



CRWI Update November 30, 2019

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INVISTA S.à.r.l.
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Services, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
METCO Environmental, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TestAmerica Laboratories, Inc.
TRC Environmental Corporation
W. L. Gore and Associates, Inc.
Wood, PLC

INDIVIDUAL MEMBERS

Ronald E. Bastian, PE
Ronald O. Kagel, PhD

ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University
Colorado School of Mines
Lamar University
Louisiana State University
Mississippi State University
New Jersey Institute of Technology
University of California – Berkeley
University of Dayton
University of Kentucky
University of Maryland
University of Utah

44121 Harry Byrd Highway, Suite 225
Ashburn, VA 20147

Phone: 703-431-7343
E-mail: mel@crwi.org
Web Page: <http://www.crwi.org>

PFAS

Congress is currently pursuing two paths for legislation that would require EPA to develop regulations governing emissions and clean-up of per- and polyfluoroalkyl substances (PFAS). The one closest to completion is the 2020 defense authorization bill. House and Senate versions have been passed and negotiations to rectify the two versions began in September. The trade press is reporting that most of the differences have been worked out but that certain PFAS requirements are holding up progress. It is uncertain whether the negotiators will find a compromise that lawmakers can support. Since these negotiations are not open to the public, it is difficult for one outside the community to be able to determine what compromises have been made or how much progress has been made until the negotiators release their final version.

During a November 19, 2019, House Energy and Commerce Committee markup, Chairman Frank Pallone (D-NJ) offered an amendment to H.R. 535 as a substitute (new language to completely replace the original language). This amendment was approved along party lines. The original bill would have required EPA to designate all PFAS compounds as hazardous substances under CERCLA. The substitute language is much more comprehensive. It would require EPA to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances within one year but would give the Agency five years to make a determination of which additional PFAS compounds to include in the hazardous substances list. It would also require the Agency to set up testing requirements under TSCA, develop primary drinking water standards, require TRI reporting (threshold of 100 pounds), require all manufacturers to report production since 2011, develop a destruction and disposal guidance, list all PFAS compounds as hazardous air pollutants under section 112(b) of the Clean Air Act, require that all incineration of PFAS be conducted in accordance with the requirements of the Clean Air Act, require that all PFAS compounds designated for disposal be handled under 40 CFR 264, and require that all incineration be conducted at a facility that has been

permitted to receive waste. It also appears that PFAS waste would be designated as hazardous but that language is not clear. The next step for this bill will be consideration by the full House. The timing for this is uncertain.

On November 8, 2019, EPA published a *Federal Register* notice asking for comments on their systematic review protocol for five PFAS compounds – perfluorodecanoic acid (PFDA), perfluorononanoic acid (PFNA), perfluorohexanoic acid, (PFHxA), perfluorohexanesulfonate (PFHxS), and perfluorobutanoic acid (PFBA). This document describes the methods for conducting a systematic review and the development of a dose response for these five chemicals. It also includes a summary of why these chemicals were chosen, the specific aims of the assessment, draft exposure criteria, and identification of areas of scientific complexity. The comment period ends on December 23, 2019.

On November 25, 2019, EPA Administrator Wheeler signed an Advance Notice of Proposed Rulemaking (ANPRM) soliciting information for a future rule to add PFAS compounds to TRI. The notice outlines why EPA is considering adding these chemicals, what listing actions are being considered, who would be required to report, and the current understanding of the hazards associated with the compounds. The notice gives a list of SIC codes of the industries that could be included in the rulemaking. In this action, EPA states there are approximately 600 PFAS compounds manufactured. They are requesting information on which of these compounds have sufficient toxicity information to be considered for listing. They also ask what the reporting thresholds should be, mentioning the two reporting thresholds for persistent, bioaccumulative, and toxic (PBT) chemicals as a possible starting point. Specifically, EPA is request for comments on:

- Which of the 600 compounds should be evaluated for inclusion in TRI;
- Are there any data on whether PFAS chemicals can be grouped or would they need to be listed individually;
- What are the appropriate thresholds for reporting; and
- A request for any toxicity data or evidence of environmental persistence or bioaccumulation.

Once published, there will be a 60-day comment period. This notice is scheduled for publication in the *Federal Register* on December 4, 2019.

