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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?

Following a landmark legislative session in 2021 in which the Maine Legislature passed a suite of PFAS legislation (see Section III below), this legislative session the Legislature again enacted a number of PFAS laws (See Section II below). These laws banned land-spreading of sludge, banned the sale of pesticides containing PFAS (starting in 2030), and authorized a task-force to determine the feasibility of treating leachate – a liquid by-product from landfills – to reduce PFAS concentrations.

Meanwhile the Maine DEP has been working to promulgate regulations following the PFAS laws enacted in 2021, particularly P.L. 2021, c. 447, which requires companies to provide to DEP certain information about their products, including the amount and type of PFAS in the products, and starting in 2030, bans the sale of products containing intentionally-added PFAS. We expect DEP to initiate a public rulemaking process to implement these new laws, found in 38 MRS § 1614, imminently. The DEP has also worked to expand its PFAS soil and groundwater testing taskforce and has been 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. The DEP is also monitoring PFAS concentrations in leachate and has requested that 25 landfill facilities in Maine each complete 5 rounds of testing by the end of 2022.

At the federal level, the EPA has released interim drinking water health advisory levels (HALs) for two PFAS chemicals – PFOA and PFOS – and final drinking water HALs for two other PFAS chemicals - PFBS and HFPO (also known as GenX). The EPA's interim drinking water advisory sets HALs for PFOA and PFOS at 0.004 parts per trillion (ppt) and 0.02 ppt, respectively, a much lower standard than the EPA's previous guidance, which set HALs for PFOA and PFOS at 70 ppt. These new HALs are below the level of both detection (determining whether a substance is present) and quantitation (the ability to determine reliably how much of a substance is present). An EPA fact sheet on the new levels is available here. The EPA has also invited states to apply for funding to address PFAS and other emerging contaminants in drinking water and has begun issuing test orders requiring manufacturers to report toxicity data and other information for particular PFAS to the EPA.

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 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

5. 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. **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. 2022 Legislation

1. *Resolve, To Address Perfluoroalkyl and Polyfluoroalkyl Substances Pollution at State-owned Solid Waste Landfills (L.D. 1875)*

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. By January 15, 2023 DAFS and BGS must submit to a designated legislative committee a report summarizing their findings. Enacted by P.L. 2022, c. 172.

2. *An Act to Require the Registration of Adjuvants in the State and to Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances (L.D. 2019)*

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.

3. *An Act to Prevent the Further Contamination of the Soils and Water of the State (L.D. 1911)*

On April 20, 2022 Governor Mills approved a law which 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.

III. Prior 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 Polyfluroalkyl 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*
6. 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 to DEP certain information about the product, including the amount and type of PFAS in the product. The DEP intends to issue a proposed rulemaking on reporting requirements this summer and is holding stakeholder meetings concerning those requirements on June 30, 2022. 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. § 1614, et seq., enacted by P.L. 2021, c. 477. For more information visit the DEP's PFAS in Products FAQs page. *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.

7. *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.

8. *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 area due to PFAS contamination. Information about the advisory, including a map of the advisory area, can be found here.

Testing

3. *PFAS Soil and Groundwater Evaluation of Sludge*

Beginning in November 2021, DEP initiated an investigation into the presence of PFAS contamination at sites where sludge was historically land applied at locations throughout Maine. Sites have been identified and prioritized to designate the schedule for sampling. On April 22, 2022, DEP released preliminary results of PFAS concentrations found in private drinking water wells in first tier of towns sampled.

Further information about the DEP's sampling schedule and investigation can be found here.

4. *PFAS Soil and Groundwater Evaluation of Septage*

DEP announced that in May 2022, it will initiate an investigation into the land application of septage. Land application of septage will be investigated separately from sludge because septage is licensed and managed differently than sludge. More information about the DEP's sampling schedule can be found here.

5. *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.

6. *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.

7. *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.

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.

United States

I. EPA Action

1. **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.

2. **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.

3. **Drinking Water Health Advisories (ppt)**

On June 15, 2022, the EPA released interim drinking water health advisory levels (HALs) for two of the most common PFAS chemicals, PFOA and PFOS, and final drinking water HALs for two other PFAS chemicals, PFBS and HFPO (also known as GenX). The EPA's interim drinking water health advisory updates the EPA's previous guidance from 2016, which set HALs for PFOA and PFOS at 70 parts per trillion. The EPA's final drinking water health advisory for PFBS and HFPO is the first time the EPA has set drinking water HALs for PFBS and HFPO. Notably, the new HALs for PFOA and PFOS are below the level of both detection (determining whether a substance is present) and quantitation (the ability to determine reliably how much of a substance is present). An EPA fact sheet on the new HALs is available here.

PFOA	0.004
PFOS	0.02
PFBS	10
HFPO	2,000

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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