



June 13, 2023

Barry Breen  
Acting Assistant Administrator  
Office of Land and Emergency Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Via Regulations.gov

**Re: Addressing Per- and Polyfluoroalkyl Substances in the Environment (Docket No. EPA-HQ-OLEM-2022-0922)**

Dear Acting Assistant Administrator Breen,

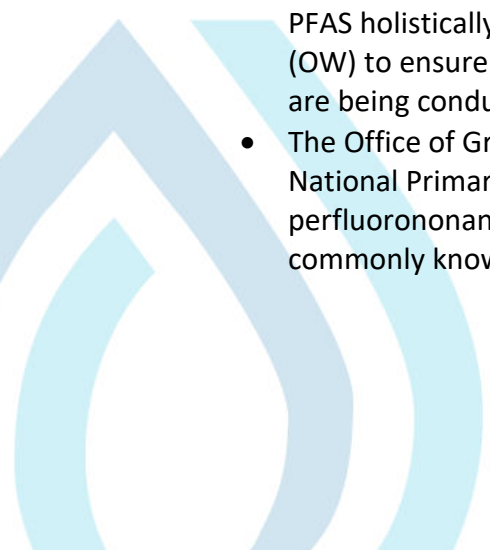
The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA's) Advanced Notice of Proposed Rulemaking (ANPRM) to consider addressing additional per- and polyfluoroalkyl substances (PFAS) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). ASDWA is the professional association that serves the leaders (and their staff) of the 57 state and territorial drinking water programs. As co-regulators with EPA, ASDWA's members play a critical role in ensuring that drinking water is of the highest quality possible and that public health and the environment is protected.

ASDWA appreciates EPA's efforts to address PFAS across all the Agency's regulatory programs through the PFAS Strategic Roadmap. The Agency's approaches to "get upstream of the problem" and "hold polluters accountable" are critical for the long-term protection of both surface and groundwater sources of drinking water. ASDWA supports EPA's efforts to ensure cleanup and treatment costs are borne by the responsible manufacturers and users of all PFAS. The public should not bear the costs for additional treatment for PFAS removal through increased water rates. Reaching this goal will take a sustained effort by multiple Federal agencies across several regulatory programs. A broad range of actions across Federal agencies needs to start now to prevent the additional spread of PFAS in the environment. Many of EPA's regulatory actions occur after the contamination has occurred.

On September 6, 2022, EPA proposed a related rulemaking to designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under CERCLA. ASDWA supports the general intent of that proposal, as it opens pathways to hold polluters accountable for the release of these chemicals. However, as stated in ASDWA's comments on this proposal (Appendix A), CERCLA is not the appropriate tool for addressing the widespread PFAS problem. CERCLA's major emphasis is on "the cleanup of inactive hazardous waste sites and the liability for cleanup costs on arrangers and transporters of hazardous substances and on current and former owners of facilities where hazardous substances were disposed"<sup>i</sup>. PFAS are "widespread in U.S. drinking water"<sup>ii</sup>, and are ubiquitous in the environment. CERCLA was designed to address problematic sites and facilities with an identifiable plume impacting ground water or some other type of specific source, not a problematic class of chemicals with widespread contamination across the country.

Additionally, ASDWA's members continue to highlight implementation concerns with CERCLA designations for any PFAS and the potential impacts across regulatory programs, which must be addressed before moving forward with a CERCLA designation. ASDWA's members have identified numerous "pitfalls" associated with these efforts, including:

