

Shannon & Wilson

See attachment

## Colvin, Rebecca A (DEC)

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**From:** Tiffany Green <Tiffany.Green@shanwil.com>  
**Sent:** Monday, October 30, 2023 5:08 PM  
**To:** Colvin, Rebecca A (DEC)  
**Subject:** Comments: PROPOSED REGULATIONS FOR A HAZARDOUS WASTE PROGRAM

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Hi Rebecca;

I have the following questions/comments as they pertain to the proposed regulations.

1.a. Will the Department be handling requests for Contained-In Determinations? Will the Department issue guidance or policy through contaminated sites?

1.b. If so, how will the Department address the limitation EPA Region 10 applies to contained-in determinations (see reference below) that prohibits groundwater and soils with listed waste concentrations below ADEC cleanup levels (i.e., no longer considered a listed waste as EPA Region 10 defaults to ADEC cleanup levels) from being returned to and spread within the area of contamination?

The EPA proceeds with requiring landfill disposal of soil; however, access to landfills within any given distance of a contaminated site may be extremely limited and, while many area landfills may accept the waste, it is common for such requests to be rejected for various reasons such as lack of resources and space to handle the volume of environmental media. Out-of-State disposal of the environmental media no longer determined to be listed-hazardous is then the only remaining option. Additionally, the same issues are presented in regard to groundwater disposal in a sanitary or stormwater sewer subject to applicable requirements; they simply do not exist in many areas of the state thus triggering shipment and treatment as if it were a listed waste.

Conversely, if environmental media contains a contaminant with no known source (not a listed waste and also not exhibiting a characteristic) at a concentration below ADEC cleanup levels, the accepted practice is to (with approval) spread the soil or water at or near the location(s) in which it was removed from (or within the bounds of the area of contamination) as long as it is greater than 100 feet from a drinking water source.

This limitation to contained-in determinations results in thousands to tens of thousands of additional state, local, and/or private funds to transport and treat or dispose of environmental media that would otherwise be acceptable to spread. It is a disservice to entities doing their due diligence to clean up environmental issues (whether generated or inherited by the entity) rather than allocating the funds toward additional mitigation and investigation for the protection of human health and the environment.

Reference:

Limitations

This hazardous waste contained-in determination is based upon the information provided to the EPA as cited in Reference 1 to this letter. Any new or different information pertaining to this request that has not been provided to or evaluated by the EPA may provide the EPA with a basis to re-evaluate or revoke this determination.

This determination may only be applied to contaminated soils and groundwater associated with the proposed site characterization activities documented in the contained-in request and cannot be applied to management of other environmental media contaminated under similar circumstances, with similar constituents, or at different locations.

All soils managed as non-hazardous under this contained-in determination must be disposed of in a facility licensed by the state to manage municipal solid waste subject to 40 C.F.R. Part 258 or non-municipal non-hazardous waste subject to 40 C.F.R. §§ 257.5 through 257.30, as applicable. All sampling and analysis must be conducted according to a written sampling and analysis plan which includes a quality assurance/quality control project plan that ensures data are acceptable for their intended use. The EPA notes that your contained-in request proposed that soils determined not to contain F002 listed hazardous waste will be disposed of to the ground surface at the location where the soil was generated. Because a typical container will have commingled contributions from multiple sites, returning a consolidated container of soil to the ground surface at the location where the soil was generated does not appear to be practicable. For this reason, and to be consistent with Region 10's long-standing policy for contained-in determinations, The EPA will require disposal in a landfill as stated above.

Your contained-in request proposed that groundwater determined not to contain F002 listed hazardous waste will be disposed of to the ground surface at the location where the groundwater was generated. Because a typical container will have commingled contributions from multiple sites, returning a consolidated container of groundwater to the ground surface at the location where the groundwater was generated does not appear to be practicable. Further, soil contamination at levels of concern may exist above where the groundwater was extracted, disposing of even clean groundwater at that location could result in inappropriate movement of contamination. Therefore, the EPA will require that groundwater

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**Note 1:** determined not to contain F002 listed waste must be disposed of in a sanitary or storm sewer subject to applicable requirements to do so.

Reference to "multiple sites" refers to individual soil borings or monitoring

wells within a given property boundary under a single ownership. This limitation extends to projects and/or locations where contamination exists in the groundwater and soil in the zone of saturation throughout a "plume" that extends over multiple property boundaries but is anticipated to originate from a single source.

**Note 2:** Clarification on reference to "commingled contributions". Where RCRA-related concerns are suspected or known, waste segregation practices are used where practical. In other cases, discrete source samples are used for characterization of "commingled contributions".

2. How does ADEC propose to manage the demand of the program in the event that PFAS are designated as hazardous waste to be managed under RCRA? The volume of material and number of point sources is already understood to be overwhelmingly large. This would seemingly overwhelm the proposed staffing and budget set forth for assuming and maintaining RCRA primacy in Alaska.

Thank you,

Tiffany Green

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