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TESTIMONY

Statement of

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Before

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Hearing on

"Examining the Future of PFAS Cleanup and Disposal Policy"

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Executive Summary

Chairman Capito, Ranking Member Whitehouse, and Members of the Committee:

My name is Kate Bowers, and I am a supervisory attorney in the American Law Division of the Congressional Research Service (CRS). Thank you for the opportunity to testify on the implications of the U.S. Environmental Protection Agency's (EPA's) designation in 2024 of two per- and polyfluoroalkyl substances (PFAS) as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This testimony will discuss CERCLA's framework for holding parties responsible for the costs to clean up contaminated sites, including the mechanisms by which private parties may sue other private parties to recoup cleanup costs. This testimony will also address EPA's CERCLA PFAS enforcement discretion policy, which it issued at the same time that it announced its final designation, and selected defenses to and exemptions from CERCLA liability.

Designation of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) subjects releases of those PFAS into the environment to CERCLA's reporting requirements and liability framework. Financial liability under CERCLA requires (1) a release or threatened release (2) of a hazardous substance (3) from a facility into the environment (4) that causes the incurrence of response costs. Only certain categories of parties with a connection to the contamination—current owners or operators of a site, past owners or operators at the time the hazardous substances were disposed of there, arrangers, and transporters—may be held liable. Designation alone does not trigger a public or private response action to address PFAS contamination at any site, however, and also does not determine any party's liability. Furthermore, designation as hazardous under CERCLA does not cause PFOA and PFOS to be treated as hazardous or toxic substances under other federal statutes with their own definitions of those terms. Designation also does not address requirements under other state and federal laws for treatment, storage, and disposal of PFOA and PFOS.

Liability under CERCLA is retroactive, strict, and joint and several. Parties may be liable under CERCLA for response costs, injury to natural resources, natural resource damage assessments, and public health studies. CERCLA authorizes EPA to clean up contaminated sites and to compel entities that bear responsibility for all or part of the contamination at a site to perform or pay for cleanup activities. Additionally, private parties that incur cleanup costs may seek to recoup those costs from other parties or from the Superfund Trust Fund.

Entities that have been involved in releases of PFAS may be held liable if the other preconditions to liability are met and no exemptions apply. These entities include parties associated with facilities or sites where PFAS was produced, used, or disposed, such as chemical manufacturing or processing facilities, firefighting training areas that used fluorinated aqueous film-forming foam, landfills or incinerators, wastewater treatment facilities, and sites with land application or disposal of biosolids. The determination of an individual party's liability under CERCLA is a fact-intensive and site-specific inquiry. Parties that fall into one or more categories of liability under CERCLA could be held liable for certain costs covered under the statute, but some of CERCLA's numerous defenses to and limitations on liability could apply.

Concurrent with the final designation, EPA issued a PFAS enforcement discretion and settlement policy memorandum explaining that the agency does not intend to recover cleanup costs from entities where equitable factors do not support CERCLA responsibility, including farmers, municipal landfills, water utilities, municipal airports, and local fire departments. EPA's decision not to pursue enforcement would not necessarily protect entities from enforcement action by states or from third-party lawsuits from entities who themselves have been held liable for response costs and who are seeking to recoup costs from other liable parties. EPA has explained, however, that it intends to use the CERCLA settlement process to protect those entities from such suits, which could address that potential outcome.

CRS remains available to the Committee to provide research and analysis of these issues or other questions related to CERCLA and the regulation of PFAS through testimony, briefings, and confidential memoranda.

Introduction

Chairman Capito, Ranking Member Whitehouse, and Members of the Committee:

My name is Kate Bowers, and I am a supervisory attorney in the American Law Division of the Congressional Research Service (CRS). Thank you for the opportunity to testify on the implications of the U.S. Environmental Protection Agency's (EPA's) designation of two per- and polyfluoroalkyl substances (PFAS) as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This testimony will discuss CERCLA's framework for holding parties responsible for the costs to clean up contaminated sites, including the mechanisms by which private parties may sue other private parties to recoup cleanup costs. This testimony will also address EPA's PFAS enforcement discretion policy.

PFAS are a large, diverse group of fluorinated compounds that have been used in numerous commercial, industrial, and military applications. PFAS are persistent in the environment and have been detected in soil, surface water, groundwater, and public water supplies. Studies suggest that exposures to PFAS above certain levels may lead to adverse health effects.[1]

On April 19, 2024, EPA announced a final rule designating two PFAS—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS)—as hazardous substances pursuant to CERCLA.[2] Designation of PFOA and PFOS as hazardous substances under CERCLA has several effects. Releases of the designated PFAS are subject to the reporting requirements for certain releases of hazardous substances pursuant to Section 103 of CERCLA.[3] Failure to comply with those reporting requirements could result in criminal penalties.[4] Designation also authorizes EPA to respond to releases or threat of releases of PFOA or PFAS without first finding that the release may present an imminent and substantial danger to the public health or welfare.[5]

Releases of PFAS designated as hazardous substances are also subject to CERCLA's liability framework. Financial liability under CERCLA requires (1) a release or threatened release (2) of a hazardous substance (3) from a facility into the environment (4) that causes the incurrence of response costs.[6] To be held liable under CERCLA, an entity must fall within one or more of the categories of "covered persons" or "potentially responsible parties" (PRPs) set forth in the statute. Each element of liability—and thus the scope of liability—is defined under the statute. Various exceptions and defenses further limit the scope of liability where applicable.

Determination of liability is a fact-intensive and site-specific inquiry that would depend on factors including a party's relationship to the contamination, the nature of the PFAS contamination, and the party's status under several federal environmental permitting regimes. Additionally, a party's liability for third-party contribution claims under CERCLA would depend in part on whether that party had resolved its liability to EPA or a state and thus was entitled to protection from future suits.

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[1] For further discussion of the properties, uses, and health effects of PFAS, see CRS Report R45986, *Federal Role in Responding to Potential Risks of Per- and Polyfluoroalkyl Substances (PFAS)*, coordinated by Elena H. Humphreys (2022).

[2] The rule designation was announced on April 19, 2024, and published on May 8, 2024. Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39124 (May 8, 2024).

[3] 42 U.S.C. § 9603.

[4] *Id.* § 9603(b).

[5] *Id.* § 9604(a)(1).

[6] *Id.* § 9607(a). For purposes of this testimony, "cleanup costs" encompasses "all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan" and "any other necessary costs of response incurred by any other person consistent with the national contingency plan." *Id.*

CERCLA hazardous substance designation alone does not trigger a public or private response action to address PFAS contamination at any site, and also does not determine any party's liability. Furthermore, such designation under CERCLA does not cause PFOA and PFOS to be treated as hazardous or toxic substances under other federal statutes with their own definitions of those terms. Designation also does not address requirements under other state and federal laws for the treatment, storage, and disposal of PFOA and PFOS.[7]

At the same time EPA announced the final designation, it also issued a PFAS enforcement discretion and settlement policy memorandum explaining that it does not intend to recover cleanup costs from entities where equitable factors do not support CERCLA responsibility, including farmers, municipal landfills, water utilities, municipal airports, and local fire departments.[8] EPA also explained that it intends to use the CERCLA settlement process to protect those entities from third-party lawsuits from entities who themselves have been held liable for response costs and who are seeking to recoup costs from other liable parties.

CRS remains available to the Committee to provide research and analysis of these issues or other questions related to CERCLA and the regulation of PFAS through testimony, briefings, and confidential memoranda.

Federal Response Authority and Overview of Cleanups

Congress enacted CERCLA to "promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts were borne by those responsible for the contamination."[9] Liability under CERCLA is generally contingent on a response action, or cleanup, at a site, and the consequent incurrence of response costs. The response action may be carried out by a private party, but it may also be a federal action: Section 104(a) of CERCLA authorizes the President to respond to a release (or substantial threat of a release) of a hazardous substance into the environment, or of a pollutant or contaminant that may present an "imminent and substantial danger to the public health or welfare."[10] The President has delegated CERCLA's response authority to EPA and other agencies that administer federal facilities.[11]

In general, CERCLA response actions for the purposes of cleanup fall into two categories. Removal actions are generally shorter-term actions taken to address immediate risks.[12] Remedial actions are generally longer-term actions to address contamination more permanently and may involve long-term containment of wastes.[13]

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[7] *See* EPA, *Questions and Answers about Designation of PFOA and PFOS as Hazardous Substances under CERCLA*, https://www.epa.gov/superfund/questions-and-answers-about-designation-pfoa-and-pfos-hazardous-substances-under-cercla (last visited Nov. 15, 2025).

[8] David M. Uhlmann, Assistant Administrator for Enforcement and Compliance Assurance, EPA, *PFAS Enforcement Discretion and Settlement Policy Under CERCLA* (Apr. 19, 2024), https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf (hereinafter "EPA PFAS Enforcement Discretion and Settlement Policy."

[9] Burlington N. & Santa Fe Ry. Co. v. United States, 556 U.S. 599, 602 (2009).

[10] 42 U.S.C. § 9604(a).

[11] *Id.* § 9615. For more general information regarding CERCLA, see CRS Report R48630, *Federal Environmental Remediation Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a.k.a. "the Superfund Law"*, by Lance N. Larson (2025).

[12] 42 U.S.C. § 9601(23).

[13] *Id.* § 9601(24).

