



May 30, 2023

**Via Regulations.gov**

Assistant Administrator Radhika Fox  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: PFAS National Primary Drinking Water Regulation Rulemaking,  
Docket No. EPA–HQ–OW–2022–0114

Dear Assistant Administrator Fox,

Clean Water Action and Clean Water Fund respectively submit these comments on the proposed *PFAS National Primary Drinking Water Regulation Rulemaking*. They complement those we have joined with the Natural Resources Defense Council, Earthjustice, et al.

**The Proposal is Consistent with the Safe Drinking Water Act and the *PFAS Strategic Roadmap***

The proposal is consistent with the Safe Drinking Water Act (SDWA), which requires the Environmental Protection Agency (EPA) to promulgate National Primary Drinking Water Regulations (NPDWRs) for contaminants that may have an adverse effect on people’s health, that are known to occur or there is a substantial likelihood that they will occur in Public Water Systems with a frequency and at levels of public health concern, and where regulation presents a meaningful opportunity for health risk reduction. The proposal is also consistent with EPA’s *PFAS Strategic Roadmap*, in which EPA committed to “Establish a national primary drinking water regulation for PFOA and PFOS that would set enforceable limits and require monitoring of public water supplies, while evaluating additional PFAS and groups of PFAS.”<sup>1</sup>

PFOA and PFOS first appeared on the Contaminant Candidate List in 2009. Out of the tens of thousands of possible chemicals, pathogens and other potential drinking water contaminants, there was enough information on health effects and occurrence for these chemicals to be included in a list of 116 contaminants (104 chemicals and 12 microbiological contaminants) that merited further research and consideration. Since that time, information on PFOA and PFOS and their health effects and occurrence in drinking water has confirmed the need for drinking water limits, and the pace of research on other PFAS chemicals has accelerated rapidly. As EPA summarizes in the proposal, PFAS chemicals present “significant and diverse” health risks.<sup>2</sup>

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<sup>1</sup> *PFAS Strategic Roadmap: EPA’s Commitments to Action 2021-2024*, October 18, 2021, <https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024#ow>

<sup>2</sup> *PFAS National Primary Drinking Water Regulation Rulemaking*, Federal Register / Vol. 88, No. 60 / Wednesday, March 29, p. 18643

Some states have already adopted enforceable drinking water limits for some PFAS chemicals. The very existence of the *PFAS Strategic Roadmap* reflects the rapidly increasing concern about these chemicals among impacted communities, public health professionals, policymakers, researchers, water professionals, public health practitioners, and environmental and health advocates. EPA's proposal meets Safe Drinking Water Act criteria and communities nationwide need these limits to protect people's health and to address growing concern about their presence in drinking water. As noted elsewhere in these comments, aggressive action to rein in PFAS pollution and restrict use of these chemicals is desperately need to address their widespread use and the numerous ways that people are exposed to them.

### **The Preliminary Regulatory Determination and Proposed NPDWR for PFHxS, GenX, PFBA, and PFNS are consistent with EPA's Final Regulatory Determination for CCL 4**

In the March 2021 *Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List*, EPA noted that commenters on the preliminary Regulatory Determination urged the agency to develop regulations for more PFAS chemicals and/or for PFAS chemicals as a class and stated:

*EPA notes that although SDWA does not require the Agency to complete regulatory determinations for the contaminants on the fifth CCL until 2026, because of the significant progress related to developing new high-quality PFAS information, combined with the Agency's commitment in the PFAS Action Plan to assist states and communities with PFAS contaminated drinking water, EPA will continue to prioritize regulatory determinations of additional PFAS in drinking water. The Agency is committing to making regulatory determinations in advance of the next SDWA deadline for additional PFAS for which the Agency has a peer reviewed health assessment, has nationally representative occurrence data in finished drinking water, and has sufficient information to determine whether there is a meaningful opportunity for health risk reduction for persons served by public water systems.<sup>3</sup>*

EPA's proposal of preliminary Regulatory Determinations and proposed regulations for four PFAS chemicals is consistent with this statement of intention to move forward on additional PFAS chemicals if sufficient health effects and occurrence information became available.

