

Perspectives on Policy & Pretreatment

2025 New England Pretreatment Coordinators Workshop



National Association of Clean Water Agencies

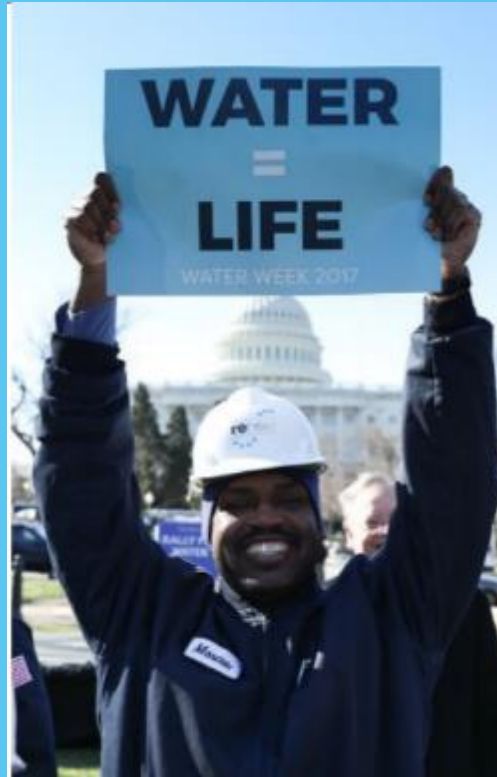
October 22, 2025 | Nashua, NH



NACWA – A Clear Commitment to Our Nation's Waters

National trade association for public wastewater & stormwater utilities

Represent over 350 public utilities of all sizes from around the country



Leader in legislative, regulatory and legal advocacy on the full spectrum of clean water issues

2025 So Far...



**“Human sacrifice, cats and dogs,
living together... mass hysteria!”**

- **Federal Funding? Maybe**
- **PFAS Regulations? Who Knows**
- **De-regulation? Probably**
- **Legal Precedents Holding? Probably Not**
- **Lawsuits Over Everything? Yes!**

What's Happening at EPA?



Staffing Changes

- Significant staffing cuts through terminations and buyouts
- Jessica Kramer confirmed as Assistant Administrator (AA) for Water on September 18
- New EPA team moving in a deregulatory direction – supposedly

Agency Reorganization

- Office of Research and Development to be eliminated
- Under Office of Water, Office of Science and Technology eliminated, new Office of Cybersecurity and Resiliency added

PFAS Maximum Contaminant Limits (MCLs)

“EPA intends to provide regulatory flexibility and holistically address these contaminants in drinking water”

- Final rule published April 10, 2024:
 - PFOA and PFOS – 4 ppt
 - PFHxS, PFNA, GenX – 10 ppt
 - Mixtures of PFHxS, PFNA, GenX, PFBS
- EPA announcement on May 14, 2025:
 - Compliance for PFOA and PFOS delayed from 2029 to 2031
 - Intent to rescind other PFAS MCLs (asked DC Circuit to vacate these regulations on Sept.11)
- “Combined with effluent limitations guidelines for PFAS and other tools to ensure that polluters are held responsible, EPA’s actions are designed to reduce the burden on drinking water systems...”

PFAS Aquatic Life Criteria

- October 7, 2024 – EPA publishes final aquatic life criteria for PFOA and PFOS
- Benchmarks set for eight other PFAS
- EPA states that “the best available science indicates that PFAS levels in the environment appear to be significantly below levels that would affect aquatic life, except in areas where there is known contamination such as Superfund sites.”

Table 1. Final Recommended Freshwater Aquatic Life Water Quality Criteria for PFOA and PFOS

Criteria Component	Acute Water Column (CMC) ¹	Chronic Water Column (CCC) ²	Invertebrate Whole-Body	Fish Whole-Body	Fish Muscle
PFOA Magnitude	3.1 mg/L	0.10 mg/L	1.18 mg/kg ww ⁴	6.49 mg/kg ww ⁴	0.133 mg/kg ww ⁴
PFOS Magnitude	0.071 mg/L	0.00025 mg/L	0.028 mg/kg ww ⁴	0.201 mg/kg ww ⁴	0.087 mg/kg ww ⁴
Duration	1-hour average	4-day average	Instantaneous ³		
Frequency	Not to be exceeded more than once in three years, on average	Not to be exceeded more than once in three years, on average	Not to be exceeded ⁵		

