



July 12, 2023

The Honorable Tom Carper
Chairman
United States Senate Environment and Public Works Committee
Washington, DC

The Honorable Shelley Moore Capito
Ranking Member
United States Senate Environment and Public Works Committee
Washington, DC

Dear Chairman Carper and Ranking Member Capito,

On behalf of organizations representing the nation's drinking water and clean water utilities, we want to commend the Senate Environment and Public Works (EPW) Committee for taking proactive steps to address the PFAS crisis through the proposed bipartisan legislation to address gaps in PFAS research and technology and enhance mitigation efforts. By opening up the opportunity for public input, the Committee has demonstrated a commitment to transparency and inclusivity. Welcoming the submission of perspectives and expertise helps ensure that the final legislation is well-informed and considers the diverse needs and concerns of those affected by per- and polyfluoroalkyl (PFAS) contamination.

Drinking water, wastewater, and stormwater utilities neither manufacture nor use PFAS but rather are passive receivers of PFAS by virtue of providing the vital public services of treating and managing local water supply, wastewater, stormwater, and biosolids. Our organizations individually have submitted comments to the Committee on specific provisions included in the draft bill. However, as the Water Coalition Against PFAS, we are jointly writing to emphasize our overarching concern that as the Committee works to advance the legislation, a provision must be incorporated protecting clean and drinking water systems from CERCLA liability for PFAS.

As stewards of their communities, public clean water and drinking water utilities stand ready to do their part under the proper Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) authorities to meet PFAS-related standards necessary to continue our mission of ensuring the highest level of protection of human health and the environment. We look forward to working with Congress and regulators to ensure these are promulgated under a proper scientific and regulatory approach.

However, as you are aware, in August of 2022 the U.S. Environmental Protection Agency (EPA) proposed designations of two of the most common PFAS chemicals, Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS), as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is also in the process of soliciting public feedback on potentially listing additional PFAS chemicals under CERCLA.

EPA has touted CERCLA as a way of providing a “polluter pays” approach to PFAS remediation activities, but unfortunately given CERCLA’s construct and the ubiquity of PFAS throughout the country, clean water and drinking water utilities and the communities they serve will be exposed under EPA’s approach to the threat of unprecedented PFAS cleanup costs – despite never producing, using, or profiting from these chemicals. The regulatory and enforcement provisions contained in CERCLA result in the unintended consequence of penalizing the communities whose drinking water, clean water, or environment was contaminated by PFAS.

This dynamic is especially problematic and acute in economically disadvantaged communities and populations with limited resources. Ultimately, public water utility ratepayers will bear the brunt of the costs of remediating PFAS pollution instead of the private companies that created the pollution to make a profit in the first place. Water affordability is already a significant challenge for millions of U.S. households, so ratepayers from coast to coast should not be presented with the bill to clean up industrial pollution created by others.

As such, it is imperative that as the Committee moves forward with this proposed legislation, Congress must clearly exempt “passive receivers” like clean water and drinking water utilities from PFAS-related CERCLA liability and ensure that Congressional and Agency efforts to control PFAS hold actual polluters accountable. Without legislative action by this Committee, customers of drinking water and wastewater services will remain at risk of incurring catastrophic CERCLA legal defense fees and eventual cleanup liability costs for PFAS, exacerbating financial instability for many impacted communities.

The Coalition strongly requests that as the Committee moves forward with this proposed PFAS legislation, Congress provide drinking water and clean water systems with a tailored legislative exemption from CERCLA liability for PFAS-related cleanups or ensure that any passive receivers exemption included is protective of all activities involved in the clean water and drinking water treatment process and for entities that have not benefited nor profited from the use of PFAS.

It is our hope that the comments and feedback submitted by the Coalition will be carefully considered during the legislative deliberations. The impact of PFAS contamination extends beyond partisan politics, and we urge the committee to approach this issue with a commitment to public health, environmental sustainability, and science-based decision making. By enacting comprehensive and science-based policies, we can take significant strides towards mitigating the risks posed by PFAS and safeguarding the health and economic wellbeing of our communities.

Thank you for your time, attention, and commitment to addressing this critical issue.

Sincerely,

The Water Coalition Against PFAS:

American Water Works Association
Association of Metropolitan Water Agencies
National Association of Clean Water Agencies
National Rural Water Association
Water Environment Federation