



EPA'S PROPOSED DESIGNATION OF PFOA AND PFOS AS HAZARDOUS: CONSIDERATIONS FOR LOCAL GOVERNMENTS

November 3, 2022

What does designation do?

- CERCLA liability is
 - Retroactive - Parties may be held liable for past actions
 - Joint and Several - Any one potentially responsible party (PRP) may be held liable for the entire cleanup of a site
 - Strict - A PRP cannot simply say that it was not negligent or that it was operating according to industry standards.
- CERCLA liability applies to:
 - Current owners and operators of a facility
 - Past owners and operators of a facility
 - Generators and parties that arranged for the disposal or transport of the hazardous substances

CERCLA hazardous substance designation does not require clean-up; it confers liability for the cost of clean-up

What are implications for community water facilities?

- Communities will face risk of litigation and the cost of that litigation as well as potentially clean-up costs
 - PRPs will sue communities when they themselves are drawn into paying for a clean-up site
 - EPA will use CERCLA liability to negotiate local government actions in consent orders
- Management of existing waste streams will change to reduce future potential liability
 - Eliminating the potential for recycling / beneficial use alternatives
 - Substantially increasing the cost of disposal
- Community facilities will have a duty to report discharges of PFOA and PFOS

What is intersection with a community's water facilities?

- EPA estimates that more than 20,000 drinking water systems have detectable levels of PFOA and PFOS in finished water
- Virtually all wastewater is contaminated at low levels by PFAS; PFOA and PFOS are the most common
- Water and wastewater treatment creates residuals that are discharged or disposed; true of both
 - Current conventional treatment
 - New treatment processes to remove PFAS
- Residual streams may be land applied, sent to landfills, discharged to interim storage ponds, discharged to WOTUS, recycled, etc.

There are approximately 50,000 community water systems and 16,000 wastewater treatment works that will be subject to CERCLA liability

What is the scope of challenge?

- The 2,500 largest POTWs produce roughly 5 million dry tons of wastewater biosolids annually
 - The majority (43%) are currently land applied and a 42% are landfilled
 - Land application is estimated to involve 390,000 acres of land annually
- Twenty-five percent of drinking water facilities use conventional treatment producing an estimated 11.5 billion tons of residuals annually
- Designation would have immediate impacts on disposal options
 - Eliminate viability of beneficial use options
 - Increase use of incineration at 10 times the cost of land application
 - Strain available hazardous waste management facility capacity
- Currently granular activated carbon used for water treatment is regenerated and reused
 - Virgin carbon pricing will rise
 - The existing 6 – 12 month lead time for GAC order fulfillment would increase
 - Impacts would be felt before new PFAS drinking water standards increase demand

What are the consequences for solid waste management?

- Products containing PFAS are in solid waste
- PFAS accumulates in landfill leachate
- Leachate often sent off-site for treatment
- PFAS difficult/costly to remove from leachate
- Treatment plants may no longer want to manage leachate
- Landfills may no longer want to take biosolids or other PFAS-laden materials



Replaces CERCLA's "Polluter Pays" Principle with a "Community Pays" Model

- Private parties will bring claims for contributions
- Significant litigation costs for lawful waste disposal and discharge going back decades
- Cost passed along to communities, drinking water and wastewater treatment facilities, and the biosolids management sector
- EPA enforcement discretion cannot protect passive receivers from litigation

Parties responsible for cleaning up the Passaic River brought contribution actions against 70 municipalities and other public entities - resulting in 8 years of litigation and a settlement of \$35.4 million.

Installing PFAS Treatment Technologies will Add Significantly to the Cost of Landfill Operation

- Technologies for PFAS removal from leachate at scale are still developing
 - Reverse osmosis
 - Granular activated carbon
- Multi-step process
 - Pretreatment
 - PFAS treatment
 - PFAS residuals treatment and management

Approximately 16 billion gallons of landfill leachate are produced every year

What are the costs?

- Capital costs alone for leachate pretreatment and leachate treatment at a moderate-sized landfill estimated at \$2 million to \$12 million
 - Additional costs anticipated for landfills where more stringent effluent levels are required
- The costs and operational effectiveness for PFAS residuals management is less understood
- Increased costs associated with PFAS management could total approximately \$966 million to \$8.187 billion per year for municipal solid waste landfills alone.

