

## ASTSWMO State-EPA Hazardous Waste Roundtable

Meeting Participant Handout

October 27, 2023

### Discussion Topics

#### **Technical Corrections to the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule**

- Published in the *Federal Register* on August 9, 2023 ([88 FR 54086](#)).
- Makes corrections and clarifications to the reg text of the Generator Improvements Rule, HW Pharmaceuticals Rule, and Definition of Solid Waste Rule.
  - Does not implement any new regulations or policy.
  - Examples: correct typos, update remaining references to § 262.34, replace “CESQG” with “VSQG.”
- Comment period ends October 10, 2023.
- Effective date is December 7, 2023.
- Direct final rule with parallel proposed rule.
  - Provisions that receive adverse comment will be withdrawn from final rule (i.e., will not go into effect).
    - Everything else will go into effect.
  - Adverse comments to withdrawn provisions to be addressed in later action, if finalized.

#### **Drum Reconditioner Advance Notice of Proposed Rulemaking**

- On August, 11, 2023, EPA published the [Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking \(ANPRM\)](#) to help the Agency plan for future action to address significant issues identified across the lifecycle of used industrial containers.
- Through this ANPRM, EPA seeks to solicit information and request comments to assist in the development of options that would ensure the proper management of industrial containers that held hazardous chemicals or hazardous waste, at industrial facilities, hazardous waste generators, and others generating or managing used containers and residues, as well as transporters and receiving facilities (i.e., drum reconditioners). The future options EPA is seeking input on include revising the RCRA regulations and other, non-regulatory options such as implementing best management practices.
- The ANPRM is EPA’s follow-up to our Fall 2022 [Damage Case Report on Drum Reconditioners](#). There have been several high-profile enforcement efforts at drum reconditioning facilities, which has led EPA to take a closer look at the underlying problems facing this industry. Because of RCRA’s “empty container” rule, these facilities generally do not have RCRA permits, which leads to less oversight and fewer controls against mismanagement.
- The report documents known damage cases, where incidents such as fires, explosions, and releases to air, soil, surface water, and groundwater have

presented risks to human health and the environment. The report also discusses the regulatory and waste issues affecting the industry, as well as looking at environmental justice indicators at the facilities.

- The appendix to the report lists the damage cases by state. Of the total 181 drum reconditioning facilities identified by EPA, 86 had one or more reported damage cases, representing 47.5% of the industry. If we missed any drum reconditioners or if you know of other damage cases, please reach out to Kaitlin Franssen at [franssen.kaitlin@epa.gov](mailto:franssen.kaitlin@epa.gov).
- The comment period for the ANPRM was until September 25, but we have extended it to November 22.
- EPA will hold a public webinar on the ANPRM on November 1, 2023. More information can be found on the ANPRM website at <https://www.epa.gov/hw/used-drum-management-and-reconditioning-advance-notice-proposed-rulemaking>

### **Proposed new RCRA recycling standards for ignitable spent refrigerants**

- On October 19, 2023, the EPA published the proposed rule *Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020*.
- In addition to the 2020 AIM Act provisions, this federal register notice also includes proposed alternative hazardous waste recycling standards for ignitable used refrigerant under Resource Conservation and Recovery Act authority.
- These proposed RCRA changes are intended to decrease emissions and support safe recycling of used refrigerants. Comments on the proposal are due December 18, 2023.
- More information on the rulemaking can be found at: <https://www.epa.gov/climate-hfcs-reduction/management-certain-hydrofluorocarbons-and-substitutes-under-subsection-h>

### **Listing of PFOA, PFOS, PFBS, and GenX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents**

- In response to several petitions, including one from the Governor of New Mexico, EPA announced on October 26, 2021, the initiation of two rulemakings.
- The first rulemaking is to add specific PFAS chemicals as RCRA Hazardous Constituents under 40 CFR Part 261 Appendix VIII.
  - EPA has evaluated the existing toxicity and health effects data on specific PFAS to determine if they meet the criteria for listing as RCRA Hazardous Constituents under 40 CFR Part 261 Appendix VIII.
  - The specific PFAS chemicals that ORCR was asked to evaluate include perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (HFPO-DA, or GenX).
  - The chemicals can be listed on 40 CFR Part 261 Appendix VIII if the data shown in scientific studies determines these chemicals have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.

