November 7, 2022

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Ms. Michelle Schutz
Office of Superfund Remediation & Technology Innovation
U.S. Environmental Protection Agency
EPA Docket Center OLEM Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW Washington, DC 20460

Re: NGWA Comment on "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances"; Docket ID No. EPA-HQ-OLEM-2019-0341

Dear Ms. Schutz:

The National Ground Water Association (NGWA) reviewed and provides the attached comments on the proposed rule "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances" by the Environmental Protection Agency (EPA).

NGWA has identified the need for additional information to enable a fuller evaluation of the effects of the rule on the groundwater industry. EPA should consider re-proposing the rule and providing more complete information regarding the steps to measure and the effects of measurement of PFOA and PFOS in products and mixtures often resulting from other statutes such as the Resource Conservation and Recovery Act, Clean Water Act and Safe Drinking Water Act.

NGWA, the largest trade association and professional society of groundwater professionals in the world, represents over 10,000 groundwater professionals within the United States and internationally. NGWA represents four key sectors: groundwater scientists and engineers; water-well contractors; and manufacturers and suppliers of water well equipment. NGWA's mission is to advocate for and support the responsible development, management, and use of groundwater. Groundwater is an essential lifesustaining resource that public policy should enable to be provided safely and adequately to maintain communities' health and economies across the nation.

NGWA appreciates the opportunity to review this proposed rule. Questions regarding our comments or other follow up may be directed to Chuck Job, NGWA Regulatory Affairs Manager, at cjob@ngwa.org, (202) 660-0060.

Sincerely,

Terry S. Morse, CAE, CIC
Chief Executive Officer
National Ground Water Association

Attachment – National Ground Water Association Comments on Proposed Rule "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances"

NGWA The Groundwater Association
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Attachment

NATIONAL GROUND WATER ASSOCIATION COMMENTS ON:

PROPOSED RULE "DESIGNATION OF PERFLUOROOCTANOIC ACID (PFOA) AND PERFLUOROOCTANESULFONIC ACID (PFOS) AS CERCLA HAZARDOUS SUBSTANCES"

Electronic Link: https://www.federalregister.gov/documents/2022/09/06/2022-18657/designation-of-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-ascercla-hazardous

Action: Proposed rule of the Environmental Protection Agency

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Code of Federal Regulations: 40 CFR 302

Agency/Docket Numbers: EPA-HQ-OLEM-2019-0341; FRL-7204-02-OLEM

Summary:

Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), the Environmental Protection Agency (EPA or the Agency) is proposing to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances. CERCLA authorizes the Administrator to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Such a designation would ultimately facilitate cleanup of contaminated sites and reduce human exposure to these "forever" chemicals.

Dates: Comments to be submitted on or before November 7, 2022.

COMMENTS OF THE NATIONAL GROUND WATER ASSOCIATION

While NGWA has supported regulatory action on PFOA and PFOS to protect public health, the proposed designation of these chemicals as "hazardous substances" with reportable quantities necessitates that additional information be provided to understand the relation of this action under CERCLA to existing requirements under other statutes that may be affected by this designation. NGWA asks for a re-proposed rule to designate PFOA and PFOS as hazardous substances that has regulatory details described clearly as an initial step in a larger regulatory

process that addresses maximum concentration levels in all media including Generation X and other PFAS chemicals and clearly identifies the designations' effects on other statutes' regulations, including those under the Resource Conservation and Recovery Act; Clean Water Act; Safe Drinking Water Act; Federal Insecticide, Fungicide and Rodenticide Act; Toxic Substances Control Act; and other chemical control laws. To understand the more complete relation to other statutes, the specific citation and wording from the respective regulations under these statutes should be provided for evaluation. A flowchart detailing these relationships among regulations would be useful and may provide insights into controlling these substances. The EPA proposal should clearly describe how this action is part of an overall differentiated governance approach to PFAS chemicals and how this action affects the generation, handling and ultimate disposition of PFAS in products, mixtures and sludges. EPA should consider the possibility of a separate regulatory process for non-degradable substances, incorporating the potential of new treatment technology when and where applicable.

Additionally, EPA should focus research on these non-degradable substances. Several aspects of research should be considered and developed: health effects of non-degradable substances and collaboration with other agencies to minimize these effects; management of products, including water, containing PFOA, PFOS and other non-degradable substances to protect human health and the environment; treatment; and disposal in ways that do not endanger drinking water sources or other pathways of potential ingestion.

Because of the insufficiency of information on identifying and measuring a release of PFOA and PFOS in the preamble, the current proposal raises more questions about the effects, benefits and costs of the regulation than it answers. The following points are raised to amplify the concern about these questions.

(1) The proposed reportable quantity for a release is 1 pound or more in 24-hours. This is ambiguous. It is not clear whether this refers to one pound of PFOA molecules, one pound of PFOS molecules, one pound of PFOA and PFOS molecules, or one pound of a substance containing PFOA and/or PFOS (e.g., AFFF concentrate or AFFF solution) or of a mixture of PFOA and/or PFOS.

    How would this amount be measured and tracked in the wide range of media in which PFOA and/or PFOS would be found? Are salts of PFOA and PFOS counted separately? What quantity of a substance or mixture is required to account for the amount? Many applications, including commercial products such as surgical instruments, in which PFOA and/or PFOS would be found may have a very large volume but a minuscule amount of PFOA and/or PFOS. How would water supplies be measured relative to this standard? Would this standard impede the delivery of life-saving action? More information is needed in the preamble and these points should be addressed in guidance.

