



April 20, 2021

Dr. Michal Freedhoff
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
U.S. Environmental Protection Agency

Dear Acting Administrator Freedhoff,

The Association of State Drinking Water Administrators (ASDWA) and the Association of Metropolitan Water Agencies (AMWA) congratulate you on your appointment to EPA's Office of Chemical Safety and Pollution Prevention (OCSPP). AMWA and ASDWA are nonpartisan organizations. AMWA represents the largest publicly owned drinking water systems in the United States and Puerto Rico, and ASDWA represents the state and territorial drinking water programs.

Contaminants of emerging concern are of great importance to state drinking water programs and public water systems (PWSs). Contaminants for which little is known and that may be persistent, bio-accumulative, and/or toxic have the potential to impact both surface water and groundwater sources of drinking water and therefore are public health risks. Although the prevention of contamination of drinking water sources has always been a high priority for both AMWA and ASDWA, the difficulties surrounding per- and polyfluoroalkyl substances (PFAS) have highlighted the need to use every tool available to EPA to prevent the intrusion of these and other emerging contaminants from entering water supplies.

Many new and emerging chemicals lack adequate testing methods, data on health effects, and reporting requirements for locations of (and releases from) chemical manufacturing, industrial processing, and production facilities. This leaves states and PWSs unable to adequately assess and address potential public health impacts and investigate the source of chemicals from a site or watershed. These unknowns also present a unique risk communication challenge for states and PWSs. Being able to identify a substance within drinking water but being unable to explain what is known and unknown about the health effects and risks associated with the substances can cause mistrust between PWSs and their customers.

PFAS are a prime example of the difficulty of addressing these issues. We are aware of the thousands of PFAS that are in existence, are able to test for dozens of these substances, and are aware of extensive impacts to both groundwater and surface water sources of drinking water. However, for most PFAS we lack sufficient health effects data and relative risk information to allow for effective decision-making. PWSs also face limited options for treating PFAS contamination, and the effectiveness of these treatments depends on the PFAS being addressed. Additionally, regardless of which method is used, these treatments are expensive and are typically above and beyond a utility's conventional water and wastewater treatment processes.

A comprehensive and holistic risk assessment and risk management approach is needed to consider potential impacts to drinking water, human health, and the environment from PFAS and other unknown chemicals throughout any part or all of the chemical's lifecycle - from manufacturing through processing, distribution, and disposal. Considering the complexities surrounding emerging

contaminants, both AMWA and ASDWA have developed a particular interest in the Toxic Substances Control Act (TSCA) and how it might be better leveraged to protect drinking water.

AMWA and ASDWA offer the following comments in hopes of continuing the dialogue with EPA and expanding our joint work to protect public health.

Key Takeaways:

1. *TSCA is the first line of defense for protecting drinking water sources from emerging contaminants, which must be addressed holistically across all regulatory statutes and agencies.*
2. *EPA should better utilize states, PWSs, and other stakeholders as the Agency works to develop risk assessments and risk management rules.*
3. *EPA must develop risk assessments and evaluations by including all exposure routes regardless of federal statutes in place. Specifically, EPA should re-open the risk evaluation for 1,4-dioxane to address drinking water exposure.*
4. *Significant New Use Rules provide a unique opportunity to assess and restrict the release of harmful chemicals into the environment.*
5. *EPA offices must better coordinate amongst themselves and with other federal agencies to leverage all regulatory tools and agency pollution prevention policies to better protect drinking water from emerging contaminants.*

Areas for improvement under TSCA

Since ASDWA and AMWA began to engage directly with EPA on TSCA, the two associations have identified multiple areas in which the Agency could strengthen the statute's use for protecting drinking water.

Risk Evaluations

Every risk evaluation done for existing chemicals should include assessments for all potential exposure routes and, in particular, the drinking water route. The Agency should be looking holistically across all of its programs and not assume that other EPA-administered statutes or regulatory programs (including the Safe Drinking Water Act (SDWA)) acting alone will provide economically feasible options to eliminate risks from these chemicals.

Previous TSCA risk evaluations for existing chemicals have specifically excluded drinking water and other exposures. A prime example is the Agency's recently finalized risk evaluation for 1,4-dioxane. A supplemental notice expanded the initial scope of the risk assessment to include general population exposures from environmental releases to surface water via the ambient water pathway. EPA's reasoning for this expansion was the lack of a nationally recommended Ambient Water Quality Criteria under the Clean Water Act. However, the same reasoning was not applied to include drinking water, which does not yet have a national standard under SDWA. This decision was made by OCSPP even as the Office of Water was relying on this risk evaluation to make a regulatory determination for 1,4-dioxane under SDWA regulation.

Both AMWA and ASDWA would strongly argue that SDWA does not currently "...adequately assess and effectively manage these exposures." In fact, the two associations would argue that this exclusion works to shift the burden of contamination onto PWSs and their customers. Using the possibility of regulation under each statute as grounds to preclude a comprehensive approach for addressing all routes of exposure is not acceptable to state drinking water programs, PWSs, and the public that they serve. We

emphasize the need to harmonize the regulatory approaches between OCSPP and the Office of Water so that potential downstream water contamination from chemicals such as PFAS and 1,4-dioxane are not left to the states and PWSs to solve.

