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EXAMINING THE IMPACT OF EPA'S CERCLA DESIGNATION
FOR TWO PFAS CHEMISTRIES AND POTENTIAL POLICY
RESPONSES TO SUPERFUND LIABILITY CONCERNS

THURSDAY, DECEMBER 18, 2025

House of Representatives,
Subcommittee on Environment,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:01 a.m., in Room 2123, Rayburn House Office Building, Hon. Gary J. Palmer [chairman of the subcommittee] presiding.

Present: Representatives Palmer, Latta, Griffith, Carter of Georgia, Joyce, Weber, Pfluger, Miller-Meeks, Evans, Fedorchak, Guthrie (ex officio), Tonko, Schakowsky, Peters, Barragan, Soto, Auchincloss, Carter of Louisiana, Menendez, and Landsman.

Also Present: Representative Dingell.

Staff Present: Byron Brown, Chief Counsel; Jessica Donlon, General Counsel; Sydney Greene, Director, Finance and Logistics; Jay Gulshen, Chief Counsel, Health; Christen Harsha, Senior Counsel, Environment; Megan Jackson, Staff Director; Patrick Kelly, Staff Assistant; Sophie Khanahmadi, Deputy Staff Director; Brayden Lacefield, Special Assistant; Sarah Meier, Counsel and

Parliamentarian; Joel Miller, Chief Counsel; Ben Mullaney, Press Secretary; Lillian Noland, Staff Assistant; Seth Ricketts, Special Assistant; Jake Riith, Staff Assistant; Jackson Rudden, Clerk, Environment; Chris Sarley, Member Services/Stakeholder Director; Timothy Trimble, Staff Assistant; Matt VanHyfte, Communications Director; Jane Vickers, Press Assistant; Katharine Willey, Senior Counsel, Environment; Keegan Cardman, Minority Staff Assistant; Timia Crisp, Minority Professional Staff Member; Devon Gorbey, Minority Environmental Fellow; Anthony Gutierrez, Minority Professional Staff Member; Caitlin Haberman, Minority Staff Director, Environment; Shae Reinberg, Minority Intern; Emma Roehrig, Minority Staff Assistant; Kylea Rogers, Minority Policy Analyst; and Hannah Treger, Minority Staff Assistant.

Mr. Palmer. The Subcommittee on Environment will come to order. The chair recognizes himself for 5 minutes for an opening statement.

Welcome to today's hearing before the Subcommittee on Environment. This year, we have revisited some of our country's most important environmental laws and confronted emerging challenges in protecting our environment and promoting a regulatory climate that encourages innovation and economic growth. Among other things, we have identified shortcomings with the administration of the Toxic Substance Control Act that delayed newer, safer chemistries from reaching consumers, explored opportunities to revitalize brownfield sites for crucial infrastructure projects, evaluated the state of technologies to improve our recycling systems, and passed commonsense Clear Air Act reforms.

Today we are examining EPA's decision in the last year to designate two PFAS chemistries, PFOA and PFOS, as hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act, also known as CERCLA, or the Superfund law. CERCLA was enacted in 1980 to facilitate the cleanup of the most contaminated sites around the country and to establish a scheme to hold liable for cleanup costs the parties responsible for that contamination.

The Superfund imposes strict and joint and several liability on parties. In other words, a responsible party could be responsible for the entire costs to clean up a contaminated site, even if its contribution to the pollution was minimal.

CERCLA excludes exemptions as well as defenses to liability for certain parties, such as bona fide prospective purchasers and innocent landowners, as they are referred to. However, in the context of the hazardous substance designations for PFOA and PFOS, there are concerns that existing exemptions and defenses may not adequately protect the class of parties commonly known as passive receivers who did not manufacture or use PFOA or PFOS but may have acquired, used, or disposed material containing these chemicals.

Today we will examine the impacts of potential liability for PFAS contamination on these

entities. Congress has clarified and expanded liability protections before, such as by passing the Small Business Liability Relief and Brownfields Revitalization Act of 2002. We will consider how concerns about PFAS liability may deter a range of economic activities and whether changes to CERCLA or other legislative action are needed.

Additionally, at our March hearing on reauthorization of the Environmental Protection Agency's Brownfields Program, we discussed the tremendous potential of the estimated 450,000 brownfield sites in our country for housing important infrastructure, such as power generation, semiconductor manufacturing facilities, and data centers. We hope to examine whether concerns about liability for PFAS hinder redevelopment of these sites.

To this end, we welcome Susan Bodine, who previously served as Assistant Administrator for the Office of Solid Waste and Emergency Response at EPA during the George W. Bush administration and then as Assistant Administrator for the Office of Enforcement and Compliance Assurance in the first Trump administration, in addition to senior staff roles in both the House and Senate.

We are also joined by Lawrence Falbe, chair of the International Council of Shopping Centers Environmental and Land Use Policy Committee. Mr. Falbe will share his experience on how potential PFAS contamination impacts real estate transaction for those seeking to reuse those sites.

Next, Emily Donovan joins us as cofounder of Clean Cape Fear, a grassroots community advocacy organization focused on the presence and impact of certain PFAS in communities.

We also welcome Tracy Mehan who represents the American Water Works Association and served as EPA Assistant Administrator of Water also during the George W. Bush administration.

I thank all of our members and witnesses for being here, and I look forward to today's discussion.

The chair now recognizes the ranking member of the subcommittee, the gentleman from New York, for 5 minutes for an opening statement.

[The prepared statement of Mr. Palmer follows:]

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Mr. Tonko. Thank you, Mr. Chair.

Per- and polyfluoroalkyl substances, or PFAS, are a large class of chemicals commonly used in firefighting foams, food packaging, nonstick cookware, and water-resistant fabrics. These chemicals are remarkably persistent in the environment and incredibly toxic and dangerous to human health, even at very small concentration levels. PFAS exposure has been linked to kidney disease, thyroid dysfunction, and various forms of cancer. Almost all Americans have had some PFAS exposure, and drinking water contaminations have been found in many communities across our country. This includes the town of Hoosick Falls in New York's 20th Congressional District that I represent. It has been nearly a decade since PFOA was detected in Hoosick Falls, which helped sound the alarm for many others to test their water.

Since that time, this committee has held numerous hearings examining PFAS. Ms. Donovan, who is testifying today, also testified at our initial hearing more than 7 years ago. In years since that hearing, there has been increased public awareness, improved scientific understanding, significant funding for remediation included in the Infrastructure Investment and Jobs Act, and major regulatory actions taken at the State and Federal levels to address PFAS risks and hold polluters accountable.

EPA released the PFAS Action Plan during the first Trump administration and a PFAS strategic road map during the Biden administration. Actions were taken across program offices and under multiple environmental laws, including the Safe Drinking Water Act, the Clean Water Act, TSCA, and CERCLA.

Many of these actions have focused on the two long chains of PFAS: PFOA and PFOS. These are certainly the best known PFAS, but domestic manufacture of these specific chemicals largely stopped years ago.

Real and ongoing risks for future exposure will come as companies substitute these PFAS with dangerous replacements, such as GenX. After many years of sounding the alarm and developing plans, we are really only now just beginning to see a Federal regulatory response take effect,

headlined by drinking water standards and a hazardous substance designation being finalized for PFOA and PFOS during the Biden administration.

But we have also seen some troubling actions taken this year by the Trump EPA to undo past progress, including approving pesticides containing PFAS, eliminating drinking water standards for four short chain PFAS, including GenX, delaying drinking water compliance deadlines for PFOA and PFOS, and limiting PFAS reporting requirements under TSCA. To its credit, to date, the Trump EPA has left in place the hazardous substance designation of PFOA and PFOS. This CERCLA listing is incredibly important. It requires a reporting of releases and compels those responsible for contaminations to remediate. It ensures that polluters are held responsible.

Regarding the specific subject of today's hearing, I want to be clear that I do have some sympathies for water systems and other passive receivers, entities that receive media containing PFAS but do not produce or use it themselves, if they are taking all the necessary steps to act responsibly and indeed protect the public.

I do believe everyone wants to do the right thing and keep people safe and healthy, but groups have been asking this committee for a CERCLA exemption for years, long before the hazardous substance designation was even initiated by EPA. And I have seen very little evidence that an exemption is needed at this time.

Before we start preemptively creating loopholes in our environmental laws, we must make certain that we are addressing a real problem. EPA has a history of developing enforcement discretion policies and was done in this case. And I believe we should wait and see if there is a systematic failure of this approach before Congress grants any exemptions. After a decade of slow and deliberate action, we are now only beginning to get our arms around the challenge to prevent PFAS from entering the environment in the future and to remediate it where it exists.

We are still in the early days of implementing a comprehensive regulatory strategy that protects our communities from the damage PFAS are causing. And I cannot support any effort that

jeopardizes or undermines the progress that has been made to date, whether that is by the administration or Congress.

So, with that, I thank you, Mr. Chair. I look forward to today's discussion, welcome the panelists, and yield back.

[The prepared statement of Mr. Tonko follows:]

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Mr. Palmer. The chair now recognizes the gentleman from Kentucky, the chairman of the full committee, for 5 minutes for an opening statement.

The Chair. Thank you, Chairman Palmer, for convening this final committee hearing of 2025. And the first session of the 119th Congress is coming to a close, and I am proud of the work we have done to facilitate the delivery of more affordable energy to families across the country, pare back burdensome regulations, and foster domestic innovation and manufacturing. I absolutely believe we can have a thriving economy while simultaneously protecting our environment. To that end, we must consider whether our current environmental laws are fit for the purpose to meet today's increasingly complex world.

The Comprehensive Environmental Response, Compensation, Liability Act, CERCLA, also known as the Superfund law, was enacted in 1980 to establish a framework for assigning liability for the costs of cleaning up contaminated sites. Though the Superfund law has been amended several times, today we will consider whether it works to facilitate the cleanup of land contaminated by two PFAS chemicals that EPA has designated as hazardous substances and how liability concerns may impact water utilities, farmers, land developers, waste management, and other sectors of our economy.

Additionally, we will assess what additional guidance may be needed for parties who want to be good stewards of the environment, follow the law, but are unsure how to do so in the context of contamination from these two PFAS chemicals. I am confident we can rise to the challenge and avoid making decisions driven by fear and misinformation.

The word "PFAS" can triggers concern because it is important that we acknowledge that the PFAS family contains thousands of different chemistries, many of which are found in electronics, medical devices, infrastructure material, safety equipment, and other essential uses that are not believed to pose a risk. Understanding this will help us focus our efforts on limiting the harms associated with specific substances most closely with adverse health environmental impacts.

I look forward to hearing from our witnesses today. I appreciate you all for being with us, and I know we are going to have a productive dialogue. And I will yield back.

[The prepared statement of The Chair follows:]

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Mr. Palmer. The chair now recognizes Mr. Menendez, who will be giving an opening statement on behalf of Mr. Pallone, the ranking member of the full committee. The gentleman from New Jersey is recognized for 5 minutes.

Mr. Menendez. Thank you, chairman.

I support holding polluters accountable for the harm they cause the people we represent. So I am discouraged that my Republican colleagues are not centering this hearing around exposed communities, who are bearing the brunt of PFAS contamination, and ensuring that we prevent further exposure to these toxic chemicals. Instead, the majority called today's hearing to discuss creating new liability shields under our Nation's Superfund law for corporate polluters.

PFAS chemicals are an urgent threat to public health. They are toxic, persistent, and have been found in our water, soil, and air, as well in products Americans use every day. Aptly referred to as "forever chemicals," PFAS have long been linked to cancers, infertility, impaired child development, and thyroid disease, among other harms.

Each day we are finding PFAS in more communities across the country and are learning about the health harms they face as a result of this exposure. Urgent action is needed to address widespread contamination and reduce our communities' exposure to these dangerous chemicals.

That is why I am pleased that Emily Donovan is here today. Mrs. Donovan is a concerned mother, advocate, and community leader who has fought tirelessly to lift up the voices of her neighbors, including carrying the stories of those who tragically aren't with us anymore. She brings an important perspective to this hearing, the voice of a community in North Carolina that has been devastated by PFAS contamination.

The topic of today's hearing does little to offer solutions to communities like Mrs. Donovan's. Rather it leans into unfounded claims to bolster recent PFAS deregulatory actions taken by Administrator Zeldin for corporate polluters and future exemptions requested by special interests. For example, since the Superfund listings for PFOA and PFOS went into effect, opponents' claims they

would lead to a flood of liability lawsuits against municipal entities have simply not materialized. There are existing tools to ensure downstream entities aren't held liable for upstream pollution so long as they properly manage hazardous substances and don't release PFAS into the environment. Yet, they continue to push a narrative of needing an exemption under Superfund.

Giving municipal entities such a carve-out would remove a powerful incentive for responsible management of hazardous waste products and risk dangerous PFAS releases into communities without consequence. I should know that these same entities, like water utilities, have a long history of following the law and managing dangerous Superfund chemicals like arsenic, chromium, and lead, safely and effectively as part of their everyday operations.

There is no reason to suggest managing PFAS would be any different. Exempting parties from CERCLA liability would let those entities off the hook for removing PFAS from their own systems, responsibly handling PFAS waste, reducing PFAS contamination for their customers, and holding polluters accountable for the harm they caused. If we are serious about addressing PFAS issues in this country, we must examine how to expedite the cleanup of toxic PFAS chemicals while simultaneously working to prevent new exposures to these dangerous substances. Unfortunately, this is not what Republicans and the Trump administration are doing. Instead, the administration has worked to roll back and decay health protective drinking water standards and limit PFAS reporting requirements, effectively leaving the EPA and communities in the dark.

Under Democratic leadership, the House passed the bipartisan PFAS Action Act, which provided real solutions to some of our pressing PFAS issues. It authorizes critical resources to water systems and communities grappling with contamination and stems the tide of PFAS chemicals into the environment. The legislation is centered on the science and the real-life experience of communities like Mrs. Donovan's.

Discussion to weaken PFAS regulations, however, misses the mark and only serves to harm workers, families, and children. Americans are already struggling with rising healthcare costs and

loss of access to life-saving care. Deregulation would make the PFAS problem worse, breaking the promises we made to communities like Mrs. Donovan's.

The companies that knew for years that they were pumping dangerous PFAS into local towns must be held accountable. Creating a litany of carve-outs from critical environmental protection will hamstring our ability to do just that. Our constituents and communities deserve action to solve this PFAS crisis once and for all. Thank you. I yield back.

[The prepared statement of Mr. Menendez follows:]

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Mr. Palmer. This concludes member opening statements.

