

**EPN Comments on EPA's Proposed Definition of Hazardous Waste
Applicable to Corrective Action for Releases From Solid Waste Management Units**

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

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The [Environmental Protection Network](https://www.epn.org/) (EPN) harnesses the expertise of more than 600 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 decision to affirm that the Resource Conservation and Recovery Act's (RCRA) corrective action program is available to clean up not only listed/characteristic hazardous waste but also those solid wastes that meet the statutory definition of hazardous waste.

This clarification advances the remedial purpose of the corrective action program expanded by Congress in the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA. Specific terms used in the statute, such as "solid waste units," "releases," "hazardous constituents," and "hazardous waste" (without reference to "listed and identified") demonstrate Congress's broader remedial intent for the corrective action and response programs. HSWA established an expectation that the RCRA corrective action and response programs would protect human health and the environment by extending to releases, media, and contaminants beyond those governed by the more limited RCRA regulatory definition governing handling, treatment, storage, and disposal requirements.

EPA correctly recognizes and implements RCRA's corrective action and response programs to address a broad array of releases, media, and contaminants in a way that best protects human health and the environment. When there is a substantial hazard posed by a release of contamination from operations handling our nation's hazardous waste, it is especially important for corrective action to be available to address releases of contaminants that present a substantial hazard as set forth in the statutory definition of hazardous waste.¹

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. This site-specific inquiry is rigorous and results in corrective action and other response actions focused on correcting facility-specific releases to protect nearby communities from substantial hazards emanating from a particular facility.

¹ The RCRA statutory definition of hazardous waste as set forth in Section 1004(5) provides that the term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; **or** (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." The term "substantial hazard" is used in this letter as shorthand for solid wastes that meet the criteria set forth in either "(A) or (B)" of this statutory definition.

In our experience, we believe that EPA, the states, and facility operators have been correctly interpreting and implementing the scope of corrective action for many years. In issuing this rule, we believe EPA should provide clarity regarding the following:

- It is important that EPA, states, and facility operators continue to have this tool to address releases presenting a substantial hazard. This includes the ability to adjust and update ongoing corrective actions and other response actions to address new and changing substantial hazards.
- It is important that EPA clarify that this codified definition may be immediately available to states to utilize for new and existing corrective actions. This should include state programs that expressly reference EPA's RCRA definitions and guidelines. It is important that actions be taken to minimize the need for modifications to state regulations and/or that actions be taken to expedite such modifications.
- It is important that EPA expressly state that this codified definition broadly applies to private and public entities, including the Department of Defense and other federal agencies.
- It is important that EPA clarify whether this rulemaking will result in additional corrective action permits and orders being issued. We noted some inconsistencies in the preamble and suggest that this be clarified in the final rulemaking.
- It is important to recognize that PFAS that are found to “(a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard” may be addressed by RCRA corrective action and response authorities regardless of its eventual listing as a “constituent” in Appendix VII.

We applaud EPA for this effort to overcome the confusion created by litigation relating to Cannon Air Force Base in New Mexico. This regulation appropriately codifies a longstanding approach to implementing corrective action and other response actions under RCRA. It is important that corrective action and other response actions be able to address substantial hazards on a site-specific basis and not be limited to addressing only the listed and characteristic wastes for which RCRA sets forth specific requirements for treatment, storage, and disposal. This regulation will provide clarity, certainty and notice to EPA, states, and facility operators (including the Department of Defense) that RCRA corrective action and response actions are available to address substantial hazards posed by releases of statutory hazardous waste.

While this proposed regulation is pending, we urge EPA to continue to utilize the statutory definition of hazardous waste to appropriately respond to releases under RCRA's corrective action and response action programs. This long-standing approach to addressing substantial hazards should continue as an effective means to protect public health and the environment from substantial hazards.

Thank you, EPA, for taking this action.