



To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water

Title **PFAS CERCLA Liability Exemption for Water and Wastewater Utilities**

Executive Summary

Castle Rock Water is concerned that the U.S. Environmental Protection Agency's (EPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) – which is now in final review at the U.S. Office of Management and Budget (OMB) – will cause water systems and our ratepayers – rather than polluters – to incur environmental cleanup liability that should be faced by entities responsible for that pollution. Castle Rock Water already has to treat for and remove per- and polyfluoroalkyl substances (PFAS) in raw water to meet upcoming regulatory drinking water requirements. This is despite the fact that the Town did not create the problem or pollute the raw water supplies. Castle Rock Water's rate payers carry the cost for this treatment. While Castle Rock Water has joined a class action lawsuit and potential settlement for these costs against some of the manufacturer's, Castle Rock Water will only recover a tiny amount of the actual long-term costs.

With the proposed designation of some PFAS compounds as hazardous substances, additional liability could be created for Castle Rock Water and our rate payers. Granular activated carbon is used by Castle Rock Water to remove PFAS. The PFAS is not destroyed in the process. Once the granular activated carbon's ability to remove PFAS is exhausted, the carbon must be disposed. Solids generated in other treatment processes both at Plum Creek Water Purification Facility and at our wastewater plant, the Plum Creek Water Reclamation Authority, may also contain residual PFAS. These solids are disposed at landfills or in the case of PCWRA for agriculture. With the designation of the some PFAS compounds as hazardous, Castle Rock Water could become liable for again carrying costs to remediate PFAS from future landfill sites, agricultural uses of biosolids or treatment of exhausted carbon. The US Senate has proposed legislation (see **Attachment A**) that would specifically exempt water and wastewater providers from the liability for PFAS under this new hazardous waste designation. Castle Rock Water and other water providers like Aurora Water strongly support this type of legislation to protect our rate payers from future costs and liability associated with the disposal of PFAS compounds. We have prepared a letter to

Colorado's two US Senators urging them to support this legislation to exempt water and wastewater providers from liability under CERCLA, see **Attachment B**.

Attachments

Attachment A: US Senate Bill S.1430
Attachment B: Letter to Colorado's US Senators

118TH CONGRESS
1ST SESSION

S. 1430

To exempt certain entities from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to releases of perfluoroalkyl and polyfluoroalkyl substances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 3, 2023

Ms. LUMMIS (for herself, Mr. BOOZMAN, Mr. CRAMER, Mr. GRAHAM, Mr. MULLIN, Mr. RICKETTS, Mr. SULLIVAN, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To exempt certain entities from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to releases of perfluoroalkyl and polyfluoroalkyl substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Systems PFAS
5 Liability Protection Act”.

1 **SEC. 2. EXEMPTION OF WATER AND WASTEWATER TREAT-**
2 **MENT FACILITIES FROM CERCLA LIABILITY**
3 **FOR RELEASES OF PFAS.**

4 (a) DEFINITIONS.—In this section:

5 (1) COVERED PERFLUOROALKYL OR
6 POLYFLUOROALKYL SUBSTANCE.—The term “cov-
7 ered perfluoroalkyl or polyfluoroalkyl substance”
8 means a non-polymeric perfluoroalkyl or
9 polyfluoroalkyl substance that contains at least 2 se-
10 quential fully fluorinated carbon atoms, excluding
11 gases and volatile liquids, that is a hazardous sub-
12 stance (as defined in section 101 of the Comprehen-
13 sive Environmental Response, Compensation, and
14 Liability Act of 1980 (42 U.S.C. 9601)).

15 (2) INDIAN TRIBE.—The term “Indian Tribe”
16 has the meaning given the term in section 4 of the
17 Indian Self-Determination and Education Assistance
18 Act (25 U.S.C. 5304).

19 (3) PROTECTED ENTITY.—The term “protected
20 entity” means—

21 (A) a public water system (as defined in
22 section 1401 of the Safe Drinking Water Act
23 (42 U.S.C. 300f));

24 (B) a publicly or privately owned or oper-
25 ated treatment works (as defined in section 212

1 of the Federal Water Pollution Control Act (33
2 U.S.C. 1292));

3 (C) a municipality to which a permit under
4 section 402 of the Federal Water Pollution
5 Control Act (33 U.S.C. 1342) is issued for
6 stormwater discharges;

7 (D) a political subdivision of a State or a
8 special district of a State acting as a wholesale
9 water agency; and

10 (E) a contractor performing the manage-
11 ment or disposal activities described in sub-
12 section (c) for an entity described in any of sub-
13 paragraphs (A) through (D).