- Hazardous constituents listed in Appendix VIII are subject to corrective action requirements at hazardous waste TSDFs.
- EPA expects the proposed rule to be issued this fall.

### **Statutory Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units**

- The second rulemaking would clarify that the RCRA Corrective Action Program has the authority at permitted facilities to require investigation and cleanup for wastes that meet the statutory definition of hazardous waste, as defined under RCRA section 1004(5). This authority could be applied to PFAS or other contaminants of emerging concern.
  - The Agency has long taken the position that section 3004(u) corrective action authority addresses statutory hazardous waste, but the current regulations apply the regulatory definition of hazardous waste to section 264.101.
  - The rule would modify the regulations to apply the statutory definition to that section and more clearly implement the Agency's longstanding position.
  - EPA expects the proposed rule to be issued this fall.

### **Revisions to Standards for the Open Burning/Open Detonation of Waste Explosive**

- ORCR is focusing on addressing concerns regarding open burning and open detonation of waste explosives, particularly in light of two 2019 reports published by EPA and the National Academy of Sciences, Engineering, and Medicine that document several alternative technologies are available for treating waste explosives.
- Specifically, ORCR is developing a proposed rulemaking to revise the regulations with respect to OB/OD in consideration of the availability of safe alternative treatment technologies. This rule is currently in interagency review. EPA expects to publish the proposed rule later this year.
- As part of the rulemaking effort, in March and December 2022, we completed extensive stakeholder engagement with Regions, states, territories, tribes, environmental/community groups, and owners and operators of OB/OD units to solicit input on how we should propose to revise the regulations.
- On a faster timeframe, ORCR issued a [policy memo](#) in June 2022 to communicate requirements with respect to open burning/open detonation (OB/OD) and to provide guidance on policy and priorities to Regional, state, and territorial permitting authorities. In short, the memo makes clear that, under the existing requirements, facilities must evaluate – and reevaluate – alternatives and use safe alternatives, if available, in lieu of OB/OD.
- ORCR is working with regions and states, and regulated facilities, including DOD to address implementation of existing requirements, while also continuing to move forward on the updated rulemaking.
- ORCR acknowledges that implementation of the existing requirements, in light of the new 2019 information, will not happen overnight. It will take time to evaluate alternatives and then fund, permit, and construct alternatives.

- ORCR appreciates the states and Regions' time and efforts in addressing this important issue.

### **Updates to the RCRA Hazardous Waste Permitting Regulations and Other Technical Corrections**

- EPA initiated the Permitting Updates Proposed Rulemaking (PUR) after this effort was selected as a National RCRA Permitting Priority for FY22.
- Action will propose amendments and various updates and clarifications to the hazardous waste generator, transporter, treatment, storage, disposal and permitting standards under the RCRA regulations.
- Proposed changes intend to codify established policies, reflect current information or standards, improve understanding and compliance with the regulations, and make technical corrections and other conforming changes to address inadvertent errors and remove obsolete references.
- Also seeking public input and information pertaining to additional topic areas. For these topic areas, the Agency will consider public input for potential future policy changes. Proposal expected in early 2024.

### **Integrating e-Manifest With Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections**

- ORCR is continuing work on a final rule, known as the "third rule." This rule was published for public comment on April 1 and proposes regulatory changes to:
  - Incorporate hazardous waste export manifests into the e-Manifest system.
  - Expand the international shipment data elements on the manifest form.
  - Revise the movement document requirements to more closely link manifest data with movement document data.
  - Revise exception, discrepancy, and unmanifested waste reports to leverage the e-Manifest system.
  - Make other technical changes, including conforming revisions to the PCB manifest regulations under TSCA.
- ORCR expects to complete the final rule in 2024.

### **Additional Updates from ORCR**

#### **Airbag Waste Rule**

- EPA continues to strongly encourage all states to adopt the interim final rule on the safe management of airbag waste as expeditiously as possible.
- This rule facilitates the removal and safe destruction of recalled Takata airbags. Unfortunately, because the defective propellant in the recalled airbags degrades over time, potentially fatal explosions are more likely than ever for the airbags that still remain in vehicles.
- The most recent fatality, reported in July of 2023, brings the total number of confirmed Takata fatalities in the United States to 26, and has sparked a number of "[Do Not Drive](#)"

warnings for unrepaired vehicles whose occupants are currently at grave risk of serious injury or death. By adopting the airbag rule, states can help reduce the potential risk to public health from both current and future recalled airbags.

