

March 8, 2024

Chairman Tom Carper and Member Shelly Moore Capito
Senate Committee on Environment and Public Works

Dear Chairman Carper and Member Capito,

We are writing to request your support for Senate Bill 1430 - Water Systems PFAS Liability Protection Act - that provides liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for public wastewater and stormwater utilities. These proposed liability protections are vital to ensure these utilities can continue to provide essential public health and environmental protection services to communities across the U.S.

Senate Bill 1430 addresses potential liability with regard to PFAS chemicals. Public wastewater and stormwater utilities are not the source of these chemicals. They passively receive flows that contain PFAS chemicals, which come from the many products used in households and businesses they serve. These utilities have little control over the inputs and sources of these chemicals, yet with the recent PFAS listing under CERCLA, they would be vulnerable to third party lawsuits for PFAS chemicals. Limited financial resources of public utilities would be diverted away from critical utility investments, such as infrastructure maintenance, to respond to and/or satisfy such lawsuits, compromising the ability of the utilities to continue to provide essential public services.


The LOTT Clean Water Alliance is an example of one such utility. We serve approximately 120,000 people and process an average of 13 million gallons of wastewater a day from three urban areas in western Washington State. LOTT has an excellent track record of meeting strict discharge permit requirements – the strictest in the Puget Sound region. Our treatment facilities were designed to treat wastewater and to remove pathogens and nutrients. Our processes are not designed or capable of removing PFAS chemicals, which are complex and many, with new and different chemicals continually entering the market.

We understand and recognize public concern about PFAS. Though PFAS chemicals are not regulated under our discharge permit, LOTT has taken a cutting-edge approach to PFAS chemicals, testing for them in our influent, effluent, reclaimed water and biosolids, even though regulations have not been codified. We have an active pretreatment program to monitor and control industrial discharges, and will start sampling our industries for PFAS in early 2024. Unfortunately, PFAS are used in thousands of everyday products, from clothing to cookware, carpets, cosmetics, and furniture. For a utility like ours with relatively little industry, there is little we can do to staunch the flow of PFAS into the wastewater system.

To effectively address this issue, legislative actions need to restrict the use of these chemicals in consumer products and industrial processes, and to focus liability on chemical and product manufacturers that profit from these chemicals. Public utilities and their ratepayers should not bear the burden of liability for PFAS chemicals that pass through wastewater and stormwater systems.

Your support for CERCLA liability protection for public utilities is essential to uphold CERCLA's fundamental "polluter pays" principle and ensure that manufacturers and polluters do not transfer their responsibility onto utility ratepayers – the households and small businesses already struggling to manage rising costs. We appreciate your dedication to environmental and public health issues and believe your leadership to advance PFAS CERCLA liability protections for public drinking water, wastewater, and stormwater utilities is of paramount importance.

Respectfully,

A handwritten signature in black ink, appearing to read 'Matt Kennelly', with a long horizontal flourish extending to the right.

Matthew J. Kennelly, P.E.
LOTT Executive Director

cc: Senator Laphonsa Butler
Senator Alex Padilla