



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #463

PFAS-Containing Firefighting Foam Disposal (Natural Resources -- Waste, Remediation, and Air)

[LFB 2021-23 Budget Summary: Page 436, #3]

CURRENT LAW

2019 Wisconsin Act 101 created a prohibition on the use of firefighting foam that contains per- or polyfluoroalkyl substances (PFAS), which are substances thought to have negative human health and environmental effects. Exempt activities under Act 101 include emergency firefighting operations, or test procedures in facilities with proper treatment, containment, and disposal measures. DNR is currently promulgating emergency and permanent rules that establish these measures. DNR has also provided outreach and training on proper storage, containment, and disposal of PFAS-containing foams for fire departments and entities that test foams. Further, DNR is developing best management practices to guide management and use of PFAS-containing foam.

DISCUSSION POINTS

1. PFAS-containing firefighting foams, also called aqueous film-forming foams (AFFFs), are used to suppress and extinguish high-hazard flammable liquid fires, which are typically referred to as Class B fires. AFFFs are effective at containing fires associated with flammable liquids such as petroleum products or aviation fuel. Many Wisconsin fire departments, and all commercial service airports, currently have and sometimes use PFAS-containing foams for emergencies. There are approximately 830 fire departments and at least eight aircraft rescue and firefighting (ARFF) units at commercial service airports.

2. Assembly Bill 68/Senate Bill 111 would provide \$1,000,000 in 2021-22 in a new continuing appropriation from the environmental management account of the segregated (SEG) environmental fund for collecting and disposing of PFAS-containing firefighting foam. The bill would not create additional statutory provisions for the program, but would provide DNR with

authority to promulgate an emergency rule without the finding of an emergency, and DNR would not be required to prepare a scope statement or submit a final emergency rule draft to the Governor. DNR indicates that it would administer collection under contract with a third-party disposal provider using funding under the bill. Typical means of disposal of AFFFs include solidifying foams and storing at a hazardous waste landfill, or incinerating the compounds.

3. Prior to the introduction of AB 68/SB 111, the Wisconsin PFAS Action Plan recommended a collection and disposal program for PFAS-containing firefighting foam. Under the PFAS Action Plan, the program would: (a) be limited to foam in the possession of fire departments that are funded by local governments or that are volunteer in nature; (b) prioritize foams manufactured prior to 2003; and (c) utilize the results of the fire department survey (discussed later) to determine trajectories and costs. The PFAS Action Plan also recommended a partnership with the Department of Agriculture, Trade, and Consumer Protection (DATCP), which administers the state clean sweep program, to complete the collection and disposal. AB 68/SB 111 does not include these provisions.

4. The following states have planned or implemented programs for the collection and disposal of PFAS-containing firefighting foams: Colorado, Connecticut, Massachusetts, Michigan, New Jersey, New York, Rhode Island, Vermont and Washington. Some states' collection programs are part of larger PFAS-related funding, and information on amounts budgeted or expended directly for foam collection and disposal programs is not available in all cases. New York budgeted \$700,000 for its program. Under the Michigan program, approximately 51,400 gallons were collected for disposal, at a cost of \$1.4 million, or an average cost of \$28 per gallon.

5. DNR states that there is no federal funding available for addressing PFAS-containing foams, nor is PFAS-containing foam regulated under federal hazardous waste laws. However, federal use restrictions related to AFFFs have been established. The FAA Reauthorization Act of 2018 directs the FAA to stop requiring the use of PFAS-containing foams by October 4, 2021. The National Defense Authorization Act of 2020 also requires the Department of Defense to phase out AFFF by October 2024, with an immediate prohibition of using it for military training exercises. The National Defense Authorization Act has occasionally provided resources to the Department of Defense (DOD) for PFAS-related clean up on or near military installations. There are eight DOD sites in Wisconsin.

6. 2019 Wisconsin Act 9, the 2019-21 biennial budget act, provided DNR \$50,000 environmental management SEG in 2019-20 to survey state and local government emergency responders to determine the level of use of PFAS-containing firefighting foam in Wisconsin. The UW-Madison Survey Center, on behalf of DNR, mailed a survey to 825 fire departments across Wisconsin in January, 2020. Responses and data were gathered and analyzed in the subsequent months, and DNR published findings in September, 2020. DNR reports that a total of 596 fire departments responded (76%), and of these departments, 455 (77% of respondents) had purchased, stored, trained with, or used PFAS-containing firefighting foam in the past. Of those 455 departments, 382 (84%) reported having amounts in stock.

7. Of the fire departments that possessed or used PFAS-containing firefighting foam, 38% reported having guidelines or best practice policies to govern use of foams. A majority of fire departments (63%) reported using PFAS-containing firefighting foam only for emergency response to fires involving flammable liquids or gases. The most common methods that fire departments

reported using to dispose of expired or unwanted PFAS-containing firefighting foam were placing foam concentrates in storage (193 fire departments) or using foams in training (158 departments). Smaller numbers of departments reported returning foams to the manufacturer (21 departments), and sending foams to a landfill (nine departments). With regard to limiting or improving the use of PFAS-containing foams, approximately two-thirds of respondents rated the following information as "very" or "extremely" important: (a) varied disposal options; (b) alternative products; (c) liability standards; (d) best management practices; and (e) environmental and health impact information related to PFAS-containing foams.

8. Based on additional follow-up questioning of respondents, and the distribution of the volume of foams reported as being held by those fire departments, DNR estimates that the total amount of PFAS-containing firefighting foam held by all 825 fire departments in the state is between 63,200 gallons and 96,300 gallons. Of those amounts, DNR estimates that approximately 23,700 to 44,700 gallons are expired and in need of disposal, and these foams are located at just over half of fire departments in the state.

9. The Wisconsin Fire Chiefs Association estimates a cost of disposal of \$50 per gallon for PFAS-containing firefighting foam. Based on DNR estimates of 23,700 to 44,700 gallons of expired foam in need of disposal, the total cost to dispose of all foam at \$50 per gallon could be from \$1,185,000 to \$2,235,000. Based on a disposal cost of \$28 per gallon, similar to the Michigan program, the total cost could be \$663,600 to \$1,251,600.

10. 2021 AB 140/SB 156 would also create a program for the collection and disposal of PFAS-containing firefighting foams. AB 140/SB 156 would create a continuing appropriation within DATCP's Division of Agricultural Resource Management and provide \$1,000,000 environmental management SEG in 2021-22 from the environmental management account of the environmental fund to create a clean sweep program for PFAS-containing firefighting foams. Under the bills, DATCP would be responsible for administering a program to collect, store, or dispose of voluntarily surrendered PFAS-containing firefighting foam. The bills would allow DATCP to contract with a third party, and DATCP indicates that the agency would administer the collection through a contractor.

11. In addition to \$1 million in funding under the program, the PFAS municipal grant program under AB 68/SB 111 (discussed in a separate paper) would include PFAS-containing foam disposal as an eligible grant activity. Under AB 68/SB 111, municipalities receiving funding under the PFAS grant program would have a 20% cost share to cover disposal of the foam. As proposed, neither AB 68/SB 111 nor AB 140/SB 156 would require a financial match from local governments for the PFAS collection and disposal program.

12. DNR argues that statewide AFFF collections could be most efficient and effective if all foam is collected in one effort, rather than in a decentralized manner among multiple communities. Given the negative health and environmental effects of PFAS, and the identified disposal needs, the Committee could approve funding of \$1,000,000 in 2021-22 as proposed under AB 68/SB 111 [Alternative 1]. The Committee could also incorporate provisions of 2021 AB 140/SB 156 and approve \$1,000,000 environmental management SEG for a collection program under DATCP [Alternative 2]. The Committee also could take no action [Alternative 3].

ALTERNATIVES

1. Provide the Department of Natural Resources \$1,000,000 in 2021-22 in a new continuing appropriation from environmental management SEG for collecting and disposing of PFAS-containing firefighting foam.

ALT 1	Change to Base
SEG (DNR)	\$1,000,000

2. Provide the Department of Agriculture, Trade and Consumer Protection \$1,000,000 in 2021-22 for a program to collect and store or dispose of unused PFAS-containing firefighting foam that was voluntarily surrendered by the person in possession of the foam. Provide DATCP may contract with a third party for the collection and storage or disposal, and that priority be given to collecting from the state or from cities, villages, towns, and counties. Require foam collected to be stored in an environmentally safe manner until properly disposed of or treated in accordance with DNR rules. Specify the provision does not confer additional rule-making authority on DATCP or DNR.

ALT 2	Change to Base
SEG (DATCP)	\$1,000,000

3. Take no action.

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