The chair would like to remind members that, pursuant to the committee rules, all members' opening statements will be made part of the record.

We want to thank our witnesses for being here today and for taking time to testify before the subcommittee. The witnesses will have the opportunity to give an opening statement followed by a round of questions from the members.

Our witnesses for today are Susan Bodine, partner, Earth and Water Law; Lawrence W. Falbe, chair of International Council of Shopping Centers Environmental and Land Use Policy Committee; Mr. Tracy Mehan, executive director of government affairs, American Water Works Association; and Ms. Emily Donovan, cofounder of Clean Cape Fear. We appreciate you being here today.

I now recognize Ms. Bodine for 5 minutes to give an opening statement.

STATEMENTS OF SUSAN BODINE, ESQ., PARTNER, EARTH & WATER LAW; G. TRACY MEHAN, EXECUTIVE DIRECTOR, GOVERNMENT AFFAIRS, AMERICAN WATER WORKS ASSOCIATION; EMILY DONOVAN, COFOUNDER, CLEAN CAPE FEAR; AND LAWRENCE W. FALBE, ESQ., CHAIR, INTERNATIONAL COUNCIL OF SHOPPING CENTERS ENVIRONMENTAL AND LAND USE POLICY COMMITTEE.

STATEMENT OF SUSAN BODINE, ESQ.

Ms. Bodine. Thank you, Chairman Palmer and Ranking Member Tonko, for inviting me to speak today on the subject matter of this hearing, examining the impact of EPA's CERCLA designation for two PFAS chemistries and potential policy responses to Superfund liability concerns.

As was mentioned, I believe, by Chairman Palmer, I have worked on PFAS issues. I have worked on Superfund issues, both enforcing Superfund, working in EPA's Office of Enforcement, managing the Superfund program while working in EPA's -- what is now the Office of Land and Emergency Management, but also, and for the longest period of time, actually, working on the Hill. I was here working in the Transportation Infrastructure Committee back in the 1990s when Congress was trying to do Superfund reform, and we were working closely with Energy and Commerce Committee because the committees shared jurisdiction, trying to make the program more fair because it is well-known that Superfund is a very draconian statute that sweeps in a lot of parties, including parties that I have heard Members on both sides of the aisle say, you know, should not be held liable. And it is with that background and knowledge base that I come here to talk to you today. My goal is to help the committee -- the subcommittee understand what are the implications and to offer some considerations, if you can -- as you consider a response.

So I am -- my written testimony, and I will summarize, it makes five points. I mean, the first

is that the Superfund liability system, it is not about polluter pays. It is about -- it ensnares parties with little to no responsibility for contamination. It is a way to expeditiously -- it is a way to get cleanup done, but it is not based on causation. It is not based on who is actually responsible. I have heard Ranking Member Tonko talk about people who didn't produce it or use it. I heard Congressman Menendez talk about people who caused contamination and characterized those people as polluters. The statute sweeps in far more people than the entities that you just described as ones that you would like to keep liable. And, in doing so, it creates enormous transaction costs. And I go into too much detail, I am sure, in my written statement about those costs and various entities like GAO, RAND Corporation, et cetera, who have quantified those costs. This is not cost spent on cleanup. This is cost spent on lawyers fighting about liability.

The consequences for PFOA and PFOS are different. I have heard the same statements from environmental groups saying, "Why is this any different from other hazardous substances? The EPA can manage that. The courts can manage it." The reason it is different is because PFOS -- PFOA and PFOS are ubiquitous in the environment. And, when you add that to the fact that EPA, back in 2024, put out two risk assessments that said that, basically, if you can detect it, there is a risk -- so there are these risk assessments out there. They are not risk-management tools. They are simply just a risk assessment saying, you know, that incredibly low levels may -- may be risky.

Now, my testimony talks about that as well, you know, whether or not those incredibly low levels are -- are accurate or whether there should be higher levels. Nonetheless, just know that, because of those incredibly -- levels and the fact that it is found everywhere, the designation of PFOA and PFOS creates a different situation than you might find with other hazardous substances, even those that are ubiquitous. Lead is ubiquitous. But lead -- we have levels that we know are management levels, levels that you would clean up.

I also want to address -- I have heard members say, "Well, isn't EPA's enforcement discretion the answer to everything?" And the answer is no because it only applies to EPA itself and because

some of the data -- again, back working on Superfund for years -- EPA only brings about a third of the cases. And so the vast majority of litigation out there is brought by parties other than EPA. Congress also has a long history of codifying and creating exemptions based on EPA's enforcement discretion. So I would encourage you -- and I talk about this in my testimony -- to look at EPA's enforcement discretion equitable principles and decide, you know, do you agree with those, and would you want to codify that.

And then, finally -- and I know I am out of time now -- you don't want to create an unfair situation where somebody is left off -- is off the hook, and someone downstream is a victim. That is what the trust fund is for. And I put numbers in my written testimony about what the levels of the Superfund trust fund are and the fact that that money is available to EPA to do cleanup to address situations where you -- where you have identified a real risk.

Thank you very much. I will be happy to answer questions.

[The prepared statement of Ms. Bodine follows:]

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Mr. Palmer. The chair now recognizes Mr. Mehan for 5 minutes for his opening statement.

STATEMENT OF G. TRACY MEHAN

Mr. Mehan. Thank you, Mr. Chairman, and thank you also, Ranking Member Tonko, for inviting us to -- thank you again for inviting us to address the committee.

The AWWA is made up of 43,000 individual members and -- excuse me -- 50,000 individual members representing many disciplines from finance, engineering, science, advocates, everyone, anyone involved, either with the utility -- water utility sector or the -- are supporting that sector. 80 percent of the population of North America is served by our membership. We include -- also among our membership of the water utilities, also many of those are combined systems, wastewater, about 40 percent, do both wastewater and drinking water. Some do storm water too.

Anyway, we appreciate this invitation. This issue of PFAS is, of course, a challenging one. And I appreciated the overview of some of the legal points that Susan Bodine made.

We do not -- our utility members do not, as was pointed out by the chairman, manufacture, use, or profit from PFAS. And, in fact, pursuant to the new regulations that EPA has promulgated, we are investing literally billions of dollars -- and that is not an exaggeration -- because you need to include not just the capital investments but the ongoing O&M costs that honestly run in perpetuity in many cases, or at least as long as there is potency in the chemistry.

Paradoxically, these robust investments that utilities are making create the possible liability under CERCLA, or Superfund, as Susan noted. We use technologies that have been approved by EPA, include granular activated carbon, which can be reactivated and replenished but eventually it has to be disposed of. Also ion exchange and reverse osmosis. All of these best available technologies generate residuals, which is the waste product from the treatment. On the wastewater side, they are called biosolids, and they use different technologies. But, again, these

are massive waste streams, and a lot of it has been land-applied or sent to municipal landfills.

But now with the nature of a persistent bio -- well, persistent toxic like the PFAS compounds, you concentrate the toxicity, and then we have to manage and dispose these residuals, in light of the Superfund designation as a hazardous substance, as hazardous substance. So, instead of going to a municipal landfill, you might want to be looking now at a RCRA-certified landfill or an incinerator. But other options are going to be -- you are going to have more expense and fewer options.

And, again, not only is Superfund strict joint and several; it is retroactive liability. And so you could have a Superfund site that is the result of decades of previous -- what was previously legal disposal practices.

Again, CERCLA, as Susan eloquently described, has a wide liability net. She used the term "draconian." It is a term I might also approve of. Again, strict joint several and retroactive liability. And, while the intent of CERCLA was to hold polluters responsible, polluter pays principle, with the ability of a potentially responsible party -- and there is many of those out there, and there is four different categories -- section 107. You can check the briefing paper you got. There is at least two, maybe three opportunities for utilities to be swept up in the liability net brought in not necessarily by EPA who has always avoided bringing in municipalities but other potential responsible parties. And there is examples of that. Well, I will go into that later if you have questions.

So let us just say that we approve the statement recently by EPA Administrator Zeldin that EPA will need new statutory authority and language from Congress to fully address the equitable concerns of passive receiver liability. And we would urge Congress to, at least this committee and the other Members of Congress, to take a careful look at some of the legislation that has been proposed, and on the House side in particular, specifically H.R. 1267, the Water Systems PFAS Liability Act, which we think is a reasonable approach, maybe not the only one, but one worth taking a look at.

There is many other things to say about this issue, and be happy to answer your questions in

the followup. Thanks again.

[The prepared statement of Mr. Mehan follows:]

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Mr. Palmer. The chair now recognizes Ms. Donovan for 5 minutes for her testimony.

STATEMENT OF EMILY DONOVAN

Ms. Donovan. Thank you all for the opportunity to testify. My name is Emily Donovan, and I am cofounder of Clean Cape Fear, a grassroots community group based in Wilmington, North Carolina. And I serve on the leadership team of the National PFAS Contamination Coalition, representing more than 42 community groups in 26 States.

Today, I am here on behalf of half a million people in southeastern North Carolina who are living with extreme PFAS contamination in our air, soil, drinking water, food supply, and now even sea foam along our beaches. This is not a hypothetical risk. It is our daily reality.

I testified before this very committee 7 years ago. I explained in great detail what happened to my area known for its pristine beaches and beautiful waterways. DuPont and Chemours used the Cape Fear region as a PFAS sacrifice zone for nearly half a century without our knowledge or consent. Our contamination crisis was so bad the United Nations Human Rights Council investigated our area and called out DuPont/Chemours Federal and State regulators for failing to stop business-related human rights abuses.

Eight years ago, we learned that GenX and other PFAS were present in extreme levels in our tap water. There were no regulations, no monitoring mechanisms, nothing to warn us. We immediately realized we were not alone. Other communities just like ours were also dealing with similar devastation. So we partnered with them and flew to D.C. regularly to demand the EPA establish first-ever Federal drinking water standards for PFAS and make sure the polluter paid for the cleanup.

Now we are watching those protections get weakened by this new administration. We fought hard for those Federal drinking water standards because we learned, without enforceable

standards, our public utilities could look us, the ratepayers, in the eyes and legally say the tap water meets or exceeds all State and Federal guidelines because there were no State and Federal guidelines.

At the time, it felt like our local leaders were more concerned with municipal liabilities and the economy, in very vague terms, rather than protecting our public health.

Wilmington's water utility knew it had a PFAS problem for a full year before the public became aware. While Chemours is by far my community's biggest PFAS polluter, there is significant PFAS pollution from a bunch of textile companies upriver from Chemours. Unfortunately, we constantly hear stories about how PFAS polluters are important employers in our town, often gaining outsized influence over the town's water system, so much so, places like Burlington, North Carolina, fail to hold themselves internally accountable for pretreatment programs. We have witnessed too often, especially in small towns, the water utilities often function as industry and developer paradises instead of true stewards of public health.

I am hearing a lot of people talking about how costly cleanup for PFOA and PFOS will be, but no one is remotely talking about an immediate moratorium or ban on all PFAS because the cleanup and liability is so costly.

I believe lawmakers and regulators have not done far enough. The entire class of PFAS should be designated as hazardous waste under the Resource Conservation Recovery Act. Last month, new research confirmed that short chain PFAS like GenX are now dominant in municipal waste streams. Yet here we are debating whether to weaken accountability for two PFAS that haven't been in commercial use for over a decade.

We have a true public health problem that no one in this room created but all of us are required to solve. In the 8 years I have been coming to D.C. begging for solutions, I have never seen the water utility lobby groups stand beside us demanding better source protections.

We are already paying for this cleanup. I raised my children on this water because I thought

it was good for them because water should be good for children. I watched my husband survive a brain tumor. I also buried friends my age who shared their illnesses with this very room 7 years ago. Some of us don't have the luxury of time to keep redirecting the focus away from real solutions. Please do not let Tom, Amy, Chris, and Sarah die in vain. Please consider those who are already paying the ultimate price, families like my friend, Kara Kenan, who is watching right now. She is a decorated veteran and a young breast cancer survivor. Her mom, Margaret, has a rare blood cancer with no cure that has progressed. Her stepdad, Bob, had bladder cancer, and his leukemia recently progressed, requiring treatments twice a week at a facility 2 hours from home. No one in their small, tight-knit family was genetically predisposed or had prior medical histories. The only thing they all shared in common was a ZIP Code and a severely PFAS-contaminated community. Please don't allow their suffering to be in vain.

If time allows, I will say this: My faith teaches me that we are called to be good stewards over all of God's creation. When we fail to do this, we are actively breaking our covenant relationship with God. The best time to solve this PFAS crisis was 50 years ago, but the second best time is right now. Do not weaken CERCLA. Do not grant exemptions or permit shields. Stand with PFAS-contaminated communities. Stand with my community. You have the power to protect human life. Please use it. Thank you.

[The prepared statement of Ms. Donovan follows:]

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Mr. Palmer. The chair now recognizes Mr. Falbe for 5 minutes for his testimony.

STATEMENT OF LAWRENCE W. FALBE, ESQ.

Mr. Falbe. Chairman Guthrie, Subcommittee Chairman Palmer, Ranking Member Pallone, Subcommittee Ranking Member Tonko, and members of the subcommittee, thank you for the opportunity to testify today. My name is Lawrence Falbe. I am a principal with the international law firm Miller Canfield in Chicago. I have been an environmental attorney in private practice for over 30 years. I am appearing today as chair of the International Council of Shopping Centers Environmental Policy and Land Use Subcommittee. The testimony and viewpoints discussed today are my own and not attributable to my law firm or our clients.

ICSC represents owners, developers, lenders, and operators of retail and mixed-use properties that anchor local economies in every congressional district. For the past several years, our committee has focused on the growing challenges that PFAS pose to commercial real estate, redevelopment, and community reinvestment.

PFAS, per- and polyfluoroalkyl substances, are a large class of chemicals that have been used widely for decades because of their unique properties. Those properties also make them persistent in the environment and extraordinarily difficult and expensive to remediate and investigate. Today, PFAS are considered harmful at extremely low levels, down to parts per trillion, and they are now detectable almost everywhere.

In 2024, EPA finalized its decision to designate two PFAS compounds, PFOA and PFOS, as hazardous substances under CERCLA, also known as Superfund. From a commercial real estate, the impact has been immediate and chilling. CERCLA is a strict joint and several retroactive liability statute. It was designed to make polluters pay for legacy contamination at significantly contaminated sites like Love Canal. But, when that framework is applied to chemicals that are

ubiquitous, migrate easily, are deemed harmful at minute levels, and often detected without a clear onsite source, the result is that passive property owners who did nothing to cause contamination are ensnared by CERCLA liability.

