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April 26, 2022

Ken Moraff
Director, Water Division
Region 1
U.S. Environmental Protection Agency
5 Post Office Square
Boston, MA 02109

Submitted via electronic mail to: Duspiva.Michele@epa.gov

Re: NACWA Comments on the U.S. Environmental Protection Agency's Region 1 Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Medium Wastewater Treatment Facilities in Massachusetts (MAG590000)

Dear Mr. Moraff:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (EPA) Region 1's proposed draft National Pollutant Discharge Elimination System (NPDES) General Permit for Medium Wastewater Treatment Facilities in Massachusetts (MAG590000) published in the Federal Register.¹

NACWA represents the interest of 350 publicly owned wastewater utilities of all sizes across the country. Each day, these utilities provide the essential service 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 in a manner that ensures the continued protection of public health and the environment.

NACWA is encouraged to see EPA begin to address per- and polyfluoroalkyl (PFAS) substances within authorities of the Clean Water Act (CWA). However, our members have initial concerns with the draft NPDES General Permit as issued by EPA Region 1 and how it will impact the forty-four medium sized publicly owned treatment works in Massachusetts.

Because this is the first draft general permit issued by EPA itself, it will also likely be the lodestar for state CWA-authorized permitting agencies to follow. NACWA has significant concerns that this draft general permit could trigger a tidal wave of similar prescriptive PFAS

¹ 87 Fed. Reg. 7175 (Feb. 8, 2022).

monitoring and reporting requirements across the country, as well as drive compliance and enforcement measures in future permit iterations.

The Potential Implications of Leveraging the NPDES Permit Program to Address PFAS

EPA's current PFAS Strategic Roadmap aims to "leverage NPDES permits to reduce PFAS discharges" and seeks to "obtain[] more comprehensive information," where PFAS *are expected or suspected to be present* in wastewater or stormwater discharges.² This effort builds upon the previous EPA Administration's Office of Water recommendation that NPDES permit writers begin considering PFAS strategies to incorporate into federally-issued permits (2020 OW Interim Strategy).³ This 2020 OW Interim Strategy recommended phased-in monitoring and best management practices, *as appropriate*, when PFAS is only *expected to be present* in point source wastewater discharges.⁴

Obtaining this information on a utility driven or voluntarily basis is one thing but mandating the collection and reporting of PFAS presence in influent, effluent, biosolids, and industrial influent—for utilities with and without an industrial pretreatment program—under the regulatory weight of a NPDES permit, is quite another.

Our members do not produce, manufacture, or profit from PFAS chemicals and instead de facto "receive" these chemicals through the raw influent that arrives daily at the treatment plant. This influent can come from domestic, industrial, and commercial sources and may contain PFAS from trace to higher concentrations, depending on the nature of the discharge to the sewer system. Although the influent is not generated by the utility, the utility has no discretion in the influent it receives and is responsible for treating under the CWA.

Municipal clean water utilities were not traditionally designed or intended with PFAS treatment capabilities in mind. To complicate matters, there are currently no cost-effective techniques available to treat or remove PFAS given the sheer volume of wastewater or biosolids managed daily by clean water utilities. Even if all industrial inputs to the treatment plant are eliminated, there is a significant probability that PFAS would be detected at trace concentrations merely from domestic inputs.

While the public clean water community is not responsible for generating or profiting from PFAS or the PFAS-containing commercial products, public utilities would bear considerable economic costs

² PFAS STRATEGIC ROADMAP: EPA'S COMMITMENTS TO ACTION 2021-2024 14 (October 18, 2021), *available at* https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf

³ Mem. from EPA Assistant Admin. David P. Ross to EPA Regional Admins, Recommendations from the PFAS NPDES Regional Coordinators Committee Interim Strategy for Per- and Polyfluoroalkyl Substances in Federally Issued National Pollutant Discharge Elimination System Permits (November 22, 2020), *available at* https://www.epa.gov/sites/default/files/2020-11/documents/pfas_npdes_interim_strategy_november_2020_signed.pdf

⁴ *Id.* at 2.

for treating and removing these chemicals if required to do so at the POTW—costs that would be passed onto ratepayers. Doing so would, in essence, make the public pay for the pollution costs of private entities that have financially profited from manufacturing and placing PFAS chemicals into commerce.

