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Chairman Capito Leads Hearing to Examine the Future of PFAS Cleanup and Disposal Policy

Below is the opening statement of Chairman Shelley Moore Capito (R-W.Va.) as delivered.

"This Congress, the Environment and Public Works Committee has examined many issues associated with PFAS contamination and remediation, including potential impacts on public health, liability issues and the EPA's regulatory responses.

"I have seen first-hand the impact of PFAS contamination in my home state of West Virginia, and I am going to continue leading this Committee's efforts to protect the health of my constituents, clean up legacy pollution and ensure the folks responsible for the contamination fund their share of the clean-up costs.

"Today, we will discuss another part of the PFAS problem: how PFAS cleanup and disposal directly affects billions of dollars in infrastructure investment. Project managers, including federal contractors, encounter PFAS contamination when expanding airports, rebuilding roads, bridges and replacing water systems.

"Since there is not a clear framework guiding where contaminated soil should go, what standards apply or who is liable, it becomes extremely difficult to clean up and remediate these sites once contamination has been identified.

"To address the liability concerns after the EPA's designation of P-F-O-A and P-F-O-S as hazardous substances under CERCLA, the agency issued an enforcement discretion policy to protect some passive receivers, including landfills, airports and farms. But that guidance does not answer the practical questions that are halting projects right now.

"First, the system between contractors and disposal facilities is breaking down. Today's projects face a major, impossible situation: landfills often will not accept soil unless the soil is tested for PFAS because insurance companies won't provide coverage to the landfill operator. When contractors do test the soil, there is no established federal standard to measure against. Insurers often deny coverage if any PFAS is detected, even if PFAS is below varying state standards.

"Second, because project managers cannot price this liability risk, potential bids for infrastructure projects just come in with huge contingencies or no bids at all. This leads to a cost premium that directly affects how critical projects are built and maintained, and those costs are passed through to taxpayers and ratepayers.

"The EPA can take steps now to improve how these problems are managed throughout the full lifecycle of a construction project. The Agency should issue clear disposal guidance to restore predictability, so contractors and landfills know where to dispose of contaminated soil.

"Projects need federal soil screening levels that are practical and implementable. Communities need guidance on managing PFAS in groundwater, stormwater and treatment systems.

"We also need to address the root cause of the contamination. PFAS hotspots such as military sites and airports are a major source of the problem. Without limiting contamination in these areas, PFAS will keep seeping into water supplies, leaving communities with a "forever" drinking water problem.

"For locations with the highest concentrations of PFAS, we may need disposal options beyond containment. The good news is that the destruction technology is here, and the EPA validated that process with thorough testing, showing that PFAS can be destroyed at levels above 99.99 percent. That technology is expensive, which is why EPA needs to issue guidance to determine what management approaches are most appropriate.

"Liability issues must be addressed. The EPA should provide predictable pathways for good-faith actors using the proven, bipartisan model established under the brownfield cleanup process. When CERCLA liability slowed brownfield cleanups, the EPA used administrative settlements to protect innocent landowners and local governments. That same authority exists today.

"The EPA's April 2024 enforcement memo on PFAS enforcement explicitly contemplates settlements with passive receivers to protect those entities from third-party claims. These settlements close the liability gap that enforcement discretion leaves open and ensures that polluters pay.

"Administrative settlements are a critical interim solution, but case-by-case agreements are too slow to fully address a nationwide challenge. Recognizing the limitations of EPA's administrative authority, Congress provided a permanent statutory solution through the 2002 Brownfields Amendments. This statutory fix removed the burden of case-by-case settlements by providing lasting legal certainty. This model is a proven framework for good governance, and it is the model we should consider for PFAS.

"Congress must come together to enact a bipartisan solution to minimize future PFAS contamination, develop a clear path to destroy PFAS and protect passive receivers. I am committed to working with members on both sides of the aisle, and I look forward to hearing from our witnesses."

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