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March 14, 2024

The Honorable Tom Carper  
Chairman  
Committee on Environment  
and Public Works  
United States Senate  
Washington, DC 20510

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

Re: S1430 Water Systems PFAS Liability Protection Act

Dear Chairman Carper and Ranking Member Capito:

The Midwest Biosolids Association (MBA) membership includes mostly public wastewater utilities, covering nine Midwestern states and neighboring Canadian Provinces. The MBA is committed to promoting environmentally sound management of biosolids, especially as a resource generated through the invaluable service the wastewater treatment industry provides to our communities. As an association representing public wastewater utilities striving to provide a safe, affordable public service to our ratepayers, we are concerned that EPA's proposed designation of PFOA and PFOS as hazardous substances under CERCLA which is now in final review at the Office of Management and Budget. This proposed designation will cause water systems and our ratepayers, rather than polluters, to incur environmental cleanup liability that should be faced by the entities responsible for that pollution. We therefore ask you to support a statutory protection for water systems from liability under CERCLA for PFAS to help ensure polluters, not the public, pay for PFAS cleanup.

CERCLA was built on a "polluter pays" principle, envisioned as holding companies that produced and profited from hazardous substances that were discharged into the environment responsible for their cleanup. This polluter pays principle is laudable – but unfortunately, the proposed designation of PFOA and PFOS means that drinking water and wastewater systems that passively receive these substances into their systems could face CERCLA cleanup liability simply because an upstream polluter deposited the chemicals in their water supplies.

A CERCLA designation for PFAS exposes water systems such as wastewater utilities like ours to potential litigation from the actual polluters. PFAS users and producers can abuse litigation to reduce their own clean-up costs and increase costs on water utilities – costs which we are then forced to pass along to ratepayers. Even when water systems are able to successfully defend ourselves in court against CERCLA claims, the cost of that litigation alone could contribute to the ongoing water affordability challenge.

CERCLA liability will be an additional burden on top of the significant treatment costs utilities will incur to meet Safe Drinking Water Act and Clean Water Act PFAS regulations. CERCLA would unjustly make ratepayers pay yet again for the environmental remedial burden that should be borne by the companies that produced and profited from PFAS for decades.

***"The Voice of the Biosolids Management and Regulatory Community in the Midwest"***

With this proposed rule under final review, it is critical that Congress move quickly to ensure that water systems and their ratepayers are not unfairly punished for PFAS contamination for which they bear zero responsibility or blame. I therefore urge you to support S. 1430, the Water Systems PFAS Liability Protection Act, introduced by Sen. Cynthia Lummis. This bill would preserve the “polluter pays” principle under CERCLA and ensure that water utilities can continue to focus their efforts on maintaining water quality.

Again, we ask that you support S. 1430 and protect water system ratepayers by providing statutory liability protections related to PFAS under CERCLA.

Sincerely,

A handwritten signature in black ink that reads "Albert Cox". The signature is written in a cursive, slightly slanted style.

Albert Cox, Ph.D, President  
AC:rd