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VIA ELECTRONIC DELIVERY

November 7, 2022

Michelle Schultz
U.S. Environmental Protection Agency
EPA Docket Center
OLEM Docket, Mail Code 28221T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances; Proposed Rule; 87 *Fed. Reg.* 54,415 (Sept. 6, 2022)

Dear Ms. Schultz:

On behalf of the Associated General Contractors of America (AGC), we respectfully submit the following comments in response to the U.S. Environmental Protection Agency's (EPA) proposal to designate PFOA and PFOS as hazardous under Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).¹ This *first-of-its-kind* regulatory action would trigger new reporting requirements and impose cleanup liability under Superfund, including increased scrutiny on current and closed Superfund sites and a potential new focus under environmental justice programs (referred to as the "proposal" or "proposed regulations").²

I. INTRODUCTION

AGC is the leading association for the construction industry. AGC represents more than 27,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings and industrial facilities, highway and public transportation infrastructure, water and wastewater systems, flood control and navigation structures, defense installations, multi-family housing, and more. The construction industry has played a powerful role in sustaining economic growth in the United States, in addition to producing structures that enhance productivity and quality of life.

¹ See 87 *Fed. Reg.* 54,415 (Sept. 6, 2022) online at <https://www.govinfo.gov/content/pkg/FR-2022-09-06/pdf/2022-18657.pdf>.

² AGC of America is a member of the U.S. Chamber of Commerce. AGC encourages the Agency to review and consider the extensive comments that the Chamber is submitting to this docket.

Over the last few years, Congress and EPA have been looking at emerging concerns with ubiquitous chemicals that are found in everyday commercial products, such as per- and polyfluoroalkyl substances (PFAS). There are approximately 5,000 PFAS in use in a wide variety of common commercial products like healthcare, cosmetics, apparel, carpeting and fire retardants. PFOA and PFOS are two of the most prevalent PFAS. EPA is proposing to take a novel, first-ever approach to designate via regulation PFOA and PFOS (and their salts and structural isomers) as hazardous substances under Superfund laws. EPA has not made the case that CERCLA is the best approach, yet EPA has already announced plans to replicate this approach with more PFAS in the near future.³

AGC supports a measured approach to environmental challenges such as PFOA and PFOS—or other emerging chemicals of concern. AGC members will be at the front lines of any remediation efforts. Given the decades of historic uses of PFAS, as well as current uses, AGC has shared concerns with Congress and EPA that how they approach the PFAS challenge could drastically increase construction costs, increase risk, and quickly overwhelm cleanup efforts. PFAS is commonly referred to as ubiquitous; and as such, its regulation under CERCLA raises equally ubiquitous liability concerns for public and private entities. There is no approved cleanup plan for PFAS. Furthermore, EPA has not assessed the capacity of existing hazardous material landfill space and other infrastructure to manage an influx of these wastes. **AGC urges EPA to withdraw its proposal, evaluate exposure risks, prioritize efforts, and lay the foundation for necessary clean-ups through other existing authorities that allow a more nuanced and workable approach.**

II. IMPACT ON CONSTRUCTION AND DEVELOPMENT

During construction, contractors routinely engage in earthmoving, dewatering, dredging and fill activities on all types of properties. PFAS from commercial applications or thousands of commonly-used products could be present in soil or groundwater in trace or even undetectable amounts unbeknownst to the contractor working on a given project. PFOA and PFOS (and other PFAS) have been in use for several decades. Historically, it is unlikely that PFOA and PFOS (or any PFAS) would have been included in the environmental site assessments commonly used by industry (i.e., parties conducting due diligence) to identify on-site and off-site sources of potential site contamination—meaning a contractor could be blind to their liability threats.⁴

AGC does not understand why EPA does not include contractors/construction among the list of industry sectors that may be impacted by this economically significant proposal.⁵ Several of the

³ See EPA presentation “Notice of Proposed Rulemaking: Designating PFOA and PFOS as CERCLA Hazardous Substances,” August 2022: [https://www.epa.gov/system/files/documents/2022-09/Overview%20Presentation NPRM%20Designation%20of%20PFOA%20and%20PFOS%20as%20CERCLA%20Hazardous%20Substances.pdf](https://www.epa.gov/system/files/documents/2022-09/Overview%20Presentation%20NPRM%20Designation%20of%20PFOA%20and%20PFOS%20as%20CERCLA%20Hazardous%20Substances.pdf).

