UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Comments on PFAS National Leadership Summit
and Engagement, Docket ID No. EPA-HQ-OW-2018-0270

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Alabama Rivers Alliance * Alaska Community Action on Toxics * Alliance for the Great Lakes * Buxmont Coalition for Safer Water * Center For A Sustainable Coast * Center for Environmental Health * Childhood Lead Action Project * Citizens Coal Council * Clean and Healthy New York * Clean Water Action * Colorado Interfaith Power and Light * Comite Civico Del Valle * Conservation Law Foundation * Ecology Center * Environmental Clinic, University of Texas School of Law * Environmental Health Strategy Center * Environmental Working Group * Freshwater for Life Action Coalition * GreenLatinos * Gulf Restoration Network * Headwater LLC * Illinois Council of Trout Unlimited * League of Conservation Voters * National Resources Defense Council * Natural Heritage Institute * Newburgh Clean Water Project * Noorzad, Seth – Law Student * Ohio Environmental Council * OVEC-Ohio Valley Environmental Coalition * PolicyLink * Rumult, Kenneth - Professor, Vermont Law School * Riverkeeper, Inc. * Safer States * Sierra Club * Toxic-Free Future * Union of Concerned Scientists * Waterkeeper Alliance * WE ACT for Environmental Justice * Women's Voices for the Earth * Zero Waste Washington

Earthjustice submits these comments on behalf of the undersigned organizations and individuals in response to EPA's request for information from the public for the purpose of "informing specific near-term actions, beyond those already underway, that are needed to address challenges caused by per- and polyfluoroalkyl substances (PFAS) currently facing states and local communities."[1] EPA has stated its commitment "to supporting states, tribes and local communities in addressing challenges with PFAS."[2] We urge EPA to demonstrate its commitment through prompt, comprehensive measures such as those outlined below.

PFAS are a family of approximately 5,000 manmade fluorinated organic chemicals characterized by the strong bond between fluorine and carbon. According to a senior CDC official, the presence and concentrations of PFAS chemicals in U.S. drinking water is "one of the most seminal public health challenges for the next decades."[3]

EPA itself has, since at least 2010, publicly recognized the dangers PFAS pose, stating that once released, PFAS "are expected to persist in the environment, may bioaccumulate, and may be highly toxic."[4] Specific medical harms associated with PFAS include: kidney cancer, testicular cancer, bladder cancer, liver function impairment, impaired fetal development, chronic

intestinal inflammation, disruption of critical thyroid hormones, weakened immune system, and high cholesterol.[5]

As EPA officials have recognized, because of the sheer number of PFAS, their makeup, and the dangers scientific studies show they pose, EPA should not regulate PFAS on an individual basis.[6] Instead, EPA should regulate PFAS as a class. That PFAS pose dangers to human health has largely been based on studies of perfluorooctanoic acid ("PFOA") and perfluorooctane sulfonate ("PFOS"), two "long-chain" PFAS that have been the most extensively produced and studied PFAS.[7] While domestic PFAS manufacturers are replacing production and use of PFOA and PFOS with shorter-chain PFAS, those replacements are structurally similar to their long-chain predecessors,[8], and no studies demonstrate that they are safe. Indeed, shorter-chain PFAS may be similarly persistent as long-chain PFAS and more mobile in the environment, thus posing a greater potential for long-range contamination.[9] Thus, it would be illogical to keep states and communities informed of the manufacture, use and release of only some PFAS and not others, especially when new PFAS continue to be developed.

Before states, tribes and local communities can meaningfully ***prevent*** and ***address*** PFAS contamination, they must first know whether and where ***all*** known PFAS are manufactured, used, or released in their vicinity. Unfortunately, EPA has failed to meaningfully and comprehensively require disclosure of PFAS. EPA should correct that immediately, and, at a minimum, implement the following:

- **Test Drinking Water Systems for the Presence of PFAS**. The best, most immediate near-term actions EPA can take to assist states, tribes and communities with this challenge is to require comprehensive testing for PFAS in all public water systems, and public disclosure of all results, so that states and municipalities can begin to design and implement measures to ensure safe drinking water is available. Testing should be required for all PFAS for which analytic methods for testing have been developed.

- **Develop Analytical Methods.** Analytical methods for testing for PFAS have been developed for only approximately 30 of the 3000 known PFAS. EPA should invest resources to develop analytical test methods for widely-used PFAS, using the lowest available detection limits. It should then add those PFAS to its Priority Pollutant List ("PPL"), a set of chemical pollutants for which EPA has published analytical test methods.[10] States and tribes consult the PPL when developing ambient water quality criteria.[11]

- **Facilitate Testing for the Presence of PFAS:** EPA should also add all PFAS for which analytical testing methods exist to the next round of testing pursuant to the Unregulated Contaminant Monitoring Rule (UCMR) under the Safe Drinking Water Act (SDWA), so that data on the presence of PFAS in drinking water is collected. In addition, the thresholds at which the presence of six PFAS currently on the UCMR should be detected and reported should be significantly lowered in accordance with the latest science. As you are aware, a recent draft toxicological profile of PFAS issued by ATSDR indicated that the safe levels of PFAS in drinking water are much lower than reflected in EPA's 2016 Health Advisory Levels.

