



Friends of Casco Bay Casco BAYKEEPER

May 12, 2025

Environment and Natural Resources Committee
Maine State Legislature
Cross Building, Room 216
Augusta, Maine
ENR@legislature.maine.gov

Re: *Friends of Casco Bay's (FOCB) Testimony in Opposition to LD 1903: An Act to Conform the State's Perfluoroalkyl and Polyfluoroalkyl Substances Laws to Federal Standards.*

Dear Senator Tepler, Representative Gramlich, and Distinguished Members of the Environment and Natural Resources Committee,

Friends of Casco Bay's (FOCB) strongly opposes LD 1903, which abdicates state authority under its police powers to pass laws to protect human and environmental health. For over 35 years, FOCB has worked to improve and protect the health of Casco Bay. We monitor water quality using methods approved by the US Environmental Protection Agency (EPA) and Maine Department of Environmental Protection (DEP). That means our data may be used for regulatory and policy-making purposes. In fact, DEP uses our data, in combination with other data, to determine the health of receiving waters, review and update water quality standards, and set permit limits under its delegated authority to issue NPDES permits under the Clean Water Act.

We understand that others will address the parts of this bill that set contaminant levels for soil and that limit Maine's authority to regulate PFAS in food packaging to any limits set in federal law or regulation. As a preliminary matter, we oppose both of those measures as the former appears to bypass state rule-making¹ and the latter impermissibly imposes federal preemption into state law. Moreover, it does so without citation to any federal law or regulation, likely because there are none.² In contrast, Maine law, 32 MRS §1733(3-B), required DEP to undertake major substantive rulemaking that prohibited PFAS in food packaging after determining

¹ FOCB are not soil experts and will leave specific comments on this topic to those with the requisite knowledge.

² The Food and Drug Administration announced its determination that the Food Contact Notifications (FCNs) regarding PFAS in food packaging are no longer effective. Several manufacturers notified FDA in writing that they ceased producing, supplying, or using the listed food contact substances (FCSs) for their intended use in the United States. See FDA, Food Contact Notifications that are no longer Effective, 2024-31692 (90 FR 693) (01/06/2025).

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that safer alternatives existed. After legislative review, the Board of Environmental Protection approved the final rule on April 18, 2024.³ That rule goes into effect May 25, 2026. This legislature should not disturb the rule it recently approved before it even goes into effect.

The remainder of our comments will focus on the section of LD 1903 that seeks to restrict state authority under the Clean Water Act. FOCB strenuously opposes the language adding 38 MRSA §420, sub-§2, ¶C-1, which proposes that: “If surface water quality standards for PFAS are established pursuant to federal law, including the Federal Water Pollution Control Act, Public Law 92-500, Section 19 304(a), as amended, the department shall adopt rules for surface water quality standards to match the federal water quality standards.” Under the Clean Water Act, water quality standards (WQS) are established by the states, NOT the federal government. They consist of use classifications and criteria that, if not exceeded, will protect the designated uses.⁴

Criteria “are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.”⁵ **Section 304(a) criteria** “are developed by EPA under authority of section 304(a) of the Clean Water Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. **This information is issued periodically to the States as guidance for use in developing criteria.**”⁶ **EPA does not, in the first instance, set criteria or water quality standards. That responsibility rests with the State.**

With respect to PFAS, EPA recently published Final Recommended Aquatic Life Criteria and Benchmarks for Select PFAS.⁷ Benchmarks reflect instances where EPA does not yet have enough data to recommend criteria.

³ DEP Rule Ch 80, section 5.

⁴ See 40 CFR § 131.4 (states responsible for reviewing, establishing and revising WQS); *Environmental Law Handbook*, 21st Ed, T 332; <https://www.epa.gov/wqs-tech/what-are-water-quality-standards> (Water quality standards (WQS) are provisions of state, territorial, authorized tribal or federal law approved by EPA that describe the desired condition of a water body and the means by which that condition will be protected or achieved).

⁵ 40 CFR § 131.3(b).

⁶ 40 CFR § 131.3(c).

