



CRWI Update  
August 31, 2017

#### MEMBER COMPANIES

Clean Harbors Environmental Services  
Dow Chemical U.S.A.  
E. I. Du Pont de Nemours  
Eastman Chemical Company  
Heritage Thermal Services  
INVISTA S.à.r.l.  
3M  
Ross Incineration Services, Inc.  
Veolia ES Technical Services, LLC

#### GENERATOR MEMBERS

Eli Lilly and Company  
Formosa Plastics Corporation, USA

#### ASSOCIATE MEMBERS

AECOM  
Alliance Source Testing LLC  
Amec Foster Wheeler PLC  
B3 Systems  
Coterie Environmental, LLC  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
METCO Environmental, Inc.  
O'Brien & Gere  
SGS North America, Inc.  
Strata-G, LLC  
SYA/Trinity Consultants  
TestAmerica Laboratories, Inc.  
TRC Environmental Corporation

#### 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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### OSWRO proposed reconsideration

After the Off-Site Waste and Recovery Operations (OSWRO) risk and technology review rule was published, Eastman and the American Chemistry Council filed a petition asking the Agency to reconsider the monitoring requirements for containers and the prohibition of releases from pressure relief devices (PRD). To support this petition, the American Chemistry Council and the Environmental Technology Council submitted data from 19 facilities owned by 8 companies. The data covered 2013-2015. During that period, there was only one PRD release (nitrogen pressure applied to a tank truck off-loading hazardous material resulting in a leak of 40 pounds of VOCs of which 0.4 pounds were HAPs). EPA granted the petition and on August 7, 2017, proposed to revise the rule to remove the monitoring requirement for PRDs on containers. This decision was based on:

- PRD releases are rare, only one release from a container in the three years of data provided;
- all OSWROs facilities are covered under subpart PP (open or defective PRDs would be detected by the inspection requirements in subpart PP); and
- The cost for monitoring would be high compared to potential for release.

However, the Agency declined to modify the prohibition of PRD releases. EPA logic was based on the data submitted showing that the best performers could operate without PRD releases. In addition, the Agency asked for comments on the following three questions.

- Should the final rule impose more frequent inspections for filled or partially filled containers that remain on-site for longer than 60 days;
- Should any additional inspection requirement apply to all containers or only to larger containers; and
- Should EPA incorporate RCRA subparts BB and CC inspection requirements as a way to help facilities identify leaking or deteriorating containers and/or covers and closure devices?

Comments are due on September 21, 2017.

## **Portland Cement HCl CPMS**

In June, EPA published a direct final rule extending the modification of the HCl CEMs requirement for the Portland Cement source category to a CPMS (continuous parameter monitoring system) requirement until a NIST traceable gas becomes available. The direct final rule would have become effective on July 5, 2017, unless adverse comment was received by July 3, 2017. EarthJustice submitted comments on June 29, 2017, stating that the direct final rule should be withdrawn because of the absence of an explanation and record for the action and for not setting a definite time limit for the extension. EPA did not withdraw the rule in a timely fashion so EarthJustice informed the Agency of their intent to file suit to force its withdrawal. Faced with litigation they would lose, EPA formally withdrew the direct final rule on August 22, 2017. Once again HCl CEMs are required for the Portland Cement source category even though NIST traceable calibration gases are not readily available. On the same day, the Agency proposed a rule to revise the testing and monitoring requirements due to the unavailability of HCl calibration gases – exactly the same as was in the withdrawn direct final rule. Essentially, EPA is re-proposing to modify the HCl CEMs monitoring requirement to a CPMS requirement until NIST traceable calibrations gases are available. Comments are due on October 6, 2017. It is expected that the Agency will restore the CPMS option shortly after the comment period has ended.

## **Hazardous waste export**

In the 2016 hazardous waste import/export final rule, the Agency allowed a transition period where both paper and electronic filings for export of hazardous waste could be used. On August 29, 2017, EPA published a *Federal Register* notice announcing the transition period would end on December 31, 2017. After that date, paper submissions will no longer be allowed and all exporters of hazardous waste must use the Automated Export System for each shipment. Additional details can be found in the notice.

## **Procedure 2 correction**

On August 7, 2017, EPA published a technical correction to Procedure 2, removing paragraphs 6.1.1.1, 6.1.1.2, 6.1.1.3, and 6.1.1.4. These paragraphs were inadvertently left in the regulations when the Agency last revised the procedure in 2016.

## **Coal ash guidance released**

Under the 2016 Water Infrastructure Improvements for the Nation Act, states can develop their own coal ash permitting programs rather than following the federal requirements. However, the states must submit their requirements to EPA to ensure that the state program is at least as protective as federal requirements. On August 10, 2017, EPA released their guidance on how states ash permit programs should comply with current federal regulations. A copy can be found at <https://www.epa.gov/coalash>.

## **Resin NESHAP reconsideration**

In October of 2014, EPA established emission limits for continuous process vents used in the manufacturing of amino/phenolic resins. Industry petitioners argued that this limit was not achievable for certain types of vents. On August 24, 2017, EPA published a proposed rule to modify that limit from 1.9 pounds of HAP per ton of resin produced to 8.6 pounds for back end process vents. In addition, the Agency is proposing to extend the compliance date, further subcategorize process vents, and to modify the work practices for operators of fixed roof tanks to allow for bypassing the control system for up to 240 hours per year during planned maintenance.

