



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

**TESTIMONY OF DAVID WRIGHT**  
**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF L.D. 780**  
**AN ACT REGARDING UNCONTROLLED HAZARDOUS SUBSTANCE SITES**  
**SPONSORED BY REPRESENTATIVE FAY**

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

**DATE OF HEARING:**

**APRIL 5, 2021**

Senator Brenner, Representative Tucker, and members of the Committee, I am David Wright, Director of the Division of Remediation within the Bureau of Remediation & Waste Management at the Department of Environmental Protection, speaking in support of L.D. 780.

This bill modifies the definition of “hazardous substance” in the Uncontrolled Hazardous Substances Sites law<sup>1</sup>. The Uncontrolled Sites Law is the State’s equivalent of the

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<sup>1</sup> Uncontrolled Hazardous Substance Sites Law, 38 M.R.S. §§ 1361-1371

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

federal “CERCLA” or “Superfund law”<sup>2</sup>, giving the Department authority to respond to “hazardous substances” that may endanger public health or the environment.

The bill’s purpose is to address potential health effects from emerging contaminants such as per- and polyfluoroalkyl substances (known as PFAS), and residues remaining after emergency removals of bulk chemicals from illegal drug labs. Currently, it is not clear that we have the necessary authority to address public health risk from these or future emerging contaminants under the Uncontrolled Sites Law. The Department proposed a similar bill last session, and a majority “ought to pass” vote in the Environment and Natural Resources Committee moved the bill to the full legislative floor where it died when the legislature adjourned due to the Covid-19 pandemic. This year’s agency bill that is before you today incorporates the amendments added by the majority in Committee.

Our intention with this bill is to allow the Department to address newly discovered risks posed by chemicals in the environment using the remediation infrastructure that we have developed when handling other emerging contaminants over the past 30 years. So, at this time we are seeking to modify the definition of hazardous substances in the Uncontrolled Sites Law.

The Uncontrolled Sites Law allows the Department to investigate the extent of hazardous substance releases, determine the risk, and mitigate that risk. We think this approach is appropriate for PFAS and other emerging contaminants. PFAS is a group of chemicals widely used in commerce that are highly persistent. Many of them move further and faster through the environment than other contaminants and present human health risks at very low concentrations. Similarly, EPA research suggests that chemical

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<sup>2</sup> 42 U.S. Code Chapter 103, Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “Superfund”)

and drug residuals that remain after emergency responses at illegal drug labs poses a significant risk warranting remedial action.

The specific modification to the Uncontrolled Sites Law that we are seeking is to include in the definition of hazardous substance, anything defined under CERCLA as a “hazardous substance”, or “pollutant or contaminant”. A “pollutant or contaminant” must be a substance that has been found to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, or physical deformations. For specific language, please see the excerpted language from the definition sections of CERCLA and the Uncontrolled Sites Law that is attached to this testimony. This change will allow the Department to use the Uncontrolled Sites Fund to investigate and mitigate risks posed by emerging contaminants or require responsible parties to undertake remedial work.

It should be noted that the Uncontrolled Sites Law contains several due process provisions for responsible parties. First, before ordering clean-up, the Commissioner must formally determine that the site poses a danger to human health or the environment. This is done by demonstrating the hazardous substance exceeds a risk-based concentration at the site, that there are people or environmental receptors at or near the site, and that there is a pathway that connects the two. Secondly, the Commissioner must demonstrate that the remediation is necessary. The Commissioner’s determination that a site is a danger and that remediation is necessary, is appealable to the Board of Environmental Protection and to the courts.

The Uncontrolled Sites Law provides liability protections for responsible parties that undertake due diligence prior to purchasing a site, municipalities that foreclose on a site, lenders, and fiduciaries. The Department also operates a Voluntary Response Action Program (called VRAP), under which an applicant investigates and remediates a site in exchange for a release from liability for known conditions. This is often done as

part of a real-estate transfer. The State's Brownfields program can help qualifying applicants pay for the investigation and remediation at these sites.

While uncontrolled sites are technically and legally complex, we have worked with responsible parties and other stakeholders to develop a consistent, efficient approach to addressing them. We first work on the sites that pose the greatest risk, use science-based approaches, and foster creative problem solving. The mission is to prevent current and future exposure to site contaminants. The process uses standard ASTM and EPA protocols to assess the extent of contamination, the risk it poses, develop alternatives to address any risk, select a remedy, and then design and implement the response action. We also monitor post-remedial care when wastes are left in-place at the site.

In summary, we believe that this modification is necessary to address current public health and environmental risks from PFAS, residues at illegal drug labs, and other emerging contaminants.

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

**Attachment: Excerpts from federal CERCLA and Maine Uncontrolled Sites Law**

**42 U.S. Code CHAPTER 103—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY [Superfund], § 9601.Definitions<sup>3</sup>**

For purpose of this subchapter—

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**(33)** The term “pollutant or contaminant” shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term “pollutant or contaminant” shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

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**(14)** The term “hazardous substance” means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include

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<sup>3</sup> Cornell Law School, Legal Information Institute Website, Downloaded Jan 9, 2020 from: <https://www.law.cornell.edu/uscode/text/42/9601>.

natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

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## **38 M.R.S. § 1362. [Uncontrolled Hazardous Substances Sites Law] Definitions<sup>4</sup>**

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1983, c. 569, §1 (NEW).]

### **1. Hazardous substance.** "Hazardous substance" means:

A. Any substance identified by the department under section 1319-O [hazardous waste, waste oil and biomedical waste rules]; [PL 2019, c. 315, §13 (AMD).]

B. Any substance identified by the board under section 1319 [hazardous matter rules]; [PL 1983, c. 569, §1 (NEW).]

C. Any substance designated pursuant to the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, Sections 101 and 102 (Superfund); [PL 1985, c. 746, §32 (AMD).]

D. Any toxic pollutant listed under the United States Federal Water Pollution Control Act, Section 307(a); [PL 1983, c. 569, §1 (NEW).]

E. Any hazardous air pollutant listed under the United States Clean Air Act, Section 112; [PL 1985, c. 746, §32 (AMD).]

F. Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to the United States Toxic Substances Control Act, Section 7; and [PL 1985, c. 746, §32 (AMD).]

G. Waste oil as defined in section 1303-C. [PL 1989, c. 878, Pt. B, §42 (AMD).] [PL 2019, c. 315, §13 (AMD).]

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<sup>4</sup> Maine Legislature Maine, Revised Statutes website downloaded Jan. 9, 2020 from: <https://legislature.maine.gov/statutes/38/title38sec1362.html>.