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Testimony of Rep. Victoria Morales presenting

**LD 1532, An Act to Protect Maine's Air Quality by
Strengthening Requirements for Air Emissions Licensing**
Before the Joint Standing Committee on Environment and Natural Resources

Senator Brenner, Representative Tucker and esteemed members of the Environment and Natural Resources Committee, my name is Victoria Morales and I represent South Portland in House District 33. It is my distinct honor to present **LD 1532, An Act to Protect Maine's Air Quality by Strengthening Requirements for Air Emissions Licensing**.

I've lived in South Portland for 17 years with my husband and 3 school-age children. South Portland is a beautiful, densely populated city of 25,000 residents within approximately 14 square miles. While we love our City, there is something every resident will tell you - the odors in the air are unbearable at times. In fact, there are days when you can't even go outside with your children because the fumes are overwhelming. Ask anyone about this issue and they will tell you what I just did, particularly those who live, go to school, and work in close proximity to the 120 petroleum storage tanks in South Portland.

It wasn't until March of 2019 that the City of South Portland became aware that the EPA had filed a consent decree with an owner of petroleum storage tanks in the City, indicating in the decree that the company had been violating its emissions permit since at least 2013 - with the amount of volatile organic compounds (VOCs) being emitted more than double what it was permitted for. As you can imagine, this was an incredible shock to receive this information from the US EPA, not from the Maine DEP or the municipality, and to receive it so late in the process. We later learned that other violations were issued against another facility owner located in the City.

The tanks referenced in the decree contain bunker fuel and asphalt and are adjacent properties to two schools containing approximately 1,500 elementary and high school children and staff, our community center and senior programming, and within very close proximity to daycare centers, other public schools, parks, the Green Belt, senior living facilities and hundreds of homes.



What we have learned since the EPA violation is as follows, in summary fashion:

In just South Portland alone, six companies, 120 tanks, collectively, are permitted to emit almost 600 tons per year of volatile organic compounds (VOCs) and 104 tons of hazardous air pollutants (HAPs) per year.¹

How are emissions levels set?

Since 1968, emissions are set based on estimates from a calculation called AP-42 that is referenced in an EPA handbook. The calculation is designed to determine how much a facility might emit. These estimates are then used by the facility owner to apply for air emissions permits and also to seek renewal permits from the State. What has never been required, though, is actual testing to see if the calculation of emissions is accurate. This is unacceptable when we are talking

¹ Protect South Portland Oil Tank Information Packet
<https://mail.google.com/mail/u/0/#search/roberta/FMfcgxwLtkXpmHKBRmlGcxZCfpwfqBSL?projector=1&messagePartId=0.1>

about the dangerous contaminants we allow to be emitted in such close proximity to our children in schools and our homes.

I am sure you are asking yourself, how could this be that we don't require testing of contaminants? We test water for contaminants because we drink and swim in it, we test land for contaminants because we farm it and live, work, and play on it, and our regulations require significant mitigation measures to remedy the contamination we find as a result of testing. But we don't test the air we breathe, specifically the air that we know is contaminated, because we allow companies to contaminate that air to a certain level.

How did we get to this place? The EPA handbook from 1968 has an interesting note in the chapter on storage tanks. It states that the calculations used to provide the estimates were developed by the American Petroleum Institute, the largest U.S. trade association for the oil and gas industry.

In 2006, the EPA identified flaws with this 1968 calculation and found that 62% of the calculations were below average or poor. Yet, the status quo remains.

When air emissions permits and renewal permits are reviewed and granted in Maine, the DEP does not require that the applicant provide:

- 1) actual levels of contaminants emitted at each facility,
- 2) the quantity of emissions that are already permitted by various facilities in the surrounding area – in other words, the cumulative effect of the permitted emissions, or
- 3) the impact of the cumulative effect of permitted contaminants on the health of the humans living, working, and playing around them.

For example, the permitting analysis is the same for a one square mile area of a town with 20 applicants for 40 tons of emissions each, totaling 800 tons, as it is for just one applicant in the same square mile for 5 tons of emissions. Similarly, the analysis is the same if the applicant is located in an industrial or rural area or if they are located adjacent to and among thousands of homes and many schools, like it is in South Portland.

