



THE UNITED STATES
CONFERENCE OF MAYORS



July 11, 2022

Mr. Barry Breen
Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Ms. Christine Kymn
Chief
Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington DC, 20503

Dear Acting Assistant Administrator Breen and Ms. Kymn,

In the U.S. Environmental Protection Agency's (EPA) PFAS Strategic Roadmap, the Office of Land and Emergency Management committed to preparing a proposed rule to designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

this year. As our respective associations have communicated to EPA and Congress, the designation of per- and poly-fluoroalkyl substances as hazardous substances will have significant financial implications for local governments.

Recently, the U.S. Chamber of Commerce published a report, “PFOS and PFOA Private Cleanup Costs at Non-Federal Superfund Sites,” which illustrates that a direct outcome of the anticipated determination will, on average, lead to between \$700 million and \$800 million in cost every year for the next three decades.

Importantly, the Chamber analysis is a conservative estimate of the potential impact and does not address the impacts that will be borne by local governments and water/wastewater systems. Communities will likely bear significant legal fees, if not the cost of corrective action, if PFOA and PFOS are listed as hazardous substances under CERCLA. For context, there are almost 16,000 wastewater treatment works in the United States, which in keeping with EPA policy, historically and currently pursued beneficial uses for solids from their treatment processes. The nation’s roughly 50,000 community water systems are similarly at risk of such expenses and liability due to their need to dispose of PFOA and PFOS that are removed from drinking water supplies during the water treatment process. Finally, municipal governments could incur liability due to other facilities they have operated where PFOA and PFOS contamination occurred, such as fire training facilities and landfills.

The proposed rule has been in Executive Order 12866 review for several months. We urge the Office of Information and Regulatory Affairs to ensure that prior to completing its review, the proposal is accompanied by and consistent with a robust economic analysis in keeping with both Office of Management and Budget and EPA guidance for such analyses (i.e., Executive Order 12866, Circular A-4, and EPA’s Guidelines for Preparing Economic Analyses). Adding PFOA and PFOS to the list of hazardous substances is a definitional change akin to EPA’s rulemakings for the definition of “Waters of the United States” – for which extensive economic analysis was conducted.

In a similar vein, the direct and indirect economic consequences on local governments and water/wastewater systems by this rulemaking warrant consultations required by statute and established practice. **The undersigned organizations ask that the proposed action not be undertaken in haste without EPA adhering to the consultation requirements of the Small Business Regulatory Enforcement Act (SBREFA), Unfunded Mandates Reform Act (UMRA), and Executive Order 13132: Federalism.**

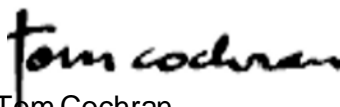
Congressional intent as outlined under UMRA and SBREFA clearly anticipate the agency engaging in pre-proposal consultation for a rulemaking of this magnitude, given the reasonable **prospect that the rule will impose new and significant economic burdens on local governments. Under the Executive Order, federal agencies must consult with state and local government officials early and often in the rulemaking process.** These consultation processes are beneficial in ensuring that rules are implementable and cost-effective. EPA’s

Local Government Advisory Committee has similarly called for consultation prior to setting regulatory standards for PFAS.

A hallmark of this administration is sound policy development that adheres to legal requirements. Prior to proceeding, EPA and this rulemaking would benefit from conducting the analyses and consultation that it must undergo according to statute and executive order.

We welcome an opportunity to discuss this matter. Please feel free to contact our staff: Judy Sheahan (USCM) at 202-355-8540 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Sarah Gimont (NACo) at 202-942-4254 or sgimont@naco.org; Steve Via (AWWA) at 202-326-6130 or svia@awwa.org, Mike Keegan (NRWA) at 202-294-4785 or keegan@nrwa.org; Brian Redder (AMWA) at 202-331-2820 #108 or redder@amwa.net; Rik Hull (NAWC) at rik@nawc.org or 267-691-7765, or Eric Saperstein (CASA) at 202.466.3755 or esap@ensresources.com.

