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April 8, 2024

Narendra Chaudhari
Office of Resource Conservation and Recovery
Mail Code 5304T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Submitted via: <http://www.regulations.gov>

*Re: NACWA Comments on EPA's Listing of Specific PFAS as
Hazardous Constituents (Docket ID: EPA-HQ-OLEM-2023-0278)*

Dear Ms. Chaudhari:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rule to list specific PFAS as hazardous constituents under the Resource Conservation and Recovery Act (RCRA).¹

NACWA represents the interests of more than 350 publicly-owned wastewater utilities of all sizes throughout the country. Each day, these utilities provide the essential services of treating billions of gallons of our nation's wastewater and stormwater along with 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.

Our members are anchor institutions in their communities that invest the time and resources necessary to meet their obligations under the Clean Water Act and other federal environmental statutes. They do not produce, use, or manufacture – nor do they profit from – per- and polyfluoroalkyl substances (PFAS), yet they are now being called upon to help mitigate and eliminate these pervasive chemicals from the environment.

These chemicals are ubiquitous in everyday commercial products and can be discharged by households into the sewer system through daily activities, from washing PFAS-laden clothing or dishware, rinsing off cosmetics and even flushing toilet paper containing PFAS. These activities send PFAS chemicals down domestic drains to the sewer system, where they arrive at a clean water utility that was not designed or built with PFAS in mind, and

¹89 Fed. Reg. 8606 (February 8, 2024).

therefore currently cannot remove these pollutants, especially at trace levels from everyday household contributions.

Many in this public clean water utility community are proactively working to identify upstream industrial and commercial sources that send PFAS to public sewer systems under the Clean Water Act's Industrial Pretreatment Program. By holding industrial users accountable for the PFAS they use and profit from, clean water utilities can mitigate PFAS concentrations coming into the treatment works. The Clean Water Act's Industrial Pretreatment Program was created around the same time as RCRA, and both have been viewed as means to control toxic pollutants and hazardous wastes in different environmental media. Our sector looks to EPA to set pretreatment standards for more industries discharging PFAS so that pretreatment efforts can be implemented nationwide.

NACWA supports EPA's response to the petitions it received to help control PFAS using RCRA and its proposed rulemaking to list certain PFAS as hazardous constituents. A hazardous constituent listing under RCRA and the corresponding application of RCRA's Corrective Action framework is the right environmental response tool to address localized significantly contaminated sites from particular treatment, storage, and disposal facilities (TDSFs).

Importantly, Congress, in crafting RCRA, made it clear that solid or dissolved materials in domestic sewage are not solid wastes as defined under RCRA, and therefore cannot be considered RCRA hazardous wastes.

The domestic sewage exclusion was intended, in part, to avoid inadvertently subjecting POTWs to RCRA regulation. The exclusion covers industrial wastes discharged to domestic sewer systems, even if the industrial wastes themselves contain or would otherwise be considered hazardous wastes. To eliminate duplicative regulatory regimes, the exclusion allows the Clean Water Act's Industrial Pretreatment Program to cover such industrial discharges, and to ensure that pollutants discharged to POTWs do not interfere with, pass through, or otherwise negatively impact the operations of POTWs, including mitigating the presence of Appendix III listed hazardous constituents in wastewater residuals, or biosolids.

The preamble recognizes this domestic sewage exclusion and its applicability to publicly owned treatment works (POTW) influent, explaining that the exclusion for "domestic sewage and any mixture of domestic sewage and other waste that passes through a sewer system from being considered solids waste (with some exceptions) applies to [a POTW's] influent." The preamble therefore also correctly asserts that "a POTW would not be potentially affected by RCRA corrective action requirements unless the facility is a hazardous waste TSDF."

