



July 14, 2023

The Honorable Thomas R. Carper,  
Chair, U.S. Senate Committee on  
Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member, U.S. Senate Committee on  
Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

The Solid Waste Association of North America appreciates the Committee's willingness to accept stakeholder comments on the draft legislation. SWANA is a not-for-profit professional association in the solid waste management field with more than 11,000 members from both the private and public sectors across North America. Members are dedicated to delivering collection, composting, recycling, and disposal services that are protective of the environment in a safe, science-based, and technologically advanced manner. Action is necessary by Congress to ensure that communities can continue to manage their solid waste safely and economically.

Consistent with concerns previously raised to the Committee, and in keeping with the "polluter pays" principle of the law, SWANA urges you to ensure that the bill includes relief from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for passive receivers of media containing per- and polyfluoroalkyl substances (PFAS). The following draft bill language is intended as another option for consideration alongside the legislation recently introduced by Senator Lummis:

**SEC. 12. CERCLA LIABILITY RELIEF FOR PASSIVE RECEIVERS OF PFAS.**

(A) *Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) is amended by adding at the end the following:*

*"(42) The term "passive receiver" means—*

*(A) Any person that received or receives material containing a per- or polyfluoroalkyl substance in its normal course of operations and did not or does not—*

*(i) manufacture a per- or polyfluoroalkyl substance or*

*(ii) receive a commercial benefit from the presence of a per- or polyfluoroalkyl substance in its products or operations; or*

*(B) Any person engaged in the production or harvesting of agricultural products."*

(B) *Section 107 of the Act (42 U.S.C. 9607) is amended by adding at the end the following:*

*"(s) PASSIVE RECEIVER EXEMPTION*

*(1) A passive receiver shall not be liable under any provision of this chapter for a release or threatened release of a per- or polyfluoroalkyl substance, and no person may recover costs or damages from a passive receiver under this chapter arising from a release of a per- or polyfluoroalkyl substance, or order a passive receiver to conduct or participate in a response to such a release, unless the passive receiver acted with gross negligence or*

*willful misconduct, and the release is not a federally permitted release under section 101(10) of this chapter.*

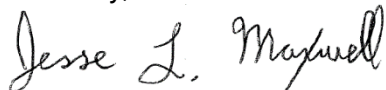
*(2) Any person who commences an action in contribution against a passive receiver who is not liable by operation of this subsection shall be liable to the passive receiver for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees."*

SWANA acknowledges that there are other ways of amending the statute to provide passive receivers with relief from CERCLA liability; however, certain approaches could prove to be problematic for our members. For example, defining the term "passive receiver" in section 101 while amending either section 107(b) ("Defenses") or section 113(f) ("Contribution") would continue to pose significant challenges for essential public services, communities, and the federal government, as the burden of proof associated with receiving relief from liability would remain with the passive receiver under either of these options. Requiring thousands of passive receivers to work through the legal system—either to establish defenses from liability under section 107(b) or to achieve a zero-contribution result under section 113(f)—would be extraordinarily time-consuming, resource-intensive, and costly for all parties involved, including for EPA.

Relying on EPA's proposal to settle and provide CERCLA contribution protection to individual parties is impractical for similar reasons considering the tremendous costs and administrative burdens that would be involved in pursuing settlements with thousands of essential public services. Moreover, any agency enforcement discretion policy would not carry the force of law, would not preclude states from initiating enforcement actions, and could be revoked by future administrations.

Thank you for consideration of our recommendations. We look forward to assisting the Committee should any questions arise on the potential disruptive impacts of a hazardous substance designation on passive receivers in ensuring the safe and effective management of waste streams containing PFAS.

Sincerely,

A handwritten signature in cursive script that reads "Jesse L. Maxwell".

Jesse L. Maxwell  
Advocacy & Safety Senior Manager