Rainbow Water District

RWDonline.net
P.O. Box 8, Springfield, OR 97477
1550 42nd Street, Springfield, OR 97477
Phone: 541-746-1676
Fax: 541-747-0845

March 7, 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:

I represent a small public water utility in Oregon, striving to provide a safe and affordable service to our customers. The U.S. Environmental Protection Agency's (EPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under CERCLA is now in final review at the U.S. Office of Management and Budget (OMB). We are concerned that this designation, as it stands now, will cause water systems and ratepayers like ours to incur environmental cleanup liability that should be faced by those 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.

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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 challenge of keeping our water rates affordable.

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. CERLCA would unjustly make ratepayers pay part of 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 urge you, therefore, 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 like Rainbow Water District can continue to focus our efforts on maintaining water quality instead of stressing about new liabilities and spending time and money in unnecessary litigation.

Again, I ask, we ask, that you support S. 1430 and protect water system ratepayers by providing statutory liability protections related to PFAS under CERCLA.

Sincerely,

Jamie Porter, PE
Superintendent