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INDIVIDUAL MEMBERS

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

ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University
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University of Maryland
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CRWI Update November 30, 2024

HWC MACT RTR rule

After a meeting of the parties in October, the judge ordered EPA to respond by November 4, 2024, as to why they could not meet the nine and 18 month schedule suggested by the plaintiffs. In response, EPA submitted an additional declaration from Penny Lassiter, Director of the Sector Policies and Programs Division. In this response, Ms. Lassiter told the court the delays in obtaining the data were due to a backup in the laboratories completing the analysis and that this data should be available shortly. The declaration laid out the following timetable for the rest of the rulemaking.

- Supplemental information collection and outreach to stakeholders, completed by November 22, 2024;
- Data analyses and modeling file development, completed by December 30, 2024;
- Residual risk analysis and technology review, completed by April 29, 2025;
- Development and completion of the proposed rule, completed by October 24, 2025;
- Proposed rule publication and comment period, completed by January 22, 2026;
- Summarization of comments, development of comment responses and analysis of data, completed by March 23, 2026; and
- Development and completion of the final rule by August 14, 2026.

The declaration stated the Agency had received data from 19 of the 23 units as a part of the Information Collection Request (ICR). Data from the three remaining units is expected by November 22. They do not expect any data from the last facility because it is no longer operating as a hazardous waste combustor.

The environmental groups countered that the data from the ICR pertained to currently unregulated pollutants and did not impact the data needed to revise the emission limits for the currently regulated pollutants. EPA responded that the courts have made it clear that the Agency was to add emission limits for non-regulated pollutants

when they conducted a technology review which is what they are doing. Both sides have agreed to additional briefings should the judge ask for it.

In summary, the two positions have not changed much since the initial briefings in 2022. However, it should be noted that as time progresses without a court decision, the two positions are starting to align.

It is not clear how the Agency is going to proceed with the malfunctions proposed rule. They could continue with the current process to publish this as a separate rule but that would likely be delayed at least 60 days into the new administration (see discussion below). An alternative is that it could get folded into the rest of the RTR rule. It is also possible that it could be dropped but one expects that probability to be low.

2024 Election

The results of the 2024 elections will result in a number of changes in both the Executive Branch and Congress. The current Biden Administration will attempt to complete as many regulations and commit as much money allocated by the current Congress as possible. The federal government is currently operating under a continuing resolution that expires on December 20, 2024. It is not clear whether the current Congress will attempt to complete the FY 2025 appropriations process by that date or whether they will pass another continuing resolution to push this decision into the next Congress.

While it is always difficult to accurately predict the future, there are some clues from the first Trump Administration on what will happen after January 20, 2025. One thing that is different is that Mr. Trump has already made a series of announcements on who he will appoint to his cabinet. This includes Lee Zeldin to be the next EPA Administrator. Mr. Zeldin represented the Long Island area in Congress from 2015 until 2023. He lost a bid to be the governor of the New York in 2022. Mr. Zeldin does not have significant experience in environmental issues.

Shortly after noon on January 20, 2025, Mr. Trump's Chief of Staff is expected to issue a memo to all federal agencies telling them to send no new actions to the Office of the Federal Register until Trump appointees have had the chance to review those actions. Actions that were emergency or with court appointed dates will likely be excluded. Any rule that has been sent to the Office of the Federal Register but not yet published are to be withdrawn. In addition, any rule that had been published in the *Federal Register* but is not yet effective, the effective date should be delayed for 60 days to allow for further review. This is typical of a new administration.

Mr. Trump's EPA is expected to be de-regulatory with most of its actions. The transition team has floated the idea of requiring all agencies to repeal 10 regulations for every new one promulgated. This idea was used in the first Trump Administration but only required two repeals for every new regulation. The two for one was not highly successful but only time will tell if the 10 for one is more or less successful. It is also

expected that the enforcement priorities for the Trump EPA will shift away from environmental justice and climate change to the more traditional enforcement areas. It is also likely that the FY 2026 budget request for EPA will be significantly lower than the FY 2025 request. Typically, Executive Branch requests for funds are ignored and Congress funds agencies based on what they want them to do. However, in the upcoming Congress, Republicans control both houses and may reduce all federal agency budgets.

Republicans in the House of Representatives will have a slightly lower majority (220-214) in the next session as they do in the current session. This will be temporarily reduced by three based on the resignation of Mr. Gaetz and two congressmen potentially joining the Executive Branch. Until new elections are held to replace these three, the House Republicans will be operating with a 217-214 majority (with one race in California still being counted). The Republican's in the Senate made significant gains and now have a 53-47 majority. If they can stay focused, this will allow the Republicans a chance to make significant legislative changes over the next two years. However, the Republicans in the Senate do not have enough votes to restrict debate (60 needed). This will mean some compromises must be made with the Democrats on the more contentious issues.

