



CRWI Update November 30, 2021

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, 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
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
TRC Environmental Corporation
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

43330 Junction Plaza, Suite 164-641
Ashburn, VA 20147

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

PFAS

In October, EPA announced they would propose a pair of rules that would add four per- and polyfluoroalkyl substances (PFAS) to the list of hazardous constituents in 40 CFR Part 261 Appendix VIII. At the time, they did not give a timetable for these actions. While speaking at a virtual meeting of the Association of State and Territorial Solid Waste Management officials on November 1, 2021, EPA staff outlined the steps and the time anticipated for the steps. The initial data gathering step is expected to take nine months. The proposed rule writing process is anticipated to take a year. Based on this projected time line, one should expect a proposed rule late in 2023. It will likely take another year to finalize the rule.

On November 1, 2021, the American Society for Testing and Materials approved changes to its Phase I environmental site standard (E1527-21). The changes include revisions in terminology, new definitions, and a footnote suggesting that property buyers may want to include testing for potential PFAS contamination. Law firms are suggesting that potential real estate buyers test for PFAS contamination as part of their due diligence.

On November 10, 2021, EPA published a notice announcing four public meetings of the Science Advisory Board to consider draft maximum contaminant level goals for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), EPA's analysis of cardiovascular disease risk reduction as a result of reduced PFOA and PFOS exposure in drinking water, and EPA's draft framework for estimating non-cancer health risks for PFAS mixtures. The paper on PFOA proposes a reference dose (RfD) of 1.5×10^{-9} mg/kg body weight/day and suggests that the compound is likely a carcinogen. The PFOS paper proposes a RfD of 7.9×10^{-9} mg/kg/day but concluded there is not enough information to decide whether PFOS is a carcinogen. Both endpoints were chosen based on a lack of immune response to a childhood vaccine. Both of these RfD's are four orders of magnitude lower than 2016 determination (2×10^{-5} mg/kg/day). EPA used the 2016 RfD values to set the 70 ppt health advisory level for PFOA and PFOS. Should the lower RfD's prevail, it would significantly lower future emission guidelines for PFOA and PFOS. These four meetings will be held on December 16, January 4, 6, and 7. Details are in the *Federal Register* notice. The four

papers can be found at

https://sab.epa.gov/ords/sab/f?p=100:18:16490947993::RP,18:P18_ID:2601#frn.

In 2020, environmental groups filed suit in the U.S. District Court in Northern California to prevent the Department of Defense from using incineration to destroy fire-fighting foams containing PFAS. After a year, the Northern California court decided to transfer the case to the U. S. District Court for the Northern District of Ohio, the area where the material was being sent for destruction. On November 19, 2021, the environmental groups filed a motion asking for summary judgment and requested that the court issue an order to void the incineration contract. The court has not yet responded to the motion.

Treating AFFF using SCWO

EPA published a paper on the use of supercritical water oxidation (SCWO) to treat aqueous film-forming foam (AFFF). EPA ran demonstration studies at Battelle (Columbus, OH), 374 Water (Durham, NC), and Aquarden (Skaeving, Denmark). For all three demonstrations, the units showed greater than 99% destruction of the per- and polyfluoroalkyl substances (PFAS) compounds measured. While trying to develop a mass balance for fluorine, it was determined that there may be considerably more PFAS compounds that were not measured in either the feed or the treated materials. There were no measurements of reaction by-products. EPA concluded in the paper that SCWO may be an alternative to incineration, landfilling, or deep well injection. A copy of the paper can be purchased at <https://ascelibrary.org/doi/full/10.1061/%28ASCE%29EE.1943-7870.0001957>.

Pyrolysis/gasification ANPRM comment period extended

On September 8, 2021, EPA published an advanced notice of proposed rulemaking (ANPRM) seeking information for potential development of regulations for pyrolysis and gasification units that converts solid waste into useful products such as energy, fuels, and chemical commodities. On November 5, 2021, EPA extended the comment period until December 23, 2021.

