From: Kevin Tweedy <ktweedyemc@gmail.com>
To: "Prr, Emc" <emc.prr@deq.nc.gov>
Subject: [External] Fwd: NCWQA: Letter Opposing Adoption of Instream PFAS WQC in Favor of Industrial Minimization Approach
Date: Sun, 13 Oct 2024 11:27:22 -0400
Importance: Normal
Attachments: NCWQA_Sept_6_2024_Letter_to_EMC_Regarding_PFAS_Minimization.pdf
Inline-Images: image001.jpg

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---------- Forwarded message ---------
From: **Kevin Tweedy** <ktweedyemc@gmail.com>
Date: Sun, Oct 13, 2024 at 11:22 AM
Subject: Fwd: NCWQA: Letter Opposing Adoption of Instream PFAS WQC in Favor of Industrial Minimization Approach
To: <emc.prr@deq.nc.gov>

---------- Forwarded message ---------
From: **Meghan Morel** <mmorel@aqualaw.com>
Date: Fri, Sep 6, 2024 at 3:10 PM
Subject: NCWQA: Letter Opposing Adoption of Instream PFAS WQC in Favor of Industrial Minimization Approach
To: pamlicojd@gmail.com <pamlicojd@gmail.com>, cduggan@dugganlegal.com <cduggan@dugganlegal.com>, baileyemc@gmail.com <baileyemc@gmail.com>, tbaumemc@gmail.com <tbaumemc@gmail.com>, carterdenr@gmail.com <carterdenr@gmail.com>, m.e.deerhake@gmail.com <m.e.deerhake@gmail.com>, mellisonEMC@gmail.com <mellisonEMC@gmail.com>, stevepkeenemc@gmail.com <stevepkeenemc@gmail.com>, HERBERT.LYERLY.NCEMC@GMAIL.COM <HERBERT.LYERLY.NCEMC@gmail.com>, jmacdon@ncsu.edu <jmacdon@ncsu.edu>, josephreardonemc@gmail.com <josephreardonemc@gmail.com>, robinsmithemc@gmail.com <robinsmithemc@gmail.com>, ktweedyemc@gmail.com <ktweedyemc@gmail.com>, Jweeseemc@gmail.com <Jweeseemc@gmail.com>, BillyarboroughEMC@gmail.com <BillyarboroughEMC@gmail.com>
Cc: Paul Calamita <paul@aqualaw.com>, A.J. Johnson <aj@aqualaw.com>

To Members of the North Carolina Environmental Management Commission,

I hope that you are doing well.

Please see the attached letter on behalf of the North Carolina Water Quality Association (NCWQA) members.

If you or your colleagues on the EMC have any questions, please do not hesitate to let me know. Thank you.

Best,

Meghan

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September 6, 2024

By Electronic Mail

JD Solomon
Chairman
NC Environmental Management Commission

Dear Chairman Solomon,

I hope you and your EMC colleagues are doing well.

Thank you for inviting me to speak during the EMC's prior meeting on behalf of Brunswick County regarding their ongoing permit experiences as well as more generally about potential EMC review of select NPDES permits based upon my experience with numerous public utilities in North Carolina and beyond. While you correctly introduced me as speaking on behalf of Brunswick County, I want to reiterate that my remarks were not on behalf of the NCWQA in my role as general counsel. The NCWQA has not taken any position on EMC review of NPDES permit because no proposed approach has been developed yet.

Today, I am writing on behalf of the NC Water Quality Association to express our concerns with DEQ's proposed surface water quality criteria for PFAS which are extremely low, present challenges for quantitation, and are potentially unattainable. The proposed criteria are so low that, if adopted, we believe virtually every surface water in the State will be impaired. DEQ has collected thousands of surface water samples, and we believe that these data would lead to designating all major water bodies as being impaired waters for PFAS. See DEQ's statewide data at https://www.deq.nc.gov/news/key-issues/emerging-compounds/understanding-pfas/deq-pfas-sampling-public-water-systems. DEQ's website states that "Federal regulations prohibit the addition of certain new sources and new discharges of pollutants to waters listed on the North Carolina 303(d) List until a TMDL is established." See: https://www.deq.nc.gov/about/divisions/water-resources/water-planning/modeling-assessment/tmdls. We fail to understand how adoption of these proposed PFAS criteria – which will result in waters statewide being deemed to be impaired - is warranted or appropriate at this time.[1] Even US EPA has not proposed the adoption of such ultra-low criteria.

