

EMBRACING THE FUTURE BY PLANNING TODAY...



March 13, 2024

SENT VIA EMAIL

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

Dear Chairman Carper and Ranking Member Capito:

I am writing representing West County Wastewater District (WCW), a wastewater utility representing 104,000 customers in western Contra Costa County, California. As the Committee on Environment and Public Works considers the critical need to address passive receiver liability for PFAS cleanup under CERCLA, WCW believes the committee must amend CERCLA to ensure clean water agencies like WCW are provided protections from frivolous and unwarranted litigation stemming from the imminent USEPA rule to designate PFAS as hazardous substance under CERCLA. Our request is consistent with past congressional actions that delivered such protections to preclude the use of CERCLA liability to cast a net of liability over innocent, passive receivers.

We generally support USEPA's efforts to eliminate and cleanup sites contaminated by Perfluorooctanoic Acid (PFOA), Perfluorooctane Sulfonate (PFOS), and other PFAS. However, such efforts must recognize that utilities do not use, manufacture, or sell these compounds. Rather, chemical and product manufacturers create and sell these compounds that result in discharges to clean water systems. As part of our role in protecting public health and the environment through treatment of wastewater influent, PFAS and other constituents are concentrated, and then appropriately disposed of via wastewater effluent and/or biosolids. This process is accomplished consistent with all applicable laws, including the Clean Water Act.

USEPA has signaled that it intends to employ "enforcement discretion" and not pursue CERCLA cleanup liability against drinking water and wastewater systems related to PFAS. However, this does not protect water and wastewater systems against CERCLA claims filed by third parties, nor does it prevent polluters from entangling local agencies in CERCLA litigation or actions by employing the "joint and several" CERCLA liability regime to attempt to offload their cleanup responsibility onto our ratepayers. Without guardrails to protect water and wastewater agencies

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March 13, 2024
Chairman Carper and Ranking Member Capito
Committee on Environment and Public Works
Page 2

(and by extension, the public ratepayers we serve), the CERCLA hazardous substances designation would divert limited public resources to defend against such litigation.

Moreover, subjecting ratepayers to polluter and third-party initiated CERCLA litigation directly conflicts with the “polluter pays” principle at the core of CERCLA. Ultimately, without a passive receivers’ exemption, CERCLA designation will result in increased water and wastewater rates nationwide, and financially burden local governments that were not responsible for the manufacture and sale of these chemicals. Congress must develop and pass liability protections to protect water systems and their ratepayers against these claims.

On behalf of WCW, we urge you to protect water and wastewater system ratepayers nationwide by providing clear and targeted liability protections for passive receivers that appropriately handle and dispose of PFAS.

Thank you for your attention to this important issue and we look forward to committee action to meet these concerns.

Sincerely,


Andrew Clough
General Manager

cc: U.S. Senator Alex Padilla (California)
U.S. Senator Laphonsa Butler (California)
Director Cheryl Sudduth, WCW Board of Directors