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NEW JERSEY, NEW MEXICO, OREGON, RHODE ISLAND, VIRGINIA,  
WASHINGTON, AND WISCONSIN**

July 30, 2019

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, D.C. 20510

Honorable Charles E. Schumer  
Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
1236 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
2468 Rayburn House Office Building  
Washington, D.C. 20515

Re: PFAS Legislation

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

As the United States Congress moves forward 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”), we write to urge Congress to ensure that some of the most urgent legislative needs – based on our experiences in our respective jurisdictions – are addressed.

PFAS have been used to produce countless products since the 1940s, including textiles with Scotchgard; Teflon products, including non-stick cookware; and food packaging. PFAS have also been used for decades as ingredients in firefighting foam, which has been used across

the country, including by the U.S. military and local fire departments. While PFAS are entirely human-made, they are estimated to be detectable in the blood stream of approximately 99% of the U.S. population. PFAS are known as “forever chemicals” because they resist degradation in the environment. PFAS also bioaccumulate – and are toxic – to humans and animals. 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 known by the acronyms PFOA and 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.<sup>1</sup>

Many of the signatories to this letter face substantial PFAS issues in their jurisdictions, while others are just beginning to investigate the extent of PFAS contamination in their States. In jurisdictions that have already identified significant PFAS contamination within their borders, we are spending tens of millions of dollars to address contamination in public drinking water sources and to investigate numerous areas of potential contamination across our communities and to prioritize responses to such contamination. Contaminated sites in our jurisdictions include but are not limited to military bases where firefighting foam was used, firefighting training centers, civilian airports, and industrial facilities.

Although eventually Congress will likely need to address the entire PFAS “lifecycle” – production, use, exposure, cleanup, and disposal – we applaud the Senate and the House of Representatives for advancing legislation that address particular issues associated with PFAS contamination. As Congress moves to reach agreement on final legislation, the experiences of our States in responding to the dangers of PFAS point to several immediate legislative needs. For the reasons set forth below, we urge Congress to support the following necessary first steps in addressing the problems posed by PFAS. Any legislation, of course, should not impair the existing rights of States to pursue appropriate remedies under existing law.

### **CERCLA Designation**

Designate certain PFAS as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).<sup>2</sup> This designation should include but not be limited to PFOA, PFOS, and “GenX” PFAS. Additionally, the Environmental Protection Agency (“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. Such designation will help promote 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”). To date, DOD has identified over 400 federal facilities around the country with known or suspected PFAS contamination from firefighting foam.<sup>3</sup> DOD has resisted cleanup of federal facilities around the country, however, on the basis that PFAS are not

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<sup>1</sup> See, e.g., C8 Science Panel Website, <http://www.c8sciencepanel.org/>.

<sup>2</sup> 42 U.S.C. §§ 9601-9675.

<sup>3</sup> See U.S. Gov’t Accountability Office, GAO-18-700T, *Status of DOD Efforts to Address Drinking Water Contamination Used in Firefighting Foam* (2018), available at [www.gao.gov/products/GAO-18-700T](http://www.gao.gov/products/GAO-18-700T).

hazardous substances under CERCLA or otherwise federally regulated. Because CERCLA applies to facilities owned or operated by the federal government,<sup>4</sup> a designation of certain PFAS as hazardous substances under CERCLA would promote the appropriate cleanup of these sites. A designation under CERCLA would also promote cleanup of 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.<sup>5</sup> Legislative carve-outs under CERCLA for certain other 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.<sup>6</sup> EPA should also be directed to develop appropriate analytical methodologies for testing for PFAS in various environmental media.

#### **Inclusion in the Toxic Release Inventory (“TRI”) Maintained by EPA**

Add the entire class of PFAS to EPA’s TRI.<sup>7</sup> This would provide information about new potential sources and areas of contamination. The thresholds for reporting releases of PFAS to the TRI should be set at a very low level, to account for the fact that PFAS may be toxic in very low concentrations.

