



November 7, 2022

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

Re: Docket No. EPA-HQ-OLEM-2019-0341

Dear Administrator Regan,

Thank you for proposing to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or “Superfund”). It is essential that we clean up PFAS contamination, including at the 180 Superfund sites where it has already been detected.¹ The proposed designation of PFOA and PFOS is one of the federal government’s first substantial steps toward making polluters pay for past PFAS contamination and discouraging future contamination. When the rule is finalized, it will jumpstart the process of identifying and cleaning up PFAS-polluted sites and in turn will help protect public health from these toxic “forever chemicals.”

As an organization, U.S. PIRG Education Fund is an advocate for the public interest. We speak out for a healthier, safer world in which we’re freer to pursue our own individual well-being and the common good. Environment America Research & Policy Center’s mission is to transform the power of our imaginations and our ideas into change that makes our world a greener and healthier place for all. Therefore, we strongly support this proposal, encourage the Environmental Protection Agency (EPA) to finalize it expeditiously, and urge the agency to consider the information outlined below when finalizing this proposed rule.

The designation of PFOA and PFOS as hazardous substances is an important first step to holding polluters accountable for cleaning up PFAS contamination.

PFOA and PFOS are the two oldest types of PFAS, or per- and polyfluorinated alkyl substances, which are a class of over 12,000 substances known as “forever chemicals” because they do not break down

¹ U.S. Senate committee on Environment and Public Works, Superfund sites identified by EPA to have PFAS contamination. (Accessed Nov. 4, 2022), <https://www.epw.senate.gov/public/index.cfm/superfund-sites-identified-by-epa-to-have-pfas-contamination>

and build up in our bodies and the environment.² Exposure to PFAS, even at low levels, can have a variety of negative health impacts including kidney and liver disease, fertility issues, birth defects and cancer.³ Biomonitoring studies by the federal Centers for Disease Control and Prevention show that the blood of nearly all Americans is already contaminated with PFAS.⁴

EPA's proposed designation of PFOA and PFOS represents one of the federal government's first concrete steps toward holding polluters accountable for past PFAS contamination and decades of disregard for the health and safety of communities. These two types of PFAS are the original two substances created in the 1940s and have become notorious since that time.⁵ PFOA and PFOS were originally manufactured by DuPont and 3M to make products such as Teflon and Scotchgard.^{6, 7} For decades these chemicals were used, largely unregulated, in thousands of applications.

Due to their wide use and persistence in the environment, PFOA and PFOS are now present in the drinking water of hundreds, if not thousands of community drinking water supplies, often due to avoidable past releases into the environment at contaminated sites. In addition to these two types, PFAS is a large class of over 12,000 different substances, many of which have *also* been found in drinking water supplies across the country. We strongly urge EPA to follow through on its commitment to issue in 2022 a proposed rulemaking seeking comments and data on designating additional PFAS for hazardous substance designation, as EPA pledged to do in its October 2021 PFAS Strategic Roadmap.⁸ When seeking comments on designating additional PFAS as hazardous substances, we urge EPA to consider the scientific consensus calling for the entire class of PFAS to be addressed together, especially since many communities are likely exposed to mixtures of multiple PFAS chemicals.⁹

EPA's designation, when it becomes final, will jumpstart the process of identifying and cleaning up PFAS-polluted sites.

PFAS are estimated to be present in the drinking water of 200 million Americans, often due to avoidable past releases into the environment at contaminated sites.¹⁰ The proposed hazardous substance

² CompTox Chemicals Dashboard, PFAS Masterlist of PFAS substances. (Aug. 10, 2021), <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster>

³ S.E. Fenton, et. al. Per- and Polyfluoroalkyl Substance Toxicity and Human Health Review: Current State of Knowledge and Strategies for Informing Future Research. *Environmental Toxicology and Chemistry*. (Oct. 5, 2020), <https://setac.onlinelibrary.wiley.com/doi/10.1002/etc.4890>

⁴ CDC, Per- and Polyfluorinated Substances (PFAS) Factsheet. (May 2, 2022), https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html

⁵ 3M, PFAS History. (Accessed Nov. 4, 2022), https://www.3m.com/3M/en_US/pfas-stewardship-us/pfas-history/#:~:text=Processes%20to%20commercially%20produce%20PFAS,on%20PFAS%2C%20including%20Scotchgard%E2%84%A2.

