

## THE MAINE PFAS TRACKER

### Maine Standards and Proposed Actions

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 Maine Board of Environmental Protection (BEP) adopted new regulations requiring manufacturers and distributors to report product information about certain children's products offered for sale within the State of Maine. See Section VI below for details.

#### I. **Maine Drinking Water Program Guidance, Department of Health and Human Services**

PFOA & PFOS Combined 70 ppt

This standard is taken from the U.S. Environmental Protection Agency Drinking Water Health Advisory of 2016. ME CDC, Dec. 2016 provided the same standard.

#### II. **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).

**III. Maine DEP Soil Remedial Action Guidelines (ppm) effective October 19, 2018**

	<b>PFBS</b>	<b>PFOS</b>	<b>PFOA</b>
Leaching to Groundwater	7.1	0.021	0.0095
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

**IV. Maine DEP Water Remedial Action Guidelines (ppb) effective October 19, 2018**

	<b>PFBS</b>	<b>PFOS</b>	<b>PFOA</b>
Residential	400	0.40	0.40
Construction	100,000	750	750

These guidelines state, “For PFOA and PFOS, use EPA health advisory where groundwater is used or may be used for human consumption.”

In the January 2020 PFAS Task Force Report, DEP stated that it “recommends treatment or replacement of drinking water supplies when the sum of all measured PFAS exceeds 400 ppt.”

**V. Maine DEP Fish Tissue Remedial Action Guidelines (ppm) effective October 19, 2018**

PFBS	52
PFOS	0.052
PFOA	0.52

**VI. 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.

**VII. 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. (See below for a description of LD 1923.)
- 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.

#### **VIII. Maine 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.

#### **IX. Maine DEP Proposed Regulations and Other Guidance**

1. Maine DEP Bureau of Remediation and Waste Management, Division of Technical Services [Memorandum](#), To: Carla Hopkins, Environmental Specialist IV, cc: David Burns, Acting Bureau Director, From: Kelly Perkins, Chemist 3, Date: March 26, 2019, Re: Per- And Polyfluoroalkyl Substances (PFAS) Laboratory Recommendations. Suggests items for discussion with laboratories before analysis of samples.

#### **X. Recent Legislation - *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.

**XI. Proposed Legislation**

1. PFAS as Hazardous Substances under Maine's Superfund Law

[LD 1923, HP1371](#) - An Act To Define as a Hazardous Substance under Maine Law Any Substance Defined under Federal Law as a Hazardous Substance, Pollutant or Contaminant was submitted by the Department of Environmental Protection and printed January 6, 2020. It would add not only all PFAS, but all "Pollutants and Contaminants" to the Maine Uncontrolled Hazardous Substance Sites Law (Maine's "Superfund"). Thereafter, DEP would have authority to designate sites, require cleanups, and seek cost recovery for addressing PFAS contamination and all other pollutants and contaminants. The bill has been voted ought-to-pass by the committee of jurisdiction and additional language is being created.

2. Report Discharges of AFFF and Information About Products Containing PFAS

[LD 2147, HP 1536](#) – An Act to Require Reporting of Perfluoroalkyl and Polyfluoroalkyl Substances, PFAS, in Products and of Discharges of Firefighting Foam Containing PFAS was submitted by the Governor and printed March 10, 2020. It would require any person causing a discharge of AFFF into any surface or ground waters, or land overlying those waters to report the discharge within 24 hours of occurrence. The legislation also requires manufacturers of final products containing PFAS to report information about the product, including the reason PFAS was used in the product and the amount and quantity of PFAS.

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**PFAS Names and CAS Numbers**

Perfluorobutanesulfonic acid (PFBS) CAS # 375-73-5, 59933-66-3

Perfluorooctanesulfonic acid (conjugate base perfluorooctanesulfonate) (PFOS) CAS # 1763-23-1

Perfluorooctanoic acid (PFOA) (conjugate base perfluorooctanoate) CAS # 335-67-1

**Contact Information**

If you have questions or concerns about PFAS issues, please contact one of our environmental law attorneys: [Ken Gray](#) at 207.791.1212, [Emily Dupraz](#) at 207.791.1231, [Bill Taylor](#) at 207.791.1213, or [Lisa Gilbreath](#) at 207.791.1397.

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