MEMBER COMPANIES

Bayer CropScience
Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
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
Formosa Plastics Corporation, USA
3M

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
TRC Environmental Corporation
Trinity Consultants
Wood, PLC

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
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U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2004-0489

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on the *Revisions to the Air Emissions Reporting Requirements*; Proposed rule. 88 FR 54,118 (August 9, 2023). CRWI is a trade association comprised of 28 members representing companies that own and operate hazardous waste combustors and companies that provide equipment and services to the combustion industry. These members operate under North American Industry Classification System codes 5622x (waste treatment and disposal) and 5629x (waste management and remediation services). As such, they will be impacted by this proposed rule.

CRWI would like to make the following four points on the proposed rule.

1. EPA's rationale for changing the reporting requirements are not justified.

   The current air emissions reporting requirements apply only to states and tribal authorities, apply to criteria pollutants, and is voluntary. EPA has determined that the current voluntary system is insufficient even when augmented by air emissions data collected under the Toxic Release Inventory (TRI) and the National Emissions Inventory (NEI). The preamble states the data are needed to support risk and technology review rules and to determine and develop emission limits for unregulated hazardous air pollutants (HAP) as required by the LEAN decision (*Louisiana Environmental Action Network v. EPA*, 955 F3d 1088 (D.C. Cir 2020)), among other reasons. CRWI believes the reasons listed above are not valid. First, the majority of risk reviews as required under section 112(f)(2) of the Clean Air Act have already been completed. EPA is currently working on several more that will likely be completed before this rule will become final. It has been the Agency's position that the Clean Air Act does not require a second residual risk review. The

courts have agreed with this position (*Citizens for Pennsylvania's Future, et al. v. Wheeler*, 469 F.Supp.3d 920 (N.D. Cal. 2020). As such, EPA does not need this data for future residual risk assessments. Second, under section 112(d)(6) of the Clean Air Act, technology reviews are to be carried out every eight years. In a technology review, the Agency is to "review, and revise as necessary (taking into account developments in practices, processes, and control technologies)…" This review is designed to determine if emission control methods have significantly improved since the initial MACT standards were developed or since the last technology review. Annual emissions data will not give the Agency the information they need to conduct a technology review. Third, data collected from the regulated industry during performance tests measure HAP emissions that are regulated by their MACT standards. They do not collect data on unregulated HAPs. This was made clear in a recent declaration (filed September 15, 2023) from Penny Lassiter, Director of the Sector Policies and Programs Division within the Office of Air Quality Planning and Standards, Office of Air and Radiation at EPA, as a part of a deadline suit (*Blue Ridge Environmental Defense League, et al. v. EPA*, U.S District Court for the District of Columbia, Case No.1:22-cv-3134). In the September 15, 2023, declaration, Ms. Lassiter states "Air emissions tests on hazardous waste combustors are generally conducted in order to demonstrate compliance with the Hazardous Waste Combustor NESHAP. By definition, Unregulated HAPs are not regulated under that NESHAP. Therefore, such data is not collected for Unregulated HAPs." (pages 4-5). This statement was made to support the idea that future testing would be required during this rulemaking. Finally, we would like to point out that in every risk and technology rulemaking to date, the Agency has included the requirement that all performance tests be electronically reported. Based on these facts, CRWI believes that the majority of the reasons the Agency is using to justify the proposed changes in data reporting are simply not valid. If the data reporting problem exists because the States are not "voluntarily" reporting what is already given to them (as required by regulations), then the problem needs to be fixed at the State level, not by adding duplicative burdens on the regulated industry. We believe a simpler fix, if the Agency actually needs/wants the data, is to require the States to submit data they already have and provide the funding to allow them to do so.

