The Honorable Brett Guthrie
Chairman
Committee on Energy and Commerce
United States House of Representatives
2123 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone Jr.
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
2123 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gary Palmer
Chairman
Subcommittee on Environment
Committee on Energy and Commerce
United States House of Representatives
2123 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Paul Tonko
Ranking Member
Subcommittee on Environment
Committee on Energy and Commerce
United States House of Representatives
2123 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Guthrie, Ranking Member Pallone, Subcommittee Chairman Palmer, Subcommittee Ranking Member Tonko, and Members of the Committee,

On behalf of the Water Coalition Against PFAS, which represents the nation's drinking water, wastewater and stormwater systems, we appreciate the Environment Subcommittee holding its December 18 hearing on "Examining the Impact of EPA's CERCLA Designation for Two PFAS Chemistries and Potential Policy Responses to Superfund Liability Concerns." We welcome the opportunity to submit this statement for the record to reiterate our support for durable statutory protections that ensure polluters are held accountable for the environmental damage they cause, and to correct several misconceptions that were expressed during the hearing.

We echo the American Water Works Association's witness in respectfully urging Congress to enact legislation that provides clear, lasting liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for drinking water, wastewater, and stormwater utilities in connection with per- and polyfluoroalkyl substances (PFAS). Absent congressional action, local water utilities and the communities they serve risk being saddled with unwarranted legal exposure, significant financial strain, and higher rates for costs properly attributable to PFAS manufacturers and other responsible parties.

Water and wastewater utilities do not produce, utilize, or benefit from PFAS. Instead, they encounter these chemicals solely because they are present in source waters or in the wastewater and stormwater flows that utilities are legally required to collect and treat. In 2024, the U.S. Environmental Protection Agency (EPA) designated PFOA and PFOS as hazardous substances under CERCLA with the goal of facilitating environmental remediation. As we share the goal of environmental protection, our organizations have not opposed the designations themselves. However, EPA's action has the unintended effect of placing water utilities at risk of substantial liability, potentially transferring massive cleanup costs to households and businesses through increased utility bills and allowing the very entities that produced or benefitted from PFAS to sue water systems to cover their remediation costs.

Earlier this fall, EPA Administrator Zeldin acknowledged this problem, stating that while EPA will continue to defend the hazardous substance designations in court, the agency "will need new statutory language from Congress to fully address our concerns with passive receiver liability." This statement underscores the need for congressional leadership to ensure CERCLA operates as intended, holding polluters financially responsible rather than ensnaring communities that are already investing heavily to remove PFAS from drinking water and wastewater streams.

In light of the above, the Water Coalition Against PFAS appreciates the Subcommittee's attention to this issue. The Subcommittee's hearing made clear that many Members are alarmed by the prospect that water utilities could be targeted in frivolous lawsuits designed to shift liability away from polluters and PFAS manufacturers and onto households and other businesses through higher water rates across the country.

Misconceptions Raised During the Hearing

We are concerned that certain aspects of the discussion during the hearing do not fully reflect the regulatory realities facing water and wastewater utilities nor how CERCLA interacts with other core water statutes, namely the Clean Water Act and Safe Drinking Water Act.

Protections Would be Premature

We respectfully disagree with the suggestion that it is premature to provide a CERCLA exemption for water utilities. EPA finalized the hazardous substance designation for PFOA and PFOS in 2024, in close succession to the PFAS drinking water standards that require utilities to treat for these same chemicals - treatment which results in the collection and management of PFOA- and PFOS-laden treatment residuals. Taken together, these regulatory actions expose drinking water utilities to potential CERCLA liability, despite compliance with their obligations under SDWA.

Similarly, clean water utilities are receiving PFAS daily in the influent they receive, putting them at risk of CERCLA liability when PFAS are discharged even in trace amounts into receiving waters or through the disposal of treatment byproducts. Wastewater and stormwater systems were never designed to remove PFAS, and there are currently no technically feasible treatment technologies capable of eliminating PFAS from the massive volumes of wastewater and stormwater these systems manage daily. Utilities are being placed at the center of a contamination problem they did not create and cannot fully control.