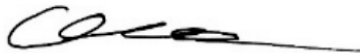
Sincerely,



Tom Cochran
Chief Executive Officer and Executive Director
U.S. Conference of Mayors



Tom Dobbins
Chief Executive Officer
Association of Metropolitan Water Agencies



Clarence E. Anthony
Chief Executive Officer and Executive Director
National League of Cities



Adam D. Link
Executive Director
California Association of Sanitation Agencies



Matthew D. Chase
Chief Executive Officer / Executive Director
National Association of County Officials



Adam Krantz
Chief Executive Officer
National Association of Clean Water Agencies



G. Tracy Menan, III
Executive Director of Government Affairs
American Water Works Association



Robert F. Powelson
President and Chief Executive Officer
National Association of Water Companies



Matthew Holmes
Chief Executive Officer
National Rural Water Association



Walter T. Marlowe, P.E., CAE
Executive Director
Water Environment Federation



THE UNITED STATES
CONFERENCE OF MAYORS



September 20, 2022

Mr. Barry Breen
Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OLEM-2019-0341

Dear Acting Assistant Administrator Breen:

On behalf of the nation's mayors, cities, and counties, we respectfully ask for a 60-day extension - at minimum - to submit comments on the U.S. Environmental Protection Agency's (EPA) Proposed *Comprehensive Environmental Response, Compensation, and Liability Act Hazardous Substances: Designation of Perfluorooctanoic Acid and Perfluorooctanesulfonic Acid*. We further request that EPA prepare and publicly report a full economic and regulatory impact analysis of the proposed action.

Implementing the proposed rule will impact the operations and budgets of local government drinking water, wastewater, airport, firefighting, and landfill facilities and could impose significant new financial burdens on households in our communities. Given the scope and magnitude of impacts that will occur when local governments are required to administer and implement a final version of this proposed rule, and the likelihood of additional legal implications for local governments, we request that EPA extend the comment deadline to allow additional time to review and provide appropriate comments.

It is for these same reasons that EPA must prepare and report with complete transparency a full economic and regulatory impact analysis. This analysis of the full direct and indirect costs and benefits has not been prepared by the agency to date despite the White House Office of Management and Budget's designation of the proposed rule as economically significant. Due to this current lack of critical information, local governments request the agency work expeditiously to complete the analysis.

This analysis is even more critical given EPA's failure to conduct a consultation consistent with E.O. 13132: Federalism, despite the clear economic significance of the rule and its implications for state and local governments.

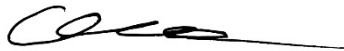
As intergovernmental partners, local leaders are dedicated to addressing concerns related to PFAS exposure and protecting the health and well-being of residents. We therefore urge the EPA to work with us to determine the best way to address PFAS in the environment.

On behalf of the nation's mayors, cities, and counties, we thank you for considering these requests and we look forward to working with the agency to ensure a final rule is practical and implementable at the local level. If you have any questions, please contact our staff: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; or Sarah Gimont (NACo) at 202-942-4254 or sgimont@naco.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



THE UNITED STATES
CONFERENCE OF MAYORS



November 7, 2022

Mr. Barry Breen
Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OLEM-2019-0341

Dear Acting Assistant Administrator Breen:

On behalf of the nation's mayors, cities, and counties, we appreciate the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) Proposed Rule - *Comprehensive Environmental Response, Compensation, and Liability Act Hazardous Substances: Designation of Perfluorooctanoic Acid and Perfluorooctanesulfonic Acid*. **Although the rule has been deemed economically significant by the Office of Management and Budget (OMB), sufficient analysis has not been performed by EPA. Due to this lack of analysis, which we strongly believe would have triggered the Federalism Consultation requirements of Executive Order 13132: Federalism, we urge the Agency to withdraw the Proposed Rule until such analysis has been conducted.**

Our organizations represent the nation's 3,069 counties, 19,000 cities and the mayors of the 1,400 largest cities throughout the United States. The health, well-being and safety of residents and communities are of utmost importance to local leaders. For the past several years, all levels of government, including the counties and cities we represent, have become increasingly concerned about drinking water contamination from Per- and Polyfluoroalkyl Substances (PFAS). Private industry created these chemicals for use in a variety of industries and applications around the globe, which have made their way into drinking water systems across the country, particularly in communities near military installations or industrial sites. The presence of these human-made chemicals has spurred action by state and local governments across the country.

