May 17, 2021

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Attention: Clean Water Act Effluent Limitations Guidelines and Standards: Organic Chemicals, Plastics and Synthetic Fibers Point Source Category, Docket # EPA-HQ-OW-2020-0582

Dear Ms. Lewis,

The Association of Clean Water Administrators (ACWA), the Association of State Drinking Water Administrators (ASDWA), the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), and the Environmental Council of the States (ECOS) (taken together, hereafter, "the Associations") are independent, nonpartisan, national organizations of state, interstate, and territorial ("states") environmental and public health program managers and commissioners who, on a daily basis, implement the programs of the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and other national and state environmental statutes. In carrying out these programs, states must ultimately address national regulatory changes and data collection efforts that can affect their ability to manage surface water, drinking water, and cross-media pollutants. Therefore, states are very interested in the *Clean Water Act Effluent Limitations Guidelines and Standards: Organic Chemicals, Plastics and Synthetic Fibers Point Source Category Advanced Noticed of Proposed Rulemaking* (hereafter, "future rule") and ensuing Effluent Limitations Guidelines ("ELGs"), Pretreatment Standards and New Source Performance Standards applicable to PFAS (taken together, hereafter, "PFAS standards").

In the comments below, we outline specific considerations of state environment programs for the Environmental Protection Agency (EPA) regarding the future rule, and list seven (7) specific recommendations for EPA:

1. Collaborate on PFAS Data Collection and Sharing
2. Engage with States on PFAS Generally
3. Integrate Data Collection Opportunities into the Suite of EPA Activities into the Future, with Specific Focus on Discharge Data and Treatment Options
4. Develop PFAS Discharge Prioritization Guidance for States

5. Evaluate Other ELG Categories that May Apply to Industries in which PFAS Discharges Have Been Quantified or May Exist
6. Consider Developing PFAS Standard(s) for Facilities Using PFAS in Products or Processes, Potentially Beyond the Scope Identified in this Future Rule
7. Use Existing Data in Addition to Generating New PFAS Data.

PFAS Standards Development Process

States have long voiced urgency on PFAS and have frequently requested EPA take actions reflecting the Agency's nation-wide leveraging capabilities, such as PFAS analyte-specific toxicity studies and regional data collection towards understanding PFAS discharges and bioaccumulation in organisms and matter in aquatic systems. An integrated, cross-media, cross-statute approach is both necessary and appropriate for persistent, bioaccumulative compounds like PFAS which, in an increasing number of analyte-specific cases, do or have the potential to harm human health and/or aquatic life. Although each state is addressing PFAS directly, states and EPA have cooperative opportunities under federal law, including CWA, to collect data and target regulations.

States generally support this future rule's development and stress that it cannot come soon enough. As stated in the Associations' April 4th, 2019, comment letter regarding the EPA PFAS Action Plan,

> *Similarly, a water quality standard for surface waters needs to be developed. Surface water quality standards form the basis of any further CWA regulation and needs to be addressed simultaneously with the Agency's other efforts. … Additionally, the timeline for addressing PFAS in wastewater discharge needs to be expedited. PFAS will continue to be a problem for drinking water entities that have intakes on surface water bodies that also receive wastewater discharges and will potentially have public health and ecological impacts if states cannot limit the discharge of PFAS before 2021* [emphasis added]**.**

States are interested in all means of minimizing human and environmental exposure to PFAS, including appropriate national regulations. While the slow pace to date of developing national-level PFAS regulations has been a major challenge, this future rule is an opportunity to take an important step forward. Apart from limited recent actions under TSCA, most PFAS regulations have focused on downstream pathways. PFAS standard(s), rather, could enable states, EPA, and their stakeholders to better control and prevent PFAS pollution upstream, towards a holistic and integrated water management approach. This approach includes working across EPA programs and with other federal agencies to ensure complete consideration of potential impacts to human health, aquatic life, drinking water, and the environment from PFAS throughout any part or all of chemical's lifecycle—from manufacturing through processing, distribution, and disposal. Establishing a national regulatory floor for priority point sources of PFAS through this future rule to include manufacturer and formulator discharges is a sensible step that should be finalized expeditiously, regularly revisited, and revised as appropriate.