PFAS Human Health Water Quality Criteria



- Proposed December 2024; Comment period ended April 25, 2025
- Incredibly low values:
 - PFOA – 0.0009 ppt
 - PFOS – 0.06 ppt
 - PFBS – 400 ppt
- Values dependent on problematic reference doses and cancer slope factors established in National Primary Drinking Water Regulations/MCLs
- NACWA comments outlined concerns with underlying science as well as failure to consider technical feasibility and costs

CERCLA Hazardous Substance Designation

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- September 2022 – EPA proposes to designate PFOA and PFOS as “hazardous substances” under Section 102(a) of CERCLA
- May 8, 2024 – EPA published final rule, which was effective July 8, 2024
- First time EPA has used this authority to designate hazardous substances without those substances first being designated as hazardous or toxic under the primary federal air, water, or toxics statutes

Two goals of CERCLA, according to Congress:

- Provide for clean-up if a hazardous substance is released into the environment
- Hold responsible parties liable for the costs of these clean-ups

CERCLA Liability for POTWs

- CERCLA assigns strict, retroactive, joint, and several liability to potentially responsible parties (PRPs)
- POTWs did not need to know they were “disposing” of PFAS via effluent or biosolids to be held liable
- Liability under CERCLA applies even if past practices were lawful and directed, permitted, or known by state or federal government
- Even if a POTW is only responsible for a fraction of PFAS contamination, it can be liable for cleaning up an entire site, particularly if other PRPs cannot be identified
- POTWs can be brought in as PRPs by third parties

Examples of CERCLA Liability for POTWs

- Passaic Valley, NJ cleanup of dioxins
 - OxyChem has brought multiple downstream POTWs into its own CERCLA lawsuit to make them pay for part of cleanup
 - EPA has tried to limit POTW responsibility, but utilities have spent hundreds of thousands of dollars on litigation costs alone
- Fox River, WI cleanup of PCBs
 - Local utilities implicated in contamination and proving *de minimis* contribution has significant costs

EPA CERCLA Enforcement Discretion Memo

“EPA does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to, community water systems and publicly owned treatment works, municipal separate storm sewer systems, publicly owned/operated municipal solid waste landfills, publicly owned airports and local fire departments, and farms where biosolids are applied to the land.

“For these same parties, EPA can use CERCLA statutory authorities when appropriate to enter into settlements that provide contribution protection from third party claims for matters addressed in the settlement.”

EPA to Defend PFAS CERCLA Designation

- September 17, 2025, court filing and announcement by EPA that it will defend PFAS CERCLA designation in *U.S. Chamber of Commerce v. EPA*
- Stated that the Agency must also continue to work to establish “a clear liability framework that ensures the polluter pays and passive receivers are protected.”
- The Agency for the first time expressly acknowledged that, while “EPA intends to do what it can based on its existing statutory authority,” it “will need new statutory language from Congress to fully address the concerns with passive receiver liability.”
- According to Administrator Zeldin, the Agency is taking this position after “hearing loud and clear from the American people, from Congress, and from local municipalities.”

Water Systems PFAS Liability Protection Act



- HR 1267, 23 current co-sponsors (14 Republicans, 9 Democrats)
- Provides a targeted exemption for water sector utilities from CERCLA liability for PFAS
- Supported by the Water Coalition Against PFAS

Draft Sewage Sludge Risk Assessment



- Released at end of Biden Administration
- Estimated risk of 1 ppb PFOA or PFOS to an atypical “farm family” – not general population – for biosolids disposal methods: land application, surface disposal and incineration (qualitative analysis only)
- Found elevated risk for both cancer and non-cancer health effects. Examples:
 - 1×10^{-3} cancer risk for milk consumption in pasture farm scenario
 - 1×10^{-4} cancer risk for drinking water and fish consumption for food crop farm scenario

Concerns with Draft Sewage Sludge Risk Assessment

- Compounded conservative with risk assessment framework
 - EPA's own Science Advisory Board stated that the assumptions used by EPA are “well outside the norm of present-day family farms . . . the vast majority of biosolids applications are made to lands that are not used for producing food directly consumed by humans but rather to lands used for producing animal feed, fiber and/or fuel.”
- No consideration of relative or comparative risks
- Problematic underlying data and assumptions

