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Client Alert

Environmental Law & Litigation

January 6, 2026

Multistate Petition To USEPA To Monitor for Microplastics in Drinking Water May Elevate Regulatory Focus

By Kegan A. Brown, Mark S. Heinzelmann, Taylor R. West, and Brian S. Winfield

While expansive federal and state regulation continues with respect to per- and polyfluoroalkyl substances (PFAS), what environmental constituent will be next to garner increased attention? The answer may be microplastics. Regulatory activity on microplastics has been relatively slow to date, but that may change in the near future.

On November 26, 2025, the governors of New Jersey, Delaware, Illinois, Maryland, Michigan, Wisconsin, and Connecticut jointly submitted a petition (Petition) to the U.S. Environmental Protection Agency (USEPA) urging the agency to include microplastics in USEPA's Sixth Unregulated Contaminant Monitoring Rule (UCMR 6) for drinking water, citing widespread prevalence of microplastics in drinking water; evolving evidence of health risks, particularly in children; and the need for a federal framework to standardize a definition, analytical methods, and monitoring.[1] The Petition is anchored in the Safe Drinking Water Act (SDWA), which requires USEPA to include in the UCMR any contaminant that is recommended by at least seven states unless USEPA determines that such inclusion would preclude monitoring of a contaminant that presents a "higher public health concern."[2]

In this article, we provide an overview of (1) microplastics—what they are and where they come from, (2) the Petition, (3) how USEPA may respond to the Petition, and (4) the current microplastic legal landscape in the United States.

1. What Are Microplastics?

USEPA defines microplastics as "plastic particles ranging in size from 5 millimeters (mm)[] to 1 nanometer (nm)."[3] This definition encompasses a broad spectrum of particle sizes, shapes, and sources. For example, items measuring 1 nm are not visible to the naked eye (a strand of hair is 80,000 nm wide), while 5 mm is about the size of a pencil eraser. Microplastics that are smaller than 1,000 nm are often considered nanoplastics.[4]

There are two broad categories of microplastics: primary and secondary. Primary microplastics are intentionally manufactured for a specific purpose, including plastic pellets that are melted to create larger plastic items and microbeads, which can be found in certain personal care products such as toothpaste and cosmetics.[5] Secondary microplastics degrade from larger pieces of plastic such as beverage bottles, bags, and toys.[6] Microfibers, a subset of secondary microplastics, degrade from synthetic materials such as clothing, furniture, and fishing nets.[7] One study involving 37 National Park System beaches found that microfibers made up 97 percent of the microplastic debris found on those beaches.[8] Microplastics are found in every ecosystem on the planet and have been found in food, beverages, and human and animal tissue.[9] While the toxicity of microplastics is unclear, some suspect the accumulation of these materials in human and animal tissue can have serious long-term health consequences.[10]

2. The Petition

a. Legal Background and Petition Overview

The SDWA requires that every five years, USEPA issue a list of unregulated contaminants to be monitored by certain public water systems, known as the UCMR.[11] UCMR 6, once finalized, will cover a monitoring period from 2027 to 2031.[12] A Notice of Proposed Rulemaking (NPRM) for UCMR 6 was scheduled for August 2025, with a Final Rule scheduled for December 2026, but the NPRM has been delayed.[13]

The SDWA requires USEPA to include "each contaminant recommended in a petition signed by the Governor of each of 7 or more States" in the UCMR, "unless the Administrator determines that the action would prevent the listing of other contaminants of a higher public health concern."[14] Through the Petition, the states rely on this provision to pressure USEPA to include microplastics in UCMR 6. Consistent with the requirements set out by law,[15] the Petition identifies the states' reasons for adding microplastics to the UCMR, including (1) the potential risk to public health, particularly any disproportional health risks to children; (2) the known or anticipated presence of microplastics in the environment; (3) any known or proposed analytical methods to test for microplastics; and (4) any other information that could assist USEPA in determining whether microplastics present a sufficient public health concern and should be included in UCMR 6.

