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May 26, 2023

Filed via regulations.gov
The Honorable Michael Regan
Administrator
Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**RE: Comments on Per- and Polyfluoroalkyl Substances
National Primary Drinking Water Regulation**

Docket ID No. EPA-HQ-OW-2022-0114

Dear Administrator Regan:

The Neuse Regional Water and Sewer Authority ("NRWASA") is a public body established pursuant to Chapter 162A of the North Carolina General Statutes. NRWASA appreciates the opportunity to comment on the Environmental Protection Agency's ("EPA") proposed PFAS National Primary Drinking Water Regulation Rulemaking ("Proposed Rulemaking"). NRWASA agrees with EPA's overall goal of limiting the public's exposure to PFAS, and we believe our comments will help EPA improve its approach to its regulation of PFAS.

Initially, we note that the Proposed Rulemaking covers 117 Federal Register pages and is accompanied by a huge volume of EPA reference documents. As a public entity, NRWASA has limited resources it can expend on reviewing the Proposed Rulemaking during the relatively short public comment period. We have not been able to fully review and evaluate each of the 59 questions EPA seeks comment on in the Proposed Rulemaking. **We encourage EPA to extend the comment period or divide the Proposed Rulemaking into a series of proposed rules that would be sequential and allow more complete review and comment.** Nevertheless, NRWASA believes that the Proposed Rulemaking raises four serious concerns that we want to ensure receive comment before the published May 30 deadline.

“NRWASA Is an Equal Opportunity Provider and Employer”

COMMENTS

The Proposed Rulemaking is a welcomed step to protect public health from the harmful effects of PFAS. However, it is important to note that the regulation will have a significant cost for water utilities. It should be implemented only after careful consideration of various factors that impact cost and ability to comply.

Specifically, NRWASA's comments focus on four recommendations. EPA's Proposed Rulemaking should:

1. Address how wholesale water systems with multiple system customers should comply with the new regulations.
2. Temporarily exempt from compliance water systems not responsible for causing the PFAS pollution problem; instead, shift compliance costs to those responsible for creating PFAS pollution, including PFAS manufacturers.
3. Delay the official promulgation of a PFAS National Primary Drinking Water Standard until EPA completes its identification of all PFAS substances and the levels at which it deems such substances harmful so that water systems can treat all regulated PFAS substances effectively through a single capital upgrade to a comprehensive purification system.
4. Provide guidance and support to NRWASA and similarly-situated entities in need of significant, unfunded capital investments to comply with treatment standards under any legally enforceable level.

NRWASA'S STRUCTURE AND CONTEXT FOR CONCERNS

NRWASA supplies water to its eight member entities in Lenoir County and Pitt County, North Carolina. Our members are: Town of Ayden, Bell Arthur Water Corporation, Deep Run Water Corporation, Eastern Pines Water Corporation, Town of Grifton, City of Kinston, and North Lenoir Water Corporation.¹ As of July 2022, NRWASA's member entities supplied 41,127 active metered accounts serving approximately 125,000 people. NRWASA's smallest member serves 354 customers and its largest member serves 11,365 customers.

Each member manages its own water system and customer base independent of NRWASA and the other NRWASA members. In addition, each of the member entities draws water from the Central Coastal Plain Capacity Use Area ("CCPCUA") aquifer and treats such water at their respective plants. NRWASA draws its water from the Neuse River and

¹ Each member corporation is a North Carolina non-profit entity and the other members are municipalities.

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treats that water at NRWASA's plant. The NRWASA water is then distributed to the member entities.

NRWASA was formed as regional public entity in response to the decreasing yields of well water in the CCPCUA. As a result of the decreasing well water, the State of North Carolina stepped in to regulate the allowable rate of groundwater withdrawals. The goal of these regulations is to limit groundwater withdrawals to a sustainable rate.

In 2000, NRWASA identified a solution to meeting this challenge. The plan was to continue to use a reasonable amount of groundwater in conjunction with a new water supply, the Neuse River, that NRWASA collects, treats, and distributes.

The NRWASA water treatment plant was completed in 2008 and can produce up to 15 million gallons of water per day. In addition, over 78 miles of water transmission mains were constructed across Lenoir and Pitt Counties to carry treated water to each member entity's water distribution system.

The NRWASA surface water supply project cost at least \$146.4 million to complete. Design and construction work of the project was funded through grants and low-interest loans from the USDA, State of North Carolina, EPA, the North Carolina Rural Center, the Goldenleaf Tobacco Trust Fund, member entities, and other local sources. The bulk of the funding was through loans, and NRWASA has carefully budgeted expenditures around servicing the debt.

