

March 12, 2021

Via email

Paul Locke , Assistant Commissioner
Elizabeth Callahan, Acting Division Director, Policy & Program Development
Bureau of Waste Site Cleanup
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108

Subject: LSPA suggestions and requests regarding PFAS6

Dear Paul and Liz:

The LSP Association (LSPA) appreciates the opportunity to provide input and feedback to MassDEP regarding current regulatory issues and technical initiatives. This letter addresses several topics regarding per- and poly-fluorinated compounds (PFAS), including the six PFAS regulated under the MCP (PFAS6). The LSPA has a group formed from several of its committees working on issues related to the implementation of the PFAS-related MCP revisions and the impacts of PFAS across the Commonwealth. Our suggestions are organized in three categories: PFAS Background Conditions and MCP Release Exemptions; MassDEP Private Well Sampling Program; and Waste Management.

In support of the issues raised in this letter, and to assist LSPs in implementing the PFAS regulations, the LSPA respectfully requests that MassDEP seek out participation by LSPA members and other stakeholders in the further development and implementation of PFAS regulations and guidance, and that MassDEP participate in the LSPA's working group. We also request that the issues raised in this letter be discussed at a BWSC Advisory Committee meeting in the coming months.

PFAS Background Conditions and MCP Release Exemptions

The LSPA believes current technical information indicates that potentially substantial concentrations of PFAS6 may be present in soil and groundwater in many locations across the Commonwealth where it is not possible to attribute that presence to an identifiable source or sources. Current research suggests that PFAS compounds can be present in the environment at concentrations associated with conditions that meet the MCP definition of "Background." Potentially confounding sources include but are not limited to septic systems (a collection point for PFAS in household products, in foods or

products in contact with food, and in human wastes); historic or current presence of PFAS in municipal water supplies; airborne deposition; precipitation; stormwater, surface water, and watershed related contributions; application during firefighting (documented and undocumented, including vehicle accidents); and widespread spraying of insecticides such as Anvil10+10. Anecdotal information indicates that there is inconsistency across the MassDEP regional offices regarding whether PFAS6 detected at or above Reportable Concentrations at a residential property where the only logical source is the septic system should or should not be a Reportable Condition under the MCP.

The LSPA respectfully requests that MassDEP issue an interim guidance and/or policy statement as soon as practical, or include additional PFAS-related revisions to the MCP before they are finalized, that includes or addresses the following:

1. Compile available national and international data on PFAS associated with the above-referenced background conditions and provide those data with analysis and interpretation to the regulated community.
2. Conduct sampling as warranted to develop local (Massachusetts) data on actual PFAS6 concentrations in septic system effluent as well as PFAS6 attributable to other non-point source background conditions.
3. Clarify that concentrations of PFAS6 attributable to the following are not MCP releases: application of pesticides consistent with labeling where such pesticides contain PFAS either by design or as a manufacturing or packaging by-product, and permitted residential septic effluent.
4. Expand the definition of Anthropogenic Background to include PFAS detected in environmental media that are not attributable to a release and consistent with typical background concentrations (as established above in item 1).
5. Clarify that background PFAS may be excluded from risk characterization.
6. Clarify that PFAS compounds that are not the regulated PFAS6 subgroup can be quantitatively excluded from risk characterization even if analytical data are available indicating their presence.
7. Consider an exemption for application of AFFF by local Fire Departments consistent with its intended purpose (fighting or prevention of fires), as a way to recognize the complexity of assigning responsibility for emergency response activities to property owners. (This exemption would not include locations where AFFF was applied in non-emergency situations). Similar to pesticides, AFFF was used consistent with its intended purpose and labeling by Fire Departments across the Commonwealth without knowledge of potential health and environmental risks. In many cases, firefighting activities took place on properties not directly associated with the source of the fire (e.g., vehicle fires/spills, transformer fires) or were caused by forces outside the property owner's

control (e.g., vehicle accident, lightning strike, appliance malfunction). In almost all cases, property owners had no control over the use of AFFF at their property.

MassDEP Private Well Sampling Program

The *MassDEP Private Wells PFAS Sampling Program* Q&A indicates that homes with PFAS6 detections exceeding 20 ppt will be identified and reported as disposal sites under the MCP. Of course, this will trigger responsibility for the homeowner to evaluate the source of the PFAS and either initiate cleanup responsibility or file a Downgradient Property Status Opinion. This is in addition to the homeowner's need to procure a clean drinking water supply or otherwise address the risks posed by the PFAS. This approach places undue financial and legal burdens on potentially innocent homeowners and may discourage sampling. The impact of these burdens may be disproportionate in disadvantaged communities. Alternative approaches can be implemented that do not impose regulatory requirements at residential properties with PFAS6 detections (see New Hampshire's program for sampling private water supply wells).

Many, although not all, Massachusetts residential properties served by private wells are also served by septic systems and are in suburban, exurban, or rural locations with no obvious, typical PFAS sources within substantial distances. MassDEP acknowledges in the Q&A document that "...it would be unusual for a residential property to be the source of significant amounts of PFAS in groundwater..."

The LSPA respectfully requests that MassDEP consider the following:

1. An exemption of applicable residential properties from categorization as Disposal Sites in the forthcoming MCP revisions, or an immediate moratorium on declaring residential properties with PFAS6 concentrations above MMCLs identified through the MassDEP or similar sampling program as Disposal Sites under the MCP unless a known source of PFAS is within 500 feet of the property or the affected supply well. We suggest that this exemption/moratorium also extend to PFAS6 exceedances detected via private sampling undertaken voluntarily or as part of a property transaction.
2. In cases where a known source exists, provide an expedited DPS form that minimizes homeowner expense while linking impacted properties to the source site. Clarify who will perform, and who will fund the DPS assessment and submittal for these homeowners.
3. Expand the proposed program to provide a mechanism for "blind" and/or "double-blind" sampling to allow potentially affected parties to protect their health while avoiding potential notification requirements.

4. Provide a database for sharing information collected as part of this program, so that larger plumes and potential release sites can be identified. Such a database should allow sharing of data by generalized location rather than address.
5. Provide a well-funded assistance program for affected residences meeting proper criteria to allow them to properly address their water supply issue and conduct MCP Response Actions.

Waste Management

PFAS6 Disposal Sites are active under the MCP. Assessment and cleanup of such sites is resulting in generation of Remediation Wastes (environmental media) as well as treatment system wastes, such as carbon and other filter media. By inclusion in the MCP, the PFAS6 compounds are now hazardous materials; however, no additional categorization has occurred. It is our understanding that MassDEP, at least in certain regions, has instituted a *de facto* ban on PFAS-impacted soil disposal/reuse within the Commonwealth, and has stipulated MassDEP approval of disposal facilities. As site discovery accelerates and MCP response actions necessarily proceed, PFAS waste disposal and management will adversely impact the timeliness and costs for response actions (particularly if in-State options are not identified), will stretch limited resources such as landfill space, and may ultimately delay or hinder cleanup.

LSPA respectfully requests that MassDEP:

1. Identify in-state disposal, recycling, and/or treatment options for PFAS-impacted soil.
2. Eliminate or provide rationale for the *de facto* ban on disposal/reuse of PFAS-impacted soil within the Commonwealth.
3. Clarify the regulatory status of PFAS treatment system wastes and provide guidance and options for proper disposal or treatment.

We appreciate your consideration of these items, which are both time-sensitive and critical to our practice. Please do not hesitate to contact us with any questions.

Sincerely,



Michele Paul, LSP
President



Wendy Rundle
Executive Director