

Committee: ENR
Drafter: DCT
File name:
LR (item)#: 2227(02)
New Title?: YES
Add Emergency?: YES
Date: 2/6/22

LD 1911
Proposed amendment – Senator Brenner

Strike the title and insert the following in its place:

“An Act To Prevent the Further Contamination of the Soils and Waters of the State with So-called Forever Chemicals”

Strike everything after the title and before the summary and insert the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the contamination of the soils and waters of the State from perfluoroalkyl and polyfluoroalkyl substances, or PFAS, poses a significant and widespread threat to the environment of the State and to the health of its citizens; and

Whereas, PFAS-contaminated sludge and septage and compost and other products and materials containing sludge and septage continue to be applied to land in the State, further contaminating the soil, water and the surrounding environment; and

Whereas, to prevent further contamination from PFAS, it is imperative to immediately prohibit the application and distribution in the State of these materials; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §413, sub-§12 is enacted to read:

12. Sampling for perfluoroalkyl and polyfluoroalkyl substances. Notwithstanding section 414-A or any other provision of law to the contrary, the department may by written notification require a person licensed by the department to discharge wastewater to groundwater or any waters of the State to sample their discharge effluent for perfluoroalkyl and polyfluoroalkyl substances. Upon receipt of such written notification, the person shall conduct sampling of their discharge effluent for perfluoroalkyl and polyfluoroalkyl substances as directed by the department.

As used in this subsection, “perfluoroalkyl and polyfluoroalkyl substances” has the same meaning as in Title 32, section 1732, subsection 5-A.

Sec. 2. 38 MRSA §1305, sub-§7 is repealed.

~~**7. On-site disposal of domestic septage; enforcement.** Municipalities shall enforce the provisions of section 1306, subsection 2. Municipalities may recover all costs of enforcement, including attorneys' fees, from a septage pumper who violates the provisions of that subsection.~~

Sec. 3. 38 MRSA §1306, sub-§2 is repealed.

~~**2. On-site disposal of domestic septage; penalty.** A homeowner may arrange for a septage pumper to dispose of septage from a residence on property of the owner of the residence at the request of the property owner, a maximum of 2 times a year, provided that the septage is placed at least 300 feet from property boundaries, fresh surface waters, tidal waters, water supplies, streets, highways and permanently or seasonally inhabited residential structures. Any homeowner or septage pumper who violates the provisions of this subsection shall be subject to a civil penalty, payable to the municipality, of not more than \$1,000 for each day of violation.~~

Sec. 4. 38 MRSA §1306, sub-§7 is enacted to read:

7. Prohibitions on land application of sludge; sale and distribution of compost and other agricultural products and materials containing sludge and septage; and sale, distribution and use of crops grown at septage application sites. Notwithstanding any provision of law to the contrary, a person may not:

A. Apply to or spread on any land in the State:

(1) Sludge generated from a municipal, commercial or industrial wastewater treatment plant;

(2) Any compost material that included in its production sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage; or

(3) Any other product or material that is intended for use as a fertilizer, soil amendment, topsoil replacement, mulch or for other similar agricultural purpose that is derived from or contains sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage;

B. Sell or distribute in the State:

(1) Any compost material that included in its production sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage; or

(2) Any other product or material that is intended for use as a fertilizer, soil amendment, topsoil replacement, mulch or for other similar agricultural purpose that is derived from or contains sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage; or

C. Sell, distribute or use in the State agricultural crops or other vegetative material for any agricultural purpose, including, but not limited to, for use as animal feed, if those agricultural crops or vegetative material were grown at a location in the State where septage is licensed or permitted to be applied or spread.

This subsection does not apply to the disposal or placement at a solid waste landfill of any of the materials that are prohibited from application, spreading, sale, distribution or use by this subsection.

Sec. 5. 38 MRSA §1310-B-1, sub-§3 is repealed and the following enacted in its place:

3. Fee. In addition to any other fee or charge required by statute or rule, beginning January 1, 2023, fees are imposed in the amount of \$10 per ton, or an equivalent amount as determined by the department on a volume basis, for all sludge or septage disposed of at a commercial, municipal, state-owned or regional association landfill.

A person who delivers sludge or septage to a landfill shall pay all fees established under this subsection to the operator of the landfill and the operator shall pay such collected fees to the department in the same manner as waste handling fees are paid to the department under section 2205. The department shall deposit all fees received under this subsection into the fund.

Sec. 6. 38 MRSA §1310-B-1, sub-§4 is amended to read:

4. Rules. The board ~~shall~~ may adopt rules necessary for the administration of the fund and any underlying program or purpose under or funded by the fund ~~and for the assessment and collection of the fee under subsection 3.~~ Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. Public Law 2021, chapter 478, §2(4) is repealed.

