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ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM DECEMBER 18, 2025

TO: Members of the Subcommittee on Environment
FROM: Environment Subcommittee Majority Staff
RE: Hearing entitled "Examining the Impact of EPA's CERCLA Designation for Two PFAS Chemistries and Potential Policy Responses to Superfund Liability Concerns"

I. INTRODUCTION

The Subcommittee on Environment will hold a hearing on Thursday, December 18, 2025, at 10:00 a.m. (ET) in 2123 Rayburn House Office Building. The hearing is entitled, "Examining the Impact of EPA's CERCLA Designation for Two PFAS Chemistries and Potential Policy Responses to Superfund Liability Concerns."

II. WITNESSES

- **Susan Bodine, Esq.,** Partner, Earth & Water Law;
- **Lawrence W. Falbe, Esq.,** Chair, International Council of Shopping Centers Environmental and Land Use Policy Committee; and
- **G. Tracy Mehan,** Executive Director, Government Affairs, American Water Works Association
- **Emily Donovan,** Co-Founder, Clean Cape Fear

III. BACKGROUND

A. What are PFAS?

Per- and polyfluoroalkyl substances, often referred to generically as "PFAS," are a group of synthetic chemistries characterized by a chain of two or more carbon and fluorine atoms

linked together.[1] There are nearly 15,000 chemicals within this diverse family of chemicals,[2] and they are generally divided into two classes: nonpolymers and polymers. PFAS chemicals are used for numerous consumer products and industrial purposes due to their strength and durability, including medical devices, electronics, semiconductors, and firefighting foams.[3]

PFAS vary widely in chemical and physical properties, behavior, and potential risks to human health and the environment. Differences in the chemical structure, carbon chain length, degree of fluorination, and chemical functional group(s) of individual PFAS have implications for their mobility, fate, and degradation in the environment, as well as uptake, metabolism, clearance, and toxicity in humans, plants, and animals. Many PFAS are chemically and thermally stable, reduce surface tension, and are resistant to heat, water, and oil. These properties make PFAS useful in many consumer products and industrial processes but also make PFAS persistent in the environment.[4]

PFAS can be categorized by chain length, which refers to the number of carbon atoms.[5] Chain length influences properties such as biological accumulation and mobility.[6] Two particular long-chain chemicals—PFOS and PFOA—were commonly used by industry until the early part of this century but have been phased out, and now legally restricted, under the Toxic Substances Control Act. Most research has typically focused on the health risks of long-chain PFAS, and those risks are more thoroughly documented.[7] According to the Environmental Protection Agency (EPA), more complete information about PFAS exposure and the risks of these different chemicals with different properties is needed.[8]

B. Recent Federal Actions

1. *Regulation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*

On May 8, 2024, EPA published a final rule designating two PFAS—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS)—as hazardous substances under

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[1] U.S. CHAMBER OF COMMERCE, ESSENTIAL CHEMISTRIES: PROVIDING BENEFITS ACROSS THE U.S. ECONOMY 5 (Aug. 2024), https://www.uschamber.com/assets/documents/Essential-Chemistries_-Providing-Benefits-Across-the-U.S.-Economy.pdf.

[2] NAT'L INST. OF ENVTL. HEALTH SCIENCES, *Perfluoroalkyl and polyfluoroalkyl Substances (PFAS)* (May 6, 2025), https://www niehs.nih.gov/health/topics/agents/pfc; AM. CHEMISTRY COUNCIL, *Frequently Asked Questions About PFAS*, https://www.americanchemistry.com/chemistry-in-america/chemistries/fluorotechnology-per-and-polyfluoroalkyl-substances-pfas/frequently-asked-questions-about-pfas (last visited Dec. 12, 2025).

[3] *Id.*

[4] ENVTL. PROT. AGENCY, Multi-Industry Per- and Polyfluoroalkyl Substances Report – 2021 Preliminary Report (Sept. 2021); https://www.epa.gov/system/files/documents/2021-09/multi-industry-pfas-study_preliminary-2021-report_508_2021.09.08.pdf.

