



Testimony of Scott Faber  
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Before the  
Committee on Environment and Public Works  
of the  
United States Senate  
on  
“Examining PFAS as Hazardous Substances”  
March 20, 2024

Thank you for the opportunity to testify.

My name is Scott Faber, and I am testifying today on behalf of the Environmental Working Group, a national environmental health organization. EWG strongly supports the EPA’s proposal to designate PFOA and PFOS as hazardous substances under CERCLA.

We’re here today because the manufacturers of these toxic forever chemicals hid their harms from their regulators, customers, neighbors, workers, and from Congress.<sup>1</sup>

That’s why PFOA and PFOS were not added to the list of more than 800 hazardous substances<sup>2</sup> decades ago – because the companies making these toxic forever chemicals illegally concealed their harms from you.

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<sup>1</sup> Nadia Gaber et al., *The Devil They Knew: Chemical Documents Influence in PFAS Science*, 89 *Annals of Global Health* 37 (2023), <https://pubmed.ncbi.nlm.nih.gov/37273487/>.

<sup>2</sup> Designation of Hazardous Substances, 40 C.F.R. § 302.4. *See also* Env’t Prot. Agency, CERCLA Hazardous Substances Defined, <https://www.epa.gov/epcra/cercla-hazardous-substances-defined> (last updated Feb. 02, 2024).

While these companies paid, at the time, the largest administrative fine in EPA history for their failure to warn us,<sup>3</sup> we're all paying the price for their illegal behavior.

None of us consented to be polluted with PFAS, but all of us have PFAS in our bodies.<sup>4</sup>

Some of us, including firefighters, have far more PFAS building up in our blood because of the use of PFAS in firefighting foam and gear.<sup>5</sup>

Some of us, including those of us working for or living downstream or downwind of PFAS makers and users, have far more PFAS building up in our blood.<sup>6</sup>

These companies have poisoned all of us, and yet the same companies, and thousands of other companies using PFAS, continue to release thousands of pounds of PFAS into the air and water every year.<sup>7</sup>

Today, as I appear before you, too many of us have too much PFAS in our blood,<sup>8</sup> and are at increased risk of the harms caused by PFAS,<sup>9</sup> and yet some companies are still needlessly using PFAS in the products we bring into our homes.

Today, as I appear before you, millions of people are being served tap water with unsafe levels of PFOA and PFOS,<sup>10</sup> and yet the water utilities charged with protecting us are seeking to delay or weaken proposed drinking water standards.<sup>11</sup>

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<sup>3</sup> See Press Release, Env't Prot. Agency, EPA Settles PFOA Case Against DuPont for Largest Environmental Administrative Penalty in Agency History (Dec. 14, 2005), [https://www.epa.gov/archive/epapages/newsroom\\_archive/newsreleases/fdcb2f665cac66bb852570d7005d6665.html](https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/fdcb2f665cac66bb852570d7005d6665.html) ("DuPont will pay \$10.25 million – the largest civil administrative penalty the EPA has ever obtained under any federal environmental statute").

<sup>4</sup> Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, PFAS in the U.S. Population, <https://www.atsdr.cdc.gov/pfas/health-effects/us-population.html> (last reviewed Jan. 18, 2024).

<sup>5</sup> Nur-Ushafa Mazumder et al., *Firefighters' Exposure to Per- and Polyfluoroalkyl Substances (PFAS) as an Occupational Hazard: A Review*, 10 *Front Mater* 1 (2023), <https://pubmed.ncbi.nlm.nih.gov/38074949/>.

<sup>6</sup> Centers for Disease Control, Agency for Toxic Substances and Disease Registry, PFAS in the U.S. Population, available at <https://www.atsdr.cdc.gov/pfas/health-effects/us-population.html> (last reviewed Jan. 18, 2024).

<sup>7</sup> 1,428 pounds of PFAS were released, according to the following reporting categories of the 2022 Toxics Release Inventory: 5.1, 5.2, 5.3, 5.5 1B, 6.1, and 8.8. See Env't Prot. Agency, EPA Releases Updated 2022 Toxics Release Inventory Reporting Data, <https://www.epa.gov/chemicals-under-tsca/epa-releases-updated-2022-toxics-release-inventory-reporting-data> (last updated Oct. 24, 2023).

<sup>8</sup> Centers for Disease Control, Agency for Toxic Substances and Disease Registry, PFAS Information for Clinicians, <https://www.atsdr.cdc.gov/pfas/resources/pfas-information-for-clinicians.html> (last reviewed Jan. 18, 2024).

<sup>9</sup> Nat'l Academies of Sci., Eng'g, & Medicine, Guidance on PFAS Exposure, Testing, and Clinical Follow-Up (2022), <https://doi.org/10.17226/26156>.

<sup>10</sup> Env't Prot. Agency, Economic Analysis for the Proposed Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation (2023), [https://www.epa.gov/system/files/documents/2023-03/Proposed%20PFAS%20NPDWR%20EA\\_final\\_03\\_09\\_2023\\_0.pdf](https://www.epa.gov/system/files/documents/2023-03/Proposed%20PFAS%20NPDWR%20EA_final_03_09_2023_0.pdf).

<sup>11</sup> See, e.g., Am. Water Works Ass'n, Comment Submitted on PFAS National Primary Drinking Water Regulation Rulemaking, EPA-HQ-OW-2022-0014, <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0114-1759>.

In particular, millions of us who served on or lived near military bases were provided some of the most polluted water in the world,<sup>12</sup> and yet the Defense Department still has not cleaned up PFAS-contaminated groundwater, even when toxic plumes threaten nearby communities and our farmers.<sup>13</sup>

Failing to reduce the amount of PFAS in our tap water will result in thousands of additional deaths, including thousands of deaths from cancer and cardiovascular disease, and thousands of infant deaths caused by low birth weights.<sup>14</sup>

But instead of taking action to close loopholes that allow more PFAS into the air and water, or to close loopholes that allow needless uses of PFAS, industry leaders are urging you to create more loopholes.

Our view is simple: Legal loopholes are the problem, not the solution.

Businesses and organizations representing millions of people strongly oppose new PFAS loopholes, especially when these loopholes will result in more, not less, PFAS pollution.<sup>15</sup>

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<sup>12</sup> Jared Hayes, *Abandoned: Unsafe 'Forever Chemicals' Levels in Thousands of Drinking Water Samples Near 63 Military Bases*, Env't Working Grp. (Nov. 29, 2023), <https://www.ewg.org/news-insights/news/2023/11/abandoned-unsafe-forever-chemicals-levels-thousands-drinking-water>.

