

Attorneys General of the States of New York, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, Oregon, Rhode Island, Washington, Wisconsin, the Commonwealths of Massachusetts and Pennsylvania, and the District of Columbia

November 7, 2022

Via Regulations.gov

Office of Land and Emergency Management Docket
Mail Code 28221T
EPA Docket Center
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ OLEM-2019-0341
Multistate Comments in Response to Proposed Designation of
PFOA/PFOS as CERCLA Hazardous Substances
87 Fed. Reg. 54,415 (Sept. 6, 2022)

Dear Administrator Regan:

The Attorneys General of the States of New York, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, Oregon, Rhode Island, Washington, Wisconsin, the Commonwealths of Massachusetts and Pennsylvania, and the District of Columbia offer these comments to support the proposed rule of the U.S. Environmental Protection Agency (EPA) to designate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 *et seq.* See 87 Fed. Reg. 54,415 (Sept. 6, 2022).

CERCLA § 102(a), 42 U.S.C. § 9602(a), expressly authorizes EPA to designate substances, which, when released into the environment “may present substantial danger to the public health, or welfare, or the environment” as “hazardous substances”, without consideration of potential costs associated with such designations. Scientific evidence amply supports EPA’s proposed hazardous substance designations of PFOA/PFOS given their toxicity, prevalence, persistence,

and mobility in the environment. The designations would provide significant public health, environmental, and economic benefits nationwide by reducing human and environmental exposures to these “forever chemicals.”

The proposed rule would also enable CERCLA’s “polluter-pays” framework to shift the burden of investigating, responding to, and remediating PFOA/PFOS contamination—currently borne by governments and their taxpayers—to the parties responsible for the contamination. Accordingly, the rule would provide governments with powerful tools to clean up PFOA/PFOS contaminated sites by increasing transparency and accountability around PFOA/PFOS releases and expanding government’s ability to respond to PFOA/PFOS contamination promptly and efficiently under federal and state law. It could also potentially result in voluntary reductions in the use of the chemicals to avoid costly releases. We applaud EPA’s exercise of its authority under CERCLA § 102(a), 42 U.S.C. § 9602(a), to address these highly toxic and ubiquitous chemical substances and recommend that EPA promptly finalize this proposed rulemaking.

Background on PFOA and PFOS

As detailed in EPA’s notice of proposed rulemaking, a substantial body of scientific evidence shows that PFOA/PFOS are persistent, pervasive, and mobile in the environment and that exposure to even small amounts of either chemical can lead to adverse human health effects. 87 Fed. Reg. 54,423-54,429. Unlike other bio-accumulative chemicals, PFOA/PFOS are highly soluble and can easily migrate from soil to groundwater. When released into the environment, PFOA/PFOS can contaminate air, water, and soil, including the plants, animals, and humans living in the environment. To date, PFOA/PFOS have been detected in groundwater monitoring wells, private drinking water wells, and public drinking water systems across the country. PFOA/PFOS have also been detected in surface waters, landfills, wastewater treatment systems, agricultural fields, livestock, and wildlife. Numerous assessments conducted by federal, state and international agencies, academia, non-profit organizations and the public sector have recognized the toxicity of PFOA/PFOS and the harm that can arise from human and environmental exposure.

Due to these concerns, our states have expended significant public resources to regulate PFOA/PFOS, address contamination in drinking water, and/or respond to contaminated sites. Among other things, we have incurred substantial costs for testing public and private water resources, installing water treatment technologies for drinking water, and providing for alternate water supplies, all at the expense of the taxpayers in our states.

EPA's Proposed Action

EPA's proposed designation of PFOA/PFOS as CERCLA "hazardous substances" is a critical step forward to addressing the challenges posed by PFOA/PFOS contamination. If finalized, EPA's proposed rule would have several direct impacts. It would require that releases of one or more pounds of either PFOA or PFOS in any 24-hour period be reported to federal, state and local authorities (CERCLA § 103(a), 42 U.S.C. § 9603(a); 42 U.S.C. § 11004). It would also require transfers of federal land to include a notice of potential PFOA/PFOS contamination and a warranty of remediation (CERCLA § 120(h); 42 U.S.C. § 9620(h)), and that PFOA/PFOS be regulated as hazardous materials under the Hazardous Materials Transportation Act (CERCLA § 306(a), 42 U.S.C. § 9656; 49 C.F.R. Parts 171-180). Most importantly, by regulating PFOA/PFOS as CERCLA "hazardous substances," the designation would facilitate faster identification and polluter-funded cleanup of PFOA/PFOS contaminated sites. *See* 87 Fed. Reg. 54,418, 54,420.

