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June 14, 2021

Principal Deputy Assistant Administrator Radhika Fox
U.S. Environmental Protection Agency – Headquarters
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Acting Regional Administrator Deb Szaro
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Ste 100
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***Re: The National Association of Clean Water Agencies (NACWA)
Recommendations on the U.S. Environmental Protection Agency's (EPA)
April 27, 2021 Memorandum Regarding Per- and Polyfluoroalkyl
Substances and the Formation of an EPA Council on PFAS (ECP)***

Dear Principal Deputy Assistant Administrator Fox and Acting
Administrator Szaro:

The National Association of Clean Water Agencies (NACWA) appreciates the ongoing work underway at the U.S. Environmental Protection Agency (EPA or Agency) to address the multitude of issues surrounding per- and polyfluoroalkyl substances (PFAS)—perhaps the most challenging suite of pervasive, synthetic chemicals known in our country's environmental history.

As the scientific understanding of PFAS evolves, EPA has the opportunity to look holistically across the broad array of existing federal statutes and regulations and develop a comprehensive path forward for best protecting human health and the environment. The PFAS Action Plan, published in 2019 and updated in 2020, forms the basis of the Agency's comprehensive path forward for understanding and responding to the extent and nature of PFAS contamination in the United States.

The recent formation of EPA's PFAS Council (EPC) and the development of a multi-year strategy is another positive step forward for the Agency and is welcomed by NACWA. We congratulate you both on your appointment as co-chairs and look forward to working closely with EPC and the Agency on this important topic.

The EPC will play a critical role as it takes a thorough review of the current PFAS Action Plan, the plan's shortfalls and successes to date, with the objective of building upon the momentum gained thus far to

lead the federal response to addressing these chemicals. Ultimately, EPC's leadership in articulating a vision for addressing PFAS will not only provide greater certainty to the public at large and the regulated community, but we also hope that you will prioritize the most meaningful federal actions to reign in the seemingly endless use of a ubiquitous, nearly indestructible, anthropogenic suite of PFAS chemicals found in our everyday consumer products.

Role of NACWA and Public Clean Water Sector

NACWA represents the interests of more than 330 municipal clean water utilities across the country of all sizes that provide an essential public service of managing billions of gallons of wastewater and stormwater each day, as well as actively engaging in resource recovery including the treatment and management of thousands of tons of nutrient-rich biosolids. Our members are environmental stewards and every day demonstrate their commitment and dedication to protecting public health and the environment.

NACWA supports the newly formed EPC and our members stand ready to assist the Agency as it works across national program offices to develop recommendations on a meaningful, holistic approach to understanding and mitigating PFAS chemicals and both the legacy contamination they have caused and strategies for minimizing – if not eliminating – future environmental problems.

Municipal clean water utilities are “passive receivers” of PFAS since they do not produce, manufacture PFAS or use PFAS in their operations but de facto “receive” these chemicals through raw influent that arrives at the treatment plant. This influent originates from heterogeneous inputs including domestic, industrial, and commercial sources and may contain PFAS constituents ranging from trace to higher concentrations depending on the nature of dischargers to the sewer system.

Publicly owned treatment works (POTWs) were not traditionally designed or constructed 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 by clean water utilities on a daily basis. Most importantly, while the clean water community is not responsible for generating PFAS or the PFAS-containing commercial products and has never profited from the production of them, public utilities and their ratepayers are in the precarious and unfair position of having to bear a considerable economic cost for monitoring, treating, and removing these chemicals depending upon EPA's regulatory approach. NACWA is very concerned about the fact that potential compliance costs would be passed inequitably on to ratepayers, requiring the public to pay for the pollution costs caused entirely by private entities that have financially profited from formulating, manufacturing, and using PFAS chemicals throughout the stream of commerce.

NACWA believes EPA can leverage existing environmental statutes and regulations to effectively protect human health and the environment while aggressively pursuing a “polluter pays” model. Due to the lack of clear federal direction, states are setting screening levels and imposing regulatory requirements – often with insufficient scientific basis or consideration of potential unintended consequences. Ensuring EPA has the tools and resources it needs to effectively eliminate these chemicals at the source is paramount to not only addressing this systemic issue

but also so that state regulatory agencies and legislatures do not create a patchwork of compliance regimes that are entirely impossible to manage.

Given EPA's renewed focus on environmental justice reform and affordability, it is especially important to remediate sites found with significant levels of PFAS-contamination and hold the responsible producers and manufacturing parties accountable. But it is imperative that such policies not result in passing potentially exorbitant clean-up costs to public clean water utilities and ratepayers that were not responsible for creating, profiting, or ultimately causing PFAS concerns in the first place.