The designation of PFOA and PFOS as hazardous substances does not automatically trigger the CERCLA response process or determine applicable cleanup standards.[14] The level of cleanup that CERCLA requires is a site-specific determination. Section 121(d) specifies that the selected remedial action "shall attain a degree of cleanup . . . and of control of further release at a minimum which assures protection of human health and the environment."[15] Section 121(d) further specifies that a cleanup must comply with applicable, relevant, and appropriate requirements (ARARs), including standards or requirements set forth in federal or state environmental or facility siting laws.[16]

CERCLA also identifies two sets of federal standards under other statutes that apply to the selection of remedial actions at any site (so long as those standards are relevant and appropriate to the circumstances of an individual release or threatened release). First, Section 121(d) requires remedial actions to achieve a level of cleanup that at least attains Maximum Contaminant Level (MCL) goals established under the Safe Drinking Water Act.[17] Second, the cleanup must be consistent with any water quality criteria established under Sections 303 or 304 of the Clean Water Act (CWA).[18]

EPA issued a final national primary drinking water regulation for six PFAS, including PFOA and PFOS, in April 2024.[19] The regulation includes MCLs for PFOA and PFOS each at 4.0 parts per trillion.[20] On May 14, 2025, EPA announced that the agency would retain the 2024 drinking water standards for PFOA and PFOS but intended to issue a proposed rule to extend compliance deadlines as well as to rescind and reconsider its regulatory determinations for the other PFAS addressed in the 2024 rule.[21] EPA also stated that it would establish a federal exemption framework and initiate enhanced outreach to water systems.[22]

Additionally, EPA published final recommended water quality criteria for PFAS to protect aquatic life in October 2024 and draft recommended water quality criteria to protect human health in December 2024.[23] Designation of MCLs and finalization of water quality criteria for any PFAS does not trigger any action under CERCLA, but those requirements could be incorporated into site-specific cleanup standards to the extent those requirements are deemed "relevant and appropriate," consistent with the underlying premise of an ARAR.

Many states and tribes have enacted separate authorities (often called "mini-Superfund laws") for their own programs to clean up contaminated sites.[24] Section 114 of CERCLA specifically provides that states may impose additional liability or requirements with respect to the release of hazardous substances within

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[14] *See* EPA, *Questions and Answers about Designation of PFOA and PFOS as Hazardous Substances under CERCLA*, https://www.epa.gov/superfund/questions-and-answers-about-designation-pfoa-and-pfos-hazardous-substances-under-cercla (last visited Nov. 13, 2025).

[15] 42 U.S.C. § 9621(d)(1).

[16] *Id.* § 9621(d)(2).

[17] *Id.* § 9621(d)(2)(A)(ii); *see also* 42 U.S.C. § 300g-1.

[18] 42 U.S.C. § 9621(d)(2)(A)(ii); *see also* 33 U.S.C. §§ 1313, 1314.

[19] PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532 (April 26, 2024).

[20] *Id.*

[21] EPA, *EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS* (May 14, 2025), https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos.

[22] *Id.*

[23] Final Recommended Aquatic Life Criteria and Benchmarks for Select PFAS, 89 Fed. Reg. 81077 (Oct. 7, 2024); Draft National Recommended Ambient Water Quality Criteria for the Protection of Human Health for Perfluorooctanoic Acid, Perfluorooctane Sulfonic Acid, and Perfluorobutane Sulfonic Acid, 89 Fed. Reg. 105041 (Dec. 26, 2024). For additional discussion of the regulation of PFAS under the Clean Water Act, see CRS In Focus IF12148, *Regulating PFAS Under the Clean Water Act*, by Laura Gatz (2025).

[24] *See* EPA, *State Response Programs*, https://www.epa.gov/enforcement/state-response-programs (last updated May 29, 2025); *see also* JAMES B. POLLACK ET AL., PFAS DESKBOOK 102–07 (2023) (discussing use of state mini-Superfund laws to address PFAS contamination).

their borders.[25] The regulations governing response actions taken under CERCLA, which are referred to as the National Contingency Plan (NCP), specify procedures for EPA and states to enter into memoranda of agreement for carrying out cleanups.[26] Private parties may also undertake response actions, either at their own initiative or subject to an order issued by EPA or a court under CERCLA.[27]

Overview of Liability Under CERCLA

CERCLA imposes liability on parties responsible for the presence of hazardous substances at a site. Parties with specific relationships to contamination at a site may be held liable when there is (1) a release or threatened release (2) of a hazardous substance (3) from a facility into the environment (4) that causes the incurrence of response costs.[28] The definitions of "release" and "hazardous substance"—and, by extension, EPA's response authority and parties' liability for response costs—exclude multiple types of releases and substances. The scope of these definitions, as well as the range of parties that can be held liable under CERCLA, are relevant in considering the effects of the PFAS hazardous substance designation.

Liability under CERCLA may take the form of an obligation to carry out a response action, or an obligation to pay response costs incurred by another party. In general, a party that incurs response costs under the conditions stated above may seek to recover some or all of those costs from other parties that are potentially liable for the costs under CERCLA.[29] CERCLA litigation can thus provide a framework for a large number of potentially liable parties to arrive at an equitable allocation of liability for response costs, based on their share of responsibility determined on a case-by-case basis.

Who May Be Liable Under CERCLA

CERCLA provides a mechanism to compel covered persons or potentially responsible parties (PRPs) to perform or pay for a cleanup of hazardous substances. Private parties and federal, state, and local governmental entities can be liable as PRPs.[30] CERCLA establishes financial liability for four categories of PRPs:

- The current owner or operator of a facility;
- Former owners or operators of a facility at the time hazardous substances were disposed of there;
- Generators and parties that arranged for the transport, disposal, or treatment of hazardous substances; and
- Transporters of hazardous substances to a facility.[31]

[25] 42 U.S.C. § 9614(a).

[26] *See* 40 C.F.R. §§ 300.500–300.525.

[27] *See id.* § 300.700.

[28] For general overview of liability under CERCLA, see CRS In Focus IF11790, *Liability Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, by Kate R. Bowers (2021); *see also* EPA, *Superfund Liability*, https://www.epa.gov/enforcement/superfund-liability (last updated Apr. 10, 2025).

[29] 42 U.S.C. §§ 9607(a), 9613(f). CERCLA does not provide a cause of action for members of the public at large, including those who may have been harmed by the release of hazardous substances, to seek damages from parties that are liable for response costs under CERCLA. *See infra* "Scope of Liability."

[30] *See* 42 U.S.C. § 9601(21) (defining "person" as "an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body").

[31] *Id.* § 9607(a).

Consideration of whether a party is liable as an owner, operator, generator, or transporter is a fact-specific inquiry based on the circumstances of an individual case. As a result, it is not possible to predict with certainty the kinds of entities that will face liability under CERCLA related to FPAS contamination. The parties that *could* be held liable, if the other preconditions to liability are met and no exemptions apply, are entities that have been involved in releases of PFAS. This includes parties associated with facilities or sites where PFAS was produced, used, or disposed, such as owners or operators of chemical manufacturing or processing facilities that released PFAS; persons who released PFAS from the use of fluorinated aqueous film-forming foam (AFFF), such as airport owners and operators and local fire departments; landfill owners and operators; generators and transporters of PFAS wastes released at landfills or other disposal or treatment sites; and owners and operators of wastewater treatment facilities that discharge PFAS. As discussed below, however, EPA has expressed an intent to refrain from taking enforcement action with respect to some of these categories of entities, as well as to use settlement agreements to protect them from lawsuits brought by other parties.[32] Additionally, because CERCLA liability extends to the federal government, the Department of Defense and other federal departments or agencies that released PFAS, such as through the use of AFFF, are also potentially liable.

Some commenters on the proposed designation raised concerns regarding the potential liability of "passive receivers" such as drinking water treatment plants, municipal wastewater treatment facilities, solid waste landfills, and composting facilities.[33] Although the term "passive receivers" is not defined in CERCLA, it is generally understood to refer to parties that receive media containing PFAS (and other hazardous substances) but do not themselves manufacture or use those substances. While some of the liability exemptions discussed below may apply, passive receivers are sometimes named as defendants in third-party CERCLA contribution claims brought by PRPs seeking to recoup some of the cleanup costs for which they have been held liable.[34] Whether a passive receiver would be obliged to perform or pay for a cleanup of PFAS contamination under CERCLA would depend on numerous factors, including the existence of a response action and the incurrence of response costs, the applicability of various defenses to and exemptions from liability, and (in the case of a federal cleanup effort) EPA's exercise of enforcement discretion.

Questions have also arisen on whether manufacturers of PFAS could be held liable for cleanup costs under CERCLA. A manufacturer could be liable if a release occurred as part of the manufacturing process at a site the manufacturer owned or operated. If a company intended to dispose of a hazardous substance that it manufactured, it might also be liable as an arranger.[35] In general, however, CERCLA does not provide a standalone mechanism for holding the manufacturer of a hazardous substance liable solely based on its manufacture of a chemical that another party released into the environment subsequent to purchase. Courts typically do not hold a manufacturer selling a "useful" commercial product liable under CERCLA for the hazardous waste contained in those products.[36] In 2009, the Supreme Court held that, although CERCLA liability would attach "if an entity were to enter into a transaction for the sole purpose

[32] *See infra* "EPA's Enforcement Discretion;" David M. Uhlmann, Assistant Administrator for Enforcement and Compliance Assurance, EPA, *PFAS Enforcement Discretion and Settlement Policy Under CERCLA* (Apr. 19, 2024), https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf (hereinafter "EPA PFAS Enforcement Discretion and Settlement Policy."

