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March 19, 2024

The Honorable Tom Carper
Chairman
U.S. Senate Committee on Environment
and Public Works
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment
and Public Works
Washington, DC 20510

RE: AGC CONCERNS WITH PFOA OR PFOS SUPERFUND LIABILITY

Dear Chairman Carper and Ranking Member Capito:

On behalf of the Associated General Contractors of America (AGC) and its more than 27,000 construction industry member firms, I write to thank you for holding a hearing on the anticipated U.S. Environmental Protection Agency (EPA) rulemaking to address perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund).

AGC members are engaged in all types of construction, including buildings, roads, bridges, transit systems, and water projects. The construction industry will be on the front lines of mitigating PFOA and PFOS pollution and stands ready to make needed improvements to infrastructure that will be necessary. Unfortunately, the wave of cleanups and litigation associated with PFOA and PFOS and other per- and polyfluoroalkyl substances has the potential to leave contractors vulnerable to liability across their project portfolios. To move forward in confidence, the construction industry needs protection against the liability that designation as a hazardous substance under CERCLA inevitably will bring.

The construction industry does not manufacture PFAS, but these chemicals may be present in soil or dewatering effluent from project sites or as an unassuming ingredient in some products or materials, such as stain-resistant carpeting. As AGC mentioned in [comments to EPA](#), a contractor will not have knowledge of potential contamination on the numerous projects they have worked on throughout the decades. Testing for these chemicals has not been required (and at the lower levels are not detectable). To the contractor, the soil would have been considered clean fill or the effluent safe to discharge. Because of the ubiquitous nature of PFAS, AGC is concerned that innocent contractors may be ensnared in litigation for contamination not originating with them or that they unwittingly “touched” or moved.

AGC urges Congress to provide “innocent contractor” or “passive receiver” protections to contractors who may have unknowingly encountered PFAS contamination on their projects.

Sincerely,

A handwritten signature in cursive script that reads 'James V. Christianson'.

James V. Christianson
Vice President, Government Relations