ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE
WASHINGTON, D.C. 20460

April 19, 2024

MEMORANDUM

SUBJECT: PFAS Enforcement Discretion and Settlement Policy Under CERCLA

FROM: David M. Uhlmann

TO: Regional Administrators and Deputy Regional Administrators
Regional Counsels and Deputy Regional Counsels

Communities across the United States face public health and environmental challenges because of toxic PFAS contamination.[1] PFAS have been manufactured in the United States and around the world since the 1940s for use in a wide range of industrial and consumer products from fire-fighting foam to non-stick cookware and water-resistant fabrics. PFAS are referred to as "forever chemicals" because of their persistence in the environment. Exposure to PFAS has been linked to deadly cancers, impacts to the liver and heart, and immune and developmental damage to infants and children.

On August 17, 2023, EPA announced a new National Enforcement and Compliance Initiative (NECI) to address exposure to PFAS.[2] NECIs are intended to focus on the most serious and widespread environmental problems facing the United States. PFAS is no exception. Due to the toxicity and persistence of PFAS chemicals, and the breadth and scope of PFAS contamination throughout the country, addressing PFAS contamination is a significant priority for EPA.

EPA now has designated two types of PFAS, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[3] The rule designating PFOA and PFOS as hazardous substances will allow EPA to use the full strength of CERCLA to address PFAS contamination. At the same time, the rule does not change the statute's liability framework, which provides liability protections in certain circumstances for parties that are not primarily responsible.

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[1] PFAS, or per- and polyfluoroalkyl substances, are a large group of manufactured chemicals. For the majority of this document, EPA will use PFAS as a shorthand to refer to perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, consistent with the definition in the Final Designation of PFOA and PFOS as Hazardous Substances. *See infra* note 3.

[2] *See* FY 2024 – 2027 National Enforcement and Compliance Initiatives.

[3] *See* Final Designation of PFOA and PFOS as Hazardous Substances. *See also* Proposed Designation of PFOA and PFOS as Hazardous Substances.

With this memorandum, I am providing direction to all EPA enforcement and compliance staff about how EPA will exercise its enforcement discretion under CERCLA in matters involving PFAS, just as EPA exercises enforcement discretion regarding other hazardous substances. EPA will focus on holding responsible entities who significantly contributed to the release of PFAS into the environment, including parties that manufactured PFAS or used PFAS in the manufacturing process, federal facilities, and other industrial parties.

EPA does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to, community water systems and publicly owned treatment works, municipal separate storm sewer systems, publicly owned/operated municipal solid waste landfills, publicly owned airports and local fire departments, and farms where biosolids are applied to the land. For these same parties, EPA can use CERCLA statutory authorities when appropriate to enter into settlements that provide contribution protection from third party claims for matters addressed in the settlement.

I. Executive Summary

EPA is issuing this PFAS Enforcement Discretion and Settlement Policy Under CERCLA regarding enforcement considerations that will inform EPA's decisions to pursue or not pursue potentially responsible parties (PRPs) for response actions or costs under CERCLA to address the release or threatened release of PFAS. This Policy is intended to clarify when EPA intends to use its CERCLA enforcement authorities or decide not to pursue a particular party. This Policy applies only to the exercise of EPA's enforcement discretion when requiring action to address releases of PFAS under CERCLA; it does not apply to enforcement under other EPA programs or statutes, including other EPA programs that may address PFAS.

The designation of PFOA and PFOS as hazardous substances should not disrupt CERCLA's liability framework; CERCLA will continue to operate as it has for decades. In enforcement matters, the facts, circumstances, and equities of each case inform which parties the Agency pursues. CERCLA's liability limitations and protections safeguard against liability in certain circumstances for parties that are not primarily responsible. EPA's enforcement discretion policies historically have given EPA much-needed flexibility to provide additional protections when circumstances warrant.[4]

Although CERCLA's liability framework is broad, the statutory affirmative defenses and EPA's enforcement discretion provide mechanisms to narrow the scope of liability and focus on the significant contributors to contamination. Some stakeholders have expressed concern that the designation of PFOA and PFOS as hazardous substances will result in parties being pursued for PFAS liability under CERCLA, even if the equities do not support seeking CERCLA response actions or costs. EPA intends to rely upon CERCLA statutory protections and EPA's existing enforcement discretion policies to alleviate those concerns, as well as the factors set forth here.

