

**Oral Testimony – ICSC  
House Energy and Commerce Environment Subcommittee  
Hearing:  
Examining the Impact of EPA’s CERCLA Designation for  
Two PFAS Chemistries and Potential Policy Responses to  
Superfund Liability Concerns  
December 18, 2025**

**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 at the law  
firm of 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 (ICSC) ICSC’s Environmental Policy  
and Land Use Subcommittee. The testimony and viewpoints  
discussed today are my own and are 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 PFAS pose to commercial real estate,  
redevelopment, and community investment.**

**PFAS—per- and polyfluoroalkyl substances—are a large class of chemicals that have been widely used for decades because of their unique properties. Those properties also make them persistent in the environment and extraordinarily difficult and expensive to investigate and remediate. 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. For 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, deemed harmful at minute levels, and are often detected without a clear on-site source, the result is that passive property owners—who did nothing to cause contamination—are ensnared by CERCLA liability.**

**This problem is compounded during real estate transactions. Environmental due diligence typically begins with a Phase I 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—before**

**sampling even 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 non-binding PFAS Enforcement Discretion 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 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 long-time property owners are categorically ineligible. And no owner ever knows whether the defense will succeed until it is tested in litigation—years later and at great expense.**

**ICSC supports science-based PFAS regulation, 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 who did not release PFAS.**

**Inconsistent approaches to PFAS continue to hobble and confuse longtime successful EPA programs like the Brownfields 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 land owners.**

**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 protections 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, ask that my statement and**

**testimony be included in the record, and yield back the balance of my time.**