
Environment & Energy Committee

HB 1143

Brief Description: Requiring notification of the discharge or use of firefighting foam containing certain chemicals.

Sponsors: Representatives Reeves, Gregerson, Appleton, Fitzgibbon, Ormsby and Stanford.

Brief Summary of Bill

- Requires notification of the Department of Ecology and the emergency management division of the state military department regarding the use or discharge of firefighting foam containing intentionally-added perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals.

Hearing Date: 1/24/19

Staff: Jacob Lipson (786-7196).

Background:

PFAS Chemicals In Firefighting Foam.

According to the Department of Ecology (ECY), perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. The ECY has also identified PFAS chemicals as persistent, bioaccumulative, and toxins (PBTs).

In 2018 the Legislature enacted restrictions on firefighting foam designed for flammable liquid fires that contains intentionally-added PFAS chemicals (PFAS foam). Starting July 1, 2018, PFAS foam may not be used or discharged for training purposes. Beginning July 1, 2020, manufacturers, importers, and distributors may not manufacture, sell, or distribute PFAS foam. The 2020 restriction on manufacture, sale, and distribution of PFAS foam does not apply:

- to the manufacture, sale, and distribution of firefighting foam to persons operating oil terminals, refineries, or certain chemical plants that use or produce flammable liquids, for the use of foam by those persons at those facilities; or

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- where the inclusion of PFAS chemicals in firefighting foam for liquid flammable fires is required by federal law, including where required under Federal Aviation Administration rules (FAA). In the event that the FAA rule or other federal rules change after January 1, 2018, the ECY is authorized to adopt rules for the manufacture, sale, and distribution of PFAS chemicals in firefighting foams for uses that are addressed by the federal rule. In October 2018, as part of the FAA Reauthorization Act of 2018, the United States Congress directed the FAA to revise its rules by 2021 to no longer require the use of fluorinated chemicals to meet performance standards for firefighting foam at airports.

Violations of these manufacture, sale, distribution, and use restrictions are subject to civil penalties of up to \$5,000 per violation for initial offenses, and up to \$10,000 for repeat offenses.

Oil And Hazardous Substance Spill Reporting.

Under the state's oil and hazardous substances spill prevention and response laws, persons that discharge oil or hazardous substances to state waters are required to immediately notify the United States Coast Guard and the emergency management division of the State Military Department (EMD). The notice to the EMD must be made to the EMD's 24-hour toll-free emergency reporting hotline. The types or characteristics of hazardous substances whose discharge which must be reported to the EMD and Coast Guard are not specified or defined.

Clean Water Act Penalties.

The ECY administers the state Water Pollution Control Act. As part of its duty to administer the act, the ECY issues state waste discharge permits, water quality permits, assesses fees and penalties, and issues notices of violation.

Violations of the state Water Pollution Control Act and oil and hazardous substance spill requirements are subject to civil penalties of up to \$10,000 per day per violation, plus additional criminal penalties for willful violations.

Summary of Bill:

Persons that discharge or use firefighting foam designed for flammable liquid fires that contains intentionally-added PFAS chemicals (PFAS foam) must notify both the Department of Ecology (ECY) and the emergency management division of the State Military Department (EMD). Notice to the EMD must immediately be made to the EMD's 24-hour toll-free emergency hotline. Notice to the ECY must be made within 24 hours and include the time, date, location, and estimated amount of PFAS foam discharged.

Any persons not subject to discharge notification requirements are nevertheless encouraged to notify the ECY of PFAS foam use or discharge.

Failure to report the discharge or use of PFAS is subject to one of the following types of penalties:

- civil penalties under the Water Pollution Control Act, for discharges of PFAS foam to state waters or where a rain event would lead to discharges to state waters; or
- penalties for violations of the restrictions on the use, manufacture, distribution, or sale of PFAS foam, for other uses and discharges of PFAS foam.

A severability clause is included.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill contains an emergency clause and takes effect immediately.