



February 3rd, 2023

Comment Clerk

ID: EPA-HQ-TRI-2022-0270-0001

Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington, DC 20460

Delivered Electronically

RE: Changes to Reporting Requirements: Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting, [Docket # EPA-HQ-TRI-2022-0270-0001](#)

The Association of Clean Water Administrators (ACWA¹), the Association of State Drinking Water Administrators (ASDWA), the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), and the Environmental Council of the States (ECOS) appreciate the opportunity to comment on the “Changes to Reporting Requirements: Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting.” ACWA, ASDWA, ASTSWMO and ECOS (“the Associations”) are nonpartisan organizations representing state and territorial clean water, drinking water, solid waste management and environmental restoration, and environmental quality agencies and leaders. The following comments are intended to address this proposed change to Toxics Release Inventory (TRI) and Supplier Notification reporting requirements, but do not necessarily reflect the concerns of individual states.

The Associations support this EPA action to add Per- and Polyfluoroalkyl Substances (PFAS) to the list of Chemicals of Special Concern with specific requirements for reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Additionally, the Associations support removing the *de minimis* exemption for Supplier Notification Requirements for PFAS and all chemicals on the list of Chemicals of Special Concern, including persistent, bioaccumulative, and toxic chemicals (PBTC). States agree with two key EPA statements in the proposal: (1) “[the *de minimis* exemption] is inconsistent with a concern for small quantities of PFAS;” and, (2) “Without [information via downstream Supplier Notification Requirements] on the TRI-listed chemical, [receiving facilities] may not have sufficient data to inform potential TRI reporting obligations.” These proposed changes effectively address some recommendations and concerns in [ACWA, ASDWA, and ECOS’ February 2020 comments](#)

¹ Some states have expressed concerns that the TRI does not discern the nature of reported releases in ways that are useful to state programs and the public – i.e., whether releases were authorized (via CWA or CAA Permits, within a contained area, compliant with existing Water Quality Standards, etc.) or unauthorized, and by extension, if a release of a chemical constitutes a significant public or environmental health concern in a given year. For this reason, Alaska’s Clean Water program abstains from supporting this comment letter.

that generally supported the “Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS); Community Right-to-Know Toxic Chemical Release Reporting.”

The Associations maintain their stance that the “[National Defense Authorization Act of 2020 \(NDAA\)](#) reporting threshold of 100lbs for the TRI is too high and not appropriate for PFAS specified in the NDAA or for PFAS added to TRI in the future.” PFAS are being regulated at increasingly lower amounts, as low as parts per trillion. Non-regulatory health-based benchmarks as low as parts per quadrillion have been established or proposed for drinking water, surface water, and aquatic life propagation/consumption. It is vital to communities, enterprises, and regulators at all scales that even “small” amounts of PFAS used, moved, or disposed of be reported. Our 2020 joint comments also recommended a “hybrid” reporting approach for listing individual PFAS (and classes of PFAS) to ensure states and other stakeholders know which PFAS are being used in specific locations, and to inform decision-making processes.

The Associations respectfully request one amendment to the rule per the preamble’s Section III (D), “Alternative Mechanisms for PFAS To Be Added to the Chemicals of Special Concern List”. The proposed rule would not apply to PFAS added to TRI via methods other than the criteria found in NDAA Sections 7321b and 7321c (i.e., when the EPA Administrator issues a Final Toxicity Value for a PFAS, or a PFAS analyte is listed under TSCA Section 8(b)(1)). Thus, PFAS and PBTC added to TRI via other NDAA Sections or other Acts of Congress would not be Chemicals of Special Concern and comport with this proposed rule’s reporting requirements unless those Acts specify accordingly; and, as the rule summary notes, “EPA will consider whether it is appropriate to identify [other PFAS analytes] as Chemicals of Special Concern when it takes action to add such substances under section 7321(d)(3) of the NDAA.”

The Associations contend that it is appropriate to identify all PFAS and PBTC as Chemicals of Special Concern until otherwise demonstrated. **We request EPA pursue a Supplemental Rulemaking to clarify that any PFAS analytes/groupings or PBTC added to TRI by any mechanism, including Acts of Congress or EPA regulation, will automatically be listed as a Chemical of Special Concern and subject to the reporting requirements contained in this proposed rule, with flexibilities provided for EPA analysis to potentially de-list a given chemical.** It would be inconsistent with the intent of Congress to add specific PFAS/PBTC to the TRI, only for many facilities and/or significant quantities in commercial products or discharges to be exempt from TRI reporting and supplier notification requirements (which, as EPA notes in this proposed rule’s press release, occurred during the first two years of implementing the 2020 NDAA). An automatic listing provision will eliminate the possibility of a “patchwork reporting scheme,” which EPA rightly seeks to avoid, and will provide certainty to communities, regulators, and business enterprises nationwide.

Otherwise, the Associations support these proposed changes to reporting requirements that will provide additional and necessary PFAS/PBTC data and information. These requirements will help ensure a more comprehensive understanding of chemical discharges and releases which can rapidly accumulate and persist in the environment, with significant potential to affect public drinking water, commercial water supplies, biosolids and sludge, fish and aquatic life intended for human consumption, and aquatic

and aquatic-dependent life. The reported data will improve the ability and capacity of states and stakeholders to assess and respond to potential PFAS/PBTC contamination and help inform policy and regulatory decision-making for programs that serve to protect human health at the national, state, and local levels.

Thank you for your considering our comments. Please be sure to carefully consider comments submitted by individual states as well. Please contact Julia Anastasio, ACWA's Executive Director (janastasio@acwa-us.org), Alan Roberson, ASDWA's Executive Director (aroberson@asdwa.org), Dania Rodriguez, ASTSWMO's Executive Director (DaniaR@astswmo.org), and Ben Grumbles, ECOS' Executive Director (bgrumbles@ecos.org) with any questions about our feedback.

Sincerely,



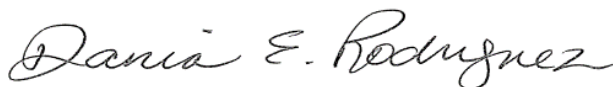
Julia Anastasio
Executive Director and General Counsel, ACWA



Alan Roberson
Executive Director, ASDWA



Ben Grumbles
Executive Director, ECOS



Dania Rodriguez
Executive Director, ASTSWMO