

May 28, 2023

Administrator Michael S. Regan  
U.S. Environmental Protection Agency  
EPA Docket Center, OW Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Re: Per- and Polyfluoroalkyl Substances (PFAS): Proposed National Primary Drinking Water Regulations (Docket ID: EPA-HQ-OW-2022-0114)**

Dear Administrator Regan,

The undersigned thirty-nine organizations strongly support the Environmental Protection Agency's proposal to set strong, scientifically supported drinking water standards for six per- and polyfluoroalkyl substances (PFAS) under the Safe Drinking Water Act. National standards to limit the concentration of PFAS in drinking water are necessary to protect human health, as EPA has documented in its proposal. And they are long overdue. We urge you to finalize the proposed standards as quickly as possible, with the changes recommended by many of our organizations in separately submitted comments.

**In this letter, we write specifically to urge EPA to resist calls to weaken or withdraw the proposed standards based on concerns over water affordability.** We are steadfast advocates for universal, *affordable* access to *safe* drinking water. EPA must not accept the premise that drinking water can be *either* safe from toxic PFAS *or* affordable, but that it cannot be both. It can and must be both. And EPA must lead the way. We offer recommendations below on how to do so.

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EPA's proposed PFAS standards align with the Biden Administration's commitment to advance environmental justice. Communities of color and low-income communities have historically faced disproportionate exposure to pollution and cumulative adverse health effects from multiple co-occurring contaminants. Published research suggests that communities with higher populations of people of color may be especially impacted by PFAS.

Yet, many water systems have opposed the proposed MCLs based on the cost of compliance, which they say may make water bills unaffordable, especially for low-income customers. The unavoidable implication is that communities experiencing PFAS contamination should resign themselves to drinking unsafe water if low-income residents cannot afford to pay higher water bills. This approach would only perpetuate existing inequities in access to safe drinking water—inequities that the Safe Drinking Water Act is meant to remedy. And it is based on a faulty premise that compliance with protective PFAS standards must come with the expense of unaffordable water bills.

First, opponents of the proposed standards often over-state the likely costs, as some of our organizations explain in separate comments submitted to the rulemaking docket. Second, as discussed further below, they often overlook steps that water systems, states, and EPA can take to fund compliance costs *without relying exclusively on ratepayers*, and *without imposing unaffordable burdens on low-income residents*.

In recent guidance under the Clean Water Act, EPA took a firm stand that communities must not be left with water that harms their health and the environment if their most vulnerable residents cannot afford increased water bills. EPA should take the same strong stand here, under the Safe Drinking Water Act.

Specifically, in the February 2023 Clean Water Act Financial Capability Assessment Guidance (“FCA Guidance”), EPA refused to accede to persistent utility demands to weaken standards whenever utilities raise concerns about affordability for low-income households.<sup>1</sup> Instead, EPA’s guidance pushes utilities to pursue “strategies for lowering costs and reducing impacts on low-income households”<sup>2</sup> using tools that “ensure that a financial strategy is in place to support needed infrastructure upgrades without overburdening their most vulnerable ratepayers.”<sup>3</sup> The guidance identifies “strategies for communities to support affordable utility rates while planning investments in water infrastructure that are essential to protecting clean water....Tools such as variable rate structures, consumer assistance programs, and grants or subsidies from the...State Revolving Fund are some of the tools outlined in the guidance.”<sup>4</sup> In releasing the guidance, EPA emphasized its commitment to work closely with state and utilities to deploy these strategies.

EPA should apply the same principles when adopting Safe Drinking Water Act standards for PFAS: adopt strong standards that are needed to protect human health *and* help water systems meet those standards without making bills unaffordable for low-income households.

In connection with adopting a final rule, EPA should highlight funding and financing strategies that water systems can use to achieve these objectives. EPA, the states, and water systems must all work to implement these strategies. We describe below several key strategies, including maximizing use of available federal funding, especially for disadvantaged communities; holding polluters accountable for water systems’ compliance costs; and adopting equitable rate structures and other programs that can increase rate revenues without burdening low-income customers.

1. Maximize the use of available federal funding, especially for disadvantaged communities.

To help communities meet new PFAS standards, Congress passed the Bipartisan Infrastructure Law (BIL). On top of federal and state funds available through “base” Drinking Water State Revolving Fund program, the BIL provides \$9 billion in grants for water systems to address emerging contaminants such as PFAS, of which \$5 billion is specifically for small, underserved, and disadvantaged communities, and of which \$4 billion of which is only available as forgivable

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<sup>1</sup> See EPA, Clean Water Act Financial Capability Assessment Guidance (Feb. 2023), <https://www.epa.gov/system/files/documents/2023-01/cwa-financial-capability-assessment-guidance.pdf>.

<sup>2</sup> <https://www.epa.gov/system/files/documents/2023-02/cwa-fca-questions-and-answers.pdf>.

