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SPEAKING IN SUPPORT OF L.D. 1911

AN ACT TO PROHIBIT THE CONTAMINATION OF CLEAN SOILS WITH SO-CALLED FOREVER CHEMICALS

SPONSORED BY REPRESENTATIVE PLUECKER

BEFORE THE JOINT STANDING COMMITTEE
ON
NATURAL RESOURCES

DATE OF HEARING:

JANUARY 24, 2022

Senator Brenner, Representative Tucker and members of the Committee, I am Paula Clark of the Department of Environmental Protection speaking today in support of LD 1911, with some requested amendments. DEP is already fully engaged in and continues to work to achieve what we understand to be the goals of LD 1911. Although the Department is in full support of the intent of this bill, the timeframe imposed for its implementation would not allow for adequate consideration of important data and information that is currently being developed to support rulemaking.

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The bill proposes that:

- The Department may not license land application or distribution of sludge or sludge-derived compost unless the material is tested for all PFAS substances “that may reasonably be quantified” by a certified laboratory, and unless established screening levels are not exceeded;
- The Board adopt rules requiring at least annual testing of sludge or sludge-derived compost;
- The Board amend Appendix A of the Department’s Chapter 418 by January 1, 2023 to update existing PFAS screening levels (PFOA, PFOS and PFBS) and establish screening levels for 4 additional PFAS substances.

In 2019, the Department directed “licensed facilities that land apply, compost or process sludge in Maine” to update their sampling and analytical work plans to include ongoing sampling and analysis for PFOA, PFOS and PFBS. These revised plans have been reviewed and approved by DEP and include annual testing requirements. Certified laboratories are routinely reporting results for between 26 and 32 PFAS substances. If testing of sludge or sludge-derived compost indicates that any PFAS screening level has been exceeded, the Department currently requires that soil pollutant loading rate calculations be performed to determine if soil pollutant concentrations would exceed the screening levels and if distribution of material can resume or not. The Department is evaluating this approach in view of the data we are collecting and the results of ongoing studies.

The volume of sludge distributed and utilized in Maine has decreased in recent years, particularly the volume land applied for agronomic utilization. However, further limitations on the utilization of this material must include planning for the immediate, practical impacts that elimination of waste handling options could have on the State. The Department recommends a phased approach to accommodate the necessary planning effort, but also provide immediate public health protections. The Department recommends prohibitions on: 1) distribution of sludge-derived compost exceeding any

established screening level that is intended for use in residential settings, and 2) licensing of any proposed new or expanded land application or compost facilities/activities involving sludge or sludge-derived compost that exceeds any established screening level. Further, the Department proposes to develop a plan and associated timeframe to eliminate the land application and distribution of sludge and sludge-derived compost exceeding established PFAS screening levels. The draft plan and recommendations would be submitted to the Committee later this year.

I would note that the bill as written would not affect existing licenses. Section 1 provides, in part, that: “The department may not license the land application or distribution of sludge or sludge-derived compost” that exceeds screening levels. Since existing facilities and distribution activities are already licensed, they would not be subject to Section 1 requirements unless the Department was considering a license modification request. Existing licenses are subject to the Department’s rule for agronomic utilization, however, which applies screening levels for PFAS.

The Department’s current screening levels are based on 2018 estimates of how PFAS in soil leaches into groundwater. A PFAS leaching to groundwater evaluation by the Department has been in progress since 2020 to update those modeled values, involving soil and groundwater collection at Maine field sites; additional field sample collection will occur this year. The Department also initiated a PFAS in soil background study in 2021; currently study data are being validated for inclusion in an initial report. Some follow-up testing is planned to assess variability and leaching potential of background soils. The Department is also evaluating whether the groundwater model used in establishing the current Appendix A screening standards for PFOA, PFOS and PFBS remains the appropriate model to use, or if the standards should be revised using a different approach. The answer to this question is, in part, dependent on the results of the ongoing work. DEP is collaborating with other states on modeling of PFAS leaching.

Additionally, the Department relies upon the Maine Center for Disease Control (CDC) to identify toxicity values for inclusion in screening level calculations. In May 2021, the

Agency for Toxic Substances and Disease Registry (ATSDR) published an updated toxicological profile for 12 perfluoroalkyls. In November 2021, the U.S. Environmental Protection Agency (EPA) recommended their Scientific Advisory Board consider drastically lower reference doses for PFOA and PFOS than those EPA used to establish a drinking water guideline of 70 ppt in 2018. Scientific information about the effects of PFAS on public health that is critical to the State's effort to update screening values is incomplete and evolving rapidly. The Department's screening levels in Chapter 418 are indisputably outdated but are still some of the only regulatory screening levels for sludge and compost in the country.

In 2022, the Department plans to evaluate background soils, leaching to groundwater, and emerging toxicological information to develop revised and new PFAS screening levels which the Department anticipates will be lower. The Department also plans to engage stakeholders to develop strategies for managing sludge that can no longer be agronomically utilized. To allow for appropriate development of science-based screening levels the Department requests that the deadline for adoption of revisions to Chapter 418 in Section 2 of the bill be revised to a deadline for initiation of rulemaking no later than December 31, 2023.

Thank you for the opportunity to provide testimony. I would be happy to answer any questions you have now; I and other Department staff will be available at the work session if you wish to discuss any of these issues in more detail.