<sup>13</sup> For example, 3,911 agriculture operations have received notifications that groundwater may have been contaminated by PFAS from nearby installations. See Dept. of Defense, Off. of the Assistant Sec'y of Defense for Energy, Installations, & Env't, Status of Notifications to Agricultural Operations for Fiscal Year 2023 (July 2023), <https://www.acq.osd.mil/eie/eer/ecc/pfas/docs/reports/Report-on-Status-of-Notifications-to-Agricultural-Operations-for-Fiscal-Year-2023.pdf>.

<sup>14</sup> Env't Prot. Agency, Economic Analysis for the Proposed Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation (2023), [https://www.epa.gov/system/files/documents/2023-03/Proposed%20PFAS%20NPDWR%20EA\\_final\\_03\\_09\\_2023\\_0.pdf](https://www.epa.gov/system/files/documents/2023-03/Proposed%20PFAS%20NPDWR%20EA_final_03_09_2023_0.pdf).

<sup>15</sup> See, e.g., Letter from Manish Bapna et al., President and CEO, Nat. Res. Defense Council (and eight other CEOs of environmental organizations), to Thomas Carper, Chairman, Senate Comm. on Env't & Public Works; Shelley Moore Capito, Ranking Member, Senate Comm. on Env't & Public Works; Cathy McMorris Rodgers, Chair, House Comm. on Energy & Env't; Frank Pallone, Ranking Member, House Comm. on Energy & Env't (June 29, 2023) ([https://static.ewg.org/upload/pdf/CEO\\_CERCLA\\_Letter\\_4\\_1.pdf](https://static.ewg.org/upload/pdf/CEO_CERCLA_Letter_4_1.pdf)); letter from 40 environmental and public health organizations, to Thomas Carper, Chairman, Senate Comm. on Env't & Public Works; Shelley Moore Capito, Ranking Member, Senate Comm. on Env't & Public Works; Cathy McMorris Rodgers, Chair, House Comm. on Energy & Env't; Frank Pallone, Ranking Member, House Comm. on Energy & Env't (Apr. 04, 2023) ([https://static.ewg.org/upload/pdf/Copy\\_of\\_Letter\\_to\\_Hill-No\\_PFAS\\_CERCLA\\_Carve-Outs-FINAL-1\\_5.pdf](https://static.ewg.org/upload/pdf/Copy_of_Letter_to_Hill-No_PFAS_CERCLA_Carve-Outs-FINAL-1_5.pdf)); letter from Millie Garcia-Serrano, President, Ass'n of State & Territorial Solid Waste Management Officials, to Thomas Carper, Chairman, Senate Comm. on Env't & Public Works; Shelley Moore Capito, Ranking Member, Senate Comm. on Env't & Public Works; Cathy McMorris Rodgers, Chair, House Comm. on Energy & Env't; Frank Pallone, Ranking Member, House Comm. on Energy & Env't (July 19, 2023) ([https://static.ewg.org/upload/pdf/Copy\\_of\\_Final\\_PFAS\\_Legislation\\_Comment\\_Letter\\_1\\_1.pdf](https://static.ewg.org/upload/pdf/Copy_of_Final_PFAS_Legislation_Comment_Letter_1_1.pdf)); letter from 80 organizations representing communities hurt by PFAS contamination, to Thomas Carper, Chairman, Senate Comm. on Env't & Public Works; Shelley Moore Capito, Ranking Member, Senate Comm. on Env't & Public Works; Cathy McMorris Rodgers, Chair, House Comm. on Energy & Env't; Frank Pallone, Ranking Member, House Comm. on Energy & Env't (June 20, 2023) ([https://static.ewg.org/upload/pdf/Letter\\_from\\_Impacted\\_Communities\\_on\\_PFAS\\_Loop\\_holes\\_7\\_1.pdf](https://static.ewg.org/upload/pdf/Letter_from_Impacted_Communities_on_PFAS_Loop_holes_7_1.pdf)).

Former EPA administrators, serving both Republican and Democratic presidents, also oppose these loopholes.<sup>16</sup>

Here's why.

Our hazardous waste laws are not only designed to recover and fairly apportion the costs of cleanup; they are also designed to ensure that public and private companies are good stewards of their hazardous wastes.

Responsible stewardship of hundreds of hazardous substances is nothing new for water utilities and waste managers.

Right now, 66 hazardous substances are found in our drinking water systems, including equally notorious pollutants like benzene, carbon tetrachloride, PCBs, and trichloroethylene.<sup>17</sup> This list is available as Appendix A to this testimony.

Right now, nearly 250 hazardous substances are found in our landfills, including antimony, arsenic, lead, and chromium.<sup>18</sup> This list is available as Appendix B to this testimony.

So you may be wondering: If water utilities and waste managers are already addressing hundreds of other hazardous substances, what's different about PFOA and PFOS?

The answer is: Nothing is different about PFOA and PFOS.

The mere presence of these substances in wastewater systems and landfills is not cause for creating unprecedented loopholes.<sup>19</sup> The law allows the EPA and the courts to use their

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<sup>16</sup> See Letter from Gina McCarthy, Christine Todd Whitman, and William Reilly, Former Adm'rs of the Env't Prot. Agency, to Thomas Carper, Chairman, Senate Comm. on Env't & Public Works; Shelley Moore Capito, Ranking Member, Senate Comm. on Env't & Public Works; Cathy McMorris Rodgers, Chair, House Comm. on Energy & Env't; Frank Pallone, Ranking Member, House Comm. on Energy & Env't (Sept. 19, 2023) [https://static.ewg.org/upload/pdf/Copy\\_of\\_EPA\\_Administrators\\_Final\\_9-19-23\\_7.pdf](https://static.ewg.org/upload/pdf/Copy_of_EPA_Administrators_Final_9-19-23_7.pdf)

<sup>17</sup> See Appendix A. *Compare* Designation of Hazardous Substances, 40 C.F.R. § 302.4, with Env't Prot. Agency, List of Substances with National Primary Drinking Water Regulations, [https://www.epa.gov/sites/production/files/2016-06/documents/npwdr\\_complete\\_table.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/npwdr_complete_table.pdf).

