

November 4, 2022

The Honorable Barry Breen  
Acting Assistant Administrator  
Office of Land and Emergency Management  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Proposed Rule, Environmental Protection Agency; Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances (87 Fed. Reg. 54,415-54,442, September 6, 2022)**

Dear Acting Assistant Administrator Breen:

The undersigned state chambers of commerce respectfully urge you to withdraw EPA's proposed rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

We represent businesses of all sizes and sectors in our states. Our companies, like the communities where they operate, support accelerating cleanup of PFAS contamination, along with remediation of brownfields industrial sites for reuse. Such remediation projects have resulted in billions in private sector investment and job creation into regions of our state that have been disadvantaged due to economic changes. In addition, while many of our states are taking action in the absence of federal guidance to address the environmental and public health challenges presented by PFOA and PFOS, they are often resorting to onerous, unscientific, and broad-based bans on products containing any PFAS. Uniform, science-based and risk-based guidance and other appropriate federal action would help in mitigating such challenges, consistent with EPA best practices concerning risk communication.

CERCLA, however, is an inappropriate tool to address the challenges presented by PFAS. EPA has other existing authorities that are more appropriate to accomplish the necessary cleanups objectives.

We offer the following important issues for your consideration prior to moving forward with the proposed rule:

**Cleanup levels, disposal methods, and other uncertainties must be addressed.** Under EPA's Strategic Roadmap, EPA should complete development of national drinking water standards for PFOA and PFOS, consistent with the best science and an appropriate assessment of risk and feasibility considerations. Approved disposal methods and capacity issues for solid waste containing PFOA and PFOS must be carefully considered in setting such standards.

**Relevant scientific and technical issues require further review.** A [recent report](#) by the World Health Organization calls into question the contaminant levels being considered by EPA. Its findings require careful consideration.

**The costs and impacts of CERCLA designation would be enormous.** EPA has failed to adequately assess the major costs and impacts for companies and communities – as well as landowners, local governments, and other persons and entities – that would arise from CERCLA designation. A study by the [U.S. Chamber of Commerce](#) of non-federal Superfund site cleanup modeled annual costs of \$700 million to \$800 million. A designation would also unleash massive potential liability for a host of public and private entities under CERCLA’s joint and several liability scheme. This may significantly delay real estate transactions by private companies, in particular potential investments into brownfield sites with the goal of remediating the property for reuse.

**Small entities must be engaged, consistent with relevant legal obligations.** EPA should fulfill obligations under the Regulatory Flexibility Act to appropriately account for impacts of public and private small entities by convening a Small Business Regulatory Enforcement Fairness Act panel.

Under basic administrative law principles, EPA must carefully consider alternatives to its proposed action. In particular, if similar outcomes can be achieved at significantly lower cost, EPA must consider those lower cost options. We strongly encourage EPA to evaluate using less costly and more workable alternatives provided by other statutes, as outlined in below:

- **Section 1432 of the Safe Drinking Water Act (SDWA):** Authorizes EPA to issue imminent and substantial endangerment orders to abate public health from “a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water” and if the appropriate state and local authorities have not acted to protect public health.
- **The Resource Conservation and Recovery Act (RCRA):** Allows owners and operators of facilities that treat, dispose, or store hazardous waste to take corrective action to remediate on-site hazardous constituent releases. States are also able to use RCRA authorities to address PFAS releases without involvement of EPA or approvals elsewhere.
- **The Defense Environmental Restoration Program (DERP):** Provides the Department of Defense (DoD) with the authorities to perform and fund remediation actions, using a nationwide risk-based approach to prioritize sites, and conduct these actions in accordance with CERCLA.

Thank you for your consideration of our requests. We are available to answer any questions you may have. To coordinate further discussion, please contact Kevin Sunday, Director of Government Affairs for the Pennsylvania Chamber of Business and Industry, at [ksunday@pachamber.org](mailto:ksunday@pachamber.org) or (717) 645-2071.

Sincerely,

Alaska Chamber  
Arizona Chamber of Commerce & Industry  
Arkansas State Chamber of Commerce  
Associated Industries of Arkansas, Inc.  
Business Council of New York State  
Idaho Association of Commerce & Industry  
Indiana Chamber of Commerce  
Iowa Association of Business and Industry  
Kansas Chamber of Commerce  
Kentucky Chamber of Commerce  
Louisiana Association of Business and Industry  
Maryland Chamber of Commerce  
Michigan Chamber of Commerce  
Minnesota Chamber of Commerce  
Missouri Chamber of Commerce and Industry  
New Jersey Business & Industry Association  
New Mexico Chamber of Commerce  
North Carolina Chamber  
Ohio Chamber of Commerce  
Pennsylvania Chamber of Business and Industry  
South Carolina Chamber of Commerce  
Virginia Chamber of Commerce