The Petition frames microplastics as both physical and chemical "contaminants" under the SDWA[16] that are ubiquitous in surface waters, having been detected globally in both raw and treated drinking water.[17] For example, U.S. tap water studies have reported measurable microplastic concentrations, and fieldwork in New Jersey waterways has documented microplastics concentrations ranging from approximately 28,000 to over 3 million particles per square kilometer.[18] The Petition underscores that microplastics concentration in waters are predicted to double by 2040, yet it remains unknown whether current drinking water and wastewater treatment plants and distribution systems will be able to successfully filter out the majority of microplastics.[19]

On health risks, the Petition highlights two interrelated concerns. First, microplastics purportedly can act as vectors for various toxic chemicals, such as polychlorinated biphenyls, known as PCBs; PFAS; and heavy metals, potentially leading to bioaccumulation and exposure via ingestion, inhalation, and dermal contact.[20] Second, microplastics particles themselves may induce physical harm at the cellular level, with nanoplastics potentially capable of reaching the brain and crossing the gut barrier.[21] The Petition further addresses particular risks to children, citing studies indicating that microplastics pass from mother to fetus in utero and that microplastics in infants indicate higher exposure levels than in adults.[22] According to the Petition, some research suggests that microplastics in fetuses can lead to premature puberty and may cause infertility.[23] However, the current variability and lack of standardized analytical methods for detecting microplastics create data inconsistency across studies, thereby complicating efforts to synthesize findings and emphasizing the need for consistent methods to ensure reliable data collection and analysis.[24]

The Petition frames USEPA's role as essential to preventing a patchwork of inconsistent state microplastic definitions and testing approaches that may slow scientific progress and policy development.[25] By including microplastics in UCMR 6 and pairing the monitoring program with analytical method development, USEPA would catalyze a unified national approach that supports subsequent risk assessment and potential microplastics regulation.

b. Potential USEPA Response to the Petition

If microplastics are included in UCMR 6, certain public water systems would be required to monitor for them and make the results publicly available in the National Contaminant Occurrence Database.[26] Based on those monitoring results, USEPA may then decide to list microplastics in the Contaminant Candidate List if it determines they are known or anticipated to occur in public water systems and pose a public health risk, which may ultimately result in regulation of microplastics under the SDWA and potentially other statutes, including state statutes and regulations.[27]

USEPA may, however, decline to add microplastics to UCMR 6 upon a finding that doing so would "prevent the listing of other contaminants of a higher public health concern[,]"[28] including those contaminants already listed in the UCMR. The statutory maximum for the UCMR is 30 contaminants,[29] and the fifth UCMR (UCMR 5) already includes 29 PFAS and lithium.[30] Thus, USEPA would have to find that microplastics represent a higher public health concern than any one of the currently listed PFAS or lithium. Given the current administration's reticence to broaden PFAS regulation, there could be a path to reducing the number of PFAS currently monitored.

Like PFAS, microplastics are a category of constituents that vary physically and chemically. Therefore, USEPA may decline to include a broad category of microplastics in UCMR 6 and instead include a discrete subset of microplastics that USEPA believes warrants monitoring, as the agency did with PFAS. Certain microfibers, as secondary microplastics, arguably may be viewed as good candidates given their prevalence in microplastic debris. Alternatively, USEPA may add certain primary microplastics to UCMR 6 that are easiest to regulate, as they are intentionally manufactured for a specific purpose and likely have readily available data regarding their chemical composition.

Given rising public awareness and concern about microplastics, a decision by USEPA to include some variation of microplastics in UCMR 6 would be unsurprising, whether it is microplastics as a whole or any combination of primary or secondary microplastics. Of note, the Petition is not the first request for microplastics' inclusion in UCMR 6. In 2024, a joint petition from 175 environmental groups requested USEPA's inclusion of microplastics in UCMR 6, citing many of the same concerns as the Petition.[31]

In the event USEPA declines to add microplastics to UCMR 6, individual states, including those whose governors jointly signed the Petition, could take independent regulatory action to address microplastics at the state level under existing statutory authority. Of course, a state-by-state regulatory regime for microplastics would likely lead to the inconsistencies in regulatory scope and analytical methodologies warned of in the Petition.

