



CRWI Update September 30, 2022

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INDIVIDUAL MEMBERS

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

ACADEMIC MEMBERS (Includes faculty from:)

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PFAS

On September 13, 2022, EPA published a notice proposing to remove twelve chemicals from the list of approved inert ingredients for use in pesticides. All twelve are either per- and polyfluoroalkyl substances (PFAS) or contain PFAS compounds. EPA states that none are currently being used as inert ingredients but believes it is appropriate to remove them to prevent their being added to pesticides in the future without EPA review. Comments will be accepted until October 13, 2022.

At the Environmental Council of States meeting in Utah, EPA Office of Water Assistant Administrator Fox tried to reassure state officials that the proposed drinking water standards for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) would take into account the feasibility of detection levels. The current health advisor levels (HAL) are several orders of magnitude below the current detection level. In the past, EPA has used HALs to set maximum contaminant levels (MCL). While Ms. Fox would not discuss specifics on what MCLs the Agency plans to set, she stated that they would reflect what was “feasible and implementable.”

After EPA published the proposed rule to add PFOA and PFOS to the list of hazardous substances under CERCLA, several industry groups asked the Agency to conduct a formal regulatory impact analysis (RIA) on the effects of the proposed rule. These groups believe that an RIA is necessary for this rule under executive orders and the Office of Management and Budget policy. EPA denied the request. The Agency decided that its current informal economic analysis supports the proposed rule and a formal RIA was not needed. Conducting an RIA would have delayed the process but might have reduced the Agency’s legal vulnerability on the final rule.

The Department of Defense (DoD) is seeking proposals to develop a method for measuring the amount of PFAS compounds in aqueous film-forming foam (AFFF). At this time, analytical methods to detect PFAS at 1 ppb do not exist. While DoD’s intent is to show that future AFFF does not contain PFAS, this method, once developed, may find multiple uses. Proposals are due by October

28, 2022. Additional detail can be found at <https://www.serdp-estcp.org/newsitems/details/ccfa32d0-b15f-4d52-8648-4a31769c1834/serdp-releases-fy-2023-supplemental-solicitation>.

EPA developed their draft strategic roadmap for dealing with PFAS issues in 2021. During the National Environmental Justice Advisory Council (NEJAC) meeting in September, the council developed a number of recommendations to be incorporated when the roadmap is revised. These include forming a PFAS response program, creating an interagency PFAS emergency response plan, develop best practices response plans, prioritizing emergency responses for environmental justice communities, and provide immediate relief (bottled water or air filters) for low income communities impacted by PFAS contamination.

As reported in August, the California legislature passed three bills governing PFAS in the state. Governor Gavin Newsom signed two but vetoed the third. He signed AB 1817 (banning sale of everyday clothing containing PFAS) and AB 2771 (expanding the ban of PFAS in cosmetics) but vetoed AB 2247. AB 2247 would have required the development of a publicly accessible database on the sources and presence of PFAS in the state. Governor Newsom stated that AB 2247 requirements were premature and would strain already limited state resources.

Environmental justice

EPA previously announced competitive grants to develop Environmental Justice Thriving Communities Technical Assistance Centers (see the August Update). The original funding was \$50 million to be spread over 5-10 centers. On September 7, 2022, EPA announced that the funding had been increased to \$100 million. They also extended the deadline for application to November 1, 2022.

EPA's External Civil Rights Compliance Office accepted complaints from the Harris County Attorney's Office and Lone Star Legal Aid. These complaints allege that the Texas Commission of Environmental Quality (TCEQ) amended their standard permits for concrete batch plants without including a requirement that the applicants show that PM and silica emissions will not cause harm to human health and the environment. In addition, the complaints argue that TCEQ failed to include Spanish speaking residents in the public hearing process.

