STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

TESTIMONY OF

BRIAN KAVANAH, DIRECTOR
BUREAU OF WATER QUALITY
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 1604

AN ACT TO PROTECT GROUNDWATER AND SURFACE WATERS FROM PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES FROM LANDFILL LEACHATE

SPONSORED BY SENATOR TIPPING

BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

APRIL 28, 2025

Senator Tepler, Representative Doudera, and members of the Committee, I am Brian Kavanah, Director of the Bureau of Water Quality at the Department of Environmental Protection. I am speaking in opposition to L.D. 1604.

How to best deal with PFAS in landfill leachate and wastewater effluent is a complex and confounding issue. The Department understands the desire to do something now. However, we do not believe this bill as drafted is the best approach for a variety of reasons.

Section 1 requires a person who is licensed by the Department to discharge wastewater to groundwater, or any waters of the State, to track and report the origin, volume, and disposition of landfill leachate treated annually to the Department. While the Solid

Waste Management Rules require each solid waste landfill to report similar information, the Department agrees that the reporting required by Section 1 of the bill would be useful and supports this requirement.

Section 2 of the bill requires the Department by rule to develop PFAS limits for any discharged effluent (not just for effluent containing leachate). It also infers that this needs to be done by June 1, 2026, as no effluent containing leachate could be discharged after that date without meeting the Department derived limits.

Based on a Department study in 2022 and 2023, all of the effluent from the 105 publicly owned treatment works (POTWs) and 14 industrial facilities tested had various levels of PFAS. Given the ubiquitous nature of PFAS in our society, this is not surprising. Of these facilities, only 12 POTWs and 6 industrial facilities are currently accepting leachate (these numbers may shift over time). Based on current data, it appears that the levels of PFAS in landfill leachate are highly variable, and the impact of landfill leachate on final effluent PFAS levels is highly variable.

If the intent of this bill is that all dischargers (landfills, POTWs, industrial) need to meet the new Department derived PFAS limits, that would be an extremely technically complex and challenging rulemaking for DEP.

If the intent of this bill is that only dischargers that accept leachate need to meet the new PFAS effluent limits, that would also be an extremely technically complex and challenging rulemaking for DEP. Also, an unintended consequence of having the bill apply only to dischargers that accept leachate is that some POTW or industries may stop accepting leachate rather than incurring the very significant cost of installing treatment. This could significantly limit disposal options for leachate.

Either way, completing an extremely technically complex rulemaking, and then having dischargers design, fund, and install treatment to meet any new limits by June 2026 is not possible.

An alternative to this bill is for Maine to follow the same regulatory process that has been in place under the Clean Water Act and Maine law for decades. That is to encourage the federal Environmental Protection Agency (EPA) to develop PFAS standards nationally and then for Maine to adopt the EPA standards.

In January 2023, EPA announced that they had completed a detailed study of the Landfills category. Based on the information and data collected through this study, EPA stated the development of effluent guidelines and pretreatment standards for landfills that discharge their leachate is warranted. The EPA intends to revise the existing Landfills Point Source Category Effluent Limitation Guidelines (ELGs) to address PFAS discharges from landfills.

The EPA develops ELGs by first gathering information on industry practices, discharge characteristics, available technologies, and economic impacts. Then, they identify the most suitable and cost-effective control technologies for preventing or treating regulated pollutants in the discharge. Finally, based on the performance of these technologies, the EPA sets ELGs for the regulated pollutants. This is a comprehensive and time-tested method for pollution control that creates a uniform standard nationally.

Section 4 of this bill requires the quarterly testing of landfill leachate for PFAS and annual reporting of results to the Department. It also requires the Department to make those results publicly available on its website. Section 5 of the bill requires landfill operators of licensed landfills to conduct private water supply testing for PFAS for properties abutting the landfill. In this bill, abutting means any property that is contiguous to the landfill, including directly across a public or private right-of-way, or any

property that is located within one mile of the landfill. Landfill operators would need to sample private water supplies to the detectable level of PFAS established by the EPA. In addition, laboratories conducting the analysis would be required to submit copies of results directly to the Department, landfill operator, and homeowner. An abutter may also request additional sampling.

While the Department supports the intent of both of these sections of the bill, the Department does not support the language as provided. The Department has existing authority under rule Chapter 405, *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization,* to require the testing proposed in LD 1604. This Rule specifies a methodology for setting up sampling paradigms for monitoring leachate and water quality at solid waste disposal facilities. The Department bases its monitoring programs for solid waste facilities on the criteria set forth in Chapter 405 to ensure consistency, scientific reliability, and regulatory certainty for those who are regulated. Licensed solid waste disposal facilities are required to have a water quality monitoring plan meeting the criteria of Chapter 405.

A facility-specific Chapter 405 water quality monitoring program may include sampling leachate, groundwater, drinking water, and surface water. It also may include the sampling of private water wells of residents abutting the facility. Water quality monitoring plans are developed considering each facility's unique characteristics such as distinctive geologic features and hydrology at the site and surrounding area, different waste inputs and subsequently different leachate characteristics, and varying site activities. The plans include the number of monitoring locations needed, actual location of samples, frequency of samples, and the types of contaminants that need to be sampled. While this bill prescribes quarterly sampling for leachate, the Department recommends that the frequency not be prescribed in statute, but instead be determined on a facility-specific basis by the Department with a minimum frequency of once a year and consistent with existing licensing requirements at the facility. The Department has no

objections to receiving sampling results annually or reporting results on the Department's website.

The intent in Section 4 of this bill is consistent with the Department's 2024 Report on the Testing of Landfill Leachate for PFAS Contamination[1]. In that report, the Department recommended continued sampling and PFAS testing of leachate at the landfills listed in the report. However, this would create new costs for landfill operators, some of which are municipalities, to perform ongoing sample collection, analysis and reporting to the Department. If the Legislature wishes to require ongoing testing of landfill leachate for PFAS, and incorporation of PFAS monitoring around landfills, the Legislature could simply direct the Department to implement such testing requirements through the Department's existing licensing authority and revisions to Chapter 405.

I'd be happy to take any questions now or at work session. Thank you.

[1] https://www.maine.gov/tools/whatsnew/attach.php?id=12270236&an=1