



**ASSOCIATION OF
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WATER AGENCIES**

LEADERS IN WATER

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Dr. Jennifer L. McLain
Director
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency

Via Email

Re: Docket ID No. EPA-HQ-OW-2022-0114, federalism consultation for proposed PFAS National Primary Drinking Water Regulation

Dear Dr. McLain,

The Association of Metropolitan Water Agencies (AMWA) is pleased to have the opportunity to provide comments on the federalism consultation for proposed per- and polyfluoroalkyl substances (PFAS) National Primary Drinking Water Regulation (NPDWR). AMWA is an organization of the general managers and CEOs of large, publicly owned drinking water utilities. Members serve communities of more than 100,000 people and work hard to provide safe, clean drinking water to the public. The association appreciates the work EPA has done to evaluate risks of PFAS in drinking water but continues to urge the agency to increase transparency and ensure it uses the best available data when making determinations.

AMWA has consistently provided comments regarding EPA’s work under the agency’s PFAS Action Plan. AMWA has supported EPA’s decision to regulate PFOA and PFOS because of the significant risks of severe health effects associated with high levels of both substances and their persistent nature. When proposing NPDWRs for PFAS, it is critical that EPA be transparent about the state of the science, health impacts, available treatment and cost, and the source(s) of the contamination.

AMWA also understands that PFAS are a unique set of substances and that there are challenges in addressing dozens, hundreds, or even thousands of these substances, and these challenges may need creative solutions. The association continues to believe that if EPA determines that regulatory action is needed beyond PFOA and PFOS, the agency should use the Negotiated Rulemaking Procedure (“Reg-Neg”). To implement a “Reg-Neg”, the agency must decide there is a need for a rule, determine that there is a limited number of identifiable interests that will be significantly affected by the rule, and conclude that there is a reasonable likelihood that a

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committee could be convened which would consist of a balanced representation of the interests involved.

Due to the unique circumstances surrounding PFAS as a family, AMWA believes this would meet the criteria for a “Reg-Neg” and would save the agency time as all key stakeholder concerns would be discussed during a process that would bring those stakeholders into a risk-risk tradeoff discussion to help the agency come to a proposal with a higher likelihood of success. Throughout any regulatory process to address PFAS, it is imperative that the agency consider any future actions within the context that whatever path EPA chooses will set the stage for how the agency addresses other PFAS and other emerging contaminants going forward.

AMWA firmly believes that EPA should continue to focus on stopping PFAS at the source, rather than treating it after release into the environment. It is generally most effective to control pollutants at their source, where they are highly concentrated, rather than remove them at the consumer’s expense after entering a water body or supply source. For example, AMWA supports EPA’s plan, laid out in the PFAS Strategic Roadmap, to restrict PFAS discharges from industrial categories including revising guidelines for organic chemicals, plastics and synthetic fibers (OCPSF), metal finishing, and electroplating. These kinds of proactive approaches help ensure that those who pollute our natural resources are not allowed to pass the cost of cleanup onto public drinking water utilities and their customers.

Treatment

Research and advancements in technology have greatly improved our understanding of PFAS, such as new developments in treatment techniques and detection limits. Should EPA consider establishing a treatment technique to control PFAS in drinking water, AMWA urges the agency to carefully consider the following questions:

- What would trigger application of a treatment technique, a quantitative or a qualitative measure?
- What would be recognized as a successful implementation of a treatment technique and what would be considered a failure?
- What would a treatment technique mean for utilities already complying with state regulations that may measure compliance based on an MCL?
- What will the disposal costs and liabilities be if PFAS is designated as a hazardous substance under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)?

Community Water Systems (CWSs) have significant differences in the composition of their source waters, as well as different environmental factors, which can influence a system’s water quality. For example, source water composition is different depending on climate, region of the country, and type of water source, among other issues, including climate change impacts. Because of the unique characteristics of source waters and water systems themselves, AMWA strongly believes there is not a “one size fits all” approach to treatment of PFAS in drinking water. EPA must recognize that treatment techniques that would be effective at one utility may not be as effective for other systems. Therefore, should EPA move forward with considering a

treatment technique rule for PFOA and PFOS, the agency should leave flexibility for utilities on both the type of treatment and the potential for new advances in treatments options that would arise in the near future.

EPA's expectations for the treatment technique need to be explicitly stated in any proposed rule. For example, during the consultation presentation in January, EPA provided approximate percentages of PFOA and PFOS removal for three different treatment techniques. If EPA were to move forward with a treatment technique approach, would utilities need to maintain the percentage of the implemented technique, or would they need to reduce concentrations to a specific quantity? Similarly, if a treatment is not able to maintain these percentages or achieve the required concentration, what would the next steps be for a utility to maintain compliance? These are questions EPA must address when crafting the proposed rule.

