

June 12, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Addressing PFAS in the Environment; EPA–HQ–OLEM–2022–0922; FRL–9064– 01–OLEM

Dear Administrator Regan:

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments on the Environmental Protection Agency’s (EPA) efforts to develop regulations pertaining to PFAS under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). ACWA’s more than 460 public water agency members supply over 90 percent of the water delivered in California for residential, agricultural, and business uses. Potential liability from a proposed CERCLA designation and the associated costs are a serious concern for ACWA members.

I. Introduction

PFAS are a group of thousands of manmade chemicals that have been used extensively since the 1950s in consumer products, such as Teflon pans, fast food packaging, firefighting foams and other materials designed to be waterproof, stain-resistant, or non-stick. Although certain PFAS chemicals are no longer manufactured in the United States, these chemicals are still produced internationally and imported into the country through consumer goods.

PFAS contamination presents challenges for many drinking water and wastewater providers throughout our nation. Efforts to combat these contaminants are taking place on both the federal and state level – with California on the frontline.¹ ACWA believes that CERCLA is a vital tool in EPA’s mission to protect public health and the environment and we support the “polluter pays” principle of CERCLA meant to cleanup contamination. However, we have serious concerns with the potential unintended consequences of regulating additional PFAS under CERCLA.

ACWA raised our CERCLA concerns directly with EPA and the Office of Management and Budget (OMB) and asked that financial impacts to the water and wastewater sectors be considered in its

¹ See California Water Boards, *PFAS Drinking Water Resources* (last updated Mar. 17, 2023), click [here](#).

previous proposal to designate PFOA and PFOS as CERCLA hazardous substances.² ACWA also submitted extensive comments on the proposal as well.³

II. Comments

In this Advanced Notice of Proposed Rulemaking (ANPRM) EPA is seeking input regarding potential CERCLA hazardous substance designations for seven PFAS in addition to PFOA and PFOS.⁴ ACWA looks forward to working with EPA to create a regulatory framework that advances the public health interest of curbing PFAS contamination while protecting against unwarranted liability and costs for public water suppliers and ratepayers. Following are ACWA's comments on EPA's ANPRM.

A. Costs

COMMENT 1 – COSTS – EPA should consider the direct and indirect costs of any potential PFAS CERCLA rulemaking.

EPA interprets CERCLA section 102(a) as excluding consideration of cost in a hazardous substance designation decision, but the agency is soliciting feedback to understand the potential costs and benefits associated with any potential future regulatory action.⁵ ACWA advocates that direct and indirect costs to public drinking water and wastewater agencies for any PFAS CERCLA proposal be considered through a comprehensive Regulatory Impact Analysis.

When PFAS are detected in a water system, they can have severe and far-reaching impacts. 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.⁶

As water agencies establish treatment systems for PFAS, a hazardous substance designation may increase the cost of treatment and disposing of the media and materials remaining after treatment because of the stringent disposal requirements for CERCLA hazardous substances. Several ACWA members have already invested millions of dollars in capital costs as well as operation and maintenance to treat PFAS contamination. These costs will only increase with additional PFAS CERCLA hazardous substance designations.

Recent studies highlight the major cost implications in dealing with PFAS. For example, a study conducted by several wastewater associations showed that “average biosolids management

² Office of Information and Regulatory Affairs, *View EO 12866 Meeting 2050-AH09* (Mar. 2, 2022), click [here](#).

³ ACWA, *Designation of PFOA and PFOS as CERCLA Hazardous Substances* (Nov. 7, 2022), click [here](#).

⁴ PFBS, PFHxS, PFNA, HFPO–DA (known as GenX Chemicals), PFBA, PFHxA and PFDA.

⁵ 88 Fed. Reg. at 22399, 22402 (Apr. 13, 2023), click [here](#).

⁶ See American Society of Civil Engineers, *California water district moves ahead with PFAS treatment systems* (Oct. 25, 2021), click [here](#); see also Reuters, *California agency sues 3M, others over groundwater contamination* (Nov. 9, 2021), click [here](#).

costs increased by approximately 37% in response to PFAS concerns.”⁷ A CERCLA designation would likely further increase these costs.

Additionally, the Chamber of Commerce released a study on the cost implications of a PFAS CERCLA designation. The study found that the annual private party cleanup costs for PFOA and PFOS under CERCLA at non-federal sites are estimated to be \$700-\$800 million.⁸ The Chamber of Commerce further emphasized to OMB that “the rulemaking cost estimates are expected to be much higher as private party costs at Superfund sites are just one element of the total costs borne by communities from a proposed hazardous substance designation.”⁹ Specifically, municipalities responsible for community water systems, landfills, and publicly owned treatment works would incur significant additional costs for cleanup.¹⁰

Therefore, direct and indirect costs need to be assessed to fully understand the implications of designating these PFAS as hazardous substances.

