



**Maine Department of Agriculture, Conservation & Forestry (DACF)  
Bureau of Agriculture, Food & Rural Resources**

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**Policy for the Determination of PFAS Contaminated Land Pursuant to 35-A MRSA § 3210-J**

Effective July 31, 2024. Revised August 22, 2024.

*DACF reserves the right to amend this policy document at any time.*

The 131<sup>st</sup> Maine Legislature enacted LD 1591 (Pub. Law 2023 c. 321), which added an additional solicitation for energy from qualified Class IA resources equal to five percent of retail electricity sales specifically to be developed on agricultural lands contaminated by perfluoroalkyl and polyfluoroalkyl substances (PFAS). LD 1591 is codified as 35-A M.R.S.A. § 3210-J.

Pursuant to 35-A M.R.S.A. § 3210-J, contaminated land is defined as "agricultural land contaminated by perfluoroalkyl and polyfluoroalkyl substances as defined in Title 38, section 1614, subsection 1, paragraph F that may no longer be used for its current or historical agricultural purposes as determined by the Department of Agriculture, Conservation and Forestry in accordance with applicable state and federal food safety standards." The Department of Agriculture, Conservation and Forestry (DACF) believes future technology or scientific understanding is likely to expand the possible uses of contaminated land, and therefore interprets the phrase "may no longer be used" as meaning that agricultural land cannot presently be safely used for agricultural production.

This memo sets forth how DACF's Bureau of Agriculture, Food and Rural Resources (BAFRR) shall determine if PFAS-contaminated land may not presently be used for current or historical agricultural purposes.

**I. Definitions**

1. "Agricultural land" means any land in Maine which is used or capable of use without substantial modification for production of agriculturally related products, including, but not limited to, crops, livestock, poultry, dairy products, and sod. 7 M.R.S.A. § 32(2).
2. "Eligible Class IA resource" means a Class IA resource, as defined in 35-A M.R.S.A. § 3210(2)(A-3), that (1) begins commercial operation on or after September 19, 2023; and (2) for which a system impact study required by ISO-NE has been filed. If the resource is a fuel cell, it must be a fuel cell that utilizes a renewable fuel.
3. "Commercial farm" means a farm that produces any farm product with the intent that the farm product be sold or otherwise disposed of to generate income. 7 MRSA § 320-K(C)
4. "Current or historical agricultural purposes" means the subject agricultural land is presently or was previously used for the production of one or more farm products.
5. "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products, and fruits, berries, vegetables, flowers, seeds, grasses, Christmas trees, and other similar products. 7 M.R.S.A. § 52(3-A).
6. "ISO-NE" means the Independent System Operator for New England.

7. "Producer" means any person engaged within this state in the business of producing, or causing to be produced, for any market, any farm product.
8. "Renewable capacity resource" has the same meaning as in 35-A MRSA § 3210(2)(B-3) and includes solar power installations whose total power production capacity does not exceed 100 megawatts.

## II. DACF's Evolving Role in Solar Siting Determinations

### 1. Technical Guidance

In January 2021, DACF issued "Technical Guidance for Utility-Scale Solar Installation and Development on Agricultural, Forested, and Natural Lands." The document (1) provides a summary of "solar basics," (2) discusses general permitting considerations, (3) reviews tax, easement, and mortgage considerations, and (4) presents solar siting best management practices for the life cycle of solar installations, from pre-construction planning to project decommissioning. With proper planning, installation, and decommissioning, land can be reverted to agricultural or forest production after decommissioning.

### 2. Determination of Contaminated Land

As discussed above, 35-A M.R.S.A. § 3210-J directs the Public Utilities Commission (PUC) to procure energy and renewable energy credits from eligible Class IA resources or combined projects and to give primary preference to eligible Class IA resources or combined projects that benefit ratepayers and are located on contaminated land. The PUC anticipates issuing the first competitive solicitation in 2024.

