



January 28, 2021

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 195 – Environment – PFAS Chemicals – Prohibitions and Requirements

Dear Chairman Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed **SB0195** and the legislation's implications on State Per- and polyfluoroalkyl substance (PFAS) management. The Department would like to provide some additional information about this legislation.

These bills comprehensively regulate PFAS associated with firefighting foam, carpeting and food packaging. MDE shares the concern of Senator Elfreth about the unacceptable potential public health risks posed by PFAS. PFAS pose complex challenges that are especially daunting given the over 4,000 PFAS which likely exist in commerce or in the environment since their use in a wide spectrum of products began in the 1940's.

Over the past two years, MDE's strategy has been to focus its efforts on investigating the occurrence (e.g. in drinking water, fish tissue and oysters) of PFAS in order to identify any site-specific unacceptable risks. Moreover, these efforts have also provided the data and science to inform decisions regarding the need for regulatory actions to reduce public health exposure and risk.

MDE's leadership and work with the MD Department of Natural Resources, MD Department of Health, and MD Department of Agriculture in the PFAS Interagency Workgroup is helping us better understand Maryland's PFAS "footprint". This collaborative effort improves the Department's ability to make robust decisions regarding the need for regulatory actions. We will continue to use the information and science we are gathering to focus efforts on those actions which provide the greatest human health benefit.

Among our many PFAS-related activities, by the end of February 2021 MDE will have:

1. Sampled 137 PWS treatment systems for a list of eighteen (18) PFAS compounds under EPA Method 537.1.
2. Taken action at (at least) 2 PWS treatment systems to stop the continued use of drinking water containing PFAS and PFOA at concentrations above 70 ppt. Additional efforts are underway to identify the source of PFAS at these locations.
3. Required semi-annual monitoring of PFAS compounds for at least 2 Community Water Systems.
4. Collected fish tissue samples at 10 locations, with 2 different species collected at 9 of those locations. At one location, where high concentrations of PFOS were observed, MDE has begun to develop a more comprehensive follow-up study.
5. Included PFAS in the states existing 5-year rotating basin fish tissue sampling plan, sampling PFAS at about 12 sites annually.
6. Completed a pilot study in the St. Mary's River to evaluate the potential for PFAS contamination in oysters and surface waters near the Patuxent Naval Air Station Webster Field Annex

7. Included reporting and stormwater management requirements in the Departments draft Multisector Industrial stormwater general permit.

In 2021, among our many PFAS-related activities MDE expects to complete its Report on the first phase of Public Water System (PWS) monitoring, decide on the need for sampling at additional PWS, and, complete any additional PWS sampling. In addition, MDE is planning to initiate a follow-up study of the occurrence of PFAS in fish tissue in a tributary to the Potomac River, complete fish tissue monitoring at an additional 12 locations in the State, make decisions on how to best approach the assessment of the occurrence of PFAS in WWTPs and biosolids, and, if resources allow begin those assessments.

Determining needed regulatory actions at the State level is particularly challenging in light of the complexity of the PFAS issue and the uncertainty surrounding the nature and timing of federal PFAS action, particularly with the change in federal administrations. For example, just last week, USEPA announced that it would be moving forward to declare PFOA and PFOA hazardous substances and to develop drinking water Maximum Contaminant Levels (MCLs) for PFOA and PFOS. The former action has important implications for the clean-up of PFAS contamination in the State, including those clean ups under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The latter action, establishing MCLs for PFOA and PFOS under the Safe Drinking Water Act, would serve to increase the amount of monitoring data available for these compounds in Public Water Systems and limit the amounts of these compounds in the water people drink from public water systems. Also last week, EPA signed the fifth Unregulated Contaminant Monitoring Rule (UCMR5), expected to be published in December 2021, where between 2023 and 2025 nationwide monitoring will occur at Public Water Systems for 29 PFAS compounds. We also know that the federal Toxic Substances Control Act provides EPA with broad and comprehensive authority to regulate nationally the manufacture, processing, distribution commerce, use and disposal of toxic substances such as certain PFAS; what we don't know is how that authority will be exercised moving forward or when such actions might be undertaken.

In light of the complex challenges associated with PFAS and the uncertainty regarding federal action, MDE respectfully suggests that rather than take action this session to regulate PFAS in the manner described in this legislation, that the sponsors consider requiring MDE to complete a study to determine, based on available science and a consideration of expected federal actions, the need for, nature of, and timing of State regulatory controls on PFAS.

The study could be required of an "advisory panel" created and chaired by MDE with representatives from government, academia, environmental/public health NGOs, and business interests. This study, to be completed by the end of December 2021, could serve as the foundation for future legislative considerations.

Thank you for your consideration. We will continue to monitor Senate Bill 195 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott