

Congress of the United States
Washington, DC 20515

October 27, 2021

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

Dear Administrator Regan:

We write to request information and follow-up action needed to ensure sufficient safeguards for the use of chemical substances and mixtures in hydraulic fracturing operations, with particular concern for per- and polyfluoroalkyl substances (PFAS). Notably, we have serious concerns regarding reports that the U.S. Environmental Protection Agency (EPA) in 2011 approved three chemicals, intended for use in hydraulic fracturing, that have the potential to degrade into perfluorinated products that could be persistent, bioaccumulative, and toxic in the environment.^{1,2}

It is widely known that PFAS pose an urgent public health and environmental threat. These toxic “forever chemicals” persist in the environment and accumulate in the human body and have been linked to a range of adverse human health and environmental effects. Furthermore, based on EPA’s own research, hydraulic fracturing can impact drinking water resources under some circumstances, such as through large volume spills during the handling of hydraulic fracturing fluids and chemicals or produced water; injection of hydraulic fracturing fluids into wells with inadequate mechanical integrity; discharge of inadequately treated hydraulic fracturing wastewater; or disposal or storage of hydraulic fracturing wastewater in unlined pits.³

Given this understanding, it is deeply troubling that for the last decade EPA has knowingly allowed oil companies engaged in hydraulic fracturing to pump toxic chemicals into the ground that can break down into perfluorinated degradation products, or PFAS. Specifically, a consent order issued for the three chemicals in 2011 shows that EPA had concerns and preliminary

¹ *EPA Approved Toxic Chemicals for Fracking a Decade Ago, New Files Show*, The New York Times (July 12, 2021).

² Physicians for Social Responsibility. Fracking with “Forever Chemicals.” July 2021.

³ U.S. EPA. Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-16/236F, 2016.

evidence that under some conditions the approved chemicals could “degrade in the environment” into substances analogous to PFOA (perfluorooctanoic acid) and could persist and bioaccumulate and “be toxic to people, wild mammals, and birds.”⁴ PFOA is one of the most well-studied and toxic PFAS contaminants, the manufacture and import of which has largely been phased out in the United States through EPA’s own PFOA Stewardship Program. We are concerned that the presence of perfluorinated degradation products, like PFOA and its short-chain analogues, in drilling only adds to the overall potential risks given the persistent, bioaccumulative, and toxic nature of these “forever chemicals.”

As you know, EPA’s authority to regulate chemicals under the Toxic Substances Control Act (TSCA) was significantly strengthened in 2016 through passage of the Lautenberg Chemical Safety Act. We strongly urge EPA to use its expanded TSCA authority to reassess the allowance of any chemicals that may be used in hydraulic fracturing operations that have the potential to degrade into perfluorinated products, such as those discussed in the 2011 consent order. The EPA should use its data collection authorities to require industry to share information about PFAS chemicals used in hydraulic fracturing, expected perfluorinated degradation products, and associated health and safety studies. The EPA should update consent orders and expand significant new use rules as needed to protect public health and the environment from these uses of PFAS. Furthermore, EPA should use its expanded TSCA authority to review and reassess any previously made claims of Confidential Business Information (CBI) surrounding these and other PFAS chemicals and make public any information no longer entitled to CBI protection. Finally, we urge EPA to reopen its rulemaking efforts under TSCA to obtain information on the chemical substances and mixtures used in hydraulic fracturing, first initiated through a 2014 Advance Notice of Proposed Rulemaking (ANPR), to provide increased transparency and data to assist in chemical evaluations.⁵

Additionally, we request a timely response to the following questions:

1. Please explain why in 2011 EPA allowed the use of chemicals that could degrade in the environment into substances analogous to PFOA, when five years earlier, the Agency had launched in 2006 the PFOA Stewardship Program due to concerns about the impact of PFOA and other long-chain PFAS on human health and the environment.
2. As part of the 2011 consent order, EPA recommended additional testing to inform the Agency’s evaluation of the human health and environmental risks of these chemicals. Did EPA follow up to request the additional testing, and was it ever completed? Please explain.

⁴ U.S. EPA Office of Pollution Prevention and Toxics. Regulation of New Chemical Substances Pending Development of Information. Premanufacture Notice Numbers: P-11-91, 92, and 93. Consent Order and Determinations Supporting Consent Order. (October 26, 2011).

⁵ <https://www.federalregister.gov/documents/2014/05/19/2014-11501/hydraulic-fracturing-chemicals-and-mixtures>

3. Given its expanded TSCA authority to improve public transparency for chemical information, does EPA have plans to review and reassess the CBI claims surrounding the three chemicals approved in 2011 that can degrade into perfluorinated products? Notably, the 2016 amendments to TSCA included expiration of most CBI claims after 10 years without reassertion and re-substantiation of the CBI claim by the information submitter. Has EPA received reassertion and re-substantiation of the CBI claims for these chemicals? Please explain.
4. Please explain what happened following EPA's issuance of the 2014 ANPR on Hydraulic Fracturing Chemicals and Mixtures, through which the Agency initiated a public participation process to seek comment on the information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information. Does EPA have ongoing or planned efforts to pursue, as a next step, a proposed rulemaking, informed by the public comments that were received in response to this ANPR? If so, please describe these efforts.
5. What is EPA doing to track the historical and ongoing usage of PFAS chemicals, including information on volumes and chemical identities, in both hydraulic fracturing wells and deep injection wells? Does EPA have any plans to restrict the use or disposal of PFAS in wells?

Thank you for your prompt attention to this matter. We acknowledge and appreciate the Agency's past research into the potential impacts of hydraulic fracturing on drinking water resources, as well as your continued work to investigate and reduce the risks posed by PFAS, notably as recently announced in EPA's PFAS Strategic Roadmap.

Sincerely,



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Member of Congress



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