[33] *E.g.*, Am. Pub. Works Ass'n, Comment Letter on Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances (Nov. 7, 2022), https://downloads.regulations.gov/EPA-HQ-OLEM-2019-0341-0344/attachment_1.pdf.

[34] *E.g.*, Transportation Leasing Co. v. California, 861 F. Supp. 931 (C.D. Cal. 1993).

[35] *E.g.*, United States v. Gen. Elec. Co., 670 F.3d 377, 385–86 (1st Cir. 2012); Cadillac Fairview/California, Inc. v. United States, 41 F.3d 562, 566 (9th Cir. 1994).

[36] *E.g.*, Fla. Power & Light Co. v. Allis Chalmers Corp., 893 F.2d 1313, 1317 (11th Cir. 1990) (holding that manufacturers of electrical transformers containing mineral oil contaminated with polychlorinated biphenyls were not liable under CERCLA absent evidence that the manufacturers intended to dispose of hazardous waste when selling the transformers).

of discarding a used and no longer useful hazardous substance," an entity would not be liable as an arranger "merely for selling a new and useful product if the purchaser of that product later, and unbeknownst to the seller, disposed of the product in a way that led to contamination."[37]

Accordingly, the manufacturers of designated PFAS or products containing designated PFAS likely would not be liable under CERCLA simply because the chemicals were released into the environment subsequent to manufacture by entities using those products. If, on the other hand, the manufacturer took intentional steps to dispose of the PFAS-containing products or sold the products with the specific intent to dispose of them, a finding of arranger liability could be more likely. In any case, a court evaluating potential liability would closely examine the manufacturer's intent, the nature of any transaction in selling products to its customers, and the nature and commercial value of the product being sold.[38] More commonly, however, PFAS manufacturers have faced suit under other laws, including state environmental laws and tort law.[39]

Definition of Release

One prerequisite to liability under CERCLA is a release or threatened release. CERCLA defines "release" as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)."[40] The definition excludes certain types of activities, including releases that result in exposure only within a workplace; emissions from engine exhaust of a motor vehicle, train, aircraft, vessel, or pipeline pumping station engine; certain releases of nuclear material; and the "normal" application of fertilizer.[41]

Questions have arisen regarding whether CERCLA liability could arise from the presence of designated PFAS in biosolids, which are the sewage sludge from wastewater treatment facilities. In some cases, biosolids may be applied to agricultural land to fertilize crops.[42] EPA has not addressed this question specifically with respect to PFAS, but it has indicated more generally that biosolids placed on the land for a beneficial purpose (such as a fertilizer substitute or soil conditioner) would not constitute a "release" that could give rise to CERCLA liability if the biosolids were applied in accordance with relevant federal requirements.[43] Additionally, as discussed below, EPA has indicated that it does not intend to take enforcement action against farms where biosolids are applied to the land.[44]

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[37] Burlington N. & Santa Fe Ry. Co. v. United States, 556 U.S. 599, 610 (2009).

[38] *E.g.*, Cal. Dep't of Toxic Substances Ctrl. v. Alco Pac., Inc., 508 F.3d 930, 938 (9th Cir. 2007).

[39] *See, e.g.*, N.J. Dep't of Env't Protection v. E. I. DuPont de Nemours & Co., No. 1:19-cv-14758 (D.N.J.). The parties in that case have reached a proposed settlement that, if approved by the court, would require payments of up to $450 million from 3M and up to $875 million from DuPont and related companies. *See* N.J. Dep't of Env't Protection, *3M PFAS Settlement*, https://dep.nj.gov/3m/ (last visited Nov. 15, 2025); N.J. Dep't of Env't Protection, *DuPont/Chemours PFAS Settlement*, https://dep.nj.gov/dupont/ (last visited Nov. 15, 2025). *See also* Order and Opinion, *In re* Aqueous Film-Forming Foams Products Liability Litigation, No. 18-mn-2873, in City of Camden v. EIDP, Inc., No. 2:23-cv-3230 (D.S.C. Feb. 8, 2024), ECF No. 175 (approving settlement in class action on behalf of public water systems).

[40] 42 U.S.C. § 9601(22).

[41] *Id.*

[42] EPA, *Land Application of Biosolids*, http://epa.gov/biosolids/land-application-biosolids (last updated Jan. 6, 2025).

[43] Standards for the Use of Disposal of Sewage Sludge, 58 Fed. Reg. 9248, 9262 (Feb. 19, 1993). EPA regulates the land application of biosolids pursuant to Section 405(d) of the Clean Water Act. *See* 33 U.S.C. § 1345(d); 40 C.F.R. pt. 503.

[44] *See infra* "EPA's Enforcement Discretion;" EPA PFAS Enforcement Discretion and Settlement Policy, *supra* note 8, at 8.

Definition of Hazardous Substance

A substance may be considered a "hazardous substance" for purposes of CERCLA based on either a designation pursuant to CERCLA itself or a designation under another statute to which CERCLA refers. Section 102 of CERCLA authorizes EPA to designate as hazardous substances elements, compounds, mixtures, solutions, and substances "which, when released into the environment may present substantial danger to the public health or welfare or the environment."[45] Section 101(14) of the statute defines "hazardous substance" to include hazardous substances designated pursuant to Section 102.[46] It also defines the term with reference to several other statutes to include (1) any substance designated as a hazardous substance under Section 311(b)(2)(A) of the CWA; (2) a characteristic or listed hazardous waste under Section 3001 of the Solid Waste Disposal Act, often referred to as the Resource Conservation and Recovery Act (RCRA); (3) any toxic pollutant listed under Section 307(a) of the CWA; (4) any hazardous air pollutant listed under Section 112 of the Clean Air Act (CAA); and (5) any imminently hazardous chemical or substance or mixture with respect to which EPA has taken action pursuant to Section 7 of the Toxic Substances Control Act.[47] Designation pursuant to CERCLA Section 102 does not cause a substance to be considered toxic or hazardous under any of those statutes. Accordingly, designation under CERCLA does not trigger the requirements that apply to toxic or hazardous substances under those statutes, including RCRA's requirements for the treatment, storage, and disposal of materials that are classified as hazardous waste.

Section 102(a) of CERCLA does not specify factors for the EPA Administrator to consider when designating a hazardous substance beyond finding that the substance "may present substantial danger to the public health or welfare or the environment" when released into the environment.[48] Currently, there are no regulations that guide the designation process. When EPA announced that it planned to retain the 2024 designation, the agency stated that it intends to develop a Section 102(a) "Framework Rule" to "provide a uniform approach to guide future hazardous substance designations, including how the agency will consider the costs of proposed designations."[49]

Approximately 800 substances are currently considered hazardous substances pursuant to CERCLA by virtue of their designation under one of the statutes cross-referenced in Section 101(14) of CERCLA.[50] Prior to 2024, EPA had never used its Section 102 authority to designate a substance as hazardous under CERCLA. The 2024 designation of PFOA and PFOS represents the first use of EPA's designation authority under Section 102.[51]

EPA's 2024 Designation

EPA announced its final designation on April 19, 2024, concluding that PFOA and PFOS, and their salts and isomers, may present substantial danger to public health or welfare or the environment.[52] Various

[45] 42 U.S.C. § 9602(a).

[46] *Id.* § 9601(14).

[47] *Id.*

[48] 42 U.S.C. § 9602(a).

[49] EPA, *Trump EPA Announces Next Steps on Regulatory PFOA and PFOS Cleanup Efforts, Provides Update on Liability and Passive Receiver Issues* (Sept. 17, 2025), https://www.epa.gov/newsreleases/trump-epa-announces-next-steps-regulatory-pfoa-and-pfos-cleanup-efforts-provides.

[50] EPA, *CERCLA Hazardous Substances Defined*, https://www.epa.gov/epcra/cercla-hazardous-substances-defined (last updated Jan. 14, 2025).

[51] *See* Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, Proposed Rule, 87 Fed. Reg. 54415, 54421 (Sept. 6, 2022).

[52] Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39124 (May 8, 2024).

industry associations filed petitions for review of the designation, and those challenges were consolidated into a single proceeding that is still pending before the U.S. Court of Appeals for the D.C. Circuit.[53] In February 2025, EPA moved to hold the case in abeyance to allow the new administration to review the designation and the litigation.[54] The court granted EPA's motion and subsequent requests to extend the abeyance.[55] On September 17, 2025, EPA filed a motion indicating that it had completed its review of the designation and decided to retain it.[56] The agency asked the court to lift the abeyance and set a schedule to complete briefing. The court granted EPA's motion, and the case is now fully briefed but has not yet been set for oral argument.[57]

The immediate effects of the PFAS hazardous substance designation under CERCLA are relatively circumscribed. Releases of a hazardous substance above a threshold amount are subject to reporting requirements, and contracts for the sale or transfer of federal property must disclose the storage, release, or disposal of hazardous substances on the property.[58] Listed and designated hazardous substances under CERCLA are also regulated as hazardous material under the Hazardous Materials Transportation Act.[59] Additionally, Section 104(a) of CERCLA authorizes EPA to conduct response actions of hazardous substances if there is a release or threatened release; by contrast, EPA must establish that a release or threatened release of a pollutant or contaminant may present an imminent and substantial danger to the public health or welfare in order to exercise its Section 104 response authority.[60] While designation also may subject releases of PFOA and PFOS into the environment to CERCLA's liability framework, designation alone does not trigger a public or private response action to address PFAS contamination at any site and is not determinative of any party's liability.

