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Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
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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 May 31, 2024

HWC MACT RTR

As of May 31, 2024, the judge has not released his decision on the HWC MACT RTR deadline suit. EPA continues to work on the rule based on issuing a proposed rule in August 2025.

Final rules

The Biden Administration is trying to finish as many rules as possible by the end of this year just in case they are not re-elected in November. There are two deadlines in this process they are trying to meet. The first is the date for a resolution of disapproval as authorized by the Congressional Review Act (CRA). This Act allows a member of Congress to introduce a resolution of disapproval for any final action of the Executive Branch that occurred in the last 60 legislative days. If approved by both houses of Congress and signed by the President, it removes that rule and prohibits the Executive Branch from promulgating a similar rule in the future. This tool is only useful when a new administration is elected primarily because the current administration would simply veto a resolution of disapproval for its own actions. This tool was first used in the second Bush administration, 16 times in the Trump administration, and three times in the Biden Administration. Each time, it was used to remove a final rule from the previous administration. Since the Act is backward looking, it is not exactly clear when the 60-day clock will start. Based on previous Congresses, observers estimate that the date is somewhere around May 31.

The second is to get as many actions published in the *Federal Register* as possible before the January 20, 2025, inauguration date. While an agency can change an already existing rule, it is more difficult because they must restart the rulemaking process. This is a time consuming process and the Agency must carefully craft their logic for making the change to avoid the courts vacating the new action.

Some examples of the Agency trying to beat the CRA deadline are the amendments to the coal- and lignite-fired electric generation regulations, the copper smelter risk and technology review final rule,

the risk and technology review for the synthetic organic chemical manufacturing industry and group I and II polymers and resins, and the technology review for coke ovens. These rules also add emissions limits for previously unregulated pollutants, require fence line monitoring in some cases, and for certain coke oven facilities, allows a work practice for by-pass vents.

OB/OD comment period extended

On May 16, 2024, EPA extended the comment period for the proposed rule to regulate open burn/open detonation (OB/OD) of waste munitions until June 20, 2024.

PFAS

For the past several years the National Defense Authorization Act renewals have been the primary legislative vehicle for modifying how per- and polyfluoroalkyl substances (PFAS) are regulated. For example, The FY 20 version required EPA to develop guidance on the disposal and destruction of PFAS compounds and the FY 22 version put a moratorium for the Department of Defense (DoD) using incineration to destroy PFAS until DoD released guidance or EPA published a final rule on PFAS destruction methods. When neither occurred in the 180 days allowed in the statute, DoD issued a memo that stopped using incineration as a destruction method for these wastes. DoD subsequently released guidance but EPA has not published a rule on PFAS destruction methods.

This year appears to be no different. H.R. 8070 cleared the House Armed Services Committee on May 22, 2024, by a 54-1 vote. It has been cleared by the Rules Committee and has been placed on the House calendar for consideration. As currently written, the legislation would effectively remove the FY 22 moratorium on using incineration to destroy PFAS by allowing the DoD to follow EPA's 2024 revisions to the PFAS disposal and destruction guidance. It would also require DoD to brief the Armed Services Committee in 2025 on available methods for disposal and destruction of wastes containing PFAS and encourage the use of destruction methods that would minimize products of incomplete destruction and show at least 93% fluorine mineralization. This legislation still has many steps before becoming final. There may be amendments when considered on the House floor and the Senate has yet to pass their version.

While the May 9, 2024, final rule on effluent limitation guidelines for coal-fired power plants does not contain any restrictions on water discharge of PFAS compounds, the preamble discussion (89 FR 40,287) suggests that it would be appropriate for permitting authorities to consider PFAS monitoring and that restriction on releases may be appropriate.

On May 17, 2024, EPA published a final rule adding seven PFAS compounds to the list of substances reported under the Toxics Release Inventory (TRI). This raises the total number of PFAS compounds reported under TRI to 196. The rule becomes effective on

June 17, 2024. A list of the additional chemicals and more information can be found in the *Federal Register* notice.

The American Society for Testing and Materials (ASTM) has released guidance (ASTM D8560-24) on methods for analyzing PFAS in indoor air. The guidance is an overview of indoor air measurement technologies. Additional details can be found at <https://www.astm.org/d8560-24.html>.

EPA issued two actions relating to how PFAS contamination will be handled in the Superfund universe. First, the Agency updated their regional screening levels on its website (<https://www.epa.gov/risk/regional-screening-levels-rsls-whats-new>) to reflect the most recent maximum contaminant levels under the Safe Drinking Water Act. Second, in their April 19, 2024, memo on PFAS enforcement discretion and settlement under CERCLA (<https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf>), the Agency indicated they would not include “passive receivers” into the principle responsible parties (PRP) process and encouraged other PRPs to do the same.

