



April 8, 2024

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Attn: Docket ID No. EPA-HQ-OLEM-2023-0278

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on the *Listing of Specific PFAS as Hazardous Constituents*; Proposed rule. 89 FR 8,606 (February 8, 2024). CRWI is a trade association comprised of 30 members representing companies that own and operate hazardous waste combustors and companies that provide equipment and services to the combustion industry.

In the preamble, EPA states that the primary impacts of this rulemaking are on the Corrective Action Program. CRWI believes the impact will be felt throughout RCRA Subtitle C. Our specific comments are attached.

Thank you for the opportunity to submit comment. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,

Melvin E. Keener, Ph.D.
Executive Director

cc: N. Chaudhari, EPA

Impacts of the proposed rule are wider than the Agency states in the preamble

The Agency states (89 FR 8,610) that the primary impact of the proposed listings will be on the Corrective Action Program. CRWI does not believe this to be correct. Based on a limited hypertext search, CRWI identified several requirements that may be impacted by the addition of these nine compounds into the list of hazardous constituents. These include waste analysis plans, standards for burners, principal organic hazardous constituent selection, and the delisting requirements. CRWI believes that the Agency should do a complete search of all RCRA regulations and policies that could be potentially impacted by adding the nine compounds. Once identified, the Agency should include these into their analysis of the impacts of these proposed changes. Some of the references with direct impacts to the hazardous waste industry are copied below. The mention of Appendix VIII is underlined to make it easy to find.

40 CFR 261.2(d) – definition of solid waste

- (d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:
- (1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.
 - (2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:
 - (i) The material must contain a bromine concentration of at least 45%; and
 - (ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and
 - (iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).
 - (3) The Administrator will use the following criteria to add wastes to that list:
 - (i)
 - (A) The materials are ordinarily disposed of, burned, or incinerated; or
 - (B) The materials contain toxic constituents listed in appendix VIII of part 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
 - (ii) The material may pose a substantial hazard to human health and the environment when recycled.

40 CFR 261.3(a)(2)(v) – rebuttable presumption for used oil

Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by

demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

40 CFR 264.342(b) – principal organic hazardous constituents

- (1) One or more POHCs will be specified in the facility's permit, from among those constituents listed in part 261, appendix VIII of this chapter, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

40 CFR 265.340 – applicability

- (c) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this subpart, except § 265.351 (Closure), provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in part 261, appendix VIII, of this chapter, and such documentation is retained at the facility, if the waste to be burned is:
 - (1) Listed as a hazardous waste in part 261, subpart D, of this chapter solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or
 - (2) Listed as a hazardous waste in part 261, subpart D, of this chapter solely because it is reactive (Hazard Code R) for characteristics other than those listed in § 261.23(a) (4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or
 - (3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under part 261, subpart C, of this chapter; or
 - (4) A hazardous waste solely because it possesses the reactivity characteristics described by § 261.23(a) (1), (2), (3), (6), (7), or (8) of this chapter, and will not be burned when other hazardous wastes are present in the combustion zone.

40 CFR 266.103(a)

- (5) Special requirements for furnaces. The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see paragraph (a)(5)(ii) of this

section) at any location other than the hot end where products are normally discharged or where fuels are normally fired:

(ii) Burning hazardous waste solely as an ingredient. A hazardous waste is burned for a purpose other than solely as an ingredient if it meets either of these criteria:

(A) The hazardous waste has a total concentration of nonmetal compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the facility record; or

40 CFR 266.104(a) DRE standard

(2) Designation of POHCs. Principal organic hazardous constituents (POHCs) are those compounds for which compliance with the DRE requirements of this section shall be demonstrated in a trial burn in conformance with procedures prescribed in § 270.66 of this chapter. One or more POHCs shall be designated by the Director for each waste feed to be burned. POHCs shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with part B of the permit application. POHCs are most likely to be selected from among those compounds listed in part 261, appendix VIII of this chapter that are also present in the normal waste feed. However, if the applicant demonstrates to the Regional Administrator's satisfaction that a compound not listed in appendix VIII or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this section, that compound may be designated as a POHC. Such POHCs need not be toxic or organic compounds.

40 CFR 266.109 – low risk waste exemption

(a) Waiver of DRE standard. The DRE standard of § 266.104(a) does not apply if the boiler or industrial furnace is operated in conformance with (a)(1) of this section and the owner or operator demonstrates by procedures prescribed in (a)(2) of this section that the burning will not result in unacceptable adverse health effects.

(2) Procedures to demonstrate that the hazardous waste burning will not pose unacceptable adverse public health effects are as follows:

(i) Identify and quantify those nonmetal compounds listed in appendix VIII, part 261 of this chapter that could reasonably be expected to be present in

the hazardous waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained;

40 CFR 266.112 – regulation of residues (delisting)

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under § 261.4(b) (4), (7), or (8) unless the device and the owner or operator meet the following requirements:

- (b) The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:
 - (1) Comparison of waste-derived residue with normal residue. The waste-derived residue must not contain appendix VIII, part 261 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix VIII of this part that may be generated as products of incomplete combustion. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this part.
- (c) Records sufficient to document compliance with the provisions of this section shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded:
 - (1) Levels of constituents in appendix VIII, part 261, that are present in waste-derived residues;
 - (2) If the waste-derived residue is compared with normal residue under paragraph (b)(1) of this section:
 - (i) The levels of constituents in appendix VIII, part 261, that are present in normal residues; and