



March 6, 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:

Louisville Water Company provides safe high-quality drinking water to nearly one-million customers in Louisville Metro and the surrounding counties. Louisville Water plays an important role in the health and safety of the community, and we are committed to maintaining the highest quality drinking water.

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. On behalf of Louisville Water Company, **I am requesting 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 its origins, CERCLA was built on a “polluter pays” principle, envisioned as companies that produced and profited from hazardous substances that were discharged into the environment would be 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 discharged or otherwise disposed of the PFAS chemicals into the water supplies used by water utilities. It is important to note that water utilities do not produce or use PFAS compounds in their treatment processes.

A CERCLA designation for PFAS exposes drinking water and wastewater utilities like Louisville Water 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 ongoing water affordability challenges.



CERCLA liability would be an additional burden for ratepayers 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 cause ratepayers to pay for the environmental remedial burden that should be borne by the companies that produced and profited from PFAS for decades.

While the EPA is pursuing an “enforcement discretion” policy that intends to concentrate the Agency’s CERCLA enforcement activities related to PFAS on the polluters that are responsible for the contamination, this discretion will be insufficient to protect our utility from legal defense costs and cleanup liability for PFAS brought by other responsible parties. Ultimately, these costs will be passed on to our ratepayers.

With the 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.

Thank you for your attention to this matter, and your efforts to protect the affordability of Louisville Metro’s drinking water. If you or your staff have any questions, please contact Peter Goodmann at pgoodmann@louisvillewater.com or at (502) 569-0894.

Sincerely,

Spencer W. Bruce, P.E.
President and CEO
Louisville Water Company