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July 15, 2021

The Honorable Diane Feinstein
U.S. Senate
Washington, D.C. 20510

The Honorable Alex Padilla
U.S. Senate
Washington, D.C. 20510

Dear Senators Feinstein and Padilla:

The Orange County Sanitation District (OC San) writes on a matter of the utmost urgency. Over the past few years, Congress has been working to develop a reasonable approach to the treatment and disposal of the Per- and polyfluoroalkyl (PFAS and PFOA) family of chemicals. There has been significant congressional debate surrounding the most appropriate approach to ensure that those responsible for the production of these chemicals are held responsible for the costs associated with any response to contaminated waters or the byproducts of wastewater.

OC San is deeply concerned that the House Committee on Energy and Commerce approved the PFAS Action Act that included provisions requiring United States Environmental Protection Agency (USEPA) to list a portion of these forever chemicals as hazardous substances under Superfund (CERCLA) and further mandated the agency to determine whether other chemical compounds of this family should be listed.

We would also like to note that the Committee on Appropriations recently reported its Fiscal Year 2022 spending bill for USEPA. This spending bill directs the agency to pursue the listing of these chemicals as hazardous substances under CERCLA. Each of these actions would expose clean water agencies dedicated to the improvement of water quality to unknown and potentially endless (and costly) litigation related to the potential discharge of wastewater or disposal of biosolids that *might contain* PFAS chemicals. We urge you to work to ensure that agencies like OC San are provided protection from such an outcome. At a minimum, we request that you work to provide an exemption from any CERCLA liabilities similar to that enjoyed by our nation's airports.

OC San is a passive recipient of PFAS/PFOA—we are not the creators. OC San has a stringent Source Control program helping to decrease the amount of toxic pollutants entering the sewer. However, OC San is unable to discriminate against discharges of PFAS chemicals that have been defined as ubiquitous. These chemicals are part of our daily lives, ranging from the manufacturing of clothing, food or industrial production.

OC San is unable to mandate the elimination of the use of such chemicals. It is vital that the responsibility for the control, discharge and treatment of these chemicals should be the sole responsibility of the producers and managed at the source.

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A decision to classify these chemicals as CERCLA hazardous substances would inevitably result in capturing agencies, like OC San, as a potentially responsible party for cleanups of contaminated waters and soils; simply because OC San was carrying out a public service, collecting and treating wastewater.

This situation is attributable to CERCLA's Joint, Several and Strict Liability regime. When CERCLA was enacted into law it was constructed to allow for cleanup of communities impacted by the indiscriminate disposal of hazardous substances at the Valley of Drums and other sites and to ensure that those responsible for the management and disposal of the chemicals would be held liable for cleanups and damages. It was never intended to assess responsibility or create an environment where legal action could be initiated against those that were not involved in the management and disposal of hazardous substances.

We note that Congress is considering legislation that would provide clean water agencies with financial assistance to implement pretreatment standards for discharges containing PFAS and to require dischargers to notify an agency of such discharges. While we appreciate this support, it fails to address the true policy and legal concern: imposing liability on public agencies that have no direct or indirect responsibility for the production, generation or discharge of these chemicals. Only through an explicit exemption from CERCLA liability can we ensure a balanced and appropriate approach to eliminate these chemicals from our environment without imposing unreasonable and unfair costs that would simply be shifted from the responsible parties to our ratepayers.

Again, we urge you to support a commonsense approach to responding to PFAS threats by maintaining responsibility at the source of PFAS.

Sincerely,



John B. Withers
Board Chairman

"CORO Foundation Fellow, Los Angeles Class of 1979"