



Know your environment.
Protect your health.

Dear Representative,

EWG urges you to support the following amendments to the National Defense Authorization Act (H.R. 2500):

- Pappas Amendment #665, which would require EPA to add PFAS to the list of toxic pollutants under the Clean Water Act.
- Dingell Amendment #537, which would designate PFAS as hazardous substances under CERCLA.

Hazardous substance designation is urgently needed to jump start the clean-up process in contaminated communities across the United States and ensure that polluters are held accountable. We understand that trade associations have expressed concerns about the potential liability that may be faced by public drinking and wastewater utilities as well as farmers. These concerns are greatly overstated.

Land application of sewage sludge is exempt from CERCLA.

Farmers who apply biosolids as a fertilizer and the wastewater facilities that provide that sludge will not be held liable under CERCLA. Section 101(22) of CERCLA exempts “the normal application of fertilizer” from the definition of “release.”¹ Applying biosolids to farm fields would constitute the normal application of fertilizer, and therefore would not be considered a “release” of a hazardous substance.

Permit requirements will reduce CERCLA liability for water utilities.

The Pappas Amendment would limit future liability for utilities because it would require EPA to establish effluent limitation guidelines and pretreatment standards under the Clean Water Act. PFAS releases would be subject to NPDES permits. Section 107(j) of CERCLA limits liability from “federally permitted releases,” including releases subject NPDES to permits.² If wastewater utilities release PFAS in compliance with an NPDES permit, they will be protected from future liability. Establishing these effluent and pretreatment requirements would also reduce the amount of PFAS going to drinking water utilities, reducing their cleanup burden.

Liability for PFAS clean-up should fall on industrial polluters, not water utilities.

The vast majority of PFAS contamination has been caused by industrial polluters and through the application of fluorinated fire-fighting foam. Under section 122(g) of CERCLA, EPA can make “de minimis” settlements for minor portions of cleanup costs with parties who only contributed a small share of

¹ 42 U.S.C. § 9601(22)(D)

² 42 U.S.C. § 9607(j).



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the pollution.³ EPA also has discretion to allowed delayed payments, payment schedules, and in-kind contributions from municipal parties in settlement agreements. The lion's share of PFAS liability will fall on chemical manufacturers, foam manufacturers, industrial dischargers, and the Department of Defense. Those parties should bear the ultimate responsibility of paying for remediation costs—including the costs of upgrading water treatment facilities to treat for PFAS.

CERCLA has additional liability exemptions and affirmative defenses

CERCLA also contains several other liability exemptions, affirmative defenses, and protections that municipalities and other public entities like utilities can use to protect themselves from liability. Municipalities are not liable for costs or damages in response to costs related to emergencies created by releases of hazardous substances⁴ and EPA can reimburse municipalities for temporary emergency measures.⁵ Municipalities and other government entities like utilities can also be exempted from liability if they are conducting a cleanup in compliance with a state cleanup program.⁶

Utilities should properly dispose PFAS waste

Utilities are also concerned that they could be liable for disposal of PFAS treatment byproducts like spent carbon filters that are disposed of in non-hazardous landfills and may leach into the surrounding community. Although not required under current law, utilities should dispose PFAS waste in landfills that accept waste regulated under Subtitle C of the Solid Waste Disposal Act. By doing so, utilities can protect themselves from future liability by treating PFAS as Subtitle C waste.

We urge you to support Pappas Amendment #665 and Dingell Amendment #537 to H.R. 2500.

³ 42 U.S.C. § 9622(g).

⁴ 42 U.S.C. § 9607(d)(2).

⁵ 42 U.S.C. § 9623.

⁶ 42 U.S.C. § 9628(b).