May 30, 2023

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

The Local Government Advisory Committee (LGAC) appreciates the opportunity to provide meaningful public comment on the proposed Per- and polyfluoroalkyl (PFAS) National Primary Drinking Water Regulation Rulemaking. Through its complex chemical makeup and ability to persist in drinking water sources and the broader environment, PFAS contamination has touched nearly every community. As local government officials, we take seriously our role in ensuring access to water that is both safe and affordable.

Based on the proposed rulemaking, the LGAC developed the following recommendations, with input from its Small Communities Advisory Subcommittee. We recommend that EPA:

- Use its authorities under the Toxic Substances Control Act to end the production and use of the most common and toxic PFAS chemicals except as required by a regulatory agency
- Work across the federal family to investigate the sources of PFAS contamination and use its enforcement discretion to systems during this process; where manufacturing is not ceased, water treatment facilities should not be held accountable for PFAS within their systems
- Use its EJ Screen tool to ensure that water systems serving small and underserved communities have access to laboratory testing
- Provide technical assistance and/or workforce development funding for labs to increase capacity and obtain PFAS certification, especially in small and underserved communities
- Examine costs for disposing of filtered PFAS biosolids, provide additional resources when needed for proper disposal, and consult states and local governments throughout this process

- Work with federal partners to provide technical assistance regarding treatment technologies for PFAS removal, especially in smaller communities, and funding to test for PFAS in private wells
- Revisit the economic analysis in the rulemaking and gather data based on real-life responses in U.S. communities
- Develop a standardized Producer Pays model for managing PFAS contamination, and use all available statutory authority to ensure enforcement, including when the U.S. Government is responsible
- Where responsible parties can't be identified, work with states and local governments to find new sources of funding and ways to make efficient use of the funding available
- Provide plain language talking points, educational materials, adaptable toolkits, and risk communication plans that represent the most up-to-date information and best practices

- Invest in consumer education about PFAS and its sources, as well as recommendations for municipalities to ban certain items from their waste streams
- Replace any use of the term “community water system” in the proposed rulemaking with “water treatment system,” or provide a more robust definition
- Use a holistic approach and analysis of its PFAS work, especially related to the impact of market shifts to other countries, the introduction of PFAS-alternatives that may be just as harmful in the long-run, and the value of using the 4 ppt measurement given the current science

More details are included below. In addition, the LGAC is working closely with EPA to develop recommendations specific to the risk communication of PFAS in drinking water. These will be a critical part of the nationwide effort to address PFAS. We look forward to continuing discussions on this important topic.

Sincerely,

Leirion Gaylor Baird

Mayor Leirion Gaylor Baird
LGAC Chair

Local Government Advisory Committee
Recommendations on PFAS National Drinking Water Regulation Rulemaking

Ending PFAS Production and Use

In its review of the proposed rulemaking, the LGAC identified several overarching themes beyond the scope of the rulemaking. First and foremost, the federal government must address PFAS from a holistic perspective, and that starts with banning the use of PFAS chemicals, starting with the most common and most toxic ones. As long as PFAS is allowed in manufacturing and importation, it will continue to be present in our environment. **The LGAC recommends that EPA ultimately use its authorities under the Toxic Substances Control Act to end the production and use of PFAS chemicals except as required by a regulatory agency.** The LGAC recognizes that there is a difference in allowing PFAS in applications like medical tubing used for chemotherapy treatments, which may be necessary and could be disposed of properly, versus applications like cosmetics and synthetic turf, which are not essential and cause widespread contamination.

Additionally, **EPA should work across the federal family to investigate the sources of PFAS contamination and enforce fiscal responsibility of those producing the pollution.** While investigating PFAS contamination sources and holding those producers responsible will be expensive, such action will save money in the end, leading to lower costs for filtering the contaminants from drinking water. Moreover, the costs will be borne by those responsible for the contamination, rather than taxpayer-funded or ratepayer funded water treatment systems. Further, this approach would lessen the risk of future contamination for water systems for which PFAS has not yet been found in raw water sources.

