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GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

May 30, 2023

EPA Docket Center
Office of Ground Water and Drinking Water Docket
Mail Code 2822IT
1200 Pennsylvania Avenue NW, Washington, DC 20460

Submitted electronically to: <https://www.regulations.gov/>

RE: Preliminary Regulatory Determination and proposed rule for PFAS National Primary Drinking Water Regulation Rulemaking Docket ID No. EPA-HQ-OW-2022-0114

Dear Administrator Regan,

The New Mexico Environment Department (NMED) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on the *Preliminary Regulatory Determination and proposed rule for PFAS National Primary Drinking Water Regulation Rulemaking* under the authority of the Safe Drinking Water Act (SDWA). EPA published the preliminary determination in the Federal Register on March 19, 2023, Docket ID No. EPA-HQ-OW-2022-0114.

NMED serves as a coregulator with EPA for the National Primary Drinking Water Regulations (NPDWRs) and is responsible for overseeing their implementation across 1,076 active public water systems in New Mexico. Protecting New Mexico's drinking water quality for present and future generations is fundamental to NMED's mission.

NMED supports EPA's positive regulatory determination for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), Perfluorononanoic acid (PFNA), Perfluorohexane sulfonate (PFHxS), Perfluorobutane sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX). The absence of an NPDWR for these compounds has resulted in varying or nonexistent regulatory actions among states, despite their occurrence in public drinking water systems across the country.


While NMED supports EPA's positive regulatory determination for these PFAS chemicals, NMED also believes that it is important for EPA to consider a number of factors that may impact effective implementation of this rule by local public water systems and state primacy agencies like NMED.

As a member of the Association of State Drinking Water Administrators (ASDWA), NMED also supports ASDWA's comments regarding EPA's Preliminary Regulatory Determination and proposed rule for PFAS National Primary Drinking Water Regulation Rulemaking. Similarly, NMED supports the Environmental Council of the States' (ECOS) comments on the proposed rule. The ASDWA and ECOS letters are attached to this letter.

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NMED appreciates this opportunity to comment on this regulatory determination. NMED encourages EPA to work hand in glove with states like New Mexico to ensure effective implementation of drinking water regulations and ensure a safe and sustainable drinking water supply for our communities.

Sincerely,



James C. Kenney
Cabinet Secretary

Attachment (3)

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham
Sydney Lienemann, Deputy Cabinet Secretary of Administration, NMED
Bruce Baizel, General Counsel, NMED
John Rhoderick, Director, Water Protection Division, NMED

Attachment 1:

Comments on EPA's Proposed PFAS National Primary Drinking Water Regulation May 30, 2023

Introduction

The EPA has published a proposed rule designating four PFAS¹ as contaminants under the Safe Drinking Water Act, establishing a National Primary Drinking Water Regulation (NPDWR) and health-based Maximum Contaminant Level Goals (MCLG) for these four PFAS and their mixtures as well as for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). PFAS have been used in food packaging, cleaning products, stain resistant carpet treatments, nonstick cookware and firefighting foam, among other products. Due to the widespread use of PFAS and the fact that they bioaccumulate, they are found in the bodies of people and animals all over the world, as well as ground and surface water and other natural resources.

The health effects of these contaminants are clear. Scientific research indicates that some PFAS affect reproductive health, increase the risk of some cancers, affect childhood development, increase cholesterol levels, affect the immune system, and interfere with the body's hormones. EPA and others have presented extensive documentation on PFOA and PFOS toxicity, mobility, persistence, and widespread presence in the environment, which result in substantial danger to public health and welfare and to the environment, including animals.

EPA, like states, must continue to move quickly to protect communities from these toxic chemicals. This rulemaking and the many other actions underway by EPA are necessary to ensure federal, state, tribal and local governments have the regulatory framework, tools, and resources needed to protect human health and the environment. Throughout development and implementation of the final rule, EPA must lead the way for states, tribes, and local governments with strong risk communication resources and tools. Federal support for effective risk communication about PFAS contamination and cleanup must address the needs of minority and disadvantaged communities and support environmental justice and equity across all communities impacted by PFAS.

State Staffing Resources and Overall Burden

Grants to states across EPA's portfolio should include additional funding to address known and unknown PFAS, PFOA and PFOS impacts and associated costs for compliance with the proposed regulation. EPA must meet the potential widespread prevalence of these compounds with appropriate funding increases and not simply pass these costs to states and communities.

Many states, including New Mexico rely heavily on federal grant dollars to help implement our state drinking water regulatory programs, specifically, the federal Public Water System Supervision (PWSS). Between 2015 and 2021, the last year for which award amounts are finalized, NMED's PWSS grant increased by 7% (from \$2,055,000 to \$2,192,000), lagging well behind inflation of nearly 12% in the same period. Beyond inflation, grant dollars are being stretched more thinly with increasingly complex and demanding workloads resulting from implemented regulations such as the Revised Total Coliform Rule,

¹ The proposed rule addresses perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (also known as a GenX chemicals), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS), and mixtures of these PFAS.

Disinfection Byproduct rules, Lead and Copper Rule Revisions, proposed Consumer Confidence Rule revisions and now PFAS regulatory determinations. The overall resources required to effectively implement these rules have increased over the years; however, the federal grant dollars have not kept pace with those resource requirements.