In addition, some members have undertaken extensive efforts to reduce their use of the aquifer by approximately 90% through reliance on NRWASA water, but all members use some groundwater. Member entities have paid increased rates over the exclusive use of well water (an average of 100%), in order to bring significant replenishment benefits to the CCPCUA aquifer.

Unfortunately, the relatively recent expenditure of such large sums of public funds did not predict the potentially devastating financial consequences of the Proposed Rulemaking.

NRWASA capital costs to comply with the Proposed Rulemaking to exceed \$30 million if it is implemented as published, and NRWASA's operating costs will increase considerably to implement the Proposed Rulemaking. The PFOS annual operating cost could eventually exceed all of NRWASA's other routine annual operating costs. This will impose tremendous unbudgeted costs and could threaten the ability of NRWASA to fulfill its mission.

1. The Proposed Rulemaking should address how the regulation applies to water wholesalers who supply multiple independent water systems.

NRWASA asks EPA to revise the Proposed Rulemaking to address how operations similar to NRWASA's multi-system approach are covered. Specifically, we recommend that EPA clarify what category of system applies to water authorities. In addition, the final rule should address the location at which a water wholesaler must test its water before supplying customers.

The Proposed Rulemaking mentions systems with more than one water supply source, but not systems with more than one customer distribution system before water reaches consumers.² NRWASA has one source of water, the Neuse River, for distribution among eight system customers, and therefore asks EPA to ensure that the final rule provides clear and workable instruction on (i) whether NRWASA must test its water before supplying the water to each of its members; (ii) whether each of NRWASA's members must test after receiving supply from NRWASA and before distributing water to consumers; or, (iii) whether both NRWASA and its members must test NRWASA water.

2. EPA should shift compliance costs to those responsible for the PFAS pollution.

The costs to NRWASA to implement the Proposed Rulemaking will be unprecedented and unbudgeted. If it is determined that the concentration of any PFAS in a public water system has exceeded a permissible concentration level, the PFAS manufacturer or discharger should be responsible for paying the actual and necessary costs incurred by the public water system to remove. The manufacturer should correct or abate the adverse effects of PFAS in the water supply system resulting from the contamination for which the PFAS manufacturer is responsible.

The Proposed Rulemaking further notes that "[c]onventional and most advanced water treatment methods are ineffective at removing PFAS."³ Not only will NRWASA need to invest in one of the technologies contemplated by the Proposed Rulemaking, it also must provide for testing, personnel, and potentially hazardous waste disposal.⁴ This, combined with NRWASA's expected up-front compliance costs and additional annual costs will pose a significant strain on NRWASA's ability to provide water for the people of Lenoir and Pitt Counties.

Shifting costs or instituting a program requiring PFAS manufacturers to pay for these costs is consistent with EPA's guidance for addressing PFAS discharges in EPA and state-

² EPA, PFAS National Primary Drinking Water Regulation Rulemaking, Federal Register Vol. 88, No. 60 page 18751.

³ *Id.* at 18684.

⁴ *See id.* at 18686.

issued NPDES permits. A similar regime should be part of the Proposed Rulemaking, or the effective date delayed until the cost issue can be addressed. NRWASA should not have to bear the full cost of treatment upgrades for contamination caused by those responsible for creating the PFAS problem. The Proposed Rulemaking should be revised to address this cost factor and to shift the cost to those responsible for creating PFAS pollution.

3. EPA should delay the Proposed Rulemaking's effective date until EPA identifies all PFAS to be eliminated from drinking water.

NRWASA asks EPA to delay the Proposed Rulemaking until it identifies all PFAS chemicals and their respective acceptable risk levels. EPA acknowledges in its Proposed Rulemaking that the six PFAS proposed for regulation "co-occur with PFAS for which the Agency is not currently making a preliminary regulatory determination. Many of these other emergent co-occurring PFAS are likely to also pose hazards to public health and the environment."⁵ Presumably, EPA is working to further study other PFAS and identify which it may regulate and at what levels. The Proposed Rulemaking states the recommended treatment strategies are "anticipated to result in removing" the other PFAS but does not specify how or the likelihood of successfully removing additional PFAS.⁶

NRWASA's primary concern is that the significant labor and capital investments it will incur to remove PFOA, PFOS, PFHxS, HFPO-DA, PFNA, and PFBS to implement the Proposed Rulemaking may not be enough to address additional PFAS EPA identifies in the coming years. NRWASA could spend millions of dollars only to have to pay for additional equipment in the near future or re-engineer solutions that could have been implemented more efficiently at the beginning of the upgrade process.

