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## **Testimony of Representative Ralph Tucker Introducing: LD 164, "An Act To Establish Maximum Contaminant Levels under the State's Drinking Water Rules for Certain Perfluoroalkyl and Polyfluoroalkyl Substances" February 9, 2021**

Good morning Senator Claxton, Representative Meyer and members of the Health and Human Services Committee. I am Rep. Ralph Tucker and I represent House District 50, part of Brunswick. I am pleased to come before you today to introduce LD 164, "An Act To Establish Maximum Contaminant Levels under the State's Drinking Water Rules for Certain Perfluoroalkyl and Polyfluoroalkyl Substances."

As detailed below, PFAS chemicals are very nasty and the state should adopt a maximum contaminant level for several of them in our drinking water. Based on the science, that level should be set at 20 parts per trillion (ppt) maximum containment level. Here are the reasons why.

### **1. Chemicals in the family of Per-and Polyfluoroalkyls (PFAS) constitute a risk to human health.**

PFAS is not a single chemical but a family of similar chemicals. Some chemicals in this family have been studied more than others. Some domestic producers have discontinued two of the most studied chemicals, but others have not, particularly foreign producers. Related chemicals continue to be used, and even those used in the past continue to pollute our fields and waters.

A massive review of toxicological studies is found in the draft report, *Toxicological Profile for Perfluoroalkyls*, June 2018, from the Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services. For some reason, it was not issued finally. This report is too much to read, but a great reference. The index and Chapter 1 are useful to browse:

<https://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=1117&tid=237>

Animal studies have shown increases in testicular, liver and pancreatic tumors. One of the largest human epidemiological studies ever conducted, the C8 Science Panel, which looked at PFAS exposures from contamination around a factory in West Virginia, concluded that PFAS chemicals were associated with: diagnosed high cholesterol, ulcerative colitis, thyroid disease, testicular cancer, kidney cancer, and pregnancy-induced hypertension. See probable link reports:

[http://www.c8sciencepanel.org/prob\\_link.html](http://www.c8sciencepanel.org/prob_link.html)

The enforceable Maximum Containment Level (MCL) for several PFAS compounds of 20 parts per trillion (ppt) is justified by the toxicology.

**2. The Maine PFAS Task Force Report gives an excellent summary of PFAS and Maine's history with PFAS. In many ways, we are ahead of other states in confronting this crisis.**

<https://www.maine.gov/pfastaskforce/materials/report/PFAS-Task-Force-Report-FINAL-Jan2020.pdf>

However, a glaring weakness in this year-old January, 2020 report is the failure to recommend an enforceable drinking water standard in line with other neighboring states. The members of the task force were cautious and did not reach a consensus on an enforceable standard.

The need for inter-state conformity has increased since last year. Since last year's Task Force Report, Vermont formally adopted a 20 ppt standard for 5 types of PFAS on March 17, 2020 and Massachusetts adopted 20 ppt for 6 types on October 2, 2020. Protective standards were also adopted by New Jersey on June 1, 2020; NH on July 26, 2020; NY on July 30, 2020; and MI on August 3, 2020.

**3. Maine CDC has fallen behind other neighboring states in setting an enforceable standard for PFAS in drinking water.**

Within its resources, the Maine Center for Disease Control has done a good job in communicating with affected citizens, responding to inquiries, calming fears and analyzing links between PFAS and food products, such as milk. However, the time has come to set a statewide enforceable standard for drinking water. Administrative rule-making could have commenced long ago.

The proposal of using the current Federal EPA “guideline” of 70 parts per trillion is outdated. The Federal government for the last 4 years has done a lot of research, as in the 2018 ATSDR report cited above, but the EPA has taken little action on the PFAS crisis, and provided little coordination for the states on enforcement and clean-up.