EPA's designation of PFOA and PFOS as hazardous substances affected the status of those two PFAS under CERCLA but not under other federal laws, including RCRA's framework for regulating treatment, storage, and disposal of solid waste and hazardous waste. Because the treatment, storage, and disposal of solid and hazardous wastes is regulated under RCRA, not CERCLA, the designation of PFOA and PFOS as hazardous under CERCLA does not result in requirements for the treatment, storage, or disposal of PFOA or PFOS. Additionally, state mini-Superfund laws may provide their own definition of hazardous substances, though some states define the term to include elements and compounds that are considered hazardous substances under CERCLA.[61] To the extent that a state incorporates by reference CERCLA hazardous substances and has not specified that releases of PFAS or PFOA are covered in its cleanup framework, the CERCLA hazardous substance designation would alter the applicability of that state's requirements.

Other Definitions of Hazardous or Toxic Substances

Designation of a hazardous substance under CERCLA resembles some comparable federal processes for designating hazardous or toxic substances and differs from others. For example, the CWA authorizes EPA to designate hazardous substances and toxic pollutants; neither the statute nor CWA implementing regulations identify more specific criteria for listing a substance as hazardous, and the statutory section on

[53] Chamber of Commerce v. EPA, No. 24-1193 (D.C. Cir.).

[54] Motion to Hold Cases in Abeyance, Chamber of Commerce v. EPA, No. 24-1193 (D.C. Cir. Feb. 11, 2025), ECF No. 2100170.

[55] Orders, Chamber of Commerce v. EPA, No. 24-1193 (D.C. Cir. Feb. 24, 2025, Apr. 30, 2025, June 2, 2025, July 3, 2025, Aug. 20, 2025), ECF Nos. 2102403, 2113719, 2118607, 2123879, 2131064.

[56] Motion to Govern, Chamber of Commerce of the U.S. v. EPA, No. 24-1193 (D.C. Cir. Sept. 17, 2025), ECF No. 2135418.

[57] Order, Chamber of Commerce v. EPA, No. 24-1193 (D.C. Cir. Oct. 2, 2025), ECF No. 2138522.

[58] 42 U.S.C. §§ 9602(b), 9603, 9611, 9620(h)(1), 11004.

[59] *Id.* § 9656.

[60] *Id.* § 9604(a).

[61] *E.g.*, N.J. STAT. ANN. § 58:10-23.11b; 35 PA. STAT. § 6020.103.

toxic pollutants directs EPA to consider "toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms" when revising the list of toxic pollutants.[62] By contrast, RCRA implementing regulations identify three pathways for listing a solid waste as a hazardous waste; for one of those pathways, EPA is required to consider eleven enumerated factors before making a determination as to whether a solid waste "is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed."[63]

Some of the laws cross-referenced in CERCLA's definition of hazardous substance impose different immediate requirements once a substance is listed as hazardous or toxic; in some instances, these requirements are more extensive than those triggered by CERCLA designation. The Clean Air Act requires EPA to identify categories of sources that emit hazardous air pollutants and to establish emissions standards for those source categories for those pollutants.[64] When a substance is determined to be a hazardous waste under RCRA, it is subject to RCRA's cradle-to-grave regulatory requirements from the time it is created; while it is transported, treated and stored; and until it is disposed.[65] Under the Clean Water Act, EPA is authorized to develop effluent limitations for toxic pollutants; states are also required to take certain action with respect to toxic pollutants when developing or revising water quality standards.[66]

The frequency of designations also varies across the listed statutes. As ratified by Congress in the 1977 CWA amendments, the CWA toxic pollutant list contains 65 entries, some of which represent groups of pollutants.[67] EPA removed three pollutants from the list in 1981 but left the overall number of entries unchanged, as the delisted pollutants were specific compounds within entries for listed groups.[68] The CWA hazardous substance included 271 hazardous substances when first published by EPA in 1978 and now includes almost 300 substances.[69] The initial list of hazardous air pollutants under the CAA included 189 pollutants; EPA has made approximately five additions, deletions, or redefinitions since 1990.[70] Under RCRA, over 800 wastes appear on one of four lists of hazardous wastes.[71]

Other statutes in addition to CERCLA establish liability frameworks for hazardous or toxic substance contamination where certain conditions are met.[72] In general, however, CERCLA provides a more comprehensive mechanism than other federal statutes for requiring parties to conduct or pay for the cleanup of contaminated sites.

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[62] *See* 33 U.S.C. §§ 1317(a)(1), 1321(b)(2)(A).

[63] 40 C.F.R. § 26.11(a)(3).

[64] 42 U.S.C. § 7412(c).

[65] 42 U.S.C. §§ 6921–6939g.

[66] *See* 33 U.S.C. § 1317(a); 40 C.F.R. § 131.11.

[67] EPA, Toxic and Priority Pollutants Under the Clean Water Act, https://www.epa.gov/eg/toxic-and-priority-pollutants-under-clean-water-act (last updated Apr. 22, 2025); 40 C.F.R. § 401.15.

[68] *Id.*

[69] 40 C.F.R. § 116.4; CRS Report R45998, *Contaminants of Emerging Concern Under the Clean Water Act*, by Laura Gatz (2021).

[70] EPA, Initial List of Hazardous Air Pollutants with Modifications, https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications (last updated Nov. 5, 2025); 40 C.F.R. §§ 63.60-63.64.

[71] 40 C.F.R. part 261; EPA, Defining Hazardous Waste: Listed, Characteristic and Mixed Radiological Wastes, https://www.epa.gov/hw/defining-hazardous-waste-listed-characteristic-and-mixed-radiological-wastes (last updated Dec. 17, 2024).

[72] *E.g.*, 33 U.S.C. § 1321(b); 42 U.S.C. § 6928.

Scope of Liability

Liability under CERCLA is retroactive, strict, and joint and several.[73] Retroactive liability means that parties may be liable for the release of hazardous substances prior designation and prior to CERCLA's enactment in 1980. Under CERCLA's strict liability framework, a party may be liable regardless of whether it was negligent. Under joint and several liability, any single party may be liable for all cleanup costs at a site if the harm is indivisible, even if other parties also contributed to the contamination.

PRPs in the listed categories are liable under CERCLA for cleanup costs incurred by the U.S. government or a state or tribe that are "not inconsistent" with the National Contingency Plan (NCP), the regulations governing response actions taken under CERCLA.[74] This means that after a government or private party incurs cleanup costs, it may sue one or more PRPs under CERCLA to recover those costs. Those PRPs, in turn, often have the right under CERCLA to seek contribution from any other PRPs, and may seek to join them as additional parties to the same CERCLA action. These actions are described in more detail below.[75] Although each of those PRPs is jointly and severally responsible for all of the applicable cleanup costs, this liability framework allows many parties that are potentially liable for the contamination at a given site to seek an equitable allocation of those costs in a single litigation. This framework is also intended to encourage capable parties to carry out response actions even before liability is settled, and to ensure that response actions take place even if some PRPs are no longer available to contribute.

PRPs are also liable for injury to natural resources, meaning that they must either restore natural resources that are injured as a result of a release or pay for restoring or replacing the injured or lost natural resources.[76] Unlike claims for cleanup costs, claims for natural resource damages may be brought only by federal, state, or tribal trustees.[77] Additionally, PRPs may be liable for the cost of natural resource damage assessments and federal public health studies at release sites.[78]

CERCLA and its liability framework largely focus on cleanup actions and on the costs incurred for those actions. The scope of liability under CERCLA does not include product liability, liability for personal injury or property damages, or health effects or medical costs resulting from a release. Such claims may be available under state law, including common law. Additionally, the Federal Tort Claims Act authorizes some tort claims against the U.S. government, but not when claims implicate government actions involving the exercise of judgment or choice.[79]

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[73] *See* EPA, *Superfund Liability*, https://www.epa.gov/enforcement/superfund-liability (last updated Apr. 10, 2025).

[74] 42 U.S.C. § 9607(a).

[75] *See* Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 161–63 (2004); United States v. Atl. Research Corp., 551 U.S. 128, 131–33 (2007).

[76] 42 U.S.C. § 9607(a).

[77] *Id.* § 9607(f).

[78] *Id.* § 9607(a).

[79] 28 U.S.C. §§ 1346, 2680(a). The United States has invoked the discretionary function exemption to the Federal Tort Claims Act to argue that it is not liable in pending multidistrict litigation challenging the United States military's use and handling of aqueous film forming foam (AFFF), which allegedly resulted in PFAS contamination of groundwater. *See* United States of America's Memorandum of Law in Support of Its Omnibus Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1), *In re* Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873-RMG (D.S.C. Feb. 26, 2024), ECF No. 4548. On February 27, 2025, the court declined to dismiss all of the Federal Tort Claims Act claims, holding that site-specific, material facts were still in dispute. In a separate order issued the same day, the court dismiss failure to warn claims brought by four dairy farms, but declined to dismiss other tort claims brought by those plaintiffs. Orders, *In re* Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873-RMG (D.S.C. Feb. 27, 2025), ECF Nos. 6728, 6730. For additional information on the Federal Tort Claims Act, see CRS Report R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Michael D. Contino and Andreas Kuersten (2023).