- For more information on the airbag rule, contact Tracy Atagi at [atagi.tracy@epa.gov](mailto:atagi.tracy@epa.gov), or see EPA's website at <https://www.epa.gov/hw/interim-final-rule-safe-management-recalled-airbags>

### **Alternate PCB Extraction Methods and Amendments to PCB Cleanup and Disposal Regulations**

- On August 29, the PCB final rule was published in the Federal Register. The rule will be effective on February 26, 2024.
- The final rule makes several changes to the federal regulations with respect to PCB clean-up and disposal under TSCA.
- Specifically, the final rule expands the available options for extraction and determinative methods used to characterize and verify the cleanup of PCB waste.
- The action also adds more flexible provisions to facilitate cleanup and protective disposal of waste generated by spills that occur during emergency situations (e.g., hurricanes or floods) and amend the performance-based disposal option for PCB remediation waste by adding explicit cleanup provisions.
- Finally, the rule makes other amendments to improve implementation of the regulations.

### **e-Manifest Program Updates**

- Software development in progress
  - Paper Processing Center corrections requests
  - Enhancements to bulk sign
- Electronic Manifest Implementation
  - Working with EPA Superfund and Emergency Management to electronic manifests on cleanups/removals
  - Working with industry on remote signer/hybrid manifests
- Continued engagement with States/OECA on enforcement.

### **RCRAInfo Updates – BR Software changes, Cost Pro, and Mapping**

- Improved Biennial Reporting Software
  - Enhancing the RCRAInfo Biennial Report Software to move more of the validations and data quality to industry at the point of submission.
    - Introduction of the Industry Summary Report - Industry will see the validation errors based on 22 validations baked into the reporting software.
  - Enhanced BR submission processing – allowing you to see the issues with the industry submissions and the explanations provided by industry for each submission.
  - Reducing the size of the SSR – down to 2 tabs
  - Improved dashboard statuses.
  - Improved tracking when the data was reported as final and who has reviewed it.

- The BR Kickoff meeting was October 19<sup>th</sup>, with quarterly meetings planned throughout the cycle.
- Biennial Report data flat file submissions will remain unchanged.
- Re-building CostPro into RCRAInfo in support of the national permitting priority for closure and post-closure care
  - Looking to have something in RCRAInfo Preproduction to test this calendar year – but this will take a lot of testing and we need your help
- Mapping
  - Building a National Climate Tool
    - All the Active RCRA Facility Locations
    - Adding Layers for the various climate hazards
    - Incorporating climate vulnerability analysis functionality into the tool
    - Will be built in FY24
    - Will make this available to States and Regions via RCRAInfo
- Enhancing the GIS Module
  - We are building in the ability to capture GIS Polygons that will allow for:
    - Facility Boundaries
    - Corrective Action Boundaries - Institutional Control areas, Engineering control areas, etc.
  - This work is broken down into 3 Phases:
  - Phase 1 - currently underway
    - Database Updates to support polygons and additional metadata.
    - Boundaries Displayed as a layer on the EPA's GeoPlatform – available via RCRAInfo.
  - Phase 2
    - Working on defining and building out our data services to allow you to submit and retrieve facility GIS data.
  - Phase 3
    - Working with the Agency's GeoServices team to integrate tools within the GeoPlatform to allow users to create boundaries on the GeoPlatform and to store that boundary data in RCRAInfo.

