



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

December 9, 2021

The Honorable Lloyd J. Austin III
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

RE: Advancing Collaboration and Coordination on Per- and Poly-Fluoroalkyl Substances (PFAS)

Dear Secretary Austin,

On December 1, 2021, the Environmental Council of the States (ECOS), the national nonprofit, nonpartisan association of state and territorial environmental agency leaders, adopted the enclosed resolution. The resolution, *Advancing Collaboration and Coordination on Per- and Poly-Fluoroalkyl Substances*, was adopted by more than 85% of the membership.

In pertinent part, the resolution calls upon the President to issue an Executive Order directing your department to undertake a series of actions related to PFAS contamination. Nearly all the actions in the resolution are directly relevant to the specific needs of the State of New Mexico given PFAS contamination from Department of Defense facilities.

To the extent you are interested in working with the New Mexico Environment Department to start immediately implementing this resolution, please contact me at (505) 470-6161 or James.Kenney@state.nm.us. Alternatively, your counsel may contact Mr. Bruce Baizel, General Counsel, at (505) 490-5427 or Bruce.Baizel@state.nm.us.

Sincerely,

James C. Kenney
Cabinet Secretary

Enclosure

Cc: Bruce Baizel, General Counsel, New Mexico Environment Department,
Bruce.Baizel@state.nm.us

Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham,
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Resolution 21-1
Approved December 1, 2021
Via Email Vote

As certified by
Donald Welsh
Executive Director

ADVANCING COLLABORATION AND COORDINATION ON PER- AND POLY-FLUOROALKYL SUBSTANCES

WHEREAS, per- and polyfluoroalkyl substances (PFAS) are a largely unregulated group of synthetic chemicals that, after decades of research, has emerged as a threat to human health and the environment that needs to be addressed through regulatory programs;

WHEREAS, PFAS are used in a wide array of consumer and industrial products and when released into the environment or discarded, do not break down in the environment, and are very hard to remove or destroy with treatment;

WHEREAS, PFAS contamination is both a public health and environmental emergency that threatens communities and their local economies and requires urgent federal and state action;

WHEREAS, at a federal level, the U.S. Environmental Protection Agency (EPA) in 2021 published the *PFAS Strategic Roadmap*; in 2016 developed a combined, non-enforceable Lifetime Health Advisory of 70 parts per trillion (ppt) for PFOA and PFOS and in February 2021 issued its final regulatory determination to initiate rulemaking to establish a National Primary Drinking Water Regulation (i.e., Maximum Contaminant Level [MCL]) for PFOA and PFOS, but most PFAS are not regulated under the Safe Drinking Water Act or regulatory programs;

WHEREAS, PFAS releases impact a variety of environmental media overseen by more than one federal program, and there is a lack of consistent, clear regulatory authority to respond to their release;

WHEREAS, given the broad range and complex, cross-media nature for PFAS; the absence of final standards or enforceable requirements under existing regulatory programs; and the absence of a process to prioritize which PFAS should be subject to further evaluation or regulatory action states are using their own authorities to regulate a number of PFAS in different environmental media, as well as using their own funding to investigate the presence of and remediate PFAS in the environment;

WHEREAS, new PFAS continue to be registered for use and there are still many unknowns and more research on PFAS toxicities, analytical methods, fate and transport, and treatment, among other aspects, is necessary;

WHEREAS, while there are no enforceable federal standards for PFAS, there are a handful of federal and state legislative enactments, Executive Orders, and policies on PFAS, developed both by Congress - such as the proposed PFAS Action Act of 2021 and provisions in the National Defense Authorization Act (NDAA) – as well as by the federal executive branch and under state legislative and executive authorities, that attempt to address PFAS concerns;

WHEREAS, the White House on October 18, 2021 directed eight federal agencies to coordinate PFAS response activities and develop new policy strategies to support research, remediation, and removal of PFAS in communities;)and

WHEREAS, ECOS is working to bridge gaps in PFAS policies, having in 2018 established a PFAS Caucus to share best practices on PFAS and a PFAS Coordinating Committee of state and federal agency leaders to share updates on PFAS activities; in 2020 published a white paper on state processes and considerations for setting state PFAS standards; and will continue to promote efforts undertaken by states, federal agencies, and the Interstate Technology and Regulatory Commission (ITRC) with regard to PFAS.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

On an accelerated basis, requests that federal agencies:

