



Aug. 8, 2019

The Honorable James M. Inhofe  
Chair  
Senate Committee on Armed Services

and

The Honorable Adam Smith  
Chair  
House Committee on Armed Services

Dear Sen. Inhofe and Rep. Smith,

As preparations begin for a conference committee to convene on the 2020 National Defense Authorization Act, the undersigned water organizations want to bring to your attention important issues surrounding provisions in both House and Senate bills addressing per- and polyfluoroalkyl substances (PFAS). Our recommendations are in the interest of protecting public health, facilitating effective science-based regulations, and holding polluters - not innocent local communities - responsible for environmental remediation costs. We stand willing to work with you to achieve these goals.

1. Liability for PFAS clean-up should rest with PFAS producers.

- a. Congress should not hold community drinking water and wastewater facilities liable for PFAS contamination caused by PFAS products that we now realize should not have been allowed into commerce in the United States.
- b. Designating PFAS as a CERCLA ("Superfund") hazardous substance would help communities that have a known responsible party with financial means to pay for cleanup. However, it could also create liability for communities that encounter PFAS in their water treatment activities. Once PFAS is removed from water, it then must be disposed of. A water utility that properly disposes of residuals containing PFAS, in a manner consistent with applicable laws, must not be held liable under CERCLA for future costs associated with PFAS cleanup. Those costs and responsibilities must remain with the original polluters that introduced PFAS into the environment. Failure to protect water utilities from this liability would victimize the public twice: once when they are forced to pay to remove PFAS from their water, and again when they are forced to pay to clean up PFAS elsewhere.
- c. If Congress does designate PFAS as a hazardous substance under CERCLA, an exemption for water and wastewater treatment residuals should be included.

2. Congress should not mandate that EPA set a drinking water standard for per- and polyfluoroalkyl substances (PFAS) as a group or class.
  - a. While research exists for legacy PFAS compounds such as PFOA and PFOS, more research is needed to understand the health impacts of other PFAS compounds and whether regulation of PFAS as a group or class would be an effective approach to public health protection.
  - b. EPA already has authority under the Safe Drinking Water Act to regulate groups of contaminants when warranted.
3. Congress should not direct EPA to prepare drinking water health advisories for PFAS compounds under the Safe Drinking Water Act.
  - a. Health advisories can become de facto maximum contaminant levels without consideration of feasibility (e.g., available analytical methods, effective drinking water treatment options, consideration of benefit-cost analyses, or due process with adequate notice and comment).
  - b. The Safe Drinking Water Act gives EPA broad authority to issue drinking water health advisories for unregulated contaminants, and the agency issued such advisories for PFOA and PFOS in 2016.
  - c. Health advisories should only be released when they facilitate effective risk management. It is not clear that health advisories issued while primary drinking water standards are in development would be effective mechanisms to guide public water systems toward sound local decisions.
4. Congress must provide EPA with the necessary resources to properly consider future PFAS regulations.
  - a. The Safe Drinking Water Act mandates a consistent, transparent, and science-based regulatory process for the consideration of new drinking water regulations. Establishing different regulatory processes for PFAS or any other groups of contaminants, with different deadlines and consideration procedures, would set a troubling precedent and likely lead to premature regulatory decisions that lack public review and scientific validity.
  - b. Setting timelines without adequate resources to assist EPA would set up drinking water regulation related to the substances in question on a path to failure. The agency will need resources to
    - i. fund research to support decision-making;
    - ii. develop policy and associated public engagement;
    - iii. help states with rule implementation; and
    - iv. provide technical assistance and funding for impacted water systems.
  - c. The nation can ill afford the further erosion of public confidence in drinking water and our regulatory system.

5. It is time for Congress to ensure that EPA utilizes the Toxic Substances Control Act to understand the risk posed by PFAS and control that risk before they are introduced into commerce.

If you would like to learn more about how we treat and distribute water, please do not hesitate to contact us.

Sincerely,

G. Tracy Mehan III  
Executive Director for Government Affairs  
American Water Works Association

Diane VanDe Hei  
Chief Executive Officer  
American Association of Metropolitan Water Agencies

Rob Powelson  
President and Chief Executive Officer  
National Association of Water Companies

Sam Wade  
Chief Executive Officer  
National Rural Water Association

cc/ Members  
House and Senate Armed Services committees

The Honorable John Barrasso, Chair  
The Honorable Thomas R. Carper, Ranking Member  
Senate Committee on Environment and Public Works

The Honorable Frank Pallone, Chair  
The Honorable Greg Walden, Ranking Member  
House Committee on Energy and Commerce