July 21, 2021

RE: Opposition to H.R. 2467, the PFAS Action Act of 2021

Dear Representative:

On behalf of organizations representing the nation's municipal governments and drinking water and wastewater systems, we write in opposition to H.R. 2467, the PFAS Action Act of 2021. While we support taking action to reduce the prevalence of PFAS in the environment, the legislation would run counter to the important "polluter pays" principle that guides Superfund site cleanups under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and would step back from the transparent, science-based process of regulating drinking water contaminants under the Safe Drinking Water Act (SDWA) and clean water operations under the Clean Water Act (CWA). We urge you to vote against this legislation in its current form.

H.R. 2467 would require EPA to designate PFOA and PFOS as hazardous substances under CERCLA within one year, and to make a determination on designating all remaining PFAS within five years. These hazardous substance designations are intended to make sure polluters are held responsible for paying for the cleanup of contaminated Superfund sites, which we support. But the bill as currently structured would also mean that municipal drinking water and wastewater utility ratepayers could face staggering financial liability to clean up PFAS that was legally disposed of following the water treatment process. We believe water and wastewater utilities, when acting in accordance with all applicable laws, should be provided an exemption to protect the utilities and water customers from bearing the costs of cleanup.

In the case of drinking water systems, if PFAS is removed from source water in order to comply with a drinking water regulatory standard, the utility then becomes the possessor of filtration media that contain those PFAS. The utility must then dispose of these PFAS-laden filters, typically by sending them to a hazardous waste landfill in accordance with applicable law. However, should that landfill ever become a Superfund site, then the water utility could be treated as a PFAS polluter — and be responsible for a portion of the cleanup costs — forcing local ratepayers to cover the cleanup bill after they already paid to remove the contaminants from their source water.

Wastewater utilities would face similar liability through no fault of their own because they receive PFAS chemicals through the raw influent that arrives at the treatment plant. This heterogenous influent can come from domestic, industrial, and commercial sources and may contain PFAS constituents ranging from trace to higher concentrations, depending on the nature of the dischargers to the sewer system. In any case, the influent is not generated by the utility, but the utility is responsible for treating it under scientific and regulatory authorities provided for under the CWA. Because wastewater utilities cannot halt treating continual industrial or domestic wastewater inputs which likely contain PFAS in some concentration, they should be

protected through a targeted CERCLA liability exemption.

It is particularly disappointing that H.R. 2467 would offer a CERCLA liability shield to airports that release PFAS into the environment through their use of firefighting foam. It defies logic that the legislation fails to extend that same liability protection to water and wastewater systems that have no choice but to dispose of PFAS found in water supplies, and whose ratepayers would be ultimately responsible for all of the costs associated with a Superfund site cleanup. As passive receivers of PFAS, water and wastewater utilities should be afforded the same liability protections that the legislation would award airports in order to keep CERCLA liability focused on the corporations that created the pollution in the first place. Our organizations have repeatedly asked Congress for CERCLA liability shields in the legislation similar to those for airports but have been rebuffed.

Additionally, many of our organizations oppose provisions in H.R. 2467 that would amend SDWA by requiring EPA to promulgate a national primary drinking water regulation for PFOA and PFOS within two years, establishing a unique and expedited drinking water contaminant regulatory process for other chemicals in the PFAS family, and eliminating EPA's discretion on whether to issue drinking water health advisories related to PFAS. In sum, these changes would undermine the development of transparent, science-based drinking water standards, and would place undue cost burdens on our communities and ratepayers while leading to premature regulatory decisions that lack public review and scientific validity.

While we share the goal of addressing PFAS contamination and holding accountable those entities that are responsible releasing it into the environment, H.R. 2467 would instead assign environmental cleanup liability to innocent water systems and their customers. We have no choice but to oppose the legislation and encourage you to vote against it in its current form.

Sincerely,

American Council of Engineering Companies
Association of California Water Agencies
California Association of Sanitation Agencies
National Association of Counties
National League of Cities
The U.S. Conference of Mayors
American Water Works Association
Association of Metropolitan Water Agencies
National Association of Clean Water Agencies
National Association of Water Companies
National Water Resources Association
Water Environment Federation