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Information Quality Guidelines Staff (Mail Code 28221T)  
U.S. Environmental Protection Agency (EPA)  
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Washington, DC 20460  
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**Re: Demand for Correction under the Information Quality Act: 1) EPA Questions and Answers About TSCA; and 2) EPA Questions and Answers about Designation of PFOA and PFOS as Hazardous Substances under CERCLA**

To Whom It May Concern:

Public Employees for Environmental Responsibility (PEER) hereby submits this Demand for Correction under the Information Quality Act (IQA) of 2000 [Section 515 of the Fiscal Year 2001 Treasury and General Government Appropriations Act, Pub. L. No. 106-554],<sup>1</sup> the Office of Management and Budget (OMB) Guidelines for Ensuring and Maximizing the Quality, Utility, and Integrity of Information disseminated by Federal Agencies (hereinafter “OMB Guidelines”)<sup>2</sup>, and the Environmental Protection Agency’s (EPA) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency (hereinafter “EPA Guidelines”).<sup>3</sup> PEER is submitting this Demand both on its own behalf.

For reasons detailed below, we demand the retraction of two EPA publications containing erroneous information about perfluorooctanoic acid (PFOA) on its website:

1. The first erroneous statement is found on, “EPA Questions and Answers About TSCA.” Specifically, it states:

*“Q8.[Is] ... perfluorooctanoic acid (PFOA), and other long-chain PFASs still being manufactured or imported into United States?”*

The manufacture and import of PFOA has also been phased out in United States as part of the PFOA Stewardship program. Existing stocks of PFOA might still be used and there might be PFOA in some imported articles.”<sup>4</sup>

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<sup>1</sup> Treasury and General Government Appropriations Act, Pub. L. No. 106-554, §515 (Fiscal Year 2001).

<sup>2</sup> Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, Republication, 67 Fed. Reg. 8452 (Feb. 22, 2002).

<sup>3</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY, OBJECTIVITY, UTILITY, AND INTEGRITY OF INFORMATION DISSEMINATED BY THE ENVIRONMENTAL PROTECTION AGENCY, available at [http://epa.gov/quality/informationguidelines/documents/EPA\\_InfoQualityGuidelines.pdf](http://epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf) [hereinafter *EPA Guidelines*].

<sup>4</sup> [Fact Sheet: 2010/2015 PFOA Stewardship Program | US EPA](#)

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2. The second erroneous statement is found on, “EPA Questions and Answers about Designation of PFOA and PFOS as Hazardous Substances under CERCLA.” Specifically, it states:

*“Have PFOA and PFOS been phased out? Are they still in use?*

Domestic production and import of PFOA has been phased out in the United States by the companies participating in the 2010/2015 PFOA Stewardship Program. Small quantities of PFOA may be produced, imported, and used by companies not participating in the PFOA Stewardship Program ...”<sup>5</sup>

Both of these cite statements are inaccurate, incomplete, and misleading.

## **I. Challenged Material Is Subject to Information Quality Act**

### **A. Challenged Material Is “Information” Subject to the IQA**

By its terms, EPA’s Information Quality Act Guidelines apply to “information” which “generally includes any communication or representation of knowledge such as facts or data, in any medium or form... to support or represent EPA’s viewpoint, or to formulate or support a regulation, guidance, or other Agency decision or position.”<sup>6</sup>

The challenged material unquestionably constitutes “information” for purposes of the IPA. The material constitutes EPA statements about PFOA and PFOS in connection with two major environmental laws: The Toxic Substances Control Act (TSCA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, otherwise known as Superfund).

Both chemicals are forms of per- and polyfluoroalkyl substances – known as PFAS, which is the subject of significant regulatory focus by EPA.

### **B. Challenged Information Was Publicly Disseminated by EPA**

EPA Guidelines also specify that “EPA initiates a distribution of information... if EPA indicates in its distribution that the information supports or represents EPA’s viewpoint...or other Agency decision or position.”<sup>7</sup>

The challenged statements are posted on EPA’s website and intended to provide a public explanation of EPA’s regulatory posture on these subjects.

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<sup>5</sup> <https://www.epa.gov/superfund/questions-and-answers-about-designation-pfoa-and-pfos-hazardous-substances-under-cercla#use>

<sup>6</sup> EPA Guidelines 5.2

<sup>7</sup> EPA GUIDELINES 5.3.

