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FREEDOM OF INFORMATION ACT REQUEST

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VIA ELECTRONIC MAIL

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Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of the U.S. Department of Defense (DoD), 32 C.F.R. Part 286, the Environmental Working

Group (EWG) makes the following request for all water testing records for all DoD installations concerning contamination by any PFAS chemical.

PFAS Chemicals

Highly fluorinated toxic chemicals, better known as PFAS, have been linked to cancer, thyroid disease, weakened immunity, and other health problems. While the full extent of contamination is unknown, EWG estimates that up to 110 million people are affected by PFAS pollution in tap water supplies,¹ including residents around (and servicemembers on) military installations.² State officials impacted by the contamination have called it the “stuff health department nightmares are made of.”³ PFAS chemicals are very persistent in the environment and can bioaccumulate in the human body.⁴

Regulation of these chemicals in drinking water is an issue of significant public interest. The U.S. does not currently have a limit on the amount of PFAS chemicals that can be in drinking water supplies. However, in 2016, the EPA set a health advisory level of 70 ppt (individually or combined) for perfluoro-octanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), two of the best-known PFAS chemicals.⁵

PFAS chemicals are the basis of aqueous film forming foam (AFFF), which is used as a fire suppressant. DoD started using AFFF in the 1970s because AFFF is an efficient method to extinguish aircraft fuel fires.⁶ AFFF has been used on military bases for emergencies, for training exercises, and for equipment testing; in nearly all uses, PFAS chemicals were released into the environment. PFOS was originally the main component of AFFF, but its manufacturer announced it would cease production in 2000.⁷ Legacy stocks of AFFF with PFOS remain on some military installations.⁸ Moreover, some AFFFs contain PFOA.⁹ The Military Performance Specification (MILSPEC) for AFFF was amended in 2017 to set a

¹ David Andrews, *Report: Up to 110 Million Americans Could Have PFAS-Contaminated Drinking Water*, ENVIRONMENTAL WORKING GROUP (May 22, 2018), <https://www.ewg.org/research/report-110-million-americans-could-have-pfas-contaminated-drinking-water#.W6u-F5NKi1s>; Bill Walker, *Update: Mapping the Expanding PFAS Crisis*, ENVIRONMENTAL WORKING GROUP (April 18, 2018), <https://www.ewg.org/research/update-mapping-expanding-pfas-crisis#.WvxdddMvwWo>.

² Tara Copp, *DoD: At Least 126 Bases Report Water Contaminants Linked to Cancer, Birth Defects*, MILITARY TIMES (April 26, 2018), <https://www.militarytimes.com/news/your-military/2018/04/26/dod-126-bases-report-water-contaminants-harmful-to-infant-development-tied-to-cancers/>. See also *A Toxic Threat: Government Must Act Now on PFAS Contamination at Military Bases*, UNION OF CONCERNED SCIENTISTS (Sept. 2018), <https://www.ucsusa.org/center-science-and-democracy/preserving-science-based-safeguards/toxic-threat-pfas-contamination-military-bases#.W6vPcX4pBEJ>.

³ Garret Ellison, *Belmont Woman's Blood is 750 Times National PFAS Average*, GRAND RAPIDS NEWS (Jan. 9, 2018), http://www.mlive.com/news/grand-rapids/index.ssf/2018/01/pfas_blood_test_ppt.html.

⁴ Environmental Protection Agency, *Basic Information on PFAS*, <https://www.epa.gov/pfas/basic-information-pfas> (last visited Nov. 8, 2018).

⁵ Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last visited May 16, 2018).

⁶ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 4 (March 2018).

<http://www.oea.gov/resource/addressing-perfluorooctane-sulfonate-pfos-and-perfluorooctanoic-acid-pfoa>.

⁷ *Id.*

⁸ Maureen Sullivan, *Statement before the Committee on Homeland Security and Governmental Affairs*, at 2 (Sept. 26, 2018).

