

Attachment—Additional Questions for the Record

Subcommittee on Environment and Climate Change

Hearing on

“The CLEAN Future Act and Drinking Water: Legislation to Ensure Drinking Water is Safe and Clean”

May 25, 2021

Dr. Jennifer McLain, Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency

The Honorable Diana DeGette (D-CO)

1. When does EPA plan to place limits on PFAS discharges into our waterways?

RESPONSE: This action is outside the scope of my responsibilities in EPA’s Office of Ground Water and Drinking Water. However, I understand that on March 10, 2021 EPA, after studying the available data regarding wastewater discharges from facilities that manufacture PFAS, published an advance notice of proposed rulemaking (ANPRM) to solicit data and information regarding manufacturers of PFAS and the presence and treatment of PFAS in discharges from this industrial category. EPA is also requesting information regarding PFAS formulators, which are facilities that produce a variety of PFAS products and materials from PFAS feedstocks. EPA will use any data and information obtained via public comment on the ANPRM to inform its decision about whether a proposed rulemaking may be necessary.

2. When does EPA plan to set a national drinking water standard for PFAS that protects the health of vulnerable populations?

RESPONSE: EPA is moving forward with developing a drinking water standard for PFOA and PFOS, in a way that is informed by the best science and is consistent with our statutory authority. EPA is currently working on the technical, scientific, and legal assessments needed to take the next step in the regulatory process. Later this year, we expect to consult with EPA’s Science Advisory Board on the science behind the impacts of PFOA and PFOS in drinking water.

3. Will EPA's drinking water standards address PFBS, PFOA and PFOS?

RESPONSE: EPA is moving forward with developing a drinking water standard for PFOA and PFOS, in a way that is informed by the best science and is consistent with our statutory authority. EPA is currently working on the technical, scientific, and legal assessments needed to take the next step in the regulatory process. Later this year, we expect to consult with EPA’s Science

Advisory Board on the science behind the impacts of PFOA and PFOS in drinking water.

With respect to PFBS, EPA released an updated toxicity assessment for PFBS earlier this year. The updated assessment reflects the best available science; involved extensive federal, state, and public engagement; and is critical to EPA efforts to help communities impacted by PFAS. This information will help EPA evaluate any next steps on PFBS.

Finally, with respect to additional PFAS, EPA's February 22, 2021 Regulatory Determinations outlined avenues that the Agency is considering to further evaluate additional PFAS chemicals and provide flexibility for the Agency to consider groups of PFAS as supported by the best available science.

4. When does EPA plan to finalize the draft toxicity value for GenX?

RESPONSE: EPA expects to issue a toxicity value for GenX by the end of this year.

5. When does EPA plan to have draft toxicity values for PFDA, PFNA, PFHxA, PFHxS, and PFBA?

RESPONSE: EPA is working to develop toxicity assessments for these five PFAS through the Integrated Risk Information System (IRIS) program. EPA expects to release a draft assessment of PFBA for public comment and peer review as early as FY21 Q4. EPA expects to release draft assessments of PFDA, PFHxA, PFHxS, and PFNA for public comment and peer review in FY 2022. More information on the timing of these assessments is available in the IRIS Program Outlook (<https://www.epa.gov/iris/iris-program-outlook>), which is updated three times a year.

6. Does EPA plan to require that sewage sludge be tested for PFAS chemicals and, if so, when does EPA plan to complete the testing requirements?

RESPONSE: Sewage sludge is an important aspect of the PFAS contamination challenge, and I expect EPA's Council on PFAS to consider next steps with respect to sewage sludge in the development of the multi-year strategy.

7. Does EPA plan to require that farmers be notified if PFAS is found in sewage sludge used for fertilizer?

RESPONSE: As noted in the response above, I know sewage sludge is an important aspect of the PFAS contamination challenge and I expect EPA will address next steps with respect to sewage sludge in the upcoming strategy.

8. Denver Water has found that costs will be significantly higher than EPA's estimate of \$4,700 per line and are more in the range of \$8000 to \$10,000 per line. Will EPA revise its cost estimates to account for cities where replacement costs are higher than EPA's average, as cities plan their own replacement programs?

