

May 12, 2025

TESTIMONY OF PETER LAFOND IN FAVOR OF L.D. 1870 “AN ACT TO ESTABLISH A CLIMATE SUPERFUND COST RECOVERY PROGRAM TO IMPOSE PENALTIES ON CLIMATE POLLUTERS”

Dear Senator Tepler, Representative Gramlich, and Distinguished Members of the ENR Committee, my name is Peter LaFond and I live in Falmouth, Maine. I previously testified (remotely) at the Public Hearing on L.D. 1870. After I testified, one of the Chairs (I’m sorry I do not know which) asked if I could submit written testimony, and I agreed I would. I hope to bring a unique perspective on L.D. 1870.

I was formerly an Assistant Attorney General in the Natural Resources Division of the Maine Attorney General’s Office (AG’s Office) and while there I was responsible for the enforcement of an analogous super fund statute, the Maine Uncontrolled Hazardous Substances Sites Law, 38 M.R.S. Sections 1361-1371 (UHS). The UHS establishes strict liability on the owners of a polluted sites, and authorizes the DEP to issue an order to clean up a site, because as stated in the “Findings and Purpose” of the UHS “adequate measures must be taken to ensure that the threats imposed by the sites are abated, cleaned up or mitigated promptly.” 38 M.R.S. Section 1361. Working with colleagues at the AG’s Office and the Maine Department of Environmental Protection, I was able to obtain and defend a cleanup order from DEP for the Holtrachem site in Orrington, Maine, arguably Maine’s worst environmental disaster. Mercury from the Holtrachem site polluted much of the Penobscot River. The UHS provides for appeals from the DEP cleanup order, first to the Board of Environmental Protection, then to the Maine Superior Court, and ultimately to the Maine Supreme Court, so due process is available for any responsible party.

Similarly, L.D. 1870 would empower the DEP to issue a cost recovery demand against a responsible party (RP), defined as a fossil fuel company that was responsible for one billion metric tons of greenhouse gas emissions during the “covered period,” to be deposited into a fund. As with the UHS, the RP could appeal the DEP decision for reconsideration, and then to the Maine Superior Court, so ample due process is available to any RP under L.D. 1870.

Given that the DEP has effectively managed the UHS Program, it would appear well positioned to administer the program contemplated by L.D. 1870. Of course, the DEP already has much to do, and the Commissioner has spoken to the potential demands on DEP resources, but given the unprecedented storm damage to Maine towns and businesses caused by climate change, which in turn has been fueled by fossil fuels, a framework for recovery seem entirely in reach.

If you have any questions or if I can be of any help, please feel free to contact me.

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