



## CRWI Update May 31, 2026

### MEMBER COMPANIES

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  
Westlake US 2, LLC

### GENERATOR MEMBERS

Eli Lilly and Company

### ASSOCIATE MEMBERS

ALL4 LLC  
Alliance Source Testing LLC  
B3 Systems  
Coterie Environmental, LLC  
Envitech, Inc.  
Eurofins TestAmerica  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
Montrose Environmental Group, Inc.  
Ramboll  
Strata-G, LLC  
TEConsulting, LLC  
Trinity Consultants  
W.L. Gore and Associated, Inc.

### INDIVIDUAL MEMBERS

Ronald E. Bastian, PE

### 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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### HWC RTR final rule

The hazardous waste combustor (HWC) risk and technology review (RTR) final rule was signed on May 29, 2026. In this action, EPA conducted an RTR as required by the Clean Air Act, added non-regulated pollutant requirements to certain source categories, and replaced the current startup, shutdown, and malfunction (SSM) provisions with work practices. After conducting the RTR, the Agency determined that the 2005 emission limits provided an ample margin of safety and that no additional restrictions were needed. They also determined that there are no developments in practices, processes, or control technologies that warrant revisions to the 2005 emission limits based on the technology review. EPA added a new work practice standard for hydrogen fluoride (HF) for hazardous waste burning incinerators, numerical emission limits for hydrogen cyanide (HCN) for hazardous waste burning cement kilns, numerical emission limits for HF and HCN for hazardous waste burning solid fuel boilers, and a work practice standard for HF and numerical emission limits for HCN for hazardous waste burning liquid fuel boilers. EPA is also replacing the current SSM provisions with work practice standards; adding electronic reporting requirements; allowing Title V air permitting authorities to choose to exempt area sources not otherwise subject to Title V air permitting requirements on a case-by-case basis; and making other corrections to the 2005 rule. A prepublication copy can be found at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>. It is scheduled for publication in the June 3, 2026, *Federal Register*.

### Affirmative defense final rule

Prior to July 31, 2023, federal operating permit programs allowed for an emergency-related affirmative defense as codified in 40 CFR 70.6(g) and 71.6(g). On July 31, 2023, EPA published a final rule that removed these two provisions. The SSM Litigation Group sued and on September 5, 2025, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision that the 2023 rule relied on erroneous legal justifications and vacated the rule. On May 28, 2026, EPA Administrator Zeldin signed a final rule to implement the 2025 court decision. It is scheduled to be published on June 1, 2026. This final rule withdraws the 2023 rule and reinstates the provisions in 40 CFR 70.6(g) and 71.6(g). EPA took this action

without asking for comments because they were implementing a court decision. Both 40 CFR 70.6(g) and 71.6(g) define an emergency as a sudden and reasonably unforeseeable event beyond the control of the source that causes the source to exceed technology based emission limits. It does not protect the source from non-compliance based on lack of preventative maintenance, careless or improper operations, or operator error. The section goes on to define how to demonstrate an affirmative defense. The rule becomes final 60 days after publication in the *Federal Register*.

## **IRIS**

EPA's risk assessment framework is based on four core elements: hazard identification; dose-response assessment; exposure assessment; and risk characterization. In 1985, EPA created the Integrated Risk Information System (IRIS) as an internal database of human health hazards and dose-response values for chemicals found in the environment. For the first decade of its existence, IRIS summaries were generated within the program offices. In 1996, the program was moved to the Office of Research and Development (ORD). The program received increasing criticism from industry that the extrapolation from animal studies to human impacts had too many conservative assumptions stacked on top of each other, creating estimated safe exposure values that were orders of magnitude lower than naturally occurring levels of that chemical. This, combined with the dismantling of ORD, prompted EPA to modify the program and move it back into the program offices (memo from David Fotouhi, Deputy Administrator for EPA, dated April 27, 2026). EPA will retain the current IRIS assessments but the program offices should consider whether the current determinations represent the current best science. It will take some time to determine how the program offices will use this memo to modify their risk based decisions.

Traditionally, Superfund sites have used dose-response values found in IRIS to set cleanup requirements. One outcome of this decision is that it may allow Superfund sites to use other values, potentially creating another issue in the negotiations to get to a Record of Decision.

## **TCE ban extension**

In 2024, EPA issued a rule banning, with some exceptions, the manufacture and use of trichloroethylene (TCE) within a year. EPA received thirteen petitions for review for this final rule. Petitioners asked for a temporary stay of the effective date for the ban while the litigation proceeded. EPA has postponed the effective date for the start of the ban a number of times. EPA also asked the court to hold the litigation in abeyance while it reconsidered the 2024 final rule. That motion was denied. The court issued a briefing schedule on April 13, 2026. On May 5, 2026, EPA extended the effective date for the ban until the judicial review has been completed. It will probably take another six to nine months to complete the litigation.

