

On May 30, the comment period closed for the Environmental Protection Agency rulemaking (88 FR 18638) on drinking water regulations for per- and polyfluoroalkyl substances (PFAS). Some western state agencies provided extensive substantive comments on the proposed rule.

The Texas Commission on Environmental Quality (TCEQ) noted the difficulty of implementing this rule across 5,500 public water systems, and the infeasibility of conducting a thorough review of the proposed rule with its 1,200 supporting documents in 62 days. “It is vitally important that primacy agencies and other stakeholders are given adequate time to evaluate proposed rulemakings to be able to provide comprehensive comments and request clarification prior to the closing of public comment periods. We realize EPA is on an expedited schedule to establish a regulation, but it should not negate the importance of meaningful input from stakeholders which will only strengthen the final rule and ultimately provide more protections for public health.”

TCEQ expressed concerns about the Hazard Index (HI) approach, which assumes a cumulative effect of different PFAS chemicals on the same organs or biological pathways. While this is a conservative approach that is convenient for rulemaking, it is not scientifically defensible – as different contaminants have been shown to impact different organs – and poses significant communication risks. “The public’s awareness and concern over PFAS continues to grow so it is critical that primacy agencies, in coordination with EPA, communicate consistent messaging to the public.” TCEQ recommended individual Maximum Contaminant Levels (MCLs) for each PFAS contaminant, allowing for precise public notice to customers with specific health-effects information. The HI approach does not take into consideration that different water systems will likely have different concentrations of PFAS contaminants depending on nearby sources, and the default communication for an exceedance would be misleading and create inappropriate concern.

TCEQ also noted concerns regarding the current lack of data tools, lab capacity, state and federal funding, and other resources at the federal, state, and local levels to implement the proposed rule. In particular, EPA’s modernization of the Safe Drinking Water Information System-State (SDWIS-State) has been in process for more than a decade, and does not currently have the functionality to reliably and consistently calculate compliance for the HI.

TCEQ said: “Due to the growing complexity of federal drinking water regulations, the knowledge required of water system operators has reached insurmountable proportions causing a strong reliance on technical and informational assistance from state regulators.... It is imperative that the final rule accurately portrays the resources primacy agencies will need to implement the rule, since many primacy agencies need to use this information to justify staffing levels and costs.” In FY23, Texas lost \$31M in Drinking Water State Revolving Fund (SRF) base capitalization grant funding due to congressional earmarking, and TCEQ emphasized the importance of protecting the long-term viability of SRF base program funding to ensure additional resources are available to implement additional federal regulations.

Finally, TCEQ urged EPA to finalize its guidance on the destruction and disposal of PFAS, and to develop communication materials to provide the public with clear information about the significance of PFAS detection levels and the impact of PFAS in drinking water versus all other exposure routes.

Washington said that EPA’s assumption that 1.3 parts per trillion (ppt) of PFAS is an achievable target nationwide may not be appropriate. Additionally, it is not appropriate to rely on laboratory results showing PFAS concentrations below the Practical Quantitation Limits (PQLs), that is the lowest concentration level that can be reliably measured across laboratories nation wide, for ongoing monitoring or compliance decisions. The States has encountered multiple issues with lab analysis, both in terms of certified lab capacity, and with the low detection limits that often require repeat samples. The States noted that they have more PFAS detections in groundwater than in surface water, and that detections are generally consistent over time with little seasonal variability. The States asked for flexibility for states to develop and provide waivers for monitoring requirements, and said they support the use of prior monitoring data to satisfy the initial monitoring requirements.

The Washington State Department of Health (DOH) said: “The HI approach is reasonable for regulating PFAS with additive toxicity. This will be challenging to implement as proposed due to the tracking of multiple compounds and automating this into existing data systems. DOH has limited IT resources to prepare for migration to [Safe Drinking Water Information System] SDWIS state. Timing will be a key consideration for successful implementation of this area of the proposed PFAS rule. As written, this approach will have a considerable resource impact on compliance activities.”

DOH requested transparent communication with the public about what is known and understood about PFAS to address questions and concerns about exposure and health effects.

Washington is also concerned about PFAS waste disposal and water treatment residuals, and is preparing an environmental impact statement to determine the least impactful disposal method.

Oregon supported the HI approach, noting that it provides optimal public health protection in the face of scientific uncertainty. The States believe that the 1.3 ppt trigger is more than most labs can achieve at this time, and that 2.0 ppt is more realistic. "Using unquantified data for decision-making is a risky precedent and states would need more clarity on how the data should be reported, interpreted, and entered." Oregon also supported monitoring flexibility for small groundwater systems, and flexibility for state waivers under certain conditions.