

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

April 30, 2020

VIA ELECTRONIC MAIL

Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, Pennsylvania 17101-2301
RegComments@pa.gov

Re: Comments of the PFAS Regulatory Coalition on Proposed Amendments to Chapter 250 (Relating to Administration of the PA Land Recycling Program)

Dear Sir or Madam:

The PFAS Regulatory Coalition (Coalition) appreciates the opportunity to file comments regarding the proposed amendments to Chapter 250 relating to administration of the Pennsylvania Land Recycling Program.

I. The Coalition's Interest

The Coalition is a group of industrial companies, municipal entities, agricultural parties, and trade associations that are directly affected by the State's development of 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 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 and Paper Association; American Fuel and Petrochemical Manufacturers; American Iron and Steel Institute; Barr Engineering; Brown & Caldwell; Gary Sanitary District (IN); Illinois Association of Wastewater Agencies; Lowell, MA; Pueblo, CO; Tempe, AZ; Toyota; Trihydro, and Yucaipa Valley Water District (CA).

Coalition members support the State's efforts to identify potential sources of those individual PFAS that pose risks to human health and the environment. In the State's pursuit of such regulations, the Coalition urges State regulators to ensure that final standards are scientifically supported, cost-effective, and achievable.

II. Proposed Rulemaking

On November 19, 2019, the Pennsylvania Environmental Quality Board (Board) issued a proposed rulemaking to amend Chapter 250 of the Pennsylvania Code, its Land Recycling Program, *inter alia*. The proposal is to add medium-specific concentrations (MSCs) for certain PFAS compounds. The Coalition’s comments are focused on the proposed MSCs for three specific PFAS compounds: Perfluorobutane Sulfonate (PFBS); Perfluorooctane Sulfonate (PFOS); and Perfluorooctanoic Acid (PFOA).

Table 1 of Appendix A lists the groundwater MSCs for PFBS, PFOS, and PFOA, as follows:

Appendix A
Table 1 – Medium-Specific Concentrations (MSCs) for Organic Regulated Substances in Groundwater

Regulated Substance	CASRN	Used Aquifers				Nonuse Aquifers	
		TDS ≤ 2500 mg/L		TDS > 2500 mg/L		R	NR
		R	NR	R	NR		
PERFLUOROBUTANE SULFONATE (PFBS)	375-73-5	690 G	1,900 G	69,000 G	190,000 G	690 G	1,900 G
PERFLUOROOCTANE SULFONATE (PFOS)	1763-23-1	0.07 H	0.07 H	7 H	7 H	0.07 H	0.07 H
PERFLUOROOCTANOIC ACID (PFOA)	335-67-1	0.07 H	0.07 H	7 H	7 H	0.07 H	0.07 H

All concentrations in µg/L
 R = Residential
 NR = Non-Residential
 M = Maximum Contaminant Level
 H = Lifetime health advisory level
 G = Ingestion
 N = Inhalation
 S = Aqueous solubility cap
 THMs – The values listed for trihalomethanes (THMs) are the total for all THMs combined.
 HAAs – The values listed for haloacetic acids (HAAs) are the total for all HAAs combined.
PFOA and PFOS values listed are for individual or total combined.

The proposed groundwater MSCs for PFOS and PFOA for residential and non-residential properties, as well as for all aquifers (whether currently being used for drinking water or not), are based on EPA’s Lifetime Health Advisory Levels (HAL) of 70 parts per trillion (ppt) combined PFOS and PFOA. Those MSCs are scaled for “used” aquifers that have total dissolved solids greater than 2,500 mg/L.

Table 3A of Appendix A reflects the proposed soil MSCs for PFBS, PFOS and PFOA:

Appendix A
Table 3 – Medium-Specific Concentrations (MSCs) for Organic Regulated Substances in Soil
A. Direct Contact Numeric Values

REGULATED SUBSTANCE	CASRN	Residential 0-15 feet	Nonresidential	
			Surface Soil 0-2 feet	Subsurface Soil 2-15 feet
PERFLUOROBUTANE SULFONATE (PFBS)	375-73-5	4,400 G	10,000 C	10,000 C
PERFLUOROOCTANE SULFONATE (PFOS)	1763-23-1	4.4 G	64 G	190,000 C
PERFLUOROOCTANOIC ACID (PFOA)	335-67-1	4.4 G	64 G	190,000 C

All concentrations in mg/kg
 G – Ingestion
 N- Inhalation
 C- Cap

Again, the proposed standards for PFOS and PFOA mirror one another, while those for PFBS are different. All of these proposed standards are based on ingestion.