⁹ *Id.*

maximum concentration of PFOS and PFOA in AFFF.¹⁰ But use of fluorocarbon surfactants is still mandated by the MILSPEC, and the 8-carbon-chain PFAS chemicals PFOA and PFOS are being replaced by shorter-chain PFAS chemicals in AFFF formulations.¹¹ These shorter-chain replacement PFAS are not as well-studied as PFOA and PFOS.¹²

PFAS Chemicals were included in UCMR3

Pursuant to section 1445 of the Safe Drinking Water Act, 42 U.S.C. § 300j-4, every five years the Administrator of the EPA issues a list of up to thirty contaminants which are not currently regulated under the Act, but about which information must be collected by public water systems (PWSs).¹³ The results obtained from monitoring these unregulated contaminants are provided to the “primary enforcement authority for the system.”¹⁴ The data are entered into a “national drinking water contaminant data base,” and become “available to the public in readily accessible form.”¹⁵

In 2012, EPA issued the Final Rule for the Unregulated Contaminant Monitoring Rule 3 (UCMR3).¹⁶ All PWSs serving more than 10,000 people, and a sample of 800 small PWSs serving fewer than 10,000 people, were required to monitor about twenty contaminants on “List 1.”¹⁷ Six PFAS chemicals were on List 1: perfluorooctanesulfonic acid (PFOS); perfluorooctanoic acid (PFOA); perfluorononanoic acid (PFNA); perfluorohexanesulfonic acid (PFHxS); perfluoroheptanoic acid (PFHpA); perfluorobutanesulfonic acid (PFBS).¹⁸ Assessment and monitoring occurred between 2013 and 2015.¹⁹

Where the DoD acts as a supplier of drinking water for military installations, it falls under the jurisdiction of the Safe Drinking Water Act. Depending on the number of people served by each water system, DoD may have been required to collect water samples and test for these PFAS contaminants. DoD tested between sixty-three²⁰ and seventy-seven²¹ community water systems under UCMR3.

DoD conducted additional testing of military installations

¹⁰ Naval Sea Systems Command, Performance Specification – Fire Extinguishing Agent, Aqueous Film-Forming Foam (AFFF) Liquid Concentrate, For Fresh and Sea Water (MIL-PRF-24385F(SH)) (Sept. 7, 2017), http://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=17270.

¹¹ Sharon Lerner, *The U.S. Military is Spending Millions to Replace Toxic Firefighting Foam with Toxic Firefighting Foam*, THE INTERCEPT (Feb. 10, 2018), <https://theintercept.com/2018/02/10/firefighting-foam-ffff-pfos-pfoa-epa/>; State of Alaska Department of Environmental Conservation, Risk of Aqueous Film Forming Foam (AFFF), <https://dec.alaska.gov/spar/csp/aqueous-film-forming-foam/> (last visited Nov. 8, 2018).

¹² Environmental Protection Agency, Basic Information on PFAS, <https://www.epa.gov/pfas/basic-information-pfas> (last visited Nov. 8, 2018).

¹³ 42 U.S.C. §§ 300j-4(a)(2)(A), (B).

¹⁴ *Id.* § 300j-4(a)(2)(D).

¹⁵ *Id.* §§ 300j-4(g)(1), (5), (7).

¹⁶ *Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems*, 77 Fed. Reg. 26,072 (May 2, 2012).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 7.

²¹ Department of Defense, Water Safety on Military Bases, at 4 (May 2018).

In response to EPA's issuance of a health advisory for PFOS and PFOA in 2016, DoD ordered additional water testing.²² "The Department began testing DoD-operated drinking water systems worldwide in June 2016 to identify drinking water that exceeded EPA's [health advisory level]."²³ DoD has completed the testing of 524 DoD drinking water systems.²⁴ If DoD is not the supplier of drinking water, then the installation is supposed to inquire, from the supplier, whether the drinking water has been tested for PFAS.²⁵

Recognizing that PFAS from Aircraft Rescue and Firefighting activities could persist in and migrate through the environment, DoD is monitoring suspected releases through additional PFAS sampling. "As of August 2017, DoD has identified 401 active or closed military installations with known or suspected releases of PFOS or PFOA."²⁶ "The Components also sampled private drinking water wells if there was a suspected or known release that migrated off base."²⁷ As of August 2017, 2445 off-base drinking water systems were tested.²⁸ Where a release is suspected, DoD is also sampling groundwater to test for PFAS.²⁹

RECORDS REQUEST I – DEPARTMENT OF THE NAVY & US MARINE CORPS

"The Navy had identified 127 installations with known or suspected releases of PFOS and PFOA . . ."³⁰