Local leaders have a substantial interest in this rulemaking. First, local governments serve as co-regulators in implementing and enforcing many federal laws with states, including Safe Drinking Water Act and Clean Water Act programs. Second, local governments manage solid waste facilities and landfills, airports, and other public service activities that will likely be impacted through unfunded mandates, additional cost burdens and legal liabilities due to the Proposed Rule.

The Proposed Rule will have severe economic impacts and require significant modifications of public works operations in every community in America to implement and comply, and yet the Agency has not accounted for the cascading regulatory burdens the Proposed Rule will trigger.

Our concerns with both the regulatory process and the potential impacts to municipal services are detailed below. We urge EPA to address these concerns before proceeding with this rulemaking.

Overarching Concerns with Regulatory Process

While we share the concern about these chemicals in our water systems, we are concerned that EPA has not examined the impacts around implementation and compliance of the Proposed Rule. Given the far-reaching impacts the rulemaking will have on many municipal operations, coupled with the lack of meaningful consultation, we believe the Agency is moving too fast and without firm knowledge of the consequences for local governments, communities and residents.

1. Lack of Economic and Regulatory Impact Analysis

EPA failed to consider the economic impacts of the proposed rule that OMB designated as a rule of economic significance. The lack of consideration of and reporting on the direct and indirect costs and benefits, and the resulting lack of public review and comment indicates that EPA is rushing the process when more consultation is needed with the regulated and co-regulating communities.

Given the scope and magnitude of impacts that will occur when local governments are required to administer, implement and comply with a final version of this Proposed Rule, and the likelihood of additional legal implications for local governments, we respectfully request that EPA withdraw the Proposed Rule and conduct a complete cost-benefit and public health analysis. The analysis should consider the impact the Proposed Rule will have on local government administration, operations and budgets for drinking water, wastewater, airport firefighting and landfill facilities, and the new financial burdens that will be imposed on households and communities. Only after completing and transparently reporting this analysis should the Agency move forward with developing a rule based on those findings. Further, the Agency should also follow the proper procedures as outlined in the Administrative Procedure Act, including the Federalism Consultation process, which would have included a briefing and the opportunity to provide comments before the rule is proposed.

2. Lack of Federalism Consultation Process

Under Executive Order 13132: Federalism, federal agencies must consult with state and local government officials early (even before a rule is proposed) and often in the rulemaking process when it will directly impact these entities. Due to the complicated nature of this rulemaking and the responsibilities and burdens that will fall to local governments in its implementation, our organizations asked for a transparent and straightforward rulemaking process, including a meaningful and engaging Federalism Consultation process, to help ensure that any final regulation is effective, implementable, practicable and cost-efficient. As co-regulators and intergovernmental partners, it is essential that state and local governments clearly understand the broad and substantial impacts the Proposed Rule will have on local communities, residents and resources.

The lack of an economic and regulatory analysis is even more concerning given EPA's failure to conduct a Federalism Consultation, despite the clear economic significance of the rule and its implications for state and local governments. The absence of an economic impact analysis and the lack of a Federalism Consultation process are fatal flaws that leave the Proposed Rule deficient in adhering to requirements the EPA must satisfy to meet a legal threshold of

acceptability. We urge EPA to adhere to the Executive Order, as well as the Agency's own implementing guidance.

Potential Impacts of the Proposed Rule to Municipal Operations

Designating Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as a hazardous waste triggers a number of new responsibilities on local governments to manage the substance in different media, as well as potentially opening local governments up to legal liability. These broad impacts have not been examined by EPA, but we offer a few examples below.

1. Drinking Water

Drinking water treatment plants, wastewater treatment facilities and solid waste landfills and composting facilities neither manufacture nor use PFAS; instead, they are passive receivers of media containing PFAS—compounds that are ubiquitous in the stream of commerce and environment. The Proposed Rule subjects these facilities to possible third-party lawsuits and future liability under CERCLA.

Moreover, once a drinking water facility detects PFOS or PFOA in their system, it will face additional expenses necessary to purchase and install energy-intensive technology (i.e., Granulated Activated Carbon, Reverse Osmosis, or Ionization) to remove the substances. Most local governments do not have available resources to retrofit facilities or take on additional treatment costs. As such, this expense will ultimately be borne by ratepayers in the community, in turn exacerbating the financial burden that fixed- and low-income households bear regarding the percentage of their income paid toward their water bills.

