



WATERREUSE®

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November 7, 2022

The Honorable Michael S. Regan

Administrator

U.S. Environmental Protection Agency

William Jefferson Clinton Building

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Dear Administrator Regan:

On behalf of the WaterReuse Association (WaterReuse), I am pleased to submit our comments regarding the U.S. Environmental Protection Agency's (EPA) Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances.

The WaterReuse Association is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that advocate for policies and programs to advance water recycling. WaterReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 200 businesses and organizations across the country.

As currently written, the proposed rule places liability burdens on receivers of PFOS and PFOA rather than on producers of the substances. Water, wastewater, and water recycling utilities (water utilities) stand ready to help tackle the PFAS crisis; however, putting the liability and cost of remediation on utilities ultimately burdens the local rate payer, and therefore, the American taxpayer, rather than the polluter.

The WaterReuse Association therefore urges EPA to adopt the following recommendations to ensure that the final rule is effective and fair.

Recommendation #1: WaterReuse strongly urges EPA to support the creation of a narrowly tailored exclusion from PFAS CERCLA liability for water, wastewater, and water recycling facilities acting in accordance with all applicable laws.

Water utilities provide essential public services and are not manufacturers or primary sources of PFAS. These water utilities protect public health and the environment while providing communities with essential services. Water recycling facilities meet additional public interest needs by generating alternative water supplies, supporting communities' climate resiliency and adaptation to the impacts of climate change. Under the proposed rule, these essential services could be undermined if water utilities are held liable for the costs of remediation under CERCLA, or if scarce public dollars are diverted to defend against litigation from other parties seeking to make local agencies financially responsible for cleanup costs.

Some water recycling facilities employ technologies such as nanofiltration (NF), reverse osmosis (RO), granulated activated carbon removal (GAC), ion exchange (IX), and PFAS-selective novel adsorbents to ensure a high-quality alternative supply of water. These technologies are also some of the most effective removal technologies for PFOA and PFOS. However, these treatment processes generate residuals, such as spent media, NF, RO concentrate (reject) streams that can include PFAS. Under CERCLA, water recycling facilities' management of the generated spent media and residuals may fall under "releases" and "disposals," exposing utilities to liability, and their ratepayers to the associated clean-up costs.

Similarly, wastewater utilities face this liability question and exposure when considering the management of biosolids. Wastewater treatment facilities produce biosolids as an unavoidable part of the treatment process, which are managed and properly disposed of through use as a soil amendment through direct land application or after composting, incineration, and landfill disposal. As managers of this material, which could potentially contain PFOA or PFOS, water utilities could be considered a potentially responsible party (PRP) under CERCLA, making them liable for the costs of cleanup.

The federal government must protect the public from bearing the brunt of PFAS cleanup liability. EPA should therefore support a clear, narrowly tailored PFAS exemption under CERCLA for water, wastewater, and water recycling utilities and agencies. If the Agency believes it does not already have the authority to include an exemption in the rule, we strongly urge the Agency to convey to Congress its support for such an exemption.

Recommendation #2: EPA should conduct a comprehensive assessment of the potential costs of the proposal, including direct and indirect cleanup costs.

The proposed rule fails to account for the ramifications of the designation on the water community, as evidenced by the absence of a full cost analysis. The failure to assess the impacts of cleanup liability on water utilities is a grave error, which must be corrected before the rule can proceed.

Placing the liability and cost on public utilities, ratepayers, and taxpayers undermines CERCLA's "polluters pay" model and will impact water utilities' ability to make essential capital investments to modernize infrastructure and combat climate change. Imposing CERCLA liability on water and wastewater utilities will lead to untenable cost increases and delays, significantly hampering the implementation of essential water projects needed to meet the challenge of establishing a reliable and sustainable water supply. It is essential to consider the cost this proposed rule places on local water utilities and districts; yet, EPA fails to consider this in its decision not to conduct an economic assessment of the cleanup costs and litigation costs associated with this designation.

Recommendation #3: EPA should clarify how water utilities will monitor, track, and report potential releases.

The proposed rule fails to consider how water utilities will be impacted by the decision to utilize the CERCLA default reportable quantity (RQ) for a hazardous substance of one or more pounds per 24-hour period. The CERCLA default RQ is not designed to be a metric monitored or tracked



by water utilities, and utilizing it fails to consider how water utilities can monitor effluent and biosolids concentrations to determine an RQ without validated test methods and sufficient lab capacities. It is not clear how the default RQ applies to the ongoing and ubiquitous nature of PFAS in water. EPA should clarify if, as well as how, this reporting structure would apply to water utilities.

Recommendation #4: WateReuse urges the federal government to invest in research and development for PFAS control and destruction technologies.

The proposed rule also fails to provide guidance on how to remediate and destroy PFOA and PFOS. With no guidelines on effective ways to manage or destroy PFAS-laden biosolids or residual streams (e.g. RO concentrate, spent GAC media), how are utilities to proceed? For EPA to create this designation, without a plan of action for the remediation or a prohibition on all uses of PFOS and PFOA (and any other PFAS compounds that EPA wishes to designate as hazardous substances) to prevent PFAS from continuing to enter water and wastewater utilities, the CERCLA designation becomes an ineffective tool for handling PFAS in water systems and simply passes the buck to local governments, and ultimately, ratepayers/taxpayers. The federal government needs to invest in conducting science-based research for PFAS control and destruction technologies to provide utilities with clear guidance moving forward.

As written, the proposed rule transfers the societal cost of clean-up and remediation from polluters to the public. It hampers utilities' ability to make essential capital investments, and it upends current practices of biosolids, media, and residual management and disposal. EPA needs to amend the proposed rule to focus on PFAS polluters and ensure that water, wastewater, and water recycling facilities are not held liable for remediation of PFAS contamination that may have unknowingly and unwittingly occurred in the normal course of providing essential public services.

We thank EPA for the continued engagement with the water stakeholder community and urge EPA to evaluate and consider potential adverse consequences of new rules, including implications for existing water recycling projects. WateReuse looks forward to working with you and your team to ensure that EPA funding programs effectively support water reuse projects across the United States.

Sincerely,



Patricia L. Sinicropi, J.D.
Executive Director

