ASSOCIATION OF METROPOLITAN WATER AGENCIES

LEADERS IN WATER

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The Honorable Gary Palmer
Chairman
Energy and Commerce Committee
Subcommittee on Environment
Washington, DC
20515

The Honorable Paul Tonko
Ranking Member
Energy and Commerce Committee
Subcommittee on Environment
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Dear Chairman Palmer and Ranking Member Tonko,

On behalf of the Association of Metropolitan Water Agencies (AMWA), we appreciate the opportunity to submit this statement for the record on the Subcommittee's December 18th hearing, "Examining the Impact of EPA's CERCLA Designation for Two PFAS Chemistries and Potential Policy Responses to Superfund Liability Concerns." AMWA's members provide quality drinking water to more than 160 million Americans and today, one of the greatest challenges facing our member utilities is how to effectively and affordably address emerging contaminants like PFAS.

This hearing highlights one of AMWA's major concerns with PFAS remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which is that innocent passive receivers like community water systems, that did not participate in creating PFAS but are responsible for removing it from drinking water and wastewater, may be liable for cleanup costs if brought into lawsuits as a "potentially responsible party" (PRP). AMWA strongly believes that Congress must intervene to ensure that those entities responsible for introducing PFAS into the environment are those that ultimately pay for PFAS remediation costs.

Drinking Water Standards for PFAS

AMWA is supportive of setting federal standards for PFAS in drinking water that are guided by sound science and optimize public health benefits. The EPA's National Primary Drinking Water Regulations (NPDWR) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), which were promulgated in 2024, will require water systems across the country to

comply with new drinking water standards that would limit concentrations to four parts-per-trillion, the equivalent of one drop in five Olympic-sized swimming pools. AMWA appreciates the EPA's May announcement of plans to extend the deadline for water system compliance with this regulation to 2031, which will give water systems more time to stand up PFAS removal technology.[1] However, our concerns over liability and cost remain.

First, filtering drinking water to four parts-per-trillion will require specific technology, like activated granular carbon filtration, which needs to be installed and operated. These technologies are already costly, and increased demand for PFAS removal technology could lead to supply chain challenges and further exacerbate costs. Though the Bipartisan Infrastructure Law provided $9 billion over five years to help public water systems address emerging contaminants like PFAS, given the anticipated compliance costs, this level of funds is not adequate to aid public water systems nationwide in implementing the systems necessary to filter water to the required standard.

A study completed by the Policy Navigation Group on behalf of AMWA estimated that the NPDWR would cost community water systems across the country as much as $6.4 billion each year—a sum that translates to an additional annual cost of $1,700 per-household for water systems serving between 501 and 1,000 people. Even for larger water systems that serve more than one million people, AMWA's estimate found that the per-household cost of compliance could average $110 per year.[2] While these costs may vary from community to community, EPA's NPDWR for PFOA and PFOS will carry significant compliance costs for water systems and their ratepayers across the country. These costs will come as many water systems are already struggling to maintain water affordability in the face of other regulatory and infrastructure renewal challenges.

Again, AMWA supports reasonable federal drinking water regulations for PFOA, PFOS, and other PFAS that carry demonstrated public health risks, and the association recognizes that water systems play an important role in protecting public health through the removal of contaminants from drinking water. Given the budgetary challenges water systems will face in compliance it is essential that Congress provide ample funding for PFAS removal technology, so that water remains affordable to ratepayers.

Liability for Disposal of PFAS-Contaminated Filters

The EPA's hazardous substance designation for PFOA and PFOS under CERCLA exposes passive receivers, including water systems, to liability related to the cleanup of PFOA and PFOS from landfill sites where utilities dispose of spent filters. Many water systems will remove PFOA

[1] https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos
[2] https://www.amwa.net/testimonycomments/amwa-comments-proposed-pfas-national-primary-drinking-water-regulation

and PFOS from drinking water supplies through a granular activated carbon filtration treatment process that will capture and concentrate the PFAS in filtration media. Eventually, this filtration media reaches the end of its useful life, and the spent media—concentrated with PFAS—must be either incinerated or disposed of at a facility that will accept material containing hazardous waste. Currently, there are no effective methods for destruction of PFAS beyond high temperature incineration, and in any case it would not be cost-effective or practical for water systems to carry out incineration themselves at the water treatment facility. As a result, water systems must arrange to dispose of their spent filtration media elsewhere.

With a lack of clear federal guidance on PFAS disposal processes and standards, and the liability that exists for improper disposal, landfills may refuse to accept filters containing PFAS, leaving water systems with nowhere to dispose of spent media and thus becoming responsible for storing it themselves. Even if landfills do accept the filters, because water systems had possession of PFAS after its removal from its water supplies, they could still face liability as a PRP under CERCLA, leading to billions of dollars more in cleanup costs.

In recognition of the fact that the original polluters and users of PFAS should bear these cleanup costs, in 2024 EPA announced an "enforcement discretion" policy that would concentrate the agency's CERCLA enforcement activities related to PFAS on the entities responsible for the contamination these chemicals have caused. This policy alone will not ensure that water systems avoid potentially catastrophic CERCLA legal defense costs and cleanup liability for PFAS. This certainty could only be provided by EPA settling with each of the 50,000 community water systems and 16,000 treatment works nationwide—a cumbersome exercise that would take years and extensive resources to complete for both EPA and water systems.

Under the "enforcement discretion" plan water systems would also remain vulnerable to lawsuits from polluters that EPA pursues for site cleanup costs if they undertake a "private right of action" under section 107 of CERCLA, or a "contribution claim" under section 113, to attempt to recover costs from other entities that meet CERCLA's definition of PRPs for a given site. These provisions are loopholes through which polluters can circumvent their cleanup responsibilities and pass costs onto water system ratepayers, or at minimum, force water systems to pay steep legal costs to defend themselves against these claims.

Congressional Action Needed to Solidify Passive Receiver Protections

Given the lack of legal protection that EPA can offer to passive receivers, the most feasible path to ensuring that innocent parties which did not contribute to PFAS pollution are protected is through statute. In the EPA's plans to address PFAS announced in September, Administrator Lee

Zeldin called on Congress to provide a solution for passive receiver liability, as the agency's ability to do so is limited.[3]

One path forward is establishment of targeted liability protections for passive receivers. Representatives Marie Gluesenkamp Perez and Celeste Maloy have introduced H.R. 1267, the Water Systems PFAS Liability Protection Act, which would guarantee that a drinking water or wastewater system that properly disposes of PFAS will not face future liability related to the cleanup of the disposal site of those chemicals. The bill also ensures accountability on the part of water systems by conditioning these liability protections on the utility following all applicable rules related to PFAS disposal.

AMWA understands and appreciates that the Committee may wish to explore other approaches to addressing this issue. We remain willing and eager to discuss the path forward with the Committee and are committed to working cooperatively to ensure that communities are not burdened with billions of dollars in cleanup costs for pollution they played no part in creating.

Conclusion

Again, AMWA appreciates the opportunity to submit this statement for the record of today's hearing. We are grateful for your leadership on this pervasive issue, which spans many sectors and impacts nearly every American. Our bedrock environmental laws should hold polluters responsible for the damage they cause. We urge the Committee to protect drinking water and wastewater systems, and their customers, from CERCLA liability related to PFAS cleanups.

AMWA and its member utilities look forward to working with you on this important topic.

Sincerely,

Tom Dobbins
Chief Executive Officer

[3] https://www.epa.gov/newsreleases/trump-epa-announces-next-steps-regulatory-pfoa-and-pfos-cleanup-efforts-provides