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October 14th, 2021

Dr. Phillip Flanders
Office of Science and Technology
Engineering and Analysis Division
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460, 4303T

RE: Preliminary Effluent Guidelines Plan 15
Docket ID: EPA-HQ-OW-2021-0547

Submitted directly to the electronic docket.

Dear Dr. Flanders,

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate, and territorial (state) water program managers who, on a daily basis, implement the water quality programs of the Clean Water Act (CWA). As the primary entities responsible for carrying out many of the CWA programs, states are very interested in any national regulatory updates or policy positions that may impact their ability to implement the CWA.

ACWA would like to express support for the Environmental Protection Agency's (EPA) continued development of Effluent Guidelines (ELGs). These national technology-based standards are critical in supporting state implementation of the National Permitting Discharge Elimination System (NPDES) program. To date, EPA has issued ELGs for 59 industrial categories, applying to ~40,000 direct discharger facilities and ~129,000 facilities that discharge to municipal sewage treatment plants.

ACWA also appreciates resources made available with the *Preliminary Effluent Guidelines Plan 15* (Plan 15) and its docket, including the *Multi-Industry PFAS Study – 2021 Preliminary Report* (PFAS Study) and the ELG Database.

With respect to Plan 15, ACWA is focusing its comments on eight areas:

1. Methodology and Considerations for the Analyses
2. Environmental Justice
3. Meat and Poultry Products to Address Nutrient Discharges;
4. Supplemental Rulemaking on the Steam Electric Power Generating Category

5. PFAS ELGs Generally
6. Organic Chemicals, Plastics & Synthetic Fibers to Address PFAS
7. Metal Finishing PSC to Address PFAS; and
8. Pulp, Paper, and Paperboard and Landfill PSCs to address PFAS discharges

1. Methodology and Considerations for the Analyses

States find EPA's ranking methodology intuitive and, with complete data, would support prioritization of toxic and nonconventional pollutants which have the greatest presence in discharges. The methodology yielded important information about nitrogen and phosphorus discharges.

The nature of some pollutants under evaluation challenges EPA's methodology. While many NPDES permits have some monitoring requirement for nutrients, very few have monitoring requirements for any PFAS or other CEC that lack approved (Part 136) analytical methods. For example, in EPA's Plan 15 crosswalk analysis containing 496,044 permit/pollutant datapoints and 361,905 DMR datapoints, only 21 permits contained conditions and/or yielded data for Perfluorononanoic acid. Median PFAS concentrations in a point source category (PSC) may be low relative to other pollutants, but PFAS is notable for its health effects at very low concentrations and its persistence at those levels. This is one important driver behind the ongoing research of PFAS' toxicity and repeated stakeholder requests for PFAS-specific ELGs. For these reasons:

- **States request the agency isolate PFAS data and repeat the analysis to identify those PSCs of greatest PFAS-specific concern**, i.e., PFAS-specific screening across categories. This is important because, as EPA estimates, many PFAS-relevant facilities are not captured by the Plan 15 methodology. For example, airport deicing, landfills, dairy products processing and other PSCs ranked low in EPA's analysis, but anecdotal information suggest they may rank relatively high if PFAS were isolated.
- **States request the Agency incorporate pollutant loads and TRI data into its analysis, to capture known quantified releases of pollutants into surface waters**. For PFAS, states expect this would reduce, but not completely address, data gaps caused by the lack of a Part 136 PFAS surface water analytical method (i.e., sparse DMR data). This would support work on other toxic and nonconventional pollutants of interest to states and EPA (i.e., CEC) as well.

2. Environmental Justice

States appreciate EPA seeking feedback on how/what data to incorporate into ELG planning analyses to account for Environmental Justice (EJ). States would be interested in the results of EPA incorporating both the EJSCREEN wastewater discharge indicator index and air/waste indicators into the ELG analysis, overlayed by significant industrial dischargers via either EJSCREEN or NPDES data.

The ELG program should continue to explore an array of EJ indicators. Particulate matter and other airborne pollutants, for example, (1) are also useful in identifying communities disproportionately burdened by pollutants cumulatively, in addition to pollutant discharges

to waterbodies or POTWs, and (2) are often associated with atmospheric deposition or transport of a broad set of pollutants (i.e., nutrients, metals, PFAS, etc.) to waterbodies that cannot be addressed by the CWA alone yet increase barriers to CWA goals. States encourage EPA to continue exploring data that would make such an analysis robust and work with states in determining the most relevant approach in the CWA context.

Some state experts have noted that in their jurisdictions, a very strong correlation exists between the siting of dischargers subject to ELGs and EJ communities. That is, detailed analysis of discharge locations, discharge concentrations, and the siting of EJ communities would be expected to consistently demonstrate that promulgating ELGs reduces pollution burdens in EJ communities. So while EPA should continue considering how to account for EJ in ELG planning, **EPA can immediately address EJ by updating and developing ELGs for a broader set of priority PSCs and pollutants, rather than the highest priorities only**.

