



April 27, 2022

**VIA eComment**

Environmental Quality Board  
PO Box 8477  
Harrisburg, PA 17105-8477

**Re: Safe Drinking Water PFAS MCL Rule  
Notice of Proposed Rulemaking, 52 Pa.B. 1245, February 26, 2022**

Dear Members of the Environmental Quality Board,

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), by and through its attorneys at the Pennsylvania Utility Law Project<sup>1</sup> and in response to the public notice and request for comment published in the February 26, 2022, Pennsylvania Bulletin (52 Pa.B. 1245), submits the following comments regarding the Environmental Quality Board's (EQB) Safe Drinking Water PFAS MCL Proposed Rulemaking.

CAUSE-PA is a statewide unincorporated association of low income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating, and telecommunication services. CAUSE-PA membership is open to low and moderate income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income families maintain affordable access to utility services and achieve economic independence and family well-being.

We commend the EQB and the Department of Environmental Protection (DEP or Department) for addressing this significant public health issue. Given the ubiquity of PFAS in our environment, taking this first step to remove the higher occurring PFAS chemicals from our drinking water is laudable and necessary. As highlighted throughout the proposed rule, determining the process for remediation is highly complex and considerate of various factors – including public health metrics

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<sup>1</sup> The Pennsylvania Utility Law Project (PULP) is a statewide specialty legal services project within the Pennsylvania Legal Aid Network, dedicated to addressing the needs of low-income utility consumers across Pennsylvania. PULP provides individual and group representation in matters which affect the ability of low-income consumers to connect and maintain affordable utility service to their homes.

and economic justice concerns – ensuring maximum benefit is derived from the costs of water treatment and that costs are reasonable.

CAUSE-PA’s interests in this rulemaking center on ensuring the resulting policy solutions are designed to equitably serve low income communities and communities of color who are disproportionately impacted by PFAS contaminants, and to help minimize the impact the rulemaking will have on water accessibility and affordability for low income consumers.

Remediating PFAS contamination and providing safe, affordable drinking water to homes necessarily requires consideration of broad inequities faced by low income communities and communities of color. Low income communities and communities of color disproportionately live near PFAS contamination sites due to historical racial discrimination in housing and occupational sectors, and inequitable enforcement of environmental regulations that concentrates sources of PFAS pollution within close proximity of these communities.<sup>2</sup>

In 2019, the Union of Concerned Scientists observed, after evaluating 73-non-military sites from the Northeastern University Social Science Environmental Health Research Institute, that 15% more low income households than expected and 22% more people of color than expected live within a five (5) mile radius of contaminated sites, based on U.S. census data.<sup>3</sup> While PFAS contamination does not remain within five (5) miles of a site, households will face higher PFAS concentrations the closer they are located to the primary source - usually an industrial site, mining or other fossil fuel extraction, or a military base where firefighting foam is used with some frequency. Low income communities and communities of color therefore find themselves subject to disproportionate PFAS levels compared to other communities and suffer the costliest health consequences as result of these contaminants.

At the same time, low income communities and communities of color already face disproportionately high water burdens – meaning they pay a substantially greater portion of their household income on water service alone.<sup>4</sup> Increasing water rates for any reason can and often does exacerbate existing disparities in access to and affordability of life-sustaining water services to the home.

We recognize the critical importance of removing PFAS from our water sources, and support the Department’s and EQB’s efforts to provide all Pennsylvanians with *safe* drinking water. But we are nevertheless concerned that the proposed approach will impose additional costs on already over-burdened communities. Ultimately, we believe that all Pennsylvanians deserve *safe, accessible, and affordable* drinking water.