[1] We also have significant concern about DEQ's revised threshold (20 parts per trillion) for PFOA plus PFOS that would trigger effluent limits for these chemicals because our members see those levels from domestic only sources, which cannot be controlled. We also have concerns about DEQ's approach which relies on a quantitation level of 4 ppt as a compliance end point because quantitation levels have already dropped below 4 ppt. US EPA itself moved away from such an approach when it adopted its drinking water MCLs for PFAS. Finally, DEQ's fiscal note did not evaluate the costs associated with the hundreds of impaired water designations that would necessarily follow adoption of DEQ's proposed criteria.

Instead of such stringent criteria with highly problematic consequences that DEQ will lose control over, we would like to propose an alternative approach – minimization of industrial discharger PFAS loadings - which has already been highly successful with source reduction and improving water quality in North Carolina and nationwide. We believe the minimization approach also provides a path forward to address 1,4-Dioxane hot spots around the State.

Significantly, DEQ has, itself, recognized the benefits of this approach and has essentially imposed it in several draft municipal wastewater permits recently. We believe publicly owned treatment works statewide will embrace this approach and will successfully implement it – even without any DEQ regulatory action.

We think DEQ's proposed PFAS instream criteria are premature and likely unnecessary given the availability of effective alternative approaches for achieving any needed reductions. Rather than trying to take a broad brush, traditional regulatory approach to unconventional pollutants, DEQ should take a more targeted approach that will get outsized results with minimal cost and disruption. That approach is to require PFAS minimization plans for both direct and indirect industrial dischargers with PFAS loadings that warrant attention.

More specifically, we recommend that DEQ adopt a regulatory modification that requires PFAS and 1,4-Dioxane monitoring and minimization plans for non-domestic dischargers (direct and indirect) with significant PFAS and/or 1,4-dioxane loadings. These minimization plans should require identification of baseline levels, annual reporting, and documentation of practicable reductions. This approach would focus our efforts for the first few years on characterizing and reducing controllable discharges of PFAS and 1,4-dioxane. This approach would yield a statewide monitoring database that would better inform future regulatory actions. It also allows time for the final promulgation of PFAS Method 1633. Finally, such an approach would provide time to see what, if anything, comes from the pending legal challenge to EPA's PFAS MCLs.

Again, NCWQA members have already embraced this approach and will continue to do so ahead of any regulatory action by DEQ.

Minimization approaches have been successfully implemented in North Carolina and nationwide in relation to a number of other complex chemicals/pollutants including mercury, PCBs, and nutrients (optimization).

In evaluating which industrial sources of PFAS are significant and warrant a minimization plan, consideration of PFAS levels (both through targeted and non-targeted sampling) should be considered, whether indirect discharger contributions move the dial at a public treatment works' effluent, and whether the source in question is upstream of a water intake. Where an industrial discharger of PFAS and/or 1,4-dioxane levels of concern is upstream of a water intake, their minimization plan should receive heightened review.

We envision that minimization plans will require significant industrial sources to evaluate minimization approaches to include the following, to the extent affordable and feasible:

- Product substitution
- Process changes to reduce loadings
- Closed loop for waste streams with significant PFAS loadings/conc.
- Capture and off-site disposal of waste streams with significant PFAS loadings/conc.
- Other approaches/solutions

Industrial dischargers directly discharging significant PFAS/1,4-dioxane loadings would send their minimization plans to DEQ for review and approval. Indirectly discharging significant industrial sources (to POTW) would send their minimization plan to the POTW (with a copy to DEQ for comment) for approval.

Approved minimization plans will become NPDES (Direct discharger) and Pretreatment (indirect dischargers) permit requirements. All such approved plans would be publicly available.

Minimization plans will be reviewed and updated at least bi-annually to the extent the source remains significant as determined by the Control Authority (indirect dischargers) or DEQ (Direct dischargers). Sources subject to minimization plans will provide an annual report on their implementation. Such sources will be required to perform targeted (quarterly, with a potential higher frequency for one or more years for facilities above a water intake) and annual non-targeted sampling. Such sampling should, to the extent feasible, be a 24-hour composite sample or, ideally, a multi-day composite sample.

We note that DEQ has very recently embraced this minimization approach. DEQ proposed new PFAS minimization requirements in several recent POTW NPDES permit renewals for NCWQA members. That brand new language is attached. We believe it is the correct general approach and obviates – at least for the time being – the need for the adoption of numeric PFAS criteria.