It should be noted that the Clean Water Act's industrial pretreatment program has made substantial reductions in discharges of hazardous constituents, particularly metals and organic pollutants. The continuation of these regulatory programs consistently demonstrate their importance in bringing about major, additional reduction of potential pass-through chemicals. The domestic sewage exclusion has provided the foundation for RCRA and the Clean Water Act's industrial pretreatment program to serve these complementary functions.

While the science and public understanding of PFAS continue to evolve along with regulations protecting public health and the environment, POTWs will utilize the Industrial Pretreatment Program, including the eventual development of local limits, to mitigate PFAS that may contaminate biosolids.

NACWA has concerns, however, about the potential intersection of RCRA and the Clean Water Act should EPA ultimately move forward with RCRA hazardous waste designations for PFAS. As noted above, the domestic sewage exclusion will ensure that any listed hazardous wastes discharged to the sewer system will not subject POTW influent to RCRA regulation, but because EPA has determined that biosolids generated at a POTW are newly generated wastes, they must be evaluated for any characteristic hazardous wastes – ignitability, corrosivity, reactivity or toxicity – under the Toxicity Characteristic Leaching Procedure (TCLP).

As it moves forward in determining whether – and, critically, how – to define any PFAS as hazardous wastes under RCRA, EPA must therefore consider the potential implications of subjecting the thousands of tons of biosolids generated each day in the United States to RCRA regulations should any PFAS be added to the list of contaminants that must be evaluated for toxicity characteristics via the TCLP. To avoid such ramifications, rather than designate PFAS as characteristic wastes, EPA should instead consider, where appropriate, hazardous waste listings for PFAS, which would more appropriately target those industries that manufacture and use these chemicals. Any such listing should also acknowledge that biosolids from POTWs are regulated under stringent sewage sludge management standards under Section 405(d) of the Clean Water Act. Notably, EPA is in the process of conducting a biosolids risk assessment for PFOA and PFOS – two of the more prevalent PFAS chemicals that EPA is currently proposing to add to the hazardous constituents list. If a risk is found, the Agency will move forward with developing and promulgating biosolids standards for these chemicals, which is the proper regulatory manner to address PFAS in biosolids.

Without careful consideration of these potential impacts, a poorly planned RCRA action could permanently end the sustainable practice of beneficially land applying biosolids as soil amendments, which currently accounts for the management of 60% of biosolids across the country. This could in turn require clean water utilities to send millions of tons of generated biosolids to a handful of hazardous waste landfills. Such landfills are few in number; there are only 21 subclass C RCRA hazardous waste landfills in the country. Nor are they engineered to accept thousands of wet tons of biosolids containing organic PFAS pollutants. Rather, they were designed to accept the most hazardous compounds that pose significant risk to public health and the environment (e.g., acids, metals, cyanides, PCBs, and mercury among others). Landfill capacity, the significant logistical challenges of transporting heavy wet biosolids across the country, the requirement for sufficient bulky material to ensure structural soundness, the corresponding increased costs that will be borne by ratepayers, and environmental justice concerns are all important aspects EPA must consider if it ultimately determines to define any PFAS as RCRA hazardous wastes.

NACWA also reiterates that source control is the best solution to mitigate PFAS in the environment. There are various efforts underway as part of EPA's PFAS Strategic Roadmap

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to address PFAS, and other federal agencies are taking a cooperative role alongside industry to eliminate PFAS use in certain commercial products, like grease-proof food packaging.

If EPA is seeking a “solution that will stand the test of time” as it states in its response to New Mexico’s petition, its top priority must be eliminating non-essential uses of PFAS from our everyday commercial products. Only such action can stop the industries responsible for creating PFAS from profiting off their continued sale and use, or the public from having to perpetually bear the environmental and financial burdens of the contamination they cause.

Thank you for the opportunity to provide the above comments, and we look forward to continuing our engagement with EPA on PFAS related issues. If there are questions or concerns, please contact me at eremmel@nacwa.org or 202-533-1839.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Remmel". The signature is fluid and cursive, with a large loop at the end.

Emily Remmel