Memoranda from October 2014 and September 2015 declared that "All Navy PWSs in the United States that produce drinking water from on installation sources where PFCs are known or suspected to have been released within approximately 1-mile up-gradient to the drinking water source must sample and test for PFOS/PFOA in finished drinking water. Navy PWSs that have completed sampling and testing for PFOS/PFOA under the Federal UCMR 3 or any state UCMR that has requirements at least as stringent as Federal requirements are not required to repeat sampling and testing for the purpose of this policy."³¹ EPA Method 537 was required to be used.³² Testing was to be completed by December 31, 2015, and results were to be submitted to OPNAV N45 by February 15, 2016.³³ It seems that a spreadsheet, documenting the sample concentration of contaminants, was supposed to be uploaded to the EM Portal Water Quality site.³⁴

²² Government Accountability Office, Drinking Water: Status of DOD Efforts to Address Drinking Water Contaminants Used in Firefighting Foam, at 0 (GAO-18-700T, Sept. 26, 2018); Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 7.

²³ Maureen Sullivan, Statement before the Committee on Homeland Security and Governmental Affairs, at 3 (Sept. 26, 2018).

²⁴ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 7.

²⁵ *Id.*

²⁶ Government Accountability Office, Drinking Water: Status of DOD Efforts to Address Drinking Water Contaminants Used in Firefighting Foam, at 0; Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 9.

²⁷ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 8.

²⁸ *Id.*

²⁹ *Id.* at 9.

³⁰ Government Accountability Office, Drinking Water: Status of DOD Efforts to Address Drinking Water Contaminants Used in Firefighting Foam, at 6.

³¹ Memorandum from the Dept. of the Navy to Commander, Navy Medicine East and Commander, Navy Medicine West, at 5, 24 (of 31) (Dec. 24, 2015), <http://www.secnav.navy.mil/eie/Documents/15-12-24-BUMED-PFC-Memo-Signed-w-Enclosures.pdf>.

³² *Id.* at 5 (of 31)

³³ *Id.* at 5-6 (of 31).

³⁴ *Id.* at 27-30 (of 31).

The Navy tested 100 drinking water systems where DoD is the purveyor of water.³⁵ Two hundred thirty-six (236) drinking water systems that have a non-DoD purveyor also conducted water testing.³⁶ The Marine Corps tested 28 drinking water systems where DoD is the purveyor of water.³⁷ Fifty-two (52) systems with a non-DoD purveyor were also tested.³⁸ Six Navy and three Marine Corps installations had PFOS and PFOA results above the EPA health advisory level.³⁹ The Navy and Marine Corps also tested 1368 groundwater wells.⁴⁰ Seven hundred eighty-four (784) tested above the health advisory level.⁴¹

RECORDS REQUEST I

From the Department of the Navy and the US Marine Corps, EWG requests the following records:

- 1) All water testing data from the UCMR3 for all installations required to comply with UCMR3. These data should include the six PFAS required under the UCMR3, and any other PFAS data if additional analyses were performed (Method 537 can detect 14 PFAS chemicals,⁴² but only six had to be monitored to comply with UCMR3). We want all results for each sample (not merely the range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 2) All testing data from any subsequent monitoring since UCMR3. (Additional sampling was an option for drinking water systems with detections above the UCMR3 Minimum Reporting Level but below the health advisory level.⁴³) This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 3) All water testing data from installations which were not required to test under UCMR3, whether DoD is a purveyor of the drinking water or not. These data should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 4) All water testing data from off-base public and private drinking water systems. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the

³⁵ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 18.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 10.

⁴¹ *Id.*

⁴² Environmental Protection Agency. Method 537: Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS). EPA Document #: EPA/600/R-08/092 (Version 1.1 Sept. 2009). The fourteen PFAS chemicals are N-ethyl perfluorooctanesulfonamidoacetic acid; N-methyl perfluorooctanesulfonamidoacetic acid; perfluorobutanesulfonic acid; perfluorodecanoic acid; perfluorododecanoic acid; perfluoroheptanoic acid; perfluorohexanesulfonic acid; perfluorohexanoic acid; perfluorononanoic acid; perfluorooctanesulfonic acid; perfluorooctanoic acid; perfluorotetradecanoic acid; perfluorotridecanoic acid; and perfluoroundecanoic acid.

⁴³ Memorandum from the Dept. of the Navy to Commander, Navy Medicine East and Commander, Navy Medicine West, at 8, 24 (of 31).

detection limit and the quantification limit. We also are requesting location information for each sample.