### **Corrective Action Update**

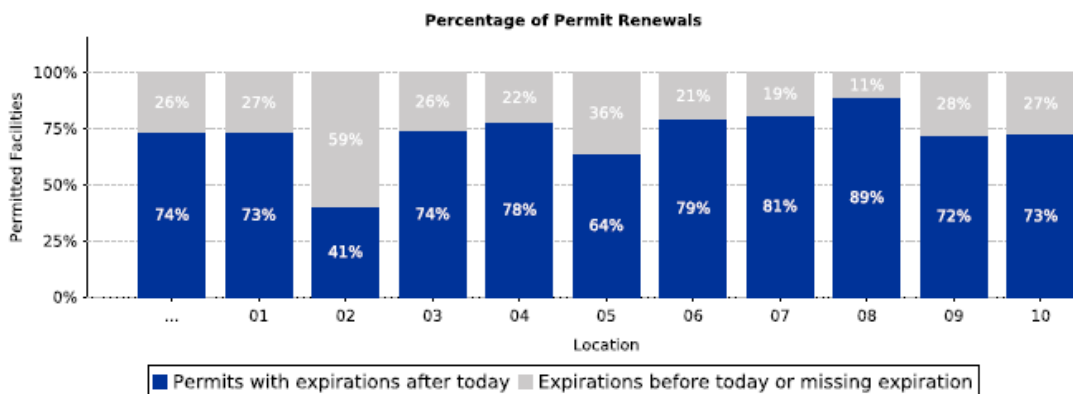
- The Corrective Action Program is working hard on implementing the 2030 Corrective Action Goals, which set our direction and will help us drive progress through 2030. These Goals were developed with a great deal of stakeholder input, including from states and tribes.
- As we work on implementing the 2030 Goals, we are using them to help us focus on the Administration's priorities of environmental justice and climate change. They are well suited to supporting these efforts, and we look forward to strengthening our efforts to ensure we prioritize these important priorities.

- EPA is excited about working together with states and tribes toward the 2030 Goals, and looks forward to the progress to ensure that RCRA facilities are cleaned up quickly and safely for their communities.
- Goal 5 reads: *By 2022, program procedures will be in place to regularly adjust the universe of facilities in the cleanup pipeline to reflect current program priorities.*
  - EPA has piloted procedures to adjust the Progress Track list of priority cleanups by both additions and subtractions. We are currently adjusting the Progress Track to reflect the results of the pilots.
  - Going forward, we plan to have an open season every February for additions; we are still working on plans for regular subtractions.
- Goal 4 reads: *By 2025, the RCRA Corrective Action Program will identify the key elements of effective Long-Term Stewardship for Corrective Action cleanups, and regions and states will have approaches in place to ensure implementation of the key elements.*
  - The first part of Goal 4 has been completed. On June 27<sup>th</sup>, 2022, Carolyn Hoskinson signed and released a document that identifies nine “Key Elements of Effective Long-Term Stewardship for RCRA Corrective Action.” The Elements provide a general framework for regulators establishing and implementing processes to assure effective long-term stewardship at RCRA facilities. ORCR appreciates input received on the Elements from the states through ASTSWMO and from tribes through the TWAR.
  - As discussed in the memo, ORCR recognizes that regions and state RCRA programs have many aspects of long-term stewardship underway that support implementation of the Key Elements. ORCR is initiating work to evaluate and solicit input on the needs of program implementers to support the second part of Goal 4.
- Goals 1, 2, and 3 focus on cleanup progress.
  - A workgroup has developed a draft performance plan for implementation for Goals 1, 2 and 3 that includes ambitious targets for completing cleanup milestones. The major aim of these goals is to address cleanup progress and completion. and to focusing on transparency, environmental justice and climate resiliency. Next steps include engaging states, tribes, and stakeholders on the draft performance plan.
- A study released on September 28, 2022, documents the economic benefits of Corrective Action cleanups. ORCR hopes that states and tribes will take full advantage of these estimates and the available Economic Benefit Facility Profiles to help spread the word about the impressive economic benefits that can be achieved through the corrective action program. ORCR is currently updating the study to include benefits estimates for an additional 30 facilities.
  - This analysis of 79 cleanups revealed that these facilities support 1,028 on-site businesses, which provide economic benefits including: \$39 billion in annual sales revenue; over 82,000 jobs; and \$7.9 billion in estimated annual employment income.
  - EPA also developed dynamic 2-page profiles for more than 40 facilities to showcase the economic benefits that can be fostered through RCRA Corrective Action cleanups.

- Here are links to a press release and summary overview for the study:
  - <https://www.epa.gov/newsreleases/epa-announces-billions-economic-benefits-resource-conservation-and-recovery-act>
  - <https://www.epa.gov/hw/redevelopment-economics-rcra-corrective-action-facilities#overview>
- ORCR published the first annual edition of the Corrective Action Program newsletter, a supplement to the monthly Waste Management Update newsletter. The Corrective Action Program newsletter provides an annual update on program accomplishments towards achieving the 2030 goals.
  - The latest Corrective Action Edition of EPA Waste Management Updates Newsletter can be found here: <https://content.govdelivery.com/accounts/USEPAORCR/bulletins/35de5ab>. To subscribe to receive future Corrective Action Newsletters & other Waste Updates, please see: <https://public.govdelivery.com/accounts/USEPAORCR/subscriber/new>.

