STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN IN OPPOSITION TO L.D. 1532

AN ACT TO AN ACT TO PROTECT MAINE'S AIR QUALITY BY STRENGTHENING REQUIREMENTS FOR AIR EMISSIONS LICENSING

PRESENTED BY REP. MORALES

BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

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Senator Brenner, Representative Tucker, and members of the Committee on Environment and Natural Resources. My name is Eric Kennedy, and I am the Director of the Division of Air Licensing and Compliance testifying in opposition to LD 1532.

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This bill encompasses a broad range of statutory revisions that would fundamentally change the air licensing process, including the terms of air emission licenses, the processing of air emission licenses, minimum civil penalty amounts for violations of license conditions, and how enforcement actions are carried out. The result of this bill would be to add substantial and expensive administrative process with no measurable environmental benefit.

The Department's Bureau of Air Quality (BAQ) currently licenses approximately 660 facilities with some type of air emission license. Of these, 49 facilities are classified as major sources of air emissions, 447 are classified as minor sources of air emissions, and an additional 164 facilities are covered by a type of air emission license known as a general permit.

Of Maine's 660 facilities, only 177 are the traditional industrial manufacturing, electrical generating, or oil and gas facilities that often come to mind as sources of air pollution. Our licensed sources also include:

- 236 mineral processing facilities. These are the portable and stationary asphalt batch plants, rock crushers, and concrete batch plants that produce crushed stone, gravel, concrete, and asphalt used in construction.
- 47 commercial or government-owned office buildings,
- 44 K-12 schools,
- 41 hospitals,
- 20 colleges or universities,
- 16 food processors, such as potato products and bakeries,
- 10 wastewater treatment plants, and
- 8 jails.

Each of the facilities described above has an air emission license that would be affected by the changes proposed in this bill.

The following is an overview of the various changes being proposed in this bill and the anticipated result should they be enacted.

Sections 1, 2, and 3

Sections 1, 2, and 3 of LD 1532 repeal sections of statute that are obsolete, antiquated, and no longer in use. Removal of these sections of the statute would have no effect since they are not currently used.

Section 4

Section 4 increases civil penalties for violations of air emissions standards. The current statute (38 M.R.S. § 349.2) provides for penalties of not less than $100/day and not more than $10,000/day for each violation. This bill would increase this to a minimum penalty of $25,000/day and a maximum penalty of $100,000/day for each violation.

Removing the Department's ability to assess penalties less than $25,000 per day is both overly punitive and counterproductive. As an example, some license violations are administrative in nature with no resulting environmental impact. Many facilities, including small facilities, are required to submit regular reports to the Department. Under this proposal, if a facility submits their report a week late, they could be assessed a fine of not less than $175,000. For most of our minor sources, any enforcement action involving a civil penalty, even minor infractions, would result in penalties likely to put the company out of business.

Section 4 would also require any penalty recovered to be transferred to the municipality. Currently, civil penalties collected go to the State's General Fund and not the DEP. As stated earlier, many of our licenses are held by the municipality itself (schools, civic centers, wastewater treatment plants, community-owned landfills, etc.). If the fine collected is returned to the municipality, the Department will be compromised in its effectiveness to conduct enforcement on the municipality itself. As written, this bill would allow such facilities to violate their license at will with little to no recourse.

Section 5

Section 5 makes changes to the required application materials and conditions for license approval. The Department processes many types of applications for air emission licenses including applications for new sources, renewals, and amendments to existing facilities; the Department processes an average of 195 of these applications per year.

Air emission licenses issued to minor sources are currently renewed every 10 years. In the interim, these facilities may apply for amendments to add new equipment or make changes to their existing equipment.

