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June 14, 2022

Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 4101M
Washington, DC 20460
Via Electronic Mail

Dear Assistant Administrator Fox:

As you know, the safe management of the thousands of tons of biosolids generated from the municipal wastewater treatment process every day across the United States is a responsibility the 350 members of the National Association of Clean Water Agencies (NACWA) take seriously. However, recent legislative and regulatory developments in some states – and developments at the federal level – are threatening the ability of NACWA members to effectively manage biosolids. On May 16, NACWA had a productive meeting with Deborah Nagle, Director of the Office of Science and Technology and her biosolids team to share some of our concerns with these developments. I write today to request that the U.S. Environmental Protection Agency (EPA) reaffirm in writing its commitment to maintaining an array of options to provide municipalities with the necessary flexibility to ensure the safe and effective management of biosolids across the country.

Public clean water agencies have only three primary management methods for biosolids – land application, landfill disposal and incineration. For decades, EPA has supported the public clean water community by developing regulations consistent with the Clean Water Act (CWA) to ensure that biosolids are managed – regardless of the method chosen by the community – in a safe, responsible manner.

The loss of even one of these management methods would have catastrophic consequences, but the public clean water community is now facing a situation where all three options are at risk of being unavailable due to the presence of PFAS. Never has EPA's engagement in and commitment to the biosolids program been more important and it is time for EPA to reaffirm its commitment to all three biosolids

management options and to the core principles of resource recovery and sustainability that undergird the practice of land application.

NACWA and its members have supported a robust regulatory framework for biosolids management since the first set of rules were initially drafted in the late 1980s. Since those rules were promulgated at 40 CFR Part 503, the biosolids program has faced numerous challenges. In the late 1990s and early 2000s, for example, the presence of dioxins and furans in biosolids raised concerns about the continued practice of land application. But through extensive data collection, analysis and risk assessment, EPA's Office of Water demonstrated that the low levels of those chemicals in biosolids did not warrant regulation for any of the three management methods. EPA's decisive action on the issue of dioxins and furans was critical to the continued success of the biosolids program.

The current issue surrounding the presence of PFAS in biosolids presents the Part 503 rules with perhaps their biggest challenge yet. All three management methods are facing pressure at the state level. U.S. EPA has made assessing the risk associated with PFAS in biosolids a priority – and we thank you for your leadership of EPA's Council on PFAS in addressing this critical issue.

Unfortunately, many states are not only moving quickly on PFAS regulations in the absence of guidance from EPA, they are also reacting to concerns over PFAS that lack the scientific rigor that is required to conduct a thorough risk assessment. As a result, public clean water utilities urgently need a strong statement from EPA Headquarters to the Regions and the states that EPA continues to support the biosolids program and that it is making the issue of evaluating the potential risks associated with PFAS in biosolids a priority. This issue demands rapid engagement and communication from EPA Headquarters.

To do this effectively, EPA must also reaffirm its continued support for the biosolids program by ensuring there are enough resources and staff allocated to addressing the current PFAS issue and whatever other emerging pollutant issues may arise in the future. In the wake of the 2018 Office of Inspector General report on the biosolids program, the Office of Water stressed that "EPA takes very seriously its statutory obligations to evaluate and regulate, where appropriate, contaminants in biosolids that may pose a risk to human health and the environment."

Following that report, the Agency, under the leadership of the Office of Science and Technology, made a sustained push to ensure it was fully engaged in the biosolids program. Even with this commitment, NACWA believes that EPA's biosolids team remains understaffed and under-resourced to address and respond effectively to the PFAS challenge and other growing emerging contaminant issues.

The simple fact is that continued underinvestment in the biosolids program will only further erode confidence in the three management practices that the clean water community has available. Risk assessment methods must be updated and reapplied on a regular basis and additional data

collection, including collecting samples of biosolids and completing comprehensive toxicity analyses, are needed on an ongoing basis to ensure the program remains protective of human health and the environment and can address new contaminant issues before they become as widespread as PFAS.

If EPA's risk assessment of PFAS in biosolids indicates that one or more of our current management practices cannot continue in its current form, EPA must be equipped and ready to help the clean water utility sector respond and adapt. To this end, we believe EPA and the clean water sector should already be discussing contingencies should any biosolids management option, whether due to PFAS or some future contaminant, be deemed to present too great a risk to human health or the environment.

To this end, NACWA proposes a multi-disciplinary working group comprised of EPA and representatives from the water sector and other key stakeholders to evaluate current disruptions in biosolids management happening in certain regions of the country and their impacts, and to discuss innovative technologies and opportunities, the benefits and long-term trends of specific biosolids management options, and possible future threats for biosolids management. This working group must have a holistic understanding of the work that needs to be done to evaluate the risks of PFAS and other emerging contaminants to all three biosolids management options and the impacts of a prohibition or limitation of the use of any one of these options to the continued viability of the remaining options, as well as the environmental and economic consequences of such policy decisions.

At the very least, EPA senior managers should be meeting regularly with the water sector to discuss these and other challenges facing biosolids management. EPA has made strides in this area over the past couple of years, but greater investment from the Agency is needed. NACWA is working to secure a meeting with Administrator Regan and we plan to raise these concerns with him as well.

We thank you again for your commitment to addressing PFAS concerns and look forward to discussing this critical and complex issue with you further.

Sincerely,

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

Adam Krantz
Chief Executive Officer

cc: Deborah Nagle, Director, Office of Science and Technology, EPA
Andrew Sawyers, Director, Office of Wastewater Management, EPA