There are two areas where the Republican majority in the Senate will have a significant impact. The first is that it will be easier for Mr. Trump to get his cabinet nominees approved by the Senate. The second is the use of a resolution of disapproval under the Congressional Review Act. This act allows Congress to disapprove by a simple majority any regulation finalized in the past 60 legislative days. This act is backward looking from the end of the current session of Congress. The exact set of actions covered by this Act will not be determined until the current Congress adjourns. The Congressional Research Service predicts that any action after August 1, 2024, will be subject to a resolution of disapproval. During the first Trump Administration, this act was successfully used to overturn 16 regulations. The Biden Administration used it for 3 regulations.

Civil monetary penalty adjustment

Once a year, EPA is required to adjust civil penalties based on inflation. These are contained in 40 CFR 19.4. However, there are a number of other references throughout the Code of Federal Regulations that also list civil penalties. These may or may not be updated each time the Agency revises the penalties based on inflation. On November 8, 2024, EPA published a direct final rule that adds language to these sections to state that the penalties in these sections may not reflect current penalties and directs the reader to 40 CFR 19.4 for the proper values. This rule was effective on the publication date.

Rubber tire manufacturing final rule

Shortly after EPA finalized the rubber manufacturing risk and technology review (RTR) final rule in 2020, the court issued their LEAN decision. EPA interprets this decision to mean that it has an obligation to address emissions from unregulated pollutants when they conduct the 8-year technology review. EPA sent an Information Collection Request to six companies asking for test data on THC, filterable PM, several HAP metals, and PAHs. Based on these test results, EPA proposed and finalized emission limits for PM as a surrogate for metals and a THC limit (15-day rolling average) as a surrogate for organic HAPs (including PAHs). The final rule was published on November 29, 2024.

Interim cumulative impact framework

EPA issued an interim draft framework for considering cumulative impacts on overburdened communities on November 21, 2024. The framework does not provide detailed instructions on how to perform cumulative impact assessments nor does it assume that it should be used in every Agency action. The document is intended for use by EPA decision makers, as appropriate, in setting standards, permitting, rulemaking, cleanup, emergency response, funding decisions, and oversight of actions where there is actual or the potential for imminent and substantial endangerment. Some of the stated goals are to:

- Fully and accurately characterize the realities that communities face;
- Identify how decision-making and opportunities for intervention can improve health and quality of life while advancing equity;
- Increase meaningful engagement and improve transparency while improving health and environmental conditions in communities;
- Protected all from disproportionate and adverse environmental effects; and
- Ensure no community bears a disproportionate share of environmental impacts.

Interestingly, the draft contains a disclaimer that EPA will “not impose or enforce any disparate impact or cumulative impact analysis requirements under Title VI against any entity in the State of Louisiana.” This is based on a court order barring them from doing so. Additional details can be found in the *Federal Register* notice. Comments will be accepted until February 19, 2025.

PFAS

On November 14, 2024, EPA released a progress report on how the Biden EPA has addressed per- and polyfluoroalkyl substances (PFAS) issues. The report highlights EPA developing drinking water standards for six PFAS compounds, investing \$10 billion to remove PFAS from water, finalizing a rule to make perfluorooctanoic acid and perfluorooctane sulfonic acid as hazardous substances under CERCLA, finalizing a rule to prevent inactive PFAS compounds from re-entering commerce, development of air and water measurement methods, and other achievements. A copy of the report can be found at <https://www.epa.gov/system/files/documents/2024-11/epas-pfas-strategic->

[roadmap-2024_508.pdf](#). It is not clear how the new Administration will continue the PFAS work.

With the Republicans taking control of the Senate in 2025, Senator Shelly Moore Capito (R-WV) will become the Chair of the Environment and Public Works Committee. She has expressed an interest in continuing oversight of how EPA is handling the PFAS issue as well as modifying the current Superfund legislation to reduce the liability of “passive” receivers.

Major source reclassification rule challenged

On November 11, 2024, several environmental groups filed a petition for review of the major source reclassification rule in the U.S. Court of Appeals for the District of Columbia Circuit. The initial petition did not include the list of issues the group want to raise. Earlier comments suggest these groups will raise the absence of guarantees that the potential to emit limits are enforceable and there are no safeguards that additional emissions will not result from reclassification. It will be interesting to see if the new administration chooses to defend this rule or to take a voluntary remand to revise it. This rule is also eligible for a resolution of disapproval under the Congressional Review Act.

Enforcement

On November 13, 2024, the Department of Justice published a proposed order against Ameren Missouri. The order requires the company to implement two mitigation projects. One is to distribute stand-alone HEPA filters to residential customers within their service area and prioritizing that distribution to low-income households. The second is to provide charging stations for electric school buses. If these two projects do not meet the benchmarks of the agreement, the company will then administer funds to weatherize and make energy efficiency upgrades to residential housing in their service area.

CRWI meetings

Our next meeting will be on February 2025 in conjunction with the IT3 conference. Additional details will be available shortly. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.