⁴ In 2021, American Society for Testing and Materials (ASTM) revised its ASTM E1527-21 for Phase I Environmental Site Assessments for the potential to address emerging contaminants (such as PFAS). Ross, J., “EPA and ASTM Incorporate PFAS Due Diligence into Environmental Site Assessments,” April 26, 2022 (available online at <https://www.martenlaw.com/news-and-insights/epa-and-astm-incorporate-pfas-due-diligence-into-environmental-site-assessments>).

⁵ See 87 Fed. Reg. at 54,416-54,417.

industries identified (among those impacted) are representative of potential future construction sites (airports, industrial mills, manufacturing facilities, and plants—as well as agricultural land) for demolition and redevelopment or for large-scale renovation or expansion projects. Furthermore, some of these industries manufacture PFAS-containing commercial products that are used in construction, such as carpet, coatings, paints, varnishes, and textiles.

The designation of PFOA and PFOS as hazardous under CERCLA would have widespread implications for the construction industry, as summarized in the examples below – all of which were mentioned in the preamble to the proposed rule,⁶ mentioned by AGC members, or identified from a brief Internet search on PFAS.⁷

- Dewatering - This could include groundwater from within the project’s site boundaries or the drawing in of PFAS from neighboring sites that can occur during dewatering activities.
- Earthmoving – Moving, disposal and/or reuse of previously considered “clean” fill and other materials.
- Construction and/or Demolition
 - Airports – Federal bases and airports may contain PFAS from fire-fighting foams.⁸
 - Buildings – PFAS could be found in common building materials (e.g., carpeting) or in products used during the building’s operation (e.g., health care).
 - Utilities – PFAS could be found in wastewater treatment plants (or old septic systems in prior residential areas). PFAS is used in both solar and wind generation products.
 - Highway – Vehicles contain products with PFAS, therefore, work on highway and transportation projects could come across trace amounts from vehicles or accidents (PFAS can be used as a vapor suppressant for hydrocarbon fuels).
 - Greenspaces – A recent study⁹ in three states demonstrates that even pristine areas have background levels of PFAS (primarily PFOS and PFOA).

⁶ See 87 Fed. Reg. at 54,417.

⁷ AGC found these examples through an informal and incomplete literature search. AGC provides this information solely to highlight potential ways in which a construction contractor may encounter PFAS on everyday project sites. AGC did not complete a formal literature review study on PFAS and does not weigh in on whether the studies mentioned are scientifically valid. Examples: [Our Current Understanding of the Human Health and Environmental Risks of PFAS | US EPA](#); [An overview of the uses of per- and polyfluoroalkyl substances \(PFAS\) - Environmental Science: Processes & Impacts \(RSC Publishing\) DOI:10.1039/D0EM00291G](#); [Septic systems as sources of organic wastewater compounds in domestic drinking water wells in a shallow sand and gravel aquifer - ScienceDirect](#); [Environmental Factor - March 2019: PFAS — a problem in North Carolina drinking water \(nih.gov\)](#); [Per- and Polyfluoroalkyl Substances \(PFASs\) detected in Source Waters and Treated Public Water Supplies | U.S. Geological Survey \(usgs.gov\)](#); [Concerns grow over PFAS-tainted sewage sludge spread on croplands | Great Lakes Now](#); [PFAS in landfills and wastewater - EHN](#); [PFAS in Sewage Sludge, Industrial Wastewater Targeted for Rules \(bloomberglaw.com\)](#); [Waxing activity as a potential source of exposure to per- and polyfluoroalkyl substances \(PFAS\) and other environmental contaminants among the US ski and snowboard community - ScienceDirect](#)

