



Municipal Clean Water Considerations on Clean Water Act Legislative Proposals

NACWA Fact Sheet - Fall 2021

Background and Issue

The National Association of Clean Water Agencies (NACWA) represents public wastewater and stormwater agencies of all sizes nationwide. Our more than 340 municipal clean water utility members across the country provide an essential public service of managing billions of gallons of wastewater and stormwater each day, as well as actively engaging in resource recovery including treating and managing thousands of tons of nutrient-rich biosolids.

As attention to per- and polyfluoroalkyl substances (PFAS) has grown, so has focus on clean water utilities' potential role in helping prevent the release of PFAS into the environment. NACWA is closely following efforts by both the U.S. Environmental Protection Agency (EPA) and Congress to advance scientific understanding and regulation of PFAS.

Municipal clean water utilities are passive receivers of PFAS – they do not produce, manufacture or use PFAS in their operations. Utilities simply receive PFAS in the raw influent arriving at the treatment plant, which includes a mix of domestic, commercial, and industrial wastewater streams. Given the wide range of uses for these chemicals, from consumer products in our homes to the vast commercial and industrial applications, coupled with their resistance to degradation, raw wastewater arriving at a municipal treatment plant is likely to contain some level of PFAS.

Influent concentrations depend on the nature of the discharges to the treatment plant and have the potential to be significantly reduced through source control focused on industries that contribute relatively high levels of PFAS. Reducing PFAS getting into the system in the first place is key because clean water utilities were not designed to treat emerging contaminants such as PFAS, and treatment options are limited and costly.

Currently, there are no reasonably cost-effective techniques available to treat or remove PFAS in the sheer volume of wastewater managed daily by clean water utilities. PFAS present significant treatment challenges by their very design as “forever chemicals,” with most technologies unable to destroy the strong carbon fluorine bond. For this reason, NACWA strongly supports a “polluter pays” approach to addressing PFAS, with remediation and treatment costs born by those industries that profit from the production of the chemicals, not by municipal ratepayers.

NACWA supports work underway at EPA including the recent formation of its PFAS Council that will serve a critical role in leading a federal response to addressing PFAS contamination. Federal progress in understanding the fate, transport, and risk of PFAS and on any appropriate standards would provide much needed clarity and confidence with regards to how to best protect public health and the environment.

Two legislative proposals under consideration in the 117th Congress would address PFAS through the Clean Water Act. NACWA supports these efforts to advance EPA's regulatory process and appreciates that Congress has worked with the Association to refine these proposals over the past few years.

Clean Water Act Effluent Limitations Guidelines and Standards and Water Quality Criteria for PFAS (as incorporated in [H.R.2467, Sec. 17](#))

This legislation would set timelines for EPA to establish recommended human health water quality criteria, effluent limitation guidelines and pretreatment standards for certain industrial categories.

It is critical to get these issues right so that investments made result in meaningful benefits and so the public can have confidence environmental and public health protection. NACWA appreciates that this Congressional language sets timelines and guardrails to more quickly and comprehensively advance the process at EPA without bypassing the science and addresses nine industrial sectors that are known to discharge PFAS in their wastewater streams.

Effluent limitations guidelines, or ELGs, and the pretreatment program facilitate EPA targeting the highest-priority sources of chemicals of concern, significantly and effectively reducing industrial pollutants *before* they enter the municipal wastewater treatment plant or waterways.

ELGs would provide national standards for PFAS discharges on an industry-by-industry basis. Industries which discharge directly to the environment would see these standards incorporated their discharge permits, and industrial facilities which send their effluent to municipal wastewater treatment plants would be regulated through EPA's Pretreatment Program.

NACWA strongly supports EPA evaluating and as necessary developing ELGs and pretreatment standards for industrial categories discharging PFAS-containing effluent to the sewer system. This reflects a "polluter pays" approach to regulating PFAS where the industrial creators of these chemicals bear much of the cost to address them. However, municipal wastewater treatment agencies will also incur costs as they administer and enforce their local pretreatment programs.

