United We Stand, Divided We Fall: Local Sewer Authorities and Biosolids Management Companies Need to Work Together

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Categories:

PFAS Updates
Publications

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Over the past week, hundreds of owners of publicly-owned treatment works (POTWs) across the country received a notice in the mail from a leading biosolid management company, stating that due to the April 19, 2024 listing of PFAS compounds (specifically PFOA and PFOS) as CERCLA hazardous substances, biosolids management contracts may need to be modified, may need to increase payment to the company, or may need to be terminated because the company can no longer provide its services. The notice also requests information showing any detectible levels of PFOA or PFOS in biosolids "to avoid potential noncompliance." But whether the source of such noncompliance is an underlying contract or a potential CERCLA obligation is not identified. The notice concludes with the statement that no immediate relief is requested, and that any unspecified relief will be discussed in a follow-up communication.

Frost Brown Todd's Environmental Practice Group (EPG) has represented local sewer authorities in the Midwest for close to four decades. Many of the EPG's clients have longstanding contractual relationships with biosolids management companies to manage land application and landfilling of biosolids during the year. These contracts typically include hauling and allocation of responsibilities for selection/approval of application sites and landfills for beneficial use or disposal, respectively, often dictated by weather conditions. As reported in an earlier EPG advisory, lawsuits have recently been filed against Synagro, the nation's largest biosolid management company, for allegedly misrepresenting the safety of biosolids applied on crop/livestock farms in Texas, and U.S. EPA announced it will issue a detailed information request to 400 POTWs later this year for PFAS-related information and potential follow-up sampling of wastewater and biosolids.

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Key Takeaways & Next Steps

Due to the risk of new CERCLA-based claims relating to biosolids being asserted against both parties to these contracts, now is clearly not the time for POTWs and their biosolids management companies to point fingers, but instead to work collaboratively to jointly minimize this risk. In addition, U.S. EPA will use the upcoming information it obtains from POTWs to complete an ongoing risk assessment for PFAS in biosolids, which is a prelude to potential new rules for PFAS in biosolids being issued. Therefore, it is vital that POTWs and their biosolids management companies remain united to address PFAS in biosolids, so that they can jointly help the Agency in making decisions about potential rules once the risk assessment is completed, which is expected by the end of 2024.

Local sewer authorities should consult with experienced environmental counsel to:

- Help evaluate the potential legal exposures and risks due to the presence of PFAS in biosolids;
- Assist in developing action steps to minimize those risks; and
- Assist with their relationships with outside biosolids management companies.

If you would like to discuss the possibility of such assistance, please contact the authors or another member of Frost Brown Todd's Environmental Practice Group.

Want more PFAS coverage?

Explore the articles below tracing the EPA's evolving position and enforcement agenda for these "forever chemicals."

- ***Congress Following States' Lead to Phase Out PFAS***
- ***Seven More PFAS Added to Toxic Release Inventory (TRI) Reporting by U.S. EPA***
- ***PFOA and PFOS Are "Hazardous Substances" Under CERCLA: Key Takeaways and Questions for Real Estate Transactions***

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- ***U.S. EPA's Upcoming Information "Request" for PFAS Information and Potential Sampling Warrants Careful Review and Consultation with Legal Counsel***
- ***U.S. EPA Surges Forward with Its "PFAS Strategic Roadmap" in the First Quarter, Changing the Scope of PFAS Regulation in Several Ways***
- ***U.S. EPA Issues "Game Changing" Listing of PFOA and PFOS Under CERCLA***
- ***U.S. EPA Finalizes Drinking Water Limits for PFAS***

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