



# NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

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December 1, 2022

Michael S. Regan, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Administrator Regan:

The adverse health outcomes from the “forever chemicals” known as Per- and Polyfluoroalkyl Substances (PFAS) have been documented by the US Centers for Disease Control and the US Environmental Protection Agency. The National Environmental Justice Advisory Council (Council) requests that environmental justice concerns be addressed in the Agency’s ongoing PFAS initiatives. This advice is a continuation of NEJAC’s avid interest in this issue going back to 2019 when the Council sent a [letter to the EPA Administrator](#) requesting that the Agency:

- Meet with frontline communities
- Cease approval of new PFAS chemicals
- Lower the EPA’s 70 ppt actionable level of PFAS chemicals
- Regulate all PFAS chemicals as a class

In EPA Administrator Andrew Wheeler's reply, Mr. Wheeler noted the actions taken by EPA to date. While those actions represented notable progress in areas like risk communication and public health advisories, many of the Council’s earlier requests went unaddressed. This prompted the NEJAC to prioritize this issue and create a workgroup in April 2021. The workgroup met with EPA staff and received staff briefings on the implementation of the [PFAS Strategic Roadmap](#).

We acknowledge and greatly appreciate the work that is being done across the agency to address PFAS, as detailed in the recently released [EPA's PFAS Strategic Roadmap: A Year of Progress](#). The PFAS workgroup’s recommendations, which were approved by the full Council during the September 28, 2022, meeting, follow the three primary goals of the Agency’s Roadmap – Research, Restrict, and Remediate. We also make recommendations to expand the three goals to five – (4) Respond: to further assist EJ communities by responding to PFAS exposure through emergency and community-based actions, and (5) Resource: to better inform and engage impacted people by providing resources to educate and engage EJ communities about public health and safety threats from forever chemicals. While these recommendations follow the three Rs framework by placing “research” first, the Council wishes to emphasize that taking action to reduce PFAS exposure in EJ communities is the top priority, and that

while additional research may be needed in areas, this should not be used as an excuse not to take action based on what is already known about risks from exposure to PFAS.

### **Overarching Recommendation**

- NEJAC strongly recommends that EPA ensure it has the internal capacity to implement its PFAS roadmap. This can be achieved by institutionalizing the Agency's commitment to PFAS with permanent positions for PFAS experts with responsibility for working to prevent further exposure, like the EPA's network of Regional Lead Contacts.

### **Research**

- Prioritize issuing test orders for emergency response users of PFAS (e.g., airports, fire stations) in environmental justice communities. Develop standards and systems for notifying these impacted communities of the effects of PFAS exposure and the approach to and outcomes of testing.
- Improve the understanding of PFAS prevalence in smaller water systems, private wells, and non-drinking water sources (e.g., livestock ponds) through regular monitoring and reporting, and the development of new measurement technologies.
- Study how PFAS is distributed through air pollution (e.g., burning garbage, biosolids dryers), how this exposure impacts human health, and how it can be effectively reduced. For example, it is important to assess the amount of PFAS in biosolids filtered out of wastewater and in incinerated biosolids smoke.
- Prioritize health monitoring of people in areas exposed to PFAS through air, soil and/or water contamination and in collaboration with cancer studies on PFAS exposure (e.g., University of Michigan [PFAS study](#) of 100,000 residents).
- Involve EJ experts in the development of EJ analysis research parameters and criteria including protocols and chronic health contributors. Cumulative impacts of historical exposures to multiple chemical and non-chemical stressors need to be considered.
- Sample and track PFAS chemicals through wastewater (where tests exist); conduct research into the ability and capacity of wastewater treatment plants to adequately monitor and track PFAS, identify sources of these chemicals, and remove them as needed. Testing should include point source, pre-treated effluent, and treated wastewater discharge.
- Conduct analysis of the health impacts of biosolid transfers from wastewater plants for usage as a fertilizer or other byproducts that may impact soil, source water, and air in EJ communities.
- Work with states, tribal governments, and territories on monitoring PFAS exposure from multiple sources (e.g., food, drinking water, air, etc.) and report data in EJScreen to improve cumulative health impact data.
- Convene and consult PFAS experts in states that are more closely monitoring PFAS and Gen X chemicals to inform national policy on allowable PFAS exposures, particularly where some regulated levels are lower than the EPA's allowable levels, i.e., CA, MA, MI, MN, NC, NH, NJ, NY, OH, VT.

- Assess EJ community risks in states that have not enacted PFAS regulations, tribal governments, and territories in anticipation of enforceable limits for PFAS in the Safe Drinking Water Act.

