Congress of the United States

Washington, DC 20515

October 11, 2022

The Honorable Michael S. Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Regan,

We are writing to thank you for recent actions you have taken to address PFAS pollution in the environment and to urge you to take additional steps to stop the flow of these toxic pollutants into our communities through EPA's upcoming guidance to state permitting authorities to address PFAS in NPDES permits.

Per- and polyfluoroalkyl substances, commonly referred to as "PFAS," are man-made chemical substances that have been manufactured for decades despite evidence of their health risks and extraordinary persistence in the environment and our bodies.[1] The strength of the carbon-fluorine bond, which is the basis for commercial applications of PFAS, is also the reason the chemicals take so long to break down.[2] When PFAS pollution is put into the environment, it is difficult and expensive to contain and remediate.[3] For example, PFAS sent to sewage treatment works will generally pass through the treatment process, remaining in treated water and biosolids. From there, it can contaminate additional ecosystems, drinking water sources, and the food chain. In addition, the Department of Defense's (DOD) long-time use of PFAS-containing firefighting foam in training exercises has resulted in the contamination of drinking water at military sites across the country. The manufacturing and use of these toxic chemicals continues to exacerbate the nationwide PFAS contamination crisis. Each entity that is part of the PFAS pollution cycle—from manufacturers to users to DOD—must be held responsible for their role in jeopardizing the health and safety of families nationwide.

Efforts to contain and remediate PFAS contamination after catastrophic releases are not only challenging and costly, they are also inequitable and inefficient. Across the country, ratepayers and drinking water providers are spending or expecting to spend hundreds of millions of dollars to try to address PFAS contamination, and the federal government recently announced an additional $10 billion in funding to assist states and water utilities with remediation. Congress has also allotted hundreds of millions of dollars for PFAS remediation at military sites. It is not fair for taxpayers and local ratepayers to bear the costs of PFAS cleanup, particularly low-income customers for whom the costs are hardest to absorb when manufacturers and DOD are responsible and can prevent releases of PFAS into the environment altogether. It is also far more cost-effective for manufacturers to treat their pollution, rather than municipal wastewater or drinking water facilities, given that treatment costs are tied to the volume of contaminated water and that manufacturers typically treat considerably less water than utilities. Thus, preventing this pollution at the source is the most effective, efficient, and equitable solution in the long term.

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[1] US EPA. *Our Current Understanding of the Human Health and Environmental Risks of PFAS*. 14 Oct. 2021, https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas.

[2] National Institutes of Health. "Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)." *National Institute of Environmental Health Sciences*, 3 June 2022, https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm.

[3] Cordner, Alissa, et al. "The True Cost of PFAS and the Benefits of Acting Now." *Environmental Science & Technology*, vol. 55, no. 14, July 2021, pp. 9630–33. *ACS Publications*, https://doi.org/10.1021/acs.est.1c03565.

Fortunately, the Clean Water Act and EPA's existing regulations already provide the tools needed to stop the flow of PFAS pollution into our nation's waters and ensure that manufacturers bear the costs of preventing and controlling PFAS contamination.

EPA's October PFAS Roadmap acknowledges that the National Pollutant Discharge Elimination System (NPDES) permitting process is an important existing tool that if used properly, can promptly rein in harmful PFAS pollution. In April, EPA issued guidance for federal NPDES permits under the Clean Water Act that recognizes the need to identify and control sources of PFAS pollution, including industrial sources that discharge directly to waters and those that send waste through Publicly Owned Treatment Works (POTWs).[4] That guidance supports the goal of eliminating PFAS discharges into the environment, clarifies that all known or suspected sources have an obligation to monitor and disclose PFAS in their effluent, and recognizes that POTWs have an obligation to require pretreatment of indirect discharges they receive. We welcome this important guidance and see its potential to significantly reduce PFAS pollution.

However, the vast majority of dischargers are not covered by the April guidance because they operate in the 47 states that issue their own NPDES permits.[5] Guidance is still needed for those sources, as reflected in the Agency's PFAS Roadmap and in the press release announcing the April guidance. We urge you to incorporate the strengths of the April guidance into that guidance, and to go further, in keeping with existing statutory and regulatory requirements.

