



Submitted via the PFAS Monitoring Plan Comment Form

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January 21, 2022

**RE: Minnesota Pollution Control Agency's Draft PFAS Monitoring Plan Comment**

Dear Ms. Greene:

Public Employees for Environmental Responsibility (PEER) appreciates the opportunity to comment on the Minnesota Pollution Control Agency's (MPCA) "Draft PFAS Monitoring Plan" (Draft Plan) and how it might be improved for a finalized PFAS Monitoring Plan (Monitoring Plan).

In issuing these draft recommendations, MPCA has taken the bold first step in understanding the extent of PFAS contamination in Minnesota. However, there is still more work that needs to be done. Consequently, we urge MPCA to amend the Draft Plan to include: the most recent scientific data on testing for PFAS and establish an advisory council for updating the agency's knowledge; the most recent data on PFAS contamination sites in Minnesota; and further input from necessary communities when making future determinations and deciding how to publish data. MPCA's Draft Plan still leaves communities in Minnesota unprotected from dangerous levels of these toxic "forever chemicals" in their air, land, and water. Our specific comments are set forth below.

**1. Identifying all potential sources of PFAS**

While the agency has identified a large number of types of facilities that may contain PFAS, PEER would also like to offer a database it recently created using the Environmental Protection Agency's data on facilities that "may be handling" PFAS. The PFAS Map is available at <https://peer.org/areas-of-work/public-health/pfas/pfas-map/>. Looking at the data spatially may also assist the agency in identifying legacy facilities as well as communities of concern where additional outreach to people at the confluence of several PFAS sources could be conducted. While the Draft Plan seeks to address currently-operating permitted facilities, the Monitoring Plan must be able to assess the impact of legacy pollution and meet impacted communities where they are, addressing their pressing concerns.

Although in most respects the MPCA Appendix F list of NAICS codes appears to be similar to EPA's data, there are some omissions in the MPCA list that would be included under EPA's data

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set—for example, EPA included mining sites as potential sources of PFAS, but it appears that MPCA has omitted mining sites from Appendix F. Any such omissions should be vetted by non-conflicted academic and advocacy experts, as discussed below, within the ambit of a MEPA advisory council.

PEER would be happy to provide underlying data for the map if that would be of assistance to MPCA as it finalizes its Monitoring Plan. While the Draft Plan begins with a fairly comprehensive list of types of facilities, the Monitoring Plan must allow for the addition and inclusion of new facilities as MPCA's knowledge develops.

## **2. MPCA has a legal duty to establish an expert body free of conflicts of interest to assist with developing the Monitoring Plan**

Monitoring PFAS discharges and emissions is a cutting-edge scientific issue and, as such, new and better testing may be in development now that could be integral to MPCA's Monitoring Plan tomorrow. This provides MPCA with a uniquely appropriate opportunity to establish an expert body to consult on developing and improving the monitoring plan over time. In fact, MPCA has a legal duty to establish such an expert body. Minn. Stat. § 116D.03, Subd. 2(2), provides, in relevant part, that:

All departments and agencies of the state government shall: . . .

utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible

This language is not discretionary: the agency “shall” utilize a systematic and interdisciplinary approach and “there shall be established advisory councils . . . with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making.” In finalizing the Monitoring Plan there is no opportunity to delay the establishment of an advisory council because its advice must be considered “as quickly and as amply as possible.” The Legislature has commanded MPCA in situations exactly like this one to seek continuing advice and direction from specialists so that the agency does not mistakenly adopt a plan that falls short of a best-practices approach to both “natural and social sciences.”

Minn. Stat. § 116D.03, Subd. 2, goes on to say that MPCA “shall” also “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources” and “undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the feasibility, safety and environmental effects of various methods of dealing with

pollutants.”<sup>1</sup> Both these mandatory requirements require MPCA to establish an advisory committee that is free of any conflicts that would pit economic interests against protecting public and environmental health from toxic pollutants—only non-conflicted experts and community members can provide alternatives that are in the public interest and sufficiently protective of public health. The section also requires transparency of MPCA, stating the agency “shall . . . make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment[.]”<sup>2</sup>

