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Submission via www.regulations.gov

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
EPA Docket Center
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

**Re: Proposed Information Collection Request; Comment Request; POTW
Influent PFAS Study Data Collection, Docket ID No.
EPA-HQ-OW-2023-0580**

Dear Administrator Regan:

Thank you for this opportunity to comment on the U.S. Environmental Protection Agency's ("EPA" or the "Agency") proposed information collection request, "U.S. Environmental Protection Agency POTW Influent PFAS Study Data Collection" (EPA ICR No. 2799.01, OMB Control No. 2040-NEW).

On behalf of Waterkeeper Alliance, the undersigned 30 U.S. Waterkeeper groups, and our respective individual members and supporters, we write to affirm the importance of EPA's planned data-collection activities and to address the Agency's specific request for information on "whether the proposed collection of information is necessary for the proper performance of the functions of the Agency."¹ While we write generally in support of EPA's proposal, we also identify several areas in which the proposal can be improved.

Waterkeeper Alliance is a global movement uniting more than 300 community-based Waterkeeper groups around the world, focusing citizen action on issues that affect our waterways, from pollution to climate change. The Waterkeeper movement patrols and protects nearly six million square miles of rivers, lakes, and coastlines in the Americas, Europe, Australia, Asia, and Africa. In the U.S., Waterkeeper Alliance represents the interests of more than 150 U.S. Waterkeeper groups and their more than one million members and supporters that live, work, and recreate in or near waterways across the country, many severely impaired by pollution. In the past three years alone, Waterkeeper Alliance, Waterkeepers, and our respective supporters in the U.S. have submitted more than 50,000 public comments on EPA actions, and Waterkeeper Alliance and Waterkeeper organizations regularly attend public meetings and hearings with EPA, demonstrating our collective knowledge about EPA processes and our strong interest in engaging on issues that impact our communities, water, and the environment. Many

¹ Proposed Information Collection Request; Comment Request; POTW Influent PFAS Study Data Collection, 89 Fed. Reg. 20962, 20963 (proposed Mar. 26, 2024) (item (i)).

Waterkeepers have a particular interest in PFAS, as more than 100 Waterkeeper groups participated in our unprecedented initiative to test U.S. surface waters for PFAS contamination.

I. Proposed Information Collection Request; Comment Request; POTW Influent PFAS Study Data Collection

PFAS are a class of manufactured organic chemicals pervasive in the environment and linked to harmful public health and ecosystem impacts. PFAS, often referred to as “forever chemicals,” have been widely used in various industrial and common consumer products since at least the 1950s. During this time, PFAS remained largely unregulated, and, as a result, PFAS contamination is now prevalent in drinking water sources (both ground and surface waters), industrial wastewater, landfill leachate, and wastewater treatment plant effluent.

Waterkeeper Alliance’s 2022 monitoring project exposed widespread PFAS contamination in U.S. surface waters. More than 100 Waterkeeper groups collected a total of 228 water samples in waterways from 34 states and the District of Columbia (“D.C.”).² Our results detected at least one PFAS compound in 95 of the 114 waterways sampled (83%); found 35 of the 55 individual PFAS compounds tested for in at least one sampled waterway (63.6%); and PFAS compounds were found at measurable concentrations in at least one waterway in 29 states and D.C.³ The pervasiveness of PFAS contamination, and their proven harm to public health and the environment, compel EPA action to regulate future releases of these chemicals and safeguard communities against the deleterious effects of exposure.

EPA’s stated purpose for its information collection request (“ICR”) is to “produce a robust data set that will enable the EPA to characterize the type and quantity of PFAS in wastewater discharges from industrial users to [publicly owned treatment works (‘POTWs’)] (including industrial categories that the EPA has determined historically or currently use PFAS but for which there is insufficient PFAS monitoring data available) as well as POTW influent, effluent, and sewage sludge.”⁴ The importance of data collection in characterizing the type and quantity of PFAS from industrial users to POTWs cannot be overstated. As EPA notes in its proposal, there is a dearth of data on “PFAS discharges from industrial categories to POTWs; the relative PFAS contributions from residential, commercial, and industrial sources to POTWs; and the fate and transport of PFAS in POTW influent and sewage sludge.”⁵ A robust ICR will help to remedy these shortcomings and empower the Agency to identify the sources of PFAS discharges, prioritize industrial categories for regulation through revised Effluent Limitations Guidelines (“ELGs”), and develop mechanisms to control the fate and transport of these discharges. In other words, a well-designed, representative ICR will serve the Agency’s goals, as delineated in its PFAS Strategic Roadmap, of restricting future environmental contamination and reducing community exposure to PFAS.

