
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: December 16, 2019

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2019 Assembly Bill 323

Assembly Amendment 1, as Amended

2019 ASSEMBLY BILL 323

2019 Assembly Bill 323 prohibits the use or discharge, including for training purposes, of a Class B fire fighting foam that contains intentionally added perfluoroalkyl or polyfluoroalkyl substances (PFAS) unless an exception applies. This prohibition does not apply to use or discharge as part of an emergency fire fighting or fire prevention operation, or use for testing purposes, including calibration, conformance, or fixed system testing, if the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases of the foam to the environment, as determined by Department of Natural Resources (DNR) rules. The DNR is required to promulgate rules under the bill as emergency rules no later than the first day of the seventh month after the bill's effective date. Finally, the bill specifies that it does not prohibit the manufacture, sale, or distribution of a Class B fire fighting foam that contains intentionally added PFAS.

ASSEMBLY AMENDMENT 1, AS AMENDED

Assembly Amendment 1, as amended, makes several changes to the bill. Specifically, it does all of the following:

- Provides that “Class B fire fighting foam” may include a dual action Class A and B foam.
- Defines “training” to mean providing first-hand field experience to a person who may use a fire fighting foam as part of an emergency fire fighting or fire prevention operation.
- Defines “testing” to include testing of a fire fighting foam to evaluate its effectiveness and testing of a fire fighting foam delivery system or equipment.
- Requires testing facilities to implement appropriate storage measures to prevent discharges¹ of the foam to the environment, in addition to other requirements under the bill, and also directs DNR to promulgate rules regarding appropriate storage measures for these testing facilities.
- Specifies that “appropriate containment, treatment, and disposal or storage measures” that testing facilities must implement may not include flushing, draining, or otherwise discharging the foam into a storm or sanitary sewer.
- If a fire fighting foam is used for testing purposes, requires notification to DNR immediately of any discharge of the foam to the environment.
- If a fire fighting foam is used or discharged as part of an emergency fire fighting or fire prevention operation, requires notification to DNR of the use or discharge immediately or as soon as practicable without hindering fire fighting or fire prevention operations.

¹ Assembly Amendment 1 to Assembly Amendment 1 has the effect of changing “release” to “discharge” throughout the bill.

- Requires a person who possesses a fire fighting foam that may be used as part of an emergency fire fighting or fire prevention operation to request and retain any safety data sheets relating to the fire fighting foam and make them available to DNR for examination after notifying DNR of the use or discharge of the foam.
- Provides that emergency rules promulgated by DNR may remain in effect for up to three years², and specifies that DNR is not required to provide evidence that promulgating emergency rules is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency.³

BILL HISTORY

Representative Nygren offered Assembly Amendment 1 on November 18, 2019, and offered Assembly Amendment 1 to Assembly Amendment 1 on December 10, 2019. On December 11, 2019, the Assembly Committee on Environment recommended adoption of Assembly Amendment 1 to Assembly Amendment 1, and adoption of Assembly Amendment 1, as amended, each on a vote of Ayes, 8; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 8; Noes, 1.

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² Under current law, in general, an emergency rule is initially effective for a period of 150 days. An agency may petition the Joint Committee for Review of Administrative Rules (JCRAR) for extensions of the effective period of an emergency rule or part of an emergency rule. JCRAR may extend a rule's effective period for a length of time specified by the committee, not to exceed 60 days. A ny number of extensions may be granted, but the total period for all extensions may not exceed 120 days. [s. 227.24 (1) (c) and (2) (a), Stats.]

³ Assembly Amendment 1 to Assembly A amendment 1 added the provision which exempts DNR from the requirement in current law to provide evidence that promulgating emergency rules is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency. [s. 227.24 (1) (a) and (3), Stats.]