

March 19, 2024

The Honorable Tom Carper
Chairman
Committee on Environment and Public
Works
United States Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public
Works
United States Senate
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

The American Farm Bureau Federation appreciates the opportunity to provide our thoughts on the impact that per- and polyfluorinated substances (PFAS) have placed on passive receivers. We commend the Senate Environment and Public Works Committee for discussing this important issue.

AFBF is the Voice of Agriculture®. We are farm and ranch families working together to build a sustainable future of safe and abundant food, fiber and renewable fuel for our nation and the world. The livelihoods of farmers and ranchers depend on healthy soil and groundwater and we support EPA's underlying goal of addressing widespread contamination of the environment caused by historic use of PFAS. However, EPA's proposed designation of PFOA and PFOS as CERCLA hazardous substances overlooks the unintended consequences that will be placed directly on farmers.

As passive receivers, farmers and ranchers have not knowingly used PFAS in their operations. PFAS chemicals are believed to arrive onto agricultural land through a few different mechanisms. First, these chemicals can be found in high quantities in firefighting foam (AFFF) used in and around airports and Department of Defense (DoD) training facilities. These chemicals have been known to travel naturally through the environment—most notably through ground and surface waters—and can eventually be deposited onto farm fields. Proximity to areas where AFFF is used can lead to elevated levels of PFAS. The first instance of PFAS contamination impacting an agricultural operation was when AFFF began leaching off of the Cannon Air Force Base in New Mexico and contaminating the water supply of nearby dairies.

Another way PFAS chemicals are delivered to farms is through the use of biosolids, which are commonly applied to farm fields as an alternative to fertilizer. A farmer accepts biosolids from a wastewater treatment facility to land-apply onto their property. Biosolids are regulated at the federal, state and local level to ensure protection of public health and the environment. For decades, EPA has encouraged and supported farmers' beneficial use of biosolids. Unfortunately, more recently, we have learned that in some instances biosolids are contributing to the spread of PFAS on agricultural lands.

Finally, leaching from pesticide holding containers has also been identified as a potential source of PFAS on farms. Recent EPA data indicates that plastic containers made of fluorinated high-density polyethylene are likely to leach PFAS into pesticides and other liquid products that are

stored in them. Regardless of how PFAS ultimately arrives onto a farm field, it is undeniable that the fault does not fall on our nation's farmers and ranchers. It is worth acknowledging, yet again, that farmers do not use PFAS chemicals in any part of their operations and are innocent receivers.

EPA has stated that they intend to use its enforcement discretion to protect farmers and ranchers. While that promise may protect farmers from EPA enforcement actions, it is not binding nor is it a restraint on CERCLA cost recovery litigation brought by third parties. The statute includes a citizen suit provision that would allow any party to file a civil action against any passive receivers.

We appreciate the opportunity to bring light to the unintended consequences of this proposed rulemaking. America's farm and ranch families could face devastating impacts simply for owning land and creating an agricultural product. PFAS contamination is a very serious issue, and we must work together to find solutions. However, families here at home and abroad are increasingly turning to America's farmers to provide global food security. It is frightening to imagine a world where farmers are unable to produce the food, fuel and fiber that our country, and the world, relies on. For all these reasons, we ask that Congress pass legislation that would provide a proper liability shield for passive PFAS receivers.

Sincerely,

A handwritten signature in black ink that reads "Zippy Duvall". The signature is written in a cursive, flowing style with a large initial "Z".

Zippy Duvall
President