PFAS removal and residuals management could increase the costs of treating landfill leachate by approximately \$0.06 to \$0.39 per gallon

Impacts to Passive Receivers

- Disrupting the Interdependence of Drinking Water and Wastewater Treatment Facilities, and Landfill Operations
- Drinking water treatment facilities depend on landfills for disposal of filter materials that may contain PFAS
- Wastewater treatment facilities rely on landfills for biosolids management
 - Land application and incineration options might become more limited
- Landfills may need to limit inbound wastes with known elevated concentrations of PFAS and/or increase disposal costs for certain media
 - Filter materials
 - Biosolids
 - Impacted soils

Broader Unintended Consequences

- Curtail the ability of some wastewater treatment facilities to continue operating if landfills cannot accept PFAS waste
- Frustrate EPA and DOD cleanup activities around military installations and other affected communities
- Divert food waste from organics recycling programs
- Increase costs disproportionately on low-income communities

DOD has obligated nearly \$1.2 billion for cleanup at 699 installations and National Guard facilities

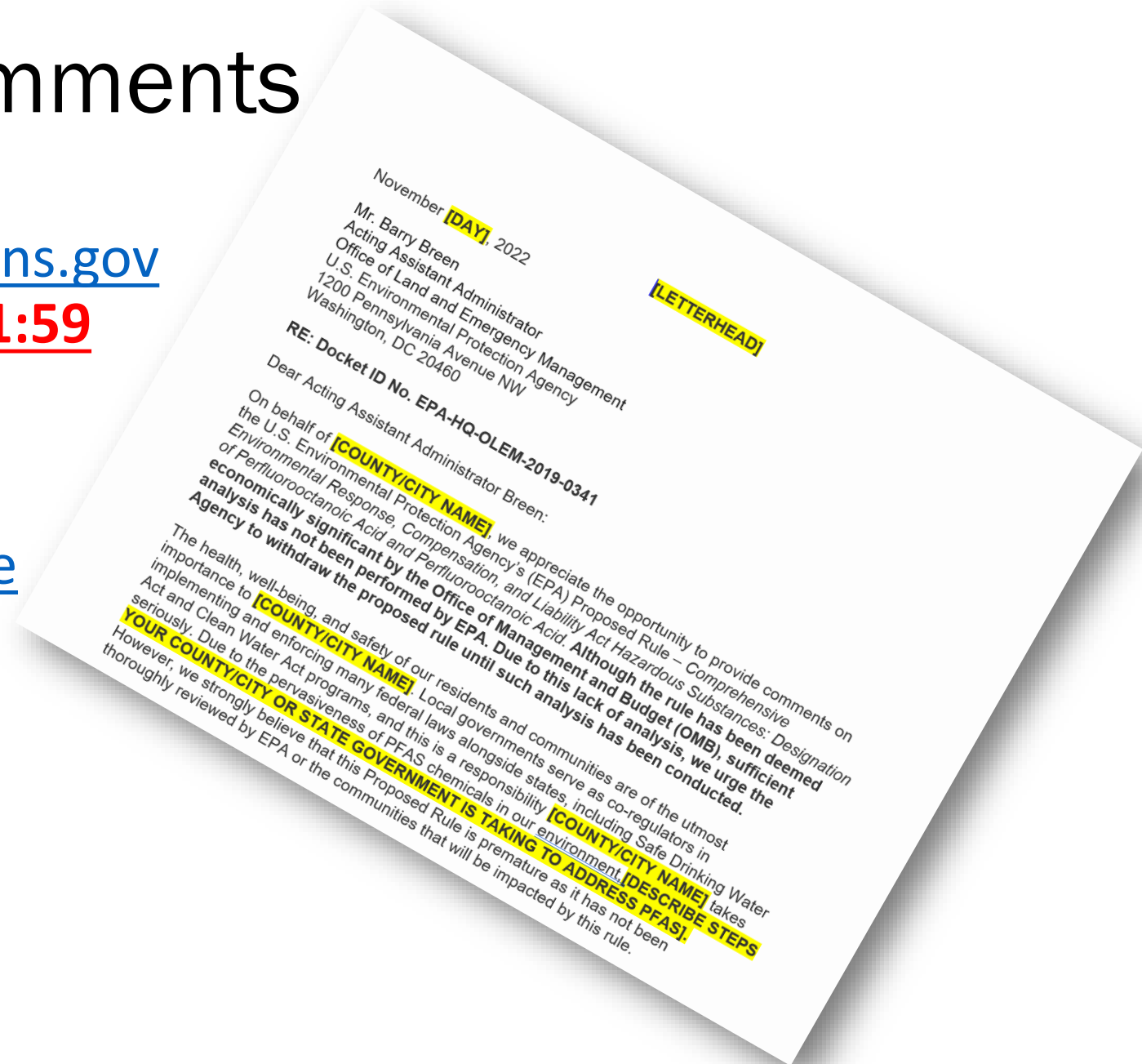
Municipal Airports and Firefighting

- PFAS chemicals required and widely used in firefighting foam at airports and for military training exercises.
 - Federal Aviation Administration and Dept. of Defense phasing out use and developing PFAS-free foam.
- Groundwater and soils contaminated near these sites, exposing local governments to legal liability.
- EPA has not considered cost burdens to local governments for site cleanup, available technology, new equipment purchase etc.

How to Submit Comments

Submit comments at [regulations.gov](https://www.regulations.gov)
by **Monday, November 7 at 11:59**
PM Eastern Standard Time

Download template letter [here](#)



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