

July 3, 2023

The Honorable Carper and Capito
Senate Committee on Environment and Public Works

RE: Draft PFAS Legislation

Dear U.S. Senators Tom Carper (D-Del.) and Shelley Moore Capito (R-W.Va.):

Orange County Sanitation District (OC San) writes in response to proposed legislative language regarding perfluoroalkyl or polyfluoroalkyl substances (PFAS) to address the treatment, management, and destruction of PFAS and other emerging contaminants.

OC San provides wastewater collection, treatment, and recycling for approximately 2.6 million people in central and northwest Orange County, CA. OC San’s primary mission is to protect public health and the environment through its services.

It is important to ensure that any PFAS legislation proposed by Congress maintains the principle that the “polluter pays” for any adverse environmental or public health impacts from PFAS exposure or contamination. Central to this priority is that passive receivers including those that manage wastewater and biosolids, must be protected from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) liability.

If the U.S. Environmental Protection Agency (USEPA) finalizes its rulemaking to designate PFAS chemicals as hazardous substances under CERCLA, the decision would trigger exposing passive receivers to untold levels of potential liability from responsible parties that would seek to dilute their responsibility for creating public health threats. As an example, biosolids resources that are critical to the health of our soils through nutrient enrichment, carbon sequestration, improved crop yields, and other benefits will be deemed too high a risk and the burden of potential for liability under CERCLA. This could eliminate decades of arguably the most successful recycling program in the nation. Additionally, unintended consequences impacting effluent discharges and recycled water are also likely.

OC San seeks to ensure that the following elements are included as part of any PFAS legislation:

1. Define passive receiver to include any entity, public or private, that is responsible for the management and treatment of wastewater, residuals, including biosolids and their land application, and water recycling.
2. Define activities covered under any passive receiver exemption as explicitly including activities related to the distribution of products derived from treatment and resource recovery (e.g., compost and any other product derived from wastewater management).

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With regard to the proposed legislative language, we provide the following comments:

- Although PFAS treatment and destruction technologies are advancing across academic, private, and public sectors, it is widely understood that, thanks to the recalcitrant nature and ubiquity of PFAS compounds, effective removal and destruction of these compounds will remain costly for the foreseeable future. Thus, we respectfully request any PFAS-related legislation include incentives for development of technologies that efficiently remove PFAS at major sources as well as points of passive aggregation, such as wastewater treatment plants. For example, OC San is actively pursuing multiple PFAS destruction options such as pyrolysis and supercritical water oxidization (SCWO) and was recently allocated over \$3 million in federal funding for the latter. It's worth emphasizing that passive recipients such as OC San are eager to be part of the solution. However, erroneous allocation of CERCLA liability to passive recipients may divert much-needed resources toward litigation instead of practical solutions.
- Lastly, allow states to use up to 1 percent of their State Revolving Loan Fund capitalization grant to support the development of a registry to identify dischargers of PFAS-laden industrial effluent. By funding a registry, the additional information would enable development of PFAS source control strategies and practical site-specific pollutant limits. The registry would also enable regulatory authorities to investing limited public resources toward the most efficacious PFAS source control strategies.

Thank you for the opportunity to submit public comments on the proposed legislation. 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