In compliance with MEPA, MPCA should convene an expert advisory council to continue to advise the agency on ongoing updates and improvements to the Monitoring Plan. This advisory council should be made up of academics and nonprofit experts who are knowledgeable about PFAS and the various types of media monitoring covered by the plan. The advisory council must also include social science experts and environmental justice advocates who can address the social impacts of PFAS pollution and how data can be best used by communities. An advisory committee with community and scientific communication expertise will be instrumental in assuring that MPCA is transparent in its work on PFAS. Improving upon efforts to convene committees of stakeholders on climate change<sup>3</sup> or environmental justice,<sup>4</sup> this PFAS advisory council must be representative of expertise in public participation, robust and independent science, and lessons learned from PFAS policy in other parts of the country. The advisory council should not be made up of permitted facility representatives who have already had ample input into the Draft Plan. Although MPCA can and will continue to hear from “stakeholders” on their views on monitoring for PFAS, regulated entities should be allowed to make submissions to the advisory council but not have a vote or ability to stop the advisory council from taking any action.<sup>5</sup> This will avoid an obvious conflict of interest that MEPA sought to avoid.

MPCA should also consider relying on the advisory council for expertise necessary to identify data gaps, which when identified may require regulatory responses that go beyond voluntary monitoring under the Monitoring Plan. By including academics and advocates that are expert in PFAS science, as well as community members that are expert in the environmental injustices they face, the advisory council could be a model example of what the Legislature demanded of state agencies in our bedrock environmental policy law.

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<sup>1</sup> At subdivisions 2(4) and 2(8).

<sup>2</sup> At subdivision 2(6).

<sup>3</sup> Press Release, Governor Walz Establishes Climate Change Subcabinet, Dec. 2, 2019, <https://mn.gov/governor/news/?id=1055-412110> (discussing “the Governor’s Advisory Council on Climate Change”).

<sup>4</sup> MPCA Environmental Justice Advisory Group, <https://www.pca.state.mn.us/about-mpca/mpca-environmental-justice-advisory-group> (last visited Jan. 21, 2022).

<sup>5</sup> This type of exclusion is consistent with other technical expert bodies such as FDA’s Tobacco Products Scientific Advisory Committee and the Intergovernmental Panel on Climate Change. See Food and Drug Administration, Tobacco Products, Scientific Advisory Committee, Nov. 12, 2019, <https://www.fda.gov/advisory-committees/committees-and-meeting-materials/tobacco-products-scientific-advisory-committee> (TPSAC only includes the regulated industry as non-voting participants: “In addition to the voting members, the Committee shall include 3 non-voting members who are identified with industry interests.”); IPCC Structure, <https://www.ipcc.ch/about/structure/> (last visited Jan. 21, 2022).

In addition MPCA should get the advisory council's input on the best available testing methods, including the following two suggestions.

a. MPCA must require monitoring for more PFAS

We commend the Draft Plan for starting with a comprehensive definition of PFAS. However, in order to be consistent with that broad definition, the Draft Plan should require that testing include all PFAS for which there is an accurate test.

As MPCA knows, any attempt to test for only a few PFAS chemicals will be meaningless due to the ability of PFAS to simply be replaced with another PFAS chemical with similar structure, function, and potential for harm.<sup>6</sup> The experience with PFOA and GenX illustrates this issue. Until around 2006, PFOA was widely used in the manufacture of polytetrafluoroethylene (PTFE) and some other fluoropolymers, which are subsequently used to make consumer products. However, PFOA has been linked to adverse health effects including cancer in people and to reduced effectiveness of childhood vaccines at very low levels of exposure.<sup>7</sup> In 2006 EPA brokered a voluntary agreement with DuPont, 3M and other producers to phase out the use of PFOA and related PFAS. In 2013, DuPont (now Chemours) introduced GenX as a replacement for PFOA in the production of fluoropolymers.<sup>8</sup> In 2020 the EPA's toxicity assessments of GenX found similar adverse health effects to those from PFOA.<sup>9</sup> Meanwhile, people were exposed to GenX for years. While there is currently a Minnesota health-based value for PFOA,<sup>10</sup> there is currently no such advisory for GenX.