2. Duplicative reporting requirements

   As stated in the preamble (88 FR 54,123), EPA acknowledges that owners/operators already report criteria air pollutant and HAP emissions to States and expresses the desire for the Agency and the States to streamline this process to use one method – the Combined Air Emissions Reporting System (CAERS). EPA also acknowledges that the proposed scheme will not eliminate the possibility that industry will face duplicative reporting requirements with the state (88 FR 54,130). EPA can easily solve the duplicative reporting requirements by simply changing the voluntary state reporting system to a mandatory reporting system. The Agency would be required to provide funds to support this requirement. The Agency should not solve the perceived problem by pushing the burden to the owner/operators. Some states will

always have different reporting requirements than does the federal government. CRWI does not have an opinion on which reporting system should be used. That is for the federal government and the states to work out. However, EPA should not try to resolve this difference by requiring owners/operators to report one way to the states and another to the federal government. This is a duplication of effort with no environmental benefit. If the federal government wants the states to report in a consistent manner, this will not be accomplished by requiring duplicate reporting requirements.

EPA also states they plan to enhance the CAERS to be able to share emissions data with the Greenhouse Gas (GHG) Reporting Program (GHGRP) and the Consolidated Emissions Data Reporting Interface (CEDRI). However, until that is completed, multiple reporting of the same data will be required. The Agency does not have a good track record of completing these types of projects in a timely fashion. Thus, facilities are likely to be forced to continue multiple reporting of the same data for many years.

The EPA states that facility definitions occasionally differ among the TRI program, the National Emissions Inventory, and State programs (84 FR 54,130). But there are other differences between the different reporting requirements than just facility definitions. Each of these reporting requirements are based on different statutory authority and have a different purpose. CRWI members already report air emissions via TRI, GHG reporting, electronic manifests, and state emissions reporting. Adding reporting of annual emissions of criteria air pollutant and HAP emissions to EPA as proposed is duplicative, unduly burdensome, and is not needed. In fact, it is likely to cause confusion. For example, TRI reporting requirements were created by the Emergency Planning and Community Right-to-Know Act (EPCRA). The purpose of TRI was to provide the public with information on the release of toxic chemicals in their community. More recently, the Agency developed electronic manifest reporting requirements based on the Hazardous Waste Electronic Manifest Establishment Act. The purpose of this requirement is to allow the Agency to more easily track the shipments of hazardous waste. On a periodic basis, member companies receive questions on why TRI data from the company seems to conflict with e-manifest data. The answer in almost all cases is that the reporting requirements for the two are different and will sometimes present different answers. Neither are wrong, just reported based on different criteria. CRWI see the same type of misunderstanding occurring if the Agency requires an owner/operator to report HAP emissions one way under CAERS, another way to the states, and a third way to TRI. This will create confusion within the Agency and the public. It will take additional time and effort to explain these differences but will do nothing to protect public health and the environment. CRWI acknowledges that different programs have different data needs. However, EPA should not push duplicative reporting down to the owners/operators because the Agency has not resolved these issues internally. CRWI supports a single method of reporting as long as it does not require duplicate, unduly burdensome reporting. But until all agencies (federal, state, tribal, and local

permitting authorities) can agree on a single method to report the same information, the Agency should not push the burden to the owners/operators.

TRI reporting and this reporting will result in different numbers because the requirements are different. This will result in two databases with different numbers leading to confusion within the Agency and the public. There will be numerous inquiries to industry to explain why they are different, resulting in increased cost with no benefit to any parties or the environment.

3. EPA should not include PFAS reporting into the requirements.

   At this point in time, no PFAS chemicals are federally regulated substances nor are they listed as HAPs. Until they are regulated chemicals, EPA should not add PFAS reporting requirements.

4. Reporting requirements for small businesses.

   There would be fewer reporting requirements for small entities that "meet all of the following criteria: (a) has 100 or fewer employees, (b) is a small business concern as defined in the Small Business Act (15 U.S.C. 631 et seq.), (c) is not a major source, (d) does not emit 50 tons or more per year of any regulated pollutant, and (e) emits less than 75 tons per year or less of all regulated pollutants." CRWI supports this idea. These companies will not have the resources to understand the reporting requirements and to actually comply with the requirements. If included, small entities would be required to hire third party help which would add to their burden.

Thank you for the opportunity to comment. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,

Melvin E. Keener, Ph.D.
Executive Director

cc: M. Houyoux, EPA