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Rep. Brooks Landgraf
Chair, House Committee on Environmental Regulation
Texas House of Representatives
Submitted electronically: https://comments.house.texas.gov/home?c=c260

RE: NACWA Comments on the Texas House of Representatives Bill H.B. 1674 "Relating to the production, sale, and use of certain agricultural products containing perfluoroalkyl and polyfluoroalkyl substances (PFAS); creating a criminal offense"

Dear Representative Landgraf:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments on proposed H.B. 1674 that would amend the Texas Agricultural Code to include provisions related to products containing per- and polyfluoroalkyl substances (PFAS) and prohibiting the manufacture, sale, distribution or application of municipal biosolids if above a certain concentration threshold. While the legislation as drafted attempts to establish a tiered system, it in fact does the opposite and sets concentrations to impossibly low thresholds, essentially a de facto ban on the land application of high-quality municipally derived biosolids. Such an outcome would result in not only greater costs to publicly owned wastewater utilities (and their ratepayers) but would also pass the buck on to Texas farmers to buy more expensive synthetic fertilizer.

NACWA represents the interests of 360 clean water utilities of all sizes across the United States, including 17 municipal wastewater utilities in Texas. NACWA agrees with and supports the more detailed comments submitted by our sister-organizations at the state level, the Texas Association of Clean Water Agencies (TACWA) and the Water Environment Association of Texas (WEAT), and we offer this comment letter to help shed light on the severity of the issue if this bill passes, on behalf of our members in Texas as well as nationally.

NACWA's public utility members are anchor institutions in their communities and provide the essential public services of treating billions of gallons of our nation's wastewater and managing the millions of tons of biosolids generated as a byproduct of the wastewater treatment process each year, in a manner that ensures continued protection of public health and the environment. Our members are public health champions and environmental stewards that have invested billions of dollars to comply with stringent and

costly Clean Water Act provisions and consistently strive to rise to the occasion no matter what the pollutant of the day may be.

Per- and polyfluoroalkyl substances (PFAS) are perhaps the most challenging and complex suite of contaminants the public wastewater sector has ever faced. As awareness grows regarding the harm caused by high levels of PFAS exposure, the mere presence of PFAS, even at extremely low part per billion (ppb) or parts per trillion (ppt) levels, is leading some to prematurely conclude that any amount of PFAS is harmful. This is creating a significant but unproven threat and possible end to how public clean water utilities sustainably manage the continual byproduct of the wastewater treatment process – known generally as municipal biosolids.

Municipal clean water utilities are passive receivers of PFAS, with these chemicals entering the wastewater treatment process as a result of upstream industrial or manufacturing uses of these chemicals that send their effluent to wastewater utilities – and through everyday domestic source contributions that contain PFAS (e.g., washing PFAS-coated cookware or waterproof cosmetics, doing laundry, using and flushing toilet paper, etc.) and are simply rinsed down the drain right to the wastewater utility.

Public clean water utilities, especially those with industrial pretreatment programs, with the assistance of state and federal regulatory agencies are conducting upstream investigations into the possible industrial sources of PFAS reaching their facilities. These efforts are tedious and take time.

Further complicating the issue, wastewater utilities were not conventionally designed or constructed with PFAS in mind and there is no currently available technology that can remove or treat PFAS in wastewater, especially when considering the millions – if not hundreds of millions of gallons – of wastewater that arrives as influent at a public utility daily.

Since PFAS are uniquely ubiquitous and indestructible, they are creating unprecedented challenges for both regulators and regulated entities in protecting public health and the environment. A growing difficult and serious conversation unfolding at the federal with state regulatory agencies, wastewater utilities, and solid waste managers is how to maintain the existing public-wastewater-waste management cycle, given the challenges arising by the mere presence of PFAS in our environment and subsequently in our waste. The intention of these conversations is to maintain the existing methods for municipally-derived biosolids and not disrupt the few, heavily regulated, management options available for public wastewater utilities and their partnered contractors.

The Bill Fails to Recognize that Municipal Biosolids Management Options are Limited; A De Facto Ban Would Further Reduce Residual Management Opportunities

NACWA has serious concerns that the language offered in the bill unfairly targets municipally-derived wastewater residuals, even though PFAS can arrive on agricultural field crops through various means, including atmospheric deposition, irrigation with contaminated groundwater, synthetic fertilizers and pesticides, and aqueous film-forming foams used to extinguish fires. The bill attempts to establish

thresholds that would allow farmers to continue to use municipal biosolids if they are below certain concentrations. However, the concentrations are so low (e.g., PFOA at 0.9 ppb, and PFOS at 5.1 ppb, respectively) that the result would be a de facto ban on the land application of biosolids and would have a cascading impact on all biosolids management approaches.

Where would these residuals go?

