

Staff Operations Item 2



ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

APRIL 16, 2024

TO: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

FROM: Sabrina A. Figler, Director of Water Quality

SUBJECT: AWWA FLY-IN WASHINGTON D.C.

AWWA's Fly-In is an annual event hosted by the Water Utility Council (WUC) in Washington, DC each Spring. Its origins date back to the 2001 Annual Conference and Exhibition (ACE), when members held a rally outside of the U.S. Capitol building and met with members of Congress. The event was such a success that AWWA decided to follow it up with a separate event the following year, and a Fly-In has been held every year since.

The purpose of the Fly-In is to advance AWWA's priorities on Capitol Hill by utilizing its vast membership and the influence each member has with their own congressional representatives. While AWWA's Government Affairs office regularly communicates with congressional staff and advocates for policies benefiting the membership and the sector, AWWA's voice simply does not carry the weight that a constituent's voice carries. The Fly-In also boosts the profile and the credibility of AWWA with members of Congress, which helps to further establish AWWA's staff, members, and volunteers as authoritative sources of knowledge and expertise on drinking water policy.

The state Fly-In participants coordinate and set up appointments with their members of Congress ahead of time. As Secretary to the NYSAWWA WUC, I was given the privilege to attend. Representing NYS in addition to myself was Erie County Division of Sewage Management, Wayne County Water and Sewer Authority, Hicksville Water, Clifton Park Water Authority, NYWEA, NYCDEP and Xylem Water Solutions.

Each of the delegates from the different organizations made every effort to make appointments with their local congressional districts and our NYS Senators. I was able to obtain appointments with Nicholas Langworthy's office, Congressional District 23, and Senators' offices Charles Schumer and Kristen Gillibrand. Unfortunately, Congressional District 26, which covers a portion of our service area, is not available for appointments until the Congressional seat is filled following the special election April 30, 2024.

AWWA Legislative Priorities in the 118th U.S. Congress:

1. **PFAS:** Support passage of S 1430, the Water Systems PFAS Liability Act, which provides statutory protections from PFAS liability under CERCLA for water systems acting in accordance with all applicable laws and regulations. Reduce the introduction of PFAS into water by controlling it at the source and holding those responsible for contamination accountable while protecting passive receivers of PFAS. *
2. **Affordability:** Support passage of S 3830, the LIHWAP Establishment Act, which would establish a permanent low-income water customer assistance program. This helps to address water affordability while keeping systems sustainable through building a permanent low-income water bill assistance program. *
3. **Cybersecurity:** Secure the nation's water systems through an effective co-regulatory model building off the successes in other sectors of the economy, and keeping known vulnerabilities private so they can be addressed instead of falling into the wrong hands. *
4. **Investment in the Nation's Water Infrastructure:** Fully fund the Drinking Water and Clean Water SRF programs and the WIFIA program **AND** halt the practice of diverting funds from annual SRF capitalization grants for earmarks. *

***All issue papers are attached for your reference.**

Both Senators Schumer and Gillibrand's offices were waiting to commit on PFAS/PFOA regulation pending the announcement of EPA's final rule. Congress needs to provide statutory protections for water and wastewater systems to ensure that polluters, rather than local communities, face financial liability for PFAS contamination. All delegates from NY were present to express our concerns regarding CERCLA and that it was built on the "polluter pays" principle, intended to hold companies that produced and profited from hazardous substances that were discharged into the environment accountable for their clean-up. Without these protections, drinking and wastewater systems that passively receive these contaminants into their systems could face retroactive, strict, joint, and severe liability because an upstream polluter deposited the chemical in their source. Two points of increased costs to a utility are installing updated treatment technology and cleaning up of a Superfund site. Langworthy's office also took great interest as I related the issues we have at home and one of the PFAS compounds we are detecting in Lake Erie. I provided to all offices our AWQR, detailing local detections.

Both Senators Schumer and Gillibrand's offices were very receptive and supportive and stated their offices would like to see the LIHWAP program put back in place. Although there is a perspective that this was a temporary assistance program provided during COVID, they realize it needs to be made permanent. LIHWAP provided bill assistance to more than 1.4 M households nationwide over 2 years. The program expired in 2023 and has not been funded since. They understand new regulatory actions will add significant costs for water systems and these investments will contribute to rising water rates. They believe Congress should authorize and fund a permanent program to help low-income customers afford their water bills, just as they have done for energy, food, and housing. Gillibrand's office recommended we continue to support the effort with letters. It is preferred the Department of Health and Human Services continue to oversee the

program. There is a Bill in the House now addressing this issue. Langworthy's office was receptive as well to the LIHWAP program being put back in place. I left behind the issue paper and ECWA's report on statistics on the LIHWAP program, completed by Joyce Tomaka with Erica Jankiewicz.

