WESTERN URBAN WATER COALITION

July 21, 2025

Via Email: *ward.tracey@epa.gov*

Tracey Ward
NDWAC Designated Federal Officer
Office of Ground Water and Drinking Water (Mail Code 4601)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Written Statement on EPA's National Drinking Water Advisory Council Meeting on Proposed Revisions to the PFAS National Primary Drinking Water Regulation

Dear Ms. Ward:

The Western Urban Water Coalition (WUWC)[1] appreciates the opportunity to provide this written statement on the U.S. Environmental Protection Agency's (EPA) National Drinking Water Advisory Council (NDWAC) Meeting.[2] As described in EPA's Federal Register notice, the purpose of the meeting is for EPA to consult with the NDWAC as required by the Safe Drinking Water Act (SDWA) on proposed revisions to the PFAS National Primary Drinking Water Regulation (NPDWR).[3]

WUWC was established in 1992 to address the unique water supply and water quality challenges that threaten the economic sustainability and growth of the western population centers. WUWC includes many of the largest urban water utilities in the West, which together serve more than 40 million urban water consumers in 21 major metropolitan areas across eight states. Some of our member utilities also operate wastewater, stormwater, and electric generation facilities, particularly hydropower facilities.

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[1] WUWC consists of the following members: **Arizona** (Central Arizona Project, City of Phoenix and Salt River Project); **California** (Eastern Municipal Water District, East Bay Municipal Utility 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); **Idaho** (City of Boise 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).

[2] 90 Fed. Reg. 30640 (July 10, 2025).

[3] *Id.*

WUWC appreciates that regulation of PFAS under the SDWA is an appropriate and necessary step to address the potential for PFAS to impact drinking water. WUWC also understands that the PFAS drinking water limits represent 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.

On April 10, 2024, EPA announced a NPDWR establishing legally enforceable Maximum Contaminant Levels (MCLs) for six PFAS in drinking water: PFOA, PFOS, PFHxS, PFNA, and HFPO-DA as contaminants with individual MCLs, and PFAS mixtures containing at least two or more of PFHxS, PFNA, HFPO-DA, and PFBS using a Hazard Index MCL to account for the combined and co-occurring levels of these PFAS in drinking water.[4] EPA also finalized health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for these PFAS. EPA's issuance of national primary drinking water standards for these chemicals was 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.

Subsequently, several legal challenges to EPA's NPDWR were filed in court, raising concerns that EPA did not follow the required SDWA process or use the best science and data in finalizing the NPDWR. On May 14, 2025, EPA announced it will keep the current NPDWR for PFOA and PFOS and intends to extend its MCL compliance deadlines.[5] Additionally, EPA announced its intent to rescind the regulations and reconsider the regulatory determinations for PFHxS, PFNA, HFPO-DA, and the Hazard Index mixture of these three PFAS plus PFBS to ensure the determinations and any resulting drinking water regulation follow the SDWA process.

WUWC appreciates EPA's careful evaluation of proposed revisions to the PFAS NPDWR based on the best available peer-reviewed science and data and considerations of affordability and feasibility, as required by the SDWA. WUWC offers the following comments to EPA detailing WUWC's concerns that EPA did not previously fully analyze the legal, practical, or economic feasibility of the PFAS MCLs.

I. EPA Did Not Properly Evaluate the PFAS MCLs for Economic Feasibility.

WUWC is concerned with the methods and standards used to evaluate the economic feasibility of the PFAS MCLs. The SDWA requires EPA to set primary drinking water standards as close to the MCL goals (MCLGs) as "feasible," taking account of both technical and economic feasibility.[6] 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.[7] Because the Proposed

[4] U.S. EPA, *Biden-Harris Administration Finalizes First-Ever National Drinking Water Standard to Protect 100M People from PFAS Pollution* (Apr. 10, 2024), https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-first-ever-national-drinking-water-standard.
[5] U.S. EPA, *EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS* (May 14, 2025), https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos#:~:text=On%20April%2010%2C%202024%2C%20EPA,Maximum%20Contaminant%20Levels%20(MCLs)..
[6] 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).
[7] SDWA § 1412(b)(3)(C); 42 U.S.C. § 300g-1(b)(3)(C).

Rule[8] setting the MCLs was considered a significant regulatory action, EPA was required by Executive Order 12866 to prepare an Economic Analysis (EA) weighing the Proposed Rule's reasonably foreseeable costs and benefits.

EPA completed an EA[9] and HRRCA that comparatively evaluated the costs and benefits of the proposed MCLs and other less stringent potential MCLs not chosen under the Proposed Rule. EPA relied on the EA and HRRCA throughout the Proposed Rule wherever it referenced cost considerations. In this respect, EPA treated 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. And 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).

The Final Rule[10] committed both of these errors. The Final Rule nowhere accounted for the National Contingency Plan (NCP), adopted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which requires these new MCLs to be used as cleanup standards by operation of law.[11] 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.

