

An update on regulation and litigation concerning PFAS in biosolids

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Several Texas landowners are plaintiffs in a pair of lawsuits — *Alessi v. Synagro Technologies, Inc.* and *Farmer v. U.S. Environmental Protection Agency* — that seek to reshape the legal landscape relating to per- and polyfluoroalkyl substances (PFAS) in biosolids. Despite good grounds to question the merits of those lawsuits, the claims are contributing to mounting public attention to the issue.

While federal regulation of PFAS in biosolids appears unlikely for the foreseeable future, the increased attention has led a growing number of state legislatures to adopt their own policies.

In this article, we provide an update on the evolving regulatory and litigation landscapes surrounding PFAS in biosolids, including *Alessi* and *Farmer*. We conclude with measures businesses should consider if they are involved in biosolids or handle wastewater that may contain PFAS.

I. Regulation of PFAS in sewage sludge, including biosolids

The wastewater treatment process produces sewage sludge, a nutrient-rich semi-solid. Biosolids are sewage sludge that has been treated to meet U.S. Environmental Protection Agency (EPA) standards for land application.

More than half of all sewage sludge in the United States is processed into biosolids and applied as fertilizer or soil conditioner on farms ($\approx 30\%$) or non-agricultural land ($\approx 25\%$).¹ The remaining sludge is typically disposed of via landfilling or incineration.

Federal regulation of biosolids

The EPA regulates sewage sludge pursuant to the Clean Water Act (“CWA”) by establishing mandatory practices for its use and disposal, including numerical limits for specified toxins in biosolids.

Under the CWA, the EPA “shall review the regulations” governing the use and disposal of sewage sludge “for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants” at least every two years.

The EPA’s regulatory process began with a comprehensive survey conducted in the late 1980s to identify pollutants that may be present in sewage sludge and potentially threaten public health or the environment. Since the first regulations went into effect in 1993, the EPA has issued biennial reports that summarize available data on pollutants in sewage sludge. The agency has not, however, regulated any new substances, including any PFAS compounds.²

Current EPA regulations categorize biosolids into three classes based on the degree of processing to reduce odor, pathogens, and attractiveness to disease vectors. Class A/EQ (Exceptional Quality) biosolids are approved for home and garden use. Class A biosolids are commonly used on parks, golf courses, and other recreational land. Class B biosolids are generally used only on cropland.

Federal action on PFAS in biosolids

Since the 1940s, many industries have used PFAS chemicals in their products and manufacturing processes. A huge array of products use one or more of the thousands of known PFAS compounds. Common uses of PFAS include various waterproof and greaseproof coatings, fire suppressants, refrigerants, household cleaners, sealants, lubricants, and cosmetics.

Rising public attention to PFAS’s alleged health impacts has led federal, state, and local governments to consider additional regulations.

On January 14, 2025, in the final days of the Biden Administration, the EPA released a draft risk assessment of the alleged health impacts of PFOA and PFOS (*i.e.*, long-chain PFAS) in sewage sludge, including biosolids. The assessment asserted that long-chain PFAS levels in biosolids higher than one part per billion (ppb) could be associated with possible health impacts on family farmers, the group with the highest potential exposure.

The draft risk assessment did not address health impacts on the general public. The assessment also noted potential health concerns arising from disposing of PFAS-laden sewage sludge in landfills or by incineration.

The National Association of Clean Water Agencies and the U.S. Composting Council were two of the many industry groups that questioned the draft risk assessment's methodology and conclusions.

The Association opined that the EPA "missed the mark" because municipal biosolids are used primarily on row crops grown for animal feed or fuel, not human consumption.³ The Council argued against the "unrealistically low" threshold of one ppb and criticized the EPA's data as being limited and biased.⁴

The Council also expressed its worry that the flawed risk assessment would "fuel unsubstantiated public concerns rather than promoting practical solutions."

The EPA has not finalized the January 2025 draft risk assessment, and it appears unlikely that the agency will soon act to regulate PFAS in biosolids. Under the Trump Administration, the EPA has generally pared back or reversed PFAS-related actions taken by the previous administration, such as drinking water standards under the CWA and reporting obligations under the Toxic Substances Control Act.

Farmer attempts to force federal regulation in the courts

In *Farmer v. EPA*, individual landowner plaintiffs, environmental and agricultural non-profits, and a local government entity sued the EPA to compel the agency to act on PFAS in sewage sludge.

In support of their claims under the CWA citizen-suit provision and the Administrative Procedure Act (APA), the *Farmer* plaintiffs argued that the CWA requires the EPA biennially to (a) identify additional pollutants in sewage sludge and (b) promulgate regulations concerning those pollutants.

The plaintiffs contend that EPA had violated its obligations by identifying only some forms of PFAS as pollutants in its biennial review process and by failing to promulgate regulations concerning long-chain PFAS compounds.

