

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



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The United States Environmental Protection Agency (“EPA”) responded to a June 23rd petition by the State of New Mexico that requested a listing of per and polyfluorinated substances (“PFAS”) as Resource Conservation and Recovery Act (“RCRA”) Subtitle C Hazardous Waste.

EPA Administrator Regan in an October 26th letter stated that it will initiate two RCRA rulemakings addressing PFAS.

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 includes pathways through drinking water, air, or food.

The June 23rd New Mexico Petition stated 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.

The RCRA regulations establish two ways of identifying solid waste as hazardous. The waste may be considered hazardous if it exhibits certain hazardous properties (“Characteristics”) or if it is included on a specific list of wastes EPA has determined are hazardous (“Listing” a waste as hazardous) because it is found to pose substantial present or potential hazards to human health or the environment.

In order to “list” wastes EPA conducts a more specific assessment of a particular waste or category of waste. The agency will “list” them if they meet criteria set out in 40 C.F.R. 261.11.

The EPA Administrator’s October 26th letter to the Governor of New Mexico states that the two rulemakings will include:

- A proposal to add PFOA, PFOS, PFBS and GenX as RCRA Hazardous Constituents under 40 C.F.R. Part 261, Appendix VIII (by evaluating existing data for these chemicals/establishing a record in support)
- Clarify in the applicable regulations that the RCRA Corrective Action Program has the authority to require investigation/cleanup for wastes that meet the statutory definition of hazardous waste (as defined under RCRA Section 1004(5))

A copy of the October 26th letter can be downloaded [here](#).