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March 29, 2017

Karen Marsh

Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

Submitted via *www.regulations.gov*

**Re: Docket EPA-HQ-OAR-2016-0490, National Emission Standards for
Hazardous Air Pollutants: Publicly Owned Treatment Works**

Dear Ms. Marsh:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the proposed amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Publicly Owned Treatment Works (POTWs) (81 FR 95352; December 27, 2017). NACWA represents the interests of nearly 300 publicly owned wastewater treatment agencies nationwide, serving the majority of the sewered population in the U.S.

NACWA worked extensively with EPA on the original POTW NESHAP, published in 1999 and amended in 2002. While NACWA appreciates that certain amendments in the current proposal were intended only as clarifications, the Association is concerned that these amendments without further clarification could unintentionally make the NESHAP applicable to more POTWs and substantially increase costs for POTWs to comply with the NESHAP. These additional costs are not justified based on risk because EPA concluded from its risk review that no additional standards are required to bring health or environmental risk to an acceptable level. These additional costs are also not justified based on technological advances because EPA concluded from its technology review that no new treatment technologies have become available since the original POTW NESHAP was promulgated. Therefore, any rule clarifications must be narrowly tailored to ensure that they do not expand the scope of the source category or otherwise result in additional costs with no corresponding health or environmental benefits.

NACWA's comments below provide details about these concerns and other issues with the proposed rule, as well as recommendations for changes to the rule.

EPA Must Not Expand the Applicability of the POTW NESHAP

EPA estimates that only six of the 16,000 POTWs in the U.S. are subject to the POTW NESHAP. The NESHAP applies to any POTW that has a design capacity to treat at least 5 million gallons per day (MGD) and is either a Group 1 or Group 2 POTW. EPA explains, and NACWA understands, that:

- Group 1 POTWs accept a waste stream regulated by another NESHAP and provide treatment and controls as an agent for the discharger of this waste stream. Group 1 POTWs may or may not be located at a major source of HAP emissions.
- Group 2 POTWs are treatment plants located at major sources of HAP emissions. Group 2 excludes those Group 1 POTWs that treat a waste stream as an agent for a discharger to comply with another NESHAP.

NACWA's primary concern with the proposed POTW NESHAP amendments arises from EPA's clarification that HAP emissions from collection systems should be included in the major source determination for potential Group 2 sources. EPA did not adequately explain that this clarification is statutorily limited by the Clean Air Act § 112(a) definition of "Major Source." This definition excludes collection systems that are not located in the contiguous area that includes the treatment plant. This definition also excludes collection systems when they are not under common control with the treatment plant. These are important clarifications that clean water utilities have used since 1999 to make appropriate applicability determinations for the POTW NESHAP. EPA should make clear that the agency is not attempting to change these statutory limits or asking that POTWs revisit applicability determinations based on these limits.

Key to these applicability determinations is the common sense understanding that "contiguous area" does not include the systems that bring raw materials and utilities from offsite to the stationary source. Ships, trains, pipelines, and other conduits for raw materials coming onsite have been routinely excluded from the scope of a major source determination. If the pipelines or transmission lines connecting two facilities were enough to constitute a single contiguous area, then being contiguous stops being a meaningful criterion for separating major sources. Congress could not have intended an interpretation of the Section 112 definition of "major source" that renders contiguous meaningless.

Clean water utilities have understood since the first POTW NESHAP was finalized in 1999 that the pipes that brought sewage to the treatment plant for processing are merely conduits for raw materials coming onsite that should also be excluded from the contiguous area of the treatment plant. Sewers could not be considered part of the same contiguous area without including every facility connected by the sewers. The only interpretation that preserves contiguous area as a meaningful criterion excludes sewers, like transmission lines and pipelines, from the major source determination. We ask that EPA make this clarification in the preamble to the final rule. Without this clarification, NACWA believes that improperly included off-site collection system emissions could likely result in the NESHAP applying to more POTWs than EPA intended to include in the proposed rule and will greatly increase the burden of the rule without a corresponding environmental benefit.¹