In the EPA's motion to dismiss the lawsuit, the agency argued that the CWA obligates the EPA only to review the existing regulations.⁵ The agency therefore asserted that it retained discretion over whether to identify and regulate additional pollutants. The EPA also contended that the court could not consider the merits of plaintiffs' APA claim because its biennial report is not a final agency action with legal consequences.

Since *Loper Bright v. Raimondo*,⁶ federal courts no longer afford *Chevron* deference to an agency's established interpretation of a statute the agency administers. However, it is noteworthy that the plaintiffs' legal theory runs counter to more than thirty years of agency practice implementing the CWA's mandate for the EPA to regulate sewage sludge.

In September 2025, Judge Dabney L. Friedrich of the U.S. District Court for the District of Columbia, a Trump appointee, adopted the EPA's arguments in full and dismissed the case.⁷

On appeal to the D.C. Circuit, Plaintiffs have abandoned their APA claim and contend only that the CWA imposes

a non-discretionary duty to identify and regulate toxic pollutants during each biennial review cycle.⁸

Local governments filed an *amicus* brief in support of the plaintiffs, arguing that federal regulation is necessary because local entities lack the capacity to address PFAS contamination effectively.⁹

An *amicus* brief filed by a group of farmers and industry stakeholders posits that, because many states treat federal biosolids standards as a regulatory ceiling, federal inaction prevents those states from taking action themselves.¹⁰

The EPA's response and *amicus* briefs in support of its position are expected to be filed in May 2026.

Whether the *Farmer* dismissal will be affirmed on appeal remains uncertain. Even if the D.C. Circuit reversed, there is no way to know how long further proceedings in the district court would last or whether it would ultimately succeed in forcing the EPA to add maximum levels of long-chain PFAS to existing sewage sludge regulations.

In the meantime, there also is no sign that EPA currently intends to address PFAS in biosolids through agency action.

State legislation and regulation concerning PFAS in biosolids

In the past few years, states have moved quickly to implement various policies concerning PFAS in biosolids. The pace of these efforts appears to be accelerating as public focus on the issue continues to build.

Between 2022 and January 2025, fifteen states adopted statutes or regulations governing PFAS in biosolids. Maine and Connecticut imposed what are effectively total bans on biosolids due to concerns about PFAS contamination.

The other thirteen states' policies generally provide that companies or waste treatment facilities must test biosolids for PFAS compounds and report the results to state regulators, with roughly half of those states also restricting the use of biosolids with PFAS levels above specified limits.

In the months following *Farmer's* dismissal, more states have acted. Tennessee and Virginia already have adopted new policies on PFAS in biosolids. Maryland's new restrictions will go into effect in May 2026, absent action from the governor. Other states, including Oklahoma and Hawaii, currently have bills in committee that address PFAS in biosolids with a mix of approaches.

II. Private litigation concerning PFAS in sewage sludge and biosolids

The same public attention to PFAS in sewage sludge driving regulatory changes is also generating increased PFAS litigation. Private litigation has begun to focus more on entities involved in biosolids and wastewater management in addition to businesses that are alleged to have discharged wastewater containing PFAS.

Alessi is a novel case concerning PFAS in biosolids. In 2024, several Texas landowners — most of whom are also plaintiffs

in *Farmer* — sued Synagro Technologies, Inc., a leading North American biosolids company.

The lawsuit alleges that plaintiffs' properties were contaminated with PFAS from a neighboring farmer's use of Synagro's biosolid-derived fertilizer.¹¹ Based on these allegations, the *Alessi* plaintiffs assert claims for negligence, strict products liability (including failure to warn), and alleged defects in the design, manufacture, and marketing of the product.

Synagro moved to dismiss the operative complaint in April 2025. The key grounds for dismissal include: (a) lack of subject matter jurisdiction based on governmental and derivative immunity, (b) statutory preclusion under the Texas Right to Farm Act, and (c) inadequacies and inconsistencies in the PFAS testing allegations plaintiffs rely on to plead causation.¹² The motion to dismiss *Alessis* still pending.

Outside the litigation, Synagro also released the results of independent PFAS testing that the company claims refute the testing relied on by the plaintiffs.¹³

Even in lawsuits primarily against industrial users of PFAS, the disposal of sewage sludge has become more of a focus for plaintiffs. In litigation alleging PFAS contamination from textile mills, plaintiffs included claims against the town that operated the publicly owned treatment works responsible for treating one mill's wastewater and land-applying the resulting biosolids.¹⁴ The town settled with the plaintiffs in March 2025.

Residents of a Connecticut town filed a putative class action lawsuit in 2024 against a paper products company, claiming personal injury and property damages. The plaintiffs' primary theory alleged that PFAS in paper sludge had leached out of the company's landfill and contaminated the town's soil and groundwater.

