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May 10, 2021

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Re: Comments on Proposed Unregulated Monitoring Contaminant Rule, Docket ID No. EPA-HQ-OW-2020-0530

Dear Administrator Regan:

The New Mexico Environment Department (NMED) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on the *Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems* under the authority of the Safe Water Drinking Act (SDWA). EPA published the request for comments in the Federal Register on March 11, 2021.

NMED has reviewed the U.S. Environmental Protection Agency's (EPA) March 11, 2021 proposed revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems. The proposed rule would require certain public water systems (PWS) to sample for 29 per- and polyfluoroalkyl substances (PFAS) and lithium.

As the State primacy agency for regulatory programs under the Safe Drinking Water Act (SDWA), NMED is highly invested in ensuring that our State's drinking water supplies are protected from emerging contaminants, such as PFAS and lithium. As reflected by NMED's comments, the Department is entrenched in the ongoing struggle to achieve our environmental and public health protection mission while grappling with insufficient resources at the state and local level. For example, the New Mexico fund that pays for contaminant sampling and analysis at public water systems has flat revenue that is insufficient to cover existing water sampling costs, let alone the increased costs of compliance with new federal rules. It is imperative that EPA explore all ways to maximize federal funds that are invested in unregulated contaminant monitoring by systems of all sizes, in urban and rural communities.

NMED appreciates the additional effort EPA is undertaking to ensure the effective implementation of UCMR 5. NMED also values the opportunity to comment on this federal action to ensure a safe and reliable drinking water supply for New Mexico communities.

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Sincerely,

Rebecca Roose
Director, Water Protection Division

cc: James Kenney, Cabinet Secretary, NMED
Radhika Fox, Acting Assistant Administrator, EPA Office of Water
Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Dr. Tracie C. Collins, Cabinet Secretary, New Mexico Department of Health
Dr. Michael Edwards, Director, State Laboratory Division, New Mexico Department of Health
Rebecca Roose, Director, Water Protection Division, NMED
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Comments

1. Small Public Water System Monitoring – Universe Coverage

NMED supports action and investment by EPA in the final UCMR 5 rule to cover at least 800 water systems that serve fewer than 3,300 people. The proposed rule includes an alternative plan that would be promulgated in the event that EPA has insufficient resources to support the analytical and shipping costs for sampling at all community water systems (CWS) and non-transient non-community water systems (NTNCWS) serving less than 10,000 people. This alternative proposes UCMR 5 sampling nationally at 800 representative water systems serving fewer than 10,000 people. Although this alternative plan is consistent with previous iterations of the UCMR program prior to the America's Water Infrastructure Act of 2018 amendments to the SDWA, it is at odds with EPA's stated commitment to take aggressive action to address PFAS.

Ninety (90%) of CWSs and NTNCWSs eligible for UCMR 5 monitoring in New Mexico serve fewer than 3,300 people. The proposed rule and EPA's proposed alternative plan would exclude numerous water systems at risk of PFAS contamination in New Mexico because of EPA's emphasis on large water systems.

PFAS are environmentally persistent chemicals with potentially long transport gradients, are not limited to urban areas, and have been detected in many rural and remote locations around New Mexico and the United States. Furthermore, many small PWSs, such as schools, homeowners associations, and mobile home parks, are located in urban or suburban areas. Such systems are likely to be excluded under the proposed rule and, even more so, the alternative plan, even though they could yield useful information about PFAS contamination of drinking water.

NMED urges EPA to avoid the alternative plan under which as few as two PWS serving fewer than 10,000 people might be sampled in New Mexico. Ongoing sampling efforts within the State indicate that PFAS are widespread in New Mexico's surface and groundwater resources. More sampling of drinking water supplies is needed to better understand the distribution and prevalence of various PFAS chemicals in the State.