### **Finalizing Health-Protective NPDWR is essential given on-going PFAS water pollution**

Despite widespread concern about PFAS chemicals in water, including drinking water sources, progress in regulatory and non-regulatory approaches for keeping PFAS chemicals out of water

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<sup>3</sup> *Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List*, Federal Register / Vol. 86, No. 40 / Wednesday, March 3, 2021 / Rules and Regulations, p. 12278-79

is disturbingly slow in comparison to the increased discovery of these chemicals in drinking water at very low levels and the growing knowledge base on their health effects, including at low levels. Despite the pollution prevention values that have guided United States environmental policy conceptually, the reality is that often pollution is not handled at its source and it falls on communities and water systems and their customers to handle contaminants that put public health at risk. This is certainly the case with PFAS chemicals. While it is ultimately more efficient and equitable to address PFAS water pollution at its source, the public health risks posed by PFAS in drinking water must be addressed now despite the fact that the contamination should be controlled upstream. EPA's own summary in the proposed rule of ongoing manufacture and use of PFOA and PFOS illustrates the problem.

*Domestic production and import of PFOA has been phased out in the United States by the companies participating in the 2010/2015 PFOA Stewardship Program. Small quantities of PFOA may be produced, imported, and used by companies not participating in the PFOA Stewardship Program and some uses of PFOS are ongoing (see 40 Code of Federal Regulations (CFR) § 721.9582). EPA is also aware of ongoing use of the chemicals available from existing stocks or newly introduced via imports. Additionally, the environmental persistence of these chemicals and formation as degradation products from other compounds may still contribute to their release in the environment.<sup>4</sup>*

Despite widespread perception that PFOA and PFOS are “behind us,” EPA notes that their manufacture and use continue and that they are highly persistent and can form as degradation products of other compounds. Monitoring and setting drinking water limits for PFOA and PFOS is needed to protect public health.

### **The Hazard Index Proposal for Four PFAS**

Although a hazard index approach has not been used in drinking water regulation, the concept of reducing public health risk from groups of chemicals is not new. Several NPDWRs address groups of contaminants, including regulations around disinfection byproducts and radionuclides. The concept of regulating drinking water contaminants as a class, rather than setting individual limits for every contaminant in the group or class, is also not a new one. One of the principles in EPA's 2010 Drinking Water Strategy was to “Address contaminants as a group rather than one at a time so that enhancement of drinking water protection can be achieved cost-effectively.”<sup>5</sup> EPA's Science Advisory Board noted that it is “a reasonable approach for estimating the potential aggregate health hazards associated with the occurrence of chemical mixtures in environmental media.”<sup>6</sup>

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<sup>4</sup> PFAS National Primary Drinking Water Regulation Rulemaking, Federal Register / Vol. 88, No. 60 / Wednesday, March 29, p. 18642

<sup>5</sup> “EPA Administrator Jackson Outlines New Vision for Clean, Safe Drinking Water, EPA press release, March 22, 2010

<sup>6</sup> Review of EPA's Analyses to Support EPA's National Primary Drinking Water Rulemaking for PFAS, EPA Science Advisory Board, August 22, 2022, p.91

The Hazard Index approach, also addresses the dose additive impacts of exposure to multiple PFAS chemicals at low levels in a way that individual contaminant limits would not. Exposure to mixtures of PFAS chemicals can have health impacts that exposure to the individual chemicals at those low levels would not. This is a critical issue and Hazard Index approach allows for consideration of this dose additive characteristic of exposure to groups of PFAS chemicals at low levels. As noted in the proposal, the Hazard Index approach also allows for the addition of more PFAS chemicals as information becomes available to develop the Health Based Water Concentration and to assess occurrence.