Consistent with CERCLA's objectives, EPA will focus on holding accountable those parties that have played a significant role in releasing or exacerbating the spread of PFAS into the environment, such as those who have manufactured PFAS or used PFAS in the manufacturing process, and other industrial

[4] *See* Unique Parties and Superfund Liability.

parties. For purposes of this Policy only, these parties are referred to as major PRPs. EPA also intends to pursue federal agencies or federal facilities when they are responsible for PFAS contamination.[5]

EPA remains committed to environmental justice and identifying and protecting overburdened communities that may be disproportionally impacted by adverse health and environmental effects.[6] EPA intends to pursue major PRPs and federal agencies to conduct investigations and cleanup to protect communities from high-risk, high-concentration PFOA and PFOS exposures.

As more fully described in Section IV of this memorandum, and subject to the limitations set forth in Section V, EPA does not intend to pursue otherwise potentially responsible parties where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to, the following entities:

(1) Community water systems[7] and publicly owned treatment works (POTWs);[8]
(2) Municipal separate storm sewer systems (MS4s);[9]
(3) Publicly owned/operated municipal solid waste landfills;
(4) Publicly owned airports and local fire departments; and
(5) Farms where biosolids are applied to the land.

EPA may extend enforcement discretion under this Policy to additional parties even if they do not fall within the categories listed above, based on the equitable factors set forth in Section IV.B.

In addition to potential EPA action, EPA understands that entities are concerned about being sued by other PRPs for PFAS cleanup costs under CERCLA. In CERCLA settlements with major PRPs, EPA will seek to require those settling parties to waive their rights to sue parties that satisfy the equitable factors. The major PRPs would then not be able to sue those non-settling parties for matters addressed under the settlement. These settlement protections are consistent with settlement protections regularly applied by EPA in other CERCLA contexts.

Further, consistent with current CERCLA enforcement practice to mitigate these litigation risk concerns, EPA can enter settlements with concerned parties under our statutory authorities when appropriate. Such settlements would help to mitigate litigation risk concerns and associated costs by providing protection from CERCLA contribution claims by other PRPs seeking a portion of PFAS response costs.[10] This exercise of enforcement discretion is discussed in Section IV.C.

To provide context for this policy, Section II provides below a short overview of CERCLA, including a description of the statutory liability framework. Section III includes a summary of the Agency's integrated approach to addressing PFAS. Section IV discusses how EPA intends to exercise its CERCLA

[5] *See* Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987).
[6] *See* Strengthening Environmental Justice Through Cleanup Enforcement Actions (July 1, 2021).
[7] A community water system is a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. *See* 40 C.F.R. § 141.2.
[8] POTW means a treatment works (as defined by CWA section 212) that is owned by a state or municipality (as defined by Clean Water Act (CWA) section 502(4)).
[9] An MS4 is a conveyance or system of conveyances that is: owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.; designed or used to collect or convey stormwater (e.g., storm drains, pipes, ditches); not a combined sewer; and not part of a sewage treatment plant, or publicly owned treatment works (POTW). *See* 40 C.F.R. § 122.26(b)(8).
[10] *See* CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2).

enforcement discretion for PFAS. Section V identifies limitations and contingencies that apply to the use of enforcement discretion in this policy.

II. Overview of CERCLA

CERCLA was enacted in 1980 in response to public concern about abandoned hazardous waste sites. CERCLA authorizes the federal government to assess sites, clean up contaminated sites, and respond to releases or threatened releases of hazardous substances, pollutants, and contaminants.

There are over 800 hazardous substances designated under CERCLA. Hazardous substance designation gives rise to a requirement to report releases at or above a certain quantity[11] and enables EPA to order actions by and recover response costs from PRPs. CERCLA's liability framework aims to ensure that, wherever possible, PRPs perform or pay for cleanups instead of relying on the Hazardous Substance Trust Fund (Superfund), consistent with EPA's "polluter pays" principle.

