

November 4, 2022

Via Electronic Mail

Administrator Michael S. Regan
U.S. Environmental Protection Agency
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Dear Administrator Regan:

We write as representatives of communities plagued by PFAS pollution, communities concerned about future pollution, and those who have yet to discover contamination.¹ Too little has been done to protect our communities for too long. This winter, your agency can change that. Although we appreciate the actions EPA has taken, they have not yet reduced PFAS exposure on the ground. The EPA's upcoming permitting guidance for state agencies implementing the National Pollutant Discharge Elimination System (NPDES) stands alone among the actions listed in the agency's PFAS Strategic Roadmap as having the potential to result in near-term reductions in PFAS discharges.

Your experience in North Carolina is an example of the widespread challenges we face and the promise of the Clean Water Act. Communities in southeastern North Carolina were exposed to toxic levels of PFAS for decades. As recently as 2017, the Cape Fear River had PFAS concentrations near 1,000,000 parts per trillion. Now, thanks to your enforcement of the Clean Water Act, levels in the river have drastically declined—yet more must be done to protect communities downstream.

Your action in North Carolina made a significant difference to reduce exposure from a facility known to manufacture PFAS. But across the country, there are hundreds of facilities known or expected to manufacture or use PFAS and discharge them directly into our waters, and many publicly owned treatment works (POTWs) accept wastewater from industrial users who have PFAS in their wastewater. These facilities have mostly operated under the radar, with most states operating under a policy of: “if we don't ask if you have it, we don't have to control it,” when it comes to PFAS. This leaves communities with huge gaps in understanding of where their PFAS exposures are coming from.

¹ The Southern Environmental Law Center submits this letter on behalf of the listed organizations. Please contact Geoff Gisler at ggisler@selcnc.org or 919-967-1450 with any questions or subsequent correspondence.

As demonstrated in North Carolina, the Clean Water Act and EPA's existing regulations already provide the tools needed to stop the flow of PFAS pollution into our nation's waters and ensure that polluters—regardless of whether they manufacture PFAS—bear the costs of preventing and controlling PFAS contamination. A permit recently issued to Chemours demonstrates the power of the Clean Water Act.² Using the EPA's NPDES Permit Writers' Manual, the N.C. Department of Environmental Quality set technology-based effluent limits of 10 ppt for GenX, 10 ppt for PMPA, and 20 ppt for PFMOAA as indicator compounds. With these limits, Chemours will be required to reduce PFAS discharges to near or below the level of detection. Every community affected by PFAS contamination deserves this level of protection.

In April, EPA issued guidance for federal NPDES permits under the Clean Water Act that recognizes the need to identify and control sources of PFAS pollution, including industrial sources that discharge directly to waters and those that send waste through POTWs.³ Yet if EPA adopts this guidance nationwide, its reliance on best management practices over proven control technology, in particular, will slow cleanup of PFAS in our communities and deter state agencies from issuing protective permits like the one recently issued to Chemours.

EPA's April memo was inconsistent with federal law in three critical ways that, if adopted by the forthcoming guidance, will protect polluters and interfere with ongoing efforts by communities to protect themselves. We request three changes:

- EPA must clarify that known or suspected sources have an ongoing obligation to disclose PFAS pollution as part of their existing NPDES permit and cannot delay disclosure until the next permit cycle.
- The guidance must set forth clear requirements to incorporate technology-based effluent limits (TBELs) on a case-by-case basis in NPDES permits for PFAS dischargers. Existing law and regulations explicitly state that TBELs are the minimum level of pollution control required, but they have not been consistently implemented for PFAS.⁴ Best management practices cannot substitute for TBELs.
- EPA must clarify that POTWs are required to evaluate the introduction of PFAS into their systems and use existing authority to ensure industrial users

² N.C. DEQ, Chemours Fayetteville Works Facility, NPDES permit, NPDES NO. NC0090042, <https://perma.cc/84X4-XCDA>; see also N.C. DEQ, Chemours Fayetteville Works Facility, fact sheet, NPDES NO. NC0090042, <https://perma.cc/MP4W-9WCH>.

³ Fox, Radhika. *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA Is the Pretreatment Control Authority*. Environmental Protection Agency, Office of Water, 28 Apr. 2022, <https://perma.cc/4JPU-AJT8>.

⁴ 40 C.F.R. §125.3.

pretreat PFAS waste consistent with the prohibition on pass-through or interference.

Enforcement and prompt implementation is also critical. For example, EPA manages the pretreatment program in New York, yet EPA Region 2 has not implemented the April guidance in any New York POTW permit.

PFAS pollution is a serious threat to our communities. The NPDES permitting guidance is the only action in the PFAS Strategic Roadmap that has the potential to reduce PFAS discharges in the near term under existing regulatory authority. Although valuable, EPA's research efforts and National Testing Strategy will not reduce PFAS pollution in the immediate future. Effluent limitation guidelines will take many years to promulgate and will only cover certain industries. Classifying PFOA and PFOS as hazardous wastes will aid in cleanup for those two chemicals but much more needs to be done to stop the worsening crisis.

By March 2023, less than six years after the public learned of Chemours' pollution, every major PFAS pollution pathway at the company's site will be controlled through the appropriate permits. The N.C. Department of Environmental Quality and community groups used the authority in the Clean Water Act to make rapid progress cleaning up the worst environmental disaster in North Carolina history. But that approach is not being used consistently at other PFAS pollution sources in North Carolina or other states. Communities across the country deserve the protection of the Clean Water Act. We urge EPA to use its existing authority to ensure that protection by releasing guidance that clarifies states' full responsibility under the Clean Water Act to stop PFAS pollution at the source.

Sincerely,

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