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Via Regulations.gov
Water Docket
EPA Docket Center
U.S. Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Re: Comments on *Drinking Water Contaminant Candidate List 5—Draft*, 86 Fed. Reg. 37948 (July 19, 2021)

Docket ID No. EPA-HQ-OW-2018-0594

Dear Administrator Regan:

The Attorneys General of the States of Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Virginia, and Wisconsin, and the District of Columbia (collectively, the States) offer these comments in support of the U.S. Environmental Protection Agency’s (EPA) *Drinking Water Contaminant Candidate List 5—Draft* (Draft CCL 5), 86 Fed. Reg. 37,948 (July 19, 2021). EPA’s Draft CCL 5 lists 66 chemicals, 3 chemical groups (per- and polyfluoroalkyl substances (PFAS), cyanotoxins, and disinfection byproducts) and 12 microbial contaminants.¹ In these comments, the States support EPA’s proposal to include PFAS as a class of chemicals in CCL 5 as a first step in the process to consider whether to set drinking water standards for these substances. The States request, however, that EPA modify the definition of PFAS in the Draft CCL 5 to make it sufficiently comprehensive to include all of the PFAS identified by EPA and consistent with the definition of PFAS used by the federal government and states in other contexts.

Background

The Safe Drinking Water Act (SDWA),² section 1412(b)(1)(B)(i), requires EPA to publish the Drinking Water Critical Contaminant List (CCL) every five years. “The

¹ See *Drinking Water Contaminant Candidate List 5—Draft* (Draft CCL 5), 86 Fed. Reg. 37,948, 37,962 (July 19, 2021) (to be codified at 40 C.F.R. pt. 141). These comments address only the proposed listing of PFAS as a class.

² 42 U.S.C. §§ 300f *et seq.*

SDWA specifies that the [CCL] must include contaminants that are not subject to any proposed or promulgated [national primary drinking water regulations (NPDWRs)], are known or anticipated to occur in public water systems (PWSs), and may require regulation under the SDWA.”³ The CCL “serves as the initial screening of potential contaminants,” and the listing “does not mean that any particular contaminant will necessarily be regulated in the future.”⁴ EPA may select contaminants from the CCL for inclusion in the Unregulated Contaminant Monitoring Rule (UCMR), which requires public water systems to gather and report occurrence data for those contaminants.⁵ The occurrence data produced by the UCMR program may then provide the basis for EPA’s regulatory determination.⁶ The SDWA, section 1412(b)(1)(B)(ii), requires EPA to make regulatory determinations no less frequently than every five years for at least five contaminants from the CCL on whether to set NPDWRs for those contaminants.

As stated in the Draft CCL 5, “PFAS are a class of synthetic chemicals that are most commonly used to make products resistant to water, heat and stains and are consequently found in industrial and consumer products like clothing, food, packaging, cookware, cosmetics, carpeting and firefighting foam.”⁷ As EPA notes in the Draft CCL 5, there are “[o]ver 4,000 PFAS that have been manufactured and used globally since the 1940s.⁸ Although numerous studies have shown that exposures to PFAS negatively affect human health, there is currently no national requirement that public water systems test for and remove unsafe levels of PFAS in drinking water.⁹

As EPA acknowledges,¹⁰ the large number of chemical substances that are part of the PFAS class makes it difficult to list each of them on the CCL. As set forth below, the States endorse EPA’s proposal to include PFAS as a class in the CCL 5 and make the following specific recommendations: (A) we urge EPA to define PFAS broadly to ensure that the entire class of PFAS is included in the CCL 5; and (B) in addition to including PFAS as a class in the CCL 5, we urge EPA to gather information to consider setting drinking water standards for PFAS as a class.

Discussion

³ *Id.* at 37,949.

⁴ *Id.* at 37,950.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 37,962.

⁸ *Id.* at 37,962.

⁹ See Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate, 86 Fed. Reg. 12,272, 12,278 (Mar. 3, 2021) (to be codified at 40 C.F.R. pt. 141).

¹⁰ 86 Fed. Reg. at 37,962.

A. The States urge EPA to define PFAS broadly and clearly to ensure that the entire universe of PFAS is included as a class of chemicals in CCL 5.

While the States support EPA’s proposal to include PFAS as a class in CCL 5, we urge EPA to use a definition of PFAS that is broad enough to actually include the entire universe of PFAS as a class of chemicals on the CCL 5.¹¹ EPA states that it is proposing “to list PFAS as a group inclusive of any PFAS.”¹² It acknowledges that “[o]ver 4,000 PFAS have been manufactured and used globally since the 1940s.”¹³ By proposing to list PFAS as a class inclusive of any PFAS, the States’ expectation is that the definition of PFAS in the CCL 5 includes all PFAS formulations, both currently known PFAS and PFAS that may be created in the future. Unfortunately, however, the definition of PFAS proposed in the Draft CCL 5 may exclude some PFAS. The States urge EPA to analyze other definitions of PFAS and choose one that is broader and clearer than the definition proposed in the Draft CCL 5 to ensure that the entire universe of PFAS is included in the final CCL 5.

