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# **UPDATES ON WASTE ISSUES: CKRC 2019 FALL MEETING**

# DISCUSSION ITEMS

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- ✘ RCRA Budget Cuts/Priorities
- ✘ PFAS Designated Hazardous Substances Proposal
- ✘ CERCLA Financial Assurance Oral Arguments on Hardrock Mining
- ✘ E-Manifest Update

# RCRA BUDGET CUTS/PRIORITIES

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- ✘ Administration has proposed its 2019 budget, including its budget for EPA
- ✘ Severe cuts again proposed for EPA, but the specific details for RCRA have not yet been revealed
- ✘ However, some general themes appear to be present agency-wide
- ✘ In particular, cuts to state grants to operate delegated authorities seem to be a likely result if this budget proposal is adopted by Congress (not likely)
- ✘ If so, States will likely seek new sources of revenue (probably from the regulated universe of facilities) to support their activities

# RCRA BUDGET CUTS/PRIORITIES

- ✘ Within the RCRA program, any severe budget cuts not covered by State grant reductions (by far, the largest current remaining budget item) would most likely target many of the non-regulatory, voluntary programs aimed at promoting source reduction, recycling and reuse of nonhazardous solid waste
- ✘ EPA also has been focused Agency-wide on LEAN reviews of all its programs to try to streamline its activities and reduce the staffing and timelines for getting activities completed

# RCRA BUDGET CUTS/PRIORITIES

- ✘ The likely top priorities for future work will be:
  - + Coal ash regulation and litigation
  - + E-manifest implementation and biennial report streamlining using e-manifest submissions
  - + Definition of Solid Waste litigation
  - + Subtitle C (hazardous waste) regulatory reforms (especially generator rule, pharmaceutical rule) and permit/corrective action process streamlining
  - + PCB disposal and clean-up regulation streamlining

# PFAS DESIGNATED HAZARDOUS SUBSTANCES PROPOSAL

- ✘ EPA has announced recently that intends to propose to add perfluoroalkyl substances (PFAS) chemicals to the list of hazardous substances
- ✘ PFAS are a group of man-made chemicals that have been in use since the 1940s, These chemicals are extremely persistent in the environment and a drinking water criteria has been set at 70 ppt
- ✘ PFAS (long chain single bonded carbon atoms bonded to fluorine atoms except for the end carbon which has a functional group such as two oxygen atoms and a hydrogen atom) and can be found in:
  - + **Food** packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water.
  - + **Commercial household products**, including stain- and water-repellent fabrics (e.g., Scotchguard), nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, and fire-fighting foams (a major source of groundwater contamination at airports and military bases where firefighting training occurs).
  - + **Workplace**, including production facilities or industries (e.g., chrome plating, electronics manufacturing or oil recovery) that use PFAS.
  - + **Drinking water**, typically localized and associated with a specific facility (e.g., manufacturer, landfill, wastewater treatment plant, firefighter training facility).
  - + **Living organisms**, including fish, animals and humans, where PFAS have the ability to build up and persist over time.
- ✘ Although PFOA and PFOS are no longer manufactured in the United States, they are still produced internationally and can be imported into the United States in consumer goods such as carpet, leather and apparel, textiles, paper and packaging, coatings, rubber and plastics.

# PFAS DESIGNATED HAZARDOUS SUBSTANCES PROPOSAL

- ✘ This proposal as a CERCLA hazardous substance also has RCRA implications
- ✘ It could be the basis for:
  - + Adding PFAS to Appendix 7 and Appendix 8
  - + Creation of new land disposal standards
  - + Consideration for designating certain solid wastes containing PFAS as listed hazardous wastes
- ✘ EPA is looking at the implications of this proposal and options for disposal of PFAS-containing contaminated media and solid wastes
- ✘ Due to the persistence of the chemicals, combustion is a potential option. However, the ability of hazardous waste combustors to handle these questions is not well-established
- ✘ In particular, the impact of these highly fluorinated chemicals on cement kiln operations is not yet understood
- ✘ EPA is seeking any information that might be available

