

Water Systems PFAS Liability Protection Act: U.S. House of Representatives Legislation



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/19/2024

United States House of Representatives Members John Curtis (“Utah”) and Marie Gluesenkamp-Perez (“Washington”) introduced legislation titled:

Water Systems PFAS Liability Protection Act (“Act”)

The bill would exempt water utilities from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) with respect to releases of perfluoroalkyl and polyfluoroalkyl substances (collectively, “PFAS”).

PFAS consist of a large group of manmade chemicals. Their properties include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation. Potential human exposure to PFAS includes pathways through drinking water, air, or food.

EPA has proposed to designate certain PFAS as CERCLA hazardous substances. Such designation would trigger corresponding requirements such as:

- Application of the potentially responsibility liability categories (i.e., current owner/operator/former owner/operator [in certain circumstances], transporter [in certain circumstances], and generators).
- Hazardous substance release reporting requirements (if reportable quantities are released)

Concerns have been expressed by various interest groups that they would be encompassed and subject to CERCLA liability/reporting requirements. These include groups representing utilities involved in providing drinking water and water reuse services.

Water utilities argued that liability for PFAS remediation lies with the substances’ manufacturers and formulators (i.e. they are “passive receivers”). Congress has been asked to not hold community drinking water facilities liable for PFAS contamination caused by PFAS products. Further concern is that if such costs are imposed upon water utilities they will be passed along to the ratepayers.

The Act’s shield from CERCLA liability would only apply to water utility systems that were in compliance with all applicable laws at the time the relevant material was handled and disposed.

A copy of the Act can be downloaded [here](#).