



## CRWI Update June 30, 2024

### 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  
Westlake US 2, LLC

### GENERATOR MEMBERS

Eli Lilly and Company  
3M

### ASSOCIATE MEMBERS

AECOM  
Alliance Source Testing LLC  
B3 Systems  
Civil & Environmental Consultants, Inc.  
Coterie Environmental, LLC  
Envitech, Inc.  
Eurofins TestAmerica  
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.  
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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### Chevron overturned

In 1984, a Supreme Court opinion set up a two-part test for agency rules. The first was whether the authority in statute was clearly stated or whether it was ambiguous. If ambiguous, the courts were to defer to the agency judgement as long as that action was a “reasonable interpretation” of that authority. Case law has been based on this two-part test for 40 years. On June 28, 2024, the Supreme Court overturned that precedent by a 6-3 vote. The opinion stated that the Administrative Procedures Act left that decision to the courts, not the agencies. As such, the agencies could advise the court on how they should rule but the decision was with the Judiciary, not the Executive Branch. The majority opinion went on to state that this opinion would “not call into question prior cases that relied on the Chevron framework.”

While this ruling should not impact past rules, it will have a major impact on future rulemakings and the challenges to those rules. As with all new court opinions, it will take additional litigation to determine its full impact. For now, an agency will need to spend more effort on the rulemaking process to develop the justification on why their interpretation of the statutory authority is the correct one. In addition, future challenges to rules will likely argue that the agency did not identify the “best” interpretation of the statute and the courts will have to make that decision. Industry is praising the decision while the environmental group are declaring it as a disaster.

### HWC MACT RTR rule

As of June 30, 2024, the judge had not released his decision on the deadline suit. EPA continues to work on the rule based on issuing an August 2025 proposed rule.

### All Appropriate Inquiries

On June 24, 2024, EPA added ASTM E2247-23 – “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process for Forestland or Rural Property” – by reference to the “Standards and Practices for All Appropriate

Inquiries.” This rule becomes effective on August 23, 2024. For one year, either E2247-16 and E2247-23 can be used to satisfy the requirements. After that, the Agency will remove the earlier version.

### **Lime kiln final rule**

On June 28, 2024, EPA Administrator Regan signed the lime kiln technology review final rule. In the proposed rule, EPA has included a health-based emission limit for hydrogen chloride (HCl). Industry supported the concept and pointed out that a recent risk review for this source category did not show any residual risks. However, this did not persuade the Agency to keep this provision in the final rule. The logic used by the Agency is that they are no longer certain that HCl is a threshold pollutant as defined in the Clean Air Act. Their current thinking is that uncertainties over whether HCl is a carcinogen precludes it from being considered as a threshold pollutant.

### **E-manifest third final rule**

On June 28, 2024, the EPA Administrator signed an e-manifest third final rule. This rule makes the following changes:

- Integrates exception reports, discrepancy reports, and unmanifested waste reports;
- Incorporates hazardous waste exports;
- Requires small and large generators to register to be able to obtain final signed manifest copies;
- Requires entities to correct manifest data;
- Revises movement document requirements; and
- Makes conforming changes to PCB manifest regulations under TSCA.

The requirements will be effective 180 days after publication in the *Federal Register*. A signed copy can be found at [https://www.epa.gov/system/files/documents/2024-07/prepublication\\_copy\\_emanifest-final\\_rule\\_july\\_2024.pdf](https://www.epa.gov/system/files/documents/2024-07/prepublication_copy_emanifest-final_rule_july_2024.pdf).

### **Removal of affirmative defense provisions**

On June 24, 2024, EPA proposed to remove the affirmative defense provisions from three Clean Air Act section 111 rules and 15 section 112 rules. This is in response to a 2014 court decision that EPA does not have the authority to provide for an affirmative defense. That authority resides with the courts. This action is formally modifying the provisions in the 18 rules to comply with the court decision. This rule does not address any section 129 rules (waste incineration). Those will be addressed at a later date. The comment period ends on August 8, 2024.

## **Reclassification final rule**

The final rule governing reclassification of a major source to a minor source was sent to the Office of Management and Budget (OMB) on June 4, 2024, for review. As proposed, the rule would allow facilities to continue to reclassify but with additional restrictions to ensure the source does not increase emissions after reclassification. OMB can take up to 90 days or longer to review a rule. One should expect the final rule to be released in late September.

## **Incorporating climate resilience into RCRA permits**

On June 5, 2024, the Office of Resource Conservation and Recovery released a final memo on how to implement climate resilience in hazardous waste permits. This is intended to be a guide for regions, states, and territories on how and when to consider potentially adverse climate change impacts (such as extreme weather events) on RCRA hazardous waste permits. For example, the memo states that permit writers when reviewing a new permit or renewing a permit, should conduct a high-level screening to determine if adverse climate change will impact the facility's ability to comply with their permit requirements. The memo also lists the authorities the permitting authority can use. These include design and operation requirements, location standards, contingency plans, and omnibus authority. The only tool mentioned in the memo is a screening process for sea level rise. A copy of the memo can be found at <https://www.epa.gov/hwpermitting/implementing-climate-resilience-hazardous-waste-permitting>.

