



Statement for the Record by the Association of State Drinking Water Administrators (ASDWA)

Senate Committee on Environment and Public Works

June 9, 2021, Hearing

**PFAS: the View from Affected Citizens and States**

Submitted by Cathy Tucker-Vogel

ASDWA President

Chief, Public Water Supply Section, Bureau of Water

Kansas Department of Health & Environment

Chairman Carper, Ranking Member Capito, and Members of the Committee:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to offer this statement for the record in conjunction with the June 9, 2021, hearing entitled, *PFAS: the View from Affected Citizens and States*. ASDWA commends the committee for their continued interest and action on addressing Per- and Polyfluoroalkyl Substances (PFAS) in drinking water and the environment.

ASDWA's 57 members include the 50 state drinking water programs, five territorial programs, the District of Columbia, and the Navajo Nation (hereinafter "states"). Our members have primary enforcement authority, or primacy, for the Safe Drinking Water Act (SDWA). Our members and their staff are on the front lines, protecting public health every day, by providing technical assistance, tools, resources, and oversight of drinking water systems, to ensure safe drinking water across the country.

ASDWA's members have serious concerns with the growing public health issues associated with PFAS in drinking water and ASDWA has five key messages for the Committee:

1. **PFAS have impacted both surface water and groundwater sources of drinking water in communities across the country that pose a risk to public health.** The number of public water systems (PWSs) that have detected PFAS in their drinking water has increased significantly as states started monitoring for PFAS in drinking water over the past decade.
2. **States are taking different approaches to address PFAS in drinking water in the absence of federal regulation.** States expect EPA to take the lead in developing PFAS drinking water regulations to create national consistency and to provide clarity on the required actions by water systems actions to address PFAS in drinking water. Due to EPA's inaction, at least seventeen states have developed or are planning to develop state PFAS drinking water regulations or guidelines that are different from EPA (and from each other), while other states are unable to act without EPA's development of federal PFAS drinking water regulations.
3. **Funding must be increased for states, water utilities, and EPA programs to address PFAS.** State drinking water programs are diverting resources from core SDWA implementation efforts for existing rules and basic PWS needs to address PFAS without new funding. While funding for the Public Water Supply Supervision (PWSS) program increased by 4.2% in FY20 appropriations, the total funding gap for states' drinking water programs has increased by \$197 million since 2011<sup>1</sup>, with an increase of only \$4.3 million in PWSS appropriations in FY20. Without adequate funding for EPA to fulfill their obligations and for states to meet their responsibilities, the protection of public health

---

<sup>1</sup> ["2019 Analysis of State Drinking Water Programs' Resources and Needs: Addressing Emerging Issues and State Specificity in Program Implementation,"](#) ASDWA, prepared by The Cadmus Group LLC and GEC, July 2020.

through drinking water programs is much more difficult. States, EPA, and PWSs also need funding for research and to monitor, track, and if necessary, install expensive treatment for PFAS.

4. **EPA must coordinate across its program offices, and with other federal agencies, to leverage all regulatory tools and agency pollution prevention policies to assess and address PFAS using a holistic lifecycle approach.** EPA has developed its PFAS Action Plan that highlights cross-media approaches but must provide more clarity and be transparent about how the agency is considering impacts to different programs in its decision-making policies.
5. **More research and industry engagement are needed to develop consistent health effects determinations and relative risk information, to better understand the universe of known and unknown PFAS, and to support the development of non-PFAS alternatives for products.** EPA and other federal agencies must create a holistic national research agenda that leverages the work states and stakeholders and engages industry to prioritize the identification and characterization of known PFAS, includes considerations for the thousands of unknown PFAS, and supports the development of non-PFAS alternatives for products.

ASDWA remains committed to the SDWA's goal of protecting public health through the provision of safe drinking water and PFAS is a significant problem in surface water and groundwater across the country. ASDWA is uniquely positioned to provide input on the challenges and opportunities states face in protecting public health from such a ubiquitous class of contaminants. This statement for the record provides perspectives from ASDWA's members that manage SDWA implementation across the county to ensure the protection of public health for millions of Americans.

1. **PFAS have impacted both surface water and groundwater sources of drinking water in communities across the country that pose a risk to public health.**

Over the past decade, PFAS contamination in drinking water has been identified beyond the public water systems (PWSs) that were required to conduct monitoring for the Third Unregulated Contaminant Monitoring Rule (UCMR3) from 2013 to 2015. The UCMR3 provided the first national set of PWS monitoring data for six PFAS compounds for all systems serving more than 10,000 people and a statistical sample of systems serving less than 10,000 people. While the UCMR3 provided the initial set of national PFAS occurrence, the dataset has its limitations and based on additional monitoring in many states, does not accurately portray the extent of PFAS contamination in drinking water sources across the country.