⁷ “As part of the Environmental Protection Agency’s (EPA) commitment to safeguard the environment from per- and polyfluoroalkyl substances (PFAS), the agency is announcing the availability of national “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Acute Saltwater Aquatic Life Benchmarks for Perfluorooctanoic Acid (PFOA)” and “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Acute Saltwater Aquatic Life Benchmarks for Perfluorooctane Sulfonate (PFOS),” pursuant to the Clean Water Act (CWA). The EPA is also announcing the availability of Acute Freshwater Aquatic Life Benchmarks for eight data-limited perfluoroalkyl substances (PFAS): perfluorobutanoic acid (PFBA), perfluorohexanoic acid (PFHxA), perfluorononanoic acid (PFNA), perfluorodecanoic acid (PFDA), perfluorobutanesulfonic acid (PFBS), perfluorohexanesulfonic acid (PFHxS), 2H-perfluoro-2-decenoic acid (8:2 FTUCA), and 2H,2H,3H,3H-perfluorodecanoic acid (7:3 FTCA). **These final CWA recommended criteria and benchmarks provide information that States and Tribes may consider when adopting water quality standards.**” 2024-23024 (89 FR 81077) and 2024-26228 (89 FR 89636)(emphasis added).

Aquatic life benchmarks, developed under section 304(a)(2) of the CWA, are informational values that the EPA generates when there are limited high quality toxicity data available and data gaps exist for several aquatic organism families. The EPA develops aquatic life benchmarks to provide information that States and Tribes may consider in their water quality protection programs. In developing aquatic life benchmarks, data gaps may be filled using new approach methods (NAMs), such as computer-based toxicity estimation tools (e.g., EPA's Web-ICE; Version 3.3; <https://www.epa.gov/webice/>) or other new approach methods intended to reduce reliance on additional animal testing (<https://www.epa.gov/chemical-research/epa-new-approach-methods-work-plan-reducing-use-vertebrate-animals-chemical/>), including the use of read-across estimates based on other chemicals with similar structures. The EPA's aquatic life benchmark values are not regulatory, nor do they automatically become part of a State's water quality standards.⁸

Maine cannot adopt a law that requires it to adopt federal water quality standards, because there are none. Maine should not adopt a law that requires it to adopt, without analysis, recommended criteria or benchmarks published by EPA as guidance. In some instances, the State will adopt recommended criteria. In others, the State might choose to focus on the data gaps identified by EPA and collect additional information before setting criteria. Moreover, Maine sometimes sets a more stringent standard based on need. For example, Maine's fresh water dissolved oxygen criteria for Class B waters are more stringent than many other states because Maine has cold waters capable of supporting fish species such as salmon that require cold, well-oxygenated water.

With respect to PFAS, EPA has only developed recommended criteria for PFOA and PFOS to protect aquatic life designated uses established for freshwaters. For other PFAS compounds it has recommended benchmarks. For marine waters, it has only recommended benchmarks. As EPA explained: "Data limitations did not allow for derivation of PFOA or PFOS national recommended water quality criteria to protect saltwater organisms."⁹ Friends of Casco Bay and Bigelow Laboratory for Ocean Sciences are collecting the first extensive marine water data set for Casco Bay. That study, which collects water samples from about 90 sites to determine PFSA levels, will be completed this year. It should complement data collected by Maine DEP and help fill the data gap identified by EPA. Maine must retain its full authority pursuant to the Clean Water Act to promulgate criteria, sometimes based on EPA guidance and sometimes based on Maine's own data and needs. That is exactly how the Clean Water Act is intended to function.¹⁰

⁸ 2024-23024 (89 FR at 81078).

⁹ *Id.*

¹⁰ FOCB also opposes the language in this bill regarding the Clean Air Act (CAA). The CAA authorizes EPA to set National Ambient Air Quality Standards (NAAQS). (At present, North Carolina, New Mexico and New Jersey have petitioned EPA to regulate PFOA, PFOS and PFNA.) Once NAAQS are set, states may adopt those or adopt stricter standards. <https://www.epa.gov/regulatory-information-topic/regulatory-and-guidance-information-topic-air>.

For the above reasons, Friends of Casco Bay respectfully requests that this Committee vote that LD 1903 OUGHT NOT TO PASS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ivy L. Frignoca', written in a cursive style.

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