

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 associations between PFAS exposure and certain cancers, thyroid diseases, immune suppression and other health effects. Growing concerns over PFAS contamination in water supplies, and potential public health effects, is driving new regulatory requirements that may affect water, wastewater, and biosolids management in Texas. Most recently, in September 2022, EPA proposed that PFOA and 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).

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.

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. **The national cost of drinking water treatment for PFOA and PFOS is expected to be more than \$50 billion over the next two decades.**

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

- **Drinking water:** EPA should not propose drinking water regulations until robust toxicological information exists to define safe, and unsafe, exposure levels. Once EPA defines those levels and adopts regulations, 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. If 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.
- Other regulations: EPA should undertake a robust scientific review of the toxicological research that is available and rely only on research that is nationally supported to establish risk-based standards for PFAS. 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. EPA should not rely solely on the Safe Drinking Water Act (SDWA) to address PFAS contamination. Drinking water standards operate more as a failsafe for when other best available business practices and regulatory barriers have failed.

KEY TALKING POINT: The national cost of drinking water treatment for PFOA and PFOS is expected to be more than \$50 billion over the next two decades.

Requests for 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 for 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