### **Restrict**

- Enact a moratorium on the approval of new PFAS chemicals, including GenX, for use in EJ communities until a cumulative impact assessment of risks to potentially impacted EJ communities and a public notification process for those communities can be completed. The cumulative impact assessment should be conducted in consultation with EJ experts. Regulate PFAS chemicals as a class instead of as individual contaminants due to the number and complexity of PFAS chemicals.
- Curb industry discharges through enforcement of effluent limitation guidelines.
- Set a maximum allowable dose of PFAS and create rules, regulations, and enforcement mechanisms to support it. Actionable levels of PFAS should be set with cumulative impacts in mind.
- Disallow the transfer of materials containing PFAS, including biosolids, particularly for agriculture and other uses where it can pose new exposure risks.
- Disallow the use of PFAS firefighting foam (aqueous film forming foam) in all EJ communities and monitor for this through wastewater treatment and local testing.
- Restrict PFAS sulfur dioxide emissions from biosolids dryer facility smokestacks in non-attainment areas and take actionable steps when emissions exceed permitted levels. Furthermore, disallow the incineration of waste, substances, and materials with PFAS in EJ communities where there are existing cumulative and multiple health risk exposures, and provide for new or improved disposal measures to protect public health.

### **Remediate**

- Create a list of priority communities that have been exposed to elevated levels of and/or lengthy periods of unmitigated exposure to PFAS and target resources and intensive interventions designed to fix the issues as a cohesive set of responses from EPA, not in several separate grants or actions.
- Prioritize accountability among PFAS chemical companies for addressing existing contamination in EJ communities and reducing the prevalence of PFAS in these communities that are overburdened by multiple chemical and non-chemical stressors.
- Assess and improve infrastructure support to communities to reduce seepage of PFAS into the water table from biosolids from wastewater treatment plants or other sources, including stormwater and drainage discharge.

### **Respond (Emergency and Community-Based)**

- Create an interagency PFAS emergency response plan in coordination with states, tribal governments, and territories to provide immediate relief in the form of provisions such as potable drinking water (e.g., bottled water, water buffalos) and air filter equipment when a community is experiencing unsafe drinking water and air

quality and is unable to adequately address these health threats without aid. This plan should include designation of a PFAS Action Response Team to ensure accountability in reporting, metrics, and transparency of outcomes.

- Direct targeted funds from federal resources and through polluter pay programs for immediate relief or emergency response to include services such as free emergency potable water supplies until local water is safe to drink; community drinking water infrastructure construction/retrofit/repair (as needed) and training for operations staff; community outreach and communications support; and long-term biomonitoring to assess the effectiveness of the intervention package.
- Support state-based polluter pay consent decrees and responses with litigation support from the External Civil Rights Office.
- Compile state, tribal government, and territories' best practices to provide emergency responses to PFAS public health risks and exposures, particularly for sensitive or vulnerable communities.
- Tailor emergency response to the community receiving assistance, with ongoing input from residents and EJ experts.

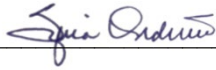
#### **Resource (Engagement and Education)**

- Create a PFAS dashboard to provide public information on EPA PFAS-related actions and plans to research, restrict, remediate, respond, share resources, and educate, including all elements of EPA's PFAS Strategic Roadmap.
- Provide technical assistance to utilities in EJ communities to write, implement and evaluate PFAS research, remediation, and response grants, including conducting meaningful community engagement.
- Develop informational and educational materials for impacted EJ communities to assist residents in limiting their PFAS exposure. One resource needed is a consumer guide to direct people to PFAS-free products, based on EPA's work with product labeling groups.
- Target media outreach to EJ communities to ensure that people in these communities are aware of and understand the recent health advisories, and know where to go for local testing, health care, and more information. Outreach materials should be distributed via TV, social media, radio, and online outlets and should be made available in all languages predominantly spoken in the community.
- Incorporate PFAS data into EJScreen for all media – water, air, dust, and soil – and other sources of exposure. Upload PFAS risk maps to EJScreen/integrate into publicly available risk maps so community members can accurately assess their cumulative risk from multiple sources of exposure to chemical and non-chemical stressors. These factors should be part of the “comprehensive EJ analysis.”
- Develop an analytic tool accessible to laypeople that allows communities to determine where PFAS contamination has been found in their area, how severe it is, and where ongoing sources of PFAS contamination are located. For example, see [EWG's map](#) of suspected industrial discharges of PFAS.

