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VIA E-FILING @ <https://www.regulations.gov>

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**Re: Comments to the Proposed Rulemaking regarding Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances
Docket No. EPA-HQ-OLEM-2019-0341**

Dear Sir/Madam:

The Pennsylvania Municipal Authorities Association (“PMAA”) appreciates the opportunity to submit comments to the Proposed Rulemaking regarding Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, Docket No. EPA-HQ-OLEM-2019-0341 (“Proposal”). The Proposal was published in the September 6, 2022 Federal Register, and, consistent with the November 7, 2022 deadline for comments, PMAA respectfully submits the following information and comments for consideration.

By way of background, PMAA is an association that represents the interests of over 700 municipal authorities in Pennsylvania, and these PMAA member municipal authorities collectively provide water, sewer, waste management and other services to over five million Pennsylvania citizens. Founded in 1941, the mission of PMAA is to assist authorities in providing services that protect and enhance the environment, promote economic vitality, and further the general welfare of the Commonwealth and its citizens. PMAA and its member municipal authorities, who are stewards of the environment, strive to provide the highest quality services to their customers and ratepayers. Many of PMAA member municipal authorities provide water and wastewater services throughout the Commonwealth of Pennsylvania, and may be impacted by EPA’s ultimate decision on the aforementioned Proposal. In fact, at its 2022 Annual Conference, PMAA adopted the following Resolution 31-23:

RESOLVED, That PMAA, in recognition of the fact that water and wastewater treatment plants are passive receivers of PFAS-compounds, oppose legislation, regulation, or policy that causes PFAS-related compounds to be listed under the Comprehensive Environmental
{03439049;v1 }

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Response, Compensation, and Liability Act (CERCLA), unless water and wastewater sludges are specifically exempted.

PMAA's specific comments on the Proposal are as follows:

1. The Proposal does not follow the "polluter pays" principle of CERCLA as it shifts the burden to public entities by potentially imposing liability and significant costs on PMAA member water, wastewater, solid waste and stormwater authorities, which costs will unfairly burden these entities and consequently be passed on to the ratepayer.
2. EPA's PFAS Strategic Roadmap, which lays the groundwork for EPA's response to various PFAS issues, focuses on a number of principles, one of which is to "Hold Polluters Accountable." However, directly contrary to the principles of the PFAS Strategic Roadmap, the Proposal will have severe consequences for PMAA members that have absolutely no role in producing or placing PFAS chemicals into the stream of commerce. Why is EPA shifting costs for, among other things, PFAS investigation and remediation on to municipal entities, including PMAA member municipal authorities, when such "shifting of costs" is contrary to the principles of the PFAS Strategic Roadmap?
3. Municipal entities, such as PMAA member municipal authorities, are simply passive receivers of PFAS chemicals, and are now or soon will be faced with strict federal and/or state requirements through other regulatory programs (e.g. MCLs under the federal Safe Drinking Water Act or similar state legislation, NPDES permitting issues under the Clean Water Act). Compliance with these programs will undoubtedly stress the financial wherewithal of many municipal entities. Notwithstanding the aforementioned, EPA now seeks to impose significant additional technical and management costs on these entities and their ratepayers/customers related to, among other things, the use of filtration and the management of biosolids through promulgation of the Proposal. What justifies this additional cost, and did EPA specifically consider such costs in the Proposal?
4. The prior comment addresses the regulatory and management expenses imposed upon municipal entities, including PMAA member municipal authorities, in addressing PFAS chemicals. However, as EPA is surely aware, the Proposal could result in these entities becoming entangled in time-consuming and complex CERCLA litigation, resulting in potential liability exposure and significant litigation costs. How does EPA plan to address such potential liability and costs?
5. In a PowerPoint presentation regarding the Proposal currently found on the PFAS section of EPA's website (Notice of the Proposed Rulemaking, dated August, 2022), EPA recognizes "equity concerns" with the Proposal, specifically as to "some stakeholders, particularly public service entities like water utilities, municipal airports and entities using biosolids." How does EPA plan to address what it identifies as "equity concerns"?

