COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

June 14, 2021

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Subcommittee Markup of H.R. 3291, H.R. 3293, and H.R. 2467

On **Wednesday, June 16, 2021, at 10:30 a.m. (EDT), via Cisco Webex online video conferencing**, the Subcommittee on Environment and Climate Change will hold a virtual markup of the following three bills:

H.R. 3291, the "Assistance, Quality, and Affordability Act of 2021";
H.R. 3293, the "Low-Income Water Customer Assistance Programs Act of 2021"; and
H.R. 2467, the "PFAS Action Act of 2021".

I. BACKGROUND ON DRINKING WATER

The U.S. drinking water infrastructure system is composed of 2.2 million miles of pipe, and the system is aging and underfunded. It is estimated that there is a water main break every two minutes, and an estimated six billion gallons of treated water is lost each day, equating to 2.1 trillion gallons per year. Between 2012 and 2018, the rate of water main breaks increased by 27 percent.[1] The U.S. Environmental Protection Agency's (EPA) 2018 Report to Congress on Drinking Water Infrastructure Needs concluded that an investment of $472.6 billion is required to maintain and improve the nation's drinking water and infrastructure over the next 20 years.[2] In its 2021 Report Card, the American Society of Civil Engineers (ACSE) rated the nation's drinking water infrastructure system a "C-" grade.[3]

The Safe Drinking Water Act (SDWA) requires EPA to set standards for naturally-occurring and man-made contaminants in the U.S. public water supply and requires public water

[1] Value of Water Campaign, ACSE, *The Economic Benefits of Investing in Water Infrastructure: How a Failure to Act Would Affect the US Economic Recovery* (www.uswateralliance.org/sites/uswateralliance.org/files/publications/The%20Economic%20Benefits%20of%20Investing%20in%20Water%20Infrastructure_final.pdf).

[2] U.S. Environmental Protection Agency, Drinking Water Infrastructure Needs Survey and Assessment, Sixth Report to Congress (Mar. 2018) (EPA 816-K-17-002).

[3] American Society of Civil Engineers (ASCE), *Report Card for America's Infrastructure: Drinking Water* (Mar. 3, 2021) (infrastructurereportcard.org/cat-item/drinking-water/).

system operators or owners to comply with these standards.[4] The statute also governs underground injection of fluids, including for oil and gas recovery, to protect underground sources of drinking water. The SDWA Amendments of 1996 changed the process for setting standards and created new funding mechanisms. The primary funding mechanism, the Drinking Water State Revolving Fund (SRF), was created through the 1996 Amendments and reauthorized under the America's Water Infrastructure Act of 2018 (AWIA). The authorizations for the SRF, and other drinking water grant programs extended in 2018, will expire at the end of the current fiscal year (FY).

Drinking water standards include two primary components: a maximum contaminant level goal (MCLG) and either a maximum contaminant level (MCL) or treatment technique. The MCLG is a purely health-based target, set at the maximum level of a contaminant in drinking water at which no anticipated adverse health effect would occur. The MCL or treatment technique is an enforceable standard, required under the statute to be set as close to the MCLG as feasible; however, EPA does have authority to set a weaker standard than what is feasible, based on a cost/benefit analysis. SDWA requires EPA to review and revise, as necessary, existing drinking water standards every six years.[5]

II. LEGISLATION TO ADDRESS DRINKING WATER

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

H.R. 3291, the "Assistance, Quality, and Affordability Act of 2021", introduced by Chairmen Tonko (D-NY) and Pallone (D-NJ), includes provisions on infrastructure, drinking water safety, and affordability.

Section 101 of the bill increases and extends the authorization for the Drinking Water System Resilience Funding program.

Section 102 increases and extends the authorization for Public Water System Supervision (PWSS) grants to states.

Section 103 makes permanent existing requirements for projects receiving funds through the Drinking Water SRF to purchase American-made iron and steel products.

Section 104 increases the allotment of Drinking Water SRF funding reserved for the territories from 0.33 percent to 1.5 percent of the aggregate amount available.

Section 105 increases and extends the Drinking Water SRF authorization at $52.94 billion over FY 2022-2031.

[4] 42 U.S.C. § 300f.

[5] SDWA § 1412(b)(9).

Section 106 authorizes $4.5 billion per year from FY 2022-2031 to replace lead service lines with priority for replacing lines in disadvantaged and environmental justice communities.

Section 107 establishes a grant program under SDWA to aid water utilities to pay capital costs associated with treatment for PFAS.

Section 108 extends the authorization for voluntary school and childcare program lead testing under SDWA Section 1464.

Section 109 extends the authorization for the grant program under Section 1465 of SDWA to replace school drinking water fountains that may contain lead.

Section 110 extends the authorization for the Indian Reservation Drinking Water program created under AWIA.

