COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

May 21, 2021

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Legislative Hearing on "The CLEAN Future Act and Drinking Water: Legislation to Ensure Drinking Water is Safe and Clean"

On **Tuesday, May 25, 2021, at 11:30 a.m. (EDT) via Cisco Webex online video conferencing**, the Subcommittee on Environment and Climate Change will hold a legislative hearing entitled, "The CLEAN Future Act and Drinking Water: Legislation to Ensure Drinking Water is Safe and Clean."

I. BACKGROUND

A. The Safe Drinking Water Act

Congress enacted the Safe Drinking Water Act (SDWA) in 1974 to protect the quality of drinking water in the United States.[1] The Act requires the Environmental Protection Agency (EPA) to set standards for naturally-occurring and man-made contaminants in the Nation's public water supply and requires public water system operators or owners to comply with these standards.[2] 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 significantly changed the process for setting drinking water standards and created new funding mechanisms for drinking water infrastructure improvements. Now, SDWA includes an array of grant programs through which EPA can provide funding and technical assistance to states, water utilities, school districts, and others. 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. 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).

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[1] U.S. Environmental Protection Agency, *Summary of the Safe Drinking Water Act* (updated Aug. 3, 2020) (www.epa.gov/laws-regulations/summary-safe-drinking-water-act#:~:text=The%20Safe%20Drinking%20Water%20Act%20(SDWA)%20was%20established%20to%20protect,above%20ground%20or%20underground%20sources).

[2] 42 U.S.C. § 300f.

Under the 1996 Amendments, the drinking water standard setting process begins with the publication of the Contaminant Candidate List (CCL), which the law requires to be revised every five years. Next, the Unregulated Contaminant Monitoring Rule (UCMR), which serves to develop occurrence data needed to make regulatory decisions for the candidate contaminants, is published. Like the CCL, the UCMR is also required under the law to be revised every five years. The third step requires EPA to make regulatory determinations to decide whether or not to regulate at least five contaminants.[3] If EPA determines regulation is warranted based on certain criteria, it begins the rulemaking process. Since 1996, all determinations made have been not to regulate, except for one regulatory determination on perchlorate, which EPA reversed in 2019.[4] Currently, national primary drinking water standards regulate more than 90 contaminants or contaminant groups, including microorganisms, disinfection byproducts, radionuclides, and heavy metals like arsenic, mercury, and lead.[5]

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.[6]

B. Need for Increased Federal Funding for Drinking Water Infrastructure

In its 2021 Report Card, the American Society of Civil Engineers (ACSE) rated the nation's drinking water infrastructure system a "C-" grade.[7] 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 6 billion gallons of treated water is lost each day, equating to 2.1 trillion gallons per

[3] U.S. Environmental Protection Agency, *How EPA Regulates Drinking Water Contaminants* (updated Jan. 27, 2020) (www.epa.gov/sdwa/how-epa-regulates-drinking-water-contaminants).

[4] The final regulatory determination for perchlorate was published in 2011, and the proposed rule was published in June 2019. *See* Environmental Protection Agency, *National Primary Drinking Water Regulations: Perchlorate*, 84 Fed. Reg. 30524 (Jun. 26, 2019) (proposed rule) and Environmental Protection Agency, *Drinking Water: Final Action on Perchlorate*, 85 Fed. Reg. 43990 (Jul. 21, 2020).

[5] U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations* (May 2009) (epa.gov/sites/production/files/2016-06/documents/npwdr_complete_table.pdf).

[6] SDWA § 1412(b)(9).

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

year. Between 2012 and 2018, the rate of water main breaks increased by 27 percent.[8] The EPA's 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.[9]

C. Lead Service Lines

Lead exposure leads to developmental delays and learning difficulties in children, as well as difficulties with memory and concentration, joint and muscle pain, and high blood pressure in adults.[10] Lead service lines can unpredictably release lead into the drinking water they transport, thereby contaminating the supply for homes and communities that rely upon and use them.[11] By 2023, EPA estimates there will be nearly 9.3 million lead service lines remaining in homes across the United States.[12] According to a recent report by the U.S. Government Accountability Office, lead service lines are most likely to be found in low income communities, communities with older housing stock, and communities of color.[13] Lead pipes are being replaced annually at an average rate of 0.5 percent of all the remaining lead service lines. At that pace, replacing all lead service lines in the United States would take approximately two centuries.[14]

II. H.R. 1512, THE "CLEAN FUTURE ACT" – DRINKING WATER PROVISIONS

Chairmen Pallone (D-NJ), Tonko (D-NY), and Rush (D-IL) introduced H.R. 1512, the "Climate Leadership and Environmental Action for our Nation's Future Act" or the "CLEAN Future Act". The CLEAN Future Act includes several provisions related to drinking water infrastructure. The drinking water provisions are included in Title VI of the bill.

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[8] 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).

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

[10] World Health Organization, *Lead poisoning and health* (Aug. 23, 2019) (www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health).

[11] Environmental Defense Fund, *Recognizing efforts to replace lead service lines* (accessed May 19, 2021) (www.edf.org/health/recognizing-efforts-replace-lead-service-lines).

[12] U.S. Environmental Protection Agency, *Economic Analysis for the Proposed Lead and Copper Rule Revisions* (Oct. 2019).

[13] U.S. Government Accountability Office, *Drinking Water: EPA Could Use Available Data to Better Identify Neighborhoods at Risk of Lead Exposure* (Dec. 2020) (GAO-21-78).

[14] *Lead in America's water systems is a national problem*, CBS News (Nov. 21, 2018).

