

The Attorneys General of North Carolina, California, Connecticut, New Jersey, Arizona, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New York, Rhode Island, Oregon, Washington, and Wisconsin

July 20, 2026

Via Regulations.gov
EPA Docket Center
Office of Water Docket
Mail Code 28221T
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Re: *Comments on Rescission of Regulatory Determinations and Removal of Related Provisions for Four PFAS Substances (PFHxS, PFNA, HFPO-DA (GenX), and the Mixture of These Three PFAS Plus PFBS)*, 91 Fed. Reg. 29,413 (May 20, 2026)

Docket ID No. EPA-HQ-OW-2025-0654

Dear Administrator Zeldin:

State commenters—North Carolina, California, Connecticut, New Jersey, Arizona, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New York, Rhode Island, Oregon, Washington, and Wisconsin (the “States”)—submit this comment letter to oppose the U.S. Environmental Protection Agency’s (“EPA”) proposal to rescind portions of its 2024 rule establishing nationwide drinking water standards for certain per- and polyfluoroalkyl substances (“PFAS”) under section 1412 of the Safe Drinking Water Act, 42 U.S.C. § 300g-1 (“SDWA” or the “Act”). *See* 89 Fed. Reg. 32,532 (Apr. 26, 2024) (the “Final Rule”). The States have powerful interests in protecting their residents from the harms of PFAS exposure through drinking water and stand in opposition to EPA’s efforts to roll back the protections promulgated by the Final Rule.

In short, EPA’s decision, reflected in the Final Rule, to concurrently issue its proposed goals and standards with the preliminary determination to regulate was lawful and justified. Now, two years later, EPA contradicts its prior interpretation of

the SDWA's process and attempts to rescind the Final Rule in violation of the SDWA and the Administrative Procedure Act ("APA"). EPA may not use an alleged—and unsubstantiated—procedural deficiency to arbitrarily weaken PFAS regulations.

In 2023, pursuant to its authority under the SDWA, EPA made a preliminary determination to regulate in drinking water PFHxS, PFNA, and HFPO-DA individually and certain combinations of PFHxS, PFNA, and HFPO-DA and PFBS (the "Index PFAS") by use of a hazard index. As required by the SDWA, EPA made this preliminary determination available for public comment. 88 Fed. Reg. 18,638 (Mar. 29, 2023) ("Preliminary Determination"). At the same time, EPA proposed maximum contaminant level goals ("MCLGs" or "Goals") and national primary drinking water regulations ("NPDWRs") in the form of maximum contaminant levels ("MCLs" or "Standards") for these substances. EPA received public comments on both its Preliminary Determination and the proposed Goals and Standards. About a year later, EPA issued the Final Rule, in which it made a final determination to regulate those four types of PFAS and promulgated its final Goals and Standards. 89 Fed. Reg. at 32,532.

After the Final Rule had been on the books for two years, on May 20, 2026, EPA proposed the subject rule to unwind the clock and rescind the Final Rule. Departing from its position in the Final Rule, which EPA had been vigorously defending in federal court, EPA asserted the novel argument that its procedure for promulgating the Goals and Standards improperly overlapped with the process for making the determination to regulate. 91 Fed. Reg. 29,413, 29,414 (May 20, 2026) ("Proposed Rescission Rule"). Specifically, EPA proposed rescinding its determinations to regulate the Index PFAS as well as the individual and hazard index Goals and Standards for all of the Index PFAS.

To justify this sweeping proposed rescission, EPA contends that the SDWA forecloses the concurrent issuance of proposed goals and standards with a *preliminary* determination to regulate. In EPA's newly adopted view, the SDWA allows concurrent publication of proposed goals and standards only with a *final* determination to regulate. In other words, because EPA supposedly jumped the gun in 2023, it now seeks to avoid regulating the Index PFAS at all, despite its final (and irrevocable) decision to do so in 2024. As an initial matter, EPA acted lawfully in its concurrent issuance in 2023. As discussed below, both the SDWA and the APA foreclose EPA's attempted maneuver. Once EPA has issued a final determination to regulate the Index PFAS, as it has here, that regulatory determination cannot be rescinded. Further, any revisions of regulations must at least maintain the same level of protection of public health, whether or not there may have been a purported error in its regulatory process.

Even if EPA issued its proposed Goals and Standards prematurely (it did not), that error would not justify the agency's complete about-face envisioned by the Proposed Rescission Rule. At most, such a procedural error would warrant rescission of only the Goals and Standards, with a renewed opportunity for public comment.

