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INDIVIDUAL MEMBERS

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

ACADEMIC MEMBERS

(Includes faculty from:)

Colorado School of Mines
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Louisiana State University
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University of Kentucky
University of Maryland
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CRWI Update October 31, 2025

HWC RTR proposed rule

EPA released the signed rule on October 28, 2025. It has a 45-day comment period that starts when it is published in the *Federal Register*. That process normally takes one to two weeks depending on the work load at the Office of the Federal Register. With the government still shut down, any estimate on a publication date would be a wild guess.

In the proposed rule, EPA sets numeric emission limits for hydrogen fluoride (HF) and hydrogen cyanide (HCN) for the solid fuel boilers, an HF work practice for incinerators, cement kilns, and liquid fuel boilers, and numerical emission limits for HCN for cement kilns and liquid fuel boilers. There are no new emission limits based on either the risk or technology review. EPA withdrew the parts of the 2024 proposed rule that would have removed the malfunctions exemption. Instead, they decided to remove the exemption for startups, shutdowns, and malfunctions and put a work practice in its place. The work practice has three components: clean fuels are required during startup and shutdown; a facility is required to follow an approved startup, shutdown, and malfunction (SSM) plan during any SSM event; and the automatic waste feed cutoff system must be operational. The proposed rule adds electronic reporting and proposes to let states exempt area sources from some Title V requirements. EPA is asking for comments on developing a health-based emissions limit for HF and HCN. They are also making a number of minor changes and editorial modifications. Compliance dates for all new numeric emission limits are three years.

In their fact sheet that accompanied the proposed rule, EPA states they intent to have a final rule signed by December 31, 2025.

Secondary lead smelter proposed rule

On October 1, 2025, EPA published a proposed technology review for the secondary lead smelter source category. EPA completed the risk and technology rule in 2012. This action is the 8-year technology review under CAA section 112(d)(6). In 2023, EPA issued a 114 request for the source category. That data showed unregulated hazardous air pollutants (HAP). This action is interesting because the Agency proposed additional Maximum

Achievable Control Technology (MACT) emission limits for certain unregulated HAPs based on the LEAN decision (Appeals Court ruling that the Agency must include any unregulated HAPs when they complete a technology review) but not for others. For example, they are proposing to set total hydrocarbon (THC) as a surrogate for non-dioxin organic HAPs and dioxin for some sources and THC as a surrogate for carbonyl sulfide for another source. However, they are proposing not to set a HCl and Cl₂ emission limits based on de minimis emissions of these two compounds. Their logic for the de minimis decision is based on EPA's estimates for emissions for the entire source category (11 facilities) would be 1.5 tons per year of HCl and 0.2 tons per year of Cl₂, far below the 10 tons per year threshold for a major source. EPA recognizes that they need to set MACT limits for each HAP emitted but goes on to cite several court opinions to justify why they do not need to set MACT emission limits under the LEAN decision for pollutants they consider de minimis. Just to cover their bases, they also propose to set a numerical limit for HCl (0.03 lb/hr) using their normal MACT process.

They also solicited comments on whether the THC and dioxin emission limits should be set based on Clean Air Act section 112(d)(6) instead of 112(d)(2) and (3). EPA is asking a similar question in the HWC RTR proposed rule. The comment period ends on November 17, 2025.

PFAS

The Toxicology Division of the Texas Council on Environmental Quality (TCEQ) has develop a proposed Systematic Review and Evidence Integration for 16 per- and polyfluoroalkyl substances (PFAS). They have also published a draft development support document for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). The support document explains how TCEQ derived the toxicity values. The systemic review of the 16 chemicals is an update of the June 2011 toxicity determinations. It includes relevant oral toxicity factors and reference doses. TCEQ will accept comments on both documents until January 30, 2026. A copy of both can be found at https://www.tceq.texas.gov/toxicology/dsd/dsds_about.

Washington state has decided to dispose of their aqueous fire-fighting foam (AFFF) containing PFAS by incineration. They estimate that approximately 30,000 gallons of AFFF from 80 fire departments will need to be destroyed. A state spokesperson stated "We selected incineration for our disposal program because it efficiently processes and destroys large quantities of AFFF. This disposal option also requires no additional permitting or rulemaking."

The Senate has cleared their version of the FY 2026 National Defense Authorization Act (NDAA). There are several PFAS provisions including one that would lift the ban for the military to use incineration to destroy PFAS containing wastes. The House version (also passed) does not include this provision. The House and Senate will now appoint a committee to work out the differences between the two versions. Only time will tell if the final bill will lift the ban on incineration.

On October 24, 2025, the Office of Management and Budget has cleared a proposed rule that is expected to scale back reporting requirements for PFAS compounds under TSCA. No details on the changes in the requirements are available.

In an October 2, 2025, order, the U.S Appeals Court of the District of Columbia Circuit issued a briefing schedule for the litigation of the rule that added PFOA and PFOS to the list of hazardous substances under CERCLA. If followed, the briefing for this litigation would be completed by the end of 2025. However, the extended government shutdown may influence that timetable.

