



September 4, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted electronically to: <https://www.regulations.gov/>

RE: Comments of the New Mexico Environment Department on the Environmental Protection Agency's Draft Guidance for Reducing Risk From Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) in Biosolids

Dear Administrator Zeldin,

The New Mexico Environment Department (NMED) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) Draft Guidance for Reducing Risk From Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) in Biosolids (Docket ID No. EPA-HQ-OW-2026-2509).

NMED strongly urges the EPA to move beyond non-binding, voluntary recommendations and take immediate regulatory action to mitigate PFAS contamination in biosolids. NMED requests that EPA incorporate the recommendations outlined in the attached comments into its final decision-making process. Relying on voluntary measures passes the burden of environmental and public health risks onto state agencies, utilities, and agricultural communities. Given that PFOA and PFOS accumulate directly in sewage sludge—threatening vital soil, livestock, and drinking water resources—New Mexicans cannot afford a passive regulatory framework.

NMED has taken proactive steps toward source identification, industrial pretreatment, and nation leading labeling standards on consumer products, demonstrating that addressing PFAS contamination requires a multi-pronged strategy. The EPA should establish enforceable federal limits and require nationwide sewage sludge surveys and industrial pretreatment initiatives that hold polluters accountable at the source. The EPA should match the urgency felt by western states protecting arid watersheds and deliver a final rule equipped with the regulatory teeth necessary to eliminate PFAS from our environment and food supply.

Sincerely,

A handwritten signature in blue ink, reading "James C. Kenney".

James C. Kenney
Cabinet Secretary

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham

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New Mexico Environment Department Comments on Environmental Protection Agency's Draft Guidance for Reducing Risk From Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) in Biosolids

Background: On July 6, 2026, the U.S. Environmental Protection Agency (EPA) published a notice of availability and requested public comment on a draft guidance memorandum aimed at reducing potential risks from perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) in biosolids. Recognizing that traditional wastewater treatment technologies do not remove these persistent chemicals—which can accumulate in sewage sludge—the EPA's non-binding, voluntary recommendations seek to provide clarity to wastewater treatment plant operators, farmers, and state and tribal water agencies. This initiative addresses public and regulated community confusion stemming from a January 2025 Draft Risk Assessment, which focused primarily on high-risk, hypothetical land-application scenarios rather than common national practices. The EPA is soliciting stakeholder feedback for 60 days, with comments due by September 4, 2026, on risk-mitigation practices, future policy options, and state-level successes in source reduction.

1. Inadequacy of voluntary recommendations and unenforceable guidance.

The Draft Guidance Memorandum states that EPA remains committed to addressing PFAS but provides only voluntary recommendations for potential ways to mitigate the risks of land-applied biosolids. Issuing informal advice—such as advising applicators to “avoid” high-risk areas or areas close to where children gather and telling wastewater treatment plants (WWTPs) to “consider” adding composite liners or testing incinerators—fails to establish an enforceable, uniform legal standard. Based on New Mexico Solid Waste Rules (20.9.2–20.9.10 NMAC), this reliance on voluntary recommendations creates regulatory loopholes, has the potential to shift liability downstream onto solid waste management facilities, and undermines state-level environmental protection.

2. Application of the “polluter pays” framework to protect passive receivers.

Voluntary recommendations for utilities, solid waste management facilities, and land applicators risks shifting financial and legal liabilities downstream onto municipal “passive receivers” and agricultural landowners who did not generate or profit from PFAS production or use. Solid waste facilities, publicly owned treatment works (POTWs), and farmers must absorb management, monitoring, and remediation costs resulting from upstream industrial contamination.

EPA should explicitly embed “polluter pays” principles into its national biosolids strategy, prioritize industrial pretreatment standards and discharge prohibitions on commercial facilities releasing PFAS into sewer systems, grant federal statutory liability protections for municipal utilities and agricultural applicators under federal cleanup programs, and establish mandatory financial assurance rules for chemical manufacturers to fund municipal wastewater infrastructure upgrades.

3. Alignment with New Mexico's comprehensive PFAS actions.

EPA's reliance on voluntary biosolids recommendations stands in contrast to the mandatory regulatory actions New Mexico has implemented to address PFAS contamination. NMED is involved in litigation against the federal government regarding PFAS contamination from federal military installations and has issued administrative compliance orders, mandated groundwater discharge permit modifications,

established comprehensive off-base sampling protocols, and implemented the state's newly enacted PFAS Protection Act.

EPA should focus on creating national frameworks based on best available science to develop uniform standards. EPA should align its national policy with proactive state enforcement by replacing soft guidance with binding federal regulatory standards, designating PFAS such as PFOA, PFOS, PFHxS, PFNA, and HFPO-DA as hazardous substances, and delivering targeted federal Clean Water State Revolving Fund (CWSRF) and Water Infrastructure Finance and Innovation Act (WIFIA) infrastructure funds directly to communities affected by historic PFAS contamination.

