



April 1, 2024

Abigail Golder
US EPA Office of Wastewater Management
Water Permits Division
Washington, DC 20460

Submitted via golder.abigail@epa.gov

Re: EPA's Proposed Rule to Include PFAS Monitoring and Reporting Requirements in NPDES Permits and Permit Applications

Dear Ms. Golder:

In 2008, the National Tribal Water Council (NTWC/Council) was formed by the U.S. Environmental Protection Agency (EPA) to provide EPA with technical input and concerns from Indian country, to strengthen EPA's coordination with Indian tribes, and to work with EPA to better understand issues and challenges faced by tribal governments and Alaska Native Villages, as they relate to EPA water programs and initiatives. The NTWC provides tribes, tribal communities, and tribal organizations with research and information for decision-making regarding water issues and water-related concerns. Furthermore, the NTWC advocates for the best interests of federally-recognized Indian and Alaska Native tribes and tribally-authorized organizations in water-related matters. The NTWC advocates for the health and sustainability of clean and safe water, and the productive use of water for the health and well-being of Indian country. The NTWC takes its role seriously and has provided input to EPA on many water issues since the Council's inception.

Many environmentally-related matters that impact tribal sovereignty and sustainability are important concerns for tribes to ensure that water-life ways are protected for current and future generations. The NTWC was invited to provide early comments and input for EPA's proposed rulemaking that will result in Per- and Polyfluoroalkyl Substances (PFAS) monitoring and reporting requirements in new and renewing National Pollutant Discharge Elimination System (NPDES) permit applications.

According to EPA, the proposed rulemaking "seeks to update requirements for several of the existing permit applications to address monitoring and reporting of PFAS. This rulemaking will consider adding PFAS reporting requirements to permit applications for new and existing publicly owned treatment works, new and existing manufacturing, commercial, mining, silvicultural operations, and

stormwater discharges associated with industrial activity.” The proposed rule would add PFAS reporting requirements to the following application forms:

- 2A Applicable to New and Existing Publicly Owned Treatment Works (POTWs), described at 40 CFR §122.21(j);
- 2C Applicable to Existing Industrial (Manufacturing, Commercial, Mining, and Silvicultural) Facilities, described at 40 CFR §122.21(g);
- 2D Applicable to New Industrial (Manufacturing, Commercial, Mining, and Silvicultural) Facilities, described at 40 CFR §122.21(k); and
- 2F Applicable to Stormwater Discharges Associated with Industrial Activity, described at 40 CFR § 122.26(c).

It is important to note that these proposed regulations will not “regulate” PFAS levels in permitted or to-be-permitted discharges. Rather, the intent of the proposed regulations is for EPA and communities to understand how much of each type of monitored PFAS is being released into the environment as part of permitted discharges.

It is possible, but not certain, that EPA will stipulate the use of one or both of the [August 2021 Draft Method 1633 Analysis of Per- and Polyfluoroalkyl Substances \(PFAS\) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS testing method](#), which specifies 40 PFAS compounds; or, the [January 2024 Method 1621 Determination of Absorbable Organic Fluorine \(AOF\) in Aqueous Matrices by Combustion Ion Chromatography \(CIC\)](#). Further clarification would be helpful.

This proposed rulemaking will address only NPDES individual permits and permitting in both state-administered and EPA-administered NPDES programs. General permits and permitting will not be covered under the proposed rulemaking.

Specific Recommendations

EPA should perhaps consider an adaptive management or best management practice approach to PFAS monitoring as part of existing or future NPDES discharges. The idea would be to have a dynamic rather than a static regulation that would hopefully address potential industry pushback or lobbying against the proposed rulemaking, and to provide cost-effective compliance for the regulated facilities. Such an approach, for example, could allow an initial and periodic assessment of smaller dischargers (e.g., less than 1 MGD with a lower frequency of monitoring and reporting to be implemented, if acceptably low PFAS levels are consistently found after several monitoring events with a return to higher frequency of monitoring, and reporting in the event of discovery of unacceptably high PFAS levels as part of a subsequent monitoring event.

