May 14, 2024

Michael Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Notice of Intent to File Suit Regarding Alleged Violation of the Clean Water Act (CWA)

Dear Administrator Regan,

I am writing on behalf of the Maine Organic Farmers and Gardeners Association (MOFGA), a 501(c)(3) nonprofit headquartered in Unity, Maine. MOFGA is a broad based community 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. Our wholly-owned subsidiary, MOFGA Certification Services, LLC, certifies 525 organic farmers and processing operations, representing roughly $120 million in sales. 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.

The purpose of this letter is to provide notice of MOFGA's intent to sue you and the U.S. Environmental Protection Agency (collectively, EPA), in accordance with the citizen suit provision of the Clean Water Act (CWA), 33 U.S.C. § 1365, for failing to perform non-discretionary acts or duties under the CWA. Our primary concern is the lack of coordinated action at the federal level to address the escalating crisis of farmland contamination from per- and polyfluoroalkyl substances (PFAS, often referred to as "forever chemicals").

Section 405 of the CWA, 33 U.S.C. § 1345, requires EPA, by July 31, 1987, and biennially thereafter, to:

1. Identify toxic pollutants in sewage sludge: and
2. Promulgate regulations, based on available information, for identified pollutants if sufficient scientific evidence shows they may harm human health or the environment.

EPA has failed to fulfill both portions of this mandate regarding PFAS. First, scientific studies show that there are at least 18 PFAS in sewage sludge, which EPA did not identify in the Agency's most recently published Biosolids Biennial Report No. 9.[1] Second, additional scientific studies show that sufficient

[1] https://www.epa.gov/biosolids/biennial-report-no-9-reporting-period-2020-2021

information is available to promulgate regulations for at least 12 PFAS previously identified in sewage sludge.[2]

EPA's failure to adequately implement the law allows toxic pollutants into our environment, causing widespread and significant harm to human health and the environment. As a result of these two failures, harmful and toxic pollutants continue to be spread on farms, pastures, home gardens, yards and even on wildlands (as soil amendments in forests) where these chemicals then contaminate our nation's food and water supply.

We learn more each week about the prevalence of PFAS-contamination in the U.S. food and agriculture systems. Increasingly we find that the primary source of this contamination is from sewage sludge. Farmers in Maine, including organic farmers who are members of MOFGA, have been at the center of an ongoing crisis caused by PFAS-contaminated wastewater treatment sludge designated "biosolids" and used as soil amendments. Since 2016, when PFAS was first found to have contaminated soil, water and subsequently milk at a Maine dairy farm, the state has been at the forefront investigating and remediating PFAS contamination of farmland. Administrators in Maine's Department of Environmental Protection (DEP); Department of Agriculture, Conservation and Forestry (DACF); and Department of Health and Human Services (DHHS) have responded to widespread PFAS contamination with broad, non-partisan support from the Maine Legislature. Since 2021, the DEP and DACF have been systematically testing soil and water in locations known to have been permitted for sludge or septage application, and DHHS has been testing food and drinking water and providing alternative drinking water or filtration for contaminated residential wells.[3]

As of January 2024, at least 59 Maine farms, both conventional and organic, have been found to be contaminated with PFAS. To date, the primary source of this contamination has been traced to the use of biosolids and paper mill sludges, either applied to farmland as soil amendments or "disposed of" by spreading on fields.[4] Maine's investigation of PFAS contamination is ongoing, and additional farms may be found to be contaminated as the Maine DEP continues its investigatory work through 2024 and subsequent years.[5]

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[2] From 2005 to 2021, various scientific studies conducted by EPA and others found concentrations of PFAS in biosolids across the United States and Canada. Each of these studies were available to EPA during the time the biennial report was created and published in 2022. The following is a list of some such studies:

- In 2017, scientists detected FBSA in biosolid amended soil in three separate locations: (1) Tillsonburg, Ontario, Canada; (2) Delhi, Ontario, Canada; and (3) Cambridge, Ontario, Canada. (Chu, 2017).
- PFHpS was found in biosolids, industrially impacted soil, and biosolid amended soil in various parts the midwestern United States. (Sepulvado, 2011; Blaine, 2013; Blaine, 2014).
- In 2021, EtFOSE was found in biosolids. (Thoma, 2022).
- In 2010, scientists found concentrations of 6:2FTOH, 7:2FTOH, 8:2FTOH , 9:2FTOH, 10:2FTOH, 11:2FTOH, 12:2FTOH, 13:2FTOH, 14:2FTOH in biosolids in Decatur, Alabama. (Yoo, 2010).
- In 2014, scientists found concentrations of 8:2/10:2 diPAP, 10:2 diPAP, and 10:2/12:2 diPAP in biosolids in Canada. (Lee, 2014).
- In 2021, scientists found concentrations of ErFOSE, MeFOSE, 5:3 FTCA, and 7:3 FTCA in biosolids. (Thomas, 2021).
- In 2021, researchers revealed the presence of GenX (HFPO-DA) in biosolids (Lee, 2021).

