

November 7, 2022

Submitted electronically to: <https://www.regulations.gov>

Ms. Michelle Schutz
Office of Superfund Remediation and Technology Innovation (5202T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OLEM-2019-0341; Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances

Dear Ms. Schutz:

The undersigned organizations—representing “passive receivers” of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) that may be present in drinking water, wastewater, and solid waste facility influent—are concerned that the U.S. Environmental Protection Agency’s (EPA’s) proposal to designate these compounds as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), without accompanying relief, could result in significant increased costs for essential public service providers and the communities they serve while undercutting the Administration’s broader human health and environmental protection goals.

Drinking water treatment plants, municipal wastewater treatment facilities, and solid waste landfills and composting facilities neither manufacture nor use per- and polyfluoroalkyl substance (PFAS); instead, they are passive receivers of media containing PFAS—compounds that are ubiquitous in the stream of commerce and environment. Each of these public services is interdependent; landfills rely on wastewater treatment facilities for their leachate discharge while water and wastewater treatment facilities depend on landfills for biosolids management and disposal of spent water filtration systems. Designating PFOA and PFOS as CERCLA hazardous substances would disrupt this interdependence by driving each sector to revisit its acceptance of influent streams containing concentrations of PFOA and PFOS.

CERCLA designation thus would lead to significant cost increases on public service providers and the communities they serve while impeding EPA’s commitments espoused in the agency’s PFAS Strategic Roadmap:

- There currently are no cost-effective techniques available to treat or remove PFOA or PFOS for the sheer volume of drinking water, wastewater, and landfill leachate managed daily by passive receiver facilities, as advanced treatment techniques at this scale are very costly. Undertaking additional treatment for PFOA and PFOS would add significantly to the costs of facility operation.
- Drinking water and wastewater facilities must manage media containing concentrations of PFOA and PFOS generated from influent treatment. The management of biosolids via incineration or land application, for example, is under increasing scrutiny in many states, and any additional disruption to available disposal outlets could result in additional cost increases for wastewater treatment.
- Passive receivers could be held liable for the entire cost of cleanup of a contaminated site, both on a prospective basis and for lawful activities going back decades. Regardless of EPA’s use of enforcement discretion in initiating remedial actions, CERCLA designation would result in third-party contribution and cost recovery claims, likely leading to substantial litigation costs for public service providers and the communities they serve.
- These foreseeable cost increases, combined with actions taken by passive receivers to curtail acceptance of influent with concentrations of PFOA or PFOS, could impact the ability of some public service providers to continue operating, frustrate EPA cleanup activities around military installations and other affected communities, and disproportionately impact low-income communities that rely on the affordability of passive receiver services.

The undersigned organizations recommend that EPA, the Interagency Policy Committee on PFAS, and the broader Administration acknowledge the full unintended consequences of the proposed rule, evaluate all relevant authorities that could provide relief to passive receivers and the communities they serve, and reinstate the “polluter pays” principle of the statute in lieu of a “community pays” approach in which public service providers would be subject to CERCLA liability. Thank you for your consideration of our input, and we look forward to continuing to partner with EPA on actions to address PFAS under the PFAS Strategic Roadmap.

Sincerely,



Scott D. Grayson, CAE
Chief Executive Officer
American Public Works Association



David Biderman
Executive Director & Chief Executive Officer
Solid Waste Association of North America



Matthew D. Chase
Chief Executive Officer & Executive Director
National Association of County Officials



Frank Franciosi
Executive Director
U.S. Composting Council



Clarence E. Anthony
Chief Executive Officer & Executive Director
National League of Cities



Tom Cochran
Chief Executive Officer & Executive Director
U.S. Conference of Mayors



Darrell K. Smith
President & Chief Executive Officer
National Waste & Recycling Association



Gerard J. Neuser
Chair
Wisconsin Counties Solid Waste Management
Association



Janine Burke-Wells
Executive Director
North East Biosolids & Residuals Association