Federal Enforcement Mechanisms

The scope of EPA's enforcement authority under CERCLA is narrower than its response authority. Although CERCLA authorizes federal actions to respond to a release of pollutants, contaminants, and hazardous substances, the statute only authorizes EPA to compel a party to pay for or perform a response action if that party caused or contributed to a release of a hazardous substance. The designation of PFOA and PFOS as hazardous substances means that EPA may now use its enforcement authority to compel parties to clean up or finance the cleanup of contamination of those substances.

CERCLA establishes three mechanisms that EPA may use to enforce liability under the statute—that is, to require parties to bear the response costs for which CERCLA makes them liable. First, EPA can compel PRPs to perform a cleanup. Section 106(a) authorizes EPA to issue a unilateral administrative order, or to seek a judicial order, requiring a PRP to take actions to address "imminent and substantial endangerment to the public health or welfare or the environment" resulting from a release or threatened release of a hazardous substance.[80] CERCLA also authorizes fines and punitive damages for noncompliance with such an order.[81] If a party complies with an order and can establish that it is not liable under CERCLA or that the required cleanup actions were arbitrary and capricious, it may seek reimbursement from the Superfund Trust Fund.[82] Alternatively, a liable party may seek to recover response costs from other PRPs, as explained below.

Second, EPA can conduct a cleanup itself and seek to recover its response costs from one or more PRPs pursuant to Section 107(a).[83] These lawsuits are known as "cost recovery" actions. EPA typically pursues cost recovery after a removal action or one of its phases is completed.[84] States and tribes may also pursue cost recovery under Section 107(a). Cleanup actions must be "not inconsistent" with the NCP for the costs to be recoverable by the United States, states, or tribes.[85] Prior to seeking cost recovery from a PRP in court, EPA generally sends a written demand letter to that PRP that includes information about the site, the response action, costs already incurred or to be incurred, and a demand for payment.[86]

Finally, EPA can enter into a negotiated settlement with PRPs to perform some or all of the cleanup. CERCLA authorizes EPA to enter into an agreement with a PRP to allow the PRP to conduct or finance a response action if EPA determines that the PRP will do so properly and promptly.[87] EPA's preference is to seek to resolve liability through negotiated settlement agreements instead of pursuing a Section 106 order or a cost recovery action.[88] Consistent with the statute's directive to facilitate settlement "[w]henever practicable and in the public interest" to expedite effective cleanups, and minimize litigation, the majority

[80] 42 U.S.C. § 9606(a).

[81] *Id.* § 9606(b).

[82] *Id.*

[83] *Id.* § 9607(a).

[84] *See* Office of Solid Waste and Emergency Response, EPA, OSWER Directive No. 9832.3-1A, *Cost Recovery Actions/Statute of Limitations* 2 (1987).

[85] 42 U.S.C. § 9607(a).

[86] *See* Office of Solid Waste and Emergency Response, EPA, OSWER Directive No. 9832.18, *Written Demand for Recovery of Costs Incurred Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)* 5–6, 8–9 (1991).

[87] 42 U.S.C. §§ 9604(a), 9622(a).

[88] EPA, *Negotiating Superfund Settlements*, https://www.epa.gov/enforcement/negotiating-superfund-settlements (last updated June 2, 2025).

of cleanups are resolved through negotiated agreements.[89] All settlement agreements under CERCLA must be in the public interest and consistent with the NCP.[90]

Under Section 122, voluntary settlement agreements may include a covenant not to sue, which limits a PRP's future liability to the United States related to the release or threatened release.[91] Additionally, parties to voluntary settlement agreements receive protection from other types of CERCLA lawsuits, as described below. A settlement with one PRP does not preclude EPA from taking action under Sections 106 or 107 with respect to other PRPs.[92]

Some parties have unique circumstances that affect EPA's settlement procedures. For example, Section 122(g)(1) of CERCLA directs EPA to negotiate expedited settlements "[w]henever practicable and in the public interest" with parties that contributed a relatively small amount of wastes to a site.[93] EPA maintains policies and streamlined model settlement documents that apply specifically to these de minimis contributors.[94] For other categories of parties, EPA may exercise its discretion and decline to pursue enforcement, as described below and as EPA has specifically exercised in the context of PFAS.

Suits by Private Parties to Recoup Cleanup Costs[95]

Although CERCLA allows any one party to be held liable for all cleanup costs even if other parties also contributed to contamination at a site, the statute also allows private parties to recoup their cleanup costs from other PRPs through two separate mechanisms. First, when a private party incurs costs, it may sue under Section 107(a) to recover from another PRP *all* costs that are necessary and consistent with the NCP.[96]

Second, when a private party is sued under Section 106 or 107(a) or has resolved its liability to the United States or a state for some or all of a response action, it may then assert a claim or counterclaim under Section 113(f) to require other PRPs to bear an equitable share of the response costs.[97] Claims under

[89] *See* Atl. Richfield Co. v. Christian, 140 S. Ct. 1335, 1355 (2020) (describing settlements as "the heart" of CERCLA and noting that EPA's efforts to negotiate settlement agreements and issue cleanup orders account for approximately 69 percent of cleanup work underway as of 2020).

[90] 42 U.S.C. § 9622(a).

[91] *Id.* § 9622(c)(1).

[92] *Id.* § 9622(c)(2).

[93] *Id.* § 9622(g)(1).

[94] *See* EPA, *Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties* (Nov. 6, 2002), https://www.epa.gov/sites/default/files/2013-09/documents/wv-exmpt-dmicro-mem.pdf; Office of Waste Programs Enforcement, EPA, OSWER Directive No. 9834.7-1D, *Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A)* (1993); EPA, *De Minimis Contributor Consent Decree*, https://cfpub.epa.gov/compliance/models/view.cfm? model_ID=538 (last revised Mar. 15, 2023); *see also* EPA, *Unique Parties and Superfund Liability*, https://www.epa.gov/enforcement/unique-parties-and-superfund-liability (last updated Oct. 5, 2023).

[95] In addition to the cost recovery and contribution claims allowed under Sections 107(a) and 113(f) of CERCLA, Section 310, CERCLA's citizen suit provision, allows "any person" to file a lawsuit against any person, including the U.S. government and "any other governmental instrumentality or agency . . . who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective" pursuant to CERCLA." 42 U.S.C. § 9659(a)(1). It also authorizes suits against the U.S. government for failure to perform a nondiscretionary duty under the statute. *Id.* § 9659(a)(2). Citizen suits may be used to challenge the adequacy of a CERCLA cleanup, but they do not provide a mechanism for determining that an entity is liable for response costs as a PRP. Additionally, Section 113(h) limits the filing of a citizen suit until after a cleanup is completed, and parties may not challenge a removal action at a site where a remedial action is planned. *Id.* § 9613(h).

[96] United States v. Atl. Research Corp., 551 U.S. 128, 141 (2007).

[97] 42 U.S.C. § 9613(f)(1), (f)(3)(B). Congress added an explicit right of contribution to CERCLA in the Superfund Amendments and Reauthorization Act of 1986 (SARA). Pub. L. No. 99-499, § 113(b), 100 Stat. 1613, 1647 (1986). Prior to SARA's enactment, courts had inferred an implied right of contribution as a corollary to the joint and several liability scheme imposed (continued...)

Section 113(f) are generally referred to as contribution claims. Cost recovery and contribution actions are mutually exclusive. A party that *may* bring a Section 113(f) contribution action *must* proceed under Section 113(f); the party is precluded from proceeding with a cost recovery action under Section 107(a).[98]

Section 113(f) specifies that a court resolving contribution claims "may allocate response costs among liable parties using such equitable factors as the court determines are appropriate."[99] The most commonly considered factors in an equitable allocation relate to the degree to which the contamination and cleanup costs are attributable to each party's actions, the nature and amount of the hazardous substances involved, the extent of each party's culpability, and the degree to which each party benefited from the disposal.[100]

Section 113(f) also protects a party that has resolved its CERCLA liability to the United States or a state in a settlement.[101] The party cannot be held liable for contribution claims by other PRPs regarding matters addressed in that settlement. This is referred to as *contribution protection*. Other PRPs that are not parties to the settlement do not receive contribution protection unless the agreement specifically provides for their liability to be discharged, but their potential liability is reduced by the amount of the settlement.[102]

The question of whether a specific contribution claim relates to a "matter addressed" in a prior settlement depends on the specific terms of the settlement agreement. In evaluating whether contribution claims are barred against a settling PRP, courts have considered the hazardous substance at issue in the settlement, the location of the site, the time frame covered by the settlement, and the cost of the cleanup.[103]

Defenses to and Limitations on Liability

In addition to the various exclusions to the elements of CERCLA liability described above, CERCLA establishes defenses to and limitations on liability associated with certain kinds of releases or parties that further circumscribe the scope of liability under the statute. Section 107(b) of CERCLA provides defenses to liability where an otherwise liable party can establish that a release or threat of release and resulting damages were caused solely by (1) an act of God; (2) an act of war; (3) an act or omission of a third party with whom the defendant has no contractual relationship, where the defendant exercised due care and took precautions against the third party's foreseeable acts or omissions and their consequences; or (4) any combination of the three circumstances listed above.[104] Other subsections of Section 107 provide exemptions and protections for parties who meet certain criteria, including municipal solid waste

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under Section 107(a). *E.g.*, United States v. New Castle Cnty., 642 F. Supp. 1258, 1268–69 (D. Del. 1986); Colorado v. Asarco, Inc., 608 F. Supp. 1484, 1490–91 (D. Colo. 1985); United States v. Conservation Chem. Co., 619 F. Supp. 162, 214–15 (W.D. Mo. 1985); United States v. Wade, 577 F. Supp. 1326, 1338 (E.D. Pa. 1983); United States v. Ottati & Goss, Inc., 630 F. Supp. 1361, 1395 (D.N.H. 1985). Congress intended the 1986 amendments to "[clarify] and [confirm]" the right of PRPs to seek contribution from other PRPs. S. REP. NO. 99-11, at 44 (1985).

