



TO: Environmental Protection Agency via <https://www.regulations.gov/>

RE: Docket ID No. EPA-HQ-OLEM-2019-0341

Thank you for the opportunity to comment on the U.S. Environmental Protection Agency (EPA) proposed listing of Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Wastewater Advisory Committee (WAC) provides a forum for all questions around wastewater and its treatment that affect the Massachusetts Water Resources Authority (MWRA) and its ratepayers. We are an independent group made up of utility directors, engineers, scientists, and representatives of industry and the public.

WAC shares the general concern about PFAS substances and their effect on health and the environment, and we are pleased to see EPA working to address them.

However, we concur with the National Association of Clean Water Agencies (NACWA) in its concerns that this CERCLA listing threatens to push significant costs and liabilities onto residents and communities by putting cleanup actions ahead of source control and risk assessment.

Public clean water agencies have never, and do not, produce or profit from PFAS chemicals. PFAS substances enter public clean water agency sewer and stormwater systems and the environment through industrial releases and, crucially, commercial and domestic wastewater – as these ubiquitous substances wash off household and commercial goods, clothing, and even our own bodies. Sewage treatment plants have limited control over the amount of these substances they receive. To date, EPA has **not** leveraged the tools available to help stem the flow of PFAS; EPA has not set effluent limits to control industrial PFAS discharges into waterways, set pretreatment standards so that clean water agencies can limit industrial discharges to their systems, nor has it implemented source control measures to stem the flow of these chemicals into the environment.

Yet, due to CERCLA's expansive definitions and lack of focus on control at the source, clean water agencies will be exposed to extensive liability under CERCLA as potentially responsible parties (PRPs) for PFAS contamination. A truly unprecedented amount of the nation's water and land area will fall under CERCLA's contamination purview if EPA categorically designates PFOA and PFOS as CERCLA hazardous substances, which in turn will expose clean water utilities

*WAC is a citizens' advisory committee to the MWRA on wastewater issues. We provide an independent forum for discussion of these matters. Environmental improvement, safety, cost and technical issues are all considered when formulating our recommendations.*¹ | Page

to unprecedented liability for their wastewater, stormwater, and biosolids management. This is *in spite of the fact* that public clean water agencies undertake these practices in accordance with strict state and federal environmental regulations.

The inevitable result will be that the communities served by public utilities will be paying for litigation and remediation for pollution they did not cause. This is in direct contradiction to the “polluter pays” approach EPA seeks to advance through the proposed designations. And while EPA has indicated that it does not intend to seek to cleanup costs from clean water agencies, the simple reality is that private entities – including those responsible for PFAS pollution – can and will.

WAC strongly supports a true polluter pays model; the public should not – and often cannot afford to – bear this cost in their water bills. But as proposed, these blanket designations would accomplish just the opposite.

The federal government must protect public health without shifting the costs to ratepayers for PFAS cleanup liability. EPA should therefore support a clear, narrowly tailored Congressional PFAS exemption under CERCLA for public clean water agencies acting in accordance with all applicable laws to avoid a “community pays” outcome.

First, EPA should do the following:

- Utilize its authority, including that found under the Toxic Substances Control Act (TSCA), to focus on source control – stemming the introduction of PFAS substances into the environment by both industrial and domestic sources is an essential precursor to nationwide remediation efforts;
- Undertake a comprehensive accounting of the potential costs of the proposal – including the cleanup costs the proposed designations could lead to. The agency must not simply bury its head in the sand and ignore the true ramifications of the proposal while passing the buck to local communities;
- Advance understanding of the risks from PFAS to human health and the environment to inform and advance standard setting under the Clean Water Act (CWA) and other bedrock environmental statutes;
- Invest in advancing PFAS destruction technologies;
- Work with the clean water community, states, and across its internal offices to develop PFAS strategies that achieve environmental objectives without putting local clean water agencies in untenable positions for managing and treating wastewater, stormwater and biosolids;
- Promulgate a regulation formalizing its stated position that the land application of biosolids constitutes the “normal application of fertilizer” and is therefore not a “release” subject to CERCLA liability if done in accordance with the Part 503 regulations

(and update such regulations if necessary following EPA's biosolids risk assessment process); and

- Modify its regulations at 40 CFR 117.12 to ensure that CERCLA's "federally permitted release" exemption applies to discharges from public clean water agencies at least on par with those from industrial dischargers.

WAC urges EPA to take a holistic, whole of agency approach to respond strategically to public health and environmental concerns stemming from PFAS substances without unduly burdening communities with unprecedented legal liability. Unfortunately, the proposed listing falls far short.

NACWA has laid out the detailed grounds for this listing being unreasonable and potentially unsustainably expensive for ratepayers. We agree, and urge EPA to give these concerns the high level of attention they deserve.

Please contact our executive director, Andreae Downs, at andreae.wac@gmail.com with any questions.

Sincerely,

Wayne Chouinard, PE
Chair