Environmental Protection Network

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The Honorable Jack Reed
Chair, Committee on Armed Services
U.S. Senate
728 Hart Senate Office Building
Washington, DC 20510

The Honorable James Inhofe
Ranking Member, Committee on Armed Services
U.S. Senate
205 Russell Senate Office Building
Washington, DC 20510

The Honorable Thomas Carper
Chair, Committee on Environment and Public Works
U.S. Senate
513 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member, Committee on Environment and Public Works
U.S. Senate
172 Russell Senate Office Building
Washington, D.C. 20510

Re: *Including H.R. 7900 Sections 5816 and 5883 in the James M. Inhofe National Defense Authorization Act*

Dear Senator Reed, Senator Inhofe, Senator Carper, and Senator Capito:

As the Executive Director of the Environmental Protection Network (EPN), an organization comprised of over 550 U.S. EPA alumni volunteering their time to protect the integrity of EPA and its mission, I am writing in regard to S. 4543, the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023. EPN urges the Senate Armed Services Committee to adopt two amendments into S. 4543 similar to those included in H.R. 7900 regarding critical actions on per- and polyfluoroalkyl substances (PFAS).

The first House amendment that should be included in S. 4543 requires EPA to use the definition of PFAS developed by the Organization for Economic Cooperation and Development (OECD) for the PFAS reporting rule mandated by the FY2020 NDAA. The second amendment requires EPA to promulgate national technology-based PFAS permit limits for the wastewater discharges of ten industries by 2027. While EPN agrees that the Senate should require EPA to focus on these ten industries, we recommend that S. 4543 change EPA's rulemaking process in order to accelerate promulgation of PFAS permit limits for these industries. We urge the Senate to consider both these amendments as critical to reducing the public health risks posed by these toxic chemicals. In the following sections, we explain the benefits of adopting these two amendments.

<u>Use of OECD Definition of PFAS for Reporting Rule Under TSCA</u>

The FY2020 NDAA (P.L. 116-92, Section 7351) directed EPA to promulgate a rule under Section 8(a)(7) of the Toxic Substances Control Act (TSCA) requiring persons who manufactured (or imported) PFAS in any year since January 1, 2011, to electronically report information regarding their PFAS uses, production volumes, disposal, exposures, and hazards. In June 2021, EPA proposed this reporting and recordkeeping rule but narrowly defined PFAS to include substances with at least two adjacent fluorinated carbon atoms. Unfortunately, this definition excludes a number of PFAS which are found in air, surface water, drinking

water, and human blood in North Carolina and elsewhere. In 2021, after a three-year, multi-stakeholder international review of PFAS terminology that included EPA, OECD updated their recommended definition of PFAS to include substances with only one fully fluorinated carbon atom. The HR 7900 bipartisan amendment clarifies the scope of reporting by adding this OECD definition of PFAS to TSCA Section 8(a)(7), thus requiring EPA to use that definition for the PFAS reporting rule. We urge the Senate Armed Services Committee to add that same amendment to S. 4543 for the following reasons.

Congress was right to require comprehensive industry reporting on all PFAS manufactured or imported over the last 11 years. This reporting rule will provide vital information on the PFAS that all Americans, including our military families throughout the country, are exposed to. This information will be a critical resource for federal and state regulators and public health professionals and create a sound foundation for efforts to reduce PFAS exposure and risks. It is imperative that EPA obtain information under the rule on the full set of PFAS posing threats to the environment and public health, but the current EPA definition excludes PFAS that we know are in people's drinking water, blood, and the air they breathe, including some that are manufactured and incinerated in high volumes.

While Congress may decide to address other aspects of PFAS policy in future legislation, the definition of PFAS for purposes of the reporting rule required in the FY2020 NDAA must be addressed immediately. Because EPA is required to finalize the reporting rule by the end of this year, Congress should include the H.R. 7900 Section 5816 amendment in FY2023 NDAA and require reporting for all PFAS meeting the OECD definition. Throughout the entire life cycle of these fluorinated chemicals, variable amounts and types of PFAS may be released into the environment from manufacturers' wastewater and stormwater, stack fugitive emissions, spills, disposal of PFAS-containing or treated materials, and general wear and tear of consumer products. Congress and the public need to understand the sources and quantities of all these chemicals manufactured in the U.S. Industry reporting on a complete set of PFAS will allow federal, state, and academic researchers to prioritize their limited resources on those chemicals that have the greatest potential for harming the environment and people. State environmental agencies, water utility trade associations, and state Attorneys General have all called on EPA to broaden its definition of PFAS in its final reporting rule due to their concerns that the agency's proposed "working definition" of PFAS is too narrow to accurately capture and account for the full range of PFAS to which people are currently being exposed or may be exposed in the future. The OECD definition is consistent with how Congress has generally defined PFAS, as well as with most state-adopted definitions, whereas EPA's current definition is an outlier.

