



CRWI Update
October 31, 2023

MEMBER COMPANIES

Bayer CropScience
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
Westlake US 2, 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 RTR rule

As of October 31, 2023, the judge has not released his decision on the deadline suit. The longer it takes, the more the gap between the what the environmental groups wants and what EPA wants narrows. If the decision is released in mid-November and finds for the plaintiff, EPA would be required to propose a rule in nine months (August 2024) with a final rule in 18 months (May 2025). EPA has asked for an August 14, 2025, date to sign a proposed rule and an August 14, 2026, date to sign a final rule. The judge's decision could be either, some compromise between the two timetables, or one he develops on his own. He is unlikely to give EPA more time than they ask for. From this, one can reasonable estimate that we will see a proposed rule sometime between August of 2024 and 2025 and a final rule between May 2025 and August 2026. The date of the proposed rule will be important to those companies planning on building new hazardous waste combustors.

Worst case planning requirements

EPA is under a court ordered deadline to develop "worst case spill regulations" under Section 311(j)(5)(A)(1) of the Clean Water Act. EPA is required to sign a final rule by September 30, 2024. The proposed rule was published on March 28, 2022. As proposed, hazardous waste treatment, storage, and disposal facilities would be included under this rulemaking. The final rule was submitted to the Office of Management and Budget on October 11, 2023. Expect the final rule to be released in January 2024. It appears that EPA will release this rule ahead of schedule.

AERR proposed rule

On October 12, 2023, EPA extended the comment period for the Air Emissions Reporting Rule (AERR). Comments are now due on November 17, 2023.

TCE proposed ban

On October 31, 2023, EPA published a proposed rule to:

- Prohibit all manufacture and import, processing, and distribution of trichloroethylene (TCE):
- Prohibit all industrial and commercial uses of TCE:
- Prohibit the disposal of TCE in industrial pre-treatment, industrial treatment, or publicly owned treatment works with a limited exemption for cleanup projects; and
- Establish recordkeeping and notification requirements.

The timeframes for phasing out TCE varies based on how it is used. Additional details can be found in the *Federal Register* notice. Comments are due by December 15, 2023.

Solar panels and lithium batteries

On October 23, 2023, EPA announced they intended to regulate discarded solar panels and lithium batteries as universal waste. According to the website, EPA plans to develop a new category of universal waste under Part 273 specifically tailored to lithium batteries. Lithium batteries can cause fires when handled improperly. As such, they are likely to be hazardous waste when discarded due to ignitability and reactivity (D001 and D003). Solar panels may be hazardous when discarded because of the metals contained within the units. EPA intends to provide a practical system for discarded solar panels that include collection and recycling. The website does not give a timetable for this activity but during a recent meeting, EPA stated they are planning to release a proposed rule in the summer of 2025. Additional information can be found at <https://www.epa.gov/hw/improving-recycling-and-management-renewable-energy-wastes-universal-waste-regulations-solar>.

PFAS

On October 11, 2023, EPA published a final rule on the reporting and recordkeeping requirements for per- and polyfluoroalkyl substances (PFAS) under the Toxics Substances Control Act to require persons that manufacture or import these chemicals in any year since January 1, 2011, to submit information to the Agency on the uses, production volumes, byproducts, disposal, exposures, and existing information on environmental or health effects. The submission period for large businesses will begin on November 12, 2024 and last through May 8, 2025. The submission period for small businesses will begin on November 12, 2024 and last through November 10, 2025. EPA has included instruction for reporting this information in the rulemaking docket.

During a presentation to the American Bar Association, EPA Assistant Administrator David Uhlmann (Office of Enforcement and Compliance Assurance) told the audience that the Agency did not intend to pursue farmers who spread biosolids on their fields,

municipal airports that used aqueous film-forming foam as a flame retardant, and wastewater treatment plants that handle PFAS as long as their activities do not endanger others and they meet regulatory requirements going forward.

During a presentation to the Association of State and Territorial Solid Waste Management Officials, Charlotte Mooney, chief of EPA's Office of Land and Emergency Response cleanup branch told the audience that EPA would decide whether to reopen Superfund cleanup decisions on a case-by-case basis once PFAS chemicals have been added to the list of hazardous constituents in Appendix VIII.

