



THE UNITED STATES
CONFERENCE OF MAYORS



May 30, 2023

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

RE: Per- and Polyfluoroalkyl Substances 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). Local leaders are dedicated to the health, well-being and safety of their residents and communities and are therefore highly interested and concerned regarding the public health impact that PFAS substances may have on our drinking water supplies and systems.

We appreciated the opportunity to submit comments to EPA in response to the Agency's Federalism Consultation briefing last year. However, we are disappointed to see that our recommendations are not reflected in this proposed regulation. Given this, we urge EPA to move forward cautiously, consult with local governments, gather and utilize additional and updated scientific data, and reexamine the cost-benefit analysis to best inform this regulation. Specifically, should EPA move forward, we ask that the Agency:

- Provide maximum flexibility for local governments, including longer compliance timeframes;
- Reconsider regulatory alternative Option 1 c, which would establish a higher MCL at 10 parts per trillion (ppt) for PFOS and PFOA; and
- Provide additional direct funding for local governments to comply with the proposed regulation to avoid creating an unfunded mandate that will disproportionately impact low-income residents and communities.

These measures are important to ensuring that local governments, water utilities and ratepayers are not unduly burdened in trying to fix a problem they did not create.

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. 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 PFAS. Created by private industry for use in a variety of sectors and applications around the globe, these chemicals have made their way into drinking water systems across the country and are heavily concentrated 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. We continue to urge the federal government to take holistic and comprehensive action to address PFAS contamination through pollution prevention, cleanup, research and development, scientific and public health analysis, and prevention of further exposure.

As passive receivers of materials containing PFAS, local water systems neither caused nor contributed to the pollution. We urge EPA to adhere to the polluter pays model and provide sufficient direct funding to comply with this regulation. Additionally, in developing this regulation, EPA should provide local governments with maximum flexibility and a longer compliance timeframe to avoid overburdening communities and ratepayers.

As coregulators in implementing federal statutes, including the Safe Drinking Water Act, and as partners in protecting public health, it is important that federal, state and local governments work together to craft reasonable and practicable rules and regulations to address PFAS contamination. In order to achieve these goals, it is essential that EPA provide local governments with a clear understanding of the rules' and regulations' requirements and a full and complete cost-benefit analysis.

In general, our organizations support provisions in the 1996 Amendments to the Safe Drinking Water Act that requires drinking water standards to be based on sound science, public health protection and the occurrence of contaminants in drinking water supplies at levels of public health concern in order to reduce risk while also balancing costs. Consequently, we believe the NPDWR 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. Further, our organizations support programs for public education regarding safe drinking water and innovative solutions that approach this problem beyond traditional command and control.

Local governments fund the majority of water infrastructure investments

Local governments fund over 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. The most recent U.S. Census data shows that local governments spent over \$142 billion on water and wastewater in 2020 alone, and, between 1993 and 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.

While 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 and wastewater, this funding is insufficient 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 FY 2026, 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 regulation or for future rulemakings pertaining to PFAS.

Taking a holistic approach toward drinking water regulations

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. Additionally, EPA should examine other related consequences of proposed rules, such as the impact on efforts to reduce greenhouse gas emissions.

Specifically, we are concerned that the Agency's rulemakings 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 that will be economically significant and, in many communities, unaffordable. 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 and addressing PFAS drinking water contamination, local governments will still face a significant 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.

Overarching Concerns and Recommendations

As EPA continues to develop this regulation, we offer several of our priority concerns and recommendations relating to local governments' ability to effectively and cost-efficiently implement the proposed changes while also protecting public health.

1. Financial Impacts

The Agency's proposed regulation will have a significant impact on public water systems, and the financial burden will ultimately be passed on to local governments and community ratepayers. In proposing this new regulation, the Agency has conducted a cost-benefit analysis and concluded annual costs of \$770 million and benefits of approximately \$1.2 billion. However, the American Water Works Association (AWWA) has estimated annual costs between \$2.5-\$3.2 billion.¹

While we appreciate the recent significant investments in our nation's water infrastructure from BIL, it unfortunately is not enough to protect the health of our residents in the manner the Agency is attempting. We have serious concerns that not only will local governments be unable to afford the required costs to comply with this regulation, but also that the Agency has underestimated the cascading impacts this regulation will have on local communities, primarily in the form of higher water bills.