1-BP listing as a HAP

In 2020, EPA announced they were granting a petition to list 1-bromopropane (1-BP) as a hazardous air pollutant (HAP). This will be the first new chemical added to the list since the Clean Air Act Amendments of 1990. In June, EPA published an advanced notice of proposed rulemaking asking for information on how to proceed with the listing process and its ramifications. That comment period ended on July 26, 2021. Based on the advanced notice, it was unclear how EPA intended to proceed with the listing. The path became clearer when the Agency submitted a final rule (November 20) to the Office of Management and Budget (OMB) listing the chemical as a HAP. It is unusual to go from an advanced notice to a final rule without including a proposed rule step in the

middle. EPA has an internal deadline to finish this action by December 31, 2021. OMB typically takes 90 days to review an action.

EPA objects to TCEQ air permit

The Texas Commission on Environmental Quality (TCEQ) issued an air permit to Oak Grove Management Company for a steam electric generating facility located in Robertson County. In 2017, the Environmental Integrity Project and the Sierra Club submitted a petition to EPA asking the Agency to object to that permit alleging it failed to comply with Clean Air Act provisions. On November 9, 2021, EPA published a notice granting that petition. The Agency cited the failure of the permit to include enforceable requirements in their written maintenance, startup, and shutdown plan, omission of limits in their Permit by Rule registrations, and failure to assure compliance with emission limits and operating requirements in the facility's New Source Review permits. TCEQ will be asked to address the issues raised in the 2017 petition.

RTR final rules

On November 18 and 19, 2021, EPA published final risk and technology review (RTR) rules covering the carbon black, cyanide, refractory products, and polyurethane source categories. In general, there were no major changes from the proposed rules. As has been their recent practice, EPA removed any startup, shutdown, and malfunction provisions and now requires electronic reporting of performance test results. EPA did not add any restrictions based on residual risk. All changes were based on technology review or the discovery of unregulated emission points within the source category. It is tempting to use these final RTR rules as an indication of how the Biden Administration plans to address future RTR rules. However, one should not read too much into this group of final rules. If the current administration wanted to make substantial changes, they would have needed to re-propose the rule. Since these rules are under court ordered deadlines, re-proposal would require asking the court for an extension of the deadline. What may be more telling is what is proposed in the next set of rules. EPA proposed an RTR rule for the paint stripping and miscellaneous surface coating operations area sources on November 19, 2021. They proposed no changes based on either risk or technology review. But this is a small source category and may not reflect how the Agency is approaching the risk review processes. The Office of Management and Budget released the proposed primary copper smelting RTR on November 22, 2021. This is a major rule and may give a better indication on whether the Biden Administration will continue to develop RTR rules using the same decision points as before or whether they will decide to use different metrics in deciding to add restrictions based on either risk or technology.

CERCLA continuous release reporting

On November 12, 2021, EPA published a direct final rule changing the reporting requirements for those sites that are required to submit continuous release reports under section 103 of the Comprehensive Environmental Response, Compensation and

Recovery Act (CERCLA). Sites required to make these reports must now do so to the appropriate headquarters office rather than to the regional office. This requirement becomes effective on December 12, 2021. The Agency does not explain why this action was taken. Observers have suggested that consolidating all reports at headquarters would make it easier for stakeholders to review those reports.

SSM SIP call litigation

In 2015, EPA updated its startup, shutdown, and malfunction (SSM) policy based on an interpretation of two court rulings that held that sources had to meet emissions limits at all times and that EPA did not have the authority to allow an affirmative defense. Following the publication of the policy, EPA informed 36 states that their state implementation plans (SIP) inappropriately allowed either an affirmative defense or an exclusion during SSM events. Industry challenged that decision. This litigation was held in abeyance while the Trump Administration decided how to proceed. On October 20, 2020, the Trump Administration issued a memo that outlined circumstances where SSM provisions and affirmative defenses could be allowed. On September 30, 2021, EPA Deputy Administrator Janet McCabe sent a memo to the Regional Administrators withdrawing the October 2020 memo and re-instating the 2015 policy. On November 3, 2021, EPA submitted an unopposed motion to the court asking that the 2015 litigation be restarted. Briefing for the original litigation had been completed but the Agency asked for supplemental briefing to update the court on recent developments.

In addition, the Agency told the court it intends to undertake rulemakings to reconsider the three Trump Administration SIP approvals for Texas, North Carolina, and Iowa. SIPs for these three states contained allowances for startup, shutdown, and malfunction events and/or affirmative defense under the 2020 policy. EPA filed a motion for voluntary remand without vacatur for those three rules. By asking for remand without vacatur, the SSM and affirmative defense provision will remain in place until EPA promulgated revised rules. This process could take one to two years.