# CERCLA FINANCIAL ASSURANCE

- ✘ EPA issued its final rule on 2/21/18; it declined to require financial assurance for the hardrock mining industry after proposing expansive requirements in the prior Administration
- ✘ Environmental groups sued the rule in the D.C. Court of Appeals in May 2018, and oral arguments were held on 3/13/19
- ✘ EPA based its decision on comments to the proposed rule that it believes substantiated undue burden on the industry from the rule, as well as comments that the risks of unfunded cleanups at currently active mines were minimal due to State laws and existing requirements by federal land management agencies
- ✘ The environmental groups challenged EPA's reliance on the risk of creating taxpayer-funded cleanups, rather than whether those other authorities were adequately preventing risks to human health and the environment and addressing costs of all significant risks (e.g., variable coverage by state laws, natural resource damages)
- ✘ The environmental groups also challenged the procedure of issuing a rule requiring no financial assurance with new comment after proposing to issue a rule with expansive coverage
- ✘ The D.C. Court of Appeals 3-judge panel actively challenged environmental groups on whether it should substitute its judgment when the statute offers substantial discretion to the EPA Administrator in determining the level of risk that requires financial assurance
- ✘ The environmental community strongly that EPA had violated even the minimum standard for action, and that substantial unaddressed existing risks had been ignored by EPA

# E-MANIFEST UPDATE

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- ✘ Summary of 3/27/19 Webinar:
  - + 1 millionth manifest submitted in February
  - + On pace for 2 million submissions for the first year, compared to 3.5 million they had projected
  - + Unless they overestimated the costs they would incur, this could suggest an increase in the per/manifest fees on October 1. They are noncommittal on that point until they announce the new fee rates in June
  - + The new fees will be effective for two years

# E-MANIFEST UPDATE

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- ✘ Paper submission backlog work-down is progressing-they have staffed up now but still are processing manifest submitted in 2018
- ✘ They are providing public reports summarizing data by month
- ✘ They are now producing delinquent manifest reports to flag late manifests for generators and inform enforcement authorities
- ✘ New functionality to query system by manifest tracking number is in preproduction and can be accessed now (will be fully active by 4/15/19)
- ✘ 3 new frequently asked questions added; list now has 31

# E-MANIFEST UPDATE

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- ✘ If you cannot find your manifest, check to see if the proper tracking number was input into the system: many issues arising from failure to get that done properly; also you cannot find a paper form that is still backlogged
- ✘ Paper manifests are not billed until the month uploaded
- ✘ Less is more in generator searches, enter ID only
- ✘ DOT apparently not in any hurry to go electronic on getting away from paper for transporters
- ✘ Can do changes to electronic manifest can occur while in-transit, but it requires person making change to re-sign the manifest (go into electronic system or go to state if it has opted out)
- ✘ Image-only submissions can only be updated with a new image until Paper Center makes it electronic
- ✘ Changes to email or contact person can only be done by contacting the Help Desk

# E-MANIFEST UPDATE

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- ✘ 2/8 FR Proposed Amendments to Manifest Form (*comments due April 9th* )
- ✘ In addition to a standard OMB request for comments on whether EPA has properly estimated the time and cost of complying with the requirements, OMB is asking for comment on the following topics:
  - + Improving the precision of waste quantities and units of measure reported on the hazardous waste manifest (both paper and electronic) by allowing usage of decimals or fractions in Item 11 of the manifest and smaller units of measure (ounces, grams, milliliters) in Item 12
  - + Enhancing the quality of international shipment data reported on the manifest by adding separate, distinct fields on the manifest so exporters can record consent numbers for each waste stream and EPA ID #s if not the site initiating the shipment for export
  - + Assisting EPA with integrating e-Manifest and biennial reporting (BR) requirements by requiring reporting of source and form codes and density information on the manifest
- ✘ Does CKRC have any concerns about these possible changes or wish to support the changes that would require submitting comments?