¹ NACWA is not aware of any defensible way to estimate the potential number of POTWs impacted by the NESHAP. Site-specific conditions, treatment process differences and varying makeup of residential and industrial dischargers from community to community make predicting emissions impractical. Given that some larger communities have thousands of miles of collection

NACWA understands that the 1999 POTW NESHAP defines a POTW broadly, including “intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment.”² However, as it was originally finalized in 1999, the POTW NESHAP applied to a non-industrial POTW treatment plant if it was “located at a major source of hazardous air pollutant . . . emissions.” 64 Fed. Reg. at 57579 (finalizing 40 C.F.R. § 63.1580). The definitions of the terms ‘major source’ and ‘stationary source,’ used extensively throughout the rule, and the applicability provisions in the rule that are based on whether a treatment plant is located at a major source, do not support inclusion of off-site collection system emissions. Clean Air Act section 112 defines a major source as “a stationary source or group of stationary sources located with a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.”³ Section 112 also states that a stationary source has the same meaning of the term under Section 111(a), which defines a stationary source as a “building, structure, facility, or installation which emits or may emit any air pollutant.”⁴

Not including collection system emissions in POTW major source determinations is also supported by *Alabama Power Co. v. Costle* and EPA’s response to that decision. In *Alabama Power*, the D.C. Circuit found that EPA had not reasonably interpreted Section 111(a)’s definition of a stationary source and had not “provide[d] explicit notice as to whether (and on what statutory authority) EPA construe[d] the term source, as divided into its several constituent units, to include ‘long-line’ operations such as pipelines, railroads, and transmission lines.”⁵ In response, EPA “confirm[ed] that it does not intend ‘source’ to encompass activities that would be many miles apart along a long-line operation” and that, for example, “EPA would not treat all of the pumping stations along a multistate pipeline as one ‘source.’”⁶

Collection systems consist of sprawling networks of hundreds or thousands of miles of sewers, pump stations, and other equipment that are clearly not part of any one source or groups of sources “located within a contiguous area.”⁷ A reasonable boundary cannot be drawn around a collection system and treatment works without including a large geographic area. Collection systems are instead a “long-line operation” like a pipeline, railroad, or transmission line. Because the 1999 POTW NESHAP explicitly required that the treatment plant be “located at a major source of hazardous air pollutant . . . emissions,” this incorporates all elements of that definition, including that the aggregated emissions must be from a single stationary source or a group of stationary sources within a contiguous area.⁸

The preamble of the 1999 rule affirms that “the major source determination must be based on facility-wide emissions,” which would not include emissions from the collection systems outside the treatment facility.⁹ EPA

systems, hundreds of pump stations and other structures, it is not hard to imagine that including collection systems in the major source determination could result in many more communities being included under the NESHAP.

² 40 CFR § 63.1595

³ 42 USC § 7412(a)(1)

⁴ 42 USC § 7411(a)(3)

⁵ *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979)

⁶ 45 Fed. Reg. 52695

⁷ 42 U.S.C. § 7412(a)(1)

⁸ 64 Fed. Reg. at 57579 (finalizing 40 C.F.R. § 63.1580)

⁹ 64 Fed. Reg. at 57576

did not give any indications in the 2002 amendments to the POTW NESHAP that this major source determination had changed, nor did it give public notice that it was proposing such a significant change that could result in additional POTWs becoming subject to the NESHAP. Likewise, EPA has never given the explicit notice that is required by the *Alabama Power* decision for the Agency to assert that it believes long-line operations can be aggregated for purposes of a major source determination.

The exclusion of collection system emissions is also supported by other interpretations of Section 112. Section 112(e)(5) required that “[t]he Administrator shall promulgate standards pursuant to subsection (d) of this section applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act) not later than 5 years after November 15, 1990.”¹⁰ Title II of the FWPCA defines “treatment works” as including “intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment.”¹¹ However, EPA and the D.C. Circuit have agreed that Section 112(e)(5) “is simply a timing provision” that does not determine what parts of the POTW EPA can and cannot regulate.¹²

Based on these reasonable and historically consistent applications of the statutory definitions of major source and stationary source to the POTW NESHAP, as well as relevant D.C. Circuit court decisions, NACWA asks EPA to clarify that POTWs may exclude off-site collection system emissions in their applicability determinations. In addition to increasing the number of POTWs subject to the NESHAP and the cost of compliance, accurately estimating emissions from offsite collection systems is extremely difficult, if not impossible. Collection systems are often owned and operated by entities separate from the POTW. Further, we are aware of no authority in either the Clean Air Act or the Clean Water Act for POTWs to impose HAP emission control measures on the owners of collection systems. By excluding long-lined conduits from all major source determinations consistent with the *Alabama Power* decision, EPA can avoid the arbitrary disparate treatment of POTWs that own collection systems from those that do not.

Proposed Requirements for Existing POTWs Will Have Unforeseen Impacts

EPA proposes that existing Group 1 and Group 2 POTWs comply with the NESHAP by developing and implementing a pretreatment program and by demonstrating that the HAP fraction emitted from all emission points up to secondary treatment does not exceed 0.08 on a 12-month rolling average basis. Any combination of pretreatment, wastewater plant modifications, or control devices may be used to meet this HAP fraction performance standard. EPA also proposes that Group 1 POTWs must meet all requirements for each appropriate NESHAP for the wastewater from each industrial user.

These proposed requirements are changes from the original POTW NESHAP. A pretreatment program was previously a condition of applicability for the NESHAP, rather than a compliance requirement, and Group 2 POTWs were previously not subject to any emission limits. NACWA questions the proposal to add the pretreatment program and HAP fraction requirements during the risk and technology review of the POTW NESHAP. EPA found in its review that the residual risk was well below acceptable levels and that no new technologies were available for emission controls. Therefore, the proposed additional compliance requirements are unnecessary and beyond the scope of EPA’s risk and technology review authority. A

¹⁰ 42 USC § 7412(e)(5)

¹¹ FWPCA § 212(2)(A)

¹² *NACWA v. EPA*, 734 F.3d 1115, 1127 (D.C. Cir. 2013)(Case No. 11-1131 et al.)

pretreatment program cannot be considered a new technology and the HAP fraction requirement will not result in any additional risk reduction.

The HAP fraction requirement was set by EPA based on data from two POTWs that have implemented controls. EPA set the 0.08 HAP fraction requirement as twice the maximum HAP fraction from these two facilities, with the factor of two applied to allow for variability between treatment plants and the limited data set. Although the six POTWs that EPA identified as subject to the NESHAP have not exceeded this requirement, setting the HAP fraction should be based on a more complete analysis of risk and variability. One NACWA member, American Bottoms Regional Wastewater Treatment Facility (ABRTF), has identified itself as subject to the NESHAP, but this facility was not included in EPA's review. ABRTF has reviewed its HAP emissions and found that it likely exceeded the 0.08 HAP fraction in the past. With the current proposal, ABRTF and/or its industrial users would need to change their operations or add controls to meet the HAP fraction requirement, which would increase the compliance cost of the rule beyond what EPA has considered for this rulemaking. There may be other POTWs like ABRTF that have not yet been identified by EPA as subject to the NESHAP, but have HAP fractions that exceed the proposed threshold.

NACWA recommends that EPA eliminate the HAP fraction requirement for existing POTWs, since the risk review did not indicate the need for any additional requirements. At a minimum, the Agency should conduct a more thorough analysis before setting a HAP fraction requirement. EPA should consider additional data, conduct a statistical analysis of the data, and determine a suitable HAP fraction based on the acceptable level of risk from HAP emissions and the variability of the data set.

EPA Must Consider Implications of Pretreatment Requirements

Although NACWA members currently subject to the NESHAP all have pretreatment programs in place and can already meet this requirement, there are practical implications related to mandating this pretreatment program requirement that EPA should consider. If a facility that is not currently subject to the POTW NESHAP later triggers applicability of the NESHAP, but does not already have a pretreatment program in place, it may be impossible for the POTW to implement a pretreatment program in the time allowed to comply with the NESHAP. Development of a pretreatment program takes considerable time for a POTW, and the POTW does not become the Control Authority until after their pretreatment program is approved by the appropriate regulatory agency (state or EPA Region). The timing of this approval cannot be controlled by the POTW, and it could take years. The POTW should not be in violation of the NESHAP because of the time needed to get approval of a pretreatment program.