² KELLY HUNTER FOSTER & DANIEL E. ESTRIN, WATERKEEPER ALLIANCE, INVISIBLE UNBREAKABLE UNNATURAL: PFAS CONTAMINATION OF U.S. SURFACE WATERS 7 (2022), <https://waterkeeper.org/wp-content/uploads/2022/10/Waterkeeper-Alliance-PFAS-Report-FINAL-10.14.22.pdf>.

³ *Id.* at 13.

⁴ Proposed Information Collection Request at 20963.

⁵ *Id.*

In 2021, EPA published its “Multi-Industry Per- and Polyfluoroalkyl Substances (PFAS) Study - 2021 Preliminary Report,” which confirmed that the majority of facilities using and discharging PFAS did not have any monitoring requirements for PFAS in their wastewater discharge permits.⁶ Indeed, of the five industrial point source categories profiled by the Agency—Organic Chemicals, Plastics, and Synthetic Fibers (“OCPSF”) manufacturing; Metal Finishing; Pulp, Paper, and Paperboard; Textile Mills; and Commercial Airport—only OCPSF was identified as having PFAS monitoring requirements.⁷ Moreover, in EPA’s 2021 review of three additional point source categories identified in the PFAS Strategic Roadmap, EPA determined that none were required to report PFAS discharges.⁸

This lack of oversight, and the growing concerns over the dangers of PFAS exposure, led states and organizations to initiate their own monitoring programs to fill this data gap.⁹ For instance, in 2018, Michigan launched two initiatives to “evaluate the potential for PFAS from industrial sources to pass through [wastewater treatment plants (‘WWTPs’)] to receiving waters” and “better understand the fate of PFOS and PFOA at municipal WWTPs.”¹⁰ EPA later used this monitoring data in its 2021 Report.¹¹ California has engaged in similar efforts, such as by issuing

⁶ See generally MULTI-INDUSTRY PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) STUDY – 2021 PRELIMINARY REPORT, EPA (2021), https://www.epa.gov/system/files/documents/2021-09/multi-industry-pfas-study_preliminary-2021-report_508_2021_09.08.pdf.

⁷ See *id.* at 5-4.

⁸ See EFFLUENT GUIDELINES PROGRAM PLAN 15, EPA (2023), https://www.epa.gov/system/files/documents/2023-01/11143_EL%20Plan%2015_508.pdf (reviewing the Leather Tanning and Finishing, Paint Formulating, and Plastics Molding and Forming point source categories).

⁹ See *Per- and Polyfluoroalkyl Substances (PFAS) in Municipal Wastewater Treatment Facilities*, CT.GOV (June 15, 2023), <https://portal.ct.gov/deep/municipal-wastewater/municipal-pfas> (detailing Connecticut’s Water Pollution Control Facility PFAS Sampling Study); *Division of Water Quality PFAS Strategy: Identify, Reduce, and Eliminate Sources of PFAS*, NJ DEPT. OF ENV’T’L PROT., <https://dep.nj.gov/dwq/pfas/> (last visited May 8, 2024) (detailing New Jersey’s Administrative Order No. 2023-01, which encourages the sampling of influent, effluent, and residuals/sludge by WWTPs); *PFAS in Wastewater*, DEPT. OF ECOLOGY, STATE OF WASHINGTON, <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals/PFAS/Wastewater> (last visited Apr. 23, 2024) (detailing the State of Washington’s 2021 and 2022 studies investigating PFAS concentrations in WWTPs’ influent, effluent, solids, and biosolids, as well as PFAS concentrations in pretreated industrial wastewater); WESTON & SAMPSON, POLY- AND PERFLUOROALKYL SUBSTANCES AT WASTEWATER TREATMENT FACILITIES AND LANDFILL LEACHATE: 2019 SUMMARY REPORT ES-1 (2020), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/02.03.20_PFAS%20in%20LF%20and%20WWTF%20Final%20Report.pdf (last visited May 8, 2024) (reporting the results of a study performed on behalf of the Vermont Department of Environmental Conservation that sampled and analyzed “landfill leachates; wastewater treatment facility (WWTF) influent, effluent, and sludge; septage at several WWTF and surface water at facilities” for the presence of PFAS). We were also informed by two of our members, Friends of Casco Bay and Choptank Riverkeeper, that Maine and Maryland have initiated PFAS monitoring programs to evaluate PFAS concentrations in WWTP wastewater effluent. See *Maryland and PFAS*, MARYLAND.GOV, <https://mde.maryland.gov/PublicHealth/Pages/PFAS-Landing-Page.aspx> (last visited Apr. 24, 2024); *PFAS and Maine DEP*, MAINE.GOV, <https://www.maine.gov/dep/spills/topics/pfas/maine-pfas.html> (last visited Apr. 23, 2024).

