



November 7, 2022

Barry Breen

Acting Assistant Administrator, Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances (EPA–HQ–OLEM–2019–0341)

Dear Acting Assistant Administrator Breen,

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to provide comments on the Environmental Protection Agency’s (EPA) proposed rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). ASDWA is the professional association that serves the leaders (and their staff) of the 57 state and territorial drinking water programs. Formed in 1984 to address a growing need for state administrators to have national representation, ASDWA has become a respected voice for states with Congress, EPA, other Federal agencies, and professional organizations in the water sector.

ASDWA continues to be appreciative of EPA’s work to address PFAS across all the Agency’s regulatory programs through the PFAS Strategic Roadmap. The Agency’s approaches to “get upstream of the problem” and “hold polluters accountable” is critical for the long-term protection of both surface and ground water sources of drinking water. ASDWA supports the general intent of this designation, as such a designation opens pathways to hold polluters accountable for the release of these chemicals. PFAS contamination has been found from a wide variety of manufacturers and users. EPA must ensure that the costs of cleanup are borne by the responsible manufacturers and users of PFOA and PFOS, not the public through mechanisms such as increased water rates to cover the costs of PFAS treatment in drinking water. However, due to several cross-media consequences, ASDWA is currently taking a neutral position on this designation.

While this designation would provide an avenue for some site cleanups and some source water protection, CERCLA is not the appropriate tool for addressing the widespread PFAS problem. The purpose of CERCLA is simple - “CERCLA's major emphasis is on the cleanup of inactive hazardous waste sites and the liability for cleanup costs on arrangers and transporters of

hazardous substances and on current and former owners of facilities where hazardous substances were disposed”¹. PFAS are “widespread in U.S. drinking water”², and are ubiquitous in the environment. CERCLA was designed to be used to address problematic sites and facilities, where there is an identifiable plume impacting groundwater, or some other type of specific source, not a problematic class of chemicals that is found everywhere.

In addition to CERCLA not being the optimal tool to address the pervasiveness of PFAS, ASDWA’s members have significant concerns regarding how this designation would be implemented and the potential impacts across regulatory programs. ASDWA recommends that EPA thoroughly address these concerns and provide additional context and assurances before finalizing the designation and developing rule implementation guidance. ASDWA’s members have identified numerous “pitfalls” associated with this rulemaking, including:

- EPA has been chronically underfunded and has struggled to assess and appropriately remediate the sites already included under CERCLA. This funding gap includes insufficient staff and resources to undertake the full remediation process, including assessment, characterization, and cleanup of each site. Without the appropriate funding (noting that Congress is responsible for appropriations), a CERCLA designation will likely be ineffective and will fail to protect source waters.
- In the past, the process of holding polluters accountable under CERCLA and getting the polluters to pay the full cost of cleanup has taken too long. If EPA moves forward with this designation, ASDWA recommends that the Agency find ways to streamline the process so that funds from responsible parties can be used to remediate contaminated sites more quickly and effectively.
- Historically, there has been little engagement with EPA’s Office of Land and Emergency Management (OLEM) and other EPA offices. Coordination across the Agency’s regulatory programs is critical if EPA is to address PFAS holistically. Specifically, OLEM should be working closely with the Office of Water to ensure that CERCLA actions properly and adequately consider impacts to drinking water and are being conducted with source water and drinking water protection in mind.
- The Office of Water (OW) is working on a proposal to regulate PFOA and PFOS under the Safe Drinking Water Act (SDWA). If the Agency opts to designate these two substances as hazardous under CERCLA, the impact of this designation on this drinking water rulemaking must be considered. OLEM and OW must work together to ensure these two rulemakings work in tandem.
- The process of finding responsible parties is difficult for many water systems with low-level PFAS detections that are untraceable to a specific source. Low levels of PFAS that

¹ EPA, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Federal Facilities, <https://www.epa.gov/enforcement/comprehensive-environmental-response-compensation-and-liability-act-cercla-and-federal>, accessed October 28, 2022.

² Scientific American, “Forever Chemicals are Widespread in U.S. Drinking Water”, <https://www.scientificamerican.com/article/forever-chemicals-are-widespread-in-u-s-drinking-water/>, accessed October 28, 2022.

could potentially be a drinking water problem have been found across the country without a specific source. EPA should provide additional guidance on how this new CERCLA designation could be used in such situations.

