

May 24, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OLEM-2022-0922; Advanced Notice of Proposed Rulemaking: Addressing PFAS in the Environment

Dear Administrator Regan:

The undersigned organizations represent local governments and public and private entities responsible for safeguarding public health and the environment. The purpose of this letter is to request that the Administration work closely with Congress to ensure that any rulemaking designating per- and polyfluoroalkyl substances (PFAS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is coupled with legislation providing statutory relief from contribution litigation for local governments and our members.

Our members provide essential public services that neither manufacture nor use PFAS; instead, they are passive receivers of media containing PFAS that are ubiquitous in the water supply, wastewater treatment process, stormwater, biosolids management, and solid waste streams. Each of these public services is interdependent: landfills rely on wastewater treatment facilities for their leachate discharge while water and wastewater treatment facilities depend on landfills, agricultural land application, and compost facilities for biosolids management and disposal of spent water filtration systems—management of which will become even more important as the Administration and states continue to prioritize standards for PFAS in drinking water and effluent discharges. Together, our sectors provide the infrastructure on which communities across the nation rely to reduce exposure to PFAS in the environment.

Although the U.S. Environmental Protection Agency has stated plans to develop a CERCLA PFAS enforcement discretion and settlement policy, the agency previously has asserted that it lacks sufficient authority to shield passive receivers from lawsuits brought by manufacturers of PFAS and other parties responsible for site contamination. **These third-party “contribution claims” would generate significant litigation costs on essential public services for lawful operations going back decades, disrupt the interdependence of passive receivers by compelling each sector to revisit its acceptance of influent streams containing PFAS concentrations, lead to significant rate increases on communities that rely on the affordability of services our members provide, and shift the CERCLA “polluter pays” principle to that of a “community pays” model in the absence of Congressional relief.**

Our sectors recognize our role as part of the long-term solution to PFAS management and share the goals of addressing PFAS contamination in the environment; however, the Administration must acknowledge the significant economic impacts that a CERCLA designation would have on local governments and our members. We thus encourage the Administration to delay taking any action designating certain PFAS compounds as hazardous substances until Congress provides relief for owners and operators of facilities charged with the responsibility of protecting the public from PFAS exposure that receive materials containing PFAS in their normal course of operations. For reference, please see the attached joint letter prepared by 31 co-signers, dated April 24, 2023, and delivered to members of the U.S. Senate Committee on Environment and Public Works.

Thank you for your consideration of our input, and we look forward to continuing to partner with the Administration on actions to address PFAS in the stream of commerce, waste stream, and the environment.

Sincerely,

American Public Works Association
Association of Compost Producers
California Association of Sanitation Agencies
California Waste Haulers Council
Coalition of Recyclers of Residual Organics by Practitioners of Sustainability
Connecticut Water Environment Association
Green Mountain Water Environment Association
Maine Water Environment Association
Massachusetts Water Environment Association
Michigan Waste & Recycling Association
Michigan Water Environment Association
Mid-Atlantic Biosolids Association
Midwest Biosolids Association
Municipal Environmental Group – Wastewater Division
Municipal Waste Management Association
National Association of Counties
National Association of Water Companies
National League of Cities
National Municipal Stormwater Alliance
National Waste & Recycling Association
National Water Resources Association
New England Water Environment Association
New Hampshire Water Pollution Control Association
Northwest Biosolids Association
Northeast Biosolids and Residuals Association
Oregon Association of Clean Water Agencies
Oregon Refuse and Recycling Association
Resource Recovery Coalition of California
Rhode Island Clean Water Association
Solid Waste Association of North America
Southeast Biosolids Association
The United States Conference of Mayors
U.S. Compost Council
Virginia Biosolids Council
Washington Association of Sewer & Water Districts
Washington Refuse & Recycling Association
Water Quality Association
West Coast Refuse and Recycling Coalition
Wisconsin Counties Solid Waste Management Association



April 24, 2023

The Honorable Tom Carper
Chairman
U.S. Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

