



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

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May 24, 2023

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

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

Re: EPA's Proposed PFAS NPDWR; Docket ID No. EPA-HQ-OW-2022-0114

Dear Administrator Regan:

On behalf of the more than 31,000 members of the American Public Works Association (APWA), we appreciate the opportunity to submit comments on the proposed rule for a National Primary Drinking Water Regulation (NPDWR) for Per- and polyfluoroalkyl substances (PFAS). APWA members are responsible for an array of water infrastructure including drinking water, stormwater, and wastewater. In these roles APWA members understand and appreciate the efforts made towards cleaner water and have a long history of achieving compliance with NPDWRs along with providing subject matter expertise to policymakers at all levels and branches of government.

As they design, build, and maintain infrastructure they are simultaneously implementing and reviewing the law and serve as a wealth of knowledge. Additionally, APWA continues to be a proud supporter of the Infrastructure Investment and Jobs Act (IIJA) and the resources provided to deliver safe drinking water and address emerging contaminants. For decades limited guidance and resources were provided regarding PFAS, yet many public works professionals were at the forefront learning and tackling pollution from "forever chemicals".

At the same time, we would like to therefore stress the scale of the proposed undertaking and the likely need for further resources for many communities, especially those that are small, disadvantaged, and lacking in professional capacity. Otherwise, the costs will fall disproportionately on vulnerable populations with limited incomes and who are already underserved.

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

CHIEF EXECUTIVE OFFICER
Scott D. Grayson, CAE



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This is the first new contaminant to be regulated in drinking water in nearly 30 years and the first since Congress significantly amended the Safe Drinking Water Act (SDWA) in 1996. For many this will be a new experience and entail an additional learning curve especially given while the EPA has used a Hazard Index before to inform risks of chemical mixtures, this is the first time the agency has chosen to do so for a federal drinking water maximum contaminant level (MCL).

Furthermore, while these levels are higher than what was proposed in the health advisories in June 2022 and are reliably testable that does not mean they do not pose a significant cost burden for water systems. The EPA's estimated costs of \$777 million to \$1.2 billion are very optimistic given the experience of systems such as the Cape Fear Public Utility Authority's estimated capital cost for its treatment, which alone was \$43 million. This far exceeded its annual operating cost of \$3-5 million and if only about 16 utilities of similar size to Cape Fear nationwide had to implement comparable treatment techniques, the total cost would exceed EPA's estimate. We believe this is not out of the realm of possibility given a September 2022 Government Accountability Office (GAO) study of drinking water data collected from six states showed at least 18 percent of the 5,300 water systems studied had PFOA and/or PFOS exceeding the proposed MCLs of 4 ppt alone. Levels of initial noncompliance may be even higher than anticipated due to sampling bias since the proposed limits are the lowest level many laboratories can reliably detect, and some systems may not have already pursued such sensitive testing. In fact, we urge EPA to conduct a fuller analysis particularly given that the agency caveated its own work in the posting in the federal register, asserting:

Data Limitations and Uncertainties in the Cost Analysis below, given the available occurrence data for the other compounds in the proposed rule (PFNA, HFPO-DA, and PFBS) and the regulatory thresholds under consideration, EPA did not model national costs associated with potential HI exceedances as a direct result of these compounds; therefore, the additional treatment cost, from co-occurrence of PFNA, HFPO-DA, PFBS or other PFAS, at systems already required to treat because of PFOA, PFOS, or PFHxS MCL and HI exceedances are not quantitatively assessed in the national cost estimates. Nor are treatment costs for systems that exceed the HI based on the combined occurrence of PFNA, HFPO-DA, PFBS, and PFHxS (where PFHxS itself does not exceed 9 ppt) included in the national monetized cost estimates.

These levels are also significantly lower than any state has proposed for PFAS chemicals, which would seem to indicate that even states highly concerned with PFAS contamination have arrived at different conclusions than EPA with regard to the cost and benefit analysis. Analysis that is fundamental to the

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1996 amendments to the SDWA, which requires a detailed risk and cost assessment, and best available peer-reviewed science, when developing standards. We again request the EPA conduct a fuller analysis that more accurately captures the costs of compliance and if necessary, the agency collects more data to inform and address the gaps that currently exist.