EPA's investment in sampling of as many representative small water systems as possible would lead to better public health outcomes by supporting informed decision-making at the federal, state and local levels. This investment is fully consistent with the key tenets of EPA's National Primary Drinking Water Regulations process and core principles of children's environmental health protection and environmental justice. Rural counties in New Mexico have greater minority (average 60.6%) and/or low-income (average 20.5%) populations compared to other states (national averages are 22% and 16%, respectively).¹ UCMR 5 sampling must inform our understanding of children's PFAS-related health risks in both urban centers and rural areas served by small PWSs. Similarly, EPA and New Mexico need more data about the presence and levels of unregulated contaminants in environmental justice communities that frequently rely on small water systems.

1 U.S. Department of Agriculture, Rural America at a Glance, November 2018, Economic Information Bulletin 200.
U.S. Department of Commerce, Census Bureau, Population Estimates Program, 2019.

NMED estimates eight small water systems would be sampled in New Mexico based on the statistical approach EPA relies upon for the proposed rule (i.e., *Selection of Nationally Representative Public Water Systems for the Unregulated Contaminant Monitoring Rule: 2020 Update*). NMED recommends that EPA include at least 15 small PWSs in New Mexico during UCMR 5 monitoring in order to better characterize PFAS distribution at a larger, and therefore more representative, group of systems.

To address cost concerns, EPA should consider excluding systems around the country that already have PFAS results for drinking water from other sampling efforts and redistribute those UCMR 5 implementation funds to gather samples among systems that still lack PFAS data. This could be accomplished by first producing a random national list of small PWSs using the standard UCMR statistical approach, then analyzing whether systems have already been sampled either for compliance or investigative purposes. The number of PFAS samples can then be re-allocated while maintaining the allowable margin of error used for the nationally representative sample of +1% at a 99% confidence level for an expected contaminant occurrence of 1%.

NMED encourages EPA to promulgate abandon the alternative plan in order to benefit a greater number of small drinking water systems during the monitoring effort. EPA should determine alternative financial solutions toward this end, including a reduction in UCMR 5 sampling events at all systems. For example, systems using surface water, groundwater under the direct influence of surface water, or mixed sources could sample twice instead of four times to decrease costs. Note that this scenario matches the proposed sampling event schedule for groundwater systems (two events).

2. Additional Analytes – Alternative Plan

If EPA does adopt the alternative plan of sampling 800 water systems serving fewer than 10,000 people, NMED encourages the addition of the analytes listed in Exhibits 5 and 6 (86 Fed. Reg. at 13,856), *Legionella pneumophila* and haloacetonitriles.

EPA would save 62% under the alternative plan compared to the proposed rule (Exhibit 4, 86 Fed. Reg. at 13,855), freeing funds that could be used to cover the analytical and shipping costs of *Legionella pneumophila* and haloacetonitrile samples at small PWSs. The addition of these analytes would improve the impact of the alternative plan that limits UCMR 5 monitoring to only a tiny fraction of those PWSs serving fewer than 10,000 people.

3. Small Public Water System Monitoring – Sampling Training and Expertise

The proposed rule states that the estimated UCMR 5 time and resource commitment for small water systems “[A]ccounts for small PWSs familiarizing themselves with the regulatory requirements; reading sampling instructions; traveling to the sampling location; collecting and shipping the samples; and maintaining their records.” 86 Fed. Reg. at 13,862. NMED believes EPA has underestimated the time required for a small water system to complete these tasks. Based on NMED’s extensive experience working with small systems on a wide range of regulatory requirements, we expect small systems to spend three to six hours to fulfill training, monitoring and recordkeeping requirements, including transporting samples to laboratories. Training samplers on the proper sampling protocols is essential to ensure quality, reliable data.

NMED also encourages EPA to clarify whether Partnership Agreements with state primacy agencies may include sample collection by that agency, rather than small PWS staff. NMED notes that compliance samplers in New Mexico may be already trained and more experienced in the efficient and proper collection of PFAS samples.

4. Environmental Justice Analysis

In addition to NMED's comments on environmental justice issues under item #1 above, NMED recommends that EPA use census tracts, rather than zip codes, "to support potential assessments of whether or not minority, low-income and/or indigenous-population communities are uniquely impacted by particular drinking water contaminants." 86 Fed. Reg. at 13,861. Census tracts are more granular than zip codes and, therefore, an analysis based on census tracts will more accurately portray the socioeconomic characteristics of a given community.