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H.P. 1536

House of Representatives, March 10, 2020

An Act To Require Reporting of Perfluoroalkyl and Polyfluoroalkyl Substances, PFAS, in Products and of Discharges of Firefighting Foam Containing PFAS

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

R. B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative INGWERSEN of Arundel. (GOVERNOR'S BILL)

1 Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 38 MRSA §417-B** is enacted to read:

3 **§417-B. Reporting discharges of aqueous film-forming foam**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Aqueous film-forming foam" or "AFFF" means a fire suppressant foam
7 containing fluorinated surfactants intended for extinguishing flammable liquid fires.

8 B. "Discharge" includes, but is not limited to, any spilling, leaking, pumping,
9 pouring, spraying, emitting, disposing, escaping, emptying or dumping, whether
10 intentional or unintentional.

11 C. "Person" means any natural person, firm, association, partnership, corporation,
12 trust, the State and any agency of the State, governmental entity, quasi-governmental
13 entity, the United States and any agency of the United States and any other legal
14 entity.

15 **2. Reporting.** A person causing a discharge of AFFF into or upon any coastal
16 waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into
17 or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or
18 other waters of the State or any public or private water supply or onto lands adjacent to,
19 on or over such waters of the State shall report the discharge to the department as soon as
20 practicable, but no later than 24 hours after the discharge occurs.

21 **Sec. 2. 38 MRSA §1310-B, sub-§2,** as amended by PL 2019, c. 291, Pt. B, §1, is
22 further amended to read:

23 **2. Hazardous waste information and information on mercury-added products
24 and electronic devices; chemicals; recyclables Information designated as
25 confidential.** Information relating to hazardous waste submitted to the department under
26 this subchapter, information relating to mercury-added products submitted to the
27 department under chapter 16-B, information relating to electronic devices submitted to
28 the department under section 1610, subsection 6-A, information related to products
29 containing PFAS, as defined in section 1612, subsection 1, submitted to the department
30 under section 1612, information related to priority toxic chemicals submitted to the
31 department under chapter 27, information related to products that contain the "deca"
32 mixture of polybrominated diphenyl ethers submitted to the department under section
33 1609 or information related to reporting on reportable recyclable materials submitted to
34 the department under section 2145 may be designated by the person submitting it as being
35 only for the confidential use of the department, its agents and employees, the Department
36 of Agriculture, Conservation and Forestry and the Department of Health and Human
37 Services and their agents and employees, other agencies of State Government, as
38 authorized by the Governor, employees of the United States Environmental Protection
39 Agency and the Attorney General and, for waste information, employees of the
40 municipality in which the waste is located. The designation must be clearly indicated on
41 each page or other portion of information. The commissioner shall establish procedures

1 to ensure that information so designated is segregated from public records of the
2 department. The department's public records must include the indication that information
3 so designated has been submitted to the department, giving the name of the person
4 submitting the information and the general nature of the information. Upon a request for
5 information, the scope of which includes information so designated, the commissioner
6 shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall
7 demonstrate to the satisfaction of the department that the designated information should
8 not be disclosed because the information is a trade secret or production, commercial or
9 financial information, the disclosure of which would impair the competitive position of
10 the submittor and would make available information not otherwise publicly available.
11 Unless such a demonstration is made, the information must be disclosed and becomes a
12 public record. The department may grant or deny disclosure for the whole or any part of
13 the designated information requested and within 15 days shall give written notice of the
14 decision to the submittor and the person requesting the designated information. A person
15 aggrieved by a decision of the department may appeal only to the Superior Court in
16 accordance with the provisions of section 346. All information provided by the
17 department to the municipality under this subsection is confidential and not a public
18 record under Title 1, chapter 13. In the event a request for such information is submitted
19 to the municipality, the municipality shall submit that request to the commissioner to be
20 processed by the department as provided in this subsection.

21 **Sec. 3. 38 MRSA §1612** is enacted to read:

22 **§1612. Products containing PFAS**

23 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
24 following terms have the following meanings.

25 **A. "Final product"** means any product, including its components, sold or distributed
26 for personal, residential, commercial or industrial use, including materials used to
27 manufacture other products.

28 **B. "Intentionally added PFAS"** means PFAS added to a final product or one of its
29 product components to provide a specific characteristic, appearance or quality or to
30 perform a specific function. "Intentionally added PFAS" includes any degradation
31 by-products of those PFAS.