Additionally, while PFAS display a wide range of environmental and health hazards, each PFAS shares a structural feature that results in a resistance to environmental and metabolic

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<sup>6</sup> Arlene Blum, Mamta Behl, Linda Birnbaum, Miriam L Diamond, Allison Phillips, Veena Singla, Nisha S Sipes, Heather M Stapleton, & Marta Venier, *Organophosphate Ester Flame Retardants: Are They a Regrettable Substitution for Polybrominated Diphenyl Ethers?*, ENVIRON SCI TECHNOL LETT. 2019 Nov 12;6(11):638-649 (2019), available at <https://pubmed.ncbi.nlm.nih.gov/32494578/>; see also Linda Birnbaum, Betsy Southerland, and Robert Sussman, *EPA must protect public health by regulating PFAS as a class*, THE HILL, (July 30, 2021) <https://thehill.com/opinion/energy-environment/565528-epa-must-protect-public-health-by-regulating-pfas-as-a-class>.

<sup>7</sup> Philippe Grandjean and Richard Clapp, *Perfluorinated Alkyl Substances: Emerging Insights Into Health Risks*, SAGE JOURNALS, (June 17, 2015) <https://journals.sagepub.com/doi/abs/10.1177/1048291115590506>.

<sup>8</sup> BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, *Dupont lawsuits (re PFOA pollution in USA)*, <https://www.business-humanrights.org/en/latest-news/dupont-lawsuits-re-pfoa-pollution-in-usa/> (Last visited Sept. 20, 2021).

<sup>9</sup> U.S. Env'tl. Protection Agency, *GenX Toxicity Assessments Documents*, <https://www.epa.gov/pfas/genx-toxicity-assessments-documents> (Last updated Apr. 8, 2021).

<sup>10</sup> MINN. POLLUTION CONTROL AGENCY, *What is Minnesota doing about PFAS?*, <https://www.pca.state.mn.us/waste/what-minnesota-doing-about-pfas> (Last Visited Jan. 20, 2022).

degradation: the strength of the carbon-fluorine bond that forms the backbone of each molecule.<sup>11</sup> This environmental persistence heightens the probability of widespread and long-lasting adverse effects.<sup>12</sup> Even if persistent chemicals are currently present at low concentrations, or do not yet exceed any regulatory thresholds, they remain in the environment and may continue to cause harmful effects.<sup>13</sup>

Therefore, testing for more than a few dozen PFAS is necessary because the persistence of each PFAS chemical has the potential for known and unknown adverse effects. Only by having a full accounting of the problem will MPCA be able to engage the public and policymakers in the serious business of managing the PFAS already in the environment.

b. MPCA's Monitoring Plan must call for total organic fluorine testing

In addition to testing for individual PFAS, the monitoring plan should also require testing that would capture the sum total of all PFAS in various tested media. MPCA should use a Total Organic Fluorine test (TOF), the gold standard for testing PFAS.

The analytical chemistry tools used to study and quantify PFAS have evolved to meet the new demands presented by this large class of chemicals. EPA currently states that there are 12,039 PFAS.<sup>14</sup> Previous tests only measured a limited set of targeted chemicals and precursors, generally failing to identify many PFAS compounds and the full extent of PFAS contamination. In contrast, a TOF shows the total concentration of fluorine, which is indicative of the amount of PFAS, and which is necessary to adequately assess the environmental impact of PFAS contamination.<sup>15</sup> The large number of chemicals in the PFAS class spark the need to screen for all PFAS without quantifying the individual constituents.

A TOF aims to reveal the presence of unidentified PFAS, which will help MPCA understand the total extent of its PFAS contamination. Without quantifying the overall amount of contamination, testing only for a small number of PFAS risks minimizing the actual harm of toxic forever chemicals already in the environment.

**3. The Monitoring Plan must be strengthened to avoid gaming testing requirements and to create the best data set possible**

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<sup>11</sup> Ian T. Cousins, et. al., *The high persistence of PFAS is sufficient for their management as a chemical class*, DOI: 10.1039/D0EM00355G (PERSPECTIVE) ENVIRON. SCI.: PROCESSES IMPACTS, 2020, 22, 2307-2312, <https://pubs.rsc.org/en/content/articlehtml/2020/em/d0em00355g>.

<sup>12</sup> Ian T. Cousins, et.al., *Why is high persistence alone a major cause of concern?*, DOI: 10.1039/C8EM00515J (Perspective) Environ. Sci.: Processes Impacts, 2019, 21, 781-792, <https://pubs.rsc.org/en/content/articlehtml/2019/em/c8em00515j>.

