

Memo

To: Potential PFAS Regulatory Coalition Members
From: Fredric P. Andes, Jeffrey S. Longworth, Tammy Helminski
Date: November 12, 2019
Re: Proposal for Formation of PFAS Regulatory Coalition

There is increasing regulatory activity on issues regarding per- and poly-fluorinated alkyl substances (PFAS). These issues range across multiple environmental media and across multiple programs, including the Clean Water Act, Safe Drinking Water Act, remediation programs such as RCRA and CERCLA, and State programs as well. This memo sets forth more details about the creation of a new, broad coalition on PFAS issues, which will address those issues across all of the relevant programs, in a coordinated way. The coalition will be managed by the attorneys of Barnes & Thornburg's environmental department, who have extensive experience leading similar groups on EPA-related regulatory issues. The B&T attorneys are also deeply involved in PFAS issues for clients throughout the country. (Further information concerning that work is included in the B&T PFAS Practice summary that is attached and on our website [here](#).)

The new group (called here the PFAS Regulatory Coalition) is an informal consortium of potentially affected and interested parties engaged in and/or affected by PFAS-related developments. The members will include trade associations, companies, and municipal entities and representatives. (Note: The group will not include manufacturers of PFAS, since those entities have somewhat different interests from other regulated parties.) There will also be an opportunity for consulting groups to become affiliate members, with more limited participation rights. The dues structure includes different dues amounts for each of these categories (trade groups, companies, municipalities, and affiliated consulting groups), with lower amounts for smaller entities. ¹The dues amounts have initially been determined based on the list of activities that likely will be undertaken. Actual activities pursued in 2020 will be agreed upon by the membership, based on an initial annual budget generated by the

¹ These annual dues amounts are as follows: large trade groups - \$25,000; large companies - \$15,000; large consulting groups - \$15,000; small national trade groups - \$10,000; large municipalities - \$10,000; state/local trade groups - \$5,000; and small municipalities - \$5,000.

original members that join by December 13, 2019. The entities that have indicated interest in joining the group are listed in the attachment to this memo.

The focus of the group will be on two priority sets of activities: (1) information-sharing related to national and precedent-setting state/local PFAS-related developments of interest to the regulated community; and (2) developing and implementing advocacy positions on PFAS-related regulatory activities at the Federal and State levels (those state developments with potential national significance). (The group would not engage in Federal legislative lobbying activities, but would monitor legislative developments, and could provide support to members that do engage in those activities or to coordinate with other groups that actively lobby Congress.) Within those two sets of activities, the PFAS Regulatory Coalition's work would generally include the following:

1. Sending out e-mails to members concerning significant developments, such as pending regulatory proposed rulemakings or significant guidance issued by EPA or States.
2. Scheduling and conducting conference calls to discuss development of comments on those regulatory actions, or to answer questions, or to consider possible responses.
3. Setting up and leading meetings of members with EPA staff (and other appropriate agencies, such as the White House Office of Management and Budget, the Small Business Administration Office of Advocacy, etc.) concerning regulatory actions and other PFAS-related matters.
4. Developing comments on agency regulatory initiatives – either to be submitted by the full group, or as model comments that could be used as templates for members to use in submitting their own comments. For some technical agency proposals, such as those related to new analytical methods, the PFAS Regulatory Coalition could also engage technical consultants to assist in developing comments. Significant engagements with consultants and/or even potential amicus briefs or other litigation may be funded separately by those members that chose to participate.
5. Drafting position papers on key PFAS-related regulatory, technical and legal issues, for use by members in meetings, hearings, or other regulatory proceedings.
6. Establishing a web site or other type of portal, open only to Coalition members, that would allow members access to a growing PFAS-related library of key documents, including model comments, position papers, agency materials, presentations, and other technical resources. The web site or other portal could also potentially allow for real-time information-sharing among members on PFAS issues.
7. Possibly funding research and drafting of technical papers concerning PFAS-related issues, where the group concludes that those papers would be useful in advocacy. (Depending on the project, this could require additional funding beyond the dues amounts.)

8. Possibly participating in litigation at Federal or State levels, whether challenging agency actions or intervening to defend agency actions against other challenges, where the group determines that it is necessary or advisable to protect its members' interests. (This may involve additional funding beyond dues amounts, for those members who want to participate in the litigation.)

The specific activities that the PFAS Regulatory Coalition would initially engage and focus on will be based, to a large extent, on current and planned EPA actions. We know that EPA currently has potential rulemakings that are at various stages of development, including:

1. EPA is working on an advanced notice of proposed rulemaking to add PFAS to the Toxic Release Inventory (TRI) list.
2. The Agency is working on "a supplemental proposal" to ensure that certain long-chain PFAS compounds cannot be imported into the U.S. under TSCA by denying applicable "significant new use requests."
3. EPA is reviewing a petition from Public Employees for Environmental Responsibility (PEER) to list PFAS as hazardous waste under RCRA.
4. EPA is working on validating and publishing draft new analytical methods that use isotope dilution for analyzing media other than drinking water.
5. The Agency is initiating the regulatory development process for listing certain PFAS as CERCLA hazardous substances and finalizing groundwater cleanup guidance.
6. EPA has stated it will issue a regulatory determination for PFOA and PFOS under the SDWA by the end of 2019.

EPA is also assessing treatment and remediation technologies, as well as conducting exposure and toxicological research. Also, EPA will likely have to respond to various PFAS regulatory mandates that are currently being debated in Congress.

At the state level, we are seeing regulatory activity with potentially wide-ranging implications. These activities include the various positions that states are taking on drinking water (and other media) criteria and whether, and at what levels, to set standards and for which PFAS compounds. Similar standard-setting debates also may apply to NPDES permits (wastewater, stormwater, and biosolids), PFAS in air emissions, and requirements for remediating/regulating soil and groundwater. The PFAS Regulatory Coalition could assist with sharing information on these developments and developing white papers or other resources members can use with state regulators.

We believe that the PFAS Regulatory Coalition's activities would best be coordinated/conducted through a limited set of work groups, each dedicated to a particular type of PFAS concern. Work groups could be formed to cover areas such as: Water Quality, Sampling & Analysis, Treatment Technology, Remediation, Other Media (e.g. Air Quality, Sludges/Biosolids), Human Health, Critical State Actions, and

Legal. Other work groups could be formed as well, depending on the interests of group members. Some issues are sufficiently broad that they could be dealt with by the membership as a whole. The PFAS Regulatory Coalition will hold several initial organizing calls, to allow the members to determine what work groups are appropriate and to which they want to participate.

If you previously expressed interest in the PFAS Regulatory Coalition, then we have provided you (in the cover note to this memo) with a proposed dues amount, based on our proposed dues structure and available information about your organization. If you have questions, please contact Fred Andes at fandes@btlaw.com and 312/214-8310. If you received this correspondence and now wish to participate in the Coalition, please also contact Fred and we will generate a proposed dues amount for you. Once you have notified us that your organization is joining the PFAS Regulatory Coalition, we will generate and provide an invoice. If you have specific invoicing procedures that we need to follow, just let us know the details.

Any questions concerning the PFAS Regulatory Coalition or this proposal can be directed to any of the members of the B&T management team, including Fred Andes, Jeff Longsworth (jlongsworth@btlaw.com and 202/408-6918) or Tammy Helminski (thelminski@btlaw.com and 616/742-3926).