I am sure you are asking yourself, again, how could that be? If you knew this and your children went to a school with many oil tanks on the other side of the playground, this might make you very concerned. As probably the only city in Maine with so many people living, working, and going to school with these petroleum storage tanks in such close proximity, we are outraged by what has been allowed to continue, all without requiring any data.



You will likely hear from those in opposition today that testing is ineffective, testing is expensive and burdensome, testing will require hiring more staff, testing is not necessary because it may not solve all of the problems. You may even hear that the air is safe to breathe, although I cannot imagine how anyone, without actual data, would have the audacity and credibility to state as much.

For those that oppose testing, I would ask the Committee to ask them what they are afraid of and why they do not want to be transparent and show the extremely concerned residents they live next to that accountability is a good idea. For the DEP, I would ask the Committee to ask how many facilities of the 177 facilities that fall in the industrial petroleum storage facilities category would be impacted by the legislation.

The requests we are making in this bill are not new to the State. They are in fact the result of two years of learning about the problem following the EPA violations, studying the solutions, and working with the DEP regarding these requests. This legislation is the result of failed attempts to achieve any measure of accountability.

Instead of accountability, the kinds of responses South Portland has heard for the past two years, and that we fully expect to hear today from the regulators and those being regulated, are responses designed to maintain the status quo.

What we are asking you to do today is the opposite of maintaining the status quo of a system that has existed since 1968 and was set up by the very industry we are seeking to regulate today – a system based on estimates and no actual testing.

You know the old saying: We cannot solve what we don't measure. But first, we have to admit that we have a problem to solve in order to move forward here. Unfortunately, we may still be stuck at this phase.

I submit to you today that it is unacceptable to assert that there is no problem given the context we are in: EPA investigations for almost a decade, violations issued, the continuation of offensive smells coming from the storage tanks that correlate with filling the tanks and other activities, science that confirms these violations, and a system that doesn't require any actual data – still.

What is clear from the last two years is that the public has lost its trust in the State's ability to keep our air safe and provide accountability and transparency. This legislation aims to change that, to center our people's health and well-being in Maine's air emissions process.

Additionally, there are procedural flaws in the process that do not allow any municipality and/or community members involved in DEP adjudicatory hearings to provide comment and have those comments be given weight in the decision-making process. They are allowed to provide comments at a public meeting, if one is granted, but there is no weight given to their comments, which do not even make it into the administrative record when final determinations are made. That must be changed. The voices of the people breathing contaminated air must be heard when we are regulating the producers of the contamination. I would argue the people's voices are the most important – for isn't it true that the regulations exist, ostensibly, to protect human health?

The Maine Supreme Judicial Court has stated that the only role of the government is to protect the health, safety, and welfare of the people. This legislation fits squarely within that duty and is why I am submitting this legislation to you today.

The amendment I am presenting to you today, at its core, requires the DEP to use a human health standard for setting Clean Air Act emission limits using an EPA-approved model, requires facility owners to actually test their emissions, and, if a facility exceeds its emissions, the bill requires the facility owner to bring its facility into compliance by lowering its emissions, either through production changes or installing emission control technology.

