

July 3, 2023

The Honorable Thomas R. Carper  
Chair, Committee on Environment and Public  
Works  
U.S. Senate  
513 Hart Senate Office Building  
Washington, DC 20515

The Honorable Shelley Moore Capito  
Ranking Member, Committee on Environment  
and Public Works  
U.S. Senate  
172 Russell Senate Office Building  
Washington, DC 20515

*Re: Draft PFAS Legislation of 2023*

Dear Chairperson Carper and Ranking Member Capito,

Founded in 2017, the [Environmental Protection Network](#) (EPN) harnesses the expertise of more than 550 former EPA career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise. EPN appreciates the opportunity to comment on this draft bill, which is the result of a bipartisan effort to address PFAS contamination.

### **General Comments**

Effective management of public health risk associated with PFAS in the U.S. requires a comprehensive, science-based framework. The proposed legislation is a step forward in the advancement of such a framework. However, one key concern is that the bill as currently drafted would fail to address 40% (or more) of the PFAS present in the U.S. environment. While Sections 3 through 11 would provide important new authorities for EPA; supplement EPA staff with experts from the National Academies of Science, Engineering, and Medicine (NASEM), private sector stakeholders, and standards-setting organizations; and authorize much-needed appropriations to accelerate public health protection, all of these provisions are undermined by the narrow definition of PFAS in Section 2 of the bill. Unless this definition is expanded, this bill will fail to fully protect the American people from PFAS pollutants. We strongly recommend that the Senate replace this narrow definition with the definition developed by the Organization for Economic Co-operation and Development (OECD). The OECD defines PFAS as fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom (without any H/Cl/Br/I atom attached to it), which captures the broad PFAS class that ranges from small molecules to complex aromatics. This definition is used by the European Union.

We are also greatly concerned that the bill may be amended to include Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund) liability exemptions for PFAS for certain industry categories, as proposed by legislation introduced by members of the Environment

and Public Works Committee. For over 40 years, CERCLA has served as the nation's preeminent "polluter pays" law. It has facilitated restoration of over 1,000 contaminated sites to support new and ongoing uses and has controlled harmful chemical exposures at hundreds more sites. Congress has never amended the law to exempt any chemical or any industry, including wastewater treatment plants, from CERCLA coverage. To do so would be unjustified and unwise, could delay cleanups and prolong health risks from PFAS, and could open the door to additional industries demanding exemptions from this bedrock environmental law. Liability exemptions undercut CERCLA's polluter pays principle. EPA uses enforcement authority judiciously to hold polluters accountable and has successfully worked to ensure that small contributors and innocent parties are not unfairly held responsible.

Below, we provide comments on each section of the bill and further explain our concerns regarding CERCLA exemptions. We would welcome the opportunity to meet with Senate staffers to discuss our recommendations in more detail.

## **Technical Comments**

### Section 2: Definitions

The blood serum data from the Cape Fear, North Carolina, population prove that people exposed to PFAS discharges from industrial facilities are contaminated with many more PFAS chemicals than the bill's current definition of PFAS recognizes. States have been defining PFAS as a class of fluorinated organic chemicals containing "at least one fluorinated carbon atom." Use of a narrow definition in the bill would undermine state efforts to regulate PFAS by excluding many chemicals they are now regulating or planning to regulate. It would also remove EPA monitoring and reporting requirements for fluorinated compounds that may at some point be found harmful, and would completely withdraw EPA's obligation to track their manufacture, use, and transport and assess their potential harm to human health and the environment.

We urge the Senators to replace the currently-proposed narrow definition with the OECD definition. The following non-polymers are included under the broader OECD definition: perfluoroalkyl acids; compounds derived from perfluoroalkane sulfonyl fluorides; fluorotelomer-based compounds; and per- and polyfluoroalkyl ether-based compounds. The polymeric PFAS included under this definition are fluoropolymers, side-chain fluorinated polymers, and perfluoropolyethers. It is critical for public health protection that this bill be revised to incorporate the OECD definition of PFAS. Doing so would ensure that EPA monitoring and reporting requirements for fluorinated compounds would continue, permitting ongoing assessment of their potential negative impacts to the public and environmental health. Adoption of the OECD definition would also advance a worldwide standard that can facilitate trade for products containing these chemicals in international commerce.

### Section 3: Maximum Contaminant Level for PFAS

EPN does not understand why the bill requires that EPA promulgate drinking water standards for PFOA, PFOS, PFHxS, PFNA, PFBS, and HFPO-DA by September 30, 2024, when EPA's Spring 2023 Unified Agenda shows the final rule is scheduled for January 2024. It may be helpful for this bill to set a "no later

than” deadline to ensure bureaucratic processes do not delay these critically important drinking water standards. It would be much more helpful, however, if the bill provided timelines for EPA to regulate more PFAS and to regulate more mixtures found in drinking water.

#### Section 4: National Academies Study on the Uses of PFAS

We are supportive of NASEM evaluating the costs and benefits of current PFAS uses; identifying the beneficial and nonessential uses of PFAS; describing the availability and efficacy of substitute chemicals; and recommending reduction in nonessential and single uses. The NASEM identification of nonessential uses will allow states and private companies to take action reducing PFAS in commerce without waiting for EPA to restrict or ban such uses through the TSCA-mandated seven-year rulemaking process. States and private companies have already taken action to reduce PFAS exposures, and this study will help accelerate these efforts.

#### Section 5: State Revolving Fund Usage

Allowing states to use up to one percent of their State Revolving Fund administrative fees to maintain a list of industrial users of PFAS within the state’s boundaries will help states quickly identify sources of PFAS contamination and alert their drinking water systems and publicly-owned treatment plants (POTWs) to their presence.

