



**Testimony of Sharon Treat, Institute for Agriculture and Trade Policy
In Support of LD 2013,
"An Act Relating to Perfluoroalkyl and Polyfluoroalkyl Substances Contamination in the State"
Joint Standing Committee on Agriculture, Conservation and Forestry
March 15, 2022**

Senator Dill and Representative O'Brien and honorable members of the Joint Standing Committee on Agriculture, Conservation and Forestry. My name is Sharon Treat and I live in Hallowell. I am Senior Attorney for the Institute for Agriculture and Trade Policy (IATP), on whose behalf I am testifying today in support of LD 2013, "An Act Relating to Perfluoroalkyl and Polyfluoroalkyl Substances Contamination in the State". IATP is a 501(c)(3) nonprofit headquartered in Minneapolis, Minnesota with offices in Hallowell, Maine and other locations. IATP works closely with farmers and seeks to promote local, sustainable and environmentally beneficial agriculture and trade policies.¹ We have been following PFAS issues across the country and especially in Maine, where we have taken a strong interest in how PFAS contamination has affected farmers and agriculture.²

FUNDING IS NEEDED FOR MEDICAL MONITORING AND FARMER ASSISTANCE.

Funding is necessary to address needs that currently go beyond site investigation, testing and remediation. These needs include (1) paying for medical monitoring of those exposed to high levels of PFAS; (2) assisting farmers facing a catastrophic situation not of their own making, by replacing lost income, helping to pivot to alternative crops or alternative fields and, and for some, relocating their farms through a state buy-back program; and (3) targeted research that directly assists farmers such as research related to food safety, identifying crops that could be safely planted on contaminated soils, whether there are soil remediation techniques that work and are cost-effective.

The Department of Agriculture, Conservation and Forestry has already identified many of these needs, but the funding that has been appropriated to date, while millions of dollars, is nevertheless insufficient. We are in strong support of appropriating the \$100 million proposed by LD 2019. DACF has proposed using a supplemental budget allocation to replace a year or season of lost income for farmers who have been impacted by PFAS contamination. While this program is welcome, farmers need more. Given the significant revenue surplus Maine is experiencing, this is the time to set aside some of this one-time money for a program to help save Maine's agricultural economy.

We know that at least nine farms are already impacted including three dairies and 5 vegetable farms. Another 30 farms are, according to DEP, most likely to be found to be contaminated based on a review

¹ IATP also has offices in Washington, D.C. and Berlin, Germany (IATP Europe). For over 30 years, IATP has provided research, analysis and advocacy on a wide range of agriculture-related issues including farm to school; climate; agroecology; soil health and water quality and access; farmworker health and economic security; and trade and market policies. For more information, see www.iatp.org.

² IATP's PFAS materials are posted here: <https://www.iatp.org/and-polyfluoroalkyl-substances-pfas>

of sludge and septage permits. Income replacement for a year at 35 farms could top \$35M, and the cost of buying farmland and relocating heavily contaminated farms could be \$50M.

Medical monitoring will also be expensive. Hundreds of residential wells have been contaminated by PFAS, some measured at extraordinarily high levels. Farmers, their families, and their neighbors have been exposed to this water for years. Some have experienced severe health problems. Others have exposed their children through contaminated breast milk. They are worried and for good reason, but even if they have excellent health insurance, blood testing may not be covered by that insurance. Others lack adequate health insurance to start with. As we explain in **APPENDIX A** attached to this testimony, there is both state and national experience with medical monitoring and blood testing programs, and a strong rationale for such a program here.

SUGGESTED AMENDMENTS.

There are several changes we suggest to this bill. Some of the definitions are overbroad (“agricultural enterprise”) or inexact (“biosolids”); the advisory committee lacks expertise related to public health and doesn’t include legislative participants, which we think would be helpful; some of the research goals are duplicative of research being conducted by other departments (“assessing current uses of PFAS”); and more specifics are needed. The bill would be improved with more detail about the department’s responsibilities, including some timelines for action. This is especially the case for immediate needs, such as income replacement, and to begin establishing more complex programs including farm relocation and buyouts, and medical monitoring. These programs will necessarily involve coordination with other departments of state government, and the bill should spell this out in more detail, including what a medical monitoring program should encompass and generally who should be eligible.

We have attached a suggested amended version of this bill as **APPENDIX B** which addresses some of these proposed changes. This amendment was developed in consultation with MFT, MOFGA and Defend Our Health.