<sup>18</sup> See Appendix B, In a review of contaminant data from over 150 active EPA National Priorities List landfills, in co-disposal landfills, 239 different hazardous substances were identified across those sites from test samples taken during the CERCLA process. Active NPL municipal landfills had 80 hazardous substances. Active NPL industrial landfills had 137 hazardous substances. Data reviewed was obtained at Env't Prot. Agency, Superfund, Search Sites <https://cumulis.epa.gov/supercpad/CurSites/srchrslt.cfm?start=1> (last accessed March 17, 2024).

<sup>19</sup> The vast majority of sites contaminated with hazardous substances are not added to the NPL, which is reserved for highly contaminated sites. Only about 10 sites are added to the NPL per year. Few if any NPL sites are likely to be listed solely as a result of the presence of PFOA and PFOS, and any sites that are added are likely to be industrial sites that used significant amounts of PFOA and PFOS.

discretion to focus on the polluters, and to assign responsibility to those who should bear responsibility.

That’s what the EPA has always done.<sup>20</sup> And that’s exactly what the EPA has said it will do with regards to PFOA and PFOS.

In a letter to House leaders, included below as Appendix C, the EPA wrote the agency will “focus its enforcement efforts on . . . PFAS manufacturers and facilities whose actions result in the release of significant amounts of PFAS into the environment.”<sup>21</sup>

Indeed, the EPA wrote that the agency “does not intend to pursue entities . . . such as farmers, water utilities, airports, or local fire departments” and that the EPA also wrote that it will “settle with parties to provide contribution rights and protections against third-party cost recovery claims.”<sup>22</sup>

This letter is consistent with the EPA’s long history of using the discretion provided by Congress to assign liability where it belongs – with the polluters.

Water utilities and waste managers can and do assert affirmative defenses,<sup>23</sup> enter into settlement agreements as a shield against liability,<sup>24</sup> and even recover cleanup costs from polluters.

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<sup>20</sup> Under Section 122(g) of CERCLA, EPA can, and often does, quickly make “de minimis” settlements with parties that contributed only a small amount to the pollution. 42 U.S.C. § 9622(g). EPA also has the discretion to make “ability to pay” settlements. 42 U.S.C. § 9622(g)(7). A settlement with EPA creates a contribution shield protecting that party from additional CERCLA contribution claims from other potentially responsible parties for any cleanup covered by the settlement. 42 U.S.C. § 9613(f)(2). The EPA also has discretion to allow delayed payments, payment schedules, and in-kind contributions from municipal parties in settlement agreements. For example, in a March 2023 listening session on CERCLA PFAS enforcement, the EPA stated clearly that it intends “to focus its CERCLA enforcement efforts on PFAS manufacturers, federal facilities, and other parties whose actions contribute to the release of significant amounts of PFAS.” Env’t Prot. Agency, CERCLA PFAS Enforcement Listening Sessions, <https://www.epa.gov/enforcement/cercla-pfas-enforcement-listening-sessions> (last updated March 15, 2024).

<sup>21</sup> See Appendix C. Letter from Lawrence Starfield, Principal Deputy Assistant Comm’r, Env’t Prot. Agency, to Rep. Frank Pallone, Ranking Member, House Comm. on Energy & Commerce, and Rep. Rick Larsen, Ranking Member, House Comm. on Transportation & Infrastructure (Aug. 9, 2023), [https://static.ewg.org/upload/pdf/PFAS\\_Letter\\_to\\_RM\\_Pallone\\_and\\_RM\\_Larsen\\_8.9.2398.pdf](https://static.ewg.org/upload/pdf/PFAS_Letter_to_RM_Pallone_and_RM_Larsen_8.9.2398.pdf).

<sup>22</sup> Under section 113(f)(2), any party that has settled with the EPA or a state “shall not be liable for claims for contribution regarding matters addressed in the settlement.” 42 U.S.C. § 9613(f)(2). Once an entity has settled with the EPA, other potentially responsible parties cannot sue them for costs related to cleanup. However, a party that has settled with the EPA may seek recovery from other parties that have not settled to recoup some of their costs spent on cleanup.

<sup>23</sup> For example, a utility can show that the release was caused by a third party and that the utility exercised due care and took precautions. See *Lincoln Props. v. Higgins*, 823 F. Supp. 1528, 1543-44 (E.D. Cal. 1992) (finding that releases into leaky sewers were not foreseeable and that the county took reasonable precautions with respect to its sewer system). Cf. *U.S. v. Meyer*, 120 F. Supp. 2d 635 (W.D. Mich. 1999) (where the city of Cadillac Wastewater Treatment Plant avoided litigation by taking steps to reduce or prevent hazardous waste from a private sewer line from entering the city sewer).

<sup>24</sup> For example, at the Donna Reservoir site, a utility’s canal was the primary source of PCB contamination in sediment and fish. The EPA settled with the utility for \$100,000, based on an ability-to-pay analysis. See 88 Fed.

So, you might be asking, if the EPA intends to settle with these parties and grant them contribution shields, where's the harm in granting them statutory exemptions?

Creating statutory loopholes will remove a powerful incentive for water utilities and waste managers to be better stewards of these toxic forever chemicals.<sup>25</sup> Unfortunately, some water utilities and landfills do behave negligently.<sup>26</sup>

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Reg. 15390 (Mar. 13, 2023). *See also* Record of Decision, Donna Reservoir and Canal System Superfund Site, U.S. Env't Prot. Agency (Sept. 2018) at 7, <https://sempub.epa.gov/work/06/100011997.pdf>. At the Wolff-Alport Chemical site, New York City and the Department of Justice have a proposed settlement for \$1.6 million to address past costs related to cleanup of radioactive substances on city property. *See* Notice of Lodging of Proposed Consent Judgment Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 88 Fed. Reg. 37906 (June 9, 2023).

<sup>25</sup> Publicly owned treatment works (POTWs) can require industrial users to pretreat waste before they will accept wastewater from those users. For example, the Michigan Department of Environment, Great Lakes, and Energy worked with POTWs to survey upstream users and implement pretreatment measures, in some cases reducing PFOS in effluent by 99 percent. *See* Michigan Department of Environment, Great Lakes, and Energy, Industrial Pretreatment Program PFAS Initiative, <https://www.michigan.gov/egle/about/organization/water-resources/industrial-pretreatment/pfas-initiative> (last visited March 15, 2023). *See also* Colin O'Neil et al., *How Michigan Reduced Industrial Discharges of PFAS*, Env't Working Grp. (April 28, 2020), <https://www.ewg.org/news-insights/news/how-michigan-reduced-industrial-discharges-pfas>.