Wastewater utilities only have three primary mechanisms for managing biosolids, which are a necessary byproduct of the wastewater treatment process. These include land application, landfilling, and incineration. Having flexibility to use each of these options is critical to municipalities across the country managing the sheer volume of biosolids generated daily. Losing one management pathway, especially the ability to land apply municipal biosolids fertilizers for beneficial reuse, will have a detrimental and cascading impact on how local communities manage this byproduct of the wastewater treatment process. Public wastewater utilities will be left to either send tons of biosolids fertilizers to landfills or to incinerate them – both of which are not practical, beneficial, or frankly sustainable in the short or long-term.

Analytical Data and Risks Should Drive PFAS Decision Making; the Proposed Rulemaking Fails to Include a Thorough Sampling Strategy of Municipal Biosolids in Texas

The Clean Water Act regulations that all municipal biosolids must comply with are based on extensive data, research and risk assessment work that resulted in standards that are both protective of human health and the environment and attainable by clean water utilities using pretreatment requirements and other tools provided by the Act. While the bill requires biosolids materials to be sampled and tested—an approach NACWA generally supports as it can lead to land application approaches that take actual risks into account—it is likely that municipal biosolids will exceed the proposed Texas thresholds, which are not based on risk.

NACWA opposes this bill as drafted because there is no reliance on risk-based evidence that municipally-derived biosolids contain PFAS in a widespread occurrence and at levels of human health or environmental harm. The proposed rulemaking also usurps the role of the U.S. Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) tasked with assessing risks of pollutants and pathogens in biosolids.

EPA is currently assessing the risks of PFOA and PFOS in biosolids to human and ecological health and is accepting public comments on its draft risk assessment. The draft risk assessment provides the critical first step insight into the health and environmental risks these two chemicals may pose in biosolids through a number of different exposure pathways. The second step, if the EPA deems there is risk, is to complete the risk management piece – which includes collecting information on PFAS occurrence data in biosolids and then developing pollution minimization plans, best management practices or Clean Water Act Part 503 Standards. EPA's draft risk assessment is not a regulation itself and clearly states it should not be used as one.

Texas acting to prevent the land application of biosolids fertilizers ahead of EPA finalizing its risk assessment and determining that standards are necessary is simply setting the State, its communities, and its ratepayers up to face alternative and costly management options for a problem they didn't even create.

Prohibitions based on the mere presence of PFAS in residuals that are not developed pursuant to a risk-based determination, as this proposed regulation aims to do, could leave municipal clean water utilities with no other option but a direct-to-landfill requirement that will be more burdensome logistically, less environmentally-friendly, and exponentially more costly.

Unfortunately, on top of all of these negative impacts to utilities, this bill will ultimately not resolve the issue over PFAS contamination in Texas. A growing subject of peer review science includes different ways that PFAS can be introduced into the environment including from active and inactive pesticide ingredients that are directly applied to land.[1]

NACWA recommends Texas take an approach akin to other states assessing PFAS concerns in the environment, including land applied biosolids. States like Michigan have taken a proactive tiered approach to addressing industrially-impacted biosolids (e.g., biosolids with concentrations at or above 100 ppb) by establishing additional regulations, sampling, and notification requirements. Biosolids that contain PFAS below 20 ppb—which is most common—can be land applied with notification to the farmer and no additional requirements. This tiered strategy, rather than an all-out ban on land application, is becoming more and more popular for states, farmers, and utilities alike as we learn more about industrial sources of PFAS coming into the wastewater treatment works and greater steps are taken to mitigate industrial PFAS sources in the first place.

The Bill Must Consider Alternatives and Costs to Clean Water Utilities and Their Ratepayers

NACWA believes the bill must include a landfill capacity and cost assessment, with sufficient public review and input opportunities from stakeholders. The costs associated with residuals management are often the second or third largest expense a clean water utility incurs, and this study must be done before the bill in enacted to fully understand its impacts.

NACWA kindly requests that the H.B. 1674 not pre-empt the federal or state environmental regulatory process for determining the risk of pollutants in biosolids and prematurely determine that municipally-derived biosolids fertilizers are injurious to public health or the environment. NACWA urges the House Environmental Regulations Committee to recognize the shortcomings of this bill and consider a more practical and strategic approach to dealing with PFAS concerns in the state. One option as a next step

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[1] *See* Donley, N. et al., *Forever Pesticides: A Growing Source of PFAS Contamination in the Environment* 132 ENVTL. HEALTH Perspectives 75003-1 (2024) (analyzing pesticide contaminate data found in wadable streams from a 2013-2017 U.S. Geological Survey collection effort and finding "nearly a quarter of all US conventional pesticides active ingredients were organofluorines and 14% were PFAS, and for active ingredients approved in the last 10 years, this had increased to 61% organofluorines and 30% PFAS").

could be to have the Texas Commission on Environmental Quality conduct a comprehensive assessment of PFAS concentrations in municipal biosolids as well as an economic cost analysis. NACWA recommends these be completed prior to passing any legislation restricting land application.

If you have any questions or comments, please contact me at eremmel@nacwa.org or 202/533-1839.

Sincerely,

Emily Remmel
Senior Director, Regulatory Affairs