- Provide help to EJ communities (particularly tribal) that may be on a “do not pay” list for federal grants but still have aging infrastructure and PFAS issues that require financial resources to address. For instance, allow for a new fiscal agent (including non-profit organizations) to increase eligibility, fund tribal college research for local jurisdiction solution-making, especially in unincorporated communities, and include equitable funding opportunities for EJ communities.
- Compile state, tribal government, and territories' best practices to provide emergency responses to PFAS public health risks and exposures, particularly for sensitive or vulnerable communities.

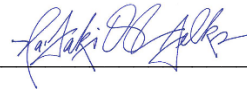
NEJAC is truly appreciative of your time and consideration of these recommendations. We believe that PFAS is a pressing environmental justice concern, and we hope that our work will inform and enhance the administration’s commitment to ensuring the health and safety of EJ communities.

Sincerely,



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Sylvia Orduño, Co-Chair



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Na'Taki Osborne Jelks, PhD, Co-Chair

cc: NEJAC Members

Matthew Tejada, Deputy Assistant Administrator for the Office of Environmental Justice, and External Civil Rights

Radhika Fox, Assistant Administrator for the Office of Water

Benita Best-Wong, Deputy Assistant Administrator for the Office of Water

Matthew Klasen, PFAS Council Manager

Paula Flores-Gregg, Designated Federal Officer

## **PFAS Work Group Recommendations to the NEJAC**

*November 2022*

NEJAC is aware that low-income communities, Indigenous communities, and communities of color are disproportionately exposed to contaminated water, air, and soil from groundwater and drinking water sources, wastewater treatment plants, industrial sites, military sites, and airports. Specifically, these communities are more likely to live near PFAS-contaminated areas. “Nearly 40,000 more low-income households and approximately 300,000 more people of color live [within five miles of a site contaminated with PFAS](#) than expected based on U.S. census data. In a state-specific analysis of Michigan, which has the most thorough PFAS testing in the nation, these inequities were exacerbated with 36,170 more low-income households and 134,488 more people of color living within five miles of a PFAS-contaminated site than expected based on U.S. census data.”<sup>1</sup>

### **Background:**

The NEJAC has expressed concerns since at least 2016 about per- and polyfluoroalkyl substances (PFAS) in drinking water and soil. In August of 2019, a senior scientist with the Environmental Working Group provided detailed testimony of the organization’s tracking and monitoring of PFAS and requested that NEJAC urge the EPA to classify the most toxic of these forever chemicals PFAS as hazardous substances. In response, the NEJAC sent a [letter](#) on August 19, 2019 to EPA Administrator Wheeler requesting the following:

1. Meet with frontline communities in each EPA region to understand the PFAS health impacts and concerns beyond regulatory issues.
2. Cease approval of new PFAS chemicals and stop adding more PFAS chemicals to the environment.
3. Request Department of Defense investigation and remediation of military bases.
4. Increase assistance of clean-up efforts at Superfund sites by providing additional resources for PFAS clean up, such as was done in St. Louis, Michigan.
5. Evaluate whether the Safe Drinking Water Act can adequately address the complexity of PFAS contamination cleanup in scope, scale, and timeframe for public drinking water sources, and if PFAS can be added to the list of toxic and hazardous substances regulated under the Clean Water Act.
6. Lower the EPA’s 70 ppt actionable level for PFAS chemicals to match the lowest levels among the states, i.e., Vermont (20 ppt for PFOA, PFOS, PFNA, PFHxS, PFHpA) and New Jersey (14 ppt for PFOA and 13 ppt for PFOS and PFNA);
7. Address the entire group of PFAS (not just one chemical at a time) in the CWA and include them on the Toxics Release Inventory; and
8. Refer to the European Commission report on PFAS biomonitoring reviews and action standards at  $\geq 0.005\%$  concentration to reduce health impacts and environmental risks.

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<sup>1</sup> Desikan, A. Carter, J. Kinser, S. Goldman, G. (2019). Abandoned Science, Broken Promises. How the Trump Administration’s Neglect of Science Is Leaving Marginalized Communities Further Behind. Center for Science and Democracy at the Union of Concerned Scientists. [www.ucsusa.org/sites/default/files/2019-10/abandoned-science-broken-promises-web-final.pdf](http://www.ucsusa.org/sites/default/files/2019-10/abandoned-science-broken-promises-web-final.pdf)

In April 2021, the administrator [responded](#) to the NEJAC about EPA initiatives and priorities. In turn, the NEJAC formed the PFAS Work Group in May 2021 and identified 4 priority areas: regulation, emergency relief, community engagement, and clean up.

