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U.S. EPA Releases Two Proposed Rules Regulating PFAS Under RCRA

The U.S. Environmental Protection Agency (EPA) recently published two proposed rules that would regulate per- and polyfluoroalkyl substances (PFAS) for cleanup under the Resource Conservation and Recovery Act (RCRA). The first, Listing of Specific PFAS as Hazardous Constituents, would add nine PFAS to the list of hazardous constituents in 40 CFR Part 261, Appendix VIII. Comments are due April 8. The nine PFAS proposed to be added to Appendix VIII of 40 CFR Part 261 are the following compounds, their salts and their structural isomers:

- Perfluorooctanoic acid
- Perfluorooctanesulfonic acid
- Perfluorobutanesulfonic acid
- Hexafluoropropylene oxide-dimer acid
- Perfluorononanoic acid
- Perfluorohexanesulfonic acid
- Perfluorodecanoic acid
- Perfluorohexanoic acid
- Perfluorobutanoic acid

The second, Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units, proposes to clarify that emerging contaminants, such as PFAS, can be remediated under the RCRA Corrective Action program, which requires investigation and remediation of releases of hazardous wastes and hazardous constituents from solid waste management units located at transport, storage or disposal facilities (TSDFs). Comments are due March 11. With the proposal, EPA seeks to codify its statutory interpretation that RCRA authorizes EPA to require corrective action of all hazardous releases from a solid waste management unit. See 42 USC 6924(u), which refers to hazardous wastes *and constituents* from solid waste management units. RCRA's list of hazardous constituents determines which releases from solid waste management units at TSDFs require corrective action. According to EPA, there are 1,740 TSDFs that have solid waste management units that have or may have released any of the nine PFAS proposed for listing, which would be subject to additional corrective action as a result of the listing. 89 Fed. Reg. at 8606. Additionally, listing of the above PFAS is a step toward classifying PFAS as hazardous waste under RCRA. Should they become RCRA hazardous wastes, they would automatically become hazardous substances subject to investigation and remediation under the Comprehensive Environmental Response, Compensation and Liability Act (aka Superfund). Both proposed rules would significantly increase the number of sites subject to RCRA Corrective Action, as well as the kinds of substances addressed by RCRA. By laying the foundation for PFAS to be designated as RCRA hazardous waste, these rules could provide EPA more authority to require the cleanup of sites and facilities contaminated with PFAS, and possibly result in the reopening of sites previously closed under Superfund. If you think you or your organization may be affected by these proposed rules, please reach out to one of the attorneys in the sidebar.

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