Major sources hold two separate types of air emission licenses. They are as follows:

1) New Source Review (NSR) licenses are required for any installation of new emission units or modifications to existing units at major sources. NSR licenses address emission standards and limits the equipment must meet, control equipment or strategies that must be used, and testing, monitoring, and recordkeeping required to demonstrate compliance with applicable standards. NSR licenses never expire, and there is no renewal function. This permitting program is established by EPA and has been delegated to the State as part of our State Implementation Plan (SIP) under the Clean Air Act, 40 C.F.R. Part 52, Subpart U.

2) Major sources are also subject to a separate permitting program established under Title V of the Clean Air Act implemented through 40 C.F.R. Part 70. These Part 70 permits are operating permits that consolidate into one document all air-related standards and requirements applicable to the facility. This includes any requirements included in previously issued NSR permits, as well as any applicable state or federal regulations. Currently, facilities must apply to renew their Part 70 permit every five years. This permitting program has also been delegated to the State by the EPA.

As written, Section 5 of LD 1532 would apply to all of the application types described above.

Section 5 adds a requirement for an application to include “a plan that outlines the steps that will be taken by the applicant to protect the public health of the community.” This plan is to be reviewed and approved or modified by both the Department and the

Department of Health and Human Services (DHHS), Maine Center for Disease Control and Prevention. This requirement seems overly broad and lacks specifics. It is unclear what is intended by “a plan to protect public health,” what such a plan would include, and appropriate criteria for which the plan could be evaluated as sufficient for approval. DHHS does not have resources to review 195 plans per year. The current licensing process already provides that emissions from licensed facilities must meet best practical treatment, applicable emission standards, and health-based ambient air quality standards.

Section 5 prohibits a licensed source from being located in an area zoned for residential use or within 1,000 feet of a residence. It is to be noted that this prohibition does not allow for grandfathering of existing facilities. It is unclear how this proposed provision would affect existing sources already located within this setback or what would happen if someone were to build a house within the setback after the facility was licensed. It is also unclear if the setback is from the property boundary or the individual emissions unit. For some types of facilities, this setback would be impractical or impossible. For example, it is rarely practical to locate elementary and high schools away from residential areas. College campuses in the state, almost all of which have an air emission license, have dorms on-site. In some cases, dorm buildings themselves contain licensed emissions units.

Section 5 adds a requirement for all licensed sources to “install a source emission testing system.” This is an undefined term. Is this a continuous monitoring system, or is it stack testing that takes place every few years? What pollutants does this provision intend to test for? Maine regulates six criteria pollutants, six greenhouse gases, and 187 hazardous air pollutants.

Test methods do not exist for some of these pollutants, and direct measurement of emissions is not always possible even when a method does exist. For example, particulate matter in a very wet exhaust stream cannot be directly measured. Fugitive sources of particulate matter or volatile organic compounds may not come from a single contained source. Short of putting a bubble over the entire facility, there is no way to install a “system” for testing all emissions from a licensed source. This would also be very impractical for institutional facilities with licenses to run equipment for facility heating and emergency back-up.

Section 5 adds a requirement for all licensed sources to “conduct continuous monitoring along the property boundary where the source of emissions is located.” Again, this would be extremely impractical for most of our licensed facilities. The bill does not define what pollutants are to be monitored or how. Existing regulations already provide the Department with the authority to incorporate testing and monitoring requirements where appropriate to determine compliance with applicable emission standards and ambient air quality standards.

Section 6

Section 5 strikes language currently in Maine law regarding the holding of a public hearing on the application and adds it back with additional detail in Section 6.

Section 6 states, “All applications for an air emission license or license renewal must receive a public hearing in the municipality where the source of proposed air emission is located.” Although not explicitly stated, it is assumed that this provision is intended to apply to license amendments as well, since those are the types of applications where new emission units are added or existing emission units are modified.

For clarification, a public hearing is not a meeting where the project is discussed and comments solicited. As defined by the Department’s Chapter 2 (06-096 C.M.R. ch. 2), a hearing is an adjudicatory process held in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, Chapter 375, subchapter 4. When a hearing takes place, notice must be provided 30 days in advance to the applicant, any interested parties, the municipality, and the Legislators of the area. At the hearing, participants are sworn in and testimony is taken. The hearing must be recorded and transcribed.

The processes currently prescribed in Department rules already provides opportunity for a hearing to be requested for any air license application more substantial than a minor revision. The Commissioner or the Board of Environmental Protection may elect to hold a hearing over any application for which they have jurisdiction. However, hearings are typically only held when there is credible conflicting technical information and it is likely that a hearing will assist the Department in understanding the evidence.

Requiring a public hearing for every application would be excessively costly and resource intensive. If this bill were to pass and assuming hearings were held only for air emission license renewals and ignoring general permits, the Department would have to hold an average of 165 public hearings per year. The Department would need to add two or three full-time staff just to schedule, manage, and run hearings. There would also be added administrative costs for hearings.

Section 6 requires that notice of each hearing be mailed by the applicant to all commercial and residential addresses within a 5-mile radius of the source. Further, this notice must be mailed “within 60 days of the hearing” although we believe the intent was for the notice to be mailed at least 60 days prior to the hearing. This would be an onerous and likely costly requirement for Maine’s 660 licensed facilities. As an example of the impracticality of this provision, the Cross Office Building in Augusta holds an air emission license. A 5-mile radius would encompass essentially all of Augusta as well as Hallowell, Farmingdale, and a large swath of Chelsea and Manchester. As another example, based on 2010 census data, there are 116,748 people living within five miles of Maine Medical Center in Portland. This facility would need to notify this population by mail in order to renew their existing air emission license. Postage alone would cost applicants thousands of dollars.

As mentioned above, if notice is to be provided 60 days in advance of the hearing, this would automatically increase the processing time of every application by at least two months since, by definition, staff cannot begin crafting the proposed license until testimony is heard.

Section 6 requires each hearing notice to provide a link to a website where information about the proposed license application can be found. The Department estimates one additional full-time staff member would be required to handle the conversion of all applications to an electronic form and manage posting that information to the website.

Section 6 requires the Department to solicit public comment at the hearing. As described earlier, by definition, hearings are an adjudicatory process where formal technical testimony is received; they are not intended for general (non-technical) public comment. The opportunity for general (non-technical) public comments are provided at public meetings. The Department already offers opportunities for public meetings where

comments can be provided for any application, and we provide additional meeting opportunities where significant public interest exists.

Section 6 directs the Department to solicit and receive testimony at the hearing concerning the effects of emissions on ambient air quality and the effectiveness and cost of air pollution controls. These analyses are already part of the existing licensing process. In cases where there is conflicting technical information, the existing process already has provisions for holding hearings to gather additional information needed for the Department to make its determination.

Section 7

Section 7 amends statute to change the term of most licenses. Currently, 477 minor source licenses are due for renewal every 10 years. This bill would change the renewal period to three years. The Department estimates that this change would require three or more additional staff members to process the additional, more frequent applications even without the other added requirements included in this bill.

As written, Section 7 would limit the term of NSR licenses issued by the Department to three years. The process for NSR licenses for major sources is governed by federal regulations which require that the license remain in effect unless explicitly rescinded or the facility does not commence construction on the project within 18 months. If this bill is passed, Department procedures would no longer be in line with federal requirements, likely leading to the denial of our State Implementation Plan by EPA and the possible loss of our delegated permitting authority under the Clean Air Act.

Conclusion

In conclusion, the provisions of this bill would require funding of approximately seven additional positions at the Department along with additional funding for the numerous public hearings it requires. While LD 1532 was likely intended to help the Department gather more information, hold applicants to greater accountability, increase public participation, and allow for higher penalties for non-compliance, the proposed changes would have little effect on emissions while adding a substantial and expensive administrative burden on both the Department and applicants. Therefore, the Department urges the Committee to vote Ought Not to Pass on LD 1532.