PFAS Policy and Practice:
The Role of Local Government and Essential Public Services

What are PFAS? PFAS, or per- and polyfluoroalkyl substances, are a large family of fluorinated chemical compounds that are ubiquitous in the stream of commerce as they are used in a wide variety of applications for their ability to resist grease, oil, water, and heat. These compounds are known as "forever chemicals" because they do not break down easily in the environment and can persist for extended periods. Some studies have linked certain PFAS compounds to various adverse health effects.

Who are Passive Receivers of PFAS? "Passive receivers" are public and private entities that do not manufacture or use PFAS but unintentionally receive these substances through contaminated media due to their widespread use. These include drinking water, wastewater treatment, stormwater management, water recycling facilities, municipal solid waste landfills, and composting facilities. These sectors are essential public services and are interdependent; for example, landfills rely on wastewater treatment facilities for their leachate discharge while water and wastewater treatment facilities depend on landfills and compost facilities for biosolids management and disposal of spent water filtration systems.

How are Passive Receivers Impacted by Federal Regulation?

- In May 2024, EPA designated two PFAS compounds as CERCLA hazardous substances.
- Under CERCLA, strict, joint and several, and retroactive liability can be imposed on any potentially responsible party (PRP) potentially connected with the presence of a hazardous substance at a site where EPA conducts—or directs other PRPs to conduct—cleanup activities. Because passive receivers have handled PFAS materials as an incidental and unavoidable part of their operations, they could be designated as PRPs under CERCLA.
- Any single PRP can be pursued by EPA, or by other PRPs, to pay for cleanup activities, regardless of the size of that party's contribution to the contamination.
- With the designation of PFAS as a CERCLA hazardous substance, EPA, manufacturers of PFAS, and other parties who bear true responsibility for PFAS contamination can pursue passive receivers through legal actions to defray their own cleanup costs.

Why Should You Care? Passive receivers will face significant litigation costs for lawful operations going back decades, which will result in those costs being passed on to the public. This would shift the "polluter pays" principle of CERCLA to that of a "community pays" model that places the burden of compliance and cleanup onto ratepayers and other entities that rely on the essential public services passive receivers provide.

How Can Congress Act? Congress has previously granted equitable statutory relief from CERCLA liability to similar classes of uniquely situated parties on numerous occasions. Given that EPA lacks sufficient authority to shield passive receivers from CERCLA contribution litigation, Congress should similarly provide a narrow liability exemption for owners and operators of passive receiver facilities.

June 2025

The Environmental Protection Agency (EPA) last year promulgated a rule to designate certain types of PFAS, perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), as hazardous substances under CERCLA. This rule could have the unintended effect of exposing water systems, which neither manufacture nor profit from PFAS, to significant liability, increasing water bills and allowing PFAS polluters to skirt their cleanup responsibility.

Congress can enact statutory liability protections to shield water system ratepayers from these costs.

Regulatory Status

CERCLA was designed by Congress to hold polluters accountable for releases of hazardous substances into the environment. Unfortunately, because PFAS are prevalent in our society and often find their way into water supplies, this EPA rule would leave water utilities exposed to significant legal liability. Even if a utility follows all applicable laws relating to PFAS treatment, handling, and disposal, they could still be brought into a liability chain for PFAS that may have passed through their system decades ago, well before the harm of PFAS was known.

Recognizing these risks, EPA has promised to exercise enforcement discretion for CERCLA PFAS cases, and not pursue cost recovery against innocent water systems. Unfortunately, that discretion can only cover cases brought by EPA. It offers no protection to water systems from being targeted to share in liability by private parties, like chemical manufacturers – a huge injustice where the entities that profited from PFAS production could make the public pay for its cleanup. PFAS manufacturers will almost certainly exploit this loophole in the CERCLA statute to decrease their clean-up costs and defray their legal liabilities. Further, EPA's policy could be rescinded by future administrations, meaning water systems could not be confident that EPA's discretion would exist in the future.

Future Costs

Water systems – and ultimately their ratepayers – are already projected to be financially strained from the cost of compliance with future EPA regulations for PFAS under the Safe Drinking Water Act and Clean Water Act. Drinking water utilities will need to invest $50 billion over the next twenty years to treat for PFAS, which equates to anywhere from $120 to $1,700 annually per ratepayer. Certain operational costs for clean water utilities will increase by up to 60% per year. Ratepayers in rural communities with smaller customer bases will be the most severely impacted.

The cost of CERCLA litigation will be ***in addition*** to these costs – meaning the public, already paying to remove PFAS pollution from water supplies, will now also be responsible for untold legal and environmental remediation costs. With Americans already paying higher prices, the last thing that families should be facing are additional substantial increases in water rates to pay for a problem they did not create, and for which chemical companies made untold profits.

Congressional Action

It is critical that Congress moves quickly to ensure water systems and their ratepayers are protected. This Congress, Reps. Marie Gluesenkamp-Perez (D-WA) and Celeste Maloy (R-UT) introduced H.R. 1267, *the Water Systems PFAS Liability Protection Act*, which would ensure that water utilities can continue to focus their efforts on maintaining water quality rather than defending themselves when polluters seek to dilute their liabilities. We look forward to working with Congress to ensure that H.R. 1267 is passed into law.