



THE UNITED STATES
CONFERENCE OF MAYORS



July 13, 2023

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

The Honorable Shelley Moore Capito
Ranking Member
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 the nation's mayors, cities, and counties, the U.S. Conference of Mayors (USCM), the National League of Cities (NLC) and the National Association of Counties (NACo) sincerely appreciate your leadership and efforts to draft bipartisan legislation to address the issue of per- and polyfluoroalkyl substances (PFAS) in our environment.

Our organizations support federal efforts to prevent further pollution and contamination from PFAS and to remove PFAS chemicals from the environment. The legislation, however, omits a key local government priority: the issue of liability protection for passive receivers. As mentioned in our earlier letter (also attached), any PFAS legislation must include a specific provision to ensure that local governments are explicitly recognized as "passive receivers" of PFAS and therefore provided a narrow exemption from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Our organizations represent local governments who are responsible for operating drinking water, wastewater and stormwater facilities, solid waste and recycling systems, and firefighting teams at both airports and in our communities. These are essential public services that are paid for by constituents. If local governments are not provided a liability exemption, communities will be caught up in CERCLA's liability web and the costs of cleanup will be borne by our residents. This is the exact opposite of the "polluter pays" principle and leaves ratepayers on the hook to pay twice – once to remove PFAS from water supplies and again to clean up PFAS contamination at a Superfund site.

Senator Cynthia Lummis's liability protection bills, including the Water Systems PFAS Liability Protection Act (S. 1430) and the Resource Management PFAS Liability Protection Act (S. 1429), are a good starting point for protecting local governments that neither caused nor contributed to PFAS contamination. We welcome the opportunity to work with your offices to develop language that protects communities and avoids passing costs onto residents and businesses.

Additionally, we urge you to ensure that the definitions of PFAS included in the legislation are consistent across the federal government, particularly those used by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Defense.

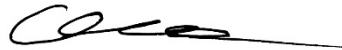
Finally, our organizations oppose provisions that would require EPA to set National Primary Drinking Water Regulations for PFAS and other chemicals. In general, our organizations support provisions in the 1996 Amendments to the Safe Drinking Water Act, which require that drinking water standards be based on sound science, public health protection and occurrence of contaminants in drinking water supplies at levels of public health concern to reduce risk while balancing costs. Congress should not circumvent this process in any way for select contaminants.

We look forward to working with your offices as you move forward on this legislation. Thank you for this opportunity to provide comments and for your consideration of the local perspective. If you have any questions, please contact us: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; or Sarah Gimont (NACo) at 202-942-4254 or sgimont@naco.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
CEO and Executive Director
National Association of Counties



April 24, 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:

The undersigned organizations represent local governments and private entities responsible for safeguarding public health and the environment, including drinking water, wastewater treatment, stormwater management, and water recycling facilities, municipal solid waste landfills, and composting facilities. We write to urge that any legislation on per- and polyfluoroalkyl substances (PFAS) that the U.S. Senate Committee on Environment and Public Works (EPW) considers include a specific provision to ensure that the organizations we represent are explicitly recognized as “passive receivers” of PFAS and afford these essential public services a narrow exemption from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Absent such relief, designation of certain PFAS as CERCLA hazardous substances would 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.

The U.S. Environmental Protection Agency (EPA) has stated often, including during Assistant Administrator Rhadika Fox’s testimony to EPW, that the agency would use its “discretionary authority” in pursuing CERCLA enforcement actions against certain parties. However, this commitment offers little comfort to our sectors 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.

EPA has stated that it has insufficient existing legal authority to provide relief to public service providers from the impact of CERCLA contribution litigation. Claims for contribution against passive receiver groups thus would generate significant litigation costs for lawful operations going back decades—costs that would lead to significant cost increases on essential public service providers and the communities and residents they serve.

It is important to highlight that our members deliver essential public services that do not involve the manufacture or use of PFAS. We are passive receivers of media containing PFAS that are ubiquitous in the

water supply, wastewater treatment process, stormwater, biosolids management, and solid waste streams. Each of our sectors is interdependent: landfills rely on wastewater treatment facilities for their leachate discharge while water and wastewater treatment facilities depend on landfills and compost facilities for biosolids management and disposal of spent water filtration systems. Although our members carry-out the delivery of public health services consistent with the requirements of the Safe Drinking Water Act, Clean Water Act, and Solid Waste Disposal Act, among other federal and state mandates, CERCLA designation, absent Congressional action, would disrupt the interdependence of passive receivers by driving each sector to revisit the acceptance of influent streams that might contain PFAS concentrations and impacting our ability to recover resources that can contribute to significant reductions in greenhouse gas emissions.

Our sectors acknowledge our role as part of the long-term solution to PFAS management, recognize the need to protect public health and the environment, and share the goal of holding accountable those entities that are primarily responsible for PFAS contamination. Nevertheless, any action designating certain PFAS compounds as hazardous substances must be accompanied by relief that allows communities to continue to rely on the affordability of the essential public services our sectors provide. Accordingly, we urge the Committee to provide statutory relief from CERCLA liability for owners and operators of passive receiver facilities.

Sincerely,

American Public Works Association
Association of Compost Producers
California Association of Sanitation Agencies
Coalition of Recyclers of Residual Organics by Practitioners of Sustainability
Michigan Water Environment Association
Michigan Waste & Recycling Association
Mid-Atlantic Biosolids Association
Midwest Biosolids Association
Municipal Environmental Group – Wastewater Division
Municipal Waste Management Association
National Association of Counties
National Association of Water Companies
National League of Cities
National Municipal Stormwater Alliance
National Waste & Recycling Association
National Water Resources Association
New England Water Environment Association
North East Biosolids and Residuals Association
Northwest Biosolids Association
Oregon Association of Clean Water Agencies
Oregon Refuse & Recycling Association
Resource Recovery Coalition of California
Solid Waste Association of North America
Southeast Biosolids Association
The United States Conference of Mayors
U.S. Composting Council
Washington Association of Sewer & Water Districts
Washington Refuse & Recycling Association
WateReuse Association
Water and Wastewater Equipment Manufacturers Association
Wisconsin Counties Solid Waste Management Association

CC: Members of the U.S. Senate Committee on Environment and Public Works