As the EPC reviews the progress made under the PFAS Action Plan and identifies new strategies and priorities moving forward, NACWA encourages you to consider the following recommendations from the public clean water community. Our members look forward to participating in any public stakeholder opportunity to engage with the Agency on addressing PFAS in our environment.

We appreciate your consideration of the following recommendations, which are further detailed below:

- Accelerate Federal Research on PFAS Toxicity and Risk
- Continue Evaluating and Developing Regulatory Measures for Upstream Industrial Sources of PFAS under the CWA and TRI
- Continue to Develop CWA Analytical Methods
- Accelerate EPA's Ongoing Efforts to Complete a Biosolids Risk Assessment
- Protect "Passive Receivers" Against CERCLA Liability
- Take an Aggressive Risk Management Approach Using TSCA

Accelerate Federal Research on PFAS Toxicity and Risk

The peer-reviewed scientific literature discussing PFAS occurrence, chemical and physical characteristics, and behavior is limited but growing. NACWA supports EPA's commitment to furthering pivotal research that goes beyond the mere detection of PFAS and reaches deeper into public health risks. Generally, not only is more peer-reviewed research on PFAS necessary, but specific research is needed that is narrowly tailored to better understanding how individual PFAS and/or similar chemically- and physically- structured PFAS constituents behave in the environment, including their fate, transport, toxicity, exposure routes and associated risks.

As EPA adds more PFAS chemicals to its toxicity assessment repository, this qualitative and quantitative toxicity information can be coupled with exposure data to determine if and when regulatory action is necessary or appropriate. Because there are a limited number of toxicological studies and standard toxicity values at the federal level, states have been left to create a patchwork of variable regulatory actions that have resulted in greater uncertainty and confusion for the regulated community.

Understanding PFAS concentrations, the level at which they are toxic, and occurrences when these chemicals exceed toxicity duration and frequency thresholds is the foundation for establishing acceptable risk. EPA must continue working to expand upon the limited information currently available and effectively communicate the variables needed to determine whether there is a risk to public health versus mere presence of a chemical in the environment. NACWA supports EPA's commitment to increased scientific research on PFAS.

Continue Evaluating and Develop Regulatory Measures for Upstream Industrial Sources of PFAS under CWA and TRI

NACWA's members are committed to better understanding upstream industrial sources of PFAS entering the treatment works and eliminating these source contributions through the Clean Water Act's (CWA) pretreatment program. Greater source control at the producer and manufacturer level is a necessary first step—and a step that is known to be both cost-effective and successfully mitigate or even eliminate PFAS chemicals coming into the treatment works.

NACWA strongly supports EPA developing CWA effluent limitations guidelines (ELGs) and pretreatment standards for industrial categories with known PFAS-containing wastewater that are discharged to the sewer system. We encourage EPA to complete its ongoing detailed study of PFAS use, treatment, and discharges by airports, paper and paperboard manufacturing, and textile and carpet manufacturing industries. We also encourage the Agency to expand beyond the limited industries listed in the PFAS Action Plan that may be discharging PFAS to POTWs.

As an example, Michigan has taken a pragmatic, data-driven approach by creating an industrial pretreatment program to identify industrial sources of certain PFAS to POTWs. By implementing a state-wide sampling program to determine industrial sources of PFAS, the state regulatory authority has been able to categorically identify these discharges to POTWs. Working with the clean water community to implement targeted PFAS source reduction strategies upstream, this initiative has ultimately decreased PFOS concentrations discharged into the sewer system and resulted in subsequent reductions in wastewater effluent and biosolids. NACWA supports similar programs looking upstream at industrial source contributions as one of the most viable and cost-effective approaches to controlling PFAS from industrial sources under the CWA.

NACWA encourages EPA to consider developing ELGs and pretreatment standards that are flexible and allow for new information and technology to be incorporated into use by industry as well as be accepted by POTWs that are enforcing CWA pretreatment standards. Importantly, POTWs must not be held responsible for enforcing unattainable limits. Due to the chemical complexities and varying risk levels of the more than 3,000 individual PFAS compounds and precursors, a "zero discharge" limitation for some industrial categories would be difficult, if not impossible, for POTWs to enforce. Understanding that not all POTWs have identical Industrial Pretreatment Program needs, EPA must be flexible in developing pretreatment standards. Allowing for pollution prevention or minimization management plans, as an alternative to numeric standards, will specifically serve individual POTWs with their own unique needs. Development of model pollution prevention/minimization plans and other PFAS pollution prevention tools would be very

helpful for POTWs and we recommend you consider including this action in EPA's forthcoming PFAS Strategy recommendations.

