

**Senate Committee on Environment and Public Works**  
**Hearing Entitled, “PFAS: the View from Affected Citizens and States”**  
**June 9, 2021**  
**Questions for the Record for Jim Kenney**

**Senator Carper:**

1. In your testimony, you recommended that Congress take immediate action to list discarded PFAS as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). Please describe any downsides or trade-offs that you believe could occur if discarded PFAS were classified as a RCRA hazardous waste.
  - a. What additional opportunities and responsibilities would this create for New Mexico and other states?

Listing discarded PFAS as a hazardous waste under RCRA results in two opportunities/responsibilities for states. First, the regulated community would be required to follow applicable regulations for PFAS when it is discarded as a waste. Second, the EPA and states would oversee permitting, compliance and enforcement of these regulations. This means that the EPA and states would employ a regulatory oversight program from cradle to grave, which includes the management of PFAS at the point it is discarded, through their transport, storage and treatment or final disposal. This approach would apply nationwide, reducing uncertainty for both regulators and the regulated community. Listing may require additional upfront costs for New Mexico to incorporate the change into new and existing permits, but it would also reduce the patchwork regulatory framework and litigation costs facing the U.S. Most importantly, it would protect people and their environment from new PFAS contamination while the EPA and states – not industry or the Department of Defense – oversee the cleanup and enforcement of contaminated PFAS sites.

With respect to permitting, entities generating PFAS-containing wastes would need to obtain an EPA hazardous waste generator identification number if they did not already have one. Additionally, those entities would be subject to 40 C.F.R. Part 262 for PFAS wastes. The requirements of this section include limiting storage to less than 90 days, manifesting requirements, 10-day transfer requirements, additional record keeping, and shipment for treatment or disposal at appropriately permitted treatment, storage, or disposal facilities. In New Mexico, these generators would become subject to the same inspections as other hazardous waste generators to ensure proper compliance with the law. Similarly, hazardous waste transporters that transport PFAS-containing waste would need to obtain an EPA hazardous waste generator number as well as comply with applicable manifesting procedures.

Treatment, storage, and disposal facilities would need to follow the same permitting requirements for PFAS as they would for other hazardous wastes. These permitting requirements would need to consider the unique characteristics of PFAS which may require already permitted facilities to obtain a permit modification. Such requirements may include waste analysis plans, additional worker training, preparedness and spill prevention plans, closure plans, traffic plans for any new facilities, and corrective action standards. This may also require an increase in financial assurance for commercial treatment, storage and disposal facilities.

For remediation purposes (known as corrective action under RCRA), a release of hazardous waste is subject to corrective action at permitted facilities. Facilities would need to meet risk-based cleanup levels specific to PFAS.