The problem was compounded during real estate transactions. Environmental due diligence typically begins with a phase 1 environmental site assessment. Now that PFOA and PFOS are CERCLA hazardous substances, their potential presence must be evaluated. If PFAS is identified as a recognized environmental condition, a deal can stall or die even before sampling begins.

Buyers, sellers, lenders, and insurers fear that investigation and remediation costs could exceed the value of the property itself, particularly when cleanup standards are inconsistent or undefined. The result is frozen redevelopment, stalled projects, and ballooning costs, especially on brownfield and infill sites that communities want redeveloped.

EPA acknowledged this risk in its nonbinding PFAS Enforcement Discussion Policy. In that policy, EPA states it does not intend to pursue enforcement against certain secondary parties. The policy does not protect property owners from third-party contribution lawsuits. It does not provide certainty to the markets. Existing CERCLA defenses, including the Bona Fide Prospective Purchaser defense, also fall short. BFPP protections are complex, uncertain, self-certifying, and easily lost. Many longtime property owners are categorically ineligible, and no owner ever knows whether their defense will succeed until tested in litigation years later and at great expense.

ICSC supports science-based PFAS regulations, protection of drinking water, and holding true polluters accountable. What we do not support is a system that discourages investment and places unlimited liability on parties that did not release PFAS. Inconsistent approaches to PFAS continue to hobble and confuse longtime successful EPA programs, like the Brownfield Program, because of EPA's recent announcement on brownfield applicants certifying their lack of liability for PFAS on brownfield sites. This causes even more uncertainty in a program that is relied upon by the commercial real estate sector.

ICSC asks Congress to reaffirm three simple principles. First, polluters should pay, not passive landowners. Second, clean drinking water must be protected. Third, brownfields and infill redevelopment, particularly housing, should be encouraged, not penalized.

To achieve those goals, we recommend Congress create statutory CERCLA liability protection for passive receivers. There is clear precedent in CERCLA, including the secured creditor exemption, for narrowly tailored protections that preserve accountability and market certainty. ICSC and its members stand ready to work with Congress, EPA, States, and communities to remediate PFAS responsibly and protect public health without undermining the redevelopment that fuels local jobs, tax bases, and housing supply.

Thank you for the opportunity to testify. I look forward to answering your questions. I ask that my statement and testimony be included in the record. And I yield back my 10 seconds.

[The prepared statement of Mr. Falbe follows:]

***** COMMITTEE INSERT *****

Mr. Palmer. I thank the witnesses for their testimony.

The chair now recognizes the chairman of the full committee, Mr. Guthrie, for 5 minutes for his questions.

The Chair. Thank you, Mr. Chair. I appreciate the recognition.

So, Mr. Mehan, as we have heard today, the Superfund law is based on the polluter pays principle, but the law may be a bad fit for dealing with PFAS contamination. Can you speak to how drinking water utilities remove PFAS chemicals? And are ratepayers at risk of having to pay increased rates because of the cost of Superfund litigation stemming from the EPA designation of PFOS and PFOA as hazardous substances?

Mr. Mehan. Thank you, Chairman. Thank you.

Clearly, at least according to our lights, the costs are very great in terms of treating and disposing of PFAS and getting it out of the water system. I will give you just a concrete example. Fairfax Water, right across the river, has got -- has levels at five parts per trillion. The standard is four parts per trillion. For them to get down from five parts per trillion to four parts per trillion, they are going to spend \$400 million for capital investment. And, beyond that, and this is the point I made earlier, 18 percent of their ongoing O&M costs are going to be consumed running and maintaining that system. That is one anecdote.

But our analysis, basically -- and I don't want to beat this to death -- you know, we view the cost at about triple what EPA did. And so whether you -- whether you buy EPA's number or our number, they are going to be huge, and the impacts are going to be greater the smaller the system. Fairfax Water is a fairly well-off, well-healed system, and a well-run one. They will get through it and they will handle it --

The Chair. -- what the costs are going to be -- but what is the cost-benefit? Is the benefits going to be huge too?

Mr. Mehan. I am sorry?

The Chair. Are the benefits marginal? Are they going to be -- I mean, are you going to pay more, but you are going to get a far better product or -- or are the benefits marginal anyway?

Mr. Mehan. Well, in terms of -- again, getting into our -- we did 85 pages of comments, but if you want to get into the benefit-cost analysis, we thought that four parts per trillion didn't meet a positive benefit-cost ratio. We think when you get around 10 parts per trillion, you are okay, at least in benefit cost. And you can argue -- and then, when you look at the international comparisons, wide variety of standards.

So what is the intelligible principle by which you set the standard, we think benefit-cost --

The Chair. So you are saying you pay far more money than -- go from 10 to 4 parts per trillion costs far more than the -- so let me --

Mr. Mehan. It is huge.

Mr. Guthrie. Ms. Bodine, in your testimony, you discuss how the Superfund trust fund must be available to help clean up the sites contaminated by PFAS. What is the significance that EPA designated these two specific PFAS chemicals out of the thousands of PFAS chemicals as hazardous substances? And does this mean that all PFAS are danger to public health and environment? I know I read that fast.

Ms. Bodine. A couple questions there.

So, under -- without the Superfund designation, without saying that PFOA and PFOS are hazardous substances, EPA still has the authority to address releases of PFOA and PFOS using their own funding, using the Superfund trust fund dollars, because they consider them pollutants and contaminants. And EPA is allowed to say, "We think this pollutant and contaminant presents an imminent and substantial danger in this situation, and therefore we are going to use our own money, come in, and address it."

EPA hasn't been doing that, but they have that authority. By listing it, then, EPA can sue people instead or, to the point of the other witnesses, other people can then bring lawsuits also.

And I am sorry. The second half of your question?

The Chair. I am running out of time here. So I want to switch to one more. So thanks.

So, Mr. Falbe, in your testimony, you talked about EPA Enforcement Discretion Policy and Superfund defenses that address concerns property developers may have. In my area, we have data centers and things that are coming, and people are really, really concerned, and fairly, about good farmland being used up for this. And so the sites are industrial sites, but we got to make sure they are safe. We got to make sure they are clean. We got to make sure people can use them. But how could Congress improve the liability defenses in existing Superfund law to address these concerns so these kind of brownfield sites can be developed?

Mr. Falbe. Yes. Thank you for the question, Chairman Guthrie.

I think, as I have testified, what we are looking for is a passive receiver exception that addresses people or entities that did not pollute using PFAS. Simply owning property under CERCLA at this point for PFOS and PFOA as CERCLA hazardous substances invokes that liability.

And the reason why the Enforcement Discussion Policy and some of the existing defenses in CERCLA are not sufficient is because, for the Enforcement Discretion Policy, as I think was already mentioned, it is only applicable to EPA. It does not bar third-party liability lawsuits, and that causes uncertainty in the marketplace. And that makes it very difficult for redevelopment to occur.

With the Bona Fide Perspective Purchaser defense, there are other issues with that. There has to be a transaction involved. We have to have bought the property after January 11th of 2002, which is when the BFPP came into existence.

The Chair. My time has expired. I appreciate your answer. We will get more of it later. I yield back to my friend from Alabama.

Mr. Palmer. The gentleman yields.

The chair now recognizes the ranking member, Mr. Tonko, for 5 minutes for his questions.

Mr. Tonko. Thank you, Mr. Chair.

Ms. Donovan, once again, welcome back to the subcommittee. I appreciate your passionate appeal to this group.

I don't expect you to have followed all of our activities since you last testified, but one issue that has been coming up recently is discussion around reauthorizing TSCA. There are industry groups that have been critical of how the Lautenberg Act changed TSCA's new chemicals program. They argue that long delays and regulatory hurdles are disincentivizing innovative, new chemicals from coming onto the market and supplanting much more dangerous chemicals already in use.

I think what has happened to you and your community is an important cautionary tale that we cannot just assume that a new chemical replacing an existing known-to-be-harmful chemical will truly protect Americans.

So, Ms. Donovan, can you please explain what is GenX, and how is it different than PFOA and PFOS, which are the older long chain PFAS?

Ms. Donovan. Sure. Thank you for that question.

So GenX is the commercial replacement to PFOA that DuPont developed. And, when it was tested, it showed to be nearly as toxic as PFOA. So the EPA said, "You can make it, but you can't release it into the environment."

The reason why we ended up having extreme levels of GenX in our tap water is because it was released as a byproduct. Clearly, these chemistries are messy and are ending up everywhere. Not only are we dealing with the legacy contamination from PFOA and PFOS that are no longer in commercial use, but now we have all of these new PFAS, 14,000 per the EPA. There was over 256 unknown PFAS in the waste streams of Chemours that was being dumped into my drinking water supply.

But I really want to point out, everything that I am hearing today, especially related to TSCA, is -- I have no idea why in the world we are allowing new uses for a class of chemicals that we don't have any proven safe disposal method for. This is like banning lead paint but then allowing

lead-laced crayons onto the market. It makes no sense. We are not solving this problem correctly. We are not talking about source control and banning and eliminating like other countries are doing right now.

Europe has realized that the only way to affordably get out of this crisis is to move away from this chemistry. And the important thing that did not happen with GenX is that we did not find a green chemistry solution. And that is one thing that Congress could do. Congress could demand that any substitute to a known toxic chemical must meet green chemistry principles before they are ever allowed to make it into the market and be a viable substitute. Because when -- if we are going to talk about the ability to have new retail space, we need to make sure that we actually have a workforce that can show up to work not sick or that can actually even afford to go shopping because, like my friend Kara, she is spending 2 days a week driving 4 hours just to get treatment for her stepdad. That is not a quality of life, and that are not resources that she is able to go shopping with.

Mr. Tonko. So I think it is fair to characterize the prevailing belief that shorter chain PFAS present a lower risk than long chain PFAS, but safer doesn't mean safe. Can you talk a little bit more about the consequences you have seen in your community due to GenX exposure?

Ms. Donovan. Well, everything that I am hearing about GenX -- and again, I am not a scientific expert on this, so you can fact-check me. But everything that I am hearing from the scientists are saying that GenX is now turning out to be just as toxic. The only difference is GenX doesn't bioaccumulate in the body nearly as much as PFOA did.

So, you know, we have to really understand toxicity. Just because it doesn't bioaccumulate doesn't mean it is harmful. If you go out and drink every night, over a decade or a lifetime, you are going to start to see some health effects even though the alcohol leaves your system in a matter of hours. We have strong regulations on pharmaceutical drugs. We have no regulations on these chemistries and the fact that they are sitting in our bodies for days and weeks. There is new research that just came out on ultra short chain PFAS showing up in the blood of Wilmington

residents at the peak of our exposure. This is a massive problem that requires a class-based solution. We are not talking about the current problem, the 21st century problem. We are talking about decades-old problem.

Mr. Tonko. Well, today, industry groups may suggest that we could develop a chemical safer than GenX if only manufacturers were not hampered by overly burdensome upfront reviews.

So, similarly, some people are calling for an expedited TSCA approval process for new chemicals that may be important for building data centers, processing critical minerals, and other national priorities. So, again, I appreciate your appearing before us today. And I yield back, Mr. Chair.

Mr. Palmer. The gentleman yields. I now recognize myself for 5 minutes for questions.

Mr. Mehan, in your written testimony, you state that CERCLA was not designed for chemicals like PFOA or PFOS. I would like for you to explain that a little bit. But, also, I want to know, are there other laws already on the books that are better for addressing these?

Mr. Mehan. Well, I think the ubiquity issue that Susan Bodine mentioned is really key. It is -- it is omnipresent. And, again, the way the standard -- the standard that is being set, at least for the MCL under the Safe Drinking Water Act, the four parts per trillion, that will drive Superfund cleanup standards. So, when you add the MCL with the ubiquity, I think you have got a real problem. And, of course, the range of potentially responsible parties is just going to explode, including water and wastewater utilities. So I think that that is sort of the key reality that we are facing in our sector.

As to other laws, I do agree with Ms. Donovan that we need to look at source water protection at a strategic level, not just the Safe Drinking Water Act, which is at the end of the pipe and puts all the burden on the ratepayers and the citizens of those communities. We need to -- the Lautenberg bill actually contemplated looking at drinking water effects and the review of chemicals. And we have seen very little of that effort in that office.

We could have excellent guidelines under the Clean Water Act targeting producers of PFAS compounds. We are not seeing any action on that front.

So I think there are other tools in the toolbox besides the Safe Drinking Water Act --

Mr. Palmer. When we talk about an affordability crisis in the country, that covers practically everything we are using right now. How will CERCLA designation impact affordability for water utilities and their customers?

Mr. Mehan. Well, there are four categories of potentially responsible parties. And, as I say, I think it is fair to say at least two of them will touch water and wastewater utilities, maybe even three, depending on circumstances. So, once you get dragged into litigation, you have several factors that come to bear. The underlying liability, which might be small, but you certainly have the litigation costs which can run for years and go into millions of dollars. And then you have, and a lot of people underestimate this, the reputational risk. A utility -- a water utility is a customer-facing entity dependent -- almost 98 percent -- I make that number up -- on ratepayers, not the Federal Government, not the State --

Mr. Palmer. You don't disagree, though, we need to make investments to ensure --

Mr. Mehan. I am sorry?

Mr. Palmer. You don't disagree that we need to make the investments to make sure our water is --

Mr. Mehan. Sure, but I am talking about cost of the Superfund designation and being dragged into litigation as a PRP. That is all. You are right. Absolutely. The costs are immense on just complying with the MCLs in the Safe Drinking Water Act.

Mr. Palmer. Mr. Falbe, given your experience with CERCLA and with transactions involving properties with contamination concerns, part of the issue here is how it impacts communities, the surrounding communities and the opportunity for better paying jobs, for new jobs. And, to his point about the reputational problems, how does that impact the ability to develop a site that could

get a business there, provide a better job for people, better healthcare, better income?

Mr. Falbe. Yeah. So the development community and markets and lenders hate uncertainty. And what the PFAS/PFOA -- or the PFOA/PFOS designation does is it injects that uncertainty into the market because the cleanup standards are not well defined. They are inconsistent from State to State. And the chemical that is ubiquitous in the environment, finding the proper -- the actual source is very difficult. So, for cleanups of property to be accomplished, trying to investigate where that PFAS came from is extremely expensive. And, given that it is ubiquitous in the environment and deemed hazardous at very minute cleanup levels, it implicates a lot of liability.

