EPA's National Water Proposal on PFAS: A Point of National, Regional and Local Contention

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As the tug of war between governmental agencies and the scientific community rages on concerning per- and polyfluoroalkyl substances (PFAS), the American Chemistry Council (ACC) has weighed in with a critique of the Environmental Protection Agency's (EPA) proposed regulation of these "forever chemicals."

On March 14, 2023, EPA announced the proposed National Primary Drinking Water Regulation (NPDWR) for six PFAS chemicals. While the proposed NPDWR does not require action until it is finalized; EPA expects to finalize this regulation by the end of 2023.

The ACC's primary critique of the NPDWR is that it is not based on sound science and realistic economic data. This is not surprising considering that the science behind PFAS is still emerging and at least one other federal agency, the Agency for Toxic Substances and Disease Registry, could not conclude that a cause-and-effect relationship exists between PFAS and human health problems despite reviewing more than 600 studies. In addition, the World Health Organization is at odds with EPA's proposed maximum contaminant levels. Moreover, any findings concerning health effects must be balanced against the economic impact that such a regulation could have on the economy, especially if the health benefits are unclear.

The ACC further critiques this proposal, arguing that it:

+ relies on an assessment of potential health effects that is fundamentally flawed;
+ overstates the non-cancer risks associated with PFOA and PFOS exposure;
+ fails to demonstrate that the benefits of the proposal justify the costs as required by the Safe Drinking Water Act; and
+ significantly underestimates the costs of complying with the proposed standard and the number of systems that will be impacted.

The ACC cites to comments by more than two dozen national, state, regional, and municipal agencies and organizations that have voiced their concerns with the lack of scientific support for such a proposal. For instance, the Western Urban Water Coalition (WUWC) specifically stated: "The drinking water standards adopted through this rulemaking have the potential to set a new precedent for further regulation of additional PFAS." Given the significance of this moment, WUWC urges EPA to adopt a rule only after assuring that the standards it selects are based on best available peer-reviewed science and are feasible, as required by the Safe Drinking Water Act."

Additionally, the ACC cites a common concern relating to the economic impact the regulation will have on local communities, small businesses, and underserved communities:

+ **Association of Metropolitan Water Agencies:** "EPA's cost analysis vastly underestimates the real-world costs that this rulemaking will impose on public water systems, and ratepayers will bear those costs. Even worse, those costs will disproportionately affect economically disadvantaged and underserved communities. … Given the numerous pressing priorities that public water systems are already grappling with, including challenges posed by aging infrastructure, compliance with various regulations, the impacts of climate change, and the current difficulties stemming from inflation, labor shortages, and disruptions in the supply chain, it is evident that more time than what is proposed in this rulemaking will be necessary for the implementation of PFAS treatment

technologies."

+ **The California-Nevada Section of the American Water Works Association:** "The Hazard Index MCL for the group of four contaminants will presumably increase the number of water systems incurring costs for construction and operation of water treatment, exacerbating the very high cost and adding to an affordability crisis for drinking water. … The regulation lacks sufficient data on occurrence of PFAS in water sources of small systems for its economic analysis, relying instead on assumptions and statistics to cover acknowledged gaps. EPA further failed to conduct meaningful consultation with small business advocates."
+ **Illinois Farm Bureau:** "Rural communities and/or underserved communities have far less resources to address expensive federal regulatory requirements. Drinking water utilities in rural areas will undoubtedly [sic] experience more challenges in meeting the 4ppt standard outlined in this proposed rule. Rural communities will incur extensive costs to obtain and install new technology. Then, uncertainty with testing availability/costs and lack of clarity with disposal methods/costs only exacerbate our concerns. It will be infeasible for many rural communities to meet the standards outlined in the short time frame identified and the exorbitant costs will inevitably be handed down to the water users. While federal funding may be available, our concern is there is not enough money to go around to cover the costs."

Finally, the proposed regulation may lead to other environmental concerns. The National Association of Clean Water Agencies (NACWA) comment suggests that the proposed rulemaking may impact greenhouse gas emissions. That is due to energy consumption at public water systems and clean water utilities as they try to monitor and comply with this proposal.

We expect that these comments may become the grounds by which these and other organizations challenge any final rulemaking, particularly as there continues to be little to no scientific support for MCLs at the levels proposed by EPA, while the costs of compliance are estimated to range in the billions of dollars.

MG+M will continue to provide updates concerning the EPA's Drinking Water Proposal.

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