<sup>26</sup> For example, negligence in Flint, Mich., causing lead to leach from aging pipes. *See, e.g.*, Michigan Health & Human Services, Flint Water Settlement, <https://www.michigan.gov/mdhhs/inside-mdhhs/legal/flint-water-settlement> (last visited March 17, 2024). In the Gowanus Canal, the city discharged hazardous substances from combined sewer overflows. Env't Prot. Agency, Superfund Site: Gowanus Canal, Brooklyn, N.Y., <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0206222> (last visited March 17, 2024) ("contamination flows into the canal from combined sewer system overflows that carry sanitary waste from homes and rainwater and industrial pollutants from storm drains. As a result, the Gowanus Canal is one of the nation's most seriously contaminated water bodies."). In Jackson, Miss., maintenance failures resulted in water shortages. *See, e.g.*, Emmanuel Felton and Bryan Pietsch, *Jackson's Water Crisis Comes After Years of Neglect: 'We've Been Going it Alone.'* Wash. Post (Aug. 30, 2022), <https://www.washingtonpost.com/nation/2022/08/30/jackson-mississippi-water-crisis-update/>. In Newark, N. J., the city failed to address lead leaching from pipes serving schools. *See* Nikita Biryukov, *Newark Finds Lead in Pipes That Should Have Been Replaced*, New Jersey Monitor (Feb. 06, 2024), <https://newjerseymonitor.com/briefs/newark-finds-lead-in-pipes-that-shouldve-been-replaced/>. In Pittsburgh, the Water and Sewer Authority mishandled a lead pipe replacement program, putting more than 150 households at risk. Michael Rubinkam, *Pittsburgh Water Authority Criminally Charged Over Lead*, Assoc. Press (Feb. 01, 2019). In Los Angeles, top officials at the Department of Water and Energy were involved in a \$2.2 million bribery and kickback scheme for a favorable settlement in a lawsuit against the utility. Dakota Smith and Julia Wick, *Attorney Agrees to Plead Guilty to Bribery in Kickback Scheme tied to DWP Billing Case*, Los Angeles Times (Nov. 29, 2021), <https://www.latimes.com/california/story/2021-11-29/attorney-agrees-to-plead-guilty-dwp-billing-case-kickback-scheme>. In Cottonwood, Ariz., officials forged water test results. Bree Burkitt, *AG: Cottonwood Employee Changed Drinking-Water Test Results to Hide Contamination*, AZCentral.com (May 27, 2018). In Brunswick, N. J. water utility workers took bribes to lower bills. Sara Jerome, *Bribery Scandal Rocks New Jersey Water Utility*, Water Online (Dec. 13, 2016), <https://www.wateronline.com/doc/bribery-scandal-rocks-new-jersey-water-utility-0001>. In Sebring, Ohio, officials failed to warn residents about lead contamination. Richard Pérez-Peña, *Lead in Ohio Villages' Water Went Uncurbed for Months, State Says*, N.Y. Times (Jan. 26, 2016), <https://www.nytimes.com/2016/01/27/us/lead-in-ohio-villages-water-went-uncurbed-for-months-state-says.html>. In Opa-Locka, Fla., a utility was forced to cede control to the county following a billing scandal. Sarah Blaskey, *Overbilling, Broken Water Meters and a Class Action Lawsuit: City's Utility is Drowning*, Miami Herald (Jan. 17, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/miami-gardens/article224246455.html>. In Peoria, Ill., a utility discharged raw sewage into the Illinois River and Peoria Lake. Press Release, Dep't of Justice,



Right now, there is no federal regulatory requirement for wastewater utilities to require polluters to “pretreat” their PFAS-laden wastes.<sup>27</sup>

Right now, there is no federal regulatory requirement for landfill operators to direct industrial wastes contaminated with PFAS to hazardous waste landfills.<sup>28</sup>

Why not?

Because a past administration gutted the part of the EPA charged with regulating PFAS and other industrial discharges under the Clean Water Act.<sup>29</sup> That’s the reason that so much PFAS is winding up in the sludge unknowingly being applied to our farm fields,<sup>30</sup> and it’s one reason so many landfills have PFAS in their leachate.<sup>31</sup>

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U.S. Government and the State of Illinois Reach Agreement with Peoria and the Greater Peoria Sanitary District to Reduce Water Pollution from Sewer System (Dec. 23, 2020), <https://www.justice.gov/opa/pr/us-government-and-state-illinois-reach-agreement-peoria-and-greater-peoria-sanitary-district>.

<sup>27</sup> Env’t Prot. Agency, Effluent Guidelines Program Plan 15 (Jan. 2023), [https://www.epa.gov/system/files/documents/2023-01/11143\\_ELG%20Plan%2015\\_508.pdf](https://www.epa.gov/system/files/documents/2023-01/11143_ELG%20Plan%2015_508.pdf) (acknowledging that the EPA “continues to focus on and evaluate the extent and nature of per- and polyfluoroalkyl substances (PFAS) discharges and assess opportunities for limiting those discharges” but has not yet established industry-wide limits like pretreatment standards for wastewater discharges).

<sup>28</sup> *Id.* at 6-12 (stating that there are currently no effluent limitation guidelines for PFAS from landfills but that the EPA intends to develop them “pending resource availability”).

<sup>29</sup> Gov’t Accountability Off., Water Pollution: EPA Has Improved Its Review of Effluent Guidelines but Could Benefit from More Information on Treatment Technologies (Sept. 10, 2012), <https://www.gao.gov/assets/gao-12-845.pdf> (“In light of that change in emphasis and soon after issuing the draft strategy, EPA reduced staffing levels for the effluent guidelines program by about 40 percent, according to program officials.”).

