



# NOVATO SANITARY DISTRICT

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March 11, 2024

*Transmitted via e-mail as listed below.*

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

Re: CERCLA Amendment - PFAS Passive Receiver Liability (Clean Water Utilities).

Dear Chairman Carper and Ranking Member Capito:

As the Committee on Environment and Public Works considers the critical need to address passive receiver liability for PFAS cleanup under CERCLA, Novato Sanitary District believes the committee must amend CERCLA to ensure clean water agencies like Novato Sanitary District 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 clean-up sites contaminated by Perfluorooctanoic Acid (PFOA), Perfluorooctane Sulfonate (PFOS), and other PFAS. However, such efforts must recognize that publicly owned water and wastewater 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 (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 Novato Sanitary District, 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. We look forward to the Committee’s action to meet these concerns.

Sincerely,



Sandeep Karkal  
General Manager-Chief Engineer

***Transmitted via e-mail to:***

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