



## CRWI Update October 31, 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

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### EPA FY 2022-2026 draft strategic plan

On October 1, 2021, EPA released their FY 2022-2026 draft strategic plan. The plan has seven goals:

1. Tackle the climate crisis;
2. Take action to advance environmental justice and civil rights;
3. Enforce environmental laws and ensure compliance;
4. Ensure clean air for all communities;
5. Ensure clean water for all communities;
6. Safeguard and revitalize communities; and
7. Ensure safety of chemicals for people and the environment.

Under climate change, EPA plans to reduce greenhouse gas (GHG) emissions by 533 million tons carbon dioxide equivalents by September 30, 2026. This would be accomplished by promulgating rules to reducing GHG emissions from light-duty, medium-duty, and heavy -duty vehicles, electric utility generation units, and the oil and gas industry; phase down production of hydrochlorofluorocarbons; and promote a circular economy for food wastes. They also plan to address the disproportionate vulnerability of low-income communities and communities of color to climate change and improve climate resilience.

Under environmental justice, EPA plans to meet their goals by increasing the capacity of communities to address environmental justice issues, reduce exposure to pollutants that disproportionately impact environmental justice communities, increase access to green space, and strengthening civil rights enforcement. For the last point, EPA plans to initiate 15 proactive civil rights reviews annually in overburdened communities; complete 100 audits annually to ensure EPA financial assistance recipients are complying with non-discriminatory programs; and complete 25 sessions annually with overburdened communities.

Under enforcement, EPA plans to:

- Focus on most serious areas of non-compliance;
- Prioritize and increase inspections in environmental justice communities;

- Minimize children's exposure to lead paint and lead in drinking water;
- Focus on PM emissions that may aggravate asthma;
- Increase use of tools such as advanced monitoring, audits and independent third-party verification, electronic reporting, and increased transparency of compliance data;
- Increased use of EJSCREEN;
- Increase the use of fence line monitoring and supplemental environmental projects; and
- Seeking restitution for victims of environmental crimes.

Under clean air, EPA plans to reduce NOx emissions from electric power generation sources; improve air quality in counties not currently meeting ambient air quality standards; ensure that all people with low socio-economic status live in areas where the air quality meets current PM 2.5 standards; include new and enhanced application of environmental justice analytics in the MATS rule; test, evaluate, and refine draft tools for incorporating environmental justice into EPA issued permits; and add air monitoring capabilities in environmental justice communities.

Under the safe water provisions, EPA plans to use the Justice40 program to determine where moneys are spent on water infrastructure; replace lead service lines especially in environmental justice communities; release a roadmap to regulate per- and polyfluoroalkyl substances; and increase the area of watersheds meeting current standards.

Under the safeguarding communities goal, EPA plans to bring human exposure under control at an additional 60 Superfund sites; clean up an additional 650 brownfield sites; make an additional 425 corrective action cleanups Ready for Anticipated Use; clean up an additional 36,500 leaking underground storage tanks; reduce lead exposure in children by completing at least 100 Superfund lead cleanup projects; and considering a proposal to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under CERCLA.

Under chemical safety, EPA plans to complete at least eight TSCA risk evaluations within statutory deadlines; review 90% of risk mitigation requirements for TSCA new chemicals; and renew 40% of the expiring lead-based paint renovation, repaint and painting certificates within 30 days.

A copy can be found at <https://www.epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf>. EPA will take comments until November 12, 2021. A final plan will be published early in 2022.

### **PFAS Strategic Roadmap 2021-2024**

On October 18, 2021, EPA released their PFAS Strategic Roadmap 2021-2024

(<https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024>). It has three central directives (research, restrict, and remediate) and a list of actions for several EPA program offices. It also includes a theme to prioritize protection of disadvantaged communities.

The Office of Chemical Safety and Pollution Prevention plans to publish a national per- and polyfluoroalkyl substances (PFAS) testing strategy; use TSCA Section 4 authority to require PFAS manufacturers to conduct and fund the studies for testing toxicity of PFAS compounds; conduct a robust review for all new PFAS compounds; develop enhanced reporting under the Toxics Release Inventory; and finalize new reporting requirements under TSCA Section 8.

The Office of Water plans to develop nationwide monitoring for PFAS in drinking water; develop national primary drinking water regulation for PFOA and PFOS; publish final toxicity assessment for Gen-X and five additional PFAS compounds; publish health advisories for hexafluoropropylene oxide dimer acid (Gen-X) and perfluorobutane sulfonic acid (PFBS); develop effluent limitation guidelines for several industrial sources; publish a multi-laboratory validated method for 40 PFAS compounds; and finalize the risk assessment for PFOA and PFOS in biosolids.

The Office of Land and Emergency Response plans to propose to designate PFOA and PFOS as hazardous substances under CERCLA; publish an advanced notice of proposed rulemaking to designate other PFAS compounds as hazardous substances under CERCLA; and update the guidance on destroying and disposing of certain PFAS and PFAS containing materials.

The Office of Air and Radiation will build the technical foundation to add PFAS to list of hazardous air pollutants; identify sources of PFAS air emissions; develop and finalize monitoring approaches for measuring stack emissions and ambient concentrations; and use EJSCREEN to determine if PFAS air pollution disproportionately affects environmental justice communities.

