



May 30, 2023

U.S. Environmental Protection Agency
EPA Docket Center
Office of Ground Water and Drinking Water Docket
Mail Code 2822IT
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: PFAS National Primary Drinking Water Regulation Rulemaking; Docket ID No. EPA-HQ-OW-2022-0114

Dear Administrator Regan:

The Western Urban Water Coalition (WUWC) appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) proposed Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation Rulemaking (the "Proposed Rule").¹ WUWC is a coalition of 19 of the largest western water utilities² formed more than 30 years ago to address the unique water issues facing the western United States. Its members serve over 40 million water consumers in major metropolitan areas in seven western states, including through operation of water treatment facilities that will become subject to the Proposed Rule.

WUWC appreciates that regulation of PFAS under the Safe Drinking Water Act (SDWA) is an appropriate and necessary step to address public safety concerns with the potential for service of PFAS-contaminated drinking water. WUWC also understands that the Proposed Rule represents just one piece of a broader federal regulatory priority that EPA is addressing through several ongoing rulemaking proceedings and concurrent policy setting. WUWC shares the fundamental goal to ensure that its western water agencies and their customers are assured a public water supply that is reliable, affordable, and safe.

¹ 88 Fed. Reg. 18638 (Mar. 29, 2023).

² WUWC was established in 1992 to address the West's unique water supply and water quality challenges, and consists of the following members: Arizona (Central Arizona Project, City of Phoenix and Salt River Project); California (Eastern Municipal Water District, City of Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and City and County of San Francisco Public Utilities Commission); Colorado (Aurora Water, Colorado Springs Utilities, and Denver Water); Nevada (Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority); New Mexico (Albuquerque Bernalillo County Water Utility Authority); Utah (Salt Lake City Public Utilities and Washington County Water Conservancy District); and Washington (Seattle Public Utilities).

The proposal to adopt national primary drinking water standards for perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonate (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS) is a historic milestone in the regulation of PFAS as emerging contaminants. EPA has not issued a primary drinking water standard for a new contaminant on its own volition for the past twenty-six years. The drinking water standards adopted through this rulemaking have the potential to set a new precedent for further regulation of additional PFAS.

Given the significance of this moment, WUWC urges EPA to adopt a rule only after assuring that the standards it selects are based on best available peer-reviewed science and are feasible, as required by the SDWA. WUWC offers the following comments to EPA that animate WUWC's concern that EPA has not yet fully analyzed the legal, practical, or economic feasibility of the Proposed Rule.

I. EPA Has Not Evaluated the Proposed MCLs for Economic Feasibility

WUWC is concerned with the methods and standards used to evaluate the economic feasibility of the proposed Maximum Contaminant Levels (MCLs).³ The SDWA requires EPA to set primary drinking water standards as close to the MCL goals (MCLGs) as “feasible,” taking account of both technical feasibility and economic feasibility.⁴ Separately, the SDWA requires that EPA prepare a Health Risk Reduction and Cost Analysis (HRRCA) that considers the costs of compliance with a proposed MCL.⁵ Because the Proposed Rule is considered a significant regulatory action, EPA is required by Executive Order 12866 to prepare an Economic Analysis (EA) weighing the Proposed Rule's reasonably foreseeable costs and benefits.

In light with these latter two requirements, EPA completed an EA⁶ and HRRCA that comparatively evaluate the costs and benefits of the proposed MCLs and other less stringent potential MCLs not chosen under the Proposed Rule. EPA relies on the EA and HRRCA throughout the Proposed Rule wherever it references cost considerations. In this respect, EPA treats the requirement for economic feasibility analysis as equivalent to cost-benefit analysis and essentially procedural.

