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June 9, 2020

Mr. David Ross
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List, EPA-HQ-OW-2019-0583

Dear Assistant Administrator Ross,

The New Mexico Environment Department (NMED) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on *Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List* under the authority of the Safe Drinking Water Act (SDWA). EPA published the preliminary determination in the Federal Register on March 10, 2020 (85 FR 14098) and subsequently extended the comment period to end on June 10, 2020 (85 FR 23940).

NMED recognizes the complexity of regulating contaminants in drinking water supplies and the importance of EPA's efforts to address drinking water contamination through science-based national program updates.

NMED appreciates this opportunity to comment on a regulatory change that is so significant for state, tribal and local public health programs. I urge EPA to work diligently and in coordination with states like New Mexico to identify additional resources to support states' efforts to effectively implement the SDWA and ensure a safe and reliable drinking water supply for our communities.

Sincerely,

Digitally signed by James Kenney
Date: 2020.06.08 22:11:02 -06'00'

James C. Kenney
Cabinet Secretary

Cc:
Kathyleen Kunkle, Cabinet Secretary, New Mexico Department of Health
Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Rebecca Roose, Director, Water Protection Division, NMED
Joe Martinez, Chief, Drinking Water Bureau, NMED

NMED Comments on Preliminary Determination

(1) NMED strongly supports EPA's positive preliminary regulatory determination for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). The absence of a National Primary Drinking Water Regulation (NPDWR) for these compounds has resulted in disparate or nonexistent regulatory actions among states, despite their occurrence in public drinking water systems across the country as demonstrated by Unregulated Contaminant Monitoring Rule 3 (UCMR3) in 2013-2016. NMED looks forward to an enforceable national regulatory standard that will facilitate a unified approach to mitigating PFOA and PFOS contamination in drinking water supplies across the country.

(2) NMED shares the significant concerns of other states related to the preliminary determination, including the lengthy timeframe for EPA to regulate PFOA and PFOS, establishing the level at which to regulate these compounds, and the uncertainty over future determinations for thousands of other perfluoroalkyl substances (PFAS) that are currently found in some drinking water supplies or other environmental media. Similar concerns are described in the comments of the Association of State Drinking Water Administrators (ASDWA).

(3) NMED supports the following recommendations from ASDWA for EPA action:

a. **Adding four additional long-chain PFAS compounds to the positive preliminary determination list for regulation under the Safe Drinking Water Act.** These four additional PFAS compounds were frequently reported in UCMR3 sampling results: 1) perfluorohexanesulfonic acid (PFHxS); 2) perfluoroheptanoic acid (PFHpA); 3) perfluorononanoic acid (PFNA); and 4) perfluorodecanoic acid (PFDA). These compounds are chemically similar to PFOA and PFOS and commonly found together in the environment. At least one widely available analytical method already exists for these compounds (EPA Method 537.1), satisfying a key stipulation of the Data Availability phase of the regulatory determination process. Adding these four additional long-chain PFAS compounds to the positive preliminary determination list would be similar to the approaches used by at least six states.

b. **Consider grouping and/or treatment technique regulatory approaches for future PFAS regulatory actions.** NMED anticipates that many of the thousands of PFAS compounds will merit regulation as more data are acquired. Among the many potential subclasses of PFAS that should be considered for regulation are precursor compounds, which are readily transformed into terminal, environmentally persistent compounds under oxidizing conditions. However, individualized consideration is impractical given the multi-phase regulatory process defined by the SDWA. NMED commends EPA's continued research into efficient approaches for regulating groups of compounds based on their physicochemical characteristics.

c. **Expedite promulgation of final PFAS regulation while adhering to the highest standards of scientific rigor and public involvement.** The timeline of 24 months for Maximum Contaminant Level Goal proposal and 18 months (with extension of up to 9 months) for final NPDWR promulgation could result in a period of over four years until a national standard is set for PFOA and PFOS. The actual regulatory compliance date for public water system compliance with the new standards could be as late two years after the rule is finalized. The interval could be even longer for other toxic PFAS compounds that have not yet received determinations or been added by EPA to the Contaminant Candidate List. The nation simply cannot wait this long for national standards on PFAS in drinking water. NMED recognizes that EPA must follow SDWA requirements in rule promulgation but agrees with ASDWA that regulation can be expedited without sacrificing well-informed decision making.

Accelerating the regulatory timeline for PFOA and PFOS will have the added benefit of establishing a precedent for regulating additional PFAS compounds once sufficient data about their occurrence and toxicity becomes available. Promulgation of regulatory actions for such compounds would be aided by off-cycle determinations, similar to the approach that EPA took for perchlorate in 2011.

d. **Set the regulatory determination for combined PFOA and PFOS concentrations in drinking water according to the best available science, not EPA's Lifetime Health Advisory Level of 70 parts per trillion (ppt).** Low minimum reporting levels and well-documented bioaccumulative effects of these compounds indicate that they merit an NPDWR standard similar to levels proposed or adopted in at least ten states (e.g., 20 ppt in New York).