

RESOLUTION

RESOLUTION IN SUPPORT OF PROPOSED LEGISLATION ENTITLED “WATER SYSTEMS PFAS LIABILITY PROTECTION ACT”

WHEREAS, the mission of the Pequannock River Basin Regional Sewerage Authority (“PRBRSA”) is to serve the people that live, work and visit our community, by providing effective wastewater treatment and disposal services through the use of sound management principles, modern scientific practices and effective planning, and to maintain our infrastructure and safeguard public health; and

WHEREAS, the United States Environmental Protection Agency (USEPA) has determined that perfluoroalkyl or polyfluoroalkyl substances (PFAS Substances) are a threat to human health and the environment; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) proposes to designate certain PFAS Substances as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA; a.k.a., Superfund Act); and

WHEREAS, under a broad definition of CERCLA, public and private drinking water utilities, wastewater agencies (POTW), stormwater utilities, and biosolids management programs are potentially subject to CERCLA liability with regard to PFAS Substances; and

WHEREAS, CERCLA was enacted to hold polluters responsible for environmental cleanups; and

WHEREAS, PRBRSA is a passive receiver of PFAS Substances and does not manufacture, use, or originate PFAS Substances. Being subject to such a CERCLA designation would ensnare public and private drinking water utilities, wastewater agencies such as PRBRSA, stormwater utilities, and biosolids management programs in endless litigation at the expense of taxpayers and ratepayers; and

WHEREAS, in the past, some New Jersey utilities have been drawn into Superfund actions even though they are not polluters; and

WHEREAS, USEPA assurances that it will rely on its enforcement discretion to keep POTWs from being forced to pay for cleanup under CERCLA may not provide a complete remedy to this issue because, 1) discretion can vary based upon the administration and EPA region, and 2) polluters may employ legal strategies that draw public and private drinking water utilities, wastewater agencies (POTW), stormwater utilities, and biosolids management programs into litigation based upon CERCLA liability; and

WHEREAS, taxpayers and ratepayers are “innocent bystanders” and should not be made to expend scarce resources to further subsidize remediation and other costs incurred by producers

and manufacturers of PFAS Substances, nor should they be subject to the regulatory uncertainty associated with prosecutorial discretion; and

WHEREAS, the cost implications of the proposed CERCLA designation are complicated by the fact that PFAS Substances are not introduced into the environment in a single or several discreet “spills” that can be terminated and remediated, but are continually being introduced into the environment as a result of products that continue to be produced, manufactured and sold by others outside of the scope of PRBRSA regulations; therefore, protection from CERCLA liability is necessary.

NOW THEREFORE BE IT RESOLVED that the Pequannock River Basin Regional Sewerage Authority calls on the Hon. Cory A. Booker and the Hon. Robert Menendez to join Sen. Cynthia Lummis in sponsoring the “Water Systems PFAS Liability Protection Act” because it would explicitly exempt public and private drinking water utilities, wastewater agencies (POTWs), stormwater utilities, and biosolids management programs from CERCLA liability for costs arising from a release to the environment of a covered perfluoroalkyl or polyfluoroalkyl substance, unless liability for damages or costs associated with the release of a PFAS Substance is due to gross negligence or willful misconduct in the discharge, disposal, management, conveyance, or storage of a PFAS Substance.


CERTIFICATION

I hereby certify that this Resolution was adopted at a regularly scheduled meeting of the Pequannock River Basin Regional Sewerage Authority held on June 21, 2023.

On motion of
Seconded by

and a Roll Call Vote as Follows:

Yeas:
Nays:
Abstain:
Absent:



Dave Desai, Secretary

Send the resolution to:

Sen. Robert Menendez
528 Hart Senate Office Building
Washington DC 20510
(202) 224-4744

Sen. Cory A. Booker
717 Hart Senate Office Building
Washington DC 20510
(202) 224-3224