



August 9, 2021

The Honorable Chuck Schumer  
Majority Leader  
United States Senate  
Room S-221, The Capitol  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Room S-230, The Capitol  
Washington, DC 20510

RE: PFAS Action Act of 2021

Dear Majority Leader Schumer and Minority Leader McConnell:

The National Waste & Recycling Association (NWRA), with support from the Solid Waste Association of North America (SWANA), writes on behalf of the waste and recycling industry to express our concerns with recently passed H.R. 2467, the PFAS Action Act of 2021. As the Senate considers this legislation, we urge you to vote against it in its current form as the legislation would run counter to the “polluter pays” principle that guides Superfund site cleanups under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

H.R. 2467 would require EPA to designate PFOA and PFOS as hazardous substances under CERCLA within one year, and within five years, to determine whether to designate the remaining PFAS as hazardous substances. CERCLA hazardous substance designations are intended to make sure polluters are held responsible for funding the cleanup of Superfund sites, but with H.R. 2467, communities served by municipal solid waste landfills could face that financial liability instead. Further, by requiring EPA to designate PFOA and PFOS as hazardous substances, the legislation circumvents the current transparent, science-based process; and instead establishes an expedited regulatory process that eliminates EPA’s discretion, bypasses public review, and ignores science.

Further, H.R. 2467 would offer a CERCLA liability shield to airports that release PFAS into the environment through their use of firefighting foam. Municipal solid waste landfills neither manufacture nor use PFAS, but merely receive materials containing PFAS from the communities landfills serve. As receivers of PFAS, Congress should extend that same CERCLA liability protection to municipal solid waste landfills. Doing so would keep CERCLA liability on the corporations that created the pollution in the first place.

We support with the sentiment outlined in the comment letter from the U.S. Conference of Mayors, National League of Cities, and National Association of Counties to Representatives Pallone and Rodgers on June 22, which raises similar concerns. Specifically, they note that “drinking water and wastewater utilities and municipal landfills, which serve as receivers of PFAS chemicals and did not cause or contribute to contamination, [thus] should not be held liable for PFAS contamination or cleanup costs.”

Further, municipal solid waste landfills are important to managing and limiting PFAS in the environment as recognized by EPA in its December 2020 draft Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances. EPA identified RCRA Subtitle D solid waste landfills

with composite liners and leachate collection and treatment systems as one of four management options to consider for destruction and disposal of PFAS containing materials.

While PFAS may appear in landfill leachate—the liquid formed by rainwater percolating through waste in landfills – that leachate is treated. Landfills typically send collected leachate to state and federally permitted wastewater treatment plants that discharge to state and federal waterways. Duly permitted Subtitle D landfills protect the groundwater from leachate that may contain PFAS through its liners, leachate collection and treatment systems and ground watering monitoring wells.

Unfortunately, designating certain PFAS as hazardous substances under CERCLA could inadvertently subject communities to increased environmental burdens and waste disposal costs:

- **Increased Likelihood of Environmental Harm.** A CERCLA designation would impel landfill operators to revisit their waste acceptance criteria, likely choosing to limit inbound wastes with elevated concentrations of PFAS and/or increasing disposal costs for certain media. Doing so could perversely incentivize entities to seek alternative means of disposal of PFAS-contaminated media and remediation wastes that are less protective of public health and the environment, curtail the ability of some wastewater treatment facilities to continue operating, and frustrate EPA cleanup activities in affected communities.
- **Increased Costs of Municipal Solid Waste Disposal.** Removing PFAS from landfill leachate requires advanced treatment techniques. These treatment methods are prohibitively expensive, costs that would be passed along to communities, water treatment plants, wastewater treatment facilities, and biosolids management, all of which rely on landfills for disposal of PFAS-contaminated media. A CERCLA designation thus would impact communities through (1) increased waste disposal fees to cover the costs of PFAS in leachate and potential remediation activities, and (2) increased fees for water and wastewater treatment to cover their expenses (as well as similar potential costs relating to PFAS treatment and remediation). These cost increases likely would have a significant disproportionate impact on low-income households that rely on the affordability of services that the waste sector provides.

While we share the goal of addressing PFAS contamination and holding accountable those entities that are responsible releasing it into the environment, H.R. 2467 would instead assign environmental cleanup liability to innocent essential public services and their customers. We have no choice but to oppose the legislation and encourage you to vote against it in its current form.

**Recommendation.** Municipal solid waste landfills and the communities they serve should not be held financially liable under CERCLA for PFAS contamination, as landfills are receivers of PFAS and are part of the long-term solution to managing these compounds. The costs of cleanup must remain with the manufacturers and importers that introduce PFAS into the stream of commerce. It is also imperative to focus on discontinuing and phasing out production and use at manufacturing facilities, finding safer alternatives for heavy-use applications, and providing water utilities and wastewater treatment facilities the resources they need to address PFAS contamination—without placing the costs of CERCLA liability on wastewater treatment plants and local ratepayers.

The attached draft legislative language provides a narrow exemption from CERCLA liability where a landfill discharges leachate in compliance with all applicable laws and regulations and where such discharge is not the result of gross negligence, willful misconduct, or noncompliance with federal and state laws governing waste disposal.

## I. DRAFT LEGISLATIVE LANGUAGE

(a) IN GENERAL.—No municipal solid waste landfill (as defined at 40 C.F.R. 258.2) shall be liable under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) for the costs of responding to, or damages resulting from, a release to the environment of a perfluoroalkyl or polyfluoroalkyl substance designated as a hazardous substance under section 102(a) of such Act that resulted from the discharge of leachate where such discharge is in compliance with Federal or State law.

(b) EXCEPTION.—Subsection (a) shall not apply with respect to any discharge described in such subsection that results from any gross negligence or willful misconduct of a municipal solid waste landfill, or from noncompliance with any Federal or State law governing waste disposal.

Thank you for considering the landfill industry's perspective on this legislation. We look forward to working with you to address the country's disposal needs. Should you have any questions, please call Anne Germain of NWRA at 202-364-3724 or e-mail at [agermain@wasterecycling.org](mailto:agermain@wasterecycling.org), or call Jesse Maxwell of SWANA at 240-494-2237 or email at [jmaxwell@swana.org](mailto:jmaxwell@swana.org).

Very truly yours,



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