Additionally, in New Mexico, almost 80% of our community water systems serve populations of less than 1,000 people. These small community water systems are often disadvantaged and underserved and require a significant amount of assistance from our drinking water program to achieve and maintain compliance with increasingly stringent drinking water regulations. Lastly, states are managing a significant increase in overall workloads due to additional factors such as the Bipartisan Infrastructure Law funding through the State Revolving Fund programs while facing retirements of technical staff and trained operators, putting states in the unreasonable and unsustainable position of being forced to do more with less.

Guidance and Training

EPA must develop a robust guidance, training, and implementation plan that includes tools for assisting public water systems and state primacy agencies for achieving and maintaining compliance with these proposed regulations, including solids generated during the treatment process. NMED also believes that these guidance, training, and implementation materials must be developed in a manner that allows small and underserved community water systems to easily understand and effectively implement the proposed regulations. The development of these materials should be completed prior to the promulgation of the final rule. This is the first newly regulated drinking water contaminant in over twenty years. States and water systems need clear guidance from EPA on implementing the new rule.

Risk Communication

As a result of several highly publicized drinking water contamination events across the country, the general public appears to be increasingly skeptical about the safety of community drinking water supplies. NMED believes that EPA has a responsibility to work with state primacy agencies ahead of final rule publication to develop and disseminate risk communication materials to the public and water systems and their customers. NMED recommends that EPA work with state primacy agencies, state departments of health, and organizations such as ASDWA to develop robust risk communication materials to ensure that public water systems and their customers fully understand the health impacts of PFAS and other drinking water contaminants in their drinking water supply. This should include easily understood public notice templates that public water systems and state primacy agencies can use to communicate information to public water system consumers.

PFAS Treatment Concerns

Complying with most drinking water contaminants can generally be achieved with modern treatment technologies. However, these treatment technologies are becoming increasingly unaffordable for many community water systems, especially those that are considered small and/or disadvantaged. These proposed PFAS regulations may require small and disadvantaged communities to fund and construct expensive advanced treatment systems in order to achieve compliance. Additionally, the overall operation and long-term maintenance of these advanced treatment systems may also require advanced level operations and increased utility rates that many small and disadvantaged communities may not be able to afford. On top of that, many community water systems are already struggling with failing infrastructure

and may not have the capacity to fund multiple high dollar projects at the same time. NMED highly recommends that EPA consider a significant amount of easily accessible low cost, or no cost funding options for community water systems that may need advanced treatment or advanced level certified operators.

Small Systems

Approximately 80% of public water systems in New Mexico are small, serving populations of under 1,000 people and often operate with volunteer boards, administrators, and in some cases, operators. Small system compliance with the proposed PFAS MCL, regardless of the final value of the MCLs, will be challenging. Most small groundwater systems currently have minimal treatment installed. For those systems with no alternative source water, installation of one of the best available technologies may present a variety of challenges if the current treatment only consists of a chemical feed and a pressure tank. The entire water sector is facing workforce shortages, especially for certified operators, and this issue is particularly prevalent at small and disadvantaged water systems. The challenges around hiring and retaining operators will continue to be exacerbated as systems install treatment to comply with the PFAS MCL. NMED highly recommends that EPA consider providing specific funding to community water systems and state primacy agencies to recruit, train, and retain a new generation of water and wastewater utility operators that will lead the effort in providing a safe and sustainable supply of drinking water for their communities.

Compliance

NMED recommends that EPA allow flexibility in the compliance deadlines to ensure feasibility, similar to the flexibility offered as a part of the final arsenic regulation that allowed staggered compliance deadlines depending on system size.

NMED appreciates and is supportive of EPA's efforts to regulate these forever chemicals and wants to work with EPA to achieve enhanced protection of public health through implementation of the more stringent regulations. However, if EPA doesn't address concerns being raised by state agencies and other organizations, the ability to successfully implement the regulations will be limited.

Lab Capacity

NMED requests that EPA address lab capacity issues ahead of final regulations including availability of existing labs certified to analyze PFAS and the logistics of sampling and transport in primarily rural states. Additionally, costs for training and certifications of laboratory personnel and sampling personnel, physical facility expansion requirements, and equipment procurements need to be factored into EPA's cost analysis.

The ability of labs to report their results electronically needs to be considered as additional costs will be incurred and resources required.

Other Concerns

NMED strongly encourages EPA to directly engage with states and organizations to develop guidance on treatment technologies and invest funding into evaluations of these treatment technologies to support state programs.

NMED recommends that EPA develop guidance for water systems considering their options to address the PFAS MCL, both treatment and non-treatment. EPA should include some of the above considerations in that guidance material to ensure systems fully evaluate their options and understand the challenges associated with the various options. EPA should include considerations for regionalization/consolidation and utilize the opportunity to encourage systems that are currently not viable to connect to viable water systems.

EPA should prioritize research on waste disposal methods and move to address PFAS waste disposal utilizing a regulatory mechanism as soon as possible to ensure that PFAS contamination isn't being moved from one media type to another. ASDWA recommends that EPA finalize the Agency's Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances ahead of the final rule.