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March 29, 2017

Karen Marsh  
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Research Triangle Park, NC 27711

*Via regulations.gov:*

*Docket ID No. EPA-HQ-OAR-2016-0490*

#### **RE: National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works**

The Association of Clean Water Administrators (“ACWA”) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the Clean Water Act (“CWA”). ACWA appreciates the opportunity to comment on the Environmental Protection Agency’s (“EPA”) draft *National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works* (“NESHAP: POTWs Rule” or the “Rule”) [Docket ID No. EPA-HQ-OAR-2016-0490].

ACWA appreciates EPA hosting two calls for the state pretreatment coordinators and ACWA Pretreatment Workgroup on the NESHAP: POTWs Rule and working with states to recognize potential issues. However, ACWA still has significant concerns that it would like to address.

#### **General Comments**

EPA states in the Federal Register that they are “proposing to add pretreatment requirements in this rulemaking because pretreatment will reduce [hazardous air pollutants (“HAP”)] emissions from both the collection systems and the POTW treatment plant operations (including both primary and secondary treatment) by limiting the quantity of HAP in the wastewater before it is even discharged to the collection system or arrives at the POTW treatment plant.”<sup>1</sup> However, this expansion of the pretreatment program will create considerable pitfalls.

40 CFR 403 sets forth the General Pretreatment Regulations. Section 403.2 explains the three objectives of these regulations:

1) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

<sup>1</sup> National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, 81 Fed. Reg. 248, 95374 (December 27, 2016) (to be codified at 40 CFR pt. 63).

- 2) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and
- 3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.<sup>2</sup>

40 CFR 403.5 describes specific pollutants that are prohibited. This list includes, “Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.”<sup>3</sup> The Rule specifically cites this section.<sup>4</sup> However, the CWA and applicable regulations do not require expansive monitoring and testing of the air to determine what constitutes “toxic gases, vapors, or fumes”, but instead allow for reliance on calculations to determine the air concentration of a constituent gas based on its concentration in the wastewater. Therefore, this detailed testing of air emissions is outside the scope of the pretreatment program for wastewater and would constitute an expansion of it.

Also, under pretreatment programs a Significant Industrial User’s (“SIU”) responsibility for compliance stops at their property line or where their discharges enter the sewer line. The NESHAP: POTWs Rule appears to imply that POTWs would have to hold an SIU in compliance at the POTW itself, disregarding the length of time, travel, and change in water through comingling with other discharges through the pipe to get to the POTW. Potential compliance determinations would be difficult at that point.

Lastly, multiple states address NESHAP regulations under state air quality programs and others require industry to reduce air emissions at the source with no gap to be bridged by pretreatment. The NESHAP: POTWs Rule would be an unnecessary burden to these facilities.

### **Applicable POTWs**

EPA explains this rule will apply to only six POTWs in the nation and that they do not plan to bring in more POTWs under the NESHAP program. However, states have expressed doubt that the Rule as presently written would achieve this result. One state explained that in their state alone (a state of only 1.3 million people), they have six facilities that could fall under the definition described in the Federal Register notice. This is certainly an issue EPA needs to look into further and provide clarity.

Other states have expressed that if this rule truly only applies to six facilities in the nation, why promulgate such a complex rule requiring all facilities to prove they are not subject to the NESHAP: POTWs Rule when EPA already knows and could just work with those six facilities individually?

### **Costs and Burden**

States have concerns about costs. EPA indicates the total cost for implementing this regulation will be \$10,530 per year for the entire nation. However, this is contradicted by the likelihood of hundreds of POTWs across the country with >5 MGD design flows and industrial contributions having to continually assure that they are staying below the 0.08 HAP fraction threshold for their entire collection and treatment system up to the secondary treatment units. Unless the POTW collects and treats all emission points, which itself is very costly, the regular monthly assessment/monitoring of emission sources or wastewater will require expenditure of capital and resources. The cost will be mitigated for every POTW which determines they are not a major source of HAP, and hence not subject to the proposed NESHAP: POTWs

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<sup>2</sup> 40 CFR § 403.2.

<sup>3</sup> 40 CFR § 403.5(b)(7).

<sup>4</sup> NESHAP: POTWs, 81 Fed. Reg. 248, 95374 (Dec. 27, 2016) (to be codified at 40 CFR pt. 63).

Rule. However, that determination, which the Rule is unclear on how frequently must occur, will be a cost in itself.

Also, the regulatory burden on the standard POTW to implement the Rule will be significant. This scheme is outside the core competencies of POTW operators and staff and has the potential to cause uncertainty and confusion.

Further, the twelve-month compliance deadline for POTWs to fully implement the NESHAP: POTWs program is simply not enough time given the level of analysis needed to determine applicability and to get a POTW to comply with the standards if the Rule is applicable.

### **Additional Comments**

States are the entities implementing the NESHAP: POTWs Rule. Therefore, ACWA strongly recommends EPA continue to include the states in discussions, specifically with regard to EPA's review of the comments and the finalization of the Rule.

While ACWA's process to develop comments is comprehensive and intended to capture the diverse perspectives of the states that implement these programs, EPA should also seriously consider all of the recommendations that come directly from states, interstates, and territories. Again, ACWA appreciates the opportunity to comment on the NESHAP: POTWs Rule. Please contact ACWA's Executive Director Julia Anastasio at [janastasio@acwa-us.org](mailto:janastasio@acwa-us.org) or (202) 756-0600 with any questions regarding ACWA's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter LaFlamme". The signature is fluid and cursive, with a large initial "P" and "L".

Peter LaFlamme  
ACWA President  
Director, Watershed Management Division  
Vermont Department of Environmental Conservation