B. Liability Concerns

COMMENT 2 – CERCLA LIABILITY– EPA’s CERCLA regulatory efforts run counter to the “polluter pays” principle and raise liability concerns for drinking water and wastewater agencies.

CERCLA is designed to remediate contaminated sites and hold parties that caused the contamination financially responsible for cleanup costs through its “polluter pays” model. ACWA strongly supports the “polluter pays” principle of CERCLA. However, under EPA’s current proposal our members and their ratepayers will be facing a “community pays” outcome that unfairly shifts the clean-up and liability costs onto municipalities and the public they serve.

Due to the ubiquitous nature of PFAS and the strict liability of CERCLA, EPA’s proposal causes our members great concern. Public water and wastewater agencies are passive receivers of PFAS from a vast array of domestic, commercial, and industrial sources. Water systems, and the public, do not have control over PFAS in the environment given the overwhelming presence of this family of chemicals in the chain of commerce and in our homes.

For example, when drinking water or water reuse agencies remove PFAS from source water via filtration media, they are responsible for the disposal of these potentially PFAS-laden filter media. The media will typically be recycled or disposed of in accordance with applicable law. Should that disposal location ever become a “facility” where there is a release or threatened release of hazardous substances, the water agency could be held liable under CERCLA and/or analogous state law as a PRP due to its lawful disposal of this necessary byproduct of a vital public health service. This outcome would force local ratepayers to cover the cleanup costs after they already paid to remove the PFAS from their source water.

⁷ NACWA et al, *Cost Analysis of the Impacts on Municipal Utilities and Biosolids Management to Address PFAS Contamination* (Oct. 2020), click [here](#).

⁸ U.S. Chamber of Commerce, *PFOS and PFOA Private Cleanup Costs at Non-Federal Sites* (Jun. 2022), click [here](#).

⁹ U.S. Chamber of Commerce, *U.S. Chamber Letter to OMB Director Young on EPA’s Proposed rule, “Designating PFOA and PFOS as CERCLA Hazardous Substances”* (Jun. 8, 2022), click [here](#).

¹⁰ U.S. Chamber of Commerce, *PFOS and PFOA Private Cleanup Costs at Non-Federal Sites* at 3-4.

Wastewater agencies would face similar liability through no fault of their own because they receive PFAS chemicals through the raw influent that arrives at the treatment plant. This influent comes from domestic, commercial, and industrial sources. Agencies may be able to achieve targeted reductions through industrial pretreatment programs, but even that will not address the concentrations arriving from countless households. Agencies are responsible for managing the tons of biosolids and treatment residuals created as a byproduct of the treatment process each day.

A significant unintended consequence of a PFAS 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.

EPA previously stated its intent not to pursue water utilities under CERCLA. ACWA appreciates EPA's efforts to minimize the liability for water and wastewater agencies. Unfortunately, the assurances given by EPA that the agency would not seek to target local utilities as Potentially Responsible Parties, or PRPs, to bear liability are a false sense of protection.

In the highly litigious world of CERCLA, any PRP can bring agencies into actions to try to reduce their own portion of the overall cleanup bill. As of 2019, at least 650 municipalities and counties across 12 states have been pulled into CERCLA litigation by other PRPs.¹¹

C. Regulatory Approach

COMMENT 3 – DESIGNATING CATEGORIES OF PFAS – ACWA supports EPA's efforts to address PFAS, but we do not believe CERCLA is the right tool.

EPA is considering whether to designate groups or categories of PFAS as hazardous substances. ACWA strongly supports EPA's efforts to better understand PFAS sources, take measured and practical approaches in gathering data, and assess the risks of PFAS to public health and the environment. Greater focus on eliminating PFAS in consumer products, source control, and destruction technology is necessary to achieve progress in mitigating PFAS risks and exposure.

ACWA is encouraged by EPA's efforts to address PFAS as these substances are ubiquitous in the environment. However, our members do not believe regulating these PFAS under CERCLA is the correct approach due to our stated concerns with cost and liability for public water and wastewater agencies.

III. Conclusion

ACWA strongly supports EPA's efforts to address PFAS contamination and protect public health. However, we have serious concerns with the potential unintended consequences of this effort and look forward to working with EPA as this process develops.

¹¹ Salzman & Thompson, *Environmental Law & Policy* (Fifth Edition) at 263 (2019).



Thank you for the opportunity to provide comments on this ANPRM. If you have any questions or would like any follow-up information, please contact Madeline Voitier, ACWA's Federal Relations Representative at madelinev@acwa.com.

Sincerely,

Madeline Voitier

Madeline Voitier
Federal Relations Representative

CC:

The Honorable Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency

Michelle Schutz, Office of Superfund Remediation and Technology Innovation, U.S. Environmental Protection Agency

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