2. Wastewater Treatment

Wastewater treatment plants, like drinking water facilities, are passive receivers of PFAS and do not cause or contribute to contamination. Nevertheless, if PFOS or PFOA are detected at a wastewater treatment plant, there are few options available to these plants for treatment or disposal. Instead, wastewater treatment plants will have to modify or curtail their operation. For example, designating PFOS or PFOA as a hazardous substance will have a chilling effect on beneficial reuse, a policy approach that EPA has embraced in the past, but might no longer be feasible for a wastewater treatment plant under this Proposed Rule. EPA should consider how limits on biosolids land application will curtail the overall reuse and recycle preferences for responsible end of life management.

The current management options available for wastewater treatment plants include using sewage sludge to create energy, sludge treatment to form biosolids and for land application, disposing in landfills, and incineration. Each of these options are currently supported by regulatory and guidance policy that takes into account the cost and health/environment risks.

- A. Treated biosolids are land applied as a natural fertilizer and to amend soils. Many homeowners and rental unit managers purchase compost that is mixed with treated biosolids for home use on lawns and gardens. If PFOS or PFOA is found in the compost or biosolids fertilizers, landowners and other users would risk becoming subject to CERCLA's liability or clean up requirements. If the more than 8 million tons of sludge that is treated to biosolids specification is no longer allowed to be used, or the legal risk of using such beneficial reuse materials is too great, where will the materials be sent, at

what cost, over what roads to what facility? EPA has not considered if there is enough “permitted” capacity to receive the sludge or biosolids.

- B. Sewage sludge that is not treated to biosolids specifications is normally disposed of in Subtitle D landfills. If EPA designates PFOS and PFOA as a hazardous substance, municipal and private landfill operators will reconsider if accepting this sludge remains a viable option when faced with future liability concerns. The reluctance of municipal solid waste landfill operators to accept sludge with PFOS and PFOA will force communities to seek hazardous waste Subtitle C landfills. Such actions would require expensive long-haul sludge transport to costly Subtitle C landfills.

EPA has not considered the availability of Subtitle C landfill capacity that can accommodate the 8 million tons of “hazardous” (by virtue of PFOS and PFOA being detected) sludge. Further, EPA has not considered how this impact will contradict other national policies to reduce greenhouse gas emissions released from the transport of sludge.

In putting forth this Proposed Rule, EPA appears to not consider or suggest how communities can manage PFOS- and PFOA-contaminated waste streams that would normally be handled by recycling and reuse.

3. Landfills and Solid Waste Facilities

Similar to drinking water and wastewater treatment facilities, landfills are passive receivers of PFAS. The role of landfills is twofold - as receivers of sewage sludge from wastewater treatment plants, as described above, and through the solid waste stream.

Although sales of products containing PFOA and PFOS have been discontinued in the U.S. market for more than a decade, many products containing PFAS remain in circulation and end up in landfills when they are thrown away by residential and commercial consumers. Once PFAS-containing items, such as carpeting, cookware and water-resistant clothing, are in landfills, PFAS accumulates in landfill leachate and is difficult to remove. The Proposed Rule would subject landfills to liability concerns and, as a result, change the calculation for landfills in terms of deciding which products to accept. Any costs associated handling or treating PFAS in leachate would be passed along to communities and its residents and businesses. We urge EPA to consider the full and complex nature of this Proposed Rule and the unintended consequences it would have on local government and these interdependent municipal services.

4. Airport Firefighting Operations

Only until recently, PFAS chemicals were required in firefighting foams used at airports to meet federal performance standards for extinguishing agents. While the Federal Aviation Administration is updating its standards to allow for a non-fluorinated option for airports, runoff from these facilities have contaminated drinking water and soils, and further opens local governments up to legal liabilities when PFAS is detected, particularly from municipal airports.

Communities with or located near military installations are similarly at risk for legal liability under this Proposed Rule, as these same firefighting foams have been used for training exercises at military bases. While the U.S. Department of Defense (DOD) is phasing out its use of the foam in training exercises and is investing in research and development of a PFAS-free firefighting

foams, communities may be found liable to address contamination originating from DOD facilities.