In March 2026, the federal district court hearing the lawsuit dismissed the case because the plaintiffs' allegations were based only on speculation that the defendant was the cause of elevated PFAS levels in the surrounding area.¹⁵

Even without any evidence that PFAS caused any personal injuries or property damage, plaintiffs are now also bringing consumer protection-style "green washing" claims concerning biosolids. For instance, a non-profit organization sued Scotts Miracle-Gro Co. for marketing its biosolid-derived fertilizer as "eco friendly" when the product purportedly contained PFAS.¹⁶

III. Strategies for companies involved with biosolids or wastewater disposal

The emerging focus on PFAS in biosolids and other sewage sludge is rapidly changing the legal landscape. These changes may lead to potential compliance and litigation challenges for companies in the wastewater management and biosolids industries as well as for businesses that dispose of wastewater that may contain PFAS.

A national patchwork of state laws and regulations governing PFAS in biosolids could pose significant compliance problems.

Navigating different states' policies requires advance notice and operational planning. Impacted businesses should work with counsel to monitor changing state and local regulations.

Companies involved with biosolids may also contemplate individual or collective engagement with state and local governments to promote policies that respond to public concerns while still recognizing waste management needs and minimizing unnecessary compliance burdens.

Businesses handling PFAS should consider whether proactive changes to corporate practices concerning wastewater and biosolids are appropriate, given state laws and the best available scientific evidence.

When businesses face claims related to PFAS contamination (from biosolids or otherwise), they should retain appropriate outside counsel as early as possible.

Environmental claims require counsel conversant in both mass tort law and the relevant scientific issues. Those issues are particularly nuanced in PFAS litigation, given the compounds' ubiquity and the technical complexity of reliable testing.

Preparing properly may decrease the odds of litigation and improve a company's defense if claims do materialize.

Notes:

¹ EPA, Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS), 90 Fed. Reg. 3859, 3860 (Jan. 15, 2025), available at *Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS)* | US EPA, <https://bit.ly/48uSPJi>.

² See generally EPA, *Biennial Reviews of Sewage Sludge Standards*, <https://bit.ly/4eRdBqk>.

³ Nat'l Ass'n of Clean Water Agencies, *May/June 2025 Regulatory Update* (July 1, 2025), <https://bit.ly/4t6wfhB>.

⁴ U.S. Composting Council, *Comment to the Risk Assessment from U.S. Composting Council* (Apr. 1, 2025), <https://bit.ly/4uhOUI6>.

⁵ Defs.' Mem. in Supp. of Mot. to Dismiss at 5–7, *Farmer v. EPA*, No. 24-cv-1654 (D.D.C. Sept. 9, 2024), ECF No. 13-1.

⁶ NEW 603 U.S. 369 (2024).

⁷ *Farmer v. EPA*, 805 F. Supp. 3d 253 (D.D.C. 2025).

⁸ Opening Brief of Pls.-Appellants at 20, *Farmer v. EPA*, No. 25-5431 (D.C. Cir. Mar. 17, 2026).

⁹ Brief of Amici Curiae Plainfield Twp. at 13–23, *Farmer v. EPA*, No. 25-5431 (D.C. Cir. Mar. 24, 2026).

¹⁰ Amicus Brief of Robert Bierschenk at 15–21, 24–27, *Farmer v. EPA*, No. 25-5431 (D.C. Cir. Mar. 24, 2026).

¹¹ Second Am. Compl., *Alessi v. Synagro Techs., Inc.*, No. 3:25-cv-00445, ECF No. 36 (N.D. Tex. Apr. 4, 2025).

¹² Mot. to Dismiss, *Alessi v. Synagro Techs., Inc.*, No. 3:25-cv-00445 (N.D. Tex. Apr. 25, 2025), ECF No. 45.

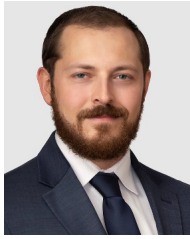
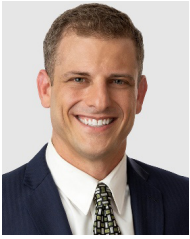
¹³ Synagro, *Synagro Releases Conclusions of Independent Scientific Study on Biosolids in Johnson County, Texas* (March 18, 2025), <https://bit.ly/4deS21K>.

¹⁴ See Compl., *Parris v. 3M Co.*, No. 4:21-cv-00040-TWT, ECF No. 1 (N.D. Ga. Feb. 23, 2021).

¹⁵ *DePaul v. Kimberly-Clark Corp.*, No. 3:24-CV-271 (KAD), 2026 WL 851249, at *1 (D. Conn. Mar. 27, 2026).

¹⁶ First Amended Complaint, *Beyond Pesticides v. Scotts Miracle-Gro Co.*, No. 2024-CAB-006782 (D.C. Super. Ct. May 23, 2025).

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