June 15, 2021

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

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S House of Representatives
Washington, DC 20515

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

The Honorable David McKinley
Ranking Member
Subcommittee on Environment and Climate Change
U.S. House of Representatives
Washington, DC 20515

RE: Opposition to H.R. 2467 and H.R. 3291 as introduced

Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chairman Tonko, and Ranking Member McKinley:

Last month our organizations wrote to members of the Energy and Commerce Committee to outline a range of concerns with several drinking water policy and infrastructure bills that were the subject of a May 25 hearing, and to request the opportunity to suggest constructive improvements to the proposals. **Now that the Environment and Climate Change Subcommittee has announced plans to markup several of these bills on June 16, we write again to express our opposition to H.R. 2467 and H.R. 3291 unless amendments that address the below concerns are adopted.**

To be clear, we strongly support reauthorization of the Drinking Water State Revolving Fund, programs to help community water systems harden their physical and cyber infrastructure, and initiatives to address residential lead service lines and school water fountains. But the legislation before the committee pairs these priorities with ill-advised proposals to overhaul EPA's transparent and science-based approach to regulating drinking water contaminants, hold local water systems and their ratepayers responsible for cleaning up the pollution of per- and polyfluoroalkyl substances (PFAS) manufacturers, and prevent water systems from taking appropriate steps to collect payment for water service to maintain overall sustainability. We have no choice but to oppose any legislation that includes these provisions.

To that end, we urge all members of the Environment and Climate Change Subcommittee to oppose H.R. 2467 and H.R. 3291 in their current form, and to support any proposed amendment that would rectify the concerns we have identified:

H.R. 2467, the PFAS Action Act of 2021

- Section 2 would leave local drinking water systems and their ratepayers subject to financial liability for environmental PFAS cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) – even in cases where the water system followed all applicable laws and regulations related to PFAS disposal. This is in direct contrast to the polluter pays principle, and we urge the committee to keep liability for PFAS cleanup with PFAS manufacturers and formulators. At minimum, the legislation should extend a similar CERCLA liability exemption to water and wastewater utilities that it offers to airports.

- 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 the Safe Drinking Water Act (SDWA) for other chemicals in the PFAS family. This new process would carry different deadlines and scientific review processes than what apply to any other contaminant that may be a candidate for regulation. While we understand that the existing SDWA regulatory process can appear frustratingly slow, a scientific, risk-based and data-driven process is indeed going to take a significant amount of time. Bypassing such processes may result in ineffective use of limited resources, and 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 by requiring the agency 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 the repeated issuance of new PFAS health advisories that may report little risk to public health. Nevertheless, the recurrent advisories could serve to undermine the public's confidence in their drinking water.

- Section 7 would establish a new PFAS infrastructure grant program to help community water systems pay costs associated with implementing technologies to remove PFAS, which we appreciate. 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." There is no water treatment technology available today that can reliably remove *all detectable amounts* of PFAS from water supplies, so that standard would prevent any water system from making use of these grant funds.

H.R. 3291, the Assistance, Quality, and Affordability Act of 2021

- Section 106 would authorize grants to help water systems replace lead service lines, with a requirement that "any recipient of funds … shall offer to replace any privately owned portion of the lead service line at no cost to the private owner." This language could be interpreted to require any water system that receives any amount of program funds to permanently pay for all future private-side lead service line replacement costs, even after this federal grant assistance has

been exhausted. Instead, we recommend that the legislation specify that "none of the funds made available" through this program may be spent in a manner that is inconsistent with conditions specified by Congress.

- Section 107 would establish a PFAS infrastructure grant program similar to what is proposed in H.R. 2467, including the limitation of eligible treatment technologies to those that are certified to remove "all detectable amounts" of PFAS from water supplies. As stated above, there is no technology available today that can reliably meet this standard.

- Section 201 would repeal section 1412(b)(6) of the Safe Drinking Water Act, a key provision that allows EPA the opportunity to ensure that the public health benefits of a drinking water regulation are reasonably balanced with the compliance costs that will be incurred by water system ratepayers. Under current law, if EPA determines that the benefits of a proposed maximum contaminant level (MCL) do not justify the costs of compliance, section 1412(b)(6) gives EPA the option, following notice and opportunity for public comment, to promulgate an MCL "that maximizes health risk reduction benefits at a cost that is justified by the benefits." Importantly, this provision does not prohibit the promulgation of an MCL with costs that outweigh benefits. Instead, it simply allows EPA – after collecting and considering public comment – the opportunity to adjust a proposed standard to better keep costs and benefits in balance. This provision is particularly important to promoting equity for low-income water ratepayers, as those individuals would be the most affected by water rate increases that could be necessary to pay for a utility's compliance with a new regulatory standard that carries excessive new costs.

- Section 202 would mirror H.R. 2467 in requiring EPA to finalize national primary drinking water regulations for PFOA and PFOS within two years and establishing a unique and expedited SDWA regulatory process for other contaminants in the PFAS family. These new rules would depart from the scientific, risk-based and data-driven process that is the hallmark of the 1996 SDWA Amendments and would undermine the public's confidence in their drinking water by requiring EPA to issue repeated health advisories for any PFAS for which the agency finalizes a toxicity value and a validated testing procedure – even when public health risks are low.

- Sections 203 and 204 would again insert Congress into EPA's impartial contaminant regulatory process by requiring the agency to rush to finalize drinking water regulations for microcystin toxin and 1,4-dioxane within two years of the bill's enactment, at levels that are more stringent than are otherwise required under SDWA. Such an expedited timeframe would come at the expense of public transparency and scientific vigor and could lead to inequitable regulations that force the lowest-income water ratepayers to shoulder a greater proportion of the new compliance costs that are passed on by their water systems.

- Section 301 would offer new EPA grants to water systems to cover the arrearages and fees of any residential water ratepayer who incurred such an expense between March 1, 2020, and the date of the bill's enactment. Aside from the fact that this program is not targeted at low-income customers and would award federal dollars to any residential customer who was late on a water

bill for any reason during the timeframe described above – thus diluting the amount of funding available for customers in legitimate need of assistance – water systems could only avail themselves of the funding if they agree to refrain from pursuing collections against delinquent bills, or disconnecting any customers for nonpayment, for a period of five years. This requirement would remove any incentive for a utility customer to pay a water bill for the next half-decade, and as a result few if any water systems would be likely to accept grant funding with these strings attached.

Again, our organizations are willing to revisit our opposition to H.R. 2467 and H.R. 3291 should they be amended to address the concerns that are detailed above. While we regret that our organizations' May 24 letter to the committee – which outlined many of these same concerns – was unsuccessful in spurring a constructive dialogue on potential amendments prior to the subcommittee markup, we remain eager to help craft bipartisan drinking water infrastructure legislation that can be supported by the nation's drinking water systems.

Sincerely,

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