



June 29, 2023

Senator Tom Carper
United States Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Shelley Moore Capito
United States Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Comments on Draft EPW PFAS Package

Dear Chairman Carper and Ranking Member Capito:

On behalf of Las Virgenes–Triunfo Joint Powers Authority (JPA), I write to thank you for working on the proposed PFAS legislative package and ask that you consider a few meaningful edits.

The JPA respectfully asks that the following provisions be amended and/or added:

- Section 3: Maximum Contaminant Level for Perfluoroalkyl or Polyfluoroalkyl (PFAS) Substances;
- Addition of Liability Exemption under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for passive receivers;
- Addition of provisions to address phase-out of the use of PFAS.

Las Virgenes–Triunfo Joint Powers Authority provides potable water, wastewater treatment, recycled water and biosolids composting to more than 75,000 residents in the cities of Agoura Hills, Calabasas, Hidden Hills, Westlake Village, and unincorporated areas of western Los Angeles County. The JPA is very concerned about PFAS contamination and is actively engaged in research and monitoring for PFAS, as well as supporting legislation.

Amendment of Section 3: Maximum Contaminant Level (MCL) for Perfluoroalkyl or Polyfluoroalkyl (PFAS) Substances

The JPA believes proposed statutory deadline of September 30, 2024 for the EPA to complete the EPA-HQ-OW-2022-0114: PFAS National Primary Drinking Water Regulation Rulemaking will force EPA to prematurely finalize the proposed rule.

EPA has proposed to set MCL for perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). Additionally, for the first time under the Safe Drinking Water Act (SDWA), the EPA

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proposes utilizing a Hazard Index (HI) to set the MCL for perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA commonly known as GenX), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS). JPA believes the use of the HI is not appropriate for the MCL and EPA should reintroduce the rule with the use of traditional MCL process.

The JPA believes that MCLs should be set once the EPA has finalized technological standards for the disposal and destruction of byproducts prior to finalizing the MCLs. Further prior to completing the MCL and the EPA relied on testing methods (533 and 537.1) to set the standards, however these methods cannot be used accurately and precisely to determine compliance with the proposed rule.

EPA must comprehensively consider the costs of implementation. In its proposed rule, EPA estimated the costs to water utilities to be between \$772 million and \$1.2 billion annually.¹ However, according to the American Water Works Association, the costs are estimated to exceed \$3.2 billion annually.² The State of Minnesota recently concluded a study that estimated the costs will be between \$14 billion and \$28 billion over 20 years.³

By requiring a statutory deadline of September 30, 2024, Congress would be ensuring EPA finalizes a rule that requires significant scientific study and technological development, and therefore time. Further, by implementing this deadline, EPA may have to cut short its required administrative review of the public comments submitted on its proposed rule. Rather than requiring the currently drafted deadline, the JPA requests the Committee encourage EPA to pause the rulemaking to ensure it can systematically review the necessary components of the proposed rule including but not limited to: the technology to test, the rules and methods of destruction of the byproduct, and the cost of implementation.

¹ EPA, PFAS National Primary Drinking Water Regulation Rulemaking, 88 Fed. Reg. 18638, 18700 (proposed Mar. 29, 2023).

² Black & Veatch, WITAF 56 TECHNICAL MEMORANDUM PFAS National Cost Model Report (Mar. 7, 2023) (<https://www.awwa.org/Portals/0/AWWA/Government/2023030756BVFfinalTechnicalMemorandum.pdf?ver=2023-03-14-102450-257>).

³ Minnesota Pollution Control Agency, Groundbreaking study shows unaffordable costs of PFAS cleanup from wastewater (June 6, 2023) (<https://www.pca.state.mn.us/news-and-stories/groundbreaking-study-shows-unaffordable-costs-of-pfas-cleanup-from-wastewater>).

Addition of Liability Exemption under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for passive receivers

The JPA respectfully requests the addition of a Liability Exemption under CERCLA for passive receivers.

In the fall of 2022, the Environmental Protection Agency (EPA) proposed a rule to add PFOS and PFOA as hazardous substances under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposal under CERCLA is a novel approach, as the EPA has previously set other environmental standards prior to opening the CERCLA's strict liability standards, citizen suits, and contribution suits for a hazardous substance.

The JPA takes actions every day to ensure the public is protected, enhance our water quality and sustainability, and protect the environmental health. No matter the technology and treatment that the JPA and similarly situated agencies undertake to address PFOA and PFOS will continue to be present in society so long as EPA and other Federal Agencies permit its manufacturing, importation, and use in the United States. Lastly, the proposed rule exposes JPA ratepayers and every ratepayer in the country to the responsibility of defending citizen suits or suits from other potentially responsibilities despite the responsibility of the pollution being on the manufacturers and importers. By EPA not addressing the full regulatory scheme ahead of addressing CERCLA, EPA has provided no protections and rather imposed a financial liability on ratepayers. The JPA believes the burden of responsibility should be on the manufacturers, and not on taxpayer dollars and passive receivers.

CERCLA was written to ensure the polluters pay, without a liability exemption, every water and wastewater district and thereby their every customer, will have to pay for the polluters contamination. The only means of protection for every citizen, is for Congress to pass a liability exemption.

The JPA asks that S. 1429, the Resource Management PFAS Liability Protection Act, and S. 1430, the Water Systems PFAS Liability Protection Act, introduced by Senator Lummis (R-WY) be incorporated into the Committee's proposed legislation. These bills will put in place a per- and polyfluoroalkyl substances (PFAS) liability exemption for water and wastewater systems and municipalities. These bills will provide protections to the JPA and other publicly-owned-treatment-works from undue liabilities and allow us to continue providing our critical services to ratepayers without unnecessarily increasing the price. Lastly, a liability exemption will ensure Congressional intent of CERCLA remains in place and every citizen does not bear the cost of cleaning up the pollution caused by others.

Addition of provisions to address phase-out of the use of PFAS

Since the 1940s, PFOA and PFOS have been used in industry and consumer products. PFAS are known as “forever chemicals” because they are resistant and bio-accumulative, making them difficult and costly to remove from water systems. Today, PFOA and PFOS can be found or are used in many consumer products such as carpets, clothing, fabrics, cookware, and firefighting foams. So long as the United States permits the use of PFAS in manufacturing and the importation of PFAS in various goods, the build-up of PFAS in the environment will continue to rise. The only way to ensure PFAS is no longer in the environment is to cut it off at the source.

The JPA respectfully requests the proposed legislation provide direction to the Federal Administrative Agencies to create and implement plans to phase-out of the use of PFAS in products within the United States.

Las Virgenes–Triunfo Joint Powers Authority supports the intention of the Committee’s legislation. For the reasons above, the JPA respectfully requests

- Amendment of Section 3: Maximum Contaminant Level for Perfluoroalkyl or Polyfluoroalkyl (PFAS) Substances;
- Addition of Liability Exemption under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for passive receivers;
- Addition of provisions to address phase-out of the use of PFAS.

If you have any questions or would like any additional information, please contact Ana Schwab at (202) 370-5311 or at Ana.Schwab@bbklaw.com.

Very truly yours,


Joe McDermott, P.E.

Las Virgenes Municipal Water District Director of Engineering and External Affairs