

## Allan Kanner



**Allan Kanner** is the founding member of Kanner & Whiteley, LLC, a national firm handling natural resource damages, environmental, toxic torts, whistleblower, first-party insurance, class action and complex business litigation. Kanner & Whiteley is a national boutique law firm made up of Mr. Kanner and three partners, Conlee Whiteley, Lili Petersen and Cindy St. Amant who have worked together as a team for over twenty-two years. The firm's successful reputation is built on its ability to effectively manage and successfully litigate and try substantial, cases to successful completion on a cooperative basis with in-house counsel, co-counsel, or referring counsel.<sup>1</sup>

Mr. Kanner is highly regarded nationally as a trial lawyer and legal strategist. Mr. Kanner is a Lawdragon 500 Leading Lawyer in America 2017, and a 2016 Top Rated Litigator, The American Lawyer. The firm has been honored as a National Law Journal Finalist, 2016 Elite Trial Lawyers (Pharmaceutical Category). The Firm was also a Finalist, 2015 Elite Trial Lawyers (Environmental Category). In 2014, Law360 recognized Mr. Kanner as a "Titan of the Plaintiffs' Bar" (2014).<sup>2</sup> He is best known for handling novel case claims, especially those arising from mass disasters, mass torts and consumer fraud.

In the *BP Deepwater Horizon* litigation, working for the State of Louisiana, the firm recovered the largest payment from a single defendant ever, the largest natural resource damages recovery for any state in history plus additional damages of almost \$10 billion.<sup>3</sup> Mr. Kanner has won significant environmental, toxic tort, commercial, consumer fraud and civil RICO cases throughout the United States for private and government clients. He has won numerous jury verdicts, has reached multi-million dollar settlements, and has been asked by courts and/or co-counsel to serve in various litigation leadership roles. Examples of some of these cases include *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (representing the State of Louisiana and as Co-Coordinating Counsel for the State Interests); *In re: Cooper Tire & Rubber Co. Tire Litig.*, MDL No. 1393 (lead counsel in consumer fraud class action ending with a settlement valued over \$1 billion); *N.J. DEP v. ExxonMobil*, No. UNN-L-3026-04 c/w UNN-L-1650-05 (Sup. Ct., NJ) (lead counsel for the State of New Jersey; settlement of \$225 million for environmental damage following 10 years of litigation and an 8 month trial); *Bonilla v. Trebol Motors Corp.* (co-lead counsel; \$129 million jury verdict in RICO class action trial) ("Mr. Kanner,

<sup>1</sup> See, [www.kanner-law.com](http://www.kanner-law.com). Kanner & Whiteley is an equal opportunity employer striving for diversity within its practice as well as in its alliances with co-counsel.

<sup>2</sup> Mr. Kanner's Lawdragon 500 profile appears at [www.lawdragon.com/2017/10/01/lawyer-limelight-allan-kanner/](http://www.lawdragon.com/2017/10/01/lawyer-limelight-allan-kanner/), and his Law360 profile appears at [www.law360.com/articles/585076/titan-of-the-plaintiffs-bar-allan-kanner](http://www.law360.com/articles/585076/titan-of-the-plaintiffs-bar-allan-kanner).

<sup>3</sup> The prior record for a recovery by a state by private counsel was \$225 million, which the firm won for the State of New Jersey. *New Jersey Department of Environmental Protection v. Exxon Mobil Corporation*, No. UNN-L-3026-04 (Union county Superior Court, NJ).

who served as lead counsel at trial, has perhaps as much experience litigating complex class action suits as any attorney in the United States. He has authored, chaired, consulted on, contributed to, and give articles, symposiums, classes, books, practice guides, etc.”); *In re: Synthroid Marketing Litig.*, MDL No. 1182 (co-lead counsel in national consumer fraud class action; \$98 million settlement); *Lemmings v. Second Chance Body Armor*, No. CJ-2004-64 (Mayes County Dist. Ct., Okla.) (lead counsel in national class action; \$29 million settlement); *In re: Cox Enter., Inc. Set-Top Cable Television Box Antitrust Litig.*, MDL No. 2048(W.D. Okla.) (co-lead counsel in antitrust class action; \$6.3 million jury verdict in test case; on appeal); *In re: Budeprion XL Marketing and Sales Litig.*, MDL No. 2107 (E.D. Pa.) (lead counsel in \$10.6 million nationwide consumer fraud class action); E.g., *In re Dollar General Corp., Motor Oil Marketing And Sales Practices Litigation*, MDL No. 2709 (W.D. Mo.) (Lead Counsel); *In re Synthroid Marketing Litigation*, MDL No. 1182 (N.D. Ill.) (one of five co-lead counsel; successfully resolved); *Talalai v. Cooper Tire & Rubber Co.*, MID-L-8839-OOMT, Mass Tort 259 (Law Div. Middlesex County, N.J.) (lead counsel in national class action; successfully resolved).

Mr. Kanner has enjoyed a distinguished thirty-six year career representing individuals, businesses and governmental entities in hundreds of complex, multi-district and high profile cases in both state and federal courts, starting with *In re: Three Mile Island Litig.* (M.D. Pa.) and *In re: Louisville Sewer Explosions Litig.* (E.D. Ky.). According to Chambers USA (2009), “Allan Kanner of Kanner & Whiteley enjoys a ‘sterling reputation’ for plaintiff-side representation in toxic tort trials.”

Many of Mr. Kanner’s landmark victories have established important precedents for other litigants or spurred transformative legislative and regulatory action. *Coleman v. Block*, No. A1-83-47 (D.N.D.) (enjoined all farm foreclosures nationwide on constitutional due process grounds and led to new FMHA regulatory guidelines); *Local 7-515 OCAW v. American Home Products*, Civ. No. 92-1238 (D.PR.) (lead counsel in Civil RICO class action obtaining compensation for workers who lost their jobs because of tax motivated corporation restructuring, leading to new federal laws barring abusive corporate tax and relocation practices); *Hanson v. Acceleration Life Ins. Co.*, Civ. No. A3:97-152 (D.N.D.) (lead counsel in national consumer fraud class action; \$14.7 million settlement for elderly purchasers of long term care insurance, leading to new federal laws eliminating bad policies and untoward actuarial practices); *Petrovic v. Amoco Oil Company* (\$10.6 million settlement on landmark environmental pollution case); *Samples v. Conoco* (\$66 million for decreased property values caused by pollution); *Roeder v. Atlantic Richfield* (\$18 million settlement property owner pollution case spurring EPA action).<sup>4</sup> Mr. Kanner’s pioneering environmental justice work was honored by the U.S. Civil Rights Commission.<sup>5</sup>

Courts have repeatedly recognized Mr. Kanner’s zealous advocacy:

*New Jersey Department of Environmental Protection v. Exxon Mobil*, No. UNN-L-3026-04 (consolidated with HUD-4415-04) (August 25, 2015, Hogan, J.) (“The Firm has labored in the high weeds of this litigation for eleven years,...The Firm was up against a determined adversary who

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<sup>4</sup> *EPA Is Moving To Designate Contaminated Nevada Cooper Mine A Superfund Site*, NEW YORK TIMES (Dec. 25, 2015), A 17 (“The federal proposal comes after the residents filed a class-action lawsuit in 2011....”)

<sup>5</sup> U.S. Commission on Civil Rights, *THE BATTLE FOR ENVIRONMENTAL JUSTICE IN LOUISIANA* (Sept. 1993), p. 48. (“The residents used legal action to challenge industry on environmental problems. There was no substantial support from civil rights or environmental groups...Attorneys played a primary role in the mobilization and resolution process.”)

created a daunting ten year defense that a less experienced, less determined, or less skilled effort would not have been able to timely, professionally, and, for the most part, successfully meet the challenge...Litigating natural resource damages is a complex and time intensive undertaking, involving a close and confident relationship between the Attorney General, the DEP and the Firm. The court was able to observe that this was true during the trial. The Kanner Firm is, under any definition, a small law firm. It is dwarfed by the firms that it opposed in this case. Yet by having the focus of those attorneys assigned to the case devote the majority of their time to their client's efforts, they undoubtedly were precluded from taking on numerous new clients particularly because of their limited size. The Attorney General's Office, having worked with the firm for over a year on a non-compensation basis before formally retaining the firm, was most certainly well aware of the limitations their retainer agreement and subsequent litigation would place on the economics of the firm and it is no doubt a reason for their support of the Firm's application.")

*In re: SCBA Liquidation, Inc.. f/k/a Second Chance Body Armor, Inc.* No. 04-12515 (W.D. Mich) (November 11, 2013) ("But for the Class and the efforts of Class Counsel, the interests of many of these individual vest purchasers would not have been adequately represented in this bankruptcy case and these individuals would not have received any compensation for their valid vast claims." As the bankruptcy court noted, "Class Counsel has protected the 'little guys.'")

*Ralph Shaffer v. Continental Casualty Company*, CV 06-2235-PSG (June 12, 2008) (Final Approval of national class action for seniors against long term care insurer) ("The Court finds Class Counsel have achieved a substantial benefit for the Class in the face of formidable defenses to liability and difficult damages issues. *Class Counsel's skill and experience enhanced the Settlement*, and Class Counsel took on a substantial risk by taking this case on a contingency basis and advancing all of the necessary litigation expenses. Class Counsel fought numerous motions, took or defended several depositions in various locations throughout the Country, analyzed thousands of documents and several expert reports, extensively prepared for trial, and after nearly two years of litigation and effort to build a compelling case against an aggressive opponent, engaged in difficult settlement negotiations.")

