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Arcwood Environmental  
Arkema, Inc.  
Bayer CropScience  
Clean Harbors Environmental Services  
Eastman Chemical Company  
Formosa Plastics Corporation, USA  
INV Nylon Chemicals Americas, LLC  
Ross Incineration Services, Inc.  
The Dow Chemical Company  
Veolia ES Technical Solutions, LLC  
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Anduril Industries, Inc.  
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AECOM  
ALL4 LLC  
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B3 Systems  
Civil & Environmental Consultants, Inc.  
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Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
Montrose Environmental Group, Inc.  
Ramboll  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
TEConsulting, LLC  
Trinity Consultants  
W.L. Gore and Associated, Inc.

## INDIVIDUAL MEMBERS

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

## ACADEMIC MEMBERS

(Includes faculty from:)

Colorado School of Mines  
Lamar University  
Louisiana State University  
Mississippi State University  
New Jersey Institute of Technology  
Northern Illinois University  
University of California – Berkeley  
University of Dayton  
University of Kentucky  
University of Maryland  
University of Utah

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## CRWI Update September 30, 2025

### HWC RTR

According to a filing in August, EPA told the district court they intended to sign the hazardous waste combustor (HWC) risk and technology (RTR) proposed rule on or before September 30, 2025, and intended to sign a final rule by the court-ordered deadline of December 31, 2025. They reiterated that position in a September 25, 2025, status report to the court. The proposed rule may have been signed by the promised date but CRWI has not seen a copy.

### Government shutdown

The House passed a clean (meaning the bill addressed only funding the government at FY 2025 levels with no other stipulations) continuing resolution (CR) on September 19, 2025, to fund the government until November 21, 2025. Senate Democrats balked at the idea of a clean CR and instead offered a CR that also extended the subsidies for the Affordable Care Act that are set to expire on December 31, 2025. Neither the Democrat version nor the clean CR could garner enough votes to limit debate. As such neither were passed by the Senate. FY 2026 started at 12:01 am October 1, 2025. EPA is using “carryover” funds to keep all EPA employees working for the first few days of the new fiscal year. Some previously scheduled EPA-public meetings occurred on October 1, 2025, but the Department of Justice has started asking the court to put litigations for several EPA rules on hold until after the shutdown has ended. The courts have agreed to these pauses in the past. It is not clear how long these “carryover” funds will last. Once they run out, EPA will furlough approximately 89% of their employees until Congress passes a CR or passes appropriations legislation for the Agency. According to EPA’s September 29, 2025, contingency plan, 1,734 of the more than 15,000 employees will continue “essential” activities. Some of the “essential” activities include law enforcement and criminal investigations, emergency response functions, certain Superfund response work, maintenance of laboratory assets, and functions that are funded by other means (pesticide fees, Superfund taxes, etc.).

Hovering over all of this is a memo from the Office of Management and Budget (September 24, 2025) telling all agencies to consider

reduction in force notices for all employees that satisfy all of three conditions: 1) discretionary funding lapsed on October 1, 2025; 2) another source of funding is not available; and 3) the programs, projects, or activities are not consistent with the President's priorities. Any actions to terminate federal employees during the shutdown will likely face judicial challenge.

The House's position is they have passed a clean CR and it is now the Senate's problem to solve. Neither Democrat nor Republican Senators appear interested in a compromise. They both seemed to be more interested in blaming the other side. According to Wikipedia, the government has been shut down 10 times (not including this one) since 1980 because of failure of Congress to fund the government. Seven have been for less than five days. The government was shut down for 21 days under the Clinton Administration, 16 days under the Obama Administration, and 35 days under the first Trump Administration. There are no reliable predictors on how long this one will last.

### **TCE interim final rule**

In a December 2024 final rule, EPA banned the use of trichloroethylene (TCE). There were a number of temporary exclusions which expired at different times. The first expired on September 15, 2025. On September 17, 2025, EPA published an interim final rule that extended the exclusion for two uses (processing nuclear fuel and disposal to wastewater) and the downstream notification requirements for the two uses. As an interim final rule, this rule remains in place until withdrawn. EPA is also requesting comments on these three decisions. Comments are due on October 17, 2025. EPA is not opening any other provisions of the 2024 rule for comment. The interim final rule is effective on September 15, 2025. Additional details can be found in the *Federal Register* notice.

### **Regulatory agenda**

The Trump Administration released its Spring 2025 Unified Agenda on September 4, 2025. This list tells stakeholders what all agencies will try to accomplish in the upcoming year. Below is a partial list of the actions EPA plans to complete in that time period:

- October 2025 - final rule implementing Congressional Review Act resolution of disapproval for the major source reclassification rule;
- Fall 2025 – proposed rule to modify the risk management plan regulations;
- December 2025 – proposed rule to update RCRA permitting requirements;
- February 2026 – final rule to revise the Safe Drinking Water Act maximum contamination levels for four PFAS compounds;
- April 2026 – final rule to add nine PFAS compounds to the list of hazardous constituents in Appendix VIII;
- April 2026 – final rule to clarify how the Corrective Action Program can be used to address emerging pollutants;

- April 2026 – final open burn/open detonation rule; and
- July 2026 – final rule developing the infrastructure for adding compounds to the list of hazardous air pollutants under the Clean Air Act.

These dates will likely slip. The next Unified Agenda is scheduled to be released in December 2025.

## **Manifests**

In a September 11, 2025, email, EPA informed users that the old 5-copy manifest can be used until further notice as long as a continuation sheet (EPA Form 8700-22A) is included. The Agency will provide a 90-day advanced notice of the date they will no longer accept the 5-copy forms.

