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**TESTIMONY OF SENATE MAJORITY LEADER SHARON TREAT
HEARING ON FEDERAL MERCURY EMISSIONS PROPOSALS**

March 1, 2004
Legislative Council Chambers, Maine Capitol

Congressman Allen, I am Sharon Treat, Majority Leader of the Maine Senate. I am a member and former chair of the Mercury Products Advisory Council and an environmental lawyer. I am here today to testify in opposition to proposals by the federal Environmental Protection Agency (EPA) which will significantly undermine the effectiveness of the Clean Air Act with respect to control and reduction of mercury emissions, leading to even dirtier air in Maine and significant, harmful, health and environmental impacts.

Maine has gone to extraordinary lengths to control mercury emissions from sources within our state, and for good reason. It is hard to think of a symbol of the purity and wildness of Maine's north woods more ubiquitous than the loon. Yet despite our efforts at the state level, loons in Maine are threatened with the highest measured mercury levels found anywhere in the United States, due in large part to our unenviable position at the tail end of the nation's prevailing winds, which sweep mercury and other airborne pollutants from states to the west and south of us. A quarter of Maine's loon population is considered to be at "high risk" from the effects of mercury, and studies show that mercury pollution is the decisive factor in the negative loon population growth rate in Maine.

Mercury deposition has contaminated our lakes and rivers, to the extent that Maine's Bureau of Health has issued strict fish consumption advisories for all of Maine's lakes, rivers and streams, as well as for coastal bluefish and striped bass. It is a sad fact, at odds with our pristine image as "vacationland" and "Maine, the way life should be."

Surveys done both in Maine and nationally, indicate that 10 to 20% of women of childbearing age have blood levels of mercury considered too high for the safety of a developing fetus. The Center for Disease Control and Prevention has found that some four million American women of child-bearing age have blood mercury levels that exceed E.P.A.'s 5.8 parts per billion standard. Exposure to mercury puts the babies born to these women at risk of brain damage, learning disabilities and motor skills deficits.

It is time for the federal government to step up to its responsibilities in this area. That means at a minimum enforcing the Clean Air Act to require antiquated coal burning plants to upgrade to modern pollution control technology, and to continue to require state of the art controls on new facilities. It does NOT mean weakening the already weak law we have to be even more ineffective, as EPA proposes.

Section 112(d) of the Act sets forth a "maximum achievable control technologies" standard to control emissions from hazardous air pollution sources equivalent to what is achieved by the best-controlled similar source in the industry. When Congress amended the Clean Air Act in 1990, it specifically called for "maximum achievable" clean-up of major sources of toxic air pollution, including mercury. It is beyond dispute that EPA has the authority under the Act to adopt a standard requiring a minimum of 90% mercury emissions reductions at all of the nation's power plants. Instead, EPA had proposed two alternatives each of which fail to protect the public health and carry out the requirements of the Clean Air Act – (1) that the Agency has discretion, but is not required, to apply a weak emission standard to existing sources, or alternatively (2) creating a novel "pooled performance standard" that is apparently designed to escape the restrictions of the law entirely. Both alternatives fall far short of the clean air standards required and should be rejected.

I think it is important for EPA to recognize the longstanding efforts of this state to make sure that we have done everything we can to reduce and even eliminate sources of mercury pollution here in Maine. We have done so even though our actions have placed practical and cost burdens on our citizens, business and government, because we recognize we must take responsibility for that part of the problem we have ourselves created.

One of my very first bills in 1990, as a freshman state representative, was legislation to ban mercury-containing batteries from garbage incinerators. I subsequently passed a resolve that required the state to identify all sources of mercury within and outside of the state and to develop a strategy to control and reduce that mercury. From that legislation, a comprehensive report was developed which provided scientific data that established the extent to which mercury deposition comes from sources outside the state, as well as in-state sources such as garbage incinerators. That report has led to a series of laws taking stringent measures to control in-state sources.

In the spring of 2000, the 119th Legislature passed ***An Act to Reduce the Release of Mercury into the Environment from Consumer Products***, (P.L.1999, c.779). The law defines mercury-added products to include thermostats, thermometers, electrical switches, relays or other electrical devices, scientific and medical devices, and lamps if mercury is added during manufacture of the product. The law established a Mercury Products Advisory Committee (Committee) to advise the Department of Environmental Protection (DEP), the State Planning Office (SPO) and the Legislature on actions needed to prevent and reduce the environmental releases of mercury from consumer products. The law contains several key provisions intended to increase the amount of mercury-added products collected for recycling. These provisions include:

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- As of July 15th, 2002, businesses and public entities may not knowingly place a mercury-added product in the solid waste stream sent for disposal.
- As of January 1, 2005 this disposal ban is extended to all Maine residents.
- The development and implementation of an aggressive education and outreach campaign by DEP to inform Maine citizens and businesses about the disposal bans and proper waste management techniques.
- State assistance to municipalities and regional associations to develop collection programs.
- A commitment by the State, within available resources, to develop and implement a capital investment grant program for public infrastructure development and improvements to enable municipalities to collect and recycle mercury-added products and universal wastes.

Since the passage of P.L. 1999, c. 779, the Legislature has passed additional mercury legislation, including the following:

- ***An Act to Further Reduce Mercury Emissions from Consumer Products***, P.L. 2001, c. 373 . This bans the sale of mercury fever thermometers and dairy manometers; requires manufacturers to provide written notice to the Department before offering a mercury-added product for sale in Maine; prohibits the purchase of mercury or mercury compounds for use in schools; and requires manufacturers who sell products to hospitals to provide a certificate of mercury content upon hospital request.
- ***An Act To Address The Health Effects of Mercury Fillings*** was enacted as P.L. 2001, c. 385. It requires the state Department of Human Services, Bureau of Health to prepare a brochure and a poster on alternative dental restorative materials and procedures and their health and environmental impacts, and for dentists who use mercury to display the poster and provide patients with the brochure.
- ***An Act to Prevent Mercury Emissions when Recycling and Disposing of Motor Vehicle*** was enacted as PL 2001, c. 656. It prohibits the sale of mercury switches in automobiles as of January 1, 2003 and establishes a statewide system to collect, consolidate and recycle the switches. A bounty of \$1 is provided to people who remove switches and return them for recycling, with the money to be provided by the auto manufacturers. Although challenged in court by the auto manufacturers (who argued in part that such programs are a *federal*, not state, responsibility), this law was recently upheld by the Federal District Court.
- ***An Act to Phase Out the Availability of Mercury-added Products*** [PL 2001, c. 620]. It prohibits the sale of most mercury thermostats used in non-manufacturer applications (effective January 1, 2006), and requests DEP to submit a comprehensive strategy to further reduce the mercury content of products by January 2003.

- ***An Act to Change the Reporting Requirements for the Mercury Switch Removal Program*** [PL 2003, c. 6] requires the DEP to file its initial status report on this program by January 1, 2004. The program provides for the removal of mercury switches from motor vehicles before they are crushed and shredded for the scrap metals market.
- ***An Act to Reduce Mercury Use in Measuring Devices and Switches*** [PL 2003, c. 221], bans the sale of most mercury switches, relays and measuring devices beginning July 1, 2006. Measuring devices include barometers, gastrointestinal tubes, flow meters, hydrometers, hygrometers, manometers, pyrometers, sphygmomanometers and thermometers. The effective date of the ban coincides with the effective date of a similar law in Connecticut, and gives manufacturers time to phase in non-mercury alternatives or seek an exemption. The law allows the DEP commissioner to grant an exemption from the ban if the manufacturer of the mercury product demonstrates that functional non-mercury alternatives are not available.
- ***An Act to Require the Installation of Dental Amalgam Separator Systems in Dental Offices*** [PL 2003, c. 301], requires the installation of amalgam separator systems in dental offices by December 31, 2004. The separators trap amalgam particles to prevent the discharge of mercury in dental office wastewater. If installed prior to March 20, 2003, the separators must achieve a minimum of a 95%, while separators installed on or after that date must have a minimum of a 98% removal efficiency as determined through testing under ISO 11143.

Maine has also put state dollars into these programs. In addition to paying for DEP staff to administer these programs and funding our defense of the auto switch provisions in court, we have also put funding into municipal mercury collection programs. In 2000, the Legislature allocated \$438,000 from the Solid Waste Management Fund to jump start the activities mandated by the legislation. In November 2002, Maine voters approved an environmental bond request, of which \$900,000 was slated to fund completion of the shed deployment statewide and the infrastructure/collection needs. We are still struggling with identifying funding sources to assist communities with the ongoing costs associated with these collection and recycling efforts. In the private sector, many Maine businesses have also incurred costs installing pollution control equipment to meet tough in-state mercury emission standards and complying with various mercury product separation and collection mandates.

Needless to say, Maine has done its part, having enacted the most sweeping mercury control laws in the country. While we are more than willing to do whatever we can, our pollution from mercury is in large part a federal responsibility: it comes from outside the state, and there is already a requirement under the Clean Air Act for the federal government to address it. It is time for the EPA to comply with the law, not undermine it. It is time for the EPA to provide assistance to states dealing with this toxic metal which threatens our children and our wildlife, not make our efforts more difficult. Thank you.

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