On September 12, 2022, a Louisiana court rejected 14 Clean Air Act permits granted to Formosa by Louisiana Department of Environmental Quality (LDEQ) for their planned St. James Parish facility. The judge agreed with the petitioners that LDEQ had failed to comply with the Clean Air Act prevention of significant deterioration requirements to show that the facility would not "cause or contribute to air pollution exceeding health-based standards." The court also found that LDEQ did not conduct a cumulative impact analysis before concluding that the risk from the new facility together with the existing facilities would not adversely affect human health and the environment. LDEQ and Formosa appealed this ruling on September 27, 2022.

On September 24, 2022, EPA merged three existing offices into a new Office of Environmental Justice and External Civil Rights. One (Office of Environmental Justice) was in the Administrator's office and the other two were in the EPA's Office of Inspector General (External Civil Rights Compliance Office and the Conflict Prevention and Resolution Center). The new office will have 200 employees at headquarters and 10-20 employees in each region. It will be headed by an Assistant Administrator nominated by the President and confirmed by the Senate. Until a nominee can be confirmed, the new office is being led by Marianne Engleman-Lado in an acting capacity. In some ways, this is simply a reorganization to put all environmental justice efforts into one office. In others, it is quite different. It will elevate the environmental justice efforts to the same level as the program and the enforcement offices. They will also be in charge of distributing the \$3 billion that was allocated for environmental justice in the Inflation Reduction Act. This puts a large amount of money into a fairly small office. While some of the money is pass through (grants to local environmental justice efforts), it will allow this office to have considerable impact on future Agency actions.

In addition to the recommendations from NEJAC on the PFAS roadmap, the committee is also developing recommendation on monitoring methods. During their September 28, 2022 meeting, a working group discussed draft recommendations on improved monitoring in environmental justice communities. The recommendations center on creating an air program similar to the Clean Water Act total maximum daily load (TMDL) program. The TMDL program looks at all the sources within a watershed to determine what individual sources can release. NEJAC will recommend developing a similar program for air sheds to account for the cumulative impact of several sources in and around a community. They will also recommend additional monitoring "upstream" of a community, inside the fence monitoring, collecting and making real-time data available to the public, and triggering push notifications to the public and regulators where facilities are out of compliance. These recommendations are expected to be finalized later this year.

The Office of Land and Emergency Management released their final action plan to address environmental justice. The initial draft was released in December 2021 and was summarized in the January 2022 Update. The final plan is generally consistent with the 2021 draft but adds a provision to integrate environmental justice into emergency response preparedness and removes the requirement to include environmental justice when using the hazard ranking system for determining whether a site should be included in the National Priorities List. A copy can be found at <https://www.epa.gov/environmentaljustice/environmental-justice-action-plan-epas-land-protection-and-cleanup-programs>.

Site-remediation final rule to OMB

The site remediation MACT final rule was published in 2003. The risk and technology review final rule was published in 2020. Environmental groups sued arguing that the lowered leak thresholds and an exemption for work done under RCRA and CERCLA

were unlawful. The current administration asked that the litigation be put into abeyance while they revised the rule to address these issues. A revised final rule was sent to the Office of Management and Budget (OMB) on September 29, 2022. Neither EPA nor OMB releases the contents of rules that are under review but most observers expect modification to the leak thresholds and the exclusions. OMB typically takes 90 days to review a rule.

Permitting updates proposed rule

EPA is developing a permitting update proposed rule to codify existing policies, improve existing understanding and compliance with regulations, make technical corrections, and remove obsolete references mainly as they apply to hazardous waste treatment, storage, and disposal and permitting standards. As a part of this process, they are hosting a webinar on October 13, 2022, to inform the public of their intentions and ask for feedback. You can register for this webinar at https://usepa.zoomgov.com/webinar/register/WN_bXVIGCIkTGUPtSx2FCunIQ.

DSW guidance

EPA has recently released an implementation guidance document on the exclusions to the definition of solid waste (DSW). This document summarizes the current state of recycling exclusions and the recent litigation history. A copy can be found at https://www.epa.gov/system/files/documents/2022-08/Implementation_Guide_for_the_DSW_Exclusion_at_40_CFR_261_4_a_24_Final_508.pdf.

