



American Water Works Association

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The Honorable Tom Carper
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20515

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20515

Dear Chairman Carper and Ranking Member Capito:

The American Water Works Association (AWWA) appreciates the opportunity to submit a statement for the record of today's hearing entitled "Examining PFAS as Hazardous Substances."

The water sector acknowledges the risks of certain per- and polyfluoroalkyl substances (PFAS) like perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), and we recognize our role in protecting public health and the environment. Water systems are part of the solution, and we're hopeful that Congress will continue to provide the resources that water systems need to install the necessary treatment technology.

However, the potential consequences of the Environmental Protection Agency's (EPA) proposed designation of PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is a source of deep concern.

CERCLA was built on a "polluter pays" principle, by which those responsible for polluting a site with hazardous substances would be held financially liable for cleaning it up. Unfortunately, without explicit statutory protections for water and wastewater systems, CERCLA risks becoming a "public pays" statute.

Water and wastewater systems are passive receivers of PFAS.

PFAS are now nearly ubiquitous in the environment. After EPA finalizes its National Primary Drinking Water Regulation (NPDWR) for six PFAS compounds, water systems across the country are going to have to ask ratepayers to foot the bill to remove them from their water supply. These water systems and their ratepayers did not pollute the water supply, and they did not manufacture or benefit from the use of PFAS in any way. These local communities are victims of PFAS pollution, not its source. But they will be paying to remove it.

Once that PFAS is removed from the water supply, the residuals generated by the PFAS removal processes – media in which PFAS is concentrated – are managed (e.g., regenerated, disposed of to landfill, or incinerated). In February, EPA proposed a rule under the Resource Conservation Recovery Act (RCRA) designating an initial set of PFAS as hazardous constituents. Additional rulemakings would

govern future disposal practices, but with CERCLA hazardous substance designation, risk management practice will favor managing these materials as a hazardous waste. This will entail increased usage of disposal options like hazardous waste landfills and incinerators – facilities that are limited in number and more costly to use.

Similarly, water systems generate significant volumes of water treatment residuals as part of the conventional treatment (i.e., coagulation, flocculation, and filtration). The Surface Water Treatment Rule, promulgated in June 1989, requires that virtually all drinking water treatment plants that draw from surface waters (e.g., lake, reservoir, river, ground water under the influence of surface water) employ conventional treatment. Again, the treatment process concentrates influent PFAS in these residuals. Conventional treatment residuals may be disposed of at a landfill, discharged to a wastewater treatment facility, or land applied. If, in the future, any of the sites that received these residuals become subject to CERCLA cleanup, the water system which disposed of those treatment residuals could be held responsible to pay for a portion of the cleanup.

Again, the water system did not pollute the water supply, manufacture PFAS, or benefit from its use in any way. But because the system was required to remove the PFAS to protect public health, it may now face significant financial risk in the future.

CERCLA liability is also retroactive, so this rule could put water systems at risk immediately. There are systems already treating for PFAS in order to comply with state standards. Other water systems may have unknowingly captured PFAS through their existing treatment processes. Whether deliberately capturing PFAS or collecting PFAS incidentally, these water systems have been managing and disposing of the treatment residuals in accordance with applicable laws and regulations. If PFAS are designated as hazardous substances under CERCLA, all of these systems would then be put at significant financial risk, even though their actions were legally sound and intended to protect the communities they serve.

Compounding costs add to a growing affordability crisis.

EPA is working toward implementing multiple regulatory actions this year that will add additional costs for water systems. As previously mentioned, EPA plans to finalize a new NPDWR for six PFAS compounds, perhaps as early as next month. According to a cost estimate commissioned by AWWA, installing, operating, and maintaining the treatment technology required to comply with this rule will cost between \$50-60 billion. EPA is also hoping to finalize the Lead and Copper Rule Improvements (LCRI) this year. EPA anticipates requiring communities to replace every lead service line in the country and estimates the rule to cost more than \$90 billion.

Although some of this funding may come from federal programs, the majority will likely be paid through rate increases, the impact of which will be felt most acutely by small, rural, and economically disadvantaged communities. AWWA's 2019 Water and Wastewater Rate Survey found that, even before the onset of the COVID-19 pandemic and the ensuing rise in costs, water rates were significantly outpacing inflation. Consequently, water systems are struggling to balance the need for infrastructure upgrades and new treatment technologies with a growing affordability crisis.