#### **Sampling and Survey of PFAS Contamination by the U.S. Geological Survey (“USGS”)**

Direct the USGS to conduct a nationwide sampling effort and survey of human and environmental exposure to PFAS, with an emphasis on drinking water, to determine the scope of PFAS contamination. This information will assist all stakeholders in prioritizing areas that require further response and will complement the inclusion of PFAS on EPA’s TRI. Our respective States’ jurisdictional agencies stand ready to assist the federal government in identifying the locations that should be the highest priority for investigation.

#### **Funding for Communities’ Response to PFAS Contamination**

Provide funding for remediation of public water systems, with a focus on environmental justice and other disadvantaged communities. Many public water providers do not have sufficient funding to address PFAS contamination, and even when they may in the first instance, raising water rates to recoup those costs present serious water affordability issues. Funding should also be made available to address potential contamination of private drinking water sources.

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<sup>4</sup> See 42 U.S.C. §§ 9601(21), 9620.

<sup>5</sup> See 40 C.F.R. Part 300.

<sup>6</sup> See 42 U.S.C. § 9603; 40 C.F.R. Part 302.4.

<sup>7</sup> See 42 U.S.C. § 11023.

**Prohibit the Use and Storage of Firefighting Foam Containing PFAS at U.S. Military Bases and Other Federal Facilities**

Prohibit the use and storage of firefighting foam containing PFAS at United States military bases and other federal facilities as quickly as possible, and immediately require protective measures when firefighting foam is used. Aqueous film-forming foam, or AFFF, is directly sprayed on or near the ground when it is used, and it is the source of PFAS at some of the worst contaminated areas in the nation, including at numerous military sites. Some of our jurisdictions have been forced to spend tens of millions of dollars to provide vulnerable communities near military bases with uncontaminated water and filtration systems. While AFFF may be discharged into the environment in responding to emergencies (or may be discharged accidentally), the vast majority of AFFF is used for firefighting training. Congress should require that training foams that do not contain PFAS be used instead of AFFF containing PFAS, and that barriers or other measures be used in areas in which foam is discharged to prevent potential contamination of the environment.

**Medical Screening**

Provide for medical screening for PFAS exposure for appropriate personnel and members of the public who may have been exposed to PFAS, including but not limited to firefighting personnel. Our citizens deserve to know about potential health threats, particularly those incurred on the job.

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Public understanding about the serious risks that PFAS contamination poses to human health and the environment is growing. Without federal legislative action to assist States and communities that are responding to this burgeoning threat, the public may lose confidence in the safety of its drinking water sources, consumer products, and other routes of exposure to dangerous levels of PFAS. We applaud the Senate and the House of Representatives for recognizing the dangers of PFAS and advancing legislation to address the resulting public health concerns and mounting State and local response costs. We urge Congress to continue these efforts by supporting the initial legislative needs highlighted above as Congress moves to reach agreement on final legislation addressing PFAS contamination.

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

Sincerely,



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Attorney General of New York



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Cc: Sen. John Barrasso, Chairman, Senate Committee on Environment and Public Works  
Sen. Thomas R. Carper, Ranking Member, Senate Committee on Environment and Public Works  
Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce  
Rep. Greg Walden, Ranking Member, House Committee on Energy and Commerce  
Sen. James Inhofe, Chairman, Senate Committee on Armed Services  
Sen. Jack Reed, Ranking Member, Senate Committee on Armed Services  
Rep. Adam Smith, Chairman, House Committee on Armed Services  
Rep. Mac Thornberry, Ranking Member, House Committee on Armed Services  
Rep. Raul M. Grijalva, Chairman, House Committee on Natural Resources  
Rep. Rob Bishop, Ranking Member, House Committee on Natural Resources  
Rep. Peter A. DeFazio, Chairman, House Committee on Transportation and Infrastructure  
Rep. Sam Graves, Ranking Member, House Committee on Transportation and Infrastructure  
Rep. Brian Fitzpatrick, Chairman, Congressional PFAS Task Force  
Rep. Dan Kildee, Chairman, Congressional PFAS Task Force