



February 1, 2024

*Transmitted via U.S. Mail and Email*

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The Honorable Radhika Fox  
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**Re: Updating the Toxic and Priority Pollutant Lists Under the Clean Water Act**

Dear Administrator Regan and Assistant Administrator Fox:

On behalf of 111 organizations and our millions of members and supporters, we write to ask you to update the Environmental Protection Agency's ("EPA") lists of toxic water pollutants.

The EPA last updated the Toxic Pollutant List in 1976 during the Ford Administration, identifying just 65 pollutants under that list. In the decades that have followed, our waters have been increasingly polluted by thousands of other chemicals and substances, such as long-lasting endocrine disruptors, pharmaceuticals, "forever chemicals," including PFAS analytes like PFOS and PFOA, and hundreds of new pesticides—many of which were not on the market in the 1970s. These toxic pollutants harm human health, contaminate the environment, accumulate in the food chain, and poison wildlife. As they build up in the environment, they create and exacerbate environmental injustices in countless communities across the nation. Although the Clean Water Act (the "Act") makes clear that it is a "national policy that the discharge of toxic pollutants in toxic amounts be prohibited," in failing to maintain up-to-date Toxic and Priority Pollutant Lists, the EPA hamstringing itself and undermines many of the Act's most powerful pollution reduction tools.

**CLEAN WATER  STRONG COMMUNITIES**

When it lists a chemical as “toxic,” EPA unlocks key environmental safeguards under both the Clean Water Act’s technology-based and water quality-based programs. For example, following this listing, EPA must develop national effluent limitation guidelines for each industrial sector that discharges such pollutants, which are then incorporated into individual discharge permits across the nation. EPA must also assess whether toxic pollutants are effectively removed by sewage collection systems, and if not, the agency must establish pretreatment standards to ensure that such chemicals are not indirectly discharged to our waters. Additionally, EPA must develop nationwide water quality criteria—acceptable levels of exposure for the protection of human health and aquatic life—that every state and tribal nation must adopt into their binding water quality standards if pollutants are on the list.

EPA acknowledges on its own website that its Toxic and Priority Pollutant Lists are out-of-date.<sup>1</sup> Updating both of these lists is vital to addressing the toxic water pollution crises occurring across the nation, one that contributes to a wide range of adverse health outcomes including physiologic, metabolic, endocrinological, reproductive, hormonal, genetic, behavioral, and neurodevelopmental effects, and leads to chronic diseases and cancer. But it is equally important for EPA to adopt a systemic solution to addressing emergent chemical threats, rather than waiting until it has dug itself an impossibly deep hole from which it must climb. Indeed, such change is essential for EPA to meaningfully *stop* new environmental injustices and *address* current environmental injustices. For decades, EPA stood almost motionless as forever chemicals permeated the aquatic environment, and in so doing, has exponentially worsened the challenges of removing them. By acting now, EPA will be taking an important step towards stopping this preventable cycle from continuing to occur in the future.

Thousands upon thousands of scientific studies have been published in the 47 years since EPA first established the Toxic Pollutant List—demonstrating worrisome, and sometimes irreversible, impacts on human health, fish, and wildlife from a wide array of modern chemicals, such as pharmaceuticals, personal care products, cleaners, food additives, pesticides, plastics, dyes, microplastics, metals, and other contaminants of emerging concern. But unfortunately, very little of this science has been brought to bear in leveraging the Clean Water Act’s tools in any meaningful way because of EPA’s inaction in maintaining its Toxic Pollutant List.

The ability of the federal government to safeguard our nation’s waters for generations to come suffered a horrible blow with the incorrect decision in *Sackett v. Environmental Protection Agency (Sackett)*, which left millions of acres of wetlands without Clean Water Act protections. Wetlands perform vital ecosystem services including the removal and trapping of pollutants that would otherwise impair downstream waters. The loss of wetlands because of *Sackett* means that significantly more pollution will now enter our nation’s dwindling water resources. Expanding the Toxic Pollutant List will allow EPA to use the full suite of tools under the Clean Water Act to meet the Act’s goal of restoring and maintaining the chemical, physical, and biological integrity of our nation’s waters. In so doing, it will protect the lives and wellbeing of individual people and populations of threatened and endangered species.

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<sup>1</sup> See U.S. EPA, *Toxic and Priority Pollutants Under the Clean Water Act*, <https://www.epa.gov/eq/toxic-and-priority-pollutants-under-clean-water-act>, last accessed Jan. 31, 2024 (in reference to the Toxic and Priority Pollutant Lists, EPA makes clear that “[p]ortions of both lists are outdated.”).

For all of these reasons, we urge EPA to be proactive and develop a plan of action to expand and modernize its antiquated Toxic Pollutant List and Priority Pollutant List, including by granting the Petition for Rulemaking submitted to you on July 31, 2023, by Northwest Environmental Advocates and the Center for Biological Diversity. We support the addition of the 1,000 plus toxic pollutants identified in the petition and its requests that EPA adopt rules that ensure future updates to the lists.

Sincerely,

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