

SENATE BILL REPORT

SJM 8001

As of January 26, 2021

Brief Description: Requesting various entities assist state and local governments in Washington with monitoring and mitigating PFAS contamination of surface water and groundwater.

Sponsors: Senators Muzzall, Rolfes, Billig, Holy, Lovelett, Mullet, Salomon and Warnick.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/26/21.

Brief Summary of Joint Memorial

- Requests the departments of Defense, Navy, and Air Force, the U.S. Environmental Protection Agency, the U. S. Department of Agriculture, and the Washington Military Department to assist state and local governments in Washington with monitoring and mitigating perfluoroalkyl and polyfluoroalkyl contamination of surface water and groundwater.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: 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 Department of Ecology (Ecology) has identified PFAS chemicals as persistent, bioaccumulative, and toxins (PBTs). They are added to carpets, cookware, food packaging, clothing, cosmetics, and other common consumer products. PFAS have many industrial applications and are used to make certain types of firefighting foams.

Forty-threestates have PFAS-contaminated drinking water, affecting 19 million people. According to Ecology, firefighting foam is the suspected source of all PFAS contamination

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

in Washington's drinking water. PFAS contamination, above EPA's health advisory level, has been found in drinking water wells in Airway Heights, North Whidbey Island, Issaquah, and at Joint Base Lewis-McChord.

Most PFAS research has been done on two specific compounds: perfluorooctane sulfonate and a related compound, perfluorooctanoic acid. The toxicity of other PFAS compounds varies. Studies in animals have shown that exposure to some PFAS can affect liver function, reproductive hormones, development of offspring, and mortality.

Studies investigating effects on people have asserted probable links to immune system toxicity, high cholesterol, reproductive and developmental issues, endocrine system disruption, ulcerative colitis, thyroid issues, certain cancers, and pregnancy-induced hypertension.

PFAS is identified as a high-priority chemical under the state Children's Safe Products Act and manufacturers of children's products containing PFAS are required to annually report product information to Ecology. On June 1, 2020, Ecology identified priority consumer products that are a significant source of or use of PFAS. Along with other identified priority consumer products that are a significant source of or use of chemical compounds, Ecology must determine regulatory actions for the PFAS products by June 2, 2022, and adopt rules to implement the regulatory actions by June 1, 2023.

Ecology is also working with the Department of Health to develop a chemical action plan that identifies sources and recommends actions to reduce the use, release, and exposure to PFAS in Washington.

The Legislature enacted restrictions on the use of PFAS in firefighting foam and in food packaging.

Beginning 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, except 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 where the inclusion of PFAS chemicals in firefighting foam for liquid flammable fires is required by federal law.

Beginning in 2024, the exceptions for use in chemical plants, oil refineries, and oil terminals are removed. These facilities may apply for a waiver, based on certain criteria. Under legislation enacted in 2020, the exceptions from restrictions on PFAS foam where required by federal law, are to be removed no earlier than two years after federal law changes.

The Federal Aviation Administration Reauthorization Act of 2018 directed the agency to stop requiring the use of fluorinated chemicals in aircraft firefighting foams no later than October 2021.

Beginning in January 1, 2022, no person may manufacture, sell, or distribute food packaging to which PFAS chemicals have been intentionally added for use in Washington State, subject to a finding by Ecology that safer alternatives are available for specific food packaging applications.

Joint memorials are a message or petition addressed to the President or U.S. Congress, or the head of any other agency of the federal or state government, asking for consideration of some matter of concern to the state or region. Proposed amendments to the U.S. Constitution are also in the form of joint memorials.

Summary of Joint Memorial: A joint memorial is respectfully represented and petitioned as follows to the U.S. Secretary of Defense, the Secretary of the U.S. Navy, the Secretary of the U.S. Air Force, the Administrator of the U.S. Environmental Protection Agency (EPA), the U.S. Secretary of Agriculture, the Director of the Washington Military Department, and the Commanding Officer of Naval Air Station Whidbey Island.