EPA Should Adopt the Proposed Rule and Designate PFOA/PFOAS as CERCLA Hazardous Substances

A. The Designation Is Supported by Substantial Evidence of the Potential Harm of PFOA/PFOS.

CERCLA is a remedial statute that establishes a framework for cleaning up sites contaminated with hazardous substances and for holding parties responsible for the contamination liable for cleanup costs. 42 U.S.C. §§ 9601 *et seq.* In addition to defining a "hazardous substance" by reference to substances identified under other statutes, CERCLA § 101(14), 42 U.S.C. § 9601(14), CERCLA authorizes EPA to designate as hazardous "substances which, when released into the environment may present substantial danger to the public health or welfare or the environment." CERCLA § 102(a), 42 U.S.C. § 9602(a).

EPA has met the criteria for designating PFOA/PFOS, including their salts and structural isomers,¹ as CERCLA hazardous substances. The scientific evidence of the chemical and physical characteristics, toxicity, and environmental prevalence

¹ PFOA/PFOS have been manufactured in various salt forms. When added to water, the salts break down into their component ions, which includes their anionic acid forms typically found in environmental media. Additionally, structural isomers of PFOA/PFOS have different arrangements of their carbon atoms in the fluorinated carbon chain, but they maintain PFOA/PFOS's distinctive carboxylic acid and sulfonic acid functional groups. *See* 87 Fed. Reg. 54,418. For these reasons, the designation appropriately includes PFOA/PFOS salts and structural isomers.

of PFOA/PFOS amply demonstrates that a release of PFOA/PFOS can pose substantial danger to public health and the environment.² For example, the scientific and health studies EPA cites in the rulemaking confirm that PFOA/PFOS are persistent and mobile in the environment. 87 Fed. Reg. 54,424. They also demonstrate that human exposure to the chemicals can lead to adverse health effects, including high cholesterol, changes in liver function, decreased immune response to vaccination, thyroid disorders, pregnancy-induced hypertension and pre-eclampsia, and testicular and kidney cancer (for PFOA) and liver and thyroid cancer (for PFOS). 87 Fed. Reg. 54,424-54,426. Indeed, EPA's recently updated interim health advisory levels for PFOA and PFOS in drinking water,³ which supersede the agency's 2016 health advisory level of 70 ppt,⁴ reflect EPA's further analysis and understanding of the extreme toxicity of these chemicals.⁵ Research also shows that PFOA/PFOS are common in many environmental media and wildlife due to their production and use in manufacturing since the 1940s, their widespread use in commercial and consumer products, their release through wastewater and other waste streams, and their resistance to degradation. 87 Fed. Reg. 54,426-54,529. Thus, substantial evidence supports EPA's proposed designation of PFOA/PFOS as hazardous substances.

B. The Proposed Designation Will Augment State and Federal Action to Protect Public Health and the Environment from the Harms of PFOA/PFOS.

² Because CERCLA's standard for listing new hazardous substances only requires a showing that the substances "may present substantial danger," this letter refers to PFOA's and PFOS's potential for causing a substantial danger. Notwithstanding, the data concerning PFOA/PFOS are strong evidence that PFOA/PFOS do, in fact, "present a substantial danger to the public health or welfare or the environment."

³ See 87 Fed. Reg. 36,848 (June 21, 2022).

⁴ U.S. EPA, "Drinking water health advisory for perfluorooctanoic acid (PFOA)," (EPA822R16005) (2016), available at https://www.epa.gov/sites/default/files/2016-05/documents/pfoa_health_advisory_final_508.pdf; U.S. EPA, "Drinking water health advisory for perfluorooctane sulfonate (PFOS)," (EPA822R16004) (2016), available at https://www.epa.gov/sites/default/files/2016-05/documents/pfos_health_advisory_final_508.pdf.

⁵ EPA's interim updated lifetime health advisories identify the concentration of chemicals in drinking water at or below which adverse health effects are not anticipated to occur. Unlike maximum contaminant levels, which take into account available treatment technologies and cost, health advisory levels are not enforceable.