We also recognize that PFAS found in raw water sources may not come from point sources with National Pollutant Discharge Elimination System (NPDES) permits that can be tracked. For example, PFAS may be discharged from Brownfields sites, agricultural land on which biosolids have been deposited, or even air deposition. Investigating contamination sources and holding polluters accountable may take many different forms, depending on the results of the investigations. EPA should integrate PFAS remediation into any applicable remediation programs – including Brownfields and Superfund – and **EPA should consider using its enforcement discretion to systems** as these investigations are underway, allowing for compliance deadline extensions for an appropriate amount of time. **Where manufacturing is not ceased, water treatment facilities should not be held accountable for PFAS within their systems.**

Laboratory Testing Access

The current proposed regulation lays out assumptions to support the conclusion that there will be adequate laboratory capacity to meet testing needs, especially at the beginning of the rule's implementation period. Section 6, subsection A notes that because of the chosen MCL of 4.0 ppt, successful recruitment of 54 labs throughout the U.S., and the allowed use of current monitoring data at the outset of the rule, a bottleneck of testing is not anticipated. That said, the LGAC also recognizes that any number of testing access issues can occur after the rule becomes final. **As a precaution, the LGAC recommends that EPA use its EJ Screen tool to ensure that water systems serving small and underserved communities have access to laboratory testing.**

Further, EPA should **provide technical assistance and/or workforce development funding for labs to build capacity and obtain PFAS certification, especially in small and disadvantaged communities**. As some communities are already exploring innovative ways to address contamination, EPA should support peer-to-peer learning as part of this assistance. Additionally, EPA should explore its ability to ramp up testing centers through the structure of local, state and federal governments, as it has in the past – especially in the absence of robust private sector investment.

Addressing Current and Future Costs

It is important to emphasize that public water systems, and local governments more broadly, are passive actors when it comes to PFAS contamination. PFAS contamination results from upstream actors. Lawsuits and resulting settlements have been somewhat successful in obtaining substantial amounts of money for clean-up projects. However, this process is largely reactive and takes time and resources to complete. **Therefore, the LGAC**

recommends that EPA develop a standardized Producer Pays model for managing PFAS contamination and use all available statutory authority to ensure enforcement. This is especially important in instances where the U.S. Government is the responsible polluter, as is the case with military sites across the country. The idea of a "producer" pay model is different than the "polluter" pay model in that passive receivers like water treatment sites and firefighting stations would not be held accountable, but rather the companies knowingly producing the PFAS products.

Where responsible parties cannot be identified or held accountable, the LGAC understands that the Bipartisan Infrastructure Law provides funding for PFAS filtration, especially for disadvantaged communities. This $10 billion allotment will make strides in ensuring more access to healthy drinking water for millions of Americans. However, this funding is unlikely to capture the entire scope of PFAS filtration needed across the country; some estimates put the total abatement cost at $400 billion. In reality, long-term funding needs are currently unknown. **The LGAC recommends that EPA work with states and local governments to find new sources of funding and ways to make efficient use of the funding available.**

While the proposed rulemaking does not include wastewater treatment, it is important to highlight the cost of disposing filtered PFAS biosolids. Disposal of any potentially harmful or hazardous contaminant adds new costs and complications for waste handlers. The LGAC is also aware that EPA is considering new regulations to designate many of the same PFAS chemicals regulated in this rule through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). If this happens, the costs associated with the handling and disposal of waste may dramatically alter the ability of water treatment systems to afford adequate filtration and disposal. **Therefore, the LGAC recommends that EPA take a robust look at potential additional costs for disposing of filtered PFAS biosolids, provide additional resources when needed for proper disposal, and consult states and local governments throughout this process.**

Of further note are the unintended consequences associated with landfill capacity for accepting discarded media and the potential emissions from granulated activated carbon regenerative furnaces. Given the widespread adoption of these technologies by drinking water facilities across the country, such considerations become increasingly important.

The LGAC's Small Communities Advisory Subcommittee also **recommends that EPA work with federal partners to provide technical assistance regarding treatment technologies for PFAS removal**, noting that the treatment costs will be higher for small communities, and **funding to test for PFAS in private wells**.

