

March 15, 2024

The Honorable Chuck Schumer  
Senate Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Tom Carper  
Senate Environment and Public Works Committee Chair  
United States Senate  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Senate Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Shelley Moore Capito  
Senate Environment and Public Works Committee Ranking Member  
United States Senate  
Washington, D.C. 20510

**Subject: City of San Diego Public Utilities Department Requests Support for PFAS Passive Receivers Liability Protection**

Dear Majority Leader Schumer, Minority Leader McConnell, Chair Carper, and Ranking Member Capito,

The City of San Diego Public Utilities Department respectfully requests the Senate Environment and Public Works Committee's support for legislation protecting water and wastewater agencies from liability under the PFAS hazardous constituents designation in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). While the City strongly supports EPA's efforts to mitigate PFAS in the environment and protect public health, we have concerns about the liability and associated costs that this decision may impose on the water and wastewater sector.

The City of San Diego Public Utilities Department provides water services for 1.4 million City customers and wastewater services for 2.2 million regional customers. The City owns and operates three water treatment plants, three wastewater treatment plants, and one biosolids facility. The Public Utilities Department's mission is to deliver high quality drinking water and recover wastewater for treatment and reuse.

Water and wastewater systems are passive receivers of PFAS with no control over PFAS entering the environment. Once produced by manufacturers for use in the chain of commerce and our homes, these chemicals ultimately end up in our water and wastewater.

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Without an exemption for water and wastewater agencies the CERCLA PFAS hazardous substance designation could result in a “community pays” model versus CERCLA’s intended “polluter pays” model. CERCLA’s joint, several and strict liability regime exposes passive receivers to liability from polluters seeking to reduce their financial responsibility for creating public health threats. Water and wastewater systems could be held financially liable for the cleanup of sites contaminated with PFAS or brought into third-party litigation despite never manufacturing, using, or benefiting from PFAS.

The City appreciates EPA’s intentions to issue enforcement discretion to protect water and wastewater agencies to the extent possible, however this does not alleviate the risks that agencies face. Without legislative protection, water and wastewater ratepayer funds could be diverted from important efforts like PFAS treatment to defending against third-party litigation or cleanup costs brought on by these changes to CERCLA.

We urge the committee to provide targeted liability protections for passive receivers to protect water and wastewater agencies and their ratepayers. Thank you for considering our request.

Sincerely,



Juan Guerreiro  
Director, Public Utilities Department  
City of San Diego

cc: Senator Alex Padilla  
Senator Laphonza Butler  
Senator Cynthia Lummis  
Lisa Celaya, Executive Assistant Director, Public Utilities Department  
Adrian Granda, Director, Government Affairs  
Walter Bishop, Deputy Director, Government Affairs  
Randy Wilde, Senior Policy Advisor, Mayor’s Office  
Ally Berenter, Deputy Director, Public Utilities Department  
Katie Keach, Program Coordinator, Public Utilities Department  
Nicole DeSantis, Senior Water Resources Specialist, Public Utilities Department