



June 8, 2020

Mr. David Ross  
Assistant Administrator for Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Subject: Supplemental Comments on Preliminary Fourth Regulatory Determinations  
[Docket # EPA-HQ-OW-2019-0583]

Dear Assistant Administrator Ross:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to provide supplemental comments on EPA's Preliminary Fourth Regulatory Determinations with the extension on the comment period to June 10, 2020. This extension afforded additional time to provide additional input on a critical point in the regulatory development process – whether to regulate a contaminant, or to not regulate.

ASDWA is the professional association that serves the men and women (and their staff) who lead and implement the 57 state and territorial drinking water programs. Formed in 1984 to address a growing need for state administrators to have national representation, ASDWA has become a respected voice for states with Congress, EPA, and other Federal agencies.

ASDWA's members are coregulators with EPA for the National Primary Drinking Water Regulations (NPDWRs), and this partnership has been critical for the successful implementation of all the NPDWRs. ASDWA looks forward to continuing this partnership in the years following the publication of the final Fourth Regulatory Determinations and the resultant regulation(s).

ASDWA would like to reiterate its support for the positive preliminary regulatory determinations for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). ASDWA recommends that when finalizing this regulatory determination, EPA also include positive determinations for four additional long-chain PFAS compounds with PFOA and PFOS: Perfluoronanoic acid (PFNA), Perfluorohexanesulfonic acid (PFHxS), Perfluoroheptanoic acid (PFHpA), and Perfluorodecanoic acid (PFDA). Including all six PFAS would be similar to current state regulatory approaches by Massachusetts, Vermont, Connecticut, New Hampshire, Minnesota, and Michigan. ASDWA supports EPA in using its flexibility as detailed in the *Federal Register* notice to expedite the regulatory development process based on a positive final regulatory determination for the six PFAS, so that the proposed and final regulation is developed as soon as

possible. The states need EPA to take a leadership role in regulating these six PFAS in a timely manner versus the current conundrum of different state standards.

ASDWA again recommends that EPA thoroughly consider state standards and guidelines with significantly lower PFAS levels than EPA's Health Advisory Level (HAL) of 70 parts per trillion (ppt) for combined concentrations of PFOA and PFOS. At least eight states are moving forward with their own state standards or guidelines using significantly lower PFAS levels than EPA's HAL, which will be in place well before EPA develops a final NPDWR.

ASDWA would also like to take this opportunity to expand on our previously submitted comments and provide additional recommendations for monitoring for PFOA, PFOS and other PFAS. ASDWA would like to reiterate our previous comment that monitoring waivers will need to be a significant component of the proposed regulation for PFOA, PFOS and other PFAS. ASDWA continues to support EPA's proposed alternative monitoring approach using the Standardized Monitoring Framework for regulated synthetic organic chemicals under [40 CFR 141.24\(h\)](#) as a model for the regulation for these six PFAS and for potential future PFAS MCL(s). Under this approach, monitoring frequency would be dependent on whether the contaminant has been detected above a certain "trigger level" and/or detected above an MCL, and whether a waiver from monitoring has been granted by the Primacy Agency. This alternative is consistent with current state monitoring approaches and allows Primacy Agencies the flexibility to alleviate monitoring burdens for appropriate water systems while maintaining public health protection. While there is a substantial administrative burden and cost for states to process waivers, many states currently utilize waivers and are familiar with the process, therefore the additional burden of an alternative monitoring approach can be appropriately managed by the Primacy Agencies.

ASDWA recommends that EPA NOT include in the proposed or final regulation the alternative approach to the Standardized Monitoring Framework described in the *Federal Register* notice "to require monitoring at public water systems only when data show the presence of PFAS in finished drinking water and those designated by the Primacy Agency." This proposed monitoring approach attempts to place the burden solely on state Primacy Agencies for determining if there is a need for a water system to monitor for compliance with the future regulation. This approach also relies on existing monitoring data being available or developed, potentially missing contamination at public water systems. If some Primacy Agencies were to rely solely on UCMR3 data, with the relatively high detection limits, water systems that may have PFAS contamination would likely be missed and would not be required to monitor under this proposed approach. This approach would also require the development of a new and different type of state tracking system, as well as a new process for determining susceptibility of drinking water sources that may not consistently capture the potential for water system PFAS contamination.