Coregulator Collaboration on PFAS Data, Science, and Regulation

States have voiced concern to EPA about changes to the EPA-state coregulator relationship, and states and EPA have articulated the need to restore and rebalance it. In recent conversations,

including ACWA's March 2021 Mid-Year Meeting, states were heartened to hear the Office of Water leadership's commitment to coregulation, as well as scientific integrity, and EPA's strong desire to integrate the restoration of these two foundational principles into the novel and routine activities EPA will undertake going forward. Development of this future rule can serve to apply these principles through early and frequent engagement, EPA acting with respect to states' expressed constraints and needs, and EPA finalizing a legally and scientifically defensible future rule. In turn, states stand prepared to support EPA's national-scale work on PFAS.

There is a lack of PFAS data in the United States. This may prevent states from promulgating PFAS regulations, while a lack of regulations and/or Part 136 Analytical Methods ("Methods") sometimes prevent states from collecting PFAS data. As noted in the Associations' April 4th, 2019, comment letter regarding the EPA PFAS Action Plan,

> *Some states are already implementing or are in the process of developing regulatory standards for all media in the absence of enforceable federal standards* [for example, this future rule]. *Other states cannot adopt standards more stringent than the federal standard. We encourage EPA to use states as a guidance and work with the states in a timely manner to establish standards for PFAS that are scientifically defensible and provide adequate flexibility for states to address the unique circumstances of their states.*

We remind EPA of this comment and add that relevant PFAS data are difficult to generate due to the lack of Methods, the expense related to monitoring unregulated contaminants, the priority of other PFAS pathways for monitoring (i.e., finished water, food products, indoor/outdoor air, etc.), and other priority parameters to monitor in surface waters. In some cases, states are also legally unable to monitor unregulated PFAS in surface waters and/or point discharges, or are experiencing formidable barriers in attempts to do so. Although EPA has been working to address the Methods barrier, release of a Method under development continues to be delayed. In its absence, analytical methods with applicability limitations, including a screening-only SW-846 Method 8327 and state-specific innovated methods, exist. EPA should be focused on expediting a Method, which would provide and enable more of the data it seeks in this Federal Register notice.

For these and other reasons, few states have the types of information requested in the future rule, and many states will be unable to respond to the charge questions EPA seeks responses to. However, development of the future rule – and other key EPA products, namely long-anticipated Methods and 304(a) human health and aquatic life water quality criteria – will enable states to acquire PFAS data towards state- and site-specific PFAS standards and regulations.

> **Recommendation 1: Collaborate on PFAS Data Collection and Sharing.** Work with state environmental associations and states to increase data collection and sharing opportunities on PFAS discharges, sources, ambient and finished water concentrations, as well as the potential requirements and scope of this future rule. Increased opportunities may include funding, expertise, and regulatory and non-regulatory pathways to sampling.
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> **Recommendation 2: Engage with States on PFAS Generally**. EPA should ensure regular consultation and discussion occurs between states and the Agency regarding PFAS management and regulation, including this future rule, using state environmental associations and existing workgroups. Include states in EPA-led workgroups or discussions

whenever possible. Carrying out this recommendation could include regular technical discussions on PFAS standards; presenting states with ideas, strategies and visions related to this future rule and other actions under federal law; EPA working with states to address barriers to preferred approaches to PFAS; conducting regular, open coregulator discussions about priority discharges and PFAS analytes; and, collaboratively developing new tools and resources that support states, EPA, stakeholders, and the general public on PFAS in the water environment context; etc.

Recommendation 3: Integrate Data Collection Opportunities into the Suite of EPA Activities into the Future, with Specific Focus on Discharge Data and Treatment Options. Although ACWA and others have cautioned EPA to not rely on point-of-discharge treatment alone to address PFAS under CWA, EPA should support data gathering efforts aggressively, including those focused on discharge data and treatment technologies. Likewise, states strongly urge EPA to regularly revisit PFAS standards once initially established, rather than performing these review and promulgation steps once only. This will enable EPA and states to update PFAS standards as further knowledge is generated about analyte-specific sources, cross-media transport, and potential to adversely affect public health and the environment. Any data and benchmarks made available from this and future reviews, rulemakings, sampling, health studies, modeling, or other EPA actions should be made publicly available.

