

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

February 08, 2024

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.

By

[Rick Williams](#), [Gabrielle K. Kramer](#), [Braeden Stang](#)

Expertise

[Environmental](#), [Environmental Disputes](#), [Products Law](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.