Given these concerns and the lack of realistic treatment options for POTWs, controlling PFAS at its source is likely the most viable and responsible regulatory option. Under the CWA, NACWA strongly supports EPA using its authority to evaluate and, as necessary, develop effluent limitation guidelines (ELGs) and pretreatment standards for industrial categories discharging PFAS-containing wastewater directly or through municipal sewer systems. Industries that discharge their wastewater to municipal wastewater treatment plants would be regulated through the National Pretreatment Program, a successful cooperative effort among federal, state, and local clean water utility authorities that gives clean water utilities the ability to develop local limits to better meet the needs of their specific treatment facilities.

Using national ELGs and pretreatment standards would also help to establish an approach for regulating PFAS where the industrial creators and users of these chemicals are responsible for the cost to remove them from wastewater, rather than shifting this cost to municipal ratepayers. Identifying industrial PFAS sources is critical to this process, but as it relates to the draft permit at issue, NACWA encourages EPA Region 1 to consider the broader NPDES implications these monitoring requirements may have on the municipal clean water community absent any pretreatment standards.

Draft Permit is a PFAS Fact-Finding Mission; Without Additional Guidance or Resources, Significant Burdens Are Placed on POTWs to Identify Potential Sources

While EPA's motives are to proactively use the NPDES permit authorities to gather ample PFAS data to inform future regulatory actions or policy, the burden to collect this information is placed squarely on Massachusetts' medium-sized municipal clean water community and its ratepayers.⁵

Using the NPDES permitting approach as a PFAS fact-finding mission may indeed help EPA and/or states identify upstream source contributors of PFAS and ultimately reduce PFAS discharges on a larger scale, but a mandatory and comprehensive monitoring approach must be designed with flexibility and minimal risk for permittees.

POTWs with established industrial pretreatment programs have shown early success in voluntarily mitigating PFAS concentrations coming into their systems and subsequently reducing concentrations in effluent and recovered residuals, but these success stories are often from mature programs at large utilities with sufficient resources and staff to implement local programs.

⁵ PFAS STRATEGIC ROADMAP, *supra* note 2, at 13.

Success has also been achieved through utility and industry partnerships where the industrial user takes steps to proactively reduce or eliminate PFAS from their discharges.

POTWs without industrial pretreatment programs will need significant resources to pinpoint and investigate upstream PFAS sources—even if these industries are generally identified or listed PFAS in their permit. Municipal clean water utilities often have little knowledge of PFAS-discharging industries within their service areas, especially those industries that are not significant industrial users (SIU) under the CWA pretreatment program.

For example, the draft permit requires medium-sized utilities to annually sample “contaminated sites” or “manufacturers of parts with polytetrafluoroethylene or Teflon type coatings.” A medium sized utility that does not have a pretreatment program will likely have trouble identifying and sampling these types of industrial users, if they even exist within their service area. This is especially true if the industry is not manufacturing PFAS per se but is simply using it in the production of another product or commercial service.

Further, the draft permit requires sampling of “any other known or expected sources of PFAS.” This is arbitrary and capricious on its face and is also potentially indefinite given that PFAS is produced and manufactured for innumerable commercial uses.

Before EPA Region 1 finalizes the Massachusetts draft permit and before state permit writers begin to incorporate similar requirements elsewhere, EPA must provide the much-needed guidance and financial support for utilities attempting to collect this informational data within their service area. Otherwise, NACWA members are on a fool’s errand, spending considerable and limited ratepayer dollars with no real benefit to finding sources or mitigating PFAS concentrations coming into their systems.

EPA Region 1 should consider guidance for utilities to structure a PFAS source identification program that could include how to begin outreach to upstream sources, how to develop pollution minimization plans, and how to monitor, report, and work productively with upstream sources to address PFAS in their service areas.

Absent Multi-Laboratory Validation Method and Promulgation Under the CWA, Data Accuracy and Confidence Fails

It is imperative that the municipal clean water community has reliable and accurate analytical methods in order to have the scientific confidence that their monitoring efforts reflect the true PFAS concentrations found in the environment.

