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DEPARTMENT OF ENVIRONMENTAL PROTECTION



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TESTIMONY OF
DAVID BURNS, DIRECTOR
BUREAU OF REMEDIATION & WASTE MANAGEMENT
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING NEITHER FOR NOR AGAINST L.D. 1600

**AN ACT TO INVESTIGATE PERFLUOROALKYL AND POLYFLUOROALKYL
SUBSTANCE CONTAMINATION OF LAND AND GROUNDWATER**

SPONSORED BY REPRESENTATIVE GRAMLICH

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

**DATE OF HEARING:
MAY 7, 2021**

Senator Brenner, Representative Tucker, and members of the Committee, I am David Burns of the Department of Environmental Protection speaking neither for nor against L.D. 1600.

This bill would require the Department to develop and implement a program to test soil and ground water for perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other contaminants identified by the Department at locations historically licensed or permitted to land apply residuals. The Department supports PFAS testing at these locations but has several concerns with the approach proposed in this bill, which the Department offers to work with the sponsor and the Committee to address. They involve prioritization of sites for testing, practicality of the testing schedule, and the absence of time to remediate highly contaminated sites if discovered.

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Since LD 1600 includes a proposed fee on residuals we will also include a preliminary discussion of the fiscal impact in our testimony.

Prioritization of Sites for Testing

The bill requires the Department to prioritize locations that received industrial residuals prior to 2015 and complete testing of these locations by July 31, 2022, with testing of the remaining locations that received residuals prior to 2019 by July 31, 2023. Based on the Department's records, this would require testing of approximately 700 sites, with each site involving one or many parcels with potentially separate owners. Some locations were historically licensed but have since surrendered their licenses and all or portions of these locations may have been sold and are now under private ownership. 38 M.R.S. §347-C gives the Department the right of inspection and entry. However, it is unclear if the draft language's use of the phrase "historically licensed or permitted to apply residuals" is meant to compel investigation of this group of sites under the provisions of 38 M.R.S. §347-C.

Current evidence from our work in the Fairfield area confirms the need to investigate licensed residuals land application sites. However, as currently drafted LD 1600 would have caused us to defer testing fields near Ohio Hill Road in Fairfield until the second year of the proposed program. This is because these sites did not receive industrial residuals as prioritized by this bill.

Based on testing done on residual materials during 2019 and 2020, the results indicate that sludges contain PFAS at varying levels, but most are at concentrations which could impact groundwater. Very limited testing of septage done to date indicates that septage may also contain PFAS at levels of concern, but further testing is necessary before reaching a definitive conclusion. Testing so far on bioash does not indicate this material contains PFAS at levels warranting testing. At this time the Department does not have information regarding levels of PFAS associated with wood ash but does not anticipate that wood ash would contain PFAS at levels warranting testing. Based on this information, the Department recommends that the bill focuses on sludges and septage as the residuals that are most likely to be of concern.

Consistent with our methods in all of our remediation programs, the Department is currently developing a prioritization system for testing land application sites. We expect to complete that work soon and recommend testing locations based on this system once finalized. Our approach includes evaluating criteria, including known levels of PFAS in residuals, quantity of residuals and years applied to the land, proximity to receptors such as private wells, and former industrial inputs to the associated wastewater treatment plant. It is important to remember that we need to evaluate locations that may have received residuals 30 to 40 years ago, so historical industrial or commercial inputs to the associated wastewater treatment plants need to be considered. The Department recommends amending the bill to allow for site evaluation based on a prioritization system to be finalized by the agency.

Practicality of Testing Schedule

As drafted, the amount of work required under the bill within the specified timeframes is ambitious. The Department's ability to quickly acquire staff resources and/or establish contracts with the private sector is a concern. To the extent possible, we would pre-plan our efforts to attain resources as soon as possible. Also, locations with multiple fields under varying ownership will take time for the Department to gain access to for testing. Another factor is that soils investigation is difficult during the winter months when the ground is frozen, so we anticipate that very little soils and groundwater work could be accomplished during the months of December through March, depending upon the weather in any given year. Regardless of whether the Department uses a combination of staff resources and private contractors to perform this work, with the volume of sites needing investigation and the seasonal limitations on portions of the work, it will be difficult at best to meet the proposed deadlines. Recognizing the need to evaluate the proposed locations, the Department recommends adjusting the proposed completion date to reflect a prioritized investigation approach, the limitations of hiring personnel or contracting the necessary work, the time involved to gain access to locations under multiple ownership, along with seasonal considerations.

Absence of Time to Remediate Highly Contaminated Sites if Discovered

LD 1600 requires the Department to complete testing of all locations, regardless of site type, by July 31, 2023. For reasons outlined below we believe this date should be modified. The bill prioritizes only the testing of locations that received residuals as part of a land application program, without consideration for the need to provide PFAS treatment if a highly contaminated site is discovered during the investigation. Simply put, if LD 1600 was in effect when the Department conducted its initial screening in Fairfield, the aggressive directive of this bill would have caused us to move on to the next site to be tested instead of expanding our investigation and identifying nearby drinking water wells with PFAS exceedances. Nowhere in the bill's drafted language is remediation of sites, such as the installation of filter systems, contemplated. Test results from the work in Fairfield identified some of the highest concentrations in drinking water that we have seen in Maine. These levels warranted immediate action but would be problematic for the Department to address if our resources are required to be directed to focus on only investigating sites. Our experience to date indicates that our work related to PFAS is of significant public interest and is tracked accordingly by both environmental groups and the public, with an expectation that identified impacts and risks from PFAS will be remediated upon discovery. We support the need to address contaminated drinking water supplies in a timely manner to ensure that the public has safe water to drink.

Fiscal Impact

For the Committee's consideration and for the reasons outlined below, the Department estimated potential revenue from the proposed \$10 per ton fee for the handling of sludges and septage. The Department estimated the fee based on the term "handling" as opposed to "disposal", as disposal only refers to landfilling or incineration of waste and would not capture land application of residuals, such as occurs routinely with septage, whereas handling is a broader term under solid waste statutes and rules. Estimating projected revenue was difficult and subject to application of a consistent set of assumptions to convert the amount generated to tonnage to apply the proposed fee. This difficulty is due to septage and some sludges generally being reported in gallons and residuals such as sludges generally being reported in cubic yards or tons. The Department

suggests modifying the bill language to account for these differences in reporting units if a fee is established. Based on the applied assumptions and 2019 data, for sludges and septage the Department estimates annual revenue in the vicinity of \$3.6 million. Presumably the associated \$3.6 million cost would be passed on to ratepayers in the case of wastewater treatment plants handling sludge and to homeowners or commercial businesses in the case of septage handling. It is not clear in LD 1600 when this fee would begin.

Current Department resources would not be adequate to implement a program of this magnitude. However, the Department recognizes the need to evaluate locations historically licensed or permitted to land apply residuals.

Addressing PFAS contamination is a high priority for the Governor and she will be proposing significant funding for this work in the budget change package. This is consistent with recommendations from the Governor's Task Force Final Report,¹ including but not limited to, testing private drinking water for PFAS in areas where groundwater is likely to have been impacted by PFAS at unsafe levels (including residual land spreading sites), accelerating efforts to identify prioritized locations, and to increase funding to support this work.

Thank you for the opportunity to testify today. I would be happy to answer any questions you may have, either now or at work session.

¹ Managing PFAS in Maine, Final Report from the Maine PFAS Task Force, January 2020.