Instead, the economic feasibility analysis needed is both procedural and substantive. Procedurally, EPA cannot lawfully ignore entire categories of costs that necessarily will result from promulgation of a new MCL. Michigan recently ran afoul of this principle when a state court overturned its proposed state MCL for PFOA and PFOS. *See 3M Company v. Mich. Dep't. of Env't, Great Lakes, and Energy*, No. 21-000078 (Mich. Ct. Claims) (Nov. 15, 2022). The

³ 88 Fed. Reg. at 18668–69, 18730 (requesting public comment on EPA's evaluation of the economic feasibility of MCLs under the Proposed Rule).

⁴ SDWA § 1412(b)(4)(B); 42 U.S.C. § 300g-1(b)(4)(B); Congressional Research Service, *Regulating Contaminants under the Safe Drinking Water Act (SDWA)*, 2, 13 (Jan. 5, 2022).

⁵ SDWA § 1412(b)(3)(C); 42 U.S.C. § 300g-1(b)(3)(C).

⁶ U.S. EPA, *Economic Analysis for the Proposed Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation* (Mar. 2023), EPA-822-P-23-001 (the “EA”).

court faulted Michigan for preparing a Regulatory Impact Statement⁷ that failed to evaluate cleanup costs arising from the proposed MCL because existing Michigan law would have required the MCL to be used as a groundwater cleanup standard for aquifers contaminated with PFOA or PFOS “as a matter of law.”

Substantively, the SDWA requires EPA to find that each proposed MCL is “technically possible and affordable.” *City of Portland v. EPA*, 507 F.3d 706, 712 (D.C. Cir. 2007). California violated this principle in 2017 when a state court overturned its then-proposed MCL for hexavalent chromium under the California SDWA. *See Cal. Mfrs. and Tech. Ass’n v. State Water Res. Control Bd.*, No. 34-2014-80001850 (Super. Ct. Cal.) (May 5, 2017). While acknowledging that the state’s “cost estimates themselves [were] quite thorough,” under the SDWA, the court found “simply coming up with cost estimates for seven MCLs and then selecting one of those MCLs is not equivalent to considering the economic feasibility of complying with the MCL.” In particular, the court focused on the agency’s failure to make findings concerning the affordability of the Proposed Rule to water utility customers.

The Proposed Rule commits both of these errors. The Proposed Rule nowhere accounts for the National Contingency Plan (NCP), adopted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which will require these new MCLs to be used as cleanup standards by operation of law.⁸ WUWC has previously expressed its significant concerns to EPA and Congress that regulating PFAS could cause water utilities to incur cleanup liability at CERCLA sites, the costs of which would ultimately be borne by ratepayers. These additional costs to ratepayers of the Proposed Rule have not been considered.

Further, EPA substitutes its cost-benefit analysis for an evaluation of affordability. EPA says it interprets the applicable SDWA standard to require an evaluation of “reasonable cost based on large and metropolitan water systems,”⁹ but its reasonableness determination merely refers back to the cost-benefit analyses it prepared in the EA and HRRCA. The primary discussion of affordability contained in the Proposed Rule relates to its potential impacts on small water systems; no due consideration is given to the affordability of the Proposed Rule to ratepayers of larger, urban water systems.¹⁰

WUWC therefore recommends that EPA reconsider the proposed MCLs and determine if the proposed numeric MCLs of 4.0 ppt for PFOA and PFOS, and the HI of 1.0 for the other four covered PFAS, will be economically feasible. The analysis should consider affordability to ratepayers of water utilities of all sizes and take into account all categories of costs that will arise as a legal consequence of the Proposed Rule.

⁷ The Regulatory Impact Statement required under Michigan law is akin to the requirements for an EA and HRRCA under federal law.

⁸ 40 C.F.R. § 300.430(e)(2)(i)(B)-(C) (requiring attainment of MCLs where MCLGs have been set at zero and contaminated groundwater or surface water is designated as a current or potential source of drinking water).

⁹ 88 Fed. Reg. at 18668.

¹⁰ *Id.* at 18686–88.

