



Testimony regarding HB 2238, Consumer Protection from PFAS
House Environmental Resource and Energy Committee
June 3, 2024

Good morning Chairman Vitali, Chairman Causer, and members of the House Environmental Resource and Energy Committee. Thank you for holding this hearing today on PFAS in products in the Commonwealth. I am Tracy Carluccio, Deputy Director of Delaware Riverkeeper Network. We appreciate the opportunity to testify today in support SB2238 as a means to limit the public exposure to PFAS by limiting the use of PFAS in certain materials. We also support that powers and duties are imposed on PADEP to implement and enforce the regulations that would be promulgated based on this legislation.

We have these specific comments on the bill:

1. We support the bill's definition of PFAS as "A substance that contains any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances." It is vital that this definition be retained without any change as it is critical that a comprehensive, science-based and widely adopted definition of PFAS is used. This definition has been adopted by the US Department of Defense, Congress and 23 states.¹ Different forms of PFAS are still PFAS if they have at least one fully fluorinated compound, which is what makes them so strong that they are called "forever chemicals", based on their persistence in the environment and living organisms. No exemptions to the definition should be allowed or the goal of limiting exposure to these highly toxic chemicals would be undermined.
2. Under definitions, we point out that there must be close oversight by DEP to ensure that the definition of an "Intentionally added PFAS chemical" does not allow the use and discharge of certain dangerous PFAS compounds. Sometimes a PFAS chemical is not intentionally added to a material but it breaks down into PFAS or PFAS-related chemicals or in some cases it is not disclosed as being in the compound used by the manufacturer/discharger. Substitute chemicals that are replacing long chain PFAS are being found to contain PFAS

¹ ATSDR, "Toxicological Profile for Perfluoroalkyls," May 2021. <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>; Safer States, "Accurate, Comprehensive, Widespread, and Protective: Explaining the PFAS Definition That Has Been Adopted by 22 States and the US Military," February 2024. https://www.saferstates.org/wp-content/uploads/PFAS-Definition-Factsheet_2.7.2024.pdf.

that meet the definition in this bill but they may not be identified by the manufacturer as such.²

Additionally, a “Third Generation” of chemical byproducts such as Polymeric PVDF Byproducts, are appearing as breakdown substances in the environment around locations where there are discharges of PFAS and PFAS substitutions. The break down occurs either during processing or they develop in the environment when mixed with other substances.³ The chemicals are often novel substances and are emerging as scientists examine groundwater, surface water, soils, and fish and may carry similar toxic properties as PFAS.

We encourage Pennsylvania to investigate and analyze for the presence of these potentially dangerous chemicals. Some companies using and discharging compounds that form or generate PFAS chemicals are well aware of the byproducts but are not controlling them so they actually are intentionally adding PFAS. This is an area of inquiry that DEP must delve into in its implementation of regulations for this bill so that these dangerous byproducts don't get mislabeled as “unintentional” and fall between the regulatory cracks. Otherwise, these chemicals will end up like all PFAS, contaminating our environment and water supplies by way of wastewater discharges, landfills, and through practices such as biosolids application on farms and parks.

3. Under definitions, the covered product includes oil and gas products. We strongly support this inclusion to address a currently uncontrolled pathway of contamination that allows PFAS compounds to enter the environment. In 2021, a report was released that documented drilling and fracking companies were injecting fracking fluids containing PFAS to extract gas, potentially contaminating ground and surface water and allowing PFAS to make its way into the wastewater produced by fracking.⁴ The examined records showed drilling companies revealed that XTO Energy, Inc., EOG Resources, Chevron, and