EPA should perhaps consider that small POTW discharges may have the potential to discharge large amounts of PFAS depending on what is ongoing upstream of the POTW and attempt to address this if warranted. And if warranted, EPA could potentially mandate a method of sampling in which the time and date of sampling events are not known more than one (1) day in advance, to make it more difficult for dischargers to a POTW to “game” the system and manage their discharges to avoid known times and dates of sampling. This latter approach would also apply to larger dischargers.

Tribal individuals and communities in Alaska and elsewhere have legitimate concerns about PFAS and other contaminants in wastewater discharges from sectors that operate under NPDES general or individual permits, including cruise ships, mining, and oil and gas. As indicated above, general permits (e.g., large cruise ships, and the oil and gas sector dischargers using general permits – in the case of Alaska) would not be addressed by the proposed rulemaking. NTWC recommends that EPA consider this shortfall and its importance as part of its proposed rulemaking. These individually- and generally-permitted NPDES wastewater discharges are especially concerning regarding potential impacts on tribal subsistence foods, especially given the known effects of bioaccumulation in the marine food web on which many depend on for subsistence and livelihood.

During the NTWC's Tribal PFAS Working Group on March 14, 2024, an answer to a question posed by an attendee about this rulemaking was that there are very few NPDES-permitted dischargers located on tribal lands. The NTWC recommends that EPA incorporate actions into its proposed rulemaking that will serve to inform the public about the results of the monitoring and reporting. For example, a web based GIS tool could be developed to view results from the proposed monitoring and reporting so that tribes and others can readily determine what is ongoing upstream of potentially-impacted surface waters due to PFAS releases by upstream NPDES-permitted facilities.

General Recommendations

The NTWC encourages EPA to continue moving forward on its [PFAS Strategic Roadmap](#) with an emphasis on the following concerns, needs and priorities.

- The Roadmap is in need of updating, as the articulated planning horizon is 2021-2024. The NTWC asks that EPA map out priorities for the future with at least a decadal or longer timeframe.
- As a PFAS concern, there are inter-jurisdictional surface water flows, for example, as water moves downstream from areas under state or federal jurisdiction to areas under tribal jurisdiction. In these instances, NTWC requests that EPA begin moving to regulate discharges of PFAS under NPDES permits to bring about a reduction in the mass of PFAS transferred from areas under state or federal jurisdiction to areas under tribal jurisdiction. To do this, it will be necessary that the proposed monitoring and reporting data quickly be utilized to develop and implement regulatory actions that will reduce the mass of PFAS entering surface waters as a result of NPDES-permitted discharges.
- In the context of PFAS in permitted NPDES discharges, EPA should commence a review to assess if and how states with primacy for NPDES permitting, whether general or individual, are attaining, or thwarting the intent of the permitting process and the Clean Water Act. States that are not living up to the letter or intent of the act, rules or regulations should be identified and be given motivation to remedy their shortcomings.
- Industry categories (e.g., Department of Defense) that are not presently regulated under NPDES should be considered for regulation under NPDES. In addition, even though EPA cannot regulate discharges from such facilities, EPA should at least acknowledge that there are important unfilled and potentially unfillable gaps in its understanding of the PFAS content of wastewater discharges

to waters of the United States and coastal waters in general. Is it possible for EPA to develop estimates to fill such gaps?

Although it appears the proposed rule may be advantageous, at this time, the full potential impacts of the proposed regulation on NPDES permits or permitting in Indian country is unknown. The NTWC appreciates the opportunity to provide early comments for consideration by EPA as it prepares to consider adding requirements for monitoring and reporting of PFAS, both as part of new NPDES permitting and as part of renewal of existing NPDES permits. Lastly, the NTWC applauds EPA for undertaking the proposed rulemaking.

Should you have questions regarding this letter, please contact me at KenPNorton@gmail.com, or Elaine Wilson, NTWC Project Manager, at Elaine.Wilson@nau.edu.

Sincerely,



Ken Norton, Chair
National Tribal Water Council

Cc: Holly Galavotti, EPA Office of Water



Office of Native American Initiatives

Northern Arizona University
PO Box 15004
Flagstaff, AZ 86011-5004
Elaine H. Wilson, NTWC Project
Manager

928-523-9555 office
928-523-1266 fax
nau.edu/itep
Elaine.Wilson@nau.edu
480-452-6774 cell

