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EPA aims to ease PFAS cleanup costs. Who will pay?

By Miranda Willson

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As EPA rolls back the first federal limits on “forever chemicals” in drinking water, a new test for the Trump administration is coming into focus: How will it force polluters to pay for contamination?

EPA's decision to delay and reconsider the drinking water regulation for per- and polyfluoroalkyl substances, or PFAS, will reduce costs for water utilities and consumers, Administrator Lee Zeldin said last week. It will be paired with other actions to “hold polluters accountable,” he said.

But utilities say the savings will be minimal, because the agency will still require the removal of two forever chemicals, PFOA and PFOS, from drinking water. Others worry that redoing the drinking water rule just finalized last year could embolden some entities deemed responsible for PFAS pollution to further resist paying for cleanup.

All told, the Trump administration has a daunting task ahead if it's committed to holding polluters accountable and stopping PFAS from entering water supplies — especially considering Zeldin's intent to cut EPA funding.

“We're seeing more movement toward legislation that's aimed at polluters while not going after water utilities in the same way, because we're passive receivers,” said Mike McGill, a communications consultant for water utilities. “But I haven't seen the specific details that have led me to believe that, ‘OK, it's done. The polluters will be held accountable.'”

PFAS are human-made chemicals that do not break down in the environment and cannot be filtered out of drinking water or wastewater through standard treatment. Although PFOA and PFOS have been phased out of new products, other PFAS are still used widely due to their resistance to heat, water and oil. Many of the substances are linked to serious human health problems, including cancer.

In Congress and at EPA, a debate is playing out that could draw hard lines on who is deemed liable for PFAS cleanup and who is a “passive receiver.”

While EPA's announcement last week explicitly deemed water utilities as “passive receivers,” another likely candidate is sewage treatment plants, which do not produce or use the chemicals but can release them through treated wastewater.

Environmental groups worry that explicitly exempting certain industries from PFAS liabilities under the nation's Superfund law would remove a key incentive to avoid further contaminating the land, air and water.

It would also force more cleanup costs under the law, also known as the Comprehensive Environmental Response, Compensation and Liability Act, onto a smaller number of parties, legal experts say.

“EPA and Congress will have to grapple with this difficult balancing act and come to terms with any unintended consequences,” Gregory Berlin, a partner at Alston & Bird who specializes in environmental law, said in an email.

One action EPA has committed to taking is setting standards for how much PFAS chemical plants can spew into the environment. That could help reduce PFAS costs for utilities and consumers, because it would force chemicalmakers to treat for and dispose of the chemicals themselves.

“This approach to regulatory revisions, combined with our commitment to pursue proactive technical assistance to water systems and use available tools to hold polluters accountable, prioritizes reducing exposure to PFAS in drinking water,” an EPA spokesperson said in an email.

A strong regulation on PFAS wastewater — effluent limitation guidelines (ELG) — would also help stop the spread of the toxic substances through sewage treatment systems. That's because many PFAS manufacturers send their waste to public treatment systems, rather than dispose of it themselves.

“We're very supportive of EPA moving forward with ELGs on PFAS, because once they do that and promulgate that, it'll provide the piece our members can use in their pre-treatment programs,” said Nathan Gardner-Andrews, general counsel at the National Association of Clean Water Agencies, which represents public wastewater treatment providers.

Still, advocates are skeptical about how EPA will approach the issue.

Chemical companies and business groups with close ties to the administration have pushed back on the prospect of new PFAS regulations, which they say are contrary to the Trump administration's deregulatory pledges. A slew of industry groups, for example, urged EPA last month to withdraw a water quality recommendation that could help reduce PFAS levels in rivers, streams and lakes.

“EPA is just kicking the can down the road,” said Kyla Bennett, director of science policy at the nonprofit Public Employees for Environmental Responsibility. “They promised they'd holistically address the PFAS contamination crisis, but there were no concrete steps in their press release.”

'Not your grandmother's PCBs'

What EPA's press release last week did say was that the agency will delay the deadline for when water utilities need to remove PFOA and PFOS, from 2029 to 2031.

In addition, the agency said it would reconsider regulations for four other PFAS, which health experts say could be just as toxic as the others. A new drinking water regulation will be proposed this fall.

“While EPA cannot pre-determine the outcome, it is possible that the result could be more stringent requirements,” the EPA spokesperson said.

For most water utilities, the changes laid out won't reduce the cost of filtration, said Steve Via, director of federal relations at the American Water Works Association.

“PFOA and PFOS are really the ones where there's a constant striving of installation treatments, so the implications of pulling other [maximum contaminant levels] on the cost side and benefit side are not large,” Via said. “We're basically looking at the same cost.”

If EPA weakens the maximum contaminant levels for the other four PFAS, it could also affect how cleanups occur at heavily contaminated sites.

For example, the Department of Defense looks to EPA drinking water standards when establishing treatment levels at PFAS-polluted sites, said James Kenney, secretary of the New Mexico Environment Department. The military has used PFAS-laden firefighting foam at New Mexico's Cannon Air Force Base but hasn't sought appropriations from Congress to pay for the widespread contamination there, Kenney said.

“My concern is any changes to the [drinking water rule] will further embolden or insulate the DOD in a way that's unhelpful to communities who, at least in New Mexico, since 2019, have been fighting with DOD to try to have safe and reliable drinking water,” he said.

So far, lawsuits have been the most successful avenue for water utilities, states and people affected by PFAS pollution to force companies potentially responsible to pay for PFAS cleanup.

A more effective way to ensure “polluters pay” is through stronger federal enforcement and standards by EPA, said Emily Lamond, member of environmental department at the law firm Cole Schotz. Congressional action is also essential, she said.

While water utilities might be relieved to have more time to remove PFOA and PFOS, Lamond hopes it will also give Congress a chance “to figure out who pays for it.”

“The federal environmental liability scheme was never designed for contaminants like this, meaning this ubiquitous, persistent and challenging to remove from water,” she said. “This is not your grandmother's PCBs.”

Wastewater utilities are optimistic that they'll be exempt from paying for cleanup of PFAS under the nation's Superfund law, said Gardner-Andrews of the National Association of Clean Water Agencies. Municipal solid waste companies and landfills, as well as airports, might also be deemed “passive receivers,” because none of those entities direct profit from PFAS, he said.

“There's an understanding that they'll probably be part of an exemption,” he said. “The way to look at it is, who is being forced to accept this stuff, versus who's profiting?”

Critics say explicit exemptions are unnecessary and could have unintended consequences. In some communities throughout the South, municipal sewage treatment plants are now a leading source of PFAS pollution through their discharges, said Jean Zhuang, a senior attorney at the Southern Environmental Law Center.

“These wastewater treatment plants have the regulatory authority to put the burden on industry and require them to remove these chemicals,” Zhuang said. “What we've seen is that these wastewater treatment plants have been lobbying in D.C. to protect polluters, instead of people downstream, and that's a problem.”

For McGill, the water utility consultant, the biggest barrier to removing PFAS from drinking water is lack of funding.

Last month, the Trump administration proposed an 89 percent cut in funding for EPA's State Revolving Funds, a leading source of grants and loans to improve water treatment systems. Democrats and some Republicans have pushed back on those cuts.

Nonetheless, the proposal came as a shock for water utilities, who have used the State Revolving Funds to pay for costly PFAS treatment systems, McGill said.

“If a combination comes where EPA is going to enforce and focus on polluters, and provide us with the money to deal with the pollution we have to deal with, it's a winning combination,” McGill said. “But it's a lot of language thus far.”