



RALPH DLG. TORRES
Governor

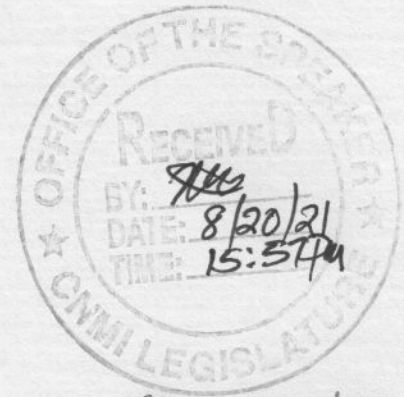
ARNOLD I. PALACIOS
Lieutenant Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

20 AUG 2021

The Honorable Jude U. Hofschneider
President of the Senate
Twenty-Second Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

The Honorable Edmund S. Villagomez
Speaker, House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Saipan, MP 96950



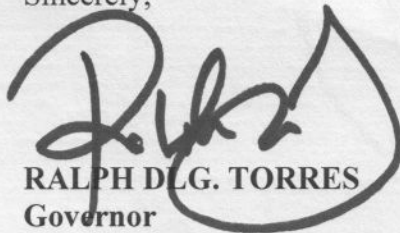
Ⓢ 8/20/21

Dear Mr. President and Mr. Speaker:

This is to inform you that I have signed into law **Senate Bill No. 22-40, HD1** entitled, "To protect the people of the Commonwealth of the Northern Mariana Islands from Per and Polyfluoroalkyl Substances (PFAS) contamination." which was passed by the Senate and the House of Representatives of the Twenty-Second Northern Marianas Commonwealth Legislature.

This bill becomes **Public Law No. 22-06**. Copies bearing my signature are forwarded for your reference.

Sincerely,


RALPH DLG. TORRES
Governor

cc: Lt. Governor; Press Secretary; Commonwealth Utilities Corporation; Commonwealth Ports Authority; Bureau of Environmental and Coastal Quality; ; Attorney General; Law Revision Commission; Public Auditor; Special Assistant for Administration; Special Assistant for Programs and Legislative Review

HOUSE CLERK'S OFC
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DATE 8/23/2021 TIME 10:02a



THE SENATE
TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SENATE BILL NO. 22-40, HD1

AN ACT

To protect the people of the Commonwealth of the Northern Mariana Islands from Per and Polyfluoroalkyl Substances (PFAS) contamination.

SENATE ACTION

Offered by Senator(s): Jude U. Hofschneider and Vinnie F. Sablan

Date: March 23, 2021

Referred to: None

Standing Committee Report No.: None

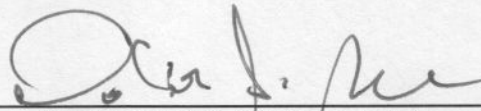
Final Reading: July 08, 2021, Accepted HD1

HOUSE ACTION

Referred to: Health and Welfare Committee

Standing Committee Report No.: 22-16 Adopted on 06/16/21

First and Final Reading: June 16, 2021


DOLORES S. BERMUDES
SENATE CLERK



THE SENATE
TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2021

S. B. NO. 22-40, HD1

AN ACT

To protect the people of the Commonwealth of the Northern Mariana Islands from Per and Polyfluoroalkyl Substances (PFAS) contamination.

BE IT ENACTED BY THE TWENTY-SECOND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:

1 **Section 1. Title.** This Act shall be known as the “The Commonwealth of the
2 Northern Mariana Islands Protection from PFAS Act.”

3 **Section 2. Findings and Purpose.** The Legislature finds that according to
4 extensive scientific research, certain per- and polyfluoroalkyl substances (PFAS) are
5 harmful synthetic compounds that pose significant health and environmental
6 consequences.

7 Also known as “forever chemicals,” PFAS have been used in a wide variety of
8 consumer products and industrial applications, including, but not limited to, clothing,
9 cookware, food packaging, carpets and upholstery, firefighting foam, electronics, and
10 construction materials. A common source of PFAS contamination in the Commonwealth
11 of the Northern Mariana Islands (Commonwealth) is aqueous film-forming foam (AFFF),
12 which contained concentrated PFAS and was utilized at fire training locations, Department
13 of Defense installations, airports, and other fire-response sites.