⁸ DOD has identified more than 400 active and former military installations with known or suspected PFOA or PFOS contamination, most likely attributable to the use of firefighting foam, and has been working via a task force since 2019 to address potential contamination. [DOD Moving Forward With Task Force to Address PFAS > U.S. Department of Defense > Defense Department News](#)

- Other - Projects on soil that was irrigated with potable water (e.g., a lawn) or fertilized with wastewater sludges (e.g., cropland) could also contain a certain level of PFAS. Projects near ski lodges may find PFAS from the use of ski waxes, which can abrade onto snow. Dust from neighboring properties could transport via aerial deposition PFAS to sites without known prior use.

AGC urges EPA to more fully vet the financial impact that the proposed designation will have on construction (and other) companies. As seen from the examples above, the implications and costs to construction will be widespread. AGC is concerned that without a risk-based approach, any necessary remediation efforts will be overwhelmed and critical infrastructure and clean energy projects¹⁰ will be mired in liability and mitigation. AGC maintains that EPA is acting too quickly, acting arbitrarily and capriciously, and not properly complying with the Regulatory Impact Analysis and Regulatory Flexibility Act requirements

What is more, and as further supported by the discussion below, AGC questions whether CERCLA is the right tool for this designation. This will be the first time EPA has used CERCLA instead of one or more of its other, commonly used regulatory tools to make a hazardous designation. CERCLA is unwieldy and triggers extreme liability for remediation. PFOA and PFOS are considered ubiquitous, meaning that trace amounts are found nearly everywhere. Yet there are limited treatment options and only one disposal option: in a hazardous waste landfill. EPA has set 70 ppt as the preliminary remediation goal for PFOA and PFOS contamination in groundwater, none for soil, and published near-zero draft advisory levels for drinking water.¹¹ It is not at all clear what standards may apply in a PFOA or PFAS cleanup action. And there is a lack of research on exposure routes and evaluation of risks to the public based on those exposures. EPA cannot even determine the extent of potentially contaminated sites.¹² CERCLA's reporting mechanism will not shed light on potentially contaminated sites—as the legacy of its historic use is greater than its current limited usage. CERCLA will prevent the agency from limiting liability for non-responsible parties.

A. Statutory, Regulatory and Contractual Liability – and Third-Party Claims

Innocent contractors need protection against statutory/regulatory legal liability for contamination associated with the active sites on which they currently work as well as completed projects. In public meetings, EPA has indicated that it will allow for “enforcement discretion,”¹³ but that discretion is

⁹ [Massachusetts Soils Study Sheds Light on Background PFAS Concentrations - Woodard & Curran \(woodardcurran.com\)](https://www.woodardcurran.com/news/2022/01/20/massachusetts-soils-study-sheds-light-on-background-pfas-concentrations)

¹⁰ PFAS is also integral in renewable energy (solar, wind, battery) technologies that will help the Biden Administration meet its carbon reduction goals. Understanding these complex issues and prioritizing any mitigation actions will be essential to move forward in a balanced and sustainable approach.

¹¹ EPA acknowledges that the interim levels are below levels at which existing analytical methods can even measure PFAS in drinking water, but the agency has not indicated the number will be revised once this proposal is finalized.

¹² See 87 Fed. Reg. at 54,423

¹³ See EPA presentation “Notice of Proposed Rulemaking: Designating PFOA and PFOS as CERCLA Hazardous Substances,” August 2022: <https://www.epa.gov/system/files/documents/2022->

not enough of an assurance. Should hazardous substances be discovered on a site, any contractor connected with that site could be drawn into a legal battle over who is financially responsible for cleaning up the site affected by PFOA/PFAS contamination.

