



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 270

[EPA-HQ-OLEM-2023-0085; FRL-9247-04-OLEM]

RIN 2050-AH27

Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units; Withdrawal

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is withdrawing its proposed rule entitled “Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units.” The Agency issued the proposed rule to: amend the regulatory definition of hazardous waste applicable to corrective action to address releases from solid waste management units at hazardous waste treatment, storage, and disposal facilities permitted under the Resource Conservation and Recovery Act (RCRA) and make conforming amendments related to the definition amendment; and add the statutory corrective action authorities to the section of the regulations that provides notice that the statutory definitions, rather than the regulatory definitions, apply to certain sections of the statute. The Agency has concluded that the proposed revisions to the existing regulations would have complicated, rather than contributed to, efficient implementation of corrective action. For those reasons EPA has determined that withdrawal is appropriate.

DATES: The proposed rule published on February 8, 2024 (89 FR 8598) is withdrawn as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Docket ID No. is EPA-HQ-OLEM-2023-0085. The Docket Center’s hours of operations are 8:30 a.m.- 4:30 p.m., Monday-

Friday (except Federal Holidays). For further information on the EPA Docket Center services and the current status, see: <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Barbara Foster, Waste and Chemical Implementation Division, Office of Resource Conservation and Recovery (5303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC, 20460, telephone number: (202) 566-0382, email address: foster.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations were proposed under the authority of sections 2002(a), 3004(u) and (v), and 3008(h) of RCRA, as amended, 42 U.S.C. 6912(a), 6924(u) and (v), and 6928(h).

II. Background

A. Description of Proposed Rule

On February 8, 2024, EPA issued a proposed rule that would have amended the regulatory definition of hazardous waste applicable to corrective action to address releases from solid waste management units at RCRA-permitted treatment, storage, and disposal facilities (*see* 89 FR 8598). The Agency proposed two related amendments. First, the Agency proposed to amend two regulatory definitions in 40 CFR – the definition of hazardous waste in § 260.10, which is applicable to corrective action under § 264.101 and subpart S, and the identical definition in § 270.2 of the hazardous waste facility permitting regulations – to expressly apply the RCRA section 1004(5) statutory definition of hazardous waste to corrective action requirements. Second, EPA proposed to add RCRA sections 3004(u) and (v) and 3008(h) to the statutory authorities identified in § 261.1(b)(2) of the regulations. That section provides notice that the statutory definitions of solid and hazardous waste, rather than the more limited regulatory definitions, govern the scope of EPA’s authority under certain sections of RCRA.

B. Withdrawal is Appropriate Because the Rule is not Necessary

Through the proposed rule, EPA sought to align its regulations with the RCRA statutory requirement that permitted facilities conduct corrective action to address releases not only of substances listed or identified as hazardous waste in the regulations but of any substance that meets the statutory definition of hazardous waste. EPA particularly intended the rule to provide clear authority to address, through corrective action in permits, releases of emerging contaminants that have not yet been listed or identified as hazardous waste under the regulations.

Some commenters on the proposed rule argued that the rule is not necessary for a number of reasons. After considering public comments received on the proposed rule, EPA, while not agreeing with all the arguments presented by commenters, has determined that the rule is not necessary and that withdrawal of the proposed rule is appropriate for reasons described below.

1. Amendments to the Definition of Hazardous Waste

The proposed rule would have amended the definition of hazardous waste: (1) in § 260.10 (applicable to § 264.101 and 40 CFR part 264, subpart S); and (2) § 270.2 (applicable to the RCRA permitting requirement). EPA proposed these changes to apply the definition of hazardous waste in RCRA section 1004(5) to corrective action requirements at permitted hazardous waste facilities thus reflecting in the regulations authority to address not only releases of hazardous wastes that are listed or identified in EPA's hazardous waste regulations, but also releases of any substance that meet the broader, RCRA statutory definition of hazardous waste.