The undersigned Attorneys General strongly oppose EPA's proposal, which would significantly and unlawfully degrade national standards that protect public health from PFAS. Following a discussion of background on the issues, the States' comments proceed as follows:

- First, we explain why it was lawful and appropriate under the SDWA for EPA to issue a preliminary determination and simultaneously propose goals and standards for PFAS in drinking water;
- Second, we show why the SDWA's anti-backsliding provision bars EPA from rescinding the Goals and Standards;
- Third, we demonstrate that the SDWA prohibits EPA from rescinding its determination to regulate the Index PFAS;
- Fourth, we show that EPA was required under the APA to provide a reasoned justification for changing its interpretation of the statute but failed to do so;
- Fifth, we explain that the Proposed Rescission Rule would fail to comply with the APA because scrapping the entire Final Rule would be arbitrary and capricious given the nature of the error and its negligible prejudicial effect (if any); and
- Finally, we show that EPA would also violate the APA by not considering alternatives to wholesale rescission of the Final Rule.

Background

States unquestionably have a paramount interest in the health and safety of their residents, and access to clean, safe drinking water is a primary concern. Toxic contaminants in drinking water are a public health threat and affect many aspects of society, including personal health, quality of life, the healthcare system, the workforce and property values. Moreover, states own and operate public water supply systems that serve institutions such as schools, parks, hospitals and prisons. These systems are subject to national primary drinking water regulations. States, including many of the undersigned, have repeatedly urged both Congress and EPA to take prompt and aggressive actions to respond to the unfolding national PFAS

contamination crisis, and have filed an amicus brief in support of the Final Rule in the United States Court of Appeals for the D.C. Circuit.¹

PFAS are known to be toxic to humans and animals even at exceptionally low concentrations. Adverse effects of oral exposure to PFAS, including the Index PFAS,

¹ See, e.g.:

- Multistate Comments dated May 30, 2023, regarding EPA's Preliminary Regulatory Determination and Proposed Rule; PFAS National Primary Drinking Water Regulation Rulemaking, 88 Fed. Reg. 18,638 (Mar. 29, 2023), https://portal.ct.gov/-/media/ag/press_releases/2023/53123_pfas_comment_letter.pdf?rev=c46ca9f124184d20a7e31b02b6b3a42c&hash=8FC3BD7F24D6F9CA1C263EE7E86C4A56.
- Multistate Comments dated April 13, 2022, regarding EPA's Fiscal Year 2022 Spend Plan for PFAS, https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2022/April/State_Comments_on_EPAs_PFAS_Spend_Plan_FINAL_751106_7.pdf?rev=761235fc045d4b9c995b1a4427a2ad3c&hash=DB08B30565068BCA058CB3E5C331694C.
- Multistate Comments dated September 27, 2021, regarding EPA's Proposed TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 86 Fed. Reg. 33,926 (June 28, 2021), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0549-0086>.
- Multistate Comments dated September 17, 2021, regarding EPA's Drinking Water Contaminant Candidate List 5 Draft, 86 Fed. Reg. 37,948 (July 19, 2021), <https://www.regulations.gov/comment/EPA-HQ-OW-2018-0594-0076>.
- Multistate Comments dated May 10, 2021, regarding EPA's proposal to expand monitoring for PFAS under the UCMR 5, 86 Fed. Reg. 13,846 (Mar. 11, 2021), https://coag.gov/app/uploads/2021/05/510.21_PFAS_Comments.pdf.
- Multistate Letter to Congress dated July 16, 2021, regarding Support for 2021 PFAS Action Act, https://content.govdelivery.com/attachments/WIGOV/2021/07/23/file_attachments/1886815/Multi-State%20PFAS%20Letter%20071621.pdf.
- Multistate Comments dated June 10, 2020, regarding EPA's Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List, 85 Fed. Reg. 14,098, 14,120 (Mar. 10, 2020), <https://www.regulations.gov/comment/EPA-HQ-OW-2019-0583-0258>.
- Multistate Comments dated April 17, 2020, regarding EPA's Supplemental Proposed Rule on Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule, 85 Fed. Reg. 12,479 (Mar. 3, 2020) <https://www.regulations.gov/comment/EPA-HQ-OPPT-2013-0225-0217>.
- Multistate Comments dated February 3, 2020, regarding Addition of Certain PFAS; Community right to Know Toxic chemical Release Reporting, 84 Fed. Reg. 66,369 (Dec. 4, 2019), <https://www.regulations.gov/comment/EPA-HQ-TRI-2019-0375-0086>.
- Multistate Letter to Congress dated July 30, 2019, regarding need for comprehensive PFAS Legislation, https://oag.ca.gov/system/files/attachments/press-docs/Multistate%20PFAS%20Legislative%20Letter_7.30.19_FINAL.pdf.
- Amicus Curiae Br. for Conn. et al., *Amer. Water Works Ass'n v. EPA*, No. 24-1188 (D.C. Cir. Jan. 17, 2025).

include thyroid, liver, kidney, immune system, hematological, reproductive, and developmental toxicity. This toxicity is compounded by the ability of PFAS to accumulate and persist in the body and in the environment, qualities that have resulted in PFAS being known as “forever chemicals,” and the additive toxicity of mixtures of the Index PFAS in drinking water.