Finally, Table 3B of Appendix A provides proposed soil-to-groundwater MSCs for PFBS, PFOS, and PFOA:

Appendix A
Table 3 – Medium-Specific Concentrations (MSCs) for Organic Regulated Substances in Soil
B. Soil to Groundwater Numeric Values¹

REGULATED SUBSTANCE	CASRN	Used Aquifers										Nonuse Aquifers				Soil Buffer Distance (feet)				
		TDS ≤ 2500 mg/L					TDS > 2500 mg/L					Residential		Nonresidential						
		Residential		Nonresidential			Residential		Nonresidential			100 X GW MSC	Generic Value	100 X GW MSC	Generic Value					
		100 X GW MSC	Generic Value	100 X GW MSC	Generic Value	Cap	100 X GW MSC	Generic Value	Cap	100 X GW MSC	Generic Value	Cap	100 X GW MSC	Generic Value	Cap					
PERFLUOROBUTANE SULFONATE (PFBS)	375-73-6	69	NA	C	190	NA	C	6,900	NA	C	10,000	NA	C	69	NA	C	190	NA	C	NA
PERFLUOROCTANE SULFONATE (PFOS)	1763-23-1	0.007	NA	E	0.007	NA	E	0.7	NA	E	0.7	NA	E	0.007	NA	E	0.007	NA	E	NA
PERFLUOROCTANOIC ACID (PFOA)	335-67-1	0.007	NA	E	0.007	NA	E	0.7	NA	E	0.7	NA	E	0.007	NA	E	0.007	NA	E	NA

¹ For other options see Section 250.308

All concentrations in mg/kg

E – Number calculated by the soil to groundwater equation [is] in section 250.308

C – Cap

NA – The soil buffer distance option is not available for this substance

[THMs – The values listed for trihalomethanes (THMs) are the total for all THMs combined.]

[HAAs – The values listed for haloacetic acids (HAAs) are the total for all HAAs combined.]

The State proposes to directly incorporate EPA’s HALs for PFOS and PFOA for its groundwater MSCs. The State also asserts that it used additional and related underlying data from EPA to calculate the proposed soil MSCs for those compounds. With respect to PFBS, the State asserts it is proposing soil and groundwater standards based on EPA’s 2014 Provisional Peer-Reviewed Toxicity Value for PFBS.

In proposing the new MSCs, the State asserts that its action does not create any specific liabilities for any parties. Instead, the proposal attempts to differentiate the mere establishment of MSC standards from those other statutes that actually enforce those MSCs, namely the State’s Clean Streams Law, 35 P.S. §§ 691.1—691.1001, and Solid Waste Management Act (SWMA), 35 P.S. §§ 6018.101—6018.1003. By doing so, the State reasons that there is no economic impact associated with its proposed rulemaking.

III. PFAS Regulatory Coalition Comments

Generally, the Coalition appreciates the State’s efforts and responsibility to protect Pennsylvania residents from possible health impacts from PFAS. We also applaud the State’s individual-compound approach to regulation and not attempting to treat classes or categories of PFAS compounds. However, the Coalition opposes each state pursuing its own solution to PFAS regulation. Rather, there should be a uniform national approach across all 50 states.

Many Coalition members have interests in multiple states, and it is important to achieve uniformity and consistency among state standards, not just for business operations but for risk communication to the general public, as well. EPA is attempting to assert that federal leadership, and the Coalition recommends that states, including Pennsylvania, contribute by

assisting EPA establish standards and defer setting individualized state standards for compounds for which EPA has not yet developed federal levels.

Recognizing that Pennsylvania is committed to its own standards, the State must acknowledge and evaluate the potential costs that may result from this proposed rulemaking. This proposal lays a foundation for additional remediation and permitting liability under other state environmental statutes, and it is disingenuous and inconsistent with a transparent rulemaking to dismiss the costs of this inevitable outcome.