- EPA has been chronically underfunded and has struggled to assess and appropriately remediate the sites already included under CERCLA. This funding gap includes insufficient staff and resources to undertake the full remediation process, including assessment, characterization, and cleanup of each site. Although the Bipartisan Infrastructure Law (BIL) allocated more than \$5 billion towards cleaning up legacy pollution at Superfund and brownfields sites, EPA should ensure that this funding is sufficient to address the increase in workload that will come from adding additional PFAS as CERCLA hazardous substances before proceeding with any rulemaking. Without the appropriate funding (noting that Congress is responsible for appropriations), a CERCLA designation will likely be ineffective and fail to protect drinking water sources.
- The past process of holding polluters accountable under CERCLA and getting the polluters to pay the total cost of cleanup can take a decade or more. Before moving forward with a CERCLA designation for additional PFAS, ASDWA recommends that the Agency streamline this process so that funds from responsible parties can be used to remediate contaminated sites quickly and effectively.
- Historically, EPA's Office of Land and Emergency Management (OLEM) has not appropriately coordinated with other EPA program offices, which is critical to address PFAS holistically. Specifically, OLEM should be working closely with the Office of Water (OW) to ensure that CERCLA actions adequately consider impacts to drinking water and are being conducted to appropriately consider source water protection.
- The Office of Groundwater and Drinking Water (OGWDW) recently proposed a new National Primary Drinking Water Rule (NPDWR) to regulate PFOA, PFOS, perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX Chemicals), perfluorohexane sulfonic acid (PFHxS), and



perfluorobutane sulfonic acid (PFBS) under the Safe Drinking Water Act (SDWA). If the Agency decides to designate any of these PFAS as hazardous under CERCLA, the impact of this designation, such as complicating the disposal of treatment media, on this drinking water rulemaking must be considered. OLEM and OGWDW must work together to ensure these rulemakings work in tandem.

- Identifying responsible parties is difficult for many water systems where PFAS detections are untraceable to a specific source, such as urban areas with several potential contributors. Levels of PFAS that could potentially be a drinking water problem have been found in many locations across the country without a specific source. EPA should provide additional guidance on how this new CERCLA designation could be used in such situations.
- How CERCLA designations for PFAS will impact cleanup goals for contaminated sites is not clear. Cleanup goals under CERCLA consider all applicable or relevant and appropriate requirements (ARARs). In the past, when addressing drinking water cleanup, maximum contaminant levels (MCLs) for the contaminant have been used. ARARs have typically been a single substance with only one MCL being used. EPA's proposed PFAS NPDWR uses a Hazard Index for the mixture of PFBS, PFNA, PFHxS, and HFPO-DA. ASDWA recommends that EPA provide additional clarity as to how the Agency's SDWA process will impact the setting of cleanup goals. As previously stated, EPA's CERCLA actions and the Agency's actions under SDWA must work coherently towards the same endpoints –source water protection and public health protection.
- An outstanding question is whether a CERCLA designation for any PFAS would negatively impact indirect potable reuse projects and, therefore, possible future drinking water supplies. These water recycling facilities use reverse osmosis, which creates a brine stream that contains PFAS. How would this designation alter the use of these facilities? EPA must weigh the benefits of a PFAS CERCLA designation with the possible negative impacts on reuse projects.

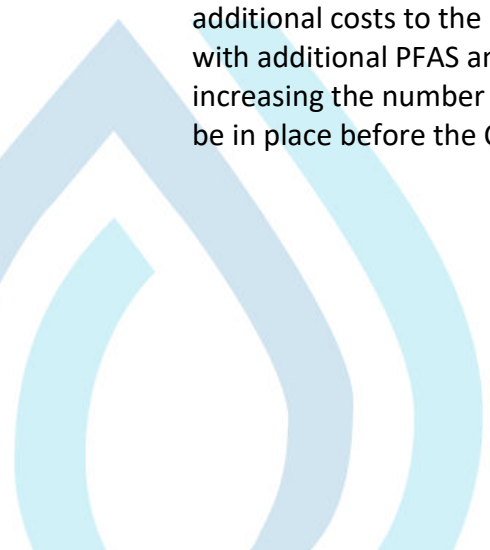
Additionally, the potential liability for water and wastewater systems for typical residual disposal practices is a significant concern. Water and wastewater systems generate large volumes of residuals daily, and loss of typical disposal practices could create significant operational difficulties. EPA needs to appropriately address this issue before considering addressing additional PFAS under CERCLA. These systems are the receivers of PFAS, and the burden of cleanup and remediation should be addressed by the polluters and should not be passed on to utilities and their ratepayers. In public engagements after the release of the PFOA and PFOS CERCLA proposal, EPA stated that the agency will address "concerns" regarding liability by using policy decisions, enforcement discretion, and settlement agreements. The Agency noted that this procedure is comparable to what EPA has done before for similar issues with multiple responsible parties. ASDWA recommends that EPA use enforcement discretion whenever possible in cases that impact water and wastewater utilities. Additionally, ASDWA recommends that EPA provide more details on how the Agency will use this discretion in any planned guidance.