While we applaud the federal effort to develop new firefighting foam, EPA has failed to consider the cost burdens on local governments in the interim, including the costs and available technology for cleaning up these sites, as well as the costs of having to purchase new equipment.

Additional Considerations

1. Enforcement

EPA has indicated that it intends to use enforcement discretion to minimize the unintended consequences of the proposed designation, but has not provided information on what those consequences would be nor has it clearly stated its policy to avoid them. Without this information, local governments cannot assess the potential impacts on their operations or budgets. Additionally, with all that is at stake for local governments with this rulemaking, local leaders should not be asked to simply trust that EPA will not take enforcement actions against local governments without seeing the Agency's commitment in writing. Furthermore, any Agency policy could change with each new Administration.

Moreover, EPA's use of its enforcement discretion cannot shield parties from private litigation under CERCLA. Regardless of EPA's use of enforcement discretion in initiating remedial actions, CERCLA designation would result in third-party contribution and cost recovery claims, likely leading to substantial litigation costs for public service providers and the communities they serve.

2. Local governments fund the majority of water infrastructure investments

Local governments fund 98 percent of all capital, operations and maintenance investment in drinking water and wastewater infrastructure in the United States, primarily through user fees and bonds. Many American households currently face a significant and widespread financial burden when it comes to water bills. This burden falls disproportionately on fixed- and low-income households who pay a significant portion of their income toward water. With the Administration's focus on environmental justice, water rate affordability must be a part of consideration of this Proposed Rule.

The most recent U.S. Census data shows that local governments spent over \$144 billion on water and wastewater in 2020 alone, and, from 1993-2019, spent over \$2.38 trillion, not adjusted for inflation. Even with this significant investment by and commitment from local governments, many communities struggle to upgrade their drinking water and wastewater systems.

During this same time period, the federal government only appropriated approximately \$2 billion annually for both the Clean Water and Drinking Water State Revolving Loan Fund (SRF) programs. The SRF programs provide grants to states which, in turn, provide local governments with loans that must be repaid.

We are pleased that the bipartisan Infrastructure Investment and Jobs Act (IIJA) provided record-high levels of funding for our nation's water infrastructure, including \$10 billion over five years for grants to address PFAS and other emerging contaminants in drinking water. Yet, we all know this level of funding will not be sufficient for local governments to meet the

requirements of this Proposed Rule and/or other PFAS-related rules that the Agency is considering.

At a minimum, it must be acknowledged that the timelines for the availability of funding under IIJA, which is through FY26, and the likely compliance dates for this rulemaking do not align. Therefore, it is uncertain if local governments will be able to use IIJA funding specifically for compliance with this forthcoming rule, as well as future rulemakings pertaining to PFAS.

Conclusion

In conclusion, as intergovernmental partners, local leaders are dedicated to addressing concerns related to PFAS exposure and protecting the health and well-being of residents. We urge the EPA to work with our organizations and our members to determine the best way to address PFAS in the environment.

We urge EPA and other federal agencies to continue making progress on a comprehensive, nationwide action plan for addressing PFAS contamination, including identifying both short-term solutions for addressing these chemicals and long-term strategies that will help local governments provide clean and safe drinking water to residents.

EPA has stated that as a subsequent step to finalizing this rulemaking, the Agency will begin a new rulemaking process to designate other PFAS chemicals as CERCLA hazardous substances. **It is incumbent on EPA to follow the proper rulemaking process for this Proposed Rule and future rulemakings, including a meaningful and transparent stakeholder engagement through the Federalism Consultation process.**

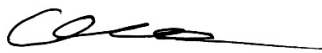
Considering the unprecedented nature of the Proposed Rule, as well as the significant ramifications for local governments, the Agency should have prioritized the completion of economic and regulatory impact analyses, a comprehensive and science-based evaluation, and meaningful stakeholder outreach. Instead, EPA has done the opposite. **We urge EPA to withdraw the Proposed Rule and to conduct the appropriate and required analysis and to consult with our organizations.**

On behalf of the nation's mayors, cities, and counties, we thank you for considering these requests and we look forward to working with the agency to ensure any final rule is practical, implementable and cost-effective at the local level as we continue to strive to provide clean water to our residents. If you have any questions, please contact our staff: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; or Sarah Gimont (NACo) at 202-942-4254 or sgimont@naco.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
CEO and Executive Director
National Association of Counties

