



American Water Works
Association

New York Section



November 7, 2022

Barry Breen
Acting Assistant Administrator
Office of Land and Emergency Management
Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Mail Code: 28221T
Washington, DC 20460
SUBMITTED ELECTRONICALLY

RE: Comments on Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances (Docket ID No: EPA-HQ-OLEM-2019-0341)

Dear Mr. Breen,

The New York Section of the American Water Works Association (NYSAWWA), the New York Water Environment Association (NYWEA), and the New York Rural Water Association (NYRWA), represent the drinking water, wastewater and rural water interests in the New York State water sector. Together, we work with our 7,000 plus members to ensure that all NYS residents have access to safe, clean, affordable and reliable water and wastewater services.

We appreciate the opportunity to comment on the Environmental Protection Agency's (EPA's) rulemaking titled "Proposed Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances" (herein referred to as the Proposal). The NYSAWWA, NYWEA, and NYRWA represent New York State public drinking water utilities who provide drinking water to more than 15 million New Yorkers and represents many of New York's publicly-owned sewage treatment facilities protecting our waterways. Our members are committed to the unfailing operation of drinking water systems and publicly-owned sewage treatment facilities to protect the public health and the environment. Consequently, our organizations have an active interest in the EPA's effective leveraging of authorities to address the challenges arising from per- and polyfluoroalkyl substances (PFAS).

EPA's proposed designation of PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) imposes a significant long-term liability on drinking water and wastewater systems and threatens to compound financial burdens on water systems that are protecting public health through drinking water treatment of PFAS. This is especially true in New York State (NYS) where the New York State Health Department has already established strict maximum contaminant levels (MCL's) of 10 parts per trillion (ppt) each for PFOA and PFOS and is in the final stages of establishing MCL's for four additional PFAS compounds. Regardless of size, every public water supplier in NYS - from the tip of Long Island to the Niagara frontier- has already tested their source water for these compounds and, where required, has already installed, or is in the process of installing, appropriate treatment systems to remove PFOA and PFOS from the

drinking water supply. Consequently, New York's drinking water suppliers have already assumed the burden of testing for and removing these compounds from the drinking water supply and the proposed designation of PFOA and PFOS as hazardous substances under CERCLA will impose significant additional long-term liability on water systems for the clean-up of PFOA and PFOS in the waste stream generated from these mandated treatment systems. The unique suite of synthetic PFAS chemicals that have been in widespread use for over 50 years has led to its ubiquity in the environment. While public water suppliers have played no role in producing, using, or profiting from PFAS compounds being placed into commerce, those in New York are already shouldering the responsibility for removing them from the state's drinking water supplies and this Proposal will make us additionally responsible for their cleanup.

In most instances, PFAS is removed from source water supplies via filtration with granular activated carbon (GAC) systems. These GAC systems must be routinely backwashed and the media must ultimately be recycled or disposed of in accordance with applicable law. Should that disposal site become a designated Superfund site, the water utility could be held liable under CERCLA as a potentially responsible party (PRP) due to its lawful disposal of this necessary byproduct of a vital public health service and force local rate payers to cover the cleanup bill after they have already paid to remove the PFAS from their drinking water. Similar liability would be faced by publicly-owned sewage treatment facilities because they passively receive PFAS chemicals in the influent that arrives from domestic, industrial, and commercial users. Although industrial pre-treatment programs may achieve targeted and meaningful reductions, they are powerless to stop the influx of PFAS from all users. Since publicly-owned sewage treatment facilities are responsible for managing the tons of biosolids and treatment residuals created as a byproduct of the treatment processes, they will also face the cost of cleanup for compounds that they neither created nor placed into commercial use.

Throughout its existence, CERCLA has been steadfast in holding to the "polluter pays" model which ensured that the creators of the listed hazardous substances were held financially responsible for the clean-up associated with these compounds. The NYSAWWA, NYWEA, and NYRWA recognizes that EPA is not intentionally targeting water and sewer systems with the proposed rule and has broad discretionary authority in terms of bringing actions against polluters. However, given the litigious world of CERCLA actions, any PRP can and routinely do bring other parties into actions to reduce their own portion of the clean-up bill. Consequently, this proposed rule will assuredly shift that burden from the "polluter pays" model to the "community pays" model since New York's water systems and the communities that they serve will now also become liable for the long-term cleanup of PFAS and PFOA, having already paid to remove PFAS from their source water. To avoid this shift in liability from the manufacturers of these toxic substances to communities already plagued by their existence, EPA must explicitly exempt the water and wastewater sector from liability under CERCLA if PFAS chemicals are designated as hazardous substances. If an explicit exemption by EPA is not possible, then some other mechanism must be found to reliably shield the water and wastewater sectors from any real or potential liability for these substances under CERCLA such that the burden for the cleanup of these substances is not unduly shifted onto our communities. As currently proposed, these exemptions, exclusions, and or any mechanisms to shield the water sector from liability are conspicuously absent from EPA's rule.

Our members are charged with providing safe and reliable drinking water to all New Yorkers and to protect our waterways. We are committed to protecting the public health and the

stewardship of the environment and want to partner with EPA in protecting the public from the dangers of PFAS compounds. We welcome the opportunity to work with you to protect our sector from the unintended costs and liabilities as we address the PFAS challenge. Thank you for the careful consideration of our comments and do not hesitate to contact us for additional information or clarification.

Sincerely,


Jenny Ingrassia, Executive Director
New York Section American Water Works Association


Patricia Cerro-Reehil, Executive Director
New York Water Environment Association, Inc.


Jamie Herman, Chief Executive Officer
New York Rural Water Association

cc: Ashley Dougherty, Asst. Secretary for the Environment