



AMERICAN PUBLIC WORKS ASSOCIATION

*Your Comprehensive  
Public Works Resource*

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November 2, 2022

Submitted electronically to: <https://www.regulations.gov>

Ms. Michelle Schutz  
Office of Superfund Remediation & Technology Innovation  
U.S. Environmental Protection Agency  
EPA Docket Center  
OLEM Docket, Mail Code 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Request for Comments on Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances; Docket ID No. EPA-HQ-OLEM-2019-0341

Dear Ms. Schutz:

On behalf of the more than 30,000 members of the American Public Works Association (APWA), we appreciate the opportunity to submit comments on the designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances. APWA includes not only personnel from local, county, state, and federal agencies, but also private sector personnel with direct oversight and involvement in our nation's water systems.

Water infrastructure is at the forefront of addressing emerging contaminants (PFAS) and should be included in conversations with regulators and other relevant stakeholders on the safety and science surrounding these chemicals. APWA appreciates EPA's focus on "holding responsible those who have manufactured and released significant amounts of PFOA and PFOS into the environment" and the promise of using "enforcement discretion and other approaches to ensure fairness for minor parties who may have been inadvertently impacted by the contamination." Additionally, our members welcome the agency's commitment to, "further outreach and engagement to hear from impacted communities, wastewater utilities, businesses, farmers and other parties during the consideration of the proposed rule."

Knowing this, **we strongly recommend that public works facilities that abided by best practices for treatment and disposal should not be held liable for something they did not create, and the proposed**

*PRESIDENT  
B. Keith Pugh, P.E., PWLF*

*CHIEF EXECUTIVE OFFICER  
Scott D. Grayson, CAE*



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**standards not inadvertently place an unjust legal burden on water systems and the communities which they serve.**

Already the uncertainty of future legal risks is creating disruptions with rising costs and wastewater treatment plants rejecting leachate from landfills over contamination fears and landfills refusing to accept waste from water facilities for the same concerns. Meanwhile, farmers suffering from a fertilizer shortage could face further exacerbation by losing access to biosolids, which are composed of solid organic matter recovered from the sewage treatment process. There has been a rapid increase in litigation surrounding these chemicals and ongoing cases appear unlikely to resolve questions of culpability. An unnecessarily low threshold for PFOA and PFOS could raise the likelihood of ensnaring innocent parties.

### **Timing and Compliance**

This designation is ill-timed as many facilities are still in the process of assessing their compliance with the drinking water health advisories issued in June in anticipation of proposed national drinking water regulations scheduled for the end of this year and finalization of the rule in 2023. Compliance with those advisories, which are substantially lower than those set in 2016 is further complicated by the fact the detection levels are below what the agency has determined can be reliably measured in water using approved testing methods in a laboratory setting. Additionally, facilities serving some of the most vulnerable populations are just receiving long needed assistance to address noncompliance with existing regulations, remediation efforts could be significantly delayed as these water systems await clarity from EPA before proceeding with improvements.

### **Congressional Intent**

We urge the agency to respect the intent of Congress when crafting these regulations. While legislation has been introduced and considered, policymakers have yet to agree on how to ensure passive receivers like water facilities are not unfairly threatened legally. Members of congress have sought to establish exemptions but have yet to determine the full scope of facilities that should qualify under such a definition. Simultaneously, those lawmakers still want to hold parties who “released the chemicals as a result of gross negligence or willful misconduct” accountable for their actions. APWA agrees and supports regulatory standards that are informed by thorough research and peer-reviewed scientific studies. Concurrently, APWA wants to make certain those standards are enforced appropriately.

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We understand the EPA also plans an advance notice of proposed rulemaking “seeking comments and data to assist in the development of potential future” regulations addressing other PFAS chemicals, and we intend to reemphasize the concerns raised.

APWA members pride themselves on being committed to public service by profession and being a resource for federal initiatives is just another way we work to protect our communities. If APWA may be of further assistance, please contact Ryan McManus, APWA Government Affairs Manager, at [rmcmanus@apwa.net](mailto:rmcmanus@apwa.net) or 202-218-6727.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, reading "Scott D. Grayson". The signature is fluid and cursive, with a long horizontal line extending from the end.

Scott D. Grayson, CAE  
Chief Executive Officer

A handwritten signature in black ink, reading "B. Keith Pugh". The signature is bold and stylized, with the letters "B", "K", and "P" being particularly prominent.

Keith Pugh, PE, PWLF  
APWA President

PRESIDENT  
B. Keith Pugh, P.E., PWLF

CHIEF EXECUTIVE OFFICER  
Scott D. Grayson, CAE