



# State of New Mexico

Michelle Lujan Grisham  
*Governor*

January 8, 2025

The Honorable Jane Nishida  
Acting Administrator  
Environmental Protection Agency  
Office of the Administrator 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Acting Administrator Nishida:

I am writing to you regarding Administrator Regan's outstanding commitment to clarify that per- and polyfluorinated substance (PFAS) contamination is regulated under the Resource Conservation and Recovery Act (RCRA).

In a letter dated October 26, 2021, Administrator Regan committed to me that the U.S. Environmental Protection Agency would clarify PFAS regulation under RCRA in response to my June 23, 2021 petition, thus granting my petition pursuant to 42 U.S.C. § 6921(c).

In acting upon my petition, Administrator Regan outlined the U.S. EPA's plan to initiate two rulemakings under RCRA, reflecting the agency's focus on using best available science and leveraging authorities to combat this shared challenge. The first was to list certain PFAS as hazardous waste or constituents under RCRA; the second was to clarify that RCRA's corrective action requirements apply to any substance meeting the statutory definition of "hazardous waste." While EPA proposed these rules on February 8, 2023, EPA has yet to publish a final rule in the federal register.<sup>1</sup> I am asking for your commitment to finalize these rules as soon as possible to protect communities.

As you and your colleagues at EPA are aware, RCRA presents a common-sense approach to managing discarded PFAS in New Mexico and across all states and territories. Currently, 50 states and territories have been granted authority to administer and enforce RCRA (in part or in whole) in lieu of the EPA. EPA's role is to ensure national consistency while providing flexibility to states to implement rules. State RCRA programs must be at least as stringent as the federal requirements, but states can adopt more stringent requirements as well. However, the U.S. Department of

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<sup>1</sup> See *Definition of Hazardous Waste Applicable to Corrective Action for Releases from Solid Waste Management Units* ([U.S. EPA Docket ID No. EPA-HQ-OLEM-2023-0085](#)) and *Listing of Specific PFAS as Hazardous Constituents* ([U.S. EPA Docket ID No. EPA-HQ-OLEM-2023-0278](#)).

Defense is challenging the Congressional intent of RCRA and the role of EPA/states to implement RCRA in protection of our citizens. By finalizing the proposed rules, EPA would safeguard the Congressional intent of RCRA by ensuring states can clearly regulate discarded PFAS chemicals that have contaminated our land and water.

As a reminder, the U.S. Department of Defense brought a federal lawsuit against my administration to undermine state RCRA authority and avoid the cleanup of PFAS in Clovis, New Mexico. In almost six years of litigation, the U.S. Department of Defense has not cleaned up *any* PFAS that has migrated outside of Cannon Air Force Base. With the support of the New Mexico Legislature, my administration has spent over \$12 million in legal fees and technical costs. With PFAS levels in the area 2,850 times the EPA drinking water standard, we have subsidized local resident blood testing, private and public drinking water testing, and the disposal of 3,500 euthanized dairy cow carcasses.

The scientific evidence only becomes clearer with every passing day: exposure to PFAS leads to cancer, diabetes, liver damage, immune system dysfunction, reduced fertility, low birth weight, and effects on children's brain and behavioral development. In fact, the U.S. Department of Veterans Affairs is now conducting a national assessment to determine whether an association between military environmental exposures and certain medical conditions exists, including kidney cancer.<sup>2</sup> This study follows a U.S. Department of Defense study to evaluate pediatric brain cancer risk at Cannon Air Force Base which concluded in part that children with a Cannon Air Force Base affiliation had a statistically higher incidence of Diffuse Intrinsic Pontine Glioma (DIPG) and Diffuse Midline Glioma (DMG) cancers compared to the non-Cannon Air Force Base pediatric populations and when compared to the U.S. civilian pediatric populations.<sup>3,4,5</sup>

While I appreciate the work of the EPA to propose these rules, it is simply not enough. I urge you to finish what your agency started in 2021 and finalize these rules in response to my petition. I also request an update on the progress and plan to finalize the rules as soon as possible.

Sincerely,



Michelle Lujan Grisham  
Governor

cc: James Kenney, Cabinet Secretary, New Mexico Environment Department

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<sup>2</sup> See <https://www.federalregister.gov/documents/2024/09/26/2024-22031/notice-of-plans-to-assess-the-current-scientific-literature-and-historical-detailed-claims-data>

<sup>3</sup> See:

<https://www.cannon.af.mil/Portals/85/Evaluation%20of%20Pediatric%20Brain%20Cancer%20Risk%20at%20Cannon%20Air%20Force%20Base.pdf>

<sup>4</sup> DIPG is a rare and aggressive type of brain tumor that typically affects children between the ages of 5 and 9.

<sup>5</sup> DMG is a highly aggressive and terminal brain tumor that occurs in the midline of the brain, spinal cord, or thalamus gland. DMG is most common in children ages 6 and 12 but can also occur in adults.