

# PFAS Uncertainty is Driving Up the Cost and Risk of Infrastructure Construction



Per- and polyfluoroalkyl substances (**PFAS**) are long-lasting chemicals that break down slowly over time. There are over 5,000 types of PFAS found in everyday products, such as cosmetics, apparel, carpeting, and fire retardants. Due to their widespread use, PFAS may be present on many construction sites, including drinking water, airports, highways, and military base projects—not just environmental cleanup jobs.

Contractors are on the front lines of managing PFAS pollution and are being left exposed to liability. With no clear federal background levels protective of human health and the environment; no standards for PFAS testing, handling, or cleanup; and limited to no risk-sharing in most public contracts, contractors are being forced to proceed blindly—taking on legal and financial risks they can't control or predict. To not hinder future construction/remediation efforts, PFAS policy needs a commonsense approach.

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 aka Superfund). Superfund liability is **triggered regardless of intent or fault**.<sup>1</sup> But the risks to the construction industry go beyond Superfund liability.

## **How PFAS Uncertainty Is Increasing Costs and Disrupting Infrastructure Projects**

Although the construction industry does not manufacture PFAS, it may already be present on project sites. For some projects, the potential contamination risks are discouraging bidders, shrinking the pool of qualified contractors, and increasing overall project costs.

- **Increased Trucking Costs** – Construction companies hauling away debris containing PFAS will eventually need truck drivers that have a Commercial Driver's License (CDL) AND a Hazardous Materials Endorsement on their CDL. Since this requires more testing and training for CDL drivers it means the cost to haul away debris will increase significantly.
- **Increased Disposal Costs**– Due to the stigma of CERCLA designation, some landfills are refusing waste, forcing some contractors to haul waste longer distances to specially designated hazardous waste landfills, which are limited, more expensive and often further distances than traditional landfills.
- **Increased Consulting, Testing and Insurance Costs** – Site investigations, testing, and engaging qualified environmental legal professionals are costly, coupled with diminished insurance coverage.
- **Limited Use of Recycled Construction Materials** – Recycling is a common practice in the construction industry that reduces construction costs and is environmentally friendly. For example, Reclaimed Asphalt Pavement (RAP) is when existing asphalt is removed through milling and recoated with new asphalt binder. However, with the increased PFAS liability, contractors will be limited in which asphalt they can recycle, including asphalt from airport runways and taxiways, military bases, and certain roadways.

## **AGC Recommendations**

**Congress should require public owners:**

- Retain **CERCLA liability** (CERCLA Section 107);
- Develop **cost-sharing mechanisms to compensate** for known and unknown contamination;
- **Test for the presence of PFAS** prior to project construction; and
- **Allow PFAS storage on site or designate disposal facilities** that knowingly permit the materials.

**The U.S. Environmental Protection Agency should:**

- Establish a background level for PFAS that is protective of human health and the environment; and
- Create clear disposal and handling requirements for PFAS-containing materials and waste to avoid exposure to legal and regulatory uncertainty.

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<sup>1</sup>Retroactive and strict liability under the Superfund law means a contractor who interacted with contaminated construction media 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.