

Follow the Leader? Maine's Strict Stance on PFAS and Biosolids Land Application Sets the Stage for Further State Regulation

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As the United States Environmental Protection Agency ("EPA"), Congress, and state regulatory agencies continue to push forward with per-and polyfluoroalkyl substances ("PFAS") regulations, the Maine Department of Environmental Protection has taken a bold stance regarding PFAS and the land application of biosolids. In a March 22, 2019 memorandum, the Acting Director of Maine's Bureau of Remediation and Waste Management, announced the State's decision to screen biosolids for perfluorooctanesulfonic acid ("PFOS") and perfluorooctanoic acid ("PFOA") – two of the more widely known PFAS substances – to 2.5 parts per billion ("ppb") and 5.2 ppb, respectively. This decision, which required initial sampling to be completed by May 7, 2019, effectively establishes a moratorium on biosolids land application within the state unless compliance with the established thresholds can be satisfied. With the standard set, will other states follow suit?

Land application of biosolids is a common practice across the country and is regularly used by publicly owned treatment works ("POTWs"), including many POTWs across West Virginia, as an affordable disposal option for the sludge generated from their operations. The practice is generally regulated through a POTW's National Pollutant Discharge Elimination System ("NPDES") permit and provides benefits to both the POTW and local agricultural operations. Regulations such as the one advanced in Maine could pose serious concerns for POTWs, private wastewater operations, and POTW industrial users, *i.e.*, non-residential customers, unless alternative disposal options are determined prior to implementation of land application restrictions.

First, because there is no federally approved testing method for PFAS in biosolids and the methodologies for establishing thresholds are largely untested, POTWs and other entities could face serious obstacles in finding laboratories willing to perform and certify the results of such PFAS testing. This could lead to costly analytical testing requirements with little to no certainty that those results are valid.

Second, if POTWs cannot land apply, where do the biosolids go? POTWs are generally limited to either landfill disposal or incineration. Landfill disposal is costly, and landfills are subject to their own quantity limitations. This requires POTWs in many instances to transport biosolids across state lines and to numerous landfills just to ensure the continued operation of their system. Incineration is also a costly disposal alternative and carries with it strict air permitting obligations. Many POTWs across West Virginia are already struggling to find viable disposal options, and regulations like this could further hamper a POTWs ability to operate.

Finally, if POTWs are forced to treat for PFAS in order to meet land application thresholds, POTWs will be facing costly capital improvements – the costs of which will generally be borne by a POTW's ratepayers – with no guarantee that treatment will be effective due to the lack of proven treatment technologies for PFAS. This may also force POTWs to cease acceptance of industrial user discharges as these discharges are likely to be a contributing factor to a POTWs elevated levels of PFAS.

While Maine has set the stage for further biosolids land application regulations, state regulatory agencies must first evaluate the available biosolids disposal options for POTWs and others that rely heavily on land application prior to implementing such sweeping regulations that effectively eliminates this disposal mechanism.