<sup>3</sup> <https://www.epa.gov/newsreleases/epa-announces-financial-capability-guidance-support-communities-and-ensure-clean>.

<sup>4</sup> <https://www.epa.gov/system/files/documents/2023-02/cwa-fca-fact-sheet.pdf>.

loans and grants to “eligible recipients,” meaning disadvantaged communities.<sup>5</sup> The BIL also includes an additional \$11.7 billion for drinking water infrastructure needs generally, of which 49% is for grants or principal forgiveness to disadvantaged communities. This funding will aid utilities in meeting EPA’s proposed PFAS drinking water standards and improve drinking water safety.

Other BIL funding, though not eligible to be used for PFAS-related costs, indirectly supports water systems’ ability to pay for PFAS compliance by reducing the need to rely on ratepayer funds for capital improvements. This includes \$15 billion for drinking water systems for lead service line replacement. For water systems that function as combined water and wastewater utilities, the BIL’s \$12.7 billion in clean water infrastructure funds also offset capital improvement costs for wastewater and stormwater management, which would otherwise be passed on to ratepayers on their combined water and sewer bills. In addition, of course, there is funding available under the State Revolving Funds that have been federally capitalized and matched by state funds over the past two and a half decades, which continue to receive annual appropriations of about \$1 billion or more. A significant portion of those funds also is reserved for grants and forgivable loans for disadvantaged communities.

Additionally, forty states have collectively dedicated almost \$19 billion dollars in American Rescue Plan Act State Fiscal Recovery Fund monies towards water infrastructure, much of which is available to municipal water (and/or wastewater) systems.<sup>6</sup>

EPA should continue to bolster its technical assistance efforts to ensure that eligible communities can access all available grants and subsidized loans. Likewise, EPA should bolster its oversight of states’ implementation of BIL funds, to ensure that funds designated for disadvantaged communities reach water systems with the greatest affordability challenges. EPA should closely track distribution of BIL funds (and other federal funds) and continue efforts to identify gaps in funding needs that can be identified for Congressional appropriators.

2. Hold PFAS manufacturers and polluters accountable for the costs of treatment and/or alternative water supplies.

Water utilities—and states on behalf of water utilities—have increasingly been filing suit against PFAS manufacturers and polluters to recover costs of treatment to remove PFAS and/or costs of securing alternative water supplies. Some have already secured significant settlements. These efforts should be encouraged and supported, as they shift the cost of compliance from water systems and their customers to those responsible for causing the contamination.

For example, in 2018, the state of Minnesota secured an \$850m settlement with 3M, which included over \$700 million for drinking water projects in the affected areas of the state.<sup>7</sup> In 2022, Massachusetts filed suit in federal court against PFAS manufacturers to recover, among other

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<sup>5</sup> Pub. L. No. 117–58, 135 Stat. 429, 1402-03 (Nov. 15, 2021).

<sup>6</sup> National Council of State Legislatures, ARPA State Fiscal Recovery Fund Database, <https://www.ncsl.org/fiscal/arpa-state-fiscal-recovery-fund-allocations> (last visited May 22, 2023).

<sup>7</sup> <https://3msettlement.state.mn.us/sites/3msettlement/files/2023-03/3M%20Settlement%20biannual%20report%2C%20February%202023.pdf>.

things, costs of treating municipal drinking water.<sup>8</sup> California,<sup>9</sup> Wisconsin,<sup>10</sup> Colorado,<sup>11</sup> and Illinois<sup>12</sup> also filed similar lawsuits in state courts in 2022. Individual water systems in New Jersey,<sup>13</sup> Philadelphia,<sup>14</sup> and Baltimore,<sup>15</sup> among others, have filed similar lawsuits against PFAS manufacturers.

EPA and the Department of Justice should do everything in their power to help water systems hold PFAS manufacturers and polluters accountable for the costs of meeting new PFAS drinking water standards. For example, to help impacted communities identify releases and enable contaminated water systems to more readily recover PFAS treatment costs from responsible parties, EPA should promptly finalize its proposal to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Further, EPA should expeditiously designate the entire class of PFAS chemicals as hazardous substances under CERCLA. Additionally, EPA should use its other robust legal authorities to assist public water systems to force polluters to pay for cleanup of drinking water, such as its imminent and substantial endangerment authorities under the Safe Drinking Water Act<sup>16</sup> and Resource Conservation and Recovery Act.<sup>17</sup>

3. Adopt equitable rate structures and other programs to increase utility revenue without burdening low-income customers.