<sup>13</sup> *Id.*

<sup>14</sup> PFAS Master List of PFAS Substances, <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster> (last visited Jan. 21, 2022).

<sup>15</sup> Lloyd J Winchell et. al., *Analyses of per and polyfluoroalkyl substances (PFAS) through the urban water cycle: Toward achieving an integrated analytical workflow across aqueous, solid, and gaseous matrices in water and wastewater treatment*, (June 20, 2021) <https://www.sciencedirect.com/science/article/pii/S0048969721003235>.

One reason to establish and rely upon an advisory council with no industry conflicts of interest is to ensure that the Monitoring Plan does not ultimately lead to a data set full of gaps and false negatives. Recent research demonstrates that “[i]ntermittent monitoring of environmental standards may induce strategic changes in polluting activities.”<sup>16</sup> Indeed, researchers have demonstrated that air monitors are more likely to be taken offline on days of announced EPA testing, and local governments are incentivized to depress pollution on monitoring days while allowing increased pollution on non-monitoring days.<sup>17</sup> Regulated facilities have even stronger incentives to report good numbers and avoid increased compliance costs.

a. Obtaining the best possible air monitoring data

Regarding the Draft Plan’s outline of air monitoring requirements, facilities that are only expected to conduct one or two stack tests at a preordained date are strongly incentivized to minimize the PFAS emitted during those tests.

It is beyond question that garbage incinerators in Minnesota can get wildly different pollution readings based on what they allow to be burned on the day of testing. Indeed, the Hennepin Energy Recovery Center (HERC), the largest garbage burner in Minnesota, “failed and registered distressingly high numbers” on its first air quality test—leading some to believe that someone intentionally burned a large quantity of batteries to create a bad result.<sup>18</sup> Leaving aside the accusation that those who oppose garbage burning would intentionally make the pollution from the facility more toxic, this admission by “the face of HERC”<sup>19</sup> that a few batteries can make its emissions far more poisonous goes both ways: on days that HERC and other garbage burners know they are set to do stack tests it is fully within their control whether or not they send PFAS-heavy trash into the incinerator, or whether they instead choose to burn something cleaner to avoid getting a bad result. It is also concerning that a mass-balance/emission-factor approach to monitoring air emissions of PFAS can only hope to measure *known* PFAS inputs, and even MPCA’s own materials admit that products labeled as PFAS-free may indeed contain different forms of PFAS than those claimed to be absent.<sup>20</sup> While some industrial PFAS users may be able to reach accurate estimates using the monitoring techniques proposed, there is reason to believe

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<sup>16</sup> Eric Yongchen Zou, *Unwatched Pollution: The Effect of Intermittent Monitoring on Air Quality* (Jan. 2021),

[https://static1.squarespace.com/static/56034c20e4b047f1e0c1bfca/t/603afc5c6607da3e67640175/1614478432535/monitor\\_zou\\_202101.pdf](https://static1.squarespace.com/static/56034c20e4b047f1e0c1bfca/t/603afc5c6607da3e67640175/1614478432535/monitor_zou_202101.pdf)

<sup>17</sup> Daniel Raimi, *Cracking the Case of the Vanishing Air Pollution Data, with Eric Zou*, RESOURCES RADIO, Aug. 31, 2021, <https://www.resources.org/resources-radio/cracking-the-case-of-the-vanishing-air-pollution-data-with-eric-zou/>

<sup>18</sup> Caleb Hannan, *Minneapolis gets trashed*, POLITICOMAGAZINE, Aug. 20, 2015, <https://www.politico.com/magazine/story/2015/08/minneapolis-trash-incinerator-121570/>.

<sup>19</sup> *See id.*

<sup>20</sup> MPCA, *Firefighting Foam Use and Disposal* (Feb. 2021), <https://www.pca.state.mn.us/sites/default/files/w-hw4-17.pdf> (“Note: Class B foam concentrates marketed or labeled as ‘PFOS and/or PFOA free’ may still contain intentionally-added PFAS and may not be fluorine-free.”).

that without spot-checks and environmental testing the Monitoring Plan will lead to underreporting of actual emissions.

