



CRWI Update September 30, 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
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

Boiler litigation

Oral arguments on the second boiler litigation were held on September 15, 2017. Environmental groups are challenging the 130 ppm CO threshold and the use of work practices during startup and shutdown. It is difficult to predict how judges will rule based on questions asked during the oral arguments. But it is an indication of the areas where they are seeking clarification prior to making a ruling. The majority of the questions were on how the relationship between CO and organic HAPs changes when CO concentrations are less than 130 ppm. There was also some confusion on which of the issues raised by the environmental groups had already been decided in the 2016 *U.S. Sugar v. EPA* decision. Decisions typically are released three to four months after oral arguments.

ADI postings

Periodically, EPA announces applicability determinations, alternative monitoring decisions, and regulatory interpretations the Agency has made under the New Source Performance and National Emissions Standards for Hazardous Air Pollutants programs. These are posted in their Applicability Determination Index (ADI). On August 4, 2017, EPA posted 31 new determinations. One was for an alternative monitoring program for a medical waste incinerator. Another was for alternate operating parameter limits for a solid waste incinerator. While none were directly related to EEE units, this is a good place to start when searching for alternative monitoring concepts that have already been approved. Additional details can be found in the *Federal Register* notice or on EPA's ADI website (<https://cfpub.epa.gov/adi/>).

Portland Cement RTR proposed rule

On September 21, 2017, EPA published their risk and technology review (RTR) proposed rule for the Portland Cement source category. This is the first RTR proposed rule published by the Trump Administration. The initial dataset to support this endeavor was developed from performance test data already submitted to the Agency under Compliance Emissions Data

44121 Harry Byrd Highway, Suite 225
Ashburn, VA 20147

Phone: 703-431-7343
E-mail: mel@crwi.org
Web Page: <http://www.crwi.org>

Reporting Interface (CEDRI). Where data were not available, the Agency used emission limits. The initial dataset was submitted to the facilities for their review and correction. EPA then used their normal method to estimate risk. Based on their analysis, EPA estimated that 134 people would be exposed to a cancer risk of greater than 1 in a million and no individuals would be exposed to a hazard index of greater than 1. For the technology review, the Agency looked at several technologies (selective catalytic reduction, activated carbon injection, catalytic ceramic filter candles, and oxygen enrichment) but declined to require any because most are not widely used in this source category and specific data on long-term performance and cost were lacking. In addition, their performance would be similar to technologies already employed. Thus, EPA found the risks from emissions for this source category to be acceptable and found no new cost-effective controls under the technology review. Based on this analysis, EPA is not proposing to make any changes in the numerical emission limits. However, they are proposing to make a number of clarifications and technical corrections. The comment period closes on November 6, 2017.

Coal ash rule reconsidered

On September 13, 2017, EPA Administrator Scott Pruitt granted two petitions for reconsideration of the coal ash rule; one was submitted by the Utility Solid Waste Activities Group and the other by AES Puerto Rico. EPA will consider modifying the uniform nationwide standards to allow site-specific or regional variance so states could tailor permits to meet the needs of their area. EPA believes they received the authority for this action in the 2016 Water Infrastructure Improvement for the Nations (WINN) Act. EPA also agreed to review the requirements for legacy sites, defining which uses for coal ash are “beneficial,” and amending “certain on-site storage practices.” The next step is for the Agency to propose a rule addressing these issues.

This rule is also being challenged in the U.S. Court of Appeals for the District of Columbia Circuit. Oral arguments were scheduled for October 17, 2017. Because EPA has granted reconsideration, EPA and the industry parties requested an indefinite stay of the litigation until the Agency completes their reconsideration process. In a September 27, 2017, order, the court denied that request but postponed the oral arguments until November 20, 2017. In addition, the order gives all parties until October 11, 2017, to file supplemental briefs addressing the relevance and implications of using the WINN Act as authority for revising this rule.

Arkansas RCRA revisions

On September 14, 2017, EPA published a direct final rule (and the accompanying proposed rule) authorizing revisions to Arkansas’ RCRA program. EPA determined that these changes were minor and satisfied all requirements. The modifications will become effective on November 13, 2017, unless adverse comments are received by October 16, 2017.

Fall Regulatory Plan

The Office of Management and Budget sent their request for data for the Fall 2017 Regulatory Plan and Unified Agenda to agencies on August 18, 2017. Parts of these instructions were designed to make the next Agenda more informative to the public. In addition, the request told agencies to include the number of regulatory and deregulatory actions per the requirements in Executive Order 13771 (two deregulatory efforts for every new regulatory effort). The request also tells agencies to remove issues from the list where they do not realistically intend to take action in the next 12 months. These actions should be retained but moved to the inactive actions list. The instructions also require that if an agency plans to work on a rulemaking, it must be in the Regulatory Plan. In the past, the listing of rulemakings in the Regulatory Plan and their anticipated dates for action have not been a very accurate guideline for what activities are taking place. It remains to be seen whether this new process will improve that accuracy.

