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The Honorable Michael Regan, Administrator
U.S. Environmental Protection Agency
Office of Groundwater and Drinking Water (Mail Code 2822IT)
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Submitted via Federal eRulemaking Portal: https://www.regulations.gov

Re: NACWA Comments on the U.S. Environmental Protection Agency's proposed PFAS National Primary Drinking Water Regulation Rulemaking (Docket ID No. EPA-HQ-OW-2022-0114).

Dear Administrator Regan:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed PFAS National Primary Drinking Water Regulation (NPDWR) rulemaking. NACWA has specific comments regarding EPA's plan to regulate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as per the regulatory determination from March 2021, and EPA's more recent preliminary regulatory determination to target perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid and its ammonium salt (HFPO-DA, or GenX chemicals), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS) and mixtures of these PFAS chemicals as drinking water contaminants under the Safe Drinking Water Act (SDWA).

NACWA represents the interests of more than 350 municipal clean water utilities, many of which are dual systems that provide safe drinking water supplies to their respective communities in addition to treating wastewater to high quality standards before beneficially reusing or discharging the water to surface waters. Many NACWA utilities also manage municipal stormwater. Our members are public health and environmental stewards that are anchor institutions that provide a critical and essential function to their communities and strive each and every day to provide the highest level of service.

NACWA recognizes that the NPDWR is primarily an issue that impacts public water systems (PWSs) under the SDWA, and we know that our sister organizations in the water sector with substantial expertise in SDWA like the Association of Metropolitan Water Agencies (AMWA) and the American Water Works Association (AWWA) will provide EPA with valuable input during the rulemaking process.

However, the NPDWR also will impact wastewater and water recycling utilities primarily regulated under the Clean Water Act (CWA), particularly those that discharge to surface waters designated as drinking water supplies or to surface waters that overlie groundwater used or designated as drinking water supplies, as well as those that are engaged in innovative water recycling and reuse projects that sometimes require compliance with the SDWA's Maximum Contaminant Levels. EPA must also consider the potential interactions of the NPDWR with CWA regulations, including increasing imposition of PFAS monitoring requirements for clean water utilities at the same time that this NPDWR will impose new PFAS monitoring requirements on PWSs.

Further, EPA is developing ambient human health water quality standards that are based on the same reference doses developed during the NPDWR process. Clean water utilities will likely be required, in the not too distant future, to meet very stringent ambient human health water quality standards when there are no existing, affordable PFAS treatment techniques to manage or treat the significant volumes of wastewater and stormwater that clean water utilities manage on a daily basis.

NACWA's comments, outlined in more detail below, include concerns over EPA's severe underestimation of cost impacts to public water systems (PWSs), EPA's shortsightedness in not fully considering laboratory capacity and the guaranteed backlog that will occur when tens of thousands of PWSs and clean water utilities are trying to monitor and comply simultaneously, the likelihood of treatment equipment and carbon supply shortages, and, lastly, the potential impacts on greenhouse gas emissions due to energy consumption at PWSs and clean water utilities.

NACWA understands EPA's desire and need to regulate PFAS in drinking water, but it is not possible to adequately address these chemicals without also eliminating the continued production, importation, and use of these chemicals in commerce on a daily basis. To the extent EPA is looking to water utilities to be the solution to the rampant, widespread presence of PFAS by removing PFAS from our nation's water supplies, the Agency must also significantly amplify its efforts to eliminate harmful PFAS production and use in the United States and prevent commercial importation of products into the country that contain PFAS. Absent this additional source control, water treatment will merely move PFAS from one environmental media to another without controlling the problem at its source.

Therefore, other environmental statutes, like the Toxic Substance Control Program (TSCA), must be the Agency's priority for pollution prevention efforts, and EPA should prioritize elimination of nonessential PFAS uses in commerce. Otherwise, public water systems and public clean water utilities will continuously, in perpetuity, be fighting a costly treatment battle with chemicals still being used in commerce—a problem that they never created in the first place. And not having a robust and aggressive pollution prevention program to address these ubiquitous and persistent chemicals before treatment is required creates a foolish precedent and an approach that is at odds with international approaches like the Stockholm Convention on Persistent Organic Pollutants.

EPA's Proposed MCLs will Impact Clean Water Utilities Engaged in Reuse

Although the proposed NPDWR primarily impacts PWSs, NACWA is concerned that this rule will also impact clean water utilities that are taking innovative steps to recycle or reuse wastewater. Treated wastewater can be beneficially reused or recycled in myriad ways including irrigation for agriculture,

domestic irrigation for landscaping, power plant cooling, as process water for industrial, manufacturing and construction uses, wetland rehydration, municipal water supplies, and environmental restoration. A rising concern is how this drinking water rulemaking will have broader impacts that EPA has failed to analyze, including costs that may be incurred by clean water systems that are leading the way to supplement water supplies, replenish aquifers and mitigate land subsidence.

Specifically, clean water utilities that recycle, reuse, and reclaim water by directly discharging to groundwater or surface waters that are potential sources of drinking water are subject the Clean Water Act's Section 402 permitting requirements. These utilities are often required to treat the reclaimed water to meet primary and secondary drinking water standards prior to the reclaimed water being beneficially reused. Therefore, these clean water utilities will also be impacted by the proposed rule as they will most likely have to meet the new MCLs as part of their discharge requirements, independent of any consideration of receiving water conditions or downstream treatment processes associated with producing drinking water.