Section 111 extends the authorization for a program created under AWIA to encourage the extension of drinking water service into underserved areas affected by natural disasters and clarifies that the territories are eligible for the program.

Section 201 repeals section 1412(b)(6) of SDWA, which authorizes EPA to set national primary drinking water standards at levels that are weaker than what is feasible, to ensure that new drinking water standards are as close to maximum contaminant level goals as feasible.

Section 202 directs the EPA Administrator (the Administrator) to promulgate a national primary drinking water regulation for per- and polyfluoroalkyl substances (PFAS) that protects the health of vulnerable and disproportionately exposed subpopulations. The standard will include, at a minimum, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

Section 203 requires the Administrator to publish a MCLG and promulgate a national primary drinking water regulation for microcystin toxin that protects the health of vulnerable and disproportionately exposed subpopulations.

Section 204 directs the Administrator to publish a MCLG and promulgate a national primary drinking water regulation for 1,4-dioxane that protects the health of vulnerable and disproportionately exposed subpopulations.

Section 205 eliminates small system variances authorized under 1415(e) of SDWA, which allow for the establishment of weaker drinking water standards for small systems.

Section 301 directs the Administrator to establish a residential emergency relief program to provide grants to public water systems for the purpose of reducing or eliminating customer debt. The section requires any water system receiving funds to halt all water shutoffs for non-payment for a period of five years after receipt of those funds. It also authorizes $4 billion for the program to remain available until expended.

On May 25, 2021, H.R. 3291 was included in a legislative hearing held by the Subcommittee on Environment and Climate Change.

B. H.R. 3293, "Low-Income Water Customer Assistance Programs Act of 2021"

H.R. 3293, the "Low-Income Water Customer Assistance Programs Act of 2021", introduced by Reps. Blunt Rochester (D-DE), Katko (R-NY), Dingell (D-MI), and Tlaib (D-MI), amends SDWA and the Federal Water Pollution Control Act to establish permanent rate assistance programs for low-income water customers.

Section 2 of the bill directs the Administrator to establish a Federal low-income drinking water assistance program to award grants to eligible entities to develop and implement local drinking water access programs to assist low-income households in maintaining access to affordable drinking water. Municipal water systems and states would administer the programs, pursuant to EPA grants. Section 2 also directs the Administrator to provide technical assistance to grant recipients and submit a report to Congress, not later than two years after funds are dispersed, on the results of the program.

Section 3 directs the Administrator to establish a Federal low-income wastewater assistance program to award grants to eligible entities to develop and implement local wastewater access programs to assist low-income households in maintaining access to affordable wastewater services, including municipal stormwater services. The grant program is designed in a similar fashion to the grant program in section 2.

Section 4 directs the Administrator to conduct a needs assessment for nationwide rural and urban low-income community water assistance program. In addition, the Administrator will submit a report to Congress, not later than one year after enactment, describing the results of the study.

On May 25, 2021, H.R. 3293 was included in a legislative hearing held by the Subcommittee on Environment and Climate Change.

III. BACKGROUND ON PFAS

PFAS are a group of man-made chemicals that have been manufactured since the 1940s.[6] PFAS have been found in many common products, including firefighting foam, non-stick cookware, water resistant clothing, cleaning products, paints and sealants, personal care products, and cosmetics.[7] The carbon-fluorine bonds in PFAS are extremely stable, causing the

[6] U.S. Environmental Protection Agency, *Basic Information on PFAS* (updated Apr. 6, 2021) (www.epa.gov/pfas/basic-information-pfas).

[7] Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, *Per- and Polyfluoroalkyl Substances (PFAS) and Your Health* (reviewed June 24, 2020) (www.atsdr.cdc.gov/pfas/health-

chemicals to accumulate and persist in the environment.[8] In addition, PFAS have been shown to bioaccumulate, meaning that after someone is exposed to PFAS, detectable levels can be found in them long after the initial exposure. PFAS exposure has been linked to high cholesterol, thyroid disease, pregnancy-induced hypertension, ulcerative colitis, and kidney and testicular cancer.[9] Although PFOA and PFOS have been voluntarily phased out by most manufacturers,[10] thousands of PFAS formulations continue to be produced.

IV. LEGISLATION TO ADDRESS PFAS

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

H.R. 2467, the "PFAS Action Act of 2021", introduced by Reps. Dingell and Upton (R-MI), would create a comprehensive regulatory regime for PFAS chemicals, from development to disposal.

Section 2 of the bill requires the Administrator to designate PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), frequently referred to as "Superfund." The bill also requires EPA to review all other PFAS chemicals over a five-year period and decide whether to list them under Superfund.

Section 3 requires the Administrator to promulgate a test rule under Section 4 of the Toxic Substances Control Act (TSCA) to require comprehensive testing of all PFAS chemicals. EPA is instructed to identify relevant subclasses of PFAS and tailor testing requirements to those subclasses.

