



THE UNITED STATES
CONFERENCE OF MAYORS

Environmental Protection Agency (EPA)

Unfunded Mandates - Priority Issues for Local Governments

The United States Environmental Protection Agency (EPA) has been working on rules and guidance policies intended to protect public health and the environment, and they will likely impact municipal services like drinking and wastewater utilities, clean air regulations and solid waste management. The United States Conference of Mayors (USCM) focus is on priority near-term and mid-term regulatory activities that history suggests will impose new costs on ratepayers. USCM is working closely with the National League of Cities (NLC) and National Association of Counties (NACo) as well as water sector organizations to monitor and advocate on behalf of local governments and the municipal water and wastewater sector.

The priority issues outlined below represent some of our most immediate concerns relating to emerging regulations and policies imposing new and costly unfunded federal mandates.

Lead and Copper Rule (LCR) – Lead Line Replacement

Number of Cities Impacted:	Over 49,000 public water systems
Basic Cost of Rulemaking:	Sampling for lead, testing, monitoring
Lead Service Line Replacement:	\$45 to \$99 billion
Status of Rule:	Proposed Rule in August 2023
	Finalized in Fall 2024

Background

EPA is proposing to amend the current regulations for lead in public drinking water and set in place requirements to remove all lead service lines from drinking water systems. These two actions are intertwined and will impact all public water systems across the nation. EPA periodically updates drinking water standards; and new directions to EPA from Congress in the Infrastructure Investment and Jobs Act (IIJA) to remove lead service lines in America, and providing partial funding with a mix of loans and grants to be administered through the State Revolving Fund Loan Programs (SRF).

Lead can be harmful to human health at low exposure levels, especially for children under the age of 6. It can cause lower IQ, decreased ability to pay attention, and underperformance in school. CDC states blood lead levels should not exceed 5 ug/dL (micrograms of lead per deciliter). American adults have an average blood lead level of 10 ug/dL.

Local water utility managers are knowledgeable of the potential for leaching lead in distribution pipes and in customer service lines from the main water pipes onto the customer property and plumbing. Best management practices in corrosion control to prevent lead leaching is a common practice. Periodic tap water samples and testing for lead levels support operational controls such as corrosion control to protect public health. Now that lead service line replacement is inevitable cities are concerned about how the new LCR standards will affect local actions and condense lead service line replacement under a compressed time frame and at an enormous cost to local water utility budgets.

Technical Concerns with EPA's LCR Proposal

EPA first published the Lead and Copper Rule in 1991. Since then, the Agency has revised the rule multiple times. Most recently, their 2021 LCR proposal included several key requirements: that cities map lead pipe locations, use an action trigger level of 15 parts per billion (ppb), and replace lead pipes over the next 33 years (3% per year). This replacement period was reasonable because it draws the cost out over time, and provides adequate time to deal with the logistical difficulty involved with performing public activity on private property.

EPA has currently reset the road map and is expected to issue a new rule in August that would potentially shorten the compliance period to address lead. EPA is considering lowering the action trigger level to 10 ppb, and dramatically shorten the 33 year timeframe for communities to remove all lead service lines.

The Cost Challenge - IIJA and Lead Pipe Removal

The Infrastructure Investment and Jobs Act (IIJA) includes \$15 billion in grant/loan aid to the states. (51% in loans/49% in grants.) The states incorporate the federal grants into their State Drinking Water Revolving Fund Loan Program (DWSRF). Local government operating regulated municipal water systems can apply to their DWSRF for a loan or grant to finance their lead pipe removal program. The states establish an intended use plan that organizes a due diligence review of grant applicants and selection process, and even designate priority projects. \$15 billion in resources, however, has been criticized as substantially insufficient when more credible cost estimates to remove all lead pipes ranges between \$45 billion to \$99 billion. The degree of difficulty to remove lead pipes is increased because the preponderance of lead pipes are found on private property, and a city must get homeowner permission to go on a property to replace lead service lines. If using the SRF funding designated for lead pipe replacement, the city is not allowed to collect any money from the homeowner even if it is used to pay back the loan.

Next Steps/Call to Action:

The Agency's upcoming lead and copper rulemaking is expected to be released in August 2023. Overall, we believe additional financial resources, an extended compliance framework and additional flexibilities at the local level would offer the most realistic approach for local governments and water systems to make significant progress towards removing lead in drinking water. The USCM, along with other local government organizations, will be submitting our comments and concerns on this issue. We strongly urge our members to do the same.