*Lemmings, et al., v. Second Chance Body Armor, Inc., et al.*, CJ-2004-62 (District Court, Mayes County, Oklahoma) (Final Approval Hearing for a national class action for police departments against makers of faulty bulletproof vest, 9/23/05, Judge James D. Goodpaster) ("Having been in this business some 40 years and having been through some litigation right here from this bench and personally I think that the lawyers for the claimants and for Toyobo have done *an outstanding job* and I really do

thank you all for the hard work that all of you have done in putting this settlement together."); (2/9/05 Order Certifying Class Action with Findings of Fact and Conclusion of Law) ("Plaintiffs' lawyers are qualified, experienced and generally able to conduct the proposed litigation and there are no antagonistic interests between the representative party and the class. Plaintiffs have retained attorneys that are qualified and skilled in complex and consumer class litigation.")

*Wallace v. American Agrinsurance, Inc.*, No LR-C-99-669 (E.D.Ark, 2005) ("I have nothing but admiration for you and your associates for the outstanding manner in which you at all time represented the [national rice grower] class plaintiffs in this case.")

*Samples v. Conoco, Inc.*, No. 2001-CA-000631, Div. J (Escambia County, First Judicial Circuit Court, Florida, 2003) (Class Counsel were "shown to be qualified, adequately financed and possessed sufficient experience...[and] have demonstrated both their commitment to vigorously pursue this matter on behalf of the class [for pollution property damages] as well as their qualifications to do so.")

*Janes v. CIBA-GEIGY Corporation*, Docket No. L-1669-01 Mass Tort 248 (Law Div. Middlesex Cty.) (5/16/03 Opinion and Order Certifying Litigation Class for pollution property damages) (Plaintiffs' "attorneys are qualified and experienced to conduct this litigation. Class counsel has the requisite experience, skill, and competency in dealing with class actions and complex litigation.")

*Hanson v. Acceleration Life Ins. Co.*, Civ. No. A3:97-152 (D.N.D. Mar. 18, 1999) (certifying class of senior long term care insurance purchasers, rejecting filed rate doctrine and denying summary judgment): Order of December 11, 1999 (approving final settlement of \$14.7 million), pp. 8-9: ("This litigation was hard fought throughout its two year pendency and required thousands of hours of counsel's time and hundreds of thousands of dollars advanced for expenses, with significant risk of no compensation. Both local counsel and national class counsel are commended for their willingness to take on this cause when there were virtually no precedents to assure them of likely success. They are all highly skilled and well-experienced attorneys who appreciate the risky nature of this litigation, yet their desire to correct a perceived injustice suffered by a vulnerable group of people led them to take this risk. Counsel's considerable skill, both in the substantive areas of this case as well as in discovery and class action procedure, together with their degrees of preparation were primary factors leading to the favorable settlement for the class. Of equal note is the fact that counsel unquestionably put the interests of the class far ahead of their own interest.") (emphasis added). This case involved a North Dakota class action certified against Acceleration Life Insurance and Commonwealth Life Insurance Company for fraud in connection with

multiple premium increases of up to 700% between 1989 and 1997 on "guaranteed renewable" Long-Term Care insurance policies. Shortly before trial a national class action settlement, supervised and approved by the federal magistrate, was entered into which brought over \$7.7 million in cash payouts to numerous elderly policyholders and their families and an additional \$4 million in insurance benefits tailored to the specific needs of each class member.

*Talalai v. Cooper Tire & Rubber Co.*, MID-L-8839-00MT, Mass Tort 249, (Law Div. Middlesex Cty.) (11/1/01 Opinion and Order Certifying National Class and Preliminarily Approving Settlement) ("The attorneys of Kanner & Whiteley, L.L.C. have substantial jury trial experience with a number of multi-million-dollar verdicts, including a number of successful class action trials. *The firm is known for its willingness to try class actions to verdicts and has done so on at least three occasions, winning every time*"; Opinion of September 13, 2002 (Approving Certification and Final Settlement of National Class), p. 5: ("The Stipulation was the result of extensive and intensive arm's length negotiations among highly experienced counsel, with the benefit of extensive discovery and full knowledge of the risks inherent in this litigation.")

*Milkman v. American Travellers Life Insurance Co.*, No. 3775, (Ct. Cm. Pleas, First Judicial District, June Term 2000) (Preliminary Approval of National Class: 11/26/01) ("As demonstrated by the credentials set forth in the Motion, the Plaintiff's attorneys are more than capable of representing the interests of the Class and there do not appear to be any conflicts of interest between the Plaintiff and the Class."). (Final Approval of National Class: 4/1/02), p. 47 ("Again, the quality of the legal representation provided by Class Counsel is exceptional. The extensive experience of each of the firms and individual attorneys serving the Class is set forth in Kanner Affidavit Paragraphs 54 through 68. Moreover, the Court can attest to Class Counsel's professionalism and skill, as demonstrated by the extensive memoranda of law and the first-class oral arguments delivered on behalf of the Class.").

*Bonilla, et al. v. Trebol Motors Corporation, et al.*, No. 92-1795 (JP) (D.P.R.) (\$129,000,000 jury verdict in civil RICO class action against Volvo and local distributor) (describing the firm's abilities on March 27, 1997, as follows: "*We have no trouble concluding that the experience and resources of Kanner & Whiteley was a major reason that the plaintiffs' class was able to so successfully present its case to the jury and achieve such an estimable result. Mr. Kanner, who served as lead counsel at trial, has perhaps as much experience litigating complex class action suits as any attorney in the United States. He has authored, chaired, consulted on, contributed to, and given articles, symposiums, classes, books, practice guides, etc. More importantly, his resume is replete with instances in which he served as counsel in complex class action suits. His experience*

was essential to the success realized by the plaintiffs in this action.") (emphasis added).

*Glass, Molders, Pottery Plastics, and Allied Workers International Union, et al. v. Wickes Companies, Inc.*, No. L-06023-88 (Sup.Ct., Camden Cty., February 24, 1992) (certifying national class of workers who lost jobs as a result of tortious conduct occurring in the context of hostile corporate raid) (describing the firm's abilities to represent the class as follows: "Plaintiffs' attorneys have extensive professional experience representing plaintiffs in class actions. Additionally, the attorneys representing the plaintiffs are equipped with the staff and resources to adequately handle a technical and complex class action. *In short, I am satisfied that plaintiffs' attorneys are committed to the class and competent to advocate its interest.*"); (emphasis added) Order Approving Counsel Fees of December 16, 1993 ("This Court finds that the Kanner firm, [and co-counsel] have all provided outstanding service to the class and faithfully executed their fiduciary duties in connection with this litigation.") (emphasis added).

*Local 7-515, Oil Chemical and Atomic Workers International Union (OCAWIU), et al v. American Home Products, et al.*, Civ. No. 92-1238 (JP) (D.P.R.) (Order of April 13, 1992, certifying national class of workers who lost jobs as a result of fraudulent job transfers to Puerto Rico under civil RICO theory), *Oil Chemical and Atomic Workers International Union v. American Home Products, et al.*, Civil No. 91-1093 consol. with Civil No. 92-1238 (Order of September 17, 1992, approving \$24 million settlement); p. 38 of transcript: "Indeed, the Court affirmatively finds that Mr. Kanner and [co-counsel] have in all matters handled this case and conducted themselves, in relation to their co-counsel, with *the highest degree of professionalism, integrity and ability*. There is no doubt in the Court's mind, based on his intimate familiarity with the record, that *but for the outstanding efforts of Mr. Kanner and [co-counsel] there would not have been such a significant and landmark result in this case*, and I have been telling you all this long before this moment." (emphasis added).

*The Board of Commissioners of the New Orleans Exhibition Hall Authority v. Missouri Pacific Railroad Company, et al.*, No. 92-4155 (Judgment of February 15, 1996) "It must be said that both firms and all attorneys involved in this protracted litigation exemplified *the highest standard of trial experience and skill* which was brought to bear on this *novel and difficult matter* in a specialized area of the law." (emphasis added).

Mr. Kanner also enjoys the highest "av" rating from Martindale-Hubbell, and has been voted a Louisiana Super Lawyer (2007-2016). He is on BNA's Board of Advisors for both THE CLASS ACTION REPORTER and THE TOXIC LAW REPORTER, and the Editorial Boards, ENVIRONMENTAL LAW REPORTER and ENVIRONMENTAL FORENSICS JOURNAL. Kanner is a member of the American Law Institute and past President of the Louisiana Association of Justice and former Governor of the American Association of Justice. His cases and results have

been featured in *The Wall Street Journal*, *Business Week*, *The National Law Journal*, *The New York Times*, *Newsweek*, *Washington Post*, CNN and other news outlets.

Kanner earned an A.B. degree from the University of Pennsylvania and a J.D. degree from Harvard Law School. He is the author of 2 books and scores of scholarly articles, which are regularly relied upon by Judges, scholars and practitioners. He has served as an adjunct professor of law at Tulane University, Duke Law School, Yale Law School, and the University of Texas. He is a former law review editor and former federal appellate clerk.

## Elizabeth B. Petersen



Elizabeth (“Lili”) is a member of Kanner & Whiteley and has been with the firm since 1996. She practices primarily in the areas of environmental law, complex litigation and class actions, including consumer fraud and environmental property damage litigation.

Since Lili has served as Special Counsel to the State of New Jersey, and is involved in litigation on behalf of the State of New Jersey to recover for damage to its natural resources from various defendants, including a case against ExxonMobil for which the State reached a \$225 million settlement, its largest ever natural resource damage recovery. She also serves as counsel to the Conservation Law Foundation in a landmark case against ExxonMobil for its failure to follow the best practices required under federal law in armoring the ExxonMobil Everett Terminal in Massachusetts against risks associated with climate change that threaten the terminal and surrounding communities, as well as violations of its Clean Water Act permit. Lili served as Special Counsel to the Louisiana Attorney General representing the State of Louisiana in the litigation against the many defendants associated with the Deepwater Horizon oil spill disaster in the Gulf of Mexico, in which she assisted in the recovery of more than \$8.8 billion in both environmental and economic damages for the State of Louisiana resulting from the disaster.

Lili has also been involved in a number of cases on behalf of private property owners for damage suffered because of pollution, including contaminated ground and surface waters, which have resulted in multi-million dollar settlements. *See, e.g., Roeder v. Atlantic Richfield Co.*, 3:11 - CV - 00105-RCJ -WGC (D. Nev.) (securing a settlement valued at \$19.5 million for residents living near contaminated groundwater); *Zancorp Properties, et al., v. Browning Ferris Industries, et al.*, No. 466933 (19th J.D.C. LA); *Guste v. Shell Oil Co.*, No. 95-0601-D (E.D. LA) (reaching a multi-million dollar settlement after six days of trial); *Samples v. Conoco, Inc.*, No. 01-631 (Fla. 1 JDCC) (reaching a settlement that provided for client payments of \$65 million plus additional monies for attorney fees and costs); *Petrovic v. Amoco Oil Co.*, No. 98-3816, 99-1334 (8th Cir.).

She has also litigated as co-lead counsel for class of purchasers of a prescription drug where misrepresentations by the manufacturer inflated purchase prices. *In re: Synthroid Marketing Litigation*, MDL No. 1182, 264 F.3d 712 (7th Cir. 2001) (reaching a settlement of \$98 million, affirmed on appeal).

Lili has taught as an adjunct professor at Tulane Law School in the area of toxic torts. Prior to joining Kanner & Whiteley, she practiced in the areas of civil and maritime litigation.

Lili is a member of the State Bar of Louisiana, and is licensed to practice law in the Louisiana State Courts, the United States District Courts for the Eastern and Middle Districts of Louisiana, and the United States Courts of Appeals for the Fifth Circuit. She has also been admitted to practice *pro hac vice* in various federal and state courts throughout the country.



## Cindy St. Amant



Cindy, a member of Kanner & Whiteley, has been with the firm since 1998. She practices primarily in the areas of consumer fraud, insurance, antitrust, pharmaceutical, agricultural products, environmental law and general class action litigation, on behalf of a variety of clients. She has been appointed as class counsel in many of the firm's class actions and has an active role in the litigation, class certification, trial and settlement of cases against product manufacturers, drug manufactures and insurance companies.

Cindy is managing the MDL *In re: Dollar General Corp. Motor Oil Marketing and Sales Practices Litigation* in which the firm serves as lead counsel. Before that, she managed the *Press* overhead and profit class action (the only successfully resolved class action after Katrina), the *Cox* antitrust MDL, and the firm's Chinese drywall litigation. In addition, she has managed large, multistate class actions, such as the *Cooper Tire* litigation, which consisted of 33 state class actions involving violations of state consumer fraud statutes or deceptive trade practices associated with the alleged faulty manufacture of tires, and the *Second Chance* litigation, which consisted of 7 state class actions alleging claims of breach of warranty and violation of state consumer protections laws associated with the sale of faulty bullet proof vests to law enforcement officers. Both of these actions ended in multi-million dollar settlements providing relief to consumers who had purchased potentially defective and deadly products. Additionally, she has handled a number of insurance coverage and broker liability claims following Hurricanes Katrina and Rita, including the *Press* class action against Louisiana Citizens Property Insurance Corporation for unpaid overhead and profit associated with certain property damage claims.

A member of the State Bars of Louisiana and Texas, Cindy is licensed to practice law in all Louisiana and Texas State Courts, the United States District Courts for the Eastern, Middle and Western Districts of Louisiana, the United States District Courts for the Eastern and Western Districts of Arkansas, the United States District Court for Northern District of Florida, the United States District Court for Western District of Michigan, the United State District Court for the District of Colorado, and the United States Courts of Appeals for the Fifth and Tenth Circuits. She has also been admitted to practice *pro hac vice* in various federal and state courts throughout the country.

In addition to her legal career, Cindy is actively involved in the community including serving on the Rayne Early Childhood Program Board as a Member (2010-2015) and currently as Chair (2016-present). She also served as Rayne Early Childhood Program Parents' Committee, Officer (2012-2014). In addition, she has served the Bricolage Academy of New Orleans as a Board Member (2013 school year) and as a Committee Member (2014 school year) of the Bricolage Community Association. She is also a perennial sponsor and active participant of Carrollton Boosters baseball and soccer leagues.

**Allison S. Brouk**



Allison is an associate at Kanner & Whiteley, L.L.C. and has been with the firm since 2011. Her practices focuses on environmental law, natural resource damage litigation, complex litigation, and class actions.

Allison is part of the Kanner & Whiteley litigation team representing the State of New Jersey in natural resource damage cases for the State, including a case against Exxon Mobil Corp., for which, following a 66-day bench trial, the parties reached a \$225 million settlement, the State's largest ever natural resource damage recovery.

Allison was also part of the litigation team representing the State of Louisiana in its claim related to the Deepwater Horizon oil spill, in which she assisted in the recovery of more than \$8.8 billion in both environmental and economic damages for the State of Louisiana resulting from the incident, the largest environmental disaster ever to occur in the Gulf of Mexico.

Allison currently serves as Special Counsel to the Attorneys General of the State of Mississippi and the State of New Mexico in the States' respective cases against Dollar General regarding its deceptive and misleading marketing and sales practices used in connection with its obsolete motor oil products.

Allison also represents the Conservation Law Foundation in landmark cases against Exxon Mobil Corp. and Shell Oil Co. for their failure to follow the best practices required under federal law in armoring the certain coastal fuel terminals against risks associated with climate change that threaten the terminals and surrounding communities, as well as violations of the companies' Clean Water Act permits.

Allison previously served as class counsel in *Roeder v. Atlantic Richfield Co.*, in which she assisted in securing and overseeing the administration of a class action settlement valued at \$19.5 million that included compensation for property damages, future medical costs and the extension of the city water system to properties in the community previously serviced by contaminated well water, as well as water right permits for residents wishing to maintain the use of private wells.

Allison graduated *magna cum laude* from Tulane University Law School, where she received a Certificate in Environmental Law. While in law school, she practiced as a student attorney for the Tulane Environmental Law Clinic, was Editor in Chief of the Tulane Environmental Law Journal and was a member of the Tulane Moot Court Board. She also served as an intern for U.S. District Judge Stanwood R. Duval, Jr. in the Eastern District of Louisiana.

Allison is admitted to practice in the State of Louisiana, the Eastern, Middle and Western District Courts of Louisiana, and the Fifth Circuit Court of Appeals. She has also been admitted to practice *pro hac vice* in various courts throughout the country. She is a member of the Louisiana Bar Association, the Federal Bar Association and the Louisiana Association for Justice.

In addition to her legal work, Allison is Presodent of the Board of Directors of Teaching Responsible Earth Education (T.R.E.E.), a non-profit organization providing comprehensive curriculum based, life-science and earth education programs in "Outdoor Classrooms" to children throughout Louisiana.

# **EXHIBIT “E”**

August 28, 2017

## ARTICLES

# Emerging Trends in Perfluorinated Chemical Regulation and Litigation

Inaction by the federal government and some state regulators should not be misinterpreted to mean that the current federal guideline is sufficiently protective.

By Allan Kanner – August 28, 2017

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Under the 1996 Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f et seq., the U.S. Environmental Protection Agency (EPA) is required periodically to generate a new list of no more than 30 unregulated contaminants to be monitored by public water systems. 40 C.F.R. § 141.40. Each iteration of this list is known as the Unregulated Contaminant Monitoring Regulation (UCMR). UCMR 3 was published on May 2, 2012, and required the monitoring of 30 contaminants between 2013 and 2015. The list includes six perfluorinated compounds (PFC), including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Currently, the EPA's minimum reporting requirements for PFOA and PFOS, considered to be indicator chemicals for the presence of other PFCs, are 0.04 µg/L and 0.02 µg/L, respectively, and the combined lifetime exposure limit is 70 ppt.

Two developments of note have occurred in conjunction with increased awareness of the dangers of PFCs: state guidelines and personal injury litigation. States have begun to take their own close looks at PFCs and their possible effects on the states' drinking water supplies, implementing guidelines more stringent than the EPA regulations. At the same time, personal injury class actions have revolved around manufacturers' failure to properly dispose of PFOA and similar PFCs.

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## Expansion of U.S. State Monitoring Rules

In light of UCMR 3 and independent state testing following claims of water contamination from manufacturing plant emissions, states are moving toward regulation of PFCs. A few states in particular have begun the process of adopting stricter standards than those suggested by the EPA

as an appropriate exposure level. (These suggested exposure levels are not binding regulations but rather technical guidelines for state and local governments to use in determining how best to handle these persistent chemicals.) This handful of regulations and guidelines represents the shift that states are making as the prevalence and danger of PFCs are brought to light in an increasing number of water supply systems around the country.

**Vermont's guidelines call for a health advisory level of 20 ppt.** Vermont, where a Saint-Gobain fabric manufacturing plant is suspected of being the cause of significant PFOA contamination, decided to adopt a more stringent health advisory level of 20 ppt, much lower than the EPA's UCMR monitoring levels and the lifetime health advisory. The state notes that in recommending this low exposure level, it considered the entire population, including children's exposure, over the long term.

Despite the new exposure level's basis in science, Saint-Gobain has filed multiple suits against the state, two of which were unsuccessful, arguing that this level is not based on generally accepted scientific standards, failing to recognize that there likely will never be 100 percent consensus on any given effect of any given chemical.

Nonetheless, Vermont is moving forward with its crackdown on PFCs and is in the process of signing into law a bill that extends liability for contamination of potable water supplies to emitters of PFOA. Those that release PFOA into the air, groundwater, surface water, or soil will be liable for the costs of extending municipal water lines to the affected areas. 10 Vt. Stat. Ann. § 6615e. The legislation passed in the Vermont Senate in February 2017 and passed in the House May 4, 2017.

**New York classified chemicals as hazardous substances.** New York has also taken steps toward regulation of PFOA: Governor Cuomo issued emergency regulations to classify PFOA as a hazardous substance in 2016 after severe PFOA contamination was found in Hoosick Falls, another location of a Saint-Gobain facility. As of March 3, 2017, PFOA and PFOS are considered permanent hazardous substances under New York law. 6 N.Y. Comp. Codes R. & Regs. pt. 597.3.

**New Jersey has proposed a 14 ppt guidance level.** New Jersey is currently proposing the lowest guidance level yet of 14 ppt, which is significantly lower than its current 40 ppt guidance level and the EPA's 70 ppt. The N.J. Department of Environmental Protection (DEP) issued a report in 2014 finding that PFOA and other PFCs were detected in two-thirds of the water systems sampled in 2009 and 2010. Given this information as well as

the multiple exposure routes, New Jersey's Drinking Water Quality Institute recommended the significantly lower health advisory guidance in 2016.

**Minnesota recognizes long-term effects of chemicals.** In May of 2017, Minnesota reevaluated its Drinking Water Guidance Value originally issued in 2009. It adopted a much lower guidance value of 27 ppt for PFOS and 35 ppt for PFOA. These revised guidance values are based on short-term periods, weeks to months, but with the understanding that PFCs remain in the human body for years and will bioaccumulate with each successive exposure.

**California published a notice of intent addressing water supply contamination.**

California is also taking action to curb PFC contamination in its water supply. On September 16, 2016, the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) published a notice of intent to list PFOA and PFOS as known to the state to cause reproductive toxicity under California's Safe Drinking Water and Toxic Enforcement Act of 1986. The list of chemicals is known as the Proposition 65 List, which requires listing a chemical when an authoritative body formally identifies the chemical as causing reproductive toxicity and the evidence considered to reach that conclusion meets the sufficiency criteria laid out by the regulation.

### Recent Litigation

Recent personal injury class actions have revolved around the failure of manufacturers and government entities to properly dispose of PFOA and similar PFCs. A few large lawsuits against prominent chemical companies have made national headlines. These suits are unique because, though dealing with water contamination, they are not claims under the Clean Water Act. Because PFCs, as unrecognized and unregulated chemicals, are essentially legally no different than water, the attorneys brought medical-monitoring claims, as well as claims for negligence, trespass, and an amalgam of traditional torts.

**DuPont litigation ends with a settlement focusing on research.** *Leach v. E. I. Du Pont de Nemours & Co. & Lubeck Public Service District*, Case No. 01-C-608 (Wood Cnty. W. Va. Cir. Ct.), was filed for medical monitoring on behalf of all those that had consumed water laced with the chemical. A settlement agreement for the *Leach* class action was approved on February 28, 2005, which required that a scientific panel be assembled to conduct research into diseases that may be linked to PFOA exposure. Diseases found to have a

“probable link” to PFOA exposure would be preserved for personal injury claims against DuPont.

Importantly, the results of this study were legally applied only to those that qualified to be class members, namely, people living within the six identified water districts that had consumed water with PFOA levels of .05 ppb or higher for at least one year, which is a deviation from the toxic tort standard for the general population. Such specifications were required by the settlement agreement in order to expedite causation issues in future litigation. With these particular parameters, DuPont agreed not to contest general causation; each plaintiff in turn would need to prove specific causation. Six diseases were found to have such a probable link—high cholesterol, kidney cancer, testicular cancer, thyroid disease, pregnancy-induced hypertension/preeclampsia, and ulcerative colitis—and those diagnosed brought successful claims for negligence, negligent infliction of emotional distress, and punitive damages.

The agreement was carefully worded to require the scientists to show a “probable link,” not definitive proof that PFOA could cause a given disease. The reports issued by the panel are careful to explain that “[a] ‘probable link’ in this setting is defined in the Settlement Agreement to mean that given the available scientific evidence, it is more likely than not that among Class Members a connection exists between PFOA exposure and a particular human disease.” Despite this, the science panel has been cited by articles and studies around the world. For example, a recent study in the Netherlands highlighted the studies in its analysis of “high-exposure communities.” Herremans Oomen Ag, Significance of PFOA Blood Test Results for People Living Nearby DuPont/Chemours (Nov. 2016).

Coinciding with the 2005 settlement agreement, the EPA entered into a Consent Agreement with DuPont for its violation of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., in which DuPont paid \$16.5 million. TSCA section 2607(e) provides that “any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator.” DuPont conducted extensive research on PFOA exposure, both for animals and humans, including blood tests in 1981 that showed transplacental movement of the chemical, but did not share this information with the EPA when it became available or following a 1997 request for known

toxicological information about PFOA. As such, DuPont violated the TSCA and its RCRA permit, which required sharing information that may warrant a modification. Pursuing other companies with similar permits in this manner may encourage safer handling of PFCs as well as put pressure on regulators to address PFC contamination with sufficient regulations to protect human health.

**DuPont litigation settles for multimillion-dollar award.** DuPont again found itself in court with the first personal injury multidistrict litigation (MDL), *In re E.I. Du Pont de Nemours & Co. C-8 Personal Injury Litigation*, MDL No. 2433, for PFC contamination. The case was recently settled for \$671 million.

The suit dealt with decades' worth of PFOA contamination in southeastern Ohio and northern West Virginia that originated from DuPont's Washington Works plant in Parkersburg, West Virginia. The lawsuit revealed that DuPont had known since as early as the 1960s that PFOA was likely dangerous to human health. No. 2:13-CV-170, 2016 WL 659112, at \*8 (S.D. Ohio Feb. 17, 2016). In 1991, DuPont scientists determined that the internal safety limit for PFOA concentration in drinking water should be set at 1 ppb. *Leach v. E.I. Du Pont de Nemours & Co.*, 2002 WL 1270121, at \*4 (W. Va. Cir. Ct. Apr. 10, 2002). Despite this, DuPont failed to inform the public when the company found three times that level of contamination in a local water district.

**St.-Gobain finds itself the subject of two states' lawsuits.** Saint-Gobain is in the midst of legal battles in both New York and Vermont following PFOA contamination from its Bennington, Vermont, fabric plant and its Hoosick Falls, New York, plastics plant. Both were the impetus for each state to adopt stricter PFC guidelines and regulations.

In Vermont, the plant contaminated the local groundwater aquifer, soil, and private drinking wells, which led to a class action bringing negligence, nuisance, trespass, battery, and strict liability claims and demanding that the company pay for remedial measures to prevent further and eliminate current contamination in the water supplies. *Sullivan v. Saint-Gobain Performance Plastics Corp.*, 2016 WL 7487723 (D. Vt. 2016). The class also brought a claim for a violation of RCRA, which defines actors that may be responsible for hazardous waste, including the "owner operator of a . . . facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). The manufacturing



operations at the plant released significant amounts of PFOA into the atmosphere, which resulted in environmental contamination around the facility, including contamination of the groundwater and local drinking water supplies. Plaintiff's Class Action Complaint, *Sullivan v. Saint-Gobain Performance Plastics Corp.*, 2016 WL 7487723.

The residents of Hoosick Falls brought a class action against Saint-Gobain, as well as Honeywell International, for medical monitoring and diminution in property values due to the stigma created by PFOA contamination in their community drinking water supplies. *Baker v. Saint-Gobain Performance Plastics Corp.*, 2016 WL 40228974 (N.D.N.Y. 2016). In 2016, the EPA designated the plants as Superfund sites, ultimately impacting homeowners' ability to obtain a mortgage. This is common when homes are not equipped with potable water supplies. Without the ability to obtain a mortgage, property values in the village have been affected and remain the primary claim in the class action.

**The U.S. military fought a litigation war stemming from PFC contamination.** Recently, the U.S. military, following decades of using PFC-laced firefighting foam in training and in emergency response, has come under fire from nearby communities that have found large swaths of PFC contamination in their water supplies.

A notable group of cases out of Pennsylvania concerns contamination around the Willow Grove Naval Base. Plaintiffs in these actions have brought claims against the U.S. Department of the Navy as well as four manufacturers of the foam and PFOA. *In Giovanni v. U.S. Department of the Navy*, 2:16-cv-04873 (2016), the Giovanni family has raised claims for medical monitoring for themselves, as well as for health assessments for themselves and other individuals exposed to the chemical. In the suits against the manufacturers, the most prominent being *Bates v. 3M Co.*, 2:16-cv-04961-PBT (E.D. Pa. 2016), plaintiffs brought claims for negligence, nuisance, and medical monitoring, as well as two products liability claims, failure to warn, and design defect.

Given the number of military bases throughout the country, and more significantly the world, lawsuits similar to these will likely only increase in number.

## Future Issues

Following the UCMR 3 testing of public water supplies completed between 2013 and 2015, systems across the country were found to have reportable levels of PFC contamination. Significantly, the reporting levels required by the EPA are much higher than those adopted by some states; and, as

such, there is a high probability that many more systems are contaminated at levels lower than EPA's advisory levels but at levels that are likely deleterious to human health.

Because the Trump administration has emphasized deregulation, it is unlikely that the EPA will be moving toward a binding regulation on PFCs in the near future. Inaction by the federal government and some state regulators, however, should not be misinterpreted to mean that the current federal guideline is sufficiently protective. Without a federal regulation, it will be up to the states to independently monitor and regulate PFC contamination.

If regulators continue to ignore the persistence of PFCs, lawsuits will only continue to proliferate as contamination becomes increasingly more prevalent throughout the world. PFCs are found in everything from Scotchgard to Teflon to firefighting foam used on U.S. military bases around the country. With so many exposure routes, PFCs have the potential to reach the litigation levels seen with polychlorinated biphenyl (PCB) and methyl tertiary butyl ether (MTBE) contamination lawsuits. Many of the same plaintiffs will likely come forward, including the states, private and public water service providers, and local communities.

Given their bioaccumulative and persistent nature, PFCs and their contamination problems are not going to dissipate any time soon.

*Allan Kanner is named partner of Kanner & Whiteley, LLC in New Orleans, Louisiana.*

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/content/aba-cms-dotorg/en/groups/litigation/committees/environmental-energy/articles/2017/summer2017-emerging-trends-in-perfluorinated-chemical-regulation-and-litigation

## McDougall, Robert

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**From:** Richard Sears <RSEARS@leg.state.vt.us>  
**Sent:** Wednesday, September 25, 2019 9:47 AM  
**To:** Walke, Peter; McDougall, Robert; Brian Campion; Nelson Brownell  
**Subject:** Fw: Pownal Fire Distric #2

Hi all,  
Can we do a conference call and add anyone else who should be on it to see if we can help these folks?  
Thanks  
Dick

Dick Sears, State Senator Bennington County & Wilmington  
343Matteson Rd.  
North Bennington, VT 05257  
Chair Senate Judiciary Committee  
Senate Appropriations Committee

---

**From:** MARK SMITH <[REDACTED]>  
**Sent:** Tuesday, September 24, 2019 12:43:42 PM  
**To:** Richard Sears <RSEARS@leg.state.vt.us>; patricia coppolino <patricia.coppolino@vermont.gov>; Raymond, Tim <tim.raymond@vermont.gov>; patric smart <patrick.smart@vermont.gov>  
**Subject:** Pownal Fire Distric #2

Good Afternoon Mr. Sears

My name is Mark Smith, I contacted you A couple of months ago concerning our PFOA situation . Approximately 3 years ago  
We were confirmed to have PFOA in our water system . At that time we were Promised clean water at no extra cost to our rate payers .  
Things went along fine for a short period of time. We have a carbon filtration system which was only supposed to be temporary. APU is  
supposed to be the responsible party for the PFOA, They are supposed to pay any difference in maintenance cost to our system .  
As of late they have decided themselves they are not the responsible party and are refusing to pay MANY of the expenses incurred because  
of the carbon filtration system. Because we have a filtration system we are required to chlorinate, having to chlorinate has caused a manganese  
problem in our system. The manganese stays in suspension in the water until it is chlorinated, then it forms granules in the water that plug our system.  
APU is directly responsible for this damage but refuses to pay any of the cost for the manganese . This is bringing us to a point were we can not  
Afford the expenses of our system. This is not our fault, We have reached out to several people to no avail. If we do not receive some help from the state ,  
we are not sure how long we can continue. We voted as a board to proceed with a permanent filtration system this will be designed with a manganese filter,  
the problem is it can not be installed until next spring. Any help you can give us is much appreciated. You may feel free to contact me cell # [REDACTED]  
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Sent from Mail for Windows 10

## McDougall, Robert

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**From:** Richard Sears <RSEARS@leg.state.vt.us>  
**Sent:** Wednesday, September 25, 2019 2:59 PM  
**To:** Walke, Peter; McDougall, Robert; Brian Campion; Nelson Brownell  
**Subject:** Re: Pownal Fire Distric #2

Thanks Peter, sorry I missed you yesterday

Dick Sears  
State Senator, Bennington County and Wilmington  
343 Matteson Rd.  
North Bennington, VT 05257  
Chair Senate Judiciary Committee  
Senate Appropriations Committee

---

**From:** "Walke, Peter" <Peter.Walke@vermont.gov>  
**Date:** Wednesday, September 25, 2019 at 2:37:26 PM  
**To:** "Richard Sears" <RSEARS@leg.state.vt.us>, "McDougall, Robert" <robert.mcdougall@vermont.gov>, "Brian Campion" <BCampion@leg.state.vt.us>, "Nelson Brownell" <NBrownell@leg.state.vt.us>  
**Subject:** RE: Pownal Fire Distric #2

Senator,

I'm doing some digging on my end to better understand what has changed. I will get back to you as soon as I have that information.

Thanks,  
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supposed to be the responsible party for the PFOA, They are supposed to pay any difference in maintenance cost to our system .

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of the carbon filtration system. Because we have a filtration system we are required to chlorinate, having to chlorinate has caused a manganese

problem in our system. The manganese stays in suspension in the water until it is chlorinated, then it forms granules in the water that plug our system.

APU is directly responsible for this damage but refuses to pay any of the cost for the manganese . This is bringing us to a point were we can not

Afford the expenses of our system. This is not our fault, We have reached out to several people to no avail. If we do not receive some help from the state ,

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or email [REDACTED] sincerely Mark R. Smith

Sent from Mail for Windows 10

## McDougall, Robert

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**From:** Richard Sears <RSEARS@leg.state.vt.us>  
**Sent:** Thursday, October 3, 2019 11:28 AM  
**To:** Walke, Peter; McDougall, Robert; Brian Campion; Nelson Brownell  
**Subject:** Re: Pownal Fire Distric #2

Thanks Peter

Dick Sears  
State Senator, Bennington County and Wilmington  
343 Matteson Rd.  
North Bennington, VT 05257  
Chair Senate Judiciary Committee  
Senate Appropriations Committee

---

**From:** "Walke, Peter" <Peter.Walke@vermont.gov>  
**Date:** Thursday, October 3, 2019 at 10:58:52 AM  
**To:** "Richard Sears" <RSEARS@leg.state.vt.us>, "McDougall, Robert" <robert.mcdougall@vermont.gov>, "Brian Campion" <BCampion@leg.state.vt.us>, "Nelson Brownell" <NBrownell@leg.state.vt.us>  
**Subject:** RE: Pownal Fire Distric #2

Following back up. We've been in conversations with both companies. We believe that we'll be able to get the issue resolved in short order. If not, we'll figure it out. Thanks, Peter

**From:** Richard Sears <RSEARS@leg.state.vt.us>  
**Sent:** Wednesday, September 25, 2019 2:59 PM  
**To:** Walke, Peter <Peter.Walke@vermont.gov>; McDougall, Robert <robert.mcdougall@vermont.gov>; Brian Campion <BCampion@leg.state.vt.us>; Nelson Brownell <NBrownell@leg.state.vt.us>  
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or email [REDACTED] sincerely Mark R. Smith

Sent from Mail for Windows 10



## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Thursday, September 26, 2019 2:59 PM  
**To:** mhamblet@capstonedc.com  
**Cc:** Clark, Charity  
**Subject:** Re: Meeting Invitation for October 10th  
**Attachments:** 20190626 SOV v 3M et al Complaint non-AFFF.pdf; 20190626 SOV v 3M et al Complaint AFFF.pdf

Dear Ms. Hamblet: Our Attorney General's Office Chief of Staff, Charity Clark, forwarded your request and e-mail to me. Due to the pending nature of the litigation you have referenced, we are not in a position to provide the briefing or take part in the discussion you have asked for.

The two complaints filed by the State of Vermont are attached for reference and should provide you some of the information you are seeking.

Sincerely,

Rob McDougall

Robert F. McDougall  
Assistant Attorney General  
Chief, Environmental Protection Division  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-3186  
[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)

 Please consider the environment before printing this e-mail

**From:** Mina Hamblet <[mhamblet@capstonedc.com](mailto:mhamblet@capstonedc.com)>  
**Sent:** Monday, September 23, 2019 1:30 PM  
**To:** Clark, Charity <[Charity.Clark@vermont.gov](mailto:Charity.Clark@vermont.gov)>  
**Subject:** Meeting Invitation for October 10th

Charity,

I work for Capstone, which is a policy analysis firm that works for leading institutional investors. On October 10<sup>th</sup>, we are hosting a group of investors to discuss litigation risk surrounding PFAS producers. They are seeking a deeper understanding of liability laws within the state and how the state might estimate costs associated with cleaning and remediating the chemical contamination. We'd very much like to speak with the Attorney General or someone in your office familiar with the state suit against PFAS producers as we are trying to better understand the suite of state initiated lawsuits pertaining to these chemicals, and would like to discuss the nature of your suits and the damages you found in the state of Vermont from the use of these chemicals.

We're looking to learn more about the common elements and differentiating factors in the various state AG law suits and given your work in the space, I know the group would appreciate your office's perspective. The meeting would be an hour roundtable discussion between you, our lead analyst, and about 10 investors.

Please let me know if I can answer any questions. We are happy to set up a brief call as well to discuss further.

**Mina Hamblet, Associate**

**Capstone LLC** | 1400 Eye Street Northwest | Washington, DC

D: 202-318-0651

E: [mhamblet@capstonedc.com](mailto:mhamblet@capstonedc.com) | [www.capstonedc.com](http://www.capstonedc.com)

## McDougall, Robert

---

**From:** Mina Hamblet <mhamblet@capstonedc.com>  
**Sent:** Thursday, September 26, 2019 3:01 PM  
**To:** McDougall, Robert  
**Cc:** Clark, Charity  
**Subject:** RE: Meeting Invitation for October 10th

Rob,

Thank you for getting back to me and letting me know. Might it be possible for you to suggest someone who could take part in a roundtable discussion of this sort?

Thank you in advance.

Best,  
Mina

Mina Hamblet, Associate  
Capstone LLC | 1400 Eye Street Northwest | Washington, DC  
D: 202-318-0651  
E: [mhamblet@capstonedc.com](mailto:mhamblet@capstonedc.com) | [www.capstonedc.com](http://www.capstonedc.com)

**From:** McDougall, Robert <robert.mcdougall@vermont.gov>  
**Sent:** Thursday, September 26, 2019 2:59 PM  
**To:** Mina Hamblet <mhamblet@capstonedc.com>  
**Cc:** Clark, Charity <Charity.Clark@vermont.gov>  
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109 State Street  
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(802) 828-3186  
[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)

**From:** Mina Hamblet <[mhamblet@capstonedc.com](mailto:mhamblet@capstonedc.com)>  
**Sent:** Monday, September 23, 2019 1:30 PM  
**To:** Clark, Charity <[Charity.Clark@vermont.gov](mailto:Charity.Clark@vermont.gov)>  
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**D:** 202-318-0651  
**E:** [mhamblet@capstonedc.com](mailto:mhamblet@capstonedc.com) | [www.capstonedc.com](http://www.capstonedc.com)

## McDougall, Robert

---

**From:** Bereket Tesfu <btesfu@naag.org>  
**Sent:** Monday, October 7, 2019 11:58 AM  
**To:** Bereket Tesfu  
**Subject:** \*NOVEMBER 7\* NAAG national environmental conference call  
**Attachments:** NAAG national environmental conference call

Just a reminder, our next call will be on **Thursday, November 7, 2019, at 1:00 p.m. (ET)**. (A calendar invite for the monthly calls is attached to this e-mail.)

To recap the two main agenda items that were discussed on the September call last week:

1. A *working* PFAS subgroup that Wisconsin has recently facilitated is under way but still in the very early stages of development. This subgroup of approximately 14 states *may* be entering into a common interest agreement and commencing a multi-state investigation and possibly litigation. This subgroup will be having a separate conference call of their own on **October 15**. To join or learn more about this group, including the October 15 call, please contact AAG Brad Motl at [motlbi@doj.state.wi.us](mailto:motlbi@doj.state.wi.us).
2. A discussion of the future of the larger PFAS group ensued on the call. There had been concerns about the viability of maintaining two groups – one that was moving toward more concrete action and one that was primarily a forum to communicate and perhaps engage in some limited cooperation. There was a countervailing desire that the larger PFAS group should still continue as a forum for states that can't or aren't yet ready to move forward with a working subgroup but are still interested in discussing the issues and learning about the activities of the working subgroup(s). It was decided that the larger group will continue in its current format while the subgroup develops with its own conference call and other activities. It is hoped that members of the subgroup will still participate in the larger PFAS group so as to be part of the discussion of the issues and to keep the larger group updated on the subgroup's activities. Additionally, there was discussion about whether the calls of the larger group would continue to proceed on a monthly schedule, as there may not be much to discuss PFAS-wise some months. It was decided that because the calls also serve to occasionally address other environmental issues of possible interest to the group, the calls would continue on the monthly schedule. In the event of no agenda items at all, the call for a given month could be canceled. (That's where sending me agenda items to discuss on the call is very important.)

We have about a month until the next call, so if you come up with any agenda items you'd like addressed on the November call, please send them my way.

To access the conference call on November 7, call in to [REDACTED] and use the **pass code** [REDACTED]. *The conference call will open with a roll call of states.* Once the substantive discussions begin, we ask that participants identify themselves by name and state so we can know who's speaking.

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We look forward to you joining us on November 7.

Bereket Tesfu  
*Program Counsel*

**National Attorneys General Training & Research Institute**

National Association of Attorneys General

1850 M Street NW, 12<sup>th</sup> Floor

Washington, DC 20036

(202) 326-6269 | [btesfu@naag.org](mailto:btesfu@naag.org)



## McDougall, Robert

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**From:** Bereket Tesfu <btesfu@naag.org>  
**Sent:** Tuesday, October 8, 2019 10:04 AM  
**Subject:** PFAS court filings mentioned on September call  
**Attachments:** document\_gw\_06.pdf; PlymouthComplaint.pdf

Hello, all. Here are the PFAS court filings that were mentioned by Sarah from California on the call last week.

Bereket Tesfu  
*Program Counsel*

### National Attorneys General Training & Research Institute

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Washington, DC 20036  
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**From:** Sarah Morrison <Sarah.Morrison@doj.ca.gov>  
**Sent:** Thursday, October 3, 2019 1:58 PM  
**To:** Bereket Tesfu <btesfu@naag.org>  
**Subject:** RE: NAAG national environmental conference call

Hi Bereket,

Attached are the documents that I mentioned on today's PFAS coordination call:

1. The court order denying the motion to dismiss the Ohio PFAS case; and
2. The complaint filed against New Hampshire's PFAS levels.

Thanks, Sarah

Sarah E. Morrison  
Supervising Deputy Attorney General  
Environment Section  
Office of the Attorney General  
300 South Spring Street, Ste. 1702  
Los Angeles, CA 90013  
[Sarah.Morrison@doj.ca.gov](mailto:Sarah.Morrison@doj.ca.gov)  
phone number: (213) 269-6328

## McDougall, Robert

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**From:** Bereket Tesfu <btesfu@naag.org>  
**Sent:** Thursday, November 7, 2019 9:22 AM  
**To:** Bereket Tesfu  
**Subject:** RE: **[\*\*CANCELED\*\*]** NOVEMBER 7\* NAAG national environmental conference call  
**Attachments:** NAAG national environmental conference call

In light of my e-mail below from yesterday and the lack of submitted agenda items for a call today, November's call is hereby CANCELED.

Our next scheduled call will be **Thursday, December 5, 2019, 1:00 p.m. (ET)**. If you don't yet have the monthly calls on your calendar as a recurring item, I've attached it to this e-mail.

I'll check back in with you all next month. In the meantime, if anyone has any items they want added to the agenda for the December call, please send them my way. Thanks!

Bereket Tesfu  
*Program Counsel*

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(202) 326-6269 | [btesfu@naag.org](mailto:btesfu@naag.org)



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**From:** Bereket Tesfu  
**Sent:** Wednesday, November 6, 2019 2:41 PM  
**To:** Bereket Tesfu <btesfu@naag.org>  
**Subject:** RE: \*NOVEMBER 7\* NAAG national environmental conference call

Good afternoon, everyone. Just checking in with you about the November call (currently scheduled to take place tomorrow). I spoke with Brad from Wisconsin, and he says the working subgroup has nothing new to report right now. They plan on having a separate call soon, but their call will be *after* tomorrow, so that won't produce anything to discuss on tomorrow's call.



I haven't received any agenda items from any other members of this group for the November call tomorrow, ***so unless I hear anything back by 8:00 p.m. tonight (ET) about agenda items from any group members, we will skip the November call and wait until Thursday, December 5, for the next call.***

FYI, some of you may already be aware that Virginia filed the multi-state amicus brief in *Atlantic Richfield* a few weeks ago. 15 states joined the brief. A PDF of it is attached to this e-mail.

Bereket Tesfu  
Program Counsel

**National Attorneys General Training & Research Institute**

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1850 M Street NW, 12<sup>th</sup> Floor  
Washington, DC 20036  
(202) 326-6269 | [btesfu@naag.org](mailto:btesfu@naag.org)



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**From:** Bereket Tesfu  
**Sent:** Monday, October 7, 2019 11:58 AM  
**To:** Bereket Tesfu <[btesfu@naag.org](mailto:btesfu@naag.org)>  
**Subject:** \*NOVEMBER 7\* NAAG national environmental conference call

Just a reminder, our next call will be on **Thursday, November 7, 2019, at 1:00 p.m. (ET)**. (A calendar invite for the monthly calls is attached to this e-mail.)

To recap the two main agenda items that were discussed on the September call last week:

1. A *working* PFAS subgroup that Wisconsin has recently facilitated is under way but still in the very early stages of development. This subgroup of approximately 14 states *may* be entering into a common interest agreement and commencing a multi-state investigation and possibly litigation. This subgroup will be having a separate conference call of their own on **October 15**. To join or learn more about this group, including the October 15 call, please contact AAG Brad Motl at [motlbrj@doj.state.wi.us](mailto:motlbrj@doj.state.wi.us).
2. A discussion of the future of the larger PFAS group ensued on the call. There had been concerns about the viability of maintaining two groups – one that was moving toward

more concrete action and one that was primarily a forum to communicate and perhaps engage in some limited cooperation. There was a countervailing desire that the larger PFAS group should still continue as a forum for states that can't or aren't yet ready to move forward with a working subgroup but are still interested in discussing the issues and learning about the activities of the working subgroup(s). It was decided that the larger group will continue in its current format while the subgroup develops with its own conference call and other activities. It is hoped that members of the subgroup will still participate in the larger PFAS group so as to be part of the discussion of the issues and to keep the larger group updated on the subgroup's activities. Additionally, there was discussion about whether the calls of the larger group would continue to proceed on a monthly schedule, as there may not be much to discuss PFAS-wise some months. It was decided that because the calls also serve to occasionally address other environmental issues of possible interest to the group, the calls would continue on the monthly schedule. In the event of no agenda items at all, the call for a given month could be canceled. (That's where sending me agenda items to discuss on the call is very important.)

We have about a month until the next call, so if you come up with any agenda items you'd like addressed on the November call, please send them my way.

To access the conference call on November 7, call in to [REDACTED] and use the **pass code** [REDACTED]. *The conference call will open with a roll call of states.* Once the substantive discussions begin, we ask that participants identify themselves by name and state so we can know who's speaking.

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We look forward to you joining us on November 7.

Bereket Tesfu  
Program Counsel

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Washington, DC 20036

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## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Monday, November 25, 2019 5:09 PM  
**To:** [REDACTED]  
**Subject:** Re: Vermont Attorney General's Office

Dear Mr. Pregger:

I am writing in response to your e-mail dated November 11<sup>th</sup> concerning water quality in Vermont's rivers and lakes. Thank you for reaching out.

We share your concerns about the ecological health of Vermont's waters, including how pollution affects the public's safe enjoyment of this resource. As you probably know, the Attorney General's Office is charged with enforcing Vermont's environmental laws in cooperation with our agency partners, including laws related to water quality. You can see some of the work we've done in this area on our [website](#). Our work is constantly evolving as we continue to receive new cases from the agencies. We also engage in strategic climate litigation with other states, which should have benefits for Vermont's lakes as well, especially in the summer months when the risk of blue-green algae outbreaks is higher. (Information on our multistate work is available [here](#).)

You may also be aware of the cleanup plan for Lake Champlain – the “total maximum daily load” or “TMDL.” This is a comprehensive plan that was developed by the United States Environmental Protection Agency with input from the State of Vermont and other stakeholders. The plan was finalized in 2016 and it includes action items the State must follow to restore the Lake to health. You can read more about it on [EPA's website](#) and on the [Vermont Agency of Natural Resources' website](#).

Unfortunately there is no easy answer. But, we are committed to learning more about the Lake's pollution problem, working to combat climate change, and supporting the State's implementation of the TMDL.

Finally, in your e-mail you mention the contamination of Vermont's waters by substances like PFAS/PFOA chemicals. In June, [our Office filed lawsuits](#) against companies for the manufacturing and distribution of PFAS chemicals and PFAS-containing products in Vermont. The lawsuits name the 3M Company, E. I. du Pont de Nemours and Company (DuPont) and related DuPont companies as the major chemical makers who manufactured and distributed PFAS chemicals and products. The lawsuits seek damages for state-wide harm to Vermont's drinking water and natural resources, including groundwater, surface waters, and wildlife. Both cases are currently pending in court.

Thank you again for reaching out.

Sincerely,

Rob McDougall

Robert F. McDougall  
Assistant Attorney General  
Chief, Environmental Protection Division  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609

(802) 828-3186

[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)



Please consider the environment before printing this e-mail

## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Monday, November 25, 2019 5:09 PM  
**To:** [REDACTED]  
**Subject:** Re: Vermont Attorney General's Office

Dear Ms. Mahoney:

I am writing in response to your e-mail dated November 9<sup>th</sup> concerning water quality in the Winooski River and Lake Champlain. Thank you for reaching out.

We share your concerns about the ecological health of Vermont's waters, including how pollution affects the public's safe enjoyment of this resource. As you probably know, the Attorney General's Office is charged with enforcing Vermont's environmental laws in cooperation with our agency partners, including laws related to water quality. You can see some of the work we've done in this area on our [website](#). Our work is constantly evolving as we continue to receive new cases from the agencies. We also engage in strategic climate litigation with other states, which should have benefits for Vermont's lakes as well, especially in the summer months when the risk of blue-green algae outbreaks is higher. (Information on our multistate work is available [here](#).)

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Unfortunately there is no easy answer. But, we are committed to learning more about the Lake's pollution problem, working to combat climate change, and supporting the State's implementation of the TMDL.

Finally, in your e-mail you mention the contamination of Vermont's waters by substances like PFAS/PFOA chemicals. In June, [our Office filed lawsuits](#) against companies for the manufacturing and distribution of PFAS chemicals and PFAS-containing products in Vermont. The lawsuits name the 3M Company, E. I. du Pont de Nemours and Company (DuPont) and related DuPont companies as the major chemical makers who manufactured and distributed PFAS chemicals and products. The lawsuits seek damages for state-wide harm to Vermont's drinking water and natural resources, including groundwater, surface waters, and wildlife. Both cases are currently pending in court.

Thank you again for reaching out.

Sincerely,

Rob McDougall

Robert F. McDougall  
Assistant Attorney General  
Chief, Environmental Protection Division  
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[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)

 Please consider the environment before printing this e-mail

## McDougall, Robert

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**From:** Lauren Hierl <lhierl@vermontconservationvoters.org>  
**Sent:** Saturday, December 7, 2019 2:10 PM  
**To:** Lauren Hierl, VCV  
**Subject:** You're Invited! Special screening of Dark Waters with reception & panel discussion, Dec 10 in Burlington

Friend,

You're invited to a free, special screening this coming Tuesday, December 10th, of a new film *Dark Waters*, starring Mark Ruffalo, Anne Hathaway and Tim Robbins, which is based on the true story of the lawyer who uncovered the dark secret of one of the world's largest corporations knowingly dumping toxic PFAS chemicals into drinking water supplies across the nation. [Click here to see the film's trailer.](#)

Join us to see this critically-acclaimed film, and to discuss what more Vermont can do about PFAS "forever chemicals." Representatives from the film's production company, Participant, are co-hosting, and will be in Vermont for the reception, which will include free food and drinks, the film screening, and panel.

### Event details - Tuesday, December 10th:

- 5pm - Reception at Revolution Kitchen, 9 Center St, Burlington
- 6pm - *Dark Waters* film screening, Merrill's Roxy Cinema, 222 College St, Burlington
- 8:15pm - Brief panel discussion of PFAS-related policy issues in Vermont

**Please RSVP at this link** - space is limited and we want to make sure to reserve you a seat!

I hope to see you there,  
Lauren

Lauren Hierl  
*Executive Director*  
(she/her/hers)  
**Vermont Conservation Voters**  
Office: (802) 224-9090  
Cell: (802) 552-0769

To learn more about our work, visit: [vermontconservationvoters.org](http://vermontconservationvoters.org)



## McDougall, Robert

---

**From:** C Safar <csafar@msdvt.com>  
**Sent:** Thursday, December 12, 2019 3:15 PM  
**To:** Murphy, Laura  
**Cc:** Iroyer@vtruralwater.org; Andrew Bolduc; McDougall, Robert; Chapman, Matt  
**Subject:** Re: Call re State PFAS Cases

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

Laura

Yes, please. The 17th at 9:30 works, but I need to be done by 10:50 because I have an 11 am call.  
January 7, 8 and 10 all work at those times.

Thank you for keeping me in the loop. I reached out to Shelburne to see if they want to participate through us. I will let you know. I have/will also reach out to a few other municipalities that we have done work for. I will keep you posted if we are listening on their behalf. Right now, I am simply participating on behalf of the Village of Essex Junction.

Claudine



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Claudine C. Safar, Esq.  
Monaghan Safar Ducham PLLC  
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92 Fairfield St.  
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On Dec 11, 2019, at 10:48 AM, Murphy, Laura <[Laura.Murphy@vermont.gov](mailto:Laura.Murphy@vermont.gov)> wrote:

Dear Liz, Andrew, and Claudine,

I believe you've each expressed interest in staying in the loop regarding the State's cases against DuPont et al. If helpful, we'd like to set up a call to give an update on the cases, and are happy to answer questions if we can. If you think other municipalities would be interested in joining, please feel free to invite them.

Would any of these times work?

Tuesday Dec 17, 9:30-11:30  
Tuesday Jan 7, 11:00-12:00

Wednesday Jan 8, 3:30-5:00

Friday Jan 10, 2:00-4:00

Please feel free to reach out with any questions in the interim.

Regards,

Laura

**Laura B. Murphy**

Assistant Attorney General  
Environmental Protection Division  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
(802) 828-1059  
[laura.murphy@vermont.gov](mailto:laura.murphy@vermont.gov)

## McDougall, Robert

---

**From:** Luke Martland <LMartland@leg.state.vt.us>  
**Sent:** Friday, January 17, 2020 10:48 AM  
**To:** Murphy, Laura  
**Cc:** McDougall, Robert  
**Subject:** RE: Briefing Rules 74 and 75

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Thank you.

One follow up question, you said an action pursuant to 3 VSA 807 must be brought within 1 year. What does the 1 year time period come from?

**From:** Murphy, Laura <Laura.Murphy@vermont.gov>  
**Sent:** Friday, January 17, 2020 10:36 AM  
**To:** Luke Martland <LMartland@leg.state.vt.us>  
**Cc:** McDougall, Robert <robert.mcdougall@vermont.gov>  
**Subject:** Briefing Rules 74 and 75

Hi Luke,

Nice chatting with you. Here is our summary judgment brief in the PFOA Rules case. The Standard of Review section is on pages 7-13.

I'm also attaching a filing we did in a Rule 75 case, where the court specifically asked the parties to brief three subject matter jurisdiction issues – talks about the writs, etc. Court agreed it was a certiorari case under Rule 75.

Best,  
Laura

**Laura B. Murphy**  
Assistant Attorney General  
Environmental Protection Division  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
(802) 828-1059  
[laura.murphy@vermont.gov](mailto:laura.murphy@vermont.gov)

## McDougall, Robert

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**From:** Bereket Tesfu <btesfu@naag.org>  
**Sent:** Wednesday, January 22, 2020 5:23 PM  
**To:** Bereket Tesfu  
**Subject:** RE: [PFAS ACTION ITEM] \*January 2\* NAAG national environmental conference call  
**Attachments:** 2020 01 22 Comments\_ANPR PFAS TRI (draft).docx; ANPRM.pdf

**Importance:** High

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

Hello, all. Following up on the e-mail below and the subsequent January conference call, attached is the much-anticipated draft letter from the New York Attorney General's office pertaining to comments on adding PFASs to the Toxics Release Inventory (TRI). (Also attached is the EPA's advanced notice of proposed rulemaking.) Here is a note from Philip Bein pertaining to the attached draft letter:

"Attached is the NYAG's draft for the comment letter on adding PFASs to the Toxics Release Inventory. When you distribute please inform the other AG offices that the end notes are incomplete and we are still working on them. We would like to receive any comments on the draft and sign on by January 29."

Because the EPA deadline to submit comments is **February 3**, and it took longer than expected to put the draft letter together, *time is of the essence* from here on out to meet New York's internal deadline of **January 29** for signatures.

If another conference call is necessary between now and January 29 to discuss the draft letter, I'm more than happy to facilitate that. Please let me know.

If anyone wants to directly reach Philip Bein, he can be contacted at [Philip.Bein@ag.ny.gov](mailto:Philip.Bein@ag.ny.gov).

If you  
Bereket Tesfu  
*Program Counsel*

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**From:** Bereket Tesfu

**Sent:** Monday, December 30, 2019 12:19 PM

**Subject:** [PFAS ACTION ITEM] \*January 2\* NAAG national environmental conference call

**Importance:** High

Hello, everyone. I hope you've been enjoying the holidays. An imminent PFAS action item has arisen that can be addressed on the call this week.

I received the following message from the New York Attorney General's Office:

"State Comments on Rulemaking for Inclusion of PFAS in Toxics Release Inventory

On December 3, 2019, EPA published an advance notice of proposed rulemaking (ANPRM) soliciting comments from the public concerning a possible future rule that would add PFAS to the toxics release inventory (TRI), the list of toxic chemicals subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). A copy of the ANPRM is attached. In addition, the National Defense Authorization Act for Fiscal Year 2020 (NDAA) was passed just days ago. It amends EPCRA by adding various PFAS chemicals to the TRI and by providing for assessment of other PFAS for possible future inclusion. New York believes that the NDAA is an important step forward in including PFAS chemicals on the list so that releases of such chemicals by facilities can be tracked and reported. However, the State believes that the entire class of PFAS chemicals should be included in the TRI. New York is developing comments proposing to add that class to the TRI and wants to solicit other states to join in these comments."

