



THE UNITED STATES  
CONFERENCE OF MAYORS



July 11, 2022

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

Ms. Christine Kymn  
Chief  
Natural Resources and Environment Branch  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17<sup>th</sup> Street NW  
Washington DC, 20503

Dear Acting Assistant Administrator Breen and Ms. Kymn,

In the U.S. Environmental Protection Agency's (EPA) PFAS Strategic Roadmap, the Office of Land and Emergency Management committed to preparing a proposed rule to designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

this year. As our respective associations have communicated to EPA and Congress, the designation of per- and poly-fluoroalkyl substances as hazardous substances will have significant financial implications for local governments.

Recently, the U.S. Chamber of Commerce published a report, “PFOS and PFOA Private Cleanup Costs at Non-Federal Superfund Sites,” which illustrates that a direct outcome of the anticipated determination will, on average, lead to between \$700 million and \$800 million in cost every year for the next three decades.

Importantly, the Chamber analysis is a conservative estimate of the potential impact and does not address the impacts that will be borne by local governments and water/wastewater systems. Communities will likely bear significant legal fees, if not the cost of corrective action, if PFOA and PFOS are listed as hazardous substances under CERCLA. For context, there are almost 16,000 wastewater treatment works in the United States, which in keeping with EPA policy, historically and currently pursued beneficial uses for solids from their treatment processes. The nation’s roughly 50,000 community water systems are similarly at risk of such expenses and liability due to their need to dispose of PFOA and PFOS that are removed from drinking water supplies during the water treatment process. Finally, municipal governments could incur liability due to other facilities they have operated where PFOA and PFOS contamination occurred, such as fire training facilities and landfills.

The proposed rule has been in Executive Order 12866 review for several months. We urge the Office of Information and Regulatory Affairs to ensure that prior to completing its review, the proposal is accompanied by and consistent with a robust economic analysis in keeping with both Office of Management and Budget and EPA guidance for such analyses (i.e., Executive Order 12866, Circular A-4, and EPA’s Guidelines for Preparing Economic Analyses). Adding PFOA and PFOS to the list of hazardous substances is a definitional change akin to EPA’s rulemakings for the definition of “Waters of the United States” – for which extensive economic analysis was conducted.

In a similar vein, the direct and indirect economic consequences on local governments and water/wastewater systems by this rulemaking warrant consultations required by statute and established practice. **The undersigned organizations ask that the proposed action not be undertaken in haste without EPA adhering to the consultation requirements of the Small Business Regulatory Enforcement Act (SBREFA), Unfunded Mandates Reform Act (UMRA), and Executive Order 13132: Federalism.**

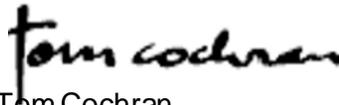
Congressional intent as outlined under UMRA and SBREFA clearly anticipate the agency engaging in pre-proposal consultation for a rulemaking of this magnitude, given the reasonable **prospect that the rule will impose new and significant economic burdens on local governments. Under the Executive Order, federal agencies must consult with state and local government officials early and often in the rulemaking process.** These consultation processes are beneficial in ensuring that rules are implementable and cost-effective. EPA’s

Local Government Advisory Committee has similarly called for consultation prior to setting regulatory standards for PFAS.

A hallmark of this administration is sound policy development that adheres to legal requirements. Prior to proceeding, EPA and this rulemaking would benefit from conducting the analyses and consultation that it must undergo according to statute and executive order.

We welcome an opportunity to discuss this matter. Please feel free to contact our staff: Judy Sheahan (USCM) at 202-355-8540 or [jsheahan@usmayors.org](mailto:jsheahan@usmayors.org); Carolyn Berndt (NLC) at 202-626-3101 or [Berndt@nlc.org](mailto:Berndt@nlc.org); Sarah Gimont (NACo) at 202-942-4254 or [sgimont@naco.org](mailto:sgimont@naco.org); Brian Redder (AMWA) at 202-331-2820 #108 or [redder@amwa.net](mailto:redder@amwa.net); Steve Via (AWWA) at 202-326-6130 or [svia@awwa.org](mailto:svia@awwa.org); Eric Saperstein (CASA) at 202.466.3755 or [esap@ensresources.com](mailto:esap@ensresources.com); Nathan Gardner-Andrews (NACWA) at (202)833-3692 or [NGardner-Andrews@nacwa.org](mailto:NGardner-Andrews@nacwa.org); Rik Hull (NAWC) at [rik@nawc.org](mailto:rik@nawc.org) or 267-691-7765; Mike Keegan (NRWA) at 202-294-4785 or [keegan@nrwa.org](mailto:keegan@nrwa.org); or Steve Dye (WEF) at 703.684.2400 or [sdye@wef.org](mailto:sdye@wef.org).

Sincerely,



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U.S. Conference of Mayors



Tom Dobbins  
Chief Executive Officer  
Association of Metropolitan Water Agencies



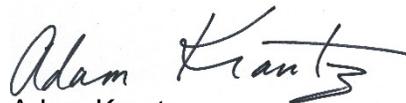
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