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March 15, 2024

The Honorable Tom Carper
Chair, 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:

As a public water authority striving to provide safe, reliable, and affordable drinking water to 350,000 residents and business owners throughout five counties in Central New York, we are concerned that the U.S. Environmental Protection Agency's (USEPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) would cause water systems and ratepayers – rather than polluters – to incur environmental cleanup liability that should be faced by entities responsible for that pollution. This proposal is now in final review at the U.S. Office of Management and Budget (OMB). Therefore, we respectfully ask that you support a statutory protection for water systems from liability under 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, meant to hold companies that produced and profited from hazardous substances discharged into the environment responsible for the cleanup of those substances. This polluter pays principle is laudable. Unfortunately, the proposed designation of PFOA and PFOS – nondegradable “forever chemicals,” which are now ubiquitous in the environment, means that drinking water 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 could abuse litigation to reduce their own clean-up costs and increase costs on water utilities – costs which we would then be 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.

With this proposed rule under final review, 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. **We 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 time and attention to this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey D. Brown'.

Jeffrey D. Brown, Esq.
Executive Director
OCWA – Central New York's Water Authority