

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