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November 15, 2021

The Honorable Thomas R. Carper
Chairman
United States Senate Committee on
Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
United States Senate Committee on
Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Legislation to Protect Public Health and the Environment from PFAS

Dear Chairman Carper and Ranking Member Capito:

As the United States Senate Committee on Environment and Public Works moves forward with hearings[1] to address the threat to human health and the environment posed by the class of chemical compounds known as poly- and per-fluoroalkyl substances ("PFAS"), the undersigned state attorneys general write to urge the Committee to pass legislation that ensures that our states' most urgent needs are addressed. PFAS are associated with severe health effects, including cancer, thyroid disease, and liver damage. Our states are spending tens of millions of taxpayer dollars to protect our residents from PFAS by remediating PFAS contamination in drinking water, providing alternative drinking water supplies, testing the blood of residents of impacted communities, and determining the scope of contamination. The serious public health threats posed by PFAS contamination and the significant budgetary impacts incurred by our states in response call for swift Congressional action.

We urge the Committee to pass or build on the bi-partisan PFAS Action Act of 2021, H.R. 2467, passed by the U.S. House of Representatives on July 21st. The PFAS Action Act contains a number of provisions vital to protecting public health, including:

[1] *See* Evaluating the Federal Response to the Persistence and Impacts of PFAS Chemicals on our Environment: Hearing Before the Senate Committee on Environment and Public Works, 117 Cong. (Oct. 20, 2021).

- providing legal authority to compel responsible parties to cleanup PFAS contamination;
- reducing exposure to and identifying PFAS contamination in air and water;
- providing funding to address PFAS contamination in drinking water;
- making medical screenings available to individuals that may have been exposed to elevated levels of PFAS; and
- prohibiting the use of firefighting foam containing PFAS at federal facilities or by federal entities.

As discussed in more detail below, these and other provisions of the PFAS Action Act will provide urgently needed assistance to our states – and other states across the nation – and help protect public health and the environment from PFAS contamination.

Legislation would also build on the "whole-of-agency approach" by the U.S. Environmental Protection Agency ("EPA") to address PFAS contamination, as set forth in its recent *PFAS Strategic Roadmap*.[2] While the *Roadmap* describes very significant and valuable efforts and timelines for achieving certain goals, legislation is still needed to ensure urgent needs are met in a timely fashion and with sufficient appropriations, as EPA has recognized in its testimony before this Committee.[3] We encourage the Committee to pass legislation that includes deadlines that reflect the need for urgency and ensure that EPA abides by the voluntary commitments it has made in the *Roadmap.*

Although Congress recently took a significant step in passing legislation providing substantial funding to address PFAS contamination, *see* Infrastructure Investment and Jobs Act, H.R. 3684, Division J, Title VI, more funding – particularly for the priorities discussed below – is vitally needed due to widespread PFAS contamination in drinking water and other media.

Background

PFAS have been used to produce countless consumer products since the 1940s, including textiles with Scotchgard™; Teflon™ products, including non-stick cookware; food packaging; and waterproof clothing. Firefighting foam containing PFAS has also been used for decades by the U.S. military, airports, industrial facilities, and local fire departments. While PFAS are entirely human-made, they are estimated to be detectable in the blood stream of 99% of the U.S. population. Unfortunately, PFAS generally appear to be highly toxic to humans and animals, they tend to bioaccumulate in organisms and migrate up the food chain, and they are extremely resistant to degradation in the environment – that is why PFAS are known as "forever chemicals." Although scientific knowledge regarding PFAS is still developing, PFAS are linked to serious adverse health effects in humans and animals. The two most studied types of PFAS are perfluorooctanoic acid/perfluorooctanoate, known as PFOA, and perfluorooctane sulfonic

[2] EPA, *Strategic Roadmap: EPA's Commitments to Action 2021-2024* (October 2021) ("EPA Roadmap") at 5, https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf (last visited Nov. 12, 2021).
[3] *See* Evaluating the Federal Response to the Persistence and Impacts of PFAS Chemicals on our Environment: Hearing Before the Senate Committee on Environment and Public Works, 117 Cong. (Oct. 20, 2021) (Statement of the Honorable Radhika Fox, Asst. Administrator, Office of Water, EPA at 69-70, https://www.epw.senate.gov/public/_cache/files/3/d/3dca7fce-e7b5-4cee-9807-b9fcd2bb9440/01EA503DF4B3BFE61B7EE666AA2FCF09.spw-10202021.pdf (last visited Nov. 12, 2021)).

