Coalition for Responsible Waste Incineration

MEMBER COMPANIES

Bayer CropScience
Clean Harbors Environmental Services
Eastman Chemical Company
Formosa Plastics Corporation, USA
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC
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GENERATOR MEMBERS

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AECOM
ALL4 LLC
Alliance Source Testing LLC
B3 Systems
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Eurofins TestAmerica
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Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
Trinity Consultants
W.L. Gore and Associated, Inc.
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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CRWI Update
September 30, 2024

HWC MACT

On September 19, 2024, the environmental petitioners filed a notice with the U.S. District Court for the District of Columbia Circuit that the Agency had proposed a rule to remove the malfunctions provisions of 40 CFR Part 63 Subpart EEE but had not done anything else to resolve the deadline challenge. They encouraged the judge to set deadlines based on nine months to propose a rule and an additional nine months to finalize it. On September 26, 2024, EPA filed a notice to the court that it was completing the data collection from the Information Collection Request and is on track to send a final rule to the *Federal Register* by August 14, 2026. As of September 30, 2024, the judge had not released his decision on the deadline suit.

Boiler decision

Through a series of final rules and challenges, the U.S. Court of Appeals for the District of Columbia Circuit in 2016 remanded 34 emission limits but let 202 emission limits for the industrial boiler source category stand. When the Agency revised the 34 remanded emission limits in 2022, they used the 2013 database. The Agency's logic was that all 236 emission limits should be based on the same dataset. They also set the new v. existing date as the publication date for the 2010 proposed rule. Environmental groups challenged the use of the 2013 data arguing that the Agency should have included data from newer compliance tests. Industry challenged the new v. existing date arguing that there were sources that had been built after the 2010 proposal date but before the 2020 proposal date that would be improperly required to comply with the new source 2022 emission limits.

On September 3, 2024, the U.S. Court of Appeals for the District of Columbia Circuit released their opinion on the boiler litigation. On a 3-0 decision, the court upheld the Agency's use of the 2013 data to set 34 revised emission limits while setting aside the Agency's new source definition date. This opinion was partially based on the *Loper Bright* decision that overturned the Chevron Doctrine.

On the new v. existing date, the court made it clear that the definition of a “new source” is to be on a pollutant-by-pollutant basis and that the definition depends on when the latest proposed rule for that pollutant was published. Just how this will play out in knowing which emission limits apply to which source for which pollutant will be interesting. A unit may have to comply with existing source emission limits for some pollutants and new source emission limits for other pollutants. In addition, a source may become existing but is required to comply with the old new source emission limits based on the anti-backsliding principle.

On what data to use to set revised emission limits, the opinion supported EPA’s use of the 2013 data even though newer compliance test data were available. However, it did not require EPA to use the older data but said that in this case, the use of the 2013 data base was a reasonable interpretation of the requirements of the Clean Air Act. The key to this decision may be that EPA only changed some of the emission limits. If in the HWC MACT RTR, the Agency decides to revise some of the 2005 emission limits and defend other, this ruling may allow the agency to use an older database to revise the targeted emission limits. If the Agency decided to revise all emission limits, this opinion may not apply.

Major source reclassification final rule

On September 10, 2024, EPA published the major source reclassification final rule. The rule became effective on that date. A summary of this rule was reported in the August 2024 Update.

PFAS

In 2023, EPA promulgated a rule to require the manufacturers or importers of per- and polyfluoroalkyl substances (PFAS) to report data relating to exposure and environmental and health effects of those compounds. That reporting period was to begin on November 12, 2024, and last for six months. On September 5, 2024, EPA published a direct final rule and a proposed rule to change that reporting period to July 11, 2025, through January 11, 2026. EPA is taking this action because the software to accept this data is not yet available. The modification becomes effective on November 4, 2024, unless adverse comment is received by October 7, 2024. Additional details can be found in the *Federal Register* notice.

The Tennessee Department of Environment and Conservation is in the process of renewing their general permit for the land application of biosolids. During a recent public hearing, local farmers suggested that the agency identify and regulate PFAS compounds in biosolids. State officials acknowledged this but indicated they would wait until EPA’s risk assessment of PFAS in biosolids is completed (end of 2024) and a University of Arizona study on PFAS migration through the soil profile is released.

The Southern Environmental Law Center has reached an agreement with GFL Environmental to limit the PFAS discharges to the surface waters of the state to 4 ppt

for their Sampson County landfill (North Carolina). GFL also agreed to decline all new waste contracts for PFAS cleanup waste streams from military bases and firefighting foams until this discharge limit has been met. Additional information can be found at https://www.southernenvironment.org/press-release/agreement-reached-between-ejcan-and-gfl-largest-landfill-in-north-carolina-to-cease-pollution-and-address-environmental-injustice/.

The Department of Defense informed Congress that it does not need to set up a formal program to pilot test the ability of non-incineration technologies to destroy PFAS contaminated materials because it has already demonstrated that several times as a part of its on-going research activities.

Several industry groups have challenged EPA's final rule to add perfluorooctanoic acid and perfluorooctane sulfonate to the list of hazardous substances under CERCLA. In their non-binding statements of issues, these groups have listed the following issues to be raised during the litigation.