[98] *See Atl. Research*, 551 U.S. at 139; Whittaker Corp. v. United States, 825 F.3d 1002, 1007 (9th Cir. 2016) ("[E]very federal court of appeals to consider the question . . . has said that a party who *may* bring a contribution action for certain expenses *must* use the contribution action, even if a cost recovery action would otherwise be available.").

Cost recovery actions under Section 107(a) and contribution actions under Section 113(f) are subject to differing statutes of limitations. *See* 42 U.S.C. § 9613(g)(2)(A)–(B) (six-year statute of limitations for cost recovery actions), 9613(g)(3)(B) (three-year statute of limitations for contribution actions).

[99] 42 U.S.C. § 9613(f)(1).

[100] *See, e.g.*, Env't Transp. Sys., Inc. v. ENSCO, Inc., 969 F.2d 503, 508 (7th Cir. 1992) (describing the six "Gore" factors, named for an amendment proposed by Rep. Al Gore identifying factors to be considered in apportioning costs).

[101] 42 U.S.C. § 9613(f)(2).

[102] *Id.*

[103] *E.g.*, Akzo Coatings, Inc. v. Aigner Corp., 803 F. Supp. 1380, 1385 (N.D. Ind. 1992); United States v. Union Gas Co., 743 F. Supp. 1144, 1154 (E.D. Pa. 1990).

[104] *Id.* § 9607(b).

generators, recyclers, service station dealers, cleanup contractors, contiguous landowners, bona fide prospective purchasers, lenders and fiduciaries, and parties that are not responsible for contamination but volunteer to help with cleanup.[105]

This testimony will focus on a discretionary limitation on EPA's enforcement authority as well as one statutory exemption and one statutory limitation that appear to be most relevant in the PFAS context. Depending on the circumstances of a specific release and the parties involved in it, other defenses and limitations could also apply.

EPA's Enforcement Discretion

Response actions and cost recovery under CERCLA are discretionary. CERCLA does not require EPA to take enforcement action with respect to every release of a hazardous substance over which the agency has response and enforcement authority. EPA may exercise its enforcement discretion on a site-by-site basis to pursue, or decline to pursue, cost recovery against PRPs that meet the statutory criteria for liability. When EPA does take action with respect to an individual site, the agency has discretion to pursue enforcement against one, some, or all PRPs, and to select which enforcement mechanism—a negotiated voluntary settlement agreement, a Section 106 order, or a Section 107(a) cost recovery action—to apply. In some instances, EPA has issued written guidance describing its enforcement discretion policy with respect to specific categories of sites or PRPs.

On April 19, 2024, EPA issued an enforcement discretion and settlement policy explaining how the agency would exercise its enforcement discretion under CERCLA in matters involving PFAS.[106] EPA stated that it "intends to focus its enforcement efforts on entities who significantly contributed to the release of PFAS contamination into the environment, including parties that manufactured PFAS or used PFAS in the manufacturing process, federal facilities, and other industrial parties."[107] As a result, the agency explained that it "does not intend to pursue otherwise potentially responsible parties where equitable factors do not support seeking response actions or costs under CERCLA."[108] EPA identified five categories of entities against which it did not intend to pursue PFAS response actions or costs under CERCLA:

- Community water systems and publicly owned treatment works,
- Municipal separate storm sewer systems,
- Publicly owned or operated municipal solid waste landfills,
- Publicly owned airports and local fire departments, and
- Farms where biosolids are applied to the land.[109]

EPA also identified several equitable factors that could form the basis for extending enforcement discretion to additional parties not in one of those five categories:

- Whether an entity is a state, local, or tribal government or works on behalf of or conducts services that otherwise would be performed by a state, local, or tribal government;
- Whether an entity performs certain defined public service roles related to drinking water, wastewater, and waste and pollution management;

[105] *Id.* §§ 9607(p), 9614(c), 9619(a), 9607(q), 9607(r), 9607(n), 9607(d).

[106] EPA PFAS Enforcement Discretion and Settlement Policy, *supra* note 8.

[107] *Id.* at 6.

[108] *Id.* at 3.

[109] *Id.* at 6–8.

- Whether an entity manufactured PFAS or used PFAS as part of an industrial process; and
- Whether and to what degree an entity is actively involved in the use, treatment, storage, disposal, or transport of PFAS.[110]

Additionally, EPA described how it could use settlement agreements to protect entities from liability and lawsuits brought by other parties. First, EPA stated that it would seek in its settlements with major PRPs to secure a waiver of rights providing that the settling PRP cannot pursue contribution claims against certain non-settling parties.[111] As noted above, absent such a waiver, the settling PRP could pursue contribution claims against those parties.

Second, as to parties that fall into one of the categories of entities enumerated in the memo or for which the enumerated equitable factors do not support enforcement against them for PFAS response actions under CERCLA, EPA stated that it may enter into settlement agreements with those parties to provide them with contribution protection.[112] Consistent with Section 113 of CERCLA, PRPs that resolve their liability to the United States through a CERCLA settlement with EPA would not be liable for third-party contribution claims for matters addressed in that settlement.[113]

Finally, EPA noted that parties may qualify for de minimis or de micromis settlements in certain situations or for limited "ability to pay" settlements "where payment could result in undue financial hardship for the PRP."[114]

Although EPA did not refer to its enforcement discretion memorandum when it announced its intent to retain the 2024 designations, the memo appears to remain in effect. CRS has not identified instances where EPA either declined to take enforcement action or entered into a settlement agreement consistent with the goals identified in the policy.

Enforcement discretion is distinct from a statutory exemption from liability in multiple ways. While EPA's exercise of enforcement discretion may allow some parties that would ordinarily be vulnerable to liability to avoid paying for some or all of a response action, the agency's decision to exercise its discretion and decline to pursue enforcement does not alter the scope of liability defined in the statute.[115] Additionally, EPA is not bound to apply an enforcement discretion policy uniformly and may deviate from it—such as for parties that fail to cooperate with the agency or significantly contribute to the spread of significant quantities of PFAS contamination, or in situations presenting an imminent and substantial endangerment to public health or the environment—or subsequently modify or revoke it.[116]

Furthermore, EPA's enforcement discretion only applies to *EPA*'s decision not to pursue enforcement against PRPs. States, tribes, and private parties may seek cost recovery or contribution against a PRP even if EPA does not. A PRP is not entitled to contribution protection unless it has resolved its liability to the United States or a state through a settlement. Therefore, a discretionary decision by EPA not to pursue enforcement against particular parties may leave that party vulnerable to contribution claims by third

[110] *Id.* at 8–9.

[111] *Id.* at 9.

[112] *Id.*

[113] 42 U.S.C. § 9613(f)(2).

[114] EPA PFAS Enforcement Discretion and Settlement Policy, *supra* note 8, at 9–10.

[115] *See* Kelley v. EPA, 15 F.3d 1100, 1107–08 (D.C. Cir. 1994) (holding that "courts and not EPA [are] the adjudicator of the scope of CERCLA liability" and vacating EPA rule limiting CERCLA liability for secured creditors).

[116] EPA PFAS Enforcement Discretion and Settlement Policy, *supra* note 8, at 10. *See, e.g.*, Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta, 785 F.3d 710, 716 (D.C. Cir. 2015) (explaining that a policy statement explaining how an agency "will exercise its broad enforcement discretion . . . under some extant statute or rule" is "binding on neither the public nor the agency, and the agency retains the discretion and the authority to change its position . . . in any specific case").

parties, though EPA's stated policy of using settlement agreements to provide contribution protection appears intended to address this potential outcome.

A non-federal or private party seeking CERCLA cost recovery or contribution against an entity covered by an EPA enforcement discretion policy would still need to meet the requirements to establish liability: that a release or threatened release of a hazardous substance caused the incurrence of response costs, and that the entity qualifies as a PRP under the statute. To the extent EPA undertakes fewer cleanups as a result of its PFAS enforcement policy, there may be fewer circumstances giving rise to the requisite response costs, unless states, tribes, local governments, or private parties choose to clean up PFAS contamination that EPA has declined to address.

Federally Permitted Releases

Section 107(j) of CERCLA provides an exemption to CERCLA liability for response costs or damages resulting from a *federally permitted release*.[117] In general, the statute defines "federally permitted release" as a release or discharge that is in accordance with a permit issued under an enumerated list of federal statutes, including the CWA, RCRA, and the CAA.[118] Releases or discharges that are potentially relevant in the PFAS context include but are not limited to the following:

- Discharges in compliance with permits under Section 402 of the CWA (i.e., National Pollutant Discharge Elimination System (NPDES) permits);
- Discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a NPDES permit and subject to a condition of such permit;
- Continuous or anticipated intermittent discharges from a point source, identified in a NPDES permit or permit application, which are caused by events occurring within the scope of relevant operating or treatment systems;
- The introduction of any pollutant into a publicly owned treatment works when the pollutant is specified in and in compliance with applicable pretreatment standards of Section 307(b) or (c) of the CWA; and
- Releases in compliance with a legally enforceable final permit issued pursuant to Section 3005(a) through (d) of RCRA from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and satisfies other conditions.