RESPONSE: The Biden-Harris Administration is dedicated to eliminating the nation's lead service lines and pipes through transformational and historic investments. Often, a lack of money is the barrier to replacing lead service lines and EPA is committed to building on EPA's successful water funding and financing programs to implement infrastructure investments enacted by Congress. In parallel, EPA is hosting virtual engagements to obtain further public input on EPA's revision to the Lead and Copper rule (LCRR), particularly from communities that are most at risk and impacted by lead in drinking water. We look forward to learning from communities such as Denver as we gather public input on the LCRR and as we work with Congress to make investments in replacing lead service lines.

9. At the current speed, service-line replacement will take about fifteen years in Denver. Until that job is done, Denver Water is providing water pitchers with special filters to protect residents from the lead that may be in their tap water. These filters require periodic replacement. Will EPA recommend that water utilities budget for the cost of replacing pitcher filters until lead service line replacement can be completed?

RESPONSE: EPA is committed to following the best science to address lead in the nation's drinking water and will take the appropriate time to review the revised LCR and make sure communities that have been impacted the most are protected. Moving forward, EPA will maintain a flexible approach by learning from stakeholders, including communities that have been impacted by lead, drinking water utilities, and EPA's state partners; incorporating the best available science; and adapting solutions to meet needs at the local level. EPA will deploy the full suite of our capabilities to help communities—especially low-income communities and those who have been historically disproportionately impacted by water-related challenges—reduce exposure to lead in drinking water. EPA looks forward to working with Congress and in coordination with states, Tribes, water systems, affected communities and other stakeholders to identify the most effective approaches for achieving our goal of protecting the public from lead in drinking water.

The Honorable Cathy McMorris Rodgers (R-WA)

1. Some of the bills before the Committee establish new programs.
 - a. Please explain what steps need to occur for the Agency to set up a new program.

RESPONSE: If Congress were to enact a new program, EPA would review the enacted legislation and develop a plan for implementing the program. The specific steps my office would undertake would be dependent upon the program Congress creates, including its scope; deadlines; prescribed roles for states, Tribes, and territories; and whether or not EPA receives appropriations for program implementation. EPA would strive to create the new program consistent with the statute, as expeditiously as possible.

- b. How long does it take to set up a new program before it is implemented?

RESPONSE: As noted in the previous response, the specific steps my office would undertake would be heavily dependent upon the program Congress creates, including its scope; deadlines; prescribed roles for states, Tribes, and territories; and whether or not EPA receives appropriations for program implementation. EPA would strive to create the new program consistent with the statute and as expeditiously as possible.

- c. What role do the States and water systems play in these efforts?

RESPONSE: I would look to the specifics of the statute as passed by Congress to best guide our implementation of a new program, in coordination with EPA's state and Tribal partners, water systems, and other stakeholders. EPA's existing drinking water funding and finance programs, such as the Drinking Water State Revolving Fund program, involve a close partnership with states, Tribes, and water systems. EPA would look to continue these close partnerships in any new program Congress were to create, consistent with the text of the statute as enacted.

2. The capitalization grants for Drinking Water State Revolving Loan Funds (DWSRF) is one of the oldest, most successful, and well-funded drinking water programs run by your office.
- a. What are some of the popular things that States are lending these funds to accomplish?

RESPONSE: The DWSRF helps communities finance infrastructure improvements needed to protect public health and ensure compliance with drinking water standards. In 2019, the DWSRF provided over \$2.8 billion in assistance to water systems for a wide range of water infrastructure projects, including transmission and distribution, system consolidation, and drinking water treatment facilities. The DWSRF also funded an additional \$178 million for critical activities including operator certification, water system capacity development, and source water protection. Since its inception, the DWSRF program has funded more

than \$41.1 billion in infrastructure projects at below-market interest rates. This low-cost financing represents a savings of approximately \$10 billion in interest costs over the life of the program. States also use the DWSRF to provide additional subsidy to disadvantaged communities that can be critical to infrastructure projects to protect public health in these communities.

EPA's 2019 DWSRF annual report includes a number of examples of the innovative projects recently funded by the DWSRF. This report is available at https://www.epa.gov/sites/default/files/2020-10/documents/2019_annual_report_final_508compliant.pdf. This report also showcases "DWSRF AQUARIUS Recognition Program" winners, which are DWSRF-funded projects recognized for exceptional focus on sustainability, innovation, and protection of public health (see: <https://www.epa.gov/dwsrf/2019-aquarius-recognition-program-0>).

