

PFAS/RCRA: New Mexico Petitions U.S. Environmental Protection Agency to Initiate Hazardous Waste Listing

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The State of New Mexico submitted a June 23rd Petition to the United States Environmental Protection Agency (“EPA”) requesting a listing of per and polyfluorinated substances (“PFAS”) as a Resource Conservation and Recovery Act (“RCRA”) Subtitle C hazardous waste.

The Petition requests that they be listed as either a class of chemicals or, in the alternative, list individual PFAS chemicals.

RCRA gives EPA the authority to regulate hazardous waste from cradle to grave. This includes the generation, transportation, treatment, storage and disposal of hazardous waste. A key EPA RCRA activity is the designation of what solid waste constitutes a listed hazardous waste.

A solid waste can be determined to be a hazardous waste if it is specifically listed and one of four RCRA hazardous waste lists (the F, K, P and U List found in Title 40 of the Code of Federal Regulations in Section 261). If a waste is found on one or more of these lists, it is considered a “listed hazardous waste.”

PFAS consists of a large group of man-made chemicals that include perfluorooctanoic acid, perfluorooctane sulfonate, and GenX chemicals. Their properties include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation. Potential human exposure to PFAS include pathways through drinking water, air, or food.

The New Mexico Petition states that:

... Without regulatory action addressing PFAS chemicals from their manufacturing to disposal, the people of the United States will continue to remain at risk from the toxic characteristics of this class of chemicals.

New Mexico cites several areas in the state that contain PFAS contamination, referencing United States Department of Defense activities at:

- Cannon Air Force Base
- Holloman Air Force Base

The Petition articulates the state’s view for the need and justification for the listing, arguing:

- Absence of a uniform regulatory process
- States must use a patchwork of statutory and regulatory authorities that may or may not provide enough oversight to provide protection
- Additional information about the characteristics and dangers of PFAS have been developed

- States such as New Mexico face roadblocks from federal facilities who have refused to act quickly to remediate PFAS contamination
- PFAS impacts on agriculture and tourism

The Petition also argues that RCRA “is the correct method of regulation of PFAS,” stating:

- Breadth and threat presented by PFAS requires listing pursuant to Subpart C because they demonstrate the characteristics of a toxic waste
- A listing would allow the states to implement regulations uniformly and through existing local programs
- Certain toxic constituents in PFAS are found in Appendix VIII at 40 C.F.R. Part 261

A copy of the Petition can be downloaded [here](#).