Biosolids Resources: biosolidsexplained.org



Resources for Utilities

WHAT ARE
BIOSOLIDS

BENEFITS OF
BIOSOLIDS

PFAS AND
BIOSOLIDS

BIOSOLIDS ARE
SAFE

NACWA
HOME



Draft Sewage Sludge Risk Assessment

Pretreatment Statement in *Federal Register*

“Regardless of the management practice to use or dispose of sewage sludge, exposure and risk reduction is possible through pretreatment at industrial facilities discharging to a WWTP [wastewater treatment plant]. By monitoring sewage sludge for PFOA and PFOS, WWTPs can identify likely discharges of PFOA and PFOS from industrial contributors, require pretreatment, and achieve significant reductions in PFOA and PFOS concentrations in their sewage sludge. In some state programs, WWTPs with industrial sources have achieved a 98 percent reduction in PFOS sewage sludge concentrations through industrial pretreatment initiatives. The EPA recommends that states, Tribes, and WWTPs monitor sewage sludge for PFAS contamination, identify likely industrial discharges of PFAS, and implement industrial pretreatment requirements, where appropriate. Doing so will help reduce downstream PFAS contamination and lower the concentration of PFOA and PFOS in sewage sludge.”

PFAS Effluent Guidelines & Pretreatment Standards



- Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Effluent Guidelines
 - Proposed rule withdrawn from White House Office of Management & Budget (OMB) on January 21, 2025
- EPA Preliminary ELG Plan 16, December 2024
 - OCPSF – Fall 2024
 - Metal Finishing – Spring 2026
 - Landfills – 2027

EPA POTW PFAS Influent Study and National Sewage Sludge Survey

Proposed ICR – March 26, 2024

- Questionnaire for 400 largest POTWs to complete, under Clean Water Act Section 308
- From the questionnaire information, EPA will ask 200 POTWs to sample up to 10 upstream industrial users, plus samples from influent, effluent, and domestic sources, at utility's expense
- Biosolids sampling will occur later
- Questionnaire originally scheduled to go out January 2025

EPA POTW PFAS Influent Study and National Sewage Sludge Survey

NACWA Comments

- EPA should compile all available data for PFAS before requiring additional sampling
- Utilize TRI data that is required for PFAS
- Any data gaps could be targeted with a well-designed study, rather than a broad, one-time sampling event that is unlikely to yield actionable data on PFAS
- Costs and laboratory capacity should be considered
- Methods 1621 and 1633 should not both be required
- Biosolids sampling should be separated from POTW Influent Study

Control PFAS with Local Limits??

Opinion: Wastewater Plants Could Protect Against PFAS Pollution

Sewage treatment plants have the power to help reduce people's exposure to PFAS. It's time they start using it.

Southern Environmental Law Center [on Undark](#)

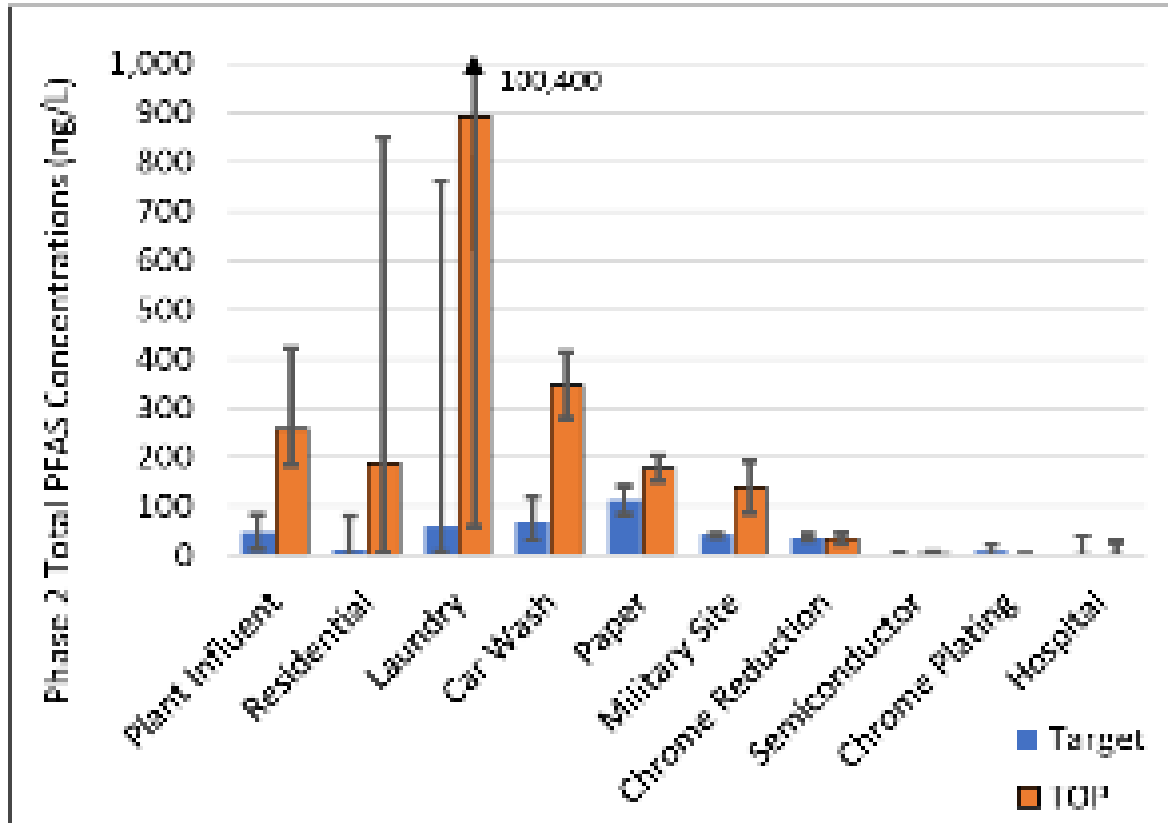
- PFAS “are insidious and harmful, and local U.S. wastewater utilities are likely giving them a free ride into drinking water and food.”
- “As it stands, many wastewater plants are irresponsibly discharging the PFAS they receive from their industrial customers back into our drinking water sources.”
- “We cannot afford to wait for thousands of PFAS to be regulated individually, or to play whack-a-mole with each type of PFAS-polluting industry. The time is now to use pretreatment authority to hold polluters accountable.”