The Office of Research and Development will develop and validate methods to detect and measure PFAS in the environment (including a draft total absorbable fluorine method for wastewater, draft methods for measuring additional PFAS in air emissions, and draft methods and approaches for evaluating PFAS leaching from solids); assess toxicity, human health, and environmental risks of PFAS compounds; complete draft perfluorohexanesulfonic acid, perfluorohexanoic acid, perfluorononanoic acid, and perfluorodecanoic acid Integrated Risk Information System (IRIS) assessments; publish a final perfluorobutanoic acid IRIS assessment; and evaluate and develop technologies for reducing PFAS in the environment.

In addition, EPA plans to engage directly with affected communities in every Region; use enforcement tools to better identify and address PFAS releases at facilities; use inspections, information requests, and collect data to understand the level of

contamination and risks; identify PFAS categories; and establish a voluntary stewardship program.

### **PFAS as hazardous waste**

One issue left out of the PFAS roadmap was how EPA was going to respond to the three petitions to regulate PFAS compounds as hazardous waste. This question was answered in an October 26, 2021, letter from EPA to the Governor of New Mexico where the Agency stated they will initiate a rulemaking to add PFOA, PFOS, PFBS, and GenX to the list of hazardous constituents under 40 CFR Part 261 Appendix VIII. The process will be to evaluate existing data for these four chemicals to establish a record to support this action. Once added to this list, the letter states that these compounds will be subject to corrective action requirements at hazardous waste treatment, storage, and disposal facilities and that including these compounds in the list is a fundamental part of any subsequent hazardous waste listing determination. In addition, EPA will initiate a rulemaking to clarify that the Corrective Action Program has the authority to require investigation and cleanup for wastes that meet the statutory definition of hazardous waste. This modification would clarify that emerging contaminants such as PFAS can be addressed by the corrective action program. The letter did not establish a timetable for these two actions. At this time, New Mexico appears to be satisfied with this response.

### **GenX toxicity determination**

On October 25, 2021, EPA released its final toxicity assessment of GenX. The document sets a chronic reference dose (RfD) of  $3 \times 10^{-6}$  mg/kg body weight/day. This value is lower than what was proposed in 2018. EPA justified the lower number based on new data and revised uncertainty factors. This is the fourth PFAS chemical for which a RfD has been established. EPA has released chronic RfD for PFBS ( $3 \times 10^{-4}$ ), PFOA ( $2 \times 10^{-5}$ ) and PFOS ( $2 \times 10^{-5}$ ). The RfD for GenX is 10 to 100 times lower than the other three. Additional information can be found at <https://www.epa.gov/chemical-research/human-health-toxicity-assessments-genx-chemicals>.

### **PCB proposed rule**

On October 22, 2021, EPA published a proposed rule on alternate polychlorinated biphenyl (PCB) extraction methods and amendments to the cleanup and disposal regulations. This proposed rule was reported on in the September 2021 Update. Comments are due by December 21, 2021.

### **AMEL for LDAR**

On October 13, 2021, EPA published a notice requesting comments on a Flint Hills Resources LLC request to use an alternative means of emissions limitation (AMEL) for their leak detection and repair (LDAR) requirements. In the proposal, Flint Hills would

replace Method 21 with a continuous leak detection sensor network and work practices at two process units. Comments on the notice are due on November 29, 2021.

### **EPA personnel**

EPA has announced that Adam Ortiz would be appointed as the Regional Administrator for Region 3 and Debra Shore would be appointed as the Regional Administrator for Region 5. Mr. Ortiz was the Director of the Montgomery County (MD) Department of Environmental Protection. Ms. Shore was an elected member of the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago. In addition, Chris Frey was nominated to be the next Assistant Administrator for the Office of Research and Development. Dr. Frey has been serving as the Deputy Assistant Administrator for science policy since February. Prior to that, he was an environmental engineering professor at North Carolina State University. The Senate Environment and Public Works Committee held a hearing on Dr. Frey's nomination on October 27, 2021.

### **OIG to reexamine inspection rates at TSDFs**

EPA's Office of Inspector General (OIG) sent a memo (October 21, 2021) to the acting assistant administrators for the Office of Land and Emergency Management and the Office of Enforcement and Compliance Assurance informing them that OIG would follow up on the 2016 report pertaining to EPA inspections at hazardous waste treatment, storage, and disposal facilities (TSDF). In the 2016 report, OIG determined that EPA had not met its statutory obligations to inspect TSDFs. RCRA requires EPA or authorized states to inspect all federal and state owned TSDF every year and privately-owned TSDFs every two years. The 2016 report found that the overall inspection rates were high (91%) but this was unevenly applied. For example, the inspection rate for private TSDFs was 94% while the inspection rates for federal and state owned facilities was 85% and 54%, respectively. At that time, there were 583 privately owned TSDFs, 111 federally owned TSDFs, and 24 state owned TSDFs. While the overall rate was high, it did not meet the statutory requirement for 100% inspection. With this memo, OIG announced it would be looking at the inspection rates of TSDFs again. The memo did not mention which fiscal year OIG would choose to audit. As a result, one might expect EPA and authorized states to pick up the pace on inspections.