14 Scientific studies show that exposure to certain “long-chain” PFAS, including
15 perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA), and
16 perfluorononanoic acid (PFNA), can lead to adverse human health effects, including
17 increased cholesterol levels, gestational hypertension or preeclampsia, decreased fertility

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1 among women, developmental effects on infants, negative effects on the immune system,
2 ulcerative colitis, kidney and testicular cancer, and thyroid hormone disruption. PFAS are
3 extremely persistent in the environment and in the human body, as these chemicals are
4 resistant to typical environmental degradation processes and bioaccumulate and persist in
5 the human body over time.

6 There is ample evidence showing that the manufacturers of long-chain PFAS
7 and/or AFFF containing long-chain PFAS have understood the risks of PFAS chemicals
8 for decades and actively sought to conceal their danger. As early as the 1960s, these
9 manufacturers were aware of the dangers posed by long-chain PFAS based on internal
10 animal and human studies, including studies of their own workers. Despite this knowledge,
11 these manufacturers hid the studies from the public at large, regulators, and their own
12 employees. These manufacturers knew of the significant harm to humans and the
13 environment caused by long-chain PFAS and failed to warn the Commonwealth and its
14 agencies, including the Commonwealth Utilities Corporation (CUC) and the
15 Commonwealth Ports Authority (CPA), their customers, and the public at large. Instead of
16 providing the required or necessary warnings, these manufacturers actively concealed the
17 dangers of long-chain PFAS and/or AFFF containing long-chain PFAS for decades.

18 The Commonwealth's water providers and agencies and private well owners have
19 been impacted by PFAS contamination through no fault of their own. The cost of
20 remediating this contamination may result in dramatically higher water and sewer rates for
21 end users. The existence of these man-made chemicals in the Commonwealth's
22 groundwater and drinking water requires a strategy to protect, preserve, and enhance the
23 water on which the Commonwealth's citizens and natural environment rely.

24 PFAS is ingested by humans, and then bioaccumulates and persists in humans,
25 through a variety of pathways, but especially through drinking water, and vulnerable
26 populations such as children, infants, and pregnant or breast-feeding women are especially
27 susceptible. In the case of pregnant or breastfeeding women, PFAS can be transferred to
28 fetuses through umbilical cord blood and to infants through breast milk. In 2016, the
29 United States Environmental Protection Agency (USEPA) established a health advisory

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1 level (HAL) for combined PFOS and PFOA in drinking water at 70 parts per trillion (ppt),
2 or 70 ng/L, based on the critical toxicological effects on development. In June 2018, the
3 Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of
4 Health and Human Services released a draft Toxicological Profile for Perfluoroalkyls. The
5 ATSDR set minimal risk levels in drinking water for: (1) PFOA at 78 ppt (adult) and 21
6 ppt (child); (2) PFOS at 52 ppt (adult) and 14 ppt (child); and (3) PFNA at 78 ppt (adult)
7 and 21 ppt (child). Numerous states, including California, Connecticut, Massachusetts,
8 Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Vermont,
9 Washington, and Wisconsin, have taken aggressive action to address PFAS contamination,
10 especially in drinking water, and have set or are in the process of setting PFAS response
11 levels, including maximum contaminant levels, at or below USEPA's HAL based on an
12 increasing number of scientific studies demonstrating increased and substantial risk to
13 human health and to the environment.

14 Between 2015 and 2016, the Commonwealth's wells in Saipan were tested for
15 PFAS during the USEPA's Third Unregulated Contaminant Monitoring Rule (UCMR3).
16 The testing conducted by CUC showed PFAS contamination in multiple tanks and wells
17 from the Isley, Koblerville, and Obyan aquifer areas. A single sample collected from Isley
18 Field contained a concentration of PFOS and PFOA combined at 7200 parts per trillion
19 (ppt), more than 100 times the lifetime health advisory level.

20 Since 2016, tests of numerous reservoirs and wells in Saipan have shown
21 concentrations of PFAS chemicals above the USEPA's HAL, resulting in multiple wells
22 being removed from service and the issuance of CUC health advisories to several villages,
23 including Chalan Laulau, Iliyang, Chalan Kiya, As Terlaje, Kannat Tabla, Fina Sisu, San
24 Jose, Garapan, Gualo Rai, As Lito, San Antonio, Chalan Kanoa, Susupe, Oleai,
25 Koblerville, and As Perdido.