While EPA’s Strategic Roadmap points to Method 1633—an analytical technique to measure 40 different PFAS chemicals in wastewater, surface water, biosolids, and sediment among other environmental matrices—this method has not been promulgated under the CWA Part 136’s Methodologies. And, while it cannot be used for CWA compliance or enforcement efforts at this

time, NACWA has additional concerns that the data collected, accurate or not, could have far reaching consequences.

This draft permit is the first-ever EPA issued NPDES general permit to include mandatory quarterly monitoring requirements for six PFAS analytes in influent, effluent, and biosolids using draft Method 1633. In addition to the six PFAS listed, utilities are to also report “all other PFAS required to be tested as part of the method” which includes up to forty different PFAS analytes.⁶

While EPA’s 2020 OW PFAS Memo acknowledged that NPDES monitoring requirements were likely ahead for POTWs, monitoring requirements were not to be triggered until *at a time after EPAs multi-lab validated methods are available to the public*. To date, EPA has not published its multi-lab validation study.

Region 1’s draft General Permit requires medium-sized utilities to report PFAS concentrations the first full calendar quarter after the effective date, which could be *before* the multi-laboratory validation study is finalized sometime later this year. This approach—to require monitoring, analysis, and reporting ahead of promulgating a rule under the CWA—runs counter to longstanding Agency policy establishing robust and scientifically confident analytical techniques for pollutant monitoring. It also places utilities in a risky liability situation where a utility officer must electronically report that the pollutant concentrations were prepared under their direction or supervision and the information submitted is to the best of their knowledge and belief, true, accurate, and complete. If the methodology itself is flawed, the Discharge Monitoring Report data could also be reported in error.

Confidence in the laboratory method is essential for EPA’s second PFAS-related regulatory initiative, developing ELGs and pretreatment standards for industries that discharge wastewater containing PFAS. Since an approved PFAS test method for wastewater is needed to implement ELGs and pretreatment standards—and this implementation will likely require significant investment from industries and utilities—EPA must ensure that its method can be fully trusted.

Yet, EPA has given the green light for this method to be used for monitoring purposes in individual or general NPDES permits. NACWA urges EPA Region 1 to provide a grace period to monitor for PFAS using Method 1633 until the methodology passes the multi-laboratory validation stage and a formal promulgation under the CWA occurs.

Required Reporting Without Broader Context Runs Risk to be Publicly Misinterpreted

NACWA is concerned that once PFAS monitoring and reporting requirements are placed into permits, which this draft general permit does, this data will be uploaded online. It will be done

⁶ See MAG590000 - Attachment H: PFAS Analyte List (identifying 40 PFAS analytes as part of draft Method 1633), available at <https://www3.epa.gov/region1/npdes/mwwtfgp/draft-medium-wwtf-gp-att-h.pdf>.

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without the confidence of multi-lab validated methodology and without any context, running the risk of being publicly misinterpreted.

In an effort to improve transparency of PFAS pollution, EPA is creating a PFAS Analytical Tool that is user-friendly and part of EPA's Enforcement and Compliance History Online (ECHO) database—a web-based tool to identify NPDES permits of interest and investigate pollution sources or trends in compliance and enforcement data.

NACWA is concerned that the medium-sized utilities in Massachusetts will be among the first in the country to have their monitoring data, which are informational only and not to be used for compliance or enforcement purposes, automatically uploaded via their electronic Discharge Monitoring Reports (eDMRs) and published online where the public could misconstrue this information.

NACWA members are witnessing firsthand that the *mere presence* of PFAS, even at extremely low parts per billion (ppb) or parts per trillion (ppt) levels, can generate significant concern over how public clean water utilities manage their daily operations and their residuals.

If the effort is to gain information on PFAS sources and quantities, NACWA encourages EPA Region 1 to not require reporting under eDMRs and rather have utilities report this information directly to the Region. While this information may still be collected with a Freedom of Information Act (FOIA) request, it will not be as readily available without any context on what PFAS concentrations mean or the limitations currently for POTWs to treat or mitigate these emerging contaminants.

Conclusion

NACWA and its members appreciate the opportunity to provide comments to EPA Region 1 on its draft general permit for medium-sized utilities in Massachusetts. We urge EPA Region 1 to consider the above concerns and the potential implications on the municipal clean water community.

If there are any questions, please do not hesitate to contact me at eremmel@nacwa.org or 202/533-1839.

Sincerely,



Emily Remmel
Director of Regulatory Affairs