Mr. Palmer. Ms. Bodine, in your written testimony, you talked about the Draconian nature of CERCLA liability and the transaction costs associated with resolving these. That extends to potentially someone who would buy property that the EPA had deemed cleaned, if they discovered something else on that property, they would be subject to a massive lawsuit. Is that correct?

Ms. Bodine. That is correct. EPA can -- can give somebody a comfort letter saying a property is clean and -- no, it doesn't matter. You could sell a property, and the subsequent property owner could then turn around and see you and say, "No, I am going to spend money to do more cleanup. I don't think it is clean enough."

Mr. Palmer. I now yield back and recognize the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes for her questions.

Ms. Schakowsky. Well, I just want to say to you, as our activist, as the person who has been working on this issue how many years?

Ms. Donovan. Eight.

Ms. Schakowsky. I can't hear.

Ms. Donovan. Eight years.

Ms. Schakowsky. Eight years? And has anything really changed in that time?

Ms. Donovan. We have seen small improvements but they were all self-funded, self-paid. Our utilities -- I was really shocked to hear that it is going to cost a community \$400 million because combined, in Wilmington and Brunswick County, for us to upgrade a massive PFAS contamination problem, Brunswick County is looking at 167 million, and Wilmington looked at 43 million with ongoing, kind of, recurring maintenance costs. But a lot of that is dictated by the pollution upstream of us. If that pollution was removed, then the costs to treat our water would go down.

Ms. Schakowsky. Well, I just want to thank you for your continuing to work on this as, pretty much, a regular citizen. And it seems to me that more, a whole lot more, needs to be done.

But what I wanted to ask you is that -- how are we going to help children the most? Although it is not only children, right? You were talking about other family members and friends that are affected. But what can we do to help you, at the very least, to help the children?

Ms. Donovan. Quite honestly, I don't see these permit shields and weakening CERCLA as a path forward that is going to help any of us. What we need are stronger policies. We need, like I said, the Resource Conservation Recovery Act, RCRA, to have all PFAS listed as a class under that as hazardous waste. That then unlocks a whole suite of resources that could be at the disposal of local, State, and Federal governments.

I think it is misguided for us to continue to have a conversation about who shouldn't be blamed. This is a problem that none of us created. And it is going to be really hard to get out of it. But we are already -- I am already putting my children's life on the line. You know, when we talk about uncertainty factors, it is devastating to be told that you have a cancer that no one has treatment for but you got maybe 2 years left to live. And that is what Kara's mom is dealing with. That is an uncertainty factor that is soul-shattering.

I think, at this point, I would really appreciate if Congress could look at banning PFAS as a class, making sure that the replacements are rooted in green chemistry, ensure that the polluters pay because right now we are self-paying for the cleanup. We don't want this in our water. We did

demand that our utilities make the investments to clean it up.

And I think we need to also pay attention that some of these utilities -- like, my utility in Brunswick County hadn't had a major upgrade since the 1980s. It was time for them to upgrade their infrastructure. They were working in 20th century technology, but we are in a 21st century environment with 21st century chemicals. It is time for us to make sure that we are treating water as sacred as it is because it is a basic need. It is a human right. And we need to stop allowing business-related human rights abuses to occur.

Ms. Schakowsky. So are pretty wealthy companies like DuPont involved in your community?

Ms. Donovan. They are involved heavily upstream. They employ -- they are a significant employer. They employ about 500 workers. And the problem that we are seeing is that these workers are dealing with a double exposure. They have the potential for contaminated ground water if they are on private wells, or they are having the issue with public water supplies also being contaminated, while going into a work environment that is not necessarily putting the needs of them over the needs of the product. You know, some things that I have heard workers joke about is that they are given clean suits, but it is not necessarily to protect them; it is to protect the product.

This needs to be a shift, a cultural change. If we are going to play with the devil -- because that is exactly what this chemistry is. The fact that it lives forever -- we are playing God here with these things. And we are not treating them with the care that they need to be treated with and understanding that this is a very dangerous proposition to be using this chemistry.

Ms. Schakowsky. In terms of the children, do we have any particular efforts to be able to protect our kids?

Ms. Donovan. No. Women bury the -- carry an incredible body burden related to PFAS. And, in fact, babies are being born contaminated. Breast milk is contaminated. I have had women call me and ask me how to put filters inside their houses just to try and create a protective bubble for themselves because they are terrified of increasing their exposure --

Ms. Schakowsky. -- their effort.

Ms. Donovan. Yes. Their effort inside their home. And it is nearly impossible. That is the one thing that we have learned, is that sometimes Chemours will pay for a utility -- sorry -- a filter under the sink, but they won't put one on a shower. We have backyard gardens that are contaminated with PFAS right now coming from Chemours. We can trace back the signature of PFAS that is being released in the air --

RPTR DETLOFF

EDTR ROSEN

[10:59 a.m.]

Mr. Palmer. The gentlewoman's time has expired. Sorry to cut you off.

Ms. Schakowsky. Are you clicking me because we are done? Okay.

Mr. Palmer. Well --

Ms. Schakowsky. Well, I am going to yield back, but let me just say one thing. As an activist myself, you are doing everything you can, but the result is too small right now, and we have to fight. I am in awe of the people who need to understand that our kids are at risk right now.

Thank you. I yield back.

Mr. Palmer. The gentlewoman yields.

The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes for his questions.

Mr. Latta. Thank you, Mr. Chairman, and thank you to our witnesses for being here with us today.

EPA issued an April 19, 2024, memorandum entitled, "PFAS Enforcement Discretion and Settlement Policy Under CERCLA." The memorandum has stated EPA does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA. EPA explained in its memo that its enforcement discretion policy to provide protection where circumstances warrant narrow -- that warrant narrow the scope of liability and focus on the significant contributors to contamination at a particular site.

Ms. Bodine, given your previous role as the assistant administrator for EPA's Office of Enforcement and Compliance, are there any challenges to using the enforcement discretion guidance or memos in the context of CERCLA or PFAS contamination?

Ms. Bodine. Yes. Thank you for question, Congressman.

The policy is just that. It is a policy. And it applies only to EPA. So EPA

enforcement -- which I explained earlier -- is about a third of the cases that are brought under the Superfund statute. It has no implication. It does not restrain anyone else from suing, whether it is a State, whether it is prior landowner, whether it is a neighbor, any third party can still sue.

So EPA, in its policy, can say we think based on equitable factors that these entities should not be held liable. All they can do is refrain from taking action themselves. They can't stop anybody else from doing it unless, on a case-by-case basis, they enter into a settlement agreement with that party and then give them contribution protection, which is what the EPA enforcement office was doing before Congress enacted the Brownfields bill and provided liability protection for Bona Fide Prospective Purchasers.

EPA was killing themselves trying to enter into the settlement agreement to provide protection from Superfund liability on a case-by-case basis, and when the law was passed, the enforcement office put out a memo saying this is really going to save us a lot of transaction costs.

Mr. Latta. Let me follow up with you. What options would water utilities have if a liable party brought them into a third-party contribution claim given the EPA enforcement discretion does not protect utilities from CERCLA liability in that scenario?

Ms. Bodine. In that scenario, I would say that, other than fighting it, the only option they have is to go to EPA and say, Sue me, Settle with me, and give me some contribution protection through the context of that settlement.

Mr. Latta. Thank you.

Mr. Mehan, how do we ensure these communities are not unfairly impacted by the cost of PFAS remediation? What role should passive receiver exemptions play in this effort?

Mr. Mehan. I don't know how we insulate the ratepayers from the cost of all this. In fact, the ratepayers are going to be the primary burden carrier for the cost of regulations, Superfund liability, litigation, reputational risk. I wish I could come up with a better answer, but that is the grim reality, if I understand your question.

Mr. Latta. Okay. Thank you.

Ms. Bodine, in the absence of a passive receiver exemption, do you see a risk that PFAS manufacturers or other primary contributors could use CERCLA contribution actions to redirect liability to our publicly owned utilities with a stable rate base?

Mr. Mehan. Oh, I certainly do. There is precedent --

Mr. Latta. Oh, I am sorry. I am sorry. I will ask that to Ms. Bodine. I am sorry.

Ms. Bodine. That is how the statute works, so yes. Exactly. EPA can target -- and, generally, they only target a handful of entities, and those entities then turn around and sue everybody else that they can find.

Mr. Latta. Okay.

Mr. Mehan, would you like to comment? I am sorry.

Mr. Mehan. Yes, Congressman. You know, a couple law professors out in California, Buzz Thompson at Stanford and Jim Salzman at UCLA Law -- they have reported that there were 600 cases where a municipality was brought in to Superfund litigation by another potentially responsible party. Those were probably mostly landfill cases, and actually, Congress dealt with some of those liability concerns in new exemptions and defenses. So there is precedent.

In New Jersey, the wastewater system in Passaic Valley -- they were sued by EPA to try and get them out of liability through one of these consent decrees. The other potentially responsible party who I will remain -- keep nameless has sued -- has kept them in the litigation for another 10 years with multiple lawsuits.

So the idea that this -- and it is a good-faith effort by EPA, this enforcement discretion memo, but as Susan said, it is not going to cut the mustard.

Mr. Latta. Thank you very much, Mr. Chairman. My time has expired, and I yield back.

Mr. Palmer. The chair now recognizes the gentleman from California, Mr. Peters, for 5 minutes for his questions.

Mr. Peters. Thank you, Mr. Chairman.

So EPA has designated these chemicals as hazardous under CERCLA, and Trump's administration has defended that designation despite a clear aversion to regulation, and there is no debate that these substances are truly harmful. Ms. Donovan makes some excellent points, but I want to level-set about what we are talking about here. We should be dealing with these chemicals upstream. And I think it is TSCA -- maybe it is RCRA -- both of those laws are in the jurisdiction of this committee, and we should deal with that.

We also have -- people should understand that the drinking water you get in your house is regulated by the Safe Drinking Water Act. That should set the right level of toxicity to protect people who get drinking water. Mr. Mehan has pointed out it shouldn't all be done at the end of the pipe. That is not fair for municipal water facilities to have to deal with this on their own, and it is extremely expensive.

And what I think -- I think that we should really concentrate on solving this problem upstream and to the extent we have to through the Safe Drinking Water Act, but that is where we need to point the gun, and that is not what we are talking about today with this innocent receivers exception under CERCLA. That is different, okay?

My concern would be here that EPA has already recognized this. They have said they are not going to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including farmers, municipal landfills, water utilities, municipal airports, and local fire departments, but that does not keep third parties from suing just to get these people into the money pot, costing our ratepayers money without any environmental benefit. Without any environmental benefit. So that is why I am open to this exception.

I don't want -- I want to -- I think our ratepayers are already burdened, appropriately to some extent, with having to clean this material up to meet the requirements of the Safe Drinking Water Act, but there is no benefit from putting them into this pot for CERCLA liability when no one suggests

that these are the polluters. The polluters are not the municipal water facilities, okay?

And, Mr. Falbe, I think that is pretty clear here. I think we should work toward a reasonable exemption under this law. CERCLA has been amended a number of times because we have recognized over the decades the very, very strict -- I don't want to Draconian, but very strict and punishing liability, and a lot of people pay money just in legal fees over long periods of time.

I think the law has had a really good effect prospectively because it scared the bejesus out of people about admitting hazardous substances in the environment because they know this liability, right? But it is retroactive. And I have been part of lawsuits -- I cut my teeth on some of the biggest first cleanups in the Midwest, and everyone was in the pot, and I had felt no sympathy for them. But going forward, let's not penalize people who aren't the polluters.

And I am particularly concerned about municipal rate systems -- municipal water systems that have to charge their ratepayers for this. So, if we don't get a benefit from it, let's not do it.

Mr. Falbe, there are also instances in the private sector where this is happening, too, where you take minimally contaminated sites and then they can't be developed. And I know you have a situation with a data center. Can you describe the situation there for us?

Mr. Falbe. Yeah. Thank you, Congressman. So the issue with the data center -- we have a piece of property -- one of our members on my committee has acquired a piece of property that was a former industrial facility -- didn't use PFAS, didn't use PFOS, PFOA -- and was a chlorinated solvent site. That site was cleaned up. There was a No Further Remediation letter issued, as we call it in Illinois, and that is a prime site for redevelopment. They have been shopping it around to data center redevelopers. They even went so far as to get a Phase I Environmental Site Assessment done that actually said that, Look, we have no reason to suspect any type of PFAS was used in this manufacturing facility.

So you have a closure letter, you have a clean Phase I, and yet, when they took it to market, one developer in particular said, Well, we don't really believe that Phase I. We want to test for

these substances. Now, you might say, Well, go ahead and test. The problem is, because PFAS is so ubiquitous in the environment, the chances of finding it coming from somewhere at these very minute levels may, you know, impact that deal, and the contract purchaser may walk away from this and even forfeit their earnest money because of the unmarketability of this property.

Mr. Peters. I am going to run out of time. Were you trying to use this for a data center where almost no one will be there? There will be almost no exposure. It is probably a good site for that. And this is the nature of the exception we did in Brownfields. We said, Oh my gosh, this is -- we are preventing -- we saw that CERCLA was preventing all these sites from being developed in an irrational way. That is why we created new law for Brownfields. We need to do something about these passive receivers, and I look forward to working with you all.

I yield back.

Mr. Palmer. The gentleman yields.

The chair now recognizes the gentleman from Pennsylvania, Dr. Joyce, for 5 minutes for his questions.

Mr. Joyce. Thank you, Chairman Palmer and Ranking Member Tonko, for holding this important hearing and to our panel for being here today to testify.

CERCLA was established to hold polluters liable for the cleanup of chemical contamination that they caused. This "polluter pays" liability framework is helpful in many instances where there is a need for expensive environmental cleanups so that the party that generated, or released the hazardous substance, can be held responsible for the associated cost.

However, the liability established by CERCLA does not stop with the polluters. Under the statute's liability framework, any person who has had incurred costs related to the remediation of hazardous substances can file suit against not just polluters but so-called passive receivers. These passive receivers are not involved in the initial generation or discharge of hazardous chemicals but might receive water, soil, or other materials containing such substances.

Given how common the use of PFAS is, the 2024 final rule designating two PFAS chemistries as hazardous substances creates a system where many passive receivers will be drawn into costly legal proceedings for contamination that they bear little or absolutely no responsibility for having created.

I would like to focus on some of the defenses to CERCLA liability outlined in the statute and whether these are sufficient to protect the passive receivers in the context of these two aforementioned PFAS designations.

Mr. Falbe, I want to talk first about the Bona Fide Prospective Purchaser defense. A party that purchases land that they know or have reason to know is contaminated can invoke this defense if they meet certain statutory criteria and ongoing obligations. Would you please give a brief overview of the statutory defense and how it works?

