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March 26, 2024

U.S. Environmental Protection Agency  
EPA Docket Center  
Office of Resource Conservation and Recovery Docket  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

via regulations.gov

Re: Docket ID No. EPA-HQ-OLEM-2023-0085

Dear Sir or Madam:

The Hazardous Waste Subcommittee (HWSC) of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comment on the U.S. Environmental Protection Agency's (EPA) Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units proposed rule, published in the Federal Register on February 8, 2024 (89 FR 8598). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial waste programs may also provide comments directly to EPA based on their own State perspectives and experiences.

ASTSWMO is an association representing the waste management and remediation programs of the fifty (50) States, five (5) Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste.

Overall, the HWSC supports EPA's proposed rulemaking, in that it provides additional clarity regarding authority to require investigation and cleanup of emerging contaminants via the corrective action program. As EPA continues its rulemaking process, the HWSC encourages EPA to have a clear implementation plan in place when a final rulemaking is promulgated. Specifically, the HWSC has received the following questions and comments regarding how a new rulemaking will be implemented and what the expectations are for State regulatory programs:

1. Given the clarifications regarding the applicability of the statutory definition of hazardous waste and the related revisions to the hazardous waste definition in 40 CFR 260.10, will States be required to draft permits (or amend existing permits) for the management of per- and polyfluoroalkyl substances (PFAS) or any other contaminant that potentially meets the statutory definition of a hazardous waste?
2. Regarding permit applications, we request that EPA issue guidance to clarify 40 CFR 270.14(d), detailing information facilities need to submit to State regulatory programs concerning any hazardous waste newly identified using the statutory definition of hazardous waste applicable to the Resource Conservation and Recovery Act (RCRA) corrective action program. This guidance should emphasize the importance of collaboration between State regulatory programs and regulated facilities in identifying additional wastes that could be classified as hazardous waste.

3. Who will be responsible for making determinations with respect to other contaminants meeting the statutory definition of hazardous waste and what is the process for making and communicating such decisions? Will EPA provide guidance to States on what information is necessary to make such a determination? Additionally, how will these determinations be addressed via the authorization process?
4. How will the revised hazardous waste definition in 40 CFR 260.10 impact previous corrective action complete determinations that have already been made, whether the determinations were made under a permit or some other enforceable document such as a corrective action long-term agreement or a corrective action consent order? Of specific interest are cases where PFAS or any other contaminants that potentially meet the statutory definition of hazardous waste were not investigated when making the corrective action complete determinations.
5. Does EPA anticipate that the identification of new emerging contaminants as hazardous waste will necessitate revisiting and potentially reopening sites previously deemed complete in their corrective actions and cleanup efforts, regardless of the time passed or remedial actions already taken?
6. Does EPA anticipate additional funding becoming available to States to oversee corrective action activities at sites where corrective action was previously complete, but are required to be re-evaluated and re-opened under these regulatory changes? The HWSC foresees that additional resources will be required to oversee corrective action activities at these sites.
7. The proposed rulemaking refers to several sections of the actual RCRA text; however, it is particularly difficult to find the correlation between the language of the RCRA text and the actual federal law (e.g., RCRA Section 3004(u) correlates to 42 U.S.C. 6924(u)). It is recommended that EPA provide a crosswalk of these citations in the final rulemaking or as separate additional guidance for States in their rulemaking and authorization process.
8. The proposed rulemaking indicates that EPA expects the changes will not impose additional requirements on regulated facilities. While the HWSC understands EPA's position that this rulemaking does not impose additional burden because it is a clarification of long-standing policy and authority already granted under the RCRA omnibus provision, we encourage EPA to re-evaluate this conclusion. The HWSC believes there will be significant additional burden on both regulated facilities and State regulatory agencies in making the determination that emerging contaminants meet the statutory definition of hazardous waste and thus should be regulated and require cleanup under RCRA corrective action.

Thank you for your consideration of the HWSC's comments. If you have any questions, please contact me at [melissa.ferree@delaware.gov](mailto:melissa.ferree@delaware.gov) or 302-739-9403.

Sincerely,



Melissa Ferree (DE), Chair  
ASTSWMO Hazardous Waste Subcommittee