- Develop science to better understand human health and ecological impacts of PFAS for regulatory and remedial purposes,
- With the inclusion of stakeholders, promulgate science-based, enforceable federal standards and expand regulatory authority to respond directly to the release of legacy and current generation PFAS under a broad range of federal laws via diverse actions (e.g., standards development, toxicological research, expanded regulatory authority),
- Research and communicate with stakeholders on various technical and cost-effective approaches to destroying and disposing of PFAS and PFAS-containing wastes,
- Provide flexible financial support including for staffing costs to states and local governments facing the threat of PFAS contamination, including activities associated with hazard communications, site assessments, remediation, and water quality,
- Include states in conversations on all federal initiatives on PFAS, including developing enforceable drinking water standards for PFAS (e.g., PFOA and PFOS),
- Prohibit the use of PFAS-based aqueous film-forming foams (AFFF) for testing and training at Federal Aviation Administration sites where PFAS foams are released into the environment,
- Support the development of fluorine-free firefighting foam including testing and certification, and
- Enhance communications and elevate studies to broaden the understanding of the impacts of PFAS from biosolids applications in farming and other impacted communities through increased communications and initiatives to focus on food and consumption safety.

Requests that the EPA urgently:

- Provide states funding and flexibility to use it to address PFAS,
- Implement provisions of the 2021 EPA PFAS Strategic Roadmap,
- Approve sampling and analytical testing methods for PFAS in multiple media,
- Develop national standards or health advisories for PFAS in various environmental media, including drinking water, surface water, biosolids, and wastes,
- Develop regulations for specific PFAS chemicals per the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA),
- List PFAS as a hazardous air pollutant under Clean Air Act Section 112(b)(1) and develop, as applicable, Maximum Available Control Technology standards,
- Using TSCA risk evaluation and risk management authorities, regulate all essential and non-essential uses of PFAS, as authorized by EPA, and release to states by January 1 of each year all available information on toxicity and health impacts from PFAS manufacturers,

- Develop toxicity characterizations for legacy and in-use PFAS and develop data and methodology to address those that currently cannot be characterized;
- Research and identify effective PFAS treatment technologies for the complete destruction of PFAS,
- Develop chemical alternatives assessments for functional uses of PFAS in products and processes through the EPA Safer Choice Program, or other credible third-party research organizations, to ensure the availability of viable, safer chemical or non-chemical alternatives, and
- Request the agency's Council on PFAS coordinate more closely with existing EPA, state, and association workgroups; and to create a subgroup of the Council dedicated as a state-U.S. Department of Defense (DoD)-EPA working group to identify PFAS challenges and to propose recommendations on enhancing PFAS cleanups across the nation at DoD federal facilities and state national guard bases.

Requests that the President of the United States urgently issue a new Executive Order on PFAS, directing the DoD to:

- Fully implement the NDAA, especially pertaining to sections 332 on state cooperative agreements, 343 on providing water not contaminated with PFAS for agricultural purposes, and 7333 on nationwide sampling for PFAS, including through developing and implementing guidance that provides the broadest coverage and protection allowable under the NDAA provisions,
- Create and timely update a webpage for states and the public that lists DoD action items from the NDAA and DoD's progress on meeting those directives, sampling data for all media and potable and monitoring wells, a listing of sites and DoD's progress on cleaning them up, and a posting of state requests for assistance under section 332 of the 2020 NDAA and DoD's response to each state,
- Provide funding to states that are overseeing assessments, investigations, emergency responses, and cleanups at DoD sites, including those of the U.S. Air Force, Navy, Army, and at federal and state national guard through the Defense and State Memorandum of Agreement or other appropriate funding vehicle,
- Communicate proactively and regularly with states by sharing data, including electronically-accessible open-source data associated with site investigation and cleanup, and progress reports and providing meaningful involvement of the states and tribes,
- Comply with applicable, relevant, and appropriate requirements, including states' promulgated standards, relating to drinking water, surface water, groundwater, solid and hazardous waste, soil, sediment, and air,
- Comply with CERCLA and RCRA requirements, even if the contamination has migrated off DoD sites,
- Prioritize sites for funding based on the risk of PFAS exposure to public health and the environment, including exposure from drinking PFAS-contaminated water or source waters, agriculture and livestock, fish and other wildlife,
- Share with states the prioritization methodology, list of prioritized sites and any changes to the prioritization methodology or list of prioritized sites on a no less than quarterly basis,
- Provide a comprehensive report and regular updates summarizing the hazard characteristics, technical performance, and costs associated with alternatives to AFFF used for fire suppression,
- Provide sufficient funding to prioritize and clean up those sites, and
- Provide sufficient funding to advance fate and transport investigations into potential exposure pathways.