

Inside EPA

'Worried' House Democrats Step Up Push For Superfund PFAS Measure September 24, 2019

"Worried" House Democrats are stepping up their push for defense bill conferees to preserve their amendment requiring EPA to list per- and polyfluoroalkyl substances (PFAS) as "hazardous substances" under the Superfund law [in the face of opposition from Senate environment committee Chairman John Barrasso \(R-WY\)](#).

During a Sept. 24 press conference with environmental groups, three lawmakers championed the House bill's various PFAS provisions, but in particular sought to make the case for conferees -- who are currently working on the final bill -- to include the House measure that requires EPA within one year to designate all PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA).

Rep. Andy Levin (D-MI) told reporters that support for the PFAS measures is broad, noting [a Sept. 3 letter](#) from a bipartisan group of 162 House lawmakers urging the conferees to back the provisions.

But he nonetheless said he is "worried because what I'm hearing out of the conference is, 'well, you know, maybe we'll do some of this, but not all of it.' Our message today is we need to move forward in tackling this PFAS problem right now in this" defense bill, he said.

[An environmentalist says that on PFAS, the sticking point in conference appears to be the CERCLA amendment, with Barrasso "really putting up a roadblock" and unwilling to negotiate on the matter.](#)

[In a statement to *Inside EPA*, Barrasso's spokesman reiterated the senator's support for the Senate's bipartisan PFAS package, which does not include the CERCLA language, saying it would impose cleanup liability on parties that had used the chemicals in good faith. "Rather than seek similar compromise, House Democrats are proposing to saddle local airports, farmers and ranchers, water utilities, and countless small businesses with billions of dollars in liability. This is what happens when the House rushes legislation and ignores the committee process. Their proposal won't become law. Our PFAS legislation can. It advanced unanimously from the Environment and Public Works Committee and passed as part of the defense authorization bill with overwhelming bipartisan support," Barrasso said.](#)

Designating PFAS as hazardous substances would trigger cleanup liability for a host of entities, including the Department of Defense (DOD), and the prospects of such a move have already prompted early calls for liability exemptions for water utilities and others, and hints of industry pushback over such carve-outs.

But the environmental source says while utilities have been pushing for a carve-out, the idea does not appear to have gotten much traction, adding the Democrats may be wary of going down a "slippery slope" of providing carve-outs to certain stakeholders but not others.

The lawmakers at the press conference stressed the CERCLA amendment is needed to gain leverage to get DOD to clean up the substances on its bases.

"The Defense Department, quite frankly, is refusing to clean it up," Rep. Debbie Dingell (D-MI), said at the press conference. "Why? Because they say it's not listed as a pollutant under the Superfund" law, she added. While DOD has acted to cut off exposure to certain PFAS above EPA's health advisory level at bases where it is the water purveyor, it has resisted states' efforts to require PFAS cleanups.

DOD officials argue that generally the military follows only "officially promulgated, non-discriminatory" standards set by states, and say the federal government's waiver of sovereign immunity under CERCLA does not extend to state efforts to enforce its own requirements if the environmental contaminants have not been deemed CERCLA hazardous substances.

The Senate version of the defense bill does not include the CERCLA amendment, although it has various other PFAS amendments that would require EPA or DOD to take action on the chemicals.

The CERCLA measure was excluded from the Senate version in part due to objections from Barrasso.

'Pushing Very Hard'

The lawmakers at the press conference would not say how vulnerable the CERCLA amendment is to being eliminated from the final defense bill, with Dingell only saying that the proponents are "pushing very hard," and noting the science shows links between PFAS and thyroid and other adverse health effects.

She said that cities are now having to pay for cleaning up their water, rather than the polluters paying -- as could be enforced if the CERCLA amendment were passed into law.

The lawmakers also signaled they are unlikely to compromise on the reach of the CERCLA amendment, which currently requires EPA to designate all PFAS as "hazardous substances." When asked whether they would be willing to vote for a modified amendment that would require EPA to only designate as hazardous substances the two most commonly found PFAS -- something EPA has been working toward -- Dingell said, "My amendment has to be in there, or I won't vote for it."

And Rep. Dan Kildee (D-MI), who leads a bipartisan caucus on PFAS and is the House Democratic Caucus' chief deputy whip, endorsed her point, noting many members supported the House defense bill reluctantly as they dislike other measures in the bill.

"But these [PFAS] provisions are a really important step forward," he added. "So if there's an expectation that these important provisions could be stripped out, and they can just have the votes that they had in the House for the [defense bill], I think they've got another thing coming."

DOD officials recently reiterated the Pentagon's past opposition to aspects of the pending PFAS measures, including contending that the decision on whether chemicals in the PFAS class should be designated as hazardous substances should be left to EPA.

And PFAS measures in the Senate version of the bill -- which would require EPA to craft a series of new drinking water, toxics and reporting rules for PFAS -- [have drawn](#) White House opposition.

But on the flip side, in addition to the 162 House members backing the PFAS measures, [a bipartisan group of 15 governors](#) this month wrote to defense authorizers, urging the leaders of the Senate and House Armed Services committees to support a "package that includes the strongest [PFAS] provisions from both the House and Senate bills," expressing support for the CERCLA amendment, among others.

As the House and Senate conferees weigh PFAS measures for inclusion in the defense bill, the House Energy & Commerce Committee plans to mark up stand-alone PFAS legislation Sept. 26, Dingell said, although she doubted that path would lead to it being enacted given obstacles it would face in the Senate.

Nevertheless, the committee's action would preserve its jurisdiction over PFAS issues after the amendments were added to the defense bill on the floor without first going through a committee process. -- *Suzanne Yohannan* (syohannan@iwpnews.com)

Editor's Note: This story has been updated to reflect comment from Sen. John Barrasso (R-WY).

<https://insideepa.com/daily-news/%E2%80%98worried%E2%80%99-house-democrats-step-push-superfund-pfas-measure>