



Public Employees for Environmental Responsibility

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Office of Land and Emergency Management, EPA
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1200 Pennsylvania Avenue, N. W.
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Docket ID No. EPA-HQ-OLEM-2019-0229

Dear Mr. Foster,

Public Employees for Environmental Responsibility (PEER)¹ appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) "Draft Interim Recommendations to Address Groundwater Contaminated with Perfluorooctanic Acid and Perfluorooctane Sulfonate" [hereinafter "Draft Interim Guidance"].

In issuing these recommendations, EPA has failed to set protective cleanup standards for groundwater and surface waters from PFOA and PFOS, let alone for the hundreds or thousands of newer PFAS substances being used in their place. Consequently, we urge EPA to immediately withdraw these recommendations and reissue new recommendations based on the latest scientific understanding of the toxicity of PFOA and PFOS. EPA's proposal would leave communities across the country unprotected from dangerous levels of these toxic "forever chemicals" in their water. The big winners in this proposal are chemical manufacturers who – with the help of EPA -- have knowingly turned a blind eye to the inherent risks of PFAS, not those affected by these toxic chemicals in their drinking water supplies.

EPA's recommendations call into question its willingness to provide a serious response to this problem. There are currently no enforceable federal PFAS drinking water standards, despite pervasive drinking water contamination, ubiquitous exposure in humans and wildlife, and a plethora of evidence of adverse health effects. Because EPA has been unwilling or unable to address this crisis, states are attempting to

¹ Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide. One of PEER's recent campaigns has been to address the widespread contamination of water by per- and polyfluoroalkyl substances (PFAS), including perfluorooctanic acid (PFOA) and perfluorooctane sulfonate (PFOS).

develop their own guidelines and enforceable limits, leaving an inconsistent patchwork of protection across the country. However, PFAS contamination is a national threat that deserves an expeditious federal response. Instead of taking this threat seriously, the “OMB Review Redline Version” of these recommendations shows the Trump Administration is intent on weakening the draft recommendations even further.

Our specific comments on this draft guidance are set forth below.

1. EPA’s proposed action levels are too high and are not protective of human health or the environment.

The 40 ppt “screening level” and the 70 ppt “preliminary remediation goal” are not protective of human health and the environment. The Draft Interim Guidance proposes a 40 ppt “screening level,” which would be used to determine which areas need to be further investigated, and a 70 ppt “preliminary remediation goal,” which would “inform final cleanup levels” of PFOS or PFOA in groundwater used or that could be used for drinking water. The Agency for Toxic Substances and Disease Registry developed much lower standards for drinking water advisory levels; specifically, approximately 7 ppt for PFOS, and approximately 11 ppt for PFOA.² These levels are much lower than EPA’s LHA, and both the screening level and preliminary remediation goal suggested here. Moreover, Harvard University researchers estimate that a safe level of PFAS in drinking water is 1 ppt.³ Given ATSDR – this Administration’s own agency – and Harvard University have developed drastically lower standards, it appears that EPA’s current levels are neither based on the best available science, nor are they protective of human health.

EPA must issue an emergency action level. The Draft Interim Guidance fails to designate an emergency action level at which EPA would act immediately and remove PFAS in order to protect human health and the environment. Failure to provide an emergency action level results in continued contamination and human health effects, and uncertainty for communities affected by such contamination. EPA needs to develop an enforceable limit for PFAS in drinking water, and an emergency action level for all waters (regardless of whether it is groundwater or surface water, and regardless of whether it is a drinking water source), soil, and the air. Cleanups can take years to complete. An emergency action level would ensure that work would start immediately in areas where the PFAS level is dangerously high.

EPA needs to issue an enforceable limit for PFAS as opposed to interim guidance. While the February 2019 Action Plan promised only to develop interim cleanup recommendations to address groundwater contaminated with PFOA and PFOS, unenforceable guidance is simply not enough. It is critical that EPA develop enforceable standards. By postponing action on enforceable standards once again, EPA is failing to protect both human health and the environment. Issuance of “interim” guidance leaves the door open for pressure to revise, particularly from the Department of Defense (DoD) who – as one of the nation’s biggest polluters of PFAS – have a vested interest limiting the cleanup level.⁴

² <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>

³ P. Grandjean and R. Clapp, Perfluorinated Alkyl Substances: Emerging Insights Into Health Risks NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy, vol. 25, 2: pp. 147-163. , First Published June 17, 2015.

