

EPA Proposes to List PFAS as Hazardous Waste Under Resources Conservation and Recovery Act

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On February 8, 2024, the US Environmental Protection Agency (EPA) proposed changing the Resources Conservation and Recovery Act (RCRA) to include nine per-and polyfluoroalkyl substances (PFAS) to the list of hazardous substances. Listing as a hazardous constituent under the RCRA requires scientific studies showing that the substance has toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other lifeforms. This change would add to a growing number of regulations facilitating corrective actions addressing PFAS contamination around the country. The EPA is proposing to add the below nine PFAS compounds to the list:

Perfluorooctanoic acid

Perfluorooctanesulfonic acid

Perfluorobutanesulfonic acid

Hexafluoropropylene oxide-dimer acid

Perfluorononanoic acid

Perfluorohexanesulfonic acid

Perfluorodecanoic acid

Perfluorohexanoic acid

Perfluorobutanoic acid

The EPA's proposal comes after New Mexico's Governor, Michelle Grisham, filed a petition with the EPA to list PFAS as hazardous waste under the RCRA. In the petition, Gov. Grisham cited the growing number of adverse health risks associated with PFAS exposure in imploring the EPA to adopt the measures. Gov. Grisham's petition goes on to say that the listing of PFAS as hazardous waste under the RCRA would allow for uniform and consistent implementation of regulations against PFAS contamination by New Mexico and other similarly situated states through the RCRA Corrective Action Program.

Corrective action is a requirement under the RCRA that directs any facility that treats, stores, or disposes of hazardous waste to investigate and clean up any releases of same into soil, groundwater, and surface water. The listing of PFAS as hazardous waste under the RCRA would consequently place PFAS cleanup under the EPA's purview through the RCRA, which already oversees nearly 4,000 hazardous waste cleanups across the country.

PFAS is a class of substances which have been widely used in a variety of consumer products for decades due to their useful chemical properties. The substances have been the focus of many recent and ongoing studies regarding their potential adverse health risks. As the number of PFAS regulations continue to increase, it is critical that manufacturers take an active approach in assessing how these regulations may impact them and make any necessary adjustments to their practices.