Memorandum

Solid Waste Subcommittee
Lucas Joseph, Assistant General Counsel
June 9, 2025
Draft Sewage Sludge Risk Assessment for PFOA and PFOS: **Feedback Requested**

The U.S. Environmental Protection Agency (EPA) earlier this year released the Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) for public comment. EPA more recently extended the **comment deadline until Aug. 14, 2025.** The draft risk assessment reflects the EPA's latest scientific understanding of the potential risks to human health and the environment posed by the presence of PFOA and PFOS in sewage sludge that is land applied as a soil conditioner or fertilizer (on agricultural, forested, and other lands), surface disposed (e.g., placed in a sewage sludge-only landfill called a monofill), or incinerated. Sewage sludge, or as it's commonly referred to as biosolids, is a nutrient-rich solid that is derived from the wastewater treatment process. *See* EPA's website for additional information and background on sewage sludge and biosolids.

If this risk assessment is approved, it will have the most impact on wastewater treatment plants (WWTPs) or facilities that discharge to public WWTPs. However, we are monitoring this issue given EPA's actions with the risk assessment, combined with existing and future PFAS regulations, that may impact mining sites that use, or previously used, biosolids for various reasons (e.g., mining reclamation, beneficial reuse, soil stabilization). Our concern is that previous land application of biosolids could be considered a source of historical contamination at your mining facility.

EPA is requesting public comment on the science and technical aspects of the assessment, but most importantly, on the assessment's modeling of biosolid application, its fate, and transport. This information will inform the EPA whether new regulatory parameters are needed. **The National Mining Association (NMA) is interested in learning if any of your operations previously used or continue to use biosolids in any way at your sites, or store biosolids in impoundments or other disposal units. The NMA is also interested if any NMA members, including our consultants with expertise in PFAS matters, have any relevant technical information to share. Member feedback will inform NMA's level of participation in coalition efforts on this matter, including potential comments. Please share all feedback by July 1, 2025.**

Draft Risk Assessment

The purpose of this draft document is to characterize the potential human health and environmental risks from land application, surface disposal, and incineration of sewage sludge containing PFOA or PFOS. The draft assessment focuses on people living near affected sites or relying on products like food, animal products, or drinking water from those areas, rather than the general public. The assessment aims to determine whether PFOA or PFOS may be present in sewage sludge at levels that could harm public health or the environment. It will inform any future decisions under Clean Water Act, section 405(d).

Regulatory Spotlight

EPA promulgated sewage sludge (biosolids) regulations in 40 C.F.R. § 503, setting the standards for the use and disposal of biosolids. Currently, no PFAS are listed as a pollutant in biosolids. 40 C.F.R. 503.23. If EPA finalizes this risk assessment, it could eventually lead to additional regulation of PFAS under these provisions. Under Clean Water Act section 405(d)(2)(C) EPA must review biosolid regulations every two years to identify any additional pollutants needing regulation. Part 503 also includes an exception that permits land application when intended for site reclamation. 40 C.F.R. § 503.14(d). The draft sewage sludge risk assessment itself gives an example of this exemption for restoring degraded land stating, "e.g., repairing the surface of a mining site." P. 3.

According to other source materials, despite these CWA provisions, liability for PFAS contamination from biosolids may likely arise under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). As you are aware, in 2024, the EPA designated PFOA and PFOS as CERCLA hazardous substances. *See* NMA's May 2, 2024, memorandum detailing this final rule. EPA developed screening values for soil as a starting point for determining if a chemical (e.g., PFOA, PFOS) needs to be considered in a Superfund site remediation plan. As a result, EPA can now hold potentially responsible parties jointly and severally liable for PFOA and PFOS contamination from biosolids, increasing the likelihood of litigation against property owners, including mining companies that used biosolids for land reclamation or other uses.

EPA's Office of Enforcement and Compliance Assurance issued a memorandum outlining its enforcement discretion guidance document for addressing PFAS liability in biosolids under CERCLA. The NMA is aware that other organizations are advocating the use of CERCLA section 101(22), which exempts "the normal application of fertilizer" from the definition of "release," to address liability concerns related to biosolids contaminated with PFAS. To date, EPA has not formally recognized this exemption, possibly to avoid releasing upstream contributors from liability.

Next Steps

To further orient yourself with this topic, the Interstate Technology Regulatory Council hosted an informative webinar with information resources detailing the fate, transport, and mobility of PFAS-containing biosolids that are land-applied, as well as treatment and disposal options and regulatory considerations. Please contact me at ljoseph@nma.org with any questions or information you have that could contribute to coalition comments on this matter.