Whereas:

- Washington State is grateful to all members of our nation's armed services;
- Washington State welcomes and appreciates the Navy and Air Force as honored community partners who contribute to the economic vitality of our state, including in the communities near Naval Air Station Whidbey Island;
- PFAS may be linked to health problems in people and animals, remain in the environment for an extended period of time without breaking down, and build up in people and the environment;
- PFAS firefighting foams have been used since the 1970s for vapor suppression, firefighting, and firefighting training at facilities handling large volumes of flammable liquid petroleum or natural gas;
- PFAS contamination related to firefighting foam use has been found at or near military sites in Washington State, including training sites at Ault Field in Oak Harbor and Naval Air Station Whidbey Island Area 6;
- known cases of PFAS contamination in surface water and groundwater in Washington State are linked to the use of firefighting foam;
- much of the known contamination in Washington State was found through testing by the Department of Defense on and near military bases in our state;
- PFAS contamination above the U.S. EPA's health advisory level has been found in drinking water wells near Ault Field, Oak Harbor, the outlying field in Coupeville, and Naval Air Station Whidbey Island Area 6;
- there are significant concerns about PFAS contamination in sediment and surface waters that support family farms and flow into Dugualla Bay;
- the Department of Defense is conducting research on PFAS-containing firefighting

foams, including replacement products, environmental risk, and treatment technology;

- it may cost hundreds of thousands to millions of dollars and require significant time and effort to mitigate PFAS contamination in surface water and groundwater sources;
- to address PFAS contamination in an effective manner will require cooperation among different levels of government, the public and private sectors, and a variety of other stakeholders; and
- at this time, the Legislature concludes that coordination among the affected parties, landowners, the state, local governments, and the federal government will lead to better solutions than imposing regulatory restrictions in the absence of sufficient data; and

Now, therefore:

- the memorialists respectfully pray that the Departments of Defense, Navy, and Air Force, U.S. EPA, U.S. Department of Agriculture, and Washington Military Department assist state and local governments in Washington with monitoring and mitigating PFAS contamination of surface water and groundwater.

Copies of the memorial are to be immediately transmitted to the specified recipients.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We view this as the first step to a big problem. PFAS is referred to as a forever chemical. There are sites around the U.S. that have detrimental impacts on populations and industries. The memorial is about getting everybody to the table and spelling out the rules. It is meant to be inclusive, not exclusive, including all areas of the state, using NAS Whidbey as an example. This is not an easy problem to solve. A treatment plant has been put in a town in Whidbey Island that was extremely expensive. There may be some technology coming to drive this cost down in future.

This is going to be a huge issue for the state. The contamination around military bases is from the federal government. We are going to need the state to push on the federal government and the Department of Defense to help with water treatment costs.

PFAS has been found in a primary aquifer of which we draw 40 percent of our drinking water. The source of contamination was from the use of firefighting foam at a training location a mile from the wells. We are left with the responsibility fiscally and ethically to

mitigate the PFAS although we had no role in the contamination. We have already spent \$1 million on environmental analysis and engineering. Water customers should not have to shoulder a burden that they had no role in creating.

CON: We are mostly in support of the joint memorial and appreciate the intent of the bill to promote better cooperation with the federal government. There is one particular provision that causes us particular alarm regarding lack of sufficient data. There is sufficient data around the dangers of PFAS. This provision contradicts and undermines policy efforts underway in Washington. We look forward to working with the sponsors to get this piece right.

OTHER: The health and wellness of our members is important to us. We understand the problem the joint memorial is trying to solve and asking for federal assistance for mitigating PFAS in water. Because drinking water wells and landowners are called out, there is concern that the burden of mitigation could fall to new homeowners and costs of new construction. We want to clarify process and involvement here.

Persons Testifying: PRO: Senator Ron Muzzall, Prime Sponsor; Bill Clarke, Washington PUD Association; Ryika Hooshangi, Sammamish Plateau Water.

CON: Nick Federici, Toxic Free Future.

OTHER: Josie Cummings, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: No one.