6. Congress has previously addressed exemptions from liability under CERCLA (*e.g.*, 42 U.S.C. 9607 (p)). Understanding that EPA cannot speak for Congress, what is the likelihood of a statutory or regulatory exemption from liability from CERCLA for entities such as PMAA member municipal authorities relating to PFAS contamination? Even if EPA in its discretion does not seek investigation/remedial costs from the aforementioned entities in the context of CERCLA, there is the distinct and very real possibility that potentially responsible parties will seek such costs in litigation. Therefore, the practical result will be that those who may be responsible for PFAS contamination will use CERCLA to recover costs from those entities which are no more than passive receivers of the PFAS contamination.
7. This is the first time that EPA has specifically used its CERCLA section 102(a) authority to designate a hazardous substance under the statute. The Proposal notes EPA's position that it need not consider costs in connection with a CERCLA section 102(a) designation of a hazardous substance. As discussed above, the Proposal could result in the expenditure of significant funds by municipal entities, such as PMAA member municipal authorities. The Proposal also notes that EPA did conduct an economic assessment of the Proposal (87 Fed. Reg. 54418 fn.4). Was this economic assessment relied upon by EPA in developing the Proposal and, if so, what is the extent to which it was considered? Was this economic assessment reviewed by the OMB and, if so, what comments were offered in response to the economic assessment?
8. In response to a specific request in the Proposal (87 Fed. Reg. 54423), and notwithstanding EPA's interpretation of whether costs are to be considered in the designation of a hazardous substance under CERCLA section 102(a), the cost to implement the Proposal, particularly on municipal entities like PMAA member municipal authorities, should have been directly considered in developing the Proposal. Simply because Congress did not expressly include cost as a factor in a CERCLA section 102(a) designation of a hazardous substance evaluation, does not preclude EPA from itself considering costs in such an evaluation particularly, whereas here, the Proposal will have such a deleterious effect on entities, such as PMAA member municipal authorities, that are simply passive receivers of the contamination that the Proposal seeks to address. That being said, throughout the Proposal, EPA recognizes the considerable range of issues and challenges facing, among others, wastewater treatment plants (87 Fed. Reg. 54427), entities that use surface water sources for drinking water (87 Fed. Reg. 54427-28), and public drinking water systems using groundwater (87 Fed. Reg. 54428) as a result of the presence of PFAS and their role as passive receivers of PFAS contamination. To reiterate, despite the aforementioned, EPA failed to consider costs in developing the Proposal. EPA should now revisit the Proposal, consider all economic data evaluating the costs to implement the Proposal, then publish a revised proposed rulemaking for public comment, with the aforementioned costs a component of such proposed rulemaking.
9. The issue of biosolids is of critical importance to certain PMAA member municipal authorities (*e.g.* wastewater facilities), which entities are presently subject to strict

regulatory requirements related to this material. Nevertheless, the Proposal potentially burdens these entities with CERCLA liability related to the use of biosolids (*e.g.* land application, incineration). Has EPA thoroughly evaluated the adverse impact to the aforementioned entities regarding the issue of biosolids if the Proposal is promulgated in its current form?

10. The Proposal lists a 24 hour default Reportable Quantity of one (1) pound per twenty-four (24) hour period (87 Fed. Reg. 55419). However, the Proposal provides little or no guidance on how PFAS quantities are to be specifically determined. By way of example, how does EPA recommend that wastewater treatment plants determine PFAS quantities in their discharges? EPA should revisit this section of the Proposal and clarify how PFAS quantities are to be determined.

Once again, PMAA appreciates the opportunity to submit comments to the Proposal, which could have a significant adverse impact on its members if promulgated in its current form.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN

By: _____

STEVEN A. HANN

SAH:ll