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PFAS Advanced Notice of Proposed Rulemaking: Association of State Drinking Water Administrators Comments on EPA Query Regarding Additional CERCLA Hazardous Determinations

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The Association of State Drinking Water Administrators (“ASDWA”) submitted June 13th comments on the United States Environmental Protection Agency’s (“EPA”) Advanced Notice of Proposed Rulemaking (“ANPRM”) titled:

Potential Future Designations of Per- and Polyfluoroalkyl Substances (“PFAS”) as CERCLA Hazardous Substances

See Docket I.D. No. EPA-HQ-OLEM-2022-0922.

EPA has proposed to designate certain PFAS as Comprehensive Environmental, Response, and Liability Act (“CERCLA”) hazardous substances. The ANPRM seeks comment on additional PFAS that should be considered for possible CERCLA hazardous substance designation.

ASDWA initially notes its support of what it describes as EPA’s approach to:

- “Get upstream of the problem”
- “Hold polluters accountable”

The organization believes that both approaches are critical for the long-term protection of both surface and groundwater sources of drinking water. Its support includes what it describes as:

... EPA’s efforts to ensure cleanup and treatment costs are borne by the responsible manufacturers and users of all PFAS.

Support is also noted for EPA’s prior proposal to designate two PFAS as CERCLA hazardous substances. Nevertheless, ASDWA puts forth its belief that:

... CERCLA is not the appropriate tool for addressing the widespread PFAS problem.

CERCLA implementation concerns identified by ASDWA members include:

- EPA’s chronic underfunding to implement CERCLA which affects the assessment and appropriation remediation of existing sites

- The process of holding polluters accountable under CERCLA to pay the total cost of cleanup can take a decade or more (ASDWA recommends EPA streamline the process)
- EPA's Office of Land and Emergency Management has not historically appropriately coordinated with other EPA program offices and notes the need to work closely with the Office of Water to ensure CERCLA actions adequately consider drinking water impacts
- EPA Office of Groundwater and Drinking Water recently proposed new Safe Drinking Water Act National Primary Drinking Water Rules for certain PFAS and a designation of CERCLA could complicate the disposal of treatment media
- Identifying responsible parties is difficult for many water systems where PFAS detections are untraceable to a specific source
- How CERCLA designations for PFAS will impact cleanup goals for contaminated sites is not clear
- An outstanding question is whether a CERCLA designation for an PFAS would negatively impact indirect potable reuse projects – therefore impacting possible future drinking water supplies
- Potential liability for water and wastewater systems for typical residual disposal practices is a significant concern since water and wastewater systems generate large volumes of residual daily

ASDWA recommends that EPA continue to address PFAS compounds under the Clean Water Act, which includes:

- Industrial, both direct and indirect
- Municipal wastewater discharges
- Biosolids

ASDWA also asks EPA to consider the barriers and challenges of disposing of spent treatment media such as Granular Activated Carbon or ion exchange media which are described as the two common PFAS removal treatment technologies.

ASDWA therefore recommends that EPA refrain from pursuing any rulemaking to add additional PFAS as CERCLA hazardous substances until it determines the impacts of that designation for PFOA and PFOS.

ASDWA describes itself as a professional association serving state drinking water programs.

A copy of the June 13th comments can be downloaded [here](#).