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**TESTIMONY OF MELANIE LOYZIM, DIRECTOR
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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**SPEAKING IN OPPOSITION TO L.D. 1181
AN ACT TO FURTHER STRENGTHEN THE PROTECTION OF PREGNANT WOMAN
AND CHILDREN FROM TOXIC CHEMICALS**

SPONSORED BY SENATOR GOODALL

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

DATE OF HEARING: APRIL 11, 2013

Senator Boyle, Representative Welsh, and Members of the Committee, I am Melanie Loyzim, Director of the Bureau of Remediation and Waste Management speaking in opposition to LD 1181.

The Department has a number of concerns with the bill, which would make significant changes to the state's existing program for Toxic Chemicals in Children's Products. Our current program is the result of extensive work done by all the interested parties and this Committee during the 125th legislative session, just two years ago. A great deal of time and effort was spent by everyone to reach a compromise that maybe not everyone was happy with, but that provided a reasonable structure and clear direction for the program. Now, the bill before you, LD 1181, seeks to change the entire scope and

implementation of the current program, and would require significant additional state resources to carry out for the foreseeable future.

Since passage of the Toxic Chemicals in Children's Products law in 2008, and its amendments in 2011, a great deal of work has been done by the Department, the Maine Center for Disease Control (CDC), and many others to identify potentially harmful chemicals in consumer products and to reduce exposure of children in Maine to chemicals of high concern. Accomplishments to date include:

- Reviewing health and product information for hundreds of chemicals in thousands of consumer products
- Establishing lists of chemicals of concern and chemicals of high concern, to inform consumers and encourage manufacturers to seek safer alternatives
- Promoting two chemicals to priority status
- Completing numerous rulemakings, including sales prohibitions, fees, and information reporting requirements
- Conducting outreach and providing assistance to regulated manufacturers across the globe
- Analyzing reports from 32 manufacturers of over 700 product/product categories containing BPA and NPE
- Reviewing and completing an Alternatives Assessment for BPA in infant formula and baby food packaging.
- Enforcing reporting, fee payment, and sales prohibition provisions
- Suggesting legislation to better implement the program, including LD 373, which seeks to clarify that products subject to regulation entering the market after the 180-day reporting period are still required to report.
- Recommending in our "Fees: Chemical Use in Children's Products" report changes to statute that allows rulemaking for fees to be routine technical in order to provide a more expedited approach to correct the rule when issues are identified. This report also identified issues relating to the collection of fees and

highlights changes that will need to be made to Chapter 881 to allow for fees to be distributed equitably, rather than equally among all manufacturers, and allow for fee waiver requests to occur before payment is required.

The scope of this program is unique at the Department, as it requires staff to investigate consumer products and interact with a regulated community that crosses many manufacturing sectors all around the world. There is no shortage of work remaining under the current law, including implementation of recent rule changes to prohibit the sale of infant formula and baby food packaging containing BPA which were presented for your consideration in LD 902 yesterday.

The law currently in place represents compromise by all parties on how chemicals in children's products should be regulated in Maine. Now, after only two years, LD 1181 looks to change this program again in a manner that will require far more resources than the Department currently has available. This bill is complex and includes many interwoven components that would greatly expand the reach of the current program, the consequence of which would be a big government program focused on churning out rules and processing paperwork, rather than engaging in meaningful analysis and informed decision-making.

As has been seen with BPA, promoting a chemical of high concern to priority status triggers a suite of additional requirements for program implementation. We expect to go into more detail on the each individual section of the bill at work session, but in general LD 1181 would require the Department to address two new priority chemicals every year. For each chemical, this includes rulemaking, outreach and compliance assistance, processing reports, collecting fees, reviewing alternatives assessments, evaluating potential sales prohibitions, and responding to citizen petitions. The current law allows the Department, the Maine CDC, and the Board of Environmental Protection to carefully assess information to determine how a particular chemical and the products that contain it should be regulated under the law. This proposal does not allow for the

careful analysis of information, but rather mandates action, where action may not be appropriate. The bill would also expand the scope of all of these activities to all food and beverage packaging that children 12 and under many come in contact with, which is essentially, all food and beverage packaging.

Maine's program is not a duplicate of any other state program. Several states have similar programs, with some commonalities and many differences. The State of Washington only requires reporting of their chemicals of high concern for children. LD 1181 would require that same reporting, but then would additionally require two of those chemicals to be listed each year as priority chemicals, which would then require alternatives assessments for each of those chemicals. The Department or any citizen can initiate a rulemaking by the Board of Environmental Protection to evaluate a potential sales prohibition on products containing a priority chemical, and under LD 1181 could require labeling of those products. No other state, besides Maine, has the authority within their chemical prioritization program to prohibit product sales based on chemical designations on list, or reported information provided. Those programs either simply produce a list of chemicals, or require reporting for listed chemicals. This bill would ultimately require the Department to undertake the same level of effort that we have done with BPA, with every single chemical of high concern that is listed.

In order to fulfill the requirements of LD 1181, the Department estimates at least seven new full-time staff would be needed, and existing staff currently working across multiple program areas would be required to dedicate more time to implementing these changes. Further resources from the Maine CDC, Office of Information Technology, and the Attorney General's Office would also be required. We estimate these program changes would require approximately \$525,000 in additional personal services at the Department, \$270,000 for information technology to start and at least \$70,000 annually for at least the first few years, as well as some additional funds for other program implementation costs.

The Department has been carrying out the work required by law, and has been pursuing continuous improvement in how we implement the program so that we can effectively address chemicals of high concern in consumer products available to Maine consumers within our existing resources. We are very disappointed that only two years after reaching agreement on how to implement this program, we are back here again.

I appreciate the opportunity to provide you with our comments and I would be happy to answer any questions you may have on this bill.

Proposed Amendment to the “Contaminant” Definition, (as included in the testimony for LD 365: An Act to Define “Contaminant” in the Laws Governing Toxic Chemicals in Children’s Products).

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1691, sub-§7-A is enacted to read:

7-A. Contaminant. "Contaminant" means a chemical that is not intentionally added, which is incidental to manufacturing and that serves no intended function in the product component. "Contaminant" includes, but is not limited to, a chemical naturally occurring in the raw materials used to manufacture a product component, unintended by-products of chemical reactions during the manufacture of the product component, trace impurities in feedstock, incompletely reacted chemical mixtures and degradation products.