



Environmental Update

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EPA PFAS Brownfields FAQ: Key Impacts on Grants, Due Diligence and CERCLA Liability

Key Notes:

- EPA's December 2025 FAQ underscores the need for PFOA/PFOS-specific due diligence for Brownfields grant eligibility and CERCLA liability protections.
- The absence of a CERCLA "passive receiver" exemption heightens risk considerations for Brownfields grant applications and recipients.
- Close coordination among attorneys, consultants and clients is critical to address the unique due diligence and liability challenges posed by PFOA/PFOS contamination.

On December 5, 2025, the U.S. Environmental Protection Agency (EPA) released a [Brownfields and Land Revitalization Program Frequently Asked Questions \(FAQ\)](#) explaining how the designation of two PFAS compounds, PFOA and PFOS, as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) affects eligibility for, and use of, EPA Brownfields funding. The FAQ confirms that federal Brownfields funding resources (e.g., [Assessment Grants](#), [Cleanup Grants](#), [Multipurpose Grants and Revolving Loan Funds Grants](#)) remain available to assess and remediate PFOA/PFOS at eligible sites, but clarifies the required showing of PFOA/PFOS due diligence and continuing obligations for grant recipients. Meanwhile, Congress has not enacted a statutory PFOA/PFOS "passive receiver" exemption under CERCLA, complicating the ability of municipalities, water/wastewater utilities, airports and other PFOA/PFOS passive receivers (entities that did not manufacture or generate the compounds) to conclusively demonstrate non-liability for these compounds at Brownfield sites, even as EPA signals enforcement discretion for these entities.

This alert summarizes the key FAQ takeaways, the practical due diligence and liability implications for transactions and grant-funded projects, and why the absence of a legislative passive receiver fix remains an important piece of the PFAS puzzle in 2026.

EPA PFAS FAQ Overview

In April 2024, EPA promulgated a final rule designating two PFAS compounds, PFOA and PFOS, as CERCLA hazardous substances. The FAQ applies to Brownfields grant eligibility and site-level requirements. EPA explains that the final rule does not change whether EPA Brownfields resources can be used to assess or clean up PFOA/PFOS at Brownfield sites and notes that even before the final rule was promulgated, these compounds were "pollutants or contaminants" eligible for assessment and cleanup grant funding.

The FAQ clarifies, however, that grant recipients must now demonstrate non-liability for PFOA/PFOS under CERCLA § 107 (e.g., through the bona fide prospective purchaser or innocent landowner defenses). The FAQ confirms that where Brownfields funds will address PFOA/PFOS, recipients must show they "cannot be held potentially liable" for such impacts at the site. This elevates the importance of qualifying for and maintaining an applicable CERCLA landowner liability protection. Under the CERCLA PFOA/PFOS rule, All Appropriate Inquiries (AAI) now includes an evaluation of these PFAS compounds. To preserve a CERCLA defense, AAI must address "conditions indicative of releases or threatened releases" of PFOA/PFOS, with investigation scopes tailored to potential sources, transport and media.

Parties responsible for PFOA or PFOS contamination or continuing releases cannot receive or benefit from Brownfields grants. Parties that can establish that they are not liable for any PFOA/PFOS found at a site must comply with certain “continuing obligations” after property acquisition, including stopping continuing releases, preventing future releases and not impeding response actions.

Due Diligence and Liability Protections: What Brownfields Recipients Need to Show

The FAQ confirms that PFAS-related Brownfields funding is conditioned in part on a showing that recipients cannot be held liable under CERCLA § 107. This, in turn, adds significance to a party’s AAI and site strategies and how these points are documented for possible future CERCLA defense purposes.

First, Phase I environmental site assessments must address PFOA/PFOS, including inquiries into historical uses such as aqueous film-forming foam (known as “AFFF”) training or response; plating; textiles; paper; and fluoropolymer processing. Phase I AAI should also include potential passive-receiver pathways such as influent/effluent, biosolids land application, landfill or leachate management. Finally, the AAI should also consider off-site migration and media beyond soil and groundwater where appropriate. Consultants should evaluate PFOA/PFOS and tailor file reviews, interviews and data gap analyses accordingly.

Second, recipients should align their chosen CERCLA defense with the facts. For example, establishing the bona fide prospective purchaser defense requires documenting AAI prior to acquisition, taking reasonable steps with respect to PFOA/PFOS and maintaining continuing obligations. For the innocent landowner or contiguous property owner defenses, emphasis shifts to evidence of pre-acquisition knowledge, source linkage and off-site migration. In each case, the file should demonstrate that the recipient is not an arranger or operator for the PFOA/PFOS at issue.