### **C. PEER Has Standing to Challenge the Information**

The EPA Guidelines state that any “affected individual” (a term defined broadly) may challenge information disseminated by an agency by filing a demand for correction.<sup>8</sup>

PEER, a nonprofit organization chartered in the District of Columbia with members throughout the country, is an affected individual for multiple reasons:

- a) PEER discovered the presence of PFAS in Anvil 10+10, the pesticide used in the aerial spraying programs of Massachusetts, Florida, New York and an estimated 25 other states, finding that were later corroborated by EPA.<sup>9</sup> PEER’s discovery led to EPA’s realization that the process of fluorinating plastic containers resulted in the manufacture of PFOA and other PFAS.
- b) PEER is currently suing EPA over the agency’s failure under section 4(f) of TSCA to halt the manufacture and distribution of tens of millions of plastic containers with dangerous levels of PFOA.<sup>10</sup>
- c) For more than 30 years, PEER has been a leading advocate for scientific integrity within EPA.<sup>11</sup> Our mission is to hold government agencies accountable for enforcing environmental laws, maintaining scientific integrity, and upholding professional ethics. The subject matter of this complaint represents a significant breach of EPA scientific integrity which directly affects our work in this field.
- d) PEER supporters, staff, and board members are at risk for ingestion of PFAS contaminated foodstuffs due to the presence of PFAS in commercial pesticides.

### **II. Challenged Material Is Categorized as “Influential” and Thus Subject to Most Rigorous Scientific Standards**

The EPA Information Quality Guidelines state that, “Disseminated information should adhere to a basic standard of quality, including objectivity, utility, and integrity.”<sup>12</sup> In this instance, the challenged material must be held to higher than a ‘basic’ standard of scientific integrity.

The challenged disseminated information is influential scientific information as defined by EPA guidelines. The EPA considers information to be “influential” when the “dissemination of the information will have or does have a clear and substantial impact ... on important public policies or private sector decisions.”<sup>13</sup> The EPA Guidelines list documents such as studies, and guidance in support of “top Agency actions” as influential. According to the EPA, “top Agency actions usually have potentially great or widespread impacts on the private sector, the public or

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<sup>8</sup> EPA GUIDELINES A3.7, 8.2.

<sup>9</sup> See <https://peer.org/epa-confirms-pfas-in-aerial-pesticides/>

<sup>10</sup> [New Suit Targets EPA Inaction on PFOA in Plastic Containers](#)

<sup>11</sup> See <https://peer.org/epa-fears-empowering-own-scientists/>

<sup>12</sup> *Supra* at 3.

<sup>13</sup> *Supra* at 6.2.

state, local or tribal governments” and “have the potential to result in major cross-Agency or cross-media policies.”<sup>14</sup>

As influential material, the EPA Guidelines specify that it subject to a higher degree of quality” as well as a “higher degree of transparency about data and methods.”<sup>15</sup> This higher level of scientific scrutiny would dictate that any significant departure from accepted or recommended practice should result in the correction or removal of the materials as failing to meet the EPA Guidelines.

In this instance, the challenged material is prominently placed on EPA’s website and are offered as core explanations for EPA’s regulatory posture on matters of great consequence to the protection of public health and the environment.

### III. Challenged Materials Are Inaccurate, Incomplete, and Misleading

The first erroneous statement claims, “The manufacture and import of PFOA has also been phased out in United States.” This is demonstrably false. As presented in detail below in Section V, EPA discovered in December of 2022 that post-mold fluorination of plastic containers resulted in the manufacture of PFOA and numerous other PFAS. Indeed, EPA was so concerned about the leaching of PFOA and other PFAS into pesticides stored in those containers, it stated, “States with existing stock of Anvil 10+10 that is stored in HDPE containers should red tag that inventory and hold for now. Clarke Mosquito has informed EPA that it will reach out to all its customers regarding management of its Anvil 10+10 product.”<sup>16</sup> In other words, EPA forced the company to pull the product off shelves to prevent it from being used due to their concerns over PFOA contamination.

The second erroneous statement claims, “Domestic production and import of PFOA has been phased out in the United States by the companies participating in the 2010/2015 PFOA Stewardship Program. Small quantities of PFOA may be produced, imported, and used by companies not participating in the PFOA Stewardship Program.” This is also demonstrably false. Once EPA identified the company fluorinating the plastic bottles which resulted in the manufacture of PFOA and other PFAS, EPA learned that 200 million containers were fluorinated annually, and used in numerous sectors of commerce. This exposed millions of Americans to toxic PFOA.

Indeed, in December of 2023, EPA stated, “These data therefore show that ...[PFOA is] *...still being manufactured* during the Company’s fluorination process...” (emphasis added).<sup>17</sup> EPA goes on to display a chart that states during “Manufacturing” of PFOA and other PFAS, the general population is exposed through three media: “Air (stack and fugitive\*), Water, Incineration”; and exposed through pathways including, “Inhalation, Ingestion...”<sup>18</sup> EPA said

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<sup>14</sup> *Supra* at 6.2.

<sup>15</sup> *Supra* at 6.3.

<sup>16</sup> [https://19january2021snapshot.epa.gov/pesticides/pfas-packaging\\_.html](https://19january2021snapshot.epa.gov/pesticides/pfas-packaging_.html)

<sup>17</sup> [https://www.epa.gov/system/files/documents/2025-01/sn-23-0002-0004-0005\\_order-signature-copy\\_12-01-2023\\_marked\\_redacted\\_vacated\\_0.pdf](https://www.epa.gov/system/files/documents/2025-01/sn-23-0002-0004-0005_order-signature-copy_12-01-2023_marked_redacted_vacated_0.pdf) at 18

<sup>18</sup> *Id.* at 33

this one company manufactured 337 grams of PFOA annually, stating, “To some, this may seem like a small amount of PFOA, but based on the known persistence, bioaccumulation, (sic) toxicity of PFOA, there is risk from even the smallest exposure.”<sup>19</sup>

Therefore, EPA was not only aware that PFOA was still being manufactured in the United States, but at such a level as to cause risk. Consequently, the challenged materials violate EPA’s own Information Quality Act guidelines which purport to “to ensure and maximize the quality, including objectivity, utility and integrity, of disseminated information” by the agency.<sup>20</sup>

#### **IV. Challenged Materials Did Not Follow EPA Quality Controls**

EPA Information Quality Act Guidelines lay out an “Agency-wide Quality System” that is designed to “ensure that EPA organizations maximize the quality of environmental information.”<sup>21</sup> That System includes steps the agency should take before disseminating scientific or technical information, especially influential information.

In this instance, EPA took none of the quality ensuring steps.

##### **A. No External Peer Review**

The Guideline invoke “EPA's Peer Review Policy” which “provides that major scientifically and technically based work products... should be peer-reviewed...or those work products that are intended to support the most important decisions or that have special importance in their own right, *external peer review is the procedure of choice*”<sup>22</sup> (emphasis added).

In this instance, there was no external peer review before EPA issued a the “Questions and Answers” fact sheets.

##### **B. Black Box Development Circumventing “Action Development Process”**

The EPA Guidelines also strongly encourage periodic circulation of information product development within the agency “at key decision milestones to facilitate the consideration of a broad range of regulatory and non-regulatory options and analytic approaches... before the release of substantive information...”<sup>23</sup>

In this instance, there was no discernible attempt to seek out different internal viewpoints. Instead, the factsheets were apparently developed by one unit of the agency in an opaque “black box” process that invited no critical review.

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<sup>19</sup> Id. at 38

<sup>20</sup> EPA GUIDELINES 5.1.

<sup>21</sup> <sup>21</sup> *Supra* at 4.1

<sup>22</sup> *Supra* at 4.2.

<sup>23</sup> *Supra* at 4.3.

### **C. No Pre-Dissemination Review**

The Guidelines direct each “EPA Program Office” to “incorporate the information quality principles “into their existing pre-dissemination review procedures” in order “to facilitate implementation of consistent cross-Agency pre-dissemination reviews by establishing a model of minimum review standards based on existing policies ...that may occur at many steps in development of information, not only at the point immediately prior to the dissemination of the information.”<sup>24</sup>

Needless to elaborate, but EPA seemingly completely bypassed any of the recommended pre-dissemination review steps prior to posting these factsheets on PFOS and PFOA.

### **D. No Integrated Error Correction Process**

The Guidelines also advocate utilization of an “Integrated Error Correction Process” by which “members of the public can notify EPA of a potential data error in information EPA distributes or disseminates.” The idea is that “EPA reviews the error notification and assists in bringing the notification to resolution with those who are responsible for the data within or outside the Agency, as appropriate.”<sup>25</sup>

In this instance, the Error Correction Process could clearly have been aided by knowledgeable individuals prior to publication. That obviously was not done.

### **V. EPA’s Results Are Contradicted by Independent Researchers and the Agency Itself**

EPA began investigating the source of PFAS found in pesticides in September of 2020 after PEER fund that PFAS were found in a particular insecticide.<sup>26</sup> In December of 2020, EPA determined that the fluorinated HDPE containers used to store and transport the pesticide may be the source of PFAS contamination.<sup>27</sup>

EPA stated in a press release that:

In January 2021, EPA continued its testing which showed the PFAS were most likely formed from a chemical reaction during the container fluorination process which then leached into the pesticide product. After completing a robust quality assurance and quality control process, EPA can confirm that it has detected eight different PFAS from the fluorinated HDPE containers, with levels ranging from 20-50 parts per billion.<sup>28</sup>

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<sup>24</sup> *Supra* at 7.1.