While EPA's PFAS Strategic Roadmap⁶ acknowledges the magnitude of the challenges posed by PFAS contamination in environmental media and the need for a national strategy to address them, states have taken myriad actions to protect their residents and natural resources from the harms posed by PFOA/PFOS and other PFAS.⁷ As EPA acknowledges in its notice of proposed rulemaking, states have adopted standards, screening levels and guidance values for PFAS in drinking water, ground water, surface water, soil, biosolids, and other media, as well as regulations designating PFOA and PFOS as hazardous substances under state law. 87 Fed. Reg. 54,432-54,435. States have also engaged in litigation against manufacturers and distributors of PFAS and products containing them to recover cleanup costs and natural resource damages⁸ and pursued remediation of PFAS at U.S. Department of Defense (DOD) sites.⁹ Additionally, many states, including many of the undersigned, have urged both Congress and EPA to take other prompt and aggressive actions to respond to the unfolding national PFAS crisis.¹⁰

⁶ U.S. EPA, "PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024" (2021), available at https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.

⁷ See National Conference of State Legislatures, Per- and Polyfluoroalkyl Substances (PFAS)/ State Legislation and Federal Action, <https://www.ncsl.org/research/environment-and-natural-resources/per-and-polyfluoroalkyl-substances-pfas-state-laws.aspx>; see also, 87 Fed. Reg. 54,432-54,436.

⁸ *In re AFFF Products Liability Litigation*, Index No. 2:18-mn-2873-RMG.

⁹ See *New Mexico v. United States*, No. 6:19-cv-178 (D.N.M.) (transferred to *AFFF Products Liability Litigation*); see also, Petition of the State of New Mexico to List PFOA and PFOS as RCRA Hazardous Wastes (June 23, 2021), available at <https://www.env.nm.gov/wp-content/uploads/2021/06/2021-06-23-Governor-letter-to-EPA-for-PFAS-petition.pdf>; *New Jersey v. United States*, No. 2:21-cv-00146 (D.S.C.) (transferred to AFFF Products Liability Litigation); *New York v. 3M Company*, Nos. 2:19-cv-01022-RMG (D.S.C.) and 2:19-cv-02607-RMG (D.S.C.) (transferred to AFFF Products Liability Litigation).

¹⁰ See, e.g., Multistate Comments dated April 13, 2022 regarding EPA's Fiscal Year 2022 Spend Plan for PFAS, available at https://www.michigan.gov/ag/_media/Project/Websites/AG/releases/2022/April/State%20Comments%20on%20EPA%20Spend%20Plan%20FINAL%20751106%207.pdf?rev=761235fc045d4b9c995b1a4427a2ad3c&hash=DB08B30565068BCA058CB3E5C331694C; Multistate Comments dated September 27, 2021 regarding EPA's Proposed TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 86 Fed. Reg. 33926 (June 28, 2021), available at <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0549-0086>; Multistate Comments dated September 17, 2021 regarding EPA's Drinking Water Contaminant Candidate List 5 Draft, 86 Fed. Reg. 37948 (July 19, 2021), available at <https://www.regulations.gov/comment/EPA-HQ-OW-2018-0594-0076>; Multistate Letter to Congress dated July 16, 2021 regarding Support for 2021 PFAS Action Act, available at https://content.govdelivery.com/attachments/WIGOV/2021/07/23/file_attachments/1886815/Multi-State%20PFAS%20Letter%20071621.pdf; Multistate Comments to Congress dated

The proposed designations will further the goals of those actions by unlocking critical federal and state tools for ensuring cleanup and protecting public health and environmental resources. First, they will provide EPA and delegated agencies with expanded CERCLA authority to respond promptly to a release or threatened release of PFOA/PFOS without the need for a determination that the release or threatened release poses “an imminent and substantial danger to the public health or welfare.” CERCLA § 104, 42 U.S.C. § 9604. Moreover, the designations will permit EPA to recover from responsible parties response costs and damages for injuries to natural resources. CERCLA §§ 107(a)(4)(C), 107(f); 42 U.S.C. §§ 9607(a)(4)(C), 9607(f); 43 C.F.R. § 11.15(a)(1). Second, the designations will allow EPA to compel parties to abate releases or threatened releases of PFOA/PFOS that pose imminent and substantial danger to human health or the environment. CERCLA § 106, 42 U.S.C. § 9606.