Specifically, we urge you to include three important safeguards in the upcoming guidance.

First, we encourage you to clarify that known or suspected sources have an ongoing obligation to disclose PFAS pollution as part of their existing NPDES permit and cannot delay disclosure until the next permit cycle. As you recognized with respect to The Chemours Company's illegal discharges in North Carolina, the Clean Water Act currently requires dischargers to disclose PFAS pollution—either as part of a permit application or in an amendment to that application if PFAS are discovered after a permit is issued.[6] These legal requirements must be more consistently enforced.

Second, the guidance should set forth clear requirements to incorporate Technology Based Effluent Limits (TBELs) on a case-by-case basis in NPDES permits for PFAS dischargers. Existing law and regulations explicitly state that TBELs are the minimum level of pollution control required, but they have not been consistently implemented for PFAS.[7] By issuing clear guidance requiring case-by-case TBELs, EPA has an opportunity to help permitting agencies across the country and dramatically reduce PFAS pollution.

Third, we ask you to clarify that POTWs must evaluate the introduction of PFAS into their systems and use existing authority to ensure Industrial Users are pretreating consistent with the prohibition on pass-through or interference. Existing law and regulations make clear that POTWs have a duty to impose pretreatment requirements on Industrial Users to address pollutants that will compromise the POTWs or pass through their treatment methods, leading to violations.[8] Because PFAS are pollutants under the Clean Water Act, ongoing unpermitted discharges of them from POTWs are violations of the statute, necessitating pretreatment. Some

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[4] Fox, Radhika. *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA Is the Pretreatment Control Authority*. Environmental Protection Agency, Office of Water, 28 Apr. 2022, https://www.epa.gov/system/files/documents/2022-04/npdes_pfas-memo.pdf.

[5] US EPA. *NPDES Permits Around the Nation*. 7 Aug. 2015, https://www.epa.gov/npdes-permits.

[6] Amended Complaint and Motion for Preliminary Injunctive Relief at 5-6, *State of North Carolina, ex rel. Michael S. Regan v. The Chemours Company*, 17 CVS 580 (Bladen County Sup. Ct., Apr. 9, 2018).

[7] 40 C.F.R. §125.3.

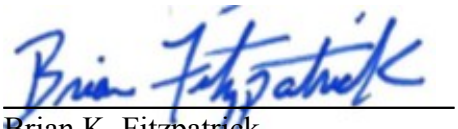
[8] 40 C.F.R. § 403.5(c).

POTWs have begun to institute pretreatment requirements, but nationwide guidance will support all POTWs in doing so. It would also reduce PFAS pollution, reduce costs for POTWs, and prevent a race to the bottom.

PFAS pollution is a serious threat to the communities we represent. We thank you for taking this crisis seriously and urge you to use your existing authorities under the Clean Water Act to make meaningful reductions in PFAS exposure in the near term.

Sincerely,

Chris Pappas
Member of Congress



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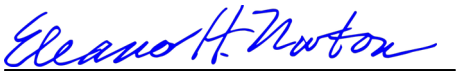

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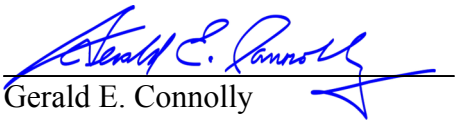

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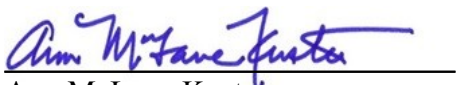

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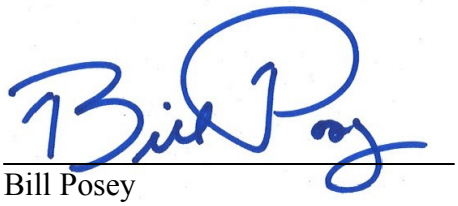