- 5) All water testing data from the 1368 groundwater wells, whether the wells were on-base or off-base. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample. If further groundwater monitoring has been completed since 2017, we would like those results as well.
- 6) Any correspondence with the water testing laboratories concerning the PFAS testing capabilities of the laboratory. "Testing capabilities" can signify the number and type of PFAS analytes that can be tested for and for each analyte the respective "method detection limit" and "method quantification limit," and can include results from the laboratories' demonstrations of capability and method performance at and below the MRL during registration with the EPA (if the laboratory was approved for UCMR3), as well as their own internal controls.

RECORDS REQUEST II – DEPARTMENT OF THE ARMY

"The Army had identified 61 [or 64] installations with known or suspected releases of PFOS and PFOA . . ."⁴⁴

A memorandum from June 2016 states that "The Army will sample for PFOS and PFOA in Army-owned or operated water systems located on Army installations that have not previously sampled for PFOS and PFOA."⁴⁵ All sizes, even single well systems, were required to be sampled.⁴⁶ Sampling was to be completed by the end of 2016.⁴⁷ An EPA approved method was to be used in the analysis.⁴⁸

The Army tested 255 drinking water systems where DoD is the purveyor of water.⁴⁹ One thousand five hundred eighty-nine (1589) drinking water systems that have a non-DoD purveyor also conducted water testing.⁵⁰ Sixteen drinking water systems had PFOS and PFOA results above the EPA health advisory level.⁵¹ The Army also tested 258 groundwater wells.⁵² One hundred four (104) groundwater wells tested above the health advisory.⁵³

RECORDS REQUEST II

From the Department of the Army, EWG requests the following records:

- 1) All water testing data from the UCMR3 for all installations required to comply with UCMR3. These data should include the six PFAS required under the UCMR3, and any other PFAS data if additional analyses were performed (EPA-approved Method 537 can detect 14 PFAS

⁴⁴ Government Accountability Office, Drinking Water: Status of DOD Efforts to Address Drinking Water Contaminants Used in Firefighting Foam, at 6; Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 10.

⁴⁵ Memorandum from Dept. of the Army for Commander, Army Materiel Command, et al., at 2 (Jun. 10, 2016), <https://www.denix.osd.mil/army-pfas/the-army-addresses-pfos-pfoa/the-army-addresses-pfos-and-pfoa/perfluorinated-compound-pfc-contamination-assessment1/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 18.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 10.

⁵³ *Id.*

chemicals,⁵⁴ but only six had to be monitored to comply with UCMR3). We want all results for each sample (not merely the range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.

- 2) All testing data from any subsequent monitoring since UCMR3. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 3) All water testing data from installations which were not required to test under UCMR3, whether DoD is a purveyor of the drinking water or not. These data should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 4) All water testing data from off-base public and private drinking water systems. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 5) All water testing data from the 258 groundwater wells, whether the wells were on-base or off-base. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample. If further groundwater monitoring has been completed since 2017, we would like those results as well.
- 6) Any correspondence with the water testing laboratories concerning the PFAS testing capabilities of the laboratory. "Testing capabilities" can signify the number and type of PFAS analytes that can be tested for and for each analyte the respective "method detection limit" and "method quantification limit," and can include results from the laboratories' demonstrations of capability and method performance at and below the MRL during registration with the EPA (if the laboratory was approved for UCMR3), as well as their own internal controls.

RECORDS REQUEST III – DEPARTMENT OF THE AIR FORCE

"The Air Force has identified 203 installations with known or suspected releases of PFOS and PFOA . . ."⁵⁵

A press release from 2016 states "The Air Force Civil Engineer Center is sampling at each installation to confirm whether a release has occurred and if PFCs are present in the ground water."⁵⁶ An AF Civil

⁵⁴ See n.42, above.

⁵⁵ Government Accountability Office, *Drinking Water: Status of DOD Efforts to Address Drinking Water Contaminants Used in Firefighting Foam*, at 6.

⁵⁶ Press Release, Air Force Public Affairs, *Assessing Potential Perfluorinated Compounds (PFCs) Contamination at Air Force Installations* (Mar. 16, 2016), <https://www.afcec.af.mil/Portals/17/documents/Environment/AFD-160322-009.pdf>.