Finally, because CERCLA allows states and private parties to recover response costs from parties responsible for the pollution, designation of PFOA/PFOS as hazardous substances will establish—for government responders and private entities alike—viable paths for recovering the cost of cleaning up PFOA/PFOS contamination.¹¹ CERCLA § 107; 42 U.S.C. § 9607; CERCLA § 113(f), 42 U.S.C. §

October 5, 2020 regarding Fiscal Year 2021 National Defense Authorization Act funding for PFAS Multistate Comments dated June 10, 2020 regarding EPA’s Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List, 85 Fed. Reg. 14098, 14120 (Mar. 10, 2020), available at <https://www.regulations.gov/comment/EPA-HQ-OW-2019-0583-0258>; Multistate Comments dated April 17, 2020 regarding EPA’s Supplemental Proposed Rule on Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule, 85 Fed. Reg. 12479 (March 3, 2020), available at <https://www.regulations.gov/comment/EPA-HQ-OPPT-2013-0225-0217>; Multistate Comments dated February 3, 2020 regarding Addition of Certain PFAS; Community right to Know Toxic chemical Release Reporting, 84 Fed. Reg. 66369 (Dec. 4, 2019), available at <https://www.regulations.gov/comment/EPA-HQ-TRI-2019-0375-0086>; Multistate Comments to Congress dated July 30, 2019 regarding need for comprehensive PFAS Legislation, available at https://oag.ca.gov/system/files/attachments/press-docs/Multistate%20PFAS%20Legislative%20Letter%207.30.19_FINAL.pdf.

¹¹ We note that designation will help promote cleanup of some of the worst contaminated sites in the country, including sites currently or formerly owned or operated by DOD. To date, DOD has identified 700 federal facilities around the country with known or suspected PFAS contamination associated with firefighting foam. See Report on Department of Defense’s Per- and Polyfluoroalkyl Substances Task Force Activities (Sept. 2022), available at <https://media.defense.gov/2022/Oct/13/2003095518/-1/-1/REPORT-ON-DEPARTMENT-OF-DEFENSE-e2%80%99S-PER-AND-POLYFLUOROALKYL-SUBSTANCES-TASK-FORCE-ACTIVITIES.PDF>. DOD has resisted cleaning up federal facilities and offsite

9613(f). EPA's proposal would also enable states to seek compensation for natural resources injured by such contamination. CERCLA §§ 107(a)(4)(C), 107(f); 42 U.S.C. §§ 9607(a)(4)(C), 9607(f); 43 C.F.R. § 11.15(a)(1). Together, these actions will help states ensure that public health and environmental threats are addressed more quickly and more consistently,¹² and that states are made whole, with response costs and natural resource damages appropriately paid by responsible parties.

We recognize that the designation of PFOA/PFOS as CERCLA hazardous substances could result in indirect costs to states due to CERCLA's liability scheme and the federal-state cost-sharing framework for responding to contaminated sites. We therefore emphasize the importance of federal funding to help state and local governments pay for site investigation, emergency response, and cleanup.¹³ Continued federal support will also be required to implement needed drinking water and wastewater infrastructure improvements.¹⁴

drinking water supplies in compliance with state remediation and drinking water standards for PFAS, and recently issued guidance indicating that adherence to state standards is optional. See DoD Guidance on Using State PFAS Drinking Water Standards in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Removal Actions (Dec. 22, 2021) (DoD may initiate a removal action where DoD is responsible for a confirmed release with PFOS/PFOA concentrations above the [70 ppt] EPA lifetime Health Advisory (HA) levels in drinking water and “*may* use the State PFAS drinking water standard when determining the cleanup level”) (emphasis added), available at <https://media.defense.gov/2022/Jan/04/2002917022/1-1/0/STATE-STANDARDS-FOR-PFAS-IN-CERCLA-REMOVAL-ACTIONS.PDF>. Because CERCLA applies to facilities owned or operated by the federal government, a designation of PFOA/PFOS as hazardous substances under CERCLA would obligate the federal government to perform appropriate cleanup of these sites in accordance with applicable or relevant and appropriate requirements (ARARs), which include more stringent state cleanup standards. See CERCLA § 120(a), 42 U.S.C. § 9620(a)).

¹² Designation of PFOA/PFOS as CERCLA hazardous substances will also provide greater clarity to state and local governments and the regulated community regarding potential issues in brownfield redevelopment.