II. Unavoidable Obstacles Threaten to Make Implementing the Proposed Rule Practically or Legally Infeasible

A. Treatment Options and Disposal of Residuals

WUWC has serious concerns with EPA's assumptions and conclusions regarding the feasibility of proposed treatment methods and the disposal of drinking water treatment residuals containing PFAS.¹¹ EPA states that treatment technologies using GAC and IX resin are the best available technologies for PFAS treatment based on several factors including efficiency and cost.¹² However, the Proposed Rule does not consider significant supply chain challenges that have impacted the availability of GAC and IX resin, or whether there is a sufficient supply of these materials to meet the increase in demand that would result from the Proposed Rule. EPA also fails to consider and weigh the costs of additional sampling that will need to be conducted to evaluate selected treatment media for contaminant breakthrough.

EPA also does not properly address the disposal of spent treatment media. Based upon its 2020 Interim Guidance,¹³ EPA states that "the most likely management option for spent material containing PFAS is reactivation for GAC and incineration for spent IX resin."¹⁴ EPA acknowledges that the "large volume of residuals is a well-known obstacle" and that "large volumes of spent GAC and ion exchange resin must be removed which does not lend itself to on-site storage over time."¹⁵ EPA further acknowledged the potential for PFAS-containing residuals to be characterized as hazardous waste subject to heightened disposal restrictions, and estimated the incremental costs of disposal to utilities. Nevertheless, EPA concluded that "costs are limited to the disposal of the PFAS contaminated residuals and wastes," and found that the "increase in [public water systems] costs are not significant enough to change the determination that the benefits of the rulemaking justify the costs."¹⁶

EPA has substituted its cost-benefit judgment for the feasibility determination required by SDWA. Nothing in existing law requires the owner or operator of a hazardous waste landfill to accept PFAS-containing residuals for disposal. The basis for EPA's assumption that at least some landfills will be available for disposal has not been supported.

By its own admission, EPA has also undercounted the costs if treatment residuals must be managed as hazardous. Under the Resource Conservation and Recovery Act (RCRA) and analogous state laws, water systems cannot lawfully accumulate and store hazardous waste without a permit.¹⁷ Neither the Proposed Rule nor the supporting EA appear to account for

¹¹ 88 Fed. Reg. at 18686 (discussing "management of treatment residuals"); 88 Fed. Reg. at 18731 (requesting comment on EPA's estimates for drinking water treatment residuals, regeneration, and capacity of disposal sites).

¹² *Id.* at 18684.

¹³ *Id.* at 18686 (citing EPA, *Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances* (2020)).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The default maximum unpermitted accumulation period under RCRA is 180 days. 40 C.F.R. § 262.16(b).

RCRA permit processing and compliance burdens that would apply to the storage of treatment residuals prior to offsite disposal.

Last, to the extent that the Proposed Rule assumes incineration is an available disposal option, EPA has failed to account for significant risk of legal infeasibility. The U.S. Department of Defense has placed a temporary ban on the incineration of PFAS.¹⁸ The state of Illinois has also enacted an outright ban on PFAS incineration.¹⁹ EPA itself has raised concerns over the uncertainties associated with incineration.²⁰ If restrictions upon PFAS waste incineration become more widespread, the typical costs of cleanup of PFAS-impacted sites would also increase as a foreseeable consequence of the Proposed Rule.²¹ Nothing in the Proposed Rule explains how EPA has concluded the selected MCLs are feasible given existing or prospective future legal prohibitions on one of the two “most likely management options” that EPA identified. For the foregoing reasons, WUWC has significant concerns about the feasibility assessment supporting the Proposed Rule.

