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April 27, 2022

**Submitted Via Email: RegComments@pa.gov**

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

**Re: Comments to Safe Drinking Water PFAS MCL Rule/Proposed Rulemaking – February 26, 2022**

Dear Sir/Madam:

The Pennsylvania Municipal Authorities Association (PMAA) appreciates the opportunity to provide comments, through undersigned counsel, to the Pennsylvania Environmental Quality Board’s (EQB) proposed rulemaking entitled Safe Drinking Water PFAS MCL Rule (Proposal), which was published in the Pennsylvania Bulletin on February 26, 2022. PMAA is an association that represents the interests of over 700 municipal authorities in Pennsylvania, which 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 members, who are stewards of the environment, strive to provide the highest water quality possible to their customers and rate payers. Many of PMAA’s members provide water and wastewater services throughout the Commonwealth of Pennsylvania, and may be impacted by EQB’s ultimate decision on the aforementioned Proposal.

In the Proposal, the EQB proposes to amend Chapter 109 of Title 25 of the Pennsylvania Code (relating to safe drinking water) and, in so doing, states that “[t]he proposed amendments will improve public health protection by setting maximum contaminant level goals (MCLG) and maximum contaminant levels (MCL) for two per- and polyfluoroalkyl substances (PFAS) – perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS).” Moreover, the EQB also states that “[t]he proposed amendments are intended to protect public health by setting State MCLs for contaminants in drinking water that are currently unregulated at the Federal level,” and “[w]ith the proposed amendments, the Commonwealth would move ahead of the United States (U.S.) Environmental Protection Agency (EPA) in addressing PFOA and PFOS in drinking water and join a small group of states that have set MCLs for select PFAS in drinking water.”

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As an association representing the interests of hundreds of water, wastewater, stormwater and solid waste entities in the Commonwealth of Pennsylvania, PMAA is generally supportive of federal and/or state regulatory initiatives, such as the Proposal, that address risks to public health and/or the environment. To that end, PMAA frequently provides written comments to both federal and state agencies regarding such regulatory initiatives. In so doing, PMAA consistently follows several core principles in submitting such comments so that it fully understands the stated benefits of the proposed initiative, and the impact on its members and their ratepayers: (1) the initiative must be protective of human health and the environment; (2) the initiative and any resulting requirements and/or recommendations must be based on the best available sound health and scientific data and information, and include a thorough review and analysis of all documents, studies and reports germane to the initiative; and, (3) there must be a funding source currently in place or guaranteed to be in place, so that the initiative is not simply an “unfunded mandate” as to PMAA members.

With the aforementioned principles in mind, PMAA respectfully submits the following comments to the Proposal:

1. Given the lack of federal PFAS standards, Pennsylvania has chosen to move forward with developing its own standards, which is a similar path taken by a number of other states. However, as the EQB is aware, EPA is contemporaneously developing its own MCLG/MCL standards for certain PFAS. According to EPA’s PFAS Strategic Roadmap, the agency plans to propose a National Primary Drinking Water Regulation (NPDWR) for PFOA and PFOS in the Fall of 2022, with a final regulation expected in the Fall of 2023. There is a distinct possibility that EPA’s NPDWR is promulgated before the effective date of Pennsylvania’s MCLs for PFOA and PFOS. PMAA is not suggesting that Pennsylvania delay or suspend its own regulatory efforts in light of EPA’s actions. However, with the timeline for developing the respective state and federal regulations seemingly overlapping, how will Pennsylvania address the possible difference in PFOA and/or PFOS standards ultimately promulgated by the two agencies? Has Pennsylvania engaged EPA regarding the nearly simultaneous development of MCLs for PFOA and PFOS at the federal and state levels?

2. As a follow-up to the prior comment, how will the Pennsylvania Department of Environmental Protection (DEP) address a situation where EPA’s drinking water standards for PFOA and/or PFOS are either more stringent or less stringent than Pennsylvania’s corresponding final standards for PFOA and/or PFOS? This is a critical issue for the entities subject to the Proposal. The Commonwealth cannot expect regulated entities to spend ratepayer resources to meet one standard, only to have the standard change shortly thereafter.

3. As part of EPA’s development of its NPDWR for PFOA and PFOS, the agency acknowledged that it is “committed to science-based approaches” (*See* EPA Press Release dated November 16, 2021, entitled “EPA Advances Science to Protect the Public from PFOA and PFOS in Drinking Water”). As part of such process, the agency provided certain draft scientific documents to EPA’s Science Advisory Board for peer review purposes. PMAA appreciates the efforts of both the Public Water System Technical

Assistance Center for its review of the pre-draft Proposal and the Drexel University PFAS Advisory Group (DPAG) for its review of a broad range of documents, studies and reports germane to the Proposal under its toxicology services contract with DEP. Nevertheless, it is important for the regulated community to understand the decision making process undertaken to support DEP's conclusions in the Proposal, to ensure that such conclusions are based upon the best available sound health and scientific data and information. PMAA is not questioning here the process used by those involved in developing the Proposal, but is interested in learning whether additional independent peer review was undertaken with respect to the conclusions set forth in the Proposal.

