

# Hicks-Ray Associates

*Implementing Strategies, Achieving Success*



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January 9, 2020

TO: WESTCAS Membership

FROM: Hicks-Ray Associates

SUBJECT: H.R. 535, the “PFAS Action Act of 2019”

The House of Representatives began floor debate yesterday afternoon on the Rule accompanying H.R. 535, the “PFAS Action Act of 2019.” With four Republicans joining 62 Democrats as co-sponsors of the bill, H.R. 535 is “bi-partisan” but that should not disguise the fact that there is strong House Republican opposition to the bill. This includes the 31 to 19 vote in the Energy and Commerce Committee on November 20, 2019 to report the bill and also President Trump’s threat to veto the measure if it passes both the House and the Senate.

H.R. 535 requires the USEPA to establish a drinking water standard for PFOA and PFOS substances within two years of enactment of the bill and to immediately designate all PFAS substances as hazardous under Section 102(a) of CERCLA. Supporters see this approach as the best way to address a public health emergency. House Republican Members of the Energy and Commerce Committee have responded with a list of concerns over the bill including the following “Dissenting Views” included in the Committee Report o for H.R. 535:

“.....A Congressional mandate to designate particular chemicals under CERCLA as hazardous is still a drastic and unprecedented action—since CERCLA’s enactment four decades ago, Congress has never statutorily named specific substances under CERCLA as hazardous.....” and “We are concerned that CERCLA’s strict, joint, and several, and retroactive liability provisions will permanently ensnare innocent parties who arrange to have their waste hauled, like municipal water systems that obtain PFAS because their filters catch it or airports who use the fire-fighting foam that is required of them.”

The version of H.R. 535 that is likely to pass the House does not represent the final word on the PFAS issue. There will be future opportunities for groups like WESTCAS to educate Members of Congress with regard to the impact of legislation like H.R. 535 on the Arid West.

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