[5] ACQUAGGA, *Sorting Through the Science: Understanding the Rule of Short-Chain PFAS in Solid Waste Management*, SOLID WASTE ASSOC. OF NORTH AM. (Jan 23, 2024), https://swana.org/news/blog/swana-post/swana-blog/2024/01/23/sorting-through-science-unearthing-role-of-short-chain-pfas.

[6] *Id.*

[7] *Id.*

[8] ENVTL. PROT. AGENCY, *Increasing Our Understanding of the Health Risks from PFAS and How to Address Them* (Nov. 5, 2025), https://www.epa.gov/pfas/increasing-our-understanding-health-risks-pfas-and-how-address-them.

CERCLA.[9] CERCLA directs EPA to designate as hazardous substances "such elements, compounds, mixtures, solutions, and substances, which, when released into the environment may present substantial danger to the public health or welfare or the environment."[10] This designation triggers several effects.[11] Releases of PFOA and PFOS are subject to CERCLA reporting requirements.[12] With this designation, EPA is also authorized to respond to releases or the threat of releases of these chemistries without a finding that the release may present an imminent and substantial danger to the public health or welfare.[13] Finally, this designation subjects PFOA and PFOS to CERCLA's liability framework.[14] EPA also issued an April 19, 2024, memorandum, *PFAS Enforcement Discretion and Settlement Policy Under CERCLA*.[15] The memorandum stated, "EPA does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA."[16]

2. *Overview of CERCLA*

Enacted in 1980, CERCLA was enacted to authorize federal government cleanup of contaminated sites and to establish a regime to hold "potentially responsible parties" (PRP) liable for the costs of cleaning up those sites.[17] Section 107 establishes financial liability for the following categories of PRPs: (1) any current owner or operator of a facility or vessel; (2) any person who owned or operated a facility at the time hazardous substances were disposed of there; (3) any person who arranged for the disposal or treatment of hazardous substances at a facility or incineration vessel, or who arranged for transport for disposal or treatment of hazardous substances; and (4) any person who transported hazardous substances for disposal or treatment at facilities, incineration vessels, or sites selected by that person.[18] CERCLA authorizes cleanup and EPA enforcement actions when there is an actual or threatened release of a hazardous substance into the environment.[19]

Liability is retroactive, strict, and joint and several.[20] Retroactive liability means that a PRP may be liable for contamination that occurred before CERCLA's enactment.[21] Under strict liability principles, a party is liable regardless of negligence.[22] Finally, joint and several liability

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[9] Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39,124 (May 8, 2024).
[10] Comprehensive Environmental Response, Compensation, and Liability Act § 102(a).
[11] *Hearing to Examine the Future of PFAS Cleanup and Disposal Policy: Hearing Before the Sen. Envtl. And Pub. Works Comm*., 119th Cong (2025) (statement of Kate Bowers, Leg. Attorney, Cong. Research Serv. at 3) [hereinafter CRS EPW Testimony].
[12] § 102.
[13] § 104(a)(1).
[14] *See* CRS EPW Testimony, *supra* note 11, at 3.
[15] ENVTL. PROT. AGENCY, *PFAS Enforcement Discretion and Settlement Policy Under CERCLA* (Apr. 19, 2024), *available at* https://www.epa.gov/enforcement/pfas-enforcement-discretion-and-settlement-policy-under-cercla.
[16] *Id.* at 2.
[17] DAVID BEARDEN, CONG. RESEARCH SERV., R41039, COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT: A SUMMARY OF SUPERFUND CLEANUP AUTHORITIES AND RELATED PROVISIONS OF THE ACT 1 (2012).
[18] Comprehensive Environmental Response, Compensation, and Liability Act § 107(a).
[19] § 106(a)
[20] *See* CRS EPW Testimony, *supra* note 11, at 12.
[21] *Id.*
[22] *Id.*

means that a party can be liable for the entire cost of the cleanup, even if other parties contributed to the contamination.[23]

