
To: House Committee on Human Services

From: Lauren Hierl, Executive Director, Vermont Conservation Voters

Re: Testimony in support of S.20 to protect Vermonters from toxic PFAS chemicals

Date: April 15, 2021

In listening to the range of testimony on S.20, the bill to regulate PFAS chemicals in certain products, Vermont Conservation Voters offers several proposed amendments.

Firefighting Foam

In response to the request for an exemption to the restriction on PFAS-containing firefighting foam for a petroleum bulk storage facility, we recommend adding an exemption section modeled on Washington's law:

§ 1663. RESTRICTION ON MANUFACTURE, SALE, AND DISTRIBUTION; EXCEPTIONS

(a) A manufacturer of class B firefighting foam shall not manufacture, sell, offer for sale, or distribute for sale or use in this State class B firefighting foam to which PFAS have been intentionally added.

~~(b) Notwithstanding subsection (a) of this section, any manufacture, sale, or distribution of class B firefighting foam where the inclusion of PFAS is required by federal law, including the requirements of 14 C.F.R. 139.317 (aircraft rescue and firefighting: equipment and agents), as that section existed as of January 1, 2020, is allowed. In the event that applicable federal regulations change after that date to allow the use of alternative firefighting agents that do not contain PFAS, the Department shall adopt rules that restrict PFAS for the manufacture, sale, and distribution of firefighting foam for uses that are addressed by federal regulation.~~

(b) The restrictions in subsection (a) of this section do not apply until January 1, 2024, to any manufacture, sale, or distribution of class B firefighting foam to a person for use at a bulk gasoline terminal.

(c) A person who operates a bulk gasoline terminal may apply to the department for a waiver. A waiver may only be for two years and may only be extended by the department for one additional two-year term. The department may grant a waiver if the applicant provides:

(i) Clear and convincing evidence that there is no commercially available replacement that does not contain intentionally added PFAS

chemicals that is capable of suppressing a large atmospheric storage tank fire;

(ii) Information on the amount of firefighting foam containing intentionally added PFAS chemicals stored, used, or released on site on an annual basis;

(iii) A report on the progress being made by the operator of the facility to transition to use of firefighting foam at the facility that does not contain intentionally added PFAS chemicals; and

(iv) An explanation of how all releases of firefighting foam will be fully contained on site and how existing containment measures will not allow firewater, wastewater, runoff, and other wastes to be released to the environment including, but not limited to, soils, groundwater, waterways, and stormwater.

Food packaging

A concern was raised about the definition of food packaging in S.20. We support the current definition as it will cover more products – all of which people can be exposed to, and which if imported into Vermont, will continue to create contamination issues due to their persistence and mobility. I do understand the phrasing might be confusing, so one amended version is suggested below.

Additionally, Sherwin-Williams suggested, and we agree, that the bill would be improved if the phrase “intentionally added” was removed from the food packaging section in all relevant sections, and instead use the phrase “*are present in any amount above an incidental presence.*”

* * * PFAS, Phthalates, and Bisphenols in Food Packaging * * *

Sec. 2. 18 V.S.A. chapter 33A is added to read:

CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

§ 1671. DEFINITIONS

(3) “Food packaging” means a package that is designed for direct food contact, including a food or beverage product that is contained in a food package or to which a food package is applied, a packaging component of a food package, and plastic disposable gloves used in commercial or institutional food service.

(4) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

§ 1672. FOOD PACKAGING (a) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a food package to which PFAS ~~have been intentionally added in any amount~~ are present in any amount above an incidental presence.

(b) Pursuant to 3 V.S.A. chapter 25, the Department may adopt rules prohibiting a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package to which bisphenols are present ~~have been intentionally added~~ in any amount greater than an incidental presence.

(c) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a food package that includes inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers, or any other additives to which phthalates are present ~~have been intentionally added~~ in any amount greater than an incidental presence.