

ASSEMBLY, No. 5537

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED APRIL 10, 2025

Sponsored by:

Assemblyman CODY D. MILLER

District 4 (Atlantic, Camden and Gloucester)

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District 4 (Atlantic, Camden and Gloucester)

SYNOPSIS

Provides extension for fire departments on prohibition on use of firefighting foam containing intentionally added perfluoroalkyl and polyfluoroalkyl substances; appropriates \$500,000 to DEP for grant program to reimburse municipalities for costs of replacing firefighting foam.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning perfluoroalkyl and polyfluoroalkyl substances
2 in firefighting foam, amending P.L.2023, c.243, and making an
3 appropriation.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2023, c.243 (C.56:8-229) is amended to read
9 as follows:

10 1. a. (1) Beginning two years after the effective date of **[this**
11 **act]** P.L.2023, c.243 (C.56:8-229 et al.), no person shall use, or
12 shall sell, offer for sale, manufacture, or distribute for sale or use in
13 the State any class B firefighting foam containing intentionally
14 added PFAS, except as provided in paragraph (2) of this subsection.

15 (2) Beginning January 1, 2027, no fire department in the State
16 shall use any class B firefighting foam containing intentionally
17 added PFAS.

18 b. Subsection a. of this section shall not apply to the sale,
19 manufacture, distribution, or use of class B firefighting foam for
20 which the inclusion of PFAS is required by federal law, or by a rule
21 or regulation adopted pursuant thereto, including, but not limited to,
22 14 C.F.R. s.139.317. If a federal requirement to include PFAS in
23 class B firefighting foam is revoked, subsection a. of this section
24 shall apply one year after the requirement is revoked.

25 c. Notwithstanding the provisions of subsection a. to the
26 contrary, the owner or operator of a facility that uses a fixed foam
27 fire suppression system for class B fires, which system is designed
28 for 110 percent containment of any expected discharge volume,
29 may use any class B firefighting foam containing intentionally
30 added PFAS until four years after the effective date of **[this act]**
31 P.L.2023, c.243 (C.56:8-229 et al.), provided that the use complies
32 with the provisions of subsection e. of this section. A manufacturer
33 or distributor may manufacture class B firefighting foam for, or
34 distribute or sell class B firefighting foam to, a facility owner or
35 operator for use pursuant to this subsection.

36 d. (1) Notwithstanding the provisions of subsection a. to the
37 contrary, the owner or operator of an oil refinery or petroleum
38 terminal may use any class B firefighting foam containing
39 intentionally added PFAS for fire suppression on a storage tank for
40 combustible or flammable liquids with a surface area of 120 square
41 meters or greater, or for fire suppression on a fuel-in-depth pool
42 until eight years after the effective date of **[this act]** P.L.2023,
43 c.243 (C.56:8-229 et al.), provided that the use complies with the
44 provisions of subsection e. of this section. A manufacturer or
45 distributor may manufacture class B firefighting foam for, or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 distribute or sell class B firefighting foam to, a facility owner or
2 operator for use pursuant to this subsection.

3 (2) The owner or operator of an oil refinery or petroleum
4 terminal that intends to continue the use of class B firefighting foam
5 containing intentionally added PFAS pursuant to paragraph (1) of
6 this subsection shall disclose this information to the Commissioner
7 of Community Affairs no later than two years after the effective
8 date of **[this act]** P.L.2023, c.243 (C.56:8-229 et al.). If, after
9 providing this information to the Commissioner of Community
10 Affairs, the owner or operator of the oil refinery or petroleum
11 terminal intends to transition a facility to PFAS-free firefighting
12 foam, the owner or operator shall inform the Commissioner of
13 Community Affairs no later than 90 days prior to the proposed
14 transition date.

15 (3) (a) An owner or operator of an oil refinery or petroleum
16 terminal may apply to the Commissioner of Community Affairs for
17 a waiver to extend the exemption provided in paragraph (1) of this
18 subsection.

19 (b) An owner or operator of an oil refinery or petroleum terminal
20 that anticipates applying for a waiver pursuant to this paragraph
21 shall submit a notice of intent to the Commissioner of Community
22 Affairs no later than five years after the effective date of **[this act]**
23 P.L.2023, c.243 (C.56:8-229 et al.).

24 (c) The Commissioner of Community Affairs may grant a waiver
25 if the applicant provides:

26 (i) clear and convincing evidence that there is no commercially
27 available replacement that does not contain intentionally added
28 PFAS and that is capable of suppressing fire for that specific use;

29 (ii) information on the amount of firefighting foam containing
30 intentionally added PFAS stored, used, or released by the applicant
31 on an annual basis;

32 (iii) a detailed transition plan, including a timeline, for the owner
33 or operator of the oil refinery or petroleum terminal to transition to
34 firefighting foam that does not contain intentionally added PFAS
35 chemicals for that specific use; and

36 (iv) a plan for meeting the requirements of subsection e. of this
37 section.

