

March 14, 2024

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

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

Re: Water Utilities and PFAS Liability

Dear Senators Bennet and Hickenlooper:

I am writing on behalf of Denver Water, the largest public water utility in Colorado, to urge you to support the Water Systems PFAS Liability Protection Act (S.1430) to ensure that utility customers are not held responsible for environmental cleanup costs related to PFAS. Denver Water provides drinking water to 1.5 million people in the Denver metro area and recycled water to various customers along Colorado's Front Range.

In 2022, EPA formally announced plans to designate two common PFAS chemicals—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers—as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These rules are now in final review at OMB.

While EPA has stated that this action will help ensure manufacturers and industrial users of these chemicals are held responsible for the cost of remediating contaminated sites, liability under CERCLA is much broader. Without congressional action, water utilities and members of the public will incur significant costs to clean up these chemicals—even though they are not responsible for introducing them into the environment.

In response, Senator Cynthia Lummis of Wyoming introduced the Water Systems PFAS Liability Protection Act (S. 1430), which would exclude water utilities from the costs associated with cleaning up PFAS substances under CERCLA. We support this proposal.

The manufacturers and industrial users of PFAS, not water utilities, are responsible for depositing PFAS chemicals into the environment. However, under EPA's proposed rule, after public water systems capture PFAS during the treatment process, the disposal of

The Honorable Tom Carper
The Honorable Shelley Moore Capito
March 14, 2024

this media at a hazardous waste facility could raise liability under CERCLA as a “potentially responsible party,” should that disposal site ever become subject to a Superfund cleanup. Further still, water utilities could be exposed to third party liability by merely transporting or discharging water contaminated with PFAS during treatment operations. This would be unfair and an unnecessary burden on water utilities and the citizens they serve.

With EPA’s proposed rule under final review this spring, it is critical that Congress quickly act to ensure water systems and the public are not unfairly punished for PFAS contamination they did not cause. We urge you to support the Water Systems PFAS Liability Protection Act (S. 1430) to ensure that polluters—not water utilities—are responsible for environmental cleanup costs related to PFAS.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan Salazar", followed by a horizontal line extending to the right.

Alan Salazar
CEO/Manager, Denver Water