Under CERCLA's strict, retroactive, joint and several liability, EPA requires Potentially Responsible Parties to clean up sites contaminated by hazardous substances regardless of fault. CERCLA makes no distinction when assigning responsibility to the source of a substance designated as hazardous -- or to the quantity of the substance introduced by the party. A hazardous substance designation for PFOA/PFOS also would force the reopening of Superfund, including Brownfield sites, that have already undergone redevelopment. Given the extremely small amounts EPA is considering (presumably less than the 70 ppt guidance for remediation of groundwater), these sites may be in a permanent state of rehabilitation—meaning the risk will be ongoing.

AGC has long shared its members' concerns about the multiple routes by which an innocent contractor may be ensnared in Superfund liability. Generally, the following groups, called Potentially Responsible Parties or PRPs, may be responsible to pay for or perform Superfund cleanups: 1) current owners or operators of a contaminated facility; 2) past owners or operators of a contaminated facility at the time hazardous substances were disposed of; 3) generators of hazardous substances found at the site; and 4) transporters that sent waste to the contaminated facility. Depending on the circumstances, general contractors could fall in any of these four categories.

Courts have uniformly held that CERCLA imposes strict liability, regardless of fault. Should hazardous waste be discovered on a site, any contractor performing work on that site could be drawn into a legal battle over who is financially responsible for cleanup of the hazardous waste at the site. The case, *Kaiser Aluminum & Chemical Corp. vs. Catelus Dev. Corp.*, 979 F.2d 1338 (9th Cir. 1992) demonstrates how an innocent contractor performing nonremediation work can be held liable for cleanup of the hazardous waste on a site, even though the contractor had no responsibility for the hazardous waste and did not own the property. The construction contractor was hired to grade and prepare the site for a housing development. This required excavation and dispersal of soil on site. No soil was removed from the site and no soil was brought onto the site. After the contractor's work was underway, it was discovered that hazardous chemicals deposited in the 1940's contaminated the site. Once the contamination was discovered, the owner sued the developer who, in turn, sued the contractor. In the 9th Circuit Court of Appeals, the contractor was found liable for cleanup costs as an operator of a hazardous waste site.¹⁴

Contractors may face an increased risk of CERCLA liability due to the language in the construction contract that outlines their scope of work and the contractor's role and responsibilities on the jobsite. See Appendix I below. A hazardous substance designation for PFOA/PFOS would impact contractual obligations between general contractors and their owner/developer clients and

[09/Overview%20Presentation NPRM%20Designation%20of%20PFOA%20and%20PFOS%20as%20CERCLA%20Hazardous%20Substances.pdf](#).

¹⁴ See also, *BancorpSouth Bank v. Env'tl. Operations, Inc.*, 908 F.Supp.2d 1016 (E.C. Mo. 2012 finding contractors on site spread hazardous substances creating a basis for operator liability).

suppliers/service providers, as well as legal claims/litigation. For example, if a contractor used fill material from a quarry and did due diligence at the time to determine the fill was “clean,” yet later tests show PFOA or PFOS contamination, then the property owner will seek legal action against the contractor—who would then need to seek compensation from the quarry. Furthermore, contract specifications that tell the contractor to select disposal sites or to identify an outside source of a material will pose a huge risk to the contractor for liability. Members are also seeing requirements for contractors to conduct extensive environmental tests on all material added to the site (e.g., aggregates, soil, etc.). Whereas this will help identify some contamination, it will not help with undetectable amounts. And it will drive up costs for projects. Contractors will not only need to be concerned with activities related to project sites, but with their own yards and laydown areas. Lastly, unaware contractors may inadvertently sign off as generators or transporters.

