



December 18, 2020

Ms. Irina Makarow
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Submitted via email to: ChemActionPlans@ecy.wa.gov

RE: National Tribal Water Council–Tribal PFAS Working Group (NTWC-TPWG) Comments on Washington State’s Draft PFAS Chemical Action Plan

Dear Ms. Makarow:

In 2006, the National Tribal Water Council (NTWC) was formed by the U.S. Environmental Protection Agency (EPA) to provide EPA with technical input from Indian Country to strengthen EPA’s coordination with Indian tribes, and to allow EPA to better understand issues and challenges faced by tribal governments and Alaska Native Villages as they relate to EPA water programs and initiatives. The NTWC provides tribes and associated tribal communities and tribal organizations with research and information for decision-making regarding water issues and water-related concerns. Furthermore, the NTWC advocates for the best interests of federally-recognized Indian and Alaska Native tribes and tribally-authorized organizations in matters pertaining to water. The NTWC also advocates for the health and sustainability of clean and safe water, and for the productive use of water for the health and well-being of Indian country. The NTWC takes its role seriously and has provided input to EPA on many water issues since the Council’s inception.

In 2020, the NTWC formed an ad hoc working group named the Tribal PFAS Working Group (NTWC-TPWG) to assist in outreach on Per- and polyfluoroalkyl substances (PFAS) to tribes and tribal members and to advocate for inclusion of tribes and tribal lifeways in policy decisions on PFAS risks and risk management. The NTWC-TPWG is supported by and working in collaboration with the National Tribal Toxics Council (NTTC), the Tribal Science Council (TSC), and the Tribal Waste and Response Steering Committee (TWRSC). These tribal partnership groups (TPGs) are all supported by USEPA.

The NTWC-TPWG members are pleased to submit comments on Washington’s Per- and Polyfluoroalkyl Substances Draft Chemical Action Plan (CAP).

The CAP’s¹ reported breadth and range of consumer products that contain PFAS chemicals is striking. These include: cosmetics, textile treatments, floor finishes and coating, cleaning agents, automobile and ski waxes, and non-stick cookware. The Environmental Working Group Guide² includes additional consumer product categories such as waterproof clothing, stain-repellent clothing, children’s products, popcorn bags, fast-food wrappers, swimwear, outdoor gear, dental floss, sport watchbands,

¹ CAP at Appendix 3, page 142.

² Environmental Working Group available at <https://www.ewg.org/pfaschemicals/protect-yourself.html>

kitchen utensils, and shoes. Tribes can be overloaded with the extensive need to identify PFAS-contamination that exists in tribal offices, drinking water systems, schools, homes and landfills. Resources are oftentimes not available to tribal governments to address the problem in the same way that states can.

PFAS is known as a “forever chemical” that persists in the environment, bioaccumulates in plants and through the food chain into animals³ that are important to tribal subsistence, cultural, and ceremonial practices. It cannot be overstated that tribal people have no alternatives in their environmental exposures. Their diet, sociocultural well-being, and in some cases economic livelihood depends on conducting their customary and traditional practices. When combined with the additional exposure from older household consumer products that may contain discontinued PFAS/PFOA chemicals, tribal people can be one of the most sensitive subpopulations that is vulnerable to PFAS chemicals.

Washington’s Draft CAP is an ambitious plan that seeks to identify, characterize and evaluate PFAS uses, releases, and proposes several management options. The CAP provides a clear assessment of the legislative measures and implementation activities that the State has already initiated. In particular, the NTWC-TPWG supports the CAP objective to evaluate PFAS contamination in drinking water systems that serve communities that do not have the financial means to test for and remove these contaminants. Similarly, the CAP recommends prioritizing vulnerable populations when planning mitigation and cleanup activities⁴.

The NTWC-TPWG recommends the following changes to the CAP:

- PFAS containing substances should be eliminated from commerce in Washington as soon as possible and be managed as a chemical class.
- Washington should not await a federal directive but should name PFAS as a hazardous chemical class as soon as possible.
- The data obtained on PFAS chemicals in biosolids should be publicly available and transparent to consumers.
- PFAS information on tribal resources including game and plant species should be collected.

The CAP fails to take a comprehensive approach to the problem of PFAS substances that remain in commerce. The CAP recommendations are primarily focused on a small number of long-chain PFAS compounds, but acknowledges that as of November 2019, there are more than 7,866 chemical compounds on EPA’s master list and that 602 PFAS are actively used in commerce⁵. For example, the CAP describes how Washington will coordinate their data collection with forthcoming data from the Toxic Release Inventory (TRI)⁶. However, the TRI will only report on 172 PFAS substances. All other PFAS chemicals that were not subject to review under a significant new use rule and that are subject to a claim of protection from disclosure are not on the current TRI list and data on their use and release will not be available. The NTPWG suggests that a better approach for PFAS management is described in Kwiatkowski et al. (2020)⁷. This approach treats PFAS chemicals that have similar molecular structures,

³ CAP at page 10, “Bioaccumulation of PFAS has been confirmed in marine and terrestrial species, zooplankton and other invertebrates, and fish. Animals do not need to be near sources of PFAS to show bioaccumulation. PFAS have also been shown to be taken up by plants.”

⁴ CAP at pages 13, 48, 345 “Ecology will consider...vulnerable populations present when prioritizing mitigation and cleanup activities”.

⁵ CAP at page 34.

