



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

LEADERS IN WATER

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May 24, 2021

Ms. Radhika Fox
Principal Deputy Assistant Administrator
Office of Water
U.S. Environmental Protection Agency

Ms. Deb Szaro
Acting Regional Administrator
Region 1
U.S. Environmental Protection Agency

Re: Recommendations for EPA’s Council on PFAS

Dear Principal Deputy Assistant Administrator Fox and Acting Regional Administrator Szaro,

The Association of Metropolitan Water Agencies (AMWA) would like to congratulate you both on your recent selection to lead the Environmental Protection Agency’s (EPA) Council on PFAS (ECP). AMWA is an organization representing the largest publicly owned drinking water utilities in the United States. The association has enjoyed having an excellent long-standing working relationship with EPA as we strive to protect drinking water. AMWA applauds the agency’s continued work to prioritize and address per- and polyfluoroalkyl substances (PFAS) by creating the ECP. The association would like to take this opportunity to provide initial recommendations to help inform the ECP’s development of the multi-year strategy.

AMWA has consistently provided comments to the agency regarding EPA’s work under the agency’s PFAS Action Plan. Most significantly, AMWA 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 and bioaccumulative characteristics. AMWA supports the framework laid out within the Safe Drinking Water Act (SDWA) for regulating substances and urges the agency to prioritize and work quickly to establish National Primary Drinking Water Regulations (NPDWRs) for these two PFAS. AMWA looks forward to helping inform these actions.

When setting NPDWRs, the agency must be sure to put the risk of PFOS and PFOA in context. For certain PFAS under EPA’s Method 537.1 and 533, minimum reporting levels are as low as two parts per trillion – levels much lower than those known to be cause for concern. Therefore, it is imperative that the agency be prepared to assist utilities in managing any transition from an unregulated contaminant to NPDWRs by providing support for risk communication. We commend EPA for its efforts to develop PFAS risk communication tools thus far. It is critical that these tools be developed as soon as possible, not only for PFOA and PFOS but also for the rest of the PFAS family.

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In the agency's Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List, where EPA determined to regulate PFOA and PFOS, the agency also asked for data and information to determine the appropriate next steps for other chemicals within the PFAS family. In AMWA's response to this questionⁱ, the association stressed that any actions the agency takes to address PFAS must be transparent 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.

However, 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"). In order 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 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 would like to stress that EPA cannot rely solely on SDWA to manage PFAS. It is essential for the agency to use all its regulatory authorities to prevent PFAS from entering source waters to begin with, rather than shifting the burden to local drinking water treatment works. Preventing pollutants from entering drinking water supply sources is a complex task. It is easier, more effective, and more equitable to control pollutants at the source, where they are highly concentrated, than it is to remove them at the consumer's expense after they have entered a water body or supply source. Controlling pollutants at the source helps ensure that those who pollute our natural resources are not allowed to pass the cost of correcting the problem onto others.

PFOA and PFOS have been largely phased out from production within the United States due to the 2010/2015 PFOA Stewardship Program. However, both PFOA and PFOS may still be imported or produced domestically if below the Chemical Data Reporting thresholds (i.e., 2,500 pounds) by companies not participating in the PFOA Stewardship Program. Additionally, precursors – other PFAS that break down into smaller chains such as PFOA and PFOS – are thought to contribute to these levelsⁱⁱ. Therefore, it would seem that the simplest and most effective way to manage these compounds would be at the source, not once they've entered the environment.

The idea of holding PFAS polluters and manufacturers accountable is even more important when discussing those substances which we know little about. There are thousands of PFAS and, according to presentations given at EPA's 2018 PFAS Summit, nearly 900 new PFAS have come through EPA's Toxic Substances Control Act (TSCA) program since 2006ⁱⁱⁱ. Many of these newer PFAS were created to replace those deemed problematic or harmful, such as PFOA and PFOS. We know very little about these replacement chemicals, but there are numerous programs outside of SDWA, which can help manage these substances to protect public health.

EPA should leverage all regulatory programs under its authority to reduce PFAS in the environment and ultimately in drinking water. AMWA urges EPA to use TSCA, the Clean Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act, as well as any other programs the agency deems appropriate to address PFAS holistically.

While AMWA is encouraged to see the agency prioritize coordination among EPA's internal offices through the creation of this council, we would like to stress the importance of continuing the work begun under the agency's PFAS Action Plan to engage other federal agencies. PFAS are a complex issue that extends beyond EPA and must be tackled using resources available across all applicable federal agencies.

Finally, AMWA encourages EPA to continue to prioritize the research goals that the agency has laid out within the PFAS Action Plan. AMWA requests that EPA focus its resources on obtaining the reliable health effects data necessary to prioritize these substances. This should be done before pursuing additional regulatory actions. EPA should also focus on developing new, cost-effective treatment options so that drinking water utilities can more efficiently and effectively address these contaminants.

Thank you for the opportunity to work with EPA to address such an important topic. If you have any questions about these comments, please contact Stephanie Hayes Schlea, AMWA's Director of Regulatory and Scientific Affairs at schlea@amwa.net.

Sincerely,



Diane VanDe Hei
Chief Executive Officer
Association of Metropolitan Water Agencies

Cc: Jennifer McLain, Office of Ground Water and Drinking Water

ⁱ AMWA. Comments on Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List. June 9, 2020. <https://www.regulations.gov/document/EPA-HQ-OW-2019-0583-0001>

ⁱⁱ Environmental Protection Agency. Regulatory Determination 4 Support Document.

ⁱⁱⁱ Morris, J. (2018). Per-and Polyfluoroalkyl Substances under the Toxic Substances Control Act (TSCA) [Powerpoint Slides]. Retrieved from <https://www.epa.gov/pfas/pfas-national-leadership-summit-materials>