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March 12, 2024

The Honorable Tom Carper, Chairman  
 The Honorable Shelley Moore Capito, Ranking Member  
 Committee on Environment and Public Works  
 United States Senate  
 Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

As the Committee on Environment and Public Works considers the critical need to address passive receiver liability for per- and polyfluoroalkyl substances (PFAS) cleanup under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Orange County Sanitation District (OC San) believes the committee must amend CERCLA. This will ensure clean water agencies like OC San are provided protections from frivolous and unwarranted litigation. Our request is consistent with past congressional actions that delivered such protections to preclude the use of CERCLA liability to cast a net of liability over innocent, passive receivers.

We generally support USEPA’s efforts to eliminate and clean-up sites contaminated by perfluorooctanoic acid (PFOA), perfluorooctane Sulfonate (PFOS), and other PFAS. However, such efforts must recognize that utilities do not use, manufacture, or sell these compounds. Rather, chemical and product manufacturers create and sell these compounds that result in discharges to clean water systems. As part of our role in protecting public health and the environment through treatment of wastewater influent, PFAS and other constituents are concentrated, and then appropriately disposed of via wastewater effluent and/or biosolids. This process is accomplished consistent with all applicable laws, including the Clean Water Act.

The USEPA has signaled that it intends to employ “enforcement discretion” and not pursue CERCLA cleanup liability against drinking water and wastewater systems related to PFAS. However, this does not protect water and wastewater systems against CERCLA claims filed by third parties, nor does it prevent polluters from entangling local agencies in CERCLA litigation or actions by employing the “joint and several” CERCLA liability regime to attempt to offload their cleanup responsibility onto our ratepayers. Without guardrails to protect water and wastewater agencies (and by extension, the public ratepayers we serve), the CERCLA hazardous substances designation would divert limited public resources to defend against such litigation.

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***Our Mission:*** To protect public health and the environment by providing effective wastewater collection, treatment, and recycling.

Moreover, subjecting ratepayers to polluter and third-party initiated CERCLA litigation directly conflicts with the “polluter pays” principle at the core of CERCLA. Ultimately, without a passive receiver’s exemption, CERCLA designation will result in increased water and wastewater rates nationwide, and financially burden local governments that were not responsible for the manufacture and sale of these chemicals. Congress must develop and pass liability protections to protect water systems and their ratepayers against these claims.

On behalf of OC San, we urge you to protect water and wastewater system ratepayers nationwide by providing clear and targeted liability protections for passive receivers that appropriately handle and dispose of PFAS.

If you have any questions, please do not hesitate to contact Jennifer Cabral, OC San Administration Manager, at (714) 593-7581 or via mail at [JCabral@ocsan.gov](mailto:JCabral@ocsan.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Wanke', with a long horizontal flourish extending to the right.

Chad P. Wanke  
Board Chairman