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CERCLA/RCRA PFOA and PFOS Rulemakings

Why Issue PFOA/PFOS Rulemaking?



PFOA and PFOS exposure is linked to adverse human health effects, including cancer and effects on the immune system, the cardiovascular system, the liver, and the developing fetus.



PFOA and PFOS are persistent and mobile in the environment.



PFOA and PFOS are prevalent. They have been detected in the drinking water of millions of Americans and are widely detected in samples from rivers, lakes and streams. Populations near highly contaminated sites are at risk of disproportionately high potential for repeat exposures.

Designation as a CERCLA Hazardous Substance

EPA is designating PFOA and PFOS, including their salts and structural isomers, as hazardous substances under CERCLA...

significant evidence demonstrates that: when released into the environment, these chemicals may present substantial danger to the public health and the environment.

PFOA and PFAS Before-After Designation as Hazardous Substance

Before Hazardous Substance Designation - "Pollutants and Contaminants" <i>(Limited)</i>	After - Hazardous Substances Designation
<p>Does <u>not</u> require:</p> <ul style="list-style-type: none">• Release reporting;• Federal Land Transfer Requirements; and• DOT regulations	<p>Requires:</p> <ul style="list-style-type: none">• Release reporting;• Federal Land Transfer Requirements; and• DOT regulations
<p>EPA must make a finding that a release, or threat of release, "may present an imminent and substantial danger" before responding.</p>	<p>Finding not needed before responding.</p>
<p>EPA does <u>not</u> have the authority to compel PRPs to clean up or pay for clean up</p>	<p>EPA has this authority.</p>

What The Designation Does NOT Do

Does **NOT**:

- ▶ Require facilities to proactively sample, test, monitor, or clean up PFOA and PFOS
- ▶ Impose requirements on how to manage contaminated waste or wastewater
- ▶ Add any site to the NPL or require that EPA reexamine existing sites
- ▶ Require any response action

What Types of Operations Will be Subject to CERCLA Release Reporting

- ▶ PFOA and/or PFOS manufacturers (including importers and importers of articles that contain these substances);
- ▶ PFOA and/or PFOS processors;
- ▶ Manufacturers of products containing PFOA and/or PFOS;
- ▶ Downstream users of PFOA and PFOS;
- ▶ Downstream users of PFOA and/or PFOS products;
- ▶ Waste management facilities; and
- ▶ Wastewater treatment facilities.

RCRA PFOA/PFAS Rulemaking

- ▶ In response to several petitions, including one from the Governor of New Mexico, EPA proposed two rulemakings on February 8, 2024

Definitions of HW Applicable to RCRA Corrective Action

- ▶ Clarifies that the RCRA Corrective Action Program has the authority at permitted facilities to require investigation & cleanup not only for regulatory hazardous waste and constituents, but also for wastes that meet the statutory definition of hazardous waste, under RCRA section 1004(5).
- ▶ EPA has long taken the position that section 3004(u) corrective action authority addresses statutory hazardous waste
- ▶ The rule would modify the regulations to apply the statutory definition to that section and more clearly implement the Agency's longstanding position.
- ▶ This could be applied to PFOA/PFAS or other emerging contaminants

RCRA Appendix VIII PFOA/PFAS Rulemaking

- ▶ Proposal to add nine PFOA/PFAS, their salts, and their structural isomers to its list of hazardous constituents under 40 CFR Part 261 Appendix VIII.
- ▶ Chemicals can be listed on 40 CFR Part 261 Appendix VIII if the data shown in scientific studies determines these chemicals have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. The burden to do a RCRA haz waste listing is much more extensive.
- ▶ Hazardous constituents listed in Appendix VIII are subject to corrective action requirements at hazardous waste TSDFs.

