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March 8, 2024

The Honorable Thomas Carper
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

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,

On behalf of over 300 water and wastewater utility members of the Vermont Rural Water Association (VRWA), we write to request your support for liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for water and wastewater systems that follow all laws and regulations in the treatment and disposal of per-and polyfluoroalkyl substances (PFAS). Our membership of small and rural communities serve people across the state and we are seriously concerned about the implications of potential CERCLA liability on our utilities and ratepayers.

In August 2022, the Environmental Protection Agency (EPA) proposed to designate two PFAS – PFOA and PFOS – as hazardous substances under CERCLA. EPA is also in the process of soliciting public feedback to designate additional PFAS chemicals as hazardous substances under CERCLA. Though CERCLA is intended to target manufacturers and polluters who knowingly released these chemicals into the environment, the law does not explicitly protect passive receivers like water and wastewater systems who merely convey PFAS through no fault of our own. Civil enforcement and CERCLA liability are inappropriate federal solutions for addressing PFAS contamination in our communities.

Since 2020, Vermont systems have been testing over 600 drinking water sources in Vermont for five PFAS. Seventeen systems have found PFAS over the state limit, including several schools and one very small, rural municipal system. While investigations are still pending in many cases, results are showing that for the schools, they will be considered their own potentially responsible party. They are not the source of PFAS contamination, but have been blamed for aquifers contaminated by firefighting training exercises and build-up in septic tanks and leachfields from cleaning products. The school janitor who has waxed the floors for decades is now being blamed instead of the chemical manufacturers. This is unacceptable.

The Vermont Rural Water Association is a nonprofit providing training and support to drinking water and wastewater systems to promote clean water and healthy communities.

In addition, these same small water and wastewater systems are struggling to find a way to treat and dispose of the PFAS. A recent Vermont study found that PFAS in residential wastewater inputs exceeded that of industrial and commercial discharges for two representative communities. Disposal options are limited with incineration not reaching high enough temperatures to destroy PFAS and the only landfill in Vermont having very limited capacity for disposal. With no good options, costs are likely to continue to skyrocket.

For these reasons, on behalf of Vermont's small drinking water and wastewater systems, we urge you to carefully consider the economic and social impacts of blaming schools and other small municipal systems. The chemical manufacturers who created PFAS should be held liable for its proliferation in the environment, included in our water and soil.

Without an explicit exemption from liability under CERCLA, water and wastewater systems could incur catastrophic CERCLA legal defense fees and liability costs for the cleanup of PFAS contamination, despite having never manufactured, used, or profited from PFAS. The testing, treatment and disposal costs related to PFAS contamination will place a significant financial burden on us. This dynamic is especially problematic in our economically disadvantaged communities who serve populations with limited resources. Manufacturers and polluters should not have the opportunity to shift their own financial burden onto the ratepayers (your constituents) that we serve.

As the Senate Committee on Environment and Public Works considers legislation to address PFAS, I urge you to uphold CERCLA's "polluter pays" principle and protect water systems and the ratepayers we serve by supporting a narrowly tailored legislative exemption for water and wastewater utilities from PFAS-related liability.

Thank you for your time and attention to this very important request.

Sincerely,

A handwritten signature in black ink, appearing to read "Liz Royer".

Liz Royer
Executive Director
Vermont Rural Water Association