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Honorable Henry Ingwersen, Senate Chair  
Honorable Michele Meyer, House Chair  
Joint Legislative Committee on Health and Human Services  
100 State House Station  
Augusta, ME 04333

Re: Testimony in Opposition to LD 1326 - An Act to Protect the Drinking Water for Consumers of Certain Water Systems by Establishing Maximum Contaminant Levels for Certain Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Senator Ingwersen, Representative Meyer, and Members of the Committee on Health and Human Services,

The Brunswick & Topsham Water District (BTWD) appreciates the opportunity to provide testimony in respectful opposition to LD 1326, which establishes statutory maximum contaminant levels (MCL) for per and polyfluoroalkyl substances (PFAS).

The following highlights BTWD's concerns with LD 1326. We express these concerns as a utility that has been at the forefront of reporting and addressing PFAS issues in drinking water here in Maine, largely related to legacy releases of PFAS from the former naval air station in Brunswick:

1. **LD 1326 attempts to mirror the federal standard, but only partially.** LD 1326 would establish a list of maximum contaminant levels (MCLs) related to certain PFAS compounds, attempting to mirror standards recently established by the US EPA, but the US EPA standards go well beyond establishing MCLs. The PFAS National Primary Drinking Water Regulation as published in the federal register is made of 226 pages. The details included in the regulation as published define many things including compliance, sampling frequency and all of the details that comprise a drinking water regulation. Without these definitions and details, inconsistencies and interpretations will arise that will increase the risk of discrepancies as Maine courts interpret LD 1326 and the USEPA and the federal courts interpret 40 CFR Parts 141 and 142. There is no practical way for the two systems to have the same interpretation. These inconsistencies between state and federal standards will lead to rule and public perception issues and distrust. The best way to avoid conflict between state and federal standards is not to adopt federal rules into state statute, and even more importantly, not to adopt only portions of federal rules.
2. **Enshrining federal drinking water rules in statute ensures future inconsistencies between state and federal requirements.** Under federal law, states are allowed to have "primacy" in enforcing federal drinking water standards as long as, among other things, the state maintains standards that are both consistent with federal standards, or stricter. Because federal standards regularly change through rulemaking by the US EPA, Maine has historically not sought to codify each change by statute or rule – which are cumbersome and time-consuming to change, if they can be changed at all. Instead, Maine's approach has been to adopt the federal regulatory standards by reference. This has made public water system compliance less burdensome and aligned federal funding with compliance deadlines to ease the financial impact on Maine citizens.

Additionally, this pattern of following the federal standards has also simplified the administrative complexity for Maine's Drinking Water Program, which is part of Maine DHHS. Maine, and most other States, have 50 years of history with using the federal standards as the basis for State regulations. This has been effective in protecting public health. This eases DHHS's role in interpretation and applicable third-party litigation.

3. **The federal Safe Drinking Water Act has an “anti-backsliding” provision.** For drinking water regulations, the EPA by law cannot just decide to repeal or weaken existing drinking water standards. That is because of strong “anti-backsliding” provisions within the Safe Drinking Water Act (SDWA) which says that any revision of a drinking water standard “shall maintain, or provide for greater, protection of the health of persons” (SDWA §1412(b)(9)). There is no reason to pass LD 1326 as a “backstop” since the US EPA has limited ability to roll back standards.
4. **Differing from federal standards will overburden state drinking water staff and utilities.** If Maine were to start down the path of enacting drinking water standards in statute that, over time, will differ from federal law, water utilities in Maine will over time lose the full benefit of federal guidance, interpretations and science as Maine will be locked into a statutory limit subject to differing legal interpretations than the federal standard. This will place additional burdens on utilities seeking guidance on compliance, and DHHS will need to develop Maine-specific guidance that meets both new EPA regulation and the outdated State standards – if possible. This will place significant administrative burden on a State agency already struggling to keep up with all statutory expectations on the state and federal level, particularly if the statutory requirements at the different levels of government are inconsistent with each other.
5. **Regulatory flexibility is important to allow compliance standards to align with regular changes in science.** Fixing contaminant levels in statute creates standards that are not easily adjusted based upon new research and science. Having such standards as part of agency regulations allows important flexibility as the science evolves. In this regard, PFAS toxicity and regulation is complex, a moving target that is better addressed by the approach the EPA has taken of studying the most prevalent compounds for occurrence and toxicity, evaluating treatment methods and impacts, then carefully crafting agency regulations to address the health threat while providing funding to offset the enormous costs of treatment and mitigation.

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Technical regulatory standards like drinking water maximum contaminant levels should be established based upon known risks and benefits, and they should allow change when required by science. PFAS toxicity and regulation is a complex, moving target that is better addressed by the approach the EPA has taken – beginning with studying the most prevalent compounds for occurrence and toxicity, followed by evaluating treatment methods and impacts, then culminating in carefully crafted regulations that address the health threat and provide funding to offset the staggering costs of treatment and mitigation. Public health regulations must also be based upon technical feasibility and science, backed up by sound research and data. Although well-meaning, LD 1326 will create complexity and confusion for water systems and DHHS staff with no public health benefit, no understanding of the financial impacts, and no funding.

For these reasons, we urge the Committee to reject this legislation by voting ought not to pass.

Very truly yours,



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