

DC Circuit Upholds EPA's PFOA and PFOS Hazardous Substance Designation, Sending the Passive Receiver Fight to Congress

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The waste and recycling industry's bid to unwind one of the most consequential PFAS regulations has failed. On August 18, 2026, the US Court of Appeals for the DC Circuit denied industry petitions challenging EPA's 2024 rule designating two forever chemicals, perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). With the designation intact, the search for liability relief now shifts from the courthouse to Capitol Hill.

The Rule and the Challenge

CERCLA lets EPA designate as hazardous any substance that, when released into the environment, may present substantial danger to the public health or welfare or the environment. See 42 U.S.C.A. § 9602. EPA invoked that authority under Section 102(a), 42 U.S.C. § 9602(a) for the first time in 2024 to reach PFOA and PFOS. As a result, seven trade associations petitioned for review, including the U.S. Chamber of Commerce, the National Waste & Recycling Association (NWRA), the American Chemistry Council, and the Recycled Materials Association. The consolidated case, *Chamber of Commerce of the United States v. EPA*, No. 24-1193, drew a panel of Judges Millett, Katsas, and Rao, with Judge Millett writing the final decision.

Specifically, petitioners argued: (1) that EPA misread CERCLA's substantial danger standard; (2) gave inadequate notice of the rule's cost-benefit analysis; and (3) acted arbitrarily in both the analysis and its decision to regulate amid scientific uncertainty. Ultimately, however, the court rejected each of these arguments in turn.

Why the Court Sided With EPA

On the science, the panel found it unnecessary to fix the precise boundaries of "substantial danger," since the petitioners did not seriously dispute that PFOA and PFOS can harm human health. EPA's rule spent three pages cataloging associated health effects, from decreased infant birth weight and cardiovascular impacts to elevated liver enzymes, immunosuppression, and preeclampsia.

On notice, the Administrative Procedure Act asks whether a final rule is a logical outgrowth of the proposal such that affected parties should have anticipated it. The court held that EPA's final Regulatory Impact Analysis grew logically from the Economic Assessment accompanying the proposed rule. Moreover, the cost data EPA added late merely supplemented the existing record, which does not require an additional comment round.

The court thus distinguished its earlier *Owner-Operator* decision, where a wholly new methodology drove the rule. Here, EPA employed no novel methodology and merely quantified a prior qualitative analysis at the petitioners' own urging.

On the economics, the court reviewed EPA's analysis deferentially, according to a broad zone of reasonable estimation. It determined EPA reasonably explained that marginal cleanup costs would be tempered because treatment infrastructure already exists at many sites, and it reasonably rejected a Chamber-commissioned study built on discussions with industry rather than empirical and decades old data. The court likewise rejected the claim that EPA improperly counted costs as benefits. The agency acknowledged private party costs yet reasonably treated the

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shift of cleanup expenses from taxpayers to polluters as an advantage aligned with CERCLA's design. And even amid site-specific uncertainty, the court found EPA had made a reasoned decision to regulate.

The Passive Receiver Argument

The industry's central concern is liability for “passive receivers”—landfills, recyclers, and water utilities that take in PFAS-laden material but neither made nor profited from the chemicals. That concern flows from CERCLA's structure: once a substance is designated, the statute imposes liability on four categories of potentially responsible parties (PRPs), from owners and operators to arrangers and transporters. Consequently, liability was found to attach notwithstanding any other provision or rule of law, subject only to narrow defenses for acts of God, war, or an unrelated third party. As applied, that means strict, joint-and-several, and retroactive liability, so one PRP can face the cost of an entire cleanup for waste it did not generate. Designation also triggers duties to report qualifying releases.

The panel was unpersuaded that these consequences fall unfairly on passive receivers. Because CERCLA's contingent, site specific steps mean liability attaches only after individualized review, the court found the fear that designation leads inevitably to liability misplaced. It stressed that the petitioners have come forward with no evidence that those responsible for the presence of hazardous substances at a site have been unfairly saddled with liability or that the statute's operation has constrained industry. The court also credited EPA's reliance on CERCLA's existing liability limits, including its de minimis, de micromis, and innocent-landowner protections.

Those carveouts, however, are particularly narrow. The municipal solid waste exemption reaches only certain small-volume generators, for example, the de micromis exemption covers only tiny quantities disposed of before April 2001, and the recycling exemption applies to defined scrap materials, not PFAS-bearing waste. None broadly shields landfills or utilities. EPA has tried to fill the gap through its 2024 PFAS Enforcement Discretion and Settlement Policy, in which EPA indicated that it does not intend to pursue passive receivers such as municipal landfills, water utilities, and local fire departments. But that policy is nonbinding, and EPA cannot force private PRPs to waive their contribution rights against passive receivers. EPA itself conceded in September 2025 that the best, most enduring solution to this issue is a statutory fix.

Reaction and the Road Ahead

Reaction to the decision has split predictably. NWRA and the Chamber voiced disappointment and warned of continued uncertainty, while stopping short of committing to an appeal, while observers framed it as confirmation that only Congress can supply what EPA cannot. As a practical matter, the decision changes little. That is because the designation was never suspended during the litigation. As such, entities subject to the designation before the ruling remain subject now.

The more meaningful shift now appears to be strategic. With the rule upheld and administrative relief incomplete, the passive receiver debate returns to a Congress that has stalled on it in the past. Standalone bills, including H.R. 1267 for water and wastewater systems, have failed to advance. The most recent vehicle is a defense-bill amendment: S. Amdt. 6429 to the FY2027 National Defense Authorization Act (NDAA), introduced by Senator Pete Ricketts of Nebraska, would shield resource management entities, water and wastewater operators, and others from PFAS liability absent gross negligence or willful misconduct. Whether passive receivers obtain relief now turns on whether that amendment survives the defense authorization process. In the meantime, operators should expect the designation to remain in force.