38 (d) The Commissioner of Community Affairs shall provide an
39 applicant an opportunity to correct deficiencies in an application for
40 a waiver.

41 (e) The Commissioner of Community Affairs shall not grant a
42 waiver under this paragraph for a specific use if any other oil
43 refinery or petroleum terminal is known to have transitioned to
44 commercially available class B firefighting foam that does not
45 contain intentionally added PFAS chemicals for that specific use.
46 The applicant may provide evidence as to why this subparagraph is
47 inapplicable, including evidence that the specific use is different. In
48 making a decision on a waiver, the Commissioner of Community

1 Affairs shall consider both information provided by the applicant
2 and information provided through public comment.

3 (f) The term of a waiver under this paragraph shall not exceed
4 two years. A waiver may be extended for one additional
5 consecutive term. All waivers shall expire no later than twelve
6 years after the effective date of **[this act]** P.L.2023, c.243 (C.56:8-
7 229 et al.).

8 (g) The Commissioner of Community Affairs shall provide an
9 opportunity for public comment during the waiver application and
10 review process.

11 (h) The owner or operator of an oil refinery or petroleum
12 terminal that has received a waiver may provide and use class B
13 firefighting foam containing intentionally added PFAS chemicals in
14 the form of mutual aid to another oil refinery or petroleum terminal
15 at the request of authorities only if the other oil refinery or
16 petroleum terminal also has a waiver.

17 (i) The Commissioner of Community Affairs shall notify the
18 waiver applicant of a decision within one year after the date the
19 application is received.

20 (j) The Department of Community Affairs shall impose a fee on
21 an applicant who requests a waiver or waiver extension pursuant to
22 this paragraph, in an amount not to exceed the reasonable costs of
23 administering the provisions of this paragraph.

24 e. (1) A person that uses class B firefighting foam containing
25 intentionally added PFAS pursuant to subsection c. or d. of this
26 section shall report the use of the foam to the Commissioner of
27 Community Affairs within five business days after the use,
28 including the identity of the foam, the quantity used, the total PFAS
29 concentration, the application for which the foam was used, and the
30 duration of the fire.

31 (2) A person that uses, or plans to use, class B firefighting foam
32 containing intentionally added PFAS pursuant to subsection c. or d.
33 of this section shall:

34 (a) not release PFAS chemicals directly to the environment, such
35 as to unsealed ground, soakage pits, waterways, or uncontrolled
36 drains;

37 (b) fully contain all releases onsite;

38 (c) implement containment measures such as bunds and ponds
39 that are controlled, impervious to PFAS chemicals, and do not
40 allow water used for firefighting, wastewater, runoff, or other
41 wastes to be released to the environment, such as to soils,
42 groundwater, waterways, or stormwater;

43 (d) dispose of all water used for firefighting, wastewater, runoff,
44 and other wastes in a manner that prevents releases to the
45 environment;

46 (e) in the event of a release of PFAS chemicals, report the
47 identity of the foam, the quantity used, the total PFAS
48 concentration, and the form of any waste that contains PFAS

1 chemicals that is released into the environment immediately to the
2 Department of Environmental Protection; and

3 (f) document the measures undertaken to comply with the
4 provisions of this paragraph, which documentation shall be retained
5 by the person and made available to any State or local official
6 enforcing the provisions of **[this act]** P.L.2023, c.243 (C.56:8-229
7 et al.), upon request.

8 f. No later than one year after the effective date of **[this act]**
9 P.L.2023, c.243 (C.56:8-229 et al.), a manufacturer of class B
10 firefighting foam containing intentionally added PFAS shall notify,
11 in writing, persons that sell the manufacturer's products in the State
12 about the provisions of **[this act]** P.L.2023, c.243 (C.56:8-229 et
13 al.).

14 g. A manufacturer that manufactures, sells, or distributes class B
15 firefighting foam containing intentionally added PFAS in the State
16 after one year after the effective date of **[this act]** P.L.2023, c.243
17 (C.56:8-229 et al.), except as authorized pursuant to subsections c.
18 and d. of this section, shall recall the product no later than 27
19 months after the effective date of **[this act]** P.L.2023, c.243
20 (C.56:8-229 et al.), and shall reimburse the retailer or any other
21 purchaser for the product. A recall of the product shall include safe
22 transport and storage, and documentation of the amount and storage
23 location of the class B firefighting foam containing intentionally
24 added PFAS, until the Department of Environmental Protection
25 formally identifies a safe disposal technology. The manufacturer
26 shall retain this documentation and shall provide it to any State or
27 local official enforcing the provisions of **[this act]** P.L.2023, c.243
28 (C.56:8-229 et al.), upon request.