4. Mandatory groundwater monitoring and sole-source aquifer protection.

The draft guidance fails to protect groundwater resources in arid and semi-arid states like New Mexico, where over 80% of the population relies on groundwater for drinking water and agricultural operations depend on alluvial aquifers. Land application of biosolids over unconfined aquifers or primary recharge zones presents an immediate threat of deep percolation, leaching, and plume migration into drinking water supplies.

EPA should establish mandatory groundwater monitoring protocols and site-suitability criteria beneath land-application fields overlaying sensitive, sole-source, or high-vulnerability aquifers.

5. Regulatory focus on total PFAS, precursor degradation, and short-chain compounds.

EPA's draft guidance restricts its scope primarily to PFOA and PFOS, failing to address the broader class of PFAS and atmospheric or biological degradation pathways. In land-applied biosolids, precursor compounds frequently break down over time into highly mobile, persistent short-chain perfluoroalkyl carboxylates and sulfonates that migrate rapidly through soil columns into underlying water tables. To address this issue, EPA should expand its guidance and future risk assessments beyond legacy PFOA and PFOS to incorporate Total Oxidable Precursor (TOP) assay tracking and set cumulative standards for broader PFAS types.

6. Evaluating cumulative and synergistic pathways in risk assessment.

In its Draft Risk Assessment, EPA calculates public health risks by looking at each exposure route—like drinking well water, drinking milk, or eating beef—individually and in isolation. In the Draft Risk Assessment, the model evaluates products like milk, beef, eggs, and drinking water as separate risk factors rather than combining them. For agricultural families living on impacted land—as well as members of the general public who consume locally raised produce, meat, and dairy—exposure happens simultaneously, and in some cases cumulatively, across all of these food and water sources.

EPA should revise the risk assessment framework to model multi-route, cumulative exposure rather than treating individual exposure pathways as isolated events.

7. Protecting surface water and drinking water supplies.

EPA's draft recommendations for bulk land appliers fail to provide the clarity or protection necessary to safeguard public water supplies. Vague directives instructing appliers to avoid sensitive areas create regulatory ambiguity and leave surface waters exposed to runoff.

EPA should replace informal advice with definitive regulatory criteria, including mandatory numeric setbacks from drinking water sources and fishable waters. NMED requests that EPA formally define high-risk agricultural vectors—such as fresh produce acreage and poultry foraging areas—where land application of biosolids is strictly prohibited.

8. Clarifying state roles and recognizing state-led proactive actions.

The recommendations related to the protection of public health and pollution prevention are not sufficient to provide clarity to states. EPA provides recommendations for three specific stakeholders: for Bulk Land Appliers of Biosolids, for the General Public, and for Wastewater Treatment Plants and Other Sewage Sludge Generators but fails to clarify the regulatory role of states. New Mexico has started requiring monitoring of PFAS in sewage sludge from WWTPs through CWA 401 certifications in order to establish an inventory in the state as a first step related to protection of public health and pollution prevention.

NMED requests that EPA update its framework to explicitly define state oversight roles and formally endorse state-led mechanisms—such as New Mexico’s CWA Section 401 certification monitoring initiative—as model guidance for states to build baseline inventories.

9. Enhancing cooperative federalism for industrial source reduction.

The draft guidance informs what measures six states have taken, and EPA is seeking feedback and data demonstrating whether and how these non-risk-based, source-reduction approaches can reduce concentrations of PFOA and PFOS in biosolids and sewage sludge, as well as feedback on mitigating public health risks.

EPA should collaborate with states more closely in the spirit of cooperative federalism and provide guidance to states on how these industrial pretreatment and source-identification approaches can be improved, refined, and supported with federal resources.

10. Standardized analytical methods, lab certification, and testing subsidies.

Recommending that WWTPs, incinerators, and land appliers monitor sewage sludge and stack emissions is unachievable without dedicated federal laboratory infrastructure. Small, rural, and Tribal utilities face financial barriers and long turnaround times because of limited commercial laboratory capacity for EPA Method 1633 and specialized air emission testing (OTM-45 and OTM-50).

NMED requests that EPA standardize testing protocols across all sludge and air matrices, rapidly expand national laboratory certification programs, and provide direct technical assistance grants to POTWs to offset analytical sampling expenses.

11. Incinerator performance testing and data repository.

Regarding surface disposal and incineration recommendations, the EPA should consider guidance for a standard performance testing of incinerators to gain information about potential releases of PFOA, PFOS, and other PFAS.

NMED requests that EPA establish standardized stack-testing performance protocols using validated testing methodologies (such as OTM-45 and OTM-50) for sewage sludge incinerators to measure volatile products of incomplete combustion.

EPA should make a repository available where WWTPs may provide their data which EPA can use in the future to bridge the data gaps identified in its *Draft Sewage Sludge Risk Assessment for PFOA and PFOS* for it to be able to provide quantitative risk estimates.

12. Land use tracking and transparency platforms.

Given that risks depend heavily on land use decisions (e.g., risks are different for growing textile crops rather than produce), EPA should evaluate policy options that would consider current and future land use practices.

To protect public health, future land uses, landowners, and property values when land ownership or agricultural practices change, the EPA should work with states, tribes, and utilities to track biosolids land use and publish the spatial data on a publicly available platform such as “How’s My Waterway.”