A. Federal Action on PFAS

EPA is moving towards possible federal Maximum Contaminant Level (MCL) standards for PFOA and PFOS—two of the most well-known and prevalent PFAS chemicals. On February 20, 2020, EPA released a prepublication version of its Regulatory Determination for Contaminants on the Fourth Drinking Water Contaminant Candidate List. The Regulatory Determination supports regulating PFOA and PFOS under the Safe Drinking Water Act, meaning that EPA is proposing to move forward with setting MCLs for these two PFAS compounds.¹ EPA has explained that, “[p]roposing a regulatory determination is the next step in the maximum contaminant level [] rulemaking process under the Safe Drinking Water Act; it enables the EPA to propose and solicit comment on information critical to regulatory decision-making towards protecting public health and communities across the nation.”² Additionally, EPA is gathering and evaluating information to determine if similar regulations are appropriate for a broader number of PFAS compounds.

EPA is focusing significant resources on developing appropriate regulatory mechanisms related to various PFAS compounds. For example, EPA has developed a PFAS Action Plan, which provides a multi-media, multi-program, national research and risk communication plan to address the emerging PFAS challenge.³ Part of EPA’s PFAS Action Plan involves expanding the scientific foundation for understanding and managing risk from PFAS, including researching improved detection and measurement methods, generating additional information about PFAS presence in the environment and drinking water, improving the understanding of effective treatment and remediation methods, and developing more information regarding the potential toxicity of a broader set of PFAS. In turn, EPA expects that this information will help states and others better manage PFAS risks.

¹ This Regulatory Determination had not yet been published in the *Federal Register* at the time of drafting of these comments, but is available at: https://www.epa.gov/sites/production/files/2020-02/documents/ccl_reg_det_4_preliminary_frn.webposting.pdf.

² *Id.*

³ See “EPA’s Per- and Polyfluoroalkyl Substances (PFAS) Action Plan” (February 2019) available at https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf.

While EPA is working through its long-established processes and rulemaking procedures, Congress is considering ways to expedite and fund various national standards-setting approaches. In January 2020, Congress passed and then the President signed into law the National Defense Authorization Act (NDAA) (P.L. 116-92) that mandates additional federal actions to regulate and manage various risks associated with many PFAS. While we recognize that not all states and stakeholders can agree on specific priorities or approaches to PFAS regulations, these congressional actions, combined with EPA's efforts, are important national developments that states should support through their contribution of expertise, resources, and efforts as the Nation works to respond to PFAS exposure risks.

Indeed, a patchwork of 50 different state solutions is unworkable and contrary to how the United States has previously addressed similar emerging-contaminant issues. While some limited variations related to groundwater, surface water, or soil cleanup levels may be expected and appropriate, the highly variable regulatory health advisories, action levels, and drinking water standards currently being developed or under consideration across the country create unnecessary confusion and complexity for the public and the regulated community.

The Coalition can foresee challenges to states that choose to develop their own unique and varying standards. Many jurisdictions have existing laws or rules that prohibit states from promulgating regulations that are more stringent than the federal rules. When EPA does promulgate national primary drinking water regulations, such states may be in conflict with their legislatures' clearly stated policies. States that promulgate their own standards ahead of EPA may be required to amend such state-specific PFAS regulations when EPA completes its work in this regard. Antibacksliding provisions may further limit states' abilities to change their standards to conform with federal rules.

B. The Scientific Community Does Not Agree on Human Health Toxicity Values for PFAS

The scientific understanding of how PFAS impacts people and the environment is still developing and, for thousands of PFAS compounds, much remains unknown. The Coalition urges the State to work with EPA to develop consistent standards.

From a toxicological perspective, regulatory agencies must have adequate science for determining health-based values before promulgating individual-compound standards, limits, and related regulations. The most prevalent and available science regarding the incidence and potential health effects of PFAS is based on PFOA and PFOS, two compounds that are no longer manufactured in the United States due to voluntary phase outs. For replacement chemicals, industry has begun using shorter-chain PFAS that can have vastly different physical, chemical, and toxicological properties from the long-chain PFOA and PFOS.

Toxicologists, whether they work for various state agencies, EPA, international standards-setting organizations, academia, or in private practice, have not yet established specific methodologies or resources, or even agreed on which of the hundreds of studies of PFAS compounds are the appropriate or critical studies that must or should support appropriate regulatory “standards.” Different methodologies, levels of experience, procedural prerequisites to standards-setting, and even local political pressures are leading to consideration of very different standards in various states and at EPA. Accordingly, the Coalition urges states to work with one another and with EPA to ensure that all use consistent, peer-reviewed and transparent scientific research and standards-setting methodologies, to help ensure that more consistent and reliable standards are established, whether in Pennsylvania or elsewhere.