acid/perfluorooctane sulfonate, known as PFOS. Human health effects associated with exposure to PFOA include kidney and testicular cancer, thyroid disease, liver damage, and preeclampsia; exposure to PFOS is associated with immune system effects, changes in liver enzymes and thyroid hormones, and other conditions.[4]

Our states face substantial threats to public health and the environment posed by PFAS. We are spending tens of millions of dollars to address contamination in drinking water sources – installing equipment to remediate PFAS contamination, providing alternative drinking water supplies, testing the blood of impacted communities, and investigating numerous areas of potential contamination, among other efforts. Other states are just beginning to investigate the extent of PFAS contamination within their borders. Contaminated sites include areas in or around military bases where firefighting foam was used, firefighting training centers, civilian airports, industrial facilities, landfills, and wastewater residuals disposal facilities. PFAS from many of these sites have migrated to contaminate nearby public and private drinking water supplies, at great costs to impacted communities and our states.

We believe that Congress and the EPA ultimately will need to address the entire PFAS "lifecycle"– production, use, exposure, cleanup, and disposal.[5] We therefore applaud the House of Representatives for taking significant steps in addressing particularly important issues for our states by advancing the PFAS Action Act. We also applaud EPA's efforts in publishing its *PFAS Strategic Roadmap* and we applaud Congress for providing significant funding to address PFAS contamination in the Infrastructure Investment and Jobs Act. The experiences of our states in responding to the dangers of PFAS points to several urgent legislative needs, many of which are addressed by the PFAS Action Act and are also set forth in EPA's *Roadmap*.

For the reasons set forth below, as the Committee moves forward to address PFAS contamination, we urge you to pass legislation that supports the following measures to address the profound and widespread health and environmental risks posed by PFAS contamination. Any legislation, of course, should not impair the existing rights of states to pursue appropriate remedies under their own authorities.

Legislative Priorities the Committee Should Address

1. Promote the Prompt and Effective Cleanup of PFAS by Designating them "Hazardous Substances" Under CERCLA

We support the designation of PFAS as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").[6] *See*

[4] *See, e.g.*, C8 Science Panel, http://www.c8sciencepanel.org/ (last updated January 22, 2020); U.S. Environmental Protection Agency, *Basic Information on PFAS*, https://www.epa.gov/pfas/basic-information-pfas#health (last visited Nov. 12, 2021).

[5] EPA has acknowledged that it "needs to take a lifecycle approach to PFAS in order to make meaningful progress" to address PFAS contamination. EPA Roadmap at 6.

[6] 42 U.S.C. §§ 9601-9675. EPA announced in February 2019 that it would designate PFOA and PFOS as "hazardous substances" under CERCLA. EPA, *EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan* (February 2019) at 28, https://www.epa.gov/sites/default/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf (last visited Nov. 12, 2021); EPA, *EPA PFAS Action*

PFAS Action Act § 2. This designation should include but not be limited to PFOA and PFOS. Additionally, EPA should be directed to immediately study other PFAS and to designate all or some of the substances in the PFAS class of chemical compounds as hazardous substances under CERCLA. *Id.*

That designation will help promote the cleanup of some of the worst contaminated sites in the country that pose substantial threats to human health and/or the environment, including sites currently or formerly owned or operated by the U.S. Department of Defense ("DOD"). DOD has identified 687 of its installations with known or suspected releases of PFAS, and many nearby drinking water sources are contaminated with PFAS.[7] DOD has not, however, actually begun long-term cleanups of any of these installations, and it is not generally addressing PFAS contamination in drinking water where state standards are exceeded but federal health advisory levels are not.[8] Because CERCLA applies to facilities owned or operated by the federal government,[9] a designation of certain PFAS as hazardous substances under CERCLA would promote the appropriate cleanup of these sites by the federal government. A designation under CERCLA would also enable the use of monies in federal or state Superfund programs to clean up so-called "orphan" sites where responsible parties cannot be identified or located or they fail to act. Contaminated sites that are subject to CERCLA would be cleaned up in a manner consistent with CERCLA's well-established procedures and protocols.[10] Additionally, cleanups should achieve state and tribal standards relating to PFAS.[11] Legislative carve-outs under CERCLA for certain types of facilities could be provided, as appropriate.