ASDWA and AMWA are pleased to hear that the Agency plans to re-open some or all of the first ten TSCA risk evaluations for existing chemicals and will move ahead with rules to address “unreasonable” risks. In light of the obvious failure to address 1,4-dioxane holistically, AMWA and ASDWA would encourage EPA to re-open the 1,4-dioxane risk evaluation as part of this effort. However, we recommend that you thoroughly consider more stringent state laws that ban or place limits on the amount of chemicals in products and consumer goods (where production, use, and disposal have the potential to impact drinking water sources and human health), that could be preempted if EPA develops TSCA risk management rules for chemicals such as 1,4-dioxane or PFAS.

Significant New Use Rules

Another area where EPA could make significant improvements is within the Agency’s Significant New Use Rules (SNURs) under TSCA. ASDWA and AMWA have commented on several SNURs and recommend that EPA undertake a deliberative process using sound science and stakeholder engagement to assess and restrict the release of new chemicals into the environment, particularly drinking water sources. The two associations also request that EPA more thoroughly evaluate and consider limiting releases of chemicals into surface waters that have specific characteristics, such as the ones listed below, which ASDWA and AMWA have highlighted in previous letters to the Agency:

- Migration of the identified chemicals to groundwater is expected to be rapid.
- Removal of a substance during wastewater treatment is minimal.
- Substances which are persistent, bio-accumulative, or toxic.
- Concerns have been identified for carcinogenicity and other health effects.

In addition to these considerations, we recommend that EPA order additional testing for chemicals that would help characterize potential human and environmental health effects where data and information are unavailable.

EPA must better utilize stakeholders in TSCA efforts

EPA identified both AMWA and ASDWA as stakeholders to be engaged in the Agency’s federalism consultations for several risk management rules. Both associations were happy to participate but have found that EPA has not been receptive to questions or comments about including drinking water exposures or other considerations. In the future, we hope that EPA consultations and stakeholder engagements for both risk management rules and risk evaluations will provide more time for reviewing information in advance of meetings and due dates, and that the Agency will be more open and receptive to our comments and questions.

ASDWA and AMWA are also pleased to hear that EPA will be conducting an evaluation of its policies, guidance, templates, and regulations for SNURs and plans to issue orders to address potential risks when a new chemical review leads to a conclusion that one or more uses may present an unreasonable risk, or when EPA lacks the information needed to make a safety finding. As stated above, AMWA and ASDWA have been actively engaging EPA regarding SNURs for several years. The associations encourage EPA to meet with both groups as EPA moves to make these changes to ensure that drinking water concerns are being adequately addressed.

ASDWA and AMWA look forward to continued and expanded EPA engagement with our organizations, the states and PWSs, and other stakeholders on OSCPP policies and programs that can (or have the potential to) impact drinking water, public health, and the environment. For example, we expect that the upcoming, “New Chemicals Procedural Regulations to Reflect the 2016 Amendments to TSCA” and “Procedures for Rulemaking Under Section 6 of TSCA,” to provide opportunities for EPA to make significant improvements based on the recommendations outlined in this letter.

EPA must work across internal offices and federal agencies to protect drinking water

Close coordination across all EPA programs and with other federal agencies is paramount to administer all possible federal regulatory authorities to holistically assess, address, remove, and most importantly, prevent harmful chemicals from entering the environment under TSCA. Considerations for this approach must include drinking water treatment; disposal of chemical substances in wastewater, sludge, and biosolids applications; and at landfills, in leachate, and in air emissions from incineration to ensure complete consideration of a substance’s lifecycle in the environment. EPA’s Office of OCSPP should closely coordinate with the Office of Ground Water and Drinking Water which oversees SDWA implementation and may be considering or have additional data and information on chemicals to better inform decision making.

In closing, SDWA uses a “multiple-barrier approach” that includes source water protection and treatment to ensure that drinking water is safe from potential contaminants. This approach is not intended to leave the burden of responsibility on the PWSs to remove toxic chemicals from the environment, it is to ensure that these barriers will minimize human exposure. It is for this reason that EPA must better utilize its other regulatory authorities and offices, particularly TSCA and OSCPP, as the first line of defense to protect drinking water and public health. Preventing contaminants from entering drinking water sources is more effective and less expensive than removing them once drinking water is contaminated. Protecting drinking water sources (and preventing contamination) is essential for sustaining safe drinking water supplies, protecting public health and the economy, and protecting the environment.

We look forward to meeting with you and engaging on these topics. Please contact Alan Roberson of ASDWA at aroberson@asdwa.org or Diane VanDe Hei of AMWA at vandehei@amwa.net to schedule a meeting and discuss further coordination on these efforts.

Sincerely,



J. Alan Roberson, Executive Director
Association of State Drinking Water Administrators



Diane VanDe Hei, Chief Executive Officer,
Association of Metropolitan Water Agencies

Cc: Radhika Fox, Acting Assistant Administrator, Office of Water
Jennifer McLain, Director, Office of Ground Water and Drinking Water
Yvette Collazo, Director, Office of Pollution Prevention and Toxics