3. Meat and Poultry Products to Address Nutrient Discharges

As described in the last Plan, EPA initiated a detailed study of wastewater discharges from the Meat and Poultry Products Category to understand the overall scope of how this industry was contributing to nutrient pollution via wastewater discharge. This study is looking for information on facilities that slaughter and/or further process meat and poultry, and/or perform rendering operations. The study is researching the total number and location of facilities, the size of the facilities, and wastewater treatment technologies used.

Currently, EPA has found that the MPP industry is responsible for the highest P levels and second highest N levels of all industrial categories, and ELGs only apply to roughly 300 of 7,000 MPP facilities. EPA also found that:

- A high percentage of direct discharge MPP facilities affect impaired waters.
- Discharge from MPP facilities puts a strain on POTWs (73% of POTWs receiving MPP wastewater have violations of permit limits).
- In addition to nutrients, the data indicates that MPP facilities discharge 63 unique pollutants and 17 metals.

Based on the study, EPA is initiating a rulemaking to move ahead with revising the current Meat and Poultry Category ELGs. ACWA feels that revisions are necessary based on this data, but encourages EPA to continue working closely with states as they are positioned to help determine the scope and best practices for this effort. Future discussions should take place to gather a better understanding on how these revisions will affect issues, such as the likelihood of industry litigation, expectations for new permits and permit renewal, the ability to meet permit deadlines and requirements, and other related topics. EPA could also take this opportunity to discuss the definition of "animal holding areas" with states.

4. Supplemental Rulemaking on the Steam Electric Power Generating Category

As noted in the plan, EPA intends to publish a proposed *Steam Electric Power Generating ELG Supplemental Rule* in the fall of 2022 to strengthen certain discharge limits for certain wastewater streams from coal power plants that use steam to generate electricity. States agree that treatment system technology continues to rapidly evolve and understand that EPA may wish to incorporate the absolute latest technology as part of this rulemaking. Before EPA finalizes this rule, states would like to further discuss the implications of these new technology requirements, including impacts to current deadlines, creation of new deadlines, likelihood of industry litigation, expectations for new permits and permit renewal, new data requirements for ICIS, and other implementation related topics.

5. PFAS ELGs Generally

States request that EPA maintain its recently quickened pace in developing PFAS ELGs and studying PFAS discharges. Below, ACWA is providing general comments and questions related to PFAS in Plan 15, followed by comments on the specific PSC announcements. These general comments include:

- EPA should pursue PFAS ELGs for more PSCs than noted in Plan 15.
- EPA should develop PFAS discharge prioritization guidance for states.
- Plan 15 should consider magnitude (i.e., loading) and toxicity of PFAS in its prioritization methodology, and Office of Water should work with offices like Office of Pollution Prevention and Toxics to capture all, not just legacy, PFAS analytes in work done under this and future ELG plans.
- As states evaluate PFAS approaches for stormwater, EPA should clarify if and how stormwater practices and PFAS concentrations were limiting factors in EPA's Plan 15 analysis.

States appreciate EPA explicitly noting its intent to continue most parts of the PFAS Study into the future. This will glean important information. As noted, DMR data yielding PFAS concentrations is fundamentally limited, as the recently released Method 1633 was not available until 2021 and a paucity of NPDES permits exist which include PFAS monitoring requirements. Please let states know how they can further assist EPA's efforts with the PFAS Study. Consistent with EPA's findings in the PFAS Study and Plan 15, several states do not believe data yielded from existing PFAS monitoring requirements (mainly DMR data in Plan 15) are statistically representative of actual PFAS concentrations across discharge categories. Each state has its own experience here; for example, Michigan EGLE has used and accepted results from the isotope dilution analytical method and ASTM D7979, and has found the approach to be statistically representative, providing it to EPA for the PFAS Study. Generally, PFAS concentrations across discharge categories can be better understood once the recently released Method 1633 is incorporated into industrial NPDES permits more broadly as a monitoring requirement, which may take years yet. This limitation, coupled with states' awareness, Best Professional Judgment, and investigations into PFAS discharges, leads us to request EPA pursue PFAS ELGs for all feasible PSCs, not just those ranking highest in EPA's Plan 15 prioritization analysis.

