

Examining PFAS as Hazardous Substances: U.S. Senate Environment and Public Works Hearing



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04/04/2024

The United States Senate Environment and Public Works Committee held a March 20th Hearing titled:

Examining PFAS as Hazardous Substances.

One of the purposes of the hearing was to discuss the issues associated with designating PFAS chemicals as Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) hazardous substances.

PFAS are a group of man-made chemicals that have been used in various industrial applications and consumer products for a number of years. They have been described as persistent in the environment and resist degradation. Potential pathways to human exposure to PFAS include drinking water, air, or food.

EPA has previously proposed to designate certain PFAS chemicals as hazardous substances.

Designation of PFAS as CERCLA hazardous substances trigger corresponding requirements such as:

- Application of the potentially responsible liability categories (i.e., current owner/operator, former owner/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 CERCLA liability/reporting requirements. For example, public-owned treatment works (“POTWs”) receive discharges that may contain PFAS from some commercial and industrial sources.

Other groups expressing concern include those representing utilities involved in providing drinking water and water reuse services. In addition, organizations such as the National Waste and Recycling Association and Solid Waste Association of North America have argued that landfills, solid waste management facilities, and recycling facilities, neither manufacture nor use PFAS but instead receive discarded materials containing PFAS or containing the substances that are ubiquitous in residential and commercial waste streams.

United States Senators John Boozman (“Arkansas”) and Cynthia Lummis (“Wyoming”) have in fact introduced legislation to ensure these and other passive receptors are not subject to CERCLA liability in the appropriate circumstances. The previously referenced interest groups and others such as the American Farm Bureau have requested such an exemption.

The witnesses testifying at the hearing included:

- Kate R. Bowers – Legislative Attorney, American Law Division, Congressional Research Service

- Scott Faber – Senior Vice President of Government Affairs, Environmental Working Group
- The Honorable James Kenney – Secretary, New Mexico Department of Environment
- Michael D. Witt – General Counsel, Passaic Valley Sewerage Commission (testifying on behalf of the Water Coalition Against PFAS)
- Robert Fox – Partner, Manko Gold Katcher Fox, Limited Liability Partnership (testifying on behalf of the National Waste and Recycling Association & Solid Waste Association of North America)

A link to the video of the hearing and the witnesses' statements that address these and related issues can be downloaded [here](#).