



**Comments of the Maine Organic Farmers and Gardeners Association
Regarding Proposed Rules to Implement Certain Strategies in
the Plan for Administration of the Fund to Address PFAS Contamination ("PFAS Fund Plan")**

January 25, 2024

Beth Valentine
PFAS Fund Director
Maine Department of Agriculture, Conservation and Forestry
28 State House Station
Augusta, ME 04333

Dear Director Valentine,

On behalf of the Maine Organic Farmers and Gardeners Association (MOFGA), please accept these comments regarding proposed rules to implement certain strategies in the Plan for Administration of the Fund to Address PFAS Contamination.

MOFGA is working to build a food system that is healthy and fair for all of us. Through education, training and advocacy, we are helping farmers thrive, making more local, organic food available and building sustainable communities. MOFGA Certification Services LLC certifies 525 organic farms and processing operations representing roughly \$120 million in sales and we are working hard to create opportunities for Maine's next generation of farmers. Each of these farmers is a Maine businessperson for whom economic health and environmental health are interdependent. While MOFGA envisions a future of healthy ecosystems, communities, people and economies sustained by the practices of organic agriculture, we attribute our success to collaboration and outreach to growers across the management spectrum.

MOFGA is proud of the work we have done along with Maine Farmland Trust in standing up the PFAS Emergency Relief Fund. Through this fund, MOFGA and MFT have provided financial assistance to more than 100 farmers to investigate PFAS contamination risks, and to help farmers and farm workers cope with stress related to contamination. In our PFAS-related collaboration with the Department of Agriculture, Conservation and Forestry ("Department"), we have also been able to help over 15 farm families as they cope with the effects of PFAS contamination. We look forward to continuing that work, as the PFAS Fund Plan and these proposed regulations envision. The need remains great and private resources such as we have been able to leverage are not sufficient to meet that need, nor a long-term solution. A well-funded State PFAS response is essential. By partnering with MOFGA and other non-governmental organizations, the Department will have the flexibility to quickly respond to emerging needs and to maximize the effectiveness of limited resources.

Definition of sources of contamination

Before commenting on each chapter of these rules, we would like to address a preliminary issue that cuts across multiple chapters. Assistance from the Fund should be available to address PFAS contamination from sludge, septage, and sludge residuals, including compost derived from sludge. "Sludge," "septage" and "residuals" are not consistently defined throughout these rules, which is confusing. The definition of residuals also needs to be clarified to include both "Class B" and "Class A" sludge products, such as NViro Soil and Night Hawk sludge-based composts, all of which can contaminate groundwater and soil with PFAS.



Chapter 400: Administrative Cost Grants

We are so pleased that the Department has taken the appropriate steps to recognize the administrative burden on farmers as they begin the process of applying to this program. At the same time, affected farmers may need more than 80 hours to apply to the several programs available through the Fund to address harm from PFAS contamination. In view of this significant burden, we encourage the Department to take all reasonable steps to ease access to these programs so that farmers can receive the support they need. This includes limiting paperwork as much as possible, providing for flexibility in the documentation required, and streamlining the appeals process.

Chapter 401: Income Replacement

The terms of this chapter seem to assume a single PFAS contamination event and a one-time payment of up to 24 months per contaminated farm (see 410 §§9, 10). The reality facing a farmer may be quite different. There may be multiple PFAS contamination discoveries at a farm arising from different sources or routes of PFAS contamination, at different times. PFAS science, including testing protocols and accuracy, health standards and the understanding of health risks caused by different PFAS, continues to evolve in real time. What farmers know about the scope and harm to their farm caused by PFAS contamination two years from now could be quite different from today. The income replacement chapter should recognize this reality with a discovery rule that addresses the potential for more than one PFAS contamination event per farm.

401 §6.5 Required documentation – We support giving the Department the flexibility to waive the requirement for certain documents for good cause. This provision will help assure timely responses to emerging contamination events.

401 §9 Cessation of Operations - Creating a strict timeline for going out of business after the discovery of PFAS contamination may exclude some farms that the fund was intended to support. As the science evolves, a product initially deemed safe could subsequently be required by the Department to be removed from the market. The farm could also change feed or water sources that introduce a new source of contamination after the initial discovery of PFAS, pushing it over the edge of financial solvency. As discussed above, we recommend providing more flexibility to this rule by adding language allowing for income replacement in circumstances where more than one PFAS contamination event is discovered.

401 §11.2 Administration - MOFGA is proud to be working closely with the Department and Maine Farmland Trust to support the Income Replacement program for farmers affected by contamination. We appreciate that we will be able to continue this work under these proposed rules, and support the streamlined reimbursement process outlined in this paragraph.

Chapter 402: No Cost Technical Assistance

MOFGA welcomes the Department's support for these valuable services needed to transition farmers into a new method of production or marketing. We appreciate the language in 402 §8.4 that allows MOFGA and other third parties to be reimbursed for technical assistance provided to PFAS-impacted farmers.

