



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 2, 2022

The Honorable Paul Pinsky, Chair
Senate Education, Health, and Environmental Affairs Committee
Miller Senate Office Building, 2W
Annapolis, Maryland 21401

Re: Senate Bill 273 – PFAS Chemicals – Prohibitions and Requirements (George “Walter” Taylor Act)

Dear Chair Pinsky and Committee Members:

The Maryland Department of the Environment (MDE or Department) has reviewed SB 273, *PFAS Chemicals – Prohibitions and Requirements (George “Walter” Taylor Act)*, and would like to provide some information about this legislation.

The bill would ban the use, manufacture, sale, or distribution of Class B fire-fighting foam, except as authorized under federal law, that contains intentionally added per- and polyfluoroalkyl substances (PFAS) chemical on or after January 1, 2023. The bill eliminates the current statutory exemption for fire-fighting foams used at the Baltimore Washington International Airport. A person who sells personal protective equipment (PPE) that contains PFAS chemicals worn by fire-fighting personnel in the performance of fire and rescue activities would be required to provide written notice to the purchaser that includes a statement that the PPE contains PFAS chemicals, and the reason why, and both the seller and purchaser must keep the notice for at least 3 years after the date of sale. Additionally, the bill would ban the use, manufacture, sale, or distribution of carpets or rugs and food packaging or any product in a food package that contains “intentionally added” PFAS chemicals on or after January 1, 2023. Persons subject to these product bans would be required to establish a certificate of compliance demonstrating compliance with the ban and must provide the certificate of compliance to MDE within 30 days of a request.

The bill would also ban the disposal of Class B fire-fighting foam with “intentionally added” PFAS through incineration or in a landfill. In late 2020, the U.S. Environmental Protection Agency (EPA) published interim guidance on the destruction and disposal of PFAS and materials containing PFAS. In the guidance, EPA evaluated thermal treatment, landfilling, and underground injection, identified data gaps and uncertainties with the destruction and disposal alternatives. EPA did not make direct recommendations on the PFAS destruction and disposal alternatives that should be used, but provided information so managers of PFAS or PFAS-containing materials can make informed decisions in the evaluation of existing destruction and disposal options. The document is available on EPA’s website at [epa.gov/pfas/interim-guidance-destroying-and-disposing-certain-pfas-and-pfas-containing-materials-are-not](https://www.epa.gov/pfas/interim-guidance-destroying-and-disposing-certain-pfas-and-pfas-containing-materials-are-not).

Under SB 273, a person authorized to use Class B fire-fighting foam with PFAS would be prohibited from releasing the foam directly to the environment and must fully contain all releases, implement containment measures, dispose of all waste, report the release to MDE, and maintain documentation on these measures. Failure of a person to meet these requirements does not preclude the use of foam if the failure to not release or

contain the foam was a result of factors beyond the control of the person. MDE, the Maryland Attorney General, a State's Attorney, county attorney or city attorney would be authorized to request documentation from any person required to maintain documentation verifying their compliance, and the person to whom the request is made must provide the documentation upon request. The bill would authorize MDE to develop regulations to enforce the ban on Class B fire-fighting foam, fire-fighting PPE, and carpets or rugs that contain intentionally added PFAS chemicals, and the release and containment requirements for persons authorized to use Class B fire-fighting foam with "intentionally added" PFAS chemicals. (MDE already has the authority to adopt regulations to enforce the proposed ban on a food package with intentionally added PFAS chemicals under existing §9-1907 of the Environment Article.) The bill contains penalty provisions for violators of the bill's requirements.

Further, SB 273 would establish two new reporting requirements for MDE. On or before December 31, 2022, MDE would be required to report to the General Assembly on the results of any testing for PFAS chemicals conducted in waters of the state, any plan for further testing for PFAS chemicals in waters of the state, and any plan for remediation and public education in areas where the water has been found to be contaminated by PFAS chemicals. Since the information required to be included in this report will need to be compiled from different programs within MDE, it would be difficult, if not impossible, to complete the report in the 5-month period provided.

Lastly, MDE and the Maryland Department of Health would be required to coordinate with other relevant state agencies, the federal government, local governments, and the public to prepare and submit by December 31, 2023 a PFAS Action Plan to the General Assembly that identifies strategies, actions, and funding alternatives for, among other things, minimizing public and environmental exposures to PFAS and cleaning up historical releases of PFAS. It would take a significant amount of effort to coordinate with and identify various relevant stakeholders and to conduct literature review of PFAS research, which is constantly evolving.

MDE has been sampling PFAS in public water systems starting in 2020, and continuing through 2022. MDE is also sampling fish and shellfish tissue to determine the levels of bioaccumulation. MDE works with the EPA to ensure that the U.S. Department of Defense sites in Maryland are assessed, remediated and monitored wherever PFAS are present. More information regarding MDE's PFAS-related activities can be found online at mde.maryland.gov/PublicHealth/Pages/PFAS-Landing-Page.aspx.

According to the U.S. Food and Drug Administration, there are nearly 5,000 different PFAS compounds. SB 273 would ban any Class B fire-fighting foam, carpet or rug, and food packaging and place notification requirements on fire-fighting PPE that contains one of 5,000 different chemicals. MDE would need to establish a new regulatory program to enforce these provisions for several products not currently regulated by the Department. This bill would increase MDE workload by creating the following new responsibilities: conducting research to identify brands and the manufacturers, distributors, retailers, or industry users of Class B fire-fighting foam, carpet or rug, food packaging, and fire-fighting PPE; adopting regulations to implement the bill's provisions; overseeing persons with unused Class B firefighting foam to ensure the product is stored in an environmentally safe manner; and conducting targeted inspection and other enforcement actions as needed.

MDE currently has adequate and sufficient staff and resources to conduct its mission effectively and efficiently. Any additional legislatively-mandated program or regulation, such as this, will likely hamper our efficiency, force us to divert resources away from current core competencies and likely disrupt customer service and/or diminish services.

Thank you for your consideration. We will continue to monitor SB 273 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: Lee Currey, MDE, Director, Water and Science Administration