- Whether EPA must consider cost before designating a substance as hazardous under CERCLA;
- Did EPA fail to give significant notice and opportunity to comment before finalizing the rule;
- Did EPA incorrectly interpret CERCLA when designating these two compounds as hazardous substances;
- Did the Agency give adequate and reasonable explanations for their conclusions that the two compounds should be designated as hazardous substances; and
- Did the Agency provide reasoned responses to submitted comments.

The non-binding list often does not reflect the issues that will be briefed. This will be decided after the parties get instructions from the court on the size of the brief and what the challengers think are the strongest arguments.

Environmental justice

On September 5, 2024, EPA finalized their *Policy for Meaningful Engagement and Public Participation in Agency Decision-Making Processes*. This document replaces a 2003 document and is meant to assist EPA staff in regulatory and non-regulatory processes that involve public participation. The goals are:

- Early and frequent outreach, accessibility, and meaningful engagement;
- Provide a clear and effective process for providing public engagement;
- Use a wide variety of processes to ensure meaningful engagement;
- Ensure the Agency understands the interest and concerns of the public when making decisions; and
- Improve the efficiency, equity, and transparency of EA's decisions.

The policy defines meaningful engagement as:

- Providing timely opportunities for the public to participate in the decision-making process;
- Seeking public input as a part of the decision-making process; and
- Encouraging public participation by sharing information in a way that it is accessible to individuals with limited English proficiency, reaching out to communities who are potentially effected, eliminating barriers for individuals to participate, and providing technical assistance, tools, and resources to aid public participation.

A copy of the policy can be found at https://www.epa.gov/system/files/documents/2024-09/achieving-health-and-environmental-protection-through-meaningful-engagement-policy-august-2024.pdf.

Late in 2023, Region 8 issued a Title V permit renewal for the Deseret Energy Bonanza power plant in Utah. The renewal incorporated the requirements from the initial permit, a 2015 settlement agreement, and a 2016 minor New Source Review permit. The Ute Indian Tribe and the Ouray Reservation alleged the permit failed to comply with the current Administration's executive orders on environmental justice and asked the Environmental Appeals Board (EAB) overturn the permit. Region 8 argued that the executive orders in question "do not create legally justiciable or enforceable obligations." The EAB panel denied the tribal petition by a 3-0 vote, stating that the plaintiff failed to show that the Agency's environmental justice analysis was "clearly erroneous, an abuse of discretion, or that the permitting decision otherwise warrants review." The decision went on to say that the Agency provided meaningful engagement by sharing information and seeking tribal input throughout the permitting process.

In August, a U.S. District Court for the Western District of Louisiana judge issued a permanent injunction blocking the Agency's ability to use Title VI of the Civil Rights Act to enforce disparate impact rules against an entity in the state. On September 19, 2024, Louisiana asked the court to amend the judgement to vacate the challenged regulations. The current judgement only applies to Louisiana. The September motion is designed to make this ruling effective in other states.

Money from the Bipartisan Infrastructure Law and the Inflation Reduction Act continues to flow. In September, EPA announced $2.5 million in grants to advance environmental justice in South Texas near the Mexico border. EPA also announced $232 million in grants to clean up brownfield sites, address legacy pollution, and advance environmental justice and $156 million more to provide solar energy for low-income communities in New Mexico.

Water fluorination

In 1975, EPA recommended adding fluoride to drinking water supplies to improve dental health. In 2016, a citizens group petitioned the Agency to remove this recommendation.

In 2017, EPA denied this petition. The group challenged the Agency's decision in the U. S. District Court for the Northern District of California. After discovery and a bench trial, the court sent the case back to the Agency because new data on fluorine toxicity had been published. The group petitioned the Agency again and again the Agency denied the petition. The court reactivated the case and held another bench trial. On September 24, 2024, the judge released an opinion that overturned the denial of the petition and wrote that "fluoridation of water at 0.7 milligrams per liter (mg/l) – the level presently considered 'optimal' in the United States – poses an unreasonable risk of reduced IQ in children." This sends the petition back to the Agency for consideration. The Agency has not indicated whether they will appeal this ruling or reconsider the petition to remove its fluoride recommendation for drinking water.

Enforcement alert – imported HFCs

On September 6, 2024, EPA issued an enforcement alert to address illegal import of hydrofluorocarbons (HFC) into the United States. The American Innovation and Manufacturing Act of 2020 mandated an 85% phase down of HFCs and authorizes EPA to place limits on manufacturing and import. EPA has recently reached settlement agreements with five companies to resolve claims of unlawful imports. The alert highlights common compliance issues associated with the import of HFCs. Additional details can be found at https://www.epa.gov/enforcement/epa-targeting-illegal-imports-hydrofluorocarbon-super-pollutants-combat-climate-change.

AWMA waste information exchange

The Air and Waste Management Association (AWMA) is hosting a waste information exchange on November 19-20, in Washington, DC. The exchange will feature EPA, industry, and state speakers providing updates on their efforts in the following areas:

- National RCRA permitting priorities;
- Non-hazardous secondary waste programs;
- PFAS regulations;
- Universal waste regulation for solar panels and lithium batteries;
- Drum reconditioning proposed rulemaking;
- Municipal landfill management; and
- E-Manifest.

Additional details can be found at https://www.awma.org/waste.

CRWI meetings

Our next meeting will be on November 13-14, 2024 in RTP, NC. It will include discussions on the upcoming HWC MACT RTR proposed rule. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.