PFAS enter the environment through various pathways, such as the widespread use of aqueous film forming foam for firefighting, and through more concentrated routes including discharges and emissions from manufacturing facilities like Chemours’ plants on the Cape Fear River in North Carolina and the Delaware River in New Jersey and 3M’s facility on the Mississippi River in Minnesota. Consequently, they are pervasive in the environment, including occurring in groundwater and surface water that may be used as sources of drinking water. They are also persistent, mobile, and difficult to extract from the environment, rendering them a long-term public health problem. *See generally* Agency for Toxic Substances & Disease Registry, Per- and Polyfluoroalkyl Substances (PFAS) & Your Health, <https://www.atsdr.cdc.gov/pfas/about/index.html>.

These concerns led EPA to promulgate the Final Rule in 2024. To make its determination to regulate, EPA was required to—and did—find that the Index PFAS “may have an adverse effect on the health of persons,” are “known to occur or there is a substantial likelihood that the [Index PFAS] will occur in public water systems with a frequency and at levels of public health concern,” and “regulation of [the Index PFAS] presents a meaningful opportunity for health risk reduction for persons served by public water systems.” *See* 42 U.S.C. § 300g-1(b); Final Rule, 89 Fed. Reg. 32,544 (adverse health effects), 32,552 (known to occur), 32,560 (meaningful opportunity). EPA was very clear in the Proposed Rescission Rule that it is not revisiting these findings. 91 Fed. Reg. at 29,417/3. Given that the Index PFAS present a public health concern and that regulation of the Index PFAS presents a meaningful opportunity to reduce risks to public health, the States have a substantial interest in the Final Rule and EPA’s proposal to rescind it.

In addition, the States are concerned that EPA, as explained below, is planning to run roughshod over one of the key provisions of the SDWA—the anti-backsliding provision. Congress designed this provision to prevent EPA from doing exactly what it proposes to do here—weaken existing health protections for public drinking water.

The anti-backsliding provision also promotes stability by allowing all concerned parties to rely on the continuation of minimum standards set by EPA. This is particularly important for the long-range planning and significant capital investments which water systems routinely require. EPA, by reversing its position

and moving to rescind the Final Rule, is affecting States' abilities to both rely on EPA's regulations and promulgate their own. In fact, EPA has admitted that this new proposal has destabilized the regulatory regime around PFAS nationwide, suggesting that "primacy agencies can conserve resources until there is certainty regarding the scope of the PFAS rule that they must adopt." 91 Fed. Reg. at 29,420/1–2. This concession ignores both the fact that the uncertainty around the PFAS drinking water standards is of EPA's own doing, as the Final Rule remains in place, and the resources already spent by states to comply with the Final Rule. For example, several states have already adopted the Final Rule into their regulations and may now need to undertake new rulemakings to revise their regulations because of the Proposed Rescission Rule.

For these and other reasons, the States provide the following comments for EPA's consideration and respectfully request that EPA withdraw the Proposed Rescission Rule.

Comments

1. EPA did not err by proposing the Goals and Standards concurrently with its Preliminary Determination.

The SDWA requires that EPA formulate, every five years, a list of contaminants in drinking water that may necessitate federal regulation. 42 U.S.C. § 300g-1(b)(1)(B)(i)(I). From this list, EPA must determine whether to regulate such contaminants, a process that involves two steps: (1) a preliminary determination with opportunity for public comment, and (2) a final determination. *Id.* § 300g-1(b)(1)(B)(ii). If and when EPA determines to regulate, it must set goals and promulgate standards based on such goals. *Id.* § 300g-1(b)(1)(E). In particular, the SDWA provides:

The Administrator shall propose the [goals] and [standards] for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate.

Id.

EPA previously determined that the SDWA allows concurrent publication of proposed goals and standards with a preliminary determination to regulate. More specifically, in 2023 EPA explained that "determination to regulate" in the foregoing provision refers to the determination process as a whole, which begins with a

preliminary determination. 88 Fed. Reg. at 18,644/3. “Under this interpretation, Section 1412(b)(1)(E) authorizes EPA to issue a preliminary determination to regulate a contaminant and a proposed [rule] addressing that contaminant concurrently and request public comment at the same time.” *Id.* EPA also concluded that the SDWA uses the term “determination to regulate” inconsistently, including in contexts where it can only refer to a preliminary or final determination, so the term has no fixed meaning. 89 Fed. Reg. at 32,541/2. Additionally, EPA argued that interpreting that term to only refer to final determinations would render the statutory language allowing EPA to publish a proposed regulation concurrent with the determination to regulate superfluous. *Id.* at 32,541/3. In other words, the statutory language that EPA must promulgate goals and standards “not later than 24 months after the determination to regulate” already allows EPA to propose goals and standards concurrently with a final determination. Therefore, the text allowing EPA to proceed concurrently must mean something more. *Id.* at 32,540/3–41/1.