Under Section 107(j), recovery for response costs or damages resulting from a federally permitted release "shall be pursuant to existing law in lieu of" CERCLA.[119] By its express terms, Section 107(j) does not modify any obligations or liability under other state or federal law, including common law, for harm resulting from a release or for the costs of cleaning up a hazardous substance. If another statute or common law provides a cause of action associated with a federally permitted release, that cause of action remains available even though CERCLA does not.

Some of the categories of industrial operators that have expressed concerns regarding their liability in the event of a PFAS hazardous substance designation likely have permits under one or more of the federal

[117] *Id.* § 9607(j).

[118] *Id.* § 9601(10). The definition includes "any emission into the air *subject to* a permit or control regulation under" specific provisions of the Clean Air Act. *Id.* § 9601(10)(H) (emphasis added). A federal court of appeals has distinguished this language from the sections of the definition that refer to discharges *in compliance* with permits issued under other laws, concluding that a release from a permitted facility that did not comply with relevant Clean Air Act permits was nevertheless "federally permitted" for the purposes of CERCLA's reporting requirements. Clean Air Council v. U.S. Steel Corp., 4 F.4th 204 (3d Cir. 2021).

[119] 42 U.S.C. § 9607(j).

environmental statutes identified in the definition of "federally permitted release." For example, municipal wastewater treatment plants would be subject to the requirements of a NPDES permit issued by EPA or a state. Whether a party's PFAS discharges constituted a federally permitted release would depend on the specific permits issued to that party. If a CWA permit issued by EPA or a state imposed PFAS-specific requirements, a court evaluating the applicability of the federally permitted release exemption would consider whether the PFAS discharge complied with the terms of the permit. Similarly, if EPA issued pretreatment standards for PFAS, a court would consider whether a facility's discharges to publicly owned treatment works were specified in and in compliance with applicable pretreatment standards. Some states with delegated CWA permitting authority have issued permits to industrial operators that include PFAS discharge limits.[120]

Somewhat less clear is whether a discharge of a designated PFAS from an entity that is permitted under the CWA could constitute a federally permitted release if the permit does not specify effluent limits or pretreatment standards specifically for discharges of PFAS. It is also less clear whether a discharge would be a federally permitted release if the permit specifies only monitoring requirements or best management practices for a designated PFAS. Currently, EPA has not specified discharge standards for PFAS under the CWA, whether in nationally applicable standards for categories of dischargers or in individual permits. EPA has indicated, however, that it plans to develop effluent limitation guidelines for PFAS manufacturers and metal finishers, and to propose a rule that would require NPDES permit applications to address monitoring and reporting of PFAS.[121] Once those rules are finalized, their implementation in permits could result in additional releases of PFAS qualifying as federally permitted releases.

Additionally, future regulation of PFAS under RCRA could affect the applicability of the federally permitted release exception to releases in compliance with hazardous waste permits issued pursuant to that statute. In February 2024, EPA proposed to list nine PFAS as "hazardous constituents" under RCRA.[122] Such a listing would not make those PFAS or the wastes containing them hazardous wastes pursuant to the statute, but would serve as a building block for potential future regulation of PFAS as a RCRA listed hazardous waste.[123] This is because one of the pathways for listing a solid waste as a hazardous waste is if the solid waste contains a hazardous constituent and the EPA Administrator concludes that the waste is "capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed."[124] If wastes containing PFAS were subsequently regulated as RCRA listed hazardous wastes, releases in compliance with RCRA hazardous waste permits issued pursuant to that statute could be considered federally permitted releases under CERCLA in some circumstances.

Limitation on EPA's Enforcement Authority for State-Law Responses

The 2002 amendments to CERCLA provide a statutory limit to the sites over which EPA may exercise its enforcement authority. Section 128(b) bars EPA from taking enforcement action under Sections 106(a) or 107(a) of CERCLA at certain sites where there is or has been a response action undertaken in pursuant to

[120] *See, e.g.*, Press Release, North Carolina Dep't of Env't Quality, *DEQ Approves Permit to Reduce PFAS Contamination in the Cape Fear River* (Sept. 15, 2022), https://www.deq.nc.gov/news/press-releases/2022/09/15/deq-approves-permit-reduce-pfas-contamination-cape-fear-river.

[121] EPA, *Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination* (Apr. 28, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-announces-major-epa-actions-combat-pfas-contamination; Office of Information and Regulatory Affairs, Office of Management and Budget, Unified Agenda, PFAS Requirements in NPDES Permit Applications, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=2040-AG34 (last visited Nov. 15, 2025).

[122] Listing of Specific PFAS as Hazardous Constituents, Proposed Rule, 89 Fed. Reg. 8606 (Feb. 8, 2024).

[123] *Id.* at 8609.

[124] *See* 40 C.F.R. § 261.11 (describing pathways for listing solid waste as a hazardous waste under RCRA).

a state's cleanup authorities.[125] Similar to EPA's enforcement discretion policy, to the extent Section 128(b) limits EPA's ability to enforce CERCLA liability arising from PFAS contamination, it may serve to limit the number of sites that could give rise to a private contribution claim under CERCLA. Moreover, where a party has recovered costs, damages, or claims under state law, Section 114(b) bars recovery under CERCLA for the same costs, damages, or claims.[126]

In states with mini-Superfund laws that allow for remediation and liability associated with PFAS contamination, some cleanups are now proceeding under those state laws,[127] which would bar federal enforcement action under CERCLA at those sites. CERCLA cost-recovery or contribution claims for which a party has already recovered costs would also be barred under Section 128(b) of CERCLA. Accordingly, to the extent PFAS contamination is addressed under state law, Section 128(b) could limit both the sites at which EPA undertakes a cleanup and the ability of any party to recoup cleanup costs pursuant to CERCLA.

Recent PFAS Litigation Under CERCLA

As noted above, the scope of financial liability under CERCLA is limited to response costs, natural resource damages, natural resource damage assessments, and federal public health studies.[128] While the 2024 designation of PFOA and PFOS makes CERCLA's liability framework available where the other preconditions to liability are met, other legal pathways remain open for recovering certain kinds of costs related to PFAS contamination.

CRS has not identified instances subsequent to the April 2024 designation in which EPA has taken enforcement action under CERCLA against a PRP related to cleanup of PFOA or PFOS contamination.[129] Litigation under other laws and between PFAS manufacturers, entities that used PFAS in their manufacturing processes, municipal governments, water utilities and other passive receivers, and owners of contaminated property has been ongoing for several years. These lawsuits have asserted a number of claims under state tort law, state "mini-CERCLA" laws, and other federal and state laws, and thus are not premised on the designation of PFAS as hazardous substances under CERCLA. While the 2024 designation may provide another cause of action in some circumstances, it does not necessarily increase the amount of financial liability a party may face. This is because CERCLA's "double recovery" provision prohibits "compensation for the same removal costs or damages or claims" under CERCLA that a party has already received under any other state or federal law, as well as compensation for removal costs or

[125] 42 U.S.C. § 9628(b)(1). EPA retains some enforcement authority, including where a state has requested federal assistance in the response action, there is migration of contamination across state lines or onto federal property, an imminent and substantial endangerment to public health or welfare or the environment necessitates further cleanup, or newly discovered information indicates that further remediation is necessary to protect public health or welfare or the environment. *Id.* § 9628(b)(1)(B).

[126] *Id.* § 9614(b). Section 114(b) also bars recovery under state law or any other federal law for costs, damages, or claims for which a party has already been compensated under CERCLA. *Id.*

[127] *See* POLLACK ET AL., *supra* note 32, at 102–07.

[128] CRS In Focus IF11790, *Liability Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, by Kate R. Bowers (2021).

[129] EPA has taken action to address PFAS contamination under other statutory authorities that are not predicated on the April 2024 CERCLA hazardous substance designation. For example, in May 2024, EPA issued an order pursuant to Section 1431 of SDWA directing the United States Air Force and the Arizona Air National Guard to address PFAS contamination in drinking water at the Tucson International Airport Area Superfund Site. *See* Emergency Administrative Order for Response Action, In the Matter of The United States Air Force and Arizona National Guard, Docket No. PWS-AO-2024-10 (May 29, 2024). In October 2024, the Air Force agreed to take several actions, including under CERCLA, to resolve the dispute with EPA. Letter from Dr. Ravi Chaudhary, Assistant Secretary of the Air Force, Energy, Installations & Environment, to David Uhlmann, Assistant Administrator, Office of Enforcement & Compliance Assurance, EPA (Oct. 21, 2024); Letter from Amy Miller-Bowen, Director, Enforcement and Compliance Assurance, EPA Region 9, to Michelle Brown, Director, Environmental Policy and Programs, Office of the Deputy Assistant Secretary of the Air Force (Oct. 21, 2024).

damages or claims under any other federal or state law that a party has already received under CERCLA.[130]

In some PFAS-related cases that were pending before the 2024 designation, plaintiffs have amended their complaints to add claims under CERCLA. One such set of cases is the AFFF multidistrict litigation (MDL), a group of more than 10,000 suits that have been consolidated before a single court. In general, the plaintiffs allege that AFFFs contaminated groundwater near military bases, airports, and other sites where they were used to extinguish liquid fuel fires, and that the plaintiffs incurred personal injury, property damage, other economic losses, and a need for medical monitoring as a result.[131] The plaintiffs allege claims against PFAS manufacturers as well as against the United States government.