CERCLA also provides reporting requirements for releases of hazardous substances over certain thresholds, and that reporting will facilitate investigations and potential cleanups of federal facilities and other sites across the country.[12] Congress should also direct EPA to identify scientifically sound analytical standards and methodologies for testing for PFAS in various environmental media.[13] *See* PFAS Action Act § 5(16)(B).

Plan: Program Update (February 2020) ("EPA 2020 Action Plan Update") at 9, https://www.epa.gov/sites/default/files/2020-01/documents/pfas_action_plan_feb2020.pdf (last visited Nov. 12, 2021). EPA stated in its *Roadmap* that it expects to issue a proposed rulemaking that designates PFOA and PFAS as hazardous substances under CERCLA in Spring 2022, and that it also expects to issue an advance notice of proposed rulemaking concerning designation of other PFAS as hazardous substances under CERCLA in Spring 2022. EPA Roadmap at 17.

[7] *See* U.S. Gov't Accountability Office, *Firefighting Foam Chemicals*, *DOD Is Investigating PFAS and Responding to Contamination, but Should Report More Cost Information* (June 2021) ("2021 GAO Report") (discussing information available as the end of fiscal year 2020) at 12, 17, https://www.gao.gov/assets/gao-21-421.pdf (last visited Nov. 12, 2021).

[8] *See* 2021 GAO Report at 16 and n.32, 18-19.

[9] *See* 42 U.S.C. §§ 9601(21), 9620.

[10] *See* 40 C.F.R. Part 300.

[11] The U.S. House of Representatives has passed legislation that would require cleanups by DOD of certain PFAS to achieve state and federal standards and health advisories under the Safe Drinking Water Act. *See* National Defense Authorization Act for Fiscal Year 2022, H.R. 4350 § 321.

[12] *See* 42 U.S.C. § 9603.

[13] EPA has validated new methods for testing for some PFAS in drinking water. *See* EPA, *EPA Announces New Method to Test for Additional PFAS in Drinking Water* (Dec. 19, 2019), https://www.epa.gov/newsreleases/epa-announces-new-method-test-additional-pfas-drinking-water (last visited Nov. 12, 2021). EPA expects to validate analytical methods to test for additional PFAS in drinking water by Fall 2024. EPA Roadmap at 15. In September

2. Protect Public Health by Designating PFAS "Hazardous Air Pollutants" Under the Clean Air Act and Prohibiting the Unsafe Incineration of PFAS

We also support the designation of PFOA and PFOS as "hazardous air pollutants" under the Clean Air Act.[14] *See* PFAS Action Act § 8. EPA should also be directed to consider whether to designate other PFAS as hazardous air pollutants.[15] *Id.* PFAS in the air may be hazardous to breathe and it may also be deposited on the ground, creating an additional pathway for PFAS to enter the environment to the detriment of human health.[16] Designating PFAS as hazardous air pollutants will promote the control and reduction of PFAS pollution in air. Congress has already required DOD to ensure that any incineration of PFAS achieves "the maximum degree of reduction in emission of PFAS,"[17] and we support a prohibition on the unsafe waste incineration of PFAS that extends beyond DOD to any other entity. *See* PFAS Action Act § 9.

3. Protect Public Health by Establishing National Primary Drinking Water Regulations for PFAS and Controlling PFAS Discharges

The Committee should support the establishment of national primary drinking water standards ("NPDWRs") under the Safe Drinking Water Act[18] for PFOA and PFOS and direct EPA to determine whether to also set NPDWRs for other PFAS. *See* PFAS Action Act § 5.[19] NPDWRs protect public health by setting legally enforceable limits for dangerous contaminants in public drinking water.[20] Unfortunately, many public and private drinking water sources are contaminated with high levels of PFAS from firefighting foam used at DOD installations and other sources.[21] Setting NPDWRs for PFAS will protect against urgent threats to public health in drinking water.

2021, EPA published a draft method to test for forty PFAS in various environmental media, and it continues efforts to develop additional testing methods. *See id.* at 15, 18.

[14] *See* 42 U.S.C. § 7401 *et seq*.

[15] EPA has stated that by Fall 2022, it will evaluate options to mitigate emissions of PFAS in air, "including listing certain PFAS as hazardous air pollutants and/or pursuing other regulatory and non-regulatory approaches." EPA Roadmap at 18.

[16] "EPA is working to better characterize and understand the environmental impacts of PFAS emitted to the air." EPA 2020 Action Plan Update at 14.

[17] National Defense Authorization Act for Fiscal Year 2020, Public L. 116-92 § 330. The U.S. House of Representatives has also passed legislation that would impose a temporary moratorium on the incineration of PFAS and firefighting foam. *See* National Defense Authorization Act for Fiscal Year 2022, H.R. 4350 § 318. EPA is "conducting research on destruction and disposal technologies" for PFAS. EPA Roadmap at 17.

[18] 42 U.S.C. § 300f *et seq.*

[19] While EPA has already decided to determine NPDWRs for PFOA and PFOS, *see* 86 Fed. Reg. 12272 (March 3, 2021), that process can take more than three years, *see* EPA, *Background on Drinking Water Standards in the Safe Drinking Water Act (SDWA)*, *Regulation Development*, https://www.epa.gov/sdwa/background-drinking-water-standards-safe-drinking-water-act-sdwa (last visited Nov. 12, 2021). EPA also recently stated that it expects to issue final regulations relating to other PFAS in Fall 2023. EPA Roadmap at 13. The PFAS Action Act would require EPA to set NPDWRs for PFOA and PFOS within two years and require that the NPDWRs for them be "protective of the health of subpopulations at greater risk." *See* PFAS Action Act §§ 5(16)(A), (E). The PFAS Action Act also provides timelines for collecting data about other PFAS in drinking water and setting NPDWRs and health advisories for those PFAS. *Id.* §§ 5(16)(G)-(H).

[20] *See* 42 U.S.C. § 300g *et seq*.

[21] *See* 2021 GAO Report at 16-19 and Appendix 2 (discussing high levels of contamination of drinking water sources at or near DOD installations).

We also support the establishment of limits on discharges of PFAS through the setting of notification requirements, pretreatment standards, and effluent limitations under the Clean Water Act.[22] *See* PFAS Action Act §§ 13, 17. While EPA has stated that it intends to "make significant progress in its ELG [effluent limitations guidelines] work by the end of 2024,"[23] the Committee should ensure that effluent limitations apply to a sufficiently broad array of industries and that those limitations are implemented in a timely manner, as set forth in the proposed Clean Water Standards for PFAS Act of 2021, S. 1907.[24] The establishment of such limits will protect our waters and environment and reduce the need to remediate PFAS in drinking water and thereby reduce costs. We further support adding PFAS to the list of toxic pollutants in the Clean Water Act. *See* PFAS Action Act § 17.

4. Provide Funding to Drinking Water Providers to Remediate PFAS in Drinking Water

Legislation should provide financial assistance to drinking water providers to remediate PFAS in drinking water. *See* PFAS Action Act §§ 7, 16, 17(d); Infrastructure Investment and Jobs Act, Division J, Title VI. Priority should be given to drinking water providers in communities that are economically disadvantaged and/or have been historically disproportionately exposed to other contaminants in their drinking water (for example, communities near military installations and communities of color). Water providers in those communities may not be able to afford the costs of remediating PFAS, and without financial assistance, any increased costs they incur could be imposed on consumers.

5. Provide Funding to States to Remediate PFAS Contamination

Just as the Committee should support the provision of funding to drinking water providers to remediate PFAS contamination, funding should also be provided to states that have spent significant funds to protect against or respond to PFAS contamination. As noted above, some of our states and other states have spent – and continue to spend – tens of millions of dollars to address contamination in public drinking water sources, to investigate numerous areas of potential contamination across our communities, and to prioritize responses to such contamination. Much of this contamination was caused by firefighting foam used by DOD and some of the contamination was also caused by the spreading of wastewater treatment sludge. The states need and deserve assistance with this significant financial burden.