EPA requested comment on having an additional requirement that POTWs "develop pretreatment requirements specifically designed to reduce HAP emissions by requiring the POTW to evaluate and set local limits for volatile organic HAP." This is impractical and conflicts with federal pretreatment program requirements that POTWs run all analyses using methods found in 40 CFR 136, since most HAPs cannot be measured using these methods. In addition, local limits are developed by POTWs to account for site-specific factors at POTWs not addressed by the prohibitions and categorical standards of the General Pretreatment Regulations of 40 CFR Part 403. Each POTW must retain the discretion to determine when local limits are or are not required for its site-specific conditions.

EPA Should Consider Alternative, Less Costly Alternatives

EPA could establish an alternative emissions standard that recognizes the HAP removal that occurs during secondary treatment of wastewater. In the preamble of the proposed rule and the supporting documents, EPA discusses the effectiveness of biological treatment of HAP. If HAP are kept in the aqueous phase until secondary treatment, significant biological treatment will occur, with small amounts of HAP discharged in the effluent and/or removed to the biosolids. Methods other than primary system covers can be used to suppress volatilization of HAP, including lowering the elevation of return lines to minimize losses due to the turbulence of open drops, installing weir covers, and implementing alternative aeration schemes. Using these methods and the existing secondary treatment units to remove HAP is likely much more cost-effective than primary system covers.

To determine a HAP fraction emitted for POTWs relying on secondary treatment removal of HAP, EPA could use data from the same two facilities that it used to determine the 0.08 HAP fraction requirement. For these facilities, the highest HAP fraction emitted by the whole treatment plant was 0.157. If EPA chooses the same factor of two to account for the variability between treatment plants and the limited data set, the resulting HAP fraction emitted would be 0.31. An alternative emissions standard of a HAP fraction emitted of 0.31 from the combined primary and secondary treatment systems would provide flexibility for POTWs that might exceed the 0.08 HAP fraction in the primary system but achieve greater HAP removal in the secondary system. This additional compliance method would be consistent with the requirements of Clean Air Act section 112(d)(3)(A).

It is also important to note that a pretreatment program limiting HAP discharged to a POTW may not necessarily reduce the HAP fraction emitted by a POTW. The HAP fraction emitted depends on many factors, including water temperature, wind, the number of operational units during dry weather, wet weather off-line storage, and the loading of specific chemicals from industry. Pretreatment can lower influent HAP levels and would be expected to lower the mass of HAP emitted, but the HAP fraction emitted might not be reduced by the loading reductions. If EPA does not eliminate the HAP fraction requirement for Group 2 POTWs, NACWA recommends that the requirement only be applied during 12-month periods when POTW HAP emissions exceed risk-based thresholds.

EPA Should Not Require Specific Test Methods and Modeling Procedures

EPA requested comment on whether the final rule should require specific test methods for determining flowrates and specific modeling procedures for modeling and determining HAP emissions. EPA suggests that this would increase the accuracy and consistency of data used to comply with the NESHAP. NACWA does not support this type of requirement, since each POTW already has a system for monitoring and modeling that has been the basis for historic data. Consistency over time is critically important for trends analysis, which provides valuable insight for managing systems. EPA's attempt to gain consistency across facilities is more disruptive than valuable. An individual POTW should be able to continue the best methods and models that it determines appropriate for its facility. Change will result in extra time and expense for the POTW to comply with the rule with no corresponding benefit as all methods and models have inherent inaccuracies and uncertainties.

EPA Should Not Apply Cover Requirements to Existing Sources

EPA also requested comment on applying the cover and control requirements for new sources to existing sources. This would mean that existing sources would be required to cover their primary treatment units and

to route the air in the headspace from all covered units, except the primary clarifier, to a control device via a closed vent system. NACWA does not support this requirement for existing sources due to the excessive burden it would place on POTWs. Cover and control systems can cost millions of dollars for each facility, making this an unreasonable requirement when the risk from HAP emissions is already well below acceptable levels.