However, unlike the Clean Water Act, permitting flexibilities like water quality variances or changes in designated uses are prohibited when there are primary drinking water standards at play under the SDWA. Therefore, EPA should evaluate instances where clean water utilities will have to comply with the proposed rule if it is finalized. NACWA encourages EPA to consider the unique intersection of the SDWA and CWA and the impacts the proposed rule will have on some utilities that are innovatively advancing indirect and direct potable reuse—a priority of EPA's through its Water Reuse Action Plan. Additionally, EPA should provide additional flexibility in the final rule for situations, such as potable reuse, to ensure EPA and state permitting authorities have the tools similar to those used in the Clean Water Act.

EPA Grossly Underestimates the Cost Impacts to Public Water Systems

EPA estimates that regulating these PFAS chemicals will cost PWSs at least $772 million per year. EPA's more conservative cost estimate, the 7% discount rate, quantifies costs to PWSs upwards of $1.2 billion per year. EPA also acknowledged PWSs would incur between $30 and $60 million annually for disposing of spent PFAS-contaminated treatment residuals if PFAS were designated as a hazardous waste and regulated under hazardous waste disposal requirements.

Our sister drinking water association, the American Water Works Association (AWWA), has comprehensively assessed what it would cost nationally for water systems to install treatment systems to remove PFOA and PFOS, and by their calculation it would exceed $3.2 billion annually.

NACWA's understanding of the costs associated with implementation of EPA's proposed rule is consistent with AWWA's cost estimation. Many communities will have to find new water sources or install expensive advanced treatment and will require substantial rate increases to pay for increased ongoing operation and maintenance costs.

This gross underestimation by EPA of the true costs of compliance does a major disservice to the public by ignoring the rightful concerns about water affordability.

EPA continues to point to the 2021 Bipartisan Infrastructure Law's (BIL) $9 billion allotment for drinking water investments to address PFAS and other emerging contaminants as a way to cover the increased costs. While the BIL funding is a historic federal water infrastructure investment—it is a mere drop in the bucket when considering the 66,000 public water systems that will be impacted by this proposed rulemaking. Some utilities are estimating they will need to spend billions of dollars at their facilities alone to treat PFAS over the next several decades. The sheer national scope and financial impact of EPA's proposed rule on public utilities far exceeds the investments provided by the BIL, which will be allocated and exhausted in a few short years.

Around the country, communities and their ratepayers are already facing heightened affordability challenges to cover the rising costs of water, wastewater, and stormwater services. To meet the MCLs proposed by this rulemaking, communities and ratepayers will bear the brunt of the treatment costs—further exacerbating the affordability gap disproportionately affecting low-income customers.

EPA Failed to Consider Laboratory Capacity

With an increased regulatory focus on PFAS, interest has grown in understanding where these chemicals are in the environment and in what concentrations. However, laboratory capacity for EPA's approved PFAS analytical methods has not caught up with the sheer demand to investigate PFAS sources. With limited laboratories currently available to provide PFAS analysis, a significant backlog is already occurring often resulting in utilities waiting six or more weeks to receive results which can exceed permit reporting deadlines.

NACWA has serious concerns that when this rule goes into effect, there will be nearly 66,000 PWSs newly and simultaneously seeking limited laboratory analysis, further straining laboratories and creating longer wait periods for analysis and results. The demand could also significantly raise costs, which already range from around $300 to $600 per sample. On the CWA side, EPA also continues to urge states to incorporate quarterly monitoring into National Pollutant Discharge Elimination System (NPDES) permits and require utilities to routinely sample their influent, effluent, and biosolids. The federal and state regulatory push for the water sector to quantify PFAS concentrations absent the necessary laboratory capacity to do this type of sensitive chemical analysis will present a significant problem for PWSs and clean water utilities alike that need to meet legally enforceable compliance deadlines in a timely manner.

Without a PFAS Destruction Technology Readily Available, EPA's Reliance on Treatment Technique Fails to Consider Indirect Impacts

EPA's proposed rule points to granulated activated carbon (GAC), anion exchange, and reverse osmosis as possible advanced treatment techniques PWSs should consider to remove PFAS from drinking water. Outside the direct costs associated with installing these advanced treatment techniques, each raises other concerns and indirect impacts that should be more thoroughly considered by EPA.

For example, PWSs selecting GAC technology will need millions of pounds of GAC to comply with EPA's proposed regulation. Currently, there are considerable supply chain issues and long waiting

periods to purchase virgin GAC. Notably, virgin GAC has a limited life span and PWSs will continually need to replace their spent-GAC by either disposing these materials in certain hazardous waste landfills or hauling it out for regeneration or recycling. These processes have considerable indirect climate impacts including increased carbon footprints to transport GAC to disposal or regeneration sites, greater quantities of waste disposed in landfills, and tremendous energy needs to regenerate spent GAC.

The same can be true for PWSs opting to install expensive reverse osmosis or anion exchange as treatment techniques to remove PFAS chemicals from drinking water. The spent resin and concentrated PFAS liquid post-filtration will have to be dealt with—only continuing to pass the PFAS contamination burden to another entity and often making its way full circle to wastewater utilities to deal with. EPA should have considered these indirect impacts.

Conclusion

NACWA appreciates the opportunity to file these comments and hopes EPA takes time to carefully review and consider these. If EPA has any questions, please do not hesitate to contact me at 202/533-1839 or eremmel@nacwa.org.

Emily Remmel
Director, Regulatory Affairs