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# Solid Waste Management Units/Corrective Action: U.S. Environmental Protection Agency Proposed Rule Amending RCRA Definition of Hazardous Waste

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The United States Environmental Protection Agency (“EPA”) published in the February 8th Federal Register a proposed rule which would amend the definition of hazardous waste applicable to corrective action to address releases from solid waste management units (“SWMUs”) at Resource Conservation and Recovery Act (“RCRA”) – permitted treatment, storage, and disposal facilities. See 89 Fed. Reg. 85958.

The stated purpose of the proposed rule is to provide clear regulatory authority to fully implement the RCRA statutory requirement that permitted facilities conduct corrective action to address both substances listed or identified as hazardous waste but also any substance meeting the definition of hazardous waste.

EPA is also articulating its interpretation that the statutory definition of hazardous waste applies to corrective action for releases from SWMUs at permitted and interim status facilities.

The 1984 Hazardous and Solid Waste Amendments to RCRA expanded corrective action authorities for both permitted RCRA facilities and facilities operating under interim status.

Section 3004(u) requires that any permit issued under Section 3005(c) of RCRA to a treatment, storage, or disposal facility after November 8, 1984, address corrective action for releases of hazardous waste or hazardous constituents from any SWMU at the facility. These permits will contain schedules of compliance where corrective action activities could not be completed prior to permit issuance. Facility owners and operators are also required to demonstrate assurances of financial responsibility for completing the required corrective action.

Section 3004(v) authorizes EPA to require corrective action beyond the facility boundary where appropriate. In addition, Section 3008(h) provides EPA with authority to issue Administrative Orders or bring court action to require corrective action or other measures, as appropriate, when there is or has been a release of hazardous waste or hazardous constituents from a RCRA facility operating under interim status.

Forty-four states and territories (including Arkansas) are authorized to run the corrective action program.

EPA has estimated that the RCRA corrective action program involves almost 4,000 cleanups across the United States.

A typical cleanup process may include sequential steps such as:

- Initial site assessment
- Site characterization
- Interim actions
- Evaluation of remedial alternatives
- Implementation of the selected remedy

The February 8th proposed rule would amend the regulations applicable to RCRA treatment, storage, and disposal facilities in two ways:

- Amend the definition of hazardous waste applicable to corrective action
- Revise the definition in § 260.10 to expressly apply the RCRA Section 1004(5) statutory definition of hazardous waste to corrective action requirements under § 264.101 and 40 CFR Part 264 Subpart S
- Amend the identical definition in the hazardous waste facility permitting regulations, §270.2, to expressly apply the statutory definition of hazardous waste to the requirements relating to corrective action in § 270.14(d)
- Add Sections 3004(u) and (v) and 3008(h) to the statutory authorities identified under 261.1(b)(2)

A copy of the Federal Register Notice can be downloaded [here](#).