



8484 Georgia Avenue, Suite 230  
Silver Spring, MD 20910

March 26, 2024

Office of Resource Conservation and Recovery  
U.S. Environmental Protection Agency  
Washington, DC 20460

**RE: Docket ID No. EPA–HQ– OLEM–2023–0085, Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units**

The Solid Waste Association of North America (SWANA) is a nonprofit professional association of 10,000 public and private sector professionals committed to advancing from solid waste management to resource management through a shared emphasis on education, advocacy, and research. For more than 50 years, SWANA has been a leading professional association in the solid waste management field and represents owners and operators of waste management and recycling facilities across North America.

This proposed rule would amend the Resource Conservation and Recovery Act (RCRA) definition of "hazardous waste" to expressly include, for purposes of RCRA corrective action, not only substances listed or identified as hazardous waste in the regulations but any substance that meets the statutory definition of hazardous waste. The proposed rule would also provide notice of EPA's interpretation that the statutory definition of hazardous waste applies to corrective action for releases from solid waste management units at permitted and interim status facilities.

SWANA supports the goal of addressing per- and poly-fluoroalkyl substances (PFAS) contamination and holding manufacturers accountable. Landfills and solid waste disposal sites neither manufacture nor use PFAS; instead, they receive discarded materials containing PFAS that are ubiquitous in residential and commercial waste streams. The industry is concerned that regulating these emerging (and other) contaminants under RCRA would assign the liabilities of corrective action to public and private waste disposal facilities which provide essential public services. The customers of these facilities would also be impacted through rate increases.

While the Environmental Protection Agency has stated that the rulemaking is intended to address releases from RCRA C facilities, and not RCRA D facilities, it may unnecessarily subject RCRA D facilities to elevated public scrutiny and civil liability for receipt and management of wastes containing these "hazardous" compounds. At the same time, the proposed rule does not address the large number of pre-RCRA facilities throughout the country. It is anticipated that concentrations at part per trillion levels of these compounds are in groundwater from air- and precipitation-borne sources, not necessarily from the typical facility operating with standard best practices.

Landfills and solid waste disposal sites neither manufacture nor use PFAS; instead, they receive discarded materials containing PFAS that are ubiquitous in residential and commercial waste streams. Landfills provide a significant benefit and are part of the solution, as they capture and contain a large portion of society's discarded PFAS constituents. The majority of the PFAS that enters a landfill is sequestered and

locked in. Landfills limit PFAS in the environment, as recognized by the Environmental Protection Agency (EPA) in its December 2020 draft Interim Guidance on the Destruction and Disposal of [PFAS] and Materials Containing [PFAS].

Waste disposal facilities are already highly regulated. Landfills are subject to extensive federal, state, and local environmental, health, and safety requirements. Landfills operate under subtitle D requirements, and contain modern design features, such as liners to prevent groundwater impacts, gas collection and management designs, and leachate collection systems to appropriately manage the smaller amount of PFAS residuals from society's discards that are not sequestered in the landfill mass.

Safe waste disposal is an essential public service, provided by landfill owners and operators across the country. These owners, both private and public entities, and the communities they serve should not be held financially liable for PFAS contamination coming from products that they are only trying to responsibly manage.

In addition, SWANA is concerned about the lack of typical public process in modifying the definition to include emerging contaminants in compounds subject to corrective action. The proposed rule will significantly impact solid waste disposal and recycling due to intended and unintended consequences in a transition period when clear federal guidance is lacking, and states are filling the void with diverting approaches.

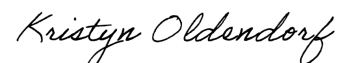
RCRA designation of PFAS compounds to be considered in corrective action would impel landfills to restrict inbound wastes and/or increase disposal costs for media with elevated levels of PFAS, including filters, biosolids, and impacted soils. The prospect of regulation in this area is already disrupting the interdependence of the drinking water, wastewater, and solid waste sectors. In a transition period, this increases uncertainty and capital investments that may not align with final regulation.

Food waste compost contains PFAS due to contact with PFAS-lined packaging materials. As a result, a RCRA designation for corrective action could result in communities diverting food waste from organics recycling programs, hindering federal, state, and local climate and waste reduction goals.

Cost increases likely will have a significant disproportionate impact on low-income households that rely on the affordability of services that the solid waste sector provides. The recycling industry is equally vulnerable. As a result, recycling goals and food waste programs would resort to landfilling to avoid exposure. In turn, landfills would experience an increase in waste disposal and an associated increase in PFAS content and associated costs. Cost increases likely will have a significant disproportionate impact on low-income households that rely on the affordability of solid waste sector services.

Thank you for considering SWANA's comments. If you have any questions about these comments, please contact the undersigned at [koldendorf@swana.org](mailto:koldendorf@swana.org).

Sincerely,

  
Kristyn Oldendorf

Director of Public Policy