



July 17, 2023

VIA Comment Portal: <https://www.epw.senate.gov/public/index.cfm/2023/6/stakeholder-comment-on-draft-pfas-legislation>

The Honorable Tom Carper
Chairman
United States Senate Environment and Public Works Committee
Washington, DC

The Honorable Shelley Moore Capito
Ranking Member
United States Senate Environment and Public Works Committee
Washington, DC

RE: Comments on Senate Environment and Public Works Committee Draft PFAS Legislation

Dear Chairman Carper and Ranking Member Capito,

On June 22, 2023, the Senate Environment and Public Works (“EPW”) Committee released per- and polyfluoroalkyl substances (“PFAS”) draft legislation (“Draft Legislation”) for stakeholder comment.

As a preface, the Advisory Board was created in the same legislation that created the Massachusetts Water Resources Authority (“MWRA”). Our role is to represent the interests of the communities and their ratepayers.

MWRA Advisory Board Comments

The MWRA Advisory Board wishes to echo and reinforce the concerns raised by the MWRA in their comments on the Draft Legislation as it relates to the proposed rule amendments under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), regarding perfluorooctanoic acid (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”).¹

The Advisory Board shares the MWRA’s concerns about the potential designation of PFOA and PFOS as hazardous substances under CERCLA as well as its far reaching direct and indirect effects. Such a designation would grant the Environmental Protection Agency (“EPA”) broad authority to enforce cleanup actions for PFOA/PFOS contamination and hold potentially responsible parties accountable for the associated costs. The retroactive and joint and several liability provisions of CERCLA, however, could lead to the recouping of cleanup expenses from any potentially responsible parties.

¹ 87 Fed. Reg. 54415, 54441-54442 (September 6, 2022) (proposing amendments to 40 CFR § 302.4)(“Proposed Rule”)





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As written, the Proposed Rule could include publicly-owned treatment works (“POTWs”), including MWRA, as potentially responsible parties; however, POTWs passively receive PFAS chemicals through wastewater from various sources, such as industrial, commercial, and residential sectors. These POTWs have limited control over the influx of PFAS chemicals and do not actively manufacture or process them for profit. Nevertheless, the broad liability framework proposed could inadvertently subject POTWs to substantial cleanup costs as passive receivers of PFAS.

Imposing such burdensome costs on passive receivers like POTWs, which provide essential public services is deeply unfair. These costs would likely be passed on to ratepayers through increased fees and charges.

Therefore, we strongly support the MWRA's call for a narrowly-tailored liability exemption for passive receivers of PFAS, such as POTWs, in the EPW Committee's Draft Legislation. This exemption would ensure that the polluter pays principle is upheld, appropriately assigning the cleanup costs to PFAS manufacturers and major commercial users who actively produced and profited from these chemicals.

By addressing the concerns raised by MWRA and other stakeholders, we can prevent unjust financial burdens on public entities providing critical wastewater treatment services, the communities they serve, and ultimately the ratepayers. It is our collective responsibility to ensure that the proposed PFAS legislation aligns with principles of fairness and accountability.

Thank you for your attention to these concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew A. Romero'.

Matthew A. Romero
Executive Director | MWRA Advisory Board



2 Griffin Way, Suite A, Chelsea, MA 02150



(617) 788-2050



mwra.ab@mwraadvisoryboard.com

mwraadvisoryboard.com

Matthew A. Romero
Executive Director