Control PFAS with Local Limits??



“Wastewater plants are paid on the front end to accept industrial wastewater and on the back end for selling sludge, with some multistate utilities bringing in hundreds of millions of [dollars](#) each year. Total U.S. wastewater treatment revenue [amounted](#) to \$65.3 billion in 2019. The very least these public utilities can do is use their pretreatment authority to prevent PFAS pollution from reaching our drinking water and food.”

Bay Area Clean Water Agencies (BACWA) Study



“At most Bay Area treatment plants, more than 95% of flows are from residential and commercial customers. Phase 2 results indicate that residential areas may contribute PFAS at concentrations similar to plant influent, which means that residential users may be the dominant source of PFAS to many treatment facilities. . . This source of PFAS can only be controlled by removing or reducing the amount of PFAS found in consumer products.” ([Study summary](#))

MEAT & POULTRY PRODUCTS (MPP) – Proposed ELGs & Pretreatment Standards

January 23, 2024 – EPA proposed effluent limitation guidelines (ELGs) and pretreatment standards for BOD, TSS, and oil & grease

- Currently no pretreatment standards for MPP Category
- EPA suggested that “POTWs that perform denitrification may want to waive BOD limits for their MPP industrial users so they can receive more carbon...”
- EPA presented options for nutrient pretreatment standards, but not as the preferred option

NACWA Asked for Local Control of MPP Discharges to Continue

- Pretreatment standards are not necessary for conventional pollutants – they are not inherently harmful to the treatment process and should not pass through it, since POTWs are designed to treat conventional pollutants
- Local control is more appropriate, since POTWs best understand the capacity and processes of the treatment plant
- POTWs often need the BOD for their treatment processes and the revenue for treating BOD
- Waiver process would introduce unneeded complication

EPA Withdraws Proposal for ELGs and Pretreatment Standards for MPP Category

- EPA announced on August 30, 2026, that it would withdraw proposal, citing information in public comments and the Administration's priorities of "protecting food supply and mitigating inflationary prices for American consumers."
- Ten environmental groups filed a lawsuit on September 15, 2025, challenging EPA's decision

Toilets Are Not Trashcans!