~~4. Notwithstanding any provision of law to the contrary, a person licensed or permitted by the department to apply sludge or septage at a location subject to evaluation under this section shall submit to an evaluation of that location under the program upon the request of the department, and, prior to January 1, 2026, the person may not submit a request to the department to surrender that license or permit prior to its expiration unless the person has submitted to such evaluation and has provided the department with the results of any testing conducted.~~

Sec. 8. Land application of septage; prohibitions. Notwithstanding any provision of law to the contrary:

1. A person licensed or permitted by the Department of Environmental Protection to apply or spread septage at one or more locations in the State may not apply septage at any location authorized under that license or permit if the department provides to the person a written determination that, pursuant to testing conducted in accordance with the requirements of Public Law 2021, Chapter 478, section 2, it has determined that the concentration of perfluoroalkyl and polyfluoroalkyl substances in groundwater at that location or in drinking water sources in close proximity to that location exceeds the applicable drinking water standard for perfluoroalkyl and polyfluoroalkyl substances imposed pursuant to Resolve 2021, Chapter 82; and

2. The department may not issue any new license or permit authorizing a person to apply or spread septage at any location in the State.

As used in this section, “perfluoroalkyl and polyfluoroalkyl substances” has the same meaning as in the Maine Revised Statutes, Title 32, section 1732, subsection 5-A and “septage” has the same meaning as in Title 38, section 1303-C, subsection 27.

Sec. 9. Department of Environmental Protection to develop plan to prohibit land application of septage; report. The Department of Environmental Protection shall study methods of and develop a plan for prohibiting the land application of septage in the State. The plan must include, but is not limited to, identification of the available capacity at wastewater treatment plants or other treatment or disposal facilities in the State or regionally to manage the septage that is currently land applied in the State, determination of the capacity anticipated to be necessary to manage that septage if land application is prohibited in the State, development of recommendations for supporting and funding the development of such additional management capacity where necessary and development of recommendations concerning a framework and appropriate timeframe for prohibiting the land application of septage in the State.

On or before January 15, 2023, the department shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report containing its findings and recommendations, include any suggested legislation, resulting from the study under this section. After receiving the report, the joint standing committee may report out legislation to implement any such recommendations.

As used in this section, “septage” has the same meaning as in the Maine Revised Statutes, Title 38, section 1303-C, subsection 27.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This amendment changes the title of and replaces the bill, adds an emergency preamble and emergency clause and does the following.

1. It authorizes the Department of Environmental Protection to require a licensed wastewater discharger to sample their discharge effluent for perfluoroalkyl and polyfluoroalkyl substances.

2. It repeals provisions of law that authorize a homeowner to arrange for septage from a residence on the property to be disposed of on that property.

3. It prohibits the application or spreading on any land in the State of sludge, any compost material that included in its production sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage or any other product or material that is intended for use as a fertilizer, soil amendment, topsoil replacement, mulch or for other similar agricultural purpose that is derived from or contains sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage.

4. It prohibits the sale or distribution in the State of any compost material that included in its production sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage or any other product or material that is intended for use as a fertilizer, soil amendment, topsoil replacement, mulch or for other similar agricultural purpose that is derived from or contains sludge generated from a municipal, commercial or industrial wastewater treatment plant or septage.

5. It prohibits the sale distribution or use in the State of agricultural crops or other vegetative material for any agricultural purpose, including, but not limited to, for use as animal feed, if those agricultural crops or vegetative material were grown at a location in the State where septage is licensed or permitted to be applied or spread.

6. It amends the provision in law imposing a \$10 per ton fee on the handling of sludge and septage beginning January 1, 2022 to instead, beginning January 1, 2023, impose a \$10 per ton fee on all sludge and septage disposed of at a landfill.

7. It repeals a provision of a Public Law 2021, Chapter 478 that prohibited a person licensed or permitted by the department to apply sludge or septage at a location subject to department evaluation for perfluoroalkyl and polyfluoroalkyl substances contamination from surrendering the license or permit prior to its expiration.

8. It provides that a person licensed or permitted by the department to apply or spread septage at one or more locations in the State may not apply septage at any location authorized under that license or permit if the department provides to the person a written determination that, pursuant to testing conducted in accordance with the requirements of Public Law 2021, Chapter 478, it has determined that the concentration of perfluoroalkyl and polyfluoroalkyl substances in groundwater at that location or in drinking water sources in close proximity to that location

exceeds the applicable drinking water standard for perfluoroalkyl and polyfluoroalkyl substances imposed pursuant to Resolve 2021, Chapter 82.

9. It prohibits the department from issuing any new license or permit authorizing a person to apply or spread septage at any location in the State.

10. It requires the department to study methods of and develop a plan for prohibiting the land application of septage in the State and, on or before January 15, 2023, to submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report containing its findings and recommendations, include any suggested legislation, resulting from that study. After receiving the report, the joint standing committee may report out legislation to implement any such recommendations.