

An Equal Opportunity Employer

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"Regional Water & Wastewater Service"

March 5, 2024

Sen. Tom Carper, Chairman
Sen. Shelley Moore Capito, Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Senators Carper and Capito:

We understand that the US Senate Environment and Public Works Committee is planning a March 20 hearing on passive receiver liability for PFAS cleanups under CERCLA, and I wanted to write to let you know how important this issue is for water and wastewater utilities.

While we agree that EPA should take steps to eliminate and clean up sites contaminated by perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) and other PFAS, water utilities do not use, manufacture, or sell these compounds. Rather, we receive them from waters polluted by manufactured products, and in the regular course of purifying water, we concentrate these and other impurities, and then dispose of the solids or sludge from water and wastewater treatment processes.

EPA has stated that they intend to employ enforcement discretion, and not seek CERCLA cleanup payments from water and wastewater utilities. This overlooks an important liability, where another polluter that is being pursued by EPA can utilize court procedures to threaten suit against other potentially responsible parties. If a water or wastewater utility were to have disposed sludge at a landfill that is subsequently targeted for CERCLA cleanup, this is precisely how a water or wastewater utility could be forced to pay, or face large legal bills to defend itself.

Asking a water or wastewater utility to be subject to potentially responsible party litigation flies in the face of the 'polluter pays' principle central to CERCLA, and will only result in increased water and wastewater rates nationwide.

MAWC is a water and wastewater utility with 124,000 customer connections in five counties in Southwestern Pennsylvania. On behalf of our customers, we hope that you act to protect water and wastewater ratepayers nationwide by creating an exemption for utilities such as what is contained in **S. 1430, the Water Systems PFAS Liability Protection Act**, introduced by Sen. Cynthia Lummis.

If you have any questions, please don't hesitate to write or call.

Sincerely,

Brian Hohman
Business Manager

Attachments: letters to Senators Casey and Fetterman

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February 14, 2024

The Honorable Bob Casey Jr.
United States Senate

Dear Senator Casey:

As a water utility striving to provide a safe, affordable public service to our ratepayers, we are concerned that the U.S. Environmental Protection Agency's (EPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under CERCLA – which is now in final review at the U.S. Office of Management and Budget (OMB) – will cause water systems and our ratepayers – rather than polluters – to incur environmental cleanup liability that should be faced by entities responsible for that pollution. **We therefore ask you to support a statutory protection for water systems from liability under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for per- and polyfluoroalkyl substances (PFAS) to help ensure polluters, 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 S. 1430, the Water Systems PFAS Liability Protection Act**, introduced by Sen. Cynthia Lummis. 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,

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February 14, 2024

The Honorable John Fetterman
United States Senate

Dear Senator Fetterman:

As a water utility striving to provide a safe, affordable public service to our ratepayers, we are concerned that the U.S. Environmental Protection Agency's (EPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under CERCLA – which is now in final review at the U.S. Office of Management and Budget (OMB) – will cause water systems and our ratepayers – rather than polluters – to incur environmental cleanup liability that should be faced by entities responsible for that pollution. **We therefore ask you to support a statutory protection for water systems from liability under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for per- and polyfluoroalkyl substances (PFAS) to help ensure polluters, not the public, pay for PFAS cleanup.**

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