Environmental Council of the States
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May 10, 2021

Radhika Fox
Acting Assistant Administrator for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Via regulations.gov: [Docket EPA-HQ-OW-2020-0530]

RE: Comments on the Proposed Unregulated Contaminant Monitoring Rule for Public Water Systems

Dear Ms. Fox:

The Environmental Council of States (ECOS) submits the following comments to the U.S. Environmental Protection Agency (EPA) on the 29 per- and polyfluoroalkyl substances (PFAS) proposed to be included in the fifth Unregulated Contaminant Monitoring Rule (UCMR5). As the nonpartisan association of state environmental agency leaders, ECOS appreciates the opportunity to express its support of and make suggestions for the UCMR5 rule. Given the variety of standpoints and actions on PFAS, these comments are written on behalf of ECOS members but do not necessarily reflect the concerns of individual states.

I. On the 29 PFAS identified in the proposed UCMR 5.

ECOS appreciates the consideration of the 29 PFAS outlined in the proposed UCMR5, especially given the detections of PFAS identified in UCMR3 (at reporting levels of 20 nanograms per liter [ng/L] for perfluorooctanoic acid [PFOA] and perfluorononanoic acid [PFNA] and 40 ng/L for perfluorooctane sulfonic acid [PFOS], for example, as compared to the proposed reporting levels of <5 ng/L for these three PFAS in UCMR5). While monitoring data gathered through the UCMR are always instrumental to understanding the frequency of and levels at which unregulated contaminants occur in public water systems (PWSs), the data on these PFAS in UCMR5 will be especially important to inform late stages of EPA's establishment of national drinking water standards for PFOA and PFOS under the Safe Drinking Water Act (SDWA) as well as to dictate future policy decisions, including Regulatory Determinations for additional PFAS. Therefore, it is critical that the contaminants chosen and data gathered are thoughtfully considered.

To that end, EPA was mandated by the Fiscal Year 2020 National Defense Authorization Act (NDAA) to monitor in this UCMR cycle for each PFAS for which a drinking water method has been EPA-validated and that are not subject to a national primary drinking water standard under the SDWA. States recognize that the 29 PFAS chosen for UCMR5 are those that are detected by EPA Methods 533 and 537.1, and thus where the most meaningful monitoring and potentially regulatory opportunities exist. Some states did note, however, that the NDAA excludes PFAS from the SDWA's limit of 30 unregulated contaminants per UCMR cycle, so more contaminants could have been selected for monitoring. States attest that EPA should gather as much data under UCMR5 as possible, especially since UCMR data is a valuable publicly-available resource, as long as the data is purposefully collected, sampled, and analyzed with non-burdensome costs.

II. On the significance and validity of data collected.

Given the likelihood that the PFAS included in the proposed UCMR5 will be found at PWSs across the country and that other PFAS not included in UCMR5 are also present, states recommend that EPA develop a plan to figure out to what extent PFAS are present and where they are coming from. The lack of information for many of these PFAS makes it challenging to understand the significance of PFAS detections through UCMR5. However, given the thousands of PFAS, addressing each individually in a timely manner is not feasible and could potentially delay health-protective drinking water standards. ECOS recognizes the complexities with regulating PFAS as a class. But EPA has implemented group rulemaking in the past (i.e., for polychlorinated biphenyls [PCBs]) and some states would like for EPA to similarly establish rulemaking for some group of PFAS under SDWA, as well as under statutes like the Toxic Substances Control Act (TSCA) and/or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) so the financial burden of PFAS pollution does not rest with drinking water utilities, and ultimately ratepayers.

ECOS has heard several stakeholders discuss the inclusion of qualitative methods like the Total Oxidizable Precursors (TOP) or Total Organic Fluorine (TOF) assays in PWS monitoring to provide information on the total PFAS present in a sample. ECOS generally encourages obtaining as much information as possible. However, some states have expressed concern regarding the quality and reproducibility of data acquired from using non-EPA validated methods. A couple of considerations for possible inclusion:

1. A few states mentioned that it would be beneficial to obtain data on what percentage of PFAS present in their PWSs is being captured by EPA Methods 533 and 537.1. This information could be gathered by adding TOF to the UCMR5 analyte list and would be helpful for targeting additional investigation and making regulatory decisions.
2. TOP and/or TOF could be included in the UCMR5's Screening Survey tier (Tier/List 2) or in the Pre-Screen Testing tier (Tier/List 3). Page 13851 of the Federal Register notice of the proposed UCMR5 indicates that a smaller number of PWSs are required to monitor for Tier 2 (e.g., pertains to monitoring for less established analytical techniques where laboratory capacity and/or cost may be a concern) or Tier 3 (e.g., can be customized to meet specific monitoring objectives for a specific group of PWSs) contaminants. If appropriate and feasible, including TOP and/or TOF in one of these tiers might provide useful information on the occurrence of PFAS as a class in public water systems.
3. If EPA were to standardize analytical methods and procedures to allow for interlaboratory comparisons of results, then these methods would be more viable for use for testing for PFAS and/or PFAS precursors. Until then, states would encourage the use of an assay such as TOP and/or TOF only to complement the targeted methods.

III. On the impact to states and risk communication.

ECOS urges EPA to be thoughtful in its requirements of drinking water systems in terms of expenses related to monitoring (e.g., large PWSs [serving more than 10,000 people]) and assistance potentially required from state environmental and health agencies to help (especially small and medium) PWSs with analysis, regulations, and/or risk communication.

ECOS encourages additional funding assistance to PWSs of all sizes to help with completing monitoring requirements. ECOS also urges EPA to prepare communications guidance for all PWSs to use to inform the public about potential health implications about the PFAS found. As is, UCMR (and the SDWA in general) is very risk-based, yet it is challenging to quantify and

therefore communicate total PFAS risk. Given that there are many different state standards and no national standard, EPA should be prepared to help states understand and communicate with the public about what the monitoring results mean in terms of public health concerns.

ECOS recommends EPA prepare risk communication guidance with answers to questions about why the data are meaningful, how they will be used, and what PWSs should do or say when they detect PFAS. States recommend that EPA make its data and decision-making strategy publicly available. EPA should consider publishing health advisories or health effects support documents with risk values (e.g., reference doses) being developed for certain PFAS (e.g., PFBS, PFHxA, PFHxS, GenX chemicals, etc.) to provide important information states need to communicate with the public about what UCMR5 results mean for their health. For more risk communication guidance, ECOS recommends EPA refer to the Interstate Technology and Regulatory Council's Risk Communication Toolkit.

Thank you for considering these comments that are intended to ensure effective public health and environmental protection. Please direct questions to me at 202-266-4929 or dwelsh@ecos.org.

Sincerely,

Donald Welsh
Executive Director
Environmental Council of the States