## **Hazardous waste list servers**

EPA has a number of list servers to provide stakeholders with updates on federal programs. If you would like to receive information on their solid and hazardous waste programs, send a blank email to [solid-and-hazardous-waste-subscribe@lists.epa.gov](mailto:solid-and-hazardous-waste-subscribe@lists.epa.gov). If you would like to be on the e-manifest list server, send a blank email to [eManifest-subscribe@lists.epa.gov](mailto:eManifest-subscribe@lists.epa.gov). You can sign up for email updates on SW-846 at <https://www.epa.gov/hw-sw846/forms/contact-us-about-hazardous-waste-test-methods>.

## **E-manifest**

The next meeting of the Hazardous Waste Electronic Manifest System Advisory Board will be held on September 26-28, 2017, in Arlington, VA. EPA will host their next webinar on the e-manifest system on October 25, 2017 at 2:00 pm. Additional information can be found at <https://www.epa.gov/hwgenerators/hazardous-waste-electronic-manifest-system-e-manifest>.

## **Regulatory reform**

Executive Order 13777 requires agencies to create task forces to review existing rules and recommend candidates for reform or repeal. Draft reports were due to the White House by July 26, 2017. EPA formally requested comments from stakeholders with a due date of May 15, 2017. The Southern Environmental Law Center (SELC) submitted a Freedom of Information Act (FOIA) request for all EPA records that relates to their efforts to meet the requirements of the order. When EPA missed the FOIA deadline and made no attempt to establish a new timeline, SELC filed a suit asking the U.S. District Court for the Western District of Virginia to force EPA to release these records. Neither the White House nor the Agency has given any indication of what regulations are being targeted under this order.

## **EPA personnel**

The Trump Administration has appointed Trey Glenn to be the Regional Administrator for Region 4. Mr. Glenn was previously the head of the Alabama Department of Environmental Management. He is the first regional administrator appointed. He

started work on August 28, 2017. In addition, the Administration announced the appointment of Cathy Stepp as the Principal Deputy Regional Administrator for Region 7. Ms. Stepp will serve as the acting Regional Administrator until one is appointed. Ms. Stepp was previously the head of the Wisconsin Department of Natural Resources.

Susan Bodine has been appointed as a Special Counsel to the Administrator on Enforcement. Ms. Bodine has been nominated to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) but her nomination has not been brought up before the Senate for a vote. Larry Starfield will continue to be the acting Assistant Administrator for OECA until Ms. Bodine is confirmed. Appointing a nominee to a counsel role has been a common practice to allow them to start working while the Senate considers their nomination. While a common practice in the past, a recent Supreme Court decision (*NLRB v. SW General*) has made this appointment more controversial. In this decision, the court stated that the Federal Vacancies Reform Act bars any nominee to an agency position from filling that position in an acting role unless the nominee spent at least 90 days as the “first assistant” to the previous office holder. Anyone who fails this test is considered to be ineligible and their actions subject to vacatur. While Mr. Starfield remains the acting Assistant Administrator until the Senate confirms Ms. Bodine, there will likely be questions raised on the legitimacy of both Mr. Starfield and Ms. Bodine’s decisions during the transition.

Finally, the number of political appointments during the Trump Administration continues to lag behind previous administrations. Right before the Senate went on recess for August, they approved 66 nominees. This brings the total confirmed appointees to 124. This compares with 310 for the Obama Administration, 294 for the Bush Administration, and 252 for the Clinton Administration for the same time period.

### **EPA buyouts**

Earlier in the year, EPA’s Inspector General released a report that showed the Agency was making steady progress to attain its 2014 restructuring goals using a voluntary buyout program. On August 15, 2017, the Inspector General released a separate report on how the Office of Inspector General (OIG) handled the 2014 buyouts. Of the 23 positions eligible for buyouts in the OIG, 11 were not listed in the plan approved by the Office of Management and Budget. The report states that OIG granted 11 buyouts to employees who did not occupy positions matching the organizational unit, geographic location, occupational series, grade level, and other factors as in the approved plan. The report states that in one case, an administrative officer that was not buyout eligible was transferred to a lower-grade secretarial position located at a different city and division that was buyout eligible and then given the buyout package. In addition, OIG failed to eliminate the positions vacated from the workforce profile. This report may complicate EPA’s current effort to buyout up to 1,228 positions.

