WC-3 Resolution on PFAS Chemicals Calling For Federal Guidance and State Planning to Address Potential Contamination

Whereas per- and polyfluoroalkyl substances ("PFAS") are a large group of man-made chemicals used in consumer products and industrial processes. In use since the 1940s, PFAS are resistant to heat, oils, stains, grease, and water — the chemical bond and makeup of which contributes to their persistence in the environment.[1] PFAS have been found to adversely affect the health of humans manifesting as developmental issues, cancer, liver damage, immune system disruption, resistance to vaccines, thyroid disease, impaired fertility and high cholesterol;

Whereas to provide Americans with a margin of protection from lifetime of exposure to two types of PFAS contaminants, per-fluorooctanoic acid ("PFOA") and per-fluorooctanesulfonic acid ("PFOS") from drinking water, the Environmental Protection Agency ("EPA") has established the health advisory levels at 70 parts per trillion;[2]

Whereas between 2000 and 2002, PFOS was voluntarily phased out of production in the U.S. by its primary manufacturer, 3M;[3][4]

Whereas the EPA has been aware of and studying the potential health effects of PFOA/PFOS, since its priority review was initiated in 2002;

Whereas Congress, under the 1996 Amendments to the Safe Drinking Water Act, provided the EPA Administrator with broad, singular subjective discretion to decide whether to regulate PFAS;[5]

Whereas Congress recently has taken steps to address PFAS contamination originating on military bases;

Whereas at least 12 states, frustrated with the lack of progress by Congress and the EPA, have adopted or proposed health guidelines or Maximum Contaminant Levels ("MCLs") for PFAS in their state;

Whereas on September 25, 2019, EPA issued advanced notice of proposed rulemaking that would allow the public to provide input on adding PFAS to the Toxics Release Inventory ("TRI") toxic chemical list[6] and on February 20, 2020, the EPA released an updated list of 172 PFAS chemicals subject to TRI reporting as required by the National Defense Authorization Act;[7]

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1 https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water

2 https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos

3 https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf

4 PFOS is a specific compound of the PFAS class of contaminants

5 *NRDC v. EPA*, 16 F.3d 1395, 1401 (4th Cir. 1993) (the court realizes that it must give due weight to EPA's interpretation and administration of this highly complex statute, particularly when its determination appears to be reasonable and is supported by substantial evidence in the administrative record)

6 https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water

7 https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water

Whereas on December 19, 2019, EPA issued *Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS,* which provides guidance for federal cleanup programs that will be helpful to states and tribes;[8]

Whereas on February 20, 2020, the EPA issued a supplemental proposal to ensure that new uses of certain persistent long-chain PFAS chemicals in surface coatings cannot be manufactured or imported into the United States without notification and review under the Toxic Substances Control Act;[9]

Whereas on February 20, 2020, the EPA announced implementation of its PFAS Action Plan by proposing regulatory determinations for PFOS and PFOA in drinking water;[10] a*nd*

Whereas on March 10, 2020, the EPA published a notice in the Federal Register of its Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List, announcing preliminary determination to regulate PFOA and PFOS under the Safe Drinking Water Act[11] and is taking public comments in the Federal Register via https://www.regulations.gov in Docket No. EPA-HQ-OW-2019-0583;[12] *now, therefore be it*

Resolved, that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2020 Summer Policy Summit conducted virtually, urges the EPA to expedite establishing a MCL for PFOS and PFOA based on risk to the public's health where the EPA is within its statutory authority to expeditiously move forward with a process to determine an MCL for PFOS and PFOA to allow individual agencies and the respective utilities within their jurisdiction to assess and address the current contamination risks; *and be it further*

Resolved that, in the absence of an EPA standard, states and their respective regulatory agencies should consider establishing PFAS Task Forces to echo the ongoing effort of the Department of Defense and Congressional PFAS Task Force that is developing mitigation plans for PFAS contaminations at military installations.[13] Regulators and the water and waste-water utilities, in coordination with other implicated agencies, should work to establish similar provisions that would urge the development of the following:

(1) Required reporting of industrial discharge of PFAS;
(2) Formalized guidance on the destruction and disposal of PFAS wastes;
(3) Standardized metrics for testing and subsequent reporting to regulators; and
(4) Continued urgency for PFAS's contaminant designation by the EPA and the establishment of a federal MCL; *and be it further*

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[8] https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water

[9] https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water

[10] https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water

[11] https://www.federalregister.gov/documents/2020/03/10/2020-04145/announcement-of-preliminary-regulatory-determinations-for-contaminants-on-the-fourth-drinking-water

[12] https://www.epa.gov/ccl/regulatory-determination-4

[13] These efforts were authorized under the National Defense Authorization Act for Fiscal Year 2020. H.R.2500 and S.1790.

Resolved that regulated water utilities, as well as non-regulated private and/or municipal water utilities, are encouraged to actively address the eminent risk of PFAS by establishing internal standards, testing, and reporting PFAS contaminant levels in their service territories to the appropriate state agencies. This effort should work in tandem with the aforementioned Task Force and include all stakeholders necessary to efficiently and equitably manage potential PFAS disposal; *and be it further*

Resolved that states and their regulatory agencies, in coordination with all other appropriate state agencies, should work in conjunction with the regulated water utilities to plan for a holistic effort for recovery of costs, including but not limited to testing and reporting for PFAS contaminants and treatment of PFAS contamination in the water supply. Non-regulated and/or municipal water utilities are strongly encouraged to utilize state funding sources to address these considerations. Non-regulated and/or municipal water utilities should consider developing conditional funding for activities encompassing PFAS identification, management, treatment, and other types of activity related to PFAS mitigation. Planning for cost recovery efforts may also include implementation of specific standards to address PFAS contamination including but not limited to an MCL.

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Sponsored by the Committee on Water
Adopted by the NARUC Board of Directors on July 22, 2020