DEEP DIVE

Democratic AGs Defend U.S. EPA Drinking Water Standards for PFAS

By Christopher Bornmann

Published: 02/21/2025

A coalition of 18 Democratic state attorneys general has filed an amicus brief in the U.S. Court of Appeals for the D.C. Circuit defending the U.S. Environmental Protection Agency's (EPA) drinking water standards for per- and polyfluoroalkyl substances (PFAS). The states argue that the rule is necessary to protect public health and assert the EPA's authority under the Safe Drinking Water Act (SDWA).

The attorneys general sent the amicus brief in response to a petition filed by the American Water Works Association (AWWA) and the Association of Metropolitan Water Agencies (AMWA) in the D.C. Circuit asking the court to review the EPA's PFAS rule. The organizations cite concerns that the EPA did not rely on the best available science and that "the rule underestimates nationwide

costs and adds to affordability challenges without achieving the public health outcomes we all seek."

The attorneys general have resisted these requests to reevaluate the rule, arguing that it is backed by strong scientific evidence, aligns with Congress' intent under the SDWA, and reinforces state-level efforts to curb PFAS pollution. In their statements, many expressed how critical these efforts are to keeping drinking water safe due to the negative impacts of PFAS on environmental and public health.

Background on the Rule

The EPA's final rule on PFAS, issued on 10 April 2024, established nationwide drinking water standards for six chemicals under the PFAS umbrella, including perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), perfluorohexane sulfonate (PFHxS), perfluorononanoic acid (PFNA), and hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX chemicals). The EPA cited extensive scientific research showing that long-term PFAS exposure can lead to health complications, including cancer, liver damage, immune system dysfunction, and development issues as the basis for regulating the chemicals.

The rule sets contamination limits, ranging from 4 to 10 parts per trillion (ppt), for these chemicals separately and as mixtures, requiring public water systems nationwide to test and treat water sources where contamination exceeds those limits. To help water suppliers deal with the rule, the EPA announced that $1 billion in funding from the Infrastructure Investments and Jobs Act would be used to implement the PFAS testing and treatment requirements.

The state attorneys general coalition's amicus brief supports the rule, arguing that it is scientifically justified because PFAS compounds often appear together in drinking water, leading to combined toxic effects. In a statement to 3E, North Carolina Attorney General Jeff Jackson said, "Every person deserves clean drinking water. North Carolinians know all too well how damaging PFAS can be to people's health and our natural resources. These standards help protect people from these forever chemicals, and I'm fighting to keep them in place."

Other Legal Challenges to the Rule

The petition by the AWWA and the AMWA is not the only challenge the rule faces. The National Association of Manufacturers and the American Chemical Council have also petitioned for the D.C. Circuit to review the rule, arguing that the EPA's PFAS standards are "arbitrary, capricious, and an abuse of discretion," use inadequate data, and inappropriately base the limits on aggregates of the substances rather than individually. The petition asks the court to vacate the PFAS rule, alleging that the EPA overstepped its authority in implementing a rule that will impose billions of dollars in compliance costs on water providers and businesses.

Christopher Allen, the vice managing partner for the Washington D.C. office of law firm Cozen O'Connor, told 3E that opponents of the rule would struggle to argue that the EPA lacks jurisdiction to regulate PFAS in drinking water.

"The hurdle those challenges will face is the significant discretion EPA has in setting those limits. The Safe Drinking Water Act is half a century old, and the EPA has a track record of

promulgating regulations under its framework. The amicus brief by the state AGs in the D.C. Circuit summarizes powerfully the arguments as to why EPA made some of the decisions it did, such as regulating mixtures of PFAS contaminants rather than each one individually or not waiting for the absolute latest testing data before setting its limits."

One of the legal strategies that industry groups may use is citing West Virginia v. EPA (2022), in which the U.S. Supreme Court ruled that the EPA lacked "clear congressional authorization" to regulate greenhouse gas emissions under the Clean Air Act. Opponents could argue that Congress never explicitly directed the EPA to regulate PFAS, making the rule invalid under the Major Questions Doctrine.

However, Allen points out the key difference that the SDWA explicitly mandates the EPA to regulate contaminants in drinking water, making it unlikely that courts will view this rule as an unlawful expansion of federal power.