¹⁰ *Wastewater Treatment Plants / Industrial Pretreatment Program*, MICHIGAN PFAS ACTION RESPONSE TEAM (Mar. 2023), <https://www.michigan.gov/pfasresponse/investigations/wastewater>.

¹¹ See MULTI-INDUSTRY PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) STUDY, *supra* note 6, at 5-7, 6-3, 7-5, 8-3.

orders requiring POTWs to test for PFAS in their wastewaters¹² and launching an online, interactive map that presents PFAS analytical data as it is received by the state's Regional Water Quality Control Boards.¹³

As previously mentioned, our 2022 monitoring project confirmed the pervasiveness of PFAS contamination in U.S. surface waters, as well as the prevalence of lesser-known PFAS compounds present in those waters.¹⁴ The project, however, also examined the potential sources of contamination. Specifically, we conducted a case study in which we selected ten waterways with the greatest difference between total upstream and downstream PFAS concentrations and classified them based on four primary potential contamination sources: landfills, airports, industrial sites, and wastewater treatment plants.¹⁵ We determined that WWTPs were the potential primary or secondary source of PFAS contamination in three out of the ten waterways: Upper Coosa Riverkeeper (Dalton Utilities Wastewater Treatment Facilities); Haw Riverkeeper (TZ Osborne WWTP); and Inland Empire Waterkeeper (Western Riverside County Regional Wastewater Authority, Riverside WWTP, Colton WWTP, San Bernardino Water Reclamation, Redlands Wastewater Treatment).¹⁶

Several of our Waterkeeper groups have independently initiated water sampling of their waterways to determine the potential sources of PFAS contamination. For instance, in 2023, Choptank Riverkeeper partnered with Upper Potomac Riverkeeper to perform water testing in their respective watersheds of biosolids, wastewater, and a farm field that historically received sewage sludge applications. The results showed significant concentrations of several PFAS compounds, particularly in the water samples from biosolids, wastewater effluent, and farm ditches. Further, Choctawhatchee Riverkeeper performed water testing of samples in its watershed taken downstream of WWTPs. Of those samples, all were found to contain PFAS, with total PFAS concentrations ranging from 1.3 to 75.4 ppt.

Although there have been efforts outside EPA to monitor the “PFAS contamination crisis,”¹⁷ these data sources, on their own, are insufficient to fulfill the Agency's directives as part of its POTW Influent PFAS Study. As EPA notes in its “Information Collection Request Supporting Statement – Part A,”¹⁸ the data collected do not provide a comprehensive, centralized, and consistent data set from which the Agency can compare and analyze PFAS concentration levels and potential sources nationwide. Moreover, because EPA did not finalize Method 1633 until January 2024, the sampling and testing methods used by these states and organizations could potentially lack the consistency and/or reliability that EPA requires. Thus, a robust ICR is

¹² See Cal. State Water Res. Control Bd., Water Code Sections 13267 and 13383 Order for the Determination of the Presence of Per- and Polyfluoroalkyl Substances at Publicly Owned Treatment Works (July 9, 2020), https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2020/wqo2020_0015_dwq.pdf.

¹³ *GeoTracker PFAS Map*, STATE WATER RES. CONTROL BD. GEOTRACKER, https://geotracker.waterboards.ca.gov/map/pfas_map# (last visited May 8, 2024).

¹⁴ See *supra* p. 2.

¹⁵ KELLY HUNTER FOSTER & DANIEL E. ESTRIN, *supra* note 2, at 44.

¹⁶ *Id.* at 46.

