



10844 Ellis Avenue
 Fountain Valley, CA 92708
 714.962.2411
 www.ocsan.gov

August 7, 2023

The Honorable Alex Padilla
 United States Senate
 Washington, D.C. 20510

Dear Senator Padilla:

The Orange County Sanitation District (OC San) writes on pending proposals to address Per- and Polyfluorinated Substances (PFAS) contamination and the associated responsibility for cleanup and management of PFAS. In August 2022, the U.S. Environmental Protection Agency (USEPA) proposed designating two PFAS – PFOA and PFOS – as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), with a possibility of designating additional PFAS chemicals in the future. CERCLA is intended to impose liability upon manufacturers and polluters who knowingly release hazardous chemicals into the environment. However, the law’s strict liability does not distinguish passive receivers like publicly owned treatment works (POTWs), who aim to protect the public and the environment responsibly. This designation would trigger liability for various parties, like wastewater agencies, which are committed to safeguarding public health in accordance with local, state, and federal standards. Therefore, we urge you to support adopting a liability exemption for POTWs (passive receivers) under the CERCLA liability provision—Section 107.

As a clean water agency, OC San is a passive receiver of PFAS and not a producer. Our operations did not create the environmental and public health threats from the manufacturing or sell PFAS chemicals. We adhere to strict permit conditions, ensuring responsible wastewater treatment and biosolids management.

We are also concerned that including PFAS as a hazardous substance under CERCLA could lead potentially responsible parties to seek to attach liability to passive receivers, thus diluting financial accountability for the actual polluters. In addition, this would apply direct or indirect liability upon our ratepayers, which would go against the foundational principle of CERCLA that the polluter should bear the burden of pay for adverse impacts.

In light of this, we respectfully request that during your deliberation on the pending proposals to address PFAS threats and responses that you consider exempting passive receivers, like OC San, from any potential CERCLA liability, thereby preserving CERCLA’s core principle of “polluter pays”. We believe that this exemption would align with the goal of promoting environmental responsibility and accountability. If you have any questions, please do not hesitate to contact Jennifer Cabral, Administration Manager at (714) 593-7581 or via mail at JCabral@ocsan.gov.

Sincerely,

Chad P. Wanke
 Board Chairman

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