



American Water Works  
Association

*Dedicated to the World's Most Important Resource®*



November 12, 2019

The Honorable Andrew R. Wheeler  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Federal Building  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

The Honorable Peter C. Wright  
Assistant Administrator  
Office of Land and Emergency Management  
U.S. Environmental Protection Agency  
William Jefferson Clinton Federal Building  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Dear Mr. Wheeler and Mr. Wright,

As some of the decisions on how to address per- and polyfluoroalkyl substances (PFAS) from a regulatory standpoint reach a critical phase, we want to bring to your attention certain policy issues derived from the experience and expertise of the water community.

We appreciate that you realize that PFAS comprise a broad group of chemicals with such varying characteristics that they cannot be designated as hazardous substances as a class under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). These broad characteristics also present a barrier to responsibly regulating PFAS as a class under the Safe Drinking Water Act as well.

In its PFAS Action Plan, EPA committed itself to determining if it could regulate individual PFAS, such as PFOA and PFOS, as hazardous substances. The water community supports the approach of the Action Plan. However, we must also warn the agency that identifying PFOA, PFOS, PFNA and a number of other PFAS as hazardous substances would make local communities liable under CERCLA for actions by manufacturers and industrial users of PFAS. This is an economic burden that local communities are not prepared to bear.

Some may argue that historically, EPA has not pursued actions against local communities for the cost of cleanup under CERCLA, or Superfund. However, nothing in CERCLA prevents potentially responsible parties under CERCLA from suing municipalities to contribute to cleanup

costs. In fact, such parties have sued more than 650 municipalities and counties in 12 states to force them to contribute to CERCLA cleanup costs. 1)

We applaud EPA working with individual communities where there is gross contamination by PFAS. However, we are deeply concerned about the possible implementation of regulatory measures that may provide more unwanted and unproductive impacts and costs on local governments and citizens nationwide than they provide benefits for a limited number of communities.

We realize regulatory decisions are complicated and difficult, and political pressures are growing. We once again offer the experiences and expertise of our membership as EPA wrestles with these issues. Please do not hesitate to contact any or all of our organizations and you work on PFAS issues. We are available to visit your offices to explain our concerns and explore solutions.

- 1) Environmental Law and Policy; Fifth Edition 2019; James Salzman and Barton H. Thompson; Foundation Press; p. 263.

Sincerely,

American Water Works Association

National Rural Water Association