26 The Legislature finds that the unprecedented volumes of PFAS in the CNMI water
27 supplies are a serious environmental justice concern, reflecting exposures to hazardous
28 chemicals that disproportionately impact vulnerable and historically underrepresented
29 communities. The highest levels of PFOS, PFOA, and other PFAS in the United States

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1 were found in Saipan. Moreover, these significant volumes of PFAS in the drinking water
2 system were concentrated in the southern villages of the island, located in Saipan Election
3 Districts 1, 2, 3, and 5. Compared to Saipan's northern villages in District 4, the southern
4 villages and districts tend to consist of higher proportions of non-citizen contract workers,
5 and indigenous Chamorro and Carolinian populations of lower socioeconomic status.
6 According to the 2016 CNMI Household Income and Expenditures Report, about 56% of
7 the CNMI's population were living in poverty in 2015, with the percentage of individuals
8 in poverty highest in District 2 and lowest in District 4. Median household incomes among
9 districts with ongoing exposure to PFAS in drinking water ranged from \$14,540 to
10 \$25,625, compared to the median household income in District 4, at \$30,769.

11 PFAS contamination is of the utmost concern for the Commonwealth. The
12 Commonwealth's natural resources, including its land, fish, wildlife, biota, air, water,
13 groundwater, drinking water supplies, and other such resources, are invaluable and
14 precious resources to the Commonwealth, and they are held by the Commonwealth
15 government in trust for the benefit of the public. The Commonwealth and its citizens are
16 heavily dependent upon its groundwater for its drinking water supply. The protection of
17 the Commonwealth's natural resources and the sources of fresh water on the islands,
18 including groundwater, is thus of primary concern to the Commonwealth government, the
19 steward and trustee of the Commonwealth's natural resources.

20 The Legislature finds that the regulation of PFAS is necessary to protect our
21 community from the harmful effects of PFAS exposure and seeks to establish enforceable
22 limits for PFAS chemicals commonly found in the Commonwealth's groundwater and
23 drinking water. The purpose of this Act is to add provisions identifying and implementing
24 enforceable limits for PFAS contaminants.

25 **Section 3. Amendment.** Title 2, Division 3 of the Commonwealth Code is hereby
26 amended by adding a new Chapter 9 to read as follows:

27 **“Chapter 9. Restrictions on Per- and Polyfluoroalkyl Substances**
28 **(PFAS) Contamination.**

29 **§ 3901. Definitions.** As used in this Chapter, the term:

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1 (a) "Bureau" means the Bureau of Environmental and Coastal Quality.

2 (b) "Commonwealth" means the government established under the
3 Constitution which became effective on January 9, 1978, including its autonomous
4 and non-autonomous agencies.

5 (c) "Maximum contaminant level" or "MCL" means the maximum
6 permissible level of a contaminant in water which is delivered to any user of a
7 public water system.

8 (d) "Groundwater" means water derived from the subsurface which is in
9 the zone of saturation.

10 (e) "Water quality criteria" means the numeric pollutant concentrations
11 and/or narrative requirements of adequate stringency to protect designated uses of
12 groundwater.

13 (f) "PFAS" means per- or polyfluoroalkyl substances and pertains to all
14 man-made chemicals that contain at least one fully fluorinated carbon, or C_nF_{2n+1}
15 alkyl moiety.

16 **§ 3902. Regulation of Maximum Contaminant Level.**

17 (a) The maximum contaminant level shall be 0.00007 mg/L (70 ng/L; 70
18 parts per trillion) for the sum of the concentrations of each of the following PFAS
19 chemicals: perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA),
20 and perfluorononanoic acid (PFNA).

21 (b) The maximum contaminant level set in § 3902(a) or in subsequent
22 regulation applies to all community water systems and all non-transient non-
23 community water systems.

24 (c) (1) The Bureau shall promulgate a maximum contaminant level that is
25 either:

26 (A) equal to the maximum contaminant level set in § 3902(a); or

27 (B) more protective than in § 3902(a) for PFOS, PFOA, and PFNA
28 combined or individually, if in any such case, accounting for an adequate margin of
29 safety to protect human health at all life stages, including, but not limited to, pre-

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1 natal development, the Bureau determines the maximum contaminant level in §
2 3902(a) needs adjustment for the protection of human health.

3 (2) The Bureau may promulgate a maximum contaminant level for PFAS
4 chemicals not listed in § 3902(a) or (c)(1) if, accounting for an adequate margin of
5 safety to protect human health at all life stages, including, but not limited to, pre-
6 natal development, the Bureau determines a maximum contaminant level needs to
7 be promulgated to protect of human health.

8 (d) Once the Bureau properly promulgates a new maximum concentration
9 level for PFAS chemicals, such level shall apply and be enforceable.