⁴ See e.g., “Addressing Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA),” delivered to U.S. Congress by Maureen Sullivan, Deputy Assistant Secretary of Defense (Environment, Safety & Occupational Health) in March 2018,

Moreover, avoiding a regulatory standard and instead relying upon an interim guidance frustrates timely remediation of the contaminated water supplies and groundwater, leaving people and the environment at risk. This guidance does not legally require the industry or the DoD to clean up contaminated sites or military facilities.

2. EPA's recommendations ignore much of the contamination

The Draft Interim Guidance should apply to all sites where PFAS contamination exists. The Draft Interim Guidance states that, “This guidance provides interim recommendations for addressing groundwater contaminated with perfluorooctanoic acid (PFOA) and/or perfluorooctane sulfonate (PFOS) *at sites being evaluated and addressed under federal cleanup programs, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and corrective action under the Resource Conservation and Recovery Act (RCRA)*”⁵ (emphasis added). Not all sites contaminated with PFAS are being evaluated under CERCLA and RCRA, and therefore this restriction will allow many contaminated sites to fall through the cracks.

The Draft Interim Guidance should apply to groundwater *and* surface water contaminated with PFAS. The Draft Interim Guidance only applies to groundwater contaminated with PFAS, yet surface waters (lakes, rivers, reservoirs, and streams) provide drinking water to the majority of Americans. Specifically, an estimated 170 million people in the United States get their drinking water from surface water, and 90 million people get their drinking water from groundwater.⁶ It is unclear why the guidance only applies to groundwater, as PFAS is contaminating surface waters, and getting into the muscles of fish.⁷ In addition, deer drinking from contaminated surface waters also get PFAS in their muscles, which can lead to human consumption of dangerously high levels.⁸ Finally, a water quality standard for PFAS in surface waters needs to be developed. Surface water quality standards form the basis of any further Clean Water Act regulation, and this would allow another legal vehicle through which PFAS contamination could be addressed.

EPA must require cleanup of all water, not just water currently being used as drinking water. The Draft Interim Guidance states, “In situations where groundwater is being used for drinking water, EPA expects that responsible parties will address levels of PFOA and/or PFOS over 70 ppt.”⁹ It is short-sighted to restrict cleanups to groundwater currently being used as drinking water. Many municipalities have potential wells (wells not currently in use but being held in reserve). Moreover, given the changing weather patterns due to climate change, some existing wells will no longer be able to provide the quantity or quality of water necessary to sustain a community. EPA must be proactive and ensure that all PFAS-contaminated water is cleaned up regardless of whether it is a current source of drinking water.

Limiting this guidance to PFOA and PFOS is too narrow. The Draft Interim Guidance states in a footnote, “This guidance is focused on PFOA and PFOS, however, EPA recognizes that toxicity

stating that there are 401 DoD installations with known or suspected PFAS contamination, with 1,621 groundwater wells that tested above EPA's Lifetime Health Advisory of 70 ppt.

⁵ Draft Interim Guidance, p. 1.

⁶ <https://www.epa.gov/nutrientpollution/where-occurs-ground-water-and-drinking-water>

⁷ See e.g., https://www.michigan.gov/pfasresponse/0,9038,7-365-86510_88060_88065---,00.html

⁸ To date, only the State of Michigan has “Do Not Eat” advisories for deer due to PFAS. See e.g., <https://www.michigan.gov/dnr/0,4570,7-350-86469-481144--,00.html>

⁹ Draft Interim Guidance, p. 2.

information is being developed on additional PFAS and will consider that information as it becomes available.”¹⁰ While it is true that there is limited toxicity information on hundreds, if not thousands, of PFAS currently in use, there is enough information for several states to have issued advisories and/or limits on PFAS other than PFOA and PFOS. For example, Connecticut, Massachusetts, and Vermont have action levels for PFNA, PFHxS, and PFHpA; Minnesota has guidance for PFHxS; New Hampshire has limits for PFHxS and PFNA; New Jersey has a regulatory limit for PFNA; and North Carolina has a health advisory for GenX PFAS (see Table 1, below). If the States have toxicity information for some of these compounds, then surely EPA has access to this as well.