The Federal Register advanced notice is attached to this e-mail. **Comments are due by February 3, 2020**, so the call this week may be the last reasonable opportunity to have as many states as possible in one forum to have a discussion on this issue and possibly coordinate from it.

If you have any other proposed agenda items, please send them my way.

To access the conference call on **January 2, 2020, at 1:00 p.m. (ET)**, call in to [REDACTED] and use the **pass code** [REDACTED]. *The conference call will open with a roll call of states. Once the substantive discussions begin, we ask that participants identify themselves by name and state so we can know who's speaking.*

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We look forward to you joining us on January 2.

Bereket Tesfu  
*Program Counsel*

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Attorneys General of the States of New York and [INSERT]

February 3, 2020

*Via Regulations.gov and First Class Mail*  
Document Control Office (7407M)  
Office of Pollution Prevention and Toxics (OPPT)  
Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460-0001

Re: Comments on the Advance Notice of Proposed Rulemaking, *Addition of Certain Per- and Polyfluoroalkyl Substances; Community Right-to-Know Toxic Chemical Release Reporting* (ANPRM), 84 Fed. Reg. 66369 (Dec. 4, 2019)

Docket ID No. EPA-HQ-TRI-2019-0375

Dear Administrator Wheeler:

In the ANPRM, the Environmental Protection Agency (EPA) requests comments “on which, if any, PFAS should be evaluated for listing [on the Toxics Release Inventory], how to list them, and what would be appropriate reporting thresholds given their persistence and bioaccumulation potential.” 84 Fed. Reg. 66369 (Dec. 4, 2019). More specifically, EPA also seeks comments on “which of the approximately 600 PFAS currently active in U.S. commerce the Agency should consider evaluating for potential addition to the [Toxics Release Inventory],” and comments on “whether there are data available to inform how to list PFAS, *i.e.*, as individual chemical listings, as a single category, as multiple categories or as a combination of individual listings and category listings.” 84 Fed. Reg. at 66373.

As discussed below, the state attorneys general respectfully submit these comments in support of a future rulemaking by EPA to list *per*-fluoroalkyl and *poly*-fluoroalkyl substances (PFASs) on the Toxics Release Inventory (TRI) as a combination of a single category listing for all PFASs and as individual listings for specific compounds in the category. As a family, the close chemical similarities between well-known PFASs and those in the entire chemical category indicates that any member of the family “can be reasonably anticipated to cause” acute and/or chronic harms to human health and adverse effects to the environment, for purposes of listing to the TRI Program. For a number of individual PFAS chemicals, considerable information is already known demonstrating the acute and chronic harms these chemicals pose to human health and their significant adverse effects to the environment. Reporting of these chemicals is feasible because validated and commonly-accepted methods exist to measure the levels of these PFASs in drinking water.

In addition, the attorneys general recommend that EPA set a TRI reporting threshold of one pound for both the PFAS category and individual PFAS chemicals as described below.

## **Background**

### **PFASs**

PFASs have been incorporated into countless consumer products since the 1940s, including textiles with Scotchgard, Teflon products, non-stick cookware, and food packaging. PFASs have also been used for decades as ingredients in firefighting foam used across the country, including by the U.S. military and local fire departments. As the ANPRM points out, PFASs risk harm to the environment and to human health, and numerous PFASs have been found in human blood. PFAS are known as “forever chemicals” because they resist degradation and are persistent in the environment. PFASs also bioaccumulate and are toxic to humans and animals. Although scientific knowledge regarding the toxicity of most PFASs is still developing, PFASs are linked to serious adverse health effects in humans and animals, including reproductive, developmental, cancer, liver, immune, thyroid, and other effects.

### **The Emergency Planning and Community Right-to-Know Act (1986) and the Pollution Prevention Act (1990)**

The TRI Program provides an important system to keep the public and government agencies informed about toxic chemicals in our communities. Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires certain federal and industrial facilities that manufacture, process, or otherwise use chemicals listed in the TRI above threshold quantities to report, on an annual basis, the amounts of these chemicals released into the environment and otherwise managed as waste. EPCRA, 42 U.S.C. § 11023. Likewise, the Pollution Prevention Act (PPA) requires regulated facilities to report pollution prevention and recycling data for chemicals on the TRI. PPA, section 6607, 42 U.S.C. § 13106.

Congress created the TRI Program as part of its response to serious chemical releases in the 1980s from Union Carbide facilities in Bhopal, India, and Institute, West Virginia. Through EPCRA, and later, PPA, Congress sought to support and promote emergency planning and to provide the public with information about releases of toxic chemicals in their communities. The TRI Program serves an essential function by providing information to federal, state, and local governments about releases of toxic chemicals to the environment, incentivizing companies to improve their environmental performance, and aiding in the development of appropriate regulations, guidelines, and standards. 42 U.S.C. §11023(h).



Chemicals are included on the TRI by statutory inclusion by Congress, or by designation by EPA. The agency may add chemicals to the TRI under authority delegated to EPA pursuant to EPCRA based on evidence that a chemical is “known to cause or can be reasonably anticipated to cause” acute or chronic adverse human health effects or significant adverse environmental effects. 42 U.S.C. § 11023(d)(2).

### **The National Defense Authorization Act for Fiscal Year 2020 (NDAA)**

In December of 2019, Congress amended EPCRA through certain provisions of the NDAA by adding certain individual PFAS chemicals to the TRI Program. NDAA, Pub. Law 116-92 (December 20, 2019). These include the PFASs commonly known as PFOA, PFOS, GenX, PFNA, and PFHxS, and certain salts and other compounds associated with these PFASs, along with other PFASs listed under other statutes and regulations. NDAA, section 7321(b)(1). The NDAA also amends EPCRA by establishing a reporting threshold for these PFASs of 100 pounds. *Id.*, section 7321(b)(2). As relevant to this ANPRM, the NDAA also provides for the possible future inclusion of other PFASs into the TRI Program. *Id.*, section 7321(c).

\* \* \*

The undersigned attorneys general believe that the NDAA is an important first step in including PFAS chemicals on the TRI so that governments, communities, and regulated companies themselves can engage in informed decision-making about the lifecycles of such chemicals at covered facilities. As described below, the attorneys general urge EPA to now proceed with a rulemaking to cover the entire family of PFASs, along with certain individual PFAS chemicals, at a reporting threshold of one pound. Our recommendations here echo those in a July 2019 letter sent by twenty-two state attorneys general, including many of those undersigned, to United States Congressional leadership (July 30, 2019 Attorneys General Letter to Congress).<sup>1</sup> Among other things, the letter requested the addition of the entire family of PFASs to the TRI to help identify new potential sources and areas of contamination, at a very low reporting level. As intended by the TRI Program, the actions we recommend below will provide the public with necessary and critical information about releases of PFASs in their communities.

### **Recommendations**

The state attorneys general respectfully make the following recommendations:

#### **Recommendation 1:**

**Add all PFASs to the TRI Program as a single category listing.**

The attorneys general respectfully recommend that EPA include all PFASs, as a class, to the TRI Program. Our recommendation applies to the entire category of PFASs, potentially consisting of more than 10,000 individual chemicals, rather than a more limited coverage of the approximately 600 PFASs the ANPRM states are presently deemed active in U.S. commerce. By casting a wider net, the TRI Program would account for PFASs that may not be purposefully manufactured for commercial use, but that are nevertheless constituents of commercial products. The class of PFASs satisfies EPCRA's listing criteria because they are "known to cause or can reasonably anticipated to cause" acute and/or chronic harm to human health and significant adverse effects to the environment. EPCRA, section 313(d)(2). For clarity, however, we take no position as to whether a maximum contaminant level (MCL) should be established under either federal law or the law of any state for PFASs, as a class, as listing to the TRI Program and the establishment of an MCL serve fundamentally different purposes and involve different criteria.

PFASs commonly analyzed and used in commerce in our states, including *per*-fluoroalkyl carboxylates (such as PFOA) and *per*-fluoroalkyl sulfonates (such as PFOS), can show similar indicia of toxicity, persistence in the environment, and tendency to accumulate ubiquitously in the environment and in biota.<sup>2</sup> Increasingly, industry is substituting *poly*-fluoroalkyl substances for *per*-fluoroalkyl substances, which have been used more traditionally in all manner of consumer products. However, *poly*-fluoroalkyl substances can readily break down or transform to both *per*-fluoroalkyl carboxylates and sulfonates whose toxicity, persistence, and bioaccumulation are well-known.<sup>3</sup> Ultra-short chain PFASs, *i.e.* those with a backbone of less than four carbon molecules, may pose a similar risk to human health and the environment. These PFASs may share similar characteristics with PFASs that are known to be toxic, persistent, and bioaccumulative, *e.g.*, a high degree of fluorination, lack of known degradation mechanism, confirmed environmental occurrence and reasonably assumed health-based toxicological endpoints.<sup>4</sup>

Commonly-used and widely-accepted commercial techniques are available to identify and quantify both short- and long-chain PFAS compounds. Likewise, total ultra-short PFAS concentrations can be readily estimated using a combination of commercially available analytical techniques.<sup>5</sup>

EPA has ample experience listing chemical families as a single category in the TRI Program. For example, the TRI lists all polychlorinated biphenyls (PCBs), a diverse family of compounds, as a single category. EPA has appropriately done so despite the chemical-specific differences in environmental fate and transport processes among individual PCBs as well as health-based impacts. PCBs provide an especially helpful example here as they tend to accumulate or demonstrate harm to humans and animals at many of the same health-based endpoints as PFASs, for example, liver, thyroid, immunological alterations, neurodevelopmental changes,