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Report to the Committee on the Environment and Natural Resources
131st Legislature, First Session

Report on the Designation of Uncontrolled Hazardous Substance Sites

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Executive Summary

This report is submitted to the Joint Standing Committee on Environment and Natural Resources pursuant to [Public Law 2021, Chapter 117](#) which requires the Department of Environmental Protection (Department) to submit a report to the Legislature regarding uncontrolled hazardous substance sites where the Department has used its authority to require a responsible party to investigate or remove a hazardous substance that is a pollutant or contaminant under Title 38, section 1362, subsection 1, paragraph H. The Department has not exercised that authority, as further detailed below.

I. Introduction and Background

[Public Law 2021, Chapter 117](#) requires the Department to submit a report to the Joint Standing Committee on the Environment and Natural Resources regarding uncontrolled hazardous substance sites where the Department, pursuant to its authority under Maine Revised Statutes (M.R.S.) [Title 38, chapter 13-B](#), has required a responsible party to investigate or remove a hazardous substance that is a pollutant or contaminant under [38 M.R.S. § 1362](#), subsection 1, paragraph H and, for each such site, the common name and chemical abstracts service registry number of the hazardous substance investigated or removed.

The impetus, in part, behind L.D. 780, An Act Regarding Uncontrolled Hazardous Substance Sites which became Public Law 2021, Chapter 117 was to give clear authority to the Department under the Uncontrolled Hazardous Substances Sites Law (Uncontrolled Sites Law) to address potential health effects from emerging contaminants such as per- and polyfluoroalkyl substances (PFAS). To do so, the state Uncontrolled Sites Law definition of hazardous substance was revised, in part, to include any substance defined as a hazardous substance or a pollutant or contaminant under the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly known as CERCLA or the Superfund Law. The Uncontrolled Sites Law is the State's equivalent of the federal CERCLA or Superfund Law.

On September 6, 2022, the United States Environmental Protection Agency (US EPA) published a Notice of Proposed Rulemaking in the Federal Register¹ designating Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances. PFOA and PFOS are two types of PFAS. As of the date of this report, US EPA has not declared PFOA and PFOS as hazardous substances under CERCLA. However, because the US EPA already considers PFOA and PFOS pollutants or contaminants under CERCLA, they are, by definition, already “hazardous substances” under the Uncontrolled Sites Law pursuant to [38 M.R.S. § 1362](#), subsection 1, paragraph H.

II. Reporting Requirements of [Public Law 2021, Chapter 117](#)

Since October 18, 2021, which was the effective date of Public Law 2021, Chapter 117, and as of the date of this report, the Department has not formally designated a site to be an uncontrolled hazardous substance site nor has the Department required, through issuance of a formal clean-up order, a responsible party to investigate or remove a hazardous substance that is a pollutant or contaminant under 38 M.R.S. § 1362 subsection 1, paragraph H. The Department continues to work with responsible parties to remediate sites that were formally designated as uncontrolled hazardous substance sites prior to the effective date of Public Law 2021, Chapter 117, and at these sites the Department is working with responsible

¹ The publication of the Notice of Proposed Rulemaking in the Federal Register commenced the 60-day public comment period ending November 7, 2022.

parties to identify any pollutants or contaminants as identified under Public Law 2021, Chapter 117 which may include PFAS. The Department is also working with potential responsible parties and other stakeholders to investigate and properly characterize the extent of contaminants, including PFAS, at other sites not formally designated as uncontrolled hazardous substance sites.

III. Conclusion

The Uncontrolled Sites Law allows the Department to use the Uncontrolled Sites Fund to investigate and mitigate risks posed by contaminants or require responsible parties to undertake remedial work when necessary. Although, the Department has not formally designated a site to be an uncontrolled hazardous substance site pursuant to [38 M.R.S. § 1364](#), or formally required a responsible party to clean up a site pursuant to a formal clean-up order since the effective date of Public Law, Chapter 117, the Department continues to work with responsible parties and other stakeholders to voluntarily address public health and environmental risks relating to hazardous substances, including the emerging contaminants such as PFAS.

Appendix A – Excerpt from Public Law 2021, Chapter 117

Sec. 5. Report. On or before January 15, 2023, the Department of Environmental Protection shall report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters regarding uncontrolled hazardous substance sites where the department, pursuant to its authority under the Maine Revised Statutes, Title 38, chapter 13-B, has required a responsible party to investigate or remove a hazardous substance that is a pollutant or contaminant under Title 38, section 1362, subsection 1, paragraph H and, for each such site, the common name and chemical abstracts service registry number of the hazardous substance investigated or removed.