⁶ CAP at page 41, “Data on PFAS use nationally will soon be collected via EPA’s Toxics Release Inventory.” And pg 52 “new sources of information, namely EPA’s Toxics Release Inventory, which can supplement our knowledge of PFAS used in industry in the state.”

⁷ Kwiatkowski, C.F., Andrews, D.Q., Birnbaum, L.S., Bruton, T.A., DeWitt, J.C., Knappe, D.R.U., Maffini, M.V., Miller, M.F., Pelch, K.E., Reade, A., Soehl, A., Trier, X., Venier, M., Wagner, C.C., Wang, Z., and Blum, A. 2020. Scientific

environmental properties, and biological hazards as a class. Kwiatkowski et al. cite lines of evidence that demonstrate that short-chain PFAS can be environmentally persistent, mobile, and bioaccumulative similar to the long-chain compounds they aim to replace⁸. Kwiatkowski et al. report that fewer than 50 individual PFAS are commonly measured in environmental media and cite a study where less than half of the total organic fluorine measured was accounted for by the sum of those individually identified PFAS compounds⁹. The ecological, public health, and economic costs of individual chemical assessment and eventual cleanup that are described in the CAP¹⁰ require a more efficient and effective approach and pollution prevention is critical. In addition, consumers must be notified when products in the market contain PFAS compounds and be warned of the potential harmful health effects and thus be given the choice to buy or not buy such products. The WA CAP should recommend a class-based approach that emphasizes the importance of eliminating non-essential uses of PFAS, requires labeling of consumer products, prioritizes research and development for treatment and disposal as a chemical class and adopts regulations to implement these actions.

PFAS chemicals as documented in the CAP persist in a hazardous form for several years and present significant environmental hazards that may be concentrated by living organisms through food chains. These definitions fit the requirements for PFAS to be considered a hazardous substance under Washington's Model Toxics Control Act. The CAP¹¹ states that if the federal government or state were to list PFAS as hazardous chemicals, additional measures to mitigate the drinking water mitigation actions could occur under the state MTCA program. The data on this is clear and WA should not wait for the federal government to take action but instead should move ahead with listing PFAS as a hazardous substance.

The CAP reports significant data gaps on the risk from PFAS in biosolids that are land applied in Washington. Exposure pathways from biosolid contamination with PFAS has been documented in other states where agricultural application rates may have been higher than in Washington State¹². The CAP also reports that PFOA and PFOS concentrations in waste are trending downward following reduced production¹³. However, data on short chain contamination in biosolids and from wastewater that originates from domestic and industrial sources is not reported. The CAP recommends that data gaps on biosolid contamination and exposure pathways be investigated¹⁴. While the NTPWG supports collection of data on biosolid contamination including short-chain concentration values, it is not explained why the CAP also recommends that accurate and precise biosolids data results should remain anonymous¹⁵. Public access to data and transparency in this process is essential.

PFAS removal efficiency of some tribal and community water treatment systems differs from advanced urban water treatment systems. Additionally, many tribes have members that use private wells that return untreated water for drinking and other household use. The CAP should include guidance appropriate to tribes and rural small communities on whether PFAS monitoring of their drinking water systems or private wells is warranted, from the perspective of their PFAS contamination potential, treatment system capacity to handle it, and relevant hydrological and other factors. Washington should

Basis for Managing PFAS as a Chemical Class. *Environ. Sci. Technol. Lett.* 2020, 7, 532-543.
<https://pubs.acs.org/doi/10.1021/acs.estlett.0c00255?ref=pdf>

⁸ Ibid. at page 534.

⁹ Ibid. at page 533.

¹⁰ CAP Appendix 10 "Economic Analysis" pg. 440.

¹¹ CAP at page. 46, "Once PFAS water contaminants are officially classified as hazardous substances by the federal government or by the state of Washington they can be addressed under the state Model Toxics Control Act (MTCA) framework."

¹² CAP at page 41.

¹³ CAP at page 401.

¹⁴ CAP at page 68.

¹⁵ CAP at page 26, 68. "Collaborate with stakeholders to get accurate and precise biosolids data. Initial results should remain anonymous."

develop and implement risk communication strategies specifically for informing tribal communities of potential health risks from all types of PFAS contamination or PFAS-containing media in household goods and natural resources. Such strategies must specifically include low-cost, easily accessible means of preventing PFAS exposure for tribal people without simply issuing consumption advisories for traditional and subsistence foods to prevent exposure. . . Strategies cannot be limited only to drinking water, but also should consider monitoring strategies of the natural resources that are impacted by PFAS or PFAS-like chemicals, to include the wild foods and their sources whether on land, in sediment, or in fresh water and salt water, including untreated drinking water, as well as consumer products including food packaging.

On behalf of the NTWC-TPWG, we thank you for the opportunity to comment on the Draft PFAS Chemical Action Plan. We appreciate all of your efforts to reach out to tribes and look forward to continued engagement. Should you or your staff have questions or comments regarding our letter, please contact Page Hingst, TSC at (402) 857-3347 or Dianne Barton, NTTC Chair, at (503) 887-5370. Or you may contact Elaine Wilson, NTWC Project Manager, at Elaine.Wilson@nau.edu for any questions regarding the NTWC-TPWG.

Sincerely,



Ken Norton, Chair
National Tribal Water Council



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National Tribal Toxics Council



Page Hingst, Vice Chair
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Cc: Kate Graf, USEPA Office of Water