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DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

TESTIMONY OF
MELANIE LOYZIM, DEPUTY COMMISSIONER
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SPEAKING IN OPPOSITION TO L.D. 1707

**AN ACT TO ENSURE ACCURACY AND RELIABILITY OF ENVIRONMENTAL
TESTING BY REQUIRING COMPLIANCE TESTING BY 3RD-PARTIES**

SPONSORED BY SEN. REBECCA MILLETT

**BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING:

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Senator Carson, Representative Tucker, and members of the Committee, I am Melanie Loyzim, Deputy Commissioner of the Department of Environmental Protection, speaking in opposition to L.D. 1707.

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The requirement proposed in this bill is unnecessary and an oversimplification of how the Department oversees compliance by the entities we issue licenses to. The bill very simply states: "The department shall include in each license issued by the department under this Title a requirement that a person who is independent from the licensee perform testing to determine compliance with the license and this Title."

The Title that is referenced in this bill is Title 38. I have attached to my testimony the list of more than 200 license types the Department issues under Title 38. They span the range of air emissions, water discharges, land development, and waste management. Some are issued under federally delegated programs from the U.S. Environmental Protection Agency, with specific requirements from federal rules, and some are related only to state laws.

This bill would require that each compliance requirement in these licenses must be assessed by someone independent from the licensee. It is unclear if that is intended to only exclude employees of a licensee, such as the wastewater treatment plant operators who currently perform a variety of daily tests of the wastewater at their plants, or if the bill would also prohibit consultants or other contractors from performing compliance assessments because they would no longer be considered independent once they are retained by a licensee. It is also unclear if the bill would apply only to compliance requirements that involve laboratory analysis or sampling, or if it would also apply to monitoring requirements such as measuring wastewater inflow volumes, water levels in impoundments, the amounts of each type of waste accepted at a landfill, groundwater levels in monitoring wells at a gravel pit, sound levels from construction activities, cut-in speeds of wind turbine blades, or the myriad of other compliance measurements included in Department licenses.

We agree that it is important to have accurate information to assess compliance with regulatory and license requirements, to ensure that licensed activities do not harm

human health and the environment. We believe we already have adequate authority in the many laws under Title 38 to impose any requirements necessary in a license to ensure compliance, including the use of third party inspectors or auditors when appropriate. For example, the Department requires third-party inspectors to monitor some construction activities at landfills, and requires audits of records at certain waste processing facilities.

The Department already requires certain assessments to be conducted by individuals with professional certifications, such as engineers and geologists, whose personal credentials are at stake when they are retained by a licensee. The Department also specifies in rules, licenses, and operating manuals how measurements and samples must be taken and what methods must be used to analyze them. Maine law requires laboratories to be certified for the analytical methods they use, and the Department requires all results to be submitted with detailed quality assurance information to ensure only the highest quality results are used to assess compliance and make decisions.

Again, the Department already has adequate authority to ensure that information used to assess compliance is non-biased, and applies that authority through a wide variety of state and federal requirements tailored to facility and activity types and the environmental media being protected.

Thank you for the opportunity to provide our comments to you, and I would be happy to answer any questions you may have.