CERCLA establishes several mechanisms for facilitating cleanup and recovering costs. Under Section 106(a), EPA may issue an order requiring a PRP to take cleanup actions.[24] The federal government, states, or tribes, may also perform cleanup activities, and section 107(a) authorizes them to recover the costs from PRPs.[25] EPA may also enter into voluntary settlement agreements for cleanup.[26] Additionally, when a private party incurs cleanup costs, it may sue another PRP to recover those costs, which is sometimes referred to as a "cost recovery claim."[27] Finally, a private party that has been sued by the federal government or resolved liability with the state or federal government may then assert a "contribution claim" against another PRP to require it to bear an equitable share of the cleanup cost.[28]

CERCLA also authorizes EPA's Brownfields Program to facilitate the redevelopment of "brownfields sites," which CERCLA defines as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."[29] The Brownfields Program provides funding to eligible recipients for assessment, cleanup, multipurpose use, capitalizing revolving loan funds, job training, and technical assistance.[30]

3. *So-Called "Passive Receivers" and Related Policy Concerns*

CERCLA liability for PFAS contamination has raised numerous concerns, particularly for so-called "passive receivers." CERCLA does not define this term or concept, but it is generally used to refer to parties that receive media containing hazardous substances (including PFAS), but that do not manufacture or use those substances themselves.[31] Drinking water treatment plants, wastewater treatment facilities, farmers who land apply biosolids, landfills, and composters have been described a passive receivers in this context.[32] These parties could potentially be responsible for performing cleanups or paying the costs, as well as face liability as defendants in contribution claims of other PRPs.[33] Passive receiver liability has raised questions about how some aspects of the CERCLA liability regime would work in these cases.

For example, the current CERCLA liability defenses may not adequately cover recipients of PFAS contaminated material. Section 107(b) establishes defenses to liability under certain circumstances.[34] In 2002, the Small Business Liability Relief and Brownfields Revitalization Act

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[23] *Id.*
[24] § 106(a).
[25] § 107(a).
[25] § 106(a).
[26] § 122.
[27] § 107(a); CRS EPW Testimony, *supra* note 11, at 13.
[28] § 113(f); CRS EPW Testimony, *supra* note 11, at 15.
[29] § 101(39).
[30] § 104(k).
[31] CRS EPW Testimony, *supra* note 11, at 7.
[32] *Id.*
[33] *Id.*
[34] § 107(b).

amended CERCLA to create additional exemptions for two categories of parties: "bona fide" prospective purchasers, and owners whose properties were contaminated by a substance migrating from a contiguous property owned by another party.[35] It also provided more specific criteria for the applicability of the "third party" defense for so-called "innocent landowners" who acquired a property with no knowledge of existing contamination and had no involvement in the actions that led to the contamination.[36]

The lack of cleanup standards may be a challenge for passive receivers. Under CERCLA, the level of cleanup required is site-specific.[37] Section 121(d) broadly requires cleanup to a standard that protects human health and the environment, and that complies with applicable, relevant, and appropriate requirements (ARAR), which include standards from federal or state laws.[38] Potential passive receivers have expressed concerns with a lack of guidance from EPA regarding cleanup standards and compliance levels.[39]

Additionally, section 107(j) establishes an exemption from CERCLA liability for cleanup costs or damages resulting from a federally permitted release, a release of discharge in accordance with a permit issued under certain federal statutes.[40] Questions remain whether this exemption would apply in certain circumstances, such as if a Clean Water Act permit does not specify effluent limits or pretreatment standards for PFAS, or if a party has a hazardous waste permit and PFAS are further regulated under the Resource Conservation and Recovery Act (RCRA).[41]

4. *Other Regulatory Actions*

On September 17, 2025, EPA announced it would retain the CERCLA hazardous substance designation for PFOA and PFOS issued under the Biden Administration.[42] However, EPA turned to Congress to address the passive receiver issue, stating, "[t]he best, most enduring solution to this issue is a statutory fix to protect passive receivers from liability."[43]

On April 28, 2025, EPA Administrator Lee Zeldin outlined a series of agency actions to address PFAS concerns.[44] These included designating an agency lead for PFAS to synchronize PFAS efforts across EPA programs; identifying and addressing information gaps; providing more frequent updates to EPA's PFAS Destruction and Disposal Guidance; developing effluent

