

THOMAS R. CARPER, DELAWARE, *CHAIRMAN*
SHELLEY MOORE CAPITO, WEST VIRGINIA, *RANKING MEMBER*

BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
DEBBIE STABENOW, MICHIGAN
MARK KELLY, ARIZONA
ALEX PADILLA, CALIFORNIA

JAMES M. INHOFE, OKLAHOMA
KEVIN CRAMER, NORTH DAKOTA
CYNTHIA M. LUMMIS, WYOMING
RICHARD SHELBY, ALABAMA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DAN SULLIVAN, ALASKA
JONI ERNST, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

MARY FRANCES REPKO, *DEMOCRATIC STAFF DIRECTOR*
ADAM TOMLINSON, *REPUBLICAN STAFF DIRECTOR*

April 19, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

Dear Administrator Regan:

I write today regarding your commitment to work with me and my colleagues to continue our bipartisan efforts addressing per- and polyfluoroalkyl substances (PFAS). I am requesting a detailed update and briefing on the status of EPA's ongoing activities related to PFAS.

As we discussed at your confirmation hearing before the Committee on Environment and Public Works (EPW), addressing the challenges of PFAS contamination is one of my jurisdictional priorities as EPW Ranking Member. I have long taken a lead role in bipartisan efforts to address the issue. Of significant importance to me is timely action by EPA to set drinking water standards for two specific PFAS—perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). I also took a lead role in provisions included in the Fiscal Year (FY) 2020 National Defense Authorization Act establishing a clear process for EPA to publicly share information from PFAS manufacturers, processors, and users around the country. To address the substantial environmental and public health impacts from PFAS in West Virginia, I secured language in the FY 2019 Department of Defense Appropriations Act to reimburse the city of Martinsburg for the significant costs involved in upgrading the Big Springs water treatment facility. This language addresses high levels of PFAS resulting from federal government releases of aqueous firefighting foam, detected in the drinking water. I also ensured Berkeley County was included in a joint study between the Department of Defense and the Agency for Toxic Substances and Disease Registry on PFAS exposure in populations living and working on and around military bases.

I want to thank the EPA staff for their action in response to my February 17, 2021 letter urging White House Chief of Staff Ronald Klain to promptly move forward with the "Final Regulatory Determinations for the Fourth Drinking Water Contaminant Candidate List," in which EPA finalized its determination to regulate both PFOS and PFOA under the Safe Drinking Water Act. I am grateful that this previously completed work was freed from the regulatory freeze under the Klain Memo¹, and that EPA staff are now able to continue to work expeditiously to establish a National Primary Drinking Water Regulation.

¹ White House Chief of Staff Ronald Klain, Memorandum on Regulatory Freeze Pending Review (Jan. 20, 2021) ("Klain Memo").

While I applaud EPA moving forward with establishing a National Primary Drinking Water Regulation for PFOS and PFOA, much work remains. Many of the regulatory and enforcement actions the Executive Branch and states may pursue related to PFAS hinge on continued research and a more in-depth understanding of the chemistry and environmental and health challenges posed by this broad class of compounds. According to the Agency, “[r]obust research is a prerequisite to improving [EPA’s] understanding of the risks associated with [PFAS] and helping the Agency make more informed decisions to protect public health” and this “is why the *PFAS Action Plan* has placed such a strong emphasis on scientific research.”²

While EPA has made significant progress in its scientific research under the *PFAS Action Plan*, critical data gaps remain.³ President Biden’s proposed FY 2022 budget includes \$75 million to “accelerate toxicity studies and research” for PFAS-related regulatory development, acknowledging that many data gaps remain and need to be resolved before moving forward with potential regulatory actions.⁴ I understand that the COVID-19 crisis may have impacted the ability to conduct research in the laboratory and the field for a number of months during 2020; however, it now appears that more than a dozen of EPA’s PFAS research and development activities are behind schedule.⁵

As the Agency itself has recognized, “EPA’s PFAS research initiatives can be used to support regulatory actions and decisions.”⁶ As EPW conducts oversight, having updated information on the status of those research initiatives and expected completion dates will inform me and my colleagues when the scientific data and information required to support regulatory actions will be available to EPA. EPA must focus on these incomplete and scientifically-driven deliverables to ensure that science—not politics—is driving EPA’s regulatory decisions.

Transparency and clear communication between EPA and Congress is necessary to have a comprehensive understanding of the risks associated with PFAS and how to best address this class of chemicals in a collaborative and effective manner.

² Letter from U.S. EPA to U.S. Gov’t Accountability Office (Dec. 14, 2020) (EPA response to the GAO draft report (GAO-21-37), *Man-Made Chemicals and Potential Health Risks*).

³ Andrew J. R. Gillespie, *US EPA’s Science-Based Approach to Understanding and Managing Environmental Risk from PFAS* (Sept. 2020), https://www.epa.gov/sites/production/files/2020-09/documents/epa_pfas_rd_overview_complete_2020_09_25.pdf.

⁴ Letter from Hon. Shalanda D. Young, Acting Director, Office of Mgmt. & Budget to Hon. Patrick Leahy, Chairman, S. Comm. on Approp. (Apr. 9, 2021).

⁵ U.S. EPA, *Status of EPA Research and Development on PFAS*, <https://www.epa.gov/chemical-research/status-epa-research-and-development-pfas>.

⁶ U.S. EPA, *supra* note 1.

Thank you in advance for providing this necessary update concerning EPA's ongoing work, including details on the anticipated date of completion for each *PFAS Action Plan* deliverable, by May 3, 2021. I look forward to continuing to work with EPA in advancing bipartisan efforts to address PFAS in the environment.

Sincerely,



Shelley Moore Capito
United States Senator
Ranking Member
Committee on Environment and Public Works