

PFAS in Sewage Sludge: DC Circuit to Clarify EPA's Regulatory Obligations

June 12, 2026

On September 29, 2025, the US District Court for the District of Columbia dismissed the plaintiffs' claims in *Farmer v. EPA*, in which a group of Texas farmers argued that the United States Environmental Protection Agency (EPA) failed, in violation of its mandate, to regulate per- and polyfluoroalkyl substances (PFAS) in sewage sludge.¹ The District Court held that while the Clean Water Act (CWA) requires EPA to review sewage sludge regulations every two years, it does not impose a date-certain deadline to identify or regulate new toxic pollutants like PFAS during those reviews. Plaintiffs appealed to the DC Circuit Court of Appeals. The court's ruling on the appeal will be important to clarify whether the EPA retains discretion under the CWA to regulate PFAS or whether stakeholders may force it to act.

The Appeal

On appeal, the appellants contest the District Court's finding that the CWA's language separates EPA's time-sensitive duty to review its regulations from the discretionary objective of regulating new pollutants.² The appellants argue that Congress's explicit intention in passing the CWA was to require EPA to affirmatively identify *and regulate* additional substances every two years.³

The appellants further argue that the biennial reviews EPA has conducted fall short of the CWA's requirements.⁴ Specifically, they argue that the CWA requires EPA to review its regulations so that it can identify and regulate new pollutants, but that EPA has only conducted a "review of scientific articles for the purpose of collecting information."⁵ The appellants characterize this review as "at best, an optional preliminary step" that does not fulfill EPA's review duty under the CWA.⁶ The appellants conclude by asking the DC Circuit to remand the case to the District Court to determine whether EPA has met its supposed duty to identify and regulate toxic pollutants with regard to six specific PFAS.⁷

Intervening Appellee Brief

On May 12, 2026, the National Association of Clean Water Agencies (NACWA), an intervening defendant, filed an appellee brief in support of the District Court's dismissal. NACWA, a national nonprofit organization comprised of more than 350 public clean water agencies that treat wastewater and stormwater, was allowed to intervene as a matter of right because its members have a financial interest in avoiding unduly burdensome and costly regulations of sewer sludge.⁸

In support of the District Court dismissal of the suit, NACWA argues the lack of explicit language creating an affirmative duty for EPA to regulate demonstrates that Congress did not intend to create such a duty with respect to sewage sludge, particularly where Congress inserted such explicit language to act in other parts of the CWA.⁹ NACWA further emphasizes that the decision of whether to regulate certain PFAS in sewer sludge is a scientific one that should fall to EPA, not to the courts through citizen-suit provisions.¹⁰ Finally, NACWA argues that the appellants' argument that EPA's biennial review process is inadequate should be rejected on procedural grounds.¹¹

Takeaways

The DC Circuit's decision on this appeal will be important in determining whether EPA has discretion to regulate, or not, on its own timeline, and what role, if any, citizen-suits may play in forcing EPA's hand. Upholding the District Court's decision will reinforce EPA's (and likely other government agencies') discretion to determine if and

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when to regulate.¹² On the other hand, should the Court overturn the dismissal, citizens will have the ability to force the EPA to promulgate regulations as to specific PFAS.

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¹ Farmer v. United States Env't Prot. Agency, 805 F. Supp. 3d 253 (D.D.C. 2025); <https://www.mgmlaw.com/news-insights/federal-court-dismisses-lawsuit-against-epa-over-regulation-of-pfas-in-sewage-sludge>.

² Farmer, 805 F. Supp. 3d at 259.

³ Opening Brief of Plaintiff-Appellants at 23-24, Farmer v. United States Env't Prot. Agency, No. 25-5431 (D.C. Cir. Mar. 17, 2026).

⁴ Id. at 31.

⁵ Id. at 32.

⁶ Id.

⁷ Id. at 33-34.

⁸ Farmer v. United States Env't Prot. Agency, No. 24-cv-1654 (DLF), (Dec. 16, 2024).

⁹ <https://www.law360.com/articles/2477194/water-utilities-urge-dc-circ-to-toss-epa-pfas-regs-suit>.

¹⁰ Id.

¹¹ Id.

¹² Notably, this does not apply to EPA denials of petitions to adopt new regulations of sewer sludge, which can still be challenged. <https://www.mgmlaw.com/news-insights/federal-court-dismisses-lawsuit-against-epa-over-regulation-of-pfas-in-sewage-sludge>.