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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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COMMISSIONER

**TESTIMONY OF**  
**KERRI MALINOWSKI, SAFER CHEMICALS PROGRAM MANAGER**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF**  
**L.D. 1505 “AN ACT TO RESTRICT THE USE OF PERFLUOROALKYL AND**  
**POLYFLUOROALKYL SUBSTANCES IN FIREFIGHTING FOAM”**  
**PRESENTED BY REP. GRAMLICH**

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

**HEARING DATE:**  
**MAY 3, 2021**

Senator Brenner, Representative Tucker, and members of the Joint Standing Committee on Environment and Natural Resources, I am Kerri Malinowski, Safer Chemicals Program Manager at the Department of Environmental Protection (DEP), providing this testimony in support of L.D. 1505.

This bill is generally consistent with recommendations from the Governor’s PFAS Task Force final report dated January 2020. It specifies prohibited discharges (with appropriate exception); a prohibition on the manufacture, sale, and distribution (with appropriate exception) and mandatory reporting of any discharge of firefighting or fire-suppressing foam that contains perfluoroalkyl and polyfluoroalkyl substances (commonly known as PFAS). The bill also

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outlines notification, recall, and reimbursement requirements for manufacturers of this type of foam; as well as a requirement for the Department, the Maine Emergency Management Agency (MEMA) and interested parties to develop a framework for the collection and storage of this foam, until it can be safely disposed of. The Department considers these aspects of the bill as potentially problematic and will be addressed later in my testimony.

Section 1 of the bill prohibits the discharge of firefighting or fire-suppressing foam that contains PFAS for testing and training purposes, unless entirely collected and properly disposed of. The Department supports this aspect of the bill, and it is consistent with the recommendations of the Governor's PFAS Task Force. The Department also supports Sections 2 and 3 of this bill, which prohibit the manufacture, sale and distribution of firefighting or fire-suppressing foam in Maine to which PFAS have been knowingly and intentionally added. Section 3 contains an appropriate exemption for the federal requirements outlined for aircraft rescue and firefighting at airports which require the use of PFAS containing firefighting foam. The Department agrees that if federal law should change to allow a foam alternative for airports that does not contain these substances, then Section 2 would apply Statewide without exception.

Section 4 requires that any discharge of firefighting or fire-suppressing foam that contains PFAS be reported to the Department as soon as practical but no later than 24 hours after the discharge occurs. The Department supports this reporting requirement and it is consistent with both the Governor's PFAS Task Force recommendations and the Department's proposed legislation LD 960, An Act To Require Reporting of Perfluoroalkyl and Polyfluoroalkyl Substances, PFAS, in Products and of Discharges of Firefighting Foam Containing PFAS. LD 1505 adds an effective date of January 1, 2022 to the foam discharge reporting requirement, whereas LD 960 would have reporting begin at the statute's effective date. In addition to the

discharge reporting requirement, the Department also recommends adding a semi-annual reporting requirement to the State Fire Marshall's Office beginning July 1, 2021 for all entities that possess Class B AFFF. Most of this foam is stored and used by the Maine Fire Service as well as the paper, petroleum, and air transport industries. The purpose of this reporting requirement would be to accurately determine the costs associated with any future take-back, disposal and replacement program, which would be necessary to develop the framework described in Section 4 of the bill. Without this requirement the Governor's PFAS Task Force AFFF Working Group did not have a means to compel data reporting in response to a survey to determine how much Class B AFFF material is stockpiled in Maine. As a result, they were only able to aggregate data from 60 of 305 fire departments and 8 of our 20 industry partners Statewide.

The Department is neither for nor against the remaining aspects of the bill that outline notification, recall, and reimbursement requirements for manufacturers of this type of foam. These aspects of the bill generate some serious questions regarding the enforcement of a manufacturers' notification requirement, foam product recalls and manufacturers' reimbursement responsibilities to distributors and end users of these products which may result in litigation for years to come. It also brings into question the liability involved when removing a potentially life-saving product from a firefighter's toolkit without immediately replacing it with something equally effective. The Department clearly understands how harmful this product is to the environment and potential impacts to public health but must also balance this with the understanding that these products are the most effective tool its end-users have available to extinguish Class B fires (defined as fires that involve flammable or combustible liquids, gases,

grease and similar materials, as well as rubber and plastics, particularly where there is the threat of reignition).

Finally, as it relates to Section 4 Framework and report, the AFFF Working Group of the Governor's PFAS Task Force has already recommended that any type of foam takeback, collection, replacement, storage, and disposal program would require substantial funding. Any foam takeback without the immediate replacement of an equally effective life-saving product may impact public safety, especially when a fire department has no funding available to replace it. Initial cost estimates for the disposal of PFAS containing AFFF and replacement foam are \$215,000 and \$1.85 million respectively based on the limited survey results referenced earlier.

Thank you for the opportunity to provide these comments. I would be happy to answer any questions.