<sup>30</sup> Note that section 101(22) of CERCLA exempts “the normal application of fertilizer” from the definition of “release.” 42 U.S.C. § 9601(22). Applying sludge to farm fields would likely constitute the normal application of fertilizer and therefore would not be considered a “release” of a hazardous substance. Experience also shows that the presence of PFAS in sludge is unlikely to generate significant new liability. Many other hazardous substances are also present in sludge, but that has not created liability for farmers. A 2018 report from the EPA Office of Inspector General found more than 350 contaminants identified in biosolids applied to lands. Among the 352 contaminants, 61 were identified as “acutely hazardous, hazardous, or priority pollutants” in other programs, including CERCLA. *See* Env’t Prot. Agency, Off. of Inspector General, EPA Unable to Assess the Impact of Unregulated Pollutants in Land-Applied Biosolids on Human Health and the Environment (Nov. 15, 2018),

[https://www.epa.gov/sites/production/files/2018-11/documents/epaig\\_20181115-19-p-0002.pdf](https://www.epa.gov/sites/production/files/2018-11/documents/epaig_20181115-19-p-0002.pdf). *See also* Lara Beaven, POTWs’ Legal Uncertainty Drives Fear Over PFAS Superfund Designation, Inside EPA (Sept. 03, 2019), <https://insideepa.com/daily-news/potws-legal-uncertainty-drives-fear-over-pfas-superfund-designation> (quoting Beveridge & Diamond attorney James Slaughter, who said that “biosolids have long had trace amounts” of chemicals that are CERCLA hazardous substances without giving rise to liability and that designating PFOA and PFOS as hazardous substances “won’t likely trigger new liability”).

<sup>31</sup> Several states have found PFAS in landfill leachate. *See, e.g.*, Minnesota Pollution Control Agency, PFAS and Closed Landfills, <https://www.pca.state.mn.us/air-water-land-climate/pfas-and-closed-landfills> (last visited March 16, 2024); New Hampshire Dep’t of Env’t Serv., PFAS Occurrence in Leachate at New Hampshire Landfills, presentation to the Joint Legislative Fiscal Committee (Oct. 14, 2022),

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/20221014-pfas-in-leachate.pdf>;

Weston & Sampson Engineers, Poly- and Perfluoroalkyl Substances at Wastewater Treatment Facilities and Landfill Leachate: 2019 Summary Report (Jan. 30, 2020),

[https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/02.03.20\\_PFAS%20in%20LF%20and%20WW](https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/02.03.20_PFAS%20in%20LF%20and%20WW)

Let's address the real challenges before us – not make them worse.

This committee has acted before to treat the PFAS contamination crisis with the urgency it deserves.

In particular, you required water utilities to test finished tap water for many PFAS<sup>32</sup> and the results are in: million of us are drinking unsafe levels of PFAS.<sup>33</sup>

For example, thousands of people being served by the Suez Water Department in Delaware are drinking tap water with levels of some PFAS of 125 parts per trillion – or 30 times higher than the level proposed by the EPA.

For example, thousands of people in New Martinsville, W.Va., are drinking tap water with levels of some PFAS of 245 parts per trillion – or 60 times higher than the level proposed by the EPA.

For example, thousands of people in Payson, Ariz., are drinking tap water with levels of some PFAS of 274 parts per trillion – or nearly 70 times higher than the level proposed by the EPA.<sup>34</sup>

The solution to pollution is not abscolution.

Congress should turn off the tap of industrial PFAS pollution, end needless uses of PFAS in everyday products, clean up the legacy pollution that threatens our defense communities, and ensure that people who have been harmed by PFAS polluters have access to justice. Subjecting PFAS releases to permit limits would not only reduce PFAS pollution but would also reduce future liability.<sup>35</sup>

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[TF%20Final%20Report.pdf](#) (prepared for the Vermont Department of Environmental Conservation); California State Water Resources Control Board, GeoTracker PFAS Map, [https://geotracker.waterboards.ca.gov/map/pfas\\_map](https://geotracker.waterboards.ca.gov/map/pfas_map) (last visited March 16, 2024); Michigan Dep't of Env't, Great Lakes, & Energy, Maps & Data, Michigan PFAS sites, [https://gis-egle.hub.arcgis.com/datasets/17b26cf283624bf49705741e81fde0c4\\_0/explore](https://gis-egle.hub.arcgis.com/datasets/17b26cf283624bf49705741e81fde0c4_0/explore) (last visited March 16, 2024); Staci L. Capozzi et al., *PFAS in Municipal Landfill Leachate: Occurrence, Transformation, & Sources*, 334 *Chemosphere* 138924 (Sept. 2023), <https://www.sciencedirect.com/science/article/abs/pii/S0045653523011918?via%3Dihub> (measuring PFAS in leachate from 17 landfills in Washington); New York State Dep't of Env't Conservation, New York State Inactive Landfill Initiative, (July 2022), [https://extapps.dec.ny.gov/docs/materials\\_minerals\\_pdf/inactivelandfillreportfinal202207.pdf](https://extapps.dec.ny.gov/docs/materials_minerals_pdf/inactivelandfillreportfinal202207.pdf).

<sup>32</sup> National Defense Authorization Act for Fiscal Year 2020, S. 1790, 116th Cong. §§ 7331-7335 (1st Sess. 2019).

<sup>33</sup> Press Release, Env't Working Grp., EPA Reveals More Evidence of Widespread 'Forever Chemicals' in Drinking Water (Feb. 07, 2024), <https://www.ewg.org/news-insights/news-release/2024/02/epa-reveals-more-evidence-widespread-forever-chemicals-drinking>.

<sup>34</sup> Env't Working Grp., EWG Tap Water Database, Town of Payson, Arizona <https://www.ewg.org/tapwater/system.php?pws=AZ0404032> (last visited March 16, 2024).

<sup>35</sup> Section 107(j) of CERCLA limits liability from "federally permitted releases," including releases subject to NPDES permits. 42 U.S.C. § 9613(j).



Congress should not enact unprecedented loopholes that will result in more PFAS pollution, not less.<sup>36</sup> Congress has never created an exemption for a specific chemical, not even for notorious pollutants like PCBs and asbestos, and Congress should not start now.

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<sup>36</sup> Congress may not stop with loopholes for utilities and landfills. *See* Proposed Amendments to H.R. 2467, PFAS Action Act of 2021, <https://rules.house.gov/bill/117/hr-2467> (proposing to exempt semiconductors; manufacturing of lithium-based batteries; aerospace industry manufacturing, solar panels and wind turbines; personal protective gear worn by military personnel, police departments and first responders; medical waste; drugs; medical devices; pipeline safety equipment; and chlorine production from CERCLA liability).