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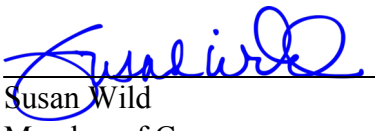

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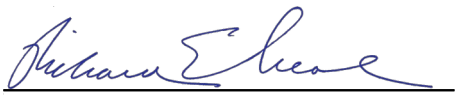

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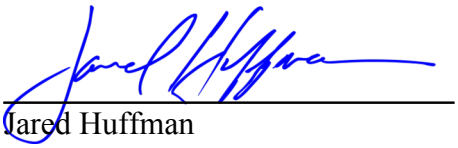

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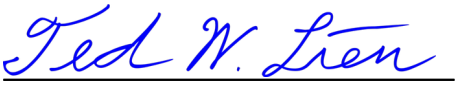

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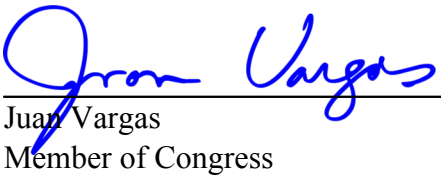

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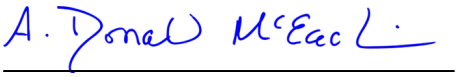

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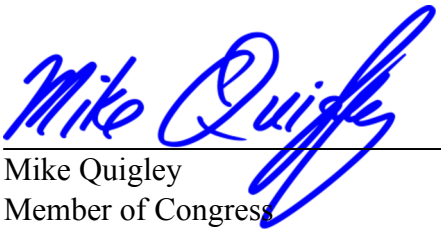

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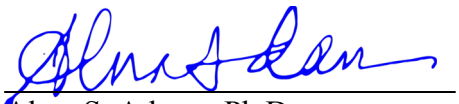

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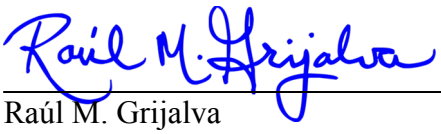

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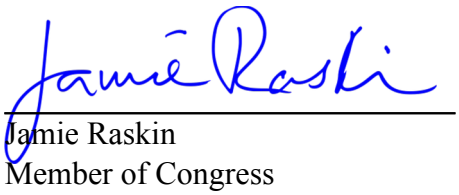

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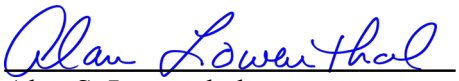

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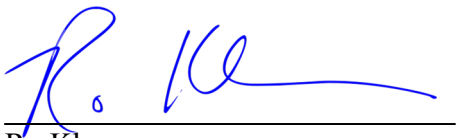

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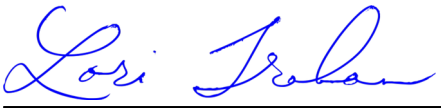

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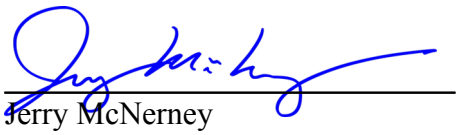

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Rashida Tlaib
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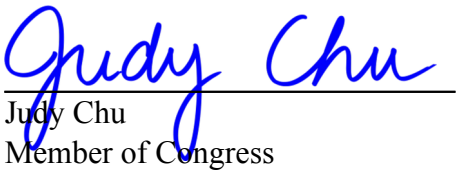

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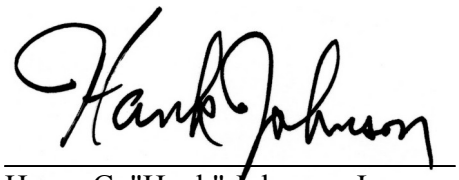

Henry C. "Hank" Johnson, Jr.
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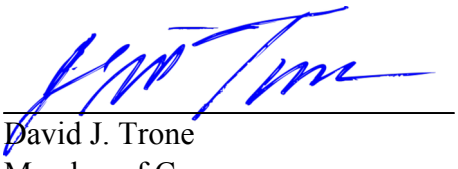

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