



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.