COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

May 13, 2019

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Legislative Hearing on "Protecting Americans at Risk of PFAS Contamination and Exposure"

On **Wednesday, March 15, 2019 at 10:30 am in room 2322 of the Rayburn House Office Building**, the Subcommittee on Environment and Climate Change will hold a hearing entitled, "Protecting Americans at Risk of PFAS Contamination & Exposure." The hearing will examine approaches to eliminate or reduce environmental and health risks to workers and the public from persistent, bioaccumulative, and toxic per- and polyfluoroalkyl substances (PFAS).

I. BACKGROUND

Since 1949, the large class of chemicals known as per- and polyfluoroalkyl substances and commonly referred to as PFAS, have been manufactured and used in many common products, such as firefighting foams, food packaging materials, nonstick cookware, cleaning products, toiletries, and stain and water-resistant fabrics.[1] Two of these chemicals, PFOA and PFOS, have been voluntarily phased out by most manufacturers,[2] but several thousand PFAS formulations continue to be produced. Of those thousands, EPA has reviewed 294 alternative PFAS chemicals – 64 percent of those chemicals required further regulation in order to mitigate associated risks.[3]

Because PFAS have very high chemical stability, these contaminants are environmentally persistent and can accumulate over time. Health studies show that PFAS bioaccumulate and will remain in the human body for years. Frequent exposures to PFAS can build up, and are linked to

[1] Interstate Technology & Regulatory Council, *History and Use of Per- and Polyfluoroalkyl Substances (PFAS)* (Nov. 13, 2017) (pfas-1.itrcweb.org/wp-content/uploads/2017/11/pfas_fact_sheet_history_and_use__11_13_17.pdf); Agency for Toxic Substances and Disease Registry, Per- and Polyfluoroalkyl Substances (PFAS) and Your Health (www.atsdr.cdc.gov/pfas/pfas-exposure.html) (accessed May 9, 2019).

[2] U.S. Environmental Protection Agency, PFOA Stewardship Program (www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program) (accessed May 9, 2019).

[3] U.S. Environmental Protection Agency, PFAS Laws and Regulations (www.epa.gov/pfas/pfas-laws-and-regulations) (accessed May 9, 2019).

severe adverse health effects, including, but not limited to, certain cancers, suppressed antibody response, reproductive problems, and thyroid hormone disruption.[4] In 2003-2004, PFOA and PFOS were detected in the blood of 99.7 percent and 99.9 percent, respectively, of those tested in the United States.[5]

Between 1951 and 2003, DuPont dumped and emitted over 1.7 million pounds of PFOA in West Virginia.[6] In 2002, the U.S. Environmental Protection Agency (EPA) ordered DuPont to provide alternative drinking water for residents near the Washington Works facility in Washington, West Virginia.[7] PFOA was one of the hazardous contaminants found in the community's drinking water. This drinking water crisis focused national attention on PFAS exposures and their potential health risks.

EPA is charged with managing risks from toxic chemicals under an array of environmental statutes. The Toxic Substances Control Act (TSCA) regulates the manufacture, processing, and distribution in commerce of chemical substances. The PFAS that have received reviews from EPA have received them under the TSCA new chemicals program.

The Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), commonly referred to as Superfund, establishes a liability regime to ensure that polluters are held responsible for cleanup costs at contaminated sites. EPA recently published draft guidance for PFAS groundwater cleanup, including at Superfund sites, though the guidance is not binding.[8] The Emergency Planning and Community Right to Know Act (EPCRA) provides for planning for and reporting on toxic releases. PFAS are not currently covered by EPCRA requirements.

Under the Safe Drinking Water Act (SDWA), EPA sets health-based standards for drinking water contaminants. To date, EPA has not set any drinking water standards for PFAS, but the Agency has issued a non-binding health advisory for PFOA and PFOS. Millions of Americans currently receive water that exceeds the EPA's health advisory level of concern for PFOA and PFOS.

