

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 212

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE PER- AND POLY-
FLUOROALKYL SUBSTANCES PROTECTION ACT; PROHIBITING CERTAIN
PRODUCTS THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
FLUOROALKYL SUBSTANCE; AUTHORIZING THE ENVIRONMENTAL
IMPROVEMENT BOARD TO ADOPT RULES PROHIBITING CERTAIN PRODUCTS
THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-FLUOROALKYL
SUBSTANCE; REQUIRING DISCLOSURE OF INFORMATION AND TESTING OF
PRODUCTS SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE IN THIS
STATE THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
FLUOROALKYL SUBSTANCE; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Per- and Poly-Fluoroalkyl Substances Protection
Act".

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1 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Per- and Poly-Fluoroalkyl Substances Protection Act:

3 A. "board" means the environmental improvement
4 board;

5 B. "carpet or rug" means a fabric marketed or
6 intended for use as a floor covering;

7 C. "chemical" means a substance with a distinct
8 molecular composition or a group of structurally related
9 substances and includes the breakdown of products of the
10 substance or substances that form through decomposition,
11 degradation or metabolism;

12 D. "cleaning product" means a finished product used
13 for general cleaning purposes, including:

14 (1) a polish or floor maintenance product;

15 (2) an air care product labeled for the
16 intended use of enhancing or conditioning the indoor
17 environment by eliminating unpleasant odors or freshening the
18 air; and

19 (3) an automotive maintenance product labeled
20 for the intended use of maintaining the appearance of a motor
21 vehicle, but does not include automotive paint or paint repair
22 products;

23 E. "consumer product" means a tangible personal
24 property that is distributed in commerce and normally used for
25 personal, family or household use, including product categories

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1 that are normally used in households but designed for or sold
2 to businesses, such as commercial carpet or floor waxes;

3 F. "cookware" means durable houseware items
4 intended for direct food contact and used to prepare, dispense
5 or store food, foodstuffs or beverages;

6 G. "cosmetic" means a product or product component,
7 other than soap, intended to be applied to the human body for
8 cleansing, beautifying or promoting attractiveness;

9 H. "currently unavoidable use" means a use of a
10 per- or poly-fluoroalkyl substance that the board has
11 determined by rule to be essential for health, safety or the
12 functioning of society and for which alternatives are not
13 reasonably available;

14 I. "department" means the department of
15 environment;

16 J. "fabric treatment" means a substance applied to
17 fabric for stain, grease or water resistance or flame
18 retardance;

19 K. "feminine hygiene product" means a disposable or
20 reusable product to collect menstruation and vaginal discharge,
21 including tampons, pads, sponges, menstruation underwear,
22 discs, applicators and menstruation cups;

23 L. "firefighting foam" means an aqueous
24 film-forming foam containing an intentionally added per- or
25 polyfluoroalkyl substance;

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1 M. "food packaging" means a container, unit
2 package, intermediate package or shipping container applied to
3 or providing a means to market, protect, handle, deliver,
4 serve, contain or store a food or beverage, including an
5 individual assembled part of a food package;

6 N. "intentionally added" means a per- or poly-
7 fluoroalkyl substance deliberately added or used during the
8 manufacture of a product where the continued presence, at any
9 level or concentration, of the per- or poly-fluoroalkyl
10 substance is desired or expected in the final product or one of
11 the product's components;

12 O. "juvenile product" means a product designed or
13 marketed for use by children under twelve years old, including
14 children's car seats, clothing and toys, but does not include
15 an electronic product, including:

16 (1) personal computers and any associated
17 equipment;

18 (2) audio and video equipment;

19 (3) calculators;

20 (4) wireless phones;

21 (5) gaming consoles;

22 (6) handheld devices incorporating a video
23 screen; and

24 (7) any associated peripheral device, such as
25 a mouse, keyboard, power supply unit or power cord;

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1 P. "manufacturer" means:

2 (1) a person, a firm, an association, a
3 partnership, a corporation, an organization or a combination or
4 a joint venture that creates, produces or assembles a product
5 or whose brand name is affixed to a product; or

6 (2) in the case of a product imported into the
7 United States, an importer or first domestic distributor of the
8 product; provided that the entity or person that created,
9 produced or assembled the product or whose brand name is
10 affixed to the product does not have an office or employees in
11 the United States;

12 Q. "medical device" means an instrument, an
13 apparatus, an implement, a machine, an implant, an in vitro
14 reagent or other similar or related device, including any
15 component or accessory, that is a product regulated as a drug
16 or medical device by the United States food and drug
17 administration under the Federal Food, Drug, and Cosmetic Act,
18 21 U.S.C. 321 et seq.:

