The PFAS Regulatory Coalition
Jeffrey Longsworth, Coordinator
jlongsworth@btlaw.com
Tammy Helminski, Coordinator
thelminski@btlaw.com
Barnes & Thornburg LLP
1717 Pennsylvania Avenue NW, Suite 500
Washington, D.C. 20006-4623

January 29, 2021

VIA ELECTRONIC MAIL
New Jersey Clean Water Council
CWC@dep.nj.gov

Re: PFAS REGULATORY COALITION RESPONSES TO NEW JERSEY CLEAN WATER COUNCIL QUESTIONS REGARDING PFAS AND NPDES PERMITS

To the New Jersey Clean Water Council:

The PFAS Regulatory Coalition (Coalition) appreciates the opportunity to file responses to the New Jersey Clean Water Council’s Request for Testimony on the future permitting of per- and polyfluoroalkyl substances (PFAS) in discharges to surface waters.

The Coalition is a group of industrial companies, municipal entities, agricultural parties, and trade associations that are directly affected by the State’s policies and regulations related to per- and polyfluoroalkyl substances (PFAS). Coalition membership includes entities in the automobile, coke and coal chemicals, iron and steel, municipal, paper, petroleum, and other sectors. None of the Coalition’s members manufacture PFAS compounds. Coalition members, for purposes of these comments, include: Airports Council International – North America; American Coke and Coal Chemicals Institute; American Forest & Paper Association; American Fuel & Petrochemical Manufacturers; American Iron and Steel Institute; American Petroleum Institute; Gary Sanitary District (IN); Illinois Association of Wastewater Agencies; Lowell, MA; Pueblo, CO; Tempe, AZ; Toyota; Trihydro, TRS Group, and Yucaipa Valley Water District (CA).

The Coalition supports and advocates for actions that provide uniformity across the country in PFAS-related legislation, regulation and policy. Additionally, the Coalition supports and advocates for legislation and regulations that do not duplicate efforts between jurisdictions, do not regulate PFAS compounds as a singular class, and do not impose requirements that are technically unsupported or that cannot practicably be implemented.

The Coalition submits below its responses to the questions posed by Council in the Request for Testimony:

1. The Department is currently requiring sampling for specific dischargers. How should the Department expand and prioritize its efforts to establish monitoring requirements for other dischargers?
ANSWER: Monitoring requirements should not be imposed nor expanded until there are EPA-approved analytical methods in place, expected later this year. NJDEP should then review the compounds that are within the scope of the EPA analytical method and decide, based on review of available toxicology data, which compounds should be priority. Thereafter, NJDEP should only establish new sampling requirements based on clear indications that a particular source category is reasonably likely to have significant levels of those PFAS in its discharges based on process knowledge.

2. Since publicly owned treatment works (POTWs) are designed only to treat sanitary waste, should there be a short period of time to focus on the identification and elimination of the source through a track-down method before compelling treatment at a POTW for wastewater facilities? If so, what period of time?

ANSWER: There should be a period of time for POTWs to focus on track-down methods; however, it should not be short. Implementing effective track-down programs effectively will take time, and the amount of time will differ depending on the situation. Most track-down efforts will begin with the POTW’s pretreatment program for significant industrial users. However, this may provide only a partial picture, since there may also be PFAS contributions from commercial sources and households, which would not be covered by the pretreatment program. In addition, PFAS can be found in the water supply used by various facilities, and that source may be inappropriately held responsible for PFAS found in their discharges; that is, these facilities are not generating the PFAS, and are not introducing the PFAS from their own processes or equipment. All these factors add to the challenges of implementing track-down systems, so it is important to ensure that there is adequate time to implement these programs in a careful, scientific, and effective manner.

3. If a track down approach is taken, what information should be collected to identify priority dischargers (e.g., specific agents industries may use in their process)?

ANSWER: NJDEP should focus on the types of dischargers that have been found elsewhere to have significant levels of PFAS in their discharges by looking at studies conducted by other states or other research. Additionally, understanding and identifying the background concentrations in source water would aid in quantifying associated loadings for dischargers. Accordingly, NJDEP should identify the PFAS loadings attributable to source waters, in order to better understand what reduction levels could be achieved by a discharger’s source control efforts without further treatment or minimization of PFAS from the source water.

4. What specific technologies are potentially available to treat wastewater from large sanitary dischargers for PFAS removal? For these technologies, what is the effectiveness and cost, as well as what secondary impacts, such as residuals management and air emissions, resulting from their use?

ANSWER: Various technologies, such as granular activated carbon and ion exchange resins, are potentially available; however, there are significant concerns regarding effectiveness, high capital and operation & maintenance costs, and secondary impacts. Additionally, treatment technology effectiveness, availability and affordability differ between low-volume,
high PFAS concentration discharges and discharges with high-volume but low concentrations. These issues and others have been evaluated by EPA and other State agencies. NJDEP should carefully review that body of work regarding technology limitations and economic impacts. The primary focus should be on how NJDEP can work with POTWs and others to develop effective source reduction programs, rather than imposing mandatory end-of-pipe treatment requirements.

5. Until limits are established at the treatment plant, are there factors that should be considered in the management of generated sludge and the land application of biosolids?

ANSWER: As an initial matter, NJDEP should evaluate available information to determine if there are significant levels of PFAS in generated sludge or biosolids from POTWs that would, based on scientific data, pose a hazard to land application or other management options. NJDEP should also consider that potential impacts from biosolids can depend on localized factors, including leachability from the biosolids matrix, as well as the type of PFAS at issue and the characteristics of the soil onto which the biosolids are being applied. Further, before NJDEP imposes State requirements that go beyond the Federal provisions, NJDEP should prioritize development of approved PFAS test methods for biosolids, while considering EPA-developed standards for sludge and biosolids management.

The Coalition appreciates the opportunity to submit these responses to New Jersey Clean Water Council questions regarding PFAS and NPDES permits. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in these comments.

Jeffrey Longsworth
Tammy Helminski
Coordinators
Barnes & Thornburg LLP
1717 Pennsylvania Avenue NW
Suite 500
Washington, D.C. 20006-4623
jlongsworth@btlaw.com
thelminski@btlaw.com