"The EPA can point to the Safe Drinking Water Act as something that specifically speaks to the issue of ensuring water safety and outlines its power and authority as it goes about doing that. It's a lot less clear a case for applying a blockbuster rule like the Major Questions Doctrine that would put EPA in a bind, and instead, it becomes a technical dance," Allen added.

The recent Supreme Court decision to repeal the Chevron doctrine, which previously required courts to defer to federal agencies' interpretations of ambiguous statutes, may complicate the D.C. Circuit decision, said Allen. While this could limit deference to the EPA's scientific assessments, Allen notes that courts "can and should still look to agencies for guidance," given the technical complexity of water contamination standards.

The Evolving Challenges Facing PFAS Manufacturing

The amicus brief filed by the Democratic AG coalition is only a small part of a larger legal and regulatory effort to combat PFAS contamination. Many of the states involved in the brief have filed lawsuits against PFAS manufacturers in the past.

"You have AGs across the political spectrum engaged on this issue, whether they are the Democratic AGs like the 18 who signed the amicus brief or Republican AGs like Texas AG Ken Paxton who sued the largest manufacturers of PFAS last December," Allen noted.

Because of these actions, even if the courts strike down the EPA's Final Rule on PFAS contamination, PFAS litigation and regulations are unlikely to go away, and businesses should be prepared for further actions by state and federal regulators.

"If blocked by the courts, the industry certainly faces a temporary reprieve in terms of not having to pay the billions of dollars compliance would cost," said Allen. "But I would emphasize 'temporary' because the states and the EPA are not going to stop. I think the EPA will take another shot at this, backed by AGs. Even under the Trump administration's policy of rolling back regulations, regulation of PFAS is politically popular."

Even if the EPA does not take further action, Allen notes that attorneys general have historically acted as a regulatory force even when federal agencies were unable or unwilling to act. Businesses should be prepared for their actions to have financial consequences.

"The tobacco litigation and Microsoft antitrust cases of the late 1990s taught AGs that they can shape national policy through lawsuits," Allen explained. "You can ask the mortgage servicers and rating agencies after the 2008 financial crisis or, more recently, prescription opioid manufacturers about that, assuming the ones you ask are still in business. When an AG sues, they are primarily looking not for monetary payments but for concrete, enforceable conduct commitments that address the underlying concerns. The implementation costs and long-term compliance can be orders of magnitude larger than any monetary settlement."

The Future of PFAS Regulation

The D.C. Circuit Court of Appeals is expected to hear oral arguments for the lawsuits against the EPA in the coming months, with a ruling anticipated by early 2026. Given the stakes of the case, the losing side will likely appeal to the U.S. Supreme Court, potentially making this a landmark case on the EPA's regulatory power.

If the court rules in favor of the EPA, the rule will remain in effect, forcing water utilities and industries to comply with PFAS regulations. However, if the court vacates or weakens the rule, states will likely intensify their efforts to regulate PFAS at the state level and pursue further litigation against chemical companies. As Allen puts it, "A win by industry here would be a victory in a significant skirmish, but the wider war will be almost unimpacted." As such, businesses should not hold out for a weakening of PFAS regulations but rather anticipate more rules to come in the near future.

Editor's Note: 3E is expanding news coverage to provide customers with insights into topics that enable a safer, more sustainable world by protecting people, safeguarding products, and helping businesses grow./Deep Dive articles, produced by reporters, feature interviews with subject matter experts and influencers as well as exclusive analysis provided by 3E researchers and consultants./All information is accurate as of the date of publication.

About the Author: Christopher Bornmann is the State Regulatory and Legal Action Reporter for 3E based in Washington, D.C. He covers the latest legal developments and updates in environmental, health, and safety (EHS) that impact the U.S. at the state level. He has experience working for the U.S. House of Representatives and national advocacy groups.

Regulatory Tags

Jurisdiction	US States, United States - Federal
Governing Body	EPA - Environmental Protection Agency
Topics	PFAS

Substance Impact

CAS#	Substance
SEQ516672	HFPO-PMSA
SEQ105403	Long-Chain Perfluoroalkyl Sulfonate (PFAS)
SEQ200348	Perfluorooctane sulfonate (PFOS)
355-46-4	PFHxS
335-67-1	PFOA
T335671	PFOA and its salts, Perfluorooctanoic acids C8F15O2X(X=H, NH4, and Metal salts), all members, as mass in components made from fluoropolymers