## Permitting reform

Both RCRA and Air offices continue to work on streamlining the permitting process. The Agency published a proposed rule (May 13, 2026) to update the definition of “begin actual construction” and added a definition for “pollution-emitting activities” for New Source Review air permits. The proposed rule would distinguish between the construction of a stationary source and the construction of non-emitting components or structures. Comments are due on June 29, 2026.

EPA launched a website (EPA Permitting Authority Map - <https://www.epa.gov/permits/epa-permitting-authority-map>) to clarify who has permitting authority for any geographical location in the US.

EPA released their draft 2027 Evidence Plan on April 30, 2026 (<https://www.epa.gov/system/files/documents/2026-04/draft-epa-fy27-evidence-plan-learning-agenda-april-2026-for-public-comment.pdf>). The Evidence Act requires federal agencies to develop evidence to support policymaking. The 2027 draft includes initiatives to utilize artificial intelligence to streamline environmental permitting decisions, specifically to encourage growth in the energy sector and for data centers.

In addition, Aaron Szabo, the Assistant Administrator for the Office of Air and Radiation released a second memo (May 11, 2026) on permitting (<https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>). This memo clarified that EPA can concurrently review proposed permits while that permit is going through public participation process. It also allowed the Agency to conclude review before the 45-day review period is over and clarified the proper method for calculating deadlines for the permitting.

## PFAS

In 2024, EPA proposed a rule to amend the definition of hazardous waste applicable to the corrective action program under RCRA. The previous administration thought it would clarify how the program could address emerging pollutants, including per- and polyfluoroalkyl substances (PFAS). On May 8, 2026, EPA formally withdrew this proposed rule, saying that the revisions to the definition would complicate rather than clarify effective implementation of the corrective action program. Also in 2024, EPA proposed to add nine PFAS compounds to its list of hazardous constituents in 40 CFR part 261 Appendix VIII. EPA has not signaled how they intend to move forward on this rulemaking.

EPA's Office of Land and Emergency Management held six engagement sessions for stakeholders concerned about how to handle PFAS containing materials. Participants flagged regulatory uncertainty, sampling and analysis costs, and landfill acceptance practices. In addition, they called for EPA to set a “low” level of PFAS concentration in soils where additional cleanup is not required.

On May 18, 2026, EPA made several announcements pertaining to PFAS regulations. The first was the intention to keep and defend the current maximum contaminant levels (MCL) for perfluorooctanoic acid and perfluorooctane sulfonic acid at 4 ppt. The second was a proposed rule to allow water systems to request a two year extension for the compliance date for these two MCLs. In conjunction with that proposed rule, EPA announced nearly \$1 billion in grants to assist in this process. A third was a proposed rule (published on May 20, 2026) to rescind the MCLs for perfluorohexane sulfonic acid, perfluorononanoic acid, hexafluoropropylene oxide dimer acid, and a hazardous index requirement for the mixture of these three plus perfluorobutane sulfonic acid. EPA's reason for the proposed rule to rescind was to address legal concerns that the previous administration failed to follow the statutory requirements in the Safe Drinking Water Act when setting these requirements.

### **Enforcement**

In 2025, Executive Order 14294 required each federal agency to list the criminal regulatory offenses and the mental state set forth in the controlling federal statutes that can result in criminal charges. On May 18, 2026, EPA released a report identifying the range of potential criminal penalties for a violation and the applicable *mens rea* standard. The current version can be found at [https://www.epa.gov/system/files?file=documents/2026-05/eo-14294-report-crim-reg-offenses-with-cover-page-5-8-26\\_0.pdf](https://www.epa.gov/system/files?file=documents/2026-05/eo-14294-report-crim-reg-offenses-with-cover-page-5-8-26_0.pdf). The Executive Order requires the Agency to update the report annually.

For those of us who are not lawyers, *mens rea* (Latin for "guilty mind") is the mental element of a crime. It refers to the intent, knowledge, or culpability a defendant must have had when committing a prohibited act. To prove guilt, prosecutors usually must show both the physical act (*actus reus*) and the guilty mind (*mens rea*).

### **CRWI meetings**

The next CRWI meeting will be held on August 19-20, 2026, in Elyria, OH. It will feature a tour of Ross' incineration operation. Please contact CRWI (703-431-7343 or [mel@crwi.org](mailto:mel@crwi.org)) if you are interested in attending.