

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2860

By Delegates Heckert, Foggin, Westfall, Anderson,
Brooks, Crouse, Vance, Honaker, Shamblin, Chiarelli
and Jennings

[Originating in the Committee on Government
Organization; Reported on February 22, 2023]

1 A BILL to amend and reenact §29-3-5g of the Code of West Virginia, 1931, as amended, relating to
2 providing for the safe disposal of used aqueous film forming foam; defining a term;
3 requiring the State Fire Commission to dispose of used aqueous film forming and other
4 class B fire-fighting foams.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5g. Class B fire-fighting foam.

1 (a) The State Fire Commission shall, on or before July 1, 2021, propose rules for legislative
2 approval in accordance with §29A-3-1 *et seq.* of this code to provide:

3 (1) Standard safe practices for the discharge or otherwise use class B fire-fighting foam
4 that contains intentionally added polyfluoroalkyl substances (PFAS).

5 (2) For purposes of this section:

6 "Aqueous Film Forming Foam (AFFF)" means a fluorinated surfactant with a foam
7 stabilizer which is diluted with water to act as a temporary barrier to exclude air from mixing with
8 the fuel vapor by developing an aqueous film on the fuel surface of some hydrocarbons which is
9 capable of suppressing the generation of fuel vapors.

10 "Class B fire-fighting foam" means any foam designed to extinguish flammable liquid fires.

11 "PFAS chemicals" means nonpolymeric perfluoroalkyl and polyfluoroalkyl substances that
12 are a group of man-made chemicals that contain at least two (2) fully fluorinated carbon atoms,
13 excluding gases, and volatile liquids.

14 "Testing" means calibration testing, conformance testing, or fixed system testing.

15 "Testing Facility" allows the discharge of foam in a non-emergency situation for the
16 evaluation and calibration of firefighting equipment and foam. This facility may also have the
17 capability to provide some level of needed training for firefighters.

18 "Fixed Foam System" means a complete installation piped from a central foam station,
19 discharging through fixed discharge devices on the flammable liquid hazard being protected.

20 Foam proportioning components are permanently installed. The system has been engineered for
21 the hazard and often contains multiple (UL or FM) listed components and foam.

22 "Foam Training Facility" shall mean to allow the discharge of foam in a nonemergency
23 situation for the training of firefighters and readiness of equipment. This facility may also have the
24 capability to provide some level of needed evaluation and calibration of equipment and foam.

25 (b) On or after July 1, 2021, no person, fire department, state department, agency, board,
26 bureau, office, commission, public corporation, or authority; county, municipal corporation, school
27 district, or other political subdivision of this state may discharge or otherwise use class B fire-
28 fighting foam that contains intentionally added PFAS chemicals unless:

29 (1) The discharge or other use occurs in fire prevention or in response to an emergency
30 fire-fighting operation; or

31 (2) The discharge or other use is for training or testing purposes which occurs at a facility
32 that has implemented containment, storage, treatment, and disposal measures to prevent
33 uncontrolled releases of such class B fire-fighting foam into the environment.

34 (c) Nothing in this code section may be construed to:

35 (1) Restrict the manufacture, sale, or distribution of class B fire-fighting foam that contains
36 intentionally added PFAS chemicals or restrict the discharge or other use of class B fire-fighting
37 foam in response to an emergency fire-fighting operation; or

38 (2) Prevent the use of nonfluorinated foams, including other class B fire-fighting foams, for
39 purposes of training for fire-fighting operations.

40 (d) The State Fire Commission may establish work groups and seek input in the
41 rulemaking process from groups or individuals with an interest in any aspect of the use of class B
42 fire-fighting foams.

43 (e) The State Fire Commission shall find a method to dispose of used or accumulated
44 AFFF and other class B fire-fighting foams, including, but not limited to, transporting the contained
45 AFFF to an accredited disposal company. If necessary, the State Fire Commission shall contract

- 46 with an accredited disposal company for this purpose. The State Fire Commission may coordinate
47 with the Department of Environmental Protection to ensure safe disposal.

NOTE: The purpose of this bill is to both define and ensure the safe disposal of AFFF fire-fighting foam

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.