

July 10, 2019

Dear Representative:

On behalf of the nation's drinking water and wastewater utilities, we urge you to oppose two amendments to the National Defense Authorization Act (H.R. 2500) that would inadvertently make communities across the country liable for costs associated with the cleanup of per- and polyfluoroalkyl substances (PFAS). Our utility members take seriously their role in protecting public health and the environment.

We strongly believe in holding polluters responsible for remediating the effects of PFAS pollution. Across the country sources of drinking water have become tainted with PFAS, causing community water systems to install costly new treatment processes to remove the contaminants. Similarly, wastewater systems receive a broad range of influent from numerous sources, some of which may include levels of PFAS, which must be treated, discharged, and – in the case of biosolids – properly managed via a variety of methods. However, drinking water and wastewater utilities are not the originators of PFAS, and should not be treated as such in legislation that attempts to hold polluters responsible.

The two amendments we oppose have not been examined by the appropriate committees of jurisdiction and actually carry significant unintended consequences for the nation's water and wastewater systems.

- Pappas Amendment #665 made in order by the NDAA rule would require EPA to add PFAS to the list of toxic pollutants under the Clean Water Act. By virtue of their addition to the toxic pollutant list, by law PFAS would automatically become defined as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- Dingell Amendment #537, which was not made in order by the original NDAA rule but which we understand may still be considered on the House floor, would directly require EPA to designate PFAS as hazardous substances under CERCLA.

We agree with the intent of these amendments to hold polluters accountable for the cost of cleaning up PFAS contamination. However, as drafted each of these amendments could result in drinking water and wastewater systems being designated as partially responsible parties under CERCLA, and thus responsible for PFAS cleanup costs. Drinking water systems which must dispose of filtration media or resin that includes PFAS could be held liable when those materials are deposited in landfills. And wastewater systems that discharge effluent containing PFAS that passed through the treatment system – or manage biosolids containing PFAS – could also be treated as polluters even though they had no hand in creating the chemicals in the first place. The cost of cleanup liability incurred by water and wastewater systems would be passed on to millions of local customers across the country.

Again, we support making polluters pay to address PFAS pollution, but we oppose the Pappas and Dingell amendments because they would force local communities to shoulder cleanup costs for which they have no responsibility. While we believe these amendments should not be added to the NDAA, our organizations hope to work with Congress to develop a more workable way to hold polluters responsible while ensuring protections for innocent communities.

Sincerely,

American Water Works Association
National Association of Clean Water Agencies
Water Environment Federation

Association of Metropolitan Water Agencies
National Association of Water Companies