New PCB Rulemaking Effective February 26, 2024

U.S. Environmental Protection Agency

- ▶ On August 29, 2023, EPA finalized regulatory changes that address several key issues related to implementing the PCB Cleanup and Disposal Program under the Toxic Substances Control Act, including:
 - ▶ expanding the available options methods used to characterize and verify the cleanup of PCB waste under the federal TSCA regulations,
 - ▶ adding more flexible provisions to facilitate cleanup and protective disposal of waste generated by spills that occur during emergency situations (e.g., hurricanes or floods),
 - ▶ adding amendments to the performance-based disposal option for PCB remediation waste by adding explicit cleanup provisions, including the requirement to notify EPA and follow specific sampling protocols,
 - ▶ removing the provision allowing PCB bulk product waste to be disposed of as roadbed material to improve protectiveness of human health and the environment, and
- ▶ [View the final rule in the *Federal Register*.](#)

New PCB Technical Guidance Available Now

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PCB Products in Buildings and Other Structures

- ▶ Technical guidance to assist property owners or operators, their contractors, and analytical labs in determining the presence of manufactured PCB products in buildings or other structures.
- ▶ Presents a statistically-based sampling approach to potentially determine the presence of PCBs

[Technical Guidance for Determining the Presence of Manufactured PCB Products in Buildings and Other Structures Document](#)

Helpful Resources

- ▶ New PCB Rule: Alternate PCB Extraction Methods and Amendments to PCB Cleanup and Disposal Regulations.
 - ▶ <https://www.epa.gov/pcbs/alternate-pcb-extraction-methods-and-amendments-pcb-cleanup-and-disposal-regulations>
- ▶ Factsheet: Determining the Presence of Manufactured PCB Products in Buildings or Other Structures
 - ▶ <https://www.epa.gov/pcbs/pcbs-building-materials-determining-presence-manufactured-pcb-products-buildings-or-other>
- ▶ Question and Answer Manual and Response to Comment Documents
 - ▶ <https://www.epa.gov/pcbs/polychlorinated-biphenyl-pcb-question-and-answer-manual-and-response-comment-documents>.
- ▶ Frequent Asked Questions about the e-Manifest (including PCB topics)
 - ▶ <https://www.epa.gov/e-manifest/frequent-questions-about-e-manifest>
- ▶ For information about EPA Region 7 PCB Program, please visit
 - ▶ <https://www.epa.gov/pcbs/epa-region-7-polychlorinated-biphenyls>
- ▶ For more information about EPA's PCB program, please visit
 - ▶ <https://www.epa.gov/pcbs>.

Used Drum Reconditioner ANPRM

- ▶ In 2023, EPA published the [Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking \(ANPRM\)](#) to take comment on a planned regulation proposal to address significant issues identified in the [2022 Damage Case Report](#).
 - ▶ The report found that an estimated 181 drum reconditioning facilities process approximately 40 million total drums each year.
 - ▶ 35% of drums are reconditioned using burn-off ovens, and the remaining are reconditioned through washing methods.
 - ▶ 86 drum reconditioning facilities had one or more reported incidents, including: fires; explosions; hazardous waste spills; employee injuries; air, water, or soil contamination; and various combinations of these incidents.
- ▶ Potential Regulation Changes:
 - ▶ Reduce the “one-inch” regulatory limit for defining RCRA empty containers
 - ▶ Require rinsing for all containers before they would be considered RCRA empty
 - ▶ Require empty drums to meet structural integrity requirements prior to shipment
 - ▶ Add specific to retain a RCRA permit exemption for drum reconditioners
- ▶ EPA is currently reviewing comments received on the ANPRM.

April 25, 2024, Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants – 4 Separate Actions

1. Requiring existing coal-fired and new natural gas-fired power plants to control 90 percent of their carbon pollution.
2. Revising the Mercury and Air Toxics Standards (MATS) for coal-fired power plants by tightening the emissions standard for toxic metals by 67 percent ng a
3. Establishes Effluent Limitation Guidelines (ELGs) for four types of wastewater:
 - Flue gas desulfurization wastewater
 - Bottom ash transport water
 - Combustion residual leachate
 - “Legacy wastewater” that is stored in surface impoundments (for example, coal ash ponds)
4. A final rule that will require the safe management of coal ash that is placed in areas that were unregulated at the federal level until now, including at previously used disposal areas that may leak and contaminate groundwater.