NACWA strongly supports Congress' efforts in this legislation to provide funding to clean water utilities to help them afford the new costs that will be associated with PFAS pretreatment. This will help protect municipal ratepayers who are not responsible for putting PFAS into the environment in the first place.

Addressing PFAS through ELGs and the pretreatment program can help reduce the heaviest loading into the wastewater treatment system. But it must be recognized that a municipal clean water utility's industrial pretreatment program will not control or eliminate the domestic inputs of PFAS to the wastewater treatment plant from everyday household products such as nonstick cookware, stain resistant carpets, personal care products, waterproof clothing, and many others that are ubiquitous in American homes.

Water Quality Criteria - Under the Clean Water Act, Section 304(a), the Administrator is required to publish water quality criteria that accurately reflects the latest scientific knowledge on identifiable effects on health and the environment that might be expected from the presence of pollutants, like PFAS, in water. EPA's *2019 PFAS Action Plan* and *2020 PFAS Action Plan Update* acknowledge that the Agency is determining *if there is enough available data and research* to support Clean Water Act water quality criteria. This process of developing criteria is important and understandably takes time.

The EPA Office of Water's Health and Ecological Criteria Division is currently working to develop recommended human health water quality criteria and ambient water quality criteria for PFAS and is expected to release draft criteria for public comment and review sometime in the near future.

NACWA appreciates that the Congressional language sets a timeline for publishing water quality criteria which we understand the Agency believes is achievable. As the scientific understanding of PFAS continues to develop, it is imperative that Congress allows EPA's work to progress and that the ultimate criterion EPA recommend rely on evidence-based science and reflect the risks posed.

EPA continues to reiterate that it will not consider implementation costs or other practical realities when it develops water quality criteria and that its sole basis is on the science. Unless any eventual water quality criteria account for background levels, costs, or the need for industrial controls to be in place first, the public clean water community could be saddled with a regulatory and economic crisis – driven by Clean Water Act permit limits for PFAS they simply cannot meet nor should be responsible for.

PFAS present an acute control challenge by their very design as “forever chemicals,” with most technologies unable to destroy the strong carbon-fluorine bond. Currently, there are no cost-effective technologies available to treat or remove PFAS in the sheer volume of wastewater managed daily by clean water utilities.

Public clean water utilities simply cannot treat to a zero level of PFAS. Even if “zero” were possible, removing PFAS chemicals from municipal wastewater influent and effluent would require advanced treatment techniques such as granulated activated carbon, ion exchange, or reverse osmosis – all of which are prohibitively expensive for the substantial volume of wastewater that may need to be treated to meet any Clean Water Act water quality standards. And many of these treatment technologies create PFAS-contaminated residuals that would require their own costly treatment and management options.

NACWA supports efforts that add greater scientific confidence in developing water quality criteria recommendations as these criteria could ultimately become water quality standards adopted by state and tribal regulatory authorities and incorporated into Clean Water Act permits.

Disclosure of Introductions of PFAS (as incorporated in [H.R.2467, Sec. 13](#))

This proposal would require “owners and operators of an industrial source” that introduces any PFAS to notify the municipal clean water utility of the identity and quantity of each substance, whether the substance is susceptible to treatment by the utility, and whether the substance would interfere with the utility’s operation.

NACWA supports the goals of this provision to provide utilities critical information about contaminants entering their systems. The provision also helps advance a “polluter pays” model where the producers of these chemicals are responsible for addressing their impacts.

However, NACWA requests additional legislative language to clarify that the regulatory and legal onus of notification is on the industrial sources that are indirectly discharging to the wastewater treatment plant—not on the utility administering the industrial pretreatment program. We suggest adding language such as “a treatment works shall not face liability under this section if the owner or operator of an industrial source fails to comply with the requirements in subsection (a).”

Without such protection, if an industrial source fails to notify the municipal clean water utility, the utility itself could face subsequent downstream compliance and enforcement repercussions for discharging PFAS under the Clean Water Act.

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