

CERCLA Myths Talking Points

Local governments and utilities responsible for safeguarding public health and the environment are seeking relief from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for passive receivers of media containing per- and polyfluoroalkyl substances (PFAS). The purpose of this document is to dispel several myths raised by groups opposing the request by passive receivers:

Myth: EPA Can Protect Passive Receivers Without the Need for Legislative Action. It is true that EPA may settle and provide CERCLA contribution protection to individual parties; however, pursuing settlements on a case-by-case basis with thousands of passive receivers would be extraordinarily time-consuming and costly for essential public services, communities, and the federal government. Further, EPA enforcement discretion could be revoked by future administrations and does not preclude states from initiating their own enforcement actions.

Myth: Statutory Relief Would Disincentivize Passive Receivers from Monitoring and Managing PFAS Responsibly. Passive receivers pride themselves in providing essential public health and environmental protection services. Water and wastewater utilities safely treat and recycle water for a range of beneficial uses. This is buttressed by extensive federal, state, and local environmental, health, and safety requirements involving water use and environmental releases; accordingly, CERCLA relief would not absolve passive receivers from taking responsibility for managing wastes containing PFAS. Statutory relief would shield essential public services and the communities they serve from CERCLA contribution claims for previously lawful actions going back decades and ensure full accountability remains with the corporations that produced the contaminants.

Myth: Passive Receivers Can Manage PFAS Like Any Other Hazardous Substance. PFAS are unlike other hazardous substances due to their ubiquity in the waste stream, emerging standards that are lower than the detection limits of current analytical methods, and the lack of treatment technologies capable of achieving total PFAS removal.

Myth: Statutory Relief is Unprecedented and Would Destabilize the Superfund Program. CERCLA has been amended numerous times to provide equitable relief to a diverse range of interests, including for “innocent” owners of property and generators and transporters of recyclable materials, without inhibiting EPA from achieving the core mission of the Superfund program. See 42 U.S.C. §§ 9601(14) and (22), 9604(a)(3), 9607(i)-(j) and (n)-(r), 9619, and 9627. Similarly, affording relief to passive receivers would not impede EPA efforts at identifying other potentially responsible parties and in facilitating the timely cleanup of contaminated sites.