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PFAS CERCLA (Superfund) Liability: Congressional Letter Requesting Equal Treatment (Enforcement Discretion) for Privately Owned/Operated Municipal Solid Waste Landfills

06/19/2023

Congressman Mike Thompson (California) transmitted a June 2nd letter to U.S. Environmental Protection Agency ("EPA") Administrator Michael S. Regan asking for:

... equal treatment for publicly and privately owned/operated municipal solid waste landfills in EPA's proposed regulation of PFAS chemicals under CERCLA.

PFAS are a group of man-made chemicals that have been used in various industrial applications and consumer products for a number of years.

EPA has proposed to designate certain PFAS (including their salts and structural isomers) as Comprehensive Environmental, Response, and Liability Act ("CERCLA") hazardous substances.

Designation of PFAS as a CERCLA hazardous substance would trigger 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).

Concerns have been expressed by various interest groups that they would be unfairly encompassed and subject to Superfund liability/reporting requirements.

An example are facilities represented by the National Waste and Recycling Association and Solid Waste Association of North America. They argue that landfills, solid waste management facilities, and recycling facilities neither manufacture nor use PFAS but instead receive discarded materials containing PFAS that are ubiquitous in residential and commercial waste streams.

The June 2nd letter from Congressman Thomas notes that EPA has previously announced plans to draft an enforcement discretion policy stating that:

... the agency may choose not to take CERCLA enforcement action against certain entities, to include "publicly owned/operated municipal solid waste landfills."

Congressman Thompson states that:

- EPA has not specified why it would limit the enforcement discretion policy to publicly owned/operated municipal solid waste landfills.
- Nearly half of municipal solid waste facilities in the U.S. are privately-owned.
- Both publicly and privately owned landfills receive municipal solid waste from public and private customers
- Such privately owned landfills are also essential public services that are subject to the same federal and state regulatory requirements.
- There does not appear to be any public benefit to regulating public and private landfills differently.

As a result, Congressman Thompson asked that EPA provide full and fair consideration in providing equal treatment for both publicly and privately owned/operated municipal solid waste landfills.

Note that United States Senator John Boozman (Arkansas), along with other Senators, has introduced five bills to ensure certain industries and municipalities are not subject to CERCLA liability if EPA designates PFAS compounds as hazardous substances. The legislation includes solid waste management facilities (as defined in Section 1004 of the Solid Waste Disposal Act) along with a number of other facilities such as:

- Agriculture
- Airports
- Entities with fire suppression systems
- Water systems or publicly owned treatment works

A link to a blog post addressing Senator Boozman's legislation can be found [here](#) and Congressman Thompson's letter [here](#).