

## **EPN Comments on Listing of Specific PFAS as Hazardous Constituents**

Docket No.: EPA-HQ-OLEM-2023-0278

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The [Environmental Protection Network](https://www.environmentalprotectionnetwork.org) (EPN) harnesses the expertise of more than 650 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

EPN commends EPA on its proposal to expand the scope of constituents subject to routine consideration in the corrective action process, relying on the authority under the Resource Conservation and Recovery Act (RCRA) Section 3004(u). We agree that these nine specific per-and polyfluoroalkyl substances (PFAS) chemicals should be listed because scientific studies have shown them to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other living entities.

As we stated in our comments on EPA's proposed definition of hazardous waste applicable to corrective action<sup>1</sup>, our collective experience implementing RCRA affirms that EPA, states, and facility operators have been effectively using the statutory definition of hazardous waste to appropriately respond to releases that pose a substantial hazard. Decisions regarding whether to address a particular release involve a detailed site-specific scientific factual analysis as to whether a particular release at a particular facility poses a substantial hazard to nearby public health or the environment. We maintain that EPA, the states, and facility operators must have the ability to adjust and update ongoing corrective actions and other response actions to address new and challenging environmental hazards, such as the health effects posed by toxic PFAS chemicals.

We agree with EPA's statement in this proposed rule that RCRA Corrective Action Program implementers already have the authority to require investigation and cleanup at RCRA treatment, storage, and disposal facilities (TSDFs) for substances not listed as hazardous constituents either through state cleanup regulations or through the authority provided by Section 270.32(b)(2), EPA's omnibus authority, and authorized state analogues. That said, we commend the agency for specifically listing these nine PFAS chemicals as hazardous constituents so there is no misunderstanding about the need to evaluate them as a routine consideration in the corrective action process.

We are aware that the U.S. Chamber of Commerce and 13 industry groups have requested a comment period extension on this proposal because they state that the nine PFAS chemicals are at various stages of risk evaluation and scientific readiness and need more review. We disagree with that characterization. RCRA Section 3004(u) does not require that a constituent have a final toxicity value in order to be listed in Appendix VIII, but eight of the PFAS chemicals have final EPA or Agency for Toxic Substances and Disease Registry (ATSDR) toxicity values. Perfluorodecanoic acid (PFDA), the one chemical without a final toxicity value, has received both public and expert peer review, and the peer review report has been published. A final toxicity value for PFDA will soon be published. In addition, both animal and human

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<sup>1</sup> <https://www.environmentalprotectionnetwork.org/proposed-rcra-haz-waste-definition/>

scientific studies have clearly shown that these nine PFAS chemicals meet the criteria to be listed as hazardous constituents.

We commend EPA for explaining in this rule that publicly owned treatment plants and solid waste disposal facilities such as municipal waste, construction, and demolition landfills will not be affected by these RCRA corrective action requirements unless such facilities also operate as hazardous waste TSDFs. We also commend EPA for confirming that the addition of these nine PFAS chemicals will become immediately effective in all states on the effective date and that EPA will implement the new rule as applied to corrective action in all states until those States become authorized for the new rule. These clear explanations should prevent any confusion regarding the applicability and implementation of this rule.

Thank you, EPA, for proposing this important new rule.