19 (1) recognized in an official compendium;

20 (2) intended for use in the diagnosis of
21 disease or other conditions, or in the cure, mitigation,
22 treatment or prevention of disease, in a human or an animal; or

23 (3) intended to affect the structure or
24 function of the body of a human or an animal and that does not
25 achieve its principal intended purposes through chemical action

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1 within or on the body of a human or an animal and that is not
2 dependent on being metabolized for achievement of its principal
3 intended purpose;

4 R. "official compendium" means a comprehensive,
5 authoritative listing of recognized medical devices, including
6 listings published by a federal regulatory body, which detail
7 specifications standards, and accepted uses of medical devices;

8 S. "per- or poly-fluoroalkyl substance" means a
9 substance in a class of fluorinated organic chemicals
10 containing at least one fully fluorinated carbon atom;

11 T. "product" means an item created, produced,
12 assembled, packaged or otherwise prepared for sale to a
13 consumer, including a product component sold or distributed for
14 personal, residential, commercial or industrial use or for use
15 in making a product;

16 U. "ski wax" means a lubricant applied to the
17 bottom of a snow runner, including a ski or snowboard, to
18 improve grip or glide properties and includes associated tuning
19 products;

20 V. "textile" means an item made in whole or in part
21 from a natural or synthetic fiber, yarn or fabric, including
22 leather, cotton, silk, jute, hemp, wool, viscose, nylon or
23 polyester;

24 W. "textile furnishings" means a textile product
25 made in whole or part from a natural or synthetic fiber, yarn

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1 or fabric that is used as furniture or a decorative accessory;
2 and

3 X. "upholstered furniture" means furniture that is
4 wholly or partially stuffed with a filling material.

5 SECTION 3. [NEW MATERIAL] PROHIBITION ON PRODUCTS
6 CONTAINING PER- OR POLY-FLUOROALKYL SUBSTANCES--EXEMPTIONS.--

7 A. Subsections B through F of this section do not
8 apply to:

9 (1) a product for which federal law governs
10 the presence of a per- or poly-fluoroalkyl substance in the
11 product in a manner that preempts state authority;

12 (2) used products offered for sale or resale;

13 (3) medical devices or drugs and the packaging
14 of the medical devices or drugs that are regulated by the
15 United States food and drug administration, including
16 prosthetic and orthotic devices;

17 (4) cooling, heating, ventilation, air
18 conditioning or refrigeration equipment that contains
19 intentionally added per- or poly-fluoroalkyl substances or
20 refrigerants listed as acceptable, acceptable subject to use
21 conditions or acceptable to narrowed use limits by the United
22 States environmental protection agency pursuant to the
23 significant new alternatives policy program, 40 Code of Federal
24 Regulations, Part 82, Subpart G and sold, offered for sale or
25 distributed for sale for the use for which the refrigerant is

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1 listed pursuant to that program;

2 (5) a veterinary product and its packaging
3 intended for use in or on animals, including diagnostic
4 equipment or test kits and the veterinary product's components
5 and any product that is a veterinary medical device, drug,
6 biologic or parasiticide or that is otherwise used in a
7 veterinary medical setting or in veterinary medical
8 applications that are regulated by or under the jurisdiction
9 of:

10 (a) the United States food and drug
11 administration;

12 (b) the United States department of
13 agriculture pursuant to the federal Virus-Serum-Toxin Act; or

14 (c) the United States environmental
15 protection agency pursuant to the Federal Insecticide,
16 Fungicide, and Rodenticide Act, except that any such products
17 approved by the United States environmental protection agency
18 pursuant to that law for aerial and land application are not
19 exempt from this section;

20 (6) a product developed or manufactured for
21 the purpose of public health or environmental or water quality
22 testing;

23 (7) a motor vehicle or motor vehicle equipment
24 regulated under a federal motor vehicle safety standard, as
25 defined in 49 United States Code, Section 30102(a)(10), except

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1 that the exemption under this paragraph does not apply to any
2 textile article or refrigerant that is included in or as a
3 component part of such products;

4 (8) any other motor vehicle, including an
5 off-highway vehicle or a specialty motor vehicle, such as an
6 all-terrain vehicle, a side by-side vehicle, farm equipment or
7 a personal assistive mobility device;

8 (9) a watercraft, an aircraft, a lighter-than-
9 air aircraft or a seaplane;

10 (10) a semiconductor, including semiconductors
11 incorporated in electronic equipment, and materials used in the
12 manufacture of semiconductors;