Protecting our Pipes, Pumps, Plants, & Personnel

Clear labeling of
non-flushable
products



Flushable
products that are
safe for sewer
systems



Consumer
education



Do Not Flush Labeling Compliance



Wastewater Infrastructure Pollution Prevention and Environmental Safety (WIPPES)

- Sets federal “Do Not Flush” labeling standards for non-flushable wipes and provides a consistent national labeling landscape.
- Closely modeled after state laws and would preempt state wipes labeling laws
- Bipartisan and Bicameral Introductions
 - S. 1092: Sen. Jeff Merkley (D-OR); Sen. Susan Collins (R-ME)
 - H.R. 2269: Rep. Lisa McClain (R-MI); Rep. Kevin Mullin (D-CA)
- Supported by NACWA, WEF, CASA, and the Association of the Nonwoven Fabrics Industry (INDA)
- **H.R. 2269 passed on June 23, 2025**





INTERNATIONAL WATER SERVICES FLUSHABILITY GROUP

(IWSFG)

- U.S., Canada, Australia, New Zealand, Japan, and Spain
- IWSFG flushability specifications published in 2018, updated in 2020
- www.iwsfg.org

CHARLESTON, SC

“Workers take
dive into deep
doo to unclog
sewer pumps”

“Divers swim
through 90 feet of
raw sewage to
unclog giant, hairy
‘fatberg’”



CHARLESTON WATER SYSTEM CLASS ACTION LAWSUIT

- Lawsuit against Costco, CVS, Kimberly-Clark, Procter & Gamble, Target, Walgreens, and WalMart
- Settlement agreement with Kimberly-Clark:
 - KC Flushable wipes will meet IWSFG specifications by May 2022
 - Non-flushable wipes will be properly labeled
- Other companies also entered similar settlement agreements

Flushable Wipes: Safe to Flush, or Not?



www.flushsmart.org

[illegible]

“Flush Smart” Sopa de Letras

Nombre: _____

Busca y enciende en un círculo todas las palabras de la lista siguiente.
¡Piensa antes de tirarlo al inodoro!

Estas cosas **NO** pertenecen en el inodoro.

juguetes música popote	comida rana pañal	basura pato ropa interior
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Puntaje del círculo de **NO LO TIRES** a no tirar las cosas no desechables al inodoro por el medio.




Conservative Law Foundation v. MWRA

Catching Up on a Little Good Case Law



- Feb. 2023 decision from the U.S. District Court for the District of Massachusetts
- **Background:** ENGO Conservative Law Foundation brought suit arguing that MWRA was in violation of its NPDES permit because it failed to take sufficient enforcement action against industrial users.
- **Issue:** Do citizens have a right to bring lawsuits over a utility's administration of its pretreatment program?
- **Decision:** CWA section 309(f) only provides EPA – not outside groups – with the right to oversee administration of a pretreatment program.

Conservative Law Foundation v. MWRA

- **Helpful dicta:** Court pointed to several policy arguments in favor of MWRA -
 - Allowing ENGOs to second-guess EPA assessment of pretreatment programs could lead to flood of litigation;
 - Utilities would face inconsistent requirements and be "in the dark in implementing their own" programs;
 - Citizen groups lack engineering and systems expertise to ensure costs imposed will not outweigh benefits achieved;
 - EPA is answerable to the public, ENGOs are "answerable only to their own members."
- **Potential applications going forward:** Could help combat ENGO positions about utility use of pretreatment programs in context of PFAS.

City and County of San Francisco v. EPA

San Francisco Supreme Court Decision



- **Background:** SFPUC challenged as overly vague requirements in its NPDES permit requiring it not to "create pollution" or "cause or contribute to the violation of water quality standards."
- **Decision:** Such "end result requirements" - i.e., requirements "that do not spell out what a permittee must do or refrain from doing" - are unlawful and are not needed to protect water quality.
- **Court's Reasoning:**
 - Such provisions violate the text, structure, and history of the CWA
 - Would allow for significant enforcement when permit holder never put on notice of compliance obligations

City and County of San Francisco v. EPA

- **Court's Reasoning (continued):**

- Eviscerate the section 402(k) "permit shield"
- Are problematic to implement where there are multiple dischargers to waterbody

- **Potential Application to Pretreatment:**

- Case does NOT directly implicate pretreatment program – Court's reasoning based on statutory provisions specific to NPDES permits and permit holders
- Case does NOT call into question narrative provisions like BMPs, record-keeping, testing, reporting
- Case does NOT call into question regulations/guidance using "end result" language, only directly enforceable terms in NPDES permits
- Arguably could be used to infer that utilities cannot enforce requirements against industrial users unless those requirements spell out compliance obligations

Upcoming Events

2025 Pretreatment Virtual Workshop

December 9-10, 1:00-5:00 pm ET



2026 Pretreatment Workshop

May 5-8, Portland, Maine



Questions?

Cynthia Finley

Director, Regulatory Affairs

cfinley@nacwa.org

www.nacwa.org



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