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March 18, 2024

The Honorable Tom Carper
Chair
Senate Environment and Public Works
Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
Senate Environment and Public Works
Committee
465 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Inland Empire Utilities Agency Requests Support for Passive Receiver PFAS Liability Protection

Dear Chair Carper and Ranking Member Capito,

The Inland Empire Utilities Agency (IEUA) respectfully requests your support for PFAS liability protections for water, wastewater, and composting agencies under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that follow all applicable law and regulations for PFAS. IEUA serves approximately 935,000 residents in western San Bernardino County, California and is proud of our reputation of promoting greater water supply reliability through significant contributions to a diversified regional water supply portfolio, including water from stormwater capture, recycling and reuse, and imported supplies. We continue to be fully committed to ensuring long-term success for the region by leading the way in water resource management and environmental sustainability and providing essential wastewater treatment services in a regionally planned and cost-effective manner while safeguarding public health and promoting economic development. We are proud that we recycle 100% of the wastewater we treat, including developing a high-quality compost material using biosolids at our Inland Empire Regional Composting Facility, a partnership with the Los Angeles County Sanitation Districts. Potential liability from a proposed CERCLA hazardous substance designation for PFOA and PFOS, and the associated costs, is a serious concern for our agency.

In September 2022, the Environmental Protection Agency (EPA) published a proposed rule to designate PFOA and PFOS as CERCLA hazardous substances. This proposed rule is now in the final stages of review at the Office of Management and Budget and is expected to be finalized before the end of this month. Congress intended CERCLA to be a statute that would allow for the remediation of contaminated sites and ensure the polluters are financially responsible for the cleanup through the “polluter pays” model. IEUA strongly supports ensuring the CERCLA “polluter pays” principle remains intact. However, under current federal efforts, IEUA and our ratepayers will be facing a “community pays” outcome that unfairly shifts the clean-up and liability costs onto water and wastewater agencies and the public they serve.

Water Smart - Thinking in Terms of Tomorrow

Marco Tule
President

Jasmin A. Hall
Vice President

Steven J. Elie
Secretary/Treasurer

Michael Camacho
Director

Paul Hofer
Director

Shivaji Deshmukh
General Manager

Public water, wastewater, and composting agencies are passive receivers of PFAS from a vast array of domestic, commercial, and industrial sources. Water and wastewater systems, and the public, do not have control over PFAS in the environment given the overwhelming presence of this family of chemicals in the chain of commerce and in our homes.

Without an explicit exemption from liability under CERCLA, water and wastewater systems could be held financially liable for the cleanup of Superfund sites contaminated with PFAS for merely fulfilling their responsibilities under the Safe Drinking Water Act and Clean Water Act to treat and dispose of these chemicals to protect public health. While we appreciate that EPA has shared that it does not intend to pursue water systems for cleanup costs, the CERCLA statute leaves those same systems vulnerable to litigation by the polluters and private citizen through potentially responsible party suits. Cleanup costs alone are daunting for many water systems; adding the financial implications of litigation would be overly burdensome for the ratepaying public.

We ask that the Senate consider and pass legislation that would protect water, wastewater, and composting systems and uphold CERCLA's polluter pays principle. This will allow these public agencies to focus on and allocate resources to accomplish their most important goal: providing safe, reliable, and affordable water and wastewater services to ratepayers. We urge you to uphold CERCLA's "polluter pays" principle and protect water systems and the ratepayers they serve by supporting a tailored legislative exemption from PFAS liability. Should you have any questions about our concerns and request, please contact Mr. Pietro Cambiaso at pcambiaso@ieua.org or at (909) 993-1639.

Thank you for your attention on this important issue.

Sincerely,

INLAND EMPIRE UTILITIES AGENCY



Marco Tule
Board President



Steven J. Elie
Board Director
Chair, Community & Legislative Affairs Committee