

# PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

## Protect Contractors from PFAS Superfund Liability

### Action Needed:

Congress must ensure:

- (1) Contractors are protected by “innocent contractor” or “passive receiver” protections to ensure contractors who unknowingly encounter PFAS are not legally liable; and
- (2) Federal agencies take a measured and legally sound approach to identifying and regulating PFAS that does not overwhelm or hinder cleanup efforts or punish innocent parties.

### Background:

Per- and polyfluoroalkyl substances known commonly as PFAS, are long-lasting chemicals that break down very slowly over time. In April 2024, the U.S. Environmental Protection Agency (EPA) issued a final rule to regulate two types of PFAS, PFOA and PFOS, as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund as it is more commonly known). Superfund liability is triggered regardless of intent or fault. Liable parties could be on the hook for the entire cost of cleanup.

Since there is retroactive and strict liability under the Superfund law, a contractor who interacted with contaminated construction materials during a project could be held liable for cleanup, even if they had no knowledge that there was PFAS present, and it happened years ago. While testing may be required in the future, contractors have not been required to test for PFAS and it is unlikely that any past testing as part of environmental site assessments would have included PFAS. Contractors will be on the front line of remediation efforts. While most contracts that are explicitly for the removal of PFAS from things like drinking water and wastewater exempt contractors from PFAS liability, this makes up a small percentage of the overall construction market. PFAS removal as part of a larger construction project does not include these same protections.

### AGC Message:

- **Support a Commonsense Approach to Managing PFAS Contamination.** Congress should ensure that clean-up efforts are not overwhelmed by resisting pressure to enact a one-size-fits-all approach to PFAS. EPA should rely on the science and focus on those chemicals within the PFAS family that have known concerns.
- **Support Adding “Innocent Contractor” Provisions to Existing Law.** Contractors will be on the front lines of PFAS cleanup efforts on contaminated sites and “everyday” projects and need protections to ensure they bid the work. If Congress wants contractors to bid on this work, it should enact innocent contractor provisions, limiting the legal liability of contractors who encounter PFAS on projects.
- **Protect the Construction Industry from Frivolous Lawsuits.** Congress should extend “passive receiver” protections (protections for those who did not cause the contamination) to construction companies that unwittingly encountered PFAS on project sites in soil or groundwater effluent. The construction industry does not produce or sell PFAS; it should not have to pay.