American Water Works Association

NACWA THE VOICE FOR A CLEAN WATER FUTURE

NWRA National Water Resources Association

Water Environment Federation the water quality people

ASSOCIATION OF METROPOLITAN WATER AGENCIES

NAWC National Association of Water Companies

NRWA National Rural Water Association

January 8, 2020

RE: Opposition to H.R. 535, the PFAS Action Act

Dear Representative:

The undersigned organizations representing the nation's drinking water and wastewater utilities are writing to express our opposition to H.R. 535, the PFAS Action Act of 2019. Unfortunately, the legislation fails to protect water system customers from liability for PFAS cleanup costs.

We believe that per- and polyfluoroalkyl substances (PFAS) should be kept out of our nation's water supplies, and that PFAS polluters should be held responsible. The fundamental mission of water and wastewater utilities is to protect public health and the environment, and in doing so they must also be mindful of affordability and the financial burden borne by their customers and the communities they serve. Utilities are tremendously concerned about what PFAS is doing in their communities and, as they have done with all previous public health and environmental challenges, are committed partners in finding a solution to this problem.

However, Congress must make a distinction between entities that introduced PFAS into the environment, and water and wastewater systems that are on the front lines of cleaning up the contamination. Utilities are not the *producers* of PFAS, but the *receivers* of PFAS. A water system that follows all applicable laws in its management of water treatment byproducts containing PFAS should not be held liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for any *further* environmental cleanup costs related to these chemicals. Doing so would penalize customers twice: once when they make investments to remove PFAS from their waters, and again when they are forced to pay to cleanup PFAS contamination elsewhere.

Unfortunately, H.R. 535 would leave municipal water and wastewater systems customers subject to financial liability for PFAS cleanup under CERCLA – even in cases where the system followed all applicable laws and regulations related to PFAS disposal. This is in direct contrast to the objective of holding polluters responsible.

It is particularly disappointing that the manager's amendment proposed for H.R. 535 would offer a CERCLA liability shield to airports that are required to use firefighting foam containing PFAS, but fails to extend that same protection to water and wastewater systems who may be required to remove and dispose of PFAS. As receivers of PFAS, water utilities should be afforded the same liability protections that airports are being awarded in the legislation.

Again, we share the goal of keeping the nation's waters free of PFAS and holding accountable those entities that are responsible for environmental contamination. But because H.R. 535 would leave water system customers unprotected against liability for environmental cleanup of PFAS, we have no choice but to oppose the legislation in its current form.

Sincerely,

American Water Works Association
Association of Metropolitan Water Agencies
National Association of Clean Water Agencies
National Association of Water Companies
National Water Resources Association
National Rural Water Association
Water Environment Federation

NACWA

EPA ACTION PLAN ON PFAS

Priority Actions

Long-Term Actions

ISSUE	ACTION	TIMEFRAME
DRINKING WATER	Develop a national drinking water regulatory determination for PFOA/PFOS	2019
ACCOUNTABILITY	List PFOA/PFOS as a hazardous substances under the Comprehensive Environmental Response, and Compensation, Liability Act (CERCLA)	Ongoing; Started in 2018
GROUNDWATER	Develop Interim Cleanup Recommendations for PFOA/PFOS	Draft interim guidance available for comment through June 10
TOXICITY	Finalize draft toxicity assessments for GenX and PFBS; other short-chain toxicity information coming in 2020	Reviewing comments
ANALYTICAL METHODS & ANALYZING OTHER MEDIA	Expand current drinking water method 537 in include GenX; develop new testing methods for short-chain PFAS	Completed Method 537.1 in 2018; additional methods coming 2019
	Develop and validate methods for other metrics (wastewater, surface water, groundwater, soil, sediment, biosolids, fish tissue, ambient air, state emissions, off-gases)	Ongoing 2019-2021
EXPAND KNOWLEDGE	Use new statutory requirements added by Frank L. Lautenberg Chemical Safety for the 21st Century Act to review new PFAS and issue significant new use rules (SNURs)	Ongoing; started in 2016
REPORTING	Explore listing PFAS chemicals on Toxic Release Inventory	Start 2019
WATER QUALITY	Determine if available data and research support the development of CWA Section 304(a) ambient water quality criteria for human health for PFAS	2021
EFFLUENT LIMITATIONS	Explore and identify industrial sources that may warrant regulation through national ELGs for the ELG 14	Start 2019
MONITORING	Under next unregulated contaminant monitoring rule (UCMR), utilize newer methods available for PFAS detection and at lower minimum reporting levels (MRLs)	2020
ATMOSPHERIC	Incorporate PFAS into EPA atmospheric models to understand atmospheric fate and transport	2022