Mr. Falbe. Yes, certainly. So the Bona Fide Prospective Purchaser defense is a fairly recent innovation for CERCLA. It was included in the Brownfields amendments of 2002.

So, you know, as CERCLA has -- we have lived with this for 45 years. CERCLA has evolved, and the BFPP is one of the new defenses that was inserted into CERCLA. So, under the BFPP, an owner, or a new buyer of property, can do an investigation, a Phase I Environmental Site Assessment, identify contamination, but yet then have a shield for CERCLA liability if certain criteria are met.

One is to do that All Appropriate Inquiry, which is usually a Phase I Environmental Site Assessment. Then, though, you have to -- when you get the property, you have to have continuing obligations. You can't just sit there if there is a problem. If there is a release, you actually have to address that. So this defense can be lost.

It is also self-certifying, which means EPA is not involved. So a BFPP or a would-be BFPP doesn't actually know they have maintained that defense until it is tested in litigation. So, because EPA is not involved and you don't get a certificate like with a State closure, it is -- it has a lot of uncertainty to it.

Mr. Joyce. Can you outline --

Mr. Falbe. Yes.

Mr. Joyce. -- any needed improvements for this defense such as EPA providing more certainty to the parties so that they can assert this defense? And, finally, in your opinion, are statutory changes needed?

Mr. Falbe. Yes. I think there is an avenue for strengthening the BFPP. The reason it was self- -- deemed self-certifying in the beginning was to try to get EPA out of the way so you didn't have to wait for the EPA to oversee a site. The problem with that is you have no regulatory authority that sort of blesses the cleanup. There is nobody to say, Yes, you have done a good job. That is what happens on the State voluntary cleanup programs.

As far as the statutory fix, I think there should be a passive receiver exemption built into CERCLA very narrowly tailored for passive receivers, among them, owners of real estate that did not authorize --

Mr. Joyce. Thank you. I think we needed that clarification today.

Mrs. Bodine, you noted in your written testimony CERCLA liability exclusions for innocent landowners where contamination is caused by a third party and continuous property owners where contamination migrates from one source to an adjacent property. However, you noted that the burden is on the landowner to prove that it is eligible for these defenses and they often incur significant costs in that process. Will these offenses be difficult to invoke in the context of PFAS?

Ms. Bodine. I would say yes because of what has been discussed here today, the fact that you don't know where the PFAS is coming from.

Mr. Joyce. But, given your experience of drafting CERCLA legislation and implementing it at the EPA, do you have any advice for us in Congress for considering whether to modify existing defenses or update new ones?

Ms. Bodine. You could do both. On the modifying existing, you could deal with the burden

of proof issue. Is it a defense where somebody raising the defense has the burden to show that they are eligible, or is it an element of liability saying that whoever is bringing the lawsuit has to show that you -- that you fall within -- that you are indeed liable. So that is existing.

On the new ones, yes, there are -- I mentioned the equitable factors. I mean, we have talked here today. People who didn't intentionally use PFAS are still being swept in. That concept of intentional use, I think it came up -- maybe Ms. Donovan brought it up.

I mean, there are States that are issuing bans on use of PFAS, and they have defined intentional use.

Mr. Joyce. My time has expired. I thank you. I will submit additional questions for review.

Mr. Chairman, I yield back.

Mr. Palmer. The gentleman yields.

The chair now recognizes the gentleman from Massachusetts, Mr. Auchincloss, for 5 minutes for his questions.

Mr. Auchincloss. Thank you, Chair.

I want to start by asking about testing with you, Mr. Mehan. You noted in your testimony that you estimate that utilities will need to make capital investments totaling between, you know, \$37 to \$48 billion by 2029 in order to fully comply with the drinking water standards. An enormous cost. It is something I hear a lot about from cities and towns. I represent 35 cities and towns. In Massachusetts, because of a lot of legacy industry and relatively dense land use, we have a lot of accumulated PFAS.

But the concern I hear is that the testing gives almost a sense of false precision distinguishing between four parts per trillion versus six parts per trillion. It can depend on the lab that is being tested. It can depend on the time of day. It can depend on what kind of gloves somebody is wearing when they are doing this. And a call for action that I have heard repeatedly is we need

in-line, 24/7, high-integrity testing of the PFAS content within drinking water facilities.

Is that something that would be a useful investment from the Federal Government in terms of R&D?

Mr. Mehan. Well, I would not rely on my law degree to give you technical advice on testing, but generally -- you know, this is a new frontier at these levels. Not millions, not billions, but trillions. Parts per trillion. And so I know that the early stages have been rough beginning to get the standards right, the methods, the testing, so at least some -- if you mean funding -- would be useful to develop the most effective approaches, which I am not confident to tell you what those are.

Mr. Auchincloss. Ms. Bodine, if you have any comments, I welcome those, too.

Ms. Bodine. I wanted to point out that the drinking water standard that has been discussed here today, which is at four parts per trillion, is not the risk-based standard. It was based -- it is based on what can actually be -- have a reliable test -- testing for, and it goes -- the risk-based standard that the EPA came out with were .01 parts per trillion and .03 for each of the two chemistries, and the four was at the, what is the practical quantification level?

Mr. Auchincloss. Yeah. I don't think we are at reliable -- at least in the sense of public health communications, I don't think we are at reliable testing right now because I think there is a lot of variability that actually undermines confidence in the test results, and we need to make Federal investments in in-line testing that is consistent and that people can understand in real time, not just lab by lab. I do want to move on because I have one other issue.

Ms. Donovan, I just so totally agree in what you have been saying, which is that debating four parts per trillion versus six parts per trillion in municipal water supplies -- we are chasing this contamination at the point in the bioaccumulation cycle when it is the hardest to mitigate, and we have got to go upstream, and we have got to address it at the point of production.

You talked about using the Resource Conservation and Recovery Act and designating PFAS as a hazardous substance under that. Would you also support using TSCA, though, so that we can

proactively regulate the production of PFAS?

Ms. Donovan. I am not a policy expert. I work at a church. And so, I am really sorry, I can't help you in the details of that.

But, if you don't mind and will allow me to take a little moment and address Mr. Peters, and maybe you both, if you feel the same way, be very careful about allowing shields where bad actors can hide behind them because that is a slippery slope. And we have seen that play out in North Carolina in the town of Pittsboro and the town of Burlington where these PFAS polluters are hiding -- are co-opting the local utilities, running the show, and allowing the pollution to proceed, and then it becomes harder.

Mr. Auchincloss. I hear that. And I think what we are trying to avoid is this downstream finger-pointing at great expense and suffering. And it seems like, while RCRA is good for remediating existing contaminated sites and we should do that, we have got to strengthen TSCA and, you know, expedite unreasonable risk determinations for PFAS as a chemical class and enhancing the authority for persistent bioaccumulative substances and just getting a lot tougher on nonessential uses of PFAS at the point of production and phasing them out, as we did, for example, with ozone-depleting chemicals in the 1980s and 1990s under the Montreal Protocol. We have frameworks for how to do this.

Ms. Donovan. When we did that with the Montreal Protocol, we replaced them with PFAS, and that is the problem. That gets into the green chemistry thing, is that we cannot keep doing regrettable substitutes and we cannot allow industry to dictate it, because they have shown us over and over again that they don't self-regulate and they don't hold themselves accountable.

Mr. Auchincloss. Yeah. We can't replace them with other toxic substances --

Mr. Palmer. The gentleman's time has expired.

Mr. Auchincloss. -- but we do need to replace them at the point of production.

I will yield back.

Mr. Palmer. The gentleman yields.

The chair now recognizes the gentleman from Texas, Mr. Weber, for 5 minutes for his questions.

Mr. Weber. Thank you, Chairman. Mr. Chairman, I ask unanimous consent to enter into the record this letter from Dave Ross, the executive vice president of Veolia, a water, energy, and waste recycling company. This letter shares recommendations on how to address PFAS management and shares results from a May 2025 test of their incinerator in Port Arthur, Texas, my congressional district, which the tests showed their incinerator destroyed 99.999 percent of PFAS-contaminated waste.

May I have unanimous consent to enter it into the record?

Mr. Griffith. [Presiding.] Sorry. I forgot I was sitting in the chair.

Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Weber. Thank you, Mr. Chairman.

Mr. Mehan, is it Mehan or Mehan?

Mr. Mehan. Mehan. H is silent.

Mr. Weber. Mehan was my next guess. Yeah.

Water utilities are already facing substantial costs to comply with PFAS regulations under the Safe Drinking Water Act and Clean Water Act, including treatment, monitoring, as well as disposal of PFAS residuals.

Going back on your law training, how would subjecting the same utilities to CERCLA liability for PFAS on top of already existing compliance obligations -- how would that affect water affordability, particularly in small, rural, and disadvantaged communities?

Mr. Mehan. Of course, the problem that small, rural communities -- whether they are rural or not, for that matter -- they don't have the base to spread the cost out -- the ratepayer base -- so they are at a disadvantage to start with as well as the technical limitations that they have in terms of staff and expertise in house. So they will probably -- you will probably see a lot of noncompliance or failure to comply, and then the cost will be -- I mean, you can just imagine. You know, they just won't be able to handle it.

And remember, we have got other mandates too. We are dealing with lead service line replacement, 40 million of those we are going to have to replace. A tremendous expense. Rates generally -- and I am not limiting this to small systems -- are going up at least three to four times the rate of inflation. And I won't say that is a bad thing, because we have been behind the curve in terms of our infrastructure investments, but the fact is that is the reality. They are going up, and all these pressures are coming to bear on -- let's face it -- the ratepayers. Not the State governments, not the Federal Government, but it is primarily the ratepayers.

Mr. Weber. Has it been your experience that there is just not a whole lot of lawyers that are willing to file lawsuits in those small communities because the money is just not there?

Mr. Mehan. That may be true.

Mr. Weber. Okay. Ms. -- is it Bodine or Bodine?

Ms. Bodine. Bodine.

Mr. Weber. That was my guess too. So I am going to come to you with the same question.

Small communities where they really can't afford to do that, what is the answer there?

Ms. Bodine. It is a chronic problem whether you are dealing with PFOA, PFOS, or anything, and the answer actually is getting operators there who can manage the system because, frankly, in smaller communities, they can't afford to pay the operators enough to stay, and so there is a lot of turnover, and so you have a lot of issues because they are just not being operated properly.

Mr. Weber. And I didn't read your bio. Are you an attorney also?

Ms. Bodine. I am an attorney, yes.

Mr. Weber. Okay. So we have got at least two attorneys on the panel, maybe three?

Okay.

Mr. Mehan. I am a recovering one.

Mr. Weber. And we have got a mom who has got the most important role. She is raising children. So thank you for being here.

Ms. Bodine, I am going to come back to you. So we are now hearing how some State and local governments are reportedly pausing PFAS sampling programs to avoid discovering contamination that would then trigger CERCLA obligations. Do you think more State and local governments should -- will follow suit without changes to CERCLA, or how would that affect -- and, if so, how would that affect environmental transparency?

Ms. Bodine. So that is an interesting question. I had not thought of that. You are saying that they are not looking for it because, if they find it, they are worried about liability? I believe that is what you just said.

Mr. Weber. I think that is the case.

Ms. Bodine. And that actually can create -- increase risk instead of reducing risk. And that is another unintended consequence of the very, very broad liability created by Superfund, whereas -- you know, I think people here today have talked about there are other statutes --

Mr. Weber. Okay. I am running out of time.

Is it Falbe or Falbe?

Mr. Falbe. Falbe.

Mr. Weber. Okay. What do you think about that? Very quickly.

Mr. Falbe. I think that putting the -- giving the decision to the States is usually the best idea. Many States were regulating PFAS before the Federal Government acted. I think cleaning up property at the local level and at the State level is really -- it is quicker, it is cheaper, it is faster, and you get -- usually get a closure certification of some kind, which the market really accepts.

Mr. Weber. Okay. I thank you for that short answer.

I yield back, Mr. Chairman.

Mr. Griffith. The gentleman yields back.

I now recognize the gentleman from New Jersey, Mr. Menendez, for his 5 minutes of questioning.

Mr. Menendez. Thank you, Chairman.

Ms. Donovan, I just want to thank you for being here. I went to school in North Carolina and spent some time in Wilmington, so I appreciate the place that has been your home and that you fight so hard to protect. And, as the father of a 5-year-old and a 3-year-old, I appreciate very much what you are doing to protect not just yourself and the families that you care about, but entire communities, which brings us to the conversation we are having here today.

Nearly all Americans have detectable levels of PFAS in their blood. Even babies are subjected to PFAS exposure in utero. A new study found that PFAS exposure in the womb or in infancy significantly increases the risk of preterm birth and triples the infant mortality rate. PFAS is

found in at least 172 million Americans' drinking water, posing serious risks to public health.

Does anyone on the panel think that the work in limiting PFAS contamination and exposure in this country is done, is complete? Yes or no?

Ms. Donovan. Oh, I am going to jump on that one. No, not even close. And the fact that we only -- as grateful as I was to the Biden administration for adopting PFAS drinking water standards, it was only for six. And now we are seeing four of them being threatened, the ones that are commercially relevant. So, no.

The baseline was to stop our drinking water exposures, but after our drinking water exposures, for the majority of Americans, it is food contamination, and we are not even talking about food contamination right now. We are talking about who shouldn't pay for the problem instead of addressing the total exposure pathway that we are all experiencing. It is more than just food. It is air. Our beaches are coated in an atrocious amount of PFAS in sea foam, the highest ever recorded in literature to date.

Mr. Menendez. Don't worry. I am coming back to you, Ms. Donovan.

But does anyone else -- do you -- just going to go down, yes or no. Do you think the work is done? Yes or no. It's a simple yes or no. Do you think the work is done on PFAS contamination and Americans' exposure to it throughout our country? Yes or no?

Ms. Bodine. No, but the statutes have standards.

Mr. Menendez. Okay. No.

Sir, yes or no?

Mr. Mehan. We think there is a lot to be done in the Clean Water Act.

Mr. Menendez. So we are not done yet.

Mr. Falbe. I think we are here because it is not done.

Mr. Menendez. Yeah. That is correct. And so I agree.

And listen, it is about sequencing, right? If I felt that we were farther along on limiting the

damage that PFAS causes to our communities, then I can see how we talk about liability at some point, right? I just don't think we are there yet. We should be having a discussion today and every day about PFAS as a public health concern.

