Alliance for Telomer Chemistry Stewardship

November 9, 2022

Re: Concept Draft for the Maine PFAS in Products Program
Submitted via email to kerri.malinowski@maine.gov

Good Afternoon Commissioner Loyzim:

The Alliance for Telomer Chemistry Stewardship (ATCS) would like to submit the below general comments, specific comments to the Maine Department of Environmental Protection (DEP) Second Concept Draft (Draft) on PFAS in Products.

ATCS is a global organization that advocates on behalf of C6 fluorotelomer-based products. Our members are leading manufacturers of fluorotelomer based products in North America, Europe, and Japan. Our mission is to promote the responsible production, use, and management of fluorotelomer based products, while also advocating for a sound science and risk-based approach to regulation. Fluorotelomer-based products are versatile chemistries with wetting and spreading features, as well as unique properties that repel water, oil and stains. These unique characteristics make fluorotelomers a critical component of first responder gear, medical garments, paints and coatings, upholstery, class B firefighting foam, among other uses that families and businesses across the world rely on.

Overall, ATCS and its members are concerned with the wide-ranging impacts of this Draft on Maine's economy, the environment, and its citizens. While we appreciate the consideration and revision of the previous definition regarding textiles, there is much work still to be done. Below are general comments and concerns on the implementation of the Draft.

If the Draft is implemented as is, DEP will receive notifications for hundreds of thousands of products, to meet the deadline on January 1, 2023. In order to support the timely receipt of such notifications, DEP must ensure that the reporting tools being developed by Interstate Chemicals Clearinghouse (IC2) are suitable for this enormous task. As part of this, it is essential DEP ensure adequate beta testing. The regulations must include a sell-through provision for products that are banned as of January 1, 2023. This effectively creates separate ban timelines between what is set when the calendar rolls in two months, from the larger ban effective in 2030.

As was highlighted during the Thursday, October 27th meeting, definitions across the Draft need clarifications. 'Unavoidable use' and 'Essential use' does not and should not mean the same. This differentiation needs to be addressed as a separate rule making by DEP. Additional clarity is needed for the importance of 'essential' from 'unavoidable'. Clarification of 'classes of products' by DEP is also needed. The following also need clarifying separation and responsibilities of 'consumer', 'manufacturer' and 'distributor'.

Another critical point also raised during the October 27th meeting is the lack of thresholds and limits within the Draft. Additionally, industry and regulators alike across the country have raised concerns that there is a critical void in available testing methods.

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The Draft requires that the notifications include information that could be considered confidential business information (CBI) by the submitters. DEP must articulate to submitters how confidential business information will be protected, what specific types of information will qualify for CBI protection, and how submitters can assert CBI claims for the information they submit. There are two additional points that are alarming that were stated during the October 27th meeting. How does DEP intended to keep CBI secure if manufactures are being requested to submit data via spreadsheets without a formal DEP reporting template? There is concern of report filing not being considered complete until fees are transferred to the state's Treasurer from DEP. Those that are being held liable for reporting do not know the agency's process, timing, and handling structure.

Modern supply chains are complex, extensive and global. They can include small, medium and large suppliers all providing component parts that are used in a single product, and they often entail multiple tiers of suppliers -- from material suppliers, to component manufacturers, to suppliers of complex sub-assemblies that are ultimately assembled into the final manufactured article. Navigating these supply chains to identify which components of a manufactured article could contain a PFAS compound, the specific identities of any PFAS compounds used, and the quantities of any PFAS compounds that might be present in a component is a highly complicated and time-consuming process that can be expected to yield incomplete results. The concept draft fails to account for any of these practical realities.

Specific Comments -- With Attached Redline

Section 2A

- Not clear whether "substance" and "chemical" are intended to have different meanings (see redline)
- To qualify as an alternative, the substance must (i) provide equivalent (**not "**similar") performance; and (ii) be "safer" than PFAS (see redline)

Section 2C

- ~~Define carpets/rugs to mean intended for use in a building (to exclude automobiles, aircraft, etc.) (see redline)~~

Section 2D

- Analytical method must be **validated** (not just commercially used)

Section 2E – see redline

Section 2G – see redline

Section 2J

- Specify that the ban on fabric treatments only applies to **aftermarket** treatments used on **finished** fabrics.

- Note: we also left the term "consumer" in this sentence in our redline, even though it's clear from other provisions that the regulations are intended to apply to commercial and industrial products

Section 2K

- If a PFAS is not intentionally present in a product (i.e., if it is a contaminant or impurity), it should not consider "intentionally added" (see redline)

Section 2M

- Focus should be on sales to purchasers in Maine (see redline)

Section 2N – see redline

Section 2P – see redline

Section 3A

- Notification should be required only if you **know or reasonably should know** that your product contains PFAS

    - Will need to add a definition of "know or reasonably should know" – to include inquiry to immediate supplier in supply chain.

- The specific information spelled out in the regulations should be required to the extent that it is "known to or reasonably ascertainable by" the manufacturer. (This is the standard used by EPA.)

    - Will need to add a definition of "known to or reasonably ascertainable by" – to include inquiry to immediate supplier in supply chain.

- The "amount" of PFAS should be reported in **ranges**, unless exact quantity is known through analytical testing. (There are only a handful of validated methods, compared to the hundreds of PFAS compounds and tens of thousands of matrices in which those PFAS are found. It is impossible to validate methods for all these compounds and matrices by the January reporting deadline – or even a 1-year extension of the deadline. Therefore, the presumption should be that content will be reported in ranges, based on knowledge of inputs.)
- The identity of PFAS should be reported by EPA Accession Number or other unique identifier, not just CAS number – to preserve CBI. (DEP will need an education on what EPA accession numbers are.)

- The Draft provides for notification waivers and deadline extensions, but neither of these are addressed in the regulations. They should be.

Section 3C

- The criteria for determining whether reporting by category is allowed should be qualitative – i.e., are the products "sufficiently similar" in terms of (i) product function and (ii) PFAS hazard and exposure

Section 3D

- Most manufacturers will become aware of changes in PFAS content when they are notified by their component suppliers. Therefore, manufacturers should be required to notify DEP of changes when they **become aware** of the change.

Section 3E – see redline

Section 4 – see redline

Section 5

- Need to incorporate exemption for products with "currently unavoidable use" of PFAS (see redline).

- Presumably a separate rulemaking will be needed to flesh out the exemption process, but we want DEP to acknowledge this.

Section 6A

- Recommend that the fee per product be very small, because tens or hundreds of thousands of products are likely to be reported. **Section 6B**

- Companies need a quick, clear method of confirming that payment has been made – since they can't sell product until payment is made. This section needs to be revised to (i) allow for electronic payment; and (ii) specify that for purposes of these regulations payment occurs when an electronic receipt is obtained.

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Section 8

- Manufacturers must be provided an opportunity to either (i) demonstrate that they have already provided all required information; or (ii) supply any missing information before being required to tell sellers to take the product off their shelves. (See redline)

We appreciate the opportunity to comment and certainly welcome any follow-up conversations and meetings for further dialogue.

Best Regards,

Shawn Swearingen
Director, ATCS