



April 2, 2024

Narendra Chaudhari
Office of Resource Conservation and Recovery (5304T)
1200 Pennsylvania Avenue NW
Washington, DC 20460

Subject: Docket ID No. EPA-HQ-OLEM-2023-0278, Listing of Specific PFAS as Hazardous Constituents

Dear Mr. Chaudhari,

Attached are the comments of the National Ground Water Association regarding the proposed rule: Listing of Specific PFAS as Hazardous Constituents.

If you have any questions or need additional information, please contact me at your convenience.

Thank you for the opportunity to review this proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Job", is positioned above the typed name of the sender.

Charles A. Job
Regulatory Affairs Manager
National Ground Water Association
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Attachment: National Ground Water Association Comments



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NATIONAL GROUND WATER ASSOCIATION

Comments On

U.S. Environmental Protection Agency Proposed Rule: Listing of Specific PFAS as Hazardous Constituents

Published: February 8, 2024

Comments Due: April 8, 2024

Document Citation: 89 FR 8606

CFR Reference: 40 CFR 261; 40 CFR 271

Agency/Docket Numbers: EPA-HQ-OLEM-2023-0278; FRL-9248-01-OLEM

Summary:

The Environmental Protection Agency (EPA or the Agency) proposed amending its regulation under the Resource Conservation and Recovery Act (RCRA) by adding nine specific per- and polyfluoroalkyl substances (PFAS), their salts, and their structural isomers, to its list of hazardous constituents. These nine PFAS are

- 1) perfluorooctanoic acid (PFOA),
- 2) perfluorooctanesulfonic acid (PFOS),
- 3) perfluorobutanesulfonic acid (PFBS),
- 4) hexafluoropropylene oxide-dimer acid (HFPO-DA or GenX),
- 5) perfluorononanoic acid (PFNA),
- 6) perfluorohexanesulfonic acid (PFHxS),
- 7) perfluorodecanoic acid (PFDA),
- 8) perfluorohexanoic acid (PFHxA), and
- 9) perfluorobutanoic acid (PFBA).

EPA's criteria for listing substances as hazardous constituents under RCRA require that they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. EPA reviewed and evaluated key toxicity and epidemiological studies and assessments for the nine PFAS to determine whether the available data for these PFAS meet the Agency's criteria for listing substances as hazardous constituents under RCRA. Based on EPA's evaluation, the above nine PFAS, their salts, and their structural isomers meet the criteria for being listed as RCRA hazardous constituents. As a result of this proposed rule, if finalized, when corrective action requirements are imposed at a facility, these PFAS would be among the hazardous constituents expressly identified for consideration in

RCRA facility assessments and, where necessary, further investigation and cleanup through the RCRA corrective action process at RCRA treatment, storage, and disposal facilities.

The preamble also notes: The EPA believes that this action may indirectly reduce existing disproportionate and adverse effects on communities with environmental justice concerns. To the extent that the proposed rule leads to the remediation of releases for any of the nine PFAS, their salts, and their structural isomers that EPA proposes to list as RCRA hazardous constituents, health risks for populations living in close proximity to these sites (particularly populations that rely on private well water near these sites) may decline. As groundwater and surface water have been identified as potential exposure pathways of PFAS, the inclusion of private well usage rates in areas surrounding facilities known to use, produce, or release PFAS provides additional information about populations that may have a potentially higher likelihood of negative health outcomes from a PFAS release. In some cases, focusing the analysis solely on those potentially more vulnerable populations served by private wells reveals further demographic disparities compared to the total U.S. population served by private wells.

Electronic Link: <https://www.federalregister.gov/documents/2024/02/08/2024-02324/listing-of-specific-pfas-as-hazardous-constituents>

Comments of the National Ground Water Association

Protection of Groundwater

Generally, the rule is protective of groundwater from PFAS constituents that may already have been released to the environment. NGWA agrees that these constituents should be regulated by adding them to the Resource Conservation and Recovery Act (RCRA) Hazardous Constituents List and removed from the environment to the extent possible. This removal can occur through the corrective action processes of RCRA for active sites of generation, use, transportation, storage and disposal.

Alignment of PFAS Regulation

CERCLA (Superfund) – In 2022, EPA proposed to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances under CERCLA.

CERCLA – in 2023, EPA sought public input on adding seven more PFAS as hazardous substances under CERCLA:

- Perfluorobutanesulfonic acid (PFBS), CASRN 375–73–5
- Perfluorohexanesulfonic acid (PFHxS), CASRN 355–46–4
- Perfluorononanoic acid (PFNA), CASRN 375–95–1
- Hexafluoropropylene oxide dimer acid (HFPO–DA), CASRN 13252–13–6 (sometimes called GenX)
- Perfluorobutanoic acid (PFBA) CASRN 375–22–4

- Perfluorohexanoic acid (PFHxA) CASRN 307–24–4
- Perfluorodecanoic acid (PFDA) CASRN 335–76–2;

EPCRA – Added all PFAS to the list of “Lower thresholds for chemicals of special concern” to be reported

SDWA – in 2023, EPA proposed to regulate under SDWA 7 PFAS plus mixtures: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as contaminants with maximum contaminant levels and perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (also known as a GenX chemicals), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS), and mixtures of these PFAS as contaminants with hazard indices under Safe Drinking Water Act (SDWA)

Other actions may be pending under other statutes and regulations, such as the Unregulated Contaminant Monitoring Rule 5th monitoring round collecting data on 29 PFAS.

It is not clear how these statutes and regulations relate to each other in EPA’s PFAS strategy and what the implications of regulating them under one statute mean for regulating them under another statute.

Enforcement of PFAS-Related Regulations

In March 2023, the EPA Office of Enforcement and Compliance Assurance indicated in a policy statement addressing PFAS that it will selectively take enforcement action against municipal solid waste landfills and treatment works, farms that use biosolids and airports. If this is the case, what is EPA’s enforcement of this new rule going to be? How will inconsistency in enforcement across programs affect the implementation of this rule at the 831 facilities with highest likelihood of handling PFAS across the nation?

Basis for National Ground Water Association Interest in this Regulation of PFAS as Hazardous Substances

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: scientists and engineers; water-well contractors; groundwater equipment manufacturers; and equipment suppliers – all who make groundwater development possible. NGWA’s mission is to advocate for and support the responsible development, management, and use of groundwater.

Over 34 million people in the United States rely on private wells and over 92 million are served by groundwater from public community water systems.

NGWA views groundwater and the subsurface as natural infrastructure that should be sustainably managed for current and future beneficial use.

A concise summary of the position of the National Ground Water Association on groundwater protection related to this proposed rule is:

- Control of potential and active sources of contamination should be a national objective, reducing the need for remediation of groundwater.
- Groundwater quality should be protected for existing or potential beneficial uses.
- NGWA published Groundwater and PFAS: State of Knowledge and Practice, a guidance document on per- and polyfluoroalkyl substances (PFAS) in 2017 (https://my.ngwa.org/NC__Product?id=a18380000kbKF9AAM) as a comprehensive report to identify the known science and knowledge related to PFAS, summarizing the fate, transport, remediation, and treatment of PFAS, as well as current technologies, methods, and field procedures.
- NGWA has additionally updated materials regarding PFAS on its resource webpage “Groundwater and PFAS” at <https://www.ngwa.org/what-is-groundwater/groundwater-issues/Groundwater-and-PFAS>.

NGWA appreciates the opportunity to comment on the proposed rule.

For further follow up, please contact:

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