

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<http://oversight.house.gov>

November 21, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

We are seeking information and documents concerning the progress being made by the Environmental Protection Agency (EPA) in protecting public health from the serious harms caused by exposure to per- and polyfluoroalkyl substances (PFAS), which include perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), and GenX.

Over the past several months, the Subcommittee has been investigating the exposure of Americans to these highly toxic chemicals. The investigation revealed that major chemical companies knew for decades that these dangerous chemicals were linked to serious health risks. Today, millions of Americans across the country are exposed to these “forever chemicals,” often by living in and around military sites and industrial sites, since these chemicals have been used in military firefighting foam and common household items such as non-stick cookware.¹

At the Subcommittee’s March 6, 2019, hearing, EPA stated that the agency was working to develop a regulatory determination for PFOA and PFOS chemicals in drinking water by the end of 2019. The Subcommittee is concerned that the Trump Administration’s deregulatory, pro-industry approach to environmental and public safety protection, and the chemical industry’s intense lobbying campaign, may jeopardize that important objective.

PFAS Chemical Exposure Requires a Federal Response

EPA has reported that exposure to PFAS chemicals has been tied to increased risk of certain cancers, birth defects, and other negative health effects.² In addition, an analysis conducted by the Environmental Working Group found evidence of widespread water

¹ *Exclusive: Trump EPA Won't Limit 2 Toxic Chemicals in Drinking Water*, Politico (Jan. 28, 2019) (online at <https://politico.com/story/2019/01/28/epa-toxic-chemicals-drinking-water-1124797>).

² Environmental Protection Agency, *Fact Sheet: PFOA & PFOS Drinking Water Health Advisories* (Nov. 2016) (online at www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf).

contamination from PFAS chemicals across the country and estimated that more than 110 million Americans may be exposed to these substances in their drinking water.³ Ninety-nine percent of Americans have PFAS in their bodies.⁴

The Department of Defense, which uses PFAS chemicals in firefighting foams, testified before the Subcommittee that they recognize PFAS as “a national problem involving a wide array of industries, commercial applications, as well as many Federal and State agencies. Therefore, it needs a nationwide solution.”⁵

On February 14, 2019, EPA issued its “PFAS Action Plan,” a series of short- and long-term actions to “reduce the risks associated with PFAS in the environment.”⁶ On March 6, 2019, at the Subcommittee’s first of three hearings on the effects of toxic PFAS chemicals, David Ross, EPA Assistant Administrator for the Office of Water, agreed that the potentially widespread contamination of Americans’ groundwater and drinking water by these chemicals constitutes a “national emergency.”⁷

At the hearing on March 6, Mr. Ross also testified about the agency’s commitment to “making a proposed regulatory determination” under the Safe Drinking Water Act regarding a maximum contaminant level (MCL) for PFOA and PFOS by the end of this year, as well as “also evaluat[ing] a broader range of PFAS chemicals” for potential regulation under the Safe Drinking Water Act. Mr. Ross stated that “EPA has initiated the regulatory development process for designating PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).”⁸

On November 7, 2019, EPA issued a press release in which the agency restated its commitment to releasing a proposed regulatory determination for PFOA and PFOS by the end of

³ *Report: Up to 110 Million Americans Could Have PFAS-Contaminated Drinking Water*, Environmental Working Group (May 22, 2018) (online at <https://ewg.org/research/report-110-million-americans-could-have-pfas-contaminated-drinking-water#.WwgkC-ZPBJ>).

⁴ *To the EPA, ‘Forever Chemicals’ Are a Big Problem Now*, Washington Post (Feb. 13, 2019) (online at www.washingtonpost.com/business/to-the-epa-forever-chemicals-are-a-big-problem-now/2019/02/13/d9a75104-2f64-11e9-8781-763619f12cb4_story.html).

⁵ Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on Examining PFAS Chemicals and Their Risks* (Mar. 6, 2019) (online at <https://oversight.house.gov/legislation/hearings/examining-pfas-chemicals-and-their-risks>).

⁶ Environmental Protection Agency, *EPA’s Per- and Polyfluoroalkyl Substances Action Plan* (Feb. 2019) (online at www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf).

⁷ Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on Examining PFAS Chemicals and Their Risks* (Mar. 6, 2019) (online at <https://oversight.house.gov/legislation/hearings/examining-pfas-chemicals-and-their-risks>).

⁸ *Id.*

this year, but gave no indication of the substance of the determination. The recent press release also failed to identify a timeframe for an EPA determination regarding other PFAS chemicals.⁹

Industry Pressure

Mr. Ross' recent comments about the MCL, and the industry's lobbying pressure, have raised serious concerns that EPA will not take action to regulate these toxic "forever chemicals" by the end of the year.