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<sup>2</sup> See *The True Cost of PFAS and the Benefits of Acting Now*; July 7, 2021  
<https://pubs.acs.org/doi/pdf/10.1021/acs.est.1c03565>

<sup>3</sup> See Union of Concerned Scientists, *Abandoned Science and Broken Promises* (2019), Figure 3, p. 13  
<https://www.ucsusa.org/sites/default/files/2019-10/abandoned-science-broken-promises-web-final.pdf>

<sup>4</sup> Colton, R. *The Affordability of Water and Wastewater Service in Twelve U.S. Cities: A Social, Business and Environmental Concern*; May 2020; <https://www.theguardian.com/environment/2020/jun/23/full-report-read-in-depth-water-poverty-investigation>

The costs to clean these sites, including costs of water monitoring and filtration by water utilities, is staggering. The Regulatory Analysis Form for this proposed rulemaking highlights the significant costs that will be borne by the water utilities – the regulated community – which will be passed down to ratepayers. These additional costs will further serve to exacerbate unaffordable water and wastewater rates already borne by these communities.<sup>5</sup> As succinctly stated in *Environmental Science and Technology*:

Communities with PFAS-contaminated drinking water also incur expenses related to testing and monitoring the contamination, informing the public, gathering information on treatment alternatives, studying the feasibility of infrastructure investments, and staff time for these projects. Low-income communities may be unable to cover such expenditures and often have few options for cost recovery, especially when the source of the PFAS contamination has not been determined.<sup>6</sup>

In addressing the deleterious health impacts of PFAS contamination and the critical importance of remediation, it is equally vital to ensure that all Pennsylvanians – including the millions of households living at or near the poverty level – can afford to access and maintain water and wastewater services to their homes.<sup>7</sup> The loss of water service due to the inability to pay can have far-reaching and devastating impacts to individuals, families, and the community as a whole. Involuntary termination of water service immediately results in unsanitary and dangerous conditions in the home; can cause homes to be condemned, can jeopardize a parent’s custody of their children and lead to forced removal of children from the homes, and is often cited as a cause of evictions from private and public housing.<sup>8</sup> These risks are not theoretical. Each year, tens of thousands of low income families across Pennsylvania are at risk of losing water service to their home as a result of their inability to pay.<sup>9</sup>

The inability to pay for water service has additional long-term impacts on a consumer’s credit and has a destabilizing impact on the ability of families to remain housed over the long term – often triggering periods of homelessness. Indeed, the mere existence of utility debt often disqualifies

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<sup>5</sup> See *The Invisible Crisis: Water Unaffordability in the United States*; May 2016 <http://uswateralliance.org/sites/uswateralliance.org/files/Invisible%20Crisis%20-%20Water%20Affordability%20in%20the%20US.pdf>

<sup>6</sup> See *The True Cost of PFAS and the Benefits of Acting Now*; July 7, 2021 <https://pubs.acs.org/doi/pdf/10.1021/acs.est.1c03565>

<sup>7</sup> See United Way of Pennsylvania, *ALICE in Pennsylvania: A Financial Hardship Study* (2019), <https://www.uwp.org/wp-content/uploads/ALICE-Report.pdf> (approximately 37% of Pennsylvania households are already unable to meet their basic living expenses).

<sup>8</sup> See Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania, *Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report* (2016), available at: <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>.

<sup>9</sup> See Pa. PUC, Reporting Requirements: At Risk Accounts, Docket No. M-2020-3019244.

households from both public and private housing.<sup>10</sup> Importantly, increased unaffordability for water service has a devastating impact on communities with high concentrations of poverty, as it causes increased blight, erodes the tax base, and destabilizes revenues for municipally owned water authorities in disadvantaged communities across the state.<sup>11</sup>

Pennsylvania's low income consumers and their communities should not have to make the untenable choice between accessing safe drinking water and being able to afford water service. Instead, it is imperative that the proposed rulemaking consider the costs borne by low income consumers who already face profound levels of water unaffordability and ensure that these costs will not exacerbate the ongoing water affordability crisis in Pennsylvania, or negatively impact communities that are already most impacted by PFAS contamination.