## **Environmental justice**

EPA planned to release version 2.3 of EJSCREEN in late June. This version will add mapping noncompliance of drinking water systems and satellite-measured nitrogen dioxide ambient air levels to the list of environmental indicators. The new version was not released as planned but is expected early in July. The Agency has training webinars scheduled for July 10 and 24, both at noon. More information can be found at <https://www.epa.gov/ejscreen/ejscreen-office-hours-training>.

In a webinar hosted by the Source Water Collaborative of state, federal, local, and non-governmental entities, three states (Utah, North Dakota, and Delaware) reported they were using EJSCREEN to identify disadvantaged communities. These states were using this tool to help make decisions on how to allocate funds made available under the Bipartisan Infrastructure Law.

## **PFAS**

The appropriations bill for the Department of Defense cleared the House of Representatives on June 28, 2024, by a 217-198 vote. The Rules Committee considered two amendments related to per- and polyfluoroalkyl substances (PFAS) but decided not to allow them during floor debate. As such, the House version of the

Department of Defense appropriations bill does not have any PFAS provisions other than allocating funds for cleanup.

EPA sent a proposed rule to the Office of Management and Budget (OMB) that would set water discharge limits for PFAS from chemical manufacturing facilities on June 14, 2024. EPA's most recent plan calls for setting effluent limitations guidelines from the organic chemical manufacturing sector, the plastics sector, and the synthetic fibers sector. OMB typically takes 90 days to review a rule. One should expect this proposed rule to be released in late September.

The state of Washington is proposing to require monitoring for PFAS compounds in two sectors as a part of their 2025 Clean Water Act industrial stormwater general permit. Sampling and reporting will be required quarterly but sources will not be subject to benchmarks or corrective actions. Two sectors are air transportation (airports) and waste management and remediations services (landfills, transfer stations, open dumps, and land application sites). More details can be found at <https://www.wastormwatercenter.org/navigating-the-2025-isgp-draft-permit-everything-you-need-to-know/>.

EPA has listed perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under CERCLA. States continue to move faster than EPA on this issue. For example, eight states (Alaska, Delaware, Massachusetts, New York, New Jersey, Rhode Island, Washington, and Vermont) have designated multiple PFAS compounds as hazardous substances. Michigan has designated seven PFAS compounds as hazardous substances while Washington has determined that all PFAS compounds are hazardous substances. In addition, Michigan has sued the Ford International Airport to force cleanup of PFAS contamination from the use of aqueous film-forming foam. Washington state has filed an enforcement order against the Spokane International Airport ordering the entity to complete a remedial investigation and feasibility study. In late May, EPA issued a unilateral administrative order to the Air Force and the Arizona National Guard to develop a plan to ensure the drinking water supply underlying Tucson meets the new drinking water standards for PFAS.

The U.S. Chamber of Commerce is leading a group that is challenging the final rule to designate PFOA and PFOS as hazardous substances under CERCLA. The petition for review was filed on June 10, 2024, in the U.S. Court of Appeals for the District of Columbia Circuit. The initial petition does not list the issues to be raised in the ensuing litigation.

Public Employees for Environmental Responsibility (PEER) has filed suit in the U.S. District Court for the District of Columbia alleging that EPA failed in its duty to develop regulations under the Clean Water Act for PFAS compounds in biosludge. The suit alleges that the Agency has enabled the land application of sewage sludge containing PFAS compounds harming people across the country.

## **RMP litigation**

Industry and states have challenged the risk management plan (RMP) amendments. Both have filed their statement of issues. The four issues listed are:

- The requirement for a third-party audit;
- The requirement for a safer technology and alternate analysis;
- The public transparency requirements; and
- The adoption of new “generally accepted” engineering practices.

Both are arguing that EPA exceeded their authority and acted arbitrarily. This list is non-binding but often represents the challengers wish list. A briefing schedule has not been set.

## **EPA FY 25 funding**

The Interior, Environment, and Related Agencies Subcommittee of the House Appropriations Committee marked up their version of the FY 2025 funding legislation for EPA. In this version, Congress would provide \$7.36 billion for the Agency which is \$1.8 billion less than EPA received for FY 2024 and \$3.4 billion less than requested by the Administration. It also includes a number of “riders” that would block spending of allocated funds on certain rules. Some of these included greenhouse gas emission standards, the Good Neighbor Plan to implement interstate ozone requirements, and the risk management plan amendments. It now goes to the full committee for consideration. This is early in the appropriations process and many things will change before final passage. It must clear the full committee and the House where changes will likely occur. Senate Democrats are opposed to all riders and will seek to restore fundings to current levels and perhaps raise them. What this represents is the House Republican’s attempt to use the power of the purse to control EPA activities.

## **Benzene levels**

The Environmental Integrity Project posted a report and a press release in May showing that fewer refineries are reporting levels of benzene above EPA’s action level based on fence line monitoring. Their conclusion was that fence line monitoring was working to reduce benzene emissions at refineries. Additional details can be found at <https://environmentalintegrity.org/news/cancer-causing-benzene-pollution-from-u-s-refineries-down-significantly/>.

## **CRWI meetings**

Our next meeting will be on August 21-22, 2024 in Defiance, OH. It will include discussions on the upcoming HWC MACT RTR proposed rule and a tour of the Holcim Cement kiln operations in Paulding. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you are interested in attending.