In addition to EPA's work to identify PFAS source contributors, the National Defense Authorization Act for FY 2020 added 172 PFAS chemicals to the Toxic Release Inventory (TRI) through the Emergency Planning and Community Right-to-Know Act and Prevention Pollution Act. EPA recently added three more PFAS constituents, rounding the total number of reportable chemicals to 175.

Beginning July 1, 2021 manufacturers and processors of these 175 PFAS must report annually how much of each chemical is released to the environment and/or managed through recycling, recovery, and treatment. NACWA applauds this new reporting requirement and is optimistic that greater transparency on industrial source contributions will not only help shed light on PFAS sources and uses outside those already known, but also assist EPA expand industrial source categories and develop pretreatment standards as necessary.

Continue to Develop CWA Analytical Methods

Generally, to date, the analytical techniques of sampling chemicals in the environment have been limited to measuring concentrations at the part per billion level. With advanced analytical techniques, PFAS compounds are being detected at the part per trillion (ppt) level in water and other environmental media, driving many stakeholders and state regulators to push for and develop increasingly low regulatory limits. It is important that EPA weigh in more clearly with a federally approved analytical method under 40 CFR Part 136 that is consistent, reproducible, and provides the scientific confidence needed for determining compliance with the CWA or other environmental statutes at very low thresholds.

As EPA moves to validate appropriate, targeted analytical methods for testing PFAS in non-potable water matrices and biosolids, NACWA requests that these analytical methods be precise and reproducible. The cost placed on utility ratepayers for sampling and analysis, or any potential subsequent regulatory compliance requirements, cannot be based on inconsistent, deficient, or unverifiable data. Problems associated with laboratory equipment, contamination, and instrument sensitivity must be resolved before the Agency approves a Clean Water Act Part 136 method.

NACWA understands there is an increased focus on measuring PFAS occurrence in the environment and that some stakeholders have an urgent desire to move away from measuring targeted PFAS analytes and rather move towards measuring total fluorine concentrations quickly using a Total Organic Fluorine (TOF) methodology. NACWA suggests caution on a TOF methodology because, while it may be useful in measuring bound fluorine and free fluorine ions present and could be used as an initial screening method, it is not a detailed analysis and cannot be used to quantify risk or discharges of specific PFAS compounds from particular sources or industries.

Accelerate EPA's Ongoing Efforts to Complete a Biosolids Risk Assessment

As part of managing and treating the nation's wastewater every day, NACWA's public utility members are actively engaged in resource recovery, including the treatment and management of nutrient-rich biosolids for use on farmlands and other applications.

Biosolids put to productive, sustainable use the wastewater treatment residuals that most communities in the United States produce and must manage in large quantities. Biosolids are highly beneficial for the environment and the economy and enhance soil health, recycle nutrients, and reduce fertilizer and pesticide use.

Typical wastewater biosolids with no direct large industrial inputs are unlikely to impact ground and surface waters at levels above EPA's existing recommended PFAS health advisory levels for drinking water (70 ppt). Only in a few worst-case scenarios have biosolids been found to contribute to PFAS groundwater contamination at levels of concern. These are rare and have involved large industrial discharges to the sewer system from facilities using significant volumes of PFAS that were then land applied. In these situations, PFAS concentrations have been greatly reduced by stopping discharges through industrial pretreatment requirements and other source control methods.

The fact that there is no EPA-approved analytical test method for PFAS in wastewater or biosolids remains a limitation in our growing understanding of PFAS in biosolids. However, identifying and eliminating the industrial sources of PFAS upstream of the treatment plant have been shown to be effective to mitigating and reducing concentrations of PFAS from wastewater and subsequently biosolids.

We understand that the Agency is several years into advancing a problem formulation for biosolids—the first step in determining exposure risks, if any, through a scientifically robust risk assessment process. EPA's biosolids program recently submitted its initial problem formulation report to the Scientific Advisory Board (SAB) for independent peer review. While this review is delayed until the SAB team of experts is re-established, NACWA cannot emphasize enough the incredible importance of this work in providing certainty for future wastewater treatment and residuals management.

Until there is a more complete scientific picture of risks of PFAS exposure in biosolids, if any, EPC's recommendations should not suggest that all biosolids are contaminated at high levels warranting a stop to land application. The land application of biosolids is considered a beneficial use of a recovered resource that is subject to stringent regulatory requirements under the Clean Water Act. NACWA supports EPA's ongoing work on its biosolids problem formulation and encourages the Agency to complete its risk assessment before making any additional determinations about PFAS and biosolids.

Protect "Passive Receivers" Against CERCLA Liability

The clean water community and other passive receivers are not responsible for creating PFAS concerns yet could face severe unintended consequences if the clear dichotomy between PFAS receivers and PFAS producers is not recognized at the federal level.

