



Association of Environmental Authorities of New Jersey

Tuesday, May 16, 2023

Why We Need the “Water Systems PFAS Liability Protection Act.”

A bill has been introduced in the U.S. Senate that would **exempt wastewater treatment plants and landfills from liability** for PFAS chemical cleanup under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) also known as the Superfund Act. CERCLA was enacted in 1980 to support cleanup of hazardous substances. (To learn more about CERCLA, see the brief history below.)

The proposed bill, as yet unnumbered, is the “Water Systems PFAS Liability Protection Act.” So far it has support only on the GOP side of the aisle, but AEA allies in Washington D.C. hope to convince Democrats to sign on, too.

EPA proposes to use CERCLA to address per- and polyfluorinated substance (PFAS) contamination in the U.S. In 2022, EPA proposed to designate two PFAS—PFOA and PFOS—as “hazardous substances” under Section 102(a) of CERCLA. The agency is considering adding at least seven more PFAS chemicals to that designation.

Under a broad definition of CERCLA, POTWs and MS4 discharges are potentially subject to CERCLA. According to the National Association of Clean Water Agencies (NACWA) and New Jersey advocates including Mike Witt of Passaic Valley Sewerage Commission, without an specific exemption written into CERCLA, publicly owned water and wastewater treatment facilities will be caught in endless litigation at the taxpayers’ (and ratepayers) expense.

The intent of CERCLA, NACWA and allies argue, is to hold polluters

responsible for environmental cleanup. POTWs don't manufacture PFAS chemicals. They, and MS4 dischargers, are passive receivers of these pollutants.

EPA has offered assurances that it will rely on its enforcement discretion to keep POTWs from being forced to pay for cleanup under CERCLA.

But that discretion can vary based on the administration. It does not protect POTWs from being dragged into CERCLA enforcement actions brought against manufacturers. Manufacturers will want to muddy the water by bringing POTWs into litigation. This has occurred in other CERCLA cases in New Jersey.

The stakes for this public policy debate are high. The cost implications to wastewater treatment utilities of this are considerable. PFAS isn't introduced into the environment in a single or several discreet "spills." They are continually being introduced into the environment. And as many AEA members are fully aware, there are also limits on current treatment technology and issues related to treatment byproducts or residuals.

NACWA, the Water Environment Federation and others ask utilities and concerned local officials to get involved. The hope is to educate Congress about the need for an exemption. Here are **suggested talking points**, based on those being circulated by NACWA and WEF:

- Ask your U.S. Senator to co-sponsor the Water Systems PFAS Liability Protection Act.
- Express your concerns about the ongoing efforts to address threats posed by PFAS by designating certain PFAS chemicals as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- Ask Congress to explicitly exempt public and private drinking water utilities, wastewater agencies (POTW), stormwater utilities, and biosolids management programs from CERCLA liability
- Explain that the foundation of CERCLA is the "polluter pays" principle and that legislative solutions for PFAS contamination and liability for cleanups must be based on the principle.
- Emphasize that your utility and the entire sector are more than willing to do our part to remove PFAS from systems to protect public health and the environment; however, ...
- As a matter of fairness, we can't expose utilities and ratepayers to legal and financial liabilities that CERCLA will create. Designating PFAS chemicals as hazardous substances under Superfund would trigger strict joint and several liability for those entities that contribute PFAS to a particular site. If a site was found to be contaminated and contained PFAS originating, in whole or in part, from a clean water agency, that agency could potentially be subject to being included in litigation to clean up the site or to pay for any damages. That will result in increased costs, including management and disposal costs associated with biosolids.

A Brief History of the Superfund Law

- Enacted by Congress on December 11, 1980; amended in 1987 through the

leadership of the late Jim Florio, who was then a Member of Congress from New Jersey and who later served as Governor.