In general, local governments will be responsible, directly or indirectly, for a wide array of associated compliance costs, including for testing, monitoring and installing treatment. The

¹ WITAF 56 Technical Memorandum Update, "PFAS National Cost Model Report," May 26, 2023

proposed Maximum Contaminant Level (MCL) of 4 ppt will require 3,400-6,000 systems across the country to take action, significantly more than are currently doing so based on state-level standards or that would need to do so if the MCL was set at a higher level such as 10 ppt. Many of the roughly 66,000 water systems that will be subject to the regulation are small systems for which compliance will be even more challenging and the financial impacts more severe. Moreover, as the Agency moves forward with rulemakings designating PFOS and PFOA or other PFAS as hazardous substances under CERCLA, these costs will only increase as local governments will also be responsible for the appropriate removal and transport of hazardous chemicals.

As providers of public water, providing safe, clean and affordable drinking water to our communities is of utmost importance to local governments. It is worth emphasizing that local governments have limited financial resources to comply with a host of new and existing water-related mandates, including but not limited to testing for lead, removing lead service lines, upgrading cybersecurity and replacing aging infrastructure. Consequently, local utilities may be forced to fund the compliance costs associated with this new regulation by cutting back on infrastructure replacement and maintenance, reducing operational resiliency and reducing other expenditures that would otherwise benefit public health and access to clean and safe drinking water.

As local governments are forced to bear the brunt of the financial burden, an increase in water rates in communities across the nation is a near certainty. Indeed, this rising consumer cost for utilities to comply with the proposed MCL will be felt most harshly by the low-income households and small business community. The U.S. Census reports that local governments spent \$80 billion in 2020 on water supply utilities. A \$2.5-\$3.2 billion new unfunded federal mandate will require a 3.125-4% increase in national spending that will be passed on to consumers through rate increases and long-term debt, particularly where advanced treatment is required for compliance. Given this regulation will currently impact approximately 3,400-6,000 systems, the burden on those communities will be dramatically higher. Many communities and residents are already experiencing significant and widespread financial burdens, and this proposed regulation will add to that burden.

Because of this, we urge the Agency to reconsider the financial impact this proposed regulation will have on individual consumers, particularly on environmental justice and disadvantaged communities. These communities are often disproportionately impacted by both increased costs for their water bills and risk exposure to emerging contaminants. In examining the financial impacts this regulation could impose upon individual households, costs will vary depending on several factors, such as the size of the public water system. In scenarios where new treatment facilities would need to be installed and operated, individual households may see increases in the amounts of hundreds of dollars to their water bills. For systems serving smaller communities, this number extends into the thousands, according to an AWWA study.

Further, 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 must dedicate a significant portion of their income to water. Given the Administration's focus on environmental justice, water rate affordability must be a part of the consideration in this proposed regulation.

In light of the Administration's Justice40 initiative, EPA should additionally recognize that the financial burden on low-income and environmental justice communities associated with meeting environmental requirements is an important aspect of environmental justice. The financial

burden that increased rates will have on disadvantaged communities should be a consideration in this and other rules and regulations.

This burden can be alleviated by providing additional flexibility for local governments, a longer compliance timeframe, and additional direct funding for local governments. Should EPA move forward, the Agency should establish a higher MCL, such as 10 ppt under Option 1 c in the proposed regulation. This will capture the systems where PFAS is more prevalent, without overburdening many more communities.

2. Practicality of Implementation

As mentioned above, local governments play a critical role in the effective implementation of federal regulations. Recognizing this, as the Agency moves forward with this regulation, we have serious concerns with several practical aspects that will impact local governments' capacity to effectively and economically achieve compliance, as outlined below. Many of these practical concerns can be minimized by establishing a higher MCL for PFOS and PFOA, which would prioritize systems with higher concentrations of the chemicals, and by granting a longer compliance timeframe.

a. MCLs for PFOS and PFOA set at detection levels

The Agency has proposed drinking water standards for PFOS and PFOA at 4 ppt, which is the lowest detection level at which the contaminant can be reliably measured. When comparing these MCL levels with other datasets in the international community, such as those from the World Health Organization, Australia, Japan and Canada, EPA's proposed standards are significantly lower. Additionally, several states have recently set their own drinking water standards for PFOS and PFOA. As proposed, EPA's standards are lower than any current international or state standard.

When taking into account that states as well as the international community have access to the same available science EPA used to develop its proposed regulation, there are questions about this wide discrepancy that requires further examination. Additionally, EPA's standards are set so strictly that thousands of systems will be in violation from the outset, necessitating immediate decision making and costly actions.