TSDf inspections

In June, EPA's Inspector General released a report that EPA's Office of Enforcement and Compliance Assurance (OECA) had failed to inspect hazardous waste treatment, storage, and disposal facilities (TSDf) as required under RCRA. On August 15, 2022, OECA sent a letter to the Inspector General acknowledging this failure and agreed to work with the Regions and States to address the most serious problems caused by non-compliance. They will do so by monitoring inspections being conducted at TSDfs to determine which have not been completed within the statutorily mandated time frame and prioritize those for immediate inspection. Where this cannot be accomplished, the inspections will be scheduled as soon as possible in the following year.

Air monitor funding

Congress passed the American Rescue Plan in 2021. In this legislation, EPA was given a one-time appropriation of \$50 million to boost air monitoring in environmental justice communities. EPA will provide states and local agencies with \$22.5 million in direct awards to purchase new equipment. However, the appropriations do not contain any funds to keep the equipment operating. This burden will fall on the states and local

government. Without additional funds, these entities may be hard pressed to keep the equipment operating.

OIRA administrator nomination

The Office of Information and Regulatory Affairs (OIRA) is the office within the Office of Management and Budget that is tasked with reviewing all regulations before they are released. As such, this office has considerable power to strengthen or weaken regulations before they are published. On September 12, 2022, President Biden nominated Richard Revesz as the next administrator for OIRA. This position has been vacant since January 2022. Mr. Revesz is currently with the New York University Institute for Policy Integrity. The Senate Homeland Security and Governmental Affairs Committee held his confirmation hearing on September 29. His nomination drew little direct opposition although several Republican Senators were critical of the current administration's approach to environmental regulations. A vote within the committee has not yet been scheduled.

Permit reform legislation

The fiscal year for the federal government ends on September 30. While the House has passed their funding bills for all federal agencies, the Senate has not completed their work. Without funding, all federal offices are required to shut down. The failure to complete the appropriations process happens on a regular basis and Congress has developed a method to keep the government funded. It is called a continuing resolution and funds the government at current levels for a short period of time to allow the appropriations process to be completed. A continuing resolution is considered a "must pass" piece of legislation. As such, members of Congress often attempt to attach other legislation with the idea that Congress will not reject this resolution and shut down the government – thus getting their legislation passed when it may struggle if considered alone.

In order to get his backing for the Inflation Reduction Act, Senator Joe Manchin (D-WV) made an agreement with Senate Majority Leader Chuck Schumer (D-NY) to include a permitting reform package in the September continuing resolution. On September 21, 2022, Senator Manchin revealed the specific language he wanted added to the continuing resolution. Some of the permitting reforms included were a two-year target for permit reviewed under the National Environmental Policy Act, a 150-day statutory limitation for court challenges of certain permits, and development of high priority energy projects where permit reviews would be expedited (critical mineral mining and offshore leasing). As promised, Senator Schumer included this legislation in the September continuing resolution. The responses from the more liberal side of the Democratic Party were fast and not very supportive. Senator Manchin was not able to secure enough Republican votes to overcome the Democrat opposition and on September 27, 2022, asked that his package be removed from the continuing resolution. Senator Schumer removed that part and the continuing resolution was passed by both the House and Senate. Late on September 30, President Biden signed

the resolution and the government funding will be continued at FY22 levels until December 16, 2022. Congress promptly went home to campaign for re-election. Senator Manchin will now start looking to modify these ideas and find another path for his permit reform ideas.

Enforcement alert

In August, EPA released an enforcement alert for stationary engines (<https://www.epa.gov/system/files/documents/2022-09/engineenforcement0822.pdf>). In the alert, EPA states they have been finding “numerous violations.” Concerns include failure to retrofit existing engines with proper emissions controls and failure to test controls once installed. The alert contains a list of recommended actions. Observers expect increased inspections based on the alert.

CRWI meetings

Our next meeting will be on November 2-3, 2022, in Freeport, TX. It will include a tour of the Dow’ combustion facilities. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.