

Federal Court Dismisses Lawsuit Against EPA Over Regulation of PFAS in Sewage Sludge

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October 2, 2025

On September 29, 2025, the US District Court for the District of Columbia dismissed a lawsuit brought by Texas farmers, multi-state environmental organizations, and Johnson County, Texas that alleged the United States Environmental Protection Agency's (EPA or the Agency) failure to regulate polyfluoroalkyl substances (PFAS) in sewage sludge used as fertilizer (biosolids) violates federal law, leaving communities vulnerable to "forever chemicals" in agricultural products and water supplies. The case, *Farmer v. EPA*, was originally filed in 2024 after farmers claimed their property, livestock, and health were harmed when PFAS-laden biosolids from neighboring fields migrated onto their land. Plaintiffs sought declaratory and injunctive relief compelling EPA to identify specific PFAS in biosolids as pollutants and regulate them under the Clean Water Act (CWA) and Administrative Procedure Act (APA).

The Complaint

The plaintiffs alleged that EPA had shirked non-discretionary duties under the CWA by failing to identify 18 PFAS chemicals (Table 1 PFAS) as pollutants in its most recent biennial biosolids review and by failing to regulate 11 PFAS previously identified in earlier reports (Table 2 PFAS). Table 1 lists eighteen specific PFAS that plaintiffs allege EPA failed to identify in its most recent Biosolids Biennial Report No. 9, despite available scientific evidence showing their presence in concentrations that may affect public health or the environment due to their toxicity, persistence, concentration, mobility, or potential for exposure. Table 2 of the complaint lists PFAS that, according to the plaintiffs, EPA identified as present in sewage sludge as early as its 2012-2013 Biennial Review (No. 5), but for which EPA has also failed to promulgate required regulations despite sufficient evidence of risk. They argued that the Agency's omissions violate the CWA's requirement that EPA review sewage sludge regulations at least every two years "for the purpose of identifying additional toxic pollutants" and were arbitrary and capricious under the APA.

The Court's Reasoning

The court rejected those arguments, emphasizing the distinction between EPA's biennial duty to review existing biosolids regulations and any subsequent obligation to identify or regulate additional pollutants. The statutory language, the court held, imposes a clear duty only to perform the review itself, not to identify or regulate new contaminants. Because Congress did not set a "date-certain deadline" for regulation, plaintiffs could not invoke the CWA's citizen-suit provision to compel EPA action.

With respect to the APA, the court determined that neither EPA's biennial report nor the Agency's failure to include certain PFAS in that report constituted "final Agency action." The report, the court noted, is informational in nature, expressly disclaiming any binding effect on regulated entities. A decision not to list a pollutant in the report does not amount to a refusal to regulate and carries no independent legal consequences. Plaintiffs therefore failed to establish the kind of finality required for APA review. Ultimately, the court dismissed the CWA claims for lack of subject matter jurisdiction, the APA claims for failure to state a claim, and the plaintiffs' "unreasonable delay" claims after plaintiffs themselves conceded dismissal was appropriate.

Broader Implications

EPA has identified PFAS in sewage sludge in past reviews but has not promulgated regulations specific to these substances and, in fact, has not identified new pollutants since 1993. While EPA has issued nine biennial biosolids reviews since 2005, identifying hundreds of chemicals, including 11 PFAS, it has not moved forward with new

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regulatory standards. The court's ruling reinforces EPA's discretion in the timing and scope of regulation, and also signals to stakeholders that meaningful legal challenges may only become viable after EPA denies a formal rulemaking petition.

The dismissal also leaves in place a regulatory gap concerning PFAS in biosolids, which some states have recently moved to close. Maine and Connecticut have banned the land application of biosolids, while Maryland, Massachusetts, Michigan, New York, Wisconsin, Colorado, Minnesota, New Hampshire, and Vermont have promulgated regulations that require sampling of biosolids and/or establish specific PFAS limits for land application.

Conclusion

The decision provides clarity for regulated entities that courts will not compel EPA to accelerate PFAS regulation through litigation premised on the biennial review requirement. The ruling does not, however, insulate the Agency from future challenges, particularly if it denies or delays petitions seeking new biosolids regulations. Moreover, EPA's draft biosolids risk assessment, issued by the Biden Administration on January 14, demonstrated risks exceeding EPA's acceptable thresholds for every human exposure pathway. If the draft risk assessment is finalized, which is certainly not guaranteed because of numerous criticisms concerning the draft's modeling assumptions, it may require regulatory action. That, however, could be years away. For industries involved in biosolids management, agriculture, and wastewater treatment, the case highlights both the complexity of PFAS regulation and the importance of monitoring evolving state-level initiatives, as state biosolids regulation is likely to be driven by states for the foreseeable future.

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