The other challenging thing is that, tomorrow, we were supposed to be in session. We are being sent home. We were in a government shutdown -- the longest government shutdown where we weren't brought back to Washington to have hearings like this. So we have lost legislative days, and every day that we are here is critically important. We should be focused on the issues that impact our communities the most, which brings me back to you, Ms. Donovan.

It has been almost 8 years since you last testified before this committee. Do you believe that the topic of this hearing, CERCLA exemptions, will help clean up PFAS in your community and in New Jersey?

Ms. Donovan. No, I don't, and I also don't think that it is really going after the polluter pays in any sort of way. I mean, we are stuck in massive lawsuits to get our polluters to pay, and what we have been begging for for the last 8 years is legislation that makes it so lock-tight for us to be able to get the polluters to pay. We want every tool, every resource available, but instead we are sitting here talking about how we can shield people from it instead of creating a lock-tight accountability chain where everybody is at the table realizing we are all on the line because my family is already on the line for this right now.

Mr. Menendez. Upstream, downstream, correct? Everyone looking at the entire continuum and making sure that we are protecting the people at the end of it who are the American citizens that we are tasked with protecting. Is that correct?

Ms. Donovan. Correct.

Ms. Donovan. Thank you. Ms. Donovan, it is my understanding that the party responsible for PFAS contamination in your community is very clear, just like responsible parties in New Jersey's proposed PFAS settlements are very clear. So, in this case and in many others, the manufacturers

of PFAS who dump into communities like yours will be held financially responsible for the cleanup. Is that your understanding?

Ms. Donovan. It is my understanding for the drinking water. Chemours definitely has the majority share, but they are not the only ones. We do have polluters upstream, and then we do have a massive -- the world's largest munitions depot terminal is in Southport, and we think the PFOS contamination along the shoreline is coming from there.

Mr. Menendez. Okay. And again, I think we can all agree that it is the polluters -- not taxpayers or ratepayers -- who should be paying for the mess that they created, and those taxpayers and ratepayers expect affordable, high-quality services that protect their health. I think that is an entirely reasonable thing for any American. Whether they live in a red State, a blue State, a rural area, or an urban area like the one I represent, we should be able to pour a glass of water for our children knowing that it will not harm their health. I don't think that is too much to ask for this government and this country in 2025.

Thank you, again, Ms. Donovan, and I yield back.

Mr. Griffith. The gentleman yields back.

A point of clarification. There were no hearings scheduled for tomorrow because it was a get-away day, and the hearing we are having here today --

Mr. Menendez. And the Epstein files are released tomorrow as well, which I am sure was part of the consideration.

Mr. Griffith. I don't think that had anything to do with the consideration. I think the consideration, in all fairness, was Christmas.

All right. I now yield myself 5 minutes to talk about the issues of the day. I find this hearing extremely interesting. I am learning. I have a lot of skepticism, and I am affected indirectly.

I represent Spring Hollow Reservoir. The land that Spring Hollow Reservoir is on -- that is

run by the Western Virginia Water Authority. The Western Virginia Water Authority tested it in 2020 and found that they had shockingly -- didn't know where it came from -- they had GenX as they traced it down, but they didn't even notify the public in 2020 because it wasn't listed as being something they needed to notify the public about until 2022. They then notified the public.

As they tracked it down, they found that it was your Chemours plant that had sent tanks, if I remember correctly, to a company called ProChem upstream in Roanoke County to be cleaned out because they had a buildup of calcium and magnesium.

ProChem was not advised, as I understand it. Based on the press reports, it was never advised that Chemours had PFAS or GenX in this case and that they should be on the lookout for GenX. As a result, Spring Hollow Reservoir was contaminated. ProChem stepped up and put \$1.9 million into trying to resolve the problem in the Spring Hollow Reservoir. It raises a couple questions for me.

Mr. Mehan, from a public water authority, should the Western Virginia Water Authority have known that GenX was dangerous when they first found it in their water in 2020?

Mr. Mehan. I can't speak for them, but --

Mr. Griffith. I am saying generally. Should they have known that was a danger?

Mr. Mehan. Well, to be clear, most of the people running water utilities are engineers. They are not toxicologists. They are not scientists in the sense of doing chemical research. You know, this wasn't on the radar of society generally.

Mr. Griffith. Okay. So it wouldn't have been -- switching over to medical malpractice language, it would not have been the standard of the industry for them to have been alert. They tested it, they saw it, thought it was strange, but they didn't know to alert anybody?

Mr. Mehan. That is correct.

Mr. Griffith. Okay. All right.

Ms. Bodine, as you know, electric power plants intake, use, and discharge water that already

may contain PFAS or GenX. How can we avoid unfairly shifting the burden of PFAS cleanup to the electric ratepayers as well as the water ratepayers?

Ms. Bodine. You are identifying an incredibly important issue, which is that -- yes. Because PFAS is ubiquitous, it is going to be in residuals generated by entities that are not intentionally using PFAS.

Mr. Griffith. Kind of like my ProChem people. They had no idea. They were cleaning out calcium and magnesium as far as they knew.

Ms. Bodine. That is not an intentional use, which has been recognized, you know, by EPA as an equitable principle that you might want to use if you were creating passive receiver liability, that no intentional use -- but, nonetheless, there are going to be residuals. They are going to be at incredibly low levels.

So it is not the entities that you have talked about like Chemours, which are going to have high levels, or perhaps your textile manufacturers or the people making Gore-Tex, you know, boots, et cetera, with high levels. It is going to be people who have it in their intake water or have it from sources they don't even know where it is coming from. And the levels are really low, but CERCLA doesn't care. There is no threshold. You are still liable. If you can detect it, you can be held liable.

Mr. Griffith. Yeah. I was really interested in some of the concepts, and I liked your idea -- and I am not saying you were promoting, but you at least laid it on the table -- of shifting the burden of proof.

And I like that, because I am concerned about what Mr. Falbe has raised because all of my people downstream of the Smith Hollow Reservoir who -- they believe that they probably started getting those chemicals in 2014, didn't test for it until 2020 -- or didn't test at all until 2020, and they didn't know it was a problem until 2022, but every landowner downstream from that site -- because they don't use -- they don't put it all into the drinking water. Some of it gets just released back into

the river -- could theoretically be liable? Is that right, Mr. Falbe?

Mr. Falbe. Yes, that's correct. And, as a matter of fact, just this month, EPA updated its website to include an affirmative -- as I can understand it, an affirmative showing that a Brownfields grant applicant is not liable for.

PFOS or PFOA on the property that you are seeking a grant from, and that is not usually how it works. A Phase I Environmental Site Assessment is not going to say you are not liable, right? This is a technical document. The last thing consultants do is make legal pronouncements in these documents. So I don't know how that is going to work. I am very concerned about it.

Mr. Griffith. Well, and I think we need to clarify that. And I probably will have some additional questions for the record at a later time, but my time is up.

And I now recognize Ms. Barragan from California -- Ms. Barragan from California for her 5 minutes of questioning.

Ms. Barragan. Thank you, Mr. Chairman.

Ms. Donovan, it must be hard for you to sit here and to hear some of the questions and answers that are being given by witnesses. Would that be accurate?

Ms. Donovan. Yeah.

Ms. Barragan. What is it about some of the questions and answers that makes it difficult for you to sit through?

I can tell you that, as a legislator, I think about my own family, my community, and say, well, shit. If there was toxic chemicals in my drinking water, I should know about it as a resident. And so just hearing, well, should you have known, well, I am not a toxicologist, well, that is not our job -- it just sounds like we are having the wrong conversation. But what is it for you that makes it frustrating?

Ms. Donovan. I mean, I think this goes back to what I said earlier, is that water utility lobby groups should be the biggest environmental champions known to man, and in the 8 years that I have

been doing this, I rarely see them. I see them actively working against us, treating it like it is a business, like water is a commodity. Water is a sacred human basic right. We should be protecting our sources, making them as pristine as possible. We should be keeping them away from industry. We should be recognizing that water utility companies should not be profit centers ever.

You know, we bail out farmers because we understand that farmers can't go under. They provide necessary food to us, even though we have abundance of food and we waste it sometimes. Water should be treated the same way. Instead of talking about how we need to shield people from liability because we don't want them to be oversued, why are we not talking about how the Federal Government can make sure that no water utility of any size ever has to worry about whether they need to make that decision between having clean, safe drinking water or having cheap, toxic water? Like, that is not what we should be talking about right now.

Ms. Barragan. Thank you. Ms. Donovan, sometimes when I have advocated for cleaner water standards or going against polluters, I have been accused of, well, you are from a very Democrat, liberal area. Are you from a Democrat, liberal area?

Ms. Donovan. No. I live in a red county. I have a lot of diverse friends. And I will say that there is not a lot we agree on and can talk about, but this is the one area where we have seen the most bipartisan support. If you come to my area and you talk about PFAS, everybody knows what you are talking about. You talk about Chemours and DuPont, and everybody is ready to see them go under. Nobody likes DuPont. Nobody likes Chemours.

And you know what we haven't been talking about today, is how are we going to make -- there are only 12 PFAS manufacturers in the entire world that are causing this problem. Why are we not talking about how we bring them to the table? You know, DuPont is profiting off of this right now because DuPont sells water filtration. We are allowing DuPont to get away with what they started back in Virginia and in North Carolina. They knew and they had opportunity and the

chance to put the controls on, and they chose not to, and here we are stuck in 7 years of litigation with them just to get them to pay for our drinking water.

Ms. Barragan. Thank you, Ms. Donovan.

The Trump EPA has proposed broad exemptions to a PFAS reporting rule that was designed to help understand where PFAS are produced and how they are used. Collecting this information from companies would help EPA regulate PFAS and prevent further contamination.

From a community perspective, how important is it that industry be required to disclose where PFAS are used, and what happens to communities when companies are exempt from providing information?

Ms. Donovan. Well, it is not fair because we are all making decisions, and they need to be informed decisions. You know, I raised my children on this water, and I can -- I worry constantly about the body burden that we expose them to unnecessarily. You know, I worry about any sneeze, any backache, any complaint of an ache or pain. Sometimes when we go out to eat, I will purposely drive out of my way to go to an area where I know the water is safe and clean. I came here, and I don't even know if the water is safe and clean here. I don't even know sometimes what food choices to make at a grocery store. Sometimes I am afraid to go to a farmer's market in our area because I am worried that it was -- that the produce was raised with contaminated tap water or contaminated well water.

We need the right to know. It must be fully disclosed. It is the only way that we can have consent. And right to information is recognized by the United Nations as a basic human right.

Ms. Barragan. Well, thank you for your advocacy and for your work and for being a voice not just for community but for those across the country. I know it can be challenging, and so you being here today is very helpful, and thank you for sharing your story. And it is something we should all be advocating for in making sure we have clean air, clean water, and certainly the ability to not have to question whether we can drink the water.

With that, I yield back.

Mr. Griffith. The gentlelady yields back.

I now recognize Mr. Soto for his 5 minutes of questioning.

Mr. Soto. Thank you, Mr. Chairman.

The Superfund law known as CERCLA has protected countless American lives. In 2024, we saw EPA advance new protections against two types of PFAS chemicals, PFOA and PFOS, widely used in consumer industrial uses. We have heard some of those uses today. These chemicals unfortunately have poisoned our drinking water in many communities, resulting in cancer clusters, low birth weight, liver disease, and more.

We saw it particularly hurt our heroes in Florida at Ocala in the Florida State Fire College, where we saw chemicals and firefighter suppressants that contaminated groundwater supplies. These included PFAS chemicals. So our firefighters sued to -- because they were facing thyroid, kidney, breast, and parathyroid cancers. Last term, I was able to file a firefighter PFAS bill, and we are actually working on a new one.

You know, Ms. Donovan, have you heard from any firefighter families in talking with families across the Nation about PFAS exposure?

Ms. Donovan. Yeah, and it is devastating to hear the stories, to listen to a grown man break down, a grown man that you know is incredibly brave because they will run into a burning building just to save a kitten or something.

I have a friend, and her husband is a firefighter in Nantucket, and he developed testicular cancer. And she was telling me that on top of struggling through the diagnosis, they also found out that there was further contamination of their drinking water, and it felt like a double cumulative whammy. But they were trying to figure out if he should stop being a firefighter because the risks were so high.

He is not afraid of fighting a fire. He is afraid of dying of cancer because he is not being

protected. He is not being protected in the most basic way with clean gear, with clean water, and with making sure that the products that are burning in the home are not creating a chemical soup that he is enduring. You know, should he quit mid-career and find something new just because of this?

In our area, our firefighters were incredibly concerned as well and they have been pushing back, but the problem in North Carolina is that our firefighters don't even have good medical liability opportunities. So they are at an increased risk of getting cancer, and in North Carolina, they were having to fight the State not to stop their exposures from PFAS but just to even get a fair shake on insurance claims.

Mr. Soto. Well, thank you for that. And I had to work on those issues on the State level and on the Federal level with a cancer presumption, but we also see it in the foam and now taking PFAS out of it. But we have a duty, Members, to our local heroes to be able to get this done.

Mr. Mehan, we saw in the infrastructure law under Biden \$50 billion for the water infrastructure, including the State Revolving Fund, which so many local water utilities utilized. We have been able to work with -- to secure over half a billion dollars from that for Toho Water, Polk Water, and for OUC in my area to help with clean drinking water. But we have seen the Trump administration propose a 90 percent cut to the State Revolving Fund for 2026 from \$2.8 billion to \$280 million.

So, as we are talking about trying to protect clean drinking water from PFAS and other chemicals and making sure our utilities have the money they need, what effect would that be if you saw the State Revolving Funds decimated by 90 percent?

Mr. Mehan. Well, it would be entirely negative. Earlier in the year, I had a conversation with the general manager of a Milwaukee utility, and they have had a pretty good program to remove lead service lines, and they depend on the SRF. And they said without the IJA or BIL, they --

Mr. Soto. The infrastructure law, just for my constituents right here who are --

Mr. Mehan. Yeah. Without the money, it wasn't going to happen because, you know, they have got a pretty -- you know, the ratepayer base isn't exactly affluent. And so, yeah, it would retard things. It will default again to the ratepayers. And so then you get into a local political discussion of how much you can afford to raise the rates and at what pace. And, of course, you know what they -- if you have ever been to a ratepayer hearing, you hear a lot of conflicting views about where the rates should be.

Mr. Soto. So, if Congress delivers on our State Revolving Funds, this will keep water utility rates down?

Mr. Mehan. Although I will -- and this will not be a popular statement. The earmarks are really devastating the SRFs program, because they are grants. They are not loans. They do not revolve back into the loans. And there are 30 States now that are getting less money from the SRF program because of earmarks.