For the preceding reasons, CAUSE-PA recommends that the EQB consider the following within the context of its proposed rulemaking: (1) develop a funding strategy to protect low income customers from increased unaffordability as a result of PFAS mitigation efforts; (2) prioritize low income communities and communities of color in remediation and treatment efforts; and (3) lay the foundation for future rulemakings to help shift the cost burden to polluters and away from water and wastewater utilities. We discuss each of these recommendations in detail below.

### ***Remediation Funding Strategy***

As discussed above, low income communities face profound levels of unaffordability compared to other residential customers. It is inequitable to strain these customers who already struggle daily to afford utility services with the additional costs required for PFAS mitigation – costs that will be passed down from utilities to their ratepayers. It is critical to help ensure that ratepayers – including low income customers who have already been disproportionately impacted by PFAS contamination – will not be responsible for the costs of PFAS mitigation and remediation.

CAUSE-PA submits that *all available* federal and state funding should be deployed to implement compliance with the new MCL before water or wastewater utilities are permitted pass costs to customers. The Department provides a breakdown of compliance costs to the regulated community in Question 19 of the proposed rulemaking's RAF, including a compliance financial assistance plan. Specifically, the Department explains that low-interest loans are provided through the Pennsylvania Infrastructure Investment Authority (PENNVEST) programs to eligible public water systems to help fund compliance efforts to maintain and improve safe drinking water. In 2021, under authority granted by Act 101 of 2019, PENNVEST approved an additional annual funding program to remediate PFAS. Additionally, after the drafting of this proposed rulemaking would

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<sup>10</sup> See Department of Housing and Urban Development (HUD), *Public Housing Occupancy Guidebook, Utilities*, available at: [https://www.hud.gov/sites/dfiles/PIH/documents/PHOG\\_Utility\\_FINAL.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHOG_Utility_FINAL.pdf). Utility debt is examined as part of public housing determinations and is often used as a reason to deny applications for public housing assistance. *Id.* Likewise, private housing providers often require applicants to secure service in their name as a condition of the lease.

<sup>11</sup> See Financial Impact of Blight on the Tri-COG Communities (Sept. 2013), <https://tcvcog.com/wp-content/uploads/2020/04/TCLB-Blight-Impact-Full-Report.pdf>.

have been completed, the federal Infrastructure Investment and Jobs Act of 2021 (IIJA) became effective, allocating \$10 billion in federal government funding to address PFAS and emerging contaminants threatening the country’s water and wastewater systems.<sup>12</sup> The IIJA allocates \$240.4 million to Pennsylvania to be used for water infrastructure improvements – with an emphasis on supporting underserved communities.<sup>13</sup>

The influx of these additional sources of funding – coupled with other potential funding streams – should be appropriately utilized to defer the costs of PFAS mitigation so that the remediation strategy does not negatively impact ratepayers who already struggle to maintain water/wastewater services at unaffordable rates.

***Prioritization of low income communities and communities of color.***

As discussed above, low income communities and communities of color are subject to disproportionate PFAS levels compared to other communities and suffer the most costly health consequences as result of these contaminants. These same communities already face disproportionately high water and wastewater burdens, regularly exceeding 10% or more of household income.<sup>14</sup> In recognition of the significant, wide-ranging, and inequitable effects of PFAS on low income communities and communities of color, it is critical that the proposed rulemaking explicitly acknowledge the effects of PFAS and develop methods to prioritize PFAS mitigation efforts for low income communities and communities of color.

More specifically, CAUSE-PA recommends that communities nearest industrial sites that test highest for contamination are identified and that water and wastewater utilities serving those areas are prioritized for receipt of funds to support compliance with the new MCL. Prioritization should be targeted in coordination with the Department’s Office of Environmental Justice, and (once final) pursuant to the Department’s Environmental Justice Policy.<sup>15</sup> Prioritization of funding in this manner comports with the goals of the IIJA, which includes a specific notation that underserved communities should be supported.<sup>16</sup>

Prioritizing funding to disproportionately impacted communities – and remediating those areas *first* – will appropriately allocate funds as prescribed by the IIJA through the federal Environmental Protection Agency, will help slow the acceleration of the water affordability crisis

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<sup>12</sup> H.R. 3684, 117th Cong. (2021) (enacted) (hereinafter “IIJA”); Pub. L. No. 117-58, Div. J, Title VI; Enrolled Bill at 973–74, ¶¶ (4)–(6) .