Gillibrands office is very pro-cybersecurity and expressed the need in several markets including the water and sewer industry, energy, and agriculture. Senator Schumer's office as well as Langeworthy's office seemed very supportive.

In response to the escalating threat of cyberattacks on critical infrastructure, On April 15, after our Fly-In, U.S. House lawmakers unveiled a cybersecurity bill focused on safeguarding water and wastewater systems. The proposed legislation would establish the Water Risk and Resilience Organization (WRRO), a specialized agency comprising cybersecurity and water system experts. This entity would work in partnership with the U.S. EPA to ensure practical and beneficial measures to enhance cybersecurity.

Both Senate offices were very familiar with the SRF funding and appropriations of various committees and funds needed for lead removal. We requested FY 2025 funding for Drinking water SRF-\$3.25 B, Clean water SRF-\$3.25 B and WIFIA-Min of \$50 M. We expressed our concerns to all offices to NOT USE THE SRF'S FOR EARMARKS! 56% of DWSRF were diverted in FY 2024 and this % has risen every year since FY 2022. We expressed our needs to Langworthy's office and relayed Congress should continue to provide funding through the annual appropriations process for major water programs and halt the practice of using annual capitalization grants for earmarks. When funds are diverted from the SRF's, states have fewer resources to run their programs and fewer funds revolve back into the SRF's, jeopardizing that program's sustainability. We did not necessarily get commitments from any of the offices.

I have followed up with all the offices and thanked them for their time and offered a tour of our water treatment plants.

Please let me know if you have any questions.

Thank you.



Empowering Local Water Solutions *through* National Support

While the nation's drinking water, wastewater, water reuse, and stormwater sectors acknowledge recent efforts by Congress and the Administration to advance our nation's water infrastructure, it is clear that significant challenges remain. To ensure communities across the U.S. can continue to rehabilitate and upgrade their critical water infrastructure affordably, we call on Congress to commit to heightened and sustained support.

Continued robust federal commitment is vital to build on recent momentum and aid communities, regardless of size or location, to address complex water challenges, including:

- Maintaining and updating aging infrastructure, rising operational costs, supply chain issues, and labor shortages;
- Tackling water contamination and compliance with regulations, including those for PFAS, new pollutants, and nutrient management; and
- Securing climate adaptation, resilience, and cybersecurity measures.

Congress and the Administration can further assist communities by supporting the following tools, policies, and resources needed to ensure water utilities can continue to fulfill their core mission of protecting public health and the environment while supporting local economic growth.

Amplify Essential Funding for Aging Water Infrastructure

The Infrastructure Investment & Jobs Act (IIJA) represents a landmark federal commitment to water infrastructure. However, the reality is that the authorized funds fall significantly short of the water sector's vast needs. Most federal water program investments hinge on yearly appropriations by Congress, leaving critical projects in limbo.

Without complete appropriations, local utilities and their customers face a financial strain that hinders essential water infrastructure investments and compliance with federal regulations. The current funding trajectory simply cannot sustain the growing demands on the water sector.

Protect the Public and Utilities from Per- and Polyfluoroalkyl Substances (PFAS)

Removing PFAS from drinking water sources as part of the wastewater treatment and stormwater management process is technically challenging and highly costly.

- Drinking water utilities will need to invest more than \$50 billion to install and operate treatment technology over the next 20 years to comply with new PFAS standards. And operational costs for individual clean water utilities will increase by up to 60% as a direct result of new PFAS regulations.
- Therefore, the water sector advocates for source control as the first line of defense to prevent PFAS from entering ecosystems.
- Congress and the EPA's approach to PFAS remediation must incorporate accurate cost estimates and water sector feedback to drive effective, implementable policy. Regulations must be evidence-based and pinpoint the origins of PFAS to ensure the responsible parties pay for clean-up efforts and are held liable for the contamination from which they profited.

Environmental organizations, Congress, and EPA agree – those who caused PFAS contamination should fund the removal of these persistent chemicals from our water and soil.

- Theoretically, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) serves to ensure that those responsible for releases of hazardous substances finance their cleanup. In practice however, without explicit protection from CERCLA, water utilities will be held liable for PFAS contamination they had no hand in creating.
- Therefore, it is imperative that Congress protect drinking water, wastewater, water recycling, stormwater utilities, and their treatment technology providers from CERCLA liability relating to PFAS cleanups, and instead adopt measures to place those costs on the responsible polluters.