Along these lines, the Coalition supports the language at §250.304(c) that sets the MSCs for groundwater at the MCL or the HAL if EPA has not yet established an MCL and also updates the MSCs if EPA promulgates new or revised MCLs or HALs. This language ensures consistency with state and federal requirements. Additionally, the Coalition requests that proposed language at §250.304(c) be revised to allow a phase-in for new criteria that would need to be used in a demonstration of attainment. The proposed language states that revised criteria “shall become effective immediately for any demonstration of attainment completed after the date the new or revised MCLs or HALs become effective.” The Coalition suggests a phase-in period of at least six months so that demonstrations of attainment that are nearly complete are not derailed at the last minute should the criteria change.

In contrast, while the Coalition respects Pennsylvania’s attempt to rely on EPA toxicological and related data, we are concerned that the State is seeking to set criteria for other media and pathways that few, if any, other states have attempted to regulate – namely soil direct contact and soil to groundwater. According to the Interstate Technology & Regulatory Council (ITRC), EPA has human health soil screening levels for PFOA and PFOS, but not for PFBS. The Coalition was not able to identify any other state that has soil direct contact criteria for any PFAS compounds.

Regarding PFBS, the Coalition has identified only three other states with soil standards related to the protection of groundwater criteria for PFBS, and the ranges of these criteria vary greatly. The Coalition recommends that the State defer setting individualized standards for PFBS until EPA develops a corresponding final federal standard for PFBS. This approach would promote national consistency and not contribute to an unnecessarily complex regulatory environment.

C. Reliance on the ATSDR Values, EPA HALs for Drinking Water, and the 2014 EPA PPRTV

We support the State’s approach of relying on toxicity information from sources other than the Agency for Toxic Substances and Disease Registry (ATSDR), such as the EPA HALs and the 2014 EPA Provisional Peer-Reviewed Toxicity Value (PPRTV). The

ATSDR, part of the federal Center for Disease Control, and many states have reviewed the toxicity information available for PFOA and PFOS and opined on appropriate dosages that reflect highly conservative assumptions designed to protect human health, including the most susceptible subpopulations. ATSDR values are derived through different methods than EPA's MCL (and Health Advisory) values and the two are not directly comparable.⁴ These variabilities in how various health recommendations are derived must be considered and addressed to ensure that any final standards are scientifically justified and corroborated.⁵

Moreover, ATSDR has only finalized the Toxicological Profile for two PFAS compounds, PFOA and PFOS. The profiles for two additional PFAS—Hexafluoropropylene Oxide (HFPO) Dimer Acid, more commonly referred to as the “GenX Chemicals;” and PFBS—are still only in draft form. ATSDR made the Toxicological Profiles for these additional PFAS available for public comment in 2018, and the Profiles have not yet been finalized.

Here, the State asserts it directly incorporated EPA's 2016 HALs regarding PFOS and PFOA into its groundwater MSCs and has used the data developed by EPA for those HALs to calculate soil MSCs for both compounds. With respect to PFBS, the State has proposed soil and groundwater standards based on the 2014 EPA PPRTV. The Coalition supports this general approach, as opposed to approaches used by other states that have improperly used and relied on ATSDR data.

D. Limits of Available Validated Test Methods for PFAS

The Coalition also believes that the State should regulate only those PFAS compounds for which there are EPA-validated analytical test methods; currently, there are no such methods for soil or for groundwater. EPA's main validated test methods for PFAS, Methods 537 and 537.1, apply only to 18 PFAS compounds in samples derived from drinking water. Recently, EPA issued Method 533 that can be used to measure an additional 11 “short-chain” PFAS compounds (and only 14 of the 18 PFAS covered by Method 537.1), again only for use in testing drinking water. Therefore, the entirety of EPA's approved test methods can measure no more than 29 different PFAS compounds, and multiple methods would have to be used to obtain results from all 29 compounds.

No validated EPA test methods exist for testing PFAS compounds in any other environmental media. EPA has received comments on a draft non-potable water test

⁴ See ATSDR Public Health Assessment Guidance Manual (2005) at Appendix F: Derivation of Comparison Values (<https://www.atsdr.cdc.gov/hac/phamanual/appf.html>) (“MCLs represent more realistic assumptions about toxicity and contain fewer uncertainty factors than the very conservative ATSDR environmental guidelines.”)

⁵ For a thorough discussion on possible confusion created by comparing ATSDR and EPA standards, see ECOS White Paper (*Processes & Considerations for Setting State PFAS Standards*) Appendix A, available at: <https://www.ecos.org/documents/ecos-white-paper-processes-and-considerations-for-setting-state-pfas-standards/> (last accessed Feb. 28, 2020).

method (SW-846 Method 8327), but that method is only considered “guidance” at this time. Additionally, EPA is working with the Department of Defense’s Naval Seas Systems Command Laboratory Quality and Accreditation Office to validate a solid-phase extraction/isotope dilution method to include solid matrices (*i.e.*, for soil, sediment, fish tissue, biosolids), as well as non-potable water sources, but that effort may not be completed until 2021.⁶

Accordingly, the Coalition recommends that the proposed rulemaking recognize the limits of the available EPA validated test methods and choose a specific test method to be referenced by any standards being adopted. Limitations on test methods and the lack of any validated method by EPA for any medium except drinking water create major challenges for the State’s efforts to regulate non-potable water or other media, including the soil and groundwater the State is proposing to regulate.

E. Limits on PFAS Testing Capabilities and Reliability of Laboratories

The Coalition urges the State to consider the capabilities and reliability of laboratories that test for PFAS. There is limited capacity nationally to perform all of the analytical laboratory work and limited reliability on any given sample result due to potential lab error, cross contamination, or other factor that could impact results in the very low parts per trillion levels being considered. There is little doubt that the closer the State sets a limit or standard to the detection limit, the less reliable the analytical sampling and related lab results become.

For example, Coalition members who have sent split samples to multiple labs report receiving highly variable results. Such anecdotal evidence demonstrates the potential difficulty and unreliability of performing testing at limits that approach the detection limit. Considering that the State can potentially impose fines, costly corrective action, or other penalties for failing to meet regulatory limits, the regulated community must have the ability to accurately measure PFAS to demonstrate compliance.

Subjecting the regulated community to fines, corrective action, and other penalties based on potentially unreliable testing raises due process concerns. Accordingly, the Coalition urges the State to consider the potential liability that may result under other state environmental statutes and evaluate the testing capability and reliability. Based on such consideration, the State should ensure that this proposed rulemaking lays the foundation for a regulatory program that accounts for the variability in and limits of current laboratory testing.

⁶ See PFAS Methods Technical Brief available at https://www.epa.gov/sites/production/files/2020-01/documents/pfas_methods-sampling_tech_brief_7jan2020-update.pdf.

F. Limited Capacity for Testing, Treatment, and Disposal

A limited number of established laboratories in the country have robust experience testing and reporting PFAS results. The State's rulemaking should account for the limited number of testing laboratories in the region. The Coalition recommends, for example, that, in regions where testing capacity is limited, the rule provide for a delayed effective date or phased implementation that allows for laboratories to develop the expertise necessary to reliably accommodate the increased testing that the rule will require.

Similarly, treatment technologies for PFAS are still being developed, and there is limited capacity for the disposal of byproducts from newly-developed technologies. For example, absorption technologies such as granular activated carbon (GAC) are being developed as potential response measures to achieve compliance with new drinking water standards for PFAS. The regulated community will need to safely dispose of the byproducts of such treatment technologies, like the spent carbon, used to treat PFAS groundwater. Moreover, there are no widely accepted or applied treatment technologies for PFAS in soil. Disposal or incineration of impacted soil has been used, but not without controversy and concerns for the need to further address PFAS. Again, this is another area where EPA is taking action.

Congress, in the NDAA, mandated that EPA, not later than one year after enactment, "publish interim guidance on the destruction and disposal of perfluoroalkyl and polyfluoroalkyl substances and materials containing perfluoroalkyl and polyfluoroalkyl substances," which includes guidance on "spent filters, membranes, resins, granular carbon, and other waste from water treatment."⁷ Again, even though the proposed rulemaking does not directly impose liability itself, the State should consider the potential remediation obligations that may arise from this proposed rulemaking under other state environmental statutes.