In the Proposed Rescission Rule, EPA takes the wholly contrary position, for the first time, that the SDWA does not permit EPA to issue proposed goals and standards concurrent with a *preliminary* determination to regulate, but rather, only with a *final* one. According to the Proposed Rescission Rule, 42 U.S.C. § 300g-1(b)(1)(E) is proscriptive in two interrelated ways. First, EPA now reads the statute to prohibit the concurrent issuance of proposed goals and standards with a preliminary determination to regulate, thereby requiring two sequential public comment periods. Second, EPA interprets the twenty-four-month deadline for issuing proposed goals and standards, which EPA views as beginning upon the agency’s final determination to regulate, to bar the agency from proposing goals and standards before such a determination.

EPA’s interpretation of the SDWA incorrectly construes the statute. The SDWA uses the phrase “determination to regulate” to refer to both steps in the process—preliminary and final. *See* 42 U.S.C. § 300g-1(b)(1)(B)(ii) (heading for subsection detailing process for both preliminary and final determinations). As EPA represented in its own brief defending the Final Rule before the D.C. Circuit, “The best reading of this provision is that ‘determination to regulate’ in the second clause refers to EPA’s *preliminary* determination, such that EPA may concurrently proceed with a preliminary determination and proposed regulation rather than waiting for a *final* regulatory determination before proposing a Goal and Standard.” Resp’t’s Proof Br. at 29,² *Amer. Water Works Ass’n v. EPA*, No. 24-1188 (D.C. Cir. Dec. 23, 2024). Additionally, although the twenty-four-month deadline sets the outer limit for

² Page cites to documents filed in the *American Water Works* litigation are to each document’s internal page numbers and not to the later-added ECF page numbers.

when EPA must issue proposed goals and standards after a final determination to regulate, it does not simultaneously bar the agency from soliciting public comment before that deadline is even triggered. *See* 42 U.S.C. § 300g-1(b)(1)(E). Moreover, nothing in the SDWA’s text suggests that the agency is barred from providing the public with more information sooner, such as by proposing goals and standards at the same time the agency considers whether to issue a final determination to regulate.

For all the reasons stated herein and in EPA’s own D.C. Circuit brief defending the Final Rule, EPA was correct then and is incorrect now.³ The Proposed Rescission Rule wrongly concludes that EPA’s previous actions contravened the statute.

2. The Proposed Rescission Rule would violate the SDWA’s anti-backsliding provision.

EPA’s proposal is also unlawful because it would violate the SDWA’s anti-backsliding provision. The anti-backsliding provision of the SDWA states:

The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

42 U.S.C. § 300g-1(b)(9). EPA’s rescission of the Final Rule would do precisely what this provision prohibits.

EPA promulgated the Final Rule in April 2024. It has since “review[ed]” the rule within the six-year time allotted by the statute. As a consequence of that review, EPA concluded that the Final Rule was promulgated according to improper procedure. Per the statute, after such “review,” EPA may “revise” the Final Rule “as appropriate.” That revision is subject to two limitations. First, the revision must “be promulgated in accordance with this section,” and second, the revision “shall maintain, or provide for greater, protection of the health of persons.” *Id.* If EPA were to finalize the Proposed Rescission Rule, EPA would fail to comply with this second requirement.

³ The States refer EPA to all the arguments it made to the United States Court of Appeals for the D.C. Circuit in case number 24-1188 in its December 2023 proof brief and see no reason to submit that brief for the record in this rulemaking proceeding in order to draw EPA’s attention to the details of its own prior court filing.

EPA takes the position that the anti-backsliding provision does not apply where EPA reviews the drinking water rule at issue and determines that the rule was promulgated on unlawful procedure. The plain language of the statute does not create such an exception, and EPA provides no text-based justification for creating this exception. Tacitly conceding that the text offers no support, EPA suggests that “[t]he context and structure of this provision makes clear that [the anti-backsliding provision] applies to a ‘revision’ of a lawfully promulgated NPDWR made after a ‘review of that NPDWR’ but ‘does not govern the rescission of unlawfully promulgated NPDWRs.’” 91 Fed. Reg. at 29,418/1. It is unclear to what “context and structure” EPA refers. *See Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988) (notice of proposed rulemaking “must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.”). EPA’s conclusory assertion is an insufficient basis for a rule. *See, e.g.*, 5 U.S.C. § 706(2)(A).

EPA gives no explanation how it could have determined that the Final Rule was unlawfully promulgated without having “review[ed]” it within the meaning of the anti-backsliding provision. And it also never explains how rescinding the Rule is something different than “revis[ing]” the Rule. After all, if rescinding and revising were inherently exclusive of each other, the anti-backsliding provision could be avoided entirely by simply rescinding a rule instead of revising it to provide less “protection of the health of persons.”