**Appendix A: SDWA Regulated Contaminants ([40 CFR 141.40](#),) on the CERCLA Hazardous Substances List ([40 CFR § 302.4](#))**

Category	Name	CAS No.
Disinfection byproducts ( <a href="#">40 CFR 141.64</a> )	Total Trihalomethanes (TTHMs)	Various
Disinfectants ( <a href="#">40 CFR 141.65</a> )	Chlorine (as Cl <sub>2</sub> )	7782-50-5
Inorganic chemicals ( <a href="#">40 CFR 141.62</a> )	Antimony	7440-36-0
	Arsenic	7440-38-2
	Asbestos (fiber > 10 micrometers)	1332-21-4
	Barium	7440-39-3**
	Beryllium	7440-41-7
	Cadmium	7440-43-9
	<a href="#">Chromium (total)</a>	7440-47-3
	Copper**	7440-50-8
	Cyanide (as free cyanide)	74-90-8 (hydrogen cyanide)
	<a href="#">Lead**</a>	7439-92-1
	Mercury (inorganic)	Various
	Selenium	7782-49-2
	Thallium	7440-28-0
	Organic chemicals ( <a href="#">40 CFR 141.61</a> )	Acrylamide**
Benzene		71-43-2
Benzo[a]pyrene (PAHs)		50-32-8
Carbofuran		1563-66-2
Carbon tetrachloride		56-23-5
Chlordane		57-74-9
Chlorobenzene		108-90-7
2,4-D		94-75-7 (acid form)
Dalapon		75-99-0
1,2-Dibromo-3-chloropropane (DBCP)		96-12-8
o-Dichlorobenzene		95-50-1
p-Dichlorobenzene		106-46-7
1,2-Dichloroethane		107-06-2
1,1-Dichloroethylene		75-35-4
cis-1,2-Dichloroethylene		156-59-2

**Appendix A: SDWA Regulated Contaminants ([40 CFR 141.40](#),) on the CERCLA Hazardous Substances List ([40 CFR § 302.4](#))**

	trans-1,2-Dichloroethylene	156-60-5
	Dichloromethane	75-09-2
	1,2-Dichloropropane	78-87-5
	Di(2-ethylhexyl) phthalate	117-81-7
	Dinoseb	88-85-7
	Dioxin (2,3,7,8-TCDD)	1746-01-6
	Diquat	85-00-7 and 2764-72-9
	Endothall	145-73-3
	Endrin	72-20-8
	Epichlorohydrin**	106-89-8
	Ethylbenzene	100-41-4
	Ethylene dibromide	106-93-4
	Heptachlor	76-44-8
	Heptachlor epoxide	1024-57-3
	Hexachlorobenzene	118-74-1
	Hexachlorocyclopentadiene	77-47-4
	Lindane	58-89-9
	Methoxychlor	72-43-5
	Oxamyl (Vydate)	23135-22-0
	Polychlorinated biphenyls (PCBs)	1336-36-3
	Pentachlorophenol	87-86-5
	Styrene	100-42-5
	Tetrachloroethylene	127-18-4
	Toluene	108-88-3
	Toxaphene	8001-35-2
	2,4,5-TP (Silvex)	93-72-1
	1,2,4-Trichlorobenzene	120-82-1
	1,1,1-Trichloroethane	71-55-6
	1,1,2-Trichloroethane	79-00-5
	Trichloroethylene	79-01-6
	Vinyl chloride	75-01-4
	Xylenes (total)	1330-20-7 (mixed)
Radionuclides ( <a href="#">40 CFR 141.66</a> )	Alpha particles	NA
	Beta particles and photon emitters	NA

**Appendix A: SDWA Regulated Contaminants ([40 CFR 141.40](#),) on the CERCLA Hazardous Substances List ([40 CFR § 302.4](#))**

	Radium 226 and Radium 228 (combined)	NA
	Uranium	NA
Other	Nickel**	7440-02-0
	Aldicarb**	116-06-3
	Aldicarb sulfone**	1646-88-4

## Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS

CERCLA CONTAMINANTS FOUND IN LANDFILLS: <a href="#">EPA PAGE</a>	
CAS No.	<a href="#">CERCLA substance 40 CFR § 302.4</a>
50180	Cyclophosphamide
50293	DDT
50328	3,4-Benzopyrene
51796	Ethyl carbamate
53703	1,2:5,6-Dibenzanthracene
56235	(e) Carbon tetrachloride
56495	3-Methylcholanthrene
56553	1,2-Benzanthracene
57647	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)
57749	Chlordane
57976	Benz[a]anthracene, 7,12-dimethyl-
58899	gamma-BHC
58902	Phenol, 2,3,4,6-tetrachloro-
59507	Phenol, 4-chloro-3-methyl-
60297	Ethane, 1,1'-oxybis-
60515	Dimethoate
62384	Mercury, (acetato-O)phenyl-
62442	Phenacetin
62555	Ethanethioamide
67561	Methanol
67641	(b) Acetone
67663	Methane, trichloro-
67721	Hexachloroethane
70304	Hexachlorophene
71363	(g) n-Butyl alcohol

## Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS

71556	1,1,1-Trichloroethane
72208	2,7:3,6-Dimethanonaphth[2, 3-b]oxirene,3,4,5,6,9,9- hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-,(1aalpha,2beta, 2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-, & metabolites
72435	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-
72548	Benzene, 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
72559	<u>DDE b</u>
74839	Bromomethane
74873	Chloromethane
74884	Iodomethane
75070	Acetaldehyde
75092	(c) Methylene chloride
75150	(c) Carbon disulfide
75274	Dichlorobromomethane
75343	1,1-Dichloroethane
75354	1,1-Dichloroethylene
75569	Propylene oxide
75694	Methane, trichlorofluoro-
75718	Methane, dichlorodifluoro-
75865	Acetone cyanohydrin
76017	Ethane, pentachloro-
76131	(f) 1,1,2-Trichloro-1,2,2-trifluoroethane
76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
77781	Dimethyl sulfite
78795	Isoprene
78831	Isobutyl alcohol
78875	Propane, 1,2-dichloro-
78886	2,3-Dichloropropene



**Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS**

78933	(b) Methyl ethyl ketone
79005	Ethane, 1,1,2-trichloro-
79016	Ethene, trichloro-
79061	Acrylamide
79107	Acrylic acid
79221	Methyl chlorocarbonate
79345	Ethane, 1,1,2,2-tetrachloro-
79469	2-Nitropropane
81812	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts
82688	Benzene, pentachloronitro-
84662	1,2-Benzenedicarboxylic acid, diethyl ester
84742	1,2-Benzenedicarboxylic acid, dibutyl ester
85007	Diquat
86737	Fluorene
87650	2,6-Dichlorophenol
87683	Hexachlorobutadiene
87865	Phenol, pentachloro-
88062	Phenol, 2,4,6-trichloro-
88755	2-Nitrophenol
90040	o-Anisidine
91203	Naphthalene
91587	2-Chloronaphthalene
91941	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-
92933	4-Nitrobiphenyl
93721	2,4,5-TP acid
94111	2,4-D Ester
95476	o-Xylene
95487	o-Cresol

## Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS

95501	Benzene, 1,2-dichloro-
95578	2-Chlorophenol
95807	Benzenediamine, ar-methyl-
95943	1,2,4,5-Tetrachlorobenzene
96093	Styrene oxide
96128	Propane, 1,2-dibromo-3-chloro-
97632	Ethyl methacrylate
98011	Furfural
98077	Benzene, (trichloromethyl)-
98828	Benzene, (1-methylethyl)-
98862	Acetophenone
98873	Benzene, (dichloromethyl)-
100027	p-Nitrophenol
100447	Benzene, (chloromethyl)-
101553	4-Bromophenyl phenyl ether
101779	4,4'-Methylenedianiline
106423	p-Xylene
106445	p-Cresol
106467	Benzene, 1,4-dichloro-
106514	p-Benzoquinone
106898	1-Chloro-2,3-epoxypropane
106934	Dibromoethane
107062	1,2-Dichloroethane
107120	Ethyl cyanide
107186	Allyl alcohol
107200	Chloroacetaldehyde
107211	Ethylene glycol
107302	Chloromethyl methyl ether
107926	Butyric acid
108054	Vinyl acetate monomer

## Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS

108101	Hexone
108316	Maleic anhydride
108383	m-Xylene
108463	1,3-Benzenediol
108601	Dichloroisopropyl ether
108883	(a) Toluene
108907	(e) Chlorobenzene
108941	Cyclohexanone
108952	Phenol
109068	2-Picoline
109773	Propanedinitrile
110167	Maleic acid
110758	2-Chloroethyl vinyl ether
110827	Benzene, hexahydro-
111444	Bis(2-chloroethyl) ether
111911	Dichloromethoxy ethane
117817	DEHP
117840	1,2-Benzenedicarboxylic acid, dioctyl ester
118741	Hexachlorobenzene
119904	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-
120581	1,3-Benzodioxole, 5-(1-propenyl)-1
121142	Benzene, 1-methyl-2,4-dinitro-
121299	Pyrethrins
123911	1,4-Dioxane
126727	1-Propanol, 2,3-dibromo-, phosphate (3:1)
127184	Ethene, tetrachloro-
130154	1,4-Naphthalenedione

## Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS

131113	1,2-Benzenedicarboxylic acid, dimethyl ester
131748	Phenol, 2,4,6-trinitro-, ammonium salt
132649	Dibenzofuran
141786	Acetic acid, ethyl ester
142289	1,3-Dichloropropane
148823	Melphalan
156605	1,2-Dichloroethylene
189559	Dibenzo[a,i]pyrene
207089	Benzo(k)fluoranthene
208968	Acenaphthylene
297972	O,O-Diethyl O-pyrazinyl phosphorothioate
301042	Lead acetate
302012	Hydrazine
305033	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
315184	Phenol, 4-(dimethylamino)-3,5-dimethyl-, 4 methylcarbamate (ester)
319846	alpha-BHC
319857	beta-BHC
319868	delta-BHC
329715	2,5-Dinitrophenol
357573	Brucine
460195	Ethanedinitrile
463581	Carbonyl sulfide
465736	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
492808	Auramine
504609	1-Methylbutadiene
506649	Silver cyanide Ag(CN)
509148	Methane, tetranitro-

**Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS**

510156	Benzeneacetic acid, 4-chloro- $\alpha$ -(4-chlorophenyl)- $\alpha$ -hydroxy-, ethyl ester
534521	4,6-Dinitro- <i>o</i> -cresol, and salts
541731	Benzene, 1,3-dichloro-
542756	1-Propene, 1,3-dichloro-
542881	Bis(chloromethyl) ether
543908	Cadmium acetate
544923	Copper cyanide Cu(CN)
557346	Zinc acetate
563122	Ethion
563688	Thallium (I) acetate
594423	Trichloromethanesulfonyl chloride
598312	Bromoacetone
606202	Benzene, 2-methyl-1,3-dinitro-
608731	HEXACHLOROCYCLOHEXANE (all isomers)
608935	Benzene, pentachloro-
609198	3,4,5-Trichlorophenol
610399	3,4-Dinitrotoluene
624839	Methyl isocyanate
630206	Ethane, 1,1,1,2-tetrachloro-
631618	Ammonium acetate
759739	N-Nitroso-N-ethylurea
764410	1,4-Dichloro-2-butene
924163	1-Butanamine, N-butyl-N-nitroso-
959988	alpha-Endosulfan
1024573	Heptachlor epoxide
1031078	Endosulfan sulfate
1319773	Cresols (isomers and mixture)
1330207	Xylenes (isomers and mixture)

**Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS**

1331471	DICHLOROBENZIDINE
1338234	Methyl ethyl ketone peroxide
1464535	2,2'-Bioxirane
1563388	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
1615801	N,N'-Diethylhydrazine
1634044	Methyl tert-butyl ether
1888717	1-Propene, 1,1,2,3,3,3-hexachloro-
1918009	Dicamba
2303164	Diallate
4549400	Vinylamine, N-methyl-N-nitroso-
5344821	1-(o-Chlorophenyl)thiourea
5952261	Diethylene glycol, dicarbamate
6533739	Carbonic acid, dithallium(1 +) salt
7005723	4-Chlorophenyl phenyl ether
7421934	Endrin aldehyde
7440235	Sodium
7440360	<u>Antimony III</u>
7440382	<u>Arsenic III</u>
7440417	<u>Beryllium III</u>
7631892	Sodium arsenate
7647189	Antimony pentachloride
7746084	Selenium dioxide
7778394	Arsenic acid H <sub>3</sub> AsO <sub>4</sub>
7782414	Fluorine
7782505	Chlorine
7784410	Potassium arsenate
7787475	Beryllium chloride
7789437	Cobaltous bromide
10049055	Chromous chloride
11096825	Aroclor 1260



