

# PFAS/CERCLA Liability: National Waste & Recycling Association/Solid Waste Association of North America Ask Congress for Exemption



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05/27/2022

The National Waste & Recycling Association (“NWRA”) and Solid Waste Association of North America (“SWANA”) sent a May 10th joint letter to the Chairmen and Ranking Members of the leadership of the following Congressional committees:

- U.S. Senate Environment and Public Works
- U.S. House of Representatives Transportation and Infrastructure
- U.S. House of Representatives Energy and Commerce

NWRA and SWANA are requesting an exemption from the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) if PFAS chemicals are designated as hazardous substances.

The organizations represent the municipal solid waste management sector.

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

The substances 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 overall concern of NWRA and SWANA is that:

... regulation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) instead would assign environmental cleanup liability to essential public services and their customers.

They ask that Congress provide municipal solid waste landfills and other passive receivers with:

. . . a narrow exemption from liability if certain PFAS are designated as hazardous substances under CERCLA.

The arguments put forth in support of this exemption include:

- Landfills neither manufacture nor use PFAS but instead receive discarded materials containing PFAS that are ubiquitous in residential and commercial waste streams
- Landfills are essential public services that are subject to extensive federal, state, and local environmental, health, and safety requirements and are important to managing and limiting PFAS in the environment.
- Permitting authorities often require landfills to accept waste streams containing PFAS
- Landfills rely on wastewater treatment facilities for leachate management and wastewater and drinking water facilities rely on landfills for biosolids management (efforts to address PFAS at municipal solid waste landfills in drinking water and wastewater facilities must avoid disrupting such interdependence among essential public services
- Landfill leachate typically represents a minor proportion of the total quantity of PFAS received at wastewater treatment facilities from all sources in contrast to PFAS manufacturers or users (generating significant litigation costs)
- Removing PFAS from landfill leachate would require advanced treatment techniques which are prohibitively expensive
- Without a CERCLA exemption, manufacturers and heavy users of PFAS compounds will bring claims for contribution against landfills and other passive receivers
- The United States Environmental Protection Agency exercise of enforcement discretion regarding CERCLA cost recovery actions would not insulate landfills from the previously referenced contribution litigation
- Costs addressing PFAS by municipal solid waste landfills will be passed along to communities
- Absent a CERCLA exemption landfills may be forced to restrict inbound waste and/or increase disposal costs for media with elevated levels of PFAS
- Food waste may contain PFAS due to contact with PFAS-lined packaging materials

The joint letter contains proposed language that would be inserted into CERCLA providing the requested exemption.

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