As described in CERCLA section 107(a), the following categories of persons may be liable for the costs or performance of a cleanup of a hazardous substance under CERCLA:

(1) Current owners and operators of a facility where hazardous substances come to be located;
(2) Owners and operators of a facility at the time that hazardous substances were disposed of at the facility;
(3) Generators and parties that arranged for the disposal or transport of the hazardous substances; and
(4) Transporters of hazardous waste that selected the site where the hazardous substances were brought.

To conserve Superfund money for cleanups at sites where there are no financially viable PRPs, EPA has adopted an "enforcement first" policy[12] to compel those responsible for contaminated sites to take the lead in cleanup (the "polluter pays" principle). In keeping with this policy, EPA routinely reaches settlements with PRPs to clean up sites. In addition, EPA can compel PRPs to clean up sites where there may be an imminent and substantial endangerment to public health or welfare or the environment from an actual or threatened release of hazardous substances. When EPA spends Superfund money to finance a response action, EPA may then seek reimbursement from PRPs. Private parties may also conduct cleanups and seek reimbursement of eligible response costs from PRPs.

CERCLA liability is not unlimited. CERCLA includes several statutory protections that may limit liability and discourage litigation (e.g., the provision for settlements with "de minimis" or minor parties, CERCLA section 122(g)). Moreover, EPA has well-established enforcement discretion policies that provide EPA flexibility to offer liability protections to parties when circumstances warrant (e.g., innocent landowners, de micromis parties, owners of residential property at or near Superfund sites,

[11] The designation of PFOA and PFOS, including their salts and structural isomers, as hazardous substances, can trigger the applicability of release reporting requirements under CERCLA sections 103 and 111(g), and accompanying regulations, and section 304 of the Emergency Planning and Community Right-to-Know Act. Facilities must report releases of hazardous substances at or above the reportable quantity (RQ) within a 24-hour period. For PFOA and PFOS, a default RQ of one pound is assigned to these substances pursuant to CERCLA section 102(b). This Policy does not apply to these requirements, and parties that may be eligible for enforcement discretion must comply with this requirement if a reportable release occurs at their facility.

[12] *See* Enforcement First for Remedial Action at Superfund Sites (Sept. 20, 2002).

and contiguous property owners).[13] Existing CERCLA limitations and enforcement policies are sufficient to mitigate concerns about liability that may arise after designation. No additional action should be necessary to ensure that those limitations and policies continue to operate as they have for decades. Nonetheless, EPA is issuing this CERCLA PFAS enforcement discretion policy consistent with existing statutory protections and policies.[14]

EPA's CERCLA enforcement discretion policies help the Agency focus on sites that pose the most risk and PRPs who have contributed significantly to contamination. EPA will continue to implement its "enforcement first" policy, which compels PRPs to conduct and pay for cleanup before resorting to the Superfund, in furtherance of CERCLA's "polluter pays" principle.

III. EPA's Approach to PFAS

On October 18, 2021, EPA released its PFAS Strategic Roadmap,[15] which highlighted the integrated approach the Agency is taking across a range of environmental media and EPA program offices to protect the public and the environment from PFAS contamination. EPA's approach to PFAS is focused on three central directives to address PFAS contamination:

(1) *research* – to invest in research, development, and innovation to increase understanding of PFAS exposures and toxicity, human health, and ecological effects and effective interventions that incorporate the best available science;
(2) *restrict* – to pursue a comprehensive approach to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment; and
(3) *remediate* – to broaden and accelerate the cleanup of PFAS contamination to protect human health and ecological systems.[16]

Historically, PFAS have been found in, or used in making, a wide range of consumer products including carpets, clothing, fabrics for furniture, packaging for food, and cookware. PFAS also have been components of firefighting foams used to extinguish liquid fuel fires at airfields, refineries, military bases and other locations, and in several industrial processes. As a result of their widespread use, environmental releases of PFAS have occurred for decades, leaving many communities and ecosystems exposed to PFAS in soil, sediment, surface water, groundwater, and air. A growing body of scientific evidence shows that exposure at certain levels to specific PFAS is linked to adverse impacts to human health.[17] EPA uses its various enforcement authorities, including under the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, and the Clean Water Act, to identify and address PFAS releases at private and federal facilities and in communities.

