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Solid Waste Management Unites/Corrective Action: ASTSWMO Comments Addressing U.S. Environmental Protection Agency Proposed Rule Amending Definition of Hazardous Waste

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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) submitted March 26th comments to the United States Environmental Protection Agency (“EPA”) addressing 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, disposal facilities. See 89 Fed. Reg. 86958 (February 8, 2024).

The stated purpose of the proposed rules 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.

ASTSWMO describes itself as an association representing the waste management and remediation programs of the 50 states, 5 territories, and the District of Columbia. The comments were prepared by ASTSWMO’s Hazardous Waste Subcommittee. Arkansas Department of Energy and Environment – Division of Environmental Quality Office of Land staff member Brad Toler is a member of ASTSWMO’s Hazardous Waste Subcommittee.

The February 8th proposed rule would amend the regulations applicable to RCRA treatment, storage, 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 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)(v) and 3008(h) to the statutory authorities identified under 261.1(b)(2).

ASTSWMO's March 26th comments note overall support of the proposed rule. This is based on the organization's belief that it:

...provides additional clarity regarding authority to require investigation and cleanup of emerging contaminants via the corrective action program.

The organization notes however, that it requests that EPA have a "clear implementation plan in place when a final rule is promulgated".

The March 26th comments pose nine detailed questions for EPA concerning the following topics:

- Permitting/PFAS.
- Permit applications/newly identified hazardous waste.
- Responsibility for hazardous waste determination.
- Previously completed corrective actions.
- Reopening previously completed sites.
- Funding.
- Correlation between RCRA text and federal law.
- Additional requirements on regulated facilities.

A copy of the ASTSWMO's comments can be downloaded [here](#).