



# LaBella

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## Pfas: cercla impact on passive receivers

2023 A&WMA Southern Section Annual  
Meeting & Technical Conference

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# Passive receivers of pfas



Drinking Water  
Wastewater



Compost

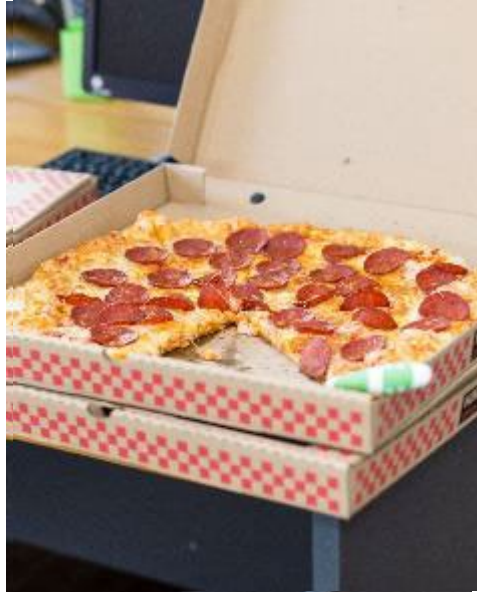


Biosolids



Landfills

Industries and municipalities who neither manufacture nor use  
PFAS-containing materials  
**and** who provide a public service





# Pfas as Hazardous substances

Designation of PFOA and PFOS as hazardous substances under CERCLA per EPA's proposed rule means that contaminated sites would be subject to Superfund cleanup and liability.





# cercla

Enacted by Congress on December 11, 1980

Response to Love Canal and similar environmental disasters

Designed to investigate and clean up sites contaminated with **Hazardous Substances**

40,000 federal Superfund sites in U.S.

- 1,300 listed on national priorities list (NPL)



**Comprehensive  
Environmental response,  
compensation,  
And Liability  
Act**



# CERCLA Liability

Retroactive • Joint &  
Several • strict

## Triggered when

- Hazardous substances are present at a facility
- A release (or possibility of a release) has occurred
- There have or will be cleanup costs incurred
- Defendant is a liable party



**Joint and several liability Makes  
all parties  
in a suit Responsible for damages  
Up to the entire amount  
Awarded.**

# Potentially Responsible Parties

## Four Classes of PRPs

- Current Facility Owners & Operators
- Past Facility Owners & Operators at the time the Hazardous Substances were Disposed
- Generators & Parties who Arranged the Disposal or Transport of Hazardous Substances
- Transporters of Hazardous Substances who Selected the Site where Hazardous Substances were Disposed



Passive receivers



## **Owner/Operator**

- Current – liable due to current ownership or operations
- Former – liable if owned/operated at time of release

## **Owner Liability**

- Extends beyond full ownership, to those who act like owners (i.e., decision-making relevant to managing the property)

## **Operator Liability**

- Manages, directs, or conducts operations specifically related to
  - pollution
  - disposal of hazardous substances, or
  - compliance with environmental regulations

**O w n e r /  
O p e r a t o r  
l i a b i l i t y**







## Arranger liability



## Arranger

**Any person** who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances.

WWTP



**Discharge of treated wastewater**

**Potentially  
Responsible  
Parties**

**L i a b l e**

**f o r**

**Cleanup Costs** including past and future costs incurred by government

**Damages** to natural resources

**Health Assessment Costs**

**Injunctive Relief** (i.e., performing and paying for cleanup) where a site may present an imminent and substantial endangerment





# CERCLA's Application to Passive Receivers

- Owner/Operator
- Transporter
- Arranger
- Contractor Liability
  - Moving/spreading substances
- Passive Migration
- Definition of Disposal



# PFAS-CERCLA Timeline



EPA issued Notice of Proposed Rulemaking (NPRM) for PFOA & PFOS

EPA held two public listening sessions on NPRM

EPA issued Advance Notice of Proposed Rulemaking (ANPRM) for additional PFAS compounds

Anticipated Final Rule for PFOA & PFOS

# Cercla pfas Enforcement discretion

Water Utilities  
POTWs

Publicly Owned/Operated  
Municipal Solid Waste Landfills

Farms Applying Biosolids

Certain Airports & Fire  
Departments

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**No Protection from Civil  
Suit by PRP**





# Advocate For limited exemption

**39 Associations** sent joint comment letter to EPA

- Reinforcing need for liability protection from CERCLA and for Congress to intervene

**31 Associations** sent joint letter to U.S. Senate EPW Committee

- Calling for CERCLA liability relief

## **Carper/Capito Legislation**

- In July, draft legislation received substantial public comments to include limited exemption

**CONTACT YOUR U.S. SENATORS!**



**Thank you!**



<https://www.labellapc.com/markets/waste-recycling/>

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