As stated above, EPA’s FCA Guidance provides a toolkit of approaches that utilities can use to increase investment in water infrastructure without making bills unaffordable for low-income customers. In addition to securing grants and subsidized loans, which reduce the costs of capital improvements for *all* ratepayers, the guidance identifies many steps that utilities can take to reduce costs for low-income customers specifically. These include:

- capping bills for low-income residents at a percentage of income;
- adopting “lifeline” rates with a low charge for an initial amount of usage sufficient to meet each household’s essential needs;
- offering bill discounts specifically to low-income customers;
- helping low-income customers repair plumbing leaks and replace old, water-guzzling toilets, which can both reduce utilities’ water supply costs and provide ongoing bill reductions for low-income households.

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<sup>8</sup> <https://www.mass.gov/news/ag-healey-sues-manufacturers-of-toxic-forever-chemicals-for-contaminating-massachusetts-drinking-water-and-damaging-natural-resources>.

<sup>9</sup> <https://oag.ca.gov/news/press-releases/attorney-general-bonta-sues-manufacturers-toxic-forever-chemicals>.

<sup>10</sup> <https://www.doj.state.wi.us/node/8711>.

<sup>11</sup> <https://coag.gov/press-releases/2-28-22/>.

<sup>12</sup> <https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-files-latest-lawsuit-over-contamination-by-toxic-forever-chemicals>.

<sup>13</sup> <https://why.org/articles/n-j-towns-sue-makers-of-forever-chemicals-saying-companies-must-pay-for-cleanup/>; <https://www.levinlaw.com/2022/11/03/court-denies-3ms-motion-summary-judgment-middlesex-water-company-case>.

<sup>14</sup> <https://why.org/articles/philly-sues-3m-dupont-other-companies-forever-chemical-contamination/>.

<sup>15</sup> <https://mayor.baltimorecity.gov/news/press-releases/2022-11-04-baltimore-files-lawsuit-combat-pfas-chemicals>.

<sup>16</sup> 42 U.S.C. 300i.

<sup>17</sup> 42 U.S.C. 6973.

There are water systems around the country using each of these approaches, to varying degrees. In addition to examples cited in the FCA Guidance, many of the best examples are collected in an extensive water affordability “toolkit” published last year by Natural Resources Defense Council and National Consumer Law Center.<sup>18</sup> That toolkit also provides detailed recommendations on best practices and factors to consider when implementing these strategies.

The FCA Guidance states that technical assistance is available through EPA concerning these approaches. We urge EPA to ramp up its technical assistance offerings on these topics.

Additionally, we urge EPA to expeditiously complete the “needs assessment for nationwide rural and urban low-income community water assistance” required by the BIL, in which EPA is required to provide Congress with “recommendations of the Administrator regarding the best methods to reduce the prevalence of a lack of affordable access to water services.”<sup>19</sup>

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Thank you for your consideration of these comments. We look forward to a final rule from EPA, coupled with supporting resources, that will protect communities from toxic PFAS contamination while helping water systems achieve affordable bills for their customers.

*Submitted on behalf of the following organizations:*

National

Anthropocene Alliance  
Children's Environmental Health Network  
Clean Water Action  
Earthjustice  
Environmental Working Group  
Green Science Policy Institute  
GreenLatinos  
League of Conservation Voters  
National Consumer Law Center, on behalf of its low-income clients  
Natural Resources Defense Council  
River Network  
Safer States  
Sierra Club  
Waterkeeper Alliance

Alabama

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<sup>18</sup> Natural Resources Defense Council and National Consumer Law Center, *Water Affordability Advocacy Toolkit* (June 2022), <https://www.nrdc.org/resources/water-affordability-advocacy-toolkit>. Three of the most relevant chapters of from this publication, entitled “Equitable Water Rates,” “Affordability and Assistance Programs,” and “Water Efficiency and Plumbing Repair Assistance,” are submitted to the rulemaking docket as separate PDF files accompanying this letter.

<sup>19</sup> Pub. L. No. 117–58, 135 Stat. 429, 50108 (Nov. 15, 2021).

Alabama Rivers Alliance  
Black Warrior Riverkeeper  
Cahaba River Society

Alaska

Alaska Community Action on Toxics

California

Community Water Center  
River in Action  
Sacred Grounds TM  
SEE (Social Eco Education)

Florida

Earth Ethics, Inc.

Great Lakes Region (multi-state)

For Love of Water (FLOW)

Louisiana

For a Better Bayou  
Habitat Recovery Project  
Justice and Beyond, Louisiana  
Louisiana Bucket Brigade  
Micah Six Eight Mission  
The Water Collaborative of Greater New Orleans

Michigan

We the People of Detroit

Minnesota

Institute for Agriculture and Trade Policy  
Lake Pepin Legacy Alliance

Northeast/Mid-Atlantic Region (multi-state)

Delaware Riverkeeper Network  
Waterspirit

Vermont

Vermont Conservation Voters  
Vermont Natural Resources Council  
Vermont Public Interest Research Group

Wisconsin

Milwaukee Water Commons

