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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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COMMISSIONER

**TESTIMONY OF  
NICK HODGKINS, DIRECTOR  
DIVISION OF REMEDIATION  
BUREAU OF REMEDIATION AND WASTE MANAGEMENT  
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF L.D. 2066**

**AN ACT TO CLARIFY LIABILITY UNDER THE UNCONTROLLED HAZARDOUS  
SUBSTANCE SITE LAW AND TO WAIVE A FEE REGARDING VOLUNTARY  
RESPONSE ACTION PLANS**

**SPONSORED BY REPRESENTATIVE FAY**

**BEFORE THE JOINT STANDING COMMITTEE  
ON  
ENVIRONMENT AND NATURAL RESOURCES**

**DATE OF HEARING:**

**JANUARY 4, 2024**

Senator Brenner, Representative Gramlich, and members of the Committee, I am Nick Hodgkins, Director of the Division of Remediation within the Bureau of Remediation and Waste Management at the Department of Environmental Protection, speaking in support of L.D.2066.

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Maine administers programs to promote the cleanup of contaminated sites so that they can be redeveloped and/or restored back into productive use. The Uncontrolled Sites Law under 38 M.R.S. §1367 authorizes the Department to seek recovery from responsible parties (otherwise known as RP's) for costs spent by the state in cleaning up sites that are contaminated with hazardous substances. The Voluntary Response Action Program (otherwise known as VRAP) under 38 M.R.S. §343-E allows for applicants (often prospective purchasers or developers of property) to voluntarily investigate and cleanup properties to the Department's satisfaction, in exchange for protections from Department enforcement actions.

This bill proposes to amend the Uncontrolled Sites Law as well as VRAP to provide clarifications for each program.

Under VRAP, this bill proposes to waive VRAP application fees for applicants that meet certain criteria under 7 M.R.S. §320-K (4)(D) (the Fund to Address PFAS Contamination administered by the Department of Agriculture Conservation and Forestry). In short this new provision proposes to remove fee requirements under 38 M.R.S. §342 (15) for owners of agricultural properties whose property has been found to have PFAS contamination primarily due to Department-licensed application of sludge, sludge-derived products, or septage, and who seek enforcement protections using the VRAP program.

Under the Uncontrolled Sites Law, this bill proposes four changes. The first change clarifies that each RP is jointly and severally responsible for all costs incurred by the state including abatement, cleanup or mitigation of the threats or hazards posed by an uncontrolled site, and all of the State's costs of acquiring property. This language closes a loophole in regard to the extent of joint and several liability for cost recovery that the state can seek for its expenses as it does not currently include abatement, cleanup or mitigation, and costs of the state acquiring property.

Similarly, the second change clarifies that a person who would otherwise be a RP is not subject to cost recovery by the State for the State's abatement, clean-up or mitigation costs and for damages as outlined in 38 M.R.S. §1367. The language here also expands to include abatement, clean-up, or mitigation costs.

The third change proposes to clarify requirements for a third-party defense used by a purchaser of property who finds out after acquisition that there was a release of hazardous substances at or on the site. In a situation where an owner wants to use a third-party defense, they must demonstrate that at the time of acquisition they did not know or had no reason to know that there was a release of hazardous substances at or on the site. This bill proposes to clarify requirements for using this defense including setting timeframes as follows:

- Any property acquired after October 31, 2006 must meet requirements under the Federal All Appropriate Inquiry Rule as set forth in 40 CFR Part 312;
- Any property acquired after December 31, 1993 and before November 1, 2006 must meet the standard set forth by the American Society for Testing and Materials (ASTM) – Standard 1527-21, for Phase I Environmental Site Assessments;
- Any property acquired before January 1, 1994, will be analyzed by the state and court based on a site specific analysis of facts; and
- This defense must not be used when the Commissioner designates a site as an uncontrolled hazardous substance site and/or sets forth an Order pursuant to 38 M.R.S. §1365.

The fourth and final change proposed by this bill is to provide a limited exemption from liability for contamination of a site with perfluoroalkyl and polyfluoroalkyl substances (PFAS) where the source of the contamination was primarily caused by Department-licensed land application of sludge, sludge-derived products, or septage. A new section

(1-C) would be added under 38 M.R.S. §1367 exempting anyone from becoming a RP if they can demonstrate that PFAS contamination was primarily caused by Department licensed activity and if certain conditions are met including:

- Provisions of the land application license must have been followed.
- Landowner must comply with information requests to the Department and/or issuance of an Administrative subpoena.
- Landowner must not impede through action or inaction performance of response action, restoration, or Department investigation at the property.
- Landowner must provide access to the property.
- Landowner must allow for Department staff to undertake activities such as placement of equipment, borings, wells, or structures on the property.
- Landowner may be required to grant the State easements or other interests in the property to conduct remediation or investigative work.

Thank you for the opportunity to provide testimony. I am available to answer questions of the Committee, both now and at work session.