B. Laboratory Capacity

WUWC is also concerned that EPA has overestimated the availability of laboratories with capacity to evaluate water systems’ compliance with the Proposed Rule.²² Based on its experience certifying laboratories as part of the Fifth Unregulated Contaminant Monitoring Regulation (UCMR5) process, EPA assumes that “the commercial market for PFAS analysis is likely to remain strong and, in fact, grow as more laboratories develop the technical capacity.”²³ EPA also assumes that, by allowing existing PFAS monitoring data to meet initial monitoring requirements, the Proposed Rule mitigates the potential for a “sudden spike in laboratory demands.”²⁴

From WUWC members’ perspective, which is informed by decades of experience with drinking water sampling and analysis, the effects of new drinking water regulations on laboratory capacity are difficult to project. EPA has approved only 53 laboratories in the country to analyze UCMR5 samples by EPA Method 533 and/or EPA Method 537.1.²⁵ Of those laboratories, seven do not

¹⁸ Off. of the Assistant Sec’y of Def. for Energy, Installations, and Env’t, *Department of Defense Incineration Moratorium Report to Congress* (Feb. 2023).

¹⁹ 415 ILCS 5/22/62 (2022).

²⁰ See e.g., U.S. EPA, *Technical Support Document - Technologies and Cost for Removing Per- and Polyfluoroalkyl Substances (PFAS) from Drinking Water* 18-19, 39 (Feb. 2023); U.S. EPA, *Best Available Technologies and Small System Compliance Technologies for Per- and Polyfluoroalkyl Substances (PFAS) in Drinking Water* 15 (2023).

²¹ U.S. Chamber of Commerce, *PFOS and PFOA Private Cleanup Costs at Non-Federal Sites* 10 (June 2022) (finding that prohibiting thermal treatment of PFAS contaminated soil would raise costs at a single National Priorities List (NPL) site by up to \$1 million and that approximately 25 percent of existing NPL sites would find onsite incineration more cost effective than disposal at a Subtitle C landfill).

²² 88 Fed. Reg. at 18667–68 (requesting public comment on the underlying assumptions that sufficient laboratory capacity will be available with the proposed MCLs; that demand will be sufficiently distributed during rule implementation to allow for laboratory capacity; and on the cost estimates related to these assumptions).

²³ *Id.* at 18667.

²⁴ *Id.* at 18667–68.

²⁵ U.S. EPA, *Laboratories Approved by EPA to Support UCMR5* (Mar. 1, 2023), available at <https://www.epa.gov/dwucmr/list-laboratories-approved-epa-fifth-unregulated-contaminant-monitoring-rule-ucmr-5>.

offer commercial services.²⁶ Further, our members have reported a decrease in the number of accredited state labs in California of approximately 25 percent since 2020.²⁷ Our members also report that recent typical laboratory turnaround times for internal and UCMR5 sampling have ranged widely from two to eight weeks. That range is likely to grow, because the Proposed Rule would increase the number of water systems obligated to test for PFAS beyond those subject to the UCMR5. Additional proposed regulations of other emerging contaminants, such as perchlorate, may soon follow that would further stress available laboratories.²⁸ EPA should not assume that all water agencies in possession of existing UCMR5 data will elect to forego further sampling for the purpose of demonstrating compliance.

C. Alternative Water Supplies

EPA requested additional comments on whether there are additional technologies which are viable for PFAS removal to the proposed MCLs, as well as any additional costs which may be associated with “non-treatment options,” such as water rights procurement.²⁹ EPA selected an economic model to evaluate costs of certain non-treatment options as part of its EA, including the construction of replacement groundwater wells in an uncontaminated aquifer or purchasing replacement water from other public water systems.³⁰

WUWC is concerned that the selected modeling does not adjust for regional differences in alternative water supply costs and availability. In the arid western United States, where the majority of WUWC members reside, periods of prolonged drought, population growth, and other stressors have constrained water supplies to a greater degree than experienced in other areas of the country.

For example, in areas of the western United States that are reliant on groundwater for a significant portion of their water supply, our members report that the costs to produce and treat groundwater to potable quality are already rising. Aquifers stressed by drought and population growth in many areas of the West have experienced significant drawdown, meaning that new or replacement water supply wells must be drilled deeper, increasing water utilities’ drilling costs and energy expenditures to pump groundwater.³¹ One of our members has reported that, where an aquifer serving as a primary water supply became contaminated with PFAS, the infrastructure and incremental operational costs of replacing that supply totaled approximately six million dollars. That capital cost translated to an approximately \$300 per person increase (\$882 per tap) over a two-year period, the effect of which is ultimately borne by ratepayers.

