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DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 1903

AN ACT TO CONFORM THE STATE'S PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES LAWS TO FEDERAL STANDARDS

SPONSORED BY SENATOR TIMBERLAKE

BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

MAY 12, 2025

Chair Tepler, Assistant Leader Gramlich, and members of the Committee, my name is Susanne Miller and I am the Director of the Bureau of Remediation and Waste Management, at the Department of Environmental Protection, speaking in opposition to L.D. 1903.

This testimony will outline the Department's opposition to specific sections of the bill, however I'd like to note that the Department of Agriculture, Conservation and Forestry

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(DACF) will also be here to testify on Section 1 of the bill, and a letter has been submitted by the Department of Health and Human Service Center for Disease Control (DHHS-CDC) also pertaining to Section 1 of the bill.

Section 1 of this bill defines what is considered to be "contaminated soil" for purposes of administering the Department of Agriculture, Conservation & Forestry's Fund to Address PFAS Contamination. It sets specific levels of PFOA and PFOS to be used to determine if soil is contaminated. These levels appear to be based upon EPA Regional Screening Level (RSL) for Chemical Contaminants at Superfund Sites methodologies. As part of this methodology, EPA provides tables of risk-based screening levels, calculated using the latest toxicity values, default exposure assumptions, chemical and physical properties, and a calculator where default parameters can be changed to reflect site-specific risks. The proposed soils levels in L.D. 1903 were developed using generic inputs with out-of-date toxicity and chemical-specific information.

EPA generally updates the RSLs on a semiannual basis. These screening levels will continue to be modified as new chemical-specific information is obtained. A comparison of the November 2023 soil screening levels proposed in L.D. 1903 to the most recent EPA RSLs for PFOS and PFOA is provided in the table below:

	PFOS	PFOA
Previous RSL Values (2023)	.13 mg/kg	.19 mg/kg
Most Recent RSL Values (2024)	0.0063 mg/kg	0.000019 mg/kg

As you can see, EPA's current screening levels are orders of magnitude lower than the outdated levels proposed in L.D. 1903.

Section 2 of the bill would set Maximum Contaminant Levels (MCLs) for drinking water to meet those adopted by the EPA at 40 CFR Part 141 in April 2024. A different bill, L.D.1326, *An Act to Protect the Drinking Water for Consumers of Certain Water Systems by Establishing MCLs for Certain PFAS,* recently passed out of the HHS Committee. L.D. 1326 codifies certain parts of EPA's 2024 drinking water standard into Maine law. Section 2 therefore would be redundant based on L.D. 1326.

Section 3 of the bill would modify the Department's authority to prohibit the sale of food packaging containing PFAS. In 2024, the Department used this authority to amend its rule Chapter 80, *Reduction of Toxics in Packaging*, to prohibit PFAS use in certain types of food packaging sold in Maine which have already been prohibited by the State of Washington. It appears that the intent of this section is to pre-empt the Department from regulating PFAS in food packaging if the federal government has already done so (such as the U.S. Food and Drug Administration approving certain quantities of PFAS in food packaging). However, this section is drafted in a way that it could preclude the Department from regulating the PFAS content of any food packaging if a federal law or rule regulates the sale of that food package. Since federal laws and rules regulate the sale of all food packaging, this could be read as effectively nullifying the authority established at 32 M.R.S. §1733, sub-3-B.

Section 4 of the bill requires the Department to adopt by rule PFAS surface water standards to match federal water quality standards. There are currently no final federal surface water quality standards for human health for PFAS. Limiting the ability of the Legislature, or the Department, to only adopt federal standards before those standards are even promulgated is not advised. Existing Maine law at 38 M.R.S. § 420 contains a framework for regulating toxic or hazardous substances in surface waters that is aligned with procedures under the Federal Water Pollution Control Act, and this bill would run contrary to this long-standing approach to setting Maine water quality standards.

Surface water quality standards are developed by the EPA as recommendations for states to adopt as water quality standards for various toxic substances to ensure protection of both aquatic life and human health. These are generally set as a maximum concentration of a certain pollutant in the surface water. Once established as a state water quality standard, they are used to determine if a water body is in attainment and to establish waste discharge permit limits as needed.

The EPA's recommended aquatic life criteria establish the ambient concentrations for a specified pollutant in surface water, which, if not exceeded will allow fish and other aquatic species to live (acute criteria) and grow and reproduce (chronic criteria). EPA finalized aquatic life criteria for PFAS in October 2024. Based on available data, only a few sites in Maine exceed these criteria generally due to the impacts of AFFF (firefighting foam) or sludge utilization. The Department expects to adopt these criteria in Department Rule, Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, during the next round of rulemaking for this rule.

The EPA's recommended human health criteria establish the ambient concentrations for a specified pollutant in surface water, which, if not exceeded will protect the general population from adverse health effects due to ingesting water, fish, and shellfish from inland and nearshore water bodies. In December 2024, the EPA issued draft national recommended human health criteria PFOA, PFOS, and PFBS. Based on available surface water and precipitation data, it appears the draft criteria are so low that all Maine waters, and all waters of the United States, would be in non-attainment. EPA is currently reviewing comments on the draft criteria and is expected to issue final human health criteria sometime in the future.

For human health water quality criteria, the Department uses a Maine-specific fish consumption level that would make Maine criteria more stringent than the federal standards as Maine data shows Mainers consume more wild caught fish than the

national average. On the other hand, under existing federal and state law, we can use a lower cancer risk level than EPA, which uses a default of 1 in 1 million people. We could choose from a range of 1 in 10,000 to 1 in 1 million. Once EPA's PFAS Human Health criteria are adopted, the Legislature might want the flexibility to use a lower risk level if 1 in 1 million results in costs that are unattainable. The Legislature took this approach for arsenic in 2011 (PL 2011, c. 194, established at 38 M.R.S. §420.2.J).

It is important to note that water quality standards for toxics are risk-based standards based on various toxicity data and exposure assumptions. The establishment of these standards does not consider technical or financial ability for the standards to be met.

Similar to Section 4 of this bill, Section 5 requires the Department to adopt air emissions standards by rule for PFAS, but instead of for surface water standards, in this section it would match federal air emissions standards. The requirement to align state air quality emission standards with any future standards established by the EPA wrongly assumes that these standards would be appropriate for protection of public health in Maine. This would preclude the Department from establishing any regional or site-specific standards that may be more appropriate for those specific conditions.

Thank you for the opportunity to testify and I would be happy to answer any questions.