

# PFAS/CERCLA Liability: Ten Water Sector Associations Request Exemption



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Ten water sector associations sent an April 28th joint letter to key United States Senate and House of Representatives Committee Chairmen and Ranking Members seeking an exemption from the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") if PFAS chemicals are designated as hazardous substances.

The 10 water sector associations jointly executing the letter include:

- American Water Works Association
- Association of Metropolitan Water Agencies
- National Association of Clean Water Agencies
- National Association of Water Companies
- National Rural Water Association
- National Water Resources Association
- Water Environment Federation
- WaterReuse Association
- Association of California Water Agencies
- California Association of Sanitation Agencies

The organizations represent United States utilities involved in providing drinking water, wastewater, and water reuse services.

PFAS have been used in various industrial applications and consumer products such as:

- Fabrics for furniture
- Paper packaging for food and other materials resistant to water, grease or stains
- Firefighting at airfields
- Utilization in several industrial processes

They have been described as persistent in the environment and resist degradation.

Designation of PFAS as a CERCLA hazardous substance would trigger certain corresponding requirements such as:

- Application of the potentially responsible liability categories (i.e., current owner or operator, former owner or operator [in certain circumstances], transporter [in certain circumstances], and generators)
- Hazardous substance release reporting requirements (if reportable quantities are released)

The 10 organizations are asking that Congress explicitly exempt public wastewater, drinking water, stormwater, and water reuse utilities from PFAS liability under CERCLA.

The arguments put forth in support of this exemption include:

- Congress should reject any policy that seeks to shift the burden for PFAS cleanups onto the public
- Congress has protected certain entities in the past from CERCLA liability
- PFAS designation would have severe unintended consequences on water systems that have played no role in producing, using, or profiting from PFAS being placed into commerce
- Without a water sector exemption cleanup liability will be imposed upon utilities protecting public health and safety but not on chemical and manufacturing companies who placed the substances into commerce as useful products
- Water, wastewater, stormwater, and water reuse systems passively receive PFAS from various sources
- Absent an exemption for water, wastewater and water reuse sectors increased management costs for byproducts created during normal water and wastewater treatment process would occur
- While the United States Environmental Protection Agency may not seek to target local utilities as CERCLA potentially responsible parties, contribution actions could be filed by responsible parties

A copy of the letter can be downloaded [here](#).