²⁶ *Id.*

²⁷ The California State Water Resources Control Board confirmed a decrease in the number of accredited labs during a workshop on Environmental Laboratory Accreditation Program Fees held on March 10, 2023.

²⁸ *See, e.g., NRDC v. Regan*, No. 20-1335, 2023 WL 3312344 (D.C. Cir., May 9, 2023) (overturning EPA’s withdrawal of its prior determination not to regulate perchlorate in drinking water).

²⁹ 88 Fed. Reg. at 18731.

³⁰ EA at 5-9–5-40.

³¹ *See, e.g.,* U.S. Geological Service, *Groundwater Decline and Depletion* (June 6, 2018), available at <https://www.usgs.gov/special-topics/water-science-school/science/groundwater-decline-and-depletion#overview>.

Water utilities in the West have increasingly been looking to diversify water supplies through commissioning recycled water projects, including projects supported by EPA funding opportunities. Our members report that recycled water projects can be capital intensive and difficult to achieve due to significant hurdles with permitting, environmental review, and agency staffing limitations. The Proposed Rule will only make utilities' water supply diversification strategies more expensive. To the extent that EPA's financial modeling supporting the Proposed Rule has not considered these differences, WUWC believes EPA has not conducted sufficient analysis to draw conclusions about the economic feasibility of obtaining alternative water supplies.

III. EPA's Proposed MCLs and MCLGs for PFHxS, GenX Chemicals, PFNA, and PFBS are Premature and Subject to Challenge

WUWC is also concerned that the issuance of a preliminary determination concurrent with proposed MCLs and MCLGs for PFHxS, GenX Chemicals, PFNA, and PFBS conflicts with the SDWA's established process for regulating drinking water contaminants and is vulnerable to legal challenges. The SDWA provides a two-step process for the regulation of drinking water contaminants. First, "after notice of the preliminary determination [to regulate contaminants] and opportunity for public comment," EPA must "make determinations of whether or not to regulate such contaminants."³² Second, EPA must "publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations" for each contaminant EPA determines to regulate.³³

In the Proposed Rule, EPA claims that the SDWA allows it to publish a proposed drinking water regulation concurrent with its preliminary determination to regulate.³⁴ However, the statute only allows EPA to "publish such proposed regulation concurrent with the determination to regulate," not the "preliminary determination to regulate."³⁵ EPA itself has published materials that document the normal SDWA regulatory process.³⁶ WUWC members appreciate EPA's sense of urgency to regulate PFAS under the SDWA, but EPA should follow the procedures set forth in the SDWA to reduce the Proposed Rule's vulnerability to legal challenges.

IV. Other Implementation, Monitoring, and Compliance Aspects of the Proposed Rule Warrant Additional Consideration

A. Below-PQL Samples Should be Counted as Zero

³² SDWA § 1412(b)(1)(B)(ii); 42 U.S.C. § 300g-1(b)(1)(B)(ii).

³³ SDWA § 1412(E); 42 U.S.C. § 300g-1(E).

³⁴ 88 Fed. Reg. at 18644 ("Section 1412(b)(1)(E) authorizes EPA to issue a preliminary determination to regulate a contaminant and a proposed NPDWR addressing that contaminant concurrently and request public comment at the same time.").

³⁵ SDWA § 1412(E); 42 U.S.C. § 300g-1(E); *see also Nat. Res. Def. Council v. Regan*, No. 20-1335, 2023 WL 3312344, at *1 (D.C. Cir. May 9, 2023) (stating that EPA must make a preliminary determination and then may make a final determination "[a]fter the comment period ends" for the preliminary determination).

³⁶ *See e.g.*, U.S. EPA, *SDWA Evaluation and Rulemaking Process*, <https://www.epa.gov/sdwa/sdwa-evaluation-and-rulemaking-process>.