This discrepancy also makes it difficult for local leaders to effectively communicate the risk associated with PFAS to the public and will likely lead to confusion among residents as they seek to determine if their water is safe to drink. EPA should work with local governments and water utilities to collaboratively develop a risk communication toolkit that explains the relative public health risks and clarifies why additional measures are necessary despite higher current state and international standards. Importantly, this language and toolkit should be voluntary for local governments to use, rather than mandatory.

b. Inadequate Laboratory Capacity

Laboratories across the nation will need to be drastically scaled up in order to manage the surging demand from public water systems as they implement and comply with the proposed regulation. Compliance monitoring is only a small fraction of the number of samples that will need to be collected and analyzed as public water systems that have test samples above the limit will also need to monitor for PFAS while installing and operating treatment techniques. Therefore, laboratory capacity must be able to not only handle initial compliance monitoring, but also monitoring from public water systems as they continue to operate and treat PFAS.

With such an increase in demand, we have serious concerns regarding laboratory capacity

across the nation and the ability for public water systems to receive and process sample results in a timely and cost-efficient manner. Currently, public water systems are reporting wait times of up to three months to receive PFAS sample results. With the Agency's current proposal giving public water systems only three years to comply, water systems will be forced to move as expeditiously as possible, resulting in increased monitoring and longer sample response times than what is already being reported. As laboratories across the nation become overwhelmed, EPA should consider the importance of having reliable, accessible and affordable laboratory capacity as it relates to local governments' capability to work towards compliance.

c. Supply Chain, Disposal and Workforce Challenges

The technologies used to remove PFOS and PFOA from drinking water include Granulated Activated Carbon (GAC) or reverse osmosis membranes. Supply chain disruptions are already apparent at the local level, with over a year wait for replacement carbon, and in many cases the cost of needed supplies has also increased. These factors will be further exacerbated if more water utilities add GAC to their systems as a treatment technique. Establishing a higher initial MCL would allow those public water systems with the highest PFOA or PFOS levels, and therefore also the highest public health risks, to be prioritized first. A rapid increase in demand resulting from detection-level MCL levels would only exacerbate the amount of time it takes to obtain and install necessary treatment.

Moreover, given that both technologies only remove but do not destroy PFOS and PFOA, local governments will have to find a way of disposing of the spent carbon and membranes. Considering that EPA is also moving forward to declare both chemicals as hazardous substances under CERCLA, local governments will be forced to use either hazardous waste landfills or hazardous waste incinerators. Unfortunately, there are very few of either of these facilities and will necessitate expensive long-hauling of material. Given the increase in energy usage associated with these treatments and the additional costs associated with appropriate disposal, EPA should focus more attention on an effective means of destroying these chemicals.

Additionally, many local governments and water systems are experiencing workforce shortages that will impact the timeline and cost to comply with this regulation. These challenges not only include trained water utility personnel, but also limited staff capacity at testing labs, in the transportation sector needed for shipping and handling equipment and lab tests, and at the state agency level for review and approval of monitoring and compliance data.

Due to the challenges outlined above, attempting to implement this regulation in such a constrained time frame would only exacerbate current issues relating to skyrocketing supply prices, labor shortages, laboratory capacity, and surging market demands. Although EPA's proposal includes providing extensions on a case-by-case basis granted either from states or by EPA, this is not a guarantee. We strongly urge the Agency to clearly and definitively extend the current proposed three-year timeline for all public water systems.

3. Additional Scientific Data and Cost-Benefit Analysis

The Agency anticipates releasing updated data in its upcoming Fifth Unregulated Contaminant Monitoring Rule (UCMR 5), expected within the next nine months. According to EPA's website, "the monitoring provides EPA and other interested parties with nationally representative data on the occurrence of contaminants in drinking water, the number of people potentially being exposed, and an estimate of the levels of that exposure. These data can support future regulatory determinations and other actions to protect public health." Notably, this current

dataset includes monitoring for 29 different PFAS chemicals, including for all six PFAS chemicals being considered under this proposal.

The information obtained from this monitoring dataset would be of great value to support the Agency as it develops its regulatory framework for proposing new drinking water standards for PFAS. This updated data will provide a deeper insight into the monitoring and testing capacities of public water systems and laboratories across the nation, as well as better inform the cost-benefit analysis. Setting the MCL levels at the detect level when more data has yet to be released denies the Agency the ability to adjust these levels in the future, making permanent strict compliance actions for which the costs may not be justified. Therefore, we urge the Agency to either propose a higher MCL standard such as 10 ppt for PFOS and PFOA, or consider waiting to finalize any MCL levels until at least this new dataset becomes available for EPA to utilize.

Conclusion

In conclusion, we urge EPA to adhere to the polluter pay model and to move forward in a way that will not shift the cost burden of this regulation onto local governments, water utilities or ratepayers. In developing this regulation, EPA should adequately examine emerging data in an effort to further scientific consensus regarding PFAS. Further, should EPA move forward on this regulation, we urge the Agency to establish a higher MCL for PFOA and PFOS and to provide local governments with maximum flexibility, longer compliance timeframes, and additional direct funding.

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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