Some plaintiffs in the AFFF multidistrict litigation have added CERCLA claims to their complaints. For example, on July 8, 2024, New Mexico filed an amended complaint against the United States, the U.S. Air Force, and the U.S. Department of the Army in the ongoing litigation.[132] New Mexico had already asserted claims against the United States under RCRA and the New Mexico Hazardous Waste Act. The amended complaint adds a CERCLA cost recovery claim against the federal defendants, alleging that New Mexico has incurred more than $3,000,000 in response costs and more than $140,000 in natural resource damage assessments and will incur future costs of at least $6,495,000 and natural resource damage assessments of at least $3,625,000.[133] Similarly, Art and Renee Schaap, the owners of a New Mexico dairy farm—who had already sued the United States under the Federal Tort Claims Act for damages related to cleanup of PFAS contamination on their property—filed a complaint in the MDL seeking to hold the United States liable for response costs under CERCLA.[134]

A suit by the City of Wausau, Wisconsin against Georgia-Pacific, LLC and other facilities that used PFAS in their manufacturing processes was originally filed in the U.S. District Court for the Western District of Wisconsin but was conditionally transferred to the AFFF MDL.[135] Wausau has opposed the transfer, and the Wisconsin case is stayed pending an order from the Judicial Panel on Multidistrict Litigation regarding the transfer.

On September 8, 2025 (prior to EPA's announcement that it intended to retain the 2024 designation), the United States moved to hold all CERCLA claims in the MDL in abeyance while EPA reviewed the 2024 designation and in order to prevent double recovery under CERCLA.[136] The court has not yet ruled on the motion. The United States also moved to deny or defer ruling on the Schaaps' motion for summary judgment to allow for fact discovery, including with respect to the question of double recovery.[137]

Some other cases were newly filed subsequent to the 2024 designation but relate to contamination that has already been the subject of other lawsuits. On December 9, 2024, the City of Dalton, Georgia—a longtime center of carpet and flooring manufacturing, including stain- and soil-resistant carpets and floors

[130] 42 U.S.C. § 9614(b).

[131] U.S. District Court, District of South Carolina, *Aqueous Film-Forming Foams (AFFF) Products Liability Litigation, MDL No. 2873*, https://www.scd.uscourts.gov/mdl-2873/index.asp (last visited Nov. 11, 2025).

[132] Second Amended Complaint, New Mexico v. United States, No. 2:20-cv-02115 (MDL No. 2:18-mn-2873) (D.S.C. July 8, 2024).

[133] *Id.* at 61–63.

[134] Complaint, Schaap v. United States, No. 2:24-cv-07040 (MDL No. 2:18-mn-2873) (D.S.C. Dec. 5, 2024), ECF No. 1; Plaintiffs' Motion for Partial Summary Judgment on Liability and Recovery of CERCLA Responses Costs Incurred to Date, Schaap v. United States, No. 2:24-cv-07040 (MDL No. 2:18-mn-2873) (D.S.C. June 25, 2025), ECF No. 7.

[135] City of Wausau v. Georgia-Pacific, LLC, No. 3:25-cv-00004 (W.D. Wisc.).

[136] United States' Motion to Hold in Abeyance CERCLA Cost Recovery and Contribution Claims, In re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873 (D.S.C. Sept. 8, 2025), ECF No. 7987.

[137] Motion to Deny or Defer Ruling on Plaintiffs' Motion for Partial Summary Judgment, Schaap v. United States, No. 2:24-cv-07040 (MDL No. 2:18-mn-2873) (D.S.C. Sept. 8, 2025), ECF No. 11.

manufactured with PFAS—filed a lawsuit against several PFAS manufacturers and carpet manufacturers that used PFAS in their manufacturing processes.[138] In addition to various state and tort law claims, Dalton alleges that the defendants arranged for disposal, treatment, and/or transport for disposal or treatment of PFAS at the city's wastewater treatment system and therefore are liable for response costs under CERCLA.[139] Dalton has been a defendant in lawsuits arising from the discharge of PFAS by Dalton's wastewater facilities, which allegedly resulted in contamination of drinking water in other cities in the area.[140]

On December 18, 2024, the State of Maryland sued W.L. Gore & Associates, a materials science company that has used PFAS in its manufacturing processes.[141] Prior to the CERCLA PFAS designation and to Maryland's suit, Gore was the defendant in a class action brought on behalf of residents in the area around Gore's facilities; that suit is still pending.[142] In its complaint, Maryland alleges that PFAS (including PFOA) from 13 of Gore's manufacturing facilities entered the state's environment, contaminated its natural resources and drinking water, and put residents' health at risk.[143] Maryland asserts cost recovery and contribution claims under Sections 107(a) and 113(g) of CERCLA, alleging that it has incurred and will continue to incur response costs as a result of the release of PFAS at Gore's facilities.[144] With respect to three of Gore's facilities, Maryland also asserts that the contamination presents an imminent and substantial endangerment to health and the environment such that injunctive relief is warranted under RCRA, and that Gore violated RCRA by its open dumping of solid waste and hazardous waste.[145] In addition to claims under federal law, Maryland also alleges state tort-law claims including public nuisance, trespass, negligence, and unjust enrichment.[146] Maryland further alleges that Gore discharged controlled hazardous substances, pollutants, and wastes in violation of state environmental laws.[147] The case is proceeding through discovery and the court has not issued a ruling on the merits or set a schedule for dispositive motions.

Options for Congress

Should Congress determine that PFAS contamination presents unique concerns that merit a different approach to liability, it has numerous options for addressing those concerns through statutory

[138] City of Dalton v. 3M Co., No. 4:24-cv-00293 (N.D. Ga.).

[139] First Amended Complaint at 36–37, City of Dalton v. 3M Co., No. 4:24-cv-00293 (N.D. Ga. Apr. 1, 2025), ECF No. 85.

[140] *See* Johnson v. 3M Co., No. 420-cv-00008 (N.D. Ga.).

[141] Complaint, Maryland v. W.L. Gore & Assocs., Inc., No. RDB-24-3656 (D. Md. Dec. 18, 2024), ECF No. 1. Maryland filed an amended complaint on May 12, 2025. First Amended Complaint, Maryland v. W.L. Gore & Assocs., Inc., No. RDB-24-3656 (D. Md. May 12, 2025), ECF No. 43.

[142] *See* Wolf v. W.L. Gore & Assocs., Inc., No. 1:23-cv-00280 (D. Md.).

[143] First Amended Complaint at 2, Maryland v. W.L. Gore & Assocs., Inc., No. RDB-24-3656 (D. Md. May 12, 2025), ECF No. 43.

[144] *Id.* at 46–48.

[145] *Id.* at 48–49.

[146] *Id.* at 36–40, 49–51.

[147] *Id.* at 40–45.

amendments. While Congress has authorized previous exemptions from liability for certain types of parties or in certain situations, Congress has not more broadly authorized exemptions from liability under CERCLA for releases of specific hazardous substances.

Members have introduced various bills in the 118th and 119th Congresses to exempt agricultural operators, solid waste management and compost facilities, water utilities, entities with fire suppression systems using AFFF, airports, and some associated contractors from CERCLA liability under certain circumstances.[148] Additionally, Section 8 of the Promoting Efficient Review for Modern Infrastructure Today Act (PERMIT Act) does not explicitly relate to PFAS but would amend the CWA's permit shield provision to provide that compliance with the conditions of a NPDES permit shall be considered compliance with enumerated sections of the CWA with respect to discharges of pollutants for which effluent limitations are included in the permit as well as some discharges for which an effluent limitation is not included in the permit.[149] If enacted, that provision of the PERMIT Act would potentially expand the universe of PFAS discharges to which the CWA's permit shield and CERCLA's federally permitted release exception would apply.

Congress could bar EPA from designating any additional PFAS as hazardous substances or amend CERCLA to impose guardrails around the agency's exercise of its designation authority. Alternatively, Congress could direct EPA to designate additional PFAS as hazardous substances under CERCLA, thus triggering the statute's reporting and liability provisions for the release of those substances. Congress could also direct EPA to take action with respect to PFAS under other statutes, thus triggering (or foreclosing) the requirements imposed by those statutes.

Disclaimer

[148] Agriculture PFAS Liability Protection Act of 2023, S. 1427, 118th Cong.; Resource Management PFAS Liability Protection Act of 2023, S. 1429, 118th Cong.; Water Systems PFAS Liability Protection Act, S. 1430, 118th Cong. (2023); Fire Suppression PFAS Liability Protection Act, S. 1432, 118th Cong. (2023); Airports PFAS Liability Protection Act, S. 1433, 118th Cong. (2023); Water Systems PFAS Liability Protection Act, H.R. 1267, 119th Cong. (2025); S. Amdt. 3363 to S. 2296, 119th Cong. (2019).

[149] Promoting Efficient Review for Modern Infrastructure Today Act (PERMIT Act) § 8, H.R. 3898, 119th Cong. (2025).