3. EPA finalized long-term revisions to the Lead and Copper Rule in January 2021, but, in order to seek additional public comment, has subsequently postponed this rule's effective date and proposed additional delay for the effective and compliance dates of these long-term revisions.
 - a. EPA has been discussing this rule update with at-risk communities, drinking water scientists, and other interested members of the public since 2010. What specific pieces of information does EPA now need from the same stakeholders it has been talking to for the last decade?

RESPONSE: EPA believes that it is important to seek further public input on the lead and copper rule revisions, particularly from communities that are most at risk of exposure to lead in drinking water. EPA is committed to following the best science to address lead in the nation's drinking water and will take the appropriate time to review the revised lead and copper rule and make sure communities that have been impacted the most are protected.

4. The Biden Administration's American Jobs Plan and a few of the bills covered by this hearing propose spending \$45 billion to "replace 100 percent of the nation's lead pipes and service lines."
 - a. Concerning the extent of the coverage of these proposals, is it your view that these proposals call for replacing only the utility-owned portion of a lead service line, the privately-owned portion of a lead service line, both utility and privately owned lines, or something more?

RESPONSE: When present, lead service lines are the greatest contributor of lead in a home's drinking water. Thus, removing a full lead service line is the best way to permanently reduce the potential that

someone will be exposed to lead in drinking water. Complete service line replacement is an eligible expense within EPA's Drinking Water State Revolving Fund program, regardless of pipe material and ownership of the property on which the service line is located. EPA looks forward to working with Congress and in coordination with states, Tribes, and water systems to achieve the goals of improving public health and safeguarding the environment, including how to address the issue you have identified.

- b. Do these proposals employ a means test to make wealthy individuals pay for upgrades to their private property?

RESPONSE: EPA looks forward to working with Congress and in coordination with states, Tribes, water systems, and other stakeholders to achieve the goals of improving public health and safeguarding the environment, including how to address the issue you have identified.

- c. Once the Federal government requires municipal systems to replace someone's private property, does the municipal system enter into an ongoing obligation to maintain the property owner's private lines?

RESPONSE: EPA looks forward to working with Congress and in coordination with states, Tribes, water systems, and other stakeholders to achieve the goals of improving public health and safeguarding the environment, including how to address the issue you have identified.

- 5. Practically speaking, is it possible to replace 100 percent of the nation's lead service lines without the cooperation and consent of every individual property owner who has a lead service line on his or her property?

RESPONSE: The Biden-Harris Administration is committed to eliminating the nation's lead service lines and pipes through transformational and historic investments in water infrastructure. EPA looks forward to working with Congress and in coordination with states, Tribes, and water systems to achieve the goals of improving public health and safeguarding the environment, including how to address the issue you have identified.

- a. If not, how do you foresee compelling this cooperation on private property?

RESPONSE: The Biden-Harris Administration is committed to eliminating the nation's lead service lines and pipes through transformational and historic investments in water infrastructure. EPA would work with states, Tribes, and water systems to support local decisions about how to address issues such as these as they design their lead service line replacement programs within their communities.

- b. Is there any legal way for a local water utility to replace a lead service line that is on private property if the property owner does not consent to the replacement?

RESPONSE: The Biden-Harris Administration is committed to eliminating the nation’s lead service lines and pipes through transformational and historic investments in water infrastructure. EPA would work with states, Tribes, and water systems to support local decisions about how to address issues such as these as they design their lead service line replacement programs within their communities.

- c. What lessons have you learned from Flint or East Lansing on their pipe replacement efforts?

RESPONSE: EPA, states, and communities have learned a great deal from communities such as Flint and East Lansing that have endeavored to replace 100% of their lead service lines and pipes. These examples highlight that full lead service line removal is possible; that doing so requires a partnership between states, water systems, and communities; and that investing in aging infrastructure can help protect public health and create good-paying jobs.

- d. Assuming everyone was cooperative, how long is practical for this national rebuild to run to completion?

RESPONSE: The Biden-Harris Administration is committed to eliminating the nation’s lead service lines and pipes through transformational and historic investments in water infrastructure. The specific timeline for completing this work would be dependent upon a number of factors, including the amount of funding provided by Congress and the number of fiscal years in which funding is made available.

- e. Has EPA calculated what the carbon footprint would be from all the steel, concrete, cement, generators, asphalt, and trucks that would need to be intensely mobilized to swiftly do this work?

RESPONSE: The specific timeline for completing this work would be dependent upon a number of factors, including the amount of funding provided by Congress and the number of fiscal years in which funding is appropriated. Across the country, pipes and treatment plants are aging and polluted drinking water is endangering public health. EPA believes it is critical to take action to reduce lead exposure, protect public health, and create good-paying jobs.