3. Existing Federal Law and USEPA Action

While adding microplastics to UCMR 6 might mark a major step toward comprehensive regulation of microplastics in the United States, it would not be the first step taken to address microplastics at the federal level. Notably, on December 18, 2015, Congress amended the Federal Food, Drug, and Cosmetic Act by passing the Microbead-Free Waters Act of 2015 (Microbead-Free Act), prohibiting the manufacturing, packaging, and distribution of rinse-off cosmetics containing plastic microbeads.[32] Included in the Microbead-Free Act are so-called over-the-counter nonprescription drugs, such as toothpastes.[33] Additionally, in November 2024, USEPA published its National Strategy to Prevent Plastic Pollution, including microplastics, which aims to address plastic pollution throughout the life cycle of plastic products.[34]

It is only a matter of time before federal and state governments broaden regulation of microplastics, regardless of whether they are added to UCMR 6. It will behoove the regulated community to closely monitor USEPA's NPRM publication for UCMR 6 and the ultimate Final Rule, as well as any future microplastics regulatory developments.
For more information on microplastics and UCMR 6, please contact the authors of this client alert.

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[1] https://www.nj.gov/governor/news/news/562025/approved/20251126c.shtml.
[2] 42 U.S.C. § 300j-4(a)(2)(B)(ii).
[3] https://www.epa.gov/water-research/microplastics-research (updated July 2, 2025).
[4] Petition at p. 2.
[5] https://marinedebris.noaa.gov/what-marine-debris/microplastics.
[6] *Id.*
[7] *Id.*
[8] https://marinedebris.noaa.gov/research/quantification-microplastics-and-microfibers-us-national-park-beaches.
[9] https://www.epa.gov/water-research/microplastics-research (updated July 2, 2025).
[10] *See, e.g.*, Savchuk, K. Microplastics and our health: What the science says, Standford Medicine Environment & Sustainability (Jan. 29, 2025), *available here*.
[11] 42 U.S.C. § 300j-4(a)(2)(A)-(B).
[12] https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2040-AG33.
[13] *Id.*
[14] 42 U.S.C. §300j-4(a)(2)(B)(ii).
[15] 40 C.F.R. §141.40(b)(1).
[16] *See* 42 U.S.C. §300f(6) defining "contaminant" as "any physical, chemical, biological, or radiological substance or matter in water."
[17] Petition at p. 2.
[18] *Id.*
[19] *Id.*
[20] Petition at p. 3.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.* at p. 4.
[26] *See* Final Rule, https://www.federalregister.gov/documents/2022/11/14/2022-23963/drinking-water-contaminant-candidate-list-5-final.
[27] *Id.*
[28] 42 U.S.C. §300j-4(a)(2)(B)(ii).
[29] 42 U.S.C. §300j-4(a)(2)(B)(i) (every five years, "the Administrator shall issue a list pursuant to subparagraph (A) of not more than 30 unregulated contaminants" to the UCMR).
[30] Final Rule, https://www.govinfo.gov/content/pkg/FR-2021-12-27/pdf/2021-27858.pdf.
[31] https://www.foodandwaterwatch.org/wp-content/uploads/2024/11/Microplastics-Petition-to-EPA.pdf.

[32] https://www.fda.gov/cosmetics/cosmetics-laws-regulations/microbead-free-waters-act-faqs.
[33] *Id.*
[34] https://www.epa.gov/system/files/documents/2024-11/final_national_strategy_to_prevent_plastic_pollution.pdf; *see also* https://www.epa.gov/circulareconomy/national-strategy-prevent-plastic-pollution (updated February 14, 2025).

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

KEGAN A. BROWN
Partner
T: 212.419.5866
kbrown@lowenstein.com

MARK S. HEINZELMANN
Partner
T: 973.422.2946
mheinzelmann@lowenstein.com

TAYLOR R. WEST
Counsel
T: 212.204.8691
twest@lowenstein.com

BRIAN S. WINFIELD
Staff Attorney
T: 862.926.2284
bwinfield@lowenstein.com

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