[13] For example, for parties who have contributed a miniscule amount of waste to the site (De Micromis Parties), EPA policy is that they should not participate in financing the cleanup. *See* Superfund Cleanup: De Minimis/De Micromis Policies and Models.
[14] *See supra* note 4.
[15] *See* PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024.
[16] *Id.* at 5.
[17] *Id.* at 7.

In September 2022, based on significant evidence that PFOA and PFOS may present a substantial danger to human health or welfare or the environment,[18] the Agency proposed to designate PFOA and PFOS as hazardous substances under section 102(a) of CERCLA. Findings from laboratory animal toxicological studies and human epidemiology studies suggest that exposure to PFOA and/or PFOS may lead to cancer and reproductive, developmental, cardiovascular, liver, and immunological effects.[19]

On April 17, 2024, EPA signed the final rule[20] to designate PFOA and PFOS as hazardous substances under section 102(a) of CERCLA. This designation allows EPA to use its CERCLA enforcement authorities, as appropriate and where relevant statutory elements are met, which could shift the cost burden of CERCLA response costs from the Superfund to PRPs. As with any other hazardous substance, EPA will determine what, if any, response and enforcement actions may be necessary to protect human health and the environment. Further, EPA and its state, local, and Tribal partners, may carry out a response action to address PFAS contamination, wholly distinct from CERCLA enforcement-driven actions.

IV. CERCLA Enforcement Discretion and Settlement Policy

Although EPA has the authority under CERCLA to require parties to perform response actions and to seek response costs incurred by the United States, the Agency has discretion on how to exercise its authority, which the Agency has utilized since CERCLA was enacted in 1980.

Consistent with EPA's past practice, this Section describes how EPA intends to exercise its CERCLA enforcement discretion for matters involving PFAS. As noted above, EPA intends to focus its enforcement efforts on entities who significantly contributed to the release of PFAS contamination into the environment, including parties that manufactured PFAS or used PFAS in the manufacturing process, federal facilities, and other industrial parties.

Section IV.A identifies entities where equitable factors do not support seeking response actions or costs under CERCLA. Section IV.B sets forth the equitable factors that EPA will consider in deciding whether to exercise enforcement discretion under CERCLA for other PRPs. Section IV.C. sets forth EPA's approach to settling with parties described in this Section.

A. Parties Covered by the PFAS Enforcement Discretion Policy

EPA does not intend to pursue, based on equitable factors, PFAS response actions or costs under CERCLA against the following parties:

1. Community Water Systems and POTWs

Community water systems and POTWs conduct public services by providing safe drinking water and managing and processing public waste. These entities are required to treat PFAS-contaminated sources of drinking water and receive PFAS-contaminated wastewater. They do not manufacture PFAS nor use PFAS as part of an industrial process. Through their operation processes, these parties may discharge

[18] *See* Proposed Designation of PFOA and PFOS as Hazardous Substances.
[19] *See id.* or related news release to proposed designation.
[20] *See supra* note 3.

effluents;[21] dispose or manage sewage sludge, biosolids,[22] and drinking water treatment residuals; and arrange for the disposal of spent treatment media (i.e., activated carbon filters, anion exchange media, or membranes) and/or the discharge of leachate, permeate, or regeneration brines.

2. Municipal Separate Storm Sewer Systems (MS4s)

MS4s do not manufacture PFAS nor use PFAS as part of an industrial process. Owners/operators of regulated MS4s perform a public service and are required to develop, implement, and enforce a stormwater management program (SWMP) to describe how the MS4 will reduce the discharge of pollutants from its sewer system.[23] While the SWMP should detect and eliminate illicit discharges, illegal dumping and connections may result in illicit discharges of non-stormwater wastes into the MS4. MS4s implement programs to prevent or reduce pollutant runoff from municipal operations into the storm sewer system, which helps to control pollutant discharges by minimizing the potential pathways for contaminants carried in runoff.

3. Publicly Owned or Operated Municipal Solid Waste Landfills

Publicly owned or operated municipal solid waste landfills perform a public service by handling municipal solid waste. They do not manufacture PFAS nor use PFAS as part of an industrial process. In addition to receiving waste from communities and other residential entities, these landfills may accept solid waste from POTWs that may be contaminated with PFAS, particularly sewage sludge and solid residues that result from treatment processes and filtration media such as granular activated carbon filters.