- **Add PFAS to the Toxics Release Inventory:** As you are aware, the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. §§ 11001, *et seq.*, is the primary federal law designed to alert communities to toxic contamination. The Toxics Release Inventory (TRI) program serves several purposes, including "to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; [and,] to aid in the development of appropriate regulations, guidelines, and standards."[12] EPA is authorized to use its rulemaking authority to "add or delete a chemical from the [TRI list] at any time."[13]

EPA has failed to add *any* PFAS to the TRI despite indicating over a decade ago that it would take steps to do so. EPA should promptly initiate a rulemaking to require PFAS as a class to be listed on the TRI, as it has done for several other classes of chemicals like PCBs. In 2005, EPA settled an administrative complaint it had filed against E.I. DuPont de Nemours (now Chemours), accusing it of concealing information for more than 20 years regarding the harms of PFOA, for the largest civil administrative penalty it had ever obtained.[14] Alarmed by the risks posed by PFOA and PFOS, EPA then convinced domestic manufacturers to cease manufacturing those PFAS. At that time, EPA also announced that it would "initiate efforts to add PFOA and related chemicals to the Toxics Release Inventory (TRI) to help monitor the results" of the agreement."[15] Twelve years later, EPA has not even initiated a rulemaking to add PFOA or PFOS—or any PFAS—to the TRI list. EPA should act immediately on this front for all PFAS. When it does so, it should establish a reporting threshold of 1,000 pounds, consistent with other chemicals, or classes of chemicals such as PCBs, of special concern.[16] It should also ensure that the requirement to report releases apply to facilities that are in Standard Industrial Classification Codes 45 (airports) and 97 (military), as it is imperative that the public know when these types of facilities in particular, which are known responsible parties for significant PFAS pollution, release these toxic substances into the environment.

- **Designate PFAS as Toxic Pollutants under the Clean Water Act:** As it has done for other groups of contaminants, EPA can and should add PFAS as a group to its Toxic Pollutant List pursuant to section 307(a)(1) of the Clean Water Act (CWA).[17] This addition will cause PFAS to be added to the CERCLA hazardous substance list, which will in turn require federal, state and local government to be notified when PFAS over a certain amount are released into the environment. States and tribes would then use this list to establish ambient water quality criteria for PFAS.

- **Close Loopholes That Allow New PFAS on Market Without Safety Review:** EPA should also take steps to ensure that no new PFAS are manufactured without going through the approval process set forth in section 5 of the Toxic Substances Control Act (TSCA). TSCA requires manufacturers to seek approval of new chemicals by submitting a premanufacture notice (PMN) to EPA.[18] This pre-market review and approval process is often avoided due to regulatory loopholes. For example, EPA allows companies to evade pre-market safety review requirements for PFAS if they are produced in low volume, as byproducts, or if they are used for

research and development or test marketing.[19] . Given the persistent, bioaccumulative, and toxic qualities associated with PFAS, no exemption from premanufacture notice and safety review should be available for PFAS.

- **Inform the Public of Active PFAS:** The public does not know how many PFAS chemicals are on the TSCA "inventory" of active chemicals in commerce. At EPA's May 2018 PFAS Summit, Jeff Morris, Director of the Office of Pollution Prevention and Toxics, stated that nearly 900 PFAS chemicals have come through EPA's TSCA program since 2006.[20] EPA's website indicates that almost 500 PFAS, including 330 non-confidential PFAS, have been reported to EPA.[21] Yet, government officials, tribes, and communities cannot readily determine which substances on the Toxics Substances Control Act Inventory are PFAS, and which PFAS are manufactured or used for industrial purposes in their area. EPA should develop, publish on EPA.gov, and regularly update a database of known and active PFAS. For each PFAS, the database should identify: where it is manufactured, processed, or otherwise used for industrial purposes; an estimated amount of the maximum amount of total PFAS present at the facility; and the general category or categories of use. A PFAS database would keep officials and communities apprised about PFAS near them, and help them prepare for possible contamination.

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States, tribes, and local communities will be able to address the ubiquitous existence of PFAS and the dangers they pose only if EPA and the public are made aware of: 1) the manufacture, use, and release of PFAS; and, 2) PFAS contamination of drinking water. EPA should act immediately to implement the actions outlined above. Only a comprehensive approach to disclosure of PFAS will provide the needed information, and there is no scientific, legal, or public health basis for failing to implement all of the suggestions outlined above.

