

EPA Seeks to Vacate PFAS Maximum Contaminant Levels

By **Brian D. Gross**

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On September 11, 2025, the Environmental Protection Agency (EPA) moved the US Court of Appeals for the DC Circuit to vacate its regulations concerning four PFAS chemicals under the Safe Drinking Water Act (SDWA). EPA has asked the court to vacate drinking water regulations that established Maximum Contaminant Levels (MCLs) for perfluorononanoic acid (PFNA), perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (also known as HFPO-DA or GenX chemicals) and a Hazard Index used to regulate mixtures of those three PFAS with perfluorobutane sulfonic acid (PFBS).¹ The [2023 regulations](#) established MCLs of 4 parts per trillion (ppt), the lowest level that is reliably detectable with current technology, for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) and 10 ppt for PFNA, PFHxS, and HFPO-DA. The regulations also established a Hazard Index of 1 for PFAS mixtures to determine their combined potential risk to human health.²

In 2024, the American Water Works Association (AWWA), Association of Metropolitan Water Agencies (AMWA), American Chemistry Council (ACC), and National Association of Manufacturers (NAM) (collectively “plaintiffs”), opposed the EPA regulations.³ The plaintiffs argue the regulations violated procedures mandated by the SDWA that provides the public two 60-day periods to comment on proposed regulations.⁴ Instead, EPA allowed for only a single 60-day comment period before moving forward with its final determination.⁵ EPA now adopts that same argument in its motion.⁶

The AMWA commended EPA’s attempt to protect public health but expressed concerns that it would add water affordability issues to households nationwide.⁷ “Our goal in filing a petition for review of the PFAS rule last year was to help the agency arrive at a regulation that protects water consumers from PFAS, is grounded in science, and is affordable to implement nationwide,” the AMWA stated in a release.⁸ Further, “[i]f accepted by the court, EPA’s request [to vacate] will reopen the opportunity for meaningful public input and ultimately lead to a more scientifically defensible final rule.”⁹

Respondent-Intervenors oppose EPA’s motion and intend to file a response.¹⁰ The Intervenors have until September 26 to file their response.¹¹

MG+M Law Clerk Aaron Hunt is a contributing author of this article.

¹ See generally Respondents’ Motion for Partial Vacatur, *American Water Works Association v. United States Environmental Protection Agency*, No. 24-1188 (D.C. Cir. Sept. 11, 2025) [hereinafter *EPA Brief*]

² *Id.*

³ See generally *American Water Works Association, et al. v. EPA, et al.*, No. 24-1188

⁴ Brief of Petitioner at 22-25, *American Water Works Association v. United States Environmental Protection Agency*, No. 24-1188 (D.C. Cir. Oct. 7, 2024)

⁵ *Id.*

⁶ *EPA Brief*, *supra* note 1 at 10-16.

⁷ Press Release, Ass’n of Metro. Water Agencies, AMWA Reacts to EPA’s Final PFAS National Primary Drinking Water Regulation (Apr. 10, 2024) <https://www.amwa.net/press-releases/amwa-reacts-epas-final-pfas-national->

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primary-drinking-water-regulation Press Release, Ass'n of Metro. Water Agencies, AWWA, AMWA statement on EPA motion to vacate Hazard Index portion of PFAS rule (Sept. 12, 2025) <https://www.amwa.net/download/joint-motion-govern-proceedings>

⁸ Press Release, Ass'n of Metro. Water Agencies, AMWA Reacts to EPA's Final PFAS National Primary Drinking Water Regulation (Apr. 10, 2024) <https://www.amwa.net/press-releases/amwa-reacts-epas-final-pfas-national-primary-drinking-water-regulation>

⁹ *Id.*

¹⁰ Joint Motion to Establish Briefing Format and Schedule at 3. *American Water Works Association v. United States Environmental Protection Agency*, No. 24-1188 (D.C. Cir. Sept. 12, 2025)

¹¹ *Id.* at 5.

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