OMB review process

The Office of Information and Regulatory Affairs (OIRA) is the section of the Office of Management and Budget (OMB) that reviews all significant regulations from federal agencies. Typically, OIRA reviews take 90 days with the possibility of extensions. On October 21, 2025, OIRA released a memo governing how they would conduct future reviews. In this memo, OIRA will impose a maximum 28-day review period for certain deregulatory actions and a maximum 14-day review for “facially unlawful rules.” At the heart of this memo is Executive Order 14219 and the April 9, 2025, memo directing all agencies to review their regulations, identify any unlawful regulatory requirements, and repeal these requirements using the “good cause” exemption of the Administrative Procedures Act. The “good cause” exemption allows agency actions without a notice and comment period. To determine whether a requirement is unlawful, the April memo directs agencies to compare the requirements to the 10 Supreme Court cases listed and determine if the requirement is unlawful based on those rulings. An example given is if a requirement was based on the deference to the agency under *Chevron*, it no longer is lawful based on the “single, best meaning” under *Loper Bright* and should be repealed under the “good cause” exemption. This is based on the concept that the legal argument is the principle grounds for repeal and would likely prevail in any subsequent litigation. Environmental groups have made it clear that any repeals of existing requirements without a notice and comment period will be challenged. A copy of the memo can be found at <https://www.whitehouse.gov/wp-content/uploads/2025/10/M-25-36-Streamlining-the-Review-of-Deregulatory-Actions.pdf?cb=1761144575>.

EPA personnel

On October 8, 2025, the Senate confirmed John Busterud to be the Assistant Administrator for the Office of Land and Emergency Management and Usha-Mria Turner to be the Assistant Administrator for the Office of International and Tribal Affairs. On October 29, 2025, the Senate Environment and Public Works Committee advanced the nominations of Jeffery Hall to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance and Douglas Troutman to be the next Assistant Administrator for the Office of Chemical Safety and Pollution Prevention. Both of these votes were along party lines.

Federal government shutdown

The federal government shutdown has now reached 31 days. The longest on record is 34 days which occurred during the first Trump Administration. The Senate has held over a dozen votes on the clean continuing resolution with the same outcome each time. At the end of October, the two sides do not seem to be any closer to resolution than they were at the end of September. Federal workers get paid biweekly. This means that they have now missed two paychecks. Many federal agencies continued to operate for a couple of weeks into the shutdown using carry-over funds. Certain employees continue to work because they are considered as essential while others have been furloughed (sent home without access to their offices or computers). The Government Fair Treatment Act of 2019 ensures that federal employees impacted by a government shutdown will receive their pay retroactively once the government is re-opened. This bill was signed by Mr. Trump in his first term.

The EPA Administrator is trying to keep the regulatory staff in place so they can continue implementing his deregulatory agenda. This included regulatory personnel in the Office of Air and Radiation and the staff working on new chemicals review in the Office of Chemical Safety and Pollution Prevention. Non-regulatory staff have seen most of the furlough notices including personnel in headquarters and regional offices. EPA announced a reduction in force for about 40 staff in their waste recycling office. This has since been blocked by a district court judge. A number of personnel working on PFAS issues in the Office of Research and Development have been transferred to the newly formed Office of Applied Science and Environmental Solutions. It is not clear if the work went with the staff or if they will be assigned other duties. This office reports directly to the Administrator.

Affirmative defense re-hearing request

In 2014, the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA did not have the authority to wave civil penalties using an affirmative defense. Since then, EPA has been removing affirmative defense provisions from all regulations when revising them. This was challenged and in September, the same court unanimously agreed with the plaintiff saying that while EPA could not wave civil penalties, an affirmative defense could be a complete shield against violations that results from actions beyond the control of the entity. The environmental groups have asked for a re-hearing by all of the judges in the Circuit. Often, these requests are made when there is a split decision which is not the case here. While it is likely that the request will be denied, stranger things have happened.

AI

Early in October, the Energy Department's Pacific Northwest National Laboratory (PNNL) released a pilot project (PermitAI) that uses artificial intelligence (AI) to assist regulators and stakeholders with National Environmental Policy Act (NEPA) reviews. PermitAI contains a specialized large language model with a large repository of

historical data. The developers utilized NEPA documents from EPA, the Department of Energy, the Department of Agriculture, and the Bureau of Land Management. The first step in the process was to develop the data base that was consistent across agencies so it could be queried by the model. The model has three sections: SearchNEPA; EngageNEPA; and CommentNEPA. All three are designed to assist permitting authorities to make faster and better informed NEPA permitting decisions. These tools are available for all stakeholders. Additional information can be found at <https://www.pnnl.gov/projects/permitai> and <https://www.pnnl.gov/publications/nepatec-v20-standardized-metadata-and-text-corpus-national-environmental-policy-act>.

In addition, the trade press is reporting that private engineering firms are developing AI based tools to organize and summarize public comments, to improve scoping for environmental impact statements, and for developing environmental assessments.

Governor's letter to Congress on permitting reforms

Through the National Governors Association, 13 governors (both Democrat and Republicans) sent a letter to the Chairs and Ranking Members for the Senate Committee on Energy and Natural Resources Committee, the Senate Committee on the Environment and Public Works, the House Energy and Commerce Committee, the House Natural Resources Committee, and the House Transportation and Infrastructure Committee asking for legislative permitting reforms. The requests included:

- A method to streamline federal agency reviews across all permitting systems by creating a common interagency system to allow for digital submissions and make AI tools available to applicants to streamline the permitting process;
- Reform NEPA permitting by allowing categorical exclusions or class-based environmental review for a long list of projects such as new transmission facilities within existing right-of-ways, grid enhancing technologies, adding carbon capture facilities to existing power plants, and many others;
- Make reforms to enhance electrical transmission;
- Make reforms to nuclear energy regulations to make the process easier to site, build, and operate new nuclear power units; and
- Improve the Clean Water Act permitting process.

The letter makes a number of specific suggestions where improvements can be made and asks Congress to move forward on developing federal permit reform legislation. A copy of the letter can be found at <https://www.nga.org/advocacy-communications/letters-nga/nga-letter-on-energy-permitting-priorities/>.

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) if you are interested in attending.