¹³ The Infrastructure Investment and Jobs Act, P.L. 117-58 (2021) provided \$3.5 billion towards remediation of sites on EPA's Superfund National Priority List. 135 Stat.1398.

¹⁴ The Infrastructure Investment and Jobs Act provided a total of \$5 billion in emergency supplemental appropriations to EPA over a five-year period from FY2022 through FY2026 to address emerging contaminants, including PFAS, through existing wastewater and drinking water infrastructure programs. This funding includes \$1 billion for Clean Water State Revolving Fund (SRF) capitalization grants to assist local wastewater treatment facilities and \$4 billion for Drinking Water SRF capitalization grants to assist public water systems. The Infrastructure Act also authorized \$5 billion in grant funding to help small, disadvantaged or underserved communities address emerging contaminants in drinking water. P.L 117-58, 135 Stat. 1399-1402

C. EPA Correctly Concluded that it Need Not Consider Cost in Designating PFOA/PFOS as CERCLA Hazardous Substances.

EPA is correct to exclude considerations of cost in its proposal to designate PFOA and PFOS as hazardous substances. As the United States Supreme Court has explained, if Congress directs the EPA to “regulate on the basis of a factor that on its face does not include cost, the Act normally should not be read as implicitly allowing the agency to consider cost anyway.” *Michigan v. EPA*, 576 U.S. 743, 755-56 (2015) (citing *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 469-472 (2001)).

1. *CERCLA § 102(a) precludes EPA from considering cost when designating a hazardous substance.*

When considering whether to designate a hazardous substance under CERCLA, EPA is limited to evaluating “such elements, compounds, mixtures, solutions, and substances which, when released into the environment *may present substantial danger to the public health or welfare or the environment.*” CERCLA § 102(a); 42 U.S.C. § 9602(a) (emphasis added). As EPA explains in the proposed rule, this directive limits EPA to consider potential threats to health, welfare or the environment. 87 Fed. Reg. 54,421-54,423. CERCLA’s criteria for designating hazardous substances are entirely directed to protecting the public health and the environment. Nothing in this standard allows EPA to consider cost in its analysis.

Similarly, cost is not contemplated by CERCLA’s definition of a hazardous substance under § 101(14), which includes various hazardous and toxic substances listed under other federal environmental statutes: Clean Water Act § 311(b)(2)(A) hazardous substances, Resource Conservation and Recovery Act § 3001 hazardous wastes, Clean Air Act § 307(a) toxic pollutants, and Toxic Substances Control Act § 7 imminently hazardous chemicals. 42 U.S.C. § 9601(14). Under each of these statutes, cost does not play a role when EPA identifies a substance or chemical for regulation.

2. *When promulgating a health-based regulation such as one under CERCLA § 102(a), EPA may not consider costs unless specifically directed by Congress to do so.*

Although EPA is precluded from considering cost in making hazardous substance designations under CERCLA § 102(a), EPA may consider cost in its other regulatory decision making where Congress provides for it. For example, as

discussed in the proposed rule, in *Michigan v. EPA*, 576 U.S. 743 (2015), the Supreme Court held that EPA must consider cost under the Clean Air Act in determining whether to regulate toxic emissions from power plants. *See* 87 Fed. Reg. 54,421-54,422. There, the Clean Air Act authorized EPA regulation that is “appropriate and necessary after considering the results of the study [required under 42 U.S.C. § 7412(n)(1)(A)].” *Michigan*, 576 U.S. at 748. The Court interpreted “appropriate and necessary” as encompassing all relevant factors, including cost, and noted both that Congress required EPA to perform a study addressing cost (among other factors) and that EPA itself acknowledged relying on that study for providing a framework for its decision making. *Id.* at 752-753.

EPA’s proposed rule is distinguishable from *Michigan* in at least two ways. First, in contrast to the Clean Air Act provision at issue in *Michigan*, CERCLA identifies a specific public health standard that allows EPA to regulate substances that “may present substantial danger to the public health or welfare or the environment.” CERCLA § 102(a), 42 U.S.C. § 9602(a). Nothing in this “public health” standard endorses considerations of cost and indeed, unlike in *Michigan*, CERCLA does not require EPA to conduct a cost study. Thus, EPA’s proposed rule appropriately bases its hazardous substances designation for PFOA/PFOS on scientific and technical considerations rather than on cost projections.

