



**WMAA NATIONAL OFFICE**

Suite 4.08, 10 Century Circuit  
Baulkham Hills NSW 2153  
**ph: 02 8746 5000** ABN 78 071 897 848  
[info@wmaa.asn.au](mailto:info@wmaa.asn.au)  
[www.wmaa.asn.au](http://www.wmaa.asn.au)

PFAS Standards Section  
Department of Environment and Energy  
GPO Box 787  
CANBERRA ACT2601

Email: [PFASstandards@environment.gov.au](mailto:PFASstandards@environment.gov.au)

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Dear Mr Pratt

**National phase out of PFOS**

The Waste Management Association of Australia (WMAA) welcomes the opportunity to provide comment the phase-out of PFOS and welcome opportunities for further consultation when the Department of Environment and Energy commences the discussion with state and territory governments on whether to amend existing state regulation related to waste disposal or adopt a national protocol.

As you may be aware, WMAA is the national peak body for the waste and resource recovery industry, with over 1,800 members based in a broad range of important waste management and resource recovery activities within the Australian economy, including infrastructure investment and operations, collection, manufacturing of valuable products from resource recovered materials, energy recovery and responsible management of residual materials, and community engagement and education. Approximately one third of WMAA's membership is employed by state environment departments, Environmental Protection Agencies, and Councils.

While the substantive point of discussion in this consultation is phasing out of PFOS, the containment and destruction of existing stocks and new stock is too a significant project in a uniform end-to-end national approach to the management of PFAs. WMAA believes that it is important that this approach is underpinned by the following principles:

- Extended Producer Responsibility (EPR) Schemes, clearly designating responsibility for end of life management of PFAs to the manufacturer;
- Data transparency among all stakeholders – including but not limited to contamination data; identification of high risk PFAs products, and; treatment technologies;
- National uniformity;
- Regulation is evidence and risk based, and follows comprehensive assessment;
- Regulatory transition periods for the waste and resource recovery industry to enable the necessary infrastructure to be in place to effectively implement any approach, and;
- Framework plasticity so newer PFAs management methods can be piloted.

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WMAA makes the following observations of gaps

**1. PFA's within Products and Materials within the Built Form (Diffuse Sources) are not considered**

WMAA believes that the scope of the phase out should explicitly mention the need to consider phase out of products and materials containing PFA's in addition to PFOS (i.e. as has occurred with asbestos containing products and materials) since end of life disposal and resource recovery is likely to be impacted by the continuing presence of all PFA's.

The widespread occurrence of PFOS and PFOA in landfill leachate noted in the Regulatory Impact Statement (RIS) indicates that diffuse sources are likely to be significant. This is supported by research on carpet and clothing as sources within landfill<sup>1</sup>. Legacy contamination in landfill is not due solely to the industrial and firefighting sources noted.

Limited understanding of the diffuse sources and fate of PFOS and PFOA may compromise the interpretation of monitoring data particularly where it is intended that

*The monitoring would initially be conducted for five (5) years to establish the extent to which upstream controls of PFOS sources have reduced the amount of PFOS entering and being emitted from waste infrastructure-(4.2)*

given that the upstream controls do not include control of diffuse sources.

WMAA consider that the likelihood of observing impacts after 5 years in landfill leachate to be low given the scale of many landfill and many factors that influence production of leachate and mobilisation within landfill.

We note that the Phase out of PFOS reflected in the RIS does not include the costs or benefits associated with phase out of PFAs in products and materials. Based on the increased awareness of issues associated with non-conforming building products containing asbestos, WMAA believe the RIS should also consider increase surveillance of PFAs in unregulated products and materials.

**2. Exclusion of the Potential Costs to Waste Infrastructure**

The costs of the various options considered in the RIS reflect a cost for increased biosolids destruction capacity but also note that

*monitoring studies may indicate a need for ongoing monitoring and / or improvement to landfill leachate management practices.....but since the potential outcomes of the monitoring program are speculative and .... not considered in the impact analysis - Footnote 107 page 58.*

Yet in Section 3.2.1 there is considerable discussion of the fate of leachates from landfill and implications for sewer discharge of leachates on release to the environment from sewerage treatment plants without commenting on the appropriateness of current discharges for which the concentrations are known (Box 9).

