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**March 7, 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:

On behalf of the Cape Fear Public Utility Authority (CFPUA) and our 200,000 water and sewer customers, I respectfully seek your support for critical statutory protections for our utility.

As you know, the U.S. Environmental Protection Agency (EPA) has aggressively pursued long overdue regulation of certain per- and polyfluoroalkyl substances (PFAS). Two of these compounds, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), are scheduled for designation as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This designation is now in final review at the U.S. Office of Management and Budget (OMB).

We believe a real and undisputed consequence of this designation will force many water systems and ratepayers, including our own, to incur massive and unaffordable environmental cleanup liability; all the while shielding polluters from some of the costs that should be faced by the chemical companies alone, the polluters who are actually responsible for this pollution.

CFPUA serves the City of Wilmington, New Hanover County region of southeastern North Carolina. We have been famously (some might say infamously) subject to 40 years of pollution from upstream chemical manufacturing facilities owned by DuPont (later Chemours). PFOA was produced at the Fayetteville Works Site, which is ground zero for our regional PFAS pollution sources. It would be a tragedy if CERCLA designation allowed Chemours/DuPont to pass on cleanup liability to their downstream victims.

**We therefore ask you to support a statutory protection for water systems from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for per- and polyfluoroalkyl substances (PFAS) to help ensure polluters like Chemours/DuPont, 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 – but 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.

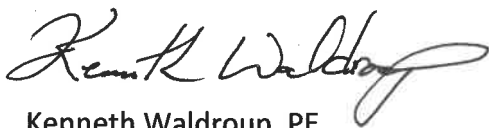
A CERCLA designation for PFAS exposes drinking water and wastewater utilities like ours to potential litigation from the actual polluters. PFAS users and producers can abuse litigation to reduce their own clean-up costs and increase costs on water utilities – costs which we are then forced to pass along to ratepayers. Even when water systems can successfully defend themselves in court against CERCLA claims, the cost of that litigation alone could contribute to the ongoing water affordability challenge.

CERCLA liability will be an additional burden on top of the significant treatment costs utilities will incur to meet Safe Drinking Water Act and Clean Water Act PFAS regulations. CERCLA would unjustly make ratepayers pay yet again, now 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 systems and their ratepayers are not unfairly punished for PFAS contamination for which they bear zero responsibility or blame. **I 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.

Sincerely submitted,



Kenneth Waldroup, PE  
Executive Director- CFPUA

CC: Tom Tillis, U.S. Senator for North Carolina  
Ted Budd, U.S. Senator for North Carolina  
Mayor Bill Saffo, City of Wilmington  
CFPUA Board members