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Biosolids/PFAS: U.S. Environmental Protection Agency Moves to Dismiss Public Employees for Environmental Responsibility Judicial Action Seeking Clean Water Act Regulation

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The Public Employees for Environmental Responsibility (“PEER”) filed in June a Judicial Action in the United States District Court for the District of Columbia (“Court”) arguing that the United States Environmental Protection Agency (“EPA”) has a non-discretionary duty to regulate several per-and polyfluoroalkyl substances (“PFAS”) in sewage sludge (i.e., biosolids). See Civil No. 1:24-cv-01654.

The United States Department of Justice (“DOJ”) on behalf on EPA filed on September 9th a response styled:

Defendants’ Memorandum in Support of Motion to Dismiss Plaintiffs’ Second Amended Complaint for Declaratory and Injunctive Relief (“MTD”).

PEER had filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) pursuant to the citizen suit provision of the Clean Water Act alleging that EPA had failed to perform a non-discretionary duty to identify and regulate toxic pollutants in sewage sludge as required by 33 U.S.C. § 1345(d).

The organizations claim that EPA had:

...failed to identify as existing in sewage sludge at least 18 toxic per-and polyfluoroalkyl substances (“PFAS”) that scientific evidence shows are present in sewage sludge in concentrations which may adversely affect public health or the environment in violation of 33 U.S.C. § 1345(d)(2).

The organization also argued that EPA was required to promulgate regulations specifying appropriate restrictions, as required by the same provision, for several other PFAS that the federal agency has previously recognized exists in sewage sludge and for which sufficient information necessitated regulations exist.

DOJ’s MTD argues that PEER has identified no Clean Water Act section that requires EPA to regulate PFAS in the manner requested in their Complaint. It further argues that PEER has therefore not met the Clean Water Act citizen suit requirements and the action must be dismissed.

DOJ also argues that a parallel Administrative Procedure Act claim filed by PEER should also be dismissed. It claims that the organization cannot:

...use the APA to evade the limitations on the CWA citizen suit provision.

Further, DOJ argues that even if PEER could do so, it would still fail to identify any actionable non-discretionary duty that EPA failed to perform.

A copy of the Complaint that was originally filed by PEER can be found [here](#).

A copy of the Motion to Dismiss can be found [here](#).