What EPA is ham-handedly trying to do here is carve out an exception from the express and unequivocal terms of the statute where none exists. If Congress wanted there to be an exception, it certainly knew how to allow exactly what EPA proposes to do here. The Clean Water Act’s anti-backsliding provision includes an exception where “the Administrator determines that . . . mistaken interpretations of law were made.” 33 U.S.C. § 1342(o)(2)(B)(ii). Conversely, the SDWA contains no similar exception and should not be interpreted to include an exception that Congress did not write into the statute. *See NRDC v. Regan*, 67 F.4th 397, 401 (D.C. Cir. 2023) (“EPA . . . has no inherent authority. It has only the authority given it by the [SDWA].”).

Apparently recognizing this obstacle, EPA attempts to circumvent it by explaining that if a court were to vacate an unlawfully promulgated rule, vacatur would not have to comply with the anti-backsliding provision. By analogy, EPA claims the same power for itself. 91 Fed. Reg. at 29,418/1. But the plain text of the SDWA places a constraint on the regulatory powers of “[t]he Administrator” of EPA—and only the Administrator—not the judicial powers of the courts. Courts

have remedial powers that agencies lack, and EPA offers no rationale to justify its analogy.

Rescission and vacatur are fundamentally different. As set forth in section 551 of the APA, a rule that rescinds another rule is itself a rule. 5 U.S.C. § 551(5) (defining “rule making” to include “repealing a rule”). Therefore, the act of rescinding a rule must comply with the APA’s rulemaking requirements. Indeed, EPA recognizes that the Proposed Rescission Rule is a “proposed rulemaking.” *E.g.*, 91 Fed. Reg. at 29,417/3.

On the other hand, vacatur springs from an entirely different chapter of the APA. Under section 706, a court is required to “hold unlawful and set aside agency action” that fails under one or more of the six judicial review standards. 5 U.S.C. § 706(2). It is axiomatic that courts do not have to go through the rulemaking process to vacate a rule under section 706. Simply put, the courts and EPA operate under entirely different requirements, and EPA offers no explanation why, in this situation, the scope of judicial power should provide any guidance as to the scope of its own authority.

In the end, EPA’s explanation for why it need not comply with the anti-backsliding provision is nothing more than *ipse dixit*.

EPA goes on to state that even if it were required to adhere to the anti-backsliding clause, it has complied in this case. 91 Fed. Reg. at 29,418/1–2. EPA is wrong again. EPA bases its justification here on its reading of *City of Waukesha v. EPA*, 320 F.3d 228 (D.C. Cir. 2003). In *City of Waukesha*, the D.C. Circuit “accept[ed] as reasonable EPA’s reading of the [anti-backsliding] section as barring any revision to an existing [standard] that does not maintain the level of protection the current [standard] *actually provides*.” *Id.* at 257. EPA bases its interpretation in the Proposed Rescission Rule of the anti-backsliding provision on the phrase “*actually provides*” from that case. EPA’s interpretation is that where a standard has been promulgated but its compliance date has not yet been reached, the standard “*actually provides*” no public health protection yet and can be rescinded with impunity.

To start, the Final Rule has been formally adopted and is presently in effect, even if the compliance deadlines have not yet passed. EPA’s tortured reading of the SDWA suggests that the anti-backsliding provision only applies to a subset of regulations based on the timing of their compliance deadlines, which can be subject to change. The statute speaks of no such distinction. Thus, EPA’s interpretation is not rooted in the text of the SDWA.

Nor is EPA's view supported by any authority cited in the proposed rule. EPA relies primarily on *City of Waukesha*. In *City of Waukesha*, EPA promulgated a drinking water standard that it believed would afford a certain level of protection. 320 F.3d at 256. It turned out to afford a greater level of protection than EPA thought it would provide. The court concluded that EPA could not backslide from the level of protection the standard “*actually provide[d]*,” and rejected the argument that EPA could lower the actual level of protection to the level that EPA thought it was providing. *Id.* at 257. The gist of the opinion is that for anti-backsliding purposes, the relevant benchmark is what “the current MCL” “*actually provides*” and not what EPA thought it might provide. By the phrase “*actually provides*,” the court was distinguishing between, on the one hand, what is real and, on the other hand, what was hypothetical and incorrect. The court was not, as EPA is seeking to do here, distinguishing the current and future states of implementation of a final standard. And indeed, the Final Rule “*actually provides*” real-world protection where primacy agencies and public water systems have already made investments and implemented changes in anticipation of the compliance deadlines.

The facts of *NRDC v. Regan* also undermine EPA's interpretation of *City of Waukesha*. In *Regan*, EPA contended that it was allowed to rescind its determination to regulate under the SDWA because it had not yet promulgated a drinking water standard based on that determination. 67 F.4th at 403–04. The D.C. Circuit rejected this argument and explained that once EPA issues a determination to regulate, it has only one option: “[I]t must promulgate regulations, to which the anti-backslide provision applies” *Id.* Here, EPA has gone a step beyond what it had done in *Regan* and actually promulgated those regulations “to which the anti-backslide provision applies.” *See id.* Contrary to EPA's suggestion otherwise, the fact that the Standards have not yet been fully implemented does not change the fact that they were in fact promulgated. The reasoning of the *Regan* court should therefore apply with even more force to the already promulgated Standards and require compliance with the anti-backsliding provision here.

