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Addition of Certain PFAS Substances/Toxic Chemical Release Reporting: National Association of Clean Water Agencies' Comments on U.S. Environmental Protection Agency Proposal

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The National Association of Clean Water Agencies ("NACWA") submitted February 2nd comments to the United States Environmental Protection Agency ("EPA") addressing its Advance Notice of Proposed Rulemaking ("ANPR") to add certain per- and polyfluoroalkyl substances ("PFAS") to the list of chemicals subject to reporting under the Emergency Planning Community Right-To-Know Act ("EPCRA").

See 84 Fed. Reg. 66369 (Dec. 4, 2019).

PFAS are a group of man-made chemicals that have been used in various industrial applications and consumer products for a number of years. Properties of these chemicals include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation. Potential human exposure to PFAS includes pathways through drinking water, air, or food.

EPCRA was enacted in 1986 and imposes requirements for industry to report on the storage, use and release of hazardous substances. Such information is provided to federal, state and local governments. The intent is to help communities plan for chemical emergencies.

A key provision is the Toxics Release Inventory ("TRI") which requires facilities to annually complete and submit a TRI ("Form R"). Form R must be submitted for each of the over 600 toxic release inventory chemicals that are manufactured or otherwise used above the applicable threshold quantities. Data reported by facilities on the Form R include:

- Recycling
- Energy recovery
- Treatment
- Disposal
- Environmental releases

EPA's December 4th ANPR is intended to gather information for use in a potential rulemaking to add certain PFAS to the TRI Toxic Chemical List under Section 313 of the EPCRA and Section 6607 of the Pollution Prevention Act. The agency is also stated to be considering establishing reporting thresholds for

PFAS chemicals that are lower than the usual statutory thresholds due to concerns for their environmental persistence and bioaccumulation potential.

The NACWA notes in its February 2nd comments that it represents the interests of over 330 public clean water utilities of all sizes and geographic regions. Such utilities are stated to be responsible for managing billions of gallons of wastewater every day.

The comments support EPA's effort to list certain PFAS comments on the TRI. The support is based on a belief that adding facilities that manufacture or use these chemicals will help public clean water utilities "better understand the upstream sources and quantities of PFAS entering their treatment systems." This is deemed important since various public clean water utilities (publically owned treatment works ["POTWs"]) implement industrial pretreatment programs. Such POTWs are stated to have the ability to:

. . . permit and enforce upstream industrial discharges that may introduce pollutants that interfere with or pass through the treatment process with an overall goal of reducing conventional and toxic pollutants discharged into the environment.

NACWA believes that adding such compounds to the Toxic Release Inventory will assist the POTWs in pretreatment efforts along with utilities that do not have pretreatment programs. The organization states that POTWs are "passive receivers who generally must accept whatever has been discharged into collection systems . . . ". It is further noted that these chemicals are found in various commercial products and it will be of some assistance if identification of the actual sources coming into POTW treatment systems can be determined.

A copy of the comments can be downloaded [here](#).