February 1, 2021

Michael Regan, Incoming Administrator
United States Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20160

Dear Incoming Administrator Regan:

We write to you today as the heads of state environmental regulatory agencies in New England to congratulate you on your nomination to head the U.S. Environmental Protection Agency (USEPA) and look forward to working with you on the important environmental issues facing all of us.

Over the years, our states have built partnerships with USEPA to advance work on key issues. We want to highlight, in particular, our partnerships with USEPA Region 1 (New England) and the Office of Research and Development.

An area of significant attention is the environmental and public health challenge posed by per- and polyfluoroalkyl substances (PFAS). We know that your experience as a state leader addressing contamination from PFAS while the Secretary of the North Carolina Department of Environmental Quality will serve the country well in addressing this critical environmental and public health challenge. Each of our states have dealt with significant PFAS contamination, and we look forward to working with you to advance our collective work.

Each of our states has taken significant action to clean up contaminated sites, to provide safe drinking water to our residents, and to address PFAS in past and current materials and commercial products. However, each state has different regulatory authority over PFAS. This creates a patchwork quilt of approaches to dealing with PFAS that generates confusion for our residents, complexity for regulated entities, and a significant duplication of effort. To effectively address this class of "forever chemicals" will require coordinated action at the national level. We look forward to that partnership. Below we have highlighted some specific efforts the USEPA can undertake to help federal, state, and local governments address PFAS.

Address current and future PFAS use through the Lautenberg Chemical Safety Act updates to the Toxic Substances Control Act

There are more than four thousand PFAS chemicals that have been approved for use in the United States, but we are just now gaining a greater understanding of the impacts of these chemicals on human health and the environment. The 2016 Lautenberg Act updates to the Toxic Substances Control Act (TSCA) give the USEPA more authority to review the safety of different chemicals and take actions to ban or confine the use of those chemicals. We ask that you direct your team to do a comprehensive review of long- and short-chain PFAS compounds to determine appropriate controls or, as warranted, the prohibition of their use. The Significant New Use Rule that covered certain long-chain PFAS issued by the USEPA in 2020 had too narrow a scope. The USEPA and all states will continue to struggle with addressing legacy PFAS contamination from industrial use and commercial products, and the only way we will make progress is to ensure the replacement compounds are safe and appropriate for use.

Expedite the Maximum Contaminant Level adoption process, including for a broader list of PFAS beyond PFOA and PFOS

Multiple states have developed Maximum Contaminant Levels (MCL) for PFAS compounds. The development of an MCL is a critical step in protecting the drinking water upon which all Americans rely. It also takes a significant amount of effort to develop the scientific and public health basis for establishing an MCL, which is why that process has typically been led by the USEPA under its Safe Drinking Water Act (SDWA) authority. Further, the current focus on PFOA and PFOS, the two PFAS chemicals the scientific community knows the most about, is insufficient to protect all Americans. We ask you to move forward with separate MCLs for as many PFAS chemicals as feasible or, if supported by the science, one cumulative PFAS MCL.

Designate PFAS chemicals as hazardous substances

Each state has different authority as it relates to the identification and remediation of contaminated sites. Designating PFOA, PFOS, and additional PFAS compounds as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) will ensure states have the consistent ability to pursue investigations and cleanups at contaminated sites. This will be especially significant for federally owned sites, which will be discussed in more detail below.

Evaluate regulating PFAS as a class

As mentioned above, there are more than four thousand PFAS compounds that have been developed for commercial use. Currently, we are only able to regulate a small handful of PFAS compounds because that is the limit of the full toxicology profile despite knowledge that similar chain length PFAS have similar properties. We urge the USEPA to explore how to develop regulatory standards to address PFAS at the class level. We standby to assist with that work, but we lack the capacity to do it independently. Doing so would have a significant impact on the other work addressed in this letter.

Expedite the development of toxicological profiles for additional PFAS compounds

Toxicological profiles form the basis for hazardous chemical regulation. Unfortunately, the funding and support for the development of toxicological profiles of the thousands of PFAS compounds has been insufficient. We urge you to partner with the Agency for Toxic Substances and Disease Registry to prioritize additional profile development. Doing so may contribute to the knowledge vital to addressing PFAS as a class, as discussed above.