Engineer Center FAQ sheet also states, “The Air Force is testing all drinking water supplies where it is the purveyor.”⁵⁷ The Air Force uses EPA Method 537 for its PFAS testing.⁵⁸

The Air Force tested 140 drinking water systems where DoD is the purveyor of water.⁵⁹ One hundred thirty-four (134) drinking water systems that have a non-DoD purveyor also conducted water testing.⁶⁰ Eleven drinking water systems had PFOS and PFOA results above the EPA health advisory level.⁶¹ The Air Force also sampled 1022 groundwater wells.⁶² Seven hundred nineteen (719) groundwater wells tested above the health advisory level.⁶³

RECORDS REQUEST III

From the Department of the Air Force, EWG requests the following records:

- 1) All water testing data from the UCMR3 for all installations required to comply with UCMR3. These data should include the six PFAS required under the UCMR3, and any other PFAS data if additional analyses were performed (Method 537 can detect 14 PFAS chemicals,⁶⁴ but only six had to be monitored to comply with UCMR3). We want all results for each sample (not merely the range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 2) All testing data from any subsequent monitoring since UCMR3. This should include all PFAS chemicals tested for, not just PFOS and PFOA. (“When PFOS/PFOA are detectable but below the lifetime HA level in drinking water, the Air Force may conduct well monitoring as needed to track level changes and determine if further action is needed.”⁶⁵) All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 3) All water testing data from installations which were not required to test under UCMR3, whether DoD is a purveyor of the drinking water or not. These data should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 4) All water testing data from off-base public and private drinking water systems. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 5) All water testing data from the 1022 groundwater wells, whether the wells were on-base or off-base. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results

⁵⁷ Air Force Public Affairs, Frequently Asked Questions (Nov. 20, 2017), https://www.afcec.af.mil/Portals/17/documents/Environment/FAQ_PFOA-PFOS.pdf.

⁵⁸ *Id.*

⁵⁹ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 18.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 10.

⁶³ *Id.*

⁶⁴ See n.42, above.

⁶⁵ Air Force Public Affairs, Frequently Asked Questions (Nov. 20, 2017), https://www.afcec.af.mil/Portals/17/documents/Environment/FAQ_PFOA-PFOS.pdf.

for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample. If further groundwater monitoring has been completed since 2017, we would like those results as well.

- 6) Any correspondence with the water testing laboratories concerning the PFAS testing capabilities of the laboratory. "Testing capabilities" can signify the number and type of PFAS analytes that can be tested for and for each analyte the respective "method detection limit" and "method quantification limit," and can include results from the laboratories' demonstrations of capability and method performance at and below the MRL during registration with the EPA (if the laboratory was approved for UCMR3), as well as their own internal controls.

RECORDS REQUEST IV – DEFENSE LOGISTICS AGENCY

There are seven DLA installations with known or suspected releases of PFOS and PFOA.⁶⁶

One drinking water system was tested where DoD is the purveyor of water.⁶⁷ Seven drinking water systems that have a non-DoD purveyor also conducted water tests.⁶⁸ None had PFOS and PFOA results above the health advisory level.⁶⁹ DLA tested twenty groundwater wells.⁷⁰ Fourteen groundwater wells had results above the health advisory level.⁷¹

RECORDS REQUEST IV

From the Defense Logistics Agency, EWG requests the following records:

- 1) All water testing data from the UCMR3 for all installations required to comply with UCMR3. These data should include the six PFAS required under the UCMR3, and any other PFAS data if additional analyses were performed (Method 537 can detect 14 PFAS chemicals,⁷² but only six had to be monitored to comply with UCMR3). We want all results for each sample (not merely the range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 2) All testing data from any subsequent monitoring since UCMR3. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 3) All water testing data from installations which were not required to test under UCMR3, whether DoD is a purveyor of the drinking water or not. These data should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.
- 4) All water testing data from off-base public and private drinking water systems. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample

⁶⁶ Maureen Sullivan, FY18 HASC brief on PFOS-PFOA, at slide 10.

⁶⁷ *Id.* at 18.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 10.

⁷¹ *Id.*

⁷² See n.42, above.

should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample.

- 5) All water testing data from the 20 groundwater wells, whether the wells were on-base or off-base. This should include all PFAS chemicals tested for, not just PFOS and PFOA. All results for each water sample should be included (not merely the numerical range of the results), including the original results report as received from the water testing lab with the concentration of each PFAS, the detection limit and the quantification limit. We also are requesting location information for each sample. If further groundwater monitoring has been completed since 2017, we would like those results as well.
- 6) Any correspondence with the water testing laboratories concerning the PFAS testing capabilities of the laboratory. “Testing capabilities” can signify the number and type of PFAS analytes that can be tested for and for each analyte the respective “method detection limit” and “method quantification limit,” and can include results from the laboratories’ demonstrations of capability and method performance at and below the MRL during registration with the EPA (if the laboratory was approved for UCMR3), as well as their own internal controls.