[3] "An Act To Investigate Perfluoroalkyl and Polyfluoroalkyl Substance Contamination of Land and Groundwater", https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280080637

[4] Committee Briefing, Joint Standing Committee on Agriculture, Conservation and Forestry Updates on Maine's PFAS Soil and Water Investigation, February 1, 2023, https://legislature.maine.gov/doc/9594; January 31, 2024, https://legislature.maine.gov/doc/10699

[5] PFAS and Maine DEP website, https://www.maine.gov/dep/spills/topics/pfas/maine-pfas.html#:~:text=Public%20Law%202021%2C%20Chapter%

PFAS contamination has been costly. Some farms have gone out of business. Farm families have been tested and found to have unimaginably high levels of PFAS in their blood. To date, more than $2,657,000 in taxpayer dollars has been provided by the Maine DACF for financial assistance to farmers impacted by PFAS contamination. This funding includes $1,413,000 to 10 farms for income replacement; $884,000 to 11 farms to support farm viability and infrastructure (including funding for clean feed, new equipment, greenhouses, water delivery, fencing); and $96,000 for 5 water filtration systems.[6] Ongoing, Maine has established a PFAS Fund to assist farmers,[7] with initial funding of $65 million (60M from state funds, 5M from the U.S. Department of Agriculture) in four categories:

- Direct assistance to impacted farms, $30.3M
- Land acquisition and management, $21.5M
- Research to support on-farm decision making, $11.2M
- Health initiatives, $7.3M[8]

This state funding for farmer assistance has been supplemented by private sector initiatives. MOFGA has been on the front lines helping farmers dealing with the devastating consequences of PFAS contamination, including by fundraising and administering with the Maine Farmland Trust an emergency relief fund as a bridge to the State's efforts to stand up publicly funded assistance.[9] Through this fund, financial assistance has been provided to more than 100 Maine farmers to investigate PFAS contamination risks, and to help farmers and farm workers cope with stress related to contamination.

The cost of comprehensively addressing the harm to farmers and the agricultural economy caused by PFAS contamination already exceeds the significant funding Maine recently appropriated. These costs are in addition to the millions of dollars the State is paying to comprehensively investigate PFAS contamination of soils and water and to pay for water filtration for contaminated residential wells.[10] Other states are facing similar costs to investigate and remediate PFAS contamination; one estimate puts the cost to states to date at nearly $3 billion, a figure that based on Maine's experience likely underestimates the actual cost.[11] We anticipate that significant funding beyond the millions already appropriated will be needed to complete the ongoing PFAS investigation, replace contaminated drinking water, address health impacts, and help farmers and farms directly and indirectly harmed by PFAS contamination. To date, more than 500 residential drinking water wells have been found to have levels of PFAS exceeding Maine's "sum of 6" PFAS interim standard, a number that likely will increase significantly once EPA's newly adopted maximum contaminant level for drinking water goes into effect.[12]

20478,or%20septage%20prior%20to%202019.

[6] DACF PFAS Update, January 31, 2024, https://legislature.maine.gov/doc/10699

[7] https://legislature.maine.gov/legis/statutes/7/title7sec320-K.html

[8] Maine PFAS Fund Plan, 2023, https://www.maine.gov/dacf/ag/pfas/docs/pfasfund/admin-plan-pfas-fund-final.pdf

[9] https://www.mofga.org/pfas/pfas-emergency-relief-fund/

[10] Map of Maine DEP sewage and sludge site investigation and contaminated wells: https://maine.maps.arcgis.com/apps/webappviewer/index.html?id=468a9f7ddcd54309bc1ae8ba173965c7

[11] $2,931,941,923 as of January 19, 2024, https://nonsticknightmare.org/nightmare-costs/

[12] Maine PFAS Investigation Preliminary Private Drinking Water Well Results by Town Associated With All Residential Samples Collected State-wide (as of November 20, 2023), https://www.maine.gov/dep/spills/topics/pfas/Groundwater%20metrics%20table%2011.20.2023%20REVISED.pdf

EPA's recent actions in other contexts regulating PFAS to limit human exposure to unsafe levels of PFAS, including establishing strict drinking water standards, are important steps that only underscore the need for EPA to more directly regulate sewage sludge/biosolids under the CWA. In Maine, widespread contamination from PFAS is the direct result of land application of biosolids that EPA has failed to adequately regulate under the CWA. EPA should not continue to allow persistent, toxic, soluble PFAS chemicals known to be present in biosolids to contaminate farmland, soils, water and food nationwide.

Maine is doing its part to stop this pervasive contamination at its source. Maine has enacted laws to require disclosure of PFAS in products and to phase out the unnecessary use of PFAS.[13] Maine is the first state in the nation to ban land-spreading of sewage-derived biosolids and fertilizer, including fertilizer sold to home gardeners and composted sludge marketed for landscaping and other uses.[14] The state has also enacted legislation to require reporting of PFAS in pesticide formulations (including both "active" and other ingredients) as a prerequisite to registering both pesticides and adjuvants, and has regulated the use of fluorinated plastic containers for pesticide storage.[15]

The lack of virtually any federal regulation of this waste to date has caused untold harm to public health and the environment. EPA must act promptly pursuant to the requirements of the CWA to identify PFAS in sewage sludge, and promulgate regulations to protect human health and the environment from further PFAS contamination caused by sewage sludge and sludge-derived fertilizer. Moreover, pending the implementation of regulations to ensure that biosolids are PFAS-free, EPA should ban land application of wastewater sludge biosolids and provide funding for safer disposal options.

MOFGA's claims are further described in the attached notice letter dated February 22, 2024, sent to you by Public Employees for Environmental Responsibility (PEER) and James Farmer, Robin Alessi, Tony Coleman, Karen Coleman and Patsy Schultz. If EPA fails to take immediate steps to address its non-compliance with the CWA within sixty (60) days, MOFGA will file suit in federal district court seeking declaratory relief, injunctive relief, and litigation costs as appropriate. If PEER has filed suit on the claims identified in its letter of February 22, 2024, before our notice period has expired, MOFGA will take appropriate steps to join that litigation.

Sincerely,

Sarah Alexander
MOFGA Executive Director

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[13] An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution. https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=107194

[14] An Act To Prevent the Further Contamination of the Soils and Waters of the State with So-called Forever Chemicals, https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=91897

[15] An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances, http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1501&item=4&snum=130