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<sup>1</sup>Environ. Sci. Technol. 2016, 50, 5024–5032 (Johnsie R. Lang, B. McKay Allred, Graham F. Peaslee, Jennifer A. Field, and Morton A. Barlaz)

WMAA believe that the RIS must include an assessment of the costs of imposing a probable sewer acceptance criteria for PFAs. If current PFOA and PFOS concentrations in landfill leachate observed currently are unacceptable for sewer discharge, WMAA believe the costs will be significant for those sites already discharging treated leachate to sewer. Our initial estimate that the Present Value of additional treatment costs is similar to the total Option 2 Cost (i.e. costs may be understated by 100%).

### **3. Legacy Costs and Equitable Cost Burden**

In clarifying the principles further, the polluter pay principle is a well-established principle of environmental stewardship and is embedded in the *Stockholm Convention*. It is then a legitimate expectation that any PFAs management in Australia follows suit. PFAs management however presents difficulties in strictly adhering to this principle, given that PFAs found in mixed waste streams and present in legacy and closed landfill, it is extremely difficult to attribute to the generation source. This means that the waste and resource recovery sector cannot formulate a calculation to apportion the true cost of leachate remediation to 'polluters'. The cost then defaults to site owners (private and local government agencies) who pass these costs on either through future site operating costs charged to users or directly from public sources for council owned facilities.

The mix of legacy and closed landfills with local government and private owners is not distributed in a manner that equitably passes costs to consumers or the public. On the contrary, large disparities may be introduced that distort the market and send inconsistent financial signals to customers.

WMAA believe that costs need to be equitably distributed to be consistent with the polluter pays principle and that a mechanism to achieve this is needed and should be included in the RIS.

### **4. Other Comments**

WMAA appreciates that in order to remove PFOS and PFOA from the supply chain, consideration of a multiple agency response will be necessary in order for a polluter pays frameworks to be successfully embedded. It is therefore submitted that a clear nationally co-ordinated response to PFAs management will better achieve the joint responsibility of governments. While, still in the initial phases of developing Australia's approach, the suggestion in the RIS of incineration as the primary management method for PFAs and the preference in the *PFAS National Environmental Management Plan* (HEPAs) of on-site treatment without recognition of the presence of PFAs in products and materials raises concerns that the proposed approach to PFA management fails to address the need for both Extended Producer Responsibility (EPR) and polluter pays principles in the Government's approach to addressing this issue, which could possibly be addressed by increased coordination between the different layers of government.

Mutuality of governments and authorities cannot be overstated here. Greater restrictions by water and sewer authorities has a knock on cost to landfill operators who currently may be discharging leachates to the sewer as trade waste that results from diffuse sources not within the scope of the NEPM or Phase out of PFOS.

WMAA strongly advocates orderly and efficient PFAs management from informed scientific and evidence based assessment informing regulation, co-ordinated to ensure the efficient and prudent use of public funds.

### **WMAA Support**

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WMAA supports in principle, Option 4 as good public policy, but highlights our concerns at the omissions noted and their significance for the waste industry and the community if not addressed.

WMAA regrets we are unable to assist with the Department's information request for import, use, storage, and PFAs stock data. WMAA believe that the import stock and mobility of those diffuse sources of PFAs within products and materials is a data gap and not directly impacted by the Phase out of PFOS and NEPM. This is an area that is of interest to our members. We are happy to nominate members who could cooperate with much needed research in this area.

Thank you for your consideration and we look forward to you contacting us to further discuss modelling, calculations and broader questions of regulation.

Yours sincerely



Paul Lightbody  
**Chair – National Landfill Divisional  
Committee**  
Waste Management Association of  
Australia



Gayle Sloan  
**Chief Executive Officer**  
Waste Management Association of  
Australia