¹⁷ See *Mapping the PFAS Contamination Crisis: New Data Show 5,021 Sites in 50 States, the District of Columbia and Four Territories*, EWG, https://www.ewg.org/interactive-maps/pfas_contamination/ (Feb. 5, 2024).

¹⁸ EPA (2024).

necessary for the Agency “to fulfill its statutory requirements to review and revise existing ELGs to address industrial discharges of PFAS or meet the PFAS Strategic Roadmap commitments to prevent PFAS releases at the source.”¹⁹

II. Key Areas for Improvement

Although we applaud EPA’s proposal to address the lack of publicly accessible information on sources of PFAS discharges to POTWs, there are key areas in which the proposed scope of outreach and testing is inadequate to accomplish the Agency’s stated objectives.

a. EPA should use ECHO to identify the ICR’s sample population.

EPA plans to use the 2012 Clean Watersheds Needs Survey (“CWNS”) to determine the sample population for its ICR. But more than a decade has passed since publication of the most recent CWNS, during which time its data may have become outdated. EPA’s Enforcement and Compliance History Online (“ECHO”) program also compiles information on wastewater treatment facilities, but its data is refreshed weekly. EPA, however, does not explain why it did not consider using ECHO in determining the ICR’s sample population.

As part of its sampling method, EPA states that it “anticipates that all POTWs with a flow rate exceeding 10 MGD and *service populations of at least 50,000 persons* will have sufficient resources to complete the data collection.”²⁰ To the extent, then, that EPA chose CWNS because, unlike ECHO, it includes data on POTWs’ service populations, we respectfully argue that the utility of this information is insufficient to justify relying on an outdated data set. EPA does not need service population data to locate large POTWs; daily flow rate alone is sufficient to identify this population of interest.²¹ And ECHO lists the daily flow rate for each facility included in its database. If EPA is determined to narrow the scope of its ICR to the largest POTWs, the Agency should simply require all POTWs with daily flow rates greater than or equal to 10 MGD to respond, regardless of their service population size.

EPA also notes that it will use the service population information included in CWNS “as the size criterion for determining small business status” and will limit its sample population to POTWs with service populations less than 50,000 persons “[t]o avoid undue burden on small businesses.”²² But, as we discuss below, we believe that small and medium POTWs should not be excluded from the questionnaire and sampling program.

b. All POTWs, regardless of size, should be required to complete the questionnaire.

¹⁹ INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT – PART A, EPA 13 (2024).

²⁰ INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT – PART B, EPA 5 (2024) (emphasis added).

²¹ *Wastewater Utility Landscape*, FEMA, https://emilms.fema.gov/is_0553a/groups/8.html (last visited May 9, 2024) (defining large POTWs as those “treat[ing] 10 or more MGD”).

²² INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT – PART A, *supra* note 19, at 12.

The Regulatory Flexibility Act (“RFA”) requires EPA to assess whether its actions would have “a significant impact on a substantial number of small entities.”²³ EPA proposes satisfying this requirement by excluding all small and medium POTWs from its questionnaire and sampling program. But by doing so, EPA loses access to an important data set. Because small and medium POTWs can also receive discharges from major industrial users, failing to collect information from these facilities will unnecessarily hamstring EPA’s attempt to “produce a robust data set” that will “identify and prioritize industrial point source categories” of PFAS dischargers.²⁴ Indeed, by limiting its outreach to only a subpopulation of POTWs, EPA risks creating knowledge gaps that will only impede the Agency’s efforts to fulfill its commitments under the PFAS Strategic Roadmap, and risks omitting small and/or environmental justice communities from the analysis.²⁵

We, therefore, recommend that the Agency require all POTWs, regardless of size, to complete the electronic questionnaire. We see no reason why the reach of this initial query should be confined to less than 3% of POTWs. Although EPA contends that such a restriction is necessary to prevent imposing an undue burden on small businesses, EPA has not presented any evidence of such a burden and, in fact, made clear that completing the questionnaire would impose only minimal costs on respondents.²⁶

c. EPA should require a statistically representative sample population of POTWs to respond to the two-phase sampling program.