Ultimately the only way to overcome gaming of air monitoring may be to require continuous testing of emissions for PFAS, but to the extent that that testing is not yet technologically available MPCA should rely on an unbiased advisory council to establish the best practices for testing. It should be MPCA and the advisory council's stated goal to avoid individual tests that are not reflective of the amount of PFAS emitted on average throughout the life of an emissions source. If testing cannot be done continuously, or randomly and unannounced, MPCA must establish a standard for sampling and monitoring inputs to assure that facilities cannot change the mix of their emissions in preparation for a known test date.

b. Obtaining the best possible wastewater monitoring data

The Draft Plan also fails to fully address the issue of PFAS contamination of wastewater. Testing only industrial pre-treatment influent in a small number of wastewater treatment plants is likely to conceal the real dangers posed by PFAS in wastewater effluent, which is continuously discharging PFAS to public waters. Considering the relatively low cost of monitoring wastewater, the Monitoring Plan should require testing all effluent and all wastewater treatment plants.<sup>21</sup>

Landfill leachate containing PFAS is a major source of ground water and surface water contamination.<sup>22</sup> It is an established problem that landfills place PFAS-laden leachate into local water treatment plants that have no way to effectively remove PFAS.<sup>23</sup>

It is not enough to say that the amount of PFAS in the influent may be related to the amount in the effluent because the effluent often has more PFAS than the influent.<sup>24</sup> MPCA is able to test for effluent as evidenced by the fact that some waste water systems in the state appear to already be capable of this.<sup>25</sup> As discussed above, it would be logical to begin by requiring TOF tests for wastewater effluent, and then adding chemical-specific monitoring as appropriate to identify upstream sources of particular chemicals.

c. MPCA's plan must require stacked testing

The Draft Plan seeks to make testing manageable by only requiring one discharge source to be tested per facility, however this could miss a large source of PFAS if the agency misjudges the

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<sup>21</sup> Draft Plan at 4 (noting costs of \$300 to \$500 per sample).

<sup>22</sup> E.A. Crunden, *Toxic PFAS waste that lasts 'forever' poses financial, logistical challenges for landfills*, WasteDive, (Oct. 19, 2020) <https://www.wastedive.com/news/pfas-forever-chemicals-waste-disposal-landfill-leachate/587042/>.

<sup>23</sup> *Id.*

<sup>24</sup> Timothy L. Coggan et. al., *An investigation into per- and polyfluoroalkyl substances (PFAS) in nineteen Australian wastewater treatment plants (WWTPs)*, Heliyon (Aug. 2019) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6716228/>.

<sup>25</sup> MPCA, Wastewater data browser, <https://www.pca.state.mn.us/data/wastewater-data-browser> (selecting "parameter" there are more than a dozen "perfluoro..." options, which are likely PFAS chemicals under MPCA's comprehensive definition) (last visited Jan. 21, 2022).

most likely media to be contaminated with PFAS at that site. Stacked testing could help prevent false negatives and therefore ensure proper data to provide for proper analysis. Garbage in, garbage out – to the extent that the agency’s goal is to “provide the initial understanding of PFAS presence (a necessary step to supporting pollution prevention) and identify scenarios where immediate measures to protect human health and the environment are necessary”<sup>26</sup> it cannot simply assume that many known PFAS discharges are insignificant because they may not be the most-contaminated media coming from a site. PFAS are an urgent problem and MPCA doesn’t have time for a Monitoring Plan plagued by false negatives.

It is also unclear whether MPCA will succeed in choosing the correct media to test. The Draft Plan says that “programs are coordinating monitoring requests in order to focus the monitoring in the area that is likely to be the most significant vector of PFAS release to the environment or the most likely to support source reduction activities.” The “or” in that sentence contains multitudes. Is it actually the case that the agency knows enough at this point both to determine the “most significant” vectors and to discount monitoring those most significant vectors if there is a more addressable source reduction target? Both identifying pollution sources and opportunities for source reduction are important, but sacrificing the former for the latter appears to be a losing proposition if it means that MPCA will come out of this process with a data set that misses large amounts of PFAS emissions. Moreover, PFAS that are “less significant” are still nonetheless significant and toxic, and might have unique problems requiring their monitoring – data from an EPA study show that 95 percent of PFAS emitted to the air travel more than 150 kilometers from the emissions source,<sup>27</sup> meaning that even “less significant” air emissions are nearly impossible to remediate and address once they have been sent out into the landscape.