### **Enforcement**

On September 30, 2021, the Department of Justice published a proposed consent decree seeking injunctive relief and civil penalties for violations at three West Texas Gas facilities. The complaint listed violations of section 112(r) of the Clean Air Act and releases of hazardous air pollutants at three natural gas processing plants and one natural gas treatment facility. The decree includes a \$3.125 million fine.

On October 1, 2021, the Department of Justice published a proposed consent decree seeking injunctive relief and civil penalties from the City of New York Department of Education over the failure to comply with the area source boiler provisions at their 1329

boilers located at 566 public school buildings. The city failed to perform timely tune ups, energy assessments, and required notifications. The decree includes a \$1 million fine.

On October 13, 2021, the Department of Justice published a proposed consent decree seeking injunctive relief and civil penalties from several LyondellBasell facilities in Texas and Iowa. The complaint alleges that the company improperly operated flares. The decree includes a \$3.4 million fine.

Also on October 13, 2021, the Department of Justice announced a settlement with DuPont over hazardous waste, air, and water violations at their Sabine River Works. The violations included failure to make hazardous waste determinations, treatment, storage, or disposal of hazardous waste without a permit, and failure to meet land disposal restrictions. The company will conduct compliance audits, control benzene emissions, and pay a \$3.1 million fine.

### **Climate change**

On October 4, 2021, EPA announced they would no longer consider natural gas fired furnaces, boilers, and dryers for their Energy Star program efficiency standards. This is a part of the current Administration moving away from oil and natural gas fired appliances and toward electric appliances. This lines up with a number of local initiatives to prevent natural gas hookups for new houses.

On October 6, 2021, EPA released the 2020 greenhouse gas (GHG) emissions data (<https://www.epa.gov/ghgreporting/ghgrp-reported-data>). Power plants released 1.5 billion metric tons of GHG. This is a 10% decline from 2019 and nearly 33% decline since 2011. Emissions from the oil and gas sector was 316 million metric tons of GHG. This was 9% less than 2019 but 12% higher than 2016. The third largest emitter was the non-fluorinated organic chemical sector with 178 million metric tons. The waste sector was in sixth place with 106 million metric tons.

On October 7, 2021, EPA published its climate adaption action plan (<https://www.epa.gov/climate-adaptation/climate-adaptation-plan>). This plan meets EPA requirements under Executive Order 14008 and lays out five priority items on how EPA will meet climate change goals. These are:

1. Integrate climate adaptation into EPA programs, policies, rulemaking processes, and enforcement activities;
2. Consult and partner with tribes, states, territories, local governments, environmental justice organizations, community groups, businesses, and other federal agencies to strengthen adaptive capacity and increase the resilience of the nation, with a particular focus on advancing environmental justice;
3. Implement measures to protect the Agency's workforce, facilities, critical infrastructure, supply chains, and procurement processes from the risks posed by climate change;
4. Measure and evaluate performance; and

5. Identify and address climate adaptation needs.

On October 8, 2021, EPA announced they would grant or partially grant a number of petitions to restrict the use of hydrofluorocarbons using the authority under the American Innovation and Manufacturing Act.

In early October, the California governor signed legislation (AB 1346) to phase out the sale of most gasoline-powered small off-road engines in the state. The legislation requires state air boards to adopt rules to implement this ban in 2024.

In 2019, New York passed the Climate Leadership and Community Protection Act. This law took effect in 2020 and requires 100% zero-emissions by 2040 and a 85% reduction in GHG emissions by 2050. Using the authority in this act, the State of New York has denied operating permits for two proposed new natural gas-fired power plants. The Astoria Gas Turbine Power LLC facility was to be a 437 MW peaking combustion turbine to replace an older peaking plant. The Danskammer Energy Center was to be a new 532 MW natural gas-fired combined cycle facility. Both companies are challenging the denial.

### **Environmental justice**

California has released their newest version of an environmental screening tool called CalEnviroScreen 4.0. This version includes a new indicator for children's exposure to lead. Biden Administration officials have suggested this addition may be a model for modifying EJSCREEN.

The White House Environmental Justice Committee is developing a scorecard to evaluate how various agencies are implementing the Justice40 initiative. This initiative is designed to ensure that 40% of the benefits from federal investments go to underserved and overburdened communities.

EPA is currently reconsidering the organic liquids distribution MACT rule. They have informed environmental petitioners that they will consider fence line monitoring during the reconsideration process as one way to address environmental justice issues.

Ajax Materials Corporation requested a permit to build a hot mix asphalt plant in Genesee Township, MI. Genesee Township shares a border with Flint. The area chosen is zoned for industrial use and has several industries already located nearby including steel fabrication, a powder coating facility, a power plant, another asphalt company, and an automobile recycling yard. EPA is urging the state to ask Ajax to find a different location rather than building in an already overburdened community.

### **CRWI meetings**

Our next meeting will be on November 10-11, 2021. It will be virtual. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you have interest in attending.