The adoption of stringent numeric criteria will force POTWs to make large capital investments and substantially increase costs which are ultimately passed on to our rate payers. These investments, which are potentially unnecessary given the benefits of this alternative approach, will negatively impact the affordability of basic water and sewer for millions of North Carolinians.

Such an approach was adopted several years ago by the State of Michigan and has been credited for achieving over a 90 percent reduction in PFAS loadings at public and private facilities with PFAS levels of concern. It has also been used successfully in North Carolina in Burlington and Greensboro, among others. Ultra-low instream water quality criteria for PFAS were not necessary to achieve these results in Michigan, North Carolina, or the many other states that have benefitted from this commonsense approach.

1,4-Dioxane

We believe the same minimization approach described above is appropriate to address any 1,4-dioxane hot spots toward achieving the 3.5 ug/L (10^{-5} risk factor) which the NCWQA has

previously suggested as an interim compromise approach. However, we believe that the science behind 1,4-dioxane is more advanced than with PFAS, so we believe that DEQ should also commit to identifying, through rulemaking, a safe level for drinking water.

Thank you for considering the views of public water and sewer utilities about how we can best work cooperatively and effectively to minimize emerging contaminants statewide while improving water quality which ultimately is in the best interest of public health, the economy, and environment.

Sincerely,

F. Paul Calamita
General Counsel

C: EMC Members
Richard Rogers
Julie Gryzb
NCWQA Members

DEQ August/September 2024 POTW PFAS Minimization Permit Language

(c.) Pretreatment program activities:

(i.) PFAS Monitoring Applicability: Industry categories known or suspected to discharge PFAS from the EPA PFAS Strategic Roadmap include: organic chemicals, plastics & synthetic fibers (OCPSF); metal finishing; electroplating; electric and electronic components; landfills; pulp, paper & paperboard; leather tanning & finishing; plastics molding & forming; textile mills; paint formulating, and airports. This is not an exhaustive list and additional industries may also discharge PFAS. For example, Centralized Waste Treatment (CWT) facilities may receive wastes from the aforementioned industries and should be considered for monitoring. There may also be categories of dischargers that do not meet the applicability criteria of any existing Effluent Limitation Guidelines (ELG); for instance , remediation sites, chemical manufacturing not covered by OCPSF, and military bases. [1]

'ELG categories of airport deicin g, landfills, textile mills, and plastics molding and forming do not have categorical pretreatment standards, and therefore small-volume indirect dischargers in those categories would not ordinarily be considered Significant Industrial Users (Sills) and may not be captured on an existing IU inventory. IUs under the Paint Formulating category are only subject to Pretreatment Standards for New Sources (PSNS), and existing sources may need to be inventoried.

(ii.) The Permittee shall identify and locate each Significant Industrial User (SIU) in the approved pretreatment program in industry categories expected or suspected of PFAS discharges to the WWTP; and begin sampling of and modify Industrial User Permits (IUPs) for each SIU identified as suspected of PFAS discharges to the WWTP to ensure sampling begins **within six months of the permit effective date, by Month xx, 2024.**

(iii.) Update Industrial Waste Survey (IWS) Inventory: POTWs must identify and locate all possible indirect dischargers that might be subject to the pretreatment program and identify the character and volume of pollutants contributed to the POTW by the indirect dischargers (see 40 CFR 403 .8(f)(2)). As EPA regulations require, this information shall be provided to the Division (see 40 CFR 122.440) and 40 CFR403.8(f)(6)) **as part of the 2024 Pretreatment Annual Report (PAR).** The IWS inventory shall be revised, as necessary, to include all indirect dischargers in industry categories expected or suspected of PFAS discharges. [1] (see 15A NCAC 02H .0906(b)(2)).

(iv.) The Permittee shall begin sampling of and/or issue IUPs for each indirect discharger identified as suspected of PFAS discharges to the WWTP to ensure sampling begins **within six months of completion of the IWS.**

(v.) The Division has determined that all SIUs and indirect dischargers identified above analyze their discharge for PFAS **at the same quarterly sampling frequency and with the same analytical method** to ensure protection of human health and the environment due to the potential health hazards associated with PFAS. Collection and evaluation of this information will also assist the Department in developing sound policies with respect to PFAS in the environment.

(vi.) The Permittee shall ensure that IUPs within the WWTP service area are modified or reissued, new IUPs are issued, and other Pretreatment Program mechanisms are completed to address PFAS discharges to POTWs.