As noted in ACWA and State Partners' (ASDWA, ASTSWMO, ECOS) May 2021 comments[1] on EPA's *Clean Water Act Effluent Limitations Guidelines and Standards: Organic Chemicals, Plastics and Synthetic Fibers Point Source Category, Docket # EPA-HQ-OW-2020-0582* (ACWA et al.'s May 2021 comments) states encourage EPA to expand its list of priority PSCs for PFAS ELGs. In this request for comments, EPA explicitly requests a rationale if commenters wish to see a PSC prioritized for promulgation or modification that is not consistent with the priorities resulting from Plan 15's screening analysis and the current Administration's priorities. States request EPA pursue PFAS ELGs for more PSCs than noted in Plan 15 (at the least, Parts 413, 425, 430, 437, and 445) because:

- Although the PFAS Study did not substantiate an ELG for each of those PSCs at this time, they are priority PSCs for states as states are aware of likely discharges among those PSCs.
- States will be in a stronger position to act on PFAS discharges when an ELG is developed or Method 1633 is promulgated under Part 136.
- The PFAS Study identifies concerning PFAS concentrations where data are available, and EPA's analysis of PFAS treatment technologies shows that conventional drinking water and wastewater treatment provide only marginal PFAS reduction of less than 25% (by unit concentration). Meanwhile, the PFAS Study demonstrated high treatment efficacy (>99%) among available non-conventional treatment technologies. **This verifies that some extent of drinking water source waters and POTWs are unnecessarily receiving PFAS that conventional treatment trains cannot address.** ELGs and Pretreatment Standards will prevent POTWs and DWTPs from receiving much of this PFAS in the first place.
- States are sometimes better able to target priority pollutant sources if an ELG is promulgated prior to or alongside CWA 304(a) water quality criteria. While a few PFAS analytes are expected to receive 304(a) criteria in the near term, the timing and extent of other 304(a) PFAS criteria is unknown. In the meantime, PFAS ELGs will enable CWA action by permitting authorities.
- Despite many industries' prior or pending discontinued use of certain PFAS, especially long-chain non-polymer analytes, legacy issues on sites and in industrial facilities can result in unexpected discharge. For example, as noted in the PFAS Study, Michigan's 12 ng/L PFOS Water Quality Standard was unknowingly exceeded by a number of facilities long after they discontinued used of PFOS, likely due to legacy or trace concentration issues. Appropriate treatment provided by an ELG would address the discharge whether or not a facility uses PFAS or is aware of legacy PFAS in its effluent.

ACWA et al.'s May 2021 comments included a recommendation that EPA develop PFAS discharge prioritization guidance for states, to help target PFAS concentrations and/or facility discharges of greatest concern. **States request EPA complete this guidance, with specific attention to fate and transport, receptor risks, and treatability of each PFAS analyte, and discuss the matter with ACWA**. Repeating Plan 15's screening analysis with

[1] Access at: https://www.acwa-us.org/documents/pfas-elg-rulemaking-2021/

isolated PFAS data and coupling this information with facility attributes – products manufactured or formulated, facility designs, PSC category rankings, TRI reporting information, etc. – can help states prioritize discharges for monitoring and/or controls. This prioritization is especially critical with the release of Method 1633, which enables facilities and states to conduct their own comparable surface water and discharge sampling for applicable PFAS and/or require sampling as a NPDES permit condition. For example, among the OCPSF PSC's 1,000+ facilities, the PFAS Study estimates 118 PFAS analytes are manufactured or used, and 85,000 tons of fluoropolymers are produced annually; but EPA was only able to identify 14 producer or formulator facilities using available information. Any discharges of contact or process waters from OCPSF facilities are of concern and need to be assessed. Given the sheer quantity of industrial discharges, states need to understand which discharges to investigate and address first. Improving this capability will enhance states' leveraging of existing resources and the work of other states and EPA.

States request the Agency consider magnitude (i.e., loading) and toxicity of PFAS in determining the merits of promulgating PFAS-specific ELGs. Because of the nature of PFAS and its cross-media transport, ACWA recommends pursuing as many PSCs as feasible. It is worth noting that many PFAS being manufactured or formulated at facilities included in the PFAS Study are not being measured in discharges, and they may have different levels of treatability than the long-chain PFAS focused on in the PFAS Study's treatment efficacy review. Office of Water should work with other EPA offices like Office of Pollution Prevention and Toxics while developing PFAS ELGs to ensure EPA actions are inclusive of the PFAS being generated today, not just PFAS generated in the past.

EPA should include PFAS formulators, including those that are not categorically regulated under OCPSF, when developing upcoming ELG(s). Table 8 in the PFAS Study demonstrates that, even from a small subset of formulator facilities, PFAS is being discharged at levels sometimes exceeding the average concentration or the upper range of concentrations in manufacturer discharges. An extent of these discharges are not captured by the OCPSF or the PSC most relevant to their operations. In Michigan, for example, there are 29 chemical manufacturers that are not categorically regulated which are discharging to POTWs. Four of those are sources of PFOS (two providing chemicals for the metal finishing industry, pool chemicals and possibly pesticides; one manufacturing polish and sanitation chemicals; and one manufacturing synthetic lubricating oils). ACWA appreciates EPA's commitment to continue evaluating the need for such regulations at a minimum. States are confident that recent data and data to be gathered in coming years via Method 1633 will demonstrate this need. Given the time necessary to craft and promulgate an ELG, EPA should begin now to get a head start.