Importantly, these costs do not even include the added financial burden of transporting PFAS treatment residuals to hazardous waste facilities rather than solid waste landfills, which may cost up to \$3.8 billion per year. Nor do they include the significant costs water systems may incur due to litigation. Without statutory protections for water and wastewater systems, polluters will use every tool available to them

– including CERCLA’s private right of action – to shirk responsibility and offload their own cost burden onto others, even if they happen to be local communities.

Recently, major insurance companies who cover drinking water systems have begun excluding PFAS from their liability coverage. Over the next several months, we expect these exclusions to be applied industry wide. Without a statutory exemption from PFAS liability for water and wastewater systems under CERCLA, insurers believe providing this coverage is too risky. This creates even more uncertainty and the potential for catastrophic financial exposure, all of which would ultimately impact ratepayers.

EPA’s enforcement discretion policy is not a solution.

EPA has proposed using its “enforcement discretion” to focus the agency’s enforcement efforts on manufacturers and polluters rather than passive receivers like water and wastewater systems. While this is an important policy step, it does not provide the level of protection and certainty that systems need. While enforcement discretion may protect water systems from direct federal enforcement, it does not address CERCLA’s private right-of-action, which allows potentially responsible parties to bring litigation claims against other entities that are alleged to be additional sources of hazardous substances at a cleanup site. EPA cannot prohibit third parties from bringing cost recovery claims against water and wastewater systems.

EPA and others have also proposed entering into settlements with water and wastewater systems to prevent chemical companies and other polluters from offloading their cost burden onto our ratepayers. This is not a workable solution. In fact, these settlement agreements have backfired against water systems in the past. In order to settle with a water system, EPA must first name them a “potentially responsible party” under CERCLA, bringing them into the litigation. Any proposed settlement is then dependent on agreement by all parties, including other potentially responsible parties and the court. This can lead to years of litigation, tying water systems up in court for years with hundreds of thousands if not millions of dollars in legal fees. Even if the water system prevails in the end, much of the damage is already done. There are no federal programs that reimburse these legal fees, those costs fall entirely on the water system’s ratepayers.

Water and wastewater systems need statutory protections.

The only way to prevent water systems and their ratepayers from significant costs under CERCLA is to provide statutory protections, as Congress has done in the past for parties like generators of municipal solid waste, recyclers, innocent landowners and purchasers, lenders, and cleanup contractors, among others.

AWWA has endorsed S. 1430, the Water Systems PFAS Liability Protection Act, which provides protection from financial liability under CERCLA for water and wastewater systems that comply with all federal laws and regulations in the treatment and disposal of PFAS. We believe this is the most direct solution to the challenges that we face. [AWWA urges the Committee to support inclusion of S. 1430, or language that is substantially similar, into any PFAS legislative package you advance this year.](#)

What is the American Water Works Association?

The American Water Works Association (AWWA) is an international, nonprofit, scientific and educational society dedicated to providing total water solutions to protect public health and assure the

effective management of water. Founded in 1881, the association is the largest organization of water professionals in the world.

Our membership includes more than 4,500 utilities that supply roughly 80 percent of the nation's drinking water and treat almost half of the nation's wastewater. Our 50,000 members represent the full spectrum of the water community: public water and wastewater systems, environmental advocates, scientists, academicians, and others who hold a genuine interest in water, our most important resource.

AWWA is accredited by ANSI (American National Standards Institute) as a standards development organization and publishes over 170 Standards that provide valuable information on design, installation, disinfection, performance, and manufacturing of products including pipe, chemicals, storage tanks, valves, meters and other appurtenances; industry-recognized consensus prerequisites; and best practices for water utility management and operations. AWWA unites the diverse water community to advance public health, safety, the economy, and the environment.

Sincerely,

A handwritten signature in black ink that reads "G. Tracy Mehan, III". The signature is written in a cursive style with a large, stylized initial "G" and a prominent flourish at the end.

G. Tracy Mehan, III
Executive Director for Government Affairs
American Water Works Association