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Testimony of the Maine Center for Disease Control and Prevention
Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

Neither For Nor Against LD 75 *An Act to Establish Maximum Contaminant Levels Under the State's Drinking Water Rules to Prohibit Certain Perfluoroalkyl and Polyfluoroalkyl Substances*

Hearing Date: April 28, 2023

Senator Baldacci, Representative Meyer, and members, Joint Standing Committee on Health and Human Services, my name is Amy Lachance, and I am the program manager for the Drinking Water Program within the Department of Health and Human Services – Maine Center for Disease Control and Prevention (Maine CDC). I am here today to provide testimony on behalf of the Maine CDC and will be speaking neither for nor against LD 75, *An Act to Establish Maximum Contaminant Levels Under the State's Drinking Water Rules to Prohibit Certain Perfluoroalkyl and Polyfluoroalkyl Substances*.

This bill amends the new law, Resolve 2021 chapter 82, introduced to the 130th Maine State Legislature as LD 129, and requires that the associated drinking water rules establish a maximum contaminant level (MCL) equivalent to zero nanograms per liter for certain perfluoroalkyl and polyfluoroalkyl substances (PFAS).

The Maine CDC supports the goal of reducing all contaminants in drinking water to the lowest levels possible for the protection of public health. However, as written, LD 75 does not represent a workable approach to addressing the PFAS problem in Maine. The following information is provided for your consideration.

The Maine CDC's Drinking Water Program (DWP) has been granted primacy authority by the US EPA to regulate public water systems for more than 90 naturally occurring and manmade contaminants under the federal Safe Drinking Water Act and State of Maine laws. The DWP has been implementing the provisions of Resolve 2021, chapter 82 since its enactment as emergency legislation in June 2021. This new law established an interim drinking water standard and testing requirements for six PFAS chemicals, including those listed in this proposed legislation.

All of Maine's Community Water Systems, as well as the schools and childcare facilities regulated by the DWP as stand-alone Public Water Systems (PWS) were required to sample their drinking water by December 31, 2022. Two hundred and five (205) out of 748, or twenty-eight percent (28%), of the systems found detectable levels of at least one of the six Maine-regulated PFAS in their finished water, and approximately 59 systems, or eight percent (8%) reported combined levels above the enforceable interim limit of 20 nanograms per liter, or parts per trillion (ppt). The DWP is currently working with these systems to ensure that the public notice

and monitoring provisions of the law were carried out. We are also providing technical assistance and/or funding support for installation of treatment to reduce PFAS levels where the interim standard has been exceeded.

The Resolve also requires the DWP to promulgate rules establishing PFAS MCLs in drinking water by June 1, 2024. However, as you may or may not be aware, the U.S. Environmental Protection Agency (EPA) has just released a draft federal PFAS rule, which was printed in the Federal Register on March 29, 2023. EPA intends to make these rules, which will apply to all Community and Non-Transient, Noncommunity (NTNC) public water systems in the U.S., final by the end of 2023. In order to maintain primacy status to continue the administration of drinking water regulations, the Maine DWP is prepared to draft State rules that effectively incorporate the federal provisions in their entirety by reference. As I will explain below, the PFAS data collected at Maine's PWSs support our assertion that adoption of the federal standards would be equally or more protective of public health as compared to a continuation of the current interim standard, as discussed below.

The draft federal rule proposes a Maximum Contaminant Level Goal (MCLG), a non-enforceable health target, of zero for two of Maine's regulated PFAS compounds, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). However, pursuant to the Safe Drinking Water Act, EPA must also consider practicality and feasibility, including currently available analytical methods, best available treatment technology, and a cost-benefit analysis, when establishing MCLs. Therefore, EPA has proposed individual MCLs of 4.0 ppt for PFOS and PFOA. The draft rule also proposes a combined MCL for four additional PFAS using a calculated Hazard Index of 1 (unitless), due to their likely co-occurrence and additive toxicity. These PFAS are: perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (also known as a GenX chemicals), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS). Therefore, there are six PFAS compounds included in the draft federal rule, and six PFAS compounds in Maine's interim standard, but only four of these compounds overlap. GenX and PFBS are in the federal proposal but not Maine's interim standard, and PFHpA and PFDA are covered only by Maine.

Implementing the proposed federal standards would significantly expand the number of the PWSs required to address PFAS levels in their drinking water as compared to Maine's current interim standard. Currently, 59 PWSs exceed Maine's interim standard; all 59 of these would also exceed the proposed federal MCLs if applied independently. A rough estimate indicates that installing treatment at these systems would cost approximately $8 million, not including operational and maintenance costs. An additional 62 systems, for a total of 121 PWSs, or 18 percent (18%) of those sampled, would exceed the federal standards. After incorporating the additional PWS, the total cost of treatment for systems exceeding the proposed federal standard is estimated at $61 million. It is also worth noting that an additional 88 NTNC PWSs would need to be tested and evaluated pursuant to the federal rule, since only the schools and child care facilities have been tested to date. These additional NTNCs are predominantly places of employment, such as businesses that employ 25 people or more.

There are no systems that exceed Maine's interim standard that would not exceed the proposed federal MCLs, despite the fact that two PFAS compounds in Maine's standard are not included

in the federal draft MCLs. There were no detections of GenX in the data set, and the only exceedances attributable to PFBS were at systems that also exceeded the MCL of 4.0 for either PFOS or PFOA, the two chemicals that are most prevalent in the data set and drive the majority of the exceedances. And although some PWS with levels between the detection limit of 2 ppt and the proposed federal MCL of 4.0 ppt for these compounds would not be immediately required to treat, these PWS would be sampling quarterly for PFAS and preparing for the likelihood of required treatment in the future. It is therefore clear based on the data that the federal regulations are equally or more stringent than the current interim standard in Maine and would meet the intent of LD 75 in providing a very thorough level of protection against PFAS in drinking water.

The DWP shares the Committee's concern about PFAS in Maine's drinking water and believes that adopting the federal regulatory limits when finalized will be extremely protective of public health. In addition, this approach will be much more practical for the DWP and regulated PWSs to implement, rather than attempting to manage both the federal regulations and State regulations in parallel. Adoption of the federal standards would also allow us to utilize guidance material developed by EPA and be consistent in our rule implementation.

Furthermore, setting MCLs at zero would cause the regulation to be very difficult or impossible to implement for the simple reason that the analytical technology does not yet exist that would allow us to determine if the standard was being achieved. Currently, laboratories can reliably report the levels of the compounds in question to about 2 or 4 ppt, which is at or near the level of the proposed MCL's for PFOA and PFOS.

In summary, the Maine CDC believes that, while achieving PFAS concentrations of zero nanograms per liter in drinking water is an appropriate maximum contaminant level *goal*, adopting the federal PFAS rule when promulgated is the most appropriate, practical, and protective approach to address PFAS in Maine's drinking water.

Thank you for your consideration of this matter and for the opportunity to provide testimony today. I am happy to address questions from Committee and I will be available to participate in any work sessions held for LD 75 or related bills.