AGC strongly urges EPA to focus on exposure risks to inform priority actions and educate the public. The massive scale of potential contamination by extremely small almost undetectable amounts of PFAS is already making its way into public discourse, signaling a wave of litigation to come and public panic and possible misinformation.¹⁵ Environmental groups are releasing reports presuming contamination of incredibly large numbers of properties and waterways.¹⁶ The media is sharing reports about amounts as low as 1 ppt.¹⁷ As mentioned above, PFAS has been found in 88 out of 100 samples taken in pristine areas in a three-state study (84 percent contained PFOS).¹⁸ An AGC member company that specializes in remediation work has shared that homeowners are already taking samples of the dirt in their backyards to have it analyzed. (EPA does mention that eating dirt could be a possible route of exposure¹⁹ but should provide some clarity to the public about what risks their backyards actually pose.)

B. Limited Clean Up, Disposal and Destruction Options

AGC members have shared that there are limited options for the treatment or disposal of PFAS. For treatment of water, one can filter/treat the water and then dispose in hazardous waste sites the treatment media (granular activated carbon, filters, and bags), sludge, sediments, and other solids. Ion exchange resin is another option, but the resins must be discarded and replaced after use, which is also expensive. There are no viable treatment options for soil except for disposal in a landfill. Advanced treatments are in the development phase. However, field trials and rollout could be years away and the costs of those treatments are unknown.

Disposal in a hazardous waste landfill will be the preferred method until EPA approves other treatment, disposal, or destruction methods. However, space in hazardous waste landfills is limited and carefully managed as they are difficult to permit. Disposal capacity can be quickly overwhelmed

¹⁵ [Lawyers Warn EPA’s CERCLA Listing Will Expand PFAS Litigation | InsideEPA.com](#)

¹⁶ [PFAS pollute 83% of U.S. waterways - E&E News \(eenews.net\); Scientists say PFAS contamination should be presumed at over 57,000 US \(sciencemag.com\)](#)

¹⁷ [Testing reveals PFAS chemicals in West Branch of Susquehanna River | State | wfmz.com](#)

¹⁸ [Massachusetts Soils Study Sheds Light on Background PFAS Concentrations - Woodard & Curran \(woodardcurran.com\)](#)

¹⁹ [Our Current Understanding of the Human Health and Environmental Risks of PFAS | US EPA](#)

with contaminated soil and treatment media. It is not clear whether the treatment media can be recharged and reused safely, so it also will likely be disposed of in hazardous waste landfills. EPA needs to revisit its capacity assessment²⁰ prior to the hazardous waste designation taking effect to ensure there are safe and acceptable means to manage the large quantities of soil and other wastes anticipated to be generated.

EPA will need to factor not only PFOA and PFOS waste into their waste calculations, but PFAS in general due to the growing stigma and fear of liability. Lacking guidance from EPA on appropriate thresholds, members are finding landfills to be risk-averse to taking any PFAS into nonhazardous facilities because of Superfund liability. Even after EPA develops the threshold for remediation, members caution that landfills will not take anything close to what the federal threshold would be due to liability. Furthermore, reports are already coming out that remediated Superfund sites could need to be reopened to address PFOA or PFOS.²¹

EPA has not established official cleanup levels or thresholds; such standards will significantly affect the cost and impact of the proposed action. The lower the threshold the more costly compliance will be as more sites will be pulled into the Superfund program—as well as more waste and used treatment media will be generated and need to be disposed of in a hazardous waste landfill. (EPA's health advisory for drinking water is below detectable levels.)

III. REGULATORY IMPACT ANALYSIS

The White House Office of Management and Budget determined the proposal is economically significant and ordered the Agency to conduct a regulatory cost-benefit analysis. AGC finds that EPA's analysis is lacking and incomplete. For example, EPA ignores the remediation costs that would result directly from the proposed action. There are also operational costs that would arise, such as training and certifications and additional layers of complexity added to project coordination; none of which are accounted for in the Agency's analysis. For example, the U.S. Chamber of Commerce's assessment is over 17.4 billion dollars for existing non-federal national priority sites alone.²² EPA must conduct a comprehensive regulatory impact analysis that factors in treatment/disposal and training and business operations costs as outlined below.

