



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

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March 18, 2024

The Honorable Tom Carper
Chairman
U.S. Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Request for Stakeholder Comments on Draft PFAS Legislation

Dear Chairman Carper and Ranking Member Capito:

On behalf of the nearly 32,000 members of the American Public Works Association (APWA), we appreciate the opportunity to submit comments on the draft per- and polyfluoroalkyl substances (PFAS) legislation. APWA includes not only personnel from local, county, state, and federal agencies, but also private sector personnel with direct oversight and involvement in our nation's water and waste systems and consequently many of them have much experience facing the challenge of PFAS contamination. The pervasiveness of these substances means our members across the country are passionately working on this issue from engaging their elected officials, to educating larger audiences about efforts in [local](#) and [national](#) media outlets to testifying on panels [directly on the Hill](#).

For decades limited guidance and resources were provided regarding PFAS, yet many public works professionals were at the forefront learning and addressing pollution from "forever chemicals" in the communities they serve. Therefore, we appreciate your work on this legislation and strong desire to provide investments in more economical and improved methods for evaluation, reduction, destruction, and remediation of PFAS. APWA has consistently supported standards and practices that are informed by thorough research and peer-reviewed scientific studies in collaboration with public works professionals responsible for implementation and remediation. Concurrently, APWA wants to make certain those standards are enforced appropriately, and practices are understood and followed accordingly.

As part of these efforts to provide greater clarity and more expeditiously address PFAS contamination, we urge inclusion of liability protections for "passive receivers" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that apply to all public works.

As we have [communicated](#) to the committee previously in coalition with other concerned organizations, passive receivers such as **public works facilities that abided by best practices for treatment and disposal**



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should not be held liable for something they did not create. However, parties who did release “the chemicals as a result of gross negligence or willful misconduct” should be held accountable for their actions. We have stressed this in correspondence with not only Congress, but also multiple times with regulatory bodies and agency officials.¹²³

To open public works to unjust litigation from third-party “contribution claims” under CERCLA would not meaningfully contribute to accountability, which already exists under other statutes and agency oversight. Instead, it would risk consuming substantial resources through legal expenses and lengthy proceedings that could unnecessarily delay or stop improvements to infrastructure including addressing PFAS. In fact, facilities with extremely limited resources and serving some of the most vulnerable populations would be most adversely affected by such litigation. Many such water and waste systems are only recently receiving long-needed assistance from the Infrastructure Investment and Jobs Act (IIJA) to address noncompliance with existing regulations.

Already the uncertainty of future legal risks is creating disruptions with rising costs and wastewater treatment plants rejecting leachate from landfills over contamination fears and landfills refusing to accept waste from water facilities for the same concerns. Meanwhile, farmers suffering from a fertilizer shortage could face further exacerbation by losing access to biosolids, which are composed of solid organic matter recovered from the sewage treatment process. There has been a rapid increase in litigation surrounding these chemicals and ongoing cases appear unlikely to resolve questions of culpability. These legal costs will ultimately be passed on from water and waste systems to customers who will pay higher rates for services than they otherwise would for the same improvements.

Our members are already anticipating and preparing for a multitude of PFAS and other regulatory changes that they will be subject to including effluent guidelines, lead service line removals, and drinking water standards. Costs from these proposed changes are already anticipated to put significant financial strain on waste and water infrastructure. A [comprehensive study](#) recently released by the state of Minnesota’s pollution control agency showed removing PFAS from the state’s wastewater streams alone is projected to cost \$14 billion to \$28 billion over the next twenty years. We appreciate Congress appropriating significant funds in IIJA to address PFAS contamination and in turn our members want to be good stewards of those funds. To add costs from litigation under CERCLA would pointlessly exacerbate already challenging budget planning and be a disservice to taxpayers.

¹ [APWA Comments on Designation of PFOA and PFOS as CERCLA Hazardous Substances](#)

² [Coalition Comments on Designation of PFOA and PFOS as CERCLA Hazardous Substances](#)

³ [Coalition Letter on Advanced Notice of Proposed Rulemaking: Addressing PFAS in the Environment](#)



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APWA also appreciates EPA's engagement on this challenging problem from their promise of using "enforcement discretion and other approaches to ensure fairness for minor parties who may have been inadvertently impacted by the contamination" to the agency's commitment to, "further outreach and engagement to hear from impacted communities, wastewater utilities, businesses, farmers and other parties." However, as EPA has stated it is not within their power to safeguard passive receivers of PFAS from liability under CERCLA, which is why we ask Congress to please include such protections in this legislation when finalized. To not do so would risk placing a higher burden on facilities like public works than those responsible for creating these contaminants.

APWA members pride themselves on being committed to public service by profession and being a resource for federal initiatives is just another way we work to protect our communities. If APWA may be of further assistance, please contact Ryan McManus, APWA Government Affairs Manager, at rmcmanus@apwa.org or 202-218-6727.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Scott D. Grayson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Scott D. Grayson, CAE
Chief Executive Officer

A handwritten signature in black ink that reads "W. Gary Losier". The signature is written in a cursive style with a long horizontal flourish extending to the right.

W. Gary Losier, PEng
APWA President