The bill stops short of actually addressing PFAS risks from these sources. We recommend requiring action to reduce these discharges once they have been identified. We also recommend that the Senators add a new PFAS pretreatment provision to this section of the bill. This new provision would require industrial users of PFAS that discharge to a POTW to begin quarterly monitoring of all measurable PFAS. The pretreatment authority would be required to use this monitoring data to add Best Management Practices or pretreatment limits to the industrial users’ permits that would reduce their PFAS. POTWs would be required to conduct quarterly monitoring of all measurable PFAS in their influent, effluent, and biosolids in order to evaluate the effectiveness of the industrial users’ pretreatment.

As with EPA’s vast experience with pretreatment for other pollutants, this new requirement would achieve dramatic reductions in PFAS discharges and immediately improve the quality of POTW effluent and biosolids. Forty-eight states allow biosolids to be applied to farmland, with the potential to contaminate crops and grazing animals if PFAS is not removed. To date, Michigan is the only state that has required its POTWs to identify industrial users discharging PFAS and to implement source controls. Michigan is reporting a 90% reduction in PFOS as a result, primarily because POTWs with significant PFAS pollution required industrial users to install granulated activated carbon systems and to eliminate leaking sources of PFAS. Based on all this experience, we recommend the Senate bill require all the states and territories to implement a PFAS pretreatment program.

#### Section 6: Technical Fix to State Response to Contaminants Program

We support the bill’s fix to make it clear that grant funding provided by EPA to the states may be used to remediate or mitigate private well contamination. This provision will help many rural communities

throughout the U.S. suffering from PFAS-contaminated ground water.

#### Section 7: Risk Management and Communication Strategies

EPN supports the requirement that EPA create and maintain a clearinghouse of risk management strategies used by states, territories and Tribes, a risk management guide for the public, and an annual report to Congress on risk management and communication strategies. State laws have allowed a number of states to move more rapidly than EPA to reduce PFAS discharges to the environment and to restrict or ban PFAS-containing products. These successes need to be shared with the public in a central clearinghouse in order to accelerate their use by others. The creation and maintenance of such a clearinghouse is a big undertaking, and we agree that \$5M for each of fiscal years 2024 through 2028 is needed for this purpose.

#### Section 8: PFAS Research and Development

The research program outlined in this section, especially the \$500M in funding, can accelerate the implementation of the EPA Office of Research and Development's Transcriptomic Assessment Product. This promising new assessment approach utilizes short term *in vivo* study design and data analysis procedures to derive toxicity reference values for data-poor chemicals. This approach could be a game changer for PFAS, allowing the rapid development of non-cancer toxicity levels for the thousands of PFAS chemicals with no existing or publicly accessible animal toxicity studies or suitable human evidence.

However, the research program will need close coordination with the Department of Defense (DoD)'s research on technologies for PFAS treatment, remediation, reduction, destruction, and disposal across media. EPA and DoD must ensure that there is no duplication of work and that the substance and timing of research products accelerates both agencies' efforts.

#### Section 9: PFAS Technology Development Prize

EPN supports a prize competition to encourage innovation in technologies for identifying PFAS in low concentrations in the environment, preventing the intrusion of PFAS in the environment, and destroying PFAS. The advisory board will provide experts from the private sector, academia, and federal agencies who can advance promising approaches by awarding prize money and publicizing the winners.

#### Section 10: Standards for the Detection, Reduction, Destruction, Remediation, and Verification of PFAS

EPN supports the requirement that EPA work with standards-setting organizations to supplement the agency's development of analytical methods, treatment technologies, and remediation approaches. Standards-setting organizations have experts who can accelerate EPA's efforts to get standard methods and technologies ready for use nationwide.

#### Section 11: Emergency Assistance for PFAS Remediation for Covered Communities

A new emergency assistance authority for the EPA will help small, rural, Tribal, underserved, or disadvantaged communities remediate PFAS-contaminated air, soil, ground or surface water. We agree that the Governor of a state or the head of an Indian Tribe should make the request for these grants or technical assistance.

Opposition to CERCLA Exemption Amendments

EPN does not support the inclusion of provisions that would provide liability exemption for certain parties from CERCLA enforcement because these exemptions will disincentivize controls on PFAS and replacement of PFAS with safe alternatives. Parties that are using PFAS-containing firefighting foam will lose the incentive to move to alternatives. POTWs will lose incentive to monitor influents from their industrial users or monitor their biosolids and effluent. Industrial users discharging to these POTWs will lose their incentive to reduce or eliminate PFAS. Landfills will lose their incentive to monitor PFAS in their leachate. Farmers using PFAS-contaminated biosolids as fertilizer do not need to be included in any new bill because the proper application of fertilizer is already exempt under CERCLA.

Considerable experience shows us that EPA's use of enforcement discretion is better than blanket exemptions as it is not possible to envision every site-specific scenario involving the release of PFAS compounds into the environment. EPA has stated it will prioritize Superfund enforcement actions against industry, manufacturers, and parties (including DoD) that have released significant amounts of PFOA and PFOS into the environment while at the same time exercising enforcement discretion for other parties as it has done under CERCLA for decades. EPA has developed several tools and policies to implement CERCLA Section 122(g), which authorizes EPA to settle expeditiously with "small" parties and to minimize their transaction costs. In addition, EPA has ensured its settlements with major polluters protect small parties from having to contribute to cleanup costs.

Thank you for the opportunity to express our views. EPN's experts look forward to the opportunity to meet with EPW staff to further discuss these issues.

Sincerely,



Michelle Roos  
Executive Director  
Environmental Protection Network