

Testimony of Sarah Woodbury, Director of Advocacy, Defend Our Health
Neither For Nor Against LD 2020, “An Act to Implement Recommendations Regarding the
Regulation of Firefighting or Fire-suppressing Foams to Which Perfluoroalkyl and Polyfluoroalkyl
Substances Have Been Intentionally Added” Before the Environment and Natural Resources
Committee
March 14, 2022

Good Morning, Senator Brenner, Representative Tucker and members of the Environment and Natural Resources Committee. My name is Sarah Woodbury and I am the director of advocacy for Defend Our Health. Defend Our Health’s mission is to make sure that everyone has equal access to safe food and drinking water, healthy homes and products that are toxic-free and climate friendly. I am here to testify neither for nor against LD 2020, “An Act to Implement Recommendations Regarding the Regulation of Firefighting or Fire-suppressing Foams to Which Perfluoroalkyl and Polyfluoroalkyl Substances Have Been Intentionally Added.”

This bill implements the disappointing and minimal recommendations DEP made in response to this committee’s directive last year in LD 1505. You asked the Department to, “...develop a framework for the collection and safe storage of ... foams... not returned to the manufacturer ... until the foams can be safely disposed of.”¹ The bill does nothing to address these actual challenges. It also does not address the open door left in the Department’s report for Maine to wash its hands of the problem by simply shipping the toxic foams out of state to be incinerated. This non-solution would likely poison people elsewhere, representing a twisted interpretation of EPA guidance, and is well outside the emerging norms of how to safely manage PFAS laden foams.

As the Department notes, the US EPA issued draft guidance on PFAS disposal that included AFFF in late 2020 that still has not been finalized. While the Department is correct in noting that the guidance does not provide a regulatory prohibition against the incineration, the Department fails to capture the extent to which the draft guidance highlights the uncertainty around the safety of incineration. EPA specifically notes “the lack of PFAS-specific information on these [incineration] facilities” and the lack of clarity on the extent to which fluorinated products of incomplete combustion are controlled.² The agency further ranks disposal options based on the certainty of their protection of the environment. Incineration options rank last of seven, meaning there is the least certainty that incineration of AFFF will actually be protective.³ This is

¹ The legislative language was heavy in internal references and condensed for ease of reading.

² United States Environmental Protection Agency. “Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances.” December 2020. Page 6. Available at https://www.epa.gov/system/files/documents/2021-11/epa-hq-olem-2020-0527-0002_content.pdf

³ *Ibid.* Page 5.

consistent with concerns raised by investigative journalists⁴ as well as scientists and experts.⁵ Further, the incineration of AFFF poses significant environmental justice concerns, with the vast majority of waste incinerators located in lower income communities and communities of color,⁶ an issue disregarded in DEP's report.⁷

In light of all these concerns, Congress placed a moratorium on the Department of Defense's further disposal of AFFF by incineration in the 2022 National Defense Authorization Act.⁸ California,⁹ Colorado,¹⁰ and Washington State¹¹ have decided to store AFFF rather than send it to incineration. New York ordered a major in-state waste incinerator to stop accepting AFFF after testing showed contamination of the area.¹² Legislation is pending in Illinois¹³ and Massachusetts¹⁴ to prohibit the incineration of PFAS, including AFFF.

Notably, Attorney General Frey joined 18 other attorneys general in a letter to Congress stating, "...we support a prohibition on the unsafe waste incineration of PFAS that extends beyond DOD to any other entity."¹⁵

As recognized nationally, by other states, and by our own Attorney General, incineration is simply not an acceptable solution to disposing of AFFF. Yet, DEP's presentation of disposal options is limited to incineration, and the recommendations section of the Department's report

⁴ See, for example: Lerner, Sharon. "The U.S. Military Plans to Keep Incinerating Toxic Firefighting Foam, Despite Health Risks." *The Intercept*. January 27, 2019. Available at: <https://theintercept.com/2019/01/27/toxic-firefighting-foam-pfas-pfoa/>