Available evidence demonstrates that PFAS contamination can be emitted in numerous ways from the same site. For example, while a military base or airport may indeed emit the most PFAS from stormwater discharge, that in no way minimizes the groundwater contamination that occurs because of the exact same pollution source. This is because PFAS contaminated groundwater may indeed be more relevant and important as it is often a source for drinking water. MPCA must reconsider its proposal in the Draft Plan to not fully test for all known discharges of PFAS from sites that are known to be handling and emitting PFAS to the environment.

#### **4. MPCA’s Monitoring Plan must include opportunities for feedback and information gathering from impacted communities**

Many parts of the Draft Plan reference “stakeholders” as a distinct group apart from the general public. The term appears to be used throughout the Draft Plan as a stand-in for regulated permittees. For example: Air Program Plan “regulated stakeholders and the general public”; Wastewater Program “the wastewater program used a stakeholder engagement process to

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<sup>26</sup> Draft Plan at 1.

<sup>27</sup> D’Ambro, E., H. Pye, J. Bash, J. Boyer, C. Allen, C. Efstathiou, R. Gilliam, L. Reynolds, K. Talgo, AND B. Murphy. Characterizing the air emissions, transport, and deposition of per- and polyfluoroalkyl substances from a fluoropolymer manufacturing facility. *International Journal of Environmental Science and Technology*. Springer, Heidelberg, Germany, 55(2):862-870, (2021), <https://doi.org/10.1021/acs.est.0c06580> available at [https://cfpub.epa.gov/si/si\\_public\\_record\\_Report.cfm?dirEntryId=350614&Lab=CEMM](https://cfpub.epa.gov/si/si_public_record_Report.cfm?dirEntryId=350614&Lab=CEMM).



understand concerns and gain early input”; the Remediation program had a “stakeholder only” meeting to brief “stakeholders” three weeks before conducting a “public meeting” on the same information<sup>28</sup>, Remediation also referred to “stakeholders” as those who are remediating their own pollution under the Draft Plan<sup>29</sup>; Solid Waste and Hazardous Waste Plan refers to numerous engagements with “stakeholders” and only describes stakeholder contacts with facilities, national waste industry groups, and landfill operators<sup>30</sup>; and the Industrial Stormwater Program Plan refers to “stakeholders and the public” but only speaks of engaging with stakeholders and not the public.<sup>31</sup> While the agency is free to consider the perspectives of permittees, its duty is to the people of Minnesota. Protecting the environment should not be limited to only options that are authorized by permittees. As the Draft Plan makes abundantly clear, the agency has ample legal authority to compel permittees to do additional monitoring to protect human health and the environment from these dangerous pollutants. Overreliance on voluntary compliance may lead to a Monitoring Plan that fails to create a complete data set and conceals important information from the concerned impacted public.

Rather than limiting agency-sought feedback to that of “stakeholders” with an interest in minimizing their own liability and costs of compliance, MPCA should now collaborate with genuine stakeholders who represent the interests of the most impacted communities in the state. For example, Duluth for Clean Water,<sup>32</sup> the Minnesota Environmental Justice Table,<sup>33</sup> the Task Force members for the Northside and Southside Green Zones in Minneapolis,<sup>34</sup> the Center for Earth, Energy and Democracy,<sup>35</sup> and numerous community groups in the East Phillips neighborhood<sup>36</sup> are active community-representative and environmental-justice leaders in areas that are undoubtedly disproportionately impacted by pollution, including PFAS exposure. Indeed, MPCA has a list of relevant environmental justice organizations on its dedicated environmental justice site, indicating it knows who to reach out to in order to create meaningful connections.<sup>37</sup>

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<sup>28</sup> See MPCA PFAS monitoring plan <https://www.pca.state.mn.us/waste/mpca-pfas-monitoring-plan> (last visited Jan. 21, 2022); see also Draft Plan at 26 (referring to stakeholders in explaining why the Remediation staff are not finalizing a guidance document that was a “short-term” priority in the PFAS Blueprint).

<sup>29</sup> Draft Plan at 26; see also *id.* (describing a “stakeholder advisory group” that will have a say in guidance that is germane to their own pollution remediation).

