

TESTIMONY OF MARK HYLAND, FORMER DIRECTOR OF THE BUREAU OF
REMEDICATION AND WASTE MANAGEMENT AT MAINE DEP, IN SUPPORT OF LD
1537 AND IN OPPOSITION TO LD 1214.

April 26, 2023

Senator Brenner, Representative Gramlich, Members of the Committee –

I'm Mark Hyland, former Director of the Bureau of Remediation and Waste Management at DEP. During the time I served as Bureau Director, I was responsible for implementing Maine's mercury products legislation, Safer Chemicals (Kids Safe Products Act), and Electronics Recycling Law, including the product reporting requirements. It is based upon that experience that I speak in support of LD 1537, and in opposition to LD 1214 AND LD 217 as the lessons learned from those laws apply to the PFAS reporting and elimination program.

Both versions of the "Concept Draft for the Maine PFAS in Products Program" that were circulated last year for public review and comment required that:

A. Beginning January 1, 2023, and prior to sale or distribution for sale in Maine of a product that contains intentionally added PFAS.

(ii) Estimated sales volume in the State or nationally for the full calendar year following the year in which the product is being reported;

However, the current proposed Chapter 90 rule has deleted item ii) above and therefore no longer requires information to be reported on estimated sales volume in the State or nationally. DEP amended this draft rule provision without any explanation or rationale provided.

DEP's proposed late change in the rule will severely limit the ability of the State, entrepreneurs and other stakeholders to identify priorities for PFAS source reduction in order to prevent future environmental contamination by PFAS. The aim of the law is to provide information that enables safer alternatives to rapidly enter the market to replace non-essential uses of PFAS.

Without this provision, the PFAS use database will tell you which products contain PFAS and the amount of the PFAS in the product. However, without the critical information on the volume of products sold, one can't tell whether it's a minor occasional use or a major widespread use.

For example, a product that contains 10% PFAS but is rarely sold or used is a much lower priority for source reduction efforts, whether voluntary or regulatory, than another product that contains 1% PFAS but is sold in 100 million units nationally every year.

Under the Maine mercury product notification requirement, the manufacturers must provide “the total amount of mercury in all units of the product or product components sold in the United States during the most recent calendar year for which sales figures are available, reported either for the units or components sold by the manufacturer or as aggregated by a manufacturer trade association for all units of the product or components made by the industry”. Similarly, quantity data is sought by EPA for each of the PFAS production and processing activities.

Total quantity data is critical to know for priority setting purposes under the Maine law, since it provides an indication of the potential for products to contaminate Maine’s land and water resources, through use and/or waste management. Using the reporting data, IMERC periodically published national data on mercury use in products, which became the best source of data in the country until EPA recently adopted its own product-based reporting obligations. National data must be requested since state-specific data will not be available. The failure to require national sales data is inconsistent with Maine’s other product notification requirements and EPA’s proposed PFAS reporting rule; and will deprive DEP and the public of critical information.

The reporting requirements in the Mercury Products Law allowed DEP to prioritize small percentage mercury products like auto switches, batteries, and thermostats that were going into our waste stream in millions of units per year, versus high percentage mercury manometers that have limited numbers and rarely reach the waste stream.

Please require manufacturers to report “Estimated sales volume in the State or nationally for the full calendar year following the year in which the product is being reported” in LD 1537 so that DEP has the information they need to make decisions on which products to target for PFAS source reduction.

Thank you for your time.