



## CRWI Update October 31, 2017

### MEMBER COMPANIES

Clean Harbors Environmental Services  
DowDuPont  
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  
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

### EPA's 2018-2022 strategic plan

EPA released their strategic plan for 2018-2022 on October 2, 2017. Comments on the plan were accepted until October 31, 2017. The draft plan has three primary goals:

- Refocus the Agency to its core mission (cleaner air, water, and land);
- Restore power to the states through cooperative federalism; and
- Lead the Agency through improved processes and adhere to the rule of law.

In this context, cooperative federalism means that the more authority is going to be delegated to the states and local government. To accomplish these goals, the strategy sets up a list of priorities for the next two years. Some of these priorities are:

- Reduce the number of non-attainment areas;
- Increase the percentage of water infrastructure projects funded through EPA grants, loans, or public-private partnerships that achieve or maintain compliance;
- Make additional brownfields sites ready for anticipated use;
- Complete EPA-initiated Toxic Substances Control Act (TSCA) risk evaluations for existing chemicals, TSCA risk management actions for existing chemicals, and TSCA pre-manufacture notice final determinations in accordance with the timelines set forth in the statute; and
- Accelerate permitting-related decisions.

Areas of work that may interest Update readers include:

- Improve air quality by reducing the number of non-attainment areas;
- Focus attention on the top ten list of Superfund sites and implement the Superfund Task Force recommendations to accelerate the pace of cleanups and promote reuse;

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- Help prevent chemical releases by reviewing approximately 12,500 Risk Management Plans (RMP) and train federal and state RMP inspectors;
- Require facilities that store certain amounts of hazardous chemicals to analyze the potential for an accidental release, develop an accident prevention program, and coordinate with local communities so that all are prepared to respond to a release;
- Update and improve the efficiency of RCRA hazardous waste regulations;
- Support states to issue, update, or maintain RCRA permits for approximately 20,000 hazardous waste units (incinerators and landfills specifically mentioned);
- Implement the e-manifest system;
- Use the E-Enterprise Web Portal to enhance permitting and reporting and to provide compliance assurance information to the states;
- Enhance compliance monitoring activities such as field inspections, electronic reporting, and data analysis tools;
- Create consistency and certainty for the regulated community by establishing a national network to ensure consistent implementation across regions;
- Focus enforcement on the most significant violations;
- Issue permits more quickly and modernize the permitting and reporting systems;
- Move from paper based to electronic reporting; and
- Develop an online system to apply for, track, and receive a permit electronically.

### **DOC report on regulatory reform**

In March 2017, the Department of Commerce (DOC) asked industry stakeholders to identify the most burdensome regulations and permitting requirements they face and requested feedback on how regulatory compliance and permitting could be simplified. This was a part of the efforts to implement several Executive Orders. They received comments from 173 entities. DOC summarized these suggestions and released a report (<https://www.commerce.gov/page/streamlining-permitting-and-reducing-regulatory-burdens-domestic-manufacturing>) on October 6, 2017. The majority of suggestions were directed at EPA regulations. The report had three major recommendations:

- Each federal agency's regulatory reform task group should deliver an action plan to the president by December 31, 2017;
- Each federal agency should create an annual, open forum for regulatory and industry stakeholders to evaluate progress in reducing regulatory burdens; and
- Federal agencies should consider using the provisions in the Fixing America's Surface Transportation Act of 2015 to streamline environmental review of infrastructure projects.

Some of the key issues identified in the report include:

- Overlap and duplication between the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) programs;
- Inappropriate classification of certain waste streams as hazardous, discouraging recycling;
- Leak detection and repair regulations require outdated monitoring technologies;
- Inconsistencies between federal and state regulatory authorities for CAA permits;
- “Once in always in” policy;
- Revisions to the current startup, shutdown, and malfunction policy;
- Single violation of the generator regulations can cause a facility to be operating without a RCRA Part B permit;
- Duplication of OSHA Process Safety Management requirements with RMP requirements;
- Requirement for Principal Responsible Parties to pay duplicate and unnecessary expenses that the Agency incurred during Superfund cleanups;
- Overlap of the Spill Prevention, Control, and Countermeasures requirements with Stormwater Pollution Prevention Plan requirements;
- Inconsistent enforcement across industry sectors and across regions
- Facilities can demonstrate ongoing and continuous compliance with reduced levels of monitoring and recordkeeping;
- Overlap of RCRA and Clean Air Act permit requirements; and
- The permitting process is too complex and inconsistent, requiring each permit be done on a case-by-case basis where many are very similar and should be routine.