<sup>30</sup> Draft Plan at 15.

<sup>31</sup> Draft Plan at 21.

<sup>32</sup> Duluth for Clean Water <https://www.duluthforcleanwater.org/> (last visited Jan. 21, 2022).

<sup>33</sup> Minnesota Environmental Justice Table, Facebook, <https://touch.facebook.com/mnejtable/> (last visited Jan. 21, 2022).

<sup>34</sup> See Northside Green Zone Task Force, Meeting Notes, Sept. 3, 2020, [https://lims.minneapolismn.gov/Download/CommitteeReport/1405/NGZ\\_20200903\\_minute\\_s.pdf](https://lims.minneapolismn.gov/Download/CommitteeReport/1405/NGZ_20200903_minute_s.pdf) (listing Task Force members for Northside Green Zone).

<sup>35</sup> Center for Earth, Energy and Democracy <http://ceed.org/> (last visited Jan. 21, 2022).

<sup>36</sup> See, e.g., East Phillips Neighborhood Institute – Indoor Urban Farm, <https://www.eastphillipsneighborhoodinstitute.org/> (last visited Jan. 21, 2022).

<sup>37</sup> See MPCA and environmental justice, <https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice> (listing seven organizations at the bottom of the page) (last visited Jan. 21, 2022).

Furthermore, Native-led organizations and tribal nations would likely have great insight into the needs for transparent and open communication of potential dangers and monitoring results that would be relevant to their constituencies.<sup>38</sup> Under Minn. Stat. § 10.65, Subd. 3, MPCA must consult with tribes regularly, but the Draft Plan makes no mentions of how the agency has consulted with them as opposed to the “stakeholders.” To the extent that MPCA has not fully consulted with tribal contacts regarding its Draft Plan it should suspend any plans to finalize the Monitoring Plan until it has done so.

## 5. Monitoring results must be made publicly available in accessible online formats

The public has a significant interest in MPCA’s PFAS testing results. Publicly released results both engage citizens and encourage legitimate decision-making through transparent means. As such, it is troubling that the Draft Plan does not name specific facilities that would have to undergo heightened testing (i.e., stack testing within the air monitoring plan) and there is reason to believe that the agency is not going to immediately publish the data it receives. The fact that the Draft Plan relies upon research on PFAS land application that includes data on anonymous participating facilities<sup>39</sup> is another troubling data gap that will not inspire public confidence in the ultimate results. It would be best to immediately publish all data received to an open database that is easy for the public to both understand and access.

Transparency ensures legitimacy in the process of establishing how dire the PFAS picture is for Minnesotans. The availability of, and ease of access by the public to, information held by the government, as well as the ability to observe or become informed about regulatory decision-making facilitates fully articulated agency decisions. This is because the general public has a significant interest in any action bearing on government misconduct. Simply put, increasing public access enables better public participation.

Preferably, the data would be visualized in a map that would allow the public to view PFAS sources by location and see the testing data develop at permitted locations over time. By providing the data in progress MPCA could save significant time and resources by getting ongoing public feedback and increasing the amount of testing based on identified gaps brought up by members of the public and advocates.

## 6. Conclusion

While MPCA has worked with its existing permittees and “stakeholders” in developing the Draft Plan, it is important that the agency continuously seek out the input of the Minnesotan public and advocacy organizations that have developed an expertise in toxics and waste issues. As such, we strongly suggest that MPCA comply with MEPA and create an advisory committee that can continuously improve upon the Monitoring Plan as information develops. This Monitoring Plan is a great opportunity for the agency to coordinate with experts, community representatives, and advocates from around the country to protect Minnesotans

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<sup>38</sup> See *id.* (listing tribal contacts that MPCA liaises on for certain permits).

<sup>39</sup> Draft Plan at 11 (“A number of municipal WWTPs are anonymously providing biosolids samples for the project.”).

from an identified but poorly-understood threat. Only monitoring a limited subset of PFAS discharges will greatly underestimate the problem, and failing to transparently share all available data with the public will undercut the goal of increasing the public's understanding. MPCA can achieve its goals through better inclusion and transparency, while still taking feedback from "stakeholders" outside of the advisory council context.

MPCA's Draft Plan is a necessary first step, yet MPCA must take further action to fully address PFAS contamination in Minnesota.

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