**Long-Term Performance Goal for RCRA Permits**

- FY 2022-2026 EPA Strategic Plan established a new LTPG for RCRA Permits: *“By September 30, 2026, increase the percentage of updated permits at RCRA facilities to 80% from the FY 2021 baseline of 72.7%.”*
- It’s important to update permits. Updating permits ensures that decisions reflect the latest technology, standards, and policy. That the permit remains protective under changing conditions, such as climate change, and that communities have an opportunity to engage in the permitting process over time, particularly as communities also change over time.
- Under this goal, updated permits means a permit not past permit expiration. That’s challenging in RCRA – however, the goal is 80% permits updated, not 100%. Therefore, there is flexibility.
- In fact, from EPA’s analysis, half of the permits past expiration are actually two years past expiration. Based on our review of the data, it appears that if we address the most backlogged permits we would achieve the 80% goal.
- The national status towards the goal (Not End of Year Results):





## Permitting: National RCRA Permitting Priorities

- Under the *RCRA Permit Oversight Strategy*, EPA works with states and Regions to identify, prioritize, and resolve top issues affecting RCRA permits or permitting programs nationally.
- In November 2022, EPA selected the next set of [national RCRA permitting priorities](#) for FY 2023/2024. This includes:
  - **Environmental Justice** – A workgroup with state and regional representatives is developing a draft guidance document with a stepwise approach for the consideration of environmental justice and cumulative impacts in the RCRA permitting program. **Five-Year Review of Land Disposal Facilities** – After considering clarifying whether the five-year review of land disposal facility permits applies only to operating land disposal facilities as opposed to operating and closed land disposal facilities, EPA decided to solicit comment through the Permitting Updates Rulemaking on ways in which post-closure care permit could be optimized or streamlined.
  - **Hazardous Waste Determinations** – EPA is considering ways to promote accurate hazardous waste determinations, including best practices for waste profiling and compatibility. EPA expects to launch this priority in early 2024.
  - **Optimize Permit Modification Process** – EPA is considering ways to enable more efficient and timely processing of permit modifications, including by proposing some regulatory changes and soliciting input through the Permitting Updates Rulemaking.
  - **Periodic Certification of Tank Systems** – EPA is considering proposing some regulatory changes and soliciting input through the Permitting Updates Rulemaking regarding the periodic certification of tank systems.
  - **Timely Renewal Applications** – EPA is exploring options for earlier receipt and improved quality of permit applications for the renewal of RCRA permits, including proposing some regulatory changes to clarify certain regulatory provisions related to permit applications in the Permitting Updates Rulemaking.
- EPA also continues to work on our ongoing national priorities, which include:
  - **Post-Closure Care Implementation** - Assisting states and Regions with post-closure care implementation. Regional/state workgroup focused on identifying issues. Developing case studies report. Updated web language on the Post-closure Rule. Considering proposing some regulatory changes to clarify certain post-closure care provisions and planning to solicit input to help inform future policy decisions through the Permitting Updates Proposed Rule.
  - **Permitting Updates Rule** - Initiated rulemaking to propose updates and clarifications primarily for TSDF and permitting standards (40 CFR parts 264/265/270). Through this action EPA is also seeking public input and information pertaining to additional topic areas for which the Agency is not proposing changes but will consider public input for potential future policy or regulatory changes. Expect to propose rule in 2024.
  - **RCRA Model Permit** - Updating the 1988 National RCRA Model Permit and developing an accompanying RCRA Permit Writer's Standard Operating

Procedure. We are updating the model permit incrementally and we just published the first module, the [RCRA permit cover page](#), on our website. Currently updating the General Permit Conditions and General Facility Conditions Applicable to All RCRA Permits, and RCRA Organic Air Emission Standards Modules.

- Other related permitting updates:
  - **PW/Inspector Workshop** - On February 7, 2023, ORCR, along with EPA's enforcement office and ASTSWMO, held the most recent national RCRA Permit Writer and Inspector Coordination workshop. We anticipate scheduling our next Permit Writer and Inspector workshop in 2024.
  - **CostPro** – ORCR is in the process of updating CostPro, which is a tool for estimating closure and post-closure costs and expects to have this available to states and Regions in RCRAInfo by early 2024.