On October 31, 2023, EPA published a final rule that removed the *de minimis* exemptions for reporting releases under the Toxics Release Inventory requirements for PFAS compounds and all chemicals of special concern (including dioxins). This change will become effective on November 30, 2023, and will apply to the reporting year beginning on January 1, 2024.

Environmental justice

EPA received a petition in March 2023 alleging that the Alabama Department of Environmental Management violated Title VI of the Civil Rights Act when distributing money from the State Revolving Funds. The state did not include on-site sanitation needs when distributing these funds. Petitioners allege that the state's requirement that these funds be sent to public works violates the civil rights of individuals that are not hooked up to the public systems. On October 3, 2023, the Agency accepted the petition.

The Department of Justice's Environmental and Natural Resources Division released its first ever report on incorporating environmental justice into its enforcement program on October 13, 2023. Some of the actions reported include addressing the Jackson, MS drinking water problems, suing Denka Performance Polymers over air emissions, and an interim resolution with the State of Alabama on Title VI of the Civil Rights Act. It also includes a number of recommendations to further implement their 2022 strategic plan. Additional details and a copy can be found at <https://www.justice.gov/opa/pr/justice-department-releases-first-ever-comprehensive-environmental-justice-enforcement>.

On October 18, 2023, EPA announced an \$800,000 grant to Southern University to fund a series of projects to reduce water pollution in Louisiana. The projects will work with local community leaders and Louisiana State University to conduct workshops and onsite water quality assessments in an effort to reduce contaminated discharges to local aquifers. Most of the work will be in East Baton Rouge and New Orleans East. Additional details can be found at <https://www.epa.gov/newsreleases/epa-announces-nearly-800k-southern-university-pollution-prevention-project>.

On October 23, 2023, EPA proposed revisions to the AERMOD guidelines. One of the proposed changes is to include the development of background concentration to allow

the permitting authority to conduct cumulative impact analyses. The comment period closes on December 22, 2023.

On October 24, 2023, EPA announced they had released \$128 million in community level grants to fund environmental justice initiatives. The funds are being given to 98 communities under the Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program (EJCPS) and 88 communities under the Environmental Justice Government-to-Government Program (EJG2G). Grants under EJCPS and EJG2G are up to \$500,000 and \$1 million, respectively. More details and a list of recipients can be found at

<https://www.epa.gov/environmentaljustice/environmental-justice-collaborative-problem-solving-cooperative-agreement-5>.

Ohio EPA granted a draft air permit for SOBA Energy Solutions to build a facility to convert 88 ton per day of tire-derived chips into syngas in Youngstown. Region 5 expressed concern that communities around the proposed facility exceeded the 80th percentile for 10 of 13 environmental justice indices. Subsequently, EPA asked Ohio EPA to conduct a more thorough environmental justice analysis before finalizing the permit.

EPA funding

The federal government's fiscal year ends on September 30. Congress did not complete the funding bills by this time. To prevent the government from shutting down, Congress passed a resolution continuing to fund the government at FY 23 levels. This resolution expires on November 17, 2023. Under regular order, the House and Senate passes 12 appropriations bills, each funding a certain segment of the federal government. To date, the House has passed nine of these bills while the Senate has not passed any. The new Speaker of the House has proposed a schedule to complete the passage of the other three appropriations bills before the current continuing resolution expired on November 17. The House passed their version of EPA's appropriations bill (H.R. 4821) by a 213-203 margin on October 31, 2023, mostly along party lines. In the House version, EPA is allocated \$6.17 billion. This is \$3.96 billion less than FY 23 and \$5.91 billion less than the Administration requested. The President released a statement that if presented with H.R. 4821 as passed by the House, he will veto it. The Senate version as passed out of committee would allocate \$9.9 billion for EPA, slightly less than the FY 23 allocation. Once the Senate passes their version of the bill, negotiators from both houses will meet and develop a compromise. Typically, this compromise is somewhere between the two numbers. If that holds true, EPA will get less funding in FY 24 than they did in FY 23.

Both the House and Senate are racing to complete their tasks by the current November 17 deadline. It is likely that another continuing resolution will be needed to prevent shutting down the government. The length of the next resolution will be an issue. The Speaker of the House is suggesting that the next one carry the government through

January 15 or even April 15. The Senate is leaning toward a shorter time. This sort of brinksmanship has become common.

CRWI meetings

Our next meeting will be on February 21-22, 2024. A location has not yet been identified. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.