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450 Ryder Street  
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March 11, 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 considers the critical need to address passive receiver liability for PFAS cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Vallejo Flood and Wastewater District believes the committee must amend CERCLA to ensure clean water agencies like ours are provided protections from frivolous and unwarranted litigation stemming from the imminent USEPA rule to designate PFAS as hazardous substance under CERCLA.

Our request is consistent with past congressional actions that delivered such protections to preclude the use of CERCLA to cast a net of liability over innocent, passive receivers. Clean water utilities receive PFAS as part of our role in protecting public health and the environment through treatment of wastewater influent consistent with all applicable laws, including the Clean Water Act. We 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.

USEPA has signaled that it intends to employ "enforcement discretion" and not pursue CERCLA cleanup liability against drinking water and wastewater systems related to PFAS. We support and encourage USEPA to maintain this position. However, a lack of USEPA enforcement does not protect water and wastewater systems against CERCLA claims filed by third parties, 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 cleanup 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. As a local agency serving a disadvantaged community with only low to moderate incomes, it should not be our ratepayers who are burdened with the millions of dollars in treatment expenses, both capital costs and ongoing

**Vallejo Flood and Wastewater District**  
**Passive Receiver Liability for PFAS Cleanup under CERCLA**  
**March 11, 2024**  
**Page 2 of 2**

operating costs, necessary to address a problem that manufacturers have created and continue to benefit from financially.

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, CERCLA designation will result in increased water and wastewater rates. Congress must develop and pass liability protections to protect water systems and their ratepayers against these claims.

On behalf of the Vallejo Flood and Wastewater District, we urge you to protect water and wastewater system ratepayers nationwide by providing clear and targeted liability protections for passive receivers that appropriately handle and dispose of PFAS as part of their regular processes regulated by the USEPA.

Thank you for your attention to this important issue and we look forward to committee action to meet these concerns.

If you have any questions, please contact me at 707-652-7801 or [MTomko@vallejowastewater.org](mailto:MTomko@vallejowastewater.org).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Tomko', with a stylized, cursive script.

Mark Tomko  
General Manager

Cc: Senator Laphonsa Butler  
Senator Alex Padilla