13 (11) non-consumer electronics and non-consumer
14 laboratory equipment not ordinarily used for personal, family
15 or household purposes;

16 (12) a product that contains intentionally
17 added per- or poly-fluoroalkyl substances with uses that are
18 currently listed as acceptable, acceptable subject to use
19 conditions or acceptable subject to narrowed use limits in the
20 United States environmental protection agency's rules under the
21 significant new alternatives policy program; provided that the
22 product contains per- or poly-fluoroalkyl substances that are
23 being used as substitutes for ozone-depleting substances under
24 the conditions specified in the rules;

25 (13) a product used for the generation,

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1 distribution or storage of electricity;

2 (14) equipment directly used in the
3 manufacture or development of the products described in
4 Paragraphs (1) through (13) of this subsection;

5 (15) a product for which the board has adopted
6 a rule providing that the use of the per- or poly-fluoroalkyl
7 substance in that product is a currently unavoidable use; or

8 (16) a product that contains fluoropolymers
9 consisting of polymeric substances for which the backbone of
10 the polymer is either a per- or polyfluorinated carbon-only
11 backbone or a perfluorinated polyether backbone that is a solid
12 at standard temperature and pressure.

13 B. Except as provided in Subsection A of this
14 section, beginning January 1, 2027, a manufacturer shall not
15 sell, offer for sale, distribute or distribute for sale in this
16 state, directly or indirectly or through intermediaries, the
17 following products if that product contains an intentionally
18 added per- or poly-fluoroalkyl substance:

- 19 (1) cookware;
20 (2) food packaging;
21 (3) dental floss;
22 (4) juvenile products; and
23 (5) firefighting foam.

24 C. Except as provided in Subsection A of this
25 section, beginning January 1, 2028, a manufacturer shall not

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1 sell, offer for sale, distribute or distribute for sale in this
2 state, directly or indirectly or through intermediaries, the
3 following products if that product contains an intentionally
4 added per- or poly-fluoroalkyl substance:

- 5 (1) carpets or rugs;
- 6 (2) cleaning products;
- 7 (3) cosmetics;
- 8 (4) fabric treatments;
- 9 (5) feminine hygiene products;
- 10 (6) textiles;
- 11 (7) textile furnishings;
- 12 (8) ski wax; and
- 13 (9) upholstered furniture.

14 D. Except as provided in Subsection A of this
15 section, the board may adopt rules to prohibit consumer
16 products not enumerated in Subsections B and C of this section
17 that contain an intentionally added per- or poly-fluoroalkyl
18 substance by category or use that a manufacturer may not sell,
19 offer for sale, distribute or distribute for sale in this
20 state, directly or indirectly or through intermediaries, upon a
21 finding of fact that a prohibition on the product is necessary
22 to protect human health or the environment. The board shall
23 set effective dates for a prohibition established by rule
24 pursuant to this subsection; provided that the board shall not
25 set an effective date for the prohibition of a product less

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1 than six months after the adoption of the final rule to
2 prohibit the product or earlier than January 1, 2027. The
3 board shall prioritize the prohibition of consumer products
4 containing an intentionally added per- or poly-fluoroalkyl
5 substance that are most likely to harm human health or
6 contaminate the environment.

7 E. Except as provided in Subsection A of this
8 section, beginning January 1, 2032, a manufacturer shall not
9 sell, offer for sale, distribute or distribute for sale in this
10 state, directly or indirectly or through intermediaries, a
11 product containing an intentionally added per- or poly-
12 fluoroalkyl substance, unless the board has adopted a rule
13 providing that the use of the per- or poly-fluoroalkyl
14 substance in that product is a currently unavoidable use. The
15 board may adopt rules to designate that the use of a per- or
16 poly-fluoroalkyl substance in a certain product is a currently
17 unavoidable use.

18 F. The department shall consult with the New Mexico
19 department of agriculture before petitioning the board pursuant
20 to Subsection D or E of this section with respect to a
21 pesticide, fertilizer, agricultural liming material or plant or
22 soil amendment that contains an intentionally added per- or
23 poly-fluoroalkyl substance. However, if a pesticide is
24 regulated by or under the jurisdiction of the Federal
25 Insecticide, Fungicide, and Rodenticide Act, then Subsections B

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1 through E of this section do not apply to the pesticide.