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[35] Small Business Liability Relief and Brownfields Revitalization Act § 221,222; BEARDEN, *supra* note 17, at 17-18.
[36] § 223.
[37] CRS EPW Testimony, *supra* note 11, at 1.
[38] Comprehensive Environmental Response, Compensation, and Liability Act § 121(d).
[39] *Hearing to Examine the Future of PFAS Cleanup and Disposal Policy: Hearing Before the Sen. Envtl. And Pub. Works Comm*., 119th Cong (2025) (statement of Leah Pilconis, Gen. Counsel, Assoc. Gen. Contractors of Am.)
[40] § 107(j)
[41] CRS EPW Testimony, *supra* note 11, at 11.
[42] Envtl. Prot. Agency, Trump EPA Announces Next Steps on Regulatory PFOA and PFOS Cleanup Efforts Provides Update on Liability and Passive Receiver Issues (Sept. 17, 2025), https://www.epa.gov/newsreleases/trump-epa-announces-next-steps-regulatory-pfoa-and-pfos-cleanup-efforts-provides.
[43] *Id.*
[44] Envtl. Prot. Agency, Administrator Zeldin Announced Major EPA Action to Combat PFAS Contamination (Apr. 28, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-announces-major-epa-actions-combat-pfas-contamination.

limitation guidelines for PFAS manufacturers; and advancing remediation and cleanup efforts where PFAS contamination has affected water supplies.[45] Under the previous Trump Administration, EPA released a PFAS Action Plan, identifying regulatory and enforcement tools EPA would leverage to address PFAS contamination.[46]

In addition to CERCLA, EPA recently has utilized other authorities to address PFAS exposure and contamination. On April 26, 2024, EPA published national primary drinking water regulations for six PFAS, including PFOA and PFOS.[47] On May 14, 2025, EPA announced it would retain the 2024 rule's standards for PFOA and PFOS, but it intends to rescind the regulations and reconsider the determinations for the other PFAS.[48] Additionally, on February 8, 2024, EPA issued a proposed rule listing nine specific PFAS as "hazardous constituents under RCRA."[49] Additionally, per "FAQs" EPA issued recently, "Brownfields Grant recipients who wish to use funding to assess and cleanup sites with PFOA or PFOS must demonstrate that they cannot be held potentially liable under CERCLA § 107 for the contamination at the brownfield site."[50] On November 13, 2025, EPA published a proposed rule to modify reporting and recordkeeping requirements promulgated in October 2023 under the Toxic Substances Control Act.[51] Finally, in the wake of a recent pesticide approval for pesticides with a single fluorinated carbon, EPA published additional information to combat misinformation conflating health concerns associated with certain PFAS with these products.[52]

C. Litigation on Contamination and State Activity

Various organizations filed suit to challenge the 2024 PFOA and PFOS designation under CERCLA, and these challenges were consolidated into a single case still pending before the U.S. Court of Appeals for the D.C. Circuit.[53] In February 2025, the appellate court granted EPA's motion to hold the case in abeyance while the new administration considers the designation. Once EPA decided to maintain the designation, it moved to lift the abeyance, and the litigation continues in federal court.[54] PFAS litigation based on other state and federal laws has continued for several years.[55] In certain PFAS-related litigation, some plaintiffs in preexisting litigation have amended their complaints to add CERCLA claims following the designation.[56]

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[45] *Id.*
[46] ENVTL. PROT. AGENCY, EPA'S PER- AND POLYFLUOROALKLYL SUBSTANCES (PFAS) ACTION PLAN (2019), https://www.epa.gov/sites/default/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf.
[47] PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32,532 (Apr. 26, 2024).
[48] Envtl. Prot. Agency, EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS (May 14, 2025), https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos.
[49] Listing of Specific PFAS as Hazardous Constituents, 89 Fed. Reg. 8606 (Feb. 8, 2024).
[50] ENVTL. PROT. AGENCY, *FAQs: What EPA's Designation of PFOA and PFOS as CERCLA Hazardous Substances Means for EPA's Brownfields and Land Revitalization Program*, https://www.epa.gov/brownfields/faqs-what-epas-designation-pfoa-and-pfos-cercla-hazardous-substances-means-epas (last updated Dec. 5, 2025).
[51] Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, 90 Fed. Reg. 50,923 (Apr. 13, 2025).
[52] Envtl. Prot Agency, Fact Check: EPA Debunks False Claims that Agency Recently Approved "Forever Chemicals" in Pesticides, Nov. 26, 2025, https://www.epa.gov/newsreleases/fact-check-epa-debunks-false-claims-agency-recently-approved-forever-chemical.
[53] CRS EPW Testimony, *supra* note 11, at 9-10.
[54] *Id.* at 10.
[55] *Id.*
[56] *Id.* at 20-21.