Section 4 establishes a five year moratorium on the introduction of new PFAS into commerce under TSCA Section 5. It also prohibits the introduction into commerce of PFAS chemicals under review-exemptions such as the low volume exemption (LVE). EPA recently announced a new policy prohibiting the introduction of new PFAS under LVEs,[11] consistent with this section.

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effects/exposure.html?CDC_AA_refVal=https%3A%2F%2Fwww.atsdr.cdc.gov%2Fpfas%2Fpfas-exposure.html).

[8] Elsie M. Sunderland, et al, *A Review of the Pathways of Human Exposure to Poly- and Perfluoroalkyl Substances (PFASs) and Present Understanding of Health Effects*, Journal of Exposure Science & Environmental Epidemiology (Nov. 23, 2018).

[9] *Id.*

[10] U.S. Environmental Protection Agency, PFOA Stewardship Program (www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program) (updated Mar. 4, 2021).

[11] U.S. Environmental Protection Agency, *EPA Announces Changes to Prevent Unsafe New PFAS from Entering the Market* (Apr. 27, 2021) (press release).

Section 5 requires EPA to promulgate a drinking water standard for PFAS that is protective of the health of vulnerable and disproportionately exposed subpopulations. The standard would cover PFOA and PFOS at a minimum, and could cover additional PFAS at the discretion of the Administrator.

Section 6 provides a five year grace period during which no financial penalties will be assessed for water systems that violate the PFAS drinking water standard promulgated under Section 5. This grace period is intended to provide time for water systems to implement necessary treatment changes to come into compliance.

Section 7 creates a new grant program to provide financial support to drinking water systems that need to implement treatment changes to remove PFAS from their finished water. The section authorizes $550 million over FY 2022-2026 for the program.

Section 8 directs the Administrator to promulgate a rule adding PFOA and its salts and PFOS and its salts to the list of hazardous air pollutants under the Clean Air Act (CAA). This section would also set a five year deadline for EPA to determine whether other PFAS should be listed as hazardous air pollutants. Lastly, this section sets a one year deadline for EPA to issue a rule identifying major source categories of PFAS under the CAA.

Section 9 requires the Administrator to promulgate regulations under Subtitle C of the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act, or RCRA) to prohibit incineration of materials containing PFAS or aqueous film forming foam if the incineration violates the CAA or fails to eliminate the PFAS in the material.

Section 10 directs the Administrator to revise the Safer Choice Standard of the Safer Choice Program to develop a voluntary PFAS-free label for cookware and other consumer products. The products include pots, pans, cooking utensils, carpets, rugs, clothing, upholstered furniture, and stain, water, or grease resistant coatings that do not contain PFAS.

Section 11 requires the Administrator, in consultation with the head of the U.S. Fire Administration, Federal Aviation Administration, and other relevant Federal agencies, to issue guidance for first responders to minimize their exposure to firefighting foam and other related equipment that contain PFAS chemicals. Covered first responders may include firefighters, police officers, paramedics, emergency medical technicians, and others.

Section 12 directs the Administrator to investigate methods and means to prevent contamination by GenX of surface waters, including source waters used for drinking water purposes.

Section 13 prohibits owners or operators of industrial facilities that emit wastewater under the Federal Water Pollution Control Act (commonly known as the Clean Water Act) from including PFAS in their effluent without prior disclosure to the relevant water treatment works. The owner or operator of the industrial source must notify the owner or operator of the applicable treatment works of the identity of the PFAS, whether the PFAS are susceptible to

treatment by the treatment works, and whether the PFAS would interfere with the operation of the treatment works.

Section 14 directs the Administrator, in coordination with the Secretary of Health and Human Services, the Secretary of Agriculture, and appropriate State agencies, to establish a website containing information relating to the testing of household well water.

Section 15 directs the Administrator to develop a risk-communication strategy to inform the public about the hazards of PFAS. The strategy would include dissemination of information about the risks posed by PFAS in land, air, water, and products, notification of the public about exposure pathways and mitigation measures, and consultation with States that have demonstrated effective risk-communication strategies for best practices.

Section 16 makes U.S. territories eligible for financial assistance designated for addressing emerging contaminants, including PFAS.

Section 17 directs the Administrator to promulgate a rule under the Federal Water Pollution Control Act establishing effluent limitations and pretreatment standards for the introduction or discharge of PFAS. This section authorizes $200 million per year from FY 2022-2026 for a grant program that provides financial assistance to owners and operators of publicly owned treatment works to implement a PFAS pretreatment standard.

In the 116th Congress, H.R. 2467 passed the House on January 10, 2020, as H.R. 535, the "PFAS Action Act of 2019". Prior to House passage, on September 26, 2019, the Subcommittee on Environment and Climate Change favorably forwarded H.R. 535, without amendments, to the full Committee by a voice vote. On November 11, 2019, the full Committee favorably forwarded H.R. 535, amended, to the House by a recorded vote.