Regulation of Per- and Polyfluoroalkyl Substances (PFAS)

TWCA is concerned about the presence of PFAS in our communities. PFAS comprise over 4,700 man-made chemicals, some of which are highly persistent in the environment. PFAS have been manufactured and used in a variety of products and industries since the 1940s. Studies have found PFAS exposure to cause serious human health effects. Growing concerns over PFAS contamination in water supplies, and potential health effects, is driving new regulatory requirements that will affect water, wastewater, and biosolids management in Texas. In September 2022, EPA proposed that Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS) (types of PFAS) be designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund). Then in March 2023, EPA proposed national drinking water standards for six types of PFAS, including PFOA and PFOS. EPA expects to finalize both these proposed rules in early 2024.

Source Control of PFAS. Controlling PFAS sources is the most effective method of addressing PFAS concerns. Every effort should be made to facilitate voluntary removal of PFAS from commercial products. This effort should also address proper disposal of existing PFAS-containing materials, including the clean-up of PFAS contamination. Focus on PFAS source control, and clean-up by PFAS sources, ensures that water and wastewater utilities, which are simply receivers of PFAS, are not liable for contamination—either existing (such as in previously disposed of biosolids) or future—nor overly burdened with addressing contamination.

PFAS Liability. While CERCLA hazardous substance designations are intended to ensure that parties are held responsible for the cleanup of contaminated sites, the unintended consequence of this designation is to include passive receivers of contaminated material, like water and wastewater systems, in the possible set of parties that will be held legally and financially responsible for a third-party's actions. Because of this, water and wastewater systems could face staggering financial liability if Congress does not act. Ultimate responsibility for the cleanup of contaminated sites and the treatment of drinking water containing PFAS should be placed on the parties responsible for releasing poPFAS into the environment. Water and wastewater utilities that comply with all applicable laws, and who neither produce nor profit from PFAS, should be provided a statutory exemption from CERCLA liability to protect the utilities and water customers from bearing the costs of cleanup.

Treatment of PFAS. If required to address treatment and removal of PFAS from water, wastewater, and biosolids, utilities should be awarded sufficient funding for such efforts. Adequate funding should also be made available to utilities for clean-up of PFAS in biosolids already disposed of, if required to undertake such clean-up. This funding is critically important for public water suppliers in light of 3M and DuPont, primary manufacturers of PFAS, seeking to limit their financial liability for PFAS through the settlement of class action suits on contamination of drinking water supplies. These settlements are expected to be wholly insufficient in addressing PFAS contamination in drinking water supplies. **The national cost of drinking water treatment for PFAS is expected to be $3-6 billion annually.**[1]

Improve PFAS Research, Monitoring, and Funding. To appropriately address PFAS contamination, additional resources must be dedicated to monitoring and research at both the state and federal levels. EPA should support additional research for treatment of PFAS in drinking water and wastewater that results in practicable and cost-effective solutions for water and wastewater utilities. Additional resources should be set aside for enhanced monitoring and research of PFAS to appropriately identify the source, transport and environmental

[1] American Water Works Association, *WITAF 56 Technical Memorandum* 32 (2023).

fate of these chemicals. Funding should also be dedicated to research on (1) health effects data on PFAS that pose a human health risk; (2) analytical methods to measure levels of PFAS in environmental samples (natural waters, wastewaters, soil, finished water); and (3) technologies to cost-effectively remove problematic PFAS from drinking water and wastewater to address public health concerns.

Regulatory Standards for PFAS.

- General: EPA should regularly review and evaluate toxicological research to ensure that risk-based PFAS regulations, both developing and developed, are based on the nationally supported, best available data. EPA should also seek to better utilize existing state and federal statutory authorities to stop PFAS from entering surface water and groundwater, including the Toxic Substances Control Act (TSCA), Clean Air Act, and Resource Conservation and Recovery Act.
- Drinking water: Upon adoption of final drinking water regulations for PFAS, EPA should provide immediate assistance to water utilities in communicating these decisions to the public. Many utilities in the U.S. already experience significant pressure by the public to treat to non-detect, even in the absence of a health-based mandate to do so.
- Wastewater: EPA should use the information they have gathered to provide practicable recommendations to state agencies regarding where PFAS is suspected and monitoring should occur. Because low levels of PFAS likely occur in many large municipal wastewater discharges, EPA should provide guidance to wastewater utilities regarding how to communicate PFAS detections to the public.
- Biosolids: If EPA sets regulatory levels for any PFAS in biosolids, EPA should simultaneously provide guidance for how to communicate lower levels of PFAS to agricultural recipients of biosolids and the public.
- Hazardous wastes: EPA should adhere to the "polluter pays" principle in Superfund law and avoid shifting to a "community pays" approach that will result if EPA fails to establish exemptions for water and wastewater utilities from CERCLA liability. When EPA finalizes its proposed rule to designate PFOS and PFOA as hazardous substances under CERCLA, and water and wastewater utilities are not exempt from CERCLA liability, EPA should work with these utilities to identify sound legal and funding strategies to minimize the financial impact to such utilities.

Requests of Congress:

- **Enact legislation for a CERCLA exemption.** Exempt water and wastewater utilities from PFAS liability under CERCLA except when utilities have released the chemicals as a result of gross negligence or willful conduct.
- **Refrain from enacting legislation to regulate PFAS.** Continue to defer to EPA's technical expertise in establishing PFAS regulations, and the associated regulatory stakeholder process.
- **Enact legislation to fund PFAS clean-up.** Provide funding to water and wastewater utilities to specifically address PFAS contamination in water, wastewater, and biosolids.
- **Enact legislation to fund PFAS research.** Fund research on: (1) health effects data on PFAS that pose a human health risk; (2) analytical methods to measure levels of PFAS in environmental samples; and (3) technologies to cost-effectively remove problematic PFAS from drinking water and wastewater to address public health concerns.

Requests of EPA:

- Improve monitoring and research of PFAS.
- Utilize national science for establishing risk-based PFAS standards under multiple state and federal statutory authorities.
- Provide guidance regarding how to communicate the presence of low levels of PFAS in drinking water, wastewater and biosolids.
- Identify wastewater influent categories where PFAS would reasonably be suspected.