Modeling Requirements are Too Vague

EPA proposes modeling requirements to address “emissions resulting from inspection, maintenance, and repair activities” and “fluctuations (e.g., daily, monthly, annual, and seasonal) in your influent wastewater HAP concentrations; annual industrial loading; performance of control devices; or any other factors that could affect your annual HAP emissions.” These proposed requirements are too vague as actions that could qualify as inspection, maintenance, and repair may be occurring on any given day. The level of fluctuations that would trigger modeling requirements is also not specified. NACWA asks EPA to clarify what type of modeling would be required and to narrow when this type of modeling would be required. Since frequent modeling places a heavy burden on POTWs, NACWA recommends that these modeling requirements be eliminated or only triggered when a threat to human health or the environment has been identified that justifies the additional burden.

Compliance Times are Insufficient

For any requirements included in the final rule, NACWA recommends that EPA extend the proposed compliance times to make them more realistic for POTWs. For example, POTWs need more than 180 days from publication of the final rule to prepare and submit an Inspection and Monitoring Plan. The time allowed for determination of monthly emissions should also be extended to allow sufficient time to obtain results and provide an accurate analysis. EPA proposes that the determinations for each month be completed by the end of the following month, which does not always allow enough time to receive results from a laboratory (a minimum of two weeks), to resolve any issues with the laboratory results, and to analyze the results. Modeling may then be required to obtain the HAP fraction emitted and determine the rolling 12-month average. NACWA therefore requests that the final rule allow a minimum of 60 days after the close of the reporting period to complete any required emissions determination.

The proposed annual report adds an additional and unnecessary burden for POTWs that EPA should alleviate by extending the deadline for the report. Much of the information that EPA proposes for the annual report is already submitted by POTWs in required reports for their discharge permits and air permits. The proposed annual report information could be incorporated into a POTW's Title V report to avoid redundancy. Any noncompliance events would be captured on deviation reports. NACWA recommends that EPA eliminate this additional reporting requirement.

EPA Has Underestimated the Costs and Burden of New Provisions

EPA has underestimated the burden of the proposed rule on POTWs, with nationwide annual costs estimated at only \$10,530 per year. NACWA understands that EPA's estimated cost only includes the new recordkeeping and reporting requirements, not the cost of monitoring and potential controls. If EPA retains requirements that increase monitoring and control obligations, EPA must include the monitoring costs required for the HAP fraction requirement and the potential costs of adding controls to meet this requirement. If EPA believes it has already included the monitoring costs in its estimate, then the Agency has significantly underestimated the

costs associated with this new requirement. The monthly influent sampling that is proposed will cost each POTW at least \$12,000 per year. For facilities like ABRTF that have more than one influent stream, the cost will be much higher.

If a POTW exceeds the HAP fraction emitted of 0.08, then planning and implementing additional controls will add to the cost of compliance. Additional sampling will be needed to identify the industrial sources of HAP requiring control and to justify the changes to discharge permits. If covers are required as a control at the POTW, the cost will be millions of dollars. Covers installed for odor control provide an example of the cost for this type of emission control. The capital cost for one NACWA member POTW to install 300,000 square feet of primary treatment covers for odor control was \$13.4 million, with an additional \$67.5 million to install headworks and primary treatment odor control stations and ductwork.

The cost of updating emissions models, which EPA suggests should be done frequently, will also place an additional burden on POTWs. The cost of hiring a consultant and additional staff to do this could cost \$200,000 per year POTW. All these costs will be multiplied if POTWs must include collection system emissions in determining if they are major sources of HAP emissions, resulting in additional POTWs becoming subject to the NESHAP. NACWA asks EPA to accurately reflect these costs in its nationwide estimate and then carefully consider whether new requirements that add these costs are justified when EPA has concluded that POTWs do not pose a residual risk or require updated technology to protect human health.

Thank you for your consideration of these comments. Please contact me at cfinley@nacwa.org or 202-533-1836 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia A. Finley".

Cynthia A. Finley, Ph.D.
Director, Regulatory Affairs