EAB permit appeals proposed rule

On November 6, 2019, EPA announced a proposed rule that would modify the permit appeals process that is a part of the Environmental Appeals Board's (EAB) mandate. The proposed rule would set up a time-limited alternative dispute resolution (ADR) as a pre-condition to judicial review by the EAB. If the parties do not agree on the ADR or

EAB decisions, the permit would become final and could be challenged in federal court. The proposed rule would establish a 60-day deadline for the EAB to reach a final decision once the appeal has been fully briefed. The proposed rule would also limit the ability to ask for extensions of the time to file briefs. Several other reforms are proposed. These include setting a twelve-year term for each EAB judge (can be renewed), a new process to determine which rulings will be considered as precedential, and a new mechanism where EPA's General Counsel can issue a dispositive legal interpretation on any manner pending before the EAB. The proposed rule will have a 30-day comment period and is scheduled for publication in the *Federal Register* on December 3, 2019.

RTR proposed rules

EPA released two proposed risk and technology review (RTR) rules in November. The surface coatings proposed rule was published on November 1, 2019. For these source categories, EPA determined that the risks are acceptable and that no additional restrictions are required based on a technology review. In addition, they are proposing to remove any startup, shutdown, and malfunction provisions and are adding electronic reporting for performance test results. Comments on this proposed rule are due on December 16, 2019.

On November 1, 2019, EPA Administrator Wheeler signed the Miscellaneous Organic NESHAP (MON) RTR proposed rule. In this action, EPA is proposing to add restrictions based on both risk and technology to address ethylene oxide emissions from tanks, process vents, and equipment leaks. They are also proposing to add monitoring and operational controls for flares used to control ethylene oxide emissions and to control emissions from processes that produce olefins and polyolefins. In addition, the Agency is proposing to remove startup, shutdown, and malfunction provisions and add electronic reporting of performance test results. This proposed rule will have a 45-day comment period once published.

RMP final rule

In 2017, EPA promulgated amendments to the risk management plan (RMP) requirements. Three petitioners requested reconsideration of several of the new provisions. EPA granted those petitions and on November 21, 2019, EPA Administrator Wheeler signed a second amendment to the original rule. In the newest amendment, EPA:

- Rescinded the requirement for a third party to conduct a compliance audit after a reportable incident;
- Rescinded the requirement to assess inherently safer technologies (chemical substitution and process designs) to reduce risk;

- Rescinded the requirement to conduct a root cause analysis after a reportable incident;
- Rescinded the requirement to release facility chemical hazard information following an incident;
- Retained the requirement that facilities must annually coordinate with local response organizations;
- Modified the amount of information provided to local emergency responders;
- Retained annual notification drills;
- Retained the requirements to hold field and tabletop exercises; and
- Modified the requirement so that a facility must hold a public hearing within 90 days of an incident;

This rule will become effective on the date it is published in the *Federal Register*.

Aerosol cans final rule

On November 15, 2019, EPA Administrator Wheeler signed a final rule regulating the disposal of aerosol cans. In this action, EPA adds hazardous waste aerosol cans to the list of universal wastes regulated under RCRA. Previous to this rule, all hazardous waste containing aerosol cans were regulated under RCRA Subtitle C requirements. Under universal waste requirements, both large and small quantity handlers must follow waste management standards, labeling requirements, accumulation time limits, employee training, responses to releases, shipping, and export requirements. Recyclers are allowed to puncture and drain aerosol cans as long as the process is conducted using a device designed to safely puncture and drain those cans. These may be commercially available units or ones designed by the facility as long as the design and operation protects human health and the environment. These requirements include written procedures, segregation of incompatible waste, proper waste management practices, spill prevention, and clean up kits. The final rule does not make any changes to the household hazardous waste exclusion for aerosol cans. The rule becomes effective 60 days after publication in the *Federal Register* (scheduled for December 9, 2019).

Delisting petition

On November 12, 2019, EPA proposed to grant a petition submitted by Emerald Kalama Chemicals and Fire Mountain Farms for a one-time delisting of up to 20,100 cubic yards of U019 (benzene) and U220 (toluene) mixed materials. This material is associated with the closure of waste management units at three facilities. EPA is proposing to grant the petition because the data submitted by the companies showed that the material in question does not meet any of the criteria of the listed wastes. The Agency will accept comments until December 12, 2019.