To view the Conference's most recent public comments on this issue, please visit:

<https://www.usmayors.org/2022/12/05/joint-comment-letters-related-to-epa-water-and-environmental-rules-and-regulations/>

To find more regulatory information on EPA's upcoming Lead and Copper Rule Improvements (RIN# 2040-AG16) please visit here:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2040-AG16>

PFAS REGULATION - PFOS/PFOA

Number of Cities Impacted:	Over 49,000 public water systems. All will be required to test and report. A subset will be required to install advanced treatment technology
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Basic Cost of Rulemaking:	Sampling for several PFAS substances, testing, monitoring
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PFAS Drinking Water Standards:	\$23 billion to \$38 billion
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PFAS Disposal Sewage Sludge and Drinking Water Residuals:	\$3.5 billion (excluding transport costs)
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Status of Rule

Drinking Water Regs:	Proposed Rule - Imminent (Next Week)
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CERCLA Designation:	Final Rule – August 2023
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Background

Per- and polyfluoroalkyl substances (PFAS) are a group of approximately 9,000-12,000 compounds used to make coatings and products that resist heat, oil, stains, grease, and water and are used in clothing, furniture, adhesives, food packaging, non-stick cooking surfaces, insulation of electrical wire, and firefighting foam. They are named "forever chemicals" because they do

not naturally break down over time, they move through soils and water easily, and they can bioaccumulate in fish and wildlife.

Regarding public health impacts, current scientific research suggests that exposure to high levels of certain PFAS may lead to adverse health outcomes, such as increased risk of some cancers, liver damage, and developmental effects. However, it is critical to note that research is still ongoing to determine the types and what levels of PFAS exposure will lead to adverse health effects. According to the CDC, “the human health effects from exposure to low environmental levels of PFOA are unknown. PFOA can remain in the body for long periods of time. In laboratory animals given large amounts, PFOA can affect growth and development, reproduction, and injure the liver. More research is needed to assess the human health effects of exposure to PFOA.”

EPA’s Regulatory Approach for PFAS

EPA has established a “road map” for regulating these chemicals and are focusing their attention on two of these compounds—perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) but there are indications that more compounds will eventually be added. Currently, EPA has launched several regulatory review efforts aimed at land and water contamination. The land contamination approach involves an EPA proposal to designate PFOS and PFOA as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This is expected to be finalized by EPA (possibly in August of 2023) and would set a regulatory level of contamination at which a contaminated site could be a candidate for Superfund or specific remediation requirements.

The water contamination approach involves the Agency setting a limit in drinking water under authority of the Safe Drinking Water Act (SDWA). The new proposed standards were expected to be released at the end of last year but have been delayed until at least March 3, 2023. For now, health advisory levels vary in different states. It’s important to note that the state regulatory levels and the levels EPA is considering, are much more stringent than World Health Organization health advisory levels of 100 parts per trillion. Further, the anticipated regulatory levels are likely to require new technology in place to remove PFOS and PFOA from drinking water including granular activated carbon, reverse osmosis, or ionization, all of which are energy intensive and expensive to operate and maintain.

While the CERCLA and SDWA regulatory efforts are advancing now at EPA, so is activity to examine what new rules might be used to regulate the chemicals under other statutory authority. For example, contaminated discharges of the chemicals by industry or publicly owned treatment works will be examined to determine the need for additional rules (under the Clean Water Act, CWA). The same can be said for biosolids land application under CWA, and municipal and industrial waste regulated under the Resource Conservation and Recovery Act (RCRA).

Impacts for Local Governments

The effects of these new regulations will be significant for local governments. As owners of municipal drinking water and wastewater facilities, these new regulations will result in required testing, monitoring, and treatment with associated costs. The financial burden will likely carry over to individual households resulting in rate increases.