29 h. After the expiration of any applicable exemption or waiver
30 pursuant to subsections c. or d. of this section, the owner or
31 operator of a facility that uses a fixed foam fire suppression system
32 for class B fires, an oil refinery, or a petroleum terminal, as
33 applicable, shall safely store any remaining class B firefighting
34 foam containing intentionally added PFAS until the Department of
35 Environmental Protection formally identifies a safe disposal
36 technology. Safe storage shall include safe transport and
37 documentation of the amount and storage location of the class B
38 firefighting foam containing intentionally added PFAS. The
39 operator shall retain this documentation and shall provide it to any
40 State or local official enforcing the provisions of **[this act]**
41 P.L.2023, c.243 (C.56:8-229 et al.), upon request.

42 i. A violation of the provisions of this section shall constitute an
43 unlawful practice for the purposes of P.L.1960, c.39 (C.56:8-1 et
44 seq.), and the violator shall be subject to all remedies and penalties
45 available pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

46 j. Nothing in this section shall be construed to impose liability
47 on any news media that accepts or publishes advertising for any

1 product that may fall within the scope of the provisions of this
2 section.

3 k. As used in this section:

4 "Class B firefighting foam" means foam designed to prevent or
5 extinguish a fire in flammable liquids, combustible liquids,
6 petroleum greases, tars, oils, oil-based paints, solvents, lacquers,
7 alcohols, and flammable gases.

8 "Fixed foam fire suppression system" means: (1) an engineered
9 or pre-engineered total flooding or local application system
10 consisting of a fixed supply of extinguishing agent permanently
11 connected for fixed agent distribution to fixed nozzles that are
12 arranged to discharge an extinguishing agent into an enclosure,
13 directly onto a hazard, or a combination of both; or (2) an automatic
14 sprinkler system.

15 "Fuel-in-depth pool" means fuel pooling in an area bounded by
16 contours of land or physical barriers that are at least six inches in
17 height, surround a surface area greater than 500 square meters, and
18 are designed to retain fuel.

19 "Intentionally added PFAS" means PFAS added to a product or
20 one of the product's components to provide a specific characteristic,
21 appearance, or quality or to perform a specific function.
22 "Intentionally added PFAS" also includes any degradation
23 byproducts of PFAS.

24 "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS"
25 means substances that include any member of the class of
26 fluorinated organic chemicals containing at least one fully
27 fluorinated carbon atom.

28 "Petroleum terminal" means: (1) a bulk liquid storage facility
29 exclusively engaged in the merchant wholesale distribution of
30 petroleum products, including liquefied petroleum gas, which
31 contains at least one storage tank containing petroleum products
32 with a surface area of 120 square meters or greater; or (2) a facility
33 engaged in the distribution of crude petroleum from extraction or
34 processing facilities, which includes at least one storage tank
35 containing crude petroleum with a surface area of 120 square meters
36 or greater.

37 (cf: P.L.2023, c.243, s.1)

38

39 2. (New section) There is appropriated from the General Fund
40 to the Department of Environmental Protection the sum of \$500,000
41 to provide additional funding for the grant program established
42 pursuant to section 2 of P.L.2023, c.243 (C.13:1K-43) to reimburse
43 eligible municipalities for the costs of the replacement of class B
44 firefighting foam containing intentionally added perfluoroalkyl and
45 polyfluoroalkyl substances with firefighting foam that complies
46 with the provisions of section 1 of P.L.2023, c.243 (C.56:8-229).

47

48 3. This act shall take effect immediately.

STATEMENT

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3 This bill would prohibit, beginning January 1, 2027, the use of
4 any class B firefighting foam containing intentionally added
5 perfluoroalkyl and polyfluoroalkyl substances (PFAS) by fire
6 departments in the State. This extension would provide a one-year
7 extension on the prohibition on the use of class B firefighting foam
8 under current law for fire departments.

9 The bill would also appropriate \$500,000 from the General Fund
10 to the Department of Environmental Protection to provide
11 additional funding for the grant program established pursuant to
12 P.L.2023, c.243 to reimburse eligible municipalities for the costs of
13 the replacement of class B firefighting foam containing
14 intentionally added PFAS with firefighting foam that complies with
15 the provisions of P.L.2023, c.243.