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Biosolids/Clean Water Act: Public Employees for Environmental Responsibility Appeal Dismissal of Citizen Suit Action Alleging EPA Failure to Address PFAS

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The United States District for the District of Columbia ("Court") addressed in a September 29th Memorandum Opinion and Order ("Memorandum") an action against the United States Environmental Protection Agency ("EPA"), and intervenor-defendant National Association of Clean Water Agencies ("NACWA") seeking to compel agency action regarding the regulation of sewage sludge (i.e., biosolids) under the Clean Water Act and the Administrative Procedure Act. *See JAMES FARMER, et al., v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.*, No. 24-cv-1654 (DLF).

The Public Employees for Environmental Responsibility (collectively, "Plaintiffs") filed the action on behalf of several Texas farmers and ranchers who had allegedly been harmed by PFAS contamination in biosolids.

The Plaintiffs filed a Complaint seeking an order directing EPA:

1. to identify certain PFAS in its next biennial report; and,
2. to regulate certain other PFAS pursuant to deadlines set by this Court.

EPA and the intervenor moved to dismiss the Complaint for lack of subject-matter jurisdiction and for failure to state a claim.

The Court granted EPA's and NACWA's motion to dismiss stating:

... Although the plain language of the CWA imposes a non-discretionary duty on EPA to review its regulations on a biennial basis, it does not mandate that EPA also identify and regulate sewage-sludge pollutants within the same time frame. And neither the Biennial Report nor EPA's failure to list pollutants in that report constitutes a final agency action subject to APA review.

The Plaintiffs in the case filed an appeal on November 25th to the United States Court of Appeals for the District of Columbia from the Final Order that was entered on September 29th.

A copy of the [Amended Complaint](#) and the [Notice of Appeal](#) can be found here.