The IIJA provides \$10 billion over the next 5 years to deal with emerging contaminants, such as PFOS and PFOA. While this funding is historic, it unfortunately will not be enough. The American Water Works Association (AWWA) is currently doing a cost analysis and will be releasing their report soon. They anticipate that approximately 10-15 percent of drinking water facilities will be impacted by these new standards and depending on the type of PFAS being regulated and the level of compliance, total costs could range anywhere from \$23 - \$38 billion; with additional annualized costs running between \$2 - \$3.5 billion. Due to these costs, individual households could see an increase of their annual water bills ranging anywhere from \$8 to \$17,000. These individual household costs fluctuate greatly depending on how many people are served by the public water system (for example less than a 100 or more than a million).

The CERCLA designation of PFOS and PFOA will also have a cost impact on wastewater operations and municipal landfills. Currently, sewage sludge is used to generate energy, applied to land as soil nourishment, or disposed in a Subtitle D (non-hazardous) landfill. If PFOS or PFOA is detected in sewage sludge, there would be fear of Superfund liability to do land application or to landfill it. The only safe option would be to dispose of the material in a Subtitle C (hazardous waste) landfill or hazardous waste incinerator. The cost estimate for incineration is \$3.5 billion annually excluding transportation costs.

Next Steps/Call to Action

The Agency is currently underway with proposing new rulemakings addressing PFAS. As mentioned above, the drinking water standards proposal was expected to be released as soon as March 3, 2023, while the CERCLA designation could be finalized in the next few months. The Conference, along with other local government organizations, will be submitting public comments addressing our priority concerns on this issue. We strongly urge our members to do the same.

The USCM submitted comments to EPA along with other organizations on EPA's proposed rule to designate PFOS/PFOA a hazardous substance. Please visit here to view our comment letter: <https://www.usmayors.org/2022/12/05/joint-comment-letters-related-to-epa-water-and-environmental-rules-and-regulations/>

To view the Agency's proposed rule on PFOS/PFOA CERCLA designation (**RIN#2050-AH09**), visit here: <https://www.federalregister.gov/documents/2022/09/06/2022-18657/designation-of-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-as-cercla-hazardous>

To find more regulatory information on EPA's upcoming proposed rule (not released yet) on PFAS drinking water standards (**RIN#2040-AG18**), visit here:
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2040-AG18>

Reform of the Financial Capability Assessment (FCA) Guidance

Background

When municipal discharges cause violations of the Clean Water Act (CWA), such as with combined sewer overflows, the EPA negotiates a legally enforceable schedule for the municipality to address these violations as soon as possible. These are called consent decrees, and in some cases, they are Administrative Orders that permittees agree to. The FCA is used by municipalities when devising plans to come into compliance with the Clean Water Act. During that process, municipalities and EPA negotiate schedules with specific timeframes for implementation of long-term control plans (LTCPs).

The Mayors Water Council has been working with EPA since 2009 to reform the costly and inflexible method and process in the 1997 Guidance policy by which EPA determines how much your community should spend to comply with the Clean Water Act (CWA). Key concerns included the inflexibility and lack of analytic transparency, use of national statistics to determine what a locality should spend to comply with the CWA requirements and standards, and forcing the regulated community to adopt costly and short compliance schedules. In 2020, the Agency released a new proposal that overall, we believed to be a vast improvement. Unfortunately, that version was withdrawn in January of 2021 and a new Guidance was just released on February 1, 2023.

Concerns with EPA's Revised FCA Guidance - February 2023

The new FCA Guidance does not deliver flexibility or relief for low- and moderate-income residents in our cities. Instead, it reinforces the flaws found in the earlier 1997 version of the FCA. Important issues center around the proposal's inclusion of:

1. Stringent compliance schedules limited to 20 years, or in exceptional cases up to 25 years;
2. The use of national benchmarks to ascertain local affordability;
3. An overly burdensome Financial Alternative Analysis (FAA) that serves as more of a "laundry list" for local governments to complete before being considered for any relief;
4. There is no strategy in the new Guidance to coordinate federal-state financial resources to help fund LTCPs in communities where EPA has brought enforcement actions. Instead, the Agency has opened regional finance centers to do what state SRF offices already do - inform cities that they can apply for a low interest loan and maybe a partial grant.