The report identified 20 sets of regulations and permitting reform ideas. Some are:

- Extend Title V permit terms from 5 years to 10 years;
- Reduce costs and avoid duplication in conducting reviews of NESHAP standards;
- Ensure new requirements under risk and technology review would not be redundant or unreasonably costly; and
- Review lists of hazardous materials to consider delisting certain materials that could be easily recycled

### **EPA report on burdensome energy regulations**

To implement President Trump’s Executive Orders on regulatory reform, EPA developed a regulatory reform task force and requested public comments on how to reduce regulatory burden. They received over 460,000 comments. One report (<https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf>) was released on October 26, 2017. This report identifies four initiatives it believes will reduce unnecessary burden on the development and use of domestic energy resources. These initiatives are:

- Simplify the New Source Review application and permitting process, reduce the length of the permitting process, review the burdens created by the current emission offset program, and review the “once in, always in” policy;
- Provide regulatory relief for the National Ambient Air Quality Standards while meaningfully improving ozone air quality, streamline the State Implementation Plan (SIP) approval process, better monitor progress on SIP reviews, and work to eliminate the backlog of 312 SIPs waiting on approval;
- Include the impact of potential losses or shifts of employment into future rulemaking efforts; and
- Actively interact with the regulated community through its recently announced Smart Sectors program to reduce regulatory burden, improve regulatory forecasting and predictability, and improve the ability to conduct long-term regulatory planning while also improving the environment and public health.

EPA formally rolled out their Smart Sectors program (<https://www.epa.gov/smartsectors>) on October 4, 2017. This program is similar to the Common Sense Initiative under President Clinton and the Sector Strategies under President Bush. The current program will partner with thirteen industry segments to develop “sensible policies to improve environmental outcomes.” The thirteen industry segments are aerospace, agriculture, automotive, cement and concrete, chemical manufacturing, construction, electronics and technology, forestry and wood products, iron and steel, mining, oil and gas, ports and marines, and utilities and power generation. The Agency hopes to use this program to increase environmental protection, increase long-term certainty and predictability, decrease industry operating costs, and lower Agency costs. The Agency has identified five Agency staff whose job will be to serve as ombudsmen, conduct educational site tours, host roundtable discussions with EPA leadership and industry, and maintain an open dialogue with trade associations. The Agency plans to add additional industry sectors in the future. The web site does not have a timetable for the next steps other than to say that each will begin in 2018.

### **Boiler litigation**

Parties to a litigation are allowed to submit supplemental information to the court after oral arguments (28(j) letters) if that information was not supplied during oral arguments or if new information becomes available that is pertinent. During oral arguments, the judges asked the Department of Justice (DOJ) where in the record the Agency stated that reducing CO concentrations below 130 ppm would not result in decreases in organic HAP emissions. At that time, DOJ did not have the reference. On September 21, 2017, DOJ send a 28(j) letter giving the court this reference. Environmental petitioners responded with a letter that countered the overall claim. In turn, the environmental petitioners sent a 28(j) letter advising the court that a recent ruling by the same court could have an impact on the decisions in this case. DOJ responded with a letter that stating that the new ruling cited by the environmental petitioners was irrelevant. For now, the flurry of 28(j) letters has died down. A ruling on this case is expected in late 2017 or early 2018.

## **DSW litigation**

In July, the U.S. Court of Appeals for the District of Columbia Circuit vacated two provisions of the 2015 definition of solid waste (DSW) amendments: the fourth legitimacy factor and the verified recycler exclusion. On October 20, 2017, all parties filed motions asking for rehearing. However, each party wanted something different. EPA's petition for re-hearing did not question the merits of the ruling but seeks clarification on whether Factor 4 is vacated for all parts of the rule or only for certain sections of the rule and whether the 2008 version of factor 4 now takes its place. In the 2008 rule, companies were required to consider Factor 4 but it was not mandated. Environmental groups asked for rehearing to change the remedy from vacatur to remand. The American Petroleum Institute asked the court to reverse its ruling and allow catalysts to be eligible for a transfer-based exclusion. The American Chemistry Council and Freeport-McMoRan asked for clarification that Factor 4 was completely vacated.

