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GOVERNOR

011
STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

Memorandum

To: Board of Environmental Protection

From: Kerri Malinowski, Office of the Commissioner

Date: July 2, 2020

Re: Chapter 890: Designation of PFOS as a Priority Chemical

The Department is recommending that the Board adopt the proposed 06-096 C.M.R. Chapter 890: Designation of PFOS as a Priority Chemical. This rule designates perfluorooctane sulfonic acid ("PFOS") and its salts as priority chemicals and requires reporting for certain consumer product categories that contain these regulated chemicals. The proposed rule applies to manufacturers and distributors of specified consumer product categories that contain intentionally added amounts of PFOS and its salts.

The proposed rule was originally posted for Departmental rulemaking with a public comment period beginning April 3, 2019. A Department public hearing was held on April 23, 2019, and the comment period closed May 6, 2019. After the close of this initial public comment period, new information about the prevalence of PFOS in Maine's biosolids highlighted the continuing possibilities of exposure and caused the Department to undertake revisions to the draft rule. This initial rulemaking period terminated with no formal action by the Commissioner. Effective September 19, 2019, responsibility for all rulemaking shifted to the Board of Environmental Protection. A new rulemaking proceeding was initiated by the Board's posting of the Department's revised draft rule for a thirty-day written public comment period beginning on October 2, 2019 and closing on November 4, 2019. Before the close of the comment period six requests for a public hearing were received. The comment period was reopened on January 1 and the Board held a public hearing on January 23, 2020. The Department made changes to the draft rule to include specific salts of PFOS and other minor changes, and the revised draft was reposted for an additional comment period on February 3, 2020. This final comment period closed on March 9, 2020.

The Department received comments from 7 interested persons or organizations prior to the close of the final comment period. These comments are summarized, and the Department's responses are set forth in the Basis Statement and Response to Comments included in the Board materials. The Department is proposing no further changes to the draft rule as posted on February 3, 2020.

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The following materials are enclosed with this memorandum:

- Clean copy of the rule with all proposed changes incorporated
- Copy of the revised rule as posted February 3, with changes shown in legislative mark-up
- Basis statement and response to comments
- Copies of the comments received during the comment period

Regulatory Framework:

The designation of PFOS and its salts as Priority Chemicals meets the statutory criteria for designation as specified in 38 M.R.S. §1694(1). Maine CDC concurrence for the proposed rule is based on the chemicals' category 1A reproductive toxicity classification on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). (Maine CDC PFOS Priority Designation Concurrence Letter, February 23, 2018). General statutory authority for the rule is provided by 38 M.R.S. §§ 1691 through 1699-B.

Requested Action:

The Department recommends that the Board adopt the February 3 draft of the rule as proposed.

Estimated time of agenda item:

Thirty minutes