Further, 35-A M.R.S.A. § 3210-J directs DACF to determine whether agricultural land contaminated by PFAS may not presently be used for its current or historical agricultural purposes in accordance with applicable state and federal food safety standards. There are no federal food safety standards for PFAS. In Maine, DACF utilizes action levels derived by the Maine Center for Disease Control for perfluorooctane sulfonate (PFOS), a particular PFAS compound. The action level for PFOS in milk is 210 parts per trillion (ppt) and in beef is 3.4 parts per billion (ppb). These are the only current PFAS-related food safety standards in Maine. They are of limited value in determining whether land may be used for agricultural purposes.

DACF will determine the feasibility of current or historical agricultural purposes at the request of solar developers who are seeking preferential treatment before the PUC according to the criteria outlined in Section III below. When DACF determines that agricultural land cannot presently be safely used for agricultural production, the developer will still need to seek a permit under DACF's new solar permitting program.

### 3. Permitting of Solar Sites

Public Law 2023 c. 448, codified as 38 M.R.S.A. § 3202, grants new permitting authority to DACF for solar energy development. During 2024, DACF will adopt rules related to administrative procedures for the permitting process, standards for the approval of a permit, standards and conditions for delegation of the authority to issue permits for solar energy development to a municipality or the Maine Land Use Planning Commission, and procedures for the enforcement of 38 M.R.S.A. § 3202.

III. Determining Whether Land May be Used for Current or Historical Agricultural Purposes

1. PFAS-contamination determinations in energy solicitations will be predicated on a solar developer contacting the DACF Bureau of Agriculture, Food, and Rural Resources to inquire about the subject agricultural land proposed for development. Inquiries may be made to BAFRR, 28 State House Station, Attention: Director of PFAS Response. The applicant must provide the following information:
  - a. A map with the proposed location of the solar installation clearly identified;
  - b. A deed or deeds reflecting current ownership of the subject agricultural land;
  - c. Documentation of soil types, such as soils classified by the United States Department of Agriculture Natural Resources Conservation Service as prime farmland, unique farmland, farmland of statewide importance, and farmland of local importance; and
  - d. A narrative describing current and historical agricultural uses of the subject land.
2. DACF will review available records to determine whether it has soil testing data for the agricultural land in question. If DACF has no data or insufficient or unreliable data, it will provide the solar developer with a statement of the testing it must obtain, along with applicable standards and a list of qualified laboratories. Data submitted by the developer will be subjected to a quality assurance review.
3. Once DACF has all of the necessary information, it will make a determination based on the level of soil contamination. PFAS are taken up by plants consumed directly by humans and by plants used for fodder for livestock that, in turn, produce meat, dairy products, and eggs. Our understanding of the transfer rate of particular PFAS compounds through these various avenues is incomplete yet evolving. Based on our current understanding, it is inadvisable to use soils with greater than 100 ppb of PFOS for most agricultural purposes. Thus, fields that test above 100 ppb for PFOS will be deemed presently unsuitable for current or historical agricultural purposes. This figure may change over time based on evolving science and the establishment of state and federal food safety standards.

Concentration	Agricultural Land Use Determination
< 100 ppb PFOS	<u>May</u> be used for its current or historical agricultural purposes
> 100 ppb PFOS	<u>May not</u> presently be used for its current or historical agricultural purposes

4. DACF will issue a determination letter indicating one of the following:
  - a. Based on a review of the information provided, current data and available information indicate that the subject agricultural land may be used for its current or historical agricultural purposes at this time.
  - b. Based on a review of the information provided, current data and available information indicate that a portion of the subject agricultural land may be used for its current or historical agricultural purposes at this time and a portion may not presently be used for its current or historical agricultural purposes.
  - c. Based on a review of the information provided, current data and available information indicate that the subject agricultural land may not presently be used for its current or historical agricultural purposes.

DACF will include a map with the determination letter that depicts the specific geographic scope of the determination.