Under Administrator Regan, the PFAS Work Group added its PFAS concerns to the NEJAC's 100 Day Letter dated [July 12, 2021](#). The Council received updated responses on [October 29, 2021](#) regarding the Agency's PFAS actions and priorities, which have been added to the Work Group's documents.

Earlier this year, the [EPA PFAS Council](#) requested that the PFAS Work Group provide a set of recommendations to improve upon the [EPA PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024](#). The following questions were issued to the Work Group:

1. The PFAS Roadmap includes a series of actions under each of EPA's primary environmental statutes, including prominent actions for PFAS review and data-gathering under the Toxic Substances Control Act, for setting drinking water standards under the Safe Drinking Water Act, and for moving to designate certain PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). Are there any gaps in EPA's approach in the October 2021 Roadmap or its implementation that limit EPA's ability to address the PFAS concerns of disadvantaged or environmental justice communities?
2. EPA's PFAS Roadmap included a commitment to engage directly with communities in each EPA Region in response to a prior NEJAC recommendation, and EPA is moving ahead to plan for these events in summer 2022. Looking ahead to EPA's October 2022 update, what additional specific engagement opportunities would the NEJAC recommend EPA prioritizes in our future efforts?
3. Over the longer term, how does EPA build trust with environmental justice communities on PFAS, and in coordination with other federal agencies? What lessons can EPA learn from these communities to inform EPA's efforts to educate the public about the risks of PFAS?

At the June 2022 public meeting, Zachary Shafer, representing the EPA PFAS Council, presented to the NEJAC an overview of the EPA PFAS Strategic Roadmap, asking for recommendations on environmental justice issues and priorities to improve the plan. The PFAS Work Group reviewed its initial list of recommendations with the Council and requested feedback.

For the September 28, 2022 public meeting, the NEJAC PFAS Work Group has assembled this list of recommendations on how the EPA Council on PFAS can improve its Strategic Roadmap to more effectively consider the needs of environmental justice communities. These recommendations, which were approved by the full Council during this meeting, follow the three primary goals of the Agency's Roadmap – Research, Restrict, and Remediate. We also make recommendations to expand the three goals to five – (4) Respond: to further assist EJ communities by responding to PFAS exposure through emergency and community-based actions, and (5) Resource: to better inform and engage impacted people by providing resources to educate and engage EJ communities about public health and safety conditions from forever chemicals. While these recommendations are framed around three R's approach to the roadmap, the Council wishes to emphasize that the heart of its recommendations is that taking action to reduce PFAS exposure in EJ communities is the top priority, and that while additional research may be needed in areas, this should not be used as an excuse not to take action based on what is already known about risks from exposure to PFAS.

### **Overarching Recommendation**

- NEJAC strongly recommends that EPA ensure it has the internal capacity to implement its PFAS roadmap. This can be achieved by institutionalizing the Agency's commitment to PFAS with permanent positions for PFAS experts with responsibility for working to prevent further exposure, like the EPA's network of Regional Lead Contacts.

## Research

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- Convene and consult PFAS experts in states that are more closely monitoring PFAS and Gen X chemicals to inform national policy on allowable PFAS exposures, particularly where some regulated levels are lower than the EPA's allowable levels, i.e., CA, MA, MI, MN, NC, NH, NJ, NY, OH, VT.
- Assess EJ community risks in [non-regulated states](#), tribal governments, and territories in anticipation of enforceable limits for PFAS in the Safe Drinking Water Act.

## Restrict

- Enact a moratorium on the approval of new PFAS chemicals, including GenX, for use in EJ communities until a cumulative impact assessment of risks to potentially impacted EJ communities and a public notification process for those communities can be completed. The cumulative impact assessment should be conducted in consultation with EJ experts. Regulate PFAS chemicals as a class instead of as individual contaminants due to the number and complexity of PFAS chemicals.
- Curb industry discharges through enforcement of effluent limitation guidelines.
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- Disallow the transfer of materials containing PFAS, including biosolids, particularly for agriculture and other uses where it can pose new exposure risks.
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### **Remediate**

- Create a list of priority communities that have been exposed to elevated levels of and/or lengthy periods of unmitigated exposure to PFAS and target resources and intensive interventions designed to fix the issues as a cohesive set of responses from EPA, not in several separate grants or actions.
- Prioritize accountability among PFAS chemical companies for addressing existing contamination in EJ communities and reducing the prevalence of PFAS in these communities that are overburdened by multiple chemical and non-chemical stressors.
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## Resource (Engagement and Education)

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