

March 18, 2024

The Honorable Tom Carper Chairman U.S. Senate Committee on Environment and Public Works 410 Dirksen Senate Office Building Washington, D.C. 20510 The Honorable Shelley Moore Capito Ranking Member U.S. Senate Committee on Environment and Public Works 410 Dirksen Senate Office Building Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

The Water and Wastewater Equipment Manufacturers of America (WWEMA) thanks the Senate Committee on Environment and Public Works (EPW) for its efforts in seeking bipartisan legislation to improve the mitigation and remediation of per- and polyfluoroalkyl substance (PFAS) contamination.

The Water and Wastewater Equipment Manufacturers Association (WWEMA) is a Washington DC-based non-profit trade association representing water and wastewater technology and service providers since 1908. We advocate, inform, and connect our members with key policy and decision-makers and help our members increase their competitiveness and profitability in the U.S. and abroad. Our members supply the most sophisticated leading-edge technologies and services, offering solutions to every water-related environmental problem and need facing today's society. WWEMA is made up of many of the most prominent and influential companies in the industry who are working together to shape the future of water and wastewater technology in the U.S. and around the world.

WWEMA recognizes the importance of addressing threats from chemicals to public health and the environment and supports efforts to address PFAS at the federal level. Our members fulfill the technology needs for the delivery of public health services consistent with the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Clean Air Act, among other federal and state mandates. We are concerned with efforts which may inadvertently impose Comprehensive Emergency Response Compensation and Liability Act (CERCLA) clean-up and natural resources damages liability on our members. While there is a priority on cleaning up sites contaminated with PFAS, hazardous substance designation under CERCLA would bring with it a host of unintended consequences for public agencies and their technology manufacturers and service providers who are charged with providing drinking water and clean water services. As you may know, CERCLA designation or liability expansion would immediately trigger CERCLA's joint, several and strict liability regime. That final action, absent Congressional action, would potentially impose untold costs on the public in the form of litigation expenses, where a potentially responsible party (PRP)¹ might attempt to capture any party (including public water and wastewater agencies, technology manufacturers, and service providers) that have "touched" water, wastewater, and lands (via biosolids application) impacted by PFAS. PRPs would most likely pursue legal actions against public agencies and their technology manufacturers and service providers in order to spread cleanup costs to other parties beyond themselves, not to mention other private third-party litigation or enforcement actions created by the rule.

The water industry has the capabilities and interest to solve the PFAS contamination problem, but the threat of liability disincentivizes and stifles technology manufacturers from actively deploying solutions as many of our members are small businesses and could not withstand litigation costs even if they are ultimately found not liable. At a time when Congress and the EPA are looking to encourage innovation to clean up and dispose of PFAS, exposure to legal liability by solution providers could negate any incentives for new treatment or disposal alternatives.

We ask that any legislation that moves through the EPW Committee include an exclusion and clarifying language to ensure that the very technology manufacturers that are helping to provide treatment and remediation solutions necessary to address the PFAS issue avoid the pitfalls of undue legal exposure. Accordingly, we urge the Committee to provide statutory relief from CERCLA liability for passive receivers such as water and wastewater equipment manufacturers in order to truly find long-term solutions for PFAS.

Thank you for the opportunity for WWEMA and its members to provide input to the Committee. If you have any questions, please feel free to contact me at <u>cternieden@wwema.org</u> or at (703) 444-1777.

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