It is important that EPA include a broad definition of PFAS in the CCL 5 because future regulatory determinations will be made based on that definition. As EPA notes, “[t]he CCL is the first step in the SDWA regulatory framework for screening and evaluating the subset of contaminants that may require future regulation.”¹⁴ And, “[h]istorically, most unregulated contaminants chosen by EPA for monitoring” under the Unregulated Contaminant Monitoring Rule (UCMR) “have been selected from the CCL.”¹⁵ While listing PFAS on the CCL 5 “does not necessarily mean that EPA will make subsequent regulatory decisions for the entire group,” it does mean that “EPA will evaluate scientific data on the listed groups, subgroups, and individual contaminants included in the group to inform any regulatory determinations for the group, subgroup, or individual contaminants in the group.”¹⁶ Because future regulatory decisions may be made for the entire class of PFAS as defined in the CCL 5 or individual contaminants in the group, it is important that the definition of PFAS capture the entire universe of PFAS.

¹¹ The States urge EPA to define PFAS broadly in the CCL 5 because it is a preliminary, investigatory step in the SDWA regulatory process. However, we do not take a position on how any regulations that may result should be structured or how PFAS as a class should be defined in later stages of the SDWA regulatory process.

¹² 86 Fed. Reg. 37,962 (July 19, 2021). EPA is not including PFOA and PFOS in the proposed CCL 5 because EPA has already made final regulatory determinations for those two PFAS. 86 Fed. Reg. 37,969 (July 19, 2021).

¹³ *Id.* at 37,962.

¹⁴ *Id.* at 37,950.

¹⁵ *Id.*

¹⁶ *Id.* at 37,962.

In the Draft CCL 5, EPA proposes the following definition of PFAS:

For the purposes of this document, the structural definition of PFAS includes per- and polyfluorinated substances that structurally contain the unit R-(CF₂)-C(F)(R')R''. Both the CF₂ and CF moieties are saturated carbons and none of the R groups (R, R' or R'') can be hydrogen (USEPA, 2021f).¹⁷

This is the same definition of PFAS that EPA included in its recently proposed rule “TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances” (TSCA rule).¹⁸ In that pending rulemaking, EPA acknowledged that this definition may only cover a subset—“at least 1,364 chemical substances and mixtures”—of the over 4,000 PFAS that have been manufactured and used.¹⁹

The States are concerned that the definition of PFAS in the Draft CCL 5 may be too narrow to ensure that the entire universe of PFAS is included in the CCL 5. For example, the definition seems to exclude fluorinated compounds containing a spacer, such as CH₂ or oxygen, between the CF₂ and CF groups. Fluorinated chemicals containing these spacers have been found in environmental testing near PFAS manufacturing plants.²⁰ The definition also seems to exclude fluorinated compounds that contain only one CF₃ group, such as some fluorinated gases, pesticides, pharmaceuticals, and dyes. The definition of PFAS should be modified to be broad enough to include chemicals containing spacers and a single CF₃ group. The States are also concerned that the current definition may not be clear enough to accurately describe the entire universe of PFAS. In this regard, the Draft CCL 5 is not clear as to whether one of the R groups (R, R', or R'') can be halogens other than fluorine or include one or more CH₂ molecules and still be included in the definition of PFAS. Also, it is not clear why none of the R groups can be hydrogen—this requirement narrows the definition.

Recent State and Federal legislation have adopted definitions of PFAS that are simpler and may be broader and more inclusive than the Draft CCL 5 definition. For

¹⁷ *Id.*

¹⁸ 86 Fed. Reg. 33,929 (June 28, 2021) (“For the purposes of this proposed action, the structural definition of PFAS includes per- and polyfluorinated substances that structurally contain the unit R-(CF₂)-C(F)(R')R''. Both the CF₂ and CF moieties are saturated carbons and none of the R groups (R, R' or R'') can be hydrogen.”).