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[4] *See* note 2.

[5] *Id.*

[6] *Ohio River Communities are Still Coping with Teflon's Toxic Legacy*, The Allegheny Front (Oct. 28, 2016).

[7] U.S. Environmental Protection Agency, E.I. DuPont de Nemours and Company PFOA Settlements (www.epa.gov/enforcement/ei-dupont-de-nemours-and-company-pfoa-settlements) (accessed May 9, 2019).

[8] U.S. Environmental Protection Agency, Draft Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS (www.epa.gov/pfas/draft-interim-recommendations-addressing-groundwater-contaminated-pfoa-and-pfos) (accessed May 9, 2019).

The Resource Conservation and Recovery Act (RCRA) governs disposal of solid and hazardous waste. EPA has taken no action to date under RCRA to ensure the safe disposal of PFAS wastes.

The Clean Air Act governs emissions of hazardous air pollutants. Increasingly, evidence shows exposure and contamination from PFAS through air emissions,[9] but no action has been taken to date to address PFAS under the Clean Air Act.

II. COMMITTEE ACTION

On May 21, 2018, the House Committee on Energy and Commerce requested additional information from EPA as part of the Committee's inquiry to determine whether political appointees tried to block or delay the release of an Agency for Toxic Substances and Disease Registry's (ATSDR) PFAS chemical hazard study.[10] EPA failed to respond to this request.

On September 6, 2018, the Subcommittee held a hearing entitled "Perfluorinated Chemicals in the Environment: An Update on the Response to Contamination and Challenges Presented." For more information on that hearing, please see here.

On January 29, 2019, the Committee reissued its earlier request regarding communications between EPA political appointees and chemical industry stakeholders regarding the release of the ATSDR PFAS risk assessment.[11] To date, EPA has provided documents that partially respond to some of the Committee's requests, however, those documents contain redactions and do not fully respond to the Committee's requests.

III. LEGISLATION

A. H.R. 535, PFAS Action Act of 2019

On January 14, 2019, Reps. Dingell (D-MI) and Upton (R-MI) introduced H.R. 535, the "PFAS Action Act of 2019." The bill requires the EPA Administrator to designate, within one year, all per- and polyfluoroalkyl substances as hazardous substances under Superfund (CERCLA). This designation would ensure that PFAS contamination is cleaned up under Superfund authorities.

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[9] Agency for Toxic Substances and Disease Registry and U.S. Environmental Protection Agency, *Toxicological Profile for Perfluoroalkyls: Draft for Public Comment* (Jun. 2018).

[10] Letter from Reps. Frank Pallone, Jr., Diana DeGette, Paul Tonko, and Kathy Castor, House Committee on Energy and Commerce, to EPA Administrator Scott Pruitt (May 21, 2018).

[11] Letter from Reps. Frank Pallone, Jr., Diana DeGette, and Paul Tonko, House Committee on Energy and Commerce, to EPA Administrator Andrew Wheeler (Jan. 29, 2019).

B. H.R. 2377, Protect Drinking Water from PFAS Act of 2019

On April 29, 2019, Reps. Boyle (D-PA) and Fitzpatrick (R-PA) introduced H.R. 2377, the "Protect Drinking Water from PFAS Act of 2019." The bill requires EPA to set a drinking water maximum contaminant level (MCL) for total per- and polyfluoroalkyl substances to protect public health.

C. H.R. 2533, Providing Financial Assistance for Safe Drinking Water Act

On May 7, 2019, Chairman Pallone (D-NJ) introduced H.R. 2533, the "Providing Financial Assistance for Safe (PFAS) Drinking Water Act." The bill requires the EPA Administrator to establish, within 180 days of enactment, a program to award grants to PFAS-affected water systems to pay the capital costs associated with installing treatment technologies that can remove all detectable amounts of PFAS from drinking water.

