



Committee: Senate Environment & Public Works Committee
Event: [Hearing to Examine the Future of PFAS Cleanup and Disposal Policy](#)
Date: November 19, 2025

Executive Summary:

The hearing primarily focused on the Environmental Protection Agency's (EPA) enforcement discretion policy, introduced in April 2024, following the designation of PFOA and PFOS as hazardous substances under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA). Although the agency's enforcement policy suggests that it will not seek compensation or recovery from passive receivers of PFAS, witnesses and Senators from both sides of the aisle expressed concerns about the potential for costly third-party litigation. The panel discussed the need for congressional action to ensure that passive recipients are not held liable and that actual polluters are held accountable. Witnesses also emphasized the need for EPA to issue clear, actionable policies for PFAS disposal.

Member Toplines:

[Chair Shelley Moore Capito \(R-WV\)](#): Capito asserted that the EPA enforcement discretion policy for PFAS does not do enough to shield passive receivers from liability under CERCLA. She noted that construction projects face delays and increased costs due to a lack of clarity regarding PFAS disposal, destruction, and associated liability. She called on the EPA to deliver “clear disposal guidance and restore predictability” for contractors. Capito then explained that the highest concentrations of PFAS are often found in hotspots such as military sites and airports, and that, without limiting contamination in these areas, PFAS will continue to pollute nearby water supplies. She contended that while PFAS destruction technology has been proven to work, it is expensive; therefore, the EPA must issue guidance to determine which management approaches are most appropriate. She concluded that while EPA's enforcement memo seeks to provide liability protections to passive receivers from third-party claims, the effort does not go far enough; Capito called on Congress to provide a permanent liability solution for passive receivers, citing the [2002 Brownfields amendments](#).

[Ranking Member Sheldon Whitehouse \(D-RI\)](#): Whitehouse contended that CERCLA (or the Superfund) is the best tool available to hold polluters accountable, stating that the law's retroactive, joint and several liability framework is critical to its execution. However, he noted that manufacturers and other responsible parties should not be allowed to abuse the law and “aggressively use third-party suits to avoid paying their fair share.” Whitehouse criticized EPA Administrator Lee Zeldin for shuttering the Office of Research and Science, which was studying additional ways to safely dispose of and destroy PFAS. Finally, he advocated for adequate funding for the State Revolving Funds to continue PFAS removal efforts and condemned the Trump administration's proposed funding cuts.

Witness Toplines:

[Eric Gerstenberg, Co-Chief Executive Officer, Clean Harbors](#): Gerstenberg referenced the *Resource Conservation and Recovery Act* (RCRA), which established a comprehensive federal framework for the disposal of hazardous waste. He noted that RCRA provides the tools to manage PFAS safely, particularly through the use of high-temperature incinerators. Gerstenberg highlighted Clean Harbors' research and PFAS disposal and destruction services and emphasized the need for an EPA regulatory framework beyond the [National Drinking Water Standard](#).

[Leah Pilconis, General Counsel, Associated General Contractors of America \(AGC\)](#): Pilconis explained that because PFAS is ubiquitous, contractors can encounter it at any construction site. Under current law, this exposes them to potential liability. She called on Congress to provide contractors with reasonable liability protections and a clear, workable path toward compliance when they encounter PFAS on construction sites. Pilconis further stressed this point, stating that CERCLA liability is strict and retroactive, joint and several, and does not take intent or prior knowledge into account. Additionally, she noted that PFAS is driving up project costs, with AGC members reporting higher trucking, disposal, testing, consulting, and insurance costs. She urged Congress to take the following steps: amend CERCLA to protect contractors and other passive receivers; direct EPA to issue clear PFAS disposal and reuse standards; require PFAS testing early; and ensure PFAS policy does not raise infrastructure costs.

[Kate Bowers, Supervisory Attorney, Congressional Research Service](#): Bowers pointed out that a CERCLA designation enables the full range of the EPA's cleanup authority but does not establish liability for any parties involved. She clarified that only specific parties linked to contamination can be held responsible, i.e., Potentially Responsible Parties (PRPs). Bowers explained that CERCLA allows any individual or entity to sue a PRP to recover response costs. Additionally, it permits parties required to cover these costs to assert a contribution claim, requiring other PRPs to bear a share of the costs. Regarding the EPA's enforcement discretion policy, Bowers noted that the agency's decision not to pursue enforcement does not shield entities from third-party claims.

Major Takeaways:

- Capito inquired whether the Brownfields CERCLA exemption provides the EPA with sufficient precedent to apply this to PFAS. Bowser suggested that it may.
- Referring to liability exemptions, Whitehouse highlighted the importance of avoiding regression on CERCLA. He questioned the witnesses about whether improper liability exemptions could harm the public.
- Sen. **Jon Husted** (R-OH) expressed hope that the EPA will continue testing solutions for PFAS disposal, identify the most cost-effective approach, and provide regulatory certainty about liability.
- Sen. **Lisa Blunt Rochester** (D-DE) inquired about the EPA's capacity to safeguard passive receivers that are either legally required to use PFAS or are unaware of PFAS contamination. Bowers acknowledged that CERCLA imposes strict liability, regardless of intent or knowledge. However, the EPA can abstain from taking enforcement action against certain pass-through entities.

- Sen. **Pete Ricketts** (R-NE) raised his amendment to the *National Defense Authorization Act*, which would remove liabilities for passive receivers of PFAS. He vocalized his support for Congress to act on passive receiver exemptions and encouraged alternatives to PFAS, such as soybean meal.
- Sen. **Alex Padilla** (D-CA) addressed the potential CERCLA liability of passive receivers, particularly municipal water and wastewater systems. He cautioned that municipalities remain vulnerable to third-party lawsuits.
- Sen. **John Curtis** (R-UT) stated that when liability or compliance costs are borne by passive recipients, they are then passed on to the public in the form of higher costs. He shared that Utah is currently facing an affordability crisis that may be exacerbated if and when passive recipients are held liable under third-party lawsuits.
- Sen. **Adam Schiff** (D-CA) raised concerns about potential CERCLA liability for water systems. He also cautioned against "blanket exclusions," noting that they could set a bad precedent and hinder clean-up efforts. He asked Pilconis and Gerstenberg about an adequate approach to codifying EPA's enforcement policy for passive receivers.
- Sen. **Angela Alsobrooks** (D-MD) expressed concerns about holding federal entities accountable for pollution and ensuring timely participation in remediation efforts.
- Sen. **Mark Kelly** (D-AZ) asked whether CERCLA is the proper tool to address PFAS contamination and, if not, what other authorities Congress can leverage. The witnesses agreed that CERCLA is the correct tool, albeit the broadest, but that additional guidelines and regulatory clarity are needed.
- Sen. **Ed Markey** (D-MA) acknowledged the need to build and upgrade water treatment facilities and expressed concerns about the associated PFAS liability costs, warning that exemptions may result in unwieldy Superfund loopholes.