TABLE 1

State	Drinking Water Action	Compound	Level (ppt)
Alaska	Action Levels	Sum of PFOA and PFOS	70
California	Interim Response Levels	Sum of PFOA and PFOS	70
	Notification Levels	PFOA	14
		PFOS	13
Colorado	Health Recommendations	Perfluorinated Compounds	70
Connecticut	Action Level (Private Wells)	Sum of PFOA, PFOS, PFNA, PFHxS, PFHpA	70
Idaho	Drinking Water Health Advisories	Sum of POFA and PFOS	70
Maine	Maximum Exposure Guidelines	Sum of POFA and PFOS	70
Massachusetts	Office of Research & Standards Guideline	Sum of PFOA, PFOS, PFNA, PFHxS, PFHpA	70
Michigan	Michigan PFAS Action Response Team (Advisory Body)	Sum of POFA and PFOS	70
Minnesota	Health Based Guidance for Water	PFOA	35
		PFOS	15
		PFHxS	47
		PFBS	2000
		PFBA	7000
New Hampshire	Rulemaking Initiated 12/31/2018	PFOA	38
		PFOS	70
		PFNA	23
		PFHxS	85
		PFOA and PFOS Combined	70
New Jersey	Quality Standard	PFNA	10
	Maximum Contaminant Level	PFNA	13
	Proposed Quality Standard	PFOS	13
	Proposed Maximum Contaminant Level	PFOS	13
	Proposed Quality Standard	PFOA	14
	Proposed Maximum Contaminant Level	PFOA	14
New York	Recommended Maximum Contaminant Level	PFOA	10
		PFOS	10
North Carolina	Health Goal	Sum of PFOA and PFOS	70
	Health Goal	GenX	140
Pennsylvania	Health Advisory	Sum of PFOA and PFOS	70
Vermont	Health Advisory	Sum of PFOA, PFOS, PFNA, PFHxS, PFHpA	20
Washington	"Do Not Drink" Health Advisory	Sum of PFOA and PFOS	70
West Virginia	Drinking Water Health Advisory	PFOA	70
		PFOS	70

Finally, if EPA has such limited toxicity information on these chemicals, which are coming into commerce and being used at an alarming frequency,¹¹ EPA should put an immediate halt to new PFAS and new uses. Let’s be clear: EPA does not know the health or environmental effects of hundreds of these compounds, nor does not it have a way to assess exposure or harm. EPA is not only failing to be

¹⁰ *Id.* at footnote 3, page 2.

¹¹ See e.g., <https://www.peer.org/news/press-releases/pfas-use-in-u.s.-skyrockets.html>

proactive; it is shrugging its shoulders and not even being reactive. Given the extreme toxicity and prevalence of the known PFAS, it is unconscionable that EPA is allowing this new generation of PFAs to be used without any regulation whatsoever. Given how long it will take the scientific community to determine the health impacts associated with these new compounds, EPA is digging itself deeper and deeper into a toxic hole. Playing whack-a-mole with new compounds is not the way to protect human health or the environment.

The Draft Interim Guidance should also apply to soil and air contaminated with PFAS. PFAS contamination is not simply restricted to the water; in fact, humans can inhale airborne PFAS and absorb it through their skin. By ignoring contamination in the soil and air, EPA is failing to solve the contamination problem. In addition, once PFAS is in the soil, it can travel to water, some of which is used for drinking water.

EPA must conduct more PFAS testing to know where the contamination is. There is a PFAS contamination crisis, and it is not only in our drinking water, but also in the air and soil. EPA must conduct additional testing to identify contaminated areas. This testing must be sensitive enough to detect PFAs compounds at or below action limits.¹² There must also be requirements to tell affected residents of potential exposure, so they can take action until the contamination is dealt with. Presently, the DoD does not routinely notify state or local officials concerning DOD-caused PFAS contamination. Finally, the Center for Disease Control (CDC) must assess the risk of cancer from PFAS, as well as other diseases.¹³

3. The Draft Interim Guidance is vague and confusing.

The Draft Interim Guidance is vague with respect to responsible parties. The third bullet under Interim Recommendations states, “In situations where groundwater is being used for drinking water, EPA expects that responsible parties will address levels of PFOA and/or PFOS over 70 ppt.”¹⁴ This vague statement begs several questions: What happens if responsible parties are not known? How does EPA expect levels to be addressed if PFOA and/or PFOS in the groundwater is over 70 ppt? Will EPA step in to address the contamination if responsible parties do not, and if so, under what authority?