In UCMR3, 23 states and two territories (25/55 or 45%) had PWSs with treated water monitoring results for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) above EPA's Health Reference Level (HRL) of 70 parts per trillion (ppt) for the sum of both compounds. This percentage of impacted states and territories is significantly higher than the EPA's UCMR3 data analysis that is shown from a national perspective:

- PFOS – 46 systems (0.9%) greater than the HRL for the sum

- PFOA – 13 systems (0.3%) greater than the HRL for the sum

In comments ([April 17, 2020](#) and [June 8, 2020](#)) to EPA on the proposed fourth regulatory determinations, ASDWA recommended that the Agency consider the number of states potentially impacted with either equal or greater weight than the national number of systems impacted based on UCMR data in any future regulatory decision making, i.e., future regulatory determinations.

Additionally, the UCMR3 detection and reporting limits were relatively high (20-40 ppt) compared to PFAS reporting limits today (approximately 1 ppt) and levels of potential health concern today (5-20 ppt). Since UCMR3 monitoring focuses on systems serving greater than 10,000 people, many additional PWSs using groundwater and surface water sources have since found high levels of PFAS in their drinking water. PFAS impacts on small groundwater PWSs have been particularly significant, along with other PWSs near chemical manufacturing facilities, military bases, fire-fighting foam application, storage, and disposal sites, manufacturing sites of fire-retardant materials, landfills, and many other locations, including some sites affected by air deposition.

At least 25 states are conducting (or have conducted) some amount of PFAS drinking water monitoring since 2013. The six states (Massachusetts, Michigan, New Hampshire, New Jersey, New York, Vermont) that now have state PFAS drinking water regulations are conducting statewide PWS sampling. Other state monitoring programs have been more limited in scope, typically due to funding constraints, and are using targeted sampling at suspected PFAS manufacturing and/or discharge sites. The number of states with detections of PFAS in drinking water continues to grow. However, it should be noted that many PWSs throughout the country have not found high levels of PFAS. Additionally, a few states have not found, and do not expect to find, PFAS contamination in drinking water except at a few specific locations such as military bases or fire-fighting training centers.

ASDWA believes that the changes in the regulatory requirements for EPA's proposed Fifth UCMR (UCMR5) will help improve the data set to provide more meaningful information for decision-making at the national and local levels, where PFAS impacts are still not readily understood. The proposed UCMR5 requires PWSs sample for 29 PFAS instead of the six UCMR3 compounds and will also have lower minimum reporting levels. If additional funding is appropriated, UCMR5 monitoring will also include all PWSs serving populations of 3,300 and 10,000 people, as well as a nationally representative sample of PWSs serving fewer than 3,300 people. However, UCMR5 monitoring will not begin until 2023 and while it will enhance the national data set, many states and PWSs have already moved forward with monitoring and response actions to address potential impacts to public health. In this regard, the six states that have developed their own PFAS drinking water regulations, along with the eleven other states that are considering or developing PFAS regulations, and even more states and PWSs that have conducted PFAS drinking water monitoring, are far ahead of EPA in addressing the PFAS contamination problem and protecting public health.

## 2. States are taking different approaches to address PFAS in drinking water in the absence of federal regulation.

In the absence of federal EPA PFAS drinking water regulations and guidance, six states have developed their own PFAS drinking water regulations and eleven other states have developed PWS guidelines and/or are considering or developing PFAS regulations. These states, along with the other states that are conducting monitoring, have also implemented response actions for high levels of PFAS in drinking water. However, at least twelve states have a prohibitive law or policy that prevents them from developing drinking water regulations that are more stringent than EPA, and therefore are unable to take actions and provide resources to assess and address PFAS without a federal regulation.

EPA's delay in developing PFAS regulations has created a conundrum of national inconsistency in drinking water standards that is hard for the public to understand. Why is the standard in my state different than my neighboring state? ASDWA has filled this gap by developing a [State Contaminants of Emerging Concern \(CEC\) Rule Development and Management Strategies Toolkit](#) and PFAS – [Source Water Protection Toolkit and Mapping Guide](#), and is currently developing a PFAS Drinking Water Regulatory Development White Paper that provides additional resources for states that are setting their own standards for the first time. Regardless of these efforts, ASDWA and its members still expect EPA to take the lead in developing national drinking water regulations for PFAS and for other chemicals that the public is concerned about. On February 22, 2021, EPA reissued the positive regulatory determinations for PFOA and PFOS, and this is a step in the right direction. As EPA moves forward with these efforts, the Agency must directly engage states (as co-regulators) and involve other stakeholders in each step of the decision-making processes for the proposed regulation, the final regulation, and potential future regulations for other PFAS.