    PFAS containing products are not labeled as to the percentage of PFOA and PFOS because the reporting cut off on Safety Data Sheets (SDS) is usually 0.1% or 1% depending on

hazard. Compositions less than 10,000 to 1,000 ppm on SDSs are unknown. Compositions of products containing PFOS or PFOA, or other PFAS are currently not required to be communicated on Safety Data Sheets or otherwise labeled normally below 1 percent. How does EPA propose to make determinizations on volumes if percent composition is not disclosed by manufacturers, when the percent composition may be less than 0.1 to 0.00001 percent. Should unintended but expected transformations of PFAS precursors to PFOA or PFOS be counted in the 1-pound reporting threshold, once known and measured?

2) 'Release' is not defined in the Proposed Rule and is defined at 40 CFR 302.3 to be:

> 'Release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:
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> (1) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;
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> (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
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> (3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or for the purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and
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> (4) The normal application of fertilizer;

This definition is problematically applied to PFOA and PFOS. How would commercial products containing minuscule amounts of PFOA and/or PFOS be considered under this definition if they were "pour[ed], emitt[ed], empt[ied], or discharg[ed]"? Would this impede delivery of water or life-saving products? Should certain mixtures or PFOA-PFOS-containing products be further excluded from the definition of 'release', including water and life-saving products? At what concentration would these products be a problem? The preamble did not give enough information to understand the measurement of PFOA and PFOS in resulting mixtures and

affected products to enable evaluation of the effects of this proposed regulation on commercial operation and function.

Deliberate application of a PFAS-containing material (e.g., AFFF) for its intended application (e.g., to save life and property) should be differentiated from negligent or inadvertent discharges of PFOS and PFOA and PFOS- and PFOA-containing materials. This is an important distinction and will affect evaluation of the proposed rule effects in the groundwater industry.

3) Under a CERCLA hazardous substance designation, the U.S Department of Transportation (DOT) may regulate PFOA and PFOS as Hazardous Materials under the Hazardous Materials Transportation Act. DOT can take this step without public comment.
    - This will make transportation of PFOA and PFOS-containing material more difficult and expensive to transport for treatment or disposal.
    - Could this impede the transport of water with a trace amount of PFOA or PFOS by truck or pipeline? Environmental justice considerations in this regard may become an issue as disadvantaged and underserved communities may rely on water provided by truck.

4) This designation may preclude or impede the installation, development, and rehabilitation of groundwater wells, particularly at Superfund or active hazardous waste sites that require monitoring wells, due to the production of cuttings and water that may contain PFAS even where the water can be treated for consumption.

   Removal of cuttings at wells may increase the cost of well installation. While the removal of contaminated cuttings at wells is a protective step, the issue of environmental justice relative to higher costs of well installation for steps to protect a local disadvantaged or underserved population who did not cause the contamination of the subsurface and groundwater that may be the only available and reliable water supply may also be problematic.

   Additionally, application of this standard would appear to apply to both drinking water wells and monitoring wells. Well drillers will need guidance in the handling and disposal of PFOA and PFOS substances and mixtures at sites being investigated as the investigation of hazardous waste disposal sites must continue. Well drillers should be protected from becoming hazardous waste generators as they participate in the remediation of hazardous waste sites and should not be subjected to CERCLA liability in this regard. A specific list of activities that are exempt from punitive actions should be developed to enable remediation of hazardous sites and protect participants in the remedial process that may involve movement of hazardous substances offsite for further disposition.

5) Hazardous substance designation of PFOA and PFOS will impede property transactions where these 'ubiquitous' chemicals are detected in groundwater and may cause the reopening of 'clean' sites for further remediation that may now be Brownfields or Superfund sites considered 'remediated'. Determining responsible parties and then subsequent remediation will be done at significant expense. Where will financial resources be derived to initiate and complete such remedial activities? More information is needed to evaluate this circumstance.

6) The disposition of PFOA and PFOS after its identification and reporting using the proposed standard is not clear. Will sufficient containment, injection capacity or disposal sites be available, particularly for large volumes of substances and mixtures?

7) How will this proposed designation, when final, affect other media and determinations of their potential usability? How will this designation affect related 'hazardous', 'health limits' and 'endangerment' decisions and actions under other statutes?

8) EPA should strengthen its review procedures and requirements under the Toxic Substances Control Act; Federal Insecticide, Fungicide, Rodenticide Act; Clean Water Act; Resource Conservation and Recovery Act; Safe Drinking Water Act; and other chemical control statutes to preclude the production and use of other chemicals having such significant health impacts. The focus should be on chemicals of concern that have non-degradation characteristics in potential proliferating uses, and produced in large quantities.

9) The current reviews of PFAS chemicals considered for regulation under the Safe Drinking Water Act by the EPA Science Advisory Board should be considered in determining the reportable quantities for PFOA and PFOS and other non-degradable chemicals.

10) EPA solicited comment on whether cost should be a factor in designating PFOA and PFOS as hazardous substances. Costs of chemical release are important to identify and understand but should not limit or cause disregard of effects on human health and the environment. While unintended costs of this designation may be identified and occur, cost should not be a factor in determining whether a substance is hazardous and necessitating designation as a hazardous substance with a reportable quantity.

11) Congress and EPA should ensure that the funds identified in the recent acts (Infrastructure

Investment and Jobs Act and other infrastructure bills that target assistance to respond to PFAS chemicals) are fully utilized to protect everyone's health and to provide safe water to all communities with particular focus on disadvantaged and underserved communities.

12) Leaving hazardous substances in the ground at Superfund sites and other sites of waste release continuing to contaminate groundwater without treatment reduces the prospects of water supply resilience. Designation should also consider prospective technology to reduce hazard and facilitate greater resource availability.