



THE UNITED STATES
CONFERENCE OF MAYORS



April 25, 2022

The Honorable Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Proposed PFAS National Primary Drinking Water Regulation - Docket ID No. EPA-HQ-OW-2022-0114

Dear Assistant Administrator Fox,

On behalf of the nation's mayors, cities and counties, we appreciate the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) Proposed Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation (NPDWR). We appreciate the Federalism Consultation EPA held for state and local government organizations on February 24, 2022 and provide these comments pursuant to Executive Order 13132: Federalism.

For the past several years, there has been growing concern across all levels of government about drinking water contamination from PFAS, a group of human-made chemicals that were created and used in a variety of industries around the globe that have made their way into drinking water systems across the country, particularly in communities near military installations or industrial sites.

We understand this proposed regulation will focus specifically on PFOA and PFOS, two of the most well-known and most-studied of the group of PFAS chemicals. We also understand that EPA is studying and evaluating additional PFAS chemicals to inform future rulemakings.

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.

Collectively, 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 our citizens and communities are top priorities for us. Local governments serve as co-regulators in implementing and enforcing many federal laws with states, including Safe Drinking Water Act programs, and our members take these responsibilities seriously.

To that end, it is important that federal, state and local governments work together to craft reasonable and practicable rules and regulations. As partners in protecting our citizens' public health, it is essential that local governments have a clear understanding regarding our responsibilities in implementing federal rules and regulations.

In general, our organizations support provisions in the 1996 Amendments to the Safe Drinking Water Act, which require that drinking water standards be based on sound science, public health protection and occurrence of contaminants in drinking water supplies at levels of public health concern to reduce risk while balancing costs. Additionally, in general, we believe the National Primary Drinking Water Regulation for PFAS, and any regulatory or legislative initiative addressing PFAS in drinking water, should balance public health and environmental priorities with technological and economic feasibility. Any federal mandate on local governments should include additional federal financial resources, as well as offer local water systems flexibility in implementation and compliance options. Finally, our organizations support programs for public education regarding safe drinking water and innovative solutions that approach this problem beyond the traditional command and control.

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, primarily through user fees and bonds. The most recent U.S. Census data shows that local governments spent over \$134.6 billion on water and wastewater in 2019 alone, and, from 1993-2019, spent over \$2.38 trillion, not adjusted for inflation. Even with this significant investment by local governments, many communities struggle to upgrade their drinking water systems.

During this same time period, the federal government 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 (also known as the Bipartisan Infrastructure Law or BIL) 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.

We urge caution to the Administration and Congress, however, in thinking that this level of funding will be sufficient for local governments to meet the requirements of this proposed regulation and/or other rules that the Agency is considering. At a minimum, it must be acknowledged that the timelines for the availability of funding under BIL, which is through FY26, and the likely compliance dates for a new NPDWR for PFAS do not align. Therefore, it is uncertain if local governments will be able to use BIL funding specifically for compliance with this forthcoming NPDWR for PFAS or other additional rules and regulations.

Take holistic approach to drinking water regulations

Additionally, considering EPA is simultaneously undergoing other rulemaking processes that pertain to local drinking water and wastewater infrastructure management, among others, it is important that these rules and regulations are not developed in silos within the Agency. We urge the Agency to take a holistic and integrated approach and consider the cumulative impacts that the rules and regulations will have on local governments in terms of costs, compliance and implementation timelines.

Specifically, we are concerned that the Agency's rulemaking processes around NPDWR for PFAS, Lead and Copper Rule Improvements and regulating PFAS under CERCLA and RCRA will individually and combined create additional unfunded mandates on local governments. If EPA moves forward with these proposed rules and regulations, new funding sources must be created to assist local governments with compliance and implementation. Even with the increased funding from BIL for the SRF programs, as well as for reducing lead in drinking water, local governments will still face a water infrastructure needs gap that would exacerbate affordability and equity concerns for the many fixed- and low-income households that already spend a disproportionate amount of their income on water bills.

Moreover, this situation is particularly relevant as the Agency is finalizing the Proposed 2022 Financial Capability Assessment Guidance and it presents an opportunity to ensure that local governments are afforded the maximum flexibilities and financial alternatives to minimize the burden on residential ratepayers. We reiterate that the *Integrated Planning for Municipal Stormwater and Wastewater* framework and Financial Capability Assessment Guidance should include both wastewater and drinking water considerations.

Comments and recommendations on proposed regulation

As EPA continues to develop this proposed regulation, we offer several overarching comments and recommendations for ensuring the regulation's implementability and effectiveness and for reducing unnecessary costs on local governments.

- **Cost concerns** - We urge the Agency to conduct a complete economic analysis of the impact the rulemaking will have on public water systems of all sizes, which will vary based on treatment level, treatment technology and other considerations. While the Agency has provided data reflecting estimated treatment and monitoring cost information, we are concerned that this is an incomplete account of the true costs for retrofitting local water treatment plants and implementing the new technology that is needed.

In addition, EPA's estimates do not account for a full cost analysis of the regulation's implementation including administrative costs, incremental costs, disposal costs, and future replacement costs. These factors are critical when determining the full cost for public water systems and analyzing the cost-benefit as required under the Safe Drinking Water Act. Additionally, energy costs and greenhouse gas emissions/carbon footprint and water usage associated with the treatment technique should be considered, as well

as future costs related to liability for the local government or water utility if the Agency moves forward with regulating PFAS as a hazardous substance under CERCLA and/or RCRA. Finally, we urge the Agency to consider the impact of the regulation on low-income and environmental justice communities in the cost analysis calculations, including rate consequences, as these communities are often disproportionately impacted by both increased costs for their water bills and risk exposure to contaminants.

- **Impact on small systems** - While public water systems that exceed the regulatory standards will incur the most substantial costs, all public water systems, including small systems, will be financially impacted. Small systems are particularly constrained in their financial and staff capacity, which impacts their ability to comply with federal regulations. As such, we urge the Agency to provide local governments, particularly small communities, with maximum flexibility for compliance options to reduce the cost burden. This includes point-of-use or alternative treatment options that may be more cost-effective for some systems and monitoring-related flexibilities. Additionally, we support the identification of variance technologies for small systems if there are no affordable Small System Compliance Technologies for contaminant removal.

Additionally, with the potentially large number of small systems that will have to comply with this regulation, the burden will be on the state primacy agency to ensure they have the management capacity to evaluate monitoring results, installing advanced treatment, changing water supplies, among others. The regulation must be implementable at the state and local level, as many small, groundwater community water systems and non-transient non-community water systems do not currently actively treat for PFAS contamination, or if they do, it is limited.

- **Public trust and risk communications** - It is essential that public notifications are clear and concise and based on sound science, particularly when referring to the potential health risks associated with elevated PFAS levels. Furthermore, it is essential that these notices are transparent, maintain public trust and do not generate needless public alarm. For these reasons, the action steps for framing the required communication, such as consumer confidence report and public notice, must be sound. We urge the Agency to work with local elected officials and public water systems in developing this framework and providing guidance and tools for local leaders for communicating with our residents.

Continue meaningful, timely and frequent engagement with local governments

As the Agency moves forward with this regulation and the development of a NPDWR for PFAS, we urge EPA to continue to adhere to Executive Order 13132: Federalism, as well as EPA's own implementing guidance. Specifically, we request that EPA continue to engage with state and local government organizations in order to provide opportunity for input into the development process to ensure that the regulation is effective, implementable and cost efficient.

In conclusion, on behalf of the nation's mayors, cities and counties, thank you for considering the local government perspective on this important issue. If you have any questions, please contact us: 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,



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