10 (e) Once a maximum concentration level has been set for a specific PFAS,
11 the PFAS shall be considered a toxic pollutant for purposes of the Bureau's water
12 quality standard regulations. The Bureau shall establish and adopt water quality
13 criteria for PFAS commensurate with § 3902(a)–(d) and the water quality standard
14 regulations.

15 (f) The Bureau shall establish and adopt regulations as necessary for the
16 implementation and enforcement of the Commonwealth's maximum contaminant
17 level and water quality criteria for PFAS chemicals, including monitoring and
18 analytical requirements.

19 (g) The Bureau shall within 12 months after adoption of this Act and
20 annually thereafter review the most recent peer-reviewed studies and scientific
21 evidence, including, but not limited to, information from the United States
22 Environmental Protection Agency and the Agency for Toxic Substances and
23 Disease Registry, independent and government agency studies, and the laws of
24 other states regarding PFAS, and shall amend or may promulgate regulations if
25 such review indicates action by the Bureau is needed for protection of human
26 health.

27 (h) If the federal government establishes a maximum concentration level or
28 equivalent standard that is more protective than the levels set herein or by the
29 Bureau through regulation, or it includes other PFAS chemicals in addition to

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1 PFOA, PFOS, and PFNA in its maximum concentration level or equivalent
2 standard, the federal maximum concentration level or equivalent standard shall be
3 the standard in the Commonwealth and shall apply for purposes of § 3903.

4 **§ 3903. Cause of Action.**

5 (a) On behalf of the Commonwealth, including its autonomous and non-
6 autonomous agencies, and the citizens of the Commonwealth in *parens patriae*, the
7 Attorney General is authorized to bring claims against and recover from any person
8 that manufactured, distributed, or marketed PFAS chemicals regulated under §
9 3902 and/or AFFF which contained PFAS chemicals regulated under § 3902
10 where:

11 (1) such person (A) had knowledge of any characteristics of PFAS
12 chemicals that could cause or contribute to environmental or human health risks at
13 or before the time that person sold PFAS chemicals or AFFF containing PFAS
14 chemicals, and (B) failed to fully disclose all such information and to issue
15 warnings of all such potentially adverse characteristics to both (i) any person
16 purchasing, storing, handling, or using PFAS chemicals or AFFF which contained
17 PFAS chemicals on the Commonwealth and (ii) the Commonwealth; and

18 (2) such PFAS chemicals or AFFF containing PFAS chemicals (A)
19 contaminated the Commonwealth's drinking water above the maximum
20 concentration level set forth in § 3902 or in subsequent regulations provided
21 thereunder; (B) contaminated the Commonwealth's groundwater above the
22 groundwater quality criteria; (C) contaminated the Commonwealth's natural
23 resources above their ambient (natural) condition; or (D) contaminated areas that
24 caused or contributed to contamination of the Commonwealth's drinking water,
25 groundwater, or other natural resources.

26 (b) Liability under this Chapter is strict, joint, and several.

27 **§ 3904. Remedies.**

28 In bringing an action under § 3903, the Attorney General is hereby
29 authorized to recover:

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1 (a) The costs to investigate, remediate, and restore, or to issue an order
2 requiring that the defendant(s) investigate, remediate, and restore, the
3 Commonwealth's PFAS-contaminated natural resources to their pre-discharge
4 conditions;

5 (b) The costs to treat, filter, remove, and/or properly dispose of PFAS
6 from groundwater and public and private drinking water wells and systems in the
7 Commonwealth, in perpetuity, that contain PFAS above the maximum
8 concentration level or water quality criteria set in § 3902 or in subsequent
9 regulations provided thereunder;

10 (c) All compensatory, incidental, and consequential damages suffered
11 by the Commonwealth, including its autonomous and non-autonomous agencies, in
12 connection with contamination from PFAS regulated under § 3902 or AFFF
13 containing PFAS regulated under § 3902, including all internalized costs of
14 compliance and regulatory oversight for future efforts to regulate and remediate
15 PFAS in the Commonwealth;

16 (d) Any equitable or additional remedies the Court finds may be
17 awarded in the interest of justice; and

18 (e) The costs of litigation and reasonable attorneys' fees.

19 **§ 3905. Availability of Remedies.**

20 Remedies provided in § 3904 are cumulative and do not affect the
21 availability of remedies under other federal or Commonwealth laws, including
22 common law.

23 **§ 3906. Retroactive Application.** §§ 3901–3908 shall apply retroactively.