CONCLUSION

All of Maine’s farm economy is being harmed by PFAS either directly or indirectly. Farmers are in limbo, and the longer it takes to complete soil, water and food testing, the more uncertainty and turmoil will be felt across all of Maine agriculture. Farmland can’t be sold while under the cloud of forever contamination, investments in high tunnels and farm equipment won’t be made, and consumer anxiety about the safety of local foods --whether justified or not—will only increase. PFAS contamination is affecting not only those whose land and water is directly contaminated but also other farmers who purchase hay for feed or milk for cheese, and don’t know whether these inputs are free of PFAS. Ultimately all Maine agriculture is being affected and will be under a cloud until all possible PFAS hotspots are identified and tested and food production is moved away from contaminated soil and water. We urge the committee’s strong support for LD 2013 and an “ought to pass” vote.

APPENDIX A – WHY THE STATE SHOULD FUND A MEDICAL MONITORING PROGRAM.

In the Department of Environmental Protection portion of the supplemental budget there's over \$4 million to stand up in-state PFAS testing capacity, to test drinking water and livestock, produce and soil samples. All critically important. But what about the people who have been exposed and have astronomically high PFAS blood levels? Farmers have been pleading for the state to pay for ongoing medical monitoring and the cost of blood tests. Even for those who have adequate insurance coverage, PFAS blood tests are unlikely to be covered by health insurance.

Drinking water with astronomical levels of PFAS. These farmers, and their neighbors, have contaminated wells they have been using for decades for drinking water and for irrigating crops. The PFAS levels measured in some of these wells are astronomical. In testimony before the legislature, PFAS in a well across the road from corn fields in Fairfield was measured at 14,832 parts per trillion (ppt), which is 742 times Maine's interim health standard for drinking water of 20 ppt for the sum of six PFAS chemicals.³ Farmers at a recent Maine Farmland Trust/Maine Organic Farmers and Gardeners Association listening session reported PFAS measurements of 9,000 ppt at an Albion farm; 1300 ppt in Jackson; 1690 ppt in another Albion farm; and 2,000 ppt on a farm in Knox.

PFAS in blood and breast milk. Many of those affected have young children, including nursing infants, who have been [exposed to PFAS through breast milk](#). One young couple who paid to have their blood tested found levels of 790 and 460 parts per billion (ppb) for PFOA and 2700 and 1800 ppb for PFOS. The difference between these measurements? The lower levels were measured for the nursing mother, who expelled some of the PFAS through breast milk – into their infant child. These are unsafe levels hundreds of times higher than background levels and significantly above that measured in industrial workers in PFAS manufacturing plants.

Exposure to PFAS causes health problems. According to the federal Environmental Protection Agency “current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to: reproductive effects such as decreased fertility or increased high blood pressure in pregnant women; developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body's immune system to fight infections, including reduced vaccine response; interference with the body's natural hormones; increased cholesterol levels and/or risk of obesity.”⁴ PFAS exposure can make people more susceptible to COVID-19 health consequences; indeed, recent research has found a strong association with PFAS exposure and COVID-19 severity, antibody response, and asthma.⁵

³ Testimony of Nathan Saunders before the Environment and Natural Resources Committee on LD 1911 and LD1875, January 24, 2022, https://legislature.maine.gov/legis/bills/display_ps.asp?PID=1456&snum=130&paper=&paperId=I&Id=1875

⁴ Environmental Protection Agency, Our Current Understanding of the Human Health and Environmental Risks of PFAS, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (Last accessed March 2, 2022)

⁵ See, “Severity of COVID-19 at elevated exposure to perfluorinated alkylates,” Philippe Grandjean, Clara Amalie Gade Timmermann, Marie Kruse, Flemming Nielsen, Pernille Just Vinholt, Lasse Boding, Carsten Heilmann, Kåre Mølbaek (December 31, 2020), <https://doi.org/10.1371/journal.pone.0244815>

PFAS health problems often don't manifest until years later. Medical monitoring programs provide ongoing medical testing to detect the potential onset of disease or other adverse health effects from toxic chemical exposures, such as PFAS. PFAS, like many toxic chemicals, can cause latent diseases that only manifest years later, thus, it becomes more critical to monitor and prevent the development of disease or other adverse health effects over the long term.⁶ Medical monitoring is precisely attuned to exposure to hazardous substances such as PFAS. Someone exposed to toxic substances may not show symptoms of an illness, but they may experience subcellular or other physiological changes that warn trained medical professionals that the patient has an increased risk of developing a serious illness requiring medical monitoring.⁷ Early detection of disease and adverse health effects prevents more devastating, and more costly, consequences later.⁸ In *Ayers v. Township of Jackson*, the court described how medical monitoring furthers 'the public interest in early detection and treatment of disease.'⁹

Medical monitoring will help affected Mainers hold responsible parties liable. Medical monitoring will help affected Mainers collect the evidence they will need to hold manufacturers accountable for covering up data about health consequences, for example, and may enable them to bring a legal case without waiting for serious disease and death to manifest. Otherwise, the responsible party is more likely to escape liability by arguing that during the long latency period, other intervening forces could have caused the injury.¹⁰

There is precedent for a government-funded and run medical monitoring program.