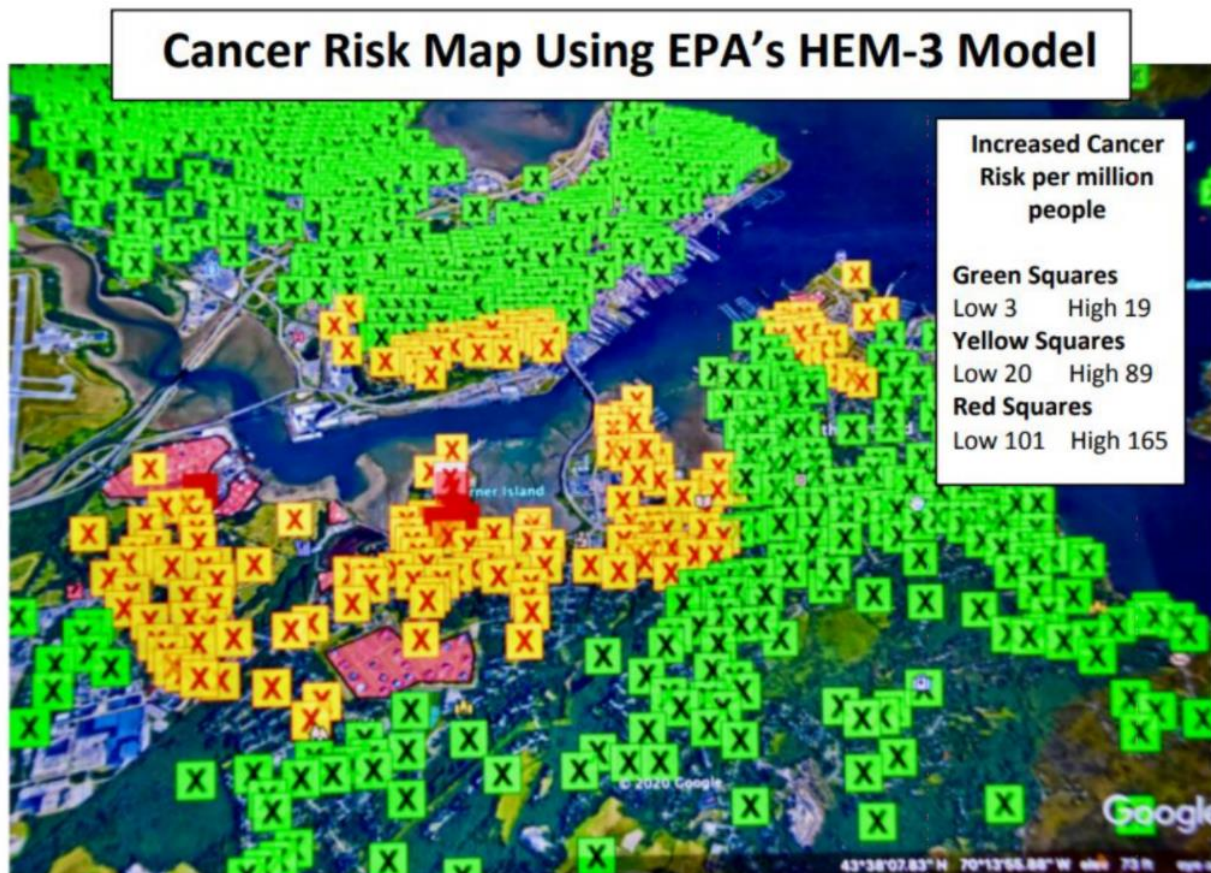
What facilities are subject to the standards set in this bill?

This bill applies only to Clean Air Emission permit holders in the industrial and petroleum storage category that are permitted to emit five tons of contaminants or more and are located within one mile of daycares, schools, senior living, and 100 or more residences. I believe this will apply to less than 100 of the total 660 permitted emitters in the State – those that are closest to people when they emit contaminants.

How are emission limits set?

This bill requires that the DEP utilize a cumulative health impact assessment EPA-approved model to set emissions limits, such as the Human Exposure Model (HEM-3 or 4) EPA-approved model.

As to the HEM-3 or 4 EPA-approved model, Professional Engineer David Falatko, who will testify today, conducted a HEM-3 cumulative analysis to show the results in South Portland. The below map summarizes the areas at greatest risk for increased cancer incidence by color. The model clearly shows that the permitted emissions at the existing tank farms presently represent an increased unacceptable risk of cancer to fence-line neighborhoods.²



² It is important to note that Maine CDC differs from Massachusetts and other states when it comes to acceptable cancer risks. Maine's acceptable risk is 10 additional cancers per one million in population. Massachusetts and other states consider the acceptable risk to be one additional cancer per one million in population.

How are permitted emission limits monitored?

This bill requires that the facility owners subject to this section install fence-line monitoring of emissions to assure compliance.

How are violations handled?

This bill provides for fines consistent with the Clean Water Act and allows the DEP to suspend or revoke permits if the facilities do not lower their emissions to the permitted levels within 90 days.

Whose voices do we allow at the table?

This bill allows the municipality and its residents and witnesses within one mile of the permitted facility to comment at adjudicatory hearings on permits and permit renewals.