* * *

In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DoD uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

EWG seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” “data,” “results,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁷³ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; we have a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**⁷⁴

⁷³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149—50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—56 (D.C. Cir. 2016).

⁷⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, we welcome an opportunity to discuss this request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

EWG respectfully requests that the DoD make every reasonable effort to provide the requested records within the 20-day determination response period required by the FOIA statute, 5 U.S.C. §§ 552(a)(6)(A)(i), 552(a)(3)(A). Where possible, please provide responsive material in electronic format, preferably as an Excel spreadsheet, by email to mhenesh@ewg.org or on a USB drive. Please send any responsive material being sent by postal mail to Environmental Working Group, 1436 U St. NW, Suite 100, Washington, DC 20009.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.12(l), EWG requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.⁷⁵ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁷⁶

EWG requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of government operations and activities in relation to drinking water contaminants.⁷⁷ The disclosure of information sought under this request will document and reveal the operations of the federal government, including how officials approach public health issues like PFAS contamination and what factors influence public officials' thinking around new science and proposed public health standards.⁷⁸ The information being requested is not currently in the public domain; release of this data would add something new to the public understanding of water contamination on and near military installations.⁷⁹ The information requested is also of interest to a broad audience of persons beyond EWG, especially as the general public becomes more knowledgeable about PFAS chemicals and drinking water contamination.⁸⁰ EWG has expertise in the area of environmental toxins and will be able to analyze the data and convey its conclusions to a broad audience.⁸¹

This request is purely for non-commercial purposes.⁸² EWG is a 501(c)(3) non-profit public interest organization dedicated to using the power of information to protect public health and the environment. EWG will use the information gathered in furtherance of this mission. EWG has long studied the public health and environmental impacts of toxic chemicals, particularly with regards to drinking water contaminants. As part of this work, EWG publishes reports and creates consumer-facing resources to educate the public and advocate for health-protective standards. For example, in 2017 EWG released an updated searchable tap water database which allows consumers to learn about

⁷⁵ 32 C.F.R. §§ 286.12(l)(1), (l)(2)(i), (l)(2)(ii).

⁷⁶ *Id.* §§ 286.12(l)(1), (l)(2)(iii).

⁷⁷ *Id.* §§ 286.12(l)(1), (l)(2)(ii).

⁷⁸ *Id.* § 286.12(l)(2)(i).

⁷⁹ *Id.* § 286.12(l)(2)(ii)(A).

⁸⁰ *Id.* § 286.12(l)(2)(ii)(B).

⁸¹ *Id.*

⁸² *Id.* §§ 286.12(a), (b)(1), (b)(5), (e)(1), (l)(1).

drinking water contaminants in their local area, contaminants of concern, and government regulation of drinking water contaminants.⁸³ This included a lengthy discussion of PFAS contamination in drinking water.⁸⁴ EWG plans to use the information gathered from this request, and its analysis of it, to educate the public through various media including reports, blogs, and press releases. EWG also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁸⁵ EWG has no commercial interest that will be furthered by the disclosure of this information.⁸⁶

Accordingly, this request qualifies for a fee waiver.⁸⁷

Conclusion

EWG looks forward to working with DoD on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Melanie Benesh at mbenesh@ewg.org or 202.939.0120. Also, if our request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

⁸³ Environmental Working Group, Tap Water Database, <https://www.ewg.org/tapwater/#.WvxrwdMvzok> (last visited Sept. 10, 2018).

⁸⁴ Environmental Working Group, Tap Water Database, PFCs, <https://www.ewg.org/tapwater/reviewed-pfcs.php#.WvxsJ9Mvzok> (last visited Sept. 10, 2018).

⁸⁵ EWG currently has approximately 690,000 page likes on Facebook and more than 57,000 followers on Twitter. Environmental Working Group, FACEBOOK, <https://www.facebook.com/ewg.org/> (last visited Sept. 26, 2018); EWG (@EWG), TWITTER, <https://twitter.com/ewg> (last visited Sept. 26, 2018).

⁸⁶ 32 C.F.R. § 286.12(l)(2)(iii)(A).

⁸⁷ Note that this is *not* a request for technical data. 32 C.F.R. § 286.13.