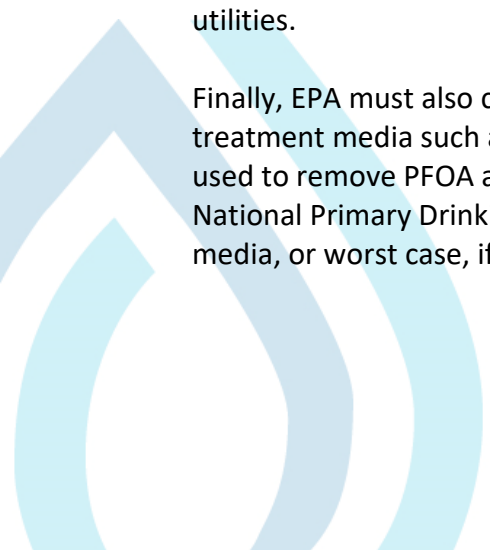
- Under this proposal, how this new designation will impact cleanup goals for contaminated sites is not clear. Cleanup goals under CERCLA consider all applicable or relevant and appropriate requirements (ARARs). In the past, when addressing drinking water cleanup, maximum contaminant levels (MCLs) for the contaminant have been used. ARARs have typically been a single substance with only one MCL being used. In the case of PFOA and PFOS, EPA may set two different MCLs. ASDWA recommends that EPA provide additional clarity as to how the Agency's SDWA process will impact the setting of cleanup goals. As stated above, EPA's CERCLA actions and the Agency's actions under SDWA must work coherently towards the same endpoint – public health protection. Additionally, EPA recently asked the Agency's Science Advisory Board PFAS Workgroup to review a document related to PFAS mixtures. ASDWA recommends that EPA clarify how PFAS mixtures may be considered when setting cleanup goals.

Another issue that requires resolution before a final rule is significant concern from water utilities regarding a possible CERCLA designation for PFOA and PFOS. These systems are the receivers of these substances. The burden of cleanup and remediation for these PFAS should not be passed on to utilities and to their ratepayers.

In public engagements after the release of the CERCLA proposal, EPA stated that the agency will address "concerns" regarding liability, assumedly for water utilities, by using policy decisions, enforcement discretion, and settlement agreements. The Agency noted that this procedure is comparable to what EPA has done before for similar issues with multiple responsible parties. ASDWA urges EPA to use enforcement discretion in cases that impact water utilities whenever possible. Additionally, ASDWA recommends that EPA expand upon how the Agency will use this discretion in any planned guidance.

With all the critical complications, ASDWA recommends that EPA provide a detailed example in the final rule that details how the Agency will manage cleanups and potential impacts to water utilities. ASDWA recommends that EPA run a tabletop exercise using a known PFAS-contaminated site to run through the entire process. The Agency's guidance should include simple visualizations of the process, such as using a flow chart in each phase, so the process is easily understood. This detailed example could help alleviate valid concerns of the water utilities.

Finally, EPA must also consider the barriers and challenges of disposing of spent absorbent treatment media such as Granular Activated Carbon (GAC) or ion exchange media, which is used to remove PFOA and PFOS. A significant regulatory consideration for the upcoming National Primary Drinking Water Regulation (NPDWR) will be the disposal cost of the spent media, or worst case, if disposal options become extremely limited or non-existent in some



areas. EPA should consider the environmental impacts from trucking water treatment residuals across state lines for disposal of spent treatment media. EPA should provide detailed guidance for media regeneration and disposal options to allow maximum flexibility for water systems to assess costs and ensure proper disposal of spent materials to avoid further environmental contamination.

Although EPA released the draft *Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products* in December 2020 and allowed an opportunity for public comment, the Agency has yet to finalize this guidance. Therefore, it is unclear how this rulemaking might impact the Agency's suggested disposal methods for newly designated PFAS substances. ASDWA recommends that EPA work with its state partners to finalize this guidance as quickly as possible, but at minimum, before the rulemaking to designate PFOA and PFOS as hazardous substances is finalized.

ASDWA thanks EPA for the opportunity to provide comment on this important rulemaking. As co-regulators and the boots on the ground, it is vital that EPA collect state input throughout all regulatory actions. If you would like to discuss these comments further, please contact me (aroberson@asdwa.org) or Stephanie Schlea (sschlea@asdwa.org).

Sincerely Yours,



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