The Draft Interim Guidance should explicitly describe how the Safe Drinking Water Act (SDWA) can be used to clean up contaminated sites. Section 1431(a) of the SDWA gives EPA the authority to take actions the Agency deems necessary to protect public health when a contaminant, whether regulated or not, is present in or likely to enter a public water system or an underground source of drinking water, and “may present an imminent and substantial endangerment to the health of persons.” EPA has used the SDWA in the past to hasten the cleanup of PFAS contaminated sites by recalcitrant responsible parties. This memo does not make that clear, and as this legal vehicle is one of the most powerful EPA has at the moment, this absence should be explained.

4. EPA must invoke other statutes to address contamination.

¹² Testing under The third Unregulated Contaminant Monitoring Rule (*UCMR 3*) resulted in detection limits that were *higher than* the LHA.

¹³ <https://www.peer.org/news/press-releases/cdc-punts-on-studying-pfas-cancer-risks.html>

¹⁴ Draft Interim Guidance, p. 3.

PFAS should be declared hazardous under CERCLA. EPA’s Action plan states that it will, “Begin...the necessary steps to propose designating PFOA and PFOS as ‘hazardous substances’ through one of the available federal statutory mechanisms.”¹⁵ The justification for taking this step is that “[l]isting PFOA and PFOS as CERCLA hazardous substances would provide additional authority to address PFOA and PFOS, including the ability to require responsible parties to carry out and/or pay for response actions.”¹⁶ This action needs to happen sooner rather than later; failure to define PFAS as hazardous under CERCLA leads to uncertainty regarding cleanup responsibilities.

All PFAS should be added to the TSCA inventory. Section 5 of TSCA allows the EPA to issue Significant New Use Rules (SNURs) that require notice to EPA *before* chemical substances and mixtures are manufactured, imported, or processed for significant new uses. The EPA Action Plan states:

In 2015, the EPA proposed the most recent SNUR on PFAS to complement the long-chain PFAS phaseout under the 2010/2015 PFOA Stewardship Program by requiring manufacturers (including importers) of PFOA and certain PFOA-related chemicals, including as part of articles, and processors of these chemicals to notify the EPA at least 90 days before starting or resuming new uses of these chemicals.¹⁷

EPA has not yet taken action against any PFAS prior to its use in manufacturing. Given that new PFAS substances are flooding the marketplace, it is imperative that EPA add all new PFAS chemicals to the TSCA inventory.

PFAS need to be added to the Toxics Release Inventory (TRI). Currently, no PFAS chemicals are included on the list of chemicals required to be reported to TRI. Chemicals covered by the TRI include those that cause cancer or other chronic human health effects, significant adverse acute human health effects, and/or significant adverse environmental effects. Clearly, PFAS fall within these categories. If PFAS are added to the TRI, industry using PFAS must report annually how much of the chemical is released to the environment, and how it is managed. This would make it easier to predict where PFAS contamination may be and ensure that human health and environmental impacts are minimized.

5. The Draft Interim Guidance was weakened by other agencies, and leaves the door open for additional tinkering.

Allowing preliminary remediation goals (PRGs) to be adjusted based upon a “site-specific” basis leaves the door open to a weaker standard. The Draft Interim Guidance states, “PRGs are used to set initial targets for cleanup, which can be adjusted on a site-specific basis as more information becomes available during the remedial investigation/feasibility study (RI/FS) process.”¹⁸ This vague language leaves a loophole for agencies like the DoD to set higher cleanup standards. PEER cannot imagine a scenario where cleanup standards should be adjusted due to more information becoming available. If

¹⁵ https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf at p. 2.

¹⁶ *Id.* at p. 3.

¹⁷ EPA Action Plan at 14.

¹⁸ Draft Interim Guidance at p. 3.

EPA was anticipating that this could be used to tighten cleanup standards at particularly sensitive areas, then the language should say that PRGs can be “adjusted *downward*.”