EPA personnel

On November 3, 2021, the Senate confirmed Jeffery Prieto as EPA's General Council (54-44 vote). Previous positions for Mr. Prieto include EPA, Department of Justice, and the Department of Agriculture.

The Senate Environment and Public Works Committee has scheduled a meeting on December 1, 2021, to vote on the nominations of Carlton Waterhouse to be the next Assistant Administrator for the Office of Solid Waste, Amanda Howe to be the next Assistant Administrator for Mission Support, David M. Uhlmann to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance, and Henry Christopher Frey to be an Assistant Administrator for the Office of Research and Development.

EPA announced the appointment of Regional Administrators for Regions 2, 4, and 8. Lisa Garcia is the new Region 2 Administrator. Ms. Garcia was in EPA in the Obama Administration where she worked on the initial environmental justice plan and the design of EJSCREEN. During the Trump Administration, she was a vice president for litigation at EarthJustice and worked for GRIST magazine on climate change issues. Daniel Blackman is the new Region 4 Administrator. Previously he was an advocate on energy related issues before the Georgia Public Service Commission and the chairman of the Georgia chapter of the Sierra Club. K.C. Becker is the new Region 8 Administrator. Ms. Becker recently completed four terms as a Colorado legislator. Regional administrators do not require Senate confirmation.

Proposed CERCLA consent decree

On November 19, 2021, the Department of Justice published a proposed consent decree with the State of New York and the Tuscarora Nation against Honeywell Corporation (old Allied Chemical site in Buffalo, NY). The complaint alleged that Allied released hazardous substances into the Buffalo River from the early 1900's through the mid-1900's. The proposed decree includes a \$4.25 million fine. These funds will be used for natural resource habitat restoration projects and includes conservation easements and restrictions on 70 acres of undeveloped land adjacent to the Buffalo River. Comments will be accepted until December 19, 2021.

OSHA coronavirus fine

During a recent inspection, OSHA determined that a Georgia grocery store failed to "develop and implement timely and effective measures to mitigate the spread of coronavirus." The determination was made based on OSHA's National Emphasis Program for Coronavirus Disease

(https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-03_CPL_03.pdf). The store faces a \$9,362 fine.

Legislation

The House passed the Build Back Better Act on November 19, 2021, by a 220 to 213 vote, mostly along party lines. No Republicans voted for it and one Democrat voted against it. The House version contains \$550 billion in new climate related spending. This includes tax credits for low-carbon technologies, developing climate resilience, a Civilian Climate Corp, and the control of legacy pollutants. The bill also contains \$160 billion linked to environmental justice issues.

The current continuing resolution funding the government expires on December 3, 2021. Both the House and Senate have completed work on their versions of appropriations legislation. However, there are considerable differences between the two version and those differences have not yet been worked out. While both the House and Senate agree there needs to be another continuing resolution, they cannot agree

on how long this one should last. Most likely they will come to an agreement in time to avoid shutting down the government at midnight on December 3.

Environmental justice

In September, EPA Region 5 requested that Michigan Department of Environment, Great Lakes, and Energy ask Ajax Materials Corporation to find a different location for a hot asphalt plant rather than building it in an already overburdened community. On November 15, 2021, Michigan approved the permit allowing Ajax to build the plant on the proposed site. On the same day, Michigan sent a letter to EPA seeking guidance on how to better address environmental justice issues. Michigan received more than 340 comments on the permit but most were outside the scope of Michigan's authority under applicable law. Michigan stated that the new permit included everything available to the state within existing laws to protect nearby citizens.

This general theme was echoed by a number of states in their comments on EPA's 2022-2026 strategic plan. For example, Texas told EPA they do not have authority to consider equity, zoning, or siting when reviewing permits. Texas also noted that EPA does not have any regulations on how equity is defined, measured, weighted, or considered in permitting or enforcement actions. The current strategic plan does not adequately address how or where EPA has the authority for the application of civil rights laws to environmental programs. The Environmental Council of States asked EPA to define "overburdened communities." Several other states submitted similar concerns. All of this points to the difficulties that will be faced by permitting authorities when they attempt to implement environmental justice directives where there are no clear definitions or authorities.

CRWI meetings

Our next meeting will be on February 16-17, 2022. We are working on a location. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.