Mandates, while well-intentioned, can entail complex and costly upgrades in combination with prescriptive procedures to demonstrate compliance. These requirements may imperil the financial sustainability and affordability of some water systems, which will warrant greater assistance in terms of funding. To not clarify the extent of these costs now would be a grievous mistake as water systems and governments across all levels budget for the future and may be forced into competing for limited federal dollars.

APWA is committed to limiting exposure to PFAS and protecting the environment. At the same time, we want to ensure efforts do not impose unintended consequences by unnecessarily directing resources away from other water system priorities like noncompliance with existing pollutant MCLs, replacement of lead service lines, microplastics, cybersecurity, or conservation and resiliency efforts to address changes in climate such as increased droughts or flooding. The reallocation of resources by communities may also mean deferring on maintenance, which could risk failure of water infrastructure and be ultimately more costly in terms of quality of life in dollars, public health, and the environment.

PFAS are a large, complex group composed of thousands of synthetic chemicals and testing for more and more of them would undoubtedly risk exacerbating other challenges. The lack of clarity on whether other PFAS might be slated for regulation as drinking water contaminants in the foreseeable future is also concerning especially as communities consider which treatment methods that may best capture a wider spectrum of PFAS chemicals.

We urge the EPA, should it move forward with the levels as proposed, to communicate with states to work with water systems and support with resources along with time to adjust. While we understand that once a rule is finalized, water systems would have three years to be in compliance with the MCLs, there is variation in state assistance and enforcement. We also believe that it will be crucial for EPA to provide sufficient staffing for this process. Communities across the country will need technical assistance and will often need to rely upon the EPA to ensure the investments they are making will achieve compliance for the significantly foreseeable future and they are able to prove so.

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EPA should also reexamine its PFAS Strategic Roadmap and consider the chronology and speed of regulatory decision making so that those subjected to new rules can have sufficient time to adapt at each stage. EPA needs to clarify preferred and effective disposal and destruction procedures for spent materials used to remove PFAS from water and how to scale in an economic manner. Biosolids deserve consideration too since systems came to rely on them as a source of revenue, but now for many they have turned into an additional expense. These actions should simultaneously help to clarify liability so that those undertaking improvements in water treatment are not potentially subject in the future to avoidable legal risks particularly as EPA considers parameters for designating PFAS compounds as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). If these efforts require additional research or changes in law, we urge EPA to include that in communications such as budget requests with federal legislators so they can appropriate the resources necessary or legislate policy changes accordingly.

All of these requests have a common theme and at this time, we urge the EPA to proceed carefully so as to ensure personnel are appropriately educated with the adoption of new well-developed standards in an efficient manner that minimizes costly mistakes such as the acquisition of unnecessary or insufficient equipment or usage of improper procedures. We believe IJIA is a historic and comprehensive law that warrants thoughtful implementation in order to avoid disruptive and unintended consequences. APWA wants to ensure updates in standards not only strengthen public health protections and environmental safety but are enforced appropriately. We urge that the new rules harmonize with other related requirements and allow for a thorough plan for phased implementation.

It is imperative that actions taken by the government provide clarity and relief, and not contribute to uncertainty that threatens to stall necessary improvements to our communities. APWA places a high priority on respecting and enhancing local control for infrastructure projects. This is especially pertinent at a time when the water sector is still overcoming the compounding difficulties caused by workforce shortages, lingering supply chain issues, and inflation. Public works professionals balance public health and environmental concerns with doing what is best in the communities where they live and serve.

APWA members pride themselves on being committed to public service by profession and being a trusted resource is 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 or 202-218-6727.

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Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads 'Scott D. Grayson'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Scott D. Grayson, CAE
Chief Executive Officer

A handwritten signature in black ink that reads 'B. Keith Pugh'. The signature is bold and stylized, with large, blocky letters.

B. Keith Pugh, PE, PWLF
APWA President

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

CHIEF EXECUTIVE OFFICER
Scott D. Grayson, CAE