Simply put, EPA must comply with the statute. Any changes to drinking water standards must “maintain, or provide for greater, protection of the health of persons.” 42 U.S.C. § 300g-1(b)(9). Because the Proposed Rescission Rule would fail this test, EPA must not adopt it.

3. The SDWA, as affirmed by the courts, likewise prohibits EPA from withdrawing its final determination to regulate the Index PFAS.

EPA's proposal to withdraw its regulatory determination also violates the SDWA. The SDWA requires that a determination to regulate be made following

“notice of the preliminary determination and opportunity for public comment” and be based on certain statutory findings. 42 U.S.C. § 300g-1(b)(1)(B)(ii). EPA followed this procedure. Therefore, the determination to regulate is binding.

Where a final determination to regulate has been made, as it has been here, it triggers a deadline for the agency to publish goals and promulgate standards. *Id.* § 300g-1(b)(1)(E) (“For each contaminant that the Administrator determines to regulate . . . , the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations . . .”). The SDWA provides no mechanism for EPA to avoid this statutory obligation.

As a direct consequence, once EPA makes a final determination to regulate, it may not walk back that decision. The D.C. Circuit in *Regan* could not have been clearer: “[T]he Safe Drinking Water Act does not permit EPA to withdraw a regulatory determination.” 67 F.4th at 398. In *Regan*, when EPA attempted to withdraw a determination to regulate under the SDWA, the D.C. Circuit vacated the withdrawal as plainly barred by the SDWA. *Id.* “Because the [SDWA] requires that the agency ‘shall’ regulate after making a regulatory determination, EPA lacks authority to withdraw that determination and decide that it ‘shall not’ regulate.” *Id.* at 404 (quoting 42 U.S.C. § 300g-1(b)(1)(E)). Thus, even if EPA’s argument regarding procedural deficiencies in its adoption of Goals and Standards had merit (which it does not), EPA would not have license to contravene the plain text of the SDWA with respect to its final determination to regulate.

4. The Proposed Rescission Rule would be arbitrary and capricious because EPA has failed to provide a reasonable justification for changing its interpretation of the statute.

The Proposed Rescission Rule marks an about face regarding the procedure EPA followed in promulgating the Final Rule. For the Final Rule, EPA concluded that the SDWA allowed it to start the rulemaking for the Goals and Standards concurrently with the preliminary determination to regulate. Now, EPA says that the statute prohibits exactly that. EPA recognizes this quandary and attempts to explain it away, but the explanation is wholly inadequate.

An agency is allowed to change its mind. However, if it does so without a reasoned justification, as is the case here, such a course change is arbitrary, capricious and unlawful. *E.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016); *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009). Here, EPA identified three supposed justifications for its 180-degree shift: “reconsidering the Agency’s rulemaking record, [reconsidering] the relevant issues raised in

litigation and evaluating the Supreme Court’s intervening decision in *Loper Bright*.” 97 Fed. Reg. at 29,417/1. But EPA never explained how any of these considerations led it to radically change course.

As background, when issuing the Final Rule, EPA received many comments disagreeing with its then-interpretation of the statute. To address this, in the preamble to the Final Rule, EPA extensively analyzed the statute, covering all the relevant statutory provisions and text, employing canons of statutory construction, and citing relevant case law. 89 Fed. Reg. at 32,540/3–42/1. In its response to comments, EPA laid out all the comments in opposition to its interpretation and addressed each of them. EPA, Resp. to Pub. Comments on Per- & Polyfluoroalkyl Substances (PFAS) Nat’l Drinking Water Reg. Rulemaking at 3-108 to -130 (Oct. 30, 2024).⁴ After this extensive analysis, EPA concluded that its then-interpretation “of the relevant language in section 1412(b)(1)(E) best effectuates all provisions of the statute.” 89 Fed. Reg. at 32,542/1.

Now, EPA is contending just the opposite—that “the best reading of SDWA section 1412(b)(1)(E) is that the soonest EPA may publish a proposed regulation is with the final regulatory determination, not with the preliminary regulatory determination.” 91 Fed. Reg. at 29,416/2. It justifies this flip-flop first based on its reconsideration of its rulemaking record. The rulemaking record is summarized above and consists of EPA reviewing all the reasons supporting its new interpretation, and rejecting them all. However, nowhere does the agency explain how its review of this information led it to shift its position.

