



BEST BEST & KRIEGER
ATTORNEYS AT LAW

March 2, 2022

Mr. Dominic J. Mancini
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

RE: RIN 2050-AH09, Designating PFOA and PFOS as CERCLA Hazardous Substances

Dear Acting Administrator Mancini,

Thank you for the opportunity to meet with OIRA and EPA staff regarding the Notice of Proposed Rule Making (NPRM) pending at your agency on the designation of perfluorooctanic acid (PFOA) and perfluorooctane sulfonate (PFOS) as Hazardous Substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The National Water Resources Association is a nonpartisan, nonprofit federation made up of agricultural and municipal water providers, state associations, and individuals dedicated to the conservation, enhancement and efficient management of our nation's most important natural resource: water. The NWRA represents a diverse group that provides water to more than 50 million Americans. The Association of California Water Agencies is the largest statewide coalition of public water agencies in the country, representing more than 460 public agency members that supply over 90 percent of the water delivered to cities, farms, and businesses in California. Best Best & Krieger is a law firm that represents municipalities and public agencies that collectively provide water and wastewater services to more than two-thirds of California's population.

We write to urge you to carefully consider in the rulemaking process the potential financial consequences of a hazardous substance designation for public water and wastewater agencies and the customers they serve. Water and wastewater agencies have not caused PFAS contamination, and their wastewater and biosolids should be exempt from CERCLA's requirements. We also request that the NPRM preamble solicit comment on an exemption and other approaches to avoid or mitigate the potential impacts of a hazardous substance designation on public water and wastewater agencies and their customers.

We strongly support the Administration's steps to control PFAS. Since the inception of CERCLA, the policy for cleanup has been "polluter pays." The Sectors Affected put forward by EPA under

NWRA, ACWA, and BBK Letter

RE: RIN 2050-AH09, Designating PFOA and PFOS as CERCLA Hazardous Substances

March 2, 2022

Page 2

this NPRM highlight many of the industries that create PFAS, put PFAS into products, and financially benefit from the use of PFAS, consistent with the EPA PFAS Roadmap's intent to stop PFAS at the source. This could directly limit, and eventually cease, the appearance of PFOA and PFOS in water and wastewater facilities.

In addition to authorizing EPA to have contaminated sites cleaned up, CERCLA permits citizen suits to enforce its cleanup requirements. Further, CERCLA permits those who are identified as responsible parties to seek financial payment from other parties who were not deemed responsible parties. Without the exclusion of water and wastewater treatment facilities, public water agencies may be brought in as a party to these cleanup cases, which may harm the affordability of water for the households they serve.

Water and wastewater treatment facilities are not producers or manufactures of PFAS, nor do these facilities utilize or profit from PFAS chemicals. Rather, water and wastewater treatment facilities are receivers and victims of these forever chemicals.

When PFAS is detected in a water system, it can cause a great disturbance. For instance, in California, water supply agencies, pumpers, and purveyors have had to take groundwater wells out of service due to PFAS detections and are taking steps to find and pay for alternative short-term water supplies, all while also developing PFAS remediation programs. As one example, it is anticipated PFAS remediation programs will cost hundreds of millions of dollars in Los Angeles and Orange Counties alone. As water agencies establish treatment systems for PFAS, a hazardous substance designation may increase the cost of disposing of the filter materials that these systems use.

Absent appropriate exclusions or other steps, an unintended consequence of PFOA/PFOS hazardous substance designation under CERCLA may be that water and wastewater treatment facilities would be required to subsidize manufacturers' liability. Public water or wastewater treatment agencies being found jointly and severally liable as part of a cleanup could force these public agencies to raise their service rates, which in turn, will increase costs for families and businesses and inappropriately shift the burden from the manufacturers of PFAS to the public.

We appreciate the opportunity to provide these comments and to meet with you. If you have any questions or would like any additional information please contact Ana Schwab at ana.schwab@bbklaw.com, Madeline Voitier at madelinev@acwa.com, or Ian Lyle at ilyle@nwra.org.

NWRA, ACWA, and BBK Letter
RE: RIN 2050-AH09, Designating PFOA and PFOS as CERCLA Hazardous Substances
March 2, 2022
Page 3

Sincerely,

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