

Nine PFAS Compounds Proposed to be Hazardous Constituents Under RCRA

Article By:

Jonathan H. Schaefer

On February 8, 2024, the U.S. Environmental Protection Agency (EPA) published two proposed rules in the Federal Register that would expand the EPA's authority to address certain per- and polyfluoroalkyl substances (PFAS) under the Resource Conservation and Recovery Act (RCRA). These rules would significantly increase the EPA's and authorized state's authority to address the release of some of the most common PFAS and require responsible parties to conduct assessments, investigations, and clean-ups.

The first proposed rule, [Listing of Specific PFAS as Hazardous Constituents](#), seeks to add nine PFAS, their salts, and their structural isomers to RCRA's list of hazardous constituents. It is important to note that this is not the same as a "hazardous waste" listing under RCRA, which would automatically designate substances as "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund.

The nine PFAS listed in the proposed rule are:

- perfluorooctanoic acid
- perfluorooctanesulfonic acid
- perfluorobutanesulfonic acid
- hexafluoropropylene oxide-dimer acid
- perfluorononanoic acid
- perfluorohexanesulfonic acid
- perfluorodecanoic acid
- perfluorohexanoic acid
- perfluorobutanoic acid

The stated purpose of this proposed rule is to bring PFAS into RCRA's Corrective Action program, which requires that the owner or operator of a facility with a permit or interim permit for the treatment, storage, or disposal of hazardous waste initiate corrective action to protect human health and the environment for all releases of hazardous wastes or hazardous constituents. It also means that the EPA has found that these substances have been shown in scientific studies to have "toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms."

The second proposed rule, [Definition of Hazardous Waste Applicable to Corrective Action for Releases from Solid Waste Management Units](#), seeks to amend the definition of “hazardous waste” and authorize the EPA to require corrective actions to address releases from RCRA-regulated solid waste management units (SWMU) of any substance that meets the statutory definition of hazardous waste — not only substances identified as hazardous waste or constituents in the RCRA regulations. This action is designed to enhance the EPA’s position that it has the authority to use the RCRA Corrective Action program at permitted facilities to address both listed hazardous waste and constituents – including the nine PFAS identified in the first proposed rule – but also other emerging contaminants, such as any of the thousands of other PFAS, if it can be shown that they meet the statutory definition of “hazardous waste.”

Taken together these proposed rules represent an important step forward in the EPA’s [PFAS Strategic Roadmap](#) by expanding the EPA’s authority to address releases of the nine listed PFAS (and potentially more) and set the stage for the EPA’s impending proposed rules to [designate](#) two PFAS – Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) – as hazardous substances under CERCLA and to [establish](#) a national primary drinking water standard for PFAS.

Comments on the listing of the nine PFAS are due April 8, while comments on the expansion of EPA’s RCRA authority are due on March 11.

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