The undersigned organizations represent local governments and private entities responsible for safeguarding public health and the environment, including drinking water, wastewater treatment, stormwater management, and water recycling facilities, municipal solid waste landfills, and composting facilities. We write to urge that any legislation on per- and polyfluoroalkyl substances (PFAS) that the U.S. Senate Committee on Environment and Public Works (EPW) considers include a specific provision to ensure that the organizations we represent are explicitly recognized as “passive receivers” of PFAS and afford these essential public services a narrow exemption from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Absent such relief, designation of certain PFAS as CERCLA hazardous substances would shift the “polluter pays” principle of the law to that of a “community pays” model placing the burden of compliance and cleanup onto ratepayers and the public at-large.

The U.S. Environmental Protection Agency (EPA) has stated often, including during Assistant Administrator Rhadika Fox’s testimony to EPW, that the agency would use its “discretionary authority” in pursuing CERCLA enforcement actions against certain parties. However, this commitment offers little comfort to our sectors given the expansive rights of Potentially Responsible Parties under CERCLA to bring contribution litigation against other entities that are alleged to be additional sources of hazardous substances at a cleanup site.

EPA has stated that it has insufficient existing legal authority to provide relief to public service providers from the impact of CERCLA contribution litigation. Claims for contribution against passive receiver groups thus would generate significant litigation costs for lawful operations going back decades—costs that would lead to significant cost increases on essential public service providers and the communities and residents they serve.

It is important to highlight that our members deliver essential public services that do not involve the manufacture or use of PFAS. We are passive receivers of media containing PFAS that are ubiquitous in the

water supply, wastewater treatment process, stormwater, biosolids management, and solid waste streams. Each of our sectors is interdependent: landfills rely on wastewater treatment facilities for their leachate discharge while water and wastewater treatment facilities depend on landfills and compost facilities for biosolids management and disposal of spent water filtration systems. Although our members carry-out the delivery of public health services consistent with the requirements of the Safe Drinking Water Act, Clean Water Act, and Solid Waste Disposal Act, among other federal and state mandates, CERCLA designation, absent Congressional action, would disrupt the interdependence of passive receivers by driving each sector to revisit the acceptance of influent streams that might contain PFAS concentrations and impacting our ability to recover resources that can contribute to significant reductions in greenhouse gas emissions.

Our sectors acknowledge our role as part of the long-term solution to PFAS management, recognize the need to protect public health and the environment, and share the goal of holding accountable those entities that are primarily responsible for PFAS contamination. Nevertheless, any action designating certain PFAS compounds as hazardous substances must be accompanied by relief that allows communities to continue to rely on the affordability of the essential public services our sectors provide. Accordingly, we urge the Committee to provide statutory relief from CERCLA liability for owners and operators of passive receiver facilities.

Sincerely,

American Public Works Association
Association of Compost Producers
California Association of Sanitation Agencies
Coalition of Recyclers of Residual Organics by Practitioners of Sustainability
Michigan Water Environment Association
Michigan Waste & Recycling Association
Mid-Atlantic Biosolids Association
Midwest Biosolids Association
Municipal Environmental Group – Wastewater Division
Municipal Waste Management Association
National Association of County Officials
National Association of Water Companies
National League of Cities
National Municipal Stormwater Alliance
National Waste & Recycling Association
National Water Resources Association
New England Water Environment Association
North East Biosolids and Residuals Association
Northwest Biosolids Association
Oregon Association of Clean Water Agencies
Oregon Refuse & Recycling Association
Resource Recovery Coalition of California
Solid Waste Association of North America
Southeast Biosolids Association
The United States Conference of Mayors
U.S. Composting Council
Washington Association of Sewer & Water Districts
Washington Refuse & Recycling Association
WateReuse Association
Water and Wastewater Equipment Manufacturers Association
Wisconsin Counties Solid Waste Management Association

CC: Members of the U.S. Senate Committee on Environment and Public Works