Third, “reasonable steps” for PFOA/PFOS are evolving, but what is clear is that stopping continuing releases,

preventing future releases and cooperating with access and response obligations apply to PFOA/PFOS-driven remedies. For sites with active or potential PFOA/PFOS exposure pathways, this may include engineering controls like stormwater management to limit transport; managing source materials or soils; and coordinating with state programs on interim measures consistent with anticipated cleanup endpoints.

Finally, recipients should anticipate PFOA/PFOS-related release reporting and documentation. Releases at or above one pound (per 24 hours) trigger CERCLA/EPCRA reporting. While such reportable quantity events are not typical in Brownfields work, parties should consider construction dewatering and the handling of concentrated residuals. Project teams should plan for compliance and communications during development activities.

Statutory Relief for “Passive Receivers”

EPA acknowledges that “passive receivers” raise unique CERCLA equities where PFAS have entered facilities through feedstocks, products, wastewater, biosolids or waste streams outside the entity’s control. In its 2024 CERCLA PFAS Enforcement Discretion and Settlement Policy, issued concurrent with the final rule, EPA expresses its intent to focus enforcement on parties who significantly contributed to PFAS releases (e.g., manufacturers, industrial users and federal facilities) rather than passive receivers like water systems, publicly owned treatment works (“POTWs”), municipal landfills, airports and local fire departments, where equitable factors weigh against seeking response costs. But critically, this policy is guidance only, meaning a strict reading of CERCLA continues to present liability risks for passive receivers.

In 2025, the Agency expressly acknowledged the need for congressional action to provide durable liability protection for passive receivers. To date, Congress has not enacted legislative exemption, despite multiple bills, debates and hearings on the topic. The lack of statutory relief for passive receivers raises several issues as it pertains to the Brownfields FAQ and AAI/CERCLA defenses.

For example, EPA's enforcement discretion policy is not a defense to § 107 liability and does not apply to private parties' ability to bring CERCLA actions against passive receivers. While EPA may not pursue certain passive receivers, other parties may still assert CERCLA cost recovery or contribution claims. A water utility, landfill or municipality seeking Brownfields funds for PFOA/PFOS-impacted property must therefore rely on statutory landowner defenses—not the policy—to “demonstrate that they cannot be held potentially liable.”

Second, the evidentiary burden for a landowner defense may be harder to meet for passive receivers. Demonstrating that a party's connection to PFOA/PFOS at a site is solely passive, that reasonable steps have been and will be taken, and that no “arranger” or “operator” nexus exists, may require extensive fact development and ongoing operational controls. For example, POTWs may need to show that PFOA/PFOS entered influent from upstream users, that the POTW did not manage the constituents as a waste to be disposed of, that it implemented source control where feasible, and that it complied with permits and regulatory directives.

Practical Implications for Brownfield Deals, Grants and Project Delivery

For municipalities, developers and lenders seeking to rely on Brownfields resources at PFOA/PFOS-impacted properties, several practical themes emerge.

Parties should align property acquisition timing and AAI completion to protect CERCLA defenses, with PFOA/PFOS evaluations included in the Phase I. Where appropriate, prospective purchasers may need to perform targeted sampling to support site strategy and to meet CERCLA defense continuing obligations. Brownfields applications that contemplate PFOA/PFOS work should include the AAI and defense documentation in the eligibility package.

Another consideration is contractual risk allocation. Redevelopment agreements, access agreements and construction contracts may need to address PFOS/PFOS explicitly through indemnities, representations and warranties, residuals management and reporting and

notification responsibilities. Sellers and current owners should be asked about their PFOA/PFOS history and data.

Parties should also consider leveraging state voluntary cleanup programs for PFOA/PFOS risk management plans and cleanup levels, as the U.S. EPA will defer to state and tribal programs for standards at Brownfields sites. This may also require coordination with state permit programs on dewatering, discharge and waste management.

To meet CERCLA's “continuing obligations” and “reasonable steps,” parties should memorialize PFOA/PFOS-specific best practices in site management plans and environmental management plans submitted with Brownfields work plans. Where operations create a risk of “continuing release,” parties should plan and budget for interim controls.

Conclusion

EPA's December 2025 PFOA/PFOS FAQ does not change parties' obligations related to Brownfields funding and work. It does, however, highlight that EPA may be more focused on whether recipients can demonstrate non-liability when seeking to use federal funds to investigate or clean up PFOA/PFOS. In the absence of a legislative passive receiver exemption under CERCLA, recipients that may be viewed as passive receivers will need to build robust, statutory landowner defenses and maintain continuing obligations to meet the requirement that they “cannot be held potentially liable” for PFOA/PFOS at the site. For Brownfields grant applicants, developers, municipalities and lenders, integrating PFOA/PFOS into AAI, risk allocation, state program strategy and project delivery is now essential both to secure funding eligibility and to preserve CERCLA liability protections.

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