D. H.R. 2566

On May 7, 2019, Rep. Soto (D-FL) introduced H.R. 2566. The bill requires EPA to establish a label under the Safer Choice program for cookware that is PFAS-free. The label would be available to cookware manufacturers on a voluntary basis to inform consumer choice.

E. H.R. 2570, PFAS User Fee Act of 2019

On May 7, 2019, Rep. Rouda (D-FL) introduced H.R. 2570, the "PFAS User Fee Act of 2019." The bill establishes a trust fund, financed through user fees from PFAS manufacturers, to pay the ongoing operations and maintenance costs of water treatment works and drinking water treatment plants that remove contamination from per- and polyfluoroalkyl substances.

F. H.R. 2577

On May 8, 2019, Rep. Delgado (D-NY) introduced H.R. 2577. The bill amends the Emergency Planning and Community Right-To-Know Act of 1986 to require reporting on releases of per- and polyfluoroalkyl substances through the Toxics Release Inventory.

G. H.R. 2591, PFAS Waste Incineration Ban Act of 2019

On May 8, 2019, Rep. Khanna (D-CA) introduced H.R. 2591, the "PFAS Waste Incineration Ban Act of 2019." The bill amends the Solid Waste Disposal Act to prohibit the incineration disposal of fire-fighting foam containing per- and polyfluoroalkyl substances. The bill also requires the EPA Administrator to, within 12 months, identify additional wastes containing PFAS for which a prohibition on incineration may be necessary to protect human health.

H. H.R. 2596

On May 8, 2019, Rep. Kuster (D-NH) introduced H.R. 2596. The bill amends the Toxic Substances Control Act to prevent the introduction of any new PFAS into commerce.

I. H.R. 2600, Toxic PFAS Control Act

On May 8, 2019, Rep. Dean (D-PA) introduced H.R. 2600, the "Toxic PFAS Control Act." The bill amends Section 6 of TSCA to comprehensively regulate per- and polyfluoroalkyl substances. The bill would prohibit the manufacture of any new PFAS chemical substance within one year and existing PFAS within two years. It would also prohibit the processing of existing PFAS within three years; establish standards for the safe disposal of PFAS; require labeling of all articles containing PFAS; and limit exemptions available for PFAS.

J. H.R. 2605

On May 8, 2019, Rep. Stevens (D-MI) introduced H.R. 2605. The bill requires the EPA Administrator to issue a final rule within 180 days listing PFAS as a hazardous air pollutant under the Clean Air Act and requires the Administrator to identify source categories for PFAS within one year.

K. H.R. 2608

On May 9, 2019, Rep. Sean Patrick Maloney (D-NY) introduced H.R. 2608. The bill requires comprehensive health testing of all PFAS under the Toxic Substances Control Act and reporting from all manufacturers and processors of PFAS on health, safety, and environmental impacts.

L. H.R. 2626

On May 9, 2019, Rep. Upton (R-MI) introduced H.R. 2626. The bill amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 to require cleanups at federal facilities to meet state limits for PFAS.

M. H.R. 2638

On May 9, 2019, Rep. Fletcher (D-TX) introduced H.R. 2638. The bill requires to issue guidance for firefighters and other first responders to minimize the use of foam and other firefighting materials containing PFAS and to minimize their health risk from PFAS exposure.

IV. WITNESSES

The following witnesses have been invited to testify:

Erik D. Olson
Health Program Director
Natural Resources Defense Council

Jamie DeWitt, PhD, DABT
Associate Professor, Department of Pharmacology & Toxicology
Brody School of Medicine at East Carolina University

Emily Marpe
Mother and Community Member
Petersburgh, New York

Brian Steglitz, P.E.
Manager, Water Treatment Services
City of Ann Arbor

Tracy Mehan
Executive Director, Government Affairs
American Water Works Association

Jane C. Luxton
Partner, Co-Chair of the Environmental and Administrative Law Practice
Lewis Brisbois