6. Make Medical Screenings Widely Available

Congress previously required DOD to provide blood testing to determine if its firefighters have been exposed to PFAS.[25] Medical screenings for PFAS should be made available to all DOD personnel and members of the public that may have been exposed to elevated levels of PFAS. Our residents deserve to know about threats to their health.

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[22] 33 U.S.C. § 1251 *et seq*.
[23] EPA Roadmap at 13.
[24] *See also* letter from U.S. Senators to the Honorable Michael Regan, EPA Administrator, October 7, 2021, https://www.gillibrand.senate.gov/imo/media/doc/Letter%20to%20EPA%20on%20PFAS%20Roadmap.pdf (last visited Nov. 12, 2021).
[25] National Defense Authorization Act for Fiscal Year 2020, Public L. 116-92 § 707.

7. Prohibit the Use and Limit the Storage of Firefighting Foam Containing PFAS at Federal Facilities

Congress should prohibit the use of firefighting foam ("AFFF") containing PFAS at federal facilities as quickly as possible and should set strict conditions for the continued storage of existing AFFF at such facilities until a safe method for disposal of AFFF is identified.[26] DOD's core mission is to protect the nation, but its use of AFFF imperils the nation's health. Additionally, the vast majority of AFFF is used for firefighting training, not fighting fire. Congress should require that training foams that do not contain PFAS be used instead of AFFF containing PFAS and that barriers or other containment measures be used in areas in which foam is discharged, to prevent contamination of the environment.[27]

* * *

The public in our states and in states across the country increasingly understand the gravity of risks that PFAS contamination poses to their health and the environment. Without additional federal legislative support, states' responses to this burgeoning threat will be hindered, and the public may lose confidence in the safety of the water they drink, the air they breathe, and the consumer products they use.

We applaud your Committee's attention to the many dangers posed by PFAS in our communities and environment. We urge the Committee to pass or build on the PFAS Action Act by supporting the legislative needs highlighted above. We offer our assistance to the Committee as you undertake this extremely important work.

While EPA's *Roadmap* describes very significant and valuable efforts and timelines for achieving certain goals, legislation is still needed to ensure urgent needs are met in a timely fashion and with sufficient appropriations, as EPA has recognized in its testimony before this Committee. The Infrastructure Investment and Jobs Act provides significant funding to address PFAS contamination in drinking water, but more funding is needed to adequately address the scope of the problem, which is widespread.

Thank you for your time and consideration of these urgent matters.

[26] Congress has required DOD to ensure that there is a PFAS-free firefighting agent available for use by October 1, 2023. *See* National Defense Authorization Act for Fiscal Year 2020, Public L. 116-92 § 322(a)(1). Congress has also prohibited DOD from using firefighting foams containing PFAS at military installations beginning on October 1, 2024; however, the DOD Secretary can waive this prohibition for two years if Congress is notified, and the prohibition also does not apply to use on ocean-going vessels. *Id.* §§ 322(c)-(e).

[27] The U.S. House of Representatives has passed legislation that would require DOD to issue guidance regarding the use of containment berms and the covering of storm drains and catch basins when performing maintenance activities that could result in spills of firefighting foam containing PFAS. *See* National Defense Authorization Act for Fiscal Year 2022, H.R. 4350 § 322.

Sincerely,

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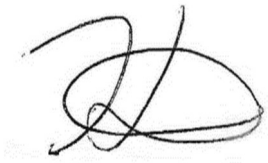

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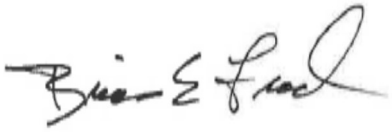

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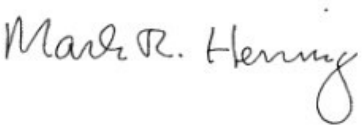

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The Honorable Charles E. Schumer, Majority Leader, United States Senate
The Honorable Mitch McConnell, Minority Leader, United States Senate
The Honorable Nancy Pelosi, Speaker, United States House of Representatives
The Honorable Steny Hoyer, Majority Leader, United States House of Representatives
The Honorable Kevin McCarthy, Minority Leader, United States House of Representatives
Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce
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Rep. Paul Tonko, Chairman, House Subcommittee on Environment and Climate Change
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