24 **§ 3907. Immunity.**

25 Notwithstanding any other provision of law, the liability of the
26 Commonwealth, including its autonomous and non-autonomous agencies, and any
27 employee thereof, for any personal injury, bodily injury, or property damage
28 caused by or resulting from PFAS contamination, shall only be based upon a
29 showing by clear and convincing evidence that the acts or omissions of the

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1 Commonwealth, including its autonomous and non-autonomous agencies, or
2 employees were manifestly unreasonable. The acts or omissions of the
3 Commonwealth, including its autonomous and non-autonomous agencies, or
4 employees shall be conclusively presumed to be reasonable if they are in accord
5 with the generally prevailing state of the art, scientific knowledge, or technology
6 available at the time the acts or omissions were undertaken or made, or in
7 accordance with the instructions provided by the manufacturer of the product.

8 **§ 3908. Savings Clause and Severability.**

9 Sections 3901–3907 are supplementary to any other federal or
10 Commonwealth law, including common law, enacted before, on, or after the
11 Effective Date of this Act and are not intended to modify any existing cause of
12 action. If any section between §§ 3901 and 3907 or its application to any person or
13 circumstance is found to be invalid or contrary to law, such invalidity shall not
14 affect other provisions or applications of said section that can be given effect
15 without the invalid provision or application, and to this end the provisions of said
16 section are severable.

17 **Section 4. Amendment.** Title 7, Division 2, Chapter 5 of the Commonwealth Code
18 is hereby amended by adding § 2515 to read as follows:

19 **“§ 2515. Limitations applicable to the Commonwealth.**

20 (a) An action brought by the Commonwealth for the following shall not be
21 subject to statutes of limitation and may be asserted at any time:

22 (1) for the restoration of, or for the recovery of damages to, the
23 Commonwealth’s natural resources, including, but not limited to, surface waters,
24 groundwater, and drinking water supplies. This Section shall be applied
25 retroactively, including to those matters pending on the Effective Date of this Act.
26 Any such claim which has been barred by virtue of the expiration of any civil
27 statute of limitations shall be permitted to proceed or be filed in any court of
28 competent jurisdiction; and

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1 (2) for the recovery of past or future costs of investigation, treatment, and/or
2 remediation of the Commonwealth's natural resources, including, but not limited
3 to, surface waters, groundwater, and drinking water supplies. This Section shall be
4 applied retroactively, including to those matters pending on the Effective Date of
5 this Act. Any such claim which has been barred by virtue of the expiration of any
6 civil statute of limitations shall be permitted to proceed or be filed in any court of
7 competent jurisdiction.

8 (b) An action brought by the Commonwealth for the recovery of damages to
9 the Commonwealth or the property of the Commonwealth due to per- and
10 polyfluoroalkyl substances, hazardous substances, or other chemical contamination
11 shall be commenced within 10 years after the cause of action accrues. This Section
12 shall be applied retroactively, including to those matters pending on the Effective
13 Date of this Act. Any such claim which has been barred by virtue of the expiration
14 of any civil statute of limitations shall be permitted to proceed or be filed in any
15 court of competent jurisdiction."

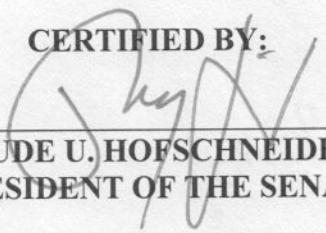
16 **Section 5. Severability.** If any provision of this Act or the application of any such
17 provision to any person or circumstance should be held invalid by a court of competent
18 jurisdiction, the remainder of this Act or the application of its provisions to persons or
19 circumstances other than those to which it is held invalid shall not be affected thereby.

20 **Section 6. Savings Clause.** This Act and any repealer contained herein shall not be
21 construed as affecting any existing right acquired under contract or acquired under statutes
22 repealed or under any rule, regulation, or order adopted under the statutes. Repealers
23 contained in this Act shall not affect any proceeding instituted under or pursuant to prior
24 law. The enactment of the Act shall not have the effect of terminating, or in any way
25 modifying, any liability, civil or criminal, which shall already be in existence on the date
26 this Act becomes effective.

27 **Section 7. Effective Date.** This Act shall take effect upon its approval by the
28 Governor or becoming law without such approval.

SENATE BILL NO. 22-40, HD1

CERTIFIED BY:



JUDE U. HOFSCHEIDER
PRESIDENT OF THE SENATE

ATTESTED BY:



VICTOR B. HOCOG
SENATE LEGISLATIVE SECRETARY

Approved this 20th day of August, 2021



RALPH DLG. TORRES
Governor

Commonwealth of the Northern Mariana Islands