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July 14, 2023

The Honorable Tom Carper
Chairman
U.S. Senate Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

Thank you for the opportunity to provide feedback on the staff draft of your per- and polyfluoroalkyl substances (PFAS) legislation. The WaterReuse Association is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that work together to advance water recycling as a multi-benefit tool. WaterReuse and its state and regional sections represent more than 200 water utilities serving over 60 million customers, and over 300 businesses and organizations across the country.

Water reuse is the process of intentionally capturing wastewater, stormwater, saltwater or graywater and cleaning it for a designated beneficial freshwater purpose, such as drinking, groundwater replenishment, and watershed restoration. The fundamental principle of water reuse is using the right water for the right purpose. By advancing water reuse, we protect public health and the environment while helping communities build resilience to drought, flooding, and other impacts of climate change.

Water recycling utilities are responsible for safeguarding public health and the environment, including through the treatment of drinking water, wastewater, and stormwater. In addition to protecting the public from the harmful effects of PFAS, the Committee's legislation must support rather than unintentionally undermine the critical services provided by water recycling utilities. To accomplish these parallel goals, we request that the Committee's legislation include a narrow exemption from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for water, wastewater, and water recycling utilities. Absent such relief, the U.S. Environmental Protection Agency's (EPA) designation of certain PFAS as CERCLA hazardous substances will shift the "polluter pays" principle of the law to that of a "community pays" model, placing the burden of compliance and cleanup onto ratepayers and the public at-large.

EPA has stated often, including in testimony to the Committee, that the Agency will use its “discretionary authority” in pursuing CERCLA enforcement actions against certain parties. However, this commitment offers little comfort to the water recycling sector given the expansive rights of Potentially Responsible Parties under CERCLA to bring contribution litigation against other entities that are alleged to be additional sources of hazardous substances at a cleanup site. We therefore urge the Committee to explicitly include a liability shield for PFAS receivers such as utilities conducting water recycling activities.

In addition to including a liability shield for water, wastewater, and water recycling utilities, WaterReuse urges the Committee to reconsider its directive, included in Section 3 of the legislation, dictating that EPA must finalize Maximum Contaminant Loads (MCLs) for certain PFAS by a certain date. WaterReuse supports the scientific, risk-based and data-driven MCL process as established under the Safe Drinking Water Act, and recommends that EPA be left to follow that process without Congress intervening to establish its own deadlines. While the intervention proposed in Section 3 of this legislation will have a limited impact in practice due to its alignment with EPA’s own rulemaking schedule, it will set a dangerous precedent of congressional involvement in a scientific, risk-based and data-driven regulatory process.

Finally, WaterReuse supports the provision of funding to assist communities with PFAS remediation (Section 11); however, we urge the Committee to expand eligibility to also include communities with high levels of PFAS contamination, and to increase the amount of funding being made available. A study recently conducted for the American Water Works Association found that PFAS remediation costs for drinking water utilities alone could cost up to \$3.2 billion per year. We appreciate the Committee’s provision of financial assistance to small, rural, Tribal, underserved, and disadvantaged communities. We recommend that the legislation also include financial assistance for communities with high PFAS concentration levels, regardless of whether those communities are small, rural, Tribal, underserved or disadvantaged. We urge you to engage stakeholders regarding the appropriate level of cost-share for such communities. Thank you for developing this important legislation, and thank you for considering our views.

Sincerely,



Patricia Sinicropi
Executive Director