November 7, 2022

Submitted electronically to: <https://www.regulations.gov>

Ms. Michelle Schutz
Office of Superfund Remediation and Technology Innovation (5202T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OLEM-2019-0341; Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances

Dear Ms. Schutz:

The undersigned organizations—representing “passive receivers” of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) that may be present in drinking water, wastewater, and solid waste facility influent—are concerned that the U.S. Environmental Protection Agency’s (EPA’s) proposal to designate these compounds as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), without accompanying relief, could result in significant increased costs for essential public service providers and the communities they serve while undercutting the Administration’s broader human health and environmental protection goals.

Drinking water treatment plants, municipal wastewater treatment facilities, and solid waste landfills and composting facilities neither manufacture nor use per- and polyfluoroalkyl substance (PFAS); instead, they are passive receivers of media containing PFAS—compounds that are ubiquitous in the stream of commerce and environment. Each of these public services is interdependent; landfills rely on wastewater treatment facilities for their leachate discharge while water and wastewater treatment facilities depend on landfills for biosolids management and disposal of spent water filtration systems. Designating PFOA and PFOS as CERCLA hazardous substances would disrupt this interdependence by driving each sector to revisit its acceptance of influent streams containing concentrations of PFOA and PFOS.

CERCLA designation thus would lead to significant cost increases on public service providers and the communities they serve while impeding EPA’s commitments espoused in the agency’s PFAS Strategic Roadmap:

- There currently are no cost-effective techniques available to treat or remove PFOA or PFOS for the sheer volume of drinking water, wastewater, and landfill leachate managed daily by passive receiver facilities, as advanced treatment techniques at this scale are very costly. Undertaking additional treatment for PFOA and PFOS would add significantly to the costs of facility operation.
- Drinking water and wastewater facilities must manage media containing concentrations of PFOA and PFOS generated from influent treatment. The management of biosolids via incineration or land application, for example, is under increasing scrutiny in many states, and any additional disruption to available disposal outlets could result in additional cost increases for wastewater treatment.
- Passive receivers could be held liable for the entire cost of cleanup of a contaminated site, both on a prospective basis and for lawful activities going back decades. Regardless of EPA’s use of enforcement discretion in initiating remedial actions, CERCLA designation would result in third-party contribution and cost recovery claims, likely leading to substantial litigation costs for public service providers and the communities they serve.
- These foreseeable cost increases, combined with actions taken by passive receivers to curtail acceptance of influent with concentrations of PFOA or PFOS, could impact the ability of some public service providers to continue operating, frustrate EPA cleanup activities around military installations and other affected communities, and disproportionately impact low-income communities that rely on the affordability of passive receiver services.

The undersigned organizations recommend that EPA, the Interagency Policy Committee on PFAS, and the broader Administration acknowledge the full unintended consequences of the proposed rule, evaluate all relevant authorities that could provide relief to passive receivers and the communities they serve, and reinstate the “polluter pays” principle of the statute in lieu of a “community pays” approach in which public service providers would be subject to CERCLA liability. Thank you for your consideration of our input, and we look forward to continuing to partner with EPA on actions to address PFAS under the PFAS Strategic Roadmap.

Sincerely,



Scott D. Grayson, CAE
Chief Executive Officer
American Public Works Association



David Biderman
Executive Director & Chief Executive Officer
Solid Waste Association of North America



Matthew D. Chase
Chief Executive Officer & Executive Director
National Association of County Officials



Frank Franciosi
Executive Director
U.S. Composting Council



Clarence E. Anthony
Chief Executive Officer & Executive Director
National League of Cities



Tom Cochran
Chief Executive Officer & Executive Director
U.S. Conference of Mayors



Darrell K. Smith
President & Chief Executive Officer
National Waste & Recycling Association



Gerard J. Neuser
Chair
Wisconsin Counties Solid Waste Management
Association



Janine Burke-Wells
Executive Director
North East Biosolids & Residuals Association

May 30, 2023

Michael S. Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via electronic submission

Re: Docket ID #: EPA-HQ-OW-2022-0114; PFAS National Primary Drinking Water Regulation Rulemaking

Dear Administrator Regan,

The undersigned organizations appreciate the opportunity to comment on the Environmental Protection Agency's (EPA) proposed Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation (NPDWR). Our respective organizations have a vested interest in protecting public health from PFAS and therefore have examined the details of this rulemaking. Individual comments have been submitted by these organizations representing each organization's perspective; however, we collectively would like to raise certain issues that EPA must address as it works to address PFAS.

