



August 11, 2023

Submitted electronically to: <https://www.regulations.gov>

The Honorable Michael Regan,
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Addressing Per- and Polyfluoroalkyl Substances in the Environment, Advance Notice of Potential Rulemaking (ANPRM); Docket ID No. EPA-HQ-OLEM-2022-0922

Dear Administrator Regan:

The National Waste & Recycling Association (NWRA) and Solid Waste Association of North America (SWANA) are pleased to submit comments on the U.S. Environmental Protection Agency's (EPA's) Advance Notice of Potential Rulemaking (ANPRM) on Addressing Per- and Polyfluoroalkyl Substances in the Environment, Docket ID No. EPA-HQ-OLEM-2022-0922. NWRA and SWANA represent companies, municipalities, and professionals in the solid waste industry. NWRA is a not-for-profit trade association representing private solid waste and recycling collection, processing, and management companies that operate in all fifty states. SWANA is a not-for-profit professional association in the solid waste management field with more than 10,000 members from both the private and public sectors across North America. Members of both organizations strive to deliver collection, composting, recycling, and disposal services that are protective of the environment in a safe, science-based, and technologically advanced manner.

Last year, NWRA and SWANA submitted comments on EPA's proposal to designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as CERCLA hazardous substances. We also submitted comments in May in response to this ANPRM jointly with other "passive receivers" of per- and polyfluoroalkyl substances (PFAS). We reiterate and append those comments to these, **urging EPA, for the following reasons, to ensure that landfills and other passive receivers are afforded relief from CERCLA contribution litigation prior to designating PFAS as hazardous substances:**

- Public and private landfills neither manufacture nor receive a commercial benefit from the use of discarded materials containing PFAS that are ubiquitous in residential and commercial waste streams. There is no practical way to identify or separate PFAS-containing materials from general waste.
- Our sector continuously faces scrutiny—from the government, investors, customers, the public, contractors, and employees—to prioritize public health and safety while managing waste materials

containing PFAS. As a regulatory matter, landfills are subject to extensive federal, state, and local environmental, health, and safety standards, including evolving requirements under the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act. As a result of the stringent environmental controls required by permit, and in recognition of our role as stewards of the environment, our industry continues to make meaningful investments to ensure that landfills are designed, constructed, and operated to reduce their environmental impact.

- EPA and the U.S. Department of Defense (DOD) each have issued guidance prioritizing landfills as effective options for managing PFAS-contaminated wastes; yet, designating certain PFAS as CERCLA hazardous substances virtually guarantees that private parties will bring CERCLA claims for contribution against landfill operators. As such, CERCLA designation in the absence of Congressional relief would impel landfills to restrict inbound wastes with elevated levels of PFAS—including spent water filtration systems, biosolids, and impacted soils at DOD facilities—disrupting the interdependence among passive receivers while frustrating Administration PFAS remediation goals and delaying the cleanup of PFAS in the environment. The mere prospect of regulation in this area is already disrupting the interdependence of the drinking water, wastewater, and solid waste sectors.

Absent relief from CERCLA liability, manufacturers and heavy users of PFAS compounds will bring claims for contribution against landfills, generating significant litigation costs. These costs will be passed along to communities, water and wastewater treatment facilities, and biosolids management, all of which rely on the services of landfills. Cost increases likely will have a significant disproportionate impact on low-income households that rely on the affordability of services that the solid waste sector provides. The solid waste sector and the communities we serve should not be held financially or legally liable under CERCLA for PFAS contamination, as landfills are only passive receivers of PFAS and are part of the long-term solution to manage these compounds.

Accordingly, we recommend that EPA simultaneously collaborate with our sector in developing an enforcement discretion policy while working with Congress to support a narrow legislative exemption from CERCLA liability. Doing so would keep CERCLA liability on the industries that created and profited from these PFAS compounds — not on taxpayers.

Thank you for your consideration of our comments, and we look forward to continuing to partner with EPA to ensure the safe and effective management of waste streams containing PFAS. Should you have any questions about this letter, please contact us at agermain@wasterecycling.org or ryep@swana.org.

Very truly yours,



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