Further, EPA substituted its cost-benefit analysis for an evaluation of affordability. EPA says it interpreted the applicable SDWA standard to require an evaluation of "reasonable cost basis on for large and medium water systems,"[12] but its reasonableness determination merely referred back to the cost-benefit analyses it prepared in the EA and HRRCA. EPA did not appropriately consider the affordability of the MCLs to ratepayers of larger, urban water systems.

WUWC therefore recommends that EPA reconsider the MCLs in light of economic feasibility. 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 MCLs.

II. PFHxS, GenX Chemicals, PFNA, and PFBS.

A. EPA's MCLs and MCLGs for These Chemicals and Mixtures were Premature.

WUWC is also concerned that the issuance of MCLs and MCLGs for PFHxS, GenX Chemicals, PFNA, and PFBS was premature as it conflicts with the SDWA's established process for regulating drinking water contaminants. And EPA's use of the Hazard Index mixture of PFHxS, GenX Chemicals, and PFNA plus PFBS was not appropriate. The SDWA provides a two-step process for the regulation of drinking water contaminants. First, "after notice of the preliminary

[8] 88 Fed. Reg. 18638 (Mar. 29, 2023).
[9] 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").
[10] 89 Fed. Reg. 32532 (Apr. 26, 2024).
[11] 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).
[12] 89 Fed. Reg. 32532, at 32575 (Apr. 26, 2024)

determination [to regulate contaminants] and opportunity for public comment," EPA must "make determinations of whether or not to regulate such contaminants."[13] Second, EPA must "publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations" for each contaminant EPA determines to regulate.[14]

But EPA claimed that the SDWA allows it to publish a proposed drinking water regulation concurrent with its preliminary determination to regulate.[15] To the contrary, the statute only allows EPA to "publish such proposed regulation concurrent with the determination to regulate," not the "preliminary determination to regulate."[16] EPA itself has published materials that document the normal SDWA regulatory process.[17] EPA should have followed the procedures set forth in the SDWA.

Accordingly, WUWC supports EPA's proposal to rescind the regulations and reconsider the regulatory determinations for PFHxS, GenX Chemicals, PFNA, and the Hazard Index mixture of these three PFAS plus PFBS.[18] WUWC agrees that this revaluation will ensure that the determinations and any resulting regulation follow the legal process laid out in the SDWA, unlike the current MCLs and MCLGs.

B. EPA Should Consider Existing Monitoring Data for these Chemicals.

The SDWA requires EPA to rely upon the best available public health information, including the occurrence database established under the SDWA, when determining whether to regulate a contaminant.[19] Thus, EPA should consider monitoring data obtained during UCMR5 and similar state-led monitoring for PFHxS, GenX Chemicals, PFNA, and PFBS in deciding whether to set MCLs for those PFAS. For example, results of PFAS testing in California drinking water supply wells show that PFHxS and PFNA exceed 10 ng/L in only a few water sources, and GenX Chemicals have not been detected in any California water systems.[20] These data support EPA's proposal to rescind the MCLs for these PFAS.

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WUWC appreciates EPA's reconsideration of these regulations and supports EPA's plan to extend the date for public water systems to comply with the MCLs for PFOA and PFOS to 2031.

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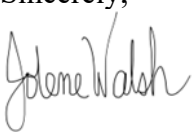
[13] SDWA § 1412(b)(1)(B)(ii); 42 U.S.C. §300g-1(b)(1)(B)(ii).
[14] SDWA § 1412(E); 42 U.S.C. §300g-1(E).
[15] 88 Fed. Reg. at 18644 ("Section 1412(b)(1)(E) authorizes EPA to issue a preliminary determination to regulate a contaminant and a proposed NPDWR addressing that contaminant concurrently and request public comment at the same time.").
[16] SDWA § 1412(E); 42 U.S.C. §300g-1(E); *see also Nat. Res. Def. Council v. Regan*, 67 F.4th 397, 399 (D.C. Cir. 2023) (stating that EPA must make a preliminary determination subject to notice and comment, of whether to regulate, and then mustmake a final determination "[a]fter the comment period ends" for the preliminary determination).
[17] *See e.g.,* U.S. EPA, *SDWA Evaluation and Rulemaking Process*, https://www.epa.gov/sdwa/sdwa-evaluation-and-rulemaking-process.
[18] U.S. EPA, *EPA Announces It Will Keep Maximum Contaminant Levels for PFOA, PFOS* (May 14, 2025), https://www.epa.gov/newsreleases/epa-announces-it-will-keep-maximum-contaminant-levels-pfoa-pfos.
[19] 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II).
[20] California State Water Resources Control Board, PFAS Regulatory Updates (June 23, 2025) at slide 9 (attached herein as **Exhibit A**).

Our members are experienced, on-the-ground partners with EPA and the states in ensuring the safety and reliability of public water supplies. Based on this experience, WUWC wants to work with EPA on this important issue. WUWC also looks forward to working together to effectively ensure that these regulations address the unique risks to public water utilities and their customers.

Thank you for the opportunity to provide these comments. If you have any questions regarding these comments, please contact me at (951) 203-2804 or walshj@emwd.org.

Sincerely,



Jolene Walsh
WUWC Chair