As a result, utilities may become targets of PFAS manufacturers seeking to shift their cleanup costs by pursuing contribution claims against other "potentially responsible parties" under Section 107(a) of CERCLA. Even when these utilities follow all applicable best practices and disposal requirements, the statute as currently written creates uncertainty and litigation risk. Congress has the ability to reduce this risk and provide clarity by adopting a narrowly tailored exemption for water and wastewater utilities that follow federal PFAS regulations. This is an important piece of the exemption, as it ensures that only utilities that are fully complying with all federal requirements are eligible for liability protection.

The urgent need for CERCLA passive receiver protections for water systems is also rooted in CERCLA's retroactive nature. Parties can be held liable for past releases, even those dating back before CERCLA's enactment. Thus, water utilities may be sued by third parties for liability for historic releases of PFAS prior to their being any PFAS standards in place for utilities to meet and even when they were in full regulatory compliance at the time.

CERCLA's strict and joint-and-several liability framework exposes wastewater and stormwater agencies to costly litigation and potential cleanup liability simply for doing their critical work of conveying, managing, or treating PFAS-contaminated flows. This legal exposure exists even when utilities are operating in full compliance with their permits. Existing CERCLA exclusions—such as federally permitted releases and the normal application of fertilizer—are narrow, uncertain, and unreliable in the PFAS context, leaving utilities vulnerable to third-party lawsuits and enforcement actions despite compliance with federal environmental requirements.

CERCLA Protections Would Discourage Utility Investments in Clean, Safe Water

Claims made during the hearing that a CERCLA exemption would reward utilities that turn a blind eye towards pollution are also incorrect, as any utility found to not have followed all applicable federal standards would not be eligible for protection from liability. Furthermore, the claim that a CERCLA liability protection would disincentivize utilities from addressing PFAS reflects a fundamental misunderstanding of how CERCLA interacts with other federal statutes. Clean and drinking water utilities are required to comply with all applicable regulations under the Clean Water Act and Safe Drinking Water Act regardless of whether certain pollutants are designated under CERCLA. Simply put, CERCLA designations have no bearing on permit compliance. Protections from CERCLA liability for PFAS will not disincentivize water utilities from CWA or SDWA compliance and in fact by avoiding CERCLA litigation, could help preserve ratepayer dollars for clean and safe water investment.

We appreciate that members of the Subcommittee agree that polluters must be held accountable, but we are concerned that maintaining CERCLA's status quo simply benefits those same polluters. As stated during the hearing, EPA's "PFAS Enforcement Discretion and Settlement Policy Under CERCLA" does not prevent polluters from shifting their own remediation costs to passive receivers through third-party contribution claims. The policy reflects EPA's intentions for federal enforcement, but the majority of contribution claims under CERCLA are brought by parties other than EPA. The current statute does not give EPA the unilateral authority to prevent these other parties from seeking to shift their cleanup costs to water and wastewater utilities through expensive and lengthy litigation. Without congressional action to close this loophole, EPA's ability to protect passive receivers is extremely limited. Statutory certainty through a tailored exemption for water utilities will more effectively place the cost burden of cleanups on polluters.

Water Utilities Seek Source Control and Appropriate Regulatory Actions

We are also in agreement with calls for Congress to act more broadly to limit the production and use of PFAS in some circumstances. Members of the Coalition have broadly encouraged greater source control efforts – a logical step to reduce the flow of new PFAS before putting parties on the hook for cleanup. The Water Against PFAS Coalition urges Congress to use and strengthen existing environmental laws, like the Clean Water Act, as a more proactive approach to reducing PFAS in the environment. These statutes can help prevent harm, rather than focusing on cleanup after the fact.