4. Publicly Owned Airports and Local Fire Departments

State or municipal airports and local fire departments provide a public service by preparing for and suppressing fire emergencies and protecting public safety. They do not manufacture PFAS nor use PFAS as part of an industrial process. Many airports and fire departments, however, store and use aqueous film forming foam (AFFF),[24] fire-fighting foam that may contain PFAS. Many airports have been required by Federal Aviation Administration regulations to maintain adequate amounts of AFFF to address fire emergencies.[25] State or municipal airports and local fire departments have also used AFFF during fire emergencies and training exercises.

To the extent publicly owned airports and local fire departments are legally required to continue to use AFFF, these parties must follow all applicable regulations governing the use, storage, handling, and disposal of AFFF that contains PFAS.[26] EPA also expects these parties to exercise a high standard of care

[21] CERCLA enumerates 11 categories of federally permitted releases, including releases regulated by CWA section 402 which established a National Pollutant Discharge Elimination System permit program. In this Policy, EPA does not take a position on the applicability of a "federally permitted release" as defined in CERCLA section 101(10).

[22] Sewage sludge is a product of the wastewater treatment process. During wastewater treatment, the liquids are separated from the solids and then may be treated physically and chemically to produce a semisolid, nutrient-rich product. The terms "biosolids" and "treated sewage sludge" are often used interchangeably; however, biosolids typically means sewage sludge treated to meet the requirements in 40 C.F.R. part 503 and intended to be applied to land as a soil amendment. Disposal (incineration and landfilling) requirements in Part 503 refer to sewage sludge.

[23] *See* Stormwater Discharges from Municipal Sources-Developing an MS4 Program.

[24] A Class B fire is a fire in flammable liquids or flammable gases, petroleum greases, tars, oils, oil-based paints, solvents, lacquers, or alcohols. States, Tribes, or municipalities may have regulations for the use and handling of AFFF.

[25] 14 C.F.R. part 139.

[26] Protocols for handling, storage, and accidental release can be found in the Material Safety Data Sheet for AFFF.

to limit the release of PFAS, minimize and contain releases, and forgo, when possible, the use of AFFF in the process of cleaning equipment and training exercises.

5. Farms that Apply Biosolids to Land

POTWs also produce sewage sludge that may be treated to become biosolids. Farms then routinely apply these biosolids to the land, and by doing so, provide for a beneficial application of a product from the wastewater treatment process.[27] Under the Clean Water Act, EPA and the states have regulated standards for the application of sludge as an agricultural fertilizer that ensures strict guidelines and agronomic application rates are followed that support crop growth and protect soil and water quality.[28] EPA recognizes that such land application can result in both economic and resource management benefits, including conservation of landfill space, reduction in methane gas from landfills, reduction of releases from incinerators, and a reduced demand for synthetic fertilizers.[29] Further, these farms do not manufacture PFAS nor use PFAS as part of an industrial process.

B. Factors Considered for Enforcement Discretion for Other Parties

Consistent with EPA's practice of considering fairness and equitable factors, EPA will exercise its enforcement discretion to not pursue additional entities for PFAS response actions or costs under CERCLA, informed by the totality of the following factors:

(1) Whether the entity is a state, local, or Tribal government, or works on behalf of or conducts a service that otherwise would be performed by a state, local, or Tribal government.
(2) Whether the entity performs a public service role in:
    - Providing safe drinking water;
    - Handling of municipal solid waste;
    - Treating or managing stormwater or wastewater;
    - Disposing of, arranging for the disposal of, or reactivating pollution control residuals (e.g., municipal biosolids and activated carbon filters);
    - Ensuring beneficial application of products from the wastewater treatment process as a fertilizer substitute or soil conditioner;[30] or
    - Performing emergency fire suppression services.
(3) Whether the entity manufactured PFAS or used PFAS as part of an industrial process.
(4) Whether, and to what degree, the entity is actively involved in the use, storage, treatment, transport, or disposal of PFAS.