Feasibility of Implementation

EPA's proposed three-year compliance timeline is insufficient and infeasible for compliance. EPA has proposed a three-year compliance time for water systems to address the presence of PFAS in their water supply above the proposed maximum contaminant level (MCL). The proposed NPDWR rulemaking indicates that EPA does not plan to issue a waiver for a two-year extension for systems that need to install PFAS treatment technologies or facilities. Water systems that need to install treatment facilities will need a minimum of five years to complete projects. The process for completing such projects is complex and time-consuming, involving various approvals, pilot studies, local land use or zoning processes, design and development, procurement, and construction. These steps require coordination with multiple entities, including boards, councils, other elected officials, and the public. Additionally, utilities are currently facing challenges, such as increased pricing, supply chain disruptions, and labor shortages, which further extend project timelines and increase costs. For these reasons, many utilities that must install treatment facilities to address PFAS will not be able to reasonably meet a three-year compliance timeline.

We recommend that EPA use its authority to provide a nationwide two-year extension for the compliance timeline for systems installing capital improvements. A two-year extension will address the concerns outlined above to alleviate burdens on water systems and allow for feasible compliance by water systems addressing PFAS contamination.

Accurately Reflecting Costs and Household Affordability

A major concern our groups have is the enormous cost of this rulemaking, which will be imposed on water systems, communities, and their ratepayers. With this rule, communities will be financially responsible for expensive treatment technologies to remove PFAS from water down to the lowest

level that can be reliably detected. While EPA's costs and benefit analysis estimates that the costs of this proposal amount to \$770 million to \$1.2 billion annually, other available data from existing facilities and industry work estimate that the cost could exceed \$3.2 billion annually¹.

Water systems are responsible for addressing various public health risks while also working to maintain affordable rates for their community. Regulations must not impose excessive financial burdens on ratepayers that drive rates beyond affordable levels for low-income households, as economic hardships can force difficult choices between water bills and essential needs. Our groups acknowledge the funding that the Bipartisan Infrastructure Law provides for PFAS, but given the estimates of organizations signing this letter, we reiterate to EPA and to Congress that this money is nowhere near enough to cover the cost of compliance.

A robust and accurate cost and benefit analysis is crucial for making sound decisions that are protective of public health and appropriately prioritize investments. EPA should improve its cost analysis, and subsequently the household affordability analysis, to be more reflective of available information on PFAS treatment costs. This is imperative to ensure that the proposed rule is not only accurately reflecting the financial impacts on communities as a whole but also examines affordability for low-income households specifically.

Meaningfully Advancing a Holistic Approach to Address PFAS

The undersigned organizations support regulation based on scientific evidence that protects human health. We emphasize the shared goal of public water systems and EPA in ensuring access to safe drinking water to the public and we encourage EPA to meaningfully advance this objective through the implementation of its PFAS Strategic Roadmap. The responsibility for pollution remediation should not rest solely on public water systems and their ratepayers.

We recommend that EPA take more proactive measures to identify sources of PFAS and limit their discharges, as prevention is more cost-effective than attempting to clean up pollution later and maintains the polluter pays principle. Advancing regulatory actions that provide source water protection will also reduce the number of systems with PFAS contamination above the proposed drinking water standards. EPA should also work to collaborate with other agencies to address other pathways of public exposure to PFAS, such as food and household products.

As the Administrator, you are responsible for advancing these regulatory actions to protect communities from contamination and the financial burden of mitigating this contamination.

We welcome any opportunity to discuss this matter with EPA further. Please feel free to contact our respective organizations with any questions.

¹ Black & Veatch, 2023. WITAF 056 Technical Memorandum Update: PFAS National Post Model Report. Prepared for American Water Works Association. May 26, 2023.

Sincerely,

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