

March 26, 2024

RCRA Docket

Environmental Protection Agency

Submitted via the Federal eRulemaking Portal: <https://www.regulations.gov/>

RE: Comments on the Proposed Rule Entitled “Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units”
Docket No. EPA-HQ-OLEM-2023-0085

Dear Sir or Madam:

The Connecticut Department of Energy and Environmental Protection (“CT DEEP”) has reviewed EPA’s February 8, 2024 Proposed Rule entitled “Definition of Hazardous Waste Applicable to Corrective Action for Releases From Solid Waste Management Units.” CT DEEP generally supports this proposed rule, and believes that it will improve the RCRA Program generally, and the RCRA Corrective Action Program in particular. However, CT DEEP has some comments on the proposed rule, as detailed below.

1. The Proposed Rule Will Improve the Ability to Address All Hazardous Waste Constituents During RCRA Corrective Action Site Cleanups. CT DEEP agrees with EPA that the Proposed Rule will make it clear that Authorized States have the ability to require constituents that are not identified as hazardous constituents in 40 CFR 261 Appendix VIII to be addressed as part of Corrective Action site cleanups. Although CT DEEP has already successfully used the RCRA omnibus provision and the provisions of applicable Connecticut state laws and regulations to require the cleanup of additional constituents such as PFAS compounds and 1,4-dioxane as part of Corrective Action cleanups in Connecticut, we believe that this rule would further bolster Connecticut’s ability to address such constituents, will make it less likely that owner/operators will challenge us with respect to addressing such constituents, and that the changes in this rule will make the state and federal rules more complementary and more consistent with each other.
2. Definitions of “Hazardous Waste in 40 CFR 261.10 and 270.2. CT DEEP notes that there are two definitions of the term “hazardous waste” – one in 40 CFR 260.10 and the other in 40 CFR 270.2, both of which EPA is proposing to modify as part of this proposed rule. While CT DEEP concurs with the intent of the proposed changes to the definitions in each section, DEEP questions why it is necessary to have two nearly identical definitions for “hazardous waste” in the RCRA regulations, especially when 40 CFR 260.10 specifically states that the definitions in that section apply “[w]hen used in Parts 260 through 273 of this Chapter” (which would include 40 CFR 270). In other words, why is there a definition of “hazardous waste” in 40 CFR 270.2 when there’s already a definition in 40 CFR 260.10?
3. Applicability of RCRA Sections 3004u and 3004v in IBR States. The central part of this rule is to add references to RCRA Sections 3004u and 3004v in several parts of the RCRA regulations to

make it clear that the broader, statutory definition of “hazardous waste” defines the scope of constituents that may be addressed during RCRA Corrective Action cleanups. Like many states, Connecticut’s Hazardous Waste Management Regulations are in a form that incorporates the federal regulations by reference (often referred to as “IBR Format”). CT DEEP questions whether or not states whose regulations are in IBR Format will be required to modify their regulations to incorporate RCRA Sections 3004u and 3004 in order to fully avail themselves of the ability to require the cleanup of constituents other than those listed in 40 CFR 261 Appendix VIII.

This concludes CTDEEP’s comments on the Proposed Rule. Please contact Ross Bunnell of my staff should you have any questions on the foregoing. Mr. Bunnell may be reached by phone at (860) 424-3274, or by email at ross.bunnell@et.gov.

Sincerely,



Gabrielle Frigon, Director
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division

GF:rqb

cc: Ray Frigon, Director, DEEP Remediation Division – Raymond.frigon@ct.gov