32 **C. "Manufacturer"** means any person who created a final product or whose brand
33 name is affixed to the product. In the case of a product that was imported into the
34 United States, "manufacturer" includes the importer or first domestic distributor of
35 the product if the person who manufactured or assembled the product or whose brand
36 name is affixed to the product does not have a presence in the United States.

37 **D. "Perfluoroalkyl and polyfluoroalkyl substances"** or "PFAS" means any member of
38 the class of fluorinated organic chemicals containing at least one fully fluorinated
39 carbon atom.

40 **E. "Product"** means an item manufactured, assembled, packaged or otherwise
41 prepared for sale to consumers.

1 F. "Product component" means a portion of a final product. A product component
2 may be created by the same manufacturer that created the final product or by a
3 different manufacturer.

4 **2. Notification.** The following provisions govern notification.

5 A. Effective January 1, 2023, a manufacturer of a final product for sale in the State
6 that contains intentionally added PFAS shall submit to the department a written
7 notification, unless the notification requirement is waived by the department pursuant
8 to this section. The written notification must include:

- 9 (1) A brief description of the final product;
- 10 (2) The purpose for which PFAS are used in the final product, including its
11 product components;
- 12 (3) The amount of PFAS, by individual chemical abstracts service registry
13 number, in each final product, reported as an exact quantity determined using
14 commercially available analytical methods or as falling within a range approved
15 for reporting purposes by the department; and
- 16 (4) The name and address of the manufacturer, and the name, address and phone
17 number of a contact person for the manufacturer.

18 B. With the approval of the department, a manufacturer may supply the information
19 required in paragraph A for a product category rather than an individual final product.

20 C. The manufacturer shall update and revise the information in the written
21 notification whenever there is significant change in the information, as set forth in
22 department rules adopted under subsection 9, or when requested by the department.

23 **3. Waiver of notification; extension of deadline.** The department may waive all or
24 part of the notification requirement under subsection 2 if the department determines that
25 substantially equivalent information is already publicly available. The department may
26 extend the deadline for submission by a manufacturer of the information required under
27 subsection 2 if the department determines that more time is needed by the manufacturer
28 to comply with the submission requirement.

29 **4. Exemptions.** The following provisions govern exemptions.

30 A. A retailer is exempt from subsection 6 unless that retailer knowingly sells a
31 product containing PFAS after that retailer has received notification in accordance
32 with subsection 7, paragraph B.

33 B. The following products are exempt from this section:

- 34 (1) A final product for which federal law governs notice of the presence of PFAS
35 in the product in a manner that preempts state authority; and
- 36 (2) A product subject to Title 32, chapter 26-A or 26-B.

37 **5. Fees.** The department may assess a fee payable by a manufacturer upon
38 submission of the notification required under subsection 2 to cover the department's

1 reasonable costs in managing the information collected. Fees must be established in
2 department rules as set forth in subsection 9.

3 **6. Failure to provide notice.** A final product containing PFAS may not be sold,
4 offered for sale or distributed for sale in this State if the manufacturer has failed to
5 provide information required under subsection 2. The department shall exempt a final
6 product from this prohibition if, in the department's judgment, the lack of availability of
7 the final product could pose an unreasonable risk to public health, safety or welfare.

8 **7. Certificate of compliance.** If the department has evidence that a final product is
9 being offered for sale in violation of this section, the department may request the
10 manufacturer of the final product to provide a certificate of compliance with this section.
11 Within 30 days of receipt of a request under this subsection, the manufacturer shall:

12 A. Provide the department with the certificate of compliance attesting that the final
13 product does not contain intentionally added PFAS; or

14 B. Notify persons who sell the final product in this State that the sale of the final
15 product is prohibited and provide the department with a list of the names and
16 addresses of those notified.

17 **8. Confidentiality.** Information submitted to the department pursuant to this section
18 is subject to the confidentiality provisions under section 1310-B.

19 **9. Rules.** The department shall adopt rules to implement this section. Rules adopted
20 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
21 subchapter 2-A.

22 SUMMARY

23 This bill requires manufacturers of products with intentionally added perfluoroalkyl
24 and polyfluoroalkyl substances to report the presence of those substances in those
25 products to the Department of Environmental Protection beginning in 2023. This bill also
26 requires any person who causes a discharge of aqueous film-forming foam into waters of
27 the State to report that discharge to the department within 24 hours.