Specifically, Members of the Coalition have encouraged the use of the Toxic Substances Control Act (TSCA) to prevent harmful chemicals from being introduced into commerce, which could play a key role in source water protection. Members of the Coalition have also called for Clean Water Act standards to help reduce industrial discharges of PFAS and to arm clean water utilities with pretreatment standards they can then implement in their communities. Additionally, members of the Coalition have long advocated for full funding of the Drinking Water and Clean Water State Revolving Funds (SRFs), which provide access to low-cost financing to help states and communities develop and implement source water protection plans, take

other actions to protect drinking water sources from contamination, and support investment in treatment systems.

However, it is important to note that even an immediate ban on production and use of new PFAS chemistries would do nothing to address the vast amounts of PFOA and PFOS that remain dispersed throughout the environment as a result of decades of widespread use. PFOA and PFOS have been phased out of commerce for years, but these legacy PFAS are the substances that drinking water and wastewater systems must treat for and manage, leaving both utilities and their customers exposed to CERCLA liability.

To be clear, CERCLA was never intended to penalize entities performing essential public health functions. Yet the ubiquity, persistence, and decades-long unregulated use of PFAS have created an unprecedented legal landscape in which passive receivers—such as water utilities—face potential liability simply for doing their jobs. It is vital to understand that compliance with federal PFAS standards does not and will not resolve this risk. CERCLA's existing protections for federally-permitted-discharges are narrow, ambiguous, and fail to address the statute's retroactive liability provisions.

Meanwhile, compliance with EPA's drinking water standards for PFAS will leave community water systems with residuals that must be disposed of – and leave them vulnerable to CERCLA liability based on what may occur at the disposal site decades in the future. As a result, utilities may be exposed to claims tied to legal disposals or discharges that occurred many years ago, even when those disposals and discharges fully complied with all applicable laws at the time.

Solutions to Maintain CERCLA's "Polluter Pays" Mantra

Both the Trump and Biden Administrations have recognized the challenges that the CERCLA PFAS designations pose for water utilities and the public, and attempted to use existing authorities to protect water systems and other passive receivers. As Administrator Zeldin recently affirmed, those administrative tools are inadequate to protect utilities from third-party litigation. Only Congress has the authority to establish a reliable liability framework that shields passive receivers and ensures that cleanup costs are borne by polluters, not the public.

Water utilities are already confronting substantial and rising costs to comply with new and looming federal requirements under the Safe Drinking Water Act and Clean Water Act. The added uncertainty and expense of CERCLA litigation is a separate layer of regulations, with significant costs and uncertainties, from these core clean and drinking water obligations and would place severe pressure on utilities, especially those serving small or rural communities with limited ratepayer bases. With Americans already facing higher utility bills, it would be fundamentally unfair to require them to underwrite the cleanup responsibilities of PFAS manufacturers that profited from these chemicals and released them without notice to the public into their households, waters, and environment for decades.

Communities should never pay for decades of corporate PFAS production and profit. Without clear statutory protections, CERCLA's foundational "polluter pays" principle risks devolving into a "public pays" model, forcing water customers to shoulder rate increases—an outcome that raises serious concerns of economic and environmental injustice.

Congressional action is both necessary and urgent. We respectfully encourage the Committee to move forward with legislation that explicitly protects drinking water, wastewater, and stormwater utilities from CERCLA liability when managing PFAS and handling residuals in compliance with applicable laws. This

Congress, Reps. Marie Gluesenkamp-Perez (D-WA) and Celeste Maloy (R-UT) introduced H.R. 1267, the Water Systems PFAS Liability Protection Act, which would ensure that utilities can continue to focus their efforts on replacing aging infrastructure and maintaining water quality rather than defending themselves in court when polluters seek to deflect costs onto the public.

We look forward to working with the Committee on passing H.R. 1267 into law and developing a durable statutory solution that reinforces CERCLA's foundational "polluter pays" principle, safeguards communities, and advances the nationwide effort to address PFAS contamination.

Thank you for your consideration of this important matter.

Sincerely,

The Water Coalition Against PFAS