- Maine's **Childhood Lead Poisoning Prevention Program** is one model for such a program. In 2021, The State of Maine received \$350,000 through a cooperative agreement from the Centers for Disease Control and Prevention (CDC). The funds address childhood lead poisoning prevention and surveillance programmatic activities currently being conducted, including ensuring blood lead testing and reporting; enhancing blood lead surveillance; and improving linkages to services.¹¹
- On the federal level, an example of a government medical monitoring program is the **World Trade Center Health Program**. The Zadroga Act created the WTC Health Program and reopened the September 11th Victim Compensation Fund (VCF). The Program provides monitoring and treatment for specific health conditions that have been determined to be 9/11-related. The VCF provides monetary compensation to individuals or surviving family members whose injuries, illnesses, or deaths were related to 9/11. The Program is housed under the U.S. Department of Health and Human Services and administered by the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.¹²

⁶ Megan Noonan, *THE DOCTOR CAN'T SEE YOU YET: OVERCOMING THE "INJURY" BARRIER TO MEDICAL MONITORING RECOVERY FOR PFAS EXPOSURE*, 45 VT. L. REV. 287, Available at: <https://lawreview.vermontlaw.edu/wp-content/uploads/2021/01/Noonan.pdf>

⁷ *Id.*; *Ayers v. Jackson Twp.*, 106 N.J. 557, 604, 525 A.2d 287, 311 (1987)

⁸ Bryce T. Hensley & David A. Neiman, *The Need for Medical Monitoring in Illinois*, July 30, 2021, Romanucci & Blandin, Available at: <https://www.rblaw.net/blog/the-need-for-medical-monitoring-in-illinois>

⁹ *Ayers v. Jackson Twp.*, 106 N.J. 557, 604, 525 A.2d 287, 311 (1987)

¹⁰ Megan Noonan, *THE DOCTOR CAN'T SEE YOU YET*

¹¹ Maine, *Childhood Lead Poisoning Prevention*, Center for Disease Control and Prevention (Last Assessed March 2, 2022), Available at: <https://www.cdc.gov/nceh/lead/programs/me.htm>

¹² U.S. Center for Disease Control and Prevention, *History, World Trade Center Program*, <https://www.cdc.gov/wtc/history.html>

APPENDIX B – PROPOSED REDRAFT OF LD 2013

Sec. 2. 7 MRSA c. 10-D is enacted to read:

CHAPTER 10-D FUND TO ADDRESS PFAS CONTAMINATION

§320-K. Fund To Address PFAS Contamination

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advisory committee" means the Advisory Committee on the Fund To Address PFAS Contamination in section 320-L.

B. "Agricultural land" has the same meaning as in section 32, subsection 2.

C. Commercial farming. "Commercial farming" means the production of any farm product with the intent that that farm product be sold or otherwise disposed of to generate income.

D. Farm product. "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses, Christmas trees and other similar products.

E. "Fund" means the Fund To Address PFAS Contamination under subsection 2.

F. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" has the same meaning as in Title 32, section 1732, subsection 5-A.

2. Fund established. The Fund To Address PFAS Contamination is established within the department as a nonlapsing fund for the purposes specified in this chapter.

3. Sources of fund. The fund is funded from funds accepted by the commissioner or allocated or appropriated by the Legislature.

4. Purposes. Allocations from the fund may be made for the following purposes as determined by the department upon recommendation of the advisory committee and to meet the requirements of paragraph 5:

A. Monitoring the health of a person, and members of that person's household, whose drinking water or agricultural land is found to be contaminated by PFAS;

B. Relocating a commercial farm with agricultural land that is found to be contaminated by PFAS;

C. Buying and selling agricultural land found to be contaminated by PFAS;

D. Investing in equipment, facilities and infrastructure to ensure that a commercial farm with land found to be contaminated by PFAS maintains profitability while the commercial farm transitions to alternative cropping systems or other modifications to its operations in response to PFAS contamination;

E. Assisting a commercial farm with land found to be contaminated by PFAS with developing enterprise budgets for alternative cropping systems or transitioning to alternative revenue streams, including but not limited to land use systems combining agricultural use of the land with solar energy production;

F. Providing short-term assistance to a person whose commercial farm is found to be contaminated by PFAS, including but not limited to income replacement and mortgage payments;

G. Evaluating the capacity of PFAS testing and data management in the state;

H. Conducting research that supports short-term farm management decisions and assesses future options for viable uses of agricultural land that has been contaminated with PFAS;

I. Establishing food safety criteria and guidance for farm products based on the state's drinking water standard, currently set at 20 parts per trillion for the sum of six PFAS (alone or in combination).

