



15 University Drive
Augusta, Maine 04330
207-623-9511

March 17, 2021

Honorable Anne Carney, Senate Chair
Honorable Thom Harnett, House Chair
Joint Legislative Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: LD 363 An Act Regarding the Statute of Limitations for Injuries or Harm Resulting from Perfluoroalkyl and Polyfluoroalkyl Substances, LD 627 An Act Relating to the Statute of Limitations for Injuries or Harm Resulting from Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Senator Carney and Representative Harnett:

The Maine Water Utilities Association (MWUA) appreciates the opportunity to provide testimony neither for/nor against LD 363 and LD 627.

About MWUA. The Maine Water Utilities Association is a nonprofit association based in Augusta that provides support for water works professionals throughout the State of Maine in advocating for safe drinking water through educational and technical programming as well as advocacy on the local, state, and national level. The Association was formed in 1925 and counts approximately 109 water utilities in Maine as members.

Discussion. Managers and operators of water and wastewater systems are committed to protecting public health and the environment. Water and wastewater systems are neither producers or users of Per and Poly-fluoroalkyl Substances (PFAS). Unfortunately, some water and wastewater systems have become unwitting conveyors of this material.

Testing for PFAS in drinking water, wastewater and bio-solids has been occurring for less than 10 years and only in the past several years has the testing technology been adequate to identify PFAS at very low levels. Only about 35 of the thousands of PFAS compounds are currently tested for in drinking water.

If a water system's source of drinking water was contaminated with PFAS, that contamination was likely delivered to consumers. If the water utility removes the PFAS through its treatment process, the PFAS will be found in the residual material it must dispose of. If a wastewater utility receives PFAS in the wastewater it receives from customers, that PFAS will be found in the wastewater discharge as well as in the bio-solids it must dispose of.

While we strongly support the effort to hold polluters and manufacturers responsible, we are concerned the broad language of LD 363 and 627 may have an unintended consequence of subjecting water and wastewater utilities to liability exposure, including a costly duty to defend

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in court, for the activities of others over which utilities have little control. As the local entity, utilities may be the easier target but are not the proper target of litigation.

We do appreciate that both bills include language expressly stating that the extended “discovery rule” for PFAS will not supersede applicability of the Maine Tort Claims Act. However, this exemption does not cover water utilities that are operated by private companies. We believe such water utilities also need the same protection afforded to quasi-governmental water districts and municipal water departments under this bill. For this reason, we respectfully request that language be added to exempt “water utilities” from the extended discovery rule of this bill so that all water system are treated the same, regardless of the form of ownership.

Conclusion. We appreciate the opportunity to provide commentary on this bill, and we again encourage the Committee to revise the bill to ensure that all water utilities are treated equally.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Roger Crouse". The signature is fluid and cursive, with the first name being more prominent.

Roger Crouse,
Legislative Committee Chair, Maine Water Utilities Association
General Manager, Kennebec Water District

cc: Bruce Berger, Executive Director
James I. Cohen, Verrill Dana, LLP, Legislative Counsel