<sup>25</sup> *Supra* at 4.4.

<sup>26</sup> <https://www.epa.gov/newsreleases/epa-releases-testing-data-showing-pfas-contamination-fluorinated-containers>

<sup>27</sup> *Id*

<sup>28</sup> *Id*

One of these PFAS was PFOA.<sup>29</sup> Therefore, there is no dispute that, by August of 2022, EPA knew that fluorination of high-density polyethylene (HDPE) done by the company Inhance Technologies LLC (“Inhance”) resulted in the manufacture of PFOA. Approximately 200 million plastic containers are fluorinated by Inhance each year, and PFOA is formed during fluorination and consistently present in plastic containers and their contents.

In 2023, scientists at Notre Dame University found that plastic containers fluorinated using post mold fluorination resulted in the formation of PFOA and other PFAS.<sup>30</sup>

On December 1, 2023, EPA ordered Inhance not to produce PFAS, including PFOA, that are created in the production of its fluorinated HDPE plastic.<sup>31</sup> While these orders were overturned by the Fifth Circuit holding that EPA exceeded its authority under TSCA Section 5,<sup>32</sup> the Court emphasized that EPA had ample authority under other sections of TSCA to regulate the fluorination process and did not question EPA’s determination of unreasonable risk and supporting risk assessment. Inhance continues its fluorination process to this day. EPA declined to appeal that ruling and withdrew an enforcement action against Inhance.

Therefore, it is indisputable that PFOA continues to be manufactured in the United States,<sup>33</sup> and that EPA is well aware of this fact.

## **VI. Demand for Prompt Correction to Minimize Public Health Threat**

These challenged materials relate to a matter of serious public health concern. EPA determined has no safe level of exposure and may cause harmful effects in drinking water at any concentration above zero. PFOA and several other PFAS have been consistently detected in plastic containers fluorinated by Inhance. The fluorination process creates a chemical barrier on the plastic container to make it more durable, but it also imparts unsafe levels of PFOA to the container, which leach into the container contents. Inhance fluorinates an estimated 200 million containers a year.

These containers are used to package a wide variety of products, including chemicals, pesticides, personal care products, cleaning products, fuel tanks, edible oils, and other consumer products. The PFOA contamination in the Inhance container lining is absorbed into the contents, and then ingested, inhaled, or dermally absorbed by consumers.

In July 2024, EPA granted a petition filed by PEER and other groups to initiate rulemaking to address three PFAS (PFOA, PFNA, and PFDA) created during the fluorination process.<sup>34</sup> However, EPA has announced no timeline for conducting rulemaking or for implementing

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<sup>29</sup> [https://www.epa.gov/system/files/documents/2022-09/EPA%20PFAS%20Container%20Leaching%20Study%2008122022\\_0.pdf](https://www.epa.gov/system/files/documents/2022-09/EPA%20PFAS%20Container%20Leaching%20Study%2008122022_0.pdf)

<sup>30</sup> Heather D. Whitehead and Graham F. Peaslee, Directly Fluorinated Containers as a Source of Perfluoroalkyl Carboxylic Acids, *Environmental Science & Technology Letters* **2023** 10 (4), 350-355  
DOI: 10.1021/acs.estlett.3c00083

<sup>31</sup> <https://www.epa.gov/newsreleases/epa-takes-action-protect-people-pfas-leach-plastic-containers-pesticides-and-other>

<sup>32</sup> *Inhance Technologies, LLC v. USEPA*, 96 F.4th 888 (5th Cir. 2024).

<sup>33</sup> See <https://www.inhancetechnologies.com/locations>

<sup>34</sup> [EPA Grants Petition to Regulate PFAS Found in Plastic Containers - Earthjustice](#)

immediate safeguards to protect the public from being exposed to toxic PFAS in fluorinated plastic containers.

As outlined above, the challenged material should be retracted because they violate EPA Guidelines for Information Quality. Accordingly, PEER asks that the EPA take the following steps to comply with the Information Quality Act:

- 1) Publicly withdraw the two Questions and Answers factsheets.
- 2) Issue a public statement, posted on official websites and accompanied by an EPA press release, that PFOA is manufactured in the United States today.

We look forward to receiving your response at the contact information heading this stationery within 90 days, as specified within the EPA Information Quality Guidelines,<sup>35</sup> if not sooner, given the adverse public health consequences stemming from EPA's misconduct.

Thank you in advance for your prompt attention to this complaint.

Sincerely,

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<sup>35</sup> EPA GUIDELINES A55.