



CRWI Update September 30, 2018

MEMBER COMPANIES

Clean Harbors Environmental Services
DowDuPont
Eastman Chemical Company
Heritage Thermal Services
INVISTA S.à.r.l.
3M
Ross Incineration Services, Inc.
Veolia ES Technical Services, 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
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
METCO Environmental, Inc.
Montrose Environmental Group, Inc.
O'Brien & Gere
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TestAmerica Laboratories, Inc.
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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RMP delay rule vacatur

On August 31, 2018, the court granted the environmental petitioners motion to file the mandate vacating the Risk Management Plan (RMP) delay rule. That same day, EPA and industrial intervenors filed motions asking the court to rescind the mandate, alleging the court did not follow its own procedures. On September 4, 2018, the court rescinded the mandate and gave EPA and industry one day to respond to the original motion for early filing of the mandate. Both met that deadline, opposing the motion. On September 21, 2018, the court again filed the mandate, vacating the 2017 RMP delay rule.

This means that the new effective date for the RMP rule is September 21, 2018. There are several provisions where compliance is required on or before the effective date. These include hazards reviews, training, compliance audit, incident investigations, and others. Facilities will also need to coordinate with local emergency planning committees. Other requirements have compliance deadlines of 2021 and 2022. The Agency has posted guidance on what this vacatur means to facilities at <https://www.epa.gov/rmp/risk-management-plan-rmp-amendments-compliance-information>.

EPA is currently in the middle of a rulemaking to repeal most of the 2017 RMP requirements. The comment period for the proposed rule has closed and the Agency anticipates a final rule in February 2019.

Solid waste incineration deadline suit

In 2016, Sierra Club filed a suit alleging that EPA failed in their non-discretionary duties to develop a Federal Implementation Plan (FIP) for the Commercial and Industrial Solid Waste Incineration (CISWI) rule, failed to develop a FIP for the Other Solid Waste Incineration (OSWI) rule, and failed to review and revise the OSWI rule. On September 14, 2018, the court released its decision. The court concluded that the two FIPs are not non-discretionary duties and as such did not set deadlines for the development of FIPs for those two rules. However, they set deadlines for the review and revision of the OSWI rule. EPA

has until March 1, 2019 to start work on the OSWI rule, they must propose a rule by August 31, 2020, and finalize that rule by May 31, 2021.

During the briefing for this litigation, EPA proposed to promulgate the CISWI FIP by September 2020 and the OSWI FIP by 2022, should the court decide to set a deadline for each.

Delisting petition

On September 12, 2018, EPA Region 10 proposed to delist up to 1,500 cubic yards per year of F006 wastewater treatment sludge from the Sandvik Special Metals facility in Kennewick, WA. Region 10 concluded that this material is non-hazardous with respect to the original federal listing criteria and there are no other factors that would warrant retaining the material as a hazardous waste. Comments will be accepted until October 12, 2018.

Louisiana hazardous waste program revisions

On September 5, 2018, EPA proposed to grant final approval for Louisiana's revisions to their hazardous waste program. Louisiana's program includes a verified recycler exclusion for recycled hazardous waste that is more stringent than the federal transfer based exclusion. Comments on this proposed rule will be accepted until October 5, 2018.

RCRA rules for airbag disposal

Takata Corporation started recalling airbags in 2013. The heart of the problem is the inflator, the metal cartridge which is designed to ignite and inflate the airbag. However, if the cartridge ruptures during deployment, it can spray metal shards into the passenger compartment. The root cause appears to be the use of an ammonium nitrate propellant without including a chemical drying agent. Environmental moisture, high temperatures, and age have been associated with the defect that can cause the cartridge to rupture. This recall covers more than 40 million airbags. When discarded, airbags are considered to be hazardous waste. In June 2017, EPA temporarily suspended RCRA Subtitle C requirements on the recalled airbags because they were being held under a government preservation order and as such, not discarded. In June 2018, EPA told the regions that the Agency is considering an exemption from hazardous waste requirements once the units are discarded. On August 31, 2018, the Office of Land and Emergency Management sent an interim final rule to the Office of Management and Budget (OMB) on the management of the recalled airbags. Neither EPA nor OMB releases the contents of rules during the review process. This makes it difficult to know what is in the interim final rule but most observers think the Agency will ease requirements by either putting them under the universal waste rule or using the scrap metal exemption. OMB typically takes 90 days to review a rule. This rule should become public in early 2019.

