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James C. Kenney
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February 3, 2020

Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

RE: Docket ID No. EPA-HQ-TRI-2019-0375

Dear Administrator Wheeler:

The New Mexico Environment Department (NMED) reviewed the U.S. Environmental Protection Agency's (EPA) December 4, 2019 Advance Notice of Proposed Rulemaking (ANPRM) regarding the addition of certain per- and polyfluoroalkyl substances (PFAS) to the Emergency Planning and Community Right-to-Know Act (EPCRA) Toxic Release Inventory (TRI).

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kenney".

James C. Kenney
Cabinet Secretary

cc: Donald Welsh, Executive Director, Environmental Council of the States (ECOS)
Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Rebecca Roose, Director, Water Protection Division
Stephane Stringer, Director, Resource Protection Division

- 1. The NMED supports the addition of per- and poly-fluoroalkyl substances (PFAS) to the list of toxic chemicals subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 6607 of the Pollution Prevention Act (PPA).**

EPA's February 2019 PFAS Action Plan (<https://www.epa.gov/pfas/epas-pfas-action-plan>) identified the addition of PFAS to the EPCRA Toxic Release Inventory (TRI) chemical list as a means to provide the public and stakeholders with information on PFAS releases, waste management and pollution prevention. The ANPRM is a necessary step towards the goal of making PFAS information available to the public and stakeholders.

- 2. PFAS toxicity justifies EPA's PFAS listing decision.**

The ANPRM states that EPA bases its listing decision on the chemical's hazard (i.e., toxicity). Information prepared by the EPA (see: <https://www.epa.gov/pfas/basic-information-pfas#health> and <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos>), and the Agency for Toxic Substances and Disease Registry (ATSDR), (see: <https://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=1116&tid=237>), demonstrate that PFAS are toxic and can pose hazards to human health.

- 3. The EPA must establish reporting thresholds for PFAS that are lower than the usual statutory thresholds given science that validates their environmental persistence, bioaccumulation and biomagnification potential.**

As stated on the EPA's PFAS website (see: <https://www.epa.gov/pfas/basic-information-pfas#health>), "PFAS can be found in ... Living organisms, including fish, animals and humans, where PFAS have the ability to build up and persist over time." Scientific information compiled by the Interstate Technology Regulatory Council (ITRC) confirms that PFAS occur widely in biota, specifically in plants, invertebrates, fish, and humans, through bioaccumulation processes. In some food webs, biomagnification of PFAS in fish also has been documented. Some long-chain PFAS are globally distributed in human sera. For more information, visit https://pfas-1.itrcweb.org/wp-content/uploads/2018/03/pfas_fact_sheet_fate_and_transport_3_16_18.pdf.

Establishing reporting thresholds for PFAS that are lower than usual thresholds is well justified on a technical basis and is in the best interest for the EPA to do so to start protecting public health and the environment.

- 4. The EPA must establish broader reporting requirements for PFAS chemicals.**

Currently, EPCRA Section 313 requires that reports be filed by owners and operators of facilities that meet all of the following criteria: (a) The facility has 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater; see 40 CFR 372.3); (b) The facility is included in a North American Industry Classification System (NAICS) code; and (c) The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA Section 313 chemical in quantities greater than the established threshold in the course of a calendar year. In 1993, Executive Order 12856 extended these reporting requirements to federal facilities, regardless of their SIC or NAICS code. Subsequent Executive Orders have not changed this requirement.

Accordingly, the EPA must codify Executive Order 12856 into its rulemaking to ensure federal facilities are held to the same standard as the private sector when it comes to PFAS.

5. The EPA's listing of PFAS must be as inclusive as possible of each specific chemical.

Given that PFAS are emerging contaminants, and that many PFAS are known to pose hazards to human health, the listing and reporting requirements must be established for individual chemicals – not a broad category. Treating PFAS as a broad category will deprive the public and stakeholders of the knowledge necessary to establish public health and environmental risks. While establishing risk is (i.e., toxicity plus potential exposures) is not within the scope of EPCRA, ensuring EPCRA applies to individual PFAS chemicals vs. a broad PFAS category is absolutely essential for public health and environmental professionals. At a minimum, the EPA should establish reporting requirements for the following chemicals:

Abbreviation	Name	CAS #
PFAS	Per- and Polyfluoroalkyl Substances	
PFBA	perfluorobutyric acid	375-22-4
PFBS	perfluorobutane sulfonic acid	375-73-5
PFPeA	perfluoropentanoic acid	2706-90-3
PFHxA	perfluorohexanoic acid	307-24-4
PFHxS	perfluorohexane sulfonic acid	355-46-4
GenX	perfluoro-2-propoxypropionic acid	13252-13-6
PFHpA	perfluoroheptanoic acid	375-85-9
PFHpS	perfluoroheptane sulfonic acid	375-92-8
6:2 FTS	6:2 fluorotelomer sulfonic acid	27619-97-2
PFOA	perfluorooctanoic acid	335-67-1
PFOS	perfluorooctane sulfonic acid	1763-23-1
PFOSA	perfluorooctane sulfonamide	754-91-6
PFNA	perfluorononanoic acid	375-95-1

6. The EPA should expeditiously and presumptively add the individual PFAS chemicals to EPCRA 313 reporting requirements as soon as practicable to assist states.

Given the EPA's delay in setting a science-based drinking water standard under the Safe Drinking Water Act (SDWA), states are leading the effort to protect drinking water through the development of such standards. The EPA must assist states by adopting individual PFAS chemical reporting requirements expeditiously and presumptively to provide data to states to protect drinking water.

7. The EPA must develop national safe drinking water standards for PFAS as expeditiously as possible.

The ANPRM is a positive initial step towards achieving one of the goals that EPA established nearly one year ago in its February 2019 PFAS Action Plan. Another goal of the PFAS Action Plan (see: <https://www.epa.gov/pfas/epas-pfas-action-plan>) states, "The EPA is committed to following the Safe Drinking Water Act process for evaluating drinking water standards for PFAS ..." The establishment of national drinking water standards for PFAS is necessary for states and public water supply systems who are responding to and managing PFAS contamination. Drinking water standards must be established not just for PFOA and PFOS, but also for the many other toxic PFAS chemicals that have been detected in drinking water in the United States.