



CRWI Update
October 31, 2022

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA
3M

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
TEConsulting, LLC
TRC Environmental Corporation
Trinity Consultants
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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HWC MACT deadline suit

On May 26, 2022, seven environmental groups sent a certified letter to EPA informing them of their intent to sue the Agency over the failure to promulgate a risk and technology review (RTR) rule for the hazardous waste combustors (HWC) source categories. When EPA did not respond, these groups filed a deadline suit in the U.S. District Court for the District of Columbia alleging that the Agency failed in their non-discretionary duty to review the 2005 and 2008 HWC rules under sections 112(d)(6) and 112(f)(2) of the Clean Air Act. The seven groups are Blue Ridge Environmental Defense Fund, Louisiana Bucket Brigade, Missouri Coalition for the Environment, River Valley Organizing, Sierra Club, United Congregations of Metro East, and Utah Physicians for a Healthy Environment. The suit asks the court to set an “expeditious deadline” to complete this rulemaking. On October 17, 2022, the district court clerk sent EPA and the Department of Justice a summons giving them 60 days to respond or the court would find in favor of the plaintiff.

Boiler remand litigation

The first legal challenge for the 2022 boiler remand final rule was filed by U.S. Sugar on October 24, 2022. Petitions for review do not list issues of concern. If one examines the comments made by U.S. Sugar during the proposed rule process, it is likely they will be challenging the new HCl standards and the failure to reset the date for new v. existing units. This is probably the first of many challenges to this rule.

Fugitive emissions under NSR proposed rule

Through a series of rulemakings, EPA decided that fugitive emissions should be considered when making the determination of whether a source was a major source under the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. They also made the determination that fugitive emissions should be considered when deciding whether a change triggers the major modification requirements. These rulemakings were completed in 1989. In 2008, EPA finalized a rule that excluded fugitives from these two determinations. EPA received a petition for

reconsideration of the 2008 rule. A series of stays left the 2008 rule in effect from January 20, 2009 until September 30, 2009. At this time, the 2008 rule is still stayed, meaning that the 1989 policy of including fugitive emissions is currently in effect.

On October 14, 2022, EPA proposed a rule to fully repeal the 2008 amendments. If finalized as proposed, all sources listed in 40 CFR 52.21(b)(1)(iii) would not be required to include fugitive emissions in determining whether they are a major. If not a listed source, those facilities would be required to include fugitives in that determination. All sources will be required to consider all forms of emissions (including fugitive) when determining if a proposed change would become a major modification. These proposed provisions only apply to the PSD and NSR programs. Comments are due on December 13, 2022.

EPA innovative technologies grants

Six months ago, eight small businesses were awarded EPA grants to prove the concept of their technology. On October 26, 2022, EPA's Office of Research and Development announced the second phase grants to further develop and commercialize their technologies. The grants are going to:

- CleanRobotics (Longmont, CO) to develop an artificial intelligence system to sort and audit trash;
- Geometric Data Analytics (Durham, NC) to develop a web-based application to provide highly localized and accurate forecasts for pesticide drift;
- Kebotix (Cambridge, MA) to develop an artificial intelligence platform to produce polychlorinated biphenyl-free pigments;
- KLAW Industries (Binghamton, NY) to develop a process to reuse glass in high-performance, low carbon concrete;
- Ohio Lumex Company to develop a sorbent trap for continuous emissions monitoring of metal hazardous air pollutants;
- Sonata Scientific (Dansbury, CT) to develop an air purifier that uses photocatalytic technology to destroy airborne pathogens;
- Triangle Environmental Health Initiative (Durham NC) to develop a compact, modular system for non-potable reuse of residential and commercial grey water; and
- Zabbie (Walnut Creek, CA) to use artificial intelligence to develop a zero-waste management platform.

EPA fence line monitoring dashboard

EPA initiated a benzene fence line monitoring program for refineries in 2015. Refineries are required to position a number of passive monitors around their facilities. Samples are collected and analyzed every two weeks. These measurements are used to calculate a benzene concentration difference for each sampling period by subtracting the lowest individual monitor reading from the highest individual monitor reading. Refineries then calculate a rolling annual average difference. These are reported on a

quarterly basis. While there are no regulatory emission limits associated with this program, facilities with a 9 micrograms per cubic meter annual average delta are required to conduct a root cause analysis and take corrective action to reduce emissions. EPA has posted this information on an interactive map to allow users to see the benzene emissions from every refinery. You can find this map and a list of facilities that exceed the 9 micrograms per cubic meter threshold at https://awsedap.epa.gov/public/extensions/Fenceline_Monitoring/Fenceline_Monitoring.html?sheet=MonitoringDashboard.

