Hold the PFAS, please: Keeping forever chemicals out of the food chain in Canada

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Management of per- and polyfluoroalkyl substances (PFAS) found in municipal waste and biosolids is the next PFAS-related initiative being pursued at the federal level to manage the health impacts of exposure to PFAS.

Shortly after publication of the Draft State of PFAS Report in May 2023, the Canadian Food Inspection Agency (CFIA) announced plans to engage with other levels of government and industry stakeholders to implement an interim standard for PFAS in biosolids used in fertilizers, set at 50 parts per billion (ppb) (the Interim Standard), to mitigate the potential risks to human health through landfarming. The application of biosolids (which are the solid phase of municipal wastewater treatment and are frequently beneficially reused as a nutrient fertilizer) is a key uptake pathway for PFAS into the food chain. Biosolids are therefore becoming the subject of a growing number of PFAS-related regulations in various jurisdictions.

Interim Standard for PFAS in biosolids

On Dec. 22, 2023, CFIA took the next step towards implementing the Interim Standard with the release of a Consultation Document outlining its proposed risk management approach. Highlights of CFIA's proposed risk management approach include the following:

- The use of perfluorooctane sulfonate (PFOS), one of the most widely studied types of PFAS, as an indicator of PFAS contamination such that the Interim Standard will be 50 ppb of PFOS (rather than PFAS in general);
- To import or sell biosolids in Canada as fertilizers, all proponents will be required to provide: (i) a certificate of analysis for PFOS (within the previous 6 months) from an accredited laboratory evidencing that the sampled concentration is below 50 ppb; and (ii) an attestation from the responsible party (importer, manufacturer, or seller) that the certificate is valid;
- Changes to CFIA's Automated Import Reference System to require approval of the certificate of analysis and attestation before a shipment is cleared for entry; and
- Compliance verification through the use of CFIA's inspection powers under the *Fertilizers Act*.

According to the Consultation Document, CFIA's selection of PFOS as an indicator of PFAS is intended to align with the approach adopted by the State of Michigan, which has shown reductions in PFAS contamination levels in tested biosolids in the 3 years since adoption.

Mitigative actions at the provincial level

Management of PFAS in biosolids is also taking place at the provincial level.

In March 2023, Québec announced a temporary ban on biosolid imports from the United States over PFAS-related concerns (particularly with respect to biosolids originating from the State of Maine). The ban was implemented through amendments to Québec's *Agricultural Operations Regulation* to introduce a new provision prohibiting the:

> *spreading on any parcel of land of sludge from a municipal or industrial wastewater treatment plant or any other wastewater treatment or collection system, as well as de-inking sludge from pulp and paper mills, where the sludge originates from outside of Canada, or any product containing such sludge.*

Québec's ban followed a joint statement from the Order of Chemists of Québec, the Order of Agronomists of Québec, and the Order of Veterinary Physicians of Québec in Dec. 2022, which raised concerns over the levels of PFAS in biosolids and recommended against their use.

Background and further reading

Additional background can be found in our prior article on the regulation of PFAS in Canada, Forever Chemicals (PFAS) regulations in Canada: What Canadian businesses need to know. It is evident that all levels of government in Canada are showing an increased focus on addressing the harmful environmental and human-health related effects associated with PFAS. At the federal level, Environment and Climate Change Canada and Health Canada have been leading the way, publishing a Draft State of Per- and Polyfluoroalkyl Substances (PFAS) Report (the Draft State of PFAS Report) in May 2023, in which they propose to take the rare step of concluding that the entire class of PFAS has the potential to cause harm to the environment and human health and, therefore, should be considered "toxic substances."

Next steps

CFIA is inviting stakeholders and the general public to provide feedback on the Interim Standard until Feb. 20, 2024. The feedback is intended to supplement earlier rounds of targeted consultation with fertilizer industry organizations, biosolids processors and generators, research associations and provincial government departments, in which stakeholders raised concerns over the need for detailed guidance on the Interim Standard, as well as the need for balanced communication on the environmental and economic benefits associated with the use of biosolids.

BLG can assist clients who wish to comment on the Interim Standard, monitor future developments, or better understand how this and other PFAS regulations on the horizon

may affect their interests. If you have any questions about PFAS regulations in Canada, or the steps that you can take to assess and minimize PFAS-related risks for your business, please reach out to any of the authors or key contacts listed below.

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