Second, EPA attempts to explain its reinterpretation of the statute based on its further consideration of the relevant issues raised in litigation. Presumably this refers to the *American Water Works Association* case in the D.C. Circuit (No. 24-1188), in which this very issue is being litigated. However, EPA never identifies anything from that litigation that it considered or how such information caused it to rethink its prior interpretation of the statute.

Finally, EPA relies on the Supreme Court’s intervening decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) to justify its about-face. In *Loper Bright*, the Supreme Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984) and held that a court is not bound by an implementing agency’s interpretation of a statute, and is instead required to determine the “best reading of the statute” even if the statute is ambiguous. *Loper Bright*, 603 U.S. at 373. *Loper Bright* thus addressed how courts

⁴ Available at <https://www.regulations.gov/document/EPA-HQ-OW-2022-0801-2461>.

should interpret statutes, but did not give an independent reason for *agencies* to change those interpretations. Here, EPA had already determined the “best reading of the statute” before the Supreme Court decided *Loper Bright*. In the Final Rule, EPA stated: “To the extent the statute is ambiguous, the EPA’s interpretation is the best interpretation of this provision” 89 Fed. Reg. at 32,538/1. As EPA had already made its own determination of the “best” interpretation, *Loper Bright* did not provide any reason for EPA to come up with a new “best” interpretation.

In fact, in *American Water Works Association*, EPA filed its merits brief after the *Loper Bright* decision. There, EPA again reviewed the language and context of section 300g-1(b)(1)(E). And EPA again reached the same conclusion: “The best reading of this provision is . . . that EPA may concurrently proceed with a preliminary determination and proposed regulation.” Resp’t’s Proof Br. at 29, *Amer. Water Works Ass’n*, No. 24-1188 (Dec. 23, 2024). *Loper Bright* does not provide a reason for EPA to change its interpretation which, as EPA affirmed following *Loper Bright*, EPA had already determined to be the best interpretation.

EPA has provided no reasoned justification for its stark reversal. Nor could it. Consequently, the Proposed Rescission Rule fails to comply with the APA.

5. The Proposed Rescission Rule would be arbitrary and capricious because EPA has not analyzed the impacts of its proposal or provided a reasoned justification for action.

As indicated above, a rule that rescinds another rule is itself a rule and therefore, under the APA, it must be based on “reasoned decision making.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41–42, 52 (1983). Ordinarily, this requires the agency to consider “the advantages *and* the disadvantages of agency decisions” before taking action. *Michigan v. EPA*, 576 U.S. 743, 753 (2015). If an agency fails to meet these requirements, the action can be set aside as arbitrary and capricious. *See Fox Television Stations*, 556 U.S. at 537. EPA failed to engage in reasoned decision making in this case, and thus, the Proposed Rule would be arbitrary and capricious.

First, EPA failed to analyze the impacts of the Proposed Rescission Rule. Aside from recognizing that the Proposed Rescission Rule would result in reduced compliance costs for regulated entities, EPA did not weigh “the advantages *and* the disadvantages” of the proposed action, including the public health implications of withdrawing drinking water regulations of contaminants known to have adverse human health impacts. Indeed, EPA expressly states that it is not withdrawing or revisiting any of the public health or scientific underpinnings of its regulatory

decision in the Final Rule. EPA's sole analysis of potential public health impacts in its proposal is found in its conclusory statement that the "rescission of these portions of the NPDWR will not change the level of public health protection from current levels" because "none of the compliance deadlines for PFHxS, PFNA, HFPO-DA, and the Index PFAS have passed." 91 Fed. Reg. at 29,418/2.

The fact that compliance deadlines under the Final Rule have not yet arrived does not excuse EPA from the obligation to compare the public health impacts and protections of its new proposal with those of the Final Rule. Contrary to EPA's cursory assertions, the Proposed Rescission Rule does not "simply maintain[] the status quo protection that is currently afforded to the public." *Id.* It will, in fact, roll back regulations that the agency lawfully adopted to protect public health, and which States and water systems have already begun working to implement over the past two years in anticipation of meeting those compliance deadlines. EPA further acknowledges that it "cannot say with certainty the degree to which nonquantifiable benefits will decrease as a result of this action," and recognized that such benefits include "developmental and reproductive toxicity, immune system suppression, liver damage, thyroid disruption, and elevated risk of kidney and liver cancers." *Id.* at 29,420/3. EPA's failure to meaningfully engage with and analyze potentially significant public health implications of its proposal falls short of the APA's requirements and its duty to the public. *See Fox Television Stations*, 556 U.S. at 537.

Second, EPA identifies no reason to promulgate the Proposed Rescission Rule other than it committed an alleged procedural error. For example, EPA nowhere alleges that the procedural error had any impact on the substantive outcome of the Final Rule. Nor does EPA allege that the end result of the Final Rule—the determination to regulate and the Goals and Standards—are themselves unsupported by fact or law. In fact, EPA is very clear that the Proposed Rescission Rule is "solely based" on the supposed legal error regarding the process by which EPA promulgated the Goals and Standards and is "not based on any substantive findings included in its regulatory determinations or associated NPDWR provisions." 91 Fed. Reg. at 29,417/3.