At a recent hearing before the Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, Congressman Antonio Delgado asked Mr. Ross to commit to establishing an MCL following EPA's regulatory determination process. Mr. Ross refused to make this commitment.¹⁰

Key industry players are attempting to evade liability for the human health dangers posed by waste sites contaminated with PFAS chemicals. At the Subcommittee's September 10, 2019, hearing with representatives from the 3M Company, DuPont de Nemours, Inc., and the Chemours Company (a spin-off of DuPont created in 2015), Denise Rutherford, the Senior Vice President of Corporate Affairs for 3M, alleged that "the weight of scientific evidence shows no adverse human health effects at current or former levels." Daryl Roberts, the Chief Operations and Engineering Officer for DuPont, attempted to avoid DuPont's responsibility for PFAS contamination by asserting that "Chemours is fully capable of cleaning up the sites. ... There's no reason that they would require our help to clean up their sites."¹¹

During the September hearing, Ms. Rutherford acknowledged 3M's membership in the lobbying organization called the Responsible Science Policy Coalition. This organization, which has met with congressional offices and EPA officials, has misleadingly stated that "the weight of current scientific evidence does not show that PFOS or PFOA cause adverse health effects in humans at current levels of exposure."¹² Ms. Rutherford also acknowledged meetings between 3M and EPA officials, stating that 3M "ha[s] engaged with them, [and] the EPA has been able to

⁹ Environmental Protection Agency, *EPA Continues Progress Under PFAS Action Plan* (Nov. 7, 2019) (online at www.epa.gov/newsreleases/epa-continues-progress-under-pfas-action-plan).

¹⁰ Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, *Hearing on The Administration's Priorities and Policy Initiatives Under the Clean Water Act* (Sept. 18, 2019) (online at <https://transportation.house.gov/committee-activity/hearings/the-administrations-priorities-and-policy-initiatives-under-the-clean-water-act>).

¹¹ Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on The Devil They Knew: PFAS Contamination and the Need for Corporate Accountability, Part II* (Sept. 10, 2019) (online at <https://oversight.house.gov/legislation/hearings/the-devil-they-knew-pfas-contamination-and-the-need-for-corporate-0>).

¹² *Inside a Corporate Giant's Fight to Thwart a Massive Pollution Tab*, Politico (Nov. 23, 2018) (online at www.politico.com/story/2018/11/23/political-chemicals-cleanup-3m-1012445).

develop processes that set appropriate regulations and nationwide science-based standards for us over many years.”¹³

Request for Information and Documents

With EPA’s end-of-year deadline quickly approaching for proposed regulation of these toxic “forever chemicals,” it has become increasingly apparent that America’s water will not be cleaned without immediate federal action. For these reasons, we request that you provide the following information by Monday, December 9, 2019:

1. The date on which EPA will announce its proposed regulatory determination regarding a national primary drinking water standard for PFOA and PFOS under the Safe Drinking Water Act, including whether or not EPA intends to regulate PFOA and PFOS by the end of the year;
2. The date on which EPA will announce its proposed regulatory determination regarding a national primary drinking water standard for other PFAS chemicals, including short-chain chemicals, under the Safe Drinking Water Act;
3. A complete list of all public and private stakeholders, including industry representatives and lobbyists representing industry interests, with whom you and/or David Ross have consulted during the PFOA and PFOS rulemaking process from February 14, 2019, to date;
4. A complete list of all public and private stakeholders, including industry representatives and lobbyists representing industry interests, with whom you and/or David Ross have consulted with regarding EPA’s regulatory determination for other PFAS chemicals, including shorter-chain chemicals, from February 14, 2019, to date;
5. A complete list of the locations of all public meetings EPA has convened regarding PFOA, PFOS, and other, shorter-chain PFAS chemicals, from February 14, 2019, to date; and
6. An update on completing the process for designating PFOA and PFOS as hazardous substances under CERCLA.

We also request that you or your designee provide a briefing to Subcommittee staff and Congressman Kildee’s staff by December 9, 2019, on the agency’s progress in making its regulatory determinations for PFOA, PFOS, and other PFAS chemicals, including shorter-chain

¹³ Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on The Devil They Knew: PFAS Contamination and the Need for Corporate Accountability, Part II* (Sept. 10, 2019) (online at <https://oversight.house.gov/legislation/hearings/the-devil-they-knew-pfas-contamination-and-the-need-for-corporate-0>).

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chemicals.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Subcommittee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Harley Rouda
Chairman
Subcommittee on Environment



Daniel T. Kildee
Member of Congress
Co-Chair, Congressional PFAS Task
Force

Enclosure

cc: The Honorable James Comer, Ranking Member

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.