2 SECTION 4. [NEW MATERIAL] RULES.--

3 A. The board shall adopt rules to:

4 (1) exempt from the reporting requirements
5 established pursuant to Section 5 of the Per- and
6 Poly-Fluoroalkyl Substances Protection Act any product that
7 contains an intentionally added per- or poly-fluoroalkyl
8 substance that is exempt pursuant to Subsection A of Section 3
9 of that act or that has been designated as a currently
10 unavoidable use;

11 (2) create a series of ranges for the amount
12 of a per- or poly-fluoroalkyl substance in a product that
13 contains an intentionally added per- or poly-fluoroalkyl
14 substance for reporting purposes unless exempted in Subsection
15 A of Section 3 of the Per- and Poly-Fluoroalkyl Substances
16 Protection Act;

17 (3) identify currently unavoidable uses of a
18 per- or poly-fluoroalkyl substance that are essential for
19 health, safety or the functioning of society and for which
20 alternatives are not reasonably available unless exempted in
21 Subsection A of Section 3 of the Per- and Poly-Fluoroalkyl
22 Substances Protection Act; and

23 (4) as pertaining to firefighting foam:

24 (a) require a periodic inventory of
25 firefighting foam quantities stored or used in New Mexico;

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1 (b) require the use of firefighting foam
2 for emergency purposes only; and

3 (c) require the cleanup of discarded
4 firefighting foam pursuant to the Hazardous Waste Act.

5 For purposes of this subsection, "emergency purposes" does
6 not include training or the use of firefighting foam in fire
7 suppression systems.

8 B. The board may:

9 (1) adopt rules to carry out the provisions of
10 the Per- and Poly-Fluoroalkyl Substances Protection Act,
11 including requiring the labeling of products in English and
12 Spanish; and

13 (2) determine that a product containing
14 intentionally added per- or poly-fluoroalkyl substances are a
15 currently unavoidable use based on determinations made by other
16 states.

17 SECTION 5. [NEW MATERIAL] RULES--INFORMATION REQUIRED--
18 EXTENSIONS--WAIVERS.--

19 A. The board shall adopt rules that enumerate the
20 information required of a manufacturer. The information
21 required shall include:

22 (1) a brief description of the product,
23 including a universal product code, stock keeping unit or other
24 numeric code assigned to the product;

25 (2) the purpose for which a per- or poly-

1 fluoroalkyl substance is used in the product;

2 (3) the amount of each per- or poly-
3 fluoroalkyl substance in the product, identified by its
4 chemical abstracts service registry number and reported as an
5 exact quantity determined using commercially available
6 analytical methods or as falling within a range approved for
7 reporting purposes by the department;

8 (4) the name and address of the manufacturer
9 and the name, address and phone number of a contact person for
10 the manufacturer; and

11 (5) any additional information requested by
12 the department as necessary; provided that the department shall
13 not require disclosure of records, reports or information or
14 particular parts of records, reports or information that would
15 divulge confidential business records or methods or processes
16 entitled to protection as trade secret, and provided further
17 that the manufacturer shall, by a preponderance of evidence,
18 demonstrate that the information requested would divulge
19 confidential business records or methods or processes entitled
20 to protection as trade secrets.

21 B. On or before January 1, 2027, a manufacturer of
22 a product sold, offered for sale, distributed or distributed
23 for sale in the state, directly or indirectly or through
24 intermediaries, that contains an intentionally added per- or
25 poly-fluoroalkyl substance shall submit to the department the

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1 information required by Subsection A of this section or a rule
2 adopted pursuant to that subsection.

3 C. On or after January 1, 2028, a manufacturer
4 shall not sell, offer for sale, distribute or distribute for
5 sale in this state, directly or indirectly or through
6 intermediaries, a product if testing requested by the
7 department demonstrates that the product contains an
8 intentionally added per- or poly-fluoroalkyl substance and the
9 manufacturer has failed to provide the department the
10 information required by Subsection A of this section or a rule
11 adopted pursuant to that subsection.

12 D. On or after January 1, 2028, a manufacturer
13 shall not sell, offer for sale, distribute or distribute for
14 sale in this state, directly or indirectly or through
15 intermediaries, a product that contains an intentionally added
16 per- or poly-fluoroalkyl substance unless the manufacturer has
17 submitted to the department the information required by
18 Subsection A of this section or a rule adopted pursuant to that
19 subsection. A product reported pursuant to this subsection
20 containing an intentionally added per- or poly-fluoroalkyl
21 substance may be prohibited from sale pursuant to the Per- and
22 Poly-Fluoroalkyl Substances Protection Act and to rules adopted
23 pursuant to that act.

24 E. A manufacturer shall submit a revision of the
25 information provided on a product within thirty days of a

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1 significant change to the information the manufacturer
2 previously submitted or upon the request of the department.

3 F. Upon written approval from the department, a
4 manufacturer may provide the information required by this
5 section to the department for a category or type of product or
6 product component.

