



**The Ground Water Protection Council**  
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*Dedicated to protecting our nation's ground water*

**Date:** June 12, 2023

**To:** U.S. Environmental Protection Agency  
Federal eRulemaking Portal: <https://www.regulations.gov>  
Docket ID No. EPA-HQ-OLEM-2022-0922

**Re:** Addressing PFAS in the Environment, Advance Notice of Proposed Rulemaking

The Ground Water Protection Council (GWPC) appreciates the opportunity to provide comments and feedback to the U.S. Environmental Protection Agency (EPA) on the Advance Notice of Proposed Rulemaking on Potential Future Designations of Per- and Polyfluoroalkyl Substances (PFAS) as CERCLA Hazardous Substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

GWPC's membership consists of representatives of state groundwater and underground injection control (UIC) regulatory agencies that mutually work toward the protection of groundwater nationwide. Our focus is specifically on protecting groundwater supplies, conserving groundwater resources for all beneficial uses, and recognizing groundwater as a critical component of the ecosystem. GWPC is unique among state associations in that its members are the state officials who set and enforce regulations on groundwater protection and UIC.

GWPC's comments on the advance notice of proposed rulemaking under CERCLA express the concerns of our state agency members, including anticipated impacts to UIC programs and facilities as well as groundwater quality concerns regarding potential future designation, or designations, of categories of PFAS as hazardous substances.

GWPC provides the following information that EPA should consider in preparing an economic analysis of the potential direct and indirect costs and benefits, including impacts on small entities, associated with this potential rulemaking.

- If PFAS are determined to be CERCLA hazardous substances, PFAS-laden waste streams generated by water treatment processes will be required to be handled and disposed as hazardous wastes which will negatively impact water and wastewater utilities in several ways including increased costs and legal risks of handling hazardous waste, and exposure to CERCLA/third party litigation. In addition, the anticipated quantities of new hazardous waste streams generated by water and wastewater utilities may overwhelm existing hazardous waste landfill capacity and existing UIC Class I injection well disposal capacity.
- If the proposed hazardous designation is adopted, PFAS-laden waste streams that are to be disposed of in UIC Class I disposal wells deep below underground sources of drinking water, would require the wells to be permitted to inject hazardous substances. There are currently multiple deep UIC Class I disposal wells taking PFAS-laden waste, and many of these wells are currently classified as non-hazardous waste disposal wells. If the proposed CERCLA PFAS rule and the anticipated Resource Conservation and Recovery Act (RCRA) PFAS rule go into effect, then there would be costs for well owners and delegated UIC state programs associated with amending these Class I permits to allow the

wells to be classified as hazardous waste wells to dispose of these wastes. Presumably, the well facilities would also need to go through the EPA's RCRA Land Disposal Restrictions (LDR) no-migration petition process to demonstrate that the waste plume would remain in a specified reservoir location for 10,000+ years.

- Currently, EPA does not have the staff capacity to process the anticipated number of new UIC Class I disposal well LDR no-migration petitions in a timely manner, which could result in costs being incurred for an anticipated waste disposal blockage and stockpiling of PFAS-laden wastes. EPA should consider the cost/benefit of streamlining its LDR no-migration process or eliminating that additional level of regulatory scrutiny for UIC Class I injection wells disposing of PFAS-laden waste. The existing UIC Class I permit process and post-permit regulation are sufficiently protective of human health/environment due to stringent well-siting requirements and robust well construction, operation, maintenance, and closure standards. This safety record has been demonstrated by the successful disposal operations of hundreds of UIC Class I injection wells since the 1980 inception of the federal UIC program. To our knowledge, there have been no cases of UIC-permitted Class I injection well failures resulting in groundwater contamination under the UIC Program.
- The hazardous substance designation would have costs associated with potential “re-openers” for closed CERCLA and RCRA cleanup sites, Brownfields sites, and operating CERCLA and RCRA cleanup sites.
- The costs for existing disposal sites to dispose of drinking water treatment sludge and wastewater biosolids as hazardous wastes should be evaluated. Costs incurred may include investigating and permitting or closing facilities as hazardous waste disposal sites. These costs could have a disproportionately larger impact on small entities and could result in them becoming responsible parties at new CERCLA sites.
- Under the proposed CERCLA rule, the presence of PFAS hazardous constituents in UIC Class V injection well operations may mean that UIC Class V non-hazardous injection wells would have to be reclassified as UIC Class IV hazardous injection wells, which are prohibited except for injection wells used in CERCLA or RCRA cleanups. CERCLA designation of these PFAS could potentially impact the operation of tens of thousands of UIC Class V injection wells, such as stormwater drainage wells, aquifer storage and recovery (ASR) and managed aquifer recharge (MAR) facilities, groundwater remediation wells, and (currently) non-hazardous waste disposal wells such as those that accept drinking water treatment residuals.

UIC delegated programs would have costs associated with addressing impacts to Class V injection well operations and will need definitive guidance from EPA on how to address the new proposed CERCLA rule requirements in the context of the UIC Class V injection well program. Many UIC Class V injection well authorizations are currently provided by rule at the federal level. EPA and delegated state agency programs that administer the UIC Class V program do not have staff or budgets to deal with the anticipated programmatic requirements related to PFAS (as hazardous substances) that may be detected in the injection streams or in the receiving aquifers of Class V wells.

- GWPC is concerned that, without regulatory flexibility, the proposed PFAS CERCLA rulemaking will negatively impact permitted, operating ASR and MAR facilities, due to the costs and liabilities associated with testing, removing/treating, and disposing of PFAS that may be present in source water as hazardous substances. Already, states are evaluating whether existing ASR and MAR projects have measurable PFAS in the injected water and in the injection zone aquifer. For example, in North Carolina one operating ASR project storing public drinking water has been terminated and the

operator has extracted millions of gallons of injected water, treated the water, and discharged the extracted, treated water back into the original surface water source (Cape Fear River). The hazardous substance designation has the potential to make any new ASR/MAR projects infeasible due to costs associated with analytical testing and with pre-injection and/or post injection (recovery) water treatment and disposal costs for the treatment residuals.

- GWPC is concerned with the potential loss of reused treated municipal wastewater as a viable water source for ASR and MAR projects because of the costs associated with treating for and removing PFAS, as well as the costs of disposing the treatment residuals as hazardous substances.

Thank you for the opportunity to provide these comments. Our members will be tasked with meeting all regulatory requirements and standards related to this rulemaking if it is adopted. We ask that EPA address our concerns prior to finalizing the proposed regulations.

If you have any questions or would like to follow up on any of these items, please contact Dan Yates, GWPC Executive Director, at (405) 516-4972 or [dyates@gwpc.org](mailto:dyates@gwpc.org).

Sincerely,

A handwritten signature in cursive script that reads "Dan Yates".

Dan Yates  
Executive Director  
The Ground Water Protection Council