



Maryland

Department of the Environment

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

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

March 30, 2022

The Honorable Shane Pendergrass, Chair
House Health & Government Operations Committee
House Office Building, Room 241
Annapolis, Maryland 21401

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

Dear Chair Pendergrass and Committee Members:

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

Overview

SB 273 third reader would mandate that MDE adopt regulations implementing the bill’s ban on directly releasing Class B fire-fighting foam into the environment and the release containment conditions for persons authorized to use Class B fire-fighting foam under the bill. It is not clear to the Department what, if any, regulations would need to be promulgated at this time, therefore MDE suggests changing “shall” back to “may.” If the mandate to promulgate regulations remains in the bill, it should be noted that while the date in which authorized users of Class B fire-fighting foam will now be delayed until, at the earliest, January 1, 2024, the release ban and release containment provisions would take effect on July 1, 2022. If the intent of the bill sponsor is for MDE to adopt regulations for these provisions on or before July 1, 2022, working with MDE’s water pollution control staff and interested stakeholders to develop the regulations and complying with the regulation promulgation procedures established in existing law would make adopting the regulations by the bill’s effective date difficult.

According to the U.S. Food and Drug Administration, there are nearly 5,000 different PFAS compounds. SB 273 would restrict the manufacturing, distribution, sale, and use of Class B fire-fighting foam, carpets or rugs, and food packages and place notification requirements on fire-fighting personal protective equipment, (PPE) that can contain one of 5,000 different PFAS chemicals. MDE would need to establish a new regulatory program to enforce these provisions for several products not currently regulated by the Department. MDE’s workload would increase to conduct 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; adopt regulations to implement the bill’s provisions; oversee persons with unused Class B firefighting foam to ensure the product is stored and disposed of in an environmentally safe manner; and conducting targeted inspection and other enforcement actions as needed.

SB 273 third reader would establish a Class B fire-fighting foam buyback program under which MDE must purchase foam from requesting fire departments at the price paid by the fire department when purchasing the foam. The bill would also mandate a \$500,000 appropriation be made in FY24, which MDE will use to purchase Class B fire-fighting foam from fire departments. Once the Class B

fire-fighting foam is purchased, MDE will need to collect and properly dispose of the foam at an out-of-state disposal facility. Coordinating the buyback program and the collection and proper disposal of Class B fire-fighting foam will establish an additional fiscal and operational impact on MDE, including conducting outreach and surveys to identify fire departments that want to participate in the buyback program and to determine the current inventory of unused Class B fire-fighting foam possessed by these fire departments. While MDE cannot determine at the time the exact cost to collect and dispose of Class B fire-fighting foam under this bill, it is expected to cost several hundreds of thousands of dollars. If MDE is required to temporarily store Class B fire-fighting foam as the result of future federal guidance on the disposal/destruction of PFAS or hazardous waste rulemaking regarding PFAS, the costs could further increase by additional hundreds of thousands of dollars. As currently drafted, the \$500,000 appropriation in FY24 required by the bill may not be used for these purposes.

The two new reporting requirements for MDE established under SB 273 first reader would remain unchanged under the bill as amended. 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 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 to complete the report in the 5 months provided between the bill's effective date and the report's due date.

While 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, could hamper our efficiency, divert resources away from current core competencies, and could disrupt customer service and/or diminish services.

Current State and Federal Actions

MDE began sampling for PFAS in public water systems in 2020, and will continue to do so 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 on the Department's [PFAS landing webpage](#).

In late 2020, the U.S. Environmental Protection Agency (EPA) published Interim Guidance on the Destruction and Disposal of PFAS and Materials Containing PFAS, which 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. If immediate destruction or disposal of PFAS-containing material is not imperative, the interim guidance states that one option managers of PFAS or PFAS-containing material can choose is to temporarily store the PFAS or PFAS-containing material for a few years until research reduces the uncertainties associated with currently identified destruction and disposal technologies. The [interim guidance](#) document is available on EPA's website.

In accordance with the federal Toxic Substances Control Act (TSCA), EPA proposed a rule in June 2021 that would require reporting and recordkeeping from manufacturers that have imported PFAS into the United States at any time since 2011 to submit certain information to EPA related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure, and disposal. Once EPA takes final action on the rule, it would provide EPA with the most comprehensive dataset of PFAS manufactured in the United States. Congress has required EPA to

adopt the final rule no later than January 1, 2023, and the EPA proposes that manufacturers and importers report the required information to EPA within 1 year of the effective date of the final rule. According to the proposed rule, EPA will use data reported by manufacturers that have imported PFAS to the United States to inform its regulatory activities as follows (more information available [online](#)).

EPA intends to use information on these chemicals to support assessments of new and existing chemicals under TSCA. For instance, information collected under this proposed rule will help inform future assessments of potential exposure to these PFAS. The Agency would also benefit from receiving all existing information related to human health and environmental effects of such substances, in order to fulfill additional environmental protection mandates beyond the TSCA program. For instance, information on PFAS use, exposure, and effects may be used to inform regulatory activities under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.), while data on PFAS manufacturing sites and disposal methods may support contaminants characterizations conducted to support contaminated site work and solid waste management programs. (86 FR 33926-33966 (June 28, 2021)).

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: The Honorable Sarah Elfreth
Kaley Laleker, MDE, Director, Land and Materials Administration
Lee Currey, MDE, Director, Water and Science Administration