Mr. Soto. So we have got to improve that. Thank you.

Mr. Griffith. The gentleman yields back.

I now recognize the gentleman from Texas, Mr. Pfluger, for his 5 minutes of questioning.

Mr. Pfluger. Thank you, Mr. Chairman. Thanks for the hearing.

I flew fighter jets in my professional career. Obviously, PFAS is something that I was very familiar with because it was a foam that was used to put out fires of, you know, those types of weapon systems. So it is something that I am definitely familiar with and understand the conversation today is really important on the contamination and what the implications are for how to deal with this.

I will start with Ms. Bodine. I have a series of questions. You know, the Pentagon has identified at least 700 installations that have known contamination, and just a baseline question on what are the potential fiscal implications for taxpayers under the current legal framework.

Ms. Bodine. The Department of Defense has authority to clean up PFAS contamination with or without the CERCLA designation that we are talking about here today in this hearing. They have been required by the various National Defense Authorization Acts to report their liabilities, which I forget their most recent number, but they do -- they are undercounting it. It is billions. They only talk about, you know, \$4 billion because that is what they have underway, but they haven't done a whole lot of cleanup -- actual cleanup work yet. So they do also say the number will end up being much, much higher. So that is a consequence of the uses of the PFOA, PFOS often to create -- for safety reasons, but nonetheless, have created contaminating groundwater.

So the difference between what they are doing now versus what they can -- what would happen with or without the CERCLA designation is, can somebody sue them? So, right now, they are cleaning it up, but they are cleaning it up based on their own priorities and their own pace. With the CERCLA designation, then somebody could sue them and say, No, put my site at the front of your list.

Mr. Pfluger. Okay. So let's pull on that a little bit. Does it make sense for Congress to continue allowing liability to be resolved through prolonged case-by-case litigation, or should there be some sort of comprehensive statutory solution that addresses it?

Ms. Bodine. I think we have -- it is clear that liability is the least efficient way of addressing a problem and that money is better spent on dealing with the cleanup, you know, whether it is DOD's money or anybody else. However, I am sympathetic to downstream communities from Air Force bases, et cetera. But Congress has a choice. If you are creating exemptions, you don't have to include Federal agencies in your exemptions. If that is your choice, they are separately funded by Congress. All the cleanup done by a Federal agency is paid by the Federal taxpayer.

Mr. Pfluger. If you were to put odds on the cost -- I know I am asking you for math in public, but just give us a scale. You know, two to one, three to one, 10 to one, I mean --

Ms. Bodine. In my testimony, I did give some numbers about what percentage of total

Superfund costs are associated with the transaction costs as opposed to cleanup. And, you know, it is -- the smaller the entity, the smaller the contributor, the greater the percentage, and some -- and it was over 50 percent for very small parties that have been dragged in. They are spending more money on lawyers than they are cleanup costs. For DOD, they are -- it is so mammoth, I can't even give you a cost.

Mr. Pfluger. Okay. Why don't I ask it this way: Who stands to gain with the individual suit method, and who would lose in that? I mean, are there winners and losers in each approach?

Ms. Bodine. Are we still talking about DOD or are we talking more broadly?

Mr. Pfluger. More broadly.

Ms. Bodine. Okay. So, if EPA were to take its money, the trust fund money that is there because it is coming in through the petroleum taxes and chemical excise taxes -- and do cleanup without suing, but do cleanup based on the funding that they have, you could -- everybody could gain. And then the question is, is there enough money in the trust fund to do that, or do you still need to keep some people liable so that -- some people who -- people have been characterized here as true polluters, which I think many have made the point is a much narrower class of parties than people that Superfund liability systems sweeps in.

Mr. Pfluger. Yeah. Thank you. That was very articulate, and that is -- I think the overall goal is to get it cleaned up and have everybody win.

I yield back.

Mr. Palmer. [Presiding.] The gentleman yields.

The chair now recognizes the gentleman from Ohio, Mr. Landsman, for 5 minutes for his questions.

Mr. Landsman. Thank you, Mr. Chair, and thank you all for being here. This is a really important hearing. I think this hearing gets at ultimately, in addition to solving a very complicated and very important problem, what side are we on?

And I do believe that at the moment, in the United States, we are facing one overwhelming issue, and that is the extreme concentration of wealth and power, and no place is that more true than in Big Tech. And the data centers are an example where these data centers are going up all the over the country, particularly in rural communities. I have a Wilmington in my neck of the woods, and they are dealing with a data center right now.

And think about this. The data center comes in, some construction jobs upfront, you know, at the beginning, use a ton of water, make a ton of noise. There are these legitimate pollution issues, and the question about forever chemicals. But, instead of tackling those things, what they get is they get land. I mean, we are talking about Amazon and these Big Tech companies. They get a bunch of land, and then these towns and townships that have no money -- they have got to give them tax cuts and tax breaks for the data centers to come in, so depleting their bank accounts, and it leaves communities frustrated, angry, poorer, sicker. And it is fueling what? It fuels higher utility bills for folks, less local money for towns and townships, the pollution.

Now, these Big Tech companies get billions and billions of dollars. Those are the winners. The President can make memes. My staff does, you know. And now these communities may not be able to sue. They may not be able to take on these folks in court. So we have got to pick a side.

And, Ms. Donovan, I am going to give you the rest of my time. You picked the side of these communities. I am going to pick the side of these communities. So, if my colleagues want to join and say, Okay, I am going to pick the side of these communities, Amazon is going to be fine. The innovation is going to happen.

Top three -- and some of this, you will repeat -- but top three things we have got to do to be with them, not the Big Tech companies. Top three things you want Congress to do.

Ms. Donovan. I wasn't prepared for that.

The top three things is end all exposures to PFAS. Make the actual polluters pay. We know

the \$1 billion polluters. We are sitting here bickering over such inconsequential things, but we also need to know the health risks. You know, part of our human rights claim was the fact that I need to be able to go to my doctor and have a real authentic conversation with my doctor about the risks of our exposures. We don't know all of those right now.

You know, I had to reschedule an urgent colonoscopy just to be here, and I don't know what is going to happen. But I also do my research, and I can't find, you know, a really strong link or a connection. We are never going to be able to fully, in a legal system, hold Chemours and DuPont accountable without being able to establish a human causal link to the exposures, and we have been fighting in our community for 7 years to try and get a large-scale human epidemiological study.

That is what the power of the United States and Congress could do. You could start funding that research. You could pass legislation right now to get that going, and we could definitely hold these polluters accountable. You can stop the exposures by joining countries in the EU and is starting to implement essential use bans.

We can start talking about holding -- sorry. The military. I just want to go back real quick to there because the DOD knew in the 1990s that their AFFF was contaminated and was causing real harm, but they still chose to continue to use it and still chose to put servicemembers at risk, and we know that there is a long history of the Department of Defense misusing our human soldiers, and then not caring for them on the back end. So we need to make sure that there is really strong provisions to help DOD-contaminated communities because of sovereign immunity for them.

So I really appreciate that you gave me all this time. I am sure I could put together a longer list, but I think there is a lot more that we could be doing right now than just trying to talk about -- or playing the "not me" game, the "not me" ghost.

Mr. Landsman. Thank you so much.

Mr. Palmer. The gentleman's time --

Mr. Landsman. I yield back.

RPTR KRAMER

EDTR SECKMAN

[12:00 P.M.]

Mr. Palmer. The chair now recognizes the gentlelady from Iowa, Dr. Miller-Meeks, for 5 minutes for her questions.

Mrs. Miller-Meeks. Thank you so much, Chair Palmer, and I thank all our witnesses for being here.

As a Representative from Iowa, I take seriously our responsibility to protect public health and the environment while also ensuring that Federal policies are fair, clear, and feasible. In Iowa, clean water affects our farmers, our rural communities, our drinking water systems, and our local employers as well as families. Many of the entities now worried about the CERCLA liability like water utilities, wastewater facilities, landfills, and farmers who responsibly apply biosolids did not create PFAS but could still be swept up in liability scheme that is retroactive, strict, joint and several. Costs to passive receivers is only one piece of the problem here. We should also explore options that support swift remediation and provide the liability certainty necessary for American industry to focus on solutions that allow them to continue to invest in the U.S. rather than endless courtroom battles.

At the same time, we should be encouraging innovation and American ingenuity. Iowa agriculture is already helping lead the way with promising alternatives to PFAS, including soy-based fire suppressants made from soybean meal. These kinds of homegrown solutions can reduce reliance on legacy chemicals, create new markets for farmers, and strengthen our economy without heavy-handed mandates from Washington.

Ms. Bodine, your testimony suggests that insignificant or inadvertent contributors may spend more on lawyers and consultants than on actually addressing PFAS contamination. Can you explain how CERCLA's joint and several liability structure incentivizes litigation over cleanup and what that

means for small businesses, farmers, and local governments?

Ms. Bodine. Yes. Thank you for that question.

In the context of, say, an EPA-led cleanup, they are not only going to sue large parties, but the statute gives the parties that EPA sues the ability to turn around and sue anyone else who may fall within a category of liability under CERCLA, which is very, very broad, and those people then spend years -- my testimony talks about, you know, 7 years, 9 years -- to get out of the cases. And, when they finally settle, their piece of the liability might be tiny, but those 7 years of litigation costs will be huge.

Mrs. Miller-Meeks. Thank you for that.

I also, with having Rock Island Arsenal and the Iowa Army Ammunition Plant in my district, I would like to echo Representative Pfluger's comments regarding military installations. That is a, I think, a concern to all of us, and so I won't ask that question.

Mr. Falbe, from your members' experience, how has the PFAS designation already affected phase 1 environmental due diligence, financing, and insurance for commercial real estate projects? And what does that mean for redevelopment, housing construction, and job creation in local communities?

Mr. Falbe. Yes. Thank you for that question.

We have talked a lot about clean water this morning. Everybody is in favor of clean water. Everybody is also, I believe, in favor of brownfield redevelopment. So it is important to be able to redevelop infill properties that are contaminated. And what we are asking for in terms of a CERCLA liability enhanced protection doesn't mean those sites will not get cleaned up. In fact, I think it paves the way for that kind of redevelopment because the concern is the unlimited CERCLA liability, the fear of having to write a blank check and pay it. Lots of lawyers like to litigate CERCLA liability.

So I think phase 1 environmental site assessments are great. They are just a look. There is no testing involved. It is still an evolving industry. And, just simply, the fear that PFOS or PFOA

may be on a site, not even caused by anything on that site but maybe by surrounding properties or air deposition or other issues like that, it creates a great degree of uncertainty.

And, as I said before, the market investors hate uncertainty. I think brownfield sites are best cleaned up at the State level where you can get closure without that CERCLA liability.

Mrs. Miller-Meeks. Thank you.

Mr. Mehan, EPA has issued enforcement discretion guidance stating it will not pursue certain categories of passive or public service entities, such as water utilities and wastewater systems. Why does this guidance fail to provide real certainty for those entities, and why is congressional action necessary to protect them from third-party lawsuits?

Mr. Mehan. I will get it right eventually.

I will echo our colleague, Susan Bodine. Guidance like that applies only to the agency, not to the two-thirds of other litigants who are potentially responsible parties who can drag in a utility or any other potentially responsible party under the four categories. So, you know, that doesn't work.

And I also cited earlier -- I don't know if you were in the room -- but there is a case in New Jersey involving Passaic Valley sewage district. And EPA actually brought them into litigation in the hope of giving them a "get out of jail free" card through a settlement. Ten years later, they are still in the litigation because of opposition from the other -- some of the major PRPs. And there is collateral litigation --

Mr. Palmer. The gentlewoman's time has expired.

Mr. Mehan. So it is a sticky wicket. And, quite frankly, no lawyer I talked to -- and EPA, to their own credit, is just trying to do the best they can. So -- but it is not a solution --

Mrs. Miller-Meeks. Thank you. I yield back. Thank you, Mr. Chair.

Mr. Palmer. The gentlewoman yields.

The chair recognizes the gentleman from Louisiana, Mr. Carter, for 5 minutes for his questions.

Mr. Carter of Louisiana. Thank you, Mr. Chairman.

Protecting communities from PFAS, so-called forever chemicals, is a matter of public health and environmental justice. PFAS are manmade chemicals that do not break down in the environment or the human body. They accumulate over time in our water, soil, and bloodstreams. They are linked to serious health harms, including cancer, reproductive complications, and weakened immune systems in children, among others.

Nowhere is this issue more urgent than in fence line communities, especially in places like the one that I represent in Louisiana, which has the unfortunate moniker of "Cancer Alley," where families live next door to petro chemical plants and industrial facilities. These communities disproportionately are Black, working class, already face higher exposure to toxic air and water pollution. PFAS contamination only compounds those risks.

Strong Federal protections matter because PFAS pollution doesn't respect State lines. We need clear standards, rigorous monitoring, and enforcement authority. I understand that there are real concerns about liability for so-called passive receivers, entities that may receive hazardous substances, including PFAS, through wastewater or recycled materials but do not manufacture or use those substances themselves.

I want to continue working with this committee on that issue but in a way that doesn't weaken protections but strengthen them for the communities that are most impacted.

Rolling back rules doesn't make chemicals safer. It just makes exposure easier and accountable -- accountably harder. For communities like mine, delays mean more user exposure, more preventable illnesses, and more families forced to choose between staying in their homes and protecting their health.

Ms. Donovan, can you describe how PFAS contamination has affected your community's health, access to clean drinking water, and overall quality of life?

Ms. Donovan. Yeah. And I am so glad that you brought up the point about fence line and

frontline communities and the environmental justice concerns because there is the cumulative impact of all of this that needs to be addressed.

There is a community that lives right beside the Sampson County landfill, which is where Chemours sends its waste, or it was documented as sending its waste for a very long time. This community is not only now dealing with contamination problems coming from this waste landfill, but they are also dealing with hog farm waste that they have had to litigate. They are constantly in litigation just to try and protect their way of life and where their ZIP Code is. And it is not fair.

We have private well owners in Brunswick County that are just now finding out that their wells were contaminated by Chemours 7 years later, all the way -- it was 80 to 90 miles downstream from the actual facility. And it was because the municipality had contaminated water, which has now contaminated the ground water of the area. Think golf courses, think -- think just irrigation, think all of that. And we are working through -- we -- but the -- the State environmental department is working with Chemours through the consent agreement to force Chemours to pay for that cleanup.