¹⁹ *Id.*

²⁰ Newton S, McMahan R, Stoeckel JA, Chislock M, Lindstrom A, Strynar M. Novel polyfluorinated compounds identified using high resolution mass spectrometry downstream of manufacturing facilities near Decatur, Alabama, USA. *Environ Sci Technol.* 2017 February 07; 51(3): 1544-1552. <https://doi.org/10.1021/acs.est.6b05330>; Zhang C, Hopkins ZR, McCord J, Strynar MJ, Knappe DRU. Fate of per- and polyfluoroalkyl ether acids in the total oxidizable precursor assay and implications for the analysis of impacted water. *Environ Sci Technol Lett.* 2019; 6(11): 662-668. <https://doi.org/10.1021/acs.estlett.9b00525>.

example, the 2021 National Defense Authorization Act (2021 NDAA) defines PFAS as “a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom, including the chemical GenX.”²¹ Similarly, Vermont recently enacted a statute defining PFAS as “a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.”²²

EPA should analyze these and other available definitions of PFAS against the proposed definition of PFAS in the Draft CCL 5 before issuing the final CCL 5. The States urge EPA to choose the broadest and clearest definition to ensure that, consistent with EPA’s stated intent, the final CCL 5 includes the entire universe of PFAS as a class of chemicals on the CCL 5.

B. The States support EPA’s proposal to include PFAS as a class in the CCL 5, and we urge EPA to gather information to consider setting drinking water standards for PFAS as a class.

The States support EPA’s proposal to include PFAS as a class in the CCL 5. Clearly, PFAS meet the SDWA criteria for listing in the CCL.²³ First, PFAS as a class are not currently regulated under the SDWA.²⁴ Second, PFAS are known or anticipated to occur in public water systems.²⁵ Third, PFAS may require regulation under the SDWA due to their prevalence in drinking water supplies and public health impacts. This listing is a significant first step in EPA’s consideration of whether to set drinking water standards under the SDWA for PFAS as a class. We urge EPA to move forward quickly to gather occurrence data on PFAS as a class in public water systems and to evaluate whether to set drinking water standards for PFAS as a class.

PFAS contamination detected in the environment is generally made up of mixtures of PFAS, which often contain PFOA or PFOS, two specific PFAS.²⁶ This PFAS mixture results from multiple sources of PFAS present in an area, the use of PFAS as mixtures in single products (e.g., fire-fighting foam or aqueous film forming

²¹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 335(e)(2) (2021).

²² Vt. Stat. Ann. tit. 18, § 1661(5) (effective July 1, 2022); 2021 Vt. Acts & Resolves 36, § 1.

²³ 42 U.S.C. § 300g-1(b)(1)(B)(i).

²⁴ See Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate, 86 Fed. Reg. 12,272, 12,278 (Mar. 3, 2021) (to be codified at 40 C.F.R. pt. 141).

²⁵ For a summary of occurrence data for PFAS other than PFOA and PFOS, see Attorneys General of Wisconsin et al., Comment Letter on the Preliminary Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List 12-18 (May 10, 2021), https://www.doj.state.wi.us/sites/default/files/news-media/6.10.20_PFAS_Letter.pdf.

²⁶ See, e.g., Bălan SA, Mathrani VC, Guo DF, Algazi AM. Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program. *Environ. Health Perspectives* 2021 Feb 17;129(2). <https://doi.org/10.1289/EHP7431>.

foam (AFFF)), and the changes in the types of PFAS that have been commonly used over time. Mixtures of PFAS may pose similar health risks to those associated with exposure to PFOA or PFOS alone, contaminants whose public health impact is well documented.²⁷

A class-based approach may be the most effective way to regulate PFAS as it would provide increased protection to the public, decrease the burden on regulatory agencies, and provide greater certainty to the operators of public water systems. Indeed, regulation of specific PFAS in the past has led to their replacement with other PFAS with similar hazards.²⁸ PFAS generally show similar indicia of toxicity, environmental persistence (hence, the common reference to PFAS as “forever” chemicals), bioaccumulation, and ubiquity in the environment.²⁹ One of the most consistent features of the PFAS class is that, despite the diversity of PFAS substances, all PFAS are extremely resistant to environmental and metabolic degradation.³⁰ There is also a growing body of evidence that shorter-chained PFAS have similar toxicological effects to the well documented adverse effects of longer-chained PFAS such as PFOA and PFOS.³¹

As EPA recognizes in its notice of this proposed action, listing the many individual PFAS in the CCL 5 would be challenging and impractical, while listing PFAS as a class squares with EPA’s commitment to better understand and then reduce the potential risks caused by this broad class of chemicals.³² Similarly, it is neither practical nor desirable for EPA to regulate PFAS on an individual basis.

²⁷ *Id.*

²⁸ Bălan SA, Mathrani VC, Guo DF, Algazi AM. Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program. *Environ. Health Perspectives* 2021 Feb 17;129(2). <https://doi.org/10.1289/EHP7431>.