RMP rule challenged

On May 9, 2024, fourteen states challenged the risk management plan (RMP) final rule in the U.S. Court of Appeals for the District of Columbia Circuit. The states allege that the Agency exceeded their statutory authority during this rulemaking. On May 10, 2024, a coalition of trade organizations also challenged the rule making the same allegations. In addition, House Republicans introduced a resolution of disapproval for the rule under the Congressional Review Act. While the resolution may get approved in the House, it is less likely to make it through the Senate. If it passes both houses, Mr. Biden will likely veto it.

NFPA 401

The 2024 edition of the National Fire Protection Association (NFPA) Code 401, *Recommended Practice for the Prevention of Fires and Uncontrolled Chemical Reactions Associated with the Handling of Hazardous Waste*, is available for use. NFPA has started the process of revising the code by asking for public input on the current version. That comment period closes on January 6, 2028. NFPA plans to release the next revision in late 2028. Additional details can be found at <https://www.nfpa.org/codes-and-standards/nfpa-401-standard-development/401>.

East Palestine settlement agreement

On May 23, 2024, EPA announced a proposed settlement agreement with Norfolk Southern rail company over the derailment and subsequent clean-up in East Palestine, Ohio. Norfolk Southern will pay a \$15 million civil penalty. The agreement also includes \$20 million for a 20-year community health program, \$15 million for a long-term ground and surface water monitoring system, \$15 million for private drinking water monitoring,

\$6 million for waterway remediation, and \$175,000 for natural resources damages. EPA estimated that the railroad company has already spend approximately \$780 million on clean-up activities.

RETIGO

REal Time Geospatial Data Viewer (RETIGO) is a web-based tool that allows users to combine locally collected data with EPA air quality and meteorological station data to create local maps. The tool allows the user to keep the locally generated data on their own computer or upload it to a data repository. This is one method where EPA can collect data from citizen science monitors and make them available to the public and their research staff. The website has a tutorial on how to use the tool. More information can be found at

<https://www.epa.gov/hesc/real-time-geospatial-data-viewer-retigo>.

EPA research grants on HFC management

EPA has announced research grants to five entities to address disposal and destruction of hydrofluorocarbons (HFC). The University of Washington is to evaluate the use of alkaline hydrolysis to destroy HFCs. Texas A&M is to design and test a method for separating a range of HFC mixtures and to develop a reverse logistics supply chain. Drexel is to develop a portable method for destruction using a liquids injection incinerator and a non-thermal gliding arc plasma unit that could be used on-site unit at refrigerant reclamation companies. The University of California – Riverside is to work on a scalable catalytic system for destroying HFCs. The Air Conditioning, Heating and Refrigeration Technology Institute is to work on a pilot project to chemically convert mixed HFCs back into their original components. The Agency issued a press release on these grants but additional details have not been posted.

Environmental justice

EPA continues to move in two different directions on environmental justice issues. On April 24, 2024, they denied resident's request to object to a Clean Air Act Title V permit for Oxbow Calcining. On May 6, 2024, the Agency closed two discrimination investigations into a complaint that Mississippi Department of Environmental Quality violated the civil rights of the citizens in Jackson when allocating funds for water infrastructure. On the other hand, the Agency plans to release version 2.3 of EJSCREEN in early June. The new version will include map layers on extreme heat, modeled drinking water service boundaries, private wells, and environmental justice grants. In April, the Office of Environmental Justice and Civil Rights (OEJCR) asked for comments on its national guidance policy for FY 2025-2026. Comments are due on June 4, 2024. This and other program office's guidance on environmental justice policy are to be finalized by July 8, 2024.

The National Academy of Sciences, Engineering, and Medicine has put together a 15-person panel to draft a consensus study on the state-of-the-science and the future of cumulative impact assessment. They will give the panel their charge questions on June 10, 2024. A timetable for the completing the report has not been announced.

On May 28, 2024, the Chesapeake Bay Foundation and the Environmental Integrity Project filed a civil rights complaint with EPA's Office of External Civil Rights asking the Agency to find that Baltimore's 10-year waste management plan is discriminatory. The complaint alleges that the plan as drafted disparately impacts six predominately Black and Hispanic communities. The complaint asks EPA to assess the health impacts of the solid waste incinerator, raise tipping fees and used the increased revenue for reinvestment into community health initiatives, restrict further industrial development in the area, and implement measures to reduce illegal dumping.

Clean school buses

On May 32, 2024, EPA announced they have awarded approximately \$900 million to fund the purchase of over 3,400 new school buses, 92% of which will be electric. These awards go to nearly every state in the Union and is funded by the 2023 Inflation Reduction Act. This brings the total funds spent to date on this program to almost \$3 billion.

CRWI meetings

Our next meeting will be on August 21-22, 2024 in Paulding, OH. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.