

June 15, 2023

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

RE: Docket ID No. EPA-HQ-OLEM-2022-0922

Dear Sir or Madam:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments regarding the U.S. Environmental Protection Agency's (EPA) Advanced Notice of Proposed Rulemaking (ANPRM) on Potential Future Designations of Per- and Polyfluoroalkyl Substances (PFAS) as CERCLA Hazardous Substances.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State program experts from all States who manage State-run Superfund programs under CERCLA.

Over the past several years, ASTSWMO has requested that the EPA regulate PFAS under CERCLA and commends the EPA for taking this important step to promote a consistent regulatory framework for PFAS. In March 2021, ASTSWMO released a Position Paper (updated in November 2022 and enclosed with these comments) which recommends that EPA, after completing the listing of Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS), evaluate classes of PFAS that have common characteristics in order to expeditiously designate as many constituents as possible as CERCLA hazardous substances and RCRA hazardous constituents.⁽¹⁾ As such, ASTSWMO appreciates EPA's consideration of the development of potential future regulations pertaining to designation as hazardous substances under CERCLA of:

- Seven PFAS, besides PFOA and PFOS, and their salts and structural isomers, or some subset thereof, which include:
 - Perfluorobutanesulfonic acid (PFBS),
 - Perfluorohexanesulfonic acid (PFHxS),
 - Perfluorononanoic acid (PFNA),
 - Hexafluoropropylene oxide dimer acid (HFPO-DA) (also called GenX)
 - Perfluorobutanoic acid (PFBA)
 - Perfluorohexanoic acid (PFHxA)
 - Perfluorodecanoic acid (PFDA)
- Precursors to PFOA, PFOS, and other PFAS listed above; and

¹ <https://astswmo.org/astswmo-position-paper-addressing-pfas-2/>

- Categories of PFAS.

Designation of additional PFAS, as contemplated in this ANPRM, would provide federal and State regulators with greater authority when considering the development of groundwater, soil, and/or drinking water standards. This designation would also advance federal and State efforts to compel responsible and potentially-responsible parties to investigate and remediate contamination nationwide, especially when private wells and public water systems are impacted.

ASTSWMO appreciates that this ANPRM is generally in agreement with the aforementioned ASTSWMO November 2022 position paper, and the value of these designations as CERCLA hazardous substances is derived from:

- creating a consistent national regulatory framework for the evaluation and cleanup of contaminated sites at a federal level;
- strengthening federal and State authority to hold polluters accountable by compelling responsible and potentially responsible parties to remediate PFOA and PFOS contamination in a complete and timely fashion;
- requiring facilities to report releases of PFOA and PFOS in excess of reportable quantities, which will lead to greater transparency and identification of potential releases. This will enhance the ability of federal, Tribal Nations, State, and local authorities to obtain information regarding the location and extent of releases;
- having a positive impact on Brownfields programs, because the rule will provide clarification and consistency related to addressing PFAS during redevelopment; and
- improved knowledge and consistency, hopefully encouraging better waste handling due to potential liability.

However, ASTSWMO members do have concerns regarding logistical challenges these listings may impose. It is important that the EPA work hand-in-hand with States to ensure that State regulatory requirements and concerns are appropriately considered and addressed, and that appropriate attention is given to impacts on already-strained core functions of State programs. Some of the issues and questions associated with implementation that ASTSWMO has identified include, but are not limited to:

- clarification on the approach for addressing PFAS at existing National Priority List (NPL) sites where PFAS may be a concern;
- clarification on addressing PFAS at NPL sites that are in the post-construction phase, where the site management has been transferred to the States, namely around the issues of:
 - who will perform and fund initial sampling to determine if an issue exists;
 - who will re-engage responsible and potentially-responsible parties;
 - whether the site will be addressed as fund lead;

- what the implications may be when an existing remedy is not addressing PFAS, and it is determined to be an issue; and
- what the impact will be on sites that are being proposed for delisting and whether there will be a requirement for PFAS investigation;
- clarification on how enforcement discretion will be applied, and how it will be considered during decision-making processes;
- clarification on how the reportable quantity amount is calculated, and how will potentially overlapping sources be accounted for during this calculation; and
- how will reportable concentrations be considered in the release reporting/notification process.

Additionally, when defining “categories of PFAS”, ASTWSMO recommends careful consideration of PFAS functional groups, chain length, and toxic endpoints. A refined approach should be employed for the combined regulation of these chemicals.

Overall, as movement is made toward better regulation and oversight of these contaminants, ASTSWMO membership recognizes a corresponding need for research, communication, and improved understanding within the following areas:

- development of human health and ecological toxicity values for PFAS;
- drinking water and wastewater treatment technologies;
- remediation technologies to remove PFAS from environmental media, to include groundwater, surface water, sediments, soil, and air;
- destruction and disposal technologies for PFAS-containing materials and waste streams;
- solidification and stabilization technologies to minimize PFAS in landfill leachate and methods to assess treatment effectiveness to aid in addressing capacity limitations; and
- acceptable levels of PFAS in compost, biosolids, and industrial byproducts that are suitable for land application.

Development within the identified key research areas above, along with advancing pollution prevention programs to support the reduction and removal of PFAS from use, needs to occur concurrently with CERCLA designations for PFAS constituents.

ASTSWMO appreciates EPA’s efforts to address PFAS contamination at the country’s NPL sites. We look forward to participating in the continuing development of an effective national regulatory framework for PFAS contaminants in the environment. If you have any questions about these comments, please contact me at millie.garcia-serrano@mass.gov or (508) 946-2727.

Sincerely,

Millie Garcia-Serrano
(MA) ASTSWMO
President

A handwritten signature in cursive script that reads "Millie Garcia-Serrano".

Enclosure

cc: Dania Rodriguez, ASTSWMO