## Appendix B: CERCLA CONTAMINANTS FOUND IN LANDFILLS

11097691	Aroclor 1254
11104282	Aroclor 1221
11141165	Aroclor 1232
12672296	Aroclor 1248
12674112	Aroclor 1016
14307358	Lithium chromate
15699180	Nickel ammonium sulfate
20830813	Daunomycin
23422539	Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride
25167822	Trichlorophenol
25550587	Dinitrophenol
30558431	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
32534955	2,4,5-TP esters
33213659	beta-Endosulfan
38622183	DIPHENYLHYDRAZINE
39196184	2-Butanone, 3,3-dimethyl-1(methylthio)-, O-[(methylamino)carbonyl] oxime
42504461	Isopropanolamine dodecylbenzenesulfonate
53469219	Aroclor 1242



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

August 9, 2023

The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Ranking Member Pallone and Ranking Member Larsen:

Thank you for your June 21, 2023, correspondence requesting information on the Environmental Protection Agency's ("EPA's") existing authorities to address PFAS liability issues under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA", or "Superfund") in the event PFOA and PFAS are designated as a hazardous substance. This letter provides a summary response, and we would be happy to discuss this important issue further.

EPA's mission is to protect human health and the environment across our great country. Superfund is one of our Nation's landmark laws that EPA uses to achieve our mission. For more than 40 years, Superfund has protected the health of people in rural and urban areas, including children and others who are especially vulnerable to the harmful impacts of dangerous chemicals. Superfund cleanups also help revitalize communities, contributing to economic growth and job creation.

Pursuant to Superfund authority, EPA proposed to designate PFOA and PFOS as CERCLA hazardous substances. EPA is in the process of considering public comments on that proposal. EPA has heard from various stakeholders, including farmers, water utilities, airports, local fire departments and others, and understands their concerns about potential CERCLA liability should EPA finalize the designation.

Informed by public comments received on the proposed designation, EPA is developing an enforcement discretion policy that will reflect the agency's enforcement priorities. If the designation is finalized, EPA will focus its enforcement efforts on, for example, PFAS manufacturers and facilities whose actions result in the release of significant amounts of PFAS into the environment. EPA does not intend to pursue entities where equitable factors do not support assigning CERCLA responsibility, such as farmers, water utilities, airports, or local fire departments. The policy will also describe how EPA can settle with parties to provide contribution rights and protections against third-party cost recovery claims under CERCLA. We believe this approach to enforcement will address stakeholder concerns and will lead to more equitable outcomes, consistent with EPA's decades-long experience with implementing CERCLA.

Indeed, EPA has a proven track record of developing and applying enforcement discretion policies that are effective and well-received, and courts have sanctioned this approach. In several instances, Congress

has subsequently codified EPA's enforcement discretion policies as statutory exemptions or protections, once the effectiveness of the policies was established through practice. These statutory protections and enforcement discretion policies historically have given EPA the needed flexibility to offer liability protections when circumstances warrant. Examples of such statutory protections and enforcement discretion policies are:

- ***De minimis or de micromis parties:*** EPA generally does not pursue and may settle with parties who are responsible for very small percentages of waste or costs.
- ***CERCLA 107(b)(3) Third-Party Defense:*** Parties are not liable if they can show that the contamination was solely caused by acts or omissions of a third party.
- ***Normal Application of Fertilizer:*** CERCLA provides that the "normal application of fertilizer" does not constitute a release and, therefore, does not trigger liability under the statute.
- ***Permit Shield Defense:*** Cost recovery is limited for releases that fall within the federally permitted release provision of CERCLA.
- ***Residential, small business and non-profit generators of municipal solid waste ("MSW") exemption:*** This exemption provides an equitable methodology for resolving CERCLA liability of certain MSW generators and transporters.
- ***Bona Fide Prospective Purchasers ("BFPP"):*** Parties that meet the threshold criteria and continuing obligations for a BFPP are provided with CERCLA liability protection.
- ***Innocent Landowners:*** Certain entities that acquire contaminated property with no knowledge of the contamination at the time of purchase may be protected from CERCLA liability.
- ***Contiguous Property Owners:*** This provision protects parties whose property is contaminated by a neighbor's property.
- ***Ability-to-pay determinations:*** EPA may enter into "ability to pay" settlements with parties to resolve CERCLA response costs where payment could result in undue financial hardship.
- ***Policy for owners of residential property at Superfund sites:*** If certain obligations are met, residential owners of property located on a Superfund site will not be required to incur response costs if the owner's activities did not lead to a release or threat of release.

Your letter also asks about our efforts to help prevent the addition of PFAS to wastewater treatment facilities and systems, and how these actions can help to identify releases of PFAS. EPA recently issued guidance providing a framework that wastewater utilities may implement to monitor and prevent or reduce the discharge of PFAS into wastewater and associated biosolids generated at the facility. Among other provisions, this guidance cites Clean Water Act regulations at 40 CFR 122.44 and 40 CFR 403.8. These rules state that publicly owned treatment works ("POTWs") should identify and locate all possible industrial dischargers to the POTW that might be subject to the pretreatment program, especially those in industry categories expected to discharge or suspected of discharging PFAS. The guidance highlights existing requirements in the National Pollutant Discharge Elimination System permitting program that can be employed to identify and address industrial PFAS discharges to POTWs. Some states and utilities had already implemented these existing authorities, even before EPA issued its guidance.

Consistent with EPA's 2021-2024 PFAS Strategic Roadmap, EPA is committed to holding polluters and other responsible parties accountable for their actions, ensuring that they assume responsibility for remediation efforts and prevent, to the extent possible, future releases of PFAS. The proposed designations of PFOA and PFOS as hazardous substances under CERCLA are centerpieces of EPA's

strategy to cleaning up PFAS contamination around the country. An associated enforcement discretion policy would ensure equitable outcomes in addressing PFAS contamination.

If you have any questions, please contact me, or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations, at [Levine.Carolyn@epa.gov](mailto:Levine.Carolyn@epa.gov) or (202)-564-1859.

Sincerely,

**LAWRENCE  
STARFIELD** Digitally signed by  
LAWRENCE STARFIELD  
Date: 2023.08.09  
12:13:15 -04'00'

Lawrence E. Starfield  
Principal Deputy Assistant Administrator