Adopting a narrow definition of PFAS that excludes specific types of PFAS or whole categories of PFAS uses is unjustified, particularly for a reporting rule intended to generate data and obtain a common understanding of the scope of the PFAS crisis. The PFAS reporting rule does not regulate or affect any use of any PFAS. The rule simply provides EPA, Congress, and other policy makers with the information necessary to make considered decisions about how to address widespread PFAS contamination and ensures the public's right-to-know about what PFAS are being manufactured, how they are used, and where exposure may be occurring. In addition, without a clear identification of what PFAS are being manufactured and how they are being used, we are stifling American innovation that will allow us to move away from production of PFAS and toward the adoption of safer alternatives.

National Technology-Based PFAS Permit Limits for Industrial Wastewater

In order to determine if they also need national PFAS permit limits, H.R. 7900 Section 5883 requires EPA to promulgate national technology-based PFAS permit limits for eight different industries between 2024 and 2026 and to monitor two additional industries by 2023. The House amendment makes no change in the EPA rulemaking process to help meet these tight deadlines. While we agree that in order to address the PFAS contamination crisis EPA needs to expeditiously control industrial wastewater discharges of PFAS, we believe these deadlines are currently unachievable given the low staff and funding levels of EPA's effluent limitation guideline program and given the burdensome and time-consuming process steps required for promulgating these permit limits under the current law. We recommend instead that S. 4543 modify this House provision to authorize changes in the effluent limitation guideline process that would accelerate rulemaking for PFAS.

Because these substances pose such a widespread threat to public health and the environment, we recommend that S. 4543 amend the Clean Water Act (CWA) to declare a public health emergency for PFAS. A July 28, 2022, National Academy of Sciences (NAS) consensus report underscores the serious risks of these substances. The new "Guidance on PFAS Exposure, Testing, and Clinical Follow-Up" report[1] concludes that sufficient evidence exists for an association between PFAS exposure and increased risk of lowered antibody response in adults and children, decreased infant and fetal growth, and kidney cancer in adults. As a result, the NAS panel recommends that clinicians screen people with blood serum PFAS concentrations as low as 2 parts per billion (2 ng/ml) for various health conditions. It is time to stop the ongoing contamination of our air, water, and land with these toxic chemicals.

Under this public health emergency, S. 4543 should authorize EPA to waive the paperwork reduction act requirements for gathering industry data on each PFAS-discharging industrial category. This change alone would save at least one year of rulemaking. S. 4543 should further redefine Best Available Treatment Technology Economically Achievable (BAT) under this emergency to be Best Performing Treatment Technology. EPA would select the technology in use by one or more industrial facilities within each industrial category that is achieving the greatest reduction in PFAS as Best Performing Treatment Technology. S. 4543 should further authorize EPA to promulgate national permit limits based on this Best Performing Treatment Technology without requiring analysis of the economic achievability of this technology for all facilities within the industrial category. This additional change in the process would save another year of rulemaking.

We recommend that S. 4543 require EPA to focus on four key industries known to have significant PFAS discharges. Those four industries are organic chemicals, plastics, and synthetic fibers; electroplaters and metal finishers; textile mills; and landfills. The other six industries cited in HR 7900 are makers of electrical and electronic compounds; paint formulators; plastics molding and forming; leather tanning and finishing; pulp, paper, and paperboard; and airports. For these six industries, EPN recommends that S. 4543 require states to use emerging contaminant funds provided by the bipartisan infrastructure bill to monitor direct discharges from these industries and require publicly owned treatment works (POTWs) to use these funds to monitor discharges into their facility from these industries. POTWs should also monitor their final

[1] https://nap.nationalacademies.org/catalog/26156/guidance-on-pfas-exposure-testing-and-clinical-follow-up

effluent and sludge to evaluate the pass-through of PFAS from these dischargers. States and POTWs would then quickly gather the data needed for EPA to determine if national technology-based permit limits are required for these additional industries.

We further recommend that S. 4543 authorize adequate funds for EPA to expeditiously promulgate national permit limits for the four high-priority PFAS-discharging industries. Even with the streamlined process under the public health emergency declaration, each rulemaking would require at least $5 million.

We appreciate this opportunity to submit comments to the record for your deliberations on S. 4543 and stand ready to brief the Committee members or their staff on our PFAS recommendations.

Respectfully submitted,

Michelle Roos

Executive Director
Environmental Protection Network

cc: Michael Regan, EPA Administrator
Michal Freedhoff, Assistant Administrator, EPA Office of Chemical Safety and Pollution Prevention
Radhika Fox, Assistant Administrator, EPA Office of Water