<sup>13</sup> <https://www.epa.gov/newsreleases/pennsylvania-get-2404-million-water-infrastructure-funding-prioritizes-underserved>

<sup>14</sup> Colton, R. The Affordability of Water and Wastewater Service in Twelve U.S. Cities: A Social, Business and Environmental Concern; May 2020; <https://www.theguardian.com/environment/2020/jun/23/full-report-read-in-depth-water-poverty-investigation>

<sup>15</sup> Pennsylvania Department of Environmental Protection; Office of Environmental Justice; Environmental Justice Policy; Document No. 012-0501-002

<sup>16</sup> See <https://www.epa.gov/newsreleases/pennsylvania-get-2404-million-water-infrastructure-funding-prioritizes-underserved>; <https://www.epa.gov/newsreleases/epa-releases-new-memo-outlining-strategy-equitably-deliver-clean-water-through>; and <https://www.epa.gov/infrastructure>

due to compliance with the MCL, and will help ensure those most severely impacted by PFAS contamination are served in a timely manner. This, in turn, will improve health outcomes and help reduce health disparities. Everyone deserves safe, accessible, affordable water - regardless of their ability to pay.

***Future rulemakings to shift the cost of remediation to the polluters – not utility ratepayers.***

CAUSE-PA appreciates the limitations of this proposed rulemaking, and the regulatory limitations of 25 Pa. Code Chapter 109, which gives the Department the authority to regulate public water systems, imposing requirements for water treatment, etc. to keep drinking water safe for public consumption.<sup>17</sup> We also understand that this rulemaking allows the Department to use its regulatory authority to set an MCL and impose requirements on public water systems to treat the water to comply with the proposed PFAS MCL. Chapter 109, and so this proposed rulemaking, does not allow for regulation of industry contaminating the water supply with PFAS.

CAUSE-PA thus recommends, outside of this rulemaking, that the Department consider updates to other Chapters included in Title 25 (including Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance), Chapter 93 (Water Quality Standards), and Chapters related to hazardous and municipal waste) to better address the source of the contamination and to help shift the cost burden to the companies discharging PFAS - rather than the current strategy of regulating the treatment and provision of safe drinking water provided by public water systems after PFAS contamination has already occurred.

Ultimately, in order to holistically alleviate PFAS contamination and its significant impacts on the health and wellbeing of communities, sources of PFAS contamination must be limited at the source – chemical manufacturers; paint, paper, plastics, electrical components, textiles, leather tanning, metal finishing, electroplating companies; and any other designated site that discharges PFAS.<sup>18</sup> To end PFAS contamination, any PFAS containing materials need to cease production, though we acknowledge these efforts are beyond the scope of this rulemaking.

CAUSE-PA once again commends the Department and the EQB for putting forward a proposed rulemaking that attempts to remediate the significant public health issue of PFAS contamination. We are grateful for the opportunity to comment on this important proposed rulemaking and encourage the promulgation of this rulemaking as modified by our recommendations to prioritize disproportionately impacted communities with funding and treatment to decrease critical socioeconomic and health disparities.

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<sup>17</sup> 25. Pa. Code, Chapter 109, related to Safe Drinking Water

<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/025/chapter109/s109.3.html&d=reduce>

<sup>18</sup> <https://www.ehn.org/what-are-pfas-2656619391/what-can-you-do-to-avoid-pfas>, describes industries listed in the proposed Clean Water Standards for PFAS Act.

Respectfully Submitted,

*On Behalf of CAUSE-PA*

A handwritten signature in blue ink that reads "Elizabeth R. Marx". The signature is fluid and cursive, with a period at the end.

Elizabeth R. Marx, Esq.

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