

October 18, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Administrator Regan:

The undersigned organizations have concerns with the Agency's proposal to list Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). While we support the federal government's efforts to accelerate cleanup and address sites contaminated with these substances, a CERCLA listing will not result in efficient and effective cleanups of sites contaminated with these two substances and will lead to significant unintended consequences and costs. EPA has several effective tools that it can use to facilitate and fund cleanup without listing. The Agency already uses available enforcement tools under CERCLA and other statutes, as well as response actions by Federal agencies, which are meeting the challenge of addressing PFOA and PFOS sites.

As the Agency is aware, PFOA and PFOS have not been manufactured in the United States in more than a decade and the Agency's significant new use rules, revised in 2020, severely limit import and use of these substances. Restrictions under federal and international standards and/or guidelines, moreover, create a strong disincentive for use in those few applications exempted from use restrictions. Consequently, it is highly unlikely that listing of PFOA and PFOS would lead to the collection of information on new releases of PFOA and PFOS as suggested in the Agency's proposal. Yet, finalizing the proposal would create significant potential liability and impacts for public and private entities throughout the United States, including the U.S. government itself, without providing evidence of a commensurate benefit to public health or the environment. In addition, we are concerned that the proposal would also lead to immediate litigation and legal uncertainty, as the proposal seems flawed in a number of significant respects and is likely to be challenged in court by adversely affected parties.

While the Agency has declined to quantify the cost impacts of addressing this liability, public statements from your office have acknowledged plans to exercise enforcement discretion to ensure fairness for various sectors and parties. Yet, the Agency has provided no information on how such discretion would be applied or which parties would be considered. Moreover, the exercise of enforcement discretion would not preclude non-federal parties from bringing CERCLA litigation, thus providing no safe harbor for any parties that are identified as candidates for the exercise of enforcement discretion.

Our coalition has provided our perspectives on the [challenges with CERCLA designation](#) and the costs and impacts of [non-federal site cleanup](#).

We urge you to withdraw the proposed rule to list PFOA and PFOS as CERCLA hazardous substances while the Agency resolves several critical issues with implications on the proposal, including:

- The effectiveness of EPA's existing tools to address PFOA and PFOS contamination.
- The number of sites across the country that may be impacted.
- The concentration of each substance that will be considered the cleanup target for remediation at Superfund sites.
- The availability of sufficient disposal capacity and technology capabilities for wastes containing PFOA and PFOS should they be designated as hazardous.
- The true economic impacts of CERCLA listing, including a robust evaluation of the identified uncertainties and impacts.
- Whether a discretionary enforcement policy is an appropriate and effective tool to manage an overbroad regulatory mandate, particularly given the reality that such a policy would not be able to prevent or control CERCLA litigation brought by non-federal parties.

Only after the Agency has provided that information can stakeholders provide meaningful comment on the listing proposal.

Sincerely,

Aerospace Industries Association
Airlines for America
American Chemistry Council
American Forest and Paper Association
American Fuel and Petrochemical
Manufacturers
American Petroleum Institute
Associated General Contractors of America.
Council of Industrial Boiler Owners
Flexible Packaging Association
Fluid Sealing Association
National Association of Chemical
Distributors
National Association of Manufacturers
National Association of Printing Ink
Manufacturers
National Association for Surface Finishing
National Council of Textile Organizations
National Oilseed Processors Association

National Mining Association
PRINTING United Alliance
TRSA - The Linen, Uniform and Facility
Services Association
U.S. Chamber of Commerce