



City of Austin

P.O. Box 1088, Austin, TX 78767-1088

March 18, 2024

The Honorable Tom Carper, Chairman
The Honorable Shelley Moore Capito, Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

As the Committee on Environment and Public Works plans to consider the issue of passive receiver liability for per- and polyfluoroalkyl substances (PFAS) cleanups under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the City of Austin appreciates the opportunity to share how concerned we are about the damage such liability could impose on our budget and our taxpayers and utility ratepayers.

We agree that EPA should take steps to cleanup sites contaminated by Perfluorooctanoic Acid (PFOA), Perfluorooctane Sulfonate (PFOS), and other PFAS. However, local governments did not manufacture and distribute these hazardous substances. Rather, we receive these substances passively, whether via water polluted by manufactured products or waste discharges, garbage received by our municipal solid waste landfill, or firefighting materials we used in accordance with federal standards and other codes.

EPA has stated that it intends to employ “enforcement discretion,” and not pursue CERCLA cleanup liability against drinking water and wastewater systems related to PFAS. However, this does not protect local governments against CERCLA claims filed by polluters themselves, which can use the courts to attempt to offload some of their cleanup responsibility onto water systems, airports, or other passive receivers that had no role in introducing PFAS into the environment.

Subjecting local government taxpayers, airport ratepayers, and utility ratepayers to CERCLA litigation filed by polluters is in direct contrast with the “polluter pays” principle at the core of CERCLA and will only result in increased taxes, airport rates, and utility rates. Congress must protect local governments and our taxpayers and ratepayers, including water systems, municipal solid waste facilities, and airports against these frivolous claims. Whatever EPA’s intentions or plans, the history of CERCLA litigation clearly illustrates that polluters are not shy about abusing litigation to reduce their own cleanup costs, and it would be naïve to believe that the manufacturers and users of PFOA and PFOS will not pursue legal action against water utilities. The history of CERCLA litigation also clearly illustrates that even the “winners” incur major legal costs, and we believe that the cost of that litigation alone could impose severe affordability challenges to our most vulnerable ratepayers.

The City of Austin urges you to protect our taxpayers, our utility ratepayers, our airports, and our water and wastewater system by providing clear and targeted liability protections for passive receivers like water systems that appropriately handle and dispose of PFAS. Senator Cynthia Lummis has introduced liability protection bills that would address the City’s concerns and the City urges the committee to act on these important bills. Those bills are:

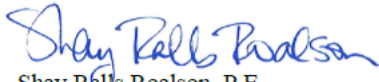
- S 1429 (municipal solid waste landfills),
- S 1430 (water, wastewater, and stormwater utilities),

The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.

- S 1432 (fire suppression materials), and
- S 1433 (airport firefighting foam).

Thank you for your work on this important issue.

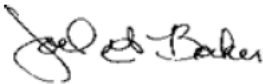
Respectfully,



Shay Ralls Roalson, P.E.
Director, Austin Water
City of Austin



Richard McHale
Director, Austin Resource Recovery
City of Austin



Joel G. Baker
Fire Chief, Austin Fire Department
City of Austin



Ghizlane Badawi
Interim Chief Executive Officer, Department of Aviation
City of Austin

cc: Honorable Members of the Austin Congressional Delegation