Treatment itself comes with a cost. A member shared a dewatering example, treating 10,000 gallons of water could use two units of granular activated carbon and four filter bags, adding some cost. At a million gallons, you could use over 100 filter bags. Treatment costs could easily amount to 0.50 cents

²⁰ Pursuant to CERCLA, EPA must assess hazardous waste capacity to meet ensure future needs. [Assessment of National Capacity for Hazardous Waste Management | US EPA](#); When last reviewed in 2019, "EPA does not believe that any current hazardous waste regulatory activities will substantially alter management behaviors within the next five years." (Assessment Report, 2019, pg. 8.) Certainly, the current proposal will change those projections. In the 2019 report, EPA includes a list of commercial hazardous waste landfills that numbers only 18 facilities (one of which is filled to capacity and capped). (See pg. 19.)

²¹ See for example: [What could the us epas proposed superfund listing for pfoa and p.pdf \(huntonak.com\)](#); [PFAS and Waste Industry CERCLA Concerns - CMBG3 Law](#).

²² <https://www.uschamber.com/environment/pfos-and-pfoa-private-cleanup-costs-at-non-federal-superfund-sites>

or more per gallon, leading to \$500,000 in hazardous waste costs in this particular example. The testing and permitting for dewatering effluent can also be costly and time-consuming; even when dewatering on projects at the wastewater treatment facility itself. Treatment will also result in waste materials that will need to be hauled, sometimes long distances, to the limited available commercial hazardous waste landfills. This is especially true with contaminated soil that will be expensive to transport in mass quantities.

In addition to the cost of treatment, EPA also needs to consider the costs of trained personnel. Anyone engaged in the site that can come into contact with hazardous waste, even if turning the site over to a specialized contractor to remediate, would need to receive HAZWOPER training. Individuals involved with a contaminated site will need to take part in the 40-hour training, including medical monitoring and refreshers. Some may also need an 8-hour supervisor training. It would cost approximately \$1,000 per person for the 40-hour training, which can be conducted online, but the contractor would have to pay that week's salary in wages. Respirator fitting is only done in person and would cost an additional \$500 per person. Medical monitoring includes establishing a baseline and conducting annual exams. Given the ubiquitous nature of PFOA and PFOS (or any PFAS), it will be hard to ascertain whether any spikes are due to conditions on the site or from handling a fast-food wrapper, using shampoo, or wearing body lotion or scents. For example, PFAS testing is so sensitive that professionals have a three-day process beforehand to prepare to take samples. They even must use special soaps and clothing detergents prior to sampling to avoid false readings.

Designation would also directly impact scheduling and coordination—adding layers of complexity and cost on construction sites. Site conditions and any necessary demolition will need to be thoroughly tested and any remediation addressed prior to new construction. Products used on the site previously would need to be researched. For example, before the demolition of a commercial building a contractor may need to separate carpet and coatings in pipes, etc., and there will be additional abatement costs. (Note that as there are no rules to guide the disposal process, demolition contractors will have no direction for handling or disposing of any potentially contaminated materials. Likewise, landfills that previously accepted materials may not accept new wastes until they could be certain the waste would not add to their own liability. Demolition construction could come to a halt without specific direction.) As mentioned above, any added materials will need to be extensively tested—which is not a guarantee that better testing methods in the future will not find some trace.

IV. REGULATORY FLEXIBILITY ACT

AGC is concerned that EPA has failed to engage in the necessary and required outreach to the small business community to ascertain more fully the impacts of the proposed action. The Agency fails to recognize the impact this proposal will have on mitigation and liability, and in doing so has not engaged in a thorough small business review nor does their economic analysis reflect the breadth of impacts. The Agency improperly certified that the proposal does not need to go through the Regulatory Flexibility Act (RFA) Small Business Regulatory Enforcement Fairness Act (SBREFA) process. Given the OMB finding that the proposal is significant, EPA should conduct an Initial Regulatory Flexibility Analysis, convene a SBREFA panel, and complete a thorough economic analysis.