Because this proposed rulemaking lays the foundation for remedial obligations under other state environmental statutes, the proposed rulemaking should evaluate the availability of testing, treatment, and disposal to ensure that sufficient technology exists in the State to achieve the standards proposed. The State's proposal avoids having to address these issues by asserting that the rule itself does not create liabilities or associated cost impacts, which rings hollow in the way such standards ultimately are implemented.

G. The State Should Consider the Rulemaking's True Costs

The State asserts that it does not expect that this proposed rulemaking, as it relates to new MSCs for PFOA, PFOS and PFBS, will create any additional costs because it does not create liability for, or the obligation to, address contamination for these and other chemicals. The State asserts that, instead, such liability or obligation comes from other environmental statutes, including The Clean Streams Law and SWMA, but, the State fails

⁷ NDAA Sec. 7631(4).

to address how these statutes will impose obligations based on the proposed MSCs, what obligations they will impose and, importantly, the cost of such obligations.

Furthermore, the State's rationale confuses liability with costs. Even if the liability is imposed by other statutes, the setting of MSCs for these three additional compounds at parts-per-trillion levels certainly imposes additional costs. The State's statement that "any potential impact to the regulated community would be insignificant"⁸ lacks practical credibility and logic.

Moreover, the State also asserts that it "does not expect that the proposed amendments would impact the number of remediations voluntarily completed or the number that must be completed as a result of Department enforcement actions."⁹ Yet, just two paragraphs above this statement, the State claims that establishing the MSCs for these PFAS compounds has the additional benefit of allowing for the remediation of sites that used or stored fire-fighting foam.¹⁰ In other words, adding these MSCs will allow for the remediation of additional sites.

The addition of soil and groundwater MSCs for PFOS, PFOA, and PFBS will add costs to existing remediation projects and subject additional sites to remediation. The proposed rulemaking's conclusion that it will not create any additional costs because it does not create any obligation to address contamination is disingenuous. The proposed rulemaking lays the foundation for remedial and permitting obligations under other state environmental statutes, and such obligations will have costs and impact additional sites. To promote transparency and a sound rulemaking process, the State must openly recognize and quantify those costs and the number of sites impacted.

Information exists regarding the variable costs of treatment systems installed at locations around the country to address groundwater, and the State should consider that information in establishing remediation standards. Additionally, the proposed rulemaking should account for the developing nature of treatment technologies and availability of disposal or other treatment endpoints. This is especially critical for the proposed soil pathways where those treatment options are limited. The State needs to understand it is seeking to impose obligations where there are limited tools to address them. To the extent that the proposed MSCs provide a basis for liability or remediation or permit obligations under other state laws, the proposed rulemaking should acknowledge and consider the associated costs, too.

Though information exists regarding the costs of treatment alternatives, there is significant uncertainty regarding how to handle byproducts from PFAS treatment. For example, a remediating party may not be able to find a landfill to take the spent media, and

⁸ PA Bull., Vol. 50 No. 7 at 1015 (Feb. 15, 2020)

⁹ *Id.*

¹⁰ *Id.*

incineration of the media is currently subject to public scrutiny and further study. In fact, Congress has directed EPA to develop guidance to specially address these issues.

Remediation standards could also affect sites being remediated under federal programs, such as Superfund. For example, f Department of Defense (DOD) sites,, the NDAA requires that cooperative agreements with states include that the DOD “shall meet or exceed the most stringent . . . standards for PFAS in any environmental media.” NDAA Sec. 332(a)(2). The states, municipalities, and private parties that are conducting these cleanups will incur substantial costs as a result. Accordingly, the State should consider in its regulatory analysis the costs to remediate to its proposed standards.

In sum, the State should provide additional information regarding how the MSCs will inform obligations and liability under other state statutes. If remedial obligations will result before there is more certainty regarding questions of treatment and disposal, then the State should conduct a more robust cost analysis to account for the potential costs, including remediation and the range of true disposal and ongoing operation and maintenance costs.

V. Conclusion

The Coalition appreciates the opportunity to submit these comments concerning the proposed rulemaking. We look forward to working closely with the State regarding developing appropriate, reasonable, and scientifically-defensible groundwater and soil protection standards. 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 Longworth

Tammy Helminski

Coordinators

Barnes & Thornburg LLP

1717 Pennsylvania Avenue NW

Suite 500

Washington, D.C. 20006-4623

jlongworth@btlaw.com

thelminski@btlaw.com