Expedite the research necessary to develop a PFAS surface water standard and fish consumption guidance values

Developing a surface water standard and fish consumption guidance values requires scientific investigation that is beyond the capacity of most state budgets. Each state would benefit from the USEPA expediting the work to develop these standards by enabling states to effectively regulate the impact of PFAS in our waste streams. For example, because states lack these standards, we lack the ability to understand the impact of releases from wastewater treatment facilities. PFAS entering those facilities from commercial, industrial, waste, and residential sources is not removed from the effluent. Without surface water standards or fish consumption values, we lack a key tool for protecting our residents.

Expedite non-drinking water PFAS analytic methods

Identifying PFAS in various environmental media remains a top priority of our states. To do that, we must have effective methods to test for the presence of and quantify PFAS. We are grateful to the work the USEPA has done to date to develop improved and new methodologies for testing drinking water (Methods 537.1 and 533), but we urge you to expedite efforts to detect PFAS in other environmental media, including in various waste streams (e.g. – biosolids, septage, landfill leachate) and in air. Specifically, we urge you to expedite the fully review of and publish as an interim method the joint USEPA-Department of Defense isotope dilution method currently undergoing single laboratory validation and methods for ambient air and stack testing.

Develop guidance for the use management and disposal/destruction of PFAS-containing firefighting foam

Until new PFAS-free firefighting foams are broadly accepted as replacements for Aqueous Film-Forming Foam (AFFF), every state in the country requires guidance and best management practices on how to limit exposure and risk from the use of these lifesaving substances. The interim disposal guidance recently published by the USEPA cites insufficient data to evaluate destruction efficacy. Given the significant stocks of existing AFFF, it is critical that we work together to expedite final guidance. We look forward to working with you and partners such as the Interstate Technology and Regulatory Council (ITRC) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to develop and validate disposal and/or destruction methods.

Develop guidance on the disposal or destruction of PFAS compounds and PFAS-containing products and for the treatment of PFAS in environmental media

While AFFF management and disposal are of particular importance, we urge you to consider the full range of PFAS uses and PFAS-containing products because regardless of how PFAS compounds are regulated now or in the future, there are existing quantities of PFAS and PFAS-containing products that will need to be disposed of or destroyed. Further, various environmental media will need to be treated for the presence of PFAS compounds. We urge you to continue the work with ITRC and ASTSWMO to develop and validate methods of disposal, destruction, and treatment.

Expedite risk assessment work for PFAS in biosolids

The EPA PFAS Action Plan February 2020 update highlighted action for biosolids which indicates that EPA is in the early scoping stages of risk assessments for PFOA and PFOS in biosolids. States are identifying significant PFAS groundwater contamination near historical biosolids land application sites. In the State of Maine, this contamination has been discovered in private drinking water supplies at levels that are orders of magnitude above the current USEPA Health Advisory of 70 ppt. Further, examples of PFAS uptake into crops and threats to livestock have been documented. We acknowledge the initial work that went into the interim disposal guidance, and we urge you to expedite finalizing that work and to look at a broader suite of PFAS compounds for risk assessment.

Recognize State-promulgated MCLs as ARARs

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Contingency Plan**,** require that remedial actions conducted under CERCLA must comply with applicable or relevant and appropriate requirements (ARARs) in State environmental laws and regulations provided that the State requirements are promulgated, are more stringent than Federal

requirements, and are identified by the State in a timely manner. In the last Administration, the USEPA delay in formal recognition of several State-promulgated PFAS MCLs has allowed responsible parties to avoid implementation of response actions to address PFAS-contaminated drinking water below the unenforceable USEPA Health Advisory.

Thank you for your consideration of our concerns regarding this challenging class of contaminants. Again, our states look forward to working with you and your administration on these and other PFAS issues that affect the safety of our country's citizens.

Sincerely,

Peter Walke
Commissioner
VT Dept. of Environmental Conservation

Melanie Loyzim
Acting Commissioner
ME Dept. of Environmental Protection

Martin Suuberg
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MA Dept. of Environmental Protection

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