

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: On January 31, 2022, the Maine DEP briefed the Maine Legislature's Environmental and Natural Resources (ENR) Committee regarding [Public Law 2021, Chapter 478, An Act To Investigate Perfluoroalkyl and Polyfluoroalkyl Substance Contamination of Land and Groundwater](#), which was enacted on July 15, 2021 and became effective on October 18, 2021. This law requires the DEP to develop a program to evaluate soil and groundwater for PFAS substances where sludge or septage was land applied and to test landfill leachate. DEP reports that it has hit the ground running, looking to hire 11 new full time positions and 6 temporary positions as part of its plan to test approximately 700 sites by the end of 2025. DEP is developing sampling plans for ambient background and effluent discharge, and according to its briefing of the ENR Committee, DEP has requested that 25 landfill facilities in Maine each complete 5 rounds of testing by the end of 2022.

PL 2021 is part of a suite of PFAS legislation enacted in 2021 that includes laws setting new interim drinking water standards; establishing a new six-year statute of limitations for any cause of action arising out of discovery of harm caused by PFAS contamination; and establishing the first ban on the sale of products containing intentionally-added PFAS (starting in 2030). Also in 2021, the DEP released new Remedial Action Guidelines (RAGs) for contaminated sites with more stringent soil leaching to groundwater standards for PFAS.

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

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

1. Maine Drinking Water Maximum Contaminant Levels

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

2. 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 (link below).

3. 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

4. Maine DEP Water Remedial Action [Guidelines](#) (ppb) effective May 1, 2021

	PFBS	PFOS	PFOA
Residential	400	0.40*	0.40*
Construction	100,000	750	750

The incorporates for the residential drinking water pathway 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.

5. Maine DEP Fish Tissue Remedial Action [Guidelines](#) (ppm) effective May 1, 2021

PFBS	52
PFOS	0.052
PFOA	0.52

6. Maine Foodstuffs Action Levels

	PFOS
Milk	210 ppt
Beef	3.4 ng/g

7. Maine Crop-Specific Soil Screening Levels for Dairy Farms (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. 2021 LEGISLATION

1. 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.

2. 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.

3. 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. 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.

4. *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.

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

This legislation became law on July 15, 2021, without the Governor's signature. Beginning on January 1, 2023, manufacturers of products for sale in Maine that contain intentionally-added PFAS must provide notice to DEP certain information about the product, including the amount and type of PFAS in the product. Effective January 1, 2023, no carpet, rug, or fabric treatment with intentionally-added PFAS may be sold in Maine. As of January 1, 2030, no product with intentionally-added PFAS may be sold in Maine unless the DEP determines that the PFAS is a currently unavoidable use. See 38 MR.S. § 1612, et seq., enacted by P.L. 2021, c. 477.

6. *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.

III. PRIOR LEGISLATION RELATED TO PFAS

1. *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. §1691, 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.

2. *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

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

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

2. *PFAS Soil and Groundwater Evaluation of Sludge and Septage Sites*

Beginning in November 2021, DEP initiated an investigation into the presence of PFAS contamination at sites where sludge and/or septage were historically land applied at locations throughout Maine. Sites have been identified and prioritized to designate the schedule for sampling. Further information about the DEP's sampling schedule and investigation can be found [here](#).

3. *Leachate Testing*

On September 1, 2021, the MDEP [sent a letter to solid waste landfills](#) that manage leachate requiring that leachate be tested for PFAS beginning on October 18, 2021. Five rounds of sampling are required, each round collected during the fall and spring beginning in fall 2021 and continuing until fall 2023.

4. *DEP Letter to EPA*

This [February 1, 2021 letter to EPA](#), authored by the heads of state environmental regulatory agencies in New England, urges federal action on PFAS to create consistent, nation-wide standards.

5. *DEP Memorandum to Licensed Facilities that Land Apply, Compost, or Process Sludge in Maine*

This [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, requires testing of certain materials for certain PFAS. All biosolids/sludge program licensees and biosolids/sludge composting facilities are directed to test their material for PFOA, PFOS, and PFBS, and to update their Sampling and Analytical Work Plan to include sampling and analysis for these compounds, before any additional land application of these materials. Includes detailed sampling and analytical recommendations.

V. 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](#), with a significant number of recommendations, including:

- A majority (8) of Task Force members recommend that the Legislature consider revising the statute of limitations for private claims to be within six years of discovery of PFAS contamination on private property.
- A majority (9) of Task Force members support legislation introduced by DEP to amend Maine’s Uncontrolled Hazardous Substance Sites Law to include pollutants or contaminants, which would give the state authority to require the removal and treatment of PFAS when such substances pose a danger to public health.
- A majority (8) of Task Force members recommend that the state require manufacturers to report the intentional use of PFAS of concern in consumer products and to require the use of safer alternatives when they are available. The state should also discourage non-essential uses of PFAS in Maine by requiring those uses to be phased out. Legislation should be introduced to require this where authority does not already exist.
- A majority (9) of Task Force members recommend Maine accelerate its ongoing efforts to sample for PFAS in prioritized locations, analyze sampling results for patterns, and refine models of PFAS fate and transport. The highest priority should be to identify and eliminate current human exposures that have the potential to exceed health-based guidelines for drinking water and screening levels for food products. The highest priority locations for sampling should include locations where Class B AFFF has been discharged, near unlined landfills, and where wastewater waste residuals were utilized on fields that produce crops for human consumption or

feed.

- The Task Force unanimously supports testing of 600 public water systems for PFAS.
- The Task Force unanimously supports recommending legislation to require fire service organizations to report discharges of Class B AFFF to the environment and legislation requiring all fire departments to report the locations of all known past fire training activities that utilized AFFF or other PFAS-containing material.
- A majority (9) of Task Force members recommends that Maine DEP consider establishing an air deposition sampling program for a suite of PFAS chemicals to protect drinking water supplies and the natural environment.

The Task Force unanimously recommends that the ME CDC consider applying the EPA health advisory level to the sum of at least PFHxS, PFNA, PFHpA, PFOA, and PFOS detected in drinking water.

Contact Information

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

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