Because PFAS has been manufactured and placed into commerce for over a half century and counting, coupled with the fact that the clean water community cannot halt treating continual industrial or domestic wastewater inputs which likely contain PFAS in some concentration, EPC must consider regulatory policy that includes narrow liability exemptions for municipal POTWs.

A hazardous substance designation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) offers a promising approach of advancing remediation and funding opportunities for heavily contaminated sites through a polluter pays model, but it does not afford publicly owned utilities certainty or safe harbor for responsibly managing ongoing inputs to the sewer system. The potential unintended consequences of a CERCLA hazardous substance designation are of great concern to the clean water community, particularly around how a designation will impact managing massive tons of biosolids that arrive at POTWs on a constant basis and that are currently thoroughly regulated and managed in a manner that is safe and sustainable.

Today, there are no existing or cost-effective techniques available to treat or remove trace concentrations of PFAS given the sheer volume of wastewater and biosolids managed daily by clean water utilities. Removing PFAS chemicals from wastewater influent and effluent to meet potential water quality standards will require advanced treatment techniques such as granulated activated carbon, ion exchange, reverse osmosis, or pyrolysis – all of which are prohibitively expensive for the substantial volume of wastewater and biosolids that would need to be treated if any CWA water quality standards are required to be met prior to discharge.

NACWA is encouraged by the work of EPA's PFAS Innovation Treatment Team (PITT) that is tasked with looking into advancing the science behind destruction and disposal techniques. EPA must answer how and where to dispose PFAS-containing residuals that are generated from these potential treatment techniques. Before major regulatory policy decisions are made, EPA must help underscore the nature and limitations of traditional municipal wastewater treatment operations and emphasize the broader need for PFAS chemical usage phaseouts, PFAS industrial source reduction, sensible treatment options based on data-driven science, and greater certainty on sustainable management of wastewater resource recovery.

Take an Aggressive Risk Management Approach Using TSCA

Under the Toxic Substances Control Act (TSCA), now strengthened by the Frank R. Lautenberg Chemical Safety for the 21st Century Act amendments, EPA has a renewed ability to evaluate new and existing PFAS chemicals, assess the risks of these chemicals and take appropriate risk management actions.

EPA's recently finalized PFAS Significant New Use Rule (SNUR) prohibiting the manufacture, importation, processing, or use of certain long-chain PFAS without EPA approval is another positive action in allowing the Agency to review an expansive list of products containing PFAS. Additionally, the Agency submitted a proposed rulemaking to the Office of Management and Budget for review that will require certain PFAS industries and manufacturers to report health and safety data and maintain records under TSCA Section 8(a)(7). While confidential, this data will aid

the Agency in better understand of the existing uses and concentrations of certain PFAS chemicals and will further help EPA prioritize risk evaluations under TSCA Section 6.

The 2010/2015 PFOA Stewardship Program—a voluntary phase out effort by major commercial companies—was indeed a significant step towards eliminating certain long-chain PFAS chemicals from everyday consumer products that subsequently resulted in a demonstrable reduction of these constituents in human blood serum concentrations and the environment. However, NACWA encourages EPA to take a hard look at essential uses versus nonessential uses as well as work with PFAS chemical manufacturers and users to find true, safer alternatives.

While this Stewardship Program is touted as reducing certain PFAS in the environment, merely replacing long-chain PFAS with shorter-chain PFAS that have not been phased out is not a long-term solution. NACWA recommends EPA leverage its authority under TSCA Section 6(a) to prioritize existing PFAS chemicals, or a suite of carefully selected PFAS chemicals most likely found in commerce, as a high priority for a TSCA risk evaluation. EPA can then evaluate whether or not these chemicals may present an unreasonable risk to public health or the environment without interference of cost or other non-risk factors. This will allow EPA the opportunity to make a solely risk-based evaluation and take subsequent risk management actions to eliminate any unreasonable risks found.

Conclusion

As EPC's team of national program experts review and refresh the current PFAS Action Plan and consider proposing modifications and a strategy moving forward, NACWA urges the EPC to review the above recommendations and to include the clean water community in future stakeholder engagement opportunities. NACWA's members are committed to protecting public and environmental health and stand ready to assist the Agency with best management approaches to reduce PFAS entering our systems; it is, however, imperative that regulatory policy starts first and foremost with those responsible for placing these chemicals in the environment in the first place.

NACWA would welcome the opportunity to meet with the EPC at the appropriate time to further discuss these recommendations. Please do not hesitate to contact Emily Remmel, NACWA's Director of Regulatory Affairs, at eremmel@nacwa.org or at 202/533-1839 for follow up discussion or for any questions.

Sincerely,

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

Adam Krantz
CEO