Request to add requirements to municipal incinerators

A group of 270 environmental groups sent a letter (October 4, 2022) to the White House Council on Environmental Quality (CEQ) urging the Council to direct EPA to update overdue standards for municipal waste combustors and close various loopholes that allow excessive emissions. This letter contends that several large municipal waste combustors do not have appropriate air pollution control devices and typically only three pollutants are monitored on a continuous basis (nitrogen oxide, carbon monoxide, and sulfur dioxide). They contend that the agency has failed to update the standards as required and that testing once a year is inadequate. Finally, they argue that enforcement is lax and when violations are found, fines are inadequate. The letter asks for CEQ to tell EPA to revise municipal waste standards, require appropriate air pollution control equipment on all units, and require continuous monitoring for toxic metals, dioxins, particulate matter, and acid gases.

RCRA MPU ruling

In 2018, EPA Region 1 alleged that distillation receiving tanks at ISP Fine Chemicals operation in Freetown, MA were hazardous waste storage tanks and were not being operated properly under RCRA. ISP challenged that ruling arguing that the distillation receiving tanks were a part of a Manufacturing Process Unit (MPU) and as such, RCRA requirements for the tanks did not apply. This was taken before an Administrative Law Judge (ALJ). In an August 15, 2022 ruling, the ALJ agreed with ISP and determined that while not all distillation receiver tanks may be a part of an MPU, in this case they were and this excludes them from RCRA regulations. The Environmental Appeals Board let this ruling stand without review. Two other similar cases addressing the scope of the MPU exemption ruled in favor of the Agency. This could have implications on how EPA pursues future enforcement actions on Subpart AA/BB/CC tanks.

Environmental justice

EPA is trying to get a better understanding of facility locations, demographics, and environmental factor to better support fair treatment and meaningful involvement in and around treatments, storage, and disposal facilities (TSDF). To do this, they plan to create a map of every RCRA Corrective Action site and permitted TSDFs in the US. Once the map is completed, the Agency will perform an EJ analysis for each facility using EJSCREEN.

EPA has released EJSCREEN 2.1. This version adds new data on US territories, threshold maps that provide a cumulative outlook, and includes a second index that incorporates new socioeconomic information. EJSCREEN 2.0 had 12 environmental justice indexes, seven socioeconomic factors, and calculated a demographic index based on income and people of color. EJSCREEN 2.1 adds an index based on low-income, unemployment, limited English, less than high school education, and low life expectancy. In addition, EPA has integrated EJSCREEN into the ECHO database.

On October 12, 2022, EPA's Deputy Assistant Administrator for the Office of External Civil Rights sent a 56 page letter to the Louisiana Department of Environmental Quality (LDEQ) concerning the environmental justice complaints around the Denka and proposed Formosa facilities in St. John the Baptist Parish. While the resolution of the complaint is not complete, the initial investigation raised concerns about LDEQ's handling of their programs and activities related to air pollution control and health risk mitigation that may have an adverse and disparate impact on residents who live in the area. Recommendations include:

- Conduct a cumulative analysis of the area including emissions from all sources;
- Conduct additional monitoring within St. John the Baptist Parish to determine where chloroprene concentrations are below 0.2 µg/m³; and
- Work to set limits in the area that, in aggregate, limit air emissions of carcinogens.

California officials have withdrawn a proposed state implementation plan (SIP) for PM 2.5 after EPA threatened disapproval because it allegedly violates the Civil Rights Act. California officials state they are willing to work with EPA to resolve the potential conflicts and are asking for guidance on how to make the SIP compliant with the Civil Rights Act.