ASDWA's comments on EPA's proposed fourth regulatory determination recommended that EPA consider including positive determinations for additional long-chain PFAS compounds, expedite the regulatory process, evaluate evolving health effects studies, consider existing state standards and guidelines with significantly lower PFAS levels than EPA's Health Advisory Level (HAL) of 70 parts per trillion (ppt) for combined concentrations of PFOA and PFOS, and provide options for alternative monitoring approaches and waivers. Below are some of the key points from ASDWA's comments:

- EPA should consider including positive determinations for four other additional long-chain PFAS compounds (PFNA, PFHxS, PFHpA, and PFDA) with PFOA and PFOS. Including all six PFAS would be more consistent with current state approaches by Massachusetts, Vermont, Connecticut, New Hampshire, Minnesota, and Michigan to develop regulations and guidance for multiple compounds.
- For expediting the regulatory development process, ASDWA recommended that EPA must move forward with developing this regulatory proposal while acknowledging that some of this data and analysis may be limited, but with the expectation that more information and toxicity assessments will be forthcoming and become available as the

regulatory process progresses. States that are developing PFAS standards and guidelines have made thoughtful decisions based on treatment and monitoring costs as part of a cost/benefit analysis, while acknowledging some gaps in the health effects data available to analyze and quantify the full array of benefits.

- EPA must also thoroughly consider state standards and guidelines with significantly lower PFAS levels than EPA's Health Advisory Level (HAL) of 70 parts per trillion (ppt) for combined concentrations of PFOA and PFOS. The states that are requiring response actions by their water systems at lower PFAS levels are extremely concerned about the potential discrepancy if EPA develops a higher-level federal PFAS standard (e.g., at EPA's current HAL of 70 ppt). Considering these lower-level state PFAS standards will be essential to ensure national consistency and to provide a unified national message for assessing and addressing PFAS in drinking water throughout the country.
- Alternative monitoring approaches and waivers, in coordination with state drinking water programs agencies, will also be critical to minimizing the substantial administrative burden and costs for states to process waivers, and track and provide assistance to systems with alternative monitoring approaches, such as for small rural groundwater systems that are geographically isolated from any potential PFAS contamination sources and for Transient Non-Community Water Systems (TNCWSs).

### **3. Funding must be increased for states, water utilities, and EPA programs to address PFAS.**

ASDWA has repeatedly pointed out the need for additional funding for states, PWSs, and EPA to assess and address PFAS. State primacy agencies are diverting resources from core drinking water program implementation efforts (inspections, existing rule implementation and compliance, technical assistance, and training, and supporting PWS infrastructure needs) to address all aspects of PFAS management – source identification, monitoring, mitigation, and treatment. These additional demands on state drinking water program resources are impacting their core programs which are primarily funded through the federal Public Water Supply Supervision (PWSS) Program. While funding for the PWSS program increased by 4.2% in FY20 appropriations, the total funding gap for states' drinking water programs has increased by \$197 million since 2011<sup>1</sup>, with an increase of only \$4.3 million in PWSS appropriations in FY20. Without adequate funding for EPA to fulfill their obligations and for states to meet their responsibilities, the protection of public health through drinking water programs is much more difficult.

States and EPA also need funding to address research needs (treatment and analytical methods), and to expand laboratory capacity to address this growing problem. PWSs impacted by high levels of PFAS need additional funding to install expensive PFAS treatment. While the Drinking Water State Revolving Funds (DWSRF) can provide some funding for capital costs, PWSs also need these funds for other basic and necessary infrastructure upgrades.

**4. EPA must coordinate across its program offices, and with other federal agencies, to leverage all regulatory tools and agency pollution prevention policies to assess and address PFAS using a holistic lifecycle approach.**

ASDWA commends EPA for the development of its PFAS Action Plan and its efforts to encompass PFAS reductions across all media programs, as well as their work with other federal agencies as part of their public health protection mission. ASDWA has provided multiple comment letters to EPA recommending that the agency should coordinate across its program offices, and work with other federal agencies (including the Department of Defense and the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health/National Institute of Environmental Health Sciences (NIH/NIEHS)) on a holistic lifecycle approach to coordinate and administer all possible federal regulatory authorities to understand, assess, address, and remove PFAS from the environment or prevent PFAS from entering the environment, from all contributing media. However, EPA must be more transparent and provide more information and clarity about how the Agency is working across offices and breaking down silos between programs to address PFAS holistically, and with other federal agencies. EPA should also provide updates with specific timelines and milestones on how the Agency is considering impacts to PWSs in their cross-program efforts and how the Agency is making decisions to address issues with drinking water treatment and used media regeneration and disposal; disposal of PFAS in wastewater, sludge, and biosolids applications; and at landfills, in leachate, and in air emissions from incineration; as well as proper incineration protocols to ensure complete removal of PFAS from the environment.