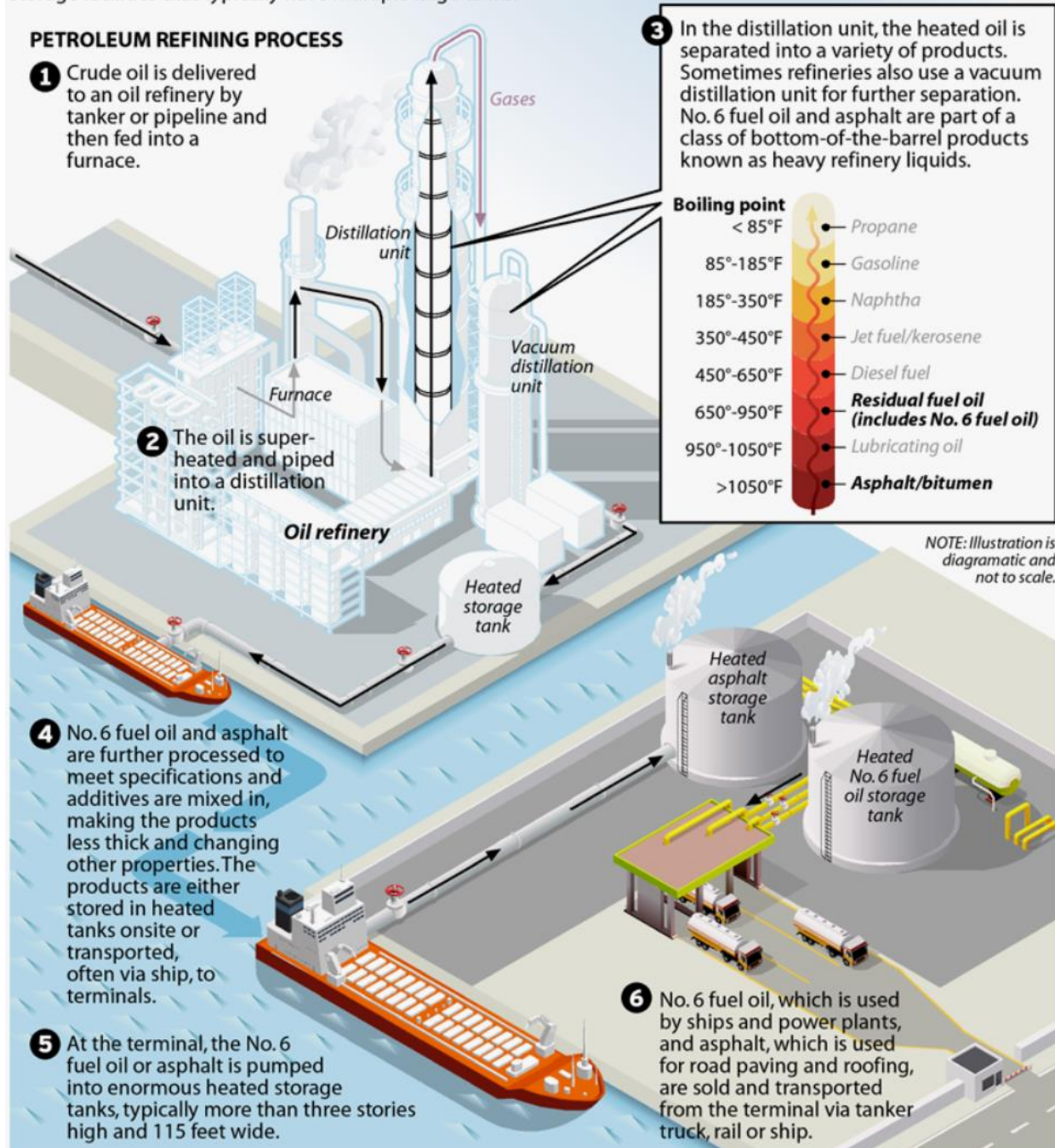
Thank you for the opportunity to present these important policy changes. I will be paying close attention to the testimony, questions and guidance from the Committee and look forward to working with all interested parties as we move forward from here to the work session.

*Visuals below to see how the petroleum tank farm process works.

How No. 6 Fuel Oil and Asphalt are Produced and Stored

No. 6 fuel oil and asphalt are refined from crude oil at oil refineries across the country. These products, which are thick and viscous, must be heated to stay liquid. Once produced, the majority of No. 6 fuel oil and asphalt is stored in heated tanks at terminals— industrial storage facilities that typically have multiple large tanks.

PETROLEUM REFINING PROCESS



SOURCE: ICN research by JULIA KANE

PAUL HORN / Inside Climate News