



FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue
Fairfax, Virginia 22031-2218
www.fairfaxwater.org

PHILIP W. ALLIN, CHAIRMAN
FRANK R. BEGOVICH, VICE-CHAIRMAN
RICHARD DOTSON, SECRETARY
J. ALAN ROBERSON, TREASURER
BURTON J. RUBIN
HARRY F. DAY
ANTHONY H. GRIFFIN
JOSEPH CAMMARATA
NANCY COLLETON
CHERYL GINYARD-JONES

JAMIE BAIN HEDGES
GENERAL MANAGER
TELEPHONE (703) 289-6011

JOHN KINGSBURY
DEPUTY GENERAL MANAGER
TELEPHONE (703) 289-6012

March 7, 2024

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

Dear Senator Capito:

Fairfax Water is a not-for-profit utility that proudly provides high-quality drinking water to over two million residents and thousands of businesses in Northern Virginia. Whether directly from us or indirectly through one of our wholesale customer partners, one in four Virginians receives drinking water produced by Fairfax Water.

We are concerned that EPA's proposed designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), currently under final review at OMB, will cause water systems and our ratepayers to incur environmental cleanup liability that should be the responsibility of the polluting entities. **As such, Fairfax Water asks you to support statutory protection for water systems from liability under CERCLA for PFAS to help ensure polluters, not the public, pay for PFAS cleanup.**

CERCLA was built on a "polluter pays" principle, intended to hold the companies producing and profiting from the hazardous substances they discharge into the environment responsible for their cleanup. This principle is laudable but unfortunately the proposed designation of PFOA and PFOS, nondegradable "forever chemicals" now ubiquitous in the environment, means that drinking water systems that passively receive these substances could face CERCLA cleanup liability because of upstream polluters depositing them into source waters.

In its recent PFAS National Primary Drinking Water Regulation Rulemaking, the EPA identified treatment alternatives to remove PFAS from drinking water. However, these treatment alternatives do not destroy PFAS or remove them from the environment, they simply move PFAS from one media (source water) to another (filter media or membrane filtrate). That media must then be disposed of in a landfill or other facility – one that may ultimately become subject to a CERCLA cleanup.

Without the protections provided by S. 1430, the Water Systems PFAS Liability Protection Act, introduced by Sen. Cynthia Lummis, drinking water customers, including the ratepayers of Fairfax Water and the neighboring Northern Virginia utilities we supply, are at risk of permanently incurring the liability of significant clean-up costs for sites that are tainted with PFAS chemicals – simply because we removed PFAS from source water to produce safe drinking water for the public. In a complete divergence from the "polluter pays" principle, our ratepayers will be burdened with the costs of removing PFAS from their drinking water to meet EPA's proposed drinking water regulation.

S.1430 – Water Systems PFAS Liability Protection Act

March 7, 2024

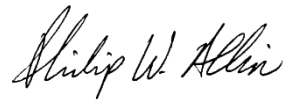
Page 2 of 2

A CERCLA designation for Per- and Polyfluoroalkyl Substances (PFAS) also exposes drinking water utilities like ours to potential litigation from polluters. PFAS users and producers can abuse litigation to reduce their clean-up costs and increase costs on water utilities – costs that we are forced to pass along to ratepayers. Even when water systems prevail in court against CERCLA claims, the cost of that litigation contributes to ongoing water affordability challenges.

On behalf of our two million customers, we urge you to support S. 1430, the Water Systems PFAS Liability Protection Act. We believe that passage of this bill is essential to preserving the “polluter pays” principle under CERCLA and to ensuring that water utilities can continue focusing on maintaining water quality.

Thank you for your attention to this critical issue. Please contact Fairfax Water’s General Manager, Jamie Bain Hedges, at 703-289-6011 or jhedges@fairfaxwater.org if you have any questions or if we can provide any additional information. We look forward to working with you to safeguard the provision of affordable, high-quality drinking water to the Northern Virginia community.

Sincerely,

A handwritten signature in black ink that reads "Philip W. Allin". The signature is written in a cursive style with a large initial 'P'.

Philip W. Allin
Chairman

cc: Jamie Bain Hedges, General Manager