



November 18, 2019

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Paul Tonko
Chairman
Subcommittee on Environment and Climate Change
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Shimkus
Ranking Member
Subcommittee on Environment and Climate Change
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Pallone, Ranking Member Walden, Chairman Tonko, and Ranking Member Shimkus:

As the Energy and Commerce Committee prepares to consider an Amendment in the Nature of a Substitute to the PFAS Action Act of 2019 (H.R. 535), the Association of Metropolitan Water Agencies (AMWA) has identified numerous concerns with this proposal. Unfortunately, as drafted the substitute amendment fails to protect water system ratepayers from liability for PFAS cleanup costs, limits water systems' ability to use new grant funds intended to help remove PFAS from water supplies, and steps away from the Safe Drinking Water Act's (SDWA) established regulatory process for emerging contaminants – potentially leading to new regulations that lack the appropriate scientific scrutiny and undermining the confidence of the public in their drinking water.

Over the past several months, AMWA has engaged with members of the Energy and Commerce Committee, as well as your counterparts on the Senate Environment and Public Works Committee, as each panel has developed legislative proposals to address PFAS. In each case, we have advocated in favor of policies that will ensure transparent, science-based regulations, holding polluters accountable while protecting water system ratepayers, and providing assistance to communities in need. We believe the substitute amendment falls short of these goals.

AMWA's concerns include the following:

- Section 2 of the substitute amendment would require EPA to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and to make a determination on whether to designate all PFAS as hazardous substances within five years. While AMWA supports holding PFAS polluters accountable, Congress should make a distinction between polluters who introduced PFAS into the environment and entities like community

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water systems that remove PFAS from their source waters and then must dispose of water treatment byproducts containing traces of the chemicals. In the case of the latter, community water systems that legally dispose of water treatment byproducts containing PFAS should not be held liable under CERCLA, as doing so would penalize ratepayers twice: once when they make investments to remove PFAS from their source water, and again when they are forced to pay to cleanup PFAS contamination elsewhere.

- Section 5 would require EPA to promulgate a national primary drinking water regulation for PFOA and PFOS within two years, while also establishing a unique and expedited regulatory process under SDWA for other chemicals in the PFAS family, with different deadlines and scientific review processes than what apply to any other contaminant that may be a candidate for regulation. These expedited processes could lead to premature regulatory decisions that lack public review and scientific validity.
- Section 5 would also permanently reduce EPA's discretion on when to issue drinking water health advisories related to PFAS. Instead the agency would be required to issue a health advisory for any PFAS for which EPA finalizes a toxicity value and a validated testing procedure, unless the administrator publishes in the Federal Register a determination that a given PFAS is unlikely to appear in drinking water at a "sufficient frequency." With time, as research continues on various PFAS and toxicity values for additional substances are identified, this provision could lead to repeated new PFAS health advisories that may report little risk to public health. Nevertheless, the repeated advisories could serve to undermine the public's confidence in their drinking water.
- AMWA appreciates that Section 13 would establish a new PFAS infrastructure grant program to help community water systems pay costs associated with implementing technologies to remove PFAS. But as written, technologies eligible for funding would be limited to those that EPA determines "are effective at removing all detectable amounts of PFAS from drinking water." Given the thousands of long- and short-chain PFAS in the environment, and ongoing advancements the detection of these PFAS in drinking water, only allowing funding assistance for technologies that can remove all detectable amounts of PFAS could be significantly limiting. Some PFAS removal technologies that effectively help water systems remove long-chain PFAS, like granular activated carbon filtration, might not be eligible for this funding assistance because they are less effective at eliminating short-chain PFAS.

AMWA appreciates that the committee has faced a difficult challenge in crafting a comprehensive and effective response to PFAS, but our concerns leave us unable to support the amendment in the nature of a substitute. We hope to have the opportunity to work with you to further refine the proposal going forward.

Sincerely,



Diane VanDe Hei
Chief Executive Officer