Another source of uncertainty for a future rule is the disposal of treatment byproducts that contain PFAS. EPA Office of Land and Emergency Management is also in the process of considering the designation of PFAS as a hazardous substance under CERCLA. If EPA takes this action, wastes of these substances would no longer be allowed to be disposed of in industrial solid waste or municipal landfills. Instead, these waste streams would have to be sent to specified hazardous waste landfills. This would increase the cost of disposal of waste from treatment for PFAS, with the financial burdens likely falling on ratepayers rather than those directly responsible for the pollution.

AMWA and other drinking water and wastewater organizations have consistently asserted that any such hazardous substance designation for PFAS must be accompanied by a targeted liability exemption for water systems. In the case of drinking water systems that filter PFAS from their water supplies, a hazardous substance designation without a liability exemption could put these systems at risk after they dispose of water treatment byproducts at an appropriate landfill. Should that landfill ever be designated as a Superfund site because of PFAS contamination, the water system could be held liable as a potentially responsible party even if it followed all legal requirements when disposing of the byproducts. Because of this, the cost analysis of this rulemaking cannot be accurately calculated.

Finally, if considering an MCL for this rulemaking, EPA must consider the role that a potential future grouping of PFAS under an MCL can play.

Public communication

Many drinking water utilities are already required to include PFAS in their Consumer Confidence Report (CCR). Therefore, AMWA supports the inclusion of PFAS monitoring data in the CCR. As PFAS current designated a chronic contaminant, AMWA supports consistency in EPAs treatment of these kinds of contaminants. EPA should give utilities time to confirm and understands PFAS concentration data, as well as identify proper messaging for the public as to not create unnecessary panic.

Additionally, the use of resources to issue a tier 1 or 2 notification for violations, especially when just slightly above the threshold, are difficult to justify if there is not an immediate threat to the

public. The idea that 1 ppt could be the difference between no violation and having to issue a public notice could not only be costly but result in widespread fear and anxiety in communities. While AMWA supports proposing NPDWRs for PFOA and PFOS, cost balances must be assessed to ensure resources that could be used to fix the violation are not wasted on notification when no immediate threat to the public exists. Using the same public notification requirement for all violations above the determined level is not always necessary when data suggest the public health concerns can vary widely with increased concentrations. EPA should continue to collect and analyze data to further understand how PFAS enter the body, are metabolized, and the full extent of health effects they cause at various concentrations.

Monitoring

Regardless of whether EPA proposes a treatment technique or an MCL, AMWA supports using similar monitoring requirements already set for Synthetic Organic Contaminants under the Standardized Monitoring Framework. This includes continued issuances of monitoring waivers by the primacy agency if it is shown that the contaminant has not been used in the area or proven a water source in not susceptible to PFAS contamination. There is no need to create a different set of rules for PFAS or other chemicals as they appear.

Under a possible treatment technique approach, for those utilities who do not receive monitoring waivers, EPA must set a reasonable “trigger level” based on the best available science and data that does not rely solely on the lowest detection limit. As technology improves at exponential rates, detections limits of parts per quadrillion should not be grounds for triggering increased monitoring.

AMWA also supports using Unregulated Contaminant Monitoring Rule 5 (UCMR 5) data as an option for the initial sampling for utilities under a potential treatment technique framework. This would help save money on additional analysis of PFAS, which can be very expensive. However, UCMR data should not be used against a PWS, as the primary mission of UCMR is data gathering. The fact that the timing of the rule and release of UCMR data may coincide should not change the overall purpose of UCMR.

Affordability

Affordability is a critical topic and many utilities across the U.S. are struggling with the ability to maintain affordable rates in light of required capital and regulatory projects. It is crucial that future regulations do not put unnecessary or significant financial burdens on ratepayers. As the nation still struggles to cope with and recover from the COVID-19 pandemic and respond to the increasing negative effects of climate change, large portions of communities still struggle to keep up with their water and other utility bills. Access to safe, clean drinking water is a necessity, and we should be working to ensure this access is affordable and equitable. Therefore, a thorough and accurate cost analysis is needed as any treatment and disposal costs will likely lead to increased rates for communities.

Conclusion

As specified in our May 24, 2021 [letter](#) supporting EPA's decision to regulate PFOA and PFOS, the association stresses that any actions the agency takes to address PFAS must be forthcoming about the state of the science, health impacts, available treatment and cost, and the source(s) of the contamination. As stated earlier, the association continues to support the process laid out under SDWA and encourages EPA to obtain the most relevant, reliable, and recent health effects data possible before making regulatory decisions.

The top concern of AMWA member utilities is providing the public with safe drinking water that is affordable to its customers. AMWA strongly urges EPA to consider the questions and concerns laid out in this letter when developing NPDWR for PFAS. It is important for EPA to consider the implementation challenges and any unintended consequences of its regulatory actions. AMWA looks forward to its continued partnership with EPA as we work toward the common goal of protecting public health. If you have any questions, please contact AMWA's Manager of Regulatory and Scientific Affairs, Brian Redder (Redder@amwa.net).

Sincerely,



Michael Arceneaux
Acting Chief Executive Officer

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