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October 14, 2021

Phillip Flanders
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Submitted via www.regulations.gov

RE: Preliminary Effluent Guidelines Program Plan 15 (Docket ID No. EPA-HQ-OW-2021-0547)

Dear Dr. Flanders:

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to comment on Preliminary Effluent Guidelines Program Plan 15 (86 Fed. Reg. 51155). NACWA represents the interests of over 340 publicly owned wastewater treatment agencies nationwide, serving the majority of the sewered population in the US. NACWA members operate highly successful pretreatment programs as co-regulators under the Clean Water Act with EPA and the states and are actively involved in efforts to reduce the quantities of pollutants that are discharged into the sewer system.

In Plan 15, EPA announced rulemakings to address PFAS discharges from the Organic Chemicals, Plastics & Synthetic Fibers (OCPSF) Category and the Metal Finishing Category, as well as a rulemaking to address nutrient discharges from the Meat & Poultry Products Category. NACWA supports EPA's efforts to control pollutants at their source through effluent limitation guidelines (ELGs) and pretreatment standards, and the Association provides comments below for the Agency to consider as it begins the rulemaking process. EPA also solicited comments on environmental justice (EJ) considerations in the ELG Program. NACWA supports these efforts and additionally provides preliminary comments on appropriately considering EJ in the ELG Program.

ELGs and Pretreatment Standards for PFAS Discharges

NACWA strongly supports EPA developing ELGs and pretreatment standards related to PFAS for the OCPSF and Metal Finishing Categories. NACWA

submitted comments to EPA on May 21, 2021, on the Advance Notice of Proposed Rulemaking (ANPRM) for ELGs, pretreatment standards, and new source performance standards for the discharges of PFAS from the OCPSF category. As explained in those comments, publicly owned treatment works (POTWs) are “passive receivers” of PFAS, since they do not produce or manufacture PFAS but de facto “receive” these chemicals through the raw influent that arrives at the treatment plant.

This influent can come from domestic, industrial, and commercial sources and may contain PFAS constituents ranging from trace to higher concentrations, depending on the nature of the dischargers 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 it under the Clean Water Act.

Municipal clean water utilities were not traditionally designed or intended with PFAS treatment capabilities in mind. There are currently no cost-effective techniques available to treat or remove PFAS given the sheer volume of wastewater managed daily by clean water utilities. 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 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 formulating PFAS chemicals in commerce.

Given these costs and the lack of realistic treatment options for POTWs, controlling PFAS at its sources is the most viable and responsible regulatory option. Developing ELGs and pretreatment standards for the industries that discharge wastewater containing PFAS is an important step to reducing the amount of PFAS introduced into the environment. NACWA therefore supports the development of ELGs and pretreatment standards for the OCPSF and Metal Finishing Categories, as well as the continued study of PFAS use, treatment, and discharge by landfills, airports, paper and paperboard manufacturers, and textile and carpet manufacturers.

As EPA develops categorical limits for PFAS for the OCPSF and Metal Finishing industries, NACWA asks the Agency to consider the following points:

- The science and techniques of PFAS detection and treatment are rapidly evolving. The ELGs and pretreatment standards must be developed in a way that allows for new information and technologies to be incorporated into use by the industry and to be accepted by POTWs that are enforcing pretreatment standards. The ELGs and pretreatment standards may need to be revised more frequently than other ELGs that were developed in the past, but sometimes not revised for decades after their promulgation.
- POTWs must not be responsible for enforcing unattainable limits. For example, EPA has established "zero-discharge" limitations for some categories. While this might be tempting when it comes to PFAS due to the environmental impacts of these chemicals, NACWA would not support this due to the wide variety of PFAS compounds and the differing risk levels of each

compound. While categorical standards are of course technology-based, unnecessarily broad and stringent limits, such as a zero-discharge limit, would be difficult, if not impossible, for POTWs to enforce.

- The impacts of pretreatment standards on small businesses must be carefully considered. NACWA's utility members support the economic well-being of their communities through their services and do not want to enforce pretreatment standards that will cause small businesses to lay off employees or close. This may especially be a concern for small metal finishers.
- NACWA supports the development of pretreatment standards that provide some flexibility for POTWs. For some industries, EPA has allowed the use of pollution management plans, such as in the Transportation Equipment Cleaning standard. NACWA supports this option as an alternative to numeric standards, since it would allow POTWs to develop control plans that specifically serve the needs of the individual POTW.
- Pretreatment standards should consider the effects of legacy contamination from PFAS. Some NACWA members have worked with their industrial users to eliminate use of PFAS, but PFAS concentrations continue to fluctuate. Alternatives to numeric standards, as stated above, might provide a solution for industries that have attempted to remove PFAS from their processes but struggle to find legacy PFAS in their systems.

NACWA is continuing to work with its members to explore practical, effective ways of setting pretreatment standards for PFAS, and we would welcome the opportunity to discuss options with EPA.

ELGs and Pretreatment Standards for Nutrients

Because of the widespread nutrient issues in the nation's waters and the continued pressure on POTWs to reduce their nutrient discharges, NACWA supports the development of ELGs and pretreatment standards for nutrients discharged by the Meat and Poultry Products Category. However, while POTWs may benefit from the reduction of nutrient loadings via direct industrial dischargers, the overall water quality benefit of the nutrient ELGs will likely be limited due to the contributions of nonpoint sources, which are the greatest source of nutrients in many watersheds. It is critical that EPA understand the nutrient reduction efforts of POTWs for flows they can control as compared to the nutrient contribution from sources outside POTW control.

Environmental Justice Considerations in ELGs

EPA solicited comments in Plan 15 for how to incorporate equity and environmental justice (EJ) into the ELG planning process, and specifically, how the EJSCREEN tool may be used to assess the proximity and potential impact of impact of industrial discharges on underserved and underrepresented populations.

Although NACWA will need more time to evaluate how the EJSCREEN tool can be used in these evaluations and the implications for the ELG program, the Association supports exploring whether industrial discharges are having a disproportionate impact on EJ communities. Pretreatment standards

for indirect dischargers are unlikely to directly affect their immediate communities, since the wastewater is discharged into the sewer system and conveyed to the POTW. ELGs may have a more direct impact, but other factors – such as air emissions, noise, and traffic – seem likely to have more adverse effects on these communities.

Any EJ considerations in the development of ELGs and pretreatment standards must consider not only environmental impacts, but economic impacts. ELGs and pretreatment standards have leveled the playing field in terms of locating industries, providing national limits on discharges so that communities cannot compete for industries by loosening environmental standards. Although communities may choose to develop more stringent local limits based on their own needs, this must be a local decision. Stricter discharge standards should not be developed for communities based on EJ evaluations done at the federal level, but instead be based on equity and EJ considerations at the local level.

In addition, ELGs and pretreatment standards that target industries located in EJ communities should never result in the loss of industries and employment opportunities for these communities. EPA could assist these industries and their communities by offering technical assistance and grants to help businesses meet or exceed their ELGs or pretreatment standards.

Since EJ considerations and the use of the EJSCREEN model in the ELG program are in the preliminary stages, NACWA recommends that EPA provide future opportunities for POTWs and other stakeholders to learn about EPA's plans and provide input. NACWA members are willing to engage in future discussions and evaluate how different options may affect their communities.

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

Sincerely,

A handwritten signature in black ink that reads "Cynthia A. Finley". The signature is written in a cursive, flowing style.

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