A. Section 633 – Drinking Water SRF Funding

This section increases and extends the authorization for the Drinking Water State Revolving Fund. The section authorizes $54.69 billion for FY 2022-2031.

B. Sec. 634 – Drinking Water System Resilience Funding

This section increases and extends the authorization for the Drinking Water System Resilience Funding program. The section authorizes $50 million per year from FY 2022-2031.

C. Sec. 635 – PFAS Treatment Grants

This section establishes a grant program under SDWA to aid water utilities to pay capital costs associated with treatment for perfluoroalkyl and polyfluoroalkyl substances (PFAS). The section authorizes $500 million per year from FY 2022-2031.

D. Sec. 637 – Lead Service Line Replacement

This section 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.

III. ADDITIONAL LEGISLATION

A. H.R. 616, the "Emergency Water is a Human Right Act"

H.R. 616, the "Emergency Water is a Human Right Act", introduced by Rep. Tlaib (D-MI), creates a grant program, administered by the Department of Health and Human Services (HHS), to provide funds to states and Indian tribes to assist low-income households that pay a high proportion of household income for drinking water and wastewater services. Any entity that receives financial assistance under this grant program must ensure that no home energy service or public water system service is or remains disconnected or interrupted during the coronavirus disease of 2019 (COVID-19) public health emergency. The bill authorizes $1.5 billion, to remain available until expended.

B. H.R. 3238, the "Colonia Infrastructure Improvement Act of 2021"

H.R. 3238, the "Colonia Infrastructure Improvement Act of 2021", introduced by Rep. Escobar (D-TX), amends SDWA and the Safe Drinking Water Act Amendments of 1996 to reauthorize grant programs that provide assistance to colonias. The term "colonia" refers to low-income communities located along the United States-Mexico border, generally in unincorporated areas. The drinking water portion of the bill would provide $100 million per year from FY 2022-2026 for drinking water assistance to colonias. Other portions of the bill focus on wastewater and surface infrastructure.

C. H.R. 3267, the "Protecting Drinking Water from PFAS Act of 2021"

H.R. 3267, the "Protecting Drinking Water from PFAS Act of 2021", introduced by Rep. Boyle (D-PA), requires the EPA Administrator to publish an MCLG and an enforceable drinking water standard for total PFAS that protect the health of vulnerable populations.

D. H.R. 3282, the "Drinking Water Funding for the Future Act of 2021"

H.R. 3282, the "Drinking Water Funding for the Future Act of 2021", introduced by Ranking Members McKinley (R-WV) and McMorris Rodgers (R-WA), extends the authorizations for several drinking water grant programs, including the Drinking Water SRF and the Water Infrastructure Finance and Innovation Act (WIFIA), without making any other changes.

E. H.R. 3286, the "Emergency Order Assurance, Safety, and Inspection of water Systems Act" or the "Emergency OASIS Act"

H.R. 3286, the "Emergency Order Assurance, Safety, and Inspection of water Systems Act" or the "Emergency OASIS Act", introduced by Rep. Ruiz (D-CA), amends SDWA to direct the EPA Administrator to issue regulations requiring the flushing of drinking water distribution systems under certain circumstances. The bill specifically addresses systems where the concentration of a contaminant in the drinking water within the system has exceeded the national standard for longer than six months, or the drinking water in the distribution system has stood stagnant for longer than six months.

F. 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 and Pallone, includes provisions on infrastructure, drinking water safety, and affordability. The infrastructure title extends and increases authorizations for existing drinking water grant programs, including the Drinking Water SRF. It also creates new funding programs for lead line replacement and PFAS treatment. In total, the bill authorizes $105.19 billion over ten years and makes permanent the Buy American requirements that currently apply to projects funded through the Drinking Water SRF.

The safety title sets deadlines for the adoption of drinking water standards for PFAS, microcystins, and 1,4 dioxane. It also amends the standard setting process under SDWA by removing both the authority to set drinking water standards that are weaker than what is feasible and the authority to set weaker standards for some systems.

The affordability title provides EPA funding to water systems for customer water debt relief.

G. H.R. 3292, the "Water Debt Relief Act of 2021"

H.R. 3292, the "Water Debt Relief Act of 2021", introduced by Reps. Dingell (D-MI), Tlaib, and Blunt Rochester (D-DE), authorizes EPA to provide funding to water systems for the cancellation of customer water debt. To receive the funds, water systems must commit to forgiving customer debt, taking no action to affect customer credit scores, and taking no action to disconnect water service for non-payment. The bill authorizes $4 billion for this program, to remain available until expended.

H. H.R. 3293, the "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, Katko (R-NY), Dingell, and Tlaib, amends SDWA and the Federal Water Pollution Control Act to establish permanent rate assistance programs for low-income water customers. Municipal water systems and states would administer the programs, pursuant to EPA grants. The bill also directs the EPA Administrator to provide technical assistance to grant recipients and submit a report to Congress, not later than two years after funds are first disbursed, on the results of the program.

I. H.R. 3300, the "Get the Lead Out Act"

H.R. 3300, the "Get the Lead Out Act", introduced by Reps. Smith (R-NJ) and Cuellar (D-TX), amends SDWA to require the full replacement of lead service lines by all community water systems within ten years. Under the plan, community water systems would develop plans to inventory and replace all lead service lines in their distribution system and submit such plans for EPA approval. The bill authorizes $10 million for each of FY 2022 and 2023 for planning activities and $46.5 billion, through the Drinking Water SRF, over ten years for lead line replacement.

IV. WITNESS

The following witness has been invited to testify:

Jennifer McLain, Ph.D.
Director
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency