

## THE MAINE PFAS TRACKER

Pierce Atwood LLP offers this summary of Maine Per- and Polyfluoroalkyl Substances (PFAS) standards as a convenience in evaluating PFAS and tracking Maine Department of Environmental Protection (DEP) regulatory and Maine legislative developments. We update this Maine PFAS Tracker when there are important new actions (if you found this on the Pierce Atwood LLP website, then you are seeing the most recent version). Levels are provided below in parts per million (ppm), parts per billion (ppb), or parts per trillion (ppt), depending on the matrix typically involved.

**WHAT'S NEW IN THIS EDITION?** The state of Maine is currently undertaking several legislative and executive initiatives to monitor and manage PFAS:

### **Maine DEP:**

**1. Remedial Action Guidelines (RAGs):** The DEP is proposing to revise its guidance “Maine Remedial Action Guidelines (RAGs) for Sites Contaminated with Hazardous Substances.” As part of those proposed revisions, the DEP has significantly lowered – and in some cases lowered by orders of magnitude - the RAG thresholds for PFOS, PFOA and PFBS in soil, groundwater, and fish. The DEP has also added soil, groundwater, and fish thresholds for PFBA, PFHxS, PFHxA, PFNA, & HFPO-DA. In 2022 the DEP conducted a study to determine background concentrations of five PFAS chemicals – PFBA, PFHxA, PFNA, PFOS and PFOA - in the environment. The study found that although PFAS is an anthropogencontaminant, several PFAS chemicals are ubiquitous in Maine Soil. The DEP has also incorporated the results of this study in the proposed RAG guidance. The DEP is currently accepting public comments on the proposed revisions until October 13, 2023.

**2. PFAS in Products:** Following discussions with stakeholders, and more than 3,000 PFAS reporting extension requests from manufacturers, the Maine Legislature [amended](#) 38 M.R.S.A. § 1614 (PFAS in Products Law). The amendments, which were signed by Governor Mills on June 8, 2023, extend the deadline for reporting intentionally added PFAS in products from January 1, 2023 to January 1, 2025, among other changes described below. Revisions to DEP’s proposed Chapter 90 rulemaking, which has been paused as the DEP and Maine legislature work over the course of the fall to implement additional changes to the law, are anticipated. Additionally, from January through March 2024, the DEP will accept proposals from both individual companies and industrial sectors seeking “currently unavoidable use” (CUU) exemptions from the intentionally added PFAS in Products ban that will go into effect in 2030 under the PFAS in Products statute. Later this year, the DEP will initiate rulemaking for the CUU exemptions. For more information about how to submit proposals to the DEP, please review our [January 2024 client alert](#).

**3. Monitoring:** The DEP has been monitoring PFAS contamination in sludge, septage, leachate, and remediation sites across the state. They have launched an interactive [PFAS Investigation Map](#) and published a [report](#) on Wastewater Effluent Monitoring, finding the concentration of PFAS in wastewater treatment facilities across the state.

### **2022/2023 Legislative Session:**

In addition to amending the PFAS in Products Law, this session passed one PFAS-related bill, killed eight PFAS-related bills, and carried over four PFAS-related bills. The legislature passed [No. 217](#) “An Act to

Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances” that promulgated the amendments to the PFAS in Products Law.

The eight bills that were not passed during this legislative session are:

- [No. 73](#) “An Act to Require Bottled Water Companies to Monitor for Perfluoroalkyl and Polyfluoroalkyl Substances”
- [No. 242](#) “An Act to Clarify That Animal Health Products Are Exempt from the Perfluoroalkyl and Polyfluoroalkyl Substances Reporting Law”
- [No. 169](#) “An Act to Amend and Clarify the Laws Governing Perfluoroalkyl and Polyfluoroalkyl Substances and Other Harmful Chemicals”
- [No. 171](#) “An Act to Provide That All Rules Regarding Perfluoroalkyl and Polyfluoroalkyl Substances Are Major Substantive Rules”
- [No. 188](#) “An Act to Require the Department of Environmental Protection to Pay for Certain Water Tests for Perfluoroalkyl and Polyfluoroalkyl Substances”
- [No. 304](#) “An Act to Establish Statewide Standards for Perfluoroalkyl and Polyfluoroalkyl Substances”
- [No. 1214](#) “An Act to Clarify the Laws to Combat Perfluoroalkyl and Polyfluoroalkyl Substances Contamination”
- [No. 1273](#) “An Act to Exempt Some Businesses from Certain Laws Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in Accordance with the Size of the Business”

The four bills to be carried over into the next legislative session are:

- [No. 75](#) “An Act to Establish Maximum Contaminant Levels Under the State’s Drinking Water Rules to Prohibit Certain Perfluoroalkyl and Polyfluoroalkyl Substances”
- [No. 277](#) “An Act Regarding Perfluoroalkyl and Polyfluoroalkyl Substances”
- [No. 1537](#) “An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution and to Provide Additional Funding”
- [No. 1960](#) “An Act to Support Farming in Maine by Extending the Deadline for Manufacturers of Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances to Report on Those Products”

#### **EPA:**

**1. PFAS Reporting:** At the federal level, the Environmental Protection Agency (EPA) on October 10, 2023, the EPA published in the [Federal Register](#) its final rule establishing reporting and recordkeeping requirements for PFAS under the Toxic Substances Control Act (TSCA), triggering an effective date of November 13, 2023. Under this rule, entities that manufacture (including import) or have manufactured PFAS in any year since January 1, 2011, have 18 months following the effective date of the rule (24 months for small article importers) to submit information to EPA regarding PFAS uses, production volumes, byproducts, disposal, exposures, and existing information on environmental or health effects. This is a one-time reporting requirement that covers 12 calendar years. Records that document any information reported to EPA must be maintained for five years.

**2. CERCLA Designation:** EPA has delayed its [rulemaking](#) in designating PFOA and PFOS as Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous

substances to February 2024. The rulemaking will have substantial impacts to the state because Maine considers any substances deemed hazardous under CERCLA as a Maine hazardous substance regulated under the Maine Uncontrolled Hazardous Substance Sites Law.

The following tracker provides up-to-date information on standards, regulatory actions, and legislation.

## Maine

### I. Maine PFAS Screening Levels (see [June 2021 summary](#))

#### 1. Maine Drinking Water Maximum Contaminant Levels

PFOA, PFOS, PFHpA, PFHxS, PFNA, and PFDA Alone or Combined 20 ppt

This interim standard was established on June 21, 2021, with the signing of P.L. 2021, c. 82.

**Maine DEP [Chapter 418](#), Beneficial Use of Solid Wastes, Appendix A – screening concentration – (secondary materials)**

	PPM	PPB	PPT
PFOA	.0025	2.5	2,500
PFOS	.0052	5.2	5,200
PFBS	1.9	1,900	1,900,000

These concentrations are also being applied as screening levels to residuals regulated under DEP [Chapter 419](#), Agronomic Utilization of Residuals. If screening levels are exceeded, a “closer look” by the Department will occur. See Memorandum from David Burns, DEP to licensed facilities that land apply, compost, or process sludge in Maine, RE: Requirement to analyze for PFAS compounds, March 22, 2019 (available [here](#)).

Maine plans to adopt the federal EPA PFAS regulations once the Rule is promulgated. The Final Rulemaking for the Maine Drinking Water Maximum Contaminant Levels is expected to be [filed](#) on or before June 1, 2024.

#### 2. Maine DEP Soil Remedial Action [Guidelines](#) (ppm) effective May 1, 2021

	PFBS	PFOS	PFOA
Leaching to Groundwater	7.1	0.0036	0.0017
Residential	1,700	1.7	1.7
Commercial	22,000	22	22
Park User	4,900	4.9	4.9
Recreator (Sediment)	5,700	5.7	5.7
Construction Worker	51,000	5.1	5.1

**3. Maine DEP Groundwater Remedial Action [Guidelines](#) (ppb) effective May 1, 2021**

	PFBS	PFOS	PFOA
Residential	400	0.04*	0.04*
Construction	100,000	750	750

The DEP Water Remedial Action Guidelines incorporate a standard that is the sum of a group of PFAS compounds (termed Class II PFAS) that currently includes: PFHxS, PFNA, PFHpA, PFOA, and PFOS.

**4. Maine DEP Fish Tissue Remedial Action [Guidelines](#) (mg/kg) effective May 1, 2021**

PFBS	52
PFOS	0.052
PFOA	0.052

As noted above, the DEP has proposed revisions to the RAGs which would significantly lower the RAG thresholds and expand the number of PFAS chemicals subject to RAGs.

**5. Maine Foodstuffs [Action Levels](#)**

	PFOS
Milk	210 ppt
Beef	3.4 ng/g

**6. Maine Crop-Specific Soil Screening Levels for Dairy Farms [Action Levels](#) (PFOS only)**

	SOIL TO HAY TO MILK	SOIL TO CORN-SILAGE TO MILK	SOIL TO HAY AND CORN-SILAGE TO MILK
Grass-Based Farm	6.8 ng/g	120 ng/g	6.4 ng/g
Average Maine Farm	13.8 ng/g	54.8 ng/g	11.0 ng/g

**II. Maine DEP Actions**

The state of Maine is currently undertaking several [initiatives](#) to manage and abate PFAS in our natural environment and in our products. These initiatives include monitoring PFAS levels in soil and groundwater at sludge and septage sites, leachate testing, and investigating PFAS in remediation sites across the state.

Since 2021, the DEP has been developing and implementing a program to monitor PFAS in areas that have been covered with sludge and septage by testing the soil and groundwater. The state is monitoring the soil at these land sites and nearby drinking water wells. When the DEP identifies sources of well water that exceed the interim limit for PFAS, the agency coordinates with homeowners to ensure that they have access to safe drinking water.

Beginning in 2021, the state has been monitoring and testing leachate (contaminated liquid draining from landfills) for PFAS. Sampling will continue through the fall/winter of 2023. DEP is also monitoring and testing PFAS at remediation sites across the state.

Notably, Maine has begun the process of regulating PFAS in products. Since the law's recent amendment, the PFAS in Products Program requires manufacturers to report products containing intentionally added PFAS compounds by January 1, 2025. The purpose of this initiative is to address the "imminent threat of further contamination of soil and water in the State." LD 217, 131st Legislature. For more information, please see the "[What's New in this Edition](#)" section at the top of this report.

### III. Prior Legislation

#### 1. *An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances*

Following discussions with stakeholders, and more than 3,000 PFAS reporting extension requests from manufacturers, the Maine Legislature [amended](#) 38 M.R.S.A. § 1614 (PFAS in Products Law). The amendments, which were signed by Governor Mills on June 8, 2023, by:

- a. Extending the deadline for reporting intentionally added PFAS in products from January 1, 2023 to January 1, 2025
- b. Requiring manufacturers to provide a brief description of any products containing intentionally added PFAS and report their annual state or national sales volume by product unit
- c. Allowing companies to report the total amount of organic fluorine in their product if the PFAS level is unknown
- d. Exempting manufacturers with 25 or fewer employees
  - a. Exempting used products or used product components from PFAS reporting requirements
- e. Prohibiting the sale and distribution of products containing intentionally added PFAS if the manufacturer has failed to meet the reporting requirements (subject to exceptions)
- f. Applying the law retroactively from January 1, 2023

#### 2. *Resolve, To Address Perfluoroalkyl and Polyfluoroalkyl Substances Pollution at State-owned Solid Waste Landfills*

Under this law – which was approved by Governor Mills on May 2, 2022 – the Department of Administrative and Financial Services (DAFS) and Bureau of General Services (BGS) must conduct a study of methods for treating leachate. The purpose of the study is to evaluate the feasibility of installing treatment technologies that can reduce PFAS concentrations in leachate to below the interim drinking water standard (20 ppt) in Maine's state-owned landfills. In January of 2023, the DAFS and BGS published a [study](#) summarizing treatment alternatives for reducing PFAS in leachate from State-owned landfills and the projected costs associated with implementation. Enacted by P.L. 2022, c. 172.

3. *An Act to Require the Registration of Adjuvants in the State and to Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances*

On April 28, 2022, the legislature approved a law prohibiting the sale and distribution of pesticides that contain PFAS. The law will go into effect starting January 1, 2030. Governor Mills allowed the bill to become law without her signature. See 7 M.R.S. § 604, et seq., enacted by P.L. 2022, c. 673.

4. *An Act to Prevent the Further Contamination of the Soils and Water of the State*

On April 20, 2022, Governor Mills approved a law that banned the land application of sludge generated from municipal, commercial, or industrial wastewater treatment plants, compost produced from sludge, or any other materials derived from sludge. The law also banned the sale of compost and other materials derived from sludge and limited the spreading of septage (waste from septic tanks). See 38 M.R.S. § 1306, enacted by P.L. 2022, c. 641.

5. *An Act Regarding the Statute of Limitations for Injuries or Harm resulting from Perfluoroalkyl and Polyfluoroalkyl Substances*

On June 22, 2021, the Legislature enacted, and Governor Mills approved, a new statute of limitations for causes of actions arising out of harm or injury caused by a PFAS substance. Under the new statute of limitations, a plaintiff may bring suit within six years of the date the plaintiff discovers or reasonably should have discovered the harm or injury. See 14 M.R.S. § 752-F, enacted by P.L. 2021, c. 328.

6. *An Act to Investigate Perfluoroalkyl and Polyfluoroalkyl Substance Contamination of Land and Groundwater*

On July 15, 2021, this budget bill became law without the Governor's signature. It establishes the Land Application Contaminant Monitoring Fund, a revolving fund to test and monitor soil and groundwater for PFAS and other contaminants and for other related activities, such as mitigating contamination through the installation of drinking water filtration systems or other remedial actions. Investigation and response activities are to be funded through a handling fee assessed by the DEP on sludge or septage beginning January 1, 2022. Under the Act, the DEP must develop a program to evaluate soil and groundwater for PFAS substances where sludge or septage was land applied and to test landfill leachate, and beginning on January 15, 2023, DEP must submit a report to the Legislature regarding its use of the fund, including a summary of contamination investigated and identified. See 38 M.R.S. § 1310-B-1, et seq., enacted by P.L. 2021, c. 478.

7. *An Act Regarding Uncontrolled Hazardous Substance Sites*

Approved by Governor Mills on June 8, 2021, this legislation amended the definition of a hazardous substance under the Maine Uncontrolled Hazardous Substance Sites Law (Maine's "Superfund") to include any substance defined as a hazardous substance or pollutant or contaminant under the United States Comprehensive Environmental Response, Compensation,

and Liability Act of 1980, 42 U.S.C. § 9601 (CERCLA). The legislation exempted from liability publicly owned treatment works and public water systems that contributed effluent or sewage sludge to an uncontrolled site. See 38 M.R.S. § 1362 and 1367-B, amended by P.L. 2021, c. 117. On August 26, 2022, the EPA proposed a rule classifying PFOS and PFOA as hazardous substances under CERCLA. Once the final rule goes into effect, PFOS and PFOA will be regulated as hazardous substances under both CERCLA and Maine’s Superfund law.

8. *An Act to Restrict the Use of Perfluoroalkyl and Polyfluoroalkyl Substances in Firefighting Foam*

On July 9, 2021, Governor Mills approved this legislation restricting the discharge, manufacture, sale, and distribution of firefighting or fire-suppressing foam to which PFAS have been intentionally added, except in certain limited exceptions, beginning on January 1, 2022. The legislation also requires that a person discharges any such foam to report the discharge to the DEP within 24 hours after the discharge. See 38 M.R.S. § 424-C, enacted by P.L. 2021, c. 449.

9. *An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*

This legislation became law on July 15, 2021, without the Governor’s signature and amended on June 8, 2023. Beginning on January 1, 2025 (originally January 1, 2023), manufacturers of products for sale in Maine that contain intentionally added PFAS must provide to DEP certain information about the product, including the amount and type of PFAS in the product. More information on the recent amendments to this law may be found in the [“What’s New in this Edition”](#) section at the top of this report. See 38 M.R.S. § 1614, et seq., enacted by P.L. 2021, c. 477. For more information visit the [DEP’s PFAS in Products FAQs page](#).

10. *Resolve, Directing the Board of Pesticides Control to Gather Information Related to Perfluoroalkyl and Polyfluoroalkyl Substances in the States*

Approved by Governor Mills on June 21, 2021, this legislation requires the Board of Pesticides Control to require manufacturers and distributors of registered pesticides to report whether the product has been stored, distributed, or packaged in a fluorinated high-density polyethylene container and whether a PFAS substance is in the formulation of the registered pesticide. See P.L. 2021, c. 83.

11. *Maine DEP Chemicals of High Concern Listing and Reporting Requirements*

PFOS and its salts were listed in July 2015 as “Chemicals of Concern,” under the Toxic Chemicals in Children’s Products Law, 38 M.R.S. §1693-A(1), et seq. At the same time, PFOS and its salts were also listed as “Chemicals of High Concern.” The listing qualifies a chemical for further regulation under this law.

On July 2, 2020, the Maine Board of Environmental Protection (BEP) adopted [regulations in Chapter 890](#) designating PFOS and its salts as priority chemicals. The regulations adopted further require that manufacturers or distributors of children’s products for sale within the state of Maine that contain PFOS or its salts report to the DEP certain product information, including the amount of PFOS or its salts in each unit and the function of the chemical in the product.

12. *An Act to Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging*

Approved by Governor Mills on June 13, 2019, this Act amends the 1989 Reduction of Toxics in Packaging law, which applied to four metals in all packaging or packaging components. The amendments expand the law to reach phthalates, PFAS, and additional "chemicals of concern" in food packages. The law now includes specific bans and authorizes additional DEP rulemakings that may lead to bans or other requirements, giving the department FDA-like authority. See 38 M.R.S. § 1731 et seq., amended by P.L. 2019, c.277.

#### IV. Other Regulatory Actions and Guidance

##### Do Not Eat Advisories

1. *Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Maine Center for Disease Control and Prevention (MECDC) "Do Not Eat" Advisory for Freshwater Fish*

On May 5, 2022, the MDIFW and the MECDC issued a "Do Not Eat" advisory for freshwater fish taken from Fish Brook Area and Police Athletic League Ponds, both located in Fairfield, due to PFAS contamination. The MECDC also recommended limiting consumption of fish caught from Durepo Pond and Limestone Stream (Limestone), Estes Lake and Mousam River (Sanford), Messalonskee Pond (Oakland/Waterville), the Presumpscot River from Saccarappa Falls to Presumpscot Falls (Falmouth/Westbrook) and Unity Pond (Unity). Information about the advisory, including information about consumption recommendations in each waterbody, can be found [here](#).

2. *MDIFW and MECDC "Do Not Eat" Advisory for Deer*

On November 23, 2021, the MDIFW and the MECDC issued a "Do Not Eat" advisory for deer taken in the greater Fairfield and Skowhegan area due to PFAS contamination. Information about the advisory can be found [here](#).