- J. Conducting research that quantifies the impact of PFAS on the State's agricultural enterprises and agricultural communities;
- K. Conducting research on soil and water remediation systems and the viability of those systems for farmers;
- L. Educational programs for landowners, including but not limited to determining best practices for informing residents about the potential of being near or on a site licensed or permitted by the State prior to 2019 to apply sludge or septage, and providing information and guidance on buying or selling agricultural land to which sludge or septage has been applied; and
- M. Long-term monitoring of contaminated sites and establishing a corresponding centralized data repository.

5. Administration. The department shall administer the fund pursuant to a plan that establishes funding priorities, administration and oversight. The plan must be developed in consultation with the advisory committee and take into consideration the department's February 4, 2022 report "Findings and Recommendations for a PFAS Study Plan Supporting L.D. 558". The department may contract for professional services to carry out the purposes of this section. The initial plan must prioritize funding and implementation of the following programs:

A. Income replacement. The department shall establish a program as soon as practicable to provide short-term assistance to a person whose commercial farm is found to be contaminated by PFAS, including but not limited to income replacement and mortgage payments.

B. Farm assistance and buyout program. The department shall establish a program to fund longer-term assistance for commercial farms with agricultural land that is found to be contaminated by PFAS. This program must address a range of alternative strategies including assisting farmers in investing in equipment, facilities and infrastructure to maintain profitability during a transition to alternative cropping systems or other modifications to its operations; purchasing agricultural land found to be contaminated by PFAS; assistance in renegotiating mortgages and lines of credit; direct purchase of contaminated land and assistance with purchasing of alternative land where a commercial farm is irreparably contaminated by PFAS.

C. Medical monitoring and PFAS testing program. In coordination with the Maine Center for Disease Control and Prevention, the commissioner shall establish a PFAS medical monitoring and blood PFAS level testing program for persons whose drinking water or agricultural land is found to be contaminated by PFAS. To qualify for the program, a person does not need to show a present injury or disease.

1. Annual blood testing. In accordance with rules adopted by the department, the program must include payment by the department for annual blood PFAS level testing and related services and diagnostic evaluations for an affected person who does not have health coverage for PFAS testing and related services. The drawing of blood for the testing may be done in the health care provider's office or may be referred to another laboratory. A blood sample taken by a health care provider or laboratory to test for blood PFAS levels must be sent to a facility approved by the Department of Health and Human Services.

2. Medical monitoring. The department shall develop criteria for funding medical monitoring for persons found to have blood level exposure to PFAS at a rate significantly greater than the general population; where it is medically necessary to undergo periodic medical examination

different from that prescribed for the general population in the absence of exposure due to increased risk; and where monitoring procedures exist that are reasonable in cost and safe for use.

6. Rules. The department may adopt rules to implement this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§320-L. Advisory Committee on the Fund To Address PFAS Contamination

The Advisory Committee on the Fund To Address PFAS Contamination is established pursuant to Title 5, section 12004-I, subsection 2-H to make recommendations to the department regarding administration of the fund. In order to develop recommendations for the department, the advisory committee may form working groups that include and seek input from subject matter experts from the public and private sectors to deliberate issues relating to the purposes of the fund, including but not limited to health monitoring, short-term financial aid for farmers, research priorities, solar siting, long-term environmental monitoring and land acquisition.

1. Membership. The advisory committee consists of:

- A. The commissioner or the commissioner's designee;
- B. The Commissioner of Environmental Protection or the commissioner's designee;
- C. The Director of the Center for Disease Control and Prevention or the director's designee;
- D. The dean of the Maine Agricultural and Forest Experiment Station at the University of Maine, College of Natural Sciences, Forestry, and Agriculture or the dean of the University of Maine Cooperative Extension, appointed by the President of the University of Maine;
- E. The Attorney General or the Attorney General's designee;
- F. Two members of the public representing the agricultural sector, appointed by the commissioner;
- G. One member of a soil and water conservation district as defined in Title 12, section 3, subsection 2, appointed by the commissioner; and
- H. Two members of the Senate including one member from the committee with jurisdiction over the Department of Agriculture, Conservation and Forestry and one member from the committee with jurisdiction over the Department of Environmental Protection, appointed by the President of the Senate; and
- I. Two members of the House of Representatives including one member from the committee with jurisdiction over the Department of Agriculture, Conservation and Forestry and one member from the committee with jurisdiction over the Department of Health and Human Services, appointed by the Speaker of the House.