²⁹ *Addition of Certain Per- and Polyfluoroalkyl Substances; Community Right-to-Know Toxic Chemical Release Reporting* (ANPRM), 84 Fed. Reg. 66,369 (Dec. 4, 2019); USEPA. EPA’s Per- and Polyfluoroalkyl Substances (PFAS) Action Plan. EPA 823R18004. U.S. Environmental Protection Agency, Washington, D.C. February 2019.

³⁰ Cousins IT, DeWitt JC, Glüge J, Goldenman G, Herzke D, Lohmann R, Ng CA, Scheringer M, Wang Z. The high persistence of PFAS is sufficient for their management as a chemical class. *Environ Sci Process Impacts*. 2020 Dec 16;22(12):2307-2312. <https://pubmed.ncbi.nlm.nih.gov/33230514/>; Kwiatkowski CF, Andrews DQ, Birnbaum LS, Bruton TA, DeWitt JC, Knappe D, Maffini MV, Miller MF, Pelch KE, Reade A, Soehl A, Trier X, Venier M, Wagner CC, Wang Z, Blum A. Scientific Basis for Managing PFAS as a Chemical Class. *Environ. Sci. Technol. Lett.* 2020 Jun 30;7, 8:532-543. <https://doi.org/10.1021/acs.estlett.0c00255>.

³¹ Kwiatkowski CF, Andrews DQ, Birnbaum LS, Bruton TA, DeWitt JC, Knappe D, Maffini MV, Miller MF, Pelch KE, Reade A, Soehl A, Trier X, Venier M, Wagner CC, Wang Z, Blum A. Scientific Basis for Managing PFAS as a Chemical Class. *Environ. Sci. Technol. Lett.* 2020 Jun 30;7, 8:532–543. <https://doi.org/10.1021/acs.estlett.0c00255>.

³² 86 Fed. Reg. at 37,962.

Attempting to regulate the over 4,000 known PFAS individually, let alone the potentially never-ending succession of formulations that may regrettably emerge, is a recipe for failing adequately to protect the public. We acknowledge that there are also practical and technical challenges to regulating PFAS as a class in drinking water or other environmental media. These challenges are potentially different than those posed by regulating PFAS as a class in other settings, such as the regulation of consumer products. In these comments, we do not address the challenges to regulating PFAS as a class in drinking water. At this stage, we urge EPA to gather the information needed to consider regulating PFAS as a class in the future.

We also applaud EPA's recent actions to regulate individual PFAS and to gather data for other individual PFAS. On June 10, 2020, many of the undersigned States³³ submitted comments in support of EPA's proposed decision to set drinking water standards for two PFAS—perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA)—which EPA announced in its Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List.³⁴ Some of the States³⁵ also recently submitted comments in support of EPA's proposal to include 29 PFAS in the UCMR 5.³⁶ Including these individual PFAS in the UCMR 5 will provide vital information about the occurrence of these contaminants in public water systems. However, to evaluate fully the public health protections needed with respect to PFAS in drinking water, we urge EPA to gather such data about PFAS as a class.

The States therefore urge EPA to gather occurrence data for PFAS as a class. One way to do so is through the UCMR program. Accordingly, in comments on the UCMR 5, some of the undersigned States urged EPA to include PFAS as a class so

³³ The Attorneys General of the States of California, Colorado, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin, and the District of Columbia submitted joint comments in support of EPA's proposed decision to set drinking water standards for PFOS and PFOA.

³⁴ Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List (Preliminary Determination), 85 Fed. Reg. 14,098, 14,120 (Mar. 10, 2020).

³⁵ The Attorneys General of the States of California, Colorado, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, Oregon, North Carolina, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin, and the District of Columbia submitted joint comments in support of EPA's proposal to include 29 PFAS in the UCMR 5.

³⁶ Attorneys General of Wisconsin et al., Comment Letter on the Proposed Rule, Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) (May 10, 2021), https://www.doj.state.wi.us/sites/default/files/news-media/510.21_PFAS_Comments.pdf.

that important helpful data may expeditiously be gathered.³⁷ Whether through the UCMR program or other means, gathering such data is an important step in setting appropriately protective drinking water standards for these groups of contaminants.

Conclusion

The States appreciate the opportunity to submit these comments on the Draft CCL 5 and fully support EPA's inclusion of PFAS as a class in the CCL 5. The States also urge EPA to define PFAS as a class broadly to ensure that the entire universe of PFAS is included in the CCL 5. In addition to including PFAS as a class in the CCL 5, we urge EPA to gather the information necessary to move forward expeditiously in considering setting drinking water standards for PFAS as a class.

Sincerely,

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³⁷ Attorneys General of Wisconsin et al., Comment Letter on the Proposed Rule, Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) (May 10, 2021), https://www.doj.state.wi.us/sites/default/files/news-media/510.21_PFAS_Comments.pdf.

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