



March 12, 2024

VIA ELECTRONIC MAIL

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

SUBJECT: CERCLA LIABILITY EXEMPTION FOR PASSIVE RECEIVERS OF PFAS

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 per- and polyfluoroalkyl substances (PFAS) cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Delta Diablo is advocating for the Committee to amend CERCLA to ensure clean water agencies like Delta Diablo are provided protections from frivolous and unwarranted litigation stemming from the imminent USEPA rule to designate PFAS as a hazardous substance under CERCLA. This 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 passive receivers of hazardous substances.

Delta Diablo supports USEPA's efforts to eliminate and remediate sites contaminated by perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), and other PFAS compounds. 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, which results in discharges to clean water systems. As part of our role in protecting public health and the environment through treatment of wastewater, PFAS and other constituents are concentrated, and then appropriately disposed of via wastewater effluent and/or biosolids. This process is consistent with all applicable laws, including the Clean Water Act.

USEPA has signaled 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 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.

In addition, subjecting ratepayers to polluter and third party initiated CERCLA litigation directly conflicts with the "polluter pays" principle, which is core to CERCLA. Ultimately,

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without a passive-receiver exemption, the 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 ratepayers against these claims.

On behalf of Delta Diablo, I 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 associated committee actions to effectively address these stated concerns.

Sincerely,



Vince De Lange  
General Manager

AWR:awr

cc: Senator Laphonza Butler  
Senator Alex Padilla  
Cheryl MacKelvie, California Association of Sanitation Agencies