To offer some perspective, we provided two examples below of consent decree schedules:

- St. Louis, MO - In August 2011, the Department of Justice filed a settlement, or consent decree, requiring MSD to spend a minimum \$4.7 billion over the next 23 years to address the issue of overflows and other sewer system improvements.
- Lima, OH - \$150 million over 29 years as a result of Integrated Planning (*Note: The population of the city of Lima, OH is a little over 35,000*)

The new FCA Guidance made several improvements that local government requested: increased transparency on how EPA evaluates local financial burdens; the continued support for integrated planning and green infrastructure; and some, but not sufficient, consideration of the local lowest quintile of poverty as an affordability factor. Despite the positives, the overall result of this policy Guidance is that local governments, their residents, and their businesses will be forced to pay substantial rate increases and experience a widespread and deepening financial burden with marginal improvements to water quality. EPA has essentially retreated to the past policy of aggressive enforcement and limited flexibility.

A recent letter from multiple organizations to EPA and OMB stated important concerns about the FCA changes expected to be released this year. An excerpt from that letter states:

“Intended as a long-overdue update to the original 1997 version of the guidance, the new FCA will fall well short of meeting the expectations of those calling for an update, including Congress, the members of our respective organizations and other key stakeholders. While seemingly a minor guidance document impacting a small portion of EPA’s environmental portfolio, the calculations in the guidance have directed tens of billions of dollars of federally-mandated spending on Clean Water Act requirements by hundreds of communities across the country since 1997. This is a document that the Agency must get right or we will repeat the mistakes of the past and continue to put low-income and disadvantaged communities across the country in the untenable position of being unable to afford their water and sewer bills.”

Visit here to view the full letter: <https://www.usmayors.org/2022/12/05/joint-comment-letters-related-to-epa-water-and-environmental-rules-and-regulations/>

Reform of the FCA stalled since the current EPA leaders have stepped back from meaningful reform in terms of flexibility on timelines and the high cost of regulatory compliance that increase financial burdens through rate increases on low- and moderate-income residents.

Next Steps/Call to Action

Given our concerns listed above, we find the current FCA Guidance difficult to support in its current form. The Conference has been vocal in raising our concerns with the EPA on this issue and had previously requested that the final proposal either be significantly revised, or withdrawn in favor of the 2021 version.

We are working with a large coalition of stakeholders to continue advocating for meaningful reform of EPA's FCA Guidance Policy.

Waters of the United States (WOTUS)

Background

A long-standing regulatory tool used by the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE), WOTUS is the rule and set of conditions by which development proposals that impact these waters are judged in permit applications. Of critical contention is the question of which water bodies fall under federal jurisdiction and therefore are subject to Clean Water Act (CWA) regulations. The definition of a regulated U.S. water was originally defined as any water body that was considered navigable. However, after several Supreme Court decisions and multiple revisions by previous administrations, the definition has undergone significant modifications. Most recently, on December 30, 2022, EPA and USACE released their revised definition of WOTUS. **The final rulemaking will become effective on March 20, 2023.**

Impact on Local Governments

Local governments are key facilitators in managing and maintaining water quality via critical infrastructure facilities and municipal water systems, such as for drinking water, wastewater, and stormwater. Therefore, a revised definition to WOTUS is likely to have significant impacts for local governments. These impacts could range from additional compliance costs to issues regarding permitting authority for development projects. Additionally, regulatory uncertainty could result in serious challenges such as project delays for critical infrastructure needs as municipalities seek clarity on which water bodies will be interpreted as federally regulated.

The Conference does not have strong policy defining what should be considered regulated Waters of the U.S. but has made formal comments to EPA and the Supreme Court in an amicus brief that outlined our position that water, wastewater, and stormwater infrastructure should NOT be considered a Waters of the United States. Additionally, USCM comments made specific reference to the inclusion of vague and undefined terms in the EPA policy. The USCM along with other organizations submitted an amicus brief to the Supreme Court.

Next Steps

It is important to note that while this rule becomes effective on March 20, 2023, an upcoming Supreme Court decision (*Sackett v. EPA*) could void EPA's most recent final rule, forcing the Agency back to the drawing board to re-propose another rulemaking. **The decision by the Supreme Court is expected in May or June 2023.** We urge Mayors to stay informed of upcoming updates relating to this decision and to continue to engage in stakeholder conversation on the impacts that a revised definition will have on municipal projects and developments.

You can find EPA's final revised definition for WOTUS here:

<https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>

You can find USCM's public comments in an amicus brief here:

www.usmayors.org/2022/12/05/joint-comment-letters-related-to-epa-water-and-environmental-rules-and-regulations/