AP 42 update – liquid storage tanks

In November, EPA revised chapter 7 of AP 42. This section of the air pollution emission factors applies to liquid storage tanks. Expect all states to require the use of the revised emission factors fairly quickly. Texas has announced that all new applications must use the new factors beginning December 16, 2019. All chapters can be found at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors>.

Unified Agenda

All federal agencies are required to tell the public what regulatory actions they are working on. This data is compiled by the General Services Administration and released on the Office of Management and Budget's website. Each entry gives a brief description of the regulatory action and an estimate of when each part of the action will be completed. This list of regulatory activities is updated in the spring and fall of each year. While the estimated completion dates for each action is often inaccurate, the list gives an observer a good overview of what any federal agency is working on and when they are trying to complete that task. On November 20, 2019, EPA released their updates to the Unified Agenda. The latest version of the agenda can be found at <https://www.reginfo.gov/public/do/eAgendaMain>. To see where EPA is on your favorite rule, scroll about half way down the page and select the Agency. This will take you to a webpage listing all active actions being undertaken by EPA. The webpage is organized by offices. To obtain an abstract of the action and an approximate timetable, click on the RIN on the right-hand side of the page.

Enforcement

On November 14, 2019, the Department of Justice announced a proposed decree and a request for comments on a draft restoration plan for the areas around the Dow Chemical Company's Midland facility. The proposed consent decree would resolve natural resource damage claims for injuries to the environment resulting from releases of dioxins and furans. Under the proposed decree, Dow would:

- Implement eight natural resource restoration projects;
- Put \$6.75 million into an account to fund five additional natural resource restoration projects;
- Pay an additional \$15 million into a restoration account to be used for future restorations;
- Reimburse the Trustees for past assessment costs; and
- Implement two additional projects identified by the state of Michigan.

Comments are due on December 30, 2019.

DOE Plastics Innovation Challenge

On November 21, 2019, the Department of Energy (DOE) released a “Plastics Innovation Challenge.” This effort will use the research abilities of the national laboratories, universities, and industry to set 2030 goals to:

- Develop collection technologies to prevent plastics from entering into the ocean;
- Develop biological and chemical methods for deconstructing plastic waste into useful chemical streams;
- Develop technologies to upcycle waste plastic streams;
- Develop new plastics that are designed to be recycled; and
- Help develop ways to commercialize upcycling and recycling plastics.

In the coming weeks, DOE plans to release requests for additional information and host workshops on overcoming barriers to current recycling technologies. In the longer term, DOE plans to announce funding opportunities and partnerships to aid in innovative solutions. It is interesting that this program is coming out of DOE. Perhaps this is because EPA has very little regulatory authority in the recycling arena. A copy of the press release can be found at <https://www.energy.gov/articles/department-energy-launches-plastics-innovation-challenge>.

EDF business survey

The Environmental Defense Fund (EDF) has defined their current approach to environmental protection as the “Fourth Wave of Environmentalism.” They define the first wave as setting aside large tracts of land for conservation, the second wave as using the legal system to hold corporations and governments accountable for pollution and wildlife preservation, and the third wave as harnessing the market to reduce emissions and make products safer. The fourth wave is the use of new technologies and individual ingenuity to reduce emissions. On October 21, 2019, EDF released the results from their second survey conducted in April-March 2019 of 600 business leaders on their company’s efforts to use new technologies to protect the environment. Some of the questions asked included:

- How their company is using new technologies to expand their sustainability and drive business results;
- How their company is adopting the Fourth Wave strategies; and
- Are they feeling pressure to balance profits and sustainability?

Some of the Fourth Wave technologies identified include artificial intelligence, automation, blockchain, data analytics, and sensors. The survey found that the energy and tech sectors were ahead of other sectors when it comes to the use of data, artificial intelligence, automation, and sensors while the retail, finance, and manufacturing sectors were the least likely to use these technologies. The survey also showed that more senior executives believe that business objectives are at odds with environmental objectives but seven out of ten feel pressure from customers and investors to make sustainability a priority. A copy of the survey results can be found at https://www.edf.org/sites/default/files/Business-and-the-Fourth-Wave-of-Environmentalism_2019.pdf

NRDC

The Natural Resources Defense Council (NRDC) has announced that former EPA Administrator Gina McCarthy will be their next new president. Ms. McCarthy will start on January 6, 2020.