



Monterey One Water

Providing Cooperative Water Solutions

ADMINISTRATIVE OFFICE: 5 Harris Court, Bldg D, Monterey, CA 93940-5756

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March 11, 2024

The Honorable Tom Carper
Chairman
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

As the Committee on Environment and Public Works considers the critical need to address passive receiver liability for PFAS cleanup under CERCLA, Monterey One Water (M1W) believes the Committee must amend CERCLA to ensure clean water agencies are provided protections from frivolous and unwarranted litigation stemming from the imminent Environmental Protection Agency (EPA) proposed rule to designate PFAS as hazardous substance under CERCLA. Monterey One Water requests that the Committee include protections in the Committee's bipartisan PFAS legislation for passive receivers against CERCLA liability.

M1W support EPA's efforts to eliminate and clean-up Perfluorooctanoic Acid (PFOA), Perfluorooctane Sulfonate (PFOS) and PFAS contaminated sites. However, such efforts must recognize that utilities do not use, manufacture, or sell these compounds. Rather, chemical and product manufacturers create and sell these compounds that result in discharges to clean water systems. As part of our role in protecting public health and the environment through treatment of wastewater influent, PFAS and other constituents are concentrated, and then appropriately disposed of via wastewater effluent and/or biosolids. This process is consistent with all applicable laws, including the Clean Water Act.

EPA has signaled that it intends to employ "enforcement discretion" and not pursue CERCLA clean-up liability against drinking water and wastewater systems related to PFAS. However, EPA's intent does not protect water and wastewater systems against third-party CERCLA claims, nor does it prevent polluters from entangling local agencies in CERCLA litigation or actions by employing the "joint and several" CERCLA liability regime to attempt to offload their clean-up responsibility onto our ratepayers. Without guardrails to protect water and wastewater agencies (and by extension, the public ratepayers we serve), the CERCLA hazardous substances designation would divert limited public resources to defend against such litigation.

Moreover, subjecting ratepayers to polluter and third-party initiated CERCLA litigation directly conflicts with the "polluter pays" principle at the core of CERCLA. Ultimately, without a passive receivers exemption, the CERCLA designation will result in increased water and wastewater rates nationwide, and financially burden local governments that were not responsible for the manufacture and sale of these chemicals. Congress must develop and pass liability protections to protect water and wastewater systems and their ratepayers against these claims.



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Monterey One Waters urges the Committee to provide clear and targeted liability protections for passive receivers that appropriately handle and dispose of PFAS and protect water and wastewater system ratepayers nationwide. Thank you for your attention to this important issue.

Sincerely,

Rachel Gaudoin
Federal Advocacy Lead