The only allegation of prejudice EPA makes is that "[t]he EPA's unlawful promulgation thwarted the fundamental processes required under the statute and affects not just the NPDWR but also the simultaneously issued regulatory determinations for these contaminants." 91 Fed. Reg. at 29,416/1. EPA points to no facts to support this conclusion. Indeed, in December 2024 EPA represented that nobody had actually demonstrated that they had been harmed by the overlapping comment periods. Resp't's Proof Br. at 36–37, *Amer. Water Works Ass'n*, No. 24-1188 (Dec. 23, 2024). Even when it moved to vacate the Final Rule, EPA could not

articulate how members of the public were harmed by a combined comment period. *See* Resp’t’s Mot. for Partial Vacatur at 17–19, *Amer. Water Works Ass’n*, No. 24-1188 (Sept. 11, 2025).

EPA’s bald assertion of prejudice in the Proposed Rescission Rule is also an insufficient basis to impugn the validity of the Final Rule. To the contrary, when promulgating the Final Rule, and after reviewing comments regarding the process that EPA used, EPA did not identify any adverse effects of its process on the public’s ability to provide comments and concluded that it was “not clear what further benefit would be provided by two separate public comment periods.” 89 Fed. Reg. at 32,542/1. In fact, EPA itself argued that seeking comment on both the determination to regulate and the Goals and Standards simultaneously “*promoted* meaningful public comment on those actions by providing commenters with much more information to evaluate them . . . including information on risk, cost, occurrence, and benefits that otherwise would not have been available as part of the record for the regulatory determinations.” Resp’t’s Proof Br. at 37, *Amer. Water Works*, No. 24-1188 (Dec. 23, 2024).

Moreover, the only error that EPA alleges it made was by issuing the Goals and promulgating the Standards “without first completing the regulatory determination as a necessary prerequisite to rulemaking.” 97 Fed. Reg. at 29,417/3. EPA has not stated that it committed any error regarding the regulatory determinations. Therefore, EPA has no basis to invalidate those determinations, and its proposal to rescind them is arbitrary, capricious, and unlawful. Even under EPA’s own argument, it has only asserted an alleged error in its process for proposing and adopting the final Goals and Standards—not the regulatory determinations—in the Final Rule.

In short, EPA’s sole justification for the Proposed Rescission Rule is that EPA allegedly made a procedural mistake regarding a comment period. However, the purported procedural mistake did not actually deprive anyone of an opportunity to comment because there was a comment period for both the determination to regulate and the Goals and Standards; at most, the alleged mistake could have affected the commenting process in a manner unspecified by EPA, but EPA does not demonstrate or argue that it actually did so; and there was no substantive infirmity with the determinations to regulate or the Goals and Standards. This is patently not a sufficient record on which to base the proposed rule. Overall, EPA has failed to provide a reasoned justification for the Proposed Rescission Rule under the APA.

6. The Proposed Rescission Rule would be arbitrary and capricious because EPA failed to consider alternatives to wholesale rescission.

Even assuming legal error and prejudice, EPA must consider alternatives to complete rescission of the determination to regulate and the Goals and Standards. “[I]n rescinding a prior action, an agency cannot simply brand it illegal and move on.” *See Louisiana v. U.S. Dep’t of Energy*, 90 F.4th 461, 475 (5th Cir. 2024). According to the Supreme Court, an agency “entirely fail[s] to consider an important aspect of the problem” when it rescinds a prior policy without considering alternatives within the ambit of the existing policy. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020). Such a failure would itself be legal error. *State Farm*, 463 U.S. at 43. The need to consider alternatives to wholesale rescission is apparent here, where EPA acknowledges that its proposal “is not based on any reassessment of the substantive findings included in its regulatory determinations of associated NPDWR provisions,” and that “scientific literature and the EPA’s health assessments have identified evidence linking [Index PFAS] to adverse health effects . . . includ[ing] developmental and reproductive toxicity, immune system suppression, liver damage, and thyroid disruption.” 91 Fed. Reg. at 29,417/3, 29,420/2–3.

Nothing in the Proposed Rescission Rule explains whether EPA considered alternatives to wholesale rescission. Insofar as the overlapping comment periods on the Preliminary Determination and proposed Goals and Standards afforded the public an inadequate opportunity for comment, a renewed public comment period regarding the Goals and Standards would cure any assumed deficiency. Rather than rescind the entire regulatory scheme, in drafting the Proposed Rescission Rule EPA ought to have crafted a more targeted solution that would not run afoul of the SDWA’s strict public health protections.

Conclusion

For all the foregoing reasons, the undersigned attorneys general respectfully submit that EPA lacks the authority to promulgate the Proposed Rescission Rule in whole or in part and should therefore withdraw the proposal.

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