PCB guidance

On August 24, 2018, the Office of Land and Emergency Management sent a document entitled “Guidance for Applicants Requesting to Treat/Dispose of PCBs Using Incineration or an Alternate Method: A Comprehensive Walkthrough of the Application Process” to the Office of Management and Budget (OMB). When asked, EPA staff responded that there is nothing new in this document and that is simply a compilation of all guidance documents that have been developed since the inception of the PCB program. OMB reviews typically take 90 days. Expect this guidance to be released early in 2019.

Disposal of unwanted household drugs

On September 11, 2018, Acting EPA Administrator Andrew Wheeler sent a letter to U.S. law enforcement personnel. Attached to this letter was a letter from Barnes Johnson, Office of Resource Conservation and Recovery, to the regions and RCRA Divisional Directors on preferred methods for handling unwanted household drugs. In his letter, Mr. Johnson states that the Drug Enforcement Agency (DEA) sponsors two prescription drug take back days a year. The most recent event (April 28, 2018) was held at approximately 6,000 locations in the U.S. and collected nearly 10 million pounds of unwanted drugs. The letter goes on to discuss the regulations that cover these materials and the preferred disposal methods. Because most of these prescription drugs are disposed of by households, they are exempted from RCRA regulations. While this allows for more options on how to handle the materials, the Controlled Substances Act requires that these materials be destroyed so they are non-retrievable. The letter lists a number of hazardous and solid waste combustion facilities that can be used to destroy these materials. These include:

- Hazardous waste incinerators;
- Large and small municipal waste incinerators;
- Hospital, medical, and infectious waste incinerators;
- Commercial and industrial solid waste incinerators; and
- Very small municipal waste incinerators that are operated as other solid waste incinerators.

The letter specifically discourages open burning and the use of burn barrels because the emissions from these units are not controlled and may pose a risk to law enforcement officers and the surrounding community. The letter also discusses methods of shipping and the DEA-registered reverse distributors authorized to accept shipment of collected household pharmaceuticals. This letter does not appear to be on EPA’s unwanted pharmaceuticals website but a copy can be obtained from CRWI.

EPA IG reports

On September 5, 2018, EPA’s Inspector General released two reports. The first described an inconsistent approach by the Agency on using data gathered and

analyzed by citizens. The report recognizes that new technologies offer the opportunity to gather data but also recognizes the problems with data quality that hamper the use of these data. The report recommends development of a strategic vision and objectives to managing data and analysis developed by citizens, the data management requirements for using citizen science data, and an action plan for addressing those requirements. This should include sharing and using the data, data format/standards, and testing/validation of the data. The report also called for the Agency to complete their “Draft Quality Assurance Handbook for Citizen Science.” In his response letter, Acting Administrator Wheeler concurred with the recommendations and indicated interim workgroup products would be completed by December 31, 2019, and final products by December 31, 2020. A copy of the report can be found at <https://www.epa.gov/office-inspector-general/report-epa-needs-comprehensive-vision-and-strategy-citizen-science-aligns>.

The second report urged the Agency to improve its management of upgrades and fixes to the sanctioned air quality modeling systems. The report recognizes that the Agency has provided guidance on recommended procedures for existing models but it often fails to upgrade that guidance to reflect model revisions. Again the Agency has agreed with the recommendations and plans to:

- Develop standard operating plans to guide and document its process for reviewing and approving revisions to preferred air quality dispersion models;
- Develop quality assurance project plans to describe results of systematic planning for air quality dispersion model revisions;
- Update the Office of Air Quality Planning and Standards’ Quality (OAQPS) Management Plan, and
- Train OAQPS staff.