Ensure Affordable Water Services for Low-Income Households

As service costs escalate, water and wastewater charges in numerous communities are outpacing inflation and income growth, causing low-income households to allocate a growing share of their income to water services. Water affordability is a significant challenge for more than 20 million U.S. households. At the same time, countless disadvantaged communities struggle to make needed investments while keeping rates affordable.

- Congress must create a permanent low-income water customer assistance program to help utilities maintain aging infrastructure, while keeping services affordable for low-income households; and
- Provide oversight of EPA's actions to address affordability concerns.

Advance Regulatory Flexibility and Reform

Communities are confronting rising expenses for regulatory compliance alongside complex water quality concerns. Targeted regulatory reforms can assist communities in managing surging costs and affordability issues, without compromising the delivery of exceptional public health and environmental safeguards.

Advance Water Research

Water research is helping solve some of the most pressing challenges for the water sector, such as aging infrastructure, emerging contaminants, extreme weather, water scarcity, and significant shifts in population. Research and development aimed at finding cost-effective solutions to these challenges not only creates more resilient and effective water systems, but also creates new jobs and supports thriving communities nationwide. These solutions also result in improved public health and safety and promote equitable solutions throughout the country. Continued federal support and funding for water research programs is vital to helping communities and utilities.

Protect Pipes from Wipes

The mismanagement of disposable wipes, including those inaccurately labeled as 'flushable,' poses a severe threat to our sewage systems. The improper disposal of such wipes leads to clogs, significant damage to wastewater treatment equipment, and presents substantial health and safety hazards.

It is imperative that Congress mandates explicit 'Do Not Flush' warnings on all non-flushable wipe packaging. Moreover, federal agencies should be endowed with the authority to enforce stringent standards on products advertised as 'flushable,' ensuring they break down with the same efficacy as conventional toilet paper. This will not only protect our infrastructure but will also safeguard the health of our water professionals and promote environmental sustainability.

Provide Tax Credits to Encourage Sustainable Water Systems

Energy generation, agricultural production, and other industrial operations account for the vast majority of water consumed in the United States each year. Few incentives exist to support the sustainable management of water in the private sector.

- Congress should establish tax credits to help industry use water sustainably, including through the adoption of water recycling technologies and systems.

2024 Water Week Partners



For more information, please visit
www.waterweek.us/#resources



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Promote water affordability in local communities

Action requested

- Support passage of S. 3830, the LIHWAP Establishment Act, which would establish a permanent low-income water customer assistance program

Establish a permanent low-income customer water assistance program at HHS.

AWWA's 2019 Water and Wastewater Rate Survey found that, even before the onset of Covid-19 and the ensuing rise in costs, water rates were significantly outpacing inflation. Now, as water systems across the country plan to make significant investments to meet upcoming regulatory requirements, affordability has become an even more acute concern for communities across the country.

The Low-Income Household Water Assistance Program (LIHWAP) provided more than \$1.1 billion in water bill assistance to over 1.4 million households across the country, helping to prevent 150,000 potential service disconnections and restore service to 17,000 households. The program also helped water systems maintain the revenue streams necessary to continue making essential infrastructure upgrades.

EPA's most recent Drinking Water Needs Survey and Assessment estimates that drinking water systems alone will need to invest \$625 billion over the next twenty years just to maintain current levels of service. AWWA's "Buried No Longer" report, released in 2012, estimated this investment to be \$1 trillion over 25 years. However, despite the growing need, LIHWAP expired in 2023 and has not been reauthorized or received additional funding.

AWWA urges Congress to pass S. 3830, the LIHWAP Establishment Act, which would authorize a permanent LIHWAP program, housed at the Department of Health and Human Services (HHS).



Support the ‘polluter pays’ principle for PFAS cleanup

Action requested

- Support passage of S. 1430, the Water Systems PFAS Liability Protection Act, which provides statutory protections from PFAS liability under CERCLA for water systems acting in accordance with all applicable laws and regulations

Support PFAS liability protections for water systems and ratepayers.

As the US Environmental Protection Agency (EPA) moves closer to finalizing a hazardous substance designation for two per- and polyfluoroalkyl substances (PFAS), perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), Congress must provide statutory protections for water and wastewater systems to ensure that polluters, rather than local communities, face financial liability for PFAS contamination.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was built on a “polluter pays” principle, intended to hold companies that produced and profited from hazardous substances that were discharged into the environment responsible for their cleanup. But without explicit liability protections, drinking water and wastewater systems that passively receive these substances into their systems could face retroactive, strict, joint and several liability simply because an upstream polluter deposited the chemicals in their water supplies.

A drinking water system that removes PFAS from source water becomes the possessor of filtration media that contain those PFAS. The system must then dispose of these PFAS-laden media, typically at a landfill or hazardous waste facility. Water systems also generate a significant volume of water treatment residuals as part of the conventional treatment process, which concentrates PFAS in these residuals. These residuals may be disposed of at a landfill, discharged to a wastewater treatment facility, or land applied. However, should any of these sites become subject to a CERCLA cleanup, the water system could be treated as a PFAS polluter — and be responsible for a portion of the costs — forcing local ratepayers to cover the cleanup bill after they already paid to remove the contaminants from their source water.

This potential liability creates an undue burden for water systems and their ratepayers, who may be forced to foot the bill twice—once for installing the treatment technology and filtering out the PFAS and again for cleaning up a Superfund site. While EPA may not target water systems directly, other potentially responsible parties will. Congress should uphold the original “polluter pays” principle of CERCLA and ensure chemical companies and other polluters can’t shift the cost of their contamination onto local communities.

AWWA therefore urges Congress to pass S. 1430, the Water Systems PFAS Liability Protection Act, which would preserve the “polluter pays” principle under CERCLA and ensure that water systems can continue to focus their efforts on maintaining water quality.



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Support a collaborative approach to water cybersecurity

Action requested

- Support a collaborative approach to cybersecurity in the water sector by establishing an independent organization to set minimum cyber standards with oversight by EPA

Ensure effective cybersecurity in the water sector.

AWWA recognizes the increasing cybersecurity threats to critical infrastructure, including water and wastewater systems. We believe these threats require a collaborative solution that leverages the knowledge and expertise of the water sector with federal oversight by EPA.

To achieve this goal, AWWA urges Congress to pass legislation establishing an independent organization entitled the Water Risk and Resilience Organization (WRRO). This sector-led organization would propose minimum cybersecurity standards for water systems and perform regular audits, while EPA would have a role in approving the standards and providing oversight.

The WRRO is modeled after the North American Electric Reliability Corporation (NERC), which proposes minimum reliability standards for the nation's bulk power system with oversight by the Federal Energy Regulatory Commission (FERC).

The collaborative nature of this framework is even more critical in the water sector, which includes an incredible diversity of system size and capacity. The approach ensures that the standards developed are risk- and performance-based, and that consideration is given to the diversity of water and wastewater systems in the country.

AWWA also urges Congress to support training and technical assistance, additional funding to enhance cybersecurity in the sector, and improved collaboration to ensure threat information is shared in an accessible and timely way.



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Invest in the nation's water infrastructure

Actions requested

- Fully fund the Drinking Water and Clean Water State Revolving Fund (SRF) programs and the Water Infrastructure Finance and Innovation Act (WIFIA) program
- Halt the practice of diverting funds from annual SRF capitalization grants for earmarks

Fully fund critical water infrastructure programs.

The Bipartisan Infrastructure Law (BIL) provided a historic \$55 billion in new funding for water infrastructure, a welcome infusion of funds for projects across the country. However, more will be needed in the years ahead. Three EPA programs are especially well equipped to help fulfill that need – the Drinking Water State Revolving Fund (DWSRF), the Clean Water State Revolving Fund (CWSRF), and the Water Infrastructure Finance and Innovation Act (WIFIA).

In its latest Drinking Water Infrastructure Needs Survey and Assessment, EPA estimates that drinking water systems alone will need to invest \$625 billion over the next 20 years for infrastructure improvement and maintenance. In our 2012 “Buried No Longer” report, AWWA put the number at \$1 trillion over 25 years. However, despite an increase in SRF authorization levels, Congress has not raised annual SRF funding levels since Fiscal Year 2017.

Given the level of need, AWWA urges Congress to fund the DWSRF and CWSRF at \$3.25 billion each and WIFIA at \$50 million – the maximum authorized amounts.

End the practice of diverting funds from the SRFs for earmarks.

Since 2022, Congress has reduced annual federal funding for state SRF programs by more than \$3.7 billion to pay for congressional earmarks. As a result, state agencies have seen a reduction in funding to administer their programs, high priority projects have been delayed or postponed, and there is less money available to provide extra subsidization of loans to disadvantaged communities. Over the long term, this loss of funding risks eliminating the “revolving” aspect of the SRFs, as loan repayments provide the primary source of recurring revenue needed to continue replacing and repairing aging water infrastructure into the future.

The infusion of funds from BIL has provided a short-term buffer, but dozens of states will face severe cuts to their SRF programs when those funds expire in Fiscal Year 2026 if Congress does not reverse course.

To help ensure the longevity of the SRF programs, AWWA urges Congress to end the practice of funding earmarks out of the annual capitalization grants.