Examining the Future of PFAS Cleanup and Disposal Policy: U.S. Senate Environment and Public Works Committee Hearing

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The United States Senate Environment and Public Works Committee held a hearing on November 19th titled:

Examining the Future of PFAS Cleanup and Disposal Policy ("Hearing").

Arkansas Senator Boozman serves in the Majority on the Environment and Public Works Committee.

The purpose of the Hearing was to discuss:

- Impact of PFAS cleanup and disposal on infrastructure investment .
- Issues that arise for project managers.
- Potentially affected projects involving airports, roads, bridges, and water systems.
- Absence of a clear framework addressing:
- Contaminated soil disposal options.
- Applicable soil cleanup standards.
- Parties that are liable.
- Absence of federal soil action levels.
- Impact on project costs because of the difficulty of pricing liability risk.
- Providing predictable pathways for good-faith actors using the Brownfield cleanup process.
- Use of destruction technology for locations with higher concentrations of PFAS.

The three witnesses providing testimony included:

- Eric Gerstenberg
- Co-Chief Executive Officer, Clean Harbors
- Testimony addressed:
- RCRA framework
- Clean Harbors background
- PFAS destruction testing & partnership with EPA and Pentagon
- Disposal Hierarchy, Solutions, and Hierarchy
- Leah Pilconis
- General Counsel, Associated General Contractors of America
- Testimony addressed:
- PFAS is creating significant costs now, even without federal cleanup orders under CERCLA.

- Increased Trucking and Handling Costs
- Increased Disposal Costs
- Increased Consulting, Testing, and Insurance Costs
- Reduced Use of Recycled Construction Materials
- CERCLA Creates Unique and Disproportionate Liability Risks for Contractors
- PFAS Magnifies Contractual Risk and Is Disrupting Insurance Markets
- Insurance Coverage Is Collapsing Under PFAS Pressure
- Exclusions for “emerging contaminants”
- PFAS exclusions increasingly added
- PFAS Liability Is a Direct Threat to Infrastructure Affordability
- PFAS Enforcement Discretion, Settlements and Cost Recovery
- AGC Member Examples – Increased Contract Risk
- AGC Member Examples - Increased Disposal and Transport Costs
- Kate R. Bowers
- Supervisory Attorney, Congressional Research Service
- Testimony addressed:
- Federal Response Authority and Overview of Cleanups
- Overview of Liability Under CERCLA
- Who May Be Liable Under CERCLA
- Definition of Release
- Definition of Hazardous Substance
- EPA’s 2024 Designation
- Other Definitions of Hazardous or Toxic Substances
- Scope of Liability
- Federal Enforcement Mechanisms
- Suits by Private Parties to Recoup Cleanup Costs
- Defenses to and Limitations on Liability
- EPA’s Enforcement Discretion
- Federally Permitted Releases
- Limitation on EPA’s Enforcement Authority for State-Law Responses
- Recent PFAS Litigation Under CERCLA
- Options for Congress

A link to the Hearing information including transcripts of testimonies can be found here.