7 G. The department may waive the obligation of a
8 manufacturer to submit all or part of the information required
9 by this section if the department determines that substantially
10 equivalent information is publicly available. The department
11 may grant a waiver to a manufacturer or a group of
12 manufacturers for multiple products or a product category.

13 H. The department may enter into an agreement with
14 one or more states or political subdivisions of a state to
15 collect information and may accept information to a shared
16 system as meeting the information requirements of this section.

17 I. The department may extend the deadline for a
18 manufacturer to submit the information required by this section
19 upon a determination by the department that the circumstances
20 merit an extension of time.

21 J. Within sixty days of receiving information from
22 a manufacturer, the department shall notify the manufacturer
23 that adequate information has been received or that additional
24 information is required. A manufacturer shall submit to the
25 department any additional information requested by the

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1 department within thirty days of the request.

2 K. The requirements of this section do not apply to
3 products that are exempt pursuant to Subsection A of Section 3
4 of the Per- and Poly-Fluoroalkyl Substances Protection Act.

5 SECTION 6. [NEW MATERIAL] TESTING REQUIRED--CERTIFICATE
6 OF COMPLIANCE--EXEMPTION.--

7 A. If the department has reason to believe that a
8 product containing an intentionally added per- or poly-
9 fluoroalkyl substance is being sold, offered for sale,
10 distributed or distributed for sale in the state, directly or
11 indirectly or through intermediaries, the department may direct
12 the manufacturer of the product to, within thirty days, provide
13 the department with testing results that demonstrate the amount
14 of each per- or poly-fluoroalkyl substance in the product,
15 identified by its chemical abstracts service registry number
16 reported as an exact quantity determined using commercially
17 available analytical methods or as falling within a range
18 approved for reporting purposes by the department.

19 B. If testing demonstrates that the product does
20 not contain an intentionally added per- or poly-fluoroalkyl
21 substance, the manufacturer shall provide the department with a
22 certificate of compliance attesting that the product does not
23 contain an intentionally added per- or poly-fluoroalkyl
24 substance, the testing results and any other relevant
25 information.

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1 C. If testing demonstrates that the product
2 contains an intentionally added per- or poly-fluoroalkyl
3 substance, the manufacturer shall:

4 (1) provide to the department, within thirty
5 days, the information required for a product pursuant to the
6 Per- and Poly-Fluoroalkyl Substances Protection Act or rules
7 adopted pursuant to that act; and

8 (2) notify a person that sells, offers for
9 sale, distributes or distributes the product for sale in this
10 state that the product is prohibited in this state and provide
11 the department with a list of the names and addresses of the
12 people notified.

13 D. The department may notify a person that sells,
14 offers for sale, distributes or distributes for sale in this
15 state a product prohibited by the Per- and Poly-Fluoroalkyl
16 Substances Protection Act or rules adopted pursuant to that act
17 that the product is prohibited in this state.

18 E. The provisions of this section do not apply to a
19 medical device or drug or the packaging of a medical device or
20 drug that is regulated by the United States food and drug
21 administration.

22 SECTION 7. [NEW MATERIAL] ENFORCEMENT--CIVIL PENALTY.--

23 A. A manufacturer that violates a provision of the
24 Per- and Poly-Fluoroalkyl Substances Protection Act or a rule
25 adopted pursuant to that act shall be assessed a civil penalty

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1 not to exceed fifteen thousand dollars (\$15,000), and for each
2 day during which any portion of a violation occurs, the
3 department may assess the manufacturer administrative costs the
4 department incurs for enforcement of the Per- and Poly-
5 Fluoroalkyl Substances Protection Act or a rule adopted
6 pursuant to that act.

7 B. A manufacturer that fails to comply with an
8 administrative order issued pursuant to the Per- and Poly-
9 Fluoroalkyl Substances Protection Act or a rule adopted
10 pursuant to that act may be assessed, pursuant to a court
11 order, a civil penalty of not more than twenty-five thousand
12 dollars (\$25,000) for each day of noncompliance.

13 C. Penalties and administrative costs imposed
14 pursuant to this section are independent of any damages,
15 remediation or cleanup costs, environmental restoration costs
16 or other monetary or nonmonetary remedies that may be imposed
17 by statute, rule or court decision.

18 D. In an action to enforce the provisions of the
19 Per- and Poly-Fluoroalkyl Substances Protection Act or a rule
20 or order adopted pursuant to that act, the department shall be
21 represented by the attorney general or the department.

22 E. Penalties collected pursuant to this section
23 shall be deposited in the recycling and illegal dumping fund.