

## Office of Policy and Legal Analysis

Date: May 12, 2021

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 1505, An Act To Restrict the Use of Perfluoroalkyl and Polyfluoroalkyl Substances in Firefighting Foam (Gramlich)

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### **Summary of bill**

This bill prohibits, beginning January 1, 2022, the discharge of firefighting or fire-suppressing foam to which PFAS have been added when used for testing or training except when the foam is entirely collected for proper disposal. The bill also prohibits, beginning January 1, 2022, the manufacture, sale and distribution of such foam unless federal law requires the inclusion of PFAS in the foam. If federal law is changed to allow an alternative to firefighting or fire-suppressing foam to which PFAS have been added, then the foam may not be manufactured, sold or distributed.

A person that discharges or causes to be discharged into the coastal or inland waters of the State firefighting or fire-suppressing foam to which PFAS have been added must notify the DEP as soon as practicable but no more than 24 hours after the discharge. By January 1, 2022, manufacturers of firefighting or fire-suppressing foam to which PFAS have been added must notify their customers of these requirements and recall the foam and reimburse the retailer or other purchaser for the foam.

The DEP is directed to collaborate with the Maine Emergency Management Agency and interested parties to develop a framework for the collection and safe storage of firefighting and fire-suppressing foam prohibited by this legislation and not returned to the manufacturer until the foam can be safely disposed of and submit a report including the framework to the Joint Standing Committee on Environment and Natural Resources by March 31, 2022.

### **List of legislators/entities that submitted written testimony and/or spoke at the hearing**

**Proponents** – Representative Gramlich, Conservation Law Foundation, Clean Production Action, Department of Environmental Protection, Defend Our Health, Institute for Agriculture and Trade Policy, Maine Municipal Association, Maine Rural Water Association, Maine Water Environment Association, Maine Water Utilities Association, additional members of the public

**Opponents** – Alliance for Telomer Chemistry Stewardship.

**Neither for nor against** – Fire Fighting Foam Coalition, International Liquid Terminals Association.

### **Notes, issues and proposed amendments**

1. *LD 960 overlap* – note that LD 960, a DEP bill, contains similar provisions regarding the regulation of firefighting foam to which PFAS have been added. The committee may want to consider passing only one piece of legislation on this matter to avoid any potential conflicts or confusion.

2. *DEP position* – notes it is in support of section 1 of the bill with one recommendation for an amendment to new 424-C(4) (see below). It remains NFNA on the rest of the bill (see additional comments below).
3. *DEP recommendation, semi-annual reporting requirement* – recommends requiring all entities that possess Class B AFFF to report semiannually, beginning July 1, 2021, to the State Fire Marshall to assist in determining the costs associated with any take-back, disposal and replacement program.
4. *DEP concerns, sections 2 and 3 of bill* – DEP believes that sections 2 and 3 of the bill, which outline notification, recall and reimbursement requirements for manufacturers of these foams, raise serious questions regarding enforceability and liability that could result in litigation.
5. *DEP concerns, section 4 of the bill* – DEP notes that section 4 of the bill, which requires development of a framework for the collection, safe storage and ultimate disposal of these foams, describes a program that would require substantial funding (initial estimates of \$215,000 for disposal and \$1.85 million for purchase of replacement foam).
6. *Alliance for Telomer Chemistry Stewardship, proposal* – suggests allowing the manufacture and sale of these foams to continue until efficient alternatives are approved so that it is available for firefighting purposes as the best available tool for extinguishing Class B fires.
7. *International Liquid Terminal Association, proposal* – suggests exempting from the prohibition the use of these foams at liquid fuel terminals. Testimony appeared to describe an exemption from the sales prohibition as the discharge prohibition does not prohibit the use of these foams in firefighting situations.
8. *Fire Fighting Foam Coalition, proposals*
  - Consider a longer sales phase-out period (5 years suggested);
  - Allow exemptions to sales prohibition for sectors where there is no drop-in replacement available, such as refineries, chemical factories, bulk fuel loading terminals and some fixed fire suppression systems; and
  - Clarify recall provision to apply only to products sold after the effective date of the sales prohibition (after 1/1/2022).
9. *Institute for Agriculture and Trade Policy, proposal* – suggests prohibition on sale of firefighting foam to which PFAS have been intentionally added should be extended to include the containers in which such foams are packaged for sale or transport if those containers have been fluorinated or otherwise contain PFAS.
10. *Technical notes (analyst)*
  - Committee may want to consider whether there is value to incorporating any of the definitions provided in LD 960 into LD 1505 (“aqueous film-forming foam” (AFFF), “discharge” or “person”). There are no definitions in LD 1505.

- Sections 2 and 3 of the bill are unallocated, however, given their scope and relationship to the allocated law in Section 1, the committee may want to consider allocating these provisions to new 424-C.
- Any need for DEP to adopt rules on the new law? No explicit rulemaking authority provided in 1505. On the same note, it must be assumed that DEP would be charged with enforcing and administering the new law, although that is not explicit.
- There are numerous, smaller technical issues with the bill. If the committee wishes to support the bill, with or without substantive amendments, the analyst can incorporate changes to the bill to address those technical issues.

**Fiscal information**

Not yet available from OFPR.