- f. Does the disposal capacity exist for all the lines being replaced?

RESPONSE: Although solid waste disposal issues are outside my area of responsibility within the Office of Ground Water and Drinking Water, EPA would work with states, Tribes, and water systems to support local decisions about how to address issues such as these as they design their lead service line replacement programs within their communities.

6. Currently, 41 States have primary enforcement delegation for Class II wells. One of the bills under discussion at this hearing would shift just EOR wells into a new Class VII to be regulated by EPA.
 - a. What would be the added workload for EPA and the States to create a new class of wells for activities that are already regulated?

RESPONSE: The specific resource impacts on EPA would depend upon the final legislation as enacted by Congress. If Congress were to create a new well class for Enhanced Oil Recovery as contemplated in the CLEAN Future Act (H.R. 1512), EPA would review the final legislation and would seek to implement it consistent with the statute and in a way that minimizes unnecessary administrative burden for EPA, states, Tribes, and permittees.

7. State UIC officials have stated to the Committee that “[w]ithout adequate federal funding assistance for Primacy program development, application, and implementation, many states will lack the funds and incentive to assume Primacy.”
 - a. Do you agree with that statement?

RESPONSE: I agree that funding is a critical element for states as they consider assuming primacy for UIC programs. EPA works closely with states and Tribes to assist them in applying for primacy.

- b. Does EPA have enough resources to support the collection and dissemination of vital geologic information as well as guidance and training for Primacy states, or those applying for primacy from the USEPA?

RESPONSE: The President’s Fiscal Year 2022 budget requests funds to support the UIC program.

- c. Should it be made clear that grants to states be available to assist in making Primacy applications to USEPA, as well as program development and implementation?

RESPONSE: I defer to Congress on the specifics of any legislation Congress were to consider in this area. EPA is available to provide technical assistance on any such proposals if requested.

8. On May 21, 2021, EPA rescinded its October 18, 2020, rulemaking that established the Agency's procedures for issuing, modifying, withdrawing, and using guidance documents. I am concerned about the abuse of regulatory guidance by EPA as a way of obtaining policy outcomes while subverting Administrative Procedure Act requirements regarding notice and public comment.

- a. What safeguards will the Agency install to prevent the above-mentioned abuses from occurring, including extra-legal policy directives being wrapped into guidance?

RESPONSE: EPA has historically employed procedures for public transparency and involvement in the development of agency actions, including guidance. EPA has made clear that the Agency will continue to make agency guidance available to the public.

- b. What transparency efforts will EPA undertake to ensure clarity for regulated stakeholders on how EPA enforces and understands its rules?

RESPONSE: EPA has historically employed procedures for public transparency and involvement in the development of agency actions, including guidance. EPA has made clear that the Agency will continue to make agency guidance available to the public.

- c. How will EPA ensure applicable, relevant guidance are available and easily accessible to the public?

RESPONSE: EPA has historically employed procedures for public transparency and involvement in the development of agency actions, including guidance. EPA has made clear that the Agency will continue to make agency guidance available to the public.

9. I understand the Biden Administration plans to formally repeal the 2020 Navigable Water Protection Rule, a regulation issued to correct the deficiencies and overreach of the previous Waters of the United States rule (the Clean Water Rule). I found the Clean Water Rule to be one of the most burdensome EPA rules of the Obama Administration from the perspective of the impact it's had on rural communities, making it more and more difficult for hardworking Americans to be successful.

- a. What is the legal basis for making this decision?

RESPONSE: This action is outside the scope of my responsibilities in EPA's Office of Ground Water and Drinking Water. However, I understand that on June 9, 2021, EPA and the Department of the Army announced their intent to propose a new rule to establish a durable definition of "waters of the United States."

- b. What is the time frame by which regulated stakeholders should expect a final rule?

RESPONSE: This action is outside the scope of my responsibilities in EPA's Office of Ground Water and Drinking Water. However, I understand that further details of the agencies' plans, including opportunity for public participation, will be conveyed in a forthcoming action.

- c. What is your anticipated process for stakeholder engagement and how will you factor that engagement into the future rulemaking?

RESPONSE: This action is outside the scope of my responsibilities in EPA's Office of Ground Water and Drinking Water. However, I understand that further details of the agencies' plans, including opportunity for public participation, will be conveyed in a forthcoming action.