In 2018, ASDWA and the Association of Clean Water Administrators (ACWA) convened a workgroup of state clean water and drinking water programs from across the country to develop the [ASDWA-ACWA Contaminants of Emerging Concern \(CEC\) Workgroup Recommendations Report](#). The report provides recommendations for a core set of intervention actions to assess and address potential impacts from CECs (including PFAS) using a four phased lifecycle approach: introductory screening, monitoring and impact surveillance, formal risk assessment, and formal risk management. These intervention actions range from regulatory actions and controls by federal and state government bodies to information gathering processes, such as research and monitoring, conducted by federal, state, or non-governmental entities. Some examples of these controls include the use of:

- The Toxic Substance Control Act (TSCA) to prohibit or restrict use of CECs or state chemical reviews, restrictions and/or bans on products.
- The Toxics Release Inventory to track the management of toxic chemicals by facilities in different industry sectors that must report annually how much of each chemical is released to the environment and/or managed through recycling, energy recovery and treatment.
- The SDWA, Clean Water Act (CWA), TSCA, and FIFRA, or similar state programs to better understand occurrence and exposure routes, establish aquatic and or human health toxicity benchmarks, and establish guidance or regulatory criteria.

- The Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and state regulatory cleanup efforts to implement remediation actions at waste sites.

A significant number of states have taken their own actions to address PFAS contamination in drinking water, groundwater, and surface water/effluent (wastewater), and at cleanup sites using a wide variety of regulatory authorities in addition to developing drinking water regulations. However, these states as well as CDC and EPA are using different numbers and nomenclature that are very confusing to water systems and the public. This includes terms such as: ambient groundwater quality standards, groundwater cleanup levels, lifetime health advisory levels, health-based values and health risk limits, maximum contaminant levels, minimum risk levels, etc. Some states may also have authority to restrict or ban chemicals in commerce that pose a risk to human or ecological health. Though, these state laws that ban or place 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 are more stringent than EPA, could be pre-empted if EPA develops TSCA risk management rules for PFAS. These differences again highlight the need for federal leadership to ensure coordinated and consistent approaches for federal and state actions and risk communication. Each of these programs must work together and with other stakeholders to ensure consistent messaging and complete consideration of PFAS impacts on human health, and to drinking water and the environment.

**5. More research and industry engagement are needed to develop consistent health effects determinations and relative risk information, to better understand the universe of known and unknown PFAS, and to support the development of non-PFAS alternatives for products.**

More research and industry engagement are needed for data collection on PFAS health effects and relative risk information to allow for effective decision-making. This research should be prioritized to focus on compounds that water systems are currently monitoring for using available analytical methods and that will be monitored for UCMR5, but also extend in the future to address other unknown PFAS as well as support the development of non-PFAS alternatives for products. States and PWSs that sample for these compounds must understand and be able to communicate potential health effects with their customers. While ASDWA commends EPA for continuing to conduct research and collect data and information on PFAS with other federal agencies, states, universities, industry, and other stakeholders, more is still needed. The universe of PFAS compounds is known to be in the thousands, with little or no information about their specific chemical structures or health effects related information.

EPA and other federal agencies must create a holistic national research agenda to ensure that the Agency is collaborating with states to address the needs for advance rapid and predictive screening methods/tests on a broad national scale to assess the capacity to more quickly evaluate the toxicity of PFAS introduced into commerce, including the further development of



predictive analytics, and grouped evaluation methods. EPA and federal agencies must also engage with industry and existing collaboration groups such as Federal-State Toxicology and Risk Analysis Committee (FSTRAC) and Water Quality Standards Managers Association (WQSMA), whose expertise and knowledge can be leveraged from their work to identify, characterize, and prioritize PFAS efforts in their states and communities; and with industry to support the development of non-PFAS alternatives for products.

In closing, ASDWA would like to emphasize that preventing PFAS from entering drinking water sources and the environment 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.

Thank you again for your continued work and support to ensure safe drinking water for all Americans. ASDWA appreciates the opportunity to submit this statement for the record to support the Committee's efforts to address this important drinking water issue. ASDWA looks forward to continuing our engagement with the Committee as potential legislation evolves in the weeks and months ahead.