States request clarification whether stormwater practices and PFAS concentrations in stormwater – i.e., PFAS detected but unlikely to be reduced by an ELG – were limiting factors in EPA's analysis. States are keenly interested in any information or approaches related to PFAS concentrations in stormwater and reducing those concentrations. States would appreciate EPA identifying any facilities or PSCs where PFAS concentrations were

notable in discharges likely as a result of stormwater runoff, and/or likely unrelated to current industrial manufacture or formulation processes (i.e., process wastewaters). This could help states address concerns about the treatability of PFAS by conventional stormwater BMPs (and potential facility noncompliance and liability when more states begin adopting water quality standards for PFAS), and about municipal stormwater discharges that could exceed future WQS values.

6. <u>Organic Chemicals, Plastics & Synthetic Fibers to Address PFAS</u>

ACWA et al.'s May 2021 comments included a recommendation that EPA pursue this and other PSCs. ACWA appreciates that the OCSPF PSC was included for a revision rulemaking in Plan 15 and appreciate EPA's direct consultation with states where possible in evaluating the potential for an OCPSF revision.

States' experiences with facilities handling or likely to be handling PFAS aligns with Plan 15's evaluation of the OCPSF PSC. In the decades since PFAS' introduction into commercial goods, OCPSF manufacturers have changed their practices and short-chain PFAS are far more prevalent with the advent of voluntary phase-out programs. It is likely that available effluent data demonstrate PFAS concentrations at lesser concentrations, but not less substantial, than periods in the past. Even using very limited information, the PFAS Study identified facilities in the OCPSF category in 11 states. States agree with EPA's estimate that, "it [is] probable that there are many more OCPSF facilities using PFAS that EPA has not yet identified." **For this reason, states encourage EPA to begin promulgating an OCPSF ELG that will apply as broadly, in terms of applicable dischargers and PFAS analytes, as possible**.

OCPSF guidance states that dischargers producing > 5 million pounds of product annually must meet conventional and toxic pollutant limits, but <5 million pounds requires conventional pollutant limits be met only. States request clarification whether EPA would consider PFAS a toxic or non-conventional pollutant under the forthcoming rule and whether this provision of OCPSF guidance would apply. ACWA's recommendation is that this limit distinction be eliminated for PFAS, i.e., facilities producing any quantity of products/year still must meet the future PFAS ELG.

7. <u>Metal Finishing PSC to Address PFAS</u>

ACWA et al.'s May 2021 comments included a recommendation that EPA pursue this and other PSCs. ACWA appreciates that the Metal Finishing PSC was included for a revision rulemaking in Plan 15 and appreciate EPA's direct consultation with states where possible in evaluating the potential for an OCPSF revision. The revision's scope should include both 40 CFR Part 433 and 413 (since many metal finishers are regulated under electroplating regulations), direct and indirect discharges, and pretreatment standards.

8. <u>Pulp, Paper, and Paperboard and Landfill PSCs to address PFAS discharges</u>

States appreciate EPA committing to evaluate these PSCs into the future with an eye for legacy PFAS in discharges. For paper, states are concerned about PFAS in discharges via

recycled fibers despite facilities 2024 discontinuation of PFAS' direct application to new paper products or use in mill processes, as well as legacy PFAS or trace concentration issues. As noted in the PFAS Study, it is possible for legacy or trace levels of a phased-out PFAS analyte to discharge in concentrations higher than regulators and facilities expect or deem appropriate (in reference to legacy PFAS use likely contributing to certain exceedances of Michigan's 12 ng/L PFOS Water Quality Standard despite facilities discontinuing use of PFOS). States would be interested in PFAS concentration data from paper mill intake water to determine if intake water is a relevant source of PFAS found in paper mill discharges.

For landfills, states are concerned about PFAS in landfill leachate discharges, which are often large-volume discharges that have been demonstrated to be indirect and direct sources of PFAS to surface waters. In Michigan, for example, there are wastewater treatment plants exceeding the state's PFOS water quality value for PFOS whose primary or only identified sources of PFAS are landfills. States recommend that EPA develop PFAS pretreatment standards for the landfills PSC.

Summary

While ACWA's process to develop comments is comprehensive and intended to capture the diverse perspectives of the state CWA programs, EPA should also seriously consider the recommendations that come directly from individual states. Thank you again for the opportunity to provide comments and recommendations on the preliminary Plan 15 proposal. Please contact ACWA's Executive Director Julia Anastasio at janastasio@acwa-us.org or (202) 756-0600 with any questions regarding ACWA's comments.

Sincerely,

Andrew Gavin
ACWA President

Deputy Executive Director
Susquehanna River Basin Commission