Chapter 403: Infrastructure Investment Grants

403 §7 Application review – The proposed rule outlines multiple evaluation criteria and a review process involving several Department staff. In the case of grants greater than \$150,000, outside experts may also participate in the grant review process. We have some questions about how this process will work in practice:

- What is the Department’s timetable for deciding to approve or deny an infrastructure grant application? Farmers in this state have already waited a long time for the PFAS Fund legislation to be enacted, the Fund Report written, reviewed, and adopted, and now for these rules to be proposed. We understand the need for the legal process and appreciate the multiple opportunities for comment and public participation. Once these rules are final, though, we hope the Department acts quickly to implement them. Perhaps there are general rules of procedure and timing that apply to the Department’s decisions on non-PFAS grants that also apply to this program. If not, we would like to see language included in these rules to ensure that grant decisions are made in a timely manner.
- 403 §7.3 lists various evaluation criteria which, unlike the selection criteria for the research grants (see 406 §7), are not weighted in any particular way. This approach gives the Department considerable flexibility and discretion. In exercising this discretion, we want to highlight the need to ensure that affected farmers are not put in a position of risking bankruptcy before qualifying for these grants. If the competition for these grants becomes tight, the Department should prioritize investment in a farm’s infrastructure before the farm faces economically dire repercussions.

403 §8.4 Payment options and restrictions - We appreciate the language in this chapter that allows MOFGA to continue to support infrastructure investments as farms pivot to new sales models to stay in business.

403 §9.4 Terms and conditions – We have concerns about this condition, which requires a grantee to reimburse the Department if the grant-funded infrastructure is sold, traded, abandoned, or destroyed; or the farm ceases to operate during the “relevant recovery period.” We can imagine several realistic scenarios where this requirement would place an unreasonable burden on the farmer:

- First, what if the grantee ceases farm operations as the result of PFAS contamination that is newly discovered during the recovery period; or if previously discovered PFAS becomes a health or farming liability as the result of changes in law, testing protocols, screening criteria, or health research? Farmers facing further economic hardship due to PFAS should not be responsible for repayment of the infrastructure grant under circumstances not of their own making, at a time when they are facing economic hardship significant enough to force them to cease farm operations.
- Second, there may be other circumstances outside of a farmers’ control that would justify waiving the repayment requirement. While we agree that farmers should not sell off infrastructure paid for by the State for a profit, if grant-funded infrastructure is destroyed in one of our increasingly frequent and destructive storms or floods, a distressed farmer should not be required to reimburse the State. Some of the payback periods for structures can be long, and imposing a requirement on a farmer already facing economic distress to repay the state for a grant given and received in good faith could easily be a barrier to participation by affected farmers. This can appear to be another potential liability for them to take on. We recommend increasing the flexibility in the enforcement of this provision. The Department should also consider removing the reimbursement requirement in the event of infrastructure destruction.
- Third, if the infrastructure that was purchased with the aid of the state is not immobile but the farm has ceased operations, the rules could allow the state to re-acquire the infrastructure and thereby offset any debt owed to the state due to the farm going out of production.

Chapter 404: Assistance Obtaining New Loans

404 §7 Application review – As we have discussed with reference to Chapter 403, a farmer should not need to be at the brink of financial ruin to qualify for the program. In a circumstance where there may be tough competition for these loans, we do not want farmers to have to wait for severe hardship in order to qualify for

the program. We note that this rule also lacks any timetable for the Department's actions and would be improved by adding language to ensure timely grant decisions.

404 §8.6 Payment restrictions - We appreciate the provision allowing third parties to be repaid for providing financial support for farmers in need of loans. This provision will help ensure that farmers receive timely assistance.

Chapter 405: Real Estate Purchases

This Chapter represents invaluable support for those farmers most affected by contamination of their land. We would like to highlight the potential for the Department to purchase property to be used for research, an option that isn't specifically addressed in this chapter. When all other prioritization criteria are considered equal, it may be advantageous to then also consider the research capacity of a parcel, providing direct control and management of a property for research purposes. Adding a prioritization criterion to 405 §8.6 to encourage land purchase for research purposes could be a strong tool to assist the State's PFAS research efforts.

We also note that criterion 405 §8.6(f) prioritizes purchase of land where PFAS impacts are associated with sludge or septage; it is unclear whether sludge-derived compost is intended to be included in this criterion, as compost is not mentioned. The definition of "sludge" in 405 §3.7 also doesn't mention compost. (Perhaps the phrase "or any such other waste having similar characteristics and effect" could include compost, although generally compost isn't considered "waste.") This is an example of the inconsistent definitions relating to sludge, septage and compost employed throughout several chapters of the proposed rule. The result is ambiguity which is not helpful. In this case, if compost derived from sludge has caused PFAS contamination on a farm, it should be prioritized to the same degree as contamination caused by sludge or septage. Land application of each of these materials was licensed or *de facto* encouraged by way of regulatory permission in the past.

Chapter 406: Competitive Research Grants

We look forward to continuing our support of research experiments to find opportunities for affected farmers to stay in production. We offer suggestions here to improve the grant review and evaluation process.

