

June 15, 2022

The Honorable Michael Regan
Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460

RE: IN: 2050-AH09 (Designating PFOA and PFOS as CERCLA Hazardous Substances)

Dear Administrator Regan:

The undersigned organizations support policy and practical solutions that will accelerate the cleanup of per- and polyfluoroalkyl substances (PFAS) in the environment. As the U.S. Environmental Protection Agency (EPA) undertakes a rulemaking process to potentially designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), we write to express our concern over the unintended consequences this action could have on communities and companies nationwide.

As the rulemaking process moves forward, we urge you to be inclusive and convene the stakeholder community in a national dialogue on the best approaches to retain the great societal benefits of many of these chemistries and countless products containing PFAS and at the same time, reduce the adverse impacts of PFAS on human health and the environment. To support this beneficial dialogue, we also urge you to prepare an economic analysis of the forthcoming proposed rule as the Administration has done for other major regulatory undertakings.

EPA has never previously designated hazardous substances directly using CERCLA authorities. Given this precedent, both the legal requirements for doing so and the magnitude of the cost and timing implications are uncertain. Therefore, EPA would be tasked with crafting both substantive and procedural requirements that would be brand-new, with massive potential implications not only for PFOA and PFOS but for other substances, including, but not limited to, other PFAS, that could meet these new standards. The implications of this effort also highlight the importance of risk-based standards developed from the best available science.

Owners and operators of landfills and water systems, as well as the millions of small and larger businesses (in addition to many other governmental entities and non-profit organizations) in communities across the United States are likely to experience direct negative economic impacts, significant supply chain disruptions, and other unintended consequences resulting from this new CERCLA liability. These costs would, in turn, hit households immediately as waste and water systems, and other businesses would shift practices to limit their exposure to CERCLA liability and pass these costs onto their customers. At this time, however, EPA has neither presented a full economic analysis demonstrating that the potential costs are justified nor developed an appropriate risk-based standard for cleanup to protect human health and the environment.

Due to the many unknowns about cost impacts, many organizations, including local governments and community-based institutions, are requesting that Congress pass legislative language that will limit such liability. Whether or not such exemption options are appropriate should be considered ahead of any proposed rule, not as a piecemeal, reactive fix. Rather than spend many millions of dollars on needless litigation, America's limited resources should be prioritized toward practical ways to reduce harmful PFAS exposure.

For example, as the Administration has done for the "waters of the United States" (WOTUS) rulemaking and EPA has historically done for other major, definition, and standard setting rules, EPA should prepare a thorough regulatory impact analysis of its proposed action, pursuant to Executive Order 12866. As with WOTUS, a CERCLA designation will have numerous site-specific impacts at existing CERCLA sites, new remediation sites, and at landfills, water systems, wastewater systems, and communities around the country. Similarly, for decades EPA has prepared regulatory impact analyses for designation rules that have significant economic impacts, such as the designation of national ambient air quality standards. EPA consistently prepares these analyses whether or not the Agency is permitted to use the information in its standard setting process. EPA prepares these analyses so that the public and stakeholders can better understand the impact of EPA's proposals and alternatives. EPA should also convene a Small Business Regulatory Enforcement Fairness Act panel to evaluate and address the impacts on small entities.

Therefore, we urge you to be inclusive and follow the Agency's process to engage stakeholders to receive the best advice and input on the forthcoming proposed rule to increase the pace of cleanups, protect human health and the environment, and avoid unintended consequences. To inform these discussions, EPA should prepare a regulatory impact analysis pursuant to E.O. 12866. EPA should listen to all stakeholders and communities and incorporate these findings before releasing any notice of proposed rulemaking to designate PFOA and PFOS as CERCLA hazardous substances.

We stand ready to assist you and thank you for your consideration.

Sincerely,

American Chemistry Council
American Coatings Association
American Council of Engineering
Companies
American Farm Bureau Federation
American Fuel & Petrochemical
Manufacturers
American Petroleum Institute
Council of Industrial Boiler Owners
Flexible Packaging Association
National Association for Surface Finishing
National Cattlemen's Beef Association

National Milk Producers Federation
National Mining Association
National Rural Water Association
National Turkey Federation
National Waste & Recycling Association
Plastics Industry Association
Solid Waste Association of North America
TRSA – The Linen, Uniform and Facility
Services Association
U.S. Chamber of Commerce
U.S. Poultry & Egg Association