Recommendation 4: Develop PFAS Discharge Prioritization Guidance for States. States recommend EPA leverage the rulemaking process it is undertaking to also develop guidance for states to (a) identify which effluent discharges may be of greatest concern, and (b) prioritize and address PFAS under CWA, SDWA, TSCA, CERCLA, and other applicable laws. States expect that discharges of PFAS are likely occurring across numerous industries and point discharge types, and states could conserve resources and better target their PFAS approaches if the federal government identified the industries and discharges (i.e., traditional NPDES, MS4s, industrial Pretreatment Programs, facility and industry types, etc.) of greatest concern at scale. EPA can leverage its authorities and convening power to generate this data, enabling states to pursue onsite or watershed remediation and sourcewater protection, PFAS source-tracking, pollution-prevention partnerships, targeted regulation, and enforcement.

Scope of the Future Rule

States agree that the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category (OCPSF) is a sensible category to prioritize. However, given the issues noted above, states urge EPA to consider other categories for review and potential regulation for this future rule (or the very next rule). Some categories and effluents of state interest are mentioned in the future rule (i.e., Airports and Textiles), while others are not. States are concerned that OCPSF will not account for dischargers under other ELGs that could be of imminent concern and/or discharging PFAS. Given the length of time since PFAS' introduction in the United States, as well as its persistent and ubiquitous presence in the environment, EPA should be aggressive in establishing PFAS standards.

Recommendation 5: Evaluate Other ELG Categories that May Apply to Industries in which PFAS Discharges Have Been Quantified or May Exist. States generally, although

not necessarily unanimously, support EPA expanding the horizon of ELG/Pretreatment Categories under consideration. This could entail a much broader universe. Below are Title 40 CFR point source categories that have been found to be sources of PFAS as direct or indirect discharges, which states recommend EPA review in this rulemaking.

- Part 413: Electroplating
- Part 425: Leather Tanning
- Part 430: Pulp, Paper, Paperboard
- Part 433: Metal Finishing
- Part 437: Centralized Waste Treaters
- Part 445: Landfills

Recommendation 6: Consider Developing PFAS Standard(s) for Facilities Using PFAS in Products or Processes, Potentially Beyond the Scope Identified in this Future Rule. States also recommend EPA evaluate discharges that may be beyond the scope of "manufacturers and formulators" only. To illustrate the breadth of state concerns, a few facility-types of concern include (please see references within Recommendation 7 below for further lists): Dry Cleaners and Centralized Laundries; Pool Chemicals; Pesticide Production, and Pesticide Distribution Equipment; Glass, Concrete, or Gypsum Manufacturers; Steam Electric Generators; Electronics, Photography, and Optical Goods Manufacturers; Scrap Recycling; Deicing and Deicing Collection Systems.

Recommendation 7: Use Existing Data in Addition to Generating New PFAS Data. EPA should review other information about what industries have used PFAS in the past to (a) help states fill information gaps and (b) identify other categories potentially applicable for this rulemaking. Example sources of information include Table 3 in the Association of State Drinking Water Administrators' PFAS Source Water Protection Guidance Project: Technical Appendix (see industry listings by NAICS Code) and "Table 2-4: Sample Historic and Current Uses of PFAS" in Interstate Technology and Regulatory Council's "PFAS Technical and Regulatory Guidance Document and Fact Sheets" (see industry listings by Industries/Applications).

Conclusion

As noted above, few states have comprehensive answers to the charge questions in this rulemaking docket. However, some states will provide data and comments directly to EPA. As always, the Associations request EPA review and thoughtfully consider the comments of individual states.

States wish to conclude this letter by reiterating EPA's opportunity to protect public health, aquatic life, the environment, and the economy; reduce nationwide net costs to regulate an important source of PFAS; reduce the current and future burden of PFAS cleanup and treatment across environmental media; and deploy the principles of Cooperative Federalism and scientific integrity in crafting this future rule. States stand ready to support EPA to the greatest extent possible.

Please contact Julia Anastasio, ACWA Executive Director and General Counsel (janastasio@acwa-us.org; 202-756-0600), Alan Roberson, ASDWA Executive Director (aroberson@asdwa.org; 703-812-9507), Dania Rodriguez, ASTSWMO Executive Director (daniar@astswmo.org; 202-640-1061), and Don Welsh, ECOS Executive Director

(dwelsh@ecos.org; 202-266-4929) with any questions regarding these comments. We look forward to working with EPA as it works towards finalizing this future rule.

Sincerely,

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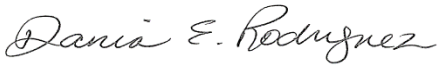

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