Maine’s Department of Environmental Protection, in collaboration with other New England states, has appealed to the new head of the Federal EPA for leadership. See the letter in the link below to the new EPA Chief Michel Regan. This excellent letter succinctly outlines the national PFAS crisis, the need for a united response, the states’ lack of resources and the need for Federal help:

<https://www.maine.gov/dep/spills/topics/pfas/PFAS-Letter-to-EPA-Feb-1-2021.pdf>

However, there is no certainty how fast the Federal EPA will exercise its authority. Things move slowly in Washington, D.C.

#### **4. In the delay caused by Federal inaction, Maine should adopt the drinking water standards studied and applied by neighboring states.**

LD 164 would adopt exactly the same enforceable drinking water standards as Massachusetts and very similar to Vermont’s. New Hampshire’s new statutory standard is in some ways even more rigorous, signed by Governor Sununu on July 23, 2020, six months ago. The New Hampshire law sets a low standard for 4 PFAS chemicals, but does not limit combined totals. Other presenters will have charts that show the state-by-state comparisons for these and other states.

#### **5. Cost of remediation should not be the critical factor in setting a drinking water standard. The biological risk to the people of Maine should be the first consideration.**

The potential cost of PFAS remediation is not yet fully known. Other neighboring

states have the same problem. Much testing remains to be done. The hotspots so far detected have often had test results far in excess of even the 70 ppt guideline.

However, if remediation is done to bring testing back to only a 70 ppt level, and then rule-making shows that the 20 ppt is fully justified by human health concerns (as other states and many physicians have determined), then we will have to go back again and re-do and re-remediate all those early sites, at additional costs.

Right now, DEP might not remediate unless the testing is in excess of 70 ppt. Currently, special funds from the DEP's waste management fund are being utilized for investigation and clean-up. Modest additional special funds for remediation, possibly from the Uncontrolled Hazardous Substance Fund, may be available pending further legislation. Long term funding would have to be assessed as the situation clarifies.

## **6. A relaxed state agency rule-making process would take too long.**

Ordinarily, the administrative process for setting enforceable chemical standards (MCL) would be initiated by the expert administrative agency, in this case the Maine CDC, using the careful rule-making procedures under the Administrative Procedures Act. However, too much time has slipped by.

We have been aware of Maine's PFAS crisis for a number of years, initially on our former military bases around 2014-2015, *but no enforceable drinking water standard for PFAS chemicals was initiated.* We now have major hot spots at the former AF Base in Limestone, the former BNAS in Brunswick and at the Navy Radio Station in Cutler. PFAS at these sites was due to use of PFAS in firefighting training.

After PFAS was discovered in milk and on farmland, and in a number of private wells, *still no enforceable standard was initiated administratively.* In the meantime, other states have done the research and the toxicology work to establish reasonable MCL standards, and we can build on their work.

Maine does not even have a MCL for PFAS in drinking water at this time, although neighboring states do. The other legislative proposal before you today, LD 129, does set an interim standard for community and certain other water systems, but not for residential and other wells. More significantly, the limit for those defined sources would only be at the Federal guidance level of 70 ppt, less safe and protective than neighboring states.

Under LD 129, the Department of Health and Human Services (CDC) would not even have to *initiate* MCL rulemaking until August 1, 2023. And the final rule is not required until June 1, 2024.

**7. Failure to align with other New England states might affect agricultural products exported across state borders.**

What if NH, VT and MA have a 20 ppt MCL, or lower, and Maine stays with 70 ppt Federal “guidance”? Will they take our water? Will they take our milk? Potatoes?

There could be some link between PFAS drinking water standards and the acceptable health standards for agricultural products. This is a complex calculation with many factors and variables. Whether a 20 ppt rather than a 70 ppt standard could change the action levels for various foods is uncertain. The CDC is attuned to this link, and has done analysis in this field, perhaps ahead of other states.

Concern about this analysis, or concern about the work in calculating and coordinating action levels for food products (due to a common New England 20 ppt MCL for drinking water) must be balanced against the danger that other states with stricter drinking water standards might have concern with our products.

For the above reasons, please vote in favor of LD 164.