[27] Under CERCLA section 101(22)(D), the definition of "release" explicitly excludes "the normal application of fertilizer." EPA believes this language is best read as requiring a site-specific analysis.
[28] *See* 40 C.F.R. part 503.
[29] EPA acknowledges that biosolids used as soil amendment are subject to an evolving regulatory scheme. CWA sections 405(d) and (e) authorize EPA to promulgate regulations containing guidelines for the use and disposal of sewage sludge, including by establishing numerical limitations where feasible. Under CWA section 405(d)(2)(D), these regulations must be "adequate to protect human health and the environment from any reasonably anticipated adverse effect of each pollutant." *See also* Policy on Municipal Sludge Management, 49 Fed. Reg. 24358 (June 2, 1984).
[30] *See, e.g.*, Standards for the Use or Disposal of Sewage Sludge, 58 Fed. Reg. 9248, 9262 (Feb. 19, 1993).

In helping to ensure equitable outcomes in addressing PFAS contamination, the above factors are instructive in determining whether an entity's CERCLA responsibility should be limited.

C. Settlement Agreements and Contribution Protection

EPA has broad discretion to decide whether to respond to a release or threat of release under CERCLA. Response decisions are made on a case-by-case basis after considering the specific circumstances related to the release at issue. CERCLA section 104(a) provides that whenever there is a release or threat of release of a hazardous substance, or a release of a pollutant or contaminant which may present an imminent and substantial danger to public health or welfare, "the President is authorized to act" and take any response action the President "deems necessary to protect the public health or welfare or the environment." EPA is further directed to employ settlement procedures "[w]henever practicable and in the public interest…to expedite effective remedial actions and minimize litigation."[31]

To further the goals of this policy, EPA can provide some measure of litigation and liability protection through settlement agreements in two primary ways when circumstances warrant.[32]

First, EPA may protect certain non-settling parties when the Agency enters settlement agreements with major PRPs. For example, if EPA settles with a PFAS manufacturer, EPA may secure a waiver of rights providing that the PFAS manufacturer cannot pursue contribution against certain non-settling parties to that settlement. The waiver of rights helps provide some protection to parties that EPA does not intend to pursue from both the costs of litigation and the costs of cleanup. Without such a waiver, settling major PRPs could pursue contribution under CERCLA from those other parties for a portion of the CERCLA cleanup.

Second, EPA may enter into settlement agreements with parties where factors do not support enforcement against them for PFAS response actions under CERCLA, as discussed in Section IV.A and B of this Policy. A party that resolves its liability through a CERCLA settlement with the United States will not be liable for third-party contribution claims related to the matters addressed in the settlement.[33] Non-settling PRPs will not be able to pursue these settling parties for contribution costs under CERCLA related to the settlement, thus minimizing litigation costs and discouraging third-party litigation.

EPA intends to discuss possible settlement approaches with interested parties that are identified by this Policy. In certain situations, parties may qualify for *de minimis* or *de micromis* settlements under the terms of the Agency's 2002 enforcement discretion/settlement policy.[34] On a case-by-case basis,

[31] CERCLA section 122(a), 42 U.S.C. § 9622(a).

[32] *See*, *e.g.*, Interim Revisions to CERCLA Judicial and Administrative Settlement Models to Clarify Contribution Rights and Protection from Claims Following the *Aviall* and *Atlantic Research Corporation* Decisions (Mar. 16, 2009); Defining "Matters Addressed" in CERCLA Settlements (Mar. 14, 1997).

[33] "A person who has resolved its liability to the United States or a state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement." CERCLA section 113, 42 U.S.C. § 9613.

[34] *See* Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties (Nov. 6, 2002); *see also* Model De Minimis Contributor Consent Decree, Model De Minimis Contributor ASAOC, Model De Minimis Landowner Consent Decree and Model De Minimis ASAOC; Superfund Cleanup Subject Listing De Minimis/De Micromis Policies and Models.

EPA may enter into limited "ability to pay" settlements with parties to resolve CERCLA response costs, where payment could result in undue financial hardship for the PRP.[35]

Parties may also be asked to perform actions such as in-kind services, including PFAS monitoring activities and implementing institutional controls. Further, parties identified by this Policy may seek settlement with EPA in order to take actions to address contamination, which would provide protection from potential contribution claims.