Under the Proposed Rule's monitoring requirements, when a public water system detects a regulated PFAS at a concentration below the practical quantitation limit (PQL), the rule stipulates that the value is counted as zero when calculating the running annual average for compliance monitoring. This methodology is entirely appropriate and consistent with existing law governing compliance determinations with drinking water standards.³⁷

WUWC sees no reason to deviate from this standard practice. EPA requests comment on whether it should consider an alternative approach under which below-PQL detections would be counted at the proposed rule trigger levels (1.3 ppt for PFOA and PFOS and 0.33 of each of the HI PFAS PQLs (i.e., PFHxS=1.0, HFPO-DA=1.7, PFNA=1.3, and PFBS=1.0)).³⁸ The Proposed Rule itself is premised upon EPA's finding that the PQL is the lowest feasible quantitation level.³⁹ By contrast, the proposed trigger levels are based upon EPA's view of laboratories' calibration limits.⁴⁰ These trigger levels are in the J value range and should not be considered reliable for the purpose of calculating a running annual average for compliance, especially since the Proposed Rule already proposes to set MCLs at the lowest quantitation level.

B. The Option to Leverage Existing Monitoring Data Will Not Necessarily Accelerate Compliance or Increase Feasibility

WUWC supports EPA's proposal to allow the use of previously acquired monitoring data obtained during UCMR5 or similar state-led monitoring to satisfy initial monitoring requirements.⁴¹ WUWC partly agrees with EPA's assertion that allowing water utilities to utilize existing sampling results will result in a "significant burden reduction" and "sufficient timing to take necessary actions and ensure rule compliance."⁴²

However, EPA should not assume for the purpose of its economic feasibility evaluation that water utilities will choose to utilize existing data and forego additional sampling. Many public water systems should be expected to elect to perform additional sampling where UCMR5 or state data could result in a finding of noncompliance. As noted above, EPA's assumption that the existing data provision will result in reduced burdens for laboratories is not a foregone conclusion.

Allowing public water systems to forego one initial sampling round also will not ensure that water utilities have sufficient time to ensure compliance within the proposed three-year rollout. Our members report that treatment plant upgrades typically take longer than three years from planning to completion, partly because of water utilities' capital planning obligations to their ratepayers. WUWC members anticipate needing to gather baseline data, conduct alternatives analysis, complete preliminary and final designs, obtain permits and complete environmental

³⁷ Examples of rules adopted under SDWA that use zero when calculating locational running annual averages or running annual averages for results are less than the PQL include the Disinfectants and Disinfection Byproducts Rule, Synthetic Organic Compounds Rule, Volatile Organic Compounds Rule, and Radiological Rule.

³⁸ 88 Fed. Reg. at 18682.

³⁹ *Id.* at 18639.

⁴⁰ *Id.* at 18667.

⁴¹ *Id.* at 18683.

⁴² *Id.*

review where necessary, obtain budget approvals, and complete procurement processes before constructing and commencing operation of upgraded treatment plants capable of treating PFAS to proposed national drinking water standards. The three-year rollout also does not account for the potential cumulative effect of EPA's PFAS Strategic Action Plan and concurrent Advance Notice of Proposed Rulemaking, which envision future regulation of additional PFAS, their precursors, or groups of PFAS. The short timeline could force water utilities to invest large amounts of capital to quickly install treatment technologies to meet the standards in the Proposed Rule, only to find that additional treatment systems are required to remove additional types or precursors of PFAS. Accordingly, while allowing utilities to leverage existing data is helpful in the short-term, a longer implementation timeframe would be appropriate.