The likelihood of additions to the list of regulated PFAS under a National Primary Drinking Water Standard are real. For example, in September 2022, EPA issued a proposed rule to designate two PFAS — PFOA, PFOS, and their salts and structural isomers — as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). EPA currently is reviewing comments received on that proposed rule. However, on April 13, 2023, EPA released another Advance Notice of Proposed Rulemaking seeking input on whether to propose to designate seven *additional* PFAS, including GenX, as hazardous substances under CERCLA and whether some PFAS compounds can or should be designated as a group or category.⁷ The problem of additional, little-known PFAS is acute in North Carolina. In a 16-state study testing 41 PFAS not covered by EPA's test methods, "[s]amples collected in North Carolina

⁵ *Id.* at 18651.

⁶ *Id.*

⁷ EPA Advanced Notice of Proposed Rulemaking Addressing PFAS in the Environment, Federal Register Vol. 88, No. 71, April 13, 2023.

contained the highest levels of unmonitored PFAS."⁸ This suggests systems in North Carolina like NRWASA may face higher compliance costs in the event more PFAS are added to the six covered by the Proposed Rulemakings in the months and years ahead.

NRWASA requests EPA (a) delay the effective date of the final rule until EPA identifies how it will regulate other types of PFAS, and (b) address payment for additional upgrade costs of the addition of future PFAS.

- 4. EPA's final rule should address regional public water systems serving economically distressed counties. Such systems should have access to federal funds for capital upgrades required by the Proposed Rulemaking and the rule should not penalize those water utilities for their inability to finance massive upgrades.**

The Proposed Rulemaking references billions of dollars the federal government has set aside to assist disadvantaged communities and small systems in reducing PFAS contamination.⁹ However, NRWASA itself does not qualify for much of this assistance because it is an independent governmental entity, despite North Carolina receiving a large share of the Bipartisan Infrastructure Law funds.¹⁰ NRWASA requests EPA to delay the effective date of the Proposed Rulemaking until such funds are available for NRWASA and similarly situated entities.

NRWASA's customers live in Pitt and Lenoir Counties – both of which are in the North Carolina Department of Commerce's top tier of the most economically distressed counties in the state.¹¹ The Proposed Rulemaking estimates the total annual cost per household for a system serving between 3,301-10,000 people to be, at best, \$133 to \$235 a year.¹² NRWASA's analysis suggests the costs will be even higher for households, and the practical impact on economically distressed households will be far worse than for more urban, higher-income regions. Placing such compliance costs squarely on NRWASA and

⁸ Coastal Review, Half of PFAS in drinking water not monitored by EPA: Study, <https://coastalreview.org/2023/04/half-of-pfas-in-drinking-water-not-monitored-by-epa-study/>.

⁹ EPA, PFAS National Primary Drinking Water Regulation Rulemaking, Federal Register Vol. 88, No. 60 page 18640.

¹⁰ See, e.g., EPA, Region 4 News Releases, <https://www.epa.gov/newsreleases/biden-harris-administration-announces-61715000-bipartisan-infrastructure-law-funding-0>, [https://www.epa.gov/newsreleases/biden-harris-administration-announces-41876000-clean-water-infrastructure-upgrades#:~:text=RALEIGH%2C%20NC%20\(Feb.,State%20Revolving%20Fund%20\(CWSRF\)](https://www.epa.gov/newsreleases/biden-harris-administration-announces-41876000-clean-water-infrastructure-upgrades#:~:text=RALEIGH%2C%20NC%20(Feb.,State%20Revolving%20Fund%20(CWSRF)), and <https://www.epa.gov/newsreleases/biden-harris-administration-announces-65-billion-drinking-water-infrastructure-6>.

¹¹ N.C. Department of Commerce, County Distress Rankings (Tiers), <https://www.commerce.nc.gov/grants-incentives/county-distress-rankings-tiers#AdditionalReferenceCountyAverageWages-497>. These rankings compare counties by their average unemployment rate, median household income, percentage growth in population, and adjusted property tax base per capita.

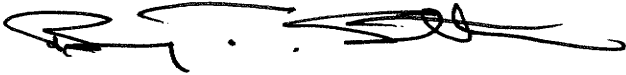
¹² EPA, PFAS National Primary Drinking Water Regulation Rulemaking, Federal Register Vol. 88, No. 60 Table 22.

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its members' customers will likely aggravate the challenging economic conditions this region of North Carolina already faces. NRWASA and its member systems will have to pass those costs down to consumers who are already living in economically challenged areas.

NRWASA respectfully requests EPA accept NRWASA's four recommendations for the Proposed Rulemaking. Incorporating each of these strategies into the Proposed Rulemaking will improve the regulation and help NRWASA eliminate PFAS substances from its water supply. EPA should ensure that the regulation is protective of public health and that it does not place an untenable burden on water utilities.

Sincerely,



Barry Sutton
Chair of the Board of Directors



Harold Herring
Executive Director

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