



WATERREUSE®

610 Madison Street, Suite 101, Box 621
Alexandria, VA 22314

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March 18, 2024

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:

On behalf of our hundreds of member organizations, we write to offer our insights and recommendations on legislation aimed at addressing per- and polyfluoroalkyl substances (PFAS) contamination. 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.

As you work to develop and refine PFAS legislation, WaterReuse strongly urges you to take a "polluter pays" approach to controlling PFAS contamination. Water utilities provide essential public services and are not manufacturers or primary sources of PFAS; rather, utilities are "passive recipients" of trace levels of PFAS, in large part through the ordinary daily activities of the residential and commercial sectors.

Unless water, wastewater, and water recycling utilities are shielded from PFAS liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the designation of various PFAS as CERCLA hazardous substances will unfairly place liability burdens on passive receivers of PFAS rather than on producers of the substances. Doing so will undermine essential public services as utilities are

forced to divert scarce public dollars to defend against litigation from other parties seeking to make local agencies financially responsible for cleanup costs. Water, wastewater, and water recycling utilities stand ready to help tackle the PFAS crisis; however, putting the liability and cost of remediation on utilities ultimately burdens the local ratepayer, and therefore, the American taxpayer, rather than the polluter. PFAS manufacturers must cover the costs of remediating PFAS pollution.

The U.S. Environmental Protection Agency (EPA) has stated often that it 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 enact a CERCLA liability shield for PFAS receivers such as utilities conducting water recycling activities. Absent such relief, EPA's 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.

Thank you for considering our views.

Sincerely,



Patricia Sinicropi
Executive Director