ASDWA supports EPA's consideration and use of the proposed alternative monitoring approach that relies on the Standardized Monitoring Framework for regulated synthetic organic chemicals as a model and utilizes waivers for appropriate water systems. ASDWA strongly recommends EPA provide appropriate guidance documents for the PFAS monitoring waivers as previously discussed.

These supplemental comments also focus on the three criteria for making positive regulatory determinations as specified in Safe Drinking Water Act (SDWA) Section 1412(b)(1)(A):

- The contaminant may have an adverse effect on the health of persons;
- The contaminant is known to occur or there is a high chance that the contaminant will occur in public water systems often enough and at levels of public health concern; and
- In the sole judgment of the Administrator, regulation of the contaminant presents a meaningful opportunity for health risk reductions for persons served by public water systems.

This statutory language leaves a lot of leeway for EPA Administrator's decision-making. Phrases such as "may have an adverse effect," "there is a high chance," and "meaningful opportunity for health risk reductions" open the door for debate on when it's appropriate to develop a national regulation, or when it's appropriate to not regulate a contaminant. For example, if the statutory language for the first criterion said "has an adverse effect on the health of persons", then the health effects data would have to be completely clear, which is almost never the case with health effects data. The use of "may" significantly changes the regulatory decision-making. One could postulate that the Agency can use a bit less clarity, i.e. to have a bit less health effects data, in order to make a positive regulatory determination in order to protect public health in the absence of clear and unambiguous health effects data. EPA's regulatory determinations under the SDWA will always be challenging as these decisions are a blend of science, policy, and judgement calls.

With the above lack of specificity in the statutory language, EPA has focused on the national numbers of systems that potentially would be impacted, generally based on the number (and percentage) of systems above the Health Reference Level (HRL). The national PFAS occurrence data from the Third Unregulated Contaminant Monitoring Rule (UCMR3) can be summarized as follows:

- PFOS – 46 systems (0.9%) greater than the HRL
- PFOA – 13 systems (0.3%) greater than the HRL

The other UCMR3 PFAS did not have a health advisory level (HAL) or an HRL, so there is not a way to compare occurrence to a health effects level of potential concern.

While some might argue that the number of systems potentially impacted based on the UCMR3 data is relatively low (59 systems), the number of states potentially impacted is high. ASDWA recommends that EPA consider the number of states potentially impacted with either equal or greater weight than the national number of systems impacted based on UCMR data in its decision making for this final regulatory determination and for future regulatory determinations. Using UCMR3 data, 23 states and two territories had systems with samples greater than the HRL for the sum of PFOA and PFOS. This is a significant number that is much larger than the above national percentages of systems. The percentages of states and territories (45%) with samples greater than the HRL for the sum of PFOA and PFOS is much greater than the national percentage of systems. Beyond UCMR3, many additional states have since found PFAS contamination in both groundwater and surface water in areas/systems that were not part of UCMR3, due to the monitoring requirement covering only systems serving greater than 10,000 people or not being included the UCMR3 sample of systems serving less than 10,000 people.

For example, the water system in Clovis, New Mexico, has seen PFAS contamination from Cannon Air Force Base in 10% of its 82 wells<sup>1</sup>. New Mexico was not one of the 23 states with UCMR3 sampling data greater than the HRL. Essentially, every state is grappling with the impacts of PFAS contamination from a wide variety of industrial and military activities when one looks at the ongoing PFAS investigations being conducted by the Department of Defense<sup>2</sup>.

