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SPEAKING NEITHER FOR NOR AGAINST
L.D.s 217, 1214, 1273, 1537
Relating to Perfluoroalkyl and Polyfluoroalkyl Substances Contamination

BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

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Senator Brenner, Representative Gramlich, and members of the Committee, I am Mark Margerum, Policy and Procedures Coordinator in the Office of the Commissioner at the Department of Environmental Protection. I am speaking neither for nor against the four bills relating to PFAS in products cited above. All these proposals would amend the provisions of 38 M.R.S. 1614, adopted as: An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution in the first session of the 130th Legislature.

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LD 217, An Act to Support Manufacturers Whose Products Contain PFAS

As amended, LD 217 would extend the reporting deadline for manufacturers until January 1, 2025. The Department supports this extension and believes that new deadline would provide a reasonable amount of time for the Department to complete rulemaking to incorporate any other changes to the law, and for manufacturers to obtain the information necessary to meet their reporting obligations.

LD 1214, An Act to Clarify the Laws to Combat Perfluoroalkyl and Polyfluoroalkyl Substances Contamination would make a variety of changes to the program established in the current law:

LD 1214 repeals from DACF's pesticide control laws in Title 7 the January 2030 prohibition on distribution of pesticides with intentionally added PFAS. The Department has no position on the changes to pesticide regulation and defers to DACF.

LD 1214 removes "degradation byproducts" from the definition of "intentionally added PFAS", significantly narrows the "PFAS" definition to synthetic compounds with 2 fluorinated carbon atoms, and excludes gases, polymers, and volatile liquids. The Department does not have enough information to determine how these changes would impact the number of compounds covered by the law. Degradation byproducts which are unintentional or represent a contaminant are currently not captured by the law. Changing the definition to two fully fluorinated carbon atoms would make the definition of PFAS for this program differ from all other definitions of PFAS in Maine law, in many other states, and in some federal laws. For example, Section 345 of the National Defense Authorization Act for Fiscal Year 2022, pertaining to drinking water testing, defines PFAS as "any man-made chemical with at least one fully fluorinated carbon atom."¹

¹ <https://www.congress.gov/bill/117th-congress/senate-bill/1605/text>

LD 1214 would allow for the protection of trade secrets in accordance with the laws of the State including Maine's Uniform Trade Secrets Act. The Maine Administrative Procedures Act definition of a public record excludes records that a court would find within the scope of a privilege (1 M.R.S. §402(3)(b)), which the Department interprets to include Maine's Uniform Trade Secrets Act (UTSA). This bill would explicitly codify that protection.

The bill proposes to repeal the 2030 ban on sale of products with intentionally added PFAS. The Department would retain the ability to enact specific sales prohibitions based on specific impacts to the Maine environment. The Department cannot predict the status of PFAS use in products in 2030.

L.D. 1273, An Act to Exempt Some Businesses from Certain Laws Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in Accordance with the Size of the Business, would provide exempt businesses with either 10 or fewer employees or less than one million dollars in annual revenue only from the portion of the reporting requirement that requires reporting the specific amount of each PFAS in their product.

The reporting requirement is Maine's primary tool for understanding what PFAS chemicals are being sold into the State, for identifying potential sources of PFAS found in Maine's waste stream, and for determining if additional sales prohibitions are warranted. The Department understands and shares the concern that this reporting requirement is costly for small businesses, and places a high demand on limited laboratory capacity. The Department does not know how many manufacturers would be exempted by the proposed change or what percentage of products containing intentionally added PFAS would be affected.

L.D. 1537, An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution and to Provide Additional Funding, also makes a variety of changes to the program established in the current statute.

LD 1537 proposes to change the effective date for reporting to October. The Department will not have completed rulemaking by then, so manufacturers would still have only the statutory provisions to inform their compliance requirements. Additional relevant details to be established in the Department's rule include how to identify products, how similar products may be reported together, and how the amount of PFAS in a product must be reported (e.g., by concentration, mass, specific amount or range).

LD 1537 would allow manufacturers to report individual PFAS descriptively when no CAS number is available. This would create additional administrative complexities and potential for confusion, in part due to the potential for numerous synonyms that may be used to describe the same compound. LD 1537 would also allow reporting total organic fluorine (TOF) content of a product if the individual PFAS content is unknown. TOF analysis is much simpler and lower cost than laboratory analysis for individual PFAS, which would substantially reduce the burden of this law on manufacturers. However, environmental contamination and the associated public health risks are connected to individual PFAS, which have varying toxicities and degradation byproducts. Reports of total fluorine content in a product would not be useful for assessing that product's contribution to measurements of specific PFAS in the waste stream and in Maine's environment.

LD 1537 would modify what products are exempt from the law to exclude "a product that is a package," with package defined under the referenced section as "a container used in marketing, protecting or handling a product." This is a helpful clarification of the existing exemption language. The Department recommends further clarifying if this is intended to exempt a product's packaging, or only such packaging when that packaging is by itself sold as a product. An example of this distinction would be empty containers

sold to by a container manufacturer to a ski wax manufacturer, versus the sale of ski wax in that container. Would the ski wax manufacturer have to report the PFAS content of the container because the container is part of the product they are selling, or would the container continue to be exempt?

LD 1537 would limit the reporting requirement to businesses with over 20 million dollars in national sales. This would greatly reduce the burden of the program on small manufacturers. The Department does not have sufficient information to determine how much PFAS entering Maine this would exclude from disclosure.

The Department does not support Section 3 of LD 1537, which would require the Department to annually prohibit sales of categories of products containing PFAS beginning January 1, 2025, and prohibits the Department from identifying unavoidable uses of a product prior to 2028 unless its related product category has already been prohibited by rule. All rules adopted under this section of the existing law are major substantive rules requiring legislative approval. This proposed change to the law would require significant additional resources for the Department to implement. Due to the timeframes for conducting major substantive rulemakings, the Department would be forced to continuously conduct multiple overlapping rulemakings beginning in 2024 and lasting until the full prohibition in 2030. Program staff would be working toward final adoption of the prior year's rulemaking in the Legislature while concurrently presenting the next proposed rule to the Board of Environmental Protection, and researching, drafting, and conducting public outreach for a subsequent rulemaking.

The Department also recommends that Section 4 of LD 1537 be struck. The Department will supply an appropriate fiscal estimate through the normal process.

Thank you for the opportunity to provide testimony on these bills. I would be happy to answer any questions you have, now or at the work session.