14 (b) EXEMPTION.—Subject to subsection (c), no per-
15 son (including the United States, any State, or an Indian
16 Tribe) may recover costs or damages from a protected en-
17 tity under the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
19 et seq.) for costs arising from a release to the environment
20 of a covered perfluoroalkyl or polyfluoroalkyl substance.

21 (c) REQUIREMENTS.—Subsection (b) shall only apply
22 if a protected entity transports, treats, disposes of, or ar-
23 ranges for the transport, treatment, or disposal of a cov-
24 ered perfluoroalkyl or polyfluoroalkyl substance—

1 (1) in a manner consistent with all applicable
2 laws at the time the activity is carried out; and

3 (2) during and following the conveyance or
4 treatment of water under Federal or State law, in-
5 cluding through—

6 (A) the management or disposal of bio-
7 solids consistent with section 405 of the Fed-
8 eral Water Pollution Control Act (33 U.S.C.
9 1345);

10 (B) the discharge of effluent in accordance
11 with a permit issued under section 402 of the
12 Federal Water Pollution Control Act (33 U.S.C.
13 1342);

14 (C) the release or disposal of water treat-
15 ment residuals or any other byproduct of drink-
16 ing water or wastewater treatment activities,
17 such as granulated activated carbon, filter
18 media, and processed waste streams; or

19 (D) the conveyance or storage of water for
20 the purpose of conserving or reclaiming the
21 water for water supply.

22 (d) SAVINGS PROVISION.—Nothing in this section
23 precludes liability for damages or costs associated with the
24 release of a covered perfluoroalkyl or polyfluoroalkyl sub-
25 stance by a protected entity if that protected entity acted

- 1 with gross negligence or willful misconduct in the dis-
- 2 charge, disposal, management, conveyance, or storage of
- 3 the covered perfluoroalkyl or polyfluoroalkyl substance.

○

February 21, 2024

The Honorable Michael Bennett
261 Russell Senate Building
United States Senate
Washington, DC 20510

The Honorable John Hickenlooper
Russell Senate Building Ste. SR-374
United States Senate
Washington, DC 20510

Dear Senator Bennett & Senator Hickenlooper:

As a water utility striving to provide a safe, affordable public service to our ratepayers (80,000+ water users), Castle Rock Water is concerned that the U.S. Environmental Protection Agency's (EPA) proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under CERCLA – which is now in final review at the U.S. Office of Management and Budget (OMB) – will cause water systems and our ratepayers – rather than polluters – to incur environmental cleanup liability that should be faced by entities responsible for that pollution. **We therefore ask you to support a statutory protection for water systems from liability under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for per- and polyfluoroalkyl substances (PFAS) to help ensure polluters, not the public, pay for PFAS cleanup.**

From the start, CERCLA was built on a “polluter pays” principle, envisioned as holding companies that produced and profited from hazardous substances that were discharged into the environment responsible for their cleanup. This polluter pays principle is laudable – but unfortunately, the proposed designation of PFOA and PFOS – nondegradable “forever chemicals,” which are now ubiquitous in the environment— means that drinking water and wastewater systems that passively receive these substances into their systems could face CERCLA cleanup liability simply because an upstream polluter deposited the chemicals in their water supplies.

A CERCLA designation for PFAS exposes drinking water and wastewater utilities like ours to potential litigation from the actual polluters. PFAS users and producers can abuse litigation to reduce their own clean-up costs and increase costs on water utilities – costs which we are then forced to pass along to ratepayers. Even when water systems can successfully defend themselves in court against CERCLA claims, the cost of that litigation alone could contribute to the ongoing water affordability challenge.

CERCLA liability will be an additional burden on top of the significant treatment costs utilities will incur to meet Safe Drinking Water Act and Clean Water Act PFAS regulations. CERCLA would unjustly make ratepayers pay yet again, now for the environmental remedial burden that should be borne by the companies that produced and profited from PFAS for decades.

With this proposed rule under final review this spring, it is critical that Congress move quickly to ensure that water systems and their ratepayers are not unfairly punished for PFAS contamination for which they bear zero responsibility or blame. **I therefore urge you to support S. 1430, the Water Systems PFAS Liability Protection Act**, introduced by Sen. Cynthia Lummis. This bill would preserve the “polluter pays” principle under CERCLA and ensure that water utilities can continue to focus their efforts on maintaining water quality.

Again, we ask that you support S. 1430 and protect water system ratepayers by providing statutory liability protections related to PFAS under CERCLA.

Thank you,

Jason Gray, Mayor

C: Town Council
Mark Marlowe, Director of Castle Rock Water
David Corliss, Town Manager
Mike Hyman, Town Attorney