⁶ Dupont, Information on PFAS: Historical Use. (Accessed Nov. 4, 2022), <https://www.dupont.com/pfas/historical-use.html#:~:text=PFAS%20have%20been%20used%20to,repel%20oil%2C%20water%20and%20stains>.

⁷ 3M, PFAS History. (Accessed Nov. 4, 2022), https://www.3m.com/3M/en_US/pfas-stewardship-us/pfas-history/#:~:text=Processes%20to%20commercially%20produce%20PFAS,on%20PFAS%2C%20including%20Scotchgard%E2%84%A2.

⁸ EPA, PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024, at 9 (2021), https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.

⁹ C. F. Kwiatkowski, et. al, Scientific Basis for Managing PFAS as a Chemical Class. *Environmental Science & Technology Letters* (Jun. 30, 2020), <https://pubs.acs.org/doi/10.1021/acs.estlett.0c00255>

¹⁰ David Q. Andrews and Olga V. Naidenko, Population-Wide Exposure to Per- and Polyfluoroalkyl Substances from Drinking Water in the United States. *Environmental Science & Technology Letters* (Oct. 14, 2020), <https://pubs.acs.org/doi/10.1021/acs.estlett.0c00713>

designation unlocks EPA's authority to order cleanups, and to recover taxpayer funds from polluters when EPA itself conducts a cleanup. It would also authorize private parties conducting cleanup consistent with CERCLA rules to recover costs from responsible parties.

In addition, the designation would compel cleanups when federal agencies are responsible for contamination. PFAS has been detected at nearly 400 military sites, and testing has found PFOA and PFOS at concentrations deemed unsafe according to EPA's recently updated lifetime health advisory levels.¹¹

We therefore urge EPA to quickly finalize the proposed rule so as to start addressing known contamination, enable impacted communities to seek remediation and clean up, and to hold any polluter responsible for PFOA and PFOS contamination accountable.

Designating PFOA and PFOS as hazardous substances will help protect public health

A "hazardous substance" designation under Superfund triggers reporting requirements for releases over a certain threshold, or reportable quantity, and facilitates consideration of contaminated sites for investigation and potential cleanup.¹² However, as the proposed rule is currently written, the reportable quantity is set at the default amount of one pound per 24 hr period which is too high.¹³

In June 2022 EPA acknowledged that multiple studies have found that PFOA and PFOS pose health risks below their respective limits of detection, meaning "any detectable level of PFOA or PFOS will result in" potential harm to children and others.¹⁴ Therefore, all environmental releases of PFOA and PFOS are of potential public health concern, and should be reported so that regulatory officials are able to assess the threat and take action quickly to contain or remediate the release before it spreads through surface-water, groundwater, or other environmental pathways. In contrast, EPA's proposed reportable quantity would allow companies to release massive amounts of PFAS-containing waste before triggering any CERCLA requirements. In order to be health protective, the threshold for PFOA and PFOS releases should be lowered so that any release of these toxic substances must be reported.

We strongly urge EPA to incorporate the above information and move expeditiously to finalize the designation of PFOA and PFOS as hazardous substances. Communities impacted by PFAS contamination, through no fault of their own, have suffered too long from the health effects and often insurmountable remediation and treatment costs incurred due to PFAS releases into the environment by polluting industries. The proposed rule is an important step to protect public health and start addressing contaminated communities' needs.

Sincerely,

¹¹ Jared Hayes (EWG), Military's Filthy 50 sites contaminated with 'forever chemicals' haven't started cleanup. (Jun. 14, 2022), <https://www.ewg.org/news-insights/news/2022/06/militarys-filthy-50-sites-contaminated-forever-chemicals-havent-started>

¹² CERCLA and EPCRA Continuous Release Reporting. (April 2022), <https://www.epa.gov/epcra/cercla-and-epcra-continuous-release-reporting>

¹³ 87 Fed. Reg. 54,549. (Sept. 6, 2022), <https://www.federalregister.gov/documents/2022/09/06/2022-18657/designation-of-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-as-cercla-hazardous>

¹⁴ EPA, Technical Fact Sheet: Drinking Water Health Advisories for Four PFAS (PFOA, PFOS, GenX chemicals, and PFBS). (June 2022), <https://www.epa.gov/system/files/documents/2022-06/technical-factsheet-four-PFAS.pdf>.

Emily Rogers
Zero Out Toxics Advocate
U.S. PIRG Education Fund

John Rumpler
Senior Director, Clean Water for America Campaign and Senior Attorney
Environment America Research & Policy Center