

November 10, 2022

Commissioner Melanie Loyzim
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

RE: MSCC Public Comments on Second PFAS Concept Draft Rule

Dear Commissioner Loyzim:

The Maine State Chamber of Commerce, representing a network of more than 5,000 businesses across Maine, thanks you for the opportunity to comment on the second “concept” draft rule for the PFAS reporting law. Maine’s businesses are only beginning to understand the implications of this law and the impacts are far greater than anyone could have expected. During the stakeholder meetings held by the Department on June 30th and the follow up meeting on October 27th, the broad impact of the reporting aspect of this law became apparent very quickly. Many of the roughly 500 participants had numerous questions that the Department could not address in the allotted time, as well as several for which answers were not yet available. We understand the difficult position the Department is in as it works to implement this law, and we very much appreciate the consistent line of communication to the Chamber as we work to navigate this law on behalf of the business community in Maine and their employees.

The law itself, as well as the newest “concept” draft rules recently published by the Department, will impact nearly every sector of the economy in Maine, including, retail, automotive, healthcare, building and construction, electronics, and agriculture. Every affected business, where a company manufactures or ships or their brand is attached to a consumer product or good into the state of Maine, will risk a ban on their goods unless they meet the requirements of this law. It is therefore critical that companies have clarity and predictability in a transparent, science-based regulatory process. At a high level, one area we are still hearing a lot of concern about is the fact this law is still scheduled to go into effect on January 1, 2023 – yet we just recently heard that this rule will likely not be in effect until April 2023 at the earliest. We consistently hear from our members that they need a predictable regulatory environment from the agencies that regulate them. Creating this grey area of uncertainty is of big concern to us, and we hope the Department recognizes that.

Based on our understanding of the status of any proposed rulemaking, manufacturers and other affected companies do not yet know what information is required and how to comply with this broad mandate, and in fact may not even be aware of the requirements of the rule. In the absence of such understanding, these companies risk a ban on the sale of their products, which would deprive Maine and its economy of the many demonstrated beneficial and safe uses of this technology, including applications that are important for public safety and public health such as life-saving pharmaceutical drugs, apparel that Mainers rely on to stay warm during the winter, and several electronics products. In addition, the complexity of meeting the requirements of this reporting law and the conceptual draft rules are even more challenging than originally envisioned by our members. For example, in the case of an automobile, which can contain over 30,000 parts - the manufacturer of that car will have to determine which parts contain PFAS at what amounts, what information is trade secret to the component part manufacturer, successfully obtain information from their suppliers and the suppliers-suppliers and then be able to report that information by January 1, 2023, in order to continue to sell that car into Maine.

This is further complicated by the definition of “manufacturer” including the person “whose brand name is affixed to the product,” which will lead to duplicative reporting and confusion of reporting obligations among actual product manufacturers and component part manufacturers or companies who license the use of their brand names. We feel that in general, complying with this aspect of the law is going to be very difficult. One concern we are hearing is that this law might not be possible to comply with, and there for, those companies might have to stop offering for sale their products in Maine because they cannot comply. In the trouble of global supply-chain issues we are currently facing, we should not be passing more difficulties on to the business community in Maine by putting them in a position where they cannot offer for sale their products in a state.

We do thank the Department for several changes made from the first concept draft to the second concept draft. We do have few specific areas we would like to address in the second concept draft in hopes the Department can help get more clarity. First, brick level of organization is an improvement. This level of reporting will have some benefits in that it could allow companies to aggregate across several platforms However, the Segment or Family level of organization could also be beneficial. The use of the brick level of organization also appears to conflict with the need to report on “products and product components” If the reporting requirement for a product is at the brick level, then what is the need for product component. We feel there is some more clarification that needs to be done on this section.

Secondly is around the fees. The fee structure put forward in the concept draft has raised concerns. As the Chamber has previously stated, there is serious costs concern to comply with this law. To start, all the testing and research that a company is going to have to go through to figure out all the necessary information is going to take a significant amount of time, money, and resources. Now to also add additional fees to report to the Department is going to add additional costs. We would hope that the Department would reconsider this aspect of the rule, and the Chamber would be happy to work with the Department and share some of the ideas to fix this problem.

We appreciate that the Department has started issuing extensions. Our position on extensions has widely been relayed to the Department. A couple things I would like to bring up for consideration. First, being if the Department would be willing to issue longer than 6-month extensions in certain

circumstances? We are hearing from our members that every product is different, some are much more complex than others, different industries are more difficult, and they will need more time. They would hope that the Department would take into consideration issuing longer than 6-month extensions for those items that are very complex and will need more time to process. We also would ask one more time that the Department would consider extending this law uniformed and not require companies to apply for extensions. Given the difficulties that it takes to work with up and down stream suppliers, this is very difficult for companies to gather and communicate with everyone necessary to make sure an extension is provided.

It is our understanding that the intent of the legislation that was passed in 2021 was for the phase out and eventual ban of PFAS in *certain* products for sale in the State of Maine by 2030. The impact of the reporting deadline and the current extremely broad scope of the definition of “PFAS” and the notification obligations contained within that bill will have a much broader impact than this intent – potentially impacting millions of products and thousands of companies who are based in Maine, do business in Maine, or sell products into the Maine marketplace. 38 MRSA §1612 (3) was added to the law so that that if the Department of Environmental Protection determined that more time was needed by manufacturers to comply with submission requirements, an extension can be granted. We have reached that point – the Department needs more time to conduct an appropriate rule-making process and Maine’s regulated community needs more time to properly report. This warrants the requested extension based on 38 MRSA §1612 for 12-months post promulgation of the final rule, so that all companies can evaluate and report on products that contain intentionally added PFAS.

In addition, there are several additional questions and concerns raised by the proposed “concept” draft rule, Notwithstanding the procedural status of such concept draft rule, we reserve the right to comment on the proposed rulemaking during that comment period, as the currently drafted concept rules are so broad, and their impact is so wide on Maine’s business community. As a general matter, the areas of concern fall into several categories: Definitions (including but not limited to PFAS, Manufacturer, Product, Product Component, commercially available analytical method, intentionally added PFAS, publicly available, and substantially equivalent information); Manufacturer notification obligations; Protection of confidential business information; Reporting by category; Unavoidable use; and Prohibition on Sale of Products containing intentionally added PFAS. We are also looking for some clarity around exemptions: specifically, packaging that is already covered under the toxics in packaging laws.

Thank you for the opportunity to provide these comments and please contact Ben Lucas at blucas@mainechamber.org with any questions.

Sincerely,

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