V. Limitations and Contingencies and Responsibilities of Other Federal Agencies and Facilities

A. Limitations and Contingencies

Any exercise of CERCLA enforcement discretion pursuant to this Policy is contingent upon a party's full cooperation with EPA, including providing access and information when requested and not interfering with activities that EPA is taking or directing others to undertake to implement a CERCLA response action. This Policy does not exempt parties from reporting PFAS releases under CERCLA.

This Policy in no way affects EPA's ability to pursue any responsible party, including those entities set forth in Section IV, whose actions or inactions significantly contribute to, or exacerbate the spread of significant quantities of PFAS contamination, thereby requiring a CERCLA response action. Where conditions may present an imminent and substantial endangerment to public health, EPA retains its authority to take any necessary action under CERCLA section 106.

This Policy does not apply to enforcement actions taken under any EPA programs or statutes other than CERCLA. As with any other hazardous substance, this Policy also does not affect EPA's ability to determine and address what, if any, response and enforcement action may be necessary to protect human health and the environment.

Further, the Agency, working with state, local, and Tribal partners, may carry out a response action to address PFAS contamination, wholly distinct from CERCLA enforcement-driven actions. In the event the exercise of CERCLA enforcement discretion results in some or all responsible parties at a Superfund site not being pursued to fund or perform PFAS cleanup, characterization, or other response actions, EPA may use all available resources and work with state, local, and Tribal partners to address the contamination.

EPA also recognizes that the science and legal requirements associated with PFAS continue to evolve.[36] As a result, the scope of this policy may change to reflect newly emerging science or regulatory requirements, or other relevant considerations. Entities must continue to follow all applicable laws and regulations.

This Policy is intended to assist EPA personnel in its exercise of CERCLA enforcement discretion in the normal course of business. It is intended solely for the guidance of employees of the Agency. This policy is not a regulation and does not create new legal obligations or limit or expand obligations under any federal, state, Tribal, or local law. It is not intended to and does not create any substantive or

[35] *See* General Policy on Ability to Pay Determinations (Sept. 30, 1997).
[36] *See, e.g.*, Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances (2024).

procedural rights for any persons. In addition, this guidance does not alter EPA's policy of not providing no action assurances outside the framework of a legal settlement, and EPA will evaluate each request for relief under this policy based on all available information.

B. Federal Agencies

Nothing in this policy affects the scope of CERCLA liability or responsibility of federal agencies, such as the Department of Defense (DoD) and the Department of Energy (DoE), to address PFAS contamination. DoD, DoE, and other federal agencies are responsible for cleaning up releases of hazardous substances, pollutants, and contaminants (including PFAS) from their facilities, and are delegated the President's CERCLA section 104 response authorities for releases on or from facilities under their own jurisdiction, custody, or control.[37] CERCLA section 111(e)(3) prohibits the use of Superfund money for remedial action at a federal facility on the National Priorities List.

VI. Next Steps and Contacts

EPA has established a team to support the implementation of this policy. This team will respond to issues pertaining to this policy and, where appropriate, assist EPA regional staff in formulating and expediting settlement agreements as needed. For questions, please contact Tina Skaar at skaar.christina@epa.gov.

cc: Superfund Emergency Management Division Directors
Superfund Regional Counsel Branch Chiefs
Kenneth Patterson, Director, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance (OECA)
Kathryn Caballero, Director, Federal Facilities Enforcement Office, OECA
Rosemarie Kelley, Director, Office of Civil Enforcement, OECA
Barry Breen, Principal Deputy Assistant Administrator, OLEM
Larry Douchand, Director, Office of Superfund Remediation and Technology Innovation, Office of Land and Emergency Management (OLEM)
Brendan Roache, Acting Director, Office of Emergency Managment, OLEM
Jeffrey Prieto, General Counsel, Office of General Counsel
Charlotte Youngblood, Associate General Counsel, Solid Waste and Emergency Response Law Office, Office of General Counsel
Bruno Piggot, Acting Assistant Administrator, Office of Water
Todd Kim, Assistant Attorney General, Environment and Natural Resources Division (ENRD), Department of Justice
Thomas A. Mariani, Jr., Chief, Environmental Enforcement Section, ENRD, Department of Justice

[37] *See* Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987).