EPA nominations

President Trump has formally nominated 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. Dr. Dourson is currently a professor in the Risk Science Center at the University of Cincinnati, College of Medicine. Mr. Wehrum is currently a partner in the Hunton & Williams law firm and was previously nominated for this position by President George W. Bush. Mr. Ross is currently an assistant attorney general for the state of Wisconsin responsible for environmental enforcement. Mr. Leopold has served as the general counsel for the Florida Department of Environmental Protection and in the Department of Justice's environmental and natural resources division. Committee hearings on all four nominations were scheduled for September 20, 2017, but were postponed on September 19, 2017. There appears to be strong opposition to Mr. Dourson and Mr. Wehrum.

The Senate has not voted on Susan Bodine's nomination to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance. Two Senators (Sheldon Whitehouse, D-RI and Jeff Merkley, D-OR) have placed holds on a vote. They are waiting on responses to questions about Ms. Bodine's current role as special counsel to Administrator Pruitt on enforcement issues.

On September 29, 2017, EPA announced that Jonathan Alboum was added to the E-Manifest Advisory Board. Mr. Alboum is the Deputy Director of the USDA Office of Procurement and Property Management. He fills one of the "expert in information technology" slots in the committee.

On September 28, 2017, EPA Administrator announced that Peter Lopez has been appointed to be the Regional Administrator for Region 2. Mr. Lopez was a member of the New York Assembly representing the 102nd district. He was active on the assembly environment and farm committees.

EPA funding

There has been a great deal of rhetoric over raising the debt ceiling and passing funding legislation for the federal government. President Trump short circuited this debate and made a deal with the Democrats to extend both the debt ceiling and the funding for the government until December 8, 2017 (H. R. 601, signed into law on September 8, 2017). This removed immediate time pressures and will allow both processes to proceed under normal order.

On September 14, 2017, the House passed H. R. 3354, appropriations legislation for a number of Cabinets including EPA. This legislation provides EPA with \$7.5 billion in funding for FY 2018. This is a reduction of \$528 million from FY 2017. As normal, the House attached a number of policy riders that tells EPA how to spend this money. These include barring EPA from enforcing methane regulations, barring federal implementation of the social cost of carbon, and restricting federal payment of legal fees. The House rejected an amendment that would have prevented EPA from consolidating regional offices. This bill now goes to the Senate where significant modifications will likely be made.

EPA Administrator meetings

The Washington Post reported (September 24, 2017) that EPA Administrator Scott Pruitt had met regularly with industry since early in April. Based on a copy of his schedule obtained by the Post, Mr. Pruitt has met with parties interested in opening a gold, copper, and molybdenum mine in Alaska, a manufacturer of truck bodies, auto manufacturers, mining trade groups, oil industry companies and trade groups, utility companies, agriculture business companies, and others. According to the Post article, there have been only two meetings with environmental groups and one meeting with a public health group.

Enforcement

In 2008, EPA and Perma-Fix of Dayton, OH entered into a consent decree based on a 2004 complaint. This facility is regulated under the Off-Site Waste and Recovery Operations regulations. In 2008, this facility was acquired by Clean Water Limited. EPA issued letters alleging violations of the consent decree in 2012 and 2014. On February 23, 2016, EPA issued a notice of violation under the Clean Air Act for failing to maintain an adequate minimum operating temperature for their regenerative thermal oxidizer (RTO) and failing to maintain an adequate minimum operating pressure within their closed vent system to ensure all affected process emissions were vented to the RTO. On September 22, 2017, EPA announced an amended proposed consent decree that would require the facility to install and test a new RTO unit; add a method of reducing the moisture upstream of the RTO; install, calibrate, and operate at least one sensor capable of measuring and recording combustion zone temperature; and install, calibrate, maintain, and continuously operate at least one pressure monitoring device

capable of measuring and recording the pressure within the closed vent system. In addition, the company will be required to pay a civil penalty of \$15,000. The comment period will be open for 30 days.

On September 12, 2017, the Department of Justice published a proposed modification of a consent decree with Bayer CropScience's facility in Institute, WV. The original consent decree was based on a 2008 explosion and the ensuing accidental release. The original consent decree called for a series of supplemental environmental projects that would have been valued at \$4.23 million. In the modification, the waste water sump supplemental project will be replaced by project that involves purchasing emergency response equipment. This will reduce the total cost of the supplemental projects to \$3.05 million. The comment period will be open for 30 days.

CRWI meeting

CRWI's next meeting will be held on November 1-2, 2017, in Durham, NC. It will feature discussions with EPA staff and a tour of their combustion research facilities. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).