Over the last two years, dozens of states have considered or enacted product bans and testing mandates.[57] For example, twenty states ban PFAS in any paper food packaging, and more will do so beginning in 2027.[58] Additionally, states such as Maine, Washington, and New York have banned PFAS in certain products, cosmetics, and textiles.[59]

D. Previous Congressional Activity

In October 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing, "Exposing EPA Efforts to Limit Chemicals Needed for Life-Saving Medical Devices and Other Essential Products."[60] Members and witnesses discussed the critical uses of certain PFAS, and the potential impact of certain regulatory actions on PFAS, including the CERCLA designation.[61]

The Senate Environment and Public Works Committee held a November 19, 2025, hearing to examine PFAS cleanup and disposal policy.[62] Witnesses described implications of the 2024 PFOA and PFOS hazardous substance designation and outlined concerns for passive receivers.[63]

In addition to holding hearings, Members of Congress have also introduced legislation to address passive receiver liability concerns. In the 118th Congress, Senator Cynthia Lummis (R-WY) introduced five bills to provide exemptions for liability under CERCLA for PFAS contamination for specific categories of passive receivers.[64] This Congress, Representative Maria Gluesenkamp Perez (D-WA) introduced H.R. 1267, the Water Systems PFAS Liability Protection Act, to exempt water systems from liability.[65]

IV. Topics for Discussion and Questions to Consider

Discussion at the hearing may include the following topics:

- What are major uses of PFAS and how will the CERCLA designation impact critical uses of PFAS chemicals generally?

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[57] Brownstein, *The Evolving PFAS Landscape: State Bans, Federal Standards and Legal Exposure* (Nov. 4, 2025), https://www.bhfs.com/insight/the-evolving-pfas-landscape-state-bans-federal-standards-and-legal-exposure/.
[58] *Id.*
[59] *Id.*
[60] *Exposing EPA Efforts to Limit Chemicals Needed for Life-Saving Medical Devices and Other Essential Products.: Hearing Before the Subcomm. on Envt., Mfg., and Critical Materials*, 118th Cong. (2023).
[61] *Id.* (statement of Chris Jahn, President and Chief Exec. Officer, Am. Chem. Council) (listing essential uses of PFAS and costs of CERCLA designation).
[62] *Hearing to Examine the Future of PFAS Cleanup and Disposal Policy: Hearing Before the Sen. Envtl. And Pub. Works Comm*., 119th Cong (2025).
[63] *Id.* (statement of Leah Pilconis, Gen. Counsel, Assoc. Gen. Contractors of Am.).
[64] *See* Sen. Cynthia Lummis, Lummus Introduces Legislation to Protect Industries from Frivolous Lawsuits (May 4, 2023), https://www.lummis.senate.gov/press-releases/lummis-introduces-legislation-to-protect-industries-from-frivolous-lawsuits/.
[65] Water Systems PFAS Liability Protection Act, H.R. 1267, 119th Cong. (2025).

- Does the current CERCLA liability scheme, including defenses and exemptions, function adequately for PFAS contamination?

- What additional guidance should Congress or the EPA provide to manufacturers, users, and passive receivers of PFAS?

- How could Congress address concerns about liability for passive receivers while still holding parties responsible for contamination accountable?

- How do concerns about PFAS liability impact the redevelopment of brownfields sites, and do the 2002 Brownfield amendments to CERCLA provide a model for Congress in how it can respond to PFAS contamination?

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Byron Brown or Christi Harsha of the Committee Staff at (202) 225-3641.