Moratorium on the Procurement of Structures or Activities Generating PFAS Emissions/Proposed Massachusetts Legislation: The National Association of Clean Waters Agencies' Testimony



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The National Association of Clean Water Agencies ("NACWA") submitted written testimony on legislation currently being considered by the Commonwealth of Massachusetts Legislature titled:

An Act Establishing a Moratorium on the Procurement of Structures or Activities Generating PFAS Emissions ("S.2655")

The NACWA testimony was submitted to the Commonwealth of Massachusetts' Joint Committee on State Administration and Regulatory Oversight on February 18, 2022.

S.2655 provides in part that the Massachusetts Department of Environmental Protection ("DEP"):

. . . shall establish and enforce as necessary a moratorium prohibiting the procurement of PFAS-emitting structures or activities and shall not grant approval to any person required to file an environmental notification form proposing a new use or structure or modification of an existing use or structure where said proposal would generate emissions containing perfluoroalkyl and polyfluoroalkyl substances.

The moratorium would remain in effect indefinitely until the promulgation of PFAS emission standards by both the United States Environmental Protection agency; and DEP, the Massachusetts Department of Public Health or other state agency or department charged with the duty to promulgate regulations relative to establishing a maximum concentration of chemicals deemed consistent with the best interests of the public health and safety of the Commonwealth.

PFAS are a group of man-made chemicals that have been used in various industrial applications and consumer products for a number of years. Properties of these chemicals include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation. Potential human exposure to PFAS includes pathways through drinking water, air, or food.

NACWA describes itself as representing the interest of over 340 publicly owned wastewater utilities of all sizes across the country. Such utilities are stated to provide the service of treating billions gallons of

United States wastewater and managing the millions of tons of biosolids generated as a byproduct of the wastewater treatment process.

The NACWA written testimony notes that both Massachusetts and United States NACWA members are "facing significant challenges associated with PFAS." Such challenges are stated to include what is described as "the erroneous perception that public clean water utilities are sources of PFAS." Concern is expressed that such utilities will incur considerable costs and liabilities for PFAS even though they are not responsible for placing it in the environment.

The concerns about the simple presence of PFAS at extremely low parts per million or parts per trillion are stated to result in some concluding that any amount of PFAS is harmful. One of NACWA's concerns is whether that could unnecessarily adversely affect their members' ability to manage municipal biosolids. Municipal biosolids are noted to be different from industrial sludges.

S.2655 is deemed a concern by NACWA because as drafted it:

- May severely impact current municipal biosolids management options
- Could stymy any innovation for future biosolids management opportunities
- Short circuits several efforts underway at EPA intended to better understand the risks of PFAS to public health and the environment
- Potentially could adversely affect the ability to make informed scientific and regulatory decisions based on an understanding of actual risk

Additional themes in the NACWA comments include:

- Municipal Biosolids Management Options are Limited: A Moratorium Further Reduces Residual Management Opportunities
- EPA has not Committed to Promulgating Emission Standards Anytime Soon
- EPA is Currently Looking into Gasification Under an Appropriate Regulatory Pathway and Making Progress to Understand Potential Human Health and Environment risks

A copy of the written testimony and *S. 2655* can be downloaded here.