We are seeing communities -- there is a Black community, a predominantly Black community called Rock Hill in Wilmington, North Carolina. And, when developers come in and create new homes, they are bypassing the ability to give this community access to municipal water that is cleaner than the ground water that has been contaminated again by PFAS. And so there is a struggle and a fight to make it equitable and just for this community to access a better -- a better opportunity for water now that it is available.

Mr. Carter of Louisiana. Can I interrupt you just for a moment because I only have a few seconds left. I really want to ask you about RCRA. We know that the Resources Conservation Recovery Act under the Biden administration was working toward coming up with ways to deal with this. How would RCRA's cradle-to-grave waste-management model provide your community with the sense of security, knowing that PFAS waste are properly managed and maintained through the

life cycle?

Ms. Donovan. Yeah. I mean, we have -- we know that there are tanker trucks that leave Chemours constantly. We have seen spills that have happened, but they don't get reported. It has been voluntary, eye on the ground observation from the very communities that is being contaminated with the air releases that are having to call regulators and say, "Hey, you know, we took some pictures of this -- of this spill." You know, that would have been documented.

We also worry again, like, where is the land application of the sewage sludge that we know is contaminated? Where is that going?

There needs to be a whole system to understand that. And, again, this isn't an issue about liability --

Mr. Carter of Louisiana. And my time has expired. As I do, Mr. Chairman, I just want to close with this. We know this, that, if the big polluters are left to their own devices, they won't report. They will continue to take the path of least resistance, which is to continue to contaminate communities. That is why committees like this and people like you coming to testify strengthen our hand in making sure that we are insisting that if coexistence is to happen --

Mr. Palmer. The gentleman's time --

Mr. Carter of Louisiana. -- it can only happen when communities are made safe.

Mr. Chairman, thank you for your generosity and time. I yield.

Mr. Palmer. The gentleman yields. The chair now recognizes the gentleman from Georgia, Mr. Carter, for 5 minutes for his questions.

Mr. Carter of Georgia. Thank you, Mr. Chairman. This is certainly an important hearing, and, Mr. Chairman, I applaud you and thank you for holding it, the impact of EPA's CERCLA designation for the two PFAS chemicals.

PFAS -- you know, we have established the fact that PFAS is used in a number of different areas and in a number of different things and consumer products and industrial purposes. And,

oftentimes, they are using lifesaving devices, electronics, and firefighting foams. And I am going to touch on that in just a second.

But, while they are essential for everyday life and many lifesaving devices, it is a very complex nature and makes the cleanup and the disposal difficult. So I want to talk about the practicality of how we deal with this. I am not denying we need to deal with it. I want to talk about the practicality.

Mr. Mehan, I want to ask you, how do you expect cleanups timelines -- or do you expect cleanup timelines to slow because parties simply don't have any place to put the soil, the residue, the water that now must be managed as potentially CERCLA-triggering waste?

Mr. Mehan. Well, if you are talking about the waste or residue or biosolids from water and wastewater utilities, that is a real problem. And EPA hasn't really come down on what is the preferred technology. So, basically, it is a sort of an ad hoc decision for each utility. Do you store it onsite? Do you incinerate it? Do you send it to a hazardous waste landfill rather than a muni landfill? Big cost differential.

So, right now, it is -- it is cats and dogs, how we are going to do it.

Now, if you are talking about a Superfund cleanup, those are historically --

Mr. Carter of Georgia. You know, 20, 25, 30 years.

Mr. Mehan. Yeah. Absolutely. There are still monster mining sites out West. I mean, Susan Bodine can address that much more eloquently than I. But they are long-haul cleanups, long-haul projects. Yeah.

Mr. Carter of Georgia. Well, given the significant liability uncertainty, the limited disposal options, and the broad range of parties that are potentially exposed, what do you think the top steps are that EPA could take? What could they do?

Mr. Mehan. You know, the technology may just have to evolve to a greater level. Also, though, EPA is going to have to maybe factor in some risk versus risk considerations that -- is storing

onsite better than sending it, maybe, to an incinerator? Well, personally, I don't think so. But there are consequences, and people aren't thrilled about having a new incinerator in their county. So it is going to be very difficult, as I say, case by case sorting this out. And whether technology will save us -- I know there was a citation from Veolia about their disposal. But I have been through the era of incineration for hazardous waste as a State official, and nobody is happy with it. Nobody is happy with it --

Mr. Carter of Georgia. Understood.

Mr. Mehan. -- land use authority so --

Mr. Carter of Georgia. Ms. Bodine, do you have anything to add to that?

Ms. Bodine. Yes. EPA, out of their Office of Land Emergency Management, really does need to provide guidance that is a risk management approach. We can't take -- you know, the Office of Water did a risk assessment that said, you know, 0.01 parts per trillion. That is not risk management. You need to say okay -- and States are already stepping out and doing this -- okay. You can land apply these residuals at -- most States have said, okay, 20 parts per billion. That's a lot different than 0.01 parts per trillion that the Office of Water risk assessment would suggest.

So you just need to have a practicable consideration that takes into account, is there really exposure? And provide real guidance. The guidance that is out there, the most recent update for 2024 says, if you have higher levels, use technologies that have a less chance of release, and that would be incineration, deep-well injection, and hazardous waste landfills, the most expensive technology --

Mr. Carter of Georgia. Okay. I have got a minute left, and I want to get to this. Ms. Bodine, I want to ask you about the foam that airports use to put out fires. If I have a loved one on a plane, I want that fire put out as soon as possible, as quickly as possible. What about the liability the airports are put under whenever they are using this, and yet now, it is being regulated this way?

Ms. Bodine. Yeah. The airports were actually compelled by law to use the same

firefighting foam that met the military specification, which for years and years included PFOA and PFOS, the AFFF foam. And, yes, they are now being sued. And the real question is, is that fair? Because, as you pointed out, they are saving lives; and, two, they were actually compelled by law to use it.

And so I think that is an example of where they recognize there is an equitable consideration, an entity that should not be targeted for enforcement under EPA's enforcement guidance. And, if somebody's well is contaminated because of firefighting foam, then EPA should use its own resources provided by the trust fund and clean it up without suing --

Mr. Carter of Georgia. Okay. I am out of time. But thank you all for being here. This is extremely important. And I yield back.

Mr. Palmer. The gentleman yields.

The chair now recognizes the gentlelady from Michigan, Mrs. Dingell, for 5 minutes for her questions.

Mrs. Dingell. Thank you, Mr. Chair.

As co-chair of the bipartisan PFAS Task Force, I want to start off with some facts. PFAS contamination is a nationwide environmental and public health crisis. It impacts our air, our soil, our water, our food systems, and consumer products.

EPA's authority under the Federal Superfund law, CERCLA, is essential to addressing it. For decades, PFAS was used widely. We acknowledge it. But these chemicals are linked to cancer, infertility, immune dysfunction, and developmental harm. And they persist in the environment for generations. Nearly every American has PFAS in their blood, 97 to 99 percent. And, today, we know with certainty that PFAS is harmful, and communities in every State have been impacted.

I have led the fight in Congress to confront this crisis. I lead -- I have led the bipartisan PFAS Action Act, which passed the House twice and would codify the designation of PFOS and PFOA as hazardous substances until -- under Superfund, set in statute a national drinking water standard, limit

industrial discharge, and strengthen cleanup authority. I have introduced legislation to eliminate PFAS from cosmetics, food packaging, firefighting turnout gear, and other products.

Earlier this year, I have led the bipartisan letter to EPA urging EPA to uphold CERCLA designation for PFAS and PFOA to reject efforts that would weaken Superfund accountability. Rolling back CERCLA won't reduce the liability that everybody is worried about. Instead, it is going to shift costs to the taxpayers and allow contamination to spread.

While EPA's CERCLA designation for PFOA -- PFOS and PFOA remains in place for now, it is under continued pressure from industry and others seeking broad exemptions, including for so-called passive receivers.

And I want to be clear: This isn't a small group of entities seeking exemptions like municipal utilities and treatment plants. It is a much larger universe, including secondary manufacturers, industrial recycling facilities, and infrastructure construction groups. The topic today is about picking who does and doesn't have to play by the rules, and I am deeply concerned that these proposals risk undermining the very purpose of Superfund.

Weakening CERCLA authority delays remediation, increases costs, and leaves communities exposed. It isn't a partisan issue. It exists to protect people and hold polluters accountable.

So I want to ask Ms. Donovan some questions. I want to be clear about what the exemptions being discussed at this hearing would accomplish. So I have yes-and-no questions.

Ms. Donovan, would Superfund exemptions remove PFAS from water, soil, air, or consumer products? Yes or no?

Ms. Donovan. No.

Mrs. Dingell. Ms. Donovan, would Superfund exemptions do anything to clean up contamination in impacted communities? Yes or no?

Ms. Donovan. No.

Mrs. Dingell. Ms. Donovan, would Superfund exemptions make any meaningful steps

towards getting boots on the ground to clean up the contamination in Cape Fear or other sites around the Nation? Yes or no?

Ms. Donovan. No.

Mrs. Dingell. Ms. Donovan, would Superfund exemptions help any of the families who are being impacted by health issues caused by PFAS exposure? Yes or no?

Ms. Donovan. No.

Mrs. Dingell. So I am going to ask you one more question. I am worried about, if I have a family on a plane and you want something -- but they are creating other ways to deal with it. Should firefighters, who are keeping us safe every single day, would this exemption help them get PFAS out of their gear and other things that they are doing to protect us?

Ms. Donovan. No.

Mrs. Dingell. So thank you to the witnesses for being here today. The risks posed by PFAS are real and serious, and weakening CERCLA would not protect communities. It would expose them to further harm. This committee has a responsibility to deliver real enforceable solutions that protect public health and stop the spread of PFAS contamination nationwide. I urge my colleagues to take up the bipartisan PFAS Action Act and take real and meaningful steps to address the full scope of the PFAS problem. Let's show the American people we care. Let's show them we know what is in your blood, and we don't want it to harm with you.

With that, I yield back, Mr. Chair.

Mr. Palmer. The gentlewoman yields.

The chair now recognizes the gentleman from Colorado, Mr. Evans, for 5 minutes for his questions.

Mr. Evans. Thank you, Mr. Chairman, to the ranking member, and of course to the witnesses for coming today.

My first question will go to Mr. Mehan. Several decades ago in Colorado, we had the

location of the old Denver International Airport, which has since moved. It is several miles to the east now. But, decades ago, the old Denver International Airport used PFAS in the firefighting foam for public safety to keep the airports safe, and it has since moved decades ago, but my district is downstream of the old airport that, again, has that PFAS load in the soil and the surrounding areas.

And so that rinses downstream to my district, to places like the largest city in my area, Thornton, Colorado, which right now is being forced to raise water rates on my constituents to pay an extra \$2.6 million a year for the treatment costs of PFAS which is coming from a site that no longer exists, decades ago, that they have no control over because it is upstream of their jurisdiction.

And I will remind my colleagues on the other side of the aisle that, when we raise rates on consumers, when we increase the cost of living, that increases the rates of poverty, and poverty also has a negative health outcome and causes real harm.

So my question to you, in your testimony, you warned about the dangers of additional costs that water utilities could be forced to pay in the form of cleaning up contamination that they did not create. Can you share some more insight into the economic impact that the current system could have on water utilities, big and small, if Congress doesn't take action to remove liability from the Thornton Water Treatment Plant for PFAS that happened decades ago that they did not create?

Mr. Mehan. Well, the cost to ratepayers is a cumulative effect. It is inflation. It is materials. It is the Lead and Copper Rule. It is the PFAS rule. It is aging infrastructure. I mean, pick your poison.

And you added just another -- I won't say needless burden, but I will put it this way -- an unjust burden on a utility to clean up something for which they were not responsible. It is just aggravating the situation. And it really makes it difficult, when you go to a public hearing to ask for a rate increase, when you have to point to things that you are really not responsible for, for which you are being held responsible.

Mr. Evans. Thank you.

Going to Mr. Falbe, we just heard about the impact that remediation would have on water utilities, and you yourself noted in your testimony that PFAS is expensive to remediate. But I would like to get some more context. What is the cost and the challenges of remediating PFAS versus other hazardous substances?

Mr. Falbe. It is extremely expensive to test for. You have to take special precautions. The fact that PFAS is so ubiquitous in the environment and is, you know, viewed as impactful at super low concentrations, parts per trillion, with a T, makes it very hard to test, which makes it more expensive, and then certainly harder to remediate. And there is not a lot of great solutions to remediate PFAS at this point. I hope that, in the future, technology will come to the rescue. But, for right now, it remains very expensive.

Mr. Evans. So would it make sense, rather than penalizing local municipalities, small operators, again, for pollution that they did not create, to take a broader, more expansive view of this so that we can -- again, we all want clean air, clean land, clean water. But penalizing the little guy for a pollution they didn't create, does that seem like a fair approach to you? Or should Congress act in this space to come up with that bigger global solution?

Mr. Falbe. Congress should act. It is not fair. And we have to remember that CERCLA is the polluter pays statute. Right? They made a policy decision that passive landowners, current landowners of contaminated property should be held liable 45 years ago. I would suggest with PFAS, because of its uniqueness, its pervasiveness in the environment, and the low threshold for cleanup, we need an exemption.

Mr. Evans. Thank you.

In my final 55 seconds here, Ms. Bodine, like a lot of other regulations under the previous administration that are heavy handed and have unintended consequences, CERCLA today is being challenged in the U.S. Court of Appeals for the D.C. Circuit by the U.S. Chamber of Commerce and several trade associations. What should EPA or Congress do if that rule is vacated in litigation by

the D.C. court? 32 seconds.

Ms. Bodine. So I think that EPA has other authorities, some of which discussed here today, which they can use to target -- they could target whatever is causing the real problem. RCRA can go after chemical manufacturers like Chemours. TSCA can prevent new uses of chemicals and already has banned PFOA and PFOS. So CERCLA is not really the best tool because for all the reasons we have discussed here today. And there are other tools out there to address, actually, the problems that people have said they want to address.

Mr. Evans. Thank you. My time has expired. Yield back.

Mr. Palmer. The gentleman's time has expired.

I would like to thank our witnesses for being here today. Members may have additional written questions for you. I will remind members that they have 10 business days to submit additional questions for the record. And I ask that the witnesses do their best to submit the responses within 10 business days upon receipt of the questions.

I ask unanimous consent to insert in the record the documents included on the staff hearing documents list.

Without objection, that will be the order.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Palmer. Without objection, the subcommittee is adjourned.

[Whereupon, at 12:28 p.m., the committee was adjourned.]