Starting November 1, 2022, the Texas Council for Environmental Quality (TCEQ) will require all new permits and modifications to existing permits requests for TSDFs to fill out TCEQ-20960. This form is designed to allow the agency to decide whether additional public outreach is required. Additional public outreach is automatic for Austin, Dallas, Fort Worth, Houston, San Antonio, West Texas, the Texas panhandle, and the Texas/Mexico border. Facilities not in those areas must fill out Section 5 of the form to assist the agency in determining whether additional outreach is required. Some of the demographics requested in Section 5 are:

- Percentage of people over 25 years of age who have at least graduated from high school;
- Per capita income for populations near the facility;
- Percent of minority population and percentage of population by race near the facility;
- Percent of linguistically isolated households by language near the facility;
- Language commonly spoken in the area by percentages;

- Community and stakeholder groups; and
- Historic public interest or involvement.

The instructions suggest using EJSCREEN to develop the information for Section 5. Copies of the form and instructions can be found at <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>

PFAS

As the comment period for the proposed rule to add perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) to the list of hazardous substances under CERCLA comes to a close on November 7, 2022, a number of industries are beginning to realize the potential cost that will be associated with this action. While some industries have been asking for an exemption, that is not allowed under the statute. If EPA finalizes the rule as proposed, all industries that handle these two compounds are subject to the statutory language that could require them to be responsible for all cleanups at a site where they cannot prove divisibility of the harm they caused from the total harm. If finalized, approved cleanup plans for Superfund sites may be required to sample for these two compounds and if found, revise the plans and cleanup mechanism. Sampling may be required at all closed Superfund sites to determine if additional cleanup is required. To allay some of these fears, EPA is telling the waste water industry that they will attempt to preserve the three management options (land application, incineration, and landfilling) for biosolids contaminated with PFAS compounds. They are also pledging to use enforcement discretion to ensure “fairness” to minor parties inadvertently impacted. In addition, EPA stated they would prioritize large industrial facilities and sites where fire-fighting foam containing PFAS has been released and it is unlikely that passive receivers (e.g., waste water treatment plants) would be initially targeted. OMB review typically takes 90 days.

A proposed rule to set maximum contaminant levels (MCL) for PFOA and PFOS under the Safe Drinking Water Act was sent to the Office of Management and Budget (OMB) on October 6, 2022. Neither EPA nor OMB releases the contents of actions being reviewed so it is difficult to know what numeric values are being proposed. The starting place could be the health advisory levels announced in June (PFOA – 0.004 ppt and PFOS – 0.02 ppt). Both of these numbers are significantly below the current method detection limit of 4 ppt. Once finalized, the MCLs for these two compounds will likely set the cleanup standards under other environmental statutes.

Meanwhile, the World Health Organization (WHO) proposed provisional guideline values (pGV) of 100 ppt for PFOA and PFOS. WHO concluded that there was too much uncertainty and the absence of consensus to identify a critical health end point that is needed to calculate health-based guidance values. Given the uncertainty, WHO is proposing pGVs for these two compounds. These values are derived with the objective of reducing human exposure and therefore risk. The comment period on this action closes on November 11, 2022.

When speaking to the Association of State and Territorial Solid Waste Management Officials, a Department of Defense (DoD) spokesperson expressed concerns about the lack of a disposal option for PFAS compounds and stated that storage was is not a solution. DoD was banned from using incineration to destroy PFAS compounds under the FY 2022 National Defense Authorization Act unless they issued guidance or EPA finalized a rule laying out the criteria for using incineration. DoD had that guidance ready early in 2022 but it has been delayed in interagency review. It is not clear when or if it will be released.

Enforcement

On October 14, 2022, the Department of Justice published a proposed consent decree with the Stony Brook Regional Sewage Authority (NJ) to resolve issues identified in a 2018 notice of violation. The proposed decree would require the sewage authority to pay a civil penalty of \$335,750, complete and implement a plan to measure mercury concentration in the sludge, conduct a compliance test, minimize the use of their by-pass stack, and conduct a root cause analysis when mercury emissions standards are violated. Comments on the proposed decree will be accepted until November 5, 2022.

E-manifest system used in enforcement

In 2021, EPA Region 6 entered into a settlement with the United Parcel Service (UPS) on how its facilities in the Region were handling hazardous waste. Many UPS facilities were generating and managing hazardous waste in all three generator categories without complying with RCRA requirements. This prompted EPA to use the e-manifest system to track UPS shipments in other parts of the country. EPA determined that UPS facilities in 45 states were generating, accumulating, and offering to transport, treat and/or dispose of certain hazardous wastes based on data gathered from the e-manifest system. This resulted in additional fines and corrective actions.