## **PFAS**

In 2024, EPA set maximum contamination levels (MCL) for six per- and polyfluoroalkyl substances (PFAS) under the Safe Drinking Water Act. Industry challenged this rule. The Trump EPA asked the court to hold this litigation in abeyance until they decided how to proceed. Subsequently, the Agency decided to defend the perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) MCLs but would revise the limits for the other four. On September 11, 2025, the Agency filed a motion with the court asking for partial vacatur of the 2024 rule. The Agency intends to continue to defend the MCLs for PFOA and PFAS but would like the court to vacate the MCLs for the other four. Environmental group intervenors have opposed this motion saying there was no procedural error that would justify a partial vacatur. It seems a little strange for EPA to ask the court to vacate when the Agency can simply say they made errors and plan to restart the rulemaking process for the other four. However, that process would leave the four MCLs in place while the rulemaking proceeds, which may take a couple of years.

In a surprising turn of events, EPA announced it would continue to defend the previous administration's rule to list PFOA and PFOS as hazardous substances under CERCLA. EPA notified the court of this decision and the court has asked for a briefing schedule. In addition, the Agency announced they intend to develop a framework rule under CERCLA to develop a uniform approach for adding future compounds to the list of hazardous substances. This announcement stated that the Agency would include cost as one of the parameters to be used in the framework. This may create problems for the Agency because the CERCLA statute does not allow cost to be considered. A timetable for this proposed rule has not been released.

In 2022, New Jersey Department of Environmental Protection (NJDEP) released interim soil remediation standards for four PFAS compounds: PFOA, perfluorononanoic acid, PFOS, and hexafluoropropylene oxide dimer acid. The state initiated a sampling of 157 sites to quantify the amounts of these four compounds in both rural and urban areas. While these compounds were widely detected, no sample had concentrations

exceeding current NJDEP interim standards. The Executive Summary can be found at [https://dep.nj.gov/wp-content/uploads/srp/pfas\\_factsheet.pdf](https://dep.nj.gov/wp-content/uploads/srp/pfas_factsheet.pdf).

### **Affirmative defense**

In 2014, the appeals court vacated the use of an affirmative defense for the reduction of civil penalties because that exceeded EPA's authority. The court ruled that the authority to reduce civil penalties resides within the court system, not the Agency. After this ruling, the Agency began removing all affirmative defense language from regulations as they were being revised. On September 2, the U.S. Appeals Court for the District of Columbia Circuit modified that opinion (*SSM Litigation Group v. EPA, et al.*). In this ruling, the court agreed that the Agency did not have the authority to set an affirmative defense for a partial (i.e., reduction of civil penalties) but it has the authority under the Clean Air Act to use an affirmative defense for the whole liability of an incident that is beyond the facilities' control. This does not infringe on the court's authority to preclude certain remedies (civil penalties). Thus, EPA can and should under the authority of the Clean Air Act allow for the use of an affirmative defense for incidents where the facility has no control. During the litigation, EPA also contended that an affirmative defense was not allowed because it violated the Clean Air Act requirement that some standard must apply at all times. The court rejected that argument by saying "an affirmative defense allows a defendant to avoid liability, but it does not alter the underlying legal requirements" of having a standard apply continuously.

Ironically, EPA removed the affirmative defense provisions in a September 2, 2025, final rule for the polyether polyois production industry source category.

### **OSWI litigation**

Environmental groups are suing EPA over the June 30, 2025, Other Solid Waste Incinerator (OSWI) final rule. While the initial filing does not list the issues to be challenged, these groups are expected to object to EPA not including pyrolysis units as regulated units and for exempting rudimentary combustion devices. They also may challenge the failure to regulate additional pollutants based on the *LEAN* decision. EPA estimates there are 60 OSWI units at 50 facilities covered under the final rule.

### **Worst case spill regulations**

On March 28, 2024, EPA published a final rule requiring facility response plans for worst case discharges under the Clean Water Act. In the final rule, EPA decided not to set additional requirements on facilities that already meet comparable requirements under RCRA and the Clean Air Act. On August 28, 2025, environmental groups filed a suit in the U.S. District Court for the Southern District of New York alleging that the Agency failed to properly issue required regulations to cover RCRA facilities and facilities covered by Clean Air Act risk management plans. The suit alleges that the other plans do not adequately cover all of the Clean Water Act hazardous substances discharges.

## **EPA reorganizations**

EPA has formally launched some of its reorganization plans. The Agency has released details of the reorganization of the Office of Enforcement and Compliance Assurance (OECA). This includes a new organizational structure that identifies the heads of each major group. Observers familiar with the OECA suggest it is a rather mild reorganization. The Agency has also officially launched their reorganization of the Office of Research and Development (ORD) with the associated reduction in force notices. But few details are available on the new structure of ORD, which personnel will be moved into the program offices, which will be retained in the new Office of Applied Science and Environmental Solutions (OASES), and which will be terminated. OASES will become a part of the headquarters staff, answering directly to the Administrator. Some offices have been told to stop work on ongoing research papers unless the scientific journal has already returned proofs. It appears that all future publications from the Agency will be approved by political appointees, not career staff.

How all of this will play out is unknown. The Senate Environment and Public Works Committee has already expressed strong opposition to the announced modifications to ORD. Once Congress passes appropriations legislation, the agencies are required to follow their direction on how much to spend and where to spend it. It is likely that the courts will get involved in this process before it is over.

## **CRWI meetings**

The next CRWI meeting will be held on November 12-13, 2025, in Port Arthur, TX. It will feature a tour of Veolia's hazardous waste combustor. Please contact CRWI (703-431-7343 or [mel@crwi.org](mailto:mel@crwi.org)) if you are interested in attending.