Red-lined version shows interagency review made document weaker. The White House Office of Management and Budget website www.regulations.gov posted a document entitled “OMB Review Redline Version” of the Draft Interim Guidance.¹⁹ This “Redline Version” makes edits to EPA’s draft recommendations that further restrict its scope and impact. Specifically, some of the changes include:

- Deleting a footnote that stated, “Consistent with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and Executive Order 12580, Federal agencies are responsible for cleaning up groundwater and other contamination at their facilities.”
- Removing mention of the Safe Drinking Water Act as an enforcement tool in cases of PFAS contamination. The document states, “In addressing PFOA and PFOS contamination, EPA’s statutory and regulatory authorities provide the Agency with flexibility in how it ensures protectiveness of human health and the environment. Depending on site-specific circumstances, a CERCLA response action may be appropriate (including an interim action, interim measure, or an early action to abate releases and limit exposure, as discussed in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (e.g., 40 CFR 300.430 (e) and (f), 40 C.F.R. 300.415(b)(2)(ii) and associated provisions), and existing EPA guidance.” The phrase “as well as the use of various enforcement tools (including enforcement or a settlement agreement or an order under the Resource Conservation and Recovery Act (RCRA) section 7003, or Safe Drinking Water Act section 1431)” was deleted from the end of this sentence.
- Deleting a footnote that would have allowed EPA to take a CERCLA response even if PFAS was the only contaminant found (e.g., no co-mingling with other CERCLA regulated contaminants) was deleted. The deleted language was: Currently, PFAS are not listed as CERCLA hazardous substances. Where PFAS contamination at a site is not commingled with known CERCLA hazardous substances, CERCLA section 104(a)(1) authorizes EPA and other federal agencies to respond to releases or threatened releases of pollutants or contaminants when the release or potential release “may present an imminent and substantial danger to the public health or welfare.” When evaluating whether use of CERCLA response authority is warranted at a site where there is no commingling of PFASs with CERCLA hazardous substances, EPA project managers should consider the circumstances at each site and determine whether the actual or potential release may present an imminent and substantial danger to public health or welfare. If there is a release of both hazardous substances and pollutants/contaminants, there normally would be no need to make the endangerment determination. CERCLA section 104(e) provides broad authority to investigate a site to determine whether hazardous substances, pollutants or contaminants have been or may be released into the environment, and what risks to human health and the environment may be posed by the site.”
- Deleting the entire section on Removal Management Levels (RMLs), which are a tool to help EPA determine when a removal action at a particular site is warranted. Part of the deleted language includes: “By definition, a removal action would not be used to address groundwater cleanup. It could, however, be an appropriate response action if the groundwater is, or could potentially be, used as drinking water...RMLs are chemical- and media-specific concentrations

¹⁹ <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2019-0229-0003>

that may be used to support a decision for EPA to undertake an action using CERCLA authority and funding.... On a case-specific basis, EPA may need to take action because of combinations of chemicals, chemical-specific factors, unusual site-specific circumstances, the finding of a public health hazard by the Agency for Toxic Substances and Disease Registry (ATSDR), ecological risk, or other case-specific considerations...” Removal of this language indicates that those officials who made these revisions do not want EPA to use its discretion to cleanup groundwater that could potentially be used for drinking water.

- Deleting a section that instructed EPA to allow state Maximum Contaminant Levels (MCLs) on PFAS to inform their decision-making: “EPA’s remedy selection guidance for Superfund ... recommends considering the following factors when evaluating whether there is an appropriate basis for taking a CERCLA response action: ...states and tribes often have an important role in helping to frame EPA’s approach to groundwater characterization and remediation under Superfund or other cleanup programs. For example, states and tribes may have MCLs or other drinking water standards, antidegradation regulations, or other standards and requirements that may be potential ARARs...They may also have other relevant guidance and policies, such as aquifer classifications.”

It is unclear from the document itself who directed and made these changes, but PEER learned that EPA made the changes in response to input from other federal agencies.²⁰ EPA was unwilling to share which agencies suggested the edits, but undoubtedly the DoD was one of them given their financial interest in the matter.

Conclusion. The Draft Interim Guidance is woefully inadequate and not protective of human health or the environment. It is yet another useless document which does not require action on an existing public health crisis. There is nothing more basic to EPA’s mission than the protection of drinking water; we can no longer afford for EPA to continue delaying the issuance of a strong, enforceable PFAs standard to ensure timely and comprehensive cleanups.

Sincerely,



Timothy Whitehouse
Executive Director

²⁰ Personal communication between Kyla Bennett of PEER and Stiven Foster, EPA.