Overall, the LGAC is concerned that the economic analysis provided in the proposed rulemaking does not encompass all the expected costs. Members whose communities have already started managing PFAS contamination state that the response evolved unpredictably and have consumed their resources. **The EPA is encouraged to look more closely at the analysis and to gather data based on real-life responses.**

Public Education and Notification of PFAS Contamination

Working with residents to maintain trust and accountability once PFAS is detected is crucial. Residents will want to know how they are affected, who is taking responsibility, and what actions are being taken to address the problem. While some of this will be based on unique local conditions, much of the messaging will be consistent from one community to the next. EPA can support the implementation of this rule – and the inevitable detection of PFAS in drinking water – **by providing plain language talking points, educational materials, adaptable toolkits, and risk communication plans that represent the most up-to-date information and best practices**. The LGAC is grateful for the opportunity to work on this with EPA in a parallel effort.

Outside the scope of this rulemaking, **EPA should also invest in consumer education about PFAS and its sources**. The Agency has had success with empowering consumers to make safe choices about what products they purchase and could replicate that approach with PFAS and appropriate notices on product labels. At the same time, local governments would benefit from this information by identifying specific items to ban from their waste streams. This approach has been used effectively for styrofoam in communities across the country in recent years.

Water Treatment Systems vs Community Water Systems

Finally, the LGAC recommends a small but important terminology change. As currently written, EPA's proposed regulation lists "community water systems" as potentially affected entities. Within the LGAC, there is some worry that this phrase will be interpreted to hold individual communities responsible for compliance, rather than larger organizations that provide drinking and wastewater services. If this were to happen, EPA would cast aside the many communities around the country that have formed comingled water service providers that allow for increased efficiency and cost-savings. For example, in Michigan, 122 communities have joined together to create the Great Lakes Water Authority. This water treatment system is now the sole water provider for these communities and has a much larger capacity to test for and remove PFAS than if the task were delegated to each community it serves. Moving away from this model, as the currently worded regulation may suggest, could result in much lower access to PFAS testing, slower delivery of test results, higher costs placed on communities, and ultimately longer exposures to PFAS contamination. **Therefore, the LGAC recommends replacing any use of the term "community water system" with "water treatment system" or providing a more robust definition that would include all appropriate entities.**

Thinking Holistically

As with many environmental issues and widespread policies there are bound to be secondary effects of both the rulemaking currently proposed by EPA and adopting the recommendations above. **The LGAC implores EPA to think holistically about its work to address PFAS contamination**, to limit these effects. For instance, the adoption of recycling practices across the country has cleaned the waste stream across the U.S., but much of this waste is simply transferred to lower-income countries, where it degrades and causes further contamination. Similarly, banning production of PFAS in the U.S. may lead to other countries taking up that spot in the market, and U.S. businesses importing the products. To mitigate this, EPA should extend its ban on importing long-chain PFAS to additional PFAS chemicals.

Another point for holistic thinking is the understanding that water is cyclical. The focus of the proposed rulemaking is water treatment systems and drinking water, but surface water contamination all needs to be considered because of subsistence fishing and downstream communities. Ultimately, one community's surface water is another community's drinking water; even though it is regulated differently, it's all the same water.

EPA should also employ the precautionary principle when regulating PFAS alternatives. The market will unquestionably adapt to the final regulation, but that may include introducing new chemicals whose properties are just as harmful as PFAS but won't be known for many years. Integrating producer responsibility into the rulemaking and implementation will ultimately lead to the appropriate precaution needed.

Finally, the EPA should consider the underlying reasons behind the 4 parts per trillion (ppt) measurement, and whether this is the most meaningful number to use. As EPA has published, the science led to a health advisory of 0 ppt. Presumably the 4 ppt was chosen based on current testing technology, but that technology will improve over time, making this number outdated. At the same time, there are parts of the country making proactive investments in removing PFAS from drinking water, but chose slightly higher thresholds, and now will have to raise rates to accommodate the change yet can't credit this expenditure with any meaningful increase in public health. Of note is the state of California, which has adopted a statewide regulation of 5 ppt.