Submitted by:

Earthjustice on *behalf of*

Alabama Rivers Alliance
Alaska Community Action on Toxics
Alliance for the Great Lakes
Buxmont Coalition for Safer Water
Center For A Sustainable Coast
Center for Environmental Health
Childhood Lead Action Project
Citizens Coal Council
Clean and Healthy New York
Clean Water Action
Colorado Interfaith Power and Light
Comite Civico Del Valle
Conservation Law Foundation
Ecology Center
Environmental Clinic, University of Texas School of Law

Environmental Health Strategy Center
Environmental Working Group
Freshwater for Life Action Coalition
GreenLatinos
Gulf Restoration Network
Headwater LLC
Illinois Council of Trout Unlimited
League of Conservation Voters
National Resources Defense Council
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Riverkeeper, Inc.
Safer States
Sierra Club
Toxic-Free Future
Union of Concerned Scientists
Waterkeeper Alliance
WE ACT for Environmental Justice
Women's Voices for the Earth
Zero Waste Washington

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[1] U.S. Envtl. Prot. Agency, *PFAS National Leadership Summit and Engagement*, https://www.epa.gov/pfas/pfas-national-leadership-summit-and-engagement (last updated Aug. 21, 2018).
[2] U.S. Envtl. Prot. Agency, *EPA Actions to Address PFAS*, https://www.epa.gov/pfas/epa-actions-address-pfas (last updated May 14, 2018).
[3] Pat Rizzuto et al., *CDC Sounds Alarm on Chemical Contamination in Drinking Water*, Bloomberg Env't. (Oct. 17, 2017, 4:23 PM), https://news.bloomberglaw.com/environment-and-energy/cdc-sounds-alarm-on-chemical-contamination-in-drinking-water.
[4] Premanufacture Notification Exemption for Polymers; Amendment of Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers, 75 Fed. Reg. 4295, 4296 (Jan. 27, 2010) (to be codified at 40 C.F.R. pt. 723).
[5] *See, e.g.*, C8 Science Panel, *C8 Probable Link Reports*, http://www.c8sciencepanel.org/prob_link.html (last updated Oct. 29, 2012).
[6] *See* Jeff McMenemy, *EPA Region 1 Leader: PFAS Treatment Could Change*, Fosters.com (Jun. 25, 2018, 7:51 PM), http://www.fosters.com/news/20180625/epa-region-1-leader-pfas-treatment-could-change; Suzanne Yohannan, *EPA Eyes Individual PFAS But Sees Limits in Chemical-Specific Approach*, InsideEPA.com (Jun. 14, 2018), https://insideepa.com/weekly-focus/epa-eyes-individual-pfas-sees-limits-chemical-specific-approach.
[7] U.S. Envtl. Prot. Agency, *Fact Sheet: PFOA & PFOS Drinking Water Health Advisories* (2007), https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf

[8] *See* Jesper Kjølholt et al., *Short-Chain Polyfluoroalkyl Substances (PFAS)* (Danish Ministry on Env't, Envtl. Project No. 1707, 2015), https://www2.mst.dk/Udgiv/publications/2015/05/978-87-93352-15-5.pdf
[9] *See* Stephan Brendel et al., *Short-Chain Perfluoroalkyl Acids: Environmental Concerns and a Regulatory Strategy under REACH* 1, 3-4 (30:9 Envtl. Sci. Eur., 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5834591/pdf/12302_2018_Article_134.pdf.
[10] *See* 40 C.F.R. § pt. 423, App'x A; U.S. Envtl. Prot. Agency, *Toxic and Priority Pollutants under the Clean Water Act*, https://www.epa.gov/eg/toxic-and-priority-pollutants-under-clean-water-act (last updated Mar. 15, 2018).
[11] *See id.*
[12] 42 U.S.C. § 11023(h); *See, e.g.*, *Dayton Power & Light Co. v. Browner*, 44 F. Supp. 2d 356, 358 (D.D.C. 1999).
[13] 42 U.S.C. §11023(d)(1).
[14] *See* U.S. Envtl. Prot. Agency, *E.I. DuPont de Nemours and Company PFOA Settlements*, https://www.epa.gov/enforcement/ei-dupont-de-nemours-and-company-pfoa-settlements (last updated Aug. 24, 2017).
[15] *See* Press Release, EPA,100 Percent Participation and Commitment in EPA's PFOA Stewardship Program, (Mar. 2, 2006), https://archive.epa.gov/epapages/newsroom_archive/newsreleases/95de36c6115a523a8525712500693772.html [https://perma.cc/2NZ3-27DD].
[16] *See* 40 C.F.R. § 372.28.
[17] *See* 33 U.S.C.A. § 1317(a)(1); 40 C.F.R. § 401.15 (2015).
[18] *See* 15 U.S.C.A. § 2604(a)(1); *id.* § 2604(i)(1); 40 C.F.R. § 720.22 (1986).
[19] *See* 40 C.F.R. § 720.30.
[20] Jeff Morrison, *Per- and Polyfluoroalkyl Substances under the Toxic Substances Control Act, (TSCA)*, [PowerPoint slides] EPA (2018), https://www.epa.gov/sites/production/files/2018-05/documents/pfas_summit_jeff_morris_22_may_2018.pdf, at slide 2.
[21] *See PFAS Laws and Regulations*, EPA (2018), https://www.epa.gov/pfas/pfas-laws-and-regulations (last updated July 30, 2018).