

TESTIMONY OF

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ON BEHALF OF THE WATER COALITION AGAINST PFAS

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Good morning and thank you Chairman Carper and Ranking Member Capito, and all members of the Committee for the invitation to testify before you today about the need to protect water systems from PFAS liability under CERCLA. Thank you for holding this hearing.

My name is Michael Witt, and I am the General Counsel for Passaic Valley Sewerage Commission, or PVSC, in Newark, New Jersey. Formed in 1897, PVSC is one of the oldest environmental agencies in the United States and has provided public sewer service for 100 years. PVSC operates the fifth-largest wastewater facility in the nation, treating over 250 million gallons of wastewater per day and providing service to 1.5 million residents in 48 municipalities across northeastern New Jersey.

I am testifying today on behalf of the Water Coalition Against PFAS. The Coalition includes organizations whose membership represents all facets of clean and safe water delivery --- the Association of Metropolitan Water Agencies, the American Water Works Association, the National Association of Clean Water Agencies, the National Association of Water Companies, the National Rural Water Association, and the Water Environment Federation. Together the Coalition advocates for tens of thousands of wastewater, drinking water, and stormwater

utilities and members of the water workforce who keep our country's vital water infrastructure operating day in and day out.

Our collaboration reflects how critical the topic you are addressing today is to all water systems – urban, suburban, and rural; large and small; public and private.

Wastewater and drinking water agencies were literally created for environmental and public health protection. That's our mission, and to help us do that, we want polluters to pay for PFAS remediation.

Ironically, it is through the very act of providing clean and safe water to the public that utilities are exposed to CERCLA liability. Utilities do *not* manufacture or profit from PFAS. Industry did that, for decades.

In contrast, utilities passively receive PFAS via source water for drinking water supplies and through wastewater discharged into sewer systems from homes and businesses.

That fact, and that fact alone, exposes each and every water utility in the country to being labeled a “potentially responsible party” under CERCLA. And it exposes millions of water ratepayers across the country to having to fund PFAS cleanups for pollution caused by private corporations.

This is simply wrong. Congress must act to fix it. Our Coalition is asking Congress to provide water systems with liability protections under CERCLA for PFAS to help ensure *polluters*, not the public, pay for cleanups.

To be clear, as EPA and state agencies develop drinking water, wastewater, and stormwater regulations for PFAS, utilities will be implementing these through costly treatment upgrades. We will be working hard to keep the rates we have to charge affordable.

But CERCLA liability will come on top of, and despite, those investments.

Some have expressed the opinion that if utilities just comply with their federal permits, they will not be subject to CERCLA liability. That is not the case.

The existing CERCLA exemptions tied to federal permits generally would require that PFAS be directly addressed in the permit before it could provide any sort of liability shield. But EPA and states are still figuring out how to address PFAS in permits.

CERCLA is also retroactive – meaning that in the future when utilities can rely on their permits to protect them from liability, they would *still* be on the hook for remediating decades worth of PFAS that chemical companies have already pumped into our water, air, and land.

I am also aware that EPA has proposed to exercise enforcement discretion and stated it does not intend to target water systems for CERCLA enforcement. We welcome that promise. But it does not carry the force of law, and its impact is limited to cleanups led by EPA, not private parties. CERCLA provides even the most culpable of parties with multiple avenues to drag innocent parties into extremely costly and complex litigation, and there is little EPA can do to stop it.

I do not come before you today with hypotheticals. I come before you as the General Counsel of a public clean water utility that has been caught up in the biggest Superfund case in the law's history for the last 28 years with no end in sight.

From 1951-1969, the Diamond Alkali Company manufactured Agent Orange on the banks of the Passaic River. A byproduct of Agent Orange is tetrachlorodibenzo-p-dioxin, or TCDD, which has since been labeled by scientists as "one of the most toxic synthetic compounds ever tested." Like PFAS, TCDD is persistent in the environment.

During its time manufacturing Agent Orange, Diamond Alkali dumped TCDD directly into the Passaic River. The company had an alarm system that would be triggered when PVSC inspectors came onto the property so that they could hide that they were pumping these toxic compounds through pipes directly into the river. The damage the company has done to the river will easily run into the billions of dollars.

It is difficult to envision a more culpable party. Yet Diamond Alkali's successors in interest – now Occidental Chemical Corporation – have through decades of litigation been able to draw hundreds of parties, including PVSC and 40 other public entities, into its fight over who should pay for removing this pollution from the river.

How have they been able to do that? By using the fact that PVSC performs the public service of collecting and treating wastewater – wastewater that, because of Diamond Alkali's actions, contained TCDD – as a basis for legal liability under CERCLA. Without an exemption from this Committee, Dupont, 3M, Chemours and all the other PFAS manufacturers will be able

to do the exact same thing to utilities in PFAS cleanups. And unlike TCDD, PFAS aren't only found in a few chemical plants – they are everywhere – putting utilities everywhere at risk.

I have also heard it said that utilities need the threat of CERCLA liability to ensure they will do the right thing. This is insulting and unmoored from reality.

I can tell you, being exposed to the Diamond Alkali superfund litigation has not spurred PVSC to better protect the environment – rather, it has kept us from spending precious public dollars on other projects that would benefit our communities.

PVSC serves highly economically-disadvantaged areas with significant environmental justice concerns and low-income households – and their dollars are going into lawyers' pockets. Since 2016, we've spent over \$4.6 million on defense costs. With the overall cleanup cost for TCDD reaching into the billions, any portion that PVSC will face will have a big impact on our customers.

I reiterate – this is simply wrong. Communities should not pay for the privilege of being poisoned. Congress must act to fix this by enacting targeted legislation to shield water sector utilities from CERCLA liability for PFAS.

That concludes my testimony. Thank you for giving me the opportunity to share our story. I would be happy to answer any questions the Committee may have.