A copy of this report can be found at <https://www.epa.gov/office-inspector-general/report-epa-can-strengthen-its-process-revising-air-quality-dispersion>.

Smart Sector program

EPA’s Smart Sector program was formally rolled out in October 2017. The ideas behind this program were to increase environmental protection, increase long-term certainty and predictability, decrease industry operating costs, and lower Agency costs. On September 6, 2018, the Agency released an interactive web-based tool to provide information about the environmental and economic performance of three industry sectors. The three sectors are chemical manufacturing, utilities and power generation, and iron and steel. They call this tool Smart Sector Snapshots. It can be found at <https://www.epa.gov/smartsectors/sector-snapshots>. For each sector, the tool will allow one to look at various environmental performances over the last 20 years. These include air emissions, hazardous waste generation, and recycling.

Enforcement

In 2015, the State of Washington filed suit under RCRA alleging that untreated emissions from the underground tanks holding mixed hazardous and radioactive waste at the Hanford, WA Department of Energy (DOE) facility was posing an “imminent and substantial endangerment” to workers health. On September 19, 2018, Washington State and the DOE announced a settlement agreement that will require the Department to test and implement a system to capture and destroy chemical vapors from their underground tanks that store mixed waste. Under the agreement, DOE will first test a treatment system that destroys up to 99 percent of the organics released on simulated waste. If that testing is successful, DOE will implement that system on a tank containing actual waste. If the second test is successful, DOE and Washington State will enter into negotiations to apply that system across all tanks at the site. They will also explore the use of a jet engine to disperse vapors. In the meantime, DOE will install vapor monitoring, detection and alarm systems in areas at risk for exposure, maintain supplied air and respirators to workers, and increase sharing of information about events. DOE will reimburse Washington State, a local group, and a local union \$925,000 for costs and fees. This agreement still has to be approved by the District Court.

On September 21, 2018, the Department of Justice published a proposed consent decree with the City of Manchester, NH to reduce mercury emissions from their sewage sludge incineration operations. The consent decree requires the city to design, install, and operate a mercury control system by January 20, 2020. In the interim, the City is required to develop methods to reduce mercury in their waste water. The decree also includes a \$131,800 civil penalty.

EPA FY 2019 funding

FY 2019 ended on September 30, 2018. The House and Senate have not completed funding legislation for EPA for FY 2019 but passed a resolution that will continue to fund the Agency at FY 2018 levels until December 7, 2018. This will allow EPA to continue to operate while the House and Senate work out differences between their two funding levels.

EPA personnel

Acting EPA Administrator Wheeler is reorganizing the regions to more closely mirror headquarters structure. This is a move designed to improve efficiency and coordination. Each region will now have eight divisions that match the divisions at headquarters. While this will probably not result in significant change in regional personnel, it will likely change titles and may re-arrange who is responsible for what. The plan will be reviewed by Congress and the unions before being implemented.

On September 8, 2018, the Washington Post reported that nearly 1,600 EPA employees have left the Agency since the beginning of the Trump Administration while

the Agency has hired fewer than 400. This comes despite Congress declining to reduce EPA's budget. Some have expressed concerns that the Agency is losing its most experienced personnel. Acting Administrator Wheeler downplayed the impacts of the departure, characterizing the changes as right-sizing the Agency after the expansions under the Obama Administration. With about 25% of EPA's current staff eligible for retirement, this trend may continue for the next couple of years.

CRWI meeting

The next CRWI meeting will be on November 7-8, 2018, in the Channelview, TX area. It will feature a tour of Lyondell's hazardous waste combustion units. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).