3. *Governor Mills' Executive Order No. 5 FY 19/20 – An Order to Study the Threats of PFAS Contamination to Public Health and the Environment*

On March 6, 2019, Governor Mills issued "[An Order to Study the Threats of PFAS Contamination to Public Health and the Environment](#)." Citing the need for a coordinated response and the necessity of studying PFAS distribution, assessing potential impacts, and recommending strategies to mitigate the impacts, Governor Mills established a task force comprised of the commissioners of four state agencies, as well as a public health physician and representatives selected by the commissioners of the Maine DEP and Maine DHHS from several different specified groups or entities. The Task Force issued its final report in January 2020, [Managing PFAS in Maine](#).



## United States

### I. EPA Action

#### 1. TSCA PFAS Reporting Requirements

On October 11, 2023, the EPA published a [final rule](#) establishing a one-time reporting and recordkeeping requirement for PFAS under TSCA. The rule will become effective on November 13, 2023. The rule requires that entities that manufacture (including import) or have manufactured PFAS at any time since January 1, 2011, report information to EPA regarding PFAS uses, production volumes, byproducts, disposal, exposures, and existing information on environmental or health effects. The scope of the rule is broad; EPA expanded its definition of PFAS subject to the rule, there is no de minimis volume threshold, and the rule lacks typical TSCA exemptions, such as for research and development, byproducts, and impurities.

EPA also finalized the requirement to include PFAS-containing articles (which are manufactured goods or finished products, either imported or domestically produced), but clarified that reporting is only required to the extent that the manufacturer (including importer) of PFAS within articles knows or can reasonably ascertain the requested information. Importantly, EPA further clarified that “entities who solely process, distribute, and/or use PFAS, and do not manufacture (including import) PFAS for a commercial purpose, are not required to report under this rule.” In other words, if a product manufacturer does not manufacture (including import) the PFAS itself, but only uses it (including as part of an article or other product), the product manufacturer wouldn’t be required to report under this rule.

For more information, please see our [client alert](#) on this rule.

#### 2. Proposed PFAS National Primary Drinking Water Regulation

On March 14, 2023, the EPA [announced](#) the proposed National Primary Drinking Water Regulations (NPDWR) for six PFAS compounds. The proposed regulations set the drinking water enforceable limits to 4.0 ppt for PFOA and PFOS, and 1.0 (unitless) for PFNA, PFHxS, PFBS, and HFPO-DA. Furthermore, this proposed regulation would require public water systems to monitor, notify the public, and reduce the levels of PFAS compounds in drinking water if they exceed the proposed standards. The EPA anticipates that this regulation will be finalized by the end of 2023. The state of Maine plans to adopt these standards by June 1, 2024. However, the state’s proposed timeline is flexible relative to federal regulatory delays.

#### 3. National PFAS Testing Strategy Test Order

On June 6, 2022, the EPA issued its first test order under the EPA’s National PFAS Testing Strategy. The EPA’s National PFAS Testing Strategy requires manufactures to provide the EPA with toxicity data and information on various PFAS. The EPA has divided PFAS into categories based on structure, physical-chemical properties and existing test data on toxicity and will

require test orders for each category. The EPA's first test order includes more than 2,000 PFAS chemicals. More information about the National PFAS strategy can be found [here](#).

#### **4. Emerging Contaminant Funding**

On June 15, 2022, the EPA announced that it is making available \$1 billion in grant funding through President Biden's Bipartisan Infrastructure Law to address PFAS and other emerging contaminants in drinking water. The goal of the funding is to benefit small or disadvantaged communities with planning, testing, and remediating emerging contaminants in drinking water. More information about the EPA's emerging contaminant funding can be found [here](#).

#### **Contact Information**

If you have questions or concerns about PFAS issues, please contact one of our environmental law attorneys: [Lisa Gilbreath](#) at 207.791.1397, [Brian Rayback](#) at 207.791.1188, or [Georgia Bolduc](#) at 207.791.1249.

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