



March 14, 2024

The Honorable Chuck Schumer
Senate Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Tom Carper
Chairman
U.S. Senate Committee on Environment
& Public Works
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment
& Public Works
Washington, D.C. 20510

Subject: EMWD Urges CERCLA Exemption for Passive PFAS Receivers

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Carper, and Ranking Member Capito:

Eastern Municipal Water District (EMWD) respectfully requests your support for PFAS liability protections for water and wastewater agencies under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EMWD is the water, wastewater and recycled water service provider to nearly one million people living and working within a 601-square mile service area in western Riverside County and is California's sixth-largest retail water agency.

As it specifically relates to PFAS, EMWD has deep appreciation for the severe and far-reaching impacts that can occur when these substances are detected. EMWD has shut off three wells due to PFAS contamination and was compensated by the Department of Defense to remediate and bring one of those wells back into service as the cause of contamination was legacy firefighting training on a nearby U.S. Air Force Base.

EMWD takes seriously the responsibility of being a good steward of our water resources and strongly supports federal efforts to protect public health by addressing PFAS contamination in our water systems. However, legislative and agency actions to remedy this nationwide problem should be guided by understanding that the

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water agencies such as EMWD did **not** create the PFAS contamination and pollution problem facing our country today.

At present, U.S. Environmental Protection Agency (EPA) is moving ahead with a final CERCLA designation regulation for two chemicals in the PFAS family - PFOA and PFOS. That rule is now in the final stages, as it is currently at the Office of Management and Budget for review. When EMWD officials met with the EPA last year about this pending regulation, officials asserted that the CERCLA statute does not allow it to provide for an exemption to the water sector.

Congress intended CERCLA to be a statute that would allow for the remediation of contaminated sites and ensure the polluters are financially responsible for the cleanup through the “polluter pays” model. EMWD strongly supports ensuring the CERCLA “polluter pays” principle remains intact. However, EPA’s pending PFAS regulation will be a “community pays” model, which will unfairly shift the clean-up and liability costs onto EMWD and its ratepayers.

Public water and wastewater agencies are passive receivers of PFAS from a vast array of domestic, commercial, and industrial sources. Water systems, and the public, do not have control over PFAS in the environment given the overwhelming presence of this family of chemicals in the chain of commerce, consumer products and in our homes.

Without an explicit statutory exemption from liability under CERCLA, under EPA’s pending regulation, water systems could be held financially liable for the cleanup of Superfund sites contaminated with PFAS for merely fulfilling their responsibilities under the Safe Drinking Water Act to treat and dispose of these chemicals to protect public health. While we appreciated that EPA has shared that it does not intend to pursue water systems for cleanup costs, the CERCLA statute leaves those same systems vulnerable to litigation by the polluters themselves through potentially responsible party (PRP) suits. Cleanup costs alone are daunting for many water systems; adding the financial implications of litigation would be overly burdensome for ratepayers.

As such, EMWD urges the Senate to pass legislation to exempt owners and operators of water facilities that are passive receivers of PFAS. A provision which achieves this objective will rightfully hold harmless water utilities from CERCLA’s liability web. In crafting this language, we strongly encourage you to ensure that the following elements are included:

1. Define passive receiver to include any entity, public or private, that is responsible for the management and treatment of wastewater, residuals, including biosolids, and water recycling.
2. Define activities covered under any passive receiver exemption as explicitly including activities related to the distribution of products derived from treatment and resource recovery (e.g. compost and any other product derived from wastewater management).

Without such a legislative exemption to the CERCLA statute, the burden of compliance and cleanup will go beyond the responsible parties and fall on those on agencies, such as EMWD, that provide essential services to the public.

The Honorable Chairman Carper and Ranking Member Capito

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Most alarmingly, it will result in overwhelming our nation's water supply systems with exorbitant cleanup costs and the litigation expenses. The impact of this will be significantly increased costs to the residents we serve – including our economically disadvantaged, and severely disadvantaged communities, which comprise over one-third of our customers.

We once again urge you to uphold CERCLA's "polluter pays" principle and protect water systems and the ratepayers they serve by supporting a tailored legislative exemption from PFAS liability. Thank you for your leadership in working to address the numerous challenges associated with the presence harmful PFAS substances in our environment.

Sincerely,



Philip Paule
Board President



Joe Mouawad, P.E.
General Manager

CC:

Senator Alex Padilla
Senator Laphonza Butler
Association of California Water Agencies
California Association of Sanitation Agencies
WaterReuse Association