A significant number of states have taken their own actions to address PFAS contamination in drinking water, groundwater, and surface water/effluent (wastewater)<sup>3</sup>. Twenty-two states have taken their own actions to reduce PFAS contamination, using a wide variety of both numbers and nomenclature:

- AGQS = ambient groundwater quality standard
- AL = private well action level
- BCL = basic comparison level
- CL = groundwater cleanup level
- GCC = Generic Cleanup Criteria
- GWQS = Groundwater Water Quality Standard
- HA = lifetime health advisory
- HNV = human noncancer value for drinking water
- HBV = health-based value
- HRL = health risk limit
- ISGWQS = Interim Specific Ground Water Quality Standard
- MCL = maximum contaminant level
- NL = notification level
- PAL = preventive action level
- PCL = protective concentration level
- RAG = remedial action guideline
- RL (CA) = Response Level (California only)
- SL = Screening Level

Additional terms used by states include Drinking Water Values and Water Quality Standard. Clearly, the public can easily become confused when confronted with these different names, acronyms, and numbers. The 22 states have developed 33 different numbers or actions to address PFAS contamination in drinking water, groundwater, and surface water/effluent (wastewater).

The number of states (22) that have taken action, combined with the 23 states and two territories with UCMR3 samples greater than the HRL for the sum of PFOA and PFOS and the likelihood

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<sup>1</sup> Clovis City Water Tests Find Toxic “Forever Chemicals” Linked to Cannon Air Force Base, New Mexico PBS, <https://www.newmexicopbs.org/productions/newmexicoinfocus/clovis-city-water-tests-find-toxic-forever-chemicals-linked-to-cannon-air-force-base/>

<sup>2</sup> Installations Conducting Assessments for PFAS Use of Potential Release, Department of Defense. [https://media.defense.gov/2020/Mar/17/2002265608/-1/-/1/1/MAP\\_OF\\_INSTALLATIONS\\_CONDUCTING\\_ASSESSMENTS\\_FOR\\_PFAS\\_USE\\_OR\\_POTENTIAL\\_RELEASE.PDF](https://media.defense.gov/2020/Mar/17/2002265608/-1/-/1/1/MAP_OF_INSTALLATIONS_CONDUCTING_ASSESSMENTS_FOR_PFAS_USE_OR_POTENTIAL_RELEASE.PDF)

<sup>3</sup> Interstate Technology Regulatory Council (ITRC) Standards and Guidance for PFAS in Groundwater, Drinking Water and Surface Water/Effluent (Wastewater), March 2020 <https://pfas-1.itrcweb.org/8-basis-of-regulations/>

that all 50 states will be impacted, clearly demonstrate the need for a national regulation that will “present a meaningful opportunity for health risk reductions for persons served by public water systems.” PFAS contamination is a national problem that needs national solutions. The states need EPA to take a leadership role in regulating these six PFAS in a timely manner versus the current conundrum of different state standards.

Finally, ASDWA would like to take this opportunity to re-emphasize its two recommended approaches for the final Fourth Regulatory Determinations and for the Draft Fifth Contaminant Candidate List (CCL5) that is scheduled to be proposed later in 2020:

1. Additional regulatory determinations should be made for CCL4 contaminants with either zero, one or two detections from national occurrence data.
2. The Draft CCL5 needs to be significantly shorter than previous CCLs to focus the research more appropriately, resulting in more informed and hopefully quicker decision-making in the future.

On behalf of the 57 states, territories and tribes that we represent and the 150,000 drinking water systems they oversee, which serve 300 million Americans, we thank you for the opportunity to provide this input to this important step in the SDWA regulatory development process. ASDWA looks forward to continuing its dialogue with EPA on the development of the resultant regulations. Please feel free to contact me (email [aroberson@asdwa.org](mailto:aroberson@asdwa.org); Phone 703-812-9507) if you would like to discuss these comments in more detail.

Sincerely,

A handwritten signature in blue ink that reads "J. Alan Roberson". The signature is written in a cursive, flowing style.

J. Alan Roberson, P.E.  
Executive Director  
Association of State Drinking Water Administrators (ASDWA)

Cc: Jennifer McLain – OGWDW  
Eric Burneson – OGWDW