- d. Is there a rule by which regulated entities will in the interim be asked to comply?

RESPONSE: This action is outside the scope of my responsibilities in EPA's Office of Ground Water and Drinking Water. However, I understand that unless there is either court action that vacates the Navigable Waters Protection Rule or the agency finalizes a new rulemaking, regulated entities must comply with the Navigable Waters Protection Rule.

- e. What is the general time frame for EPA to promulgate a contentious rulemaking?

RESPONSE: This action is outside the scope of my responsibilities in EPA's Office of Ground Water and Drinking Water. However, I understand that further details of the agencies' plans, including opportunity for public participation, will be conveyed in a forthcoming action.

- f. What is the expected cost of repealing and replacing the 2020 Navigable Water Protection Rule?

RESPONSE: This action is outside the scope of my responsibilities in EPA's Office of Ground Water and Drinking Water. However, I understand that further details of the agencies' plans, including opportunity for public participation, will be conveyed in a forthcoming action.

The Honorable Richard Hudson (R-NC)

1. Access to clean and safe drinking water, especially during these challenging times, is critical to both public health and restoring our economy. Far too many Americans can't trust what comes out of their faucets and many more are only one disaster away from being in the same situation. Clean, safe water is foundational for every community across North Carolina and across this country. It is vital that we continue to work across the aisle to provide solutions that ensure communities across the country can meet their water demands.

Ms. McLain, if you do the math on EPA's website, you realize that 65 percent of sites on the National Priorities List have been there for more than 11 years. You mentioned in your testimony that requiring them to be cleaned up in 10 years is not practical. One of the last actions the previous Administration took concerning drinking water standards, was making a final determination to regulate PFOA and PFOS under the Safe Drinking Water Act. It was recently reported that the Agency was planning on issuing a maximum contaminate level goal (MCLG) this year.

- a. Can you please update me on whether EPA will issue an MCLG this year and how much longer it might take to propose a national primary drinking water standard for these two PFAS chemicals?

RESPONSE: EPA is moving forward with developing a drinking water standard for PFOA and PFOS, in a way that is informed by the best science and our statutory authority. EPA is currently working on the technical, scientific, and legal assessments needed to take the next step in the regulatory process. Later this year, we expect to consult with EPA's Science Advisory Board on the science behind the impacts of PFOA and PFOS in drinking water.

- b. What other activities is EPA undertaking in the Office of Ground Water and Drinking Water related to PFAS, including issuing any health advisories for PFAS like GenX?

RESPONSE: EPA recently proposed the Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) to collect new data on PFAS in drinking water. The proposed UCMR 5 would provide new data that are critically needed to improve EPA's understanding of the frequency that 29 PFAS are found in the nation's drinking water systems and at what levels, including GenX chemicals. EPA published the proposed UCMR 5 in the *Federal Register* on March 11, 2021; held two virtual public meetings on the proposal this spring; and accepted public comments until May 10. EPA is currently reviewing public comments and looks forward to publishing a final rule later this year.

Additionally, on July 19, EPA published draft Contaminant Candidate List 5 (CCL 5), which provides the latest list of drinking water contaminants that are known or anticipated to occur in public water systems and are not currently subject to EPA drinking water regulations. As directed by the Safe Drinking Water Act, EPA's CCL 5 identifies priority contaminants to consider for potential regulation to ensure that public health is protected. EPA's CCL 5 proposes to list PFAS as a group, with the exception of PFOA and PFOS, because the agency is moving forward with developing a drinking water standard for these two contaminants.

The Honorable Neal Dunn (R-FL)

1. We are working to ensure adequate infrastructure funding to promote safe and reliable water supply for all areas of the country. Given the substantial funding needed to address these and other drinking water concerns, we should consider the inefficiencies that drive up the cost borne by rate payers. For example, studies have shown that as much as 1 in 4 gallons of water are lost by leaky pipes.
 - a. As we consider committing billions of federal dollars into water infrastructure needs, should we take the opportunity to leverage this investment and modernize our infrastructure by providing a grant program to enhance the adoption of smart water technologies?

RESPONSE: EPA appreciates Congress's recent attention toward upgrading and modernizing our nation's drinking water systems, and I agree that technology must be a critical component of these investments. EPA is available to provide technical assistance to advance these shared goals, and, if enacted, EPA would strive to create such a program consistent with the statute and as expeditiously as possible.