⁵ See for example and additional citations: Yassir, A., Lam, C., & Bond, D. (2020). (rep.). *The Reckless Rush to Burn AFFF*. Retrieved March 10, 2022, from <https://www.bennington.edu/afff>

⁶ Li, Rina. "Nearly 80% of US incinerators located in marginalized communities, report reveals." *WasteDive*. May 23, 2019. Available at: <https://www.wastedive.com/news/majority-of-us-incinerators-located-in-marginalized-communities-report-r/555375/>

⁷ Oddly, DEP highlighted the need to evaluate environmental justice concerns associated with selecting additional locations for storage of AFFF, but not related to disposal. While we would strongly support such an evaluation for storage, we suggest it is also disingenuous if not downright misleading to highlight potential environmental justice impacts of relatively benign AFFF storage while completely ignoring the well documented disparities in the siting of hazardous waste incinerators and the almost certain and significant disparate impacts posed by shipping Maine's AFFF to such facilities.

⁸ Sec 343 of the National Defense Authorization Act for Fiscal Year 2022. Available at: <https://www.congress.gov/117/plaws/publ81/PLAW-117publ81.pdf>

⁹ Foam must be stored until the California EPA "formally identifies a safe disposal technology," which must be done with separate approval of the legislature. See SB-1044 as signed by Governor Sept 29, 2020: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1044

¹⁰ See "Takeback Program" under <https://cdphe.colorado.gov/pfas-projects>

¹¹ See <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals/PFAS/Toxics-in-firefighting>

¹² Crunden, E.A. "PFAS incineration in New York spurs legislation, loss of federal contracts." *Waste Dive*. May 14, 2020. Available at: <https://www.wastedive.com/news/pfas-cohoes-incinerator-congress-concerns/577699/>

¹³ Illinois' legislature passed a ban last year, which was vetoed out of concern that it inadvertently included pollution control devices at some facilities. A revised version is moving rapidly. See <https://news.stpublicradio.org/health-science-environment/2022-01-16/illinois-environmentalists-again-push-for-the-state-to-ban-burning-of-toxic-pfas>

¹⁴ H. 3826. "An Act prohibiting disposal by incineration of certain aqueous film-forming foam." <https://malegislature.gov/Bills/192/H3836>

¹⁵ Attorney General of New York, et al. Letter from Attorneys General to Chairman Carper and Ranking Member Capito regarding Legislation to Protect Public Health and the Environment from PFAS. November 15, 2021. Available at: https://ag.ny.gov/sites/default/files/pfas_letter_to_epw_11.15.2021.pdf - page 5

invites the legislature to appropriate up to \$2.5 million to support the incineration of Maine AFFF.

We suggest that the safe collection and holding of AFFF until such time that an appropriate destructive technology is available¹⁶ is the solution the state needs to undertake. Given the lateness of the session, and the lack of a plan or comprehensive recommendations from DEP, we would suggest more comprehensive legislation may be needed next session.

However, given DEP's apparent willingness to suggest incineration as a solution to AFFF, we would suggest this committee not proceed with granting additional exemptions to the current law as suggested by this bill without also restricting incineration of AFFF as a disposal pathway. We strongly encourage the committee to amend LD 2020 to prohibit the use of incineration as a disposal method to the greatest extent possible, and at a minimum prohibit the use of state funds to support such incineration. We have included possible language below. Should the committee prevent the use of incineration of AFFF, in line with best practices in place elsewhere, we would be in support of the amended bill.

Thank you.

Proposed Amendment - Add new Sec. 2 to LD 2020:

Sec. 2. 38 MRSA 424-C, sub-§7 is enacted to read:

7. Disposal by incineration prohibited. No person shall dispose by incineration or cause to be disposed by incineration a firefighting or fire-suppressing foam to which PFAS have been intentionally added.

¹⁶ EPA researchers recently suggested positive results using supercritical water oxidation, for example. See: Krause, Max J., et al. "Supercritical Water Oxidation as an Innovative Technology for PFAS Destruction." J. Environ. Eng., 2022, 148(2):05021006. Available at: <https://ascelibrary.org/doi/10.1061/%28ASCE%29EE.1943-7870.0001957>