AMERICAN WATER

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

Dear Chairman Carper and Ranking Member Capito:

As the largest regulated water and wastewater utility company in the United States striving to provide a safe, affordable public service to the 14 million people we serve in 14 states and 18 military installations, we are concerned about the U.S. Environmental Protection Agency's (EPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under CERCLA. This proposed designation, which is now in final review at the U.S. Office of Management and Budget (OMB),will cause water and wastewater systems and our customers – rather than polluters – to face the environmental cleanup liability that should be incurred by entities responsible for that pollution. **We, therefore, ask you to support a statutory protection for water and wastewater systems from liability under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for per- and polyfluoroalkyl substances (PFAS) to help ensure polluters, not the public, pay for PFAS cleanup.**

From the start, 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. Unfortunately, the proposed designation of PFOA and PFOS – nondegradable "forever chemicals," which are now ubiquitous in the environment – 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 drinking water and 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 and wastewater utilities – costs that are then passed along to customers. Even when water and wastewater systems can successfully defend themselves in court against CERCLA claims, the cost of that litigation, alone, could contribute to ongoing affordability challenges.

One Water Street
Camden, NJ 08102

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

With this proposed rule under final review this spring, it is critical that Congress move quickly to ensure that water and wastewater systems and their customers are not unfairly punished for PFAS contamination for which they bear zero responsibility or blame. **We, therefore, urge you to support the inclusion of S. 1430, the Water Systems PFAS Liability Protection Act, in any PFAS legislative package the Committee considers**. 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.

Thank you,

M. Susan Hardwick
M. Susan Hardwick
President and Chief Executive Officer

Christine Keck
VP National Government and Regulatory Affairs