## **EPA FY 2018 funding**

EPA's FY 2018 funding legislation has been passed out of committee and is ready for debate on the Floor. Before that happens, the legislation goes to the House Rules Committee. The Rules Committee is controlled by the majority party with 2 members from the majority for every one member of the minority. Once sent to the Rules Committee, all interested Representatives submit amendments they would like to make on this legislation. The committee decides which amendments will be allowed and the length of time for debate on each amendment. As such, both Democrats and Republicans are sending proposed amendments for the funding legislation. These range from Democrats proposing amendments to prevent EPA from closing regional offices to Republicans seeking to prevent funding for Chesapeake Bay cleanup. Most observers expect this legislation to come to the Floor of the House early in September. Once approved by the House, it goes to the Senate for consideration. The Senate will modify it and the two will work out a compromise. The compromise goes back through both the House and the Senate for an up or down vote (no amendments allowed at this stage). It then goes to the President for signature. FY 2017 ends on September 30, 2017. This seems like plenty of time except that the House is formally in session for 12 days and Senate is formally in session for 17 days in September. If they fail to meet the deadline, Congress can pass a continuing resolution that will allow the government to say open while they finish the appropriations process. This has been the norm for the past several years. Neither the President nor members of Congress have expressed any desire to shut down the government over budget issues – at least at this time.

## **Enforcement**

On August 3, 2017, EPA published a proposed consent decree with Harcos Chemical over alleged violations of their risk management plan (RMP) requirements for three facilities (Shreveport, LA; Kansas City, KS; and Bessemer, AL). The proposed decree includes a \$950,000 fine and the requirement to audit 29 facilities for compliance with section 112(r) of the Clean Air Act. It also includes a supplemental environmental project where the company will improve their fire prevention capabilities at eight facilities.

On August 15, 2017, EPA Region 1 announced a consent decree and final order with ChemArt Company of Lincoln, RI covering various violations of their RMP requirements. The agreement requires the company to pay a civil penalty of \$221,326, reduce the amount of chlorine stored at the facility, reduce the likelihood of an accidental release of chlorine, and reduce any damage that could result from a release. Observers have opined that this enforcement action shows an increased understanding of how process safety management enforcement issues can be addressed through the Clean Air Act instead of OSHA.

On August 18, 2017, EPA published a proposed consent decree with the City of Waterbury, CT over alleged violations of sewage sludge incinerator regulations. Under

the proposed decree, the city will bring their sewage sludge incinerator into compliance with regulations and will pay a \$104,000 fine.

### **Arkema fire**

The Arkema chemical plant in Crosby, TX had 19.5 tons of organic peroxides stored at the facility. This material requires refrigeration to prevent ignition. To prevent an incident, Arkema put in three levels of redundancy. Due to heavy rainfall from Hurricane Harvey, the power to the facility went out. Backup generators kicked in and provided cooling until flood waters knocked out the generators. A passive liquid nitrogen cooling system then kicked in but that too failed due to rising waters. Finally in a last minute effort, Arkema employees transferred the materials to nine self-contained refrigerated trailers and moved the trailers to a remote section of the facility. When six foot of water swamped the trailers, the employees called for a water evacuation. Early Thursday morning (August 31, 2017), one of the trailers caught fire and burned. Residents within 1.5 miles were evacuated as a precaution. Fifteen emergency workers went to the hospital. Two more trailers caught fire and burned. When the other five trailers did not catch fire, the company stepped in and did a controlled burn to remove the hazard. The evacuation of the area was then lifted. This is just one example of the slow moving disasters that were associated with this storm and points to the difficulties of planning for emergencies. One would have thought that three back-up plans would be adequate to prevent this incident but none seemed to consider getting 50 inches of rain in a four day period. Sadly, facility personnel could see the problem materialize but had few options on how to stop it.

As one politician put it, there is no reason to let a good crisis go to waste (liberally paraphrased). Based on this concept, environmental groups were quick to point out that this is the very reason for the Obama Administration's revisions to the risk management plan (RMP) requirements and called on EPA to abandon their efforts to modify and delay those requirements.

### **RMP litigation**

In June, the EPA published a rule that delays the implementation of the risk management plan (RMP) rules to allow the current administration to review and possibly revise the requirements. Several environmental groups sued asking the court to stay the decision and to grant expedited briefing. On August 30, 2017, the court denied the stay but granted expedited briefing, ordering all parties to submit opening briefs within 14 days. The court also ordered oral arguments to be scheduled the first appropriate date after briefing is completed. Contrary to opinions expressed in earlier Updates, it appears that this litigation may be settled before the Agency gets a chance to revise the rule.

### **Greenpeace sued**

Energy Transfer Partners LP is the company that is building the Dakota Access Pipeline. They filed suit against Greenpeace under the Racketeer Influenced and Corrupt Organization (RICO) Act alleging that the organization runs a “relentless campaign of lies and outright mob thuggery.” They also allege that the organization is soliciting donations under false claims, threatening company investors and lenders, launching cyberattacks, and trying to sabotage the pipeline. This law was created to prosecute the mafia but has been recently used in more creatively modes. Greenpeace responded that this is an attempt to silence free speech through litigation. The suit seeks \$300 million in damages. A similar suit was filed against Greenpeace last year on the behalf of a multi-national forestry company.

### **2018 IT3 conference**

The next IT3 conference will be held on March 6-8, 2018 in Houston, TX. Abstracts are due by September 25, 2017. Additional information can be found at [www.awma.org/it3](http://www.awma.org/it3).

### **CRWI meeting**

CRWI’s next meeting is tentatively scheduled to be held in RTP for early in November. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).