## **RTR rules**

The Agency published two risk and technology (RTR) final rules in October. The first (October 11, 2017) was a rule for the chemical recovery combustion sources at pulp and paper mills. In this rule, the Agency determined that the risks from this source category were acceptable and no additional limitations were needed. For the technology review, the Agency reduced the opacity limits for certain sources and added a requirement that facilities with electrostatic precipitators must maintain the proper operation of their automatic voltage control. In addition, the final rule included a provision that these sources must conduct emission testing every five years, must electronically submit test data, removed the startup, shutdown, and malfunction provisions, and made a number of technical corrections.

The second (October 16, 2017) was a final rule for the manufacturing of nutritional yeast. The Agency made no changes in the current regulations based on a risk review. They also determined that there have been no developments in practices, processes, or control technologies that warrant revisions to the current standards. In addition, the final rule removes the startup, shutdown, and malfunction provisions, requires a VOC CEMs, adds relative accuracy test audit provisions for the CEMs, and requires electronic reporting of performance test data.

## **Delisting**

EPA published two final delisting rules and one proposed delisting rule in October. The first final rule was published on October 2, 2017, and granted Samsung Austin Semiconductor's (Austin, TX) petition to delist copper filter cake from their electroplating process. This material was listed as F006. Samsung submitted data showing that the material did not contain cadmium, hexavalent chromium, nickel, or cyanide and should not be listed. The Agency agreed and determined this material is not hazardous waste as long as it is disposed of in a Subtitle D landfill.

The second final rule was published on October 26, 2017. It granted ExxonMobil's petition (Beaumont, TX refinery) to delist solids from a secondary containment basin (F037 and F038). Based on data submitted, the Agency concluded that this material is not hazardous when disposed of in a Subtitle D landfill.

The proposed rule was published on October 31, 2017. EPA is proposing to grant a petition from Blanchard Refining Company (Texas City, TX) to delist residual solids from the reclamation of on-site oil bearing hazardous secondary materials. EPA will accept comments on this proposed rule until November 30, 2017.

### **E-manifest**

The Agency has announced two workshops for companies that plan to use the new e-manifest system. The first will be held on November 13, 2017, from 1:00 pm until 6:00 pm EST. The second workshop will be held on November 30, 2017, from 9:00 am until 5:00 pm EST. Both will be held at EPA's offices in Arlington, VA (2777 S. Crystal Drive). Both will allow companies to learn how to integrate company-specific electronic system with the E-manifest system. EPA plans to launch the new system in June 2018.

### **CPP proposed withdrawal**

On October 16, 2017, EPA published a proposed rule to repeal the Clean Power Plan (CPP). CPP would set carbon emissions guidelines for the fossil fuel-fired electric generation source category. The Agency is not taking comments on the "endangerment finding" as a part of this rulemaking. Comments should be submitted by December 15, 2017. The Agency has not given any indications of whether a replacement rule will be proposed, when it might be published, or what would be in a replacement rule if it were proposed.

### **Spill prevention ICR**

Section 311(j)(1) of the Clean Water Act requires EPA to develop regulations to "prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities..." The Agency promulgated regulations for oil sector in 2002. However, the Agency has not developed spill prevention regulations for "hazardous substances." Environmental groups filed a suit alleging that the Agency failed in a non-discretionary duty to develop spill regulations for hazardous substances. In the settlement agreement, the Agency agreed to develop a proposed rule no later than June 2018. On September 21, 2017, EPA published a proposed information collection request (ICR) to gather data to develop this proposed rule. In this request, the Agency would send a questionnaire to state and local governments asking a series of questions related to facilities that use or store hazardous substances (as listed in 40 CFR Part 116). These questions include the hazardous substance they store, historical discharges to waterways, and any citations to state requirements to prevent such a discharge. Comments on the proposed ICR will be accepted until November 20, 2017.

