Biosolids Legal Update

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Presentation Overview

- Regulatory framework for biosolids
- DNR Regulation
- EPA Regulation
- State Legislative Activity
- What's Next?

Regulatory Framework

- DNR operates biosolids program under delegated federal authority
  - 40 CFR Part 503; Wis. Stat. ch. 283; Wis. Admin. Code NR 204
- EPA reviews regulations biennially and promulgates new regulations for additional pollutants in sludge as needed

PFAS Regulations for Biosolids

- Currently no federal criteria for PFAS in biosolids
- Two main mechanisms for state level regulation:
  - DNR has developed an "Interim Strategy for Land Application of Biosolids and Industrial Sludges Containing PFAS" (updated March 1, 2024)
  - DNR includes **monitoring** requirements in WPDES permits for full range of PFAS compounds in biosolids starting in 2022

DNR's Interim Strategy for Biosolids Land Application

- Intent to limit land application of municipal biosolids and industrial sludges "significantly impacted" by PFAS compounds
- Tiered approach to management:
  - PFOA + PFOS >150 ppb (ug/kg): industrially impacted; notify DNR; find alternative to land application
  - PFOA + PFOS of 50-150 ppb (ug/kg): notify DNR; investigate sources; reduce overall loading to <1.5 dry tons per acre; notify landowner/farmer prior to application; track application rates
  - PFOA + PFOS of 20-50 ppb (ug/kg): investigate sources; notify landowner/farmer prior to application; track application rates
  - PFOA + PFOS of <20 ppb (ug/kg): land apply as normal consistent with NR 204

Biosolids Monitoring in WPDES Permits

Monitoring Requirements and Limitations					
Parameter	**Limit Type**	**Limit and Units**	**Sample Frequency**	**Sample Type**	**Notes**
Phosphorus, Water Extractable		% of Tot P	Quarterly	Composite	
Potassium, Total Recoverable		Percent	Quarterly	Composite	
PCB Total Dry Wt	Ceiling	50 mg/kg	Once	Composite	Once in 2028.
PCB Total Dry Wt	High Quality	10 mg/kg	Once	Composite	Once in 2028.
PFOA + PFOS		µg/kg	Annual	Calculated	Report the sum of PFOA and PFOS. See PFAS Permit Sections for more information.
PFAS Dry Wt			Annual	Grab	Perfluoroalkyl and Polyfluoroalkyl Substances based on updated DNR PFAS List. See PFAS Permit Sections for more information.

4.2.1.10 PFAS Land Application Requirements

The department recommends the landspreading and/or land application of sludge be done in a manner consistent with the most recent version of the “Interim Strategy for Land Application of Biosolids and Industrial Sludges containing PFAS”.

Groundwater Standards

- DNR has initiated rulemaking for 6 PFAS compounds:
  - PFOA, PFOS, PFHxS, PFNA, PFBS, and HFPO-DA (GenX Chemicals)
  - Same compounds for which EPA released federal drinking water standards
- Groundwater standards will become relevant criteria for regulation of:
  - Solid and hazardous waste
  - Spills and remediation sites
  - Wastewater and water quality
  - Other
- Preliminary public hearing on statement of scope held on March 6, 2025

EPA Lab Methods for PFAS

- EPA has been developing methods to test for various PFAS compounds in non-potable water, including wastewater and biosolids
- Uniform method intended to keep testing methods consistent across NPDES permits
- Published Method 1633A for screening for PFAS in non-drinking water matrices in January 2024
  - Recommends using method but not nationally required until EPA has promulgated through rulemaking
  - Currently in public comment phase
- DNR has been requiring use of method since February 1, 2025 unless otherwise directed

EPA Biosolids Risk Assessment

- EPA conducted risk assessment on human health and environmental risk from PFAS in biosolids
- Released draft on January 14, 2025
- Conservative approach to health risks associated with PFOA/PFOS exposure through land application
- No imposition of new regulatory requirements on WPDES permit holders who land apply biosolids
  - DNR Interim Strategy continues to apply
  - WPDES permit sampling for PFAS compounds in biosolids still required

PFOA and PFOS CERCLA Designation

- April 19, 2024: EPA designates PFOS and PFOA as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA /Superfund)
- Designation opens many avenues for liability – owners, operators, generators, arrangers, transporters
- EPA released enforcement discretion memo in tandem with new rule
  - Focus response actions on manufacturers with "**significant**" role in release
  - Does not intended to pursue response actions or costs from municipal water or wastewater utilities or farmers that accepted land application of biosolids containing PFAS
  - BUT does not pertain to compensation claims from other parties

PFOA and PFOS CERCLA Designation

- Ongoing legal challenges from industry and other groups
  - Lawsuits argue designations too broad/exceed EPA's authority
  - Will unfairly impose costs on parties who were passive receivers
- Litigation is currently paused pending new administration's review

State Legislative Developments

- Governor's budget included PFAS provisions
  - Creation of community grant program
  - Expansion of well compensation grant program
  - Request to adopt previously introduced legislation that would prohibit land application of biosolids containing PFAS levels exceeding those set by DNR

State Legislative Developments

- SB 127/AB 130
  - Introduced March 14, 2025
  - Creates an exemption under the state spills law, including for:
    - A person who spread biosolids or wastewater residuals contaminated by PFAS in compliance with any applicable license or permit
    - A person who owns land upon which biosolids or wastewater residuals contaminated by PFAS were spread in compliance with any applicable license or permit

State Developments

- SB 128/AB 131
  - Introduced March 14, 2025
  - Reintroduction of legislation vetoed last session
  - Includes:
    - Municipal grant program for use of reserved PFAS funding
    - Grants for disposal of PFAS-contaminated biosolids in landfills
    - Innocent landowner program that includes protections for landowners who accepted biosolids containing PFAS

What should wastewater utilities do?

- Limited options for biosolids disposal
  - Land application
  - Landfilling
  - Incineration
- Know what's in your biosolids
- Work on reducing amounts
  - Ex. drying technologies to reduce mass loading of water from sludge

Questions?

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