² See: J.W. Washington et al., Nontargeted mass-spectral detection of chloroperfluoropolyether carboxylates in New Jersey soils, *Science*, June 5, 2020, Vol. 368, Issue 6495, pp. 1103-1107, <https://science.sciencemag.org/content/368/6495/1103.abstract-aff-3>; Emerging Chlorinated Polyfluorinated Polyether Compounds Impacting the Waters of Southwestern New Jersey Identified by Use of Nontargeted Analysis. *Environmental Science & Technology*, McCord et al. (2020) at <https://pubs.acs.org/doi/10.1021/acs.estlett.0c00640>; Environmental Fate of Cl-PFPECA: Predicting the Formation of PFAS Transformation Products in New Jersey Soils, Marina G. Evich, Mary Davis, Eric J. Weber, Caroline Tebes-Stevens, Brad Acrey, William Matthew Henderson, Sandra Goodrow, Erica Bergman and John W. Washington. *Environ. Sci. Technol.* 2022, 56, 12, 7779–7788. Publication Date: May 26, 2022 <https://doi.org/10.1021/acs.est.1c06126> Copyright © 2022 American Chemical Society. Download at: <https://pubs.acs.org/doi/10.1021/acs.est.1c06126>.

³ Seth Newton, National Exposure Research Laboratory, U.S.EPA, et al, “Novel Polyfluorinated Compounds Identified Using High Resolution Mass Spectrometry Downstream of Manufacturing Facilities near Decatur, Alabama.” *Environmental Science and Technology*, January 13, 2017. Doi:10.1021/acs.est.6b05330.

⁴ Dusty Horwitt, J.D., “Fracking with “Forever Chemicals”, Physicians for Social Responsibility, 2021. <https://psr.org/wp-content/uploads/2021/07/fracking-with-forever-chemicals.pdf>

Anadarko all developed and operated wells in the state and may have employed forever chemicals in fracking.⁵

A follow up investigation by the Philadelphia Inquirer found further evidence that PFAS had been used in at least eight oil and gas wells drilled in Pennsylvania.⁶ A 2022 report explains that in Pennsylvania and other states chemical manufacturers are not required to disclose a complete list of the chemicals in fracking and drilling mixtures and due trade secret exemptions it is not a straightforward process to discover their presence, leaving the public in the dark.⁷

DEP has conducted statewide PFAS water sampling but there has been no comprehensive testing of private wells or drinking water sources near oil and gas sites. Many areas where drilling is occurring are dependent on private wells and since private wells are not regulated in the Commonwealth, they are not covered by the new drinking water regulations that Pennsylvania and the federal government set for some of the most commonly found and most toxic PFAS compounds. An incident was reported in 2022 when University of Pittsburgh Researchers tested water samples from a private well near fracking wells and found seven of the 14 PFAS they tested for.⁸ This bill would provide much needed protection for residents by prohibiting the use of PFAS in oil and gas well extraction operations, eliminating a source of PFAS exposure that is now not at all addressed by any entity.

4. Section 7112: DRN supports that the DEP processes and the decisions made in administering, prioritizing, and related actions regarding the implementation and enforcement of the resulting regulations must be made public and that there be a transparent and open public participation program that accompanies the agency's actions. We fully support at Section 7112 that an interface be created for the disclosure of PFAS chemical information and that it be publicly accessible through an on line, free platform.

Thank you for the opportunity to testify today in support of this important legislation that will provide much needed protection to Pennsylvanians from the highly toxic and health damaging PFAS compounds that people are often exposed to through everyday consumer products and other unexpected sources without even knowing it.

The greater the exposure of people to PFAS, especially our most vulnerable populations infants and children, the greater the risk of developing a disease linked to PFAS. These exposures can

⁵ *Ibid.*

⁶ <https://www.inquirer.com/opinion/editorials/fracking-pennsylvania-pfas-toxic-chemicals-water-20210805.html>

⁷ <https://psr.org/wp-content/uploads/2022/07/chemical-makers-exemptions-from-fracking-chemical-disclosure-rules.pdf>

⁸ <https://www.ehn.org/pfas-fracking-in-drinking-water-2657776204/unsolvable-mysteries-pfas-contamination>

lead to devastate health conditions, lifelong adverse developmental effects, and diseases such as cancer and we must do all we can to prevent that.