4. As discussed herein, an issue of particular importance to PMAA is that the Proposal be based upon the best available sound health and scientific data and information. In the Proposal, the EQB provides a reference list of applicable documents, studies and reports that were apparently used to develop the Proposal. However, there needs to be transparency not only as to the documents/studies/reports that were considered in the development of the Proposal, but also as to the documents/studies/reports that were available to the EQB, but not considered in the development of the Proposal, and the reason(s) that they were not considered. In other words, were there documents (e.g. health, toxicological, epidemiological) that the EQB reviewed, but for some reason, chose not to include in its evaluation process. PMAA understands that this inquiry is similar to one that EPA's Science Advisory Board requested of EPA in connection with EPA's NPDWR. (*See* April 1, 2022 Draft Report issued by the Science Advisory Board as part of the aforementioned peer review process involving EPA's NPDWR for PFAS.)

5. It is PMAA's understanding that the DPAG reviewed other state and Federal agency work on PFAS-related standards, and PMAA appreciates this undertaking as being consistent with PMAA's position that all available information needs to be vetted in connection with the development of regulatory initiatives, such as the Proposal. However, given the timing of the Proposal, it does not appear (from a review of references cited in the Proposal) that certain EPA studies were either available or considered in developing the Proposal. Does DEP or DPAG plan to review additional information that may not have been available at the time the Proposal was issued? PMAA suggests that the EQB and DEP discuss and evaluate any differences or contradictions between the Proposal and any final report issued by EPA's Science Advisory Board in connection with EPA's NPDWR and MCLs for PFOA and PFOS.

6. Drinking Water Facilities, many of which are PMAA members, will bear the regulatory and economic burden of complying with the Proposal, notwithstanding the critical fact that these facilities are merely passive entities that are subject to the Proposal solely due to the actions of others. These facilities neither manufacture nor produce PFAS, yet will be required to treat the raw influent at their plants containing these emerging contaminants, consistent with the requirements of the Clean Water Act and/or Pennsylvania Safe Drinking Water Act. As DEP is aware, most, if not all, of these facilities were not designed to treat emerging contaminants such as PFAS. Therefore, PMAA strongly urges that DEP undertake regulatory initiatives that address, at a minimum, source control requirements related to PFAS to eliminate or substantially reduce, among other things, the

costs of PFAS treatment, management and monitoring that will be directly borne by PMAA members and their ratepayers under the requirements of a promulgated PFAS regulation.

7. Based upon the information provided in the Proposal, PMAA is requesting that the EQB or DEP provide additional information regarding the number of Pennsylvania laboratories certified to perform EPA Method 537.1 and whether DEP anticipates that laboratory capacity will be available to handle the sampling and monitoring requirements set forth in the Proposal, in addition to other sampling and monitoring requirements placed upon drinking water facilities (*e.g.*, EPA’s Fifth Unregulated Contaminant Monitoring Rule, published December 27, 2021). PMAA also requests that the EQB and/or DEP review once again the Proposal’s sampling/monitoring provisions to eliminate any redundancy in state and federal sampling/monitoring requirements.

8. Economics will undoubtedly be a significant factor in the implementation of any regulation promulgated after comments to the Proposal are considered. PMAA appreciates the level of detail provided by the EQB in presenting costs for both treatment and monitoring; however, PMAA believes that greater clarity in such a presentation is vital so that all drinking water facilities, irrespective of size, will be able to easily identify the costs anticipated to meet any promulgated regulation addressing PFAS. By way of example, in discussing Table 12 of the Proposal, the EQB notes that “[t]reatment costs estimates are based on the costs to install and maintain treatment for a 1 MGD treatment plant.” Immediately thereafter, the EQB states that “[t]he actual costs would be expected to be proportionally less for a treatment plant with a smaller design capacity.” What data, other than the proportional calculations provided in the Proposal, form the basis for this assumption? Moreover, would the same “proportional” analysis be valid for treatment plants with a design capacity above 1 MGD?

9. Drinking water facilities, including PMAA members, will need to know with certainty the costs to implement the requirements in the Proposal (and, ultimately, any promulgated regulation) in order to effectively budget for what appears to be a very significant expenditure. A review of literature available to date seems to indicate that the ultimate cost for both treatment and monitoring, as envisioned by the Proposal, will be higher (perhaps significantly) than the costs for each provided in the Proposal.

10. It is inevitable that PMAA members will need to spend an enormous amount of money to meet the requirements of the Proposal, even if such requirements can technically be met. Therefore, the Commonwealth needs to ensure that adequate funding is allocated, preferably through grants, to meet the economic expenditures required to meet the requirements of any promulgated PFAS regulation. PMAA understands that certain monies may be available (*e.g.*, Bipartisan Infrastructure Law), but these monies appear to be wholly insufficient, especially in light of other existing or prospective regulatory initiatives (*e.g.*, EPA Lead and Copper Rule) that drinking water facilities in Pennsylvania must address.

11. Does the EQB or DEP plan to address PFAS in sources of drinking water other than those covered by the Proposal?

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Once again, PMAA is appreciative of the opportunity to comment on the Proposal, and looks forward to working with the Commonwealth to address the issue of PFAS in our drinking water.

Very truly yours,

HAMBURG, RUBIN, MULLIN,  
MAXWELL & LUPIN

By: 

STEVEN A. HANN

SAH:ll