There are two reasons the amendments to the definition of hazardous waste are not necessary. First, nearly all corrective actions address regulatory hazardous wastes and hazardous constituents. This has been demonstrated through years of program implementation – EPA and authorized states have issued only a limited number of permits and section 3008(h) orders addressing substances that were not hazardous waste or hazardous constituents listed or identified by regulation.¹ Second, to the extent that releases of other RCRA statutory hazardous

¹ See *Economic Assessment for the Definition of Hazardous Waste Applicable to Corrective Action for Releases from Solid Waste Management Units*, which is available in the docket for the proposed rule (EPA-HQ-OLEM-2023-0085).

wastes and constituents have occurred and present a risk to human health or the environment, EPA has other tools to require clean up in RCRA permits. Namely, RCRA section 3005(c)(3) and EPA's implementing regulations at § 270.32 require that all permits include such requirements as are necessary to protect human health and the environment. This "omnibus" authority requires that permits contain such terms and conditions as the Administrator determines necessary to protect human health and the environment, including any necessary conditions requiring an owner or operator to address releases of substances that are not hazardous waste or hazardous constituents under the regulations.

For these reasons EPA has concluded that the existing regulations provide the tools to develop protective permit conditions, when necessary, without the need to modify the hazardous waste definition applicable to § 264.101, 40 CFR part 264, subpart S, and § 270.14(d). EPA is thus withdrawing these proposed changes.

2. Amendments to § 261.1(b)(2)

Section 261.1(b) merely provides notice of EPA's statutory interpretations. EPA proposed to include its longstanding statutory interpretations of sections 3004(u) and (v) and section 3008(h) in that section. In the proposal, EPA stated that it did not believe that the addition of those sections to this paragraph would impose additional requirements on facilities. Rather, EPA's intent in revising § 261.1(b)(2) as part of its proposal to amend the applicable hazardous waste definitions was to maintain consistency in the regulations. Because the Agency is withdrawing the proposed revisions to the definitions coupled with the fact that the Agency has articulated its consistent and longstanding interpretation of the scope of its authority under sections 3004(u) and (v) and section 3008(h) elsewhere, EPA is also withdrawing the proposed revisions to § 261.1(b)(2). EPA is not reconsidering or revisiting its interpretation of those statutory provisions, and nothing in this withdrawal of the proposed rule affects those prior interpretations.

C. The proposed rule could have complicated, rather than contributed to, efficient implementation of corrective action.

Though some commenters generally supported the proposed rule, EPA found convincing concerns that were raised by other commenters. Commenters stated that the proposed rule would, as a practical matter, result in confusion for regulators and owners and operators on which substances were subject to corrective action and what units were solid waste management units. Commenters argued that the statutory definition is broad, that it provides little guidance to the regulated community as to what is regulated under the statute, and that the proposed rule would result in inconsistent implementation of corrective action.

EPA agrees that the proposed rule could unnecessarily create uncertainty and disrupt implementation of corrective action. While the proposed rule would have made clear that the statutory hazardous waste definition applies to corrective action, it could have, as a result, made less clear the obligations of owners and operators in routine and established permit processes. For example, uncertainty related to the identification of hazardous waste that will be subject to corrective action at a facility could complicate compliance with the information submission requirements of § 270.14(d)(3), which requires owners and operators to submit all available information pertaining to any releases of hazardous wastes from solid waste management units, by making less clear what is an adequate permit application. The Agency thus concludes that withdrawal of the proposed rule is appropriate.

D. Additional Information

Nothing in this action modifies or affects the regulations promulgated to date to govern corrective action, or EPA's longstanding interpretations of the scope of its RCRA corrective action authorities. Any future changes to the regulations would be preceded by a notice of proposed rulemaking published in the *Federal Register* for public comment.

Finally, EPA also retains other authorities to address releases at RCRA facilities. For example, EPA may take action under RCRA section 7003 where solid or hazardous waste

management activities may present an imminent and substantial endangerment to health or the environment. And, under RCRA section 3013, EPA may require investigations where the presence of hazardous waste or releases of hazardous waste may present a substantial hazard to human health or the environment. In addition, section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA),² provides broad authority to take action requiring abatement if EPA determines there may be an imminent and substantial endangerment caused by actual or threatened release of hazardous substances.

Lee Zeldin,

Administrator.

[FR Doc. 2026-09179 Filed: 5/7/2026 8:45 am; Publication Date: 5/8/2026]

² 42 U.S.C. 9606.