

Office of Policy and Legal Analysis

Date: May 12, 2021

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 1600, An Act To Investigate Perfluoroalkyl and Polyfluoroalkyl Substance Contamination of Land and Groundwater (Gramlich)

Summary of bill

This bill creates the Land Application Contaminant Monitoring Fund to be used by the DEP to test and monitor soil and groundwater for PFAS and other contaminants and for other related activities. The fund is funded by a \$10 per ton fee assessed on any disposal of septage, industrial sludge, municipal sludge, bioash, wood ash or other residual, which is material generated as a by-product of a nonagricultural production or treatment process that has value as a source of crop nutrients or soil amendment.

This bill also requires the DEP to test land that has received residuals for PFAS and other contaminants and to notify the DACF of the findings of any contamination of land currently being used for the production of agricultural products.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Representative Gramlich, Representative Parry, Penobscot Nation, Conservation Law Foundation, Defend Our Health, Don't Waste ME, Institute for Agriculture and Trade Policy, Maine Green Independent Party, Maine Organic Gardeners and Farmers Association, Peace and Justice Center of Eastern Maine, Sierra Club-Maine Chapter, additional members of the public.

Opponents – Maine Dairy Industry Association, Maine Rural Water Association, Maine Water Environment Association.

Neither for nor against – Department of Environmental Protection, Maine Municipal Association.

Notes, issues and proposed amendments

1. *Sponsor's proposed amendment* – along with her hearing testimony, the sponsor distributed a proposed amendment to the bill.
2. *DEP recommendations*
 - Focus on testing of sludge and septage as residuals most likely to be of concern;
 - Clarify whether intent is to compel investigation of sites where residuals were received through DEP's right of inspection and entry under §347-C in the even a site is no longer licensed/under private ownership;
 - Amend bill to allow for site prioritization based on a system to be developed by DEP (development in process now);
 - Adjust proposed testing completion date to reflect a prioritized investigation approach, personnel/contracting limitations and time constraints involved;

- Adjust fee to focus on “handling” rather than “disposal” and account for differences in reporting metrics (tonnage/cubic yards vs. gallons); and
- Need to clarify when fee is to begin to be assessed?

3. *MDLA proposed amendments*

- Provide for a greater role by DACF in the testing program;
- Clarify intended scope of term “residual” as used in testing program language; and
- Clarify intended meaning of “other contaminants” as provided in scope of fund and testing program (concern over applicability to other regulated substances allowed for agricultural use).

4. *MRWA/MWEA funding concerns* – notes that the primary funding source of this program would be the sludge/septage disposal fee. Both entities assume that these fees will be primarily paid by utility ratepayers, in other words, by Maine residents who will see tax increases as a result. Although these entities do not object to a testing program for PFAS contamination, they suggest that the fund should be capitalized by federal and/or state funding and, if possible, the manufacturers of these chemicals.

DEP similarly assumed in its testimony that these fee amounts, estimated to be around \$3.6 million annually, would be passed onto utility ratepayers (for sludge) and homeowners/commercial businesses (for septage).

5. *MWEA, additional concerns*

- Term “disposal” in fee provision is not clearly defined, but is assumed to include all forms of biosolids and sludge management including beneficial reuse;
- \$10/ton fee is excessive, twice as much as the current \$5/ton sludge surcharge under 2203-A(1).
- Provision allowing transfer of unspent monies to Uncontrolled Sites Fund could lead to a situation where fees paid by water utilities are used to remediate sites contaminated by substances other than PFAS for which water utilities are not responsible parties. Transfer provision seems unnecessary, but if it must be kept in, consider including spending restrictions in Uncontrolled Sites Fund limited to PFAS-contaminated sites.

6. *Technical note (analyst) – fee provision*

- In the bill, the \$10/ton fee is to be imposed on “any disposal” of these residuals.
- Per 1303-C(12), “disposal” is defined to mean:

Disposal" means the discharge, deposit, dumping, spilling, leaking or placing of hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage into or on land, air or water and the incineration of solid waste, refuse-derived fuel, sludge or septage so that the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel, sludge or septage or a constituent of the hazardous, biomedical or solid waste, waste oil, refuse-derived fuel,

sludge or septage may enter the environment or be emitted into the air, or discharged into waters, including ground waters.

- Unclear which entities this fee is to be imposed on or at what facilities/locations (licensed or not) the fee is to be collected. For reference, waste handling fees in §2203-A are imposed on solid waste “disposed of at commercial, municipal, state-owned and regional association landfills.” Those fees are collected by a landfill from an entity disposing of waste and remitted to the DEP.
- Note that proposed amendment changes the activity regulated from “disposal” to “handling”. Per §1303-C(14), “handle” is defined to mean:

"Handle" means to store, transfer, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of or treat.

This category of regulated activity appears to be even broader than the term “disposal,” which that includes and also begs the same question about which entities are subject to the fee and where the fee is to be collected/imposed.

Fiscal information

Not yet available from OFPR.

DEP noted in its testimony that it would estimate annual fee revenue from the proposed fee in the vicinity of \$3.6 million and recognized that current DEP resources would not be adequate to implement a program of this magnitude. DEP also noted that the Governor will be proposing significant funding for this work in the budget change package.