**EPA has requested comment on alternative approaches to calculating running annual averages for compliance.**

As noted in the comments we joined with NRDC, Earthjustice et al, using monitoring results above the Minimum Detection Level (MDL) to determine MCL compliance would be more consistent with existing NPDWRs and more protective of public health. The proposed procedure for calculating the running annual average in the proposal would use zero for any sample above the MDL but below the Practical Quantitation (PQL). EPA should revisit whether this aspect of the proposal since it discounts sample results that indicate the presence of regulated PFAS at levels that present public health risk.

**Decisive Actions to Address Burdens on Regulated Public Water Systems, State Primacy Agencies, and the Public**

When EPA's proposed drinking water limits are final, communities around the country will need to invest in treatment and staff to comply with the regulations. While costs and effort will be higher where PFAS chemicals are found, all community water systems and non-transient non-community water systems will need to monitor for PFAS. New federal funding available as a result of the bipartisan Infrastructure Investment and Jobs Act and the Drinking Water State Revolving Fund will help, and water systems and communities should continue to seek to hold PFAS polluters accountable for contaminating drinking water wherever possible. Nonetheless, water systems and local governments will incur additional costs, people's water bills will often go up, state primacy agencies responsible for implementation will also incur new costs, and ongoing exposure to PFAS chemicals through food, air, and other routes of exposure will continue to pose public health risk.

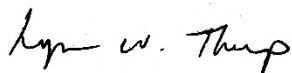
EPA should ensure that all guidance documents are comprehensive and clear and take innovative approaches to providing technical assistance, training and other support to water systems and to complement state agency implementation activities. EPA should also ensure that state agency support reflects the true costs of implementing the new regulations. The PFAS CoSTS analysis developed by the Association of State Drinking Water Administrators (ASDWA) estimates first year implementation costs for state agencies to be \$59, 889,624 and annual costs after that to be \$18,768,960.

The proposed PFAS NPDWRs are a major step forward in limiting PFAS chemicals in drinking water. EPA needs to act equally aggressively to keep PFAS out of the environment and to curb use of these chemicals in order to avoid an ongoing downstream burden on communities and public health. Using the Clean Water Act's water pollution programs to keep PFAS chemicals out of water, including drinking water sources, is one example. EPA's December 2022 direction to states to include PFAS chemicals in water pollution permits is critical.<sup>7</sup> EPA needs to accelerate all activities, including but not limited to Effluent Limitation Guidelines (ELG) development, that will enable federal and state permit writers to include PFAS chemicals in National Pollution Elimination Discharge System (NPDES) permits. EPA has also made progress on other commitments in the *PFAS Strategy Roadmap*, and should accelerate and enhance these activities to reflect the seriousness of the health and environmental risks and of the concrete downstream burden demonstrated by the proposed NPDWRs.

EPA should also consider innovation initiatives to more explicitly use authorities other than the Safe Drinking Water Act to reduce public health risk in drinking water and to avoid downstream pollution burden that should be controlled upstream. In its 2010 Drinking Water Strategy, EPA committed to using the authority of multiple statutes to help protect drinking water.<sup>8</sup> This has led to improved consultation and coordination in some cases, but not to systemic initiatives that could deliver real results to keep contaminants out of drinking water. EPA should explore more concrete initiatives to use the authority of other statutes to control PFAS chemicals and other drinking water contaminants at the source, rather than relying on treatment once they have entered a drinking water supply and passing that burden and cost on to the public. Examples could include additional requirements within the Toxic Substances Control Act (TSCA) and Clean Water Act programs for any contaminants appearing on the SDWA Contaminant Candidate List.

We appreciate the opportunity to comment on this proposal.

Respectfully Submitted,



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<sup>7</sup> [EPA Directs State to Use Water Pollution Permits to Control PFAS](#), Jennifer Peters blog post, December 7, 2022.

<sup>8</sup> *A New Approach to Protecting Drinking Water and Public Health*, EPA, March 2010.