

Rural Water Issues Advisory [7/1/2019]

Senate Passes PFAS Legislation: On Thursday, the Senate passed their version of the annual defense authorization bill which included a bipartisan comprehensive legislative package to address the problem of per- and polyfluoroalkyl substances (PFAS) in water.

[Title LXVII, "PFAS Release Disclosure, Detection, and Safe Drinking Water Assistance](#)

The legislation would mandate that EPA set a national regulation (NPDWR) for PFAS under the Safe Drinking Water Act (SDWA). If the bill is enacted, it would result in Congress selecting the SDWA regulation as opposed to the EPA. EPA has said it will decide by the end of the year whether to regulate PFAS under the SDWA, but the Senate was still compelled to act. Many states, tired of waiting for the EPA, have now set their own standards (below the EPA non-enforceable Health Advisory level). The bill also directs the Department of Defense to take more aggressive action on PFAS that would: force the military to finalize agreements with states for cleaning up PFAS contamination caused by the military largely through the use of firefighting foam; force the EPA to consider barring new uses of PFAS and require PFAS manufacturers to share data on their production; develop testing procedures for various PFAS assessments in drinking water within one year; establish health advisory levels within one year of establishing toxicity values for any PFAS compounds; expand the list of PFAS compounds in the next round of monitoring under the unregulated contaminant monitoring rule; direct EPA to conduct research on emerging PFAS compounds; establish interim guidance within one year regarding the destruction and disposal of PFAS and PFAS-containing materials; etc.

The Senate Bill Includes NRWA's Four Main Positions for Addressing PFAS:

1. Non-regulatory/enforcement remedies for local communities impacted by PFAS contamination: Section 6723 states, "*The Administrator may not impose financial penalties for the violation of a NPDWR with respect to a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances... earlier than the date that is 5 years after the date on which the Administrator promulgates the regulation.*" NRWA will likely advocate to extend this timeframe.
2. Dedicated funding for communities affected: Section 6724 authorizes a new \$100,000,000 a year through 2024 under the state revolving loan fund to assist with treatment costs for any new rule.
3. Dedicated funding to small communities (i.e. communities with the most need): Section 6724 sets-aside not less than 25 percent of the new funding "*to provide grants to disadvantaged communities or public water systems serving fewer than 25,000 persons.*" Funding for unregulated contaminant monitoring for small communities: Section 6722 includes the following provision, "*Subject to the availability of appropriations, [EPA shall] require public water systems serving not fewer than 3,300 and not more than 10,000 persons to monitor for the substances...*"
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NRWA Will Be Urging that All The Beneficial PFAS Provisions be Included in the House Version: The House of Representatives' leadership is planning to take up the national defense authorization legislation, including the PFAS provisions, soon after the July 4th recess. Any differences between the Senate and House bills would need to be reconciled before the measure could be sent to the president.

NRWA to Urge the House to Exempt Water and Sewer Systems from Potential Superfund Liability for PFAS:

Some Members of the House of Representatives are advancing additional PFAS amendments during their consideration of the defense authorization bill including one that would require EPA to declare PFAS "hazardous substances" under the Superfund law. NRWA will be urging the House to have water and wastewater systems exempted from Superfund liability under any such amendment because it could create additional cleanup liability for water systems that have land-applied their biosolids or disposed of waste from drinking water treatment systems. NRWA's Regulatory Committee recommended the position last week and the NRWA Executive Committee approved the measure over the weekend.