ASDWA recommends that EPA continue to address PFAS compounds under the Clean Water Act (CWA), including industrial (both direct and indirect) and municipal wastewater discharges and biosolids. EPA's PFAS Strategic Roadmap plans to establish national technology-based regulatory limits for PFAS discharges from industrial sources through the Effluent Limitations Guidelines (ELP) program and to finalize the risk assessment for PFOA and PFOS in biosolids, expected by winter 2024. EPA should continue these planned actions under their proposed timelines, concurrent with recently released guidance for National Pollutant Discharge Elimination System (NPDES) permits, as well as efforts to address PFAS through the Resource Conservation and Recovery Act (RCRA).

As noted above, EPA must also consider the barriers and challenges of disposing of spent treatment media such as Granular Activated Carbon (GAC) or ion exchange media, the two common PFAS removal treatment technologies. A significant regulatory consideration for the proposed NPDWR is the disposal cost of the spent media, or, in the worst case, if disposal options become extremely limited or nonexistent in some areas. Some primacy agencies have already reported water systems being unable to dispose of their PFAS-containing treatment media as some waste disposal sites are refusing to accept the material. ASDWA recommends that EPA provide detailed guidance for media regeneration and disposal options to allow maximum flexibility for water systems to assess costs and ensure proper disposal of spent materials to avoid further environmental contamination.

Although EPA released the draft *Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances*, in December 2020, with an opportunity for public comment, the Agency has yet to finalize this guidance. Therefore, how new CERCLA designations for PFAS might impact the Agency's suggested disposal methods is still unclear. ASDWA recommends that EPA work with its co-regulators to finalize this guidance as quickly as possible.

At a minimum, ASDWA recommends that EPA refrain from pursuing any rulemaking to add additional PFAS as hazardous substances under CERCLA until the Agency determines the impacts of that designation for PFOA and PFOS (assuming the proposed rule is finalized). Waiting for the first set of hazardous substances designations to go into place will identify critical issues that could be addressed in subsequent rulemaking. EPA must ensure these designations will not inhibit our current goals of addressing PFAS in drinking water nor pass on additional costs to the public. EPA may determine that CERCLA is not the correct statute to deal with additional PFAS and should look to other laws like RCRA or that other actions, such as increasing the number of disposal sites that can manage CERCLA hazardous substances, should be in place before the CERCLA designation is proposed.



ASDWA thanks EPA for the opportunity to provide comments on this important rulemaking. Primacy agencies are EPA's co-regulators and the boots on the ground for ensuring clean drinking water, so collecting primacy agency input throughout all regulatory actions is critical. If you would like to discuss these comments further, please contact me ([aroberson@asdwa.org](mailto:aroberson@asdwa.org)) or Stephanie Schlea ([sschlea@asdwa.org](mailto:sschlea@asdwa.org)).

Sincerely Yours,



J. Alan Roberson, P.E.  
ASDWA Executive Director

Cc: Michelle Schutz – OSRTI  
Bruno Pigott – EPA OW  
Jennifer McLain – EPA OGWDW  
Eric Burneson – EPA OGWDW  
Ryan Albert – EPA OGWDW  
Alex Lan - EPA OGWDW

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<sup>i</sup> EPA, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Federal Facilities, <https://www.epa.gov/enforcement/comprehensive-environmental-response-compensation-and-liability-act-cercla-and-federal/>, accessed October 28, 2022.

<sup>ii</sup>Scientific American, "Forever Chemicals are Widespread in U.S. Drinking Water", <https://www.scientificamerican.com/article/forever-chemicals-are-widespread-in-u-s-drinking-water/>, accessed October 28, 2022.