Legacy Coal Combustion Residuals Surface Impoundments and CCR Management Units

- ▶ The original CCR rule did not impose requirements on inactive surface impoundments at inactive facilities, referred to as “Legacy Units.
- ▶ In 2018, the DC Court of Appeals, vacated the exemption for Legacy Units.
- ▶ Under the new rule “Legacy CCR Surface Impoundments” means a CCR surface impoundment that no longer receives CCR, but contained both CCR and liquids on or after October 19, 2015
- ▶ The Legacy CCR final rule, largely mirrors the requirements for active facilities, including requiring the proper closure of the impoundments and remediating CCR contaminated groundwater.

e-Manifest Update

- ▶ EPA is continuing to encourage generators, and transporters, to register for e-Manifest.
 - ▶ Since October 2023, over 2,000 site IDs, listed on more than 280,000 manifests, have registered their first Site Manager in RCRAInfo.
 - ▶ EPA is working contacting generators directly to encourage them to register for e-Manifest.
- ▶ EPA is working internally to get its own house in-order to ensure EPA is using e-Manifest for its own hazardous waste shipments.
- ▶ EPA is continuing work on a final rule, known as the “third rule.” The “third rule” was proposed in April 2022 to incorporate export manifests and other manifest-related reporting in e-Manifest, and other proposed changes. The final rule is expected in 2024.
- ▶ In response to user needs, EPA released the following system updates: requirements from the PCB rule, correction request enhancements for HQ and state users, and remote signer updates.

Hazardous Waste Incinerator Backlog

- ▶ There has been a backlog of containerized hazardous waste awaiting commercial incineration since the summer of 2021.
- ▶ EPA identified flexibilities outlined in a 2021 memo that can continue applied by states on a case-by-case basis, including the option to grant hazardous waste generators 30-day extensions to their accumulation times.
- ▶ EPA continues monitor where the incinerator backlog has continued.
- ▶ In January 2024, EPA published [a new webpage, along with FAQs](#), on this issue.

Bipartisan Infrastructure Law – Solid Waste Infrastructure for Recycling Grant Program

- ▶ The [Solid Waste Infrastructure for Recycling grant program](#) provides grants to improve post-consumer materials management and infrastructure;
- ▶ Last fall, EPA announced the selection of grants totalling more than \$160 million to expand recycling infrastructure and waste management systems across the country, including:
 - A project by the East Central Solid Waste Management District of Missouri to:
 - Buy a truck, a trailer, and a Styrofoam compactor, and constructing a new storage facility.
 - This actions will help the Recycling Center create 20 staffed drop-off locations throughout the four-county region of Warren, Lincoln, Montgomery, and Franklin Counties in Missouri.
 - Missouri Department of Natural Resources
 - Update the Missouri Solid Waste Management Plan
 - Develop a sustainable organic materials management plan

Bipartisan Infrastructure Law – Recycling Education and Outreach Grant Program

- ▶ The [Recycling Education and Outreach grant program](#) provides funds to inform the public about residential or community recycling or composting programs; provide information about the materials that are accepted and to increase collection rates and decrease contamination rates.
- ▶ EPA chose 25 proposals for the Recycling, Education and Outreach grant program including:
 - ▶ Joplin, Missouri This project will guide the development and implementation of five campaigns:
 - ▶ Innovative Training to Divert Recyclables from landfills
 - ▶ Innovative Training about Proper Recycling
 - ▶ Benefits of Recycling in Reducing Greenhouse Gas Emissions
 - ▶ Composting Training for Community Members
 - ▶ Reduction of Contaminants in Recyclable Materials