EPA states that it “does not intend for this data collection to be a statistically representative sample of the entire population of POTWs or industrial users in the United States” and that a statistically representative sample of POTWs is not required “to meet the stated goals of the study.”²⁷ The Agency argues that attempting to do so would be “technically challenging, if not infeasible,”²⁸ but does not explain further why representative samples are unnecessary. Considering EPA’s rationale for initiating the ICR, we therefore remain unconvinced. Specifically, EPA asserts that the questionnaire and sampling program will “identify and quantify sources of PFAS to POTWs” and “provide a robust data set that will characterize the type and quantity of PFAS in POTW influent, effluent, and sewage sludge/biosolids as well as total organic carbon, metals, total solids, fixed solids, and volatile solids in sewage sludge/biosolids.”²⁹ But without representative samples of industrial users and POTWs, the Agency cannot compile the comprehensive and reliable data set required to “make informed decisions on appropriate actions to control PFAS.”³⁰ Further, in Part A of EPA’s supporting

²³ *Id.* at 12.

²⁴ Proposed Information Collection Request at 20963.

²⁵ *See* Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 Fed. Reg. 25251 (April 26, 2023); Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994).

²⁶ INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT – PART A, *supra* note 19, at 15, 18 (estimating that the questionnaire would require 23 hours of work time and a total labor cost of \$1,485.23 per respondent).

²⁷ INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT – PART B, *supra* note 20, at 3, 6.

²⁸ *Id.* at 4.

²⁹ *Id.* at 2.

³⁰ *Id.*

statement, the Agency itself touts the utility of the ICR in “provid[ing] the first *comprehensive national data set* on PFAS industrial and domestic sources, pretreatment options to reduce PFAS sources, and PFAS transformation and fate throughout the wastewater and biosolids treatment process.”³¹

To remedy this disparity, EPA should distribute the questionnaire to all POTWs and then determine the statistically representative sample of respondents, including small and medium POTWs, that will complete the two-phase sampling program. EPA may find that this representative sample of POTWs is sufficiently large to allow for each POTW to still collect samples from only ten industrial users. However, EPA will need to confirm that requiring samples from only ten industrial users per POTW will provide a statistically representative sample of industrial users.

d. EPA should require POTWs to employ composite sampling rather than one-time grab samples.

EPA states that the POTWs selected for the two-phase sampling program will be required to collect one-time grab samples of industrial user effluent, domestic wastewater, POTW influent and effluent, and sewage sludge/biosolids. However, daily fluctuations in wastewater flow and composition significantly reduce the quality and representativeness of one-time grab samples. EPA should instead, at a minimum, require POTWs to employ 24-hour composite sampling.³² While we recognize that composite sampling is more expensive than grab sampling, these costs are outweighed by EPA’s need for a sampling procedure that will produce representative samples on which the Agency can base its future efforts to understand and manage PFAS contamination. Moreover, one-time grab samples offer opportunities for manipulation of sampling results. Requiring composite sampling or multiple samples, however, will minimize the likelihood of this occurring.

III. EPA Must Urgently Achieve the PFAS Strategic Roadmap’s Goals and Objectives

Waterkeeper Alliance supports EPA’s initial actions to address PFAS pollution in accordance with the PFAS Strategic Roadmap. Given the extensive scope of PFAS pollution in our water, however, we urge the Agency to prioritize its resources and attention to accelerating these efforts. The use of PFAS in products began in the 1940s, yet EPA has failed to set enforceable standards, leading to decades of these harmful forever chemicals accumulating in our waterways and, in some cases, our bodies. Ever-expanding documentation of widespread PFAS contamination in the nation’s waters shows that, in addition to finalizing the other proposed actions, EPA must urgently prioritize the adoption of federal effluent limitation guidelines and pretreatment standards for PFAS discharges into surface waters under the Clean Water Act. Although the Agency’s robust, representative ICR is an important step in developing such standards, it is only that: a single step. EPA must continue to gain momentum in its pursuit of

³¹ INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT – PART A, *supra* note 19, at 13 (emphasis added).

³² *See, e.g.*, Cal. State Water Res. Control Bd. at 16 (requiring 24-hour composite sampling of POTWs’ influent and effluent).

regulating PFAS pollution at the source. Additionally, EPA should implement a coordinated water monitoring program for PFAS with federal, state, local, and interstate agencies, Tribal governments, and qualified non-governmental organizations, and EPA should include the PFAS contaminants in its National Aquatic Resource Surveys of rivers/streams, lakes, coastal waters, and wetlands.

Respectfully submitted,

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