

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

October 5, 2020

The Honorable Adam Smith
Chairman
House Armed Services Committee
2216 Rayburn House Office Building
Washington, D.C. 20515

The Honorable James M. Inhofe
Chairman
U.S. Senate Committee on Armed Services
Russell Senate Building, Room 228
Washington, D.C. 20510

The Honorable Mac Thornberry
Ranking Member
House Armed Services Committee
2216 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jack Reed
Ranking Member
U.S. Senate Committee on Armed Services
Russell Senate Building, Room 228
Washington, D.C. 20510

Re: PFAS Legislation

Dear Chairman Smith, Chairman Inhofe, Ranking Member Thornberry, and
Ranking Member Reed:

As you work to finalize the Fiscal Year 2021 National Defense Authorization Act (FY2021 NDAA) conference report, we urge you to include important provisions adopted in the House bill that build upon progress made in the Fiscal Year 2020 NDAA (FY2020 NDAA) and help safeguard the public and environment against the highly persistent and toxic class of chemical compounds known as per- and poly-fluoroalkyl substances (PFAS). The provisions in this funding bill that we highlight below are important, but we also encourage you to act to further regulate these harmful chemical compounds, including to designate them as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

We were pleased to see that some of the recommendations made in a July 30, 2019, letter to Congressional leadership, joined by attorneys general from twenty-two states and sovereigns and attached hereto at Appendix A, addressing the FY2020 NDAA were adopted in last year’s bill, including provisions limiting and ultimately prohibiting the use of aqueous film forming foam (AFFF) on military installations. (Sec. 322-324.) We hope to see other recommendations included in this year’s final bill.

First and foremost, we urge you to include Section 332, Standards for Removal or Remedial Actions With Respect to PFOS or PFOA Contamination, of H.R. 6395, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, in the final version of the FY2021 NDAA. Section 332 requires the Department of Defense (DOD), when conducting removal or remedial actions relating to PFAS, to meet the PFAS standards established in the state in which the installation is located, when those standards are more stringent than Federal standards or health advisory levels for the remediation of sites contaminated with the PFAS chemical compounds perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Currently, there are approximately at least 678 active or closed military installations with known or suspected PFAS contamination on- or off-site, requiring prompt attention to protect military personnel and surrounding communities. See <https://www.ewg.org/interactive-maps/2019-pfas-crash-training-military-sites-March2020/map/>.

We also encourage your respective committees to include the many other important provisions in the House bill focused on protecting our communities from PFAS, including those that provide DOD with the tools necessary to conduct appropriately protective remediation and removal of PFAS contamination. Those tools include additional funding and authorization for PFAS clean-up, robust resources for ongoing and new studies, innovative research and development of safe PFAS disposal mechanisms, and alternatives to PFAS-laden firefighting AFFF. We also urge you to include the other provisions in the House-passed version of the FY2021 NDAA that support service members, their families, and defense communities, by requiring DOD to offer PFAS blood testing for all interested service members as part of their routine physicals; further limit the PFAS-containing products DOD's Defense Logistics Agency may procure; and engage in meaningful stakeholder notification and prompt publication of the results of drinking, surface, or ground water PFAS testing.

We were also pleased to see that the FY2020 NDAA, consistent with our previous letter, includes a provision directing DOD to work expeditiously to finalize or amend a cooperative agreement with a state "to address testing, monitoring, removal, and remedial actions relating to contamination or suspected contamination of drinking, surface, or groundwater from PFAS originating from activities of the Department of Defense." PL 116-92, Sec. 332(a)(1). This provision will expedite the cleanup of DOD sites that are not on the National Priorities List and require that a cooperative agreement "meet or exceed the most stringent" of an enforceable state or federal standard for drinking, surface, or groundwater or a health advisory of the Safe Drinking Water Act. We strongly support a Congressional mandate that requires DOD to meet the most stringent state standards during site remediation, regardless of whether a state and DOD are able to reach a cooperative agreement.

We also encourage Congress to act beyond the FY2021 NDAA to create more stringent federal standards. That is why we previously recommended and still believe that Congress should designate at least PFOA, PFOS, and so-called GenX PFAS as “hazardous substances” under CERCLA. To start, Congress should direct the EPA to study additional PFAS compounds and, as appropriate, designate additional PFAS compounds as “hazardous substances” under CERCLA. This was the first recommendation in our previous letter and Congress has not yet required the EPA to take these crucial steps.

Thank you for once again making PFAS remediation and the protection of our communities a priority for the work of your committees. We urge Congress to maintain focus on PFAS remediation as a crucial priority in crafting the final version of the FY2021 NDAA and to keep the goal of developing strong federal regulation of PFAS compounds at the forefront for Congress.

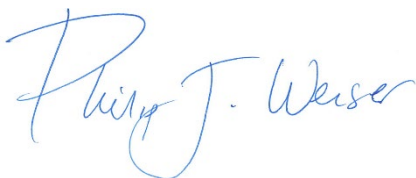
Sincerely,



Dana Nessel
Attorney General of Michigan



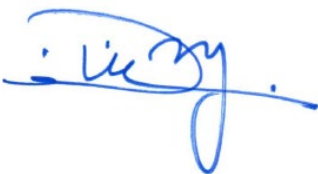
Kathleen Jennings
Attorney General of Delaware



Philip J. Weiser
Attorney General of Colorado



Karl A. Racine
Attorney General of District of Columbia



William Tong
Attorney General of Connecticut



Leevin Camacho
Attorney General of Guam



Kwame Raoul
Attorney General of Illinois



Gurbir S. Grewal
Attorney General of New Jersey



Tom Miller
Attorney General of Iowa



Letitia James
Attorney General of New York



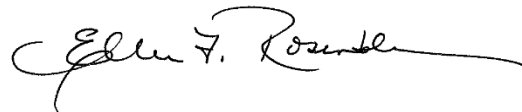
Aaron M. Frey
Attorney General of Maine



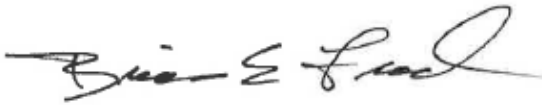
Hector Balderas
Attorney General of New Mexico



Maura Healey
Attorney General of Massachusetts



Ellen Rosenbloom
Attorney General of Oregon



Brian E. Frosh
Attorney General of Maryland



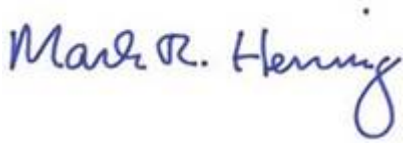
Josh Shapiro
Attorney General of Pennsylvania

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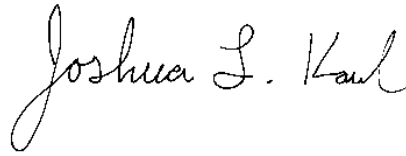
Peter Neronha
Attorney General of Rhode Island

A blue ink handwritten signature of Bob Ferguson, written in a cursive style.

Bob Ferguson
Attorney General of Washington

A blue ink handwritten signature of Mark R. Herring, written in a cursive style.

Mark R. Herring
Attorney General of Virginia

A blue ink handwritten signature of Joshua L. Kaul, written in a cursive style.

Joshua L. Kaul
Attorney General of Wisconsin

EM:jg
Enclosure