C. Less Restrictive Trigger Values are Warranted

WUWC supports setting rule triggers at more lenient values of 2.0 ppt for PFOA and PFOS and 0.50 for the HI PFAS, consistent with EPA's request for comments on alternative values.⁴³ In WUWC members' experience, trigger values of 2.0 ppt and 0.50 ppt would fall in line with laboratories' current calibration limits for measuring PFAS constituents. WUWC agrees that adopting these more lenient trigger values would potentially result in reduced burdens to water utilities in the form of less frequent reporting. Similar to other comments above, WUWC reiterates its view that partially mitigating the administrative burdens resulting from the Proposed Rule is insufficient to demonstrate that the Proposed Rule is economically feasible.

D. Monitoring Schedule Flexibility is Appropriate

WUWC also supports allowing water systems the flexibility to place entry points to the distribution system on divergent compliance monitoring schedules based on specific entry point sampling results rather than mandating that compliance monitoring frequency proceed on the same schedule for all sampling points.⁴⁴ In WUWC members' experience, individual monitoring schedules are preferable to large urban water utilities from a cost and administrability perspective. Large water utilities are likely to have to monitor compliance at several points of compliance at once. Forcing uniform monitoring schedules would deprive WUWC members of the ability to adjust to site-specific considerations and result in redundant labor expense compared to a more adjustable schedule. WUWC reiterates its general comment that partially mitigating administrative burdens resulting from the Proposed Rule is insufficient to demonstrate economic feasibility.

E. State Primacy Agencies Should Have the Authority to Grant Monitoring Waivers in Appropriate Circumstances

Last, WUWC supports an adjustment to the Proposed Rule to allow state primacy agencies to issue monitoring waivers under circumstances where a public water system observes covered PFAS for at least one year below the corresponding rule trigger level.⁴⁵ Traditional vulnerability

⁴³ *Id.* at 18730.

⁴⁴ *Id.*

⁴⁵ *Id.* at 18683.

assessments in line with existing SDWA regulations that evaluate the potential for a water system to be susceptible to PFAS contamination should be utilized to support such waivers.⁴⁶

The Proposed Rule does not currently contemplate state primacy agency waiver authority based on EPA's belief that "due to the ubiquity, environmental persistence, and transport abilities of PFAS, granting waivers based on these conditions would be challenging."⁴⁷ WUWC disagrees because the Proposed Rule would set MCLs for PFOA and PFOS at 4 ppt, the lowest feasible quantitation level according to EPA's own findings. Under the Proposed Rule, assuming it is even feasible to implement, there would be very low potential for monitoring to result in false negatives.

Moreover, while the covered PFAS are indeed ubiquitous and persistent in the environment, the mere existence of a state primacy agency waiver authority would not result in under-monitoring. State primacy agencies would share EPA's interest in protecting public health and would simply deny monitoring waiver requests under circumstances where public water systems have not demonstrated appropriate circumstances. In the unlikely event that a state primacy agency was found to consistently grant monitoring waivers in inappropriate circumstances, EPA would also have authority to revoke its grant of state primacy.⁴⁸ Therefore, WUWC does not agree with EPA that the ubiquity or pervasiveness of these PFAS substances presents a sound justification for depriving states of monitoring waiver authority that is common under the SDWA.

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Our members are experienced, on-the-ground partners with EPA and the states in the implementation of the SDWA and other related authorities. WUWC recognizes the importance of regulating PFAS in line with WUWC's mission to ensure that western water agencies and their customers are assured a public water supply that is reliable, affordable, and safe for consumption. Based on this experience, WUWC wants to work with EPA, other federal and state regulatory agencies, and members of Congress to address this important issue. We look forward to continued dialogue and collaboration on legislative and regulatory initiatives affecting PFAS and water quality.

Thank you for the opportunity to provide these comments. For more information, please contact me at (303) 739-7378 or mbrown@auroragov.org, or WUWC's national counsel, Ted Boling, at (202) 661-5872 or TedBoling@perkinscoie.com.

Very truly yours,



Marshall P. Brown
Chairman

⁴⁶ Cf. 40 C.F.R. § 141.24.

⁴⁷ *Id.*

⁴⁸ See generally 40 C.F.R. § 142, Subpart B.