V. CONCLUSION

AGC urges EPA to withdraw the proposal. EPA has not sufficiently considered the widespread implications of its proposed course of action—ignoring impacts to innocent contractors and creating significant liability for public and private entities. EPA is proposing this action in the absence of sufficient treatment, disposal, or destruction options. EPA has not justified why it seeks to designate a CERCLA hazardous substance by rulemaking (for the first time) instead of using one of its other regulatory authorities and avenues to address PFOA and PFOS (and additional PFAS in the future). The agency could have proposed action under CERCLA as a “pollutant or contaminant” or through the Resource Conservation and Recovery Act or the Safe Drinking Water Act, thereby avoiding the inescapable and inequitable liability scheme under CERCLA’s hazardous designation. EPA should focus on prioritizing efforts based on exposure risks. EPA also needs to conduct a comprehensive regulatory impact analysis. Furthermore, EPA has failed to engage with small businesses about potential impacts.

If you have any questions, please reach out directly to Melinda Tomaino at melinda.tomaino@agc.org or (703) 837-5415.

Sincerely,



Melinda L. Tomaino
Director, Environment and Sustainability



Leah Pilconis
Vice President and Counsel, Risk Management

APPENDIX I

As construction projects get larger, owners are pushing responsibility to the general contractors to manage, hire consultants, remediation specialists, and resolve site conditions. With increased frequency (and particularly on critical infrastructure projects), contractors are expected to manage environmental risk, including:

- Perform all HazMat encountered – government approvals, environmental protection plan
- Hire HazMat consultant
- Obtain bids, hire subcontractors to deal with HazMat and dispose off-site
- Owner pays costs and increases time for HazMat

Example 1:

Dealing with environmental conditions transferred to the contractor—

“7.1.1.1 Except as otherwise provided in this Section 7.7.1, Design-Builder shall, as part of the D&C Work, perform, or cause to be performed, all Hazardous Materials Management required in connection with the Project in accordance with applicable Law, Governmental Approvals, the approved Environmental Protection Program, and all applicable provisions of the DBC Documents.”

Contractor hires consultants—

“7.1.1.3 Design-Builder shall obtain Developer’s approval of one or more independent hazardous material consultants (the “Hazmat Consultant”) that will perform assessments of any Hazardous Materials encountered in connection with the Project, the Site or the D&C Work.”

Dealing with environmental conditions transferred to contractor –

“7.1.1.1 Except as otherwise provided in this Section 7.7.1, Design-Builder shall, as part of the D&C Work, perform, or cause to be performed, all Hazardous Materials Management required in connection with the Project in accordance with applicable Law, Governmental Approvals, the approved Environmental Protection Program, and all applicable provisions of the DBC Documents.”

Example 2:

Contractor hires the subcontractors—

“The Contractor's geotechnical engineer shall review all available geotechnical information provided in the Contract package and become familiar with the soil and site conditions at the project site by visiting the site. During the site visit and in subsequent phases of the project, the Contractor shall examine and/or verify the

information provided and obtain any additional information to complete the design and construction of the project. **The Contractor remains solely responsible and liable for design sufficiency and should not depend on reports provided by the [Government] as part of the contract documents.**”

Example 3:

Reimbursement for Costs—

“12.2.4 Costs and Delays. Except for Owner Release(s) of Hazardous Materials, except as set forth in Sections 12.2.3 and 12.3 and without limiting Owner’s role or responsibilities set forth in Section 12.2.5, **Contractor shall not be entitled to any compensation due to increased costs or delays associated with the discovery, handling, storage, removal, remediation, transport, treatment or disposal of Hazardous Materials**, including contaminated groundwater, encountered in construction of the Project or Utility Adjustments.”