406 §5.1 Proposal review panel – The panel does not specifically include any members with research experience. We think the review process would be improved by incorporating research expertise into it. There are several ways this could be accomplished, including if one or more commissioners appointed a designee with research experience. However, this leaves the appointment up to chance and wouldn't ensure relevance in particular cases. To ensure research experience in the review process, we recommend amending the rule to incorporate a double-blind third-party system for proposal review. In this way, research expertise from the University of Maine or from the farming community could be incorporated into the evaluation process without the potential for conflicts of interest or requiring recusal. With respect to recusal (405 §5.3) we note that if a public member of the panel comes from the University, then "by association" that member would have to recuse themselves from evaluating the proposal, creating potential confusion for the University's role on the Panel. The addition of a third-party double-blind panel addresses this potential problem.

406 §7.1 Research priority – This provision advantages research projects that directly relate to research priority areas designated by the Commissioner. To ensure a fair process, applicants need to know in advance of developing and submitting their grant proposals what those research priorities are.

Chapter 407: Blood Testing

We applaud the Department's continuing support for farmers and their families whose health is being affected by PFAS contamination. As the medical understanding of the effects of various PFAS becomes clearer through research and experience, the rules must maintain the flexibility to react to developing science affecting the exposure timelines outlined in the rules, and the blood serum levels that are understood to have negative health impacts. The Department needs to be responsive and flexible in how it supports people whose health has been affected.

407 §3.10 Definition of "residuals" - Chapter 407 should pay for blood serum testing for persons exposed to PFAS from land contaminated by compost derived from sludge. The definition needs to be clarified to include "Class A" sludge products, which pose a similar risk to groundwater and soils as "Class B" products.

407 §6.3 Required documentation – The requirement that the Department of Environmental Protection provide documentation that land application of residuals "has been reasonably determined to be the primary source of PFAS contamination" is problematic and should be removed. This requirement could exclude individuals exposed to PFAS-contaminated water, soils and foods linked to contaminated compost, because DEP did not have a site-specific permit system for Class A compost applications, and thus may lack documentation. It is unclear why the Fund would require this DEP sign-off for the two health-related chapters of this rule. The Fund should be more, not less, inclusive when public health is at stake. The rules should not create a series of obstacles that could trip up, or deter, applicants seeking medical monitoring— even if unintentionally.

This chapter also specifically excludes assistance to farms where there was unlicensed land application of residuals (e.g., 407 §3.7). In instances where sludge was spread without a license, or where DEP's record of the license cannot be located, affected farmers and residents should nevertheless have access to services and assistance – especially where there are health impacts. The Department should amend its rule accordingly.

Confidentiality of personal medical records – Chapter 407 does not include specific language requiring that rule is implemented in a HIPAA compliant manner. These protections should be added to the rule to maintain confidentiality for individuals receiving financial support for blood serum testing and other health services.

Chapter 408: Financial Support for Mental Health Care

The mental health stresses associated with the health effects and financial duress of PFAS are complicated and long term. Farming is a difficult industry already facing a mental health crisis, and we generally support this rule. The rule should recognize, however, that the mental health impacts of PFAS contamination could extend beyond the 10-year limit. As negative effects of contamination of different PFAS at different levels in blood and body are discovered, and as the financial toll continues to be felt, we expect support for mental health care to be needed well into the future. Flexibility to react to new science and unfolding discoveries is key for the Department's response.

Changes needed to remove obstacles to assistance - In instances where sludge was spread without a license, or where DEP's record of the license cannot be located, affected farmers and residents should nevertheless have access to services and assistance – especially where there are health impacts. As in Chapter 407, this rule should be amended in several places to eliminate obstacles to coverage.

408 §3.7 Unlicensed spreading – As in Chapter 407, this chapter excludes assistance to farms where there was unlicensed land application of residuals. The rule should be amended to delete this exclusion.

408 §3.11 Definition of "residuals"- As in Chapter 407, the definition of "residuals" needs to be clarified to include "Class A" sludge products, which pose a similar risk to groundwater and soils as "Class B" products.

408 §6.3 Required documentation – As in Chapter 407, the requirement that DEP provide documentation that land application of residuals “has been reasonably determined to be the primary source of PFAS contamination” will likely exclude from coverage PFAS-affected persons exposed through compost and should be removed.

Confidentiality of personal medical records – As in Chapter 407, language protecting the confidentiality of medical information and records should be added to the rule.

Conclusion

Thank you for the opportunity to submit comments on rules governing implementation of the PFAS Fund Plan. MOFGA is proud of our collaboration with the Department to respond to this crisis in our agricultural community. We particularly appreciate provisions throughout these rules that allow for and encourage our ongoing collaboration. MOFGA is committed to being a responsive and flexible resource for our farming community and the Department.

Because we are collectively just beginning to understand the full impact of these chemicals on our natural environment, our bodies, and our industry, we encourage the Department to incorporate flexibility into the rules where possible in order to continue to meet farmers’ needs over time.

The smooth implementation of these rules to get the dollars out the door is our highest priority right now. Overall, we are in strong support of the proposed rules. Our suggested changes are intended to clarify ambiguities and to improve the grant process to effectively carry out the legislative intent and the objectives of the PFAS Plan. As an organization, we are standing by to support the Department in the implementation of these rules.

Respectfully submitted,



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