In this regard, we agree with EPA that a more apt comparison is to EPA’s promulgation of national ambient air quality standards under the Clean Air Act § 109(b)(1), 42 U.S.C. § 7409(b). *See* 87 Fed. Reg. 54,421. In *Whitman v. American Trucking Ass’ns*, 531 U.S. 457 (2001), the Supreme Court noted that the Clean Air Act established the standard for air quality as the maximum airborne concentration of a pollutant that the public health can tolerate subject to an adequate margin of safety, and that therefore EPA could not consider costs because “[n]owhere are the costs of achieving such a standard made part of that initial calculation.” *American Trucking*, 531 U.S. at 465. Similarly, in *Utility Solid Waste Activities Group v. EPA*, 901 F.3d 414 (D.C. Cir. 2018), the court concluded that EPA properly excluded consideration of costs in adopting its coal combustion waste disposal rule under the Resource Conservation and Recovery Act where the relevant statutory standard addressed “adverse effects on health or the environment” without mentioning costs or including other language that could encompass cost.

Second, although CERCLA, like the Clean Air Act, authorizes EPA regulation that is “appropriate,” Congress’s use of “appropriate” in CERCLA § 102(a) can be reasonably interpreted to describe EPA rulemaking procedure rather than the substantive criteria that EPA must consider in determining whether a substance is hazardous. *See* 42 U.S.C. § 9602(a) (directing EPA to promulgate and revise

regulations “as may be appropriate” to designate hazardous substances). That language cannot be read to license EPA’s consideration of all possible factors including cost.

In any event, EPA has determined the direct costs of its proposed PFOA/PFOS listings to be “relatively small” and any indirect costs to be “impractical” to quantitatively assess at this early stage. *See* 87 Fed. Reg. 54,423. The proposed designation does not itself compel any response action by EPA or any private party, and any indirect costs of the rule may depend on site-specific factors such as the magnitude and extent of PFOA/PFOS contamination and the incremental cost of addressing PFOA/PFOS relative to baseline costs of cleaning up other contaminants at such sites. *Id.*; *see also* EPA’s economic assessment pursuant to Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review.¹⁵

3. EPA may consider cost later in the CERCLA process.

Finally, we note that although EPA is precluded from considering cost for its proposed PFOA/PFOS designation, the agency is authorized to consider cost later in the CERCLA process. For example, EPA generally considers cost in conducting its remedial investigation and feasibility study of a contaminated site. 40 C.F.R. § 300.430(e)(7)(iii). EPA may also consider cost in choosing between remedial alternatives that meet the threshold requirement of providing “[o]verall protection of human health and the environment and compliance with ARARs.” 40 C.F.R. §§ 300.430(f)(1)(i)(A), (f)(1)(ii).¹⁶

Recommendations

EPA should promptly finalize its proposed designation of PFOA/PFOS as CERCLA hazardous substances. Moreover, because the proposed action could result in indirect costs to states, we recommend expanding federal funding to help state and local governments and other public service providers (such as publicly owned treatment works, public drinking water providers, and municipal landfills) pay for site investigation, emergency response and cleanup, and necessary drinking water and wastewater infrastructure improvements. We also urge EPA to exercise

¹⁵ U.S. EPA, “Economic Assessment of the Potential Costs and Other Impacts of the Proposed Rulemaking to Designate Perfluorooctanoic Acid and Perfluorooctanesulfonic Acid as Hazardous Substances” (2022), EPA-HQ-OLEM-2019-0341-0034, available at <https://www.regulations.gov/document/EPA-HQ-OLEM-2019-0341-0034>

¹⁶ See 87 Fed. Reg. 54,422, *fn* 17.

appropriate enforcement discretion under CERCLA § 122, 42 U.S.C. § 9622, to ensure equitable cleanups and settlements that assign primary responsibility to parties that actively contributed to the contamination or otherwise profited from the conditions resulting in contamination.

* * *

Finally, we commend EPA for identifying in its PFAS Strategy Roadmap numerous other actions required to address the nation's ongoing PFAS crisis. EPA, for example, has announced in the Roadmap and in its notice of proposed rulemaking that it will explore designating other PFAS as hazardous substances under CERCLA. *See* 87 Fed. Reg. 54,418. We encourage EPA to consider making such future designations and for the agency to do so on a class basis if supported by the science. We look forward to EPA's progress in completing that, and other Roadmap actions.

Sincerely,

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