- Outgrowth of a series of shocking pollution events, including some in New Jersey
- Responsible for the cleanup of thousands and thousands of sites
- Taxes chemical and petroleum industries and gives federal authority to clean up hazardous substances that harm the public health
- Two kinds of response actions: short-term and long-term
- Establishes EPA National Priorities List

More info: <https://www.epa.gov/superfund/superfund-cercla-overview>

AEA Participates in Local Finance Board Consideration of Gloucester Township Request to Dissolve its MUA

Peggy Gallos and Dennis Palmer commented at last week's Local Finance Board meeting, before **the board approved Gloucester Township's request to dissolve the GTMUA.**

An attorney representing Gloucester Township said the township was dissolving the authority to create efficiencies and cost savings, although he noted that some of those efficiencies and cost savings could not be quantified. He said MUA staff would be absorbed into the township staff. The MUA has a \$6.15 million undesignated fund balance. The attorney said that about \$2 million of that was required to honor outstanding bond covenants, but the remaining approximately \$4 million was what he called "residual surplus." He said the township was asking the LFB to be permitted to sweep that \$4M into the general fund to be used for non-sewer purposes.

Dennis urged the board not to permit any of the MUA's undesignated fund balance to be used for general purposes. Peggy echoed that concern. She noted she had never heard the term "residual surplus." She noted that many utilities prefer to use undesignated fund balances for on-going renewal and replacement, and to fund emergency repairs. This approach mitigates the need for borrowing and costs that go along with it.

One Gloucester Township resident attending the meeting asked a series of questions, mainly to do with the lack of specificity about certain claims about cost savings. Several GT officials participated in the LFB meeting, but did not speak, including the GT mayor.

The attorney for GT conceded that the authority was well-run and was not being dissolved because of mismanagement. He said there was no significance to the MUA being dissolved at this particular time, except that the current township leaders want to run things more efficiently. He said the authority is not overstaffed, and all employees will be retained.

Yet he also listed savings from attrition among the unspecified savings that were a benefit of dissolution. He said that future retirements could leave vacancies that would not be filled. (After the meeting, AEA representatives were left to wonder whether that would result in understaffing for the utility operations.)

Peggy asked whether the township plans to sell the sewer system. The attorney said that selling has not been discussed.

The Local Finance Board voted unanimously to approve the dissolution, but it is requiring that \$3 million of the undesignated fund balance be retained rather than the lower \$2M the township proposed.

LFB Secretary and Division of Local Government Services Director Jacquelyn Suarez said the DCA rigorously reviewed the dissolution request. She noted that the township has no requirement to demonstrate there will be savings to proceed with dissolution.

The scope of LFB consideration is limited to whether the township will be able to deliver the service post-dissolution and whether it can defease the authority debt, she said.

Gloucester Township now must hold a public hearing on the dissolution.

Enroll in the Environmental Professional Development Academy

The 2023 Environmental Professional Development Academy (EPDA) kicks off with the first of its four tracks, administration, on Wednesday, June 7. **It is not too late to sign up.**

After a kick-off orientation session on June 7, the cohort will meet on June 14, 21, and 28.

The operations track starts on July 12, with the finance and human resources tracks in August and September. Three special, one-day sessions are planned on safety, information technology, and on permitting/lab/engineering.

For more information, see the AEA website or contact Karen.

Exporting from Edmunds for LIHWAP Reporting

AEA retail members are required by the new Low-income Household Water Assistance Program (LIHWAP) law to report delinquent residential customer accounts to the NJ Department of Community Affairs (DCA) every 14 days.

Tammy Davicsin, IT manager at Toms River MUA, worked with DCA's IT director to create **a method of generating a customer report to Excel from Edmunds**

Tammy says that although Edmunds can be a little different for each customer, her

approach to exporting a report could very likely be useful for anyone who has to generate the LIHWAP reports.

Tammy has shared with AEA a step-by-step instruction document explaining how to generate this report. **If you are interested in seeing this document, please contact Karen.**

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