### **“Sue and settle” policy**

EPA continues to chip away at Obama Administration rules and policies. Latest is revised instructions on “sue and settle” lawsuits (released October 16, 2017). “Sue and settle” was a term used for lawsuits where groups would file a deadline suit, the Agency would agree to a deadline to propose or finalize a new rule, and would pay attorney’s fees. The new policy has a 10-point directive on how to handle future deadline suits. Some of these are:

- Publishing any notices of intent to sue within 15 days of receiving the notice;
- Reaching out to states or regulated entities that might be impacted by a settlement;
- Forbid entering into an agreement that exceeds the Agency’s authority;
- Exclude attorney’s fees and litigation costs when settling;
- Provide sufficient time for the rulemaking process; and
- Publish any proposed agreement and allow for a 30-day comment period.

If implemented as planned, the new policy should increase public participation in all new deadline suits.

### **EPA personnel**

President Trump has appointed four new Regional Administrators. On October 4, Cosmo Servidio was named as the Regional Administrator for Region 3. Mr. Servidio was a former Pennsylvania state legislator. On October 5, 2017, Doug Benevento was named as the Regional Administrator for Region 8. Mr. Benevento was a former state regulator and power-sector attorney. On October 18, Jim Gulliford was named as the Regional Administrator for Region 7. Mr. Gulliford was recently the Executive Director of the Soil and Water Conservation Society. Mr. Gulliford was also an Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances (2006 – 2009) and the Regional Administrator for Region 7 (2001 – 2006). On October 18, Chris Hladick was named as the Regional Administrator for Region 10. Mr. Hladick was a commissioner for the Commerce Community and Economic Development for the State of Alaska. Regional Administrators have been appointed for Regions 2, 3, 4, 7, 8, and 10.

On October 25, 2017, the Senate Environment and Public Works Committee approved the nominations of four individuals to Assistant Administrator positions: Dr. Michael Dourson, Office of Chemical Safety and Pollution Prevention; William Wehrum, Office of Air and Radiation; David Ross, Office of Water; and Matthew Leopold, General Counsel. All were approved along party lines (11-10 vote). The vote in committee was delayed because several Republican Senators from corn-producing states wanted assurances from EPA Administrator Pruitt that the biofuel targets for 2018 would not be reduced. These assurances were given in an October 19, 2017, letter. These four

nominations now go to the entire Senate for a confirmation vote. Senate Democrats have been highly critical of Dr. Dourson and Mr. Wehrum.

It appears that Susan Bodine's responses to question on her current work as an advisor to Administrator Pruitt has satisfied Democrats. However, a vote to confirm her nomination as the next Assistant Administrator for the Office of Enforcement and Compliance Assurance has not yet been scheduled.

On October 5, the White House announced it was formally nominating Andrew Wheeler as the next Deputy Administrator for EPA. Mr. Wheeler is formerly the staff director for the Senate Environment and Public Works Committee. A hearing for Mr. Wheeler is scheduled for November 8, 2017.

### **Enforcement**

On October 25, 2017, EPA Region 6 announced a proposed settlement agreement with Macy's over violations of hazardous waste regulations. From 2012 through 2015, several Macy's stores generated sufficient waste to qualify as small quantity generators but failed to notify EPA and state authorities. They also failed to meet the conditions for small-quantity generators and did not complete proper manifests. During this period, 44 stores generated more than 269,168 pounds of hazardous waste. As a part of the settlement, Macy's will develop a program to train more than 400 retailers in Oklahoma and Texas on how to comply with hazardous waste requirements, will complete 11 third party audits, will share the results with all Macy's stores, and pay a \$375,000 penalty.

On October 31, 2017, EPA announced a proposed consent decree with ExxonMobil over failure to properly operate and monitor industrial flares. Under the proposed agreement, Exxon will spend approximately \$300 million to install and operate control and monitoring equipment for 26 flares at five facilities in Texas and Louisiana. In addition, Exxon will create waste minimization plans to reduce the amount of material sent to the flares, will operate flare gas recovery systems at four of the facilities, put benzene monitoring stations at the fence line, and pay a fine of \$2.5 million. In addition, Exxon will be required to spend \$1 million on a project to plant trees in Baytown, TX.