

Virginia Waste Industries Association

A Chapter of the



**National
Waste & Recycling
Association**

Collect. Recycle. Innovate.

P.O. Box 241
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March 18, 2024

Senator Carper
Senator Capito
EPW Committee Members
U.S. Senate
Environment and Public Works Committee

RE: Comments on Draft PFAS Legislation

Dear Chairman Carper, Ranking Member Capito, and EPW Committee Members:

Any legislation on per- and polyfluoroalkyl substances (PFAS) that the U.S. Senate Committee on Environment and Public Works (EPW) considers must include a specific provision to ensure that “passive receivers” of PFAS that provide essential public services are afforded 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 waste and recycling industry delivers an essential public service that does 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.

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 the waste and recycling industry 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.

While EPA has announced that it would not pursue enforcement against publicly-owned or -operated landfills, nearly half of the country is served by privately-owned landfills. Communities across the nation that rely on the affordability that landfills provide thus would not benefit from EPA’s enforcement discretion policy.

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.

Many passive receivers of PFAS are 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 the waste and recycling industry carries out the delivery of public health services consistent with the requirements of the Solid Waste Disposal Act among other federal and state mandates, CERCLA designation, absent Congressional action,

March 18, 2024

Page 2

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.

The waste and recycling industry is part of the long-term solution to PFAS management and we recognize our need to protect public health and the environment. We 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 that our industry provides. Accordingly, we urge the Committee to provide statutory relief from CERCLA liability for owners and operators of passive receiver facilities.

As EPA has insufficient existing authority to provide relief to taxpayers and other waste sector customers from the impact of CERCLA contribution litigation, Congress should provide passive receivers with a narrow exemption from liability if certain PFAS are designated as hazardous substances under CERCLA. Doing so would keep CERCLA liability on the industries that created and profited from these hazardous substances—not on taxpayers.

Respectfully submitted,



Jennifer Johnson

Chairwoman

Virginia Waste Industries Association