



Date: July 15, 2022

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

Re: MMTA, NMMA and MRAA Comments Regarding PFAS Concept Draft

Dear Commissioner Loyzim,

The Maine Marine Trades Association (MMTA), the National Marine Manufacturers Association (NMMA), and the Marine Retailers Association of the Americas (MRAA) appreciate the opportunity to comment on Public Law c. 477, [An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution](#) (LD 1503, 130th Legislature) enacted by the Maine Legislature in July 2021. This new law requires manufacturers of products with intentionally added PFAS to report the intentionally added presence of PFAS in those products to the Department beginning January 1, 2023. The law also prohibits the sale of carpets or rugs, as well as the sale of fabric treatments, that contain intentionally added PFAS beginning on January 1, 2023. Effective January 1, 2030, any product containing intentionally added PFAS may not be sold in Maine unless the use of PFAS in the product is specifically designated as a currently unavoidable use by the Department.

The Maine Marine Trades Association (MMTA) represents over 120 small businesses in Maine including boatyards, boat builders, marinas, marine retailers, brokers, and related fields. Collectively our industry contributes an annual impact of approximately \$2.9 billion to the state. Our businesses provide essential services to the Maine fishing fleet and commercial transportation vessels, as well as many recreational boats—both coastal and inland. MMTA works with the Department on many issues related to boats, boating, and compliance for business operations.

The National Marine Manufacturers Association (NMMA) is the trade association for the U.S. recreational boating industry, representing nearly 1,300 marine businesses, including recreational boat, marine engine, and accessory manufacturers. Our members are often U.S.-based small businesses, many of which are family owned. NMMA members collectively manufacture more than 85 percent of the marine products

sold in the U.S. Furthermore, the recreational boating industry has a \$170 billion impact on the nation's economy and in communities across the country, with nearly 700,000 American jobs across 35,000 U.S.-based marine businesses.

The Marine Retailers Association of the Americas (MRAA) is the leading trade association of North American small businesses that sell and service new and pre-owned recreational boats and operate marinas, boatyards, and accessory stores. MRAA represents more than 1,300 individual member retail locations and is proud to have 13 members located throughout Maine.

Requiring Reporting of Articles Will Adversely Impact Small Business Boat Manufacturers

The MMTA, NMMA, and MRAA have given careful consideration to the Maine PFAS Reporting Rule and while we support the phase out of PFAS chemicals where there are alternatives, we urge the Maine DEP to exempt articles from the scope of the proposed rule's requirements. Most of our members are primarily small businesses that manufacture boats, engines, and marine accessories, and do not have the technical resources or expertise to identify chemicals that may or may not be found in the hundreds or thousands of parts and accessories found in a recreational boat. It is important to recognize that 93% of US marine manufacturers are small businesses and in Maine probably all boat builders and marine businesses are small businesses. It is our understanding from the PFAS Reporting Rule that many of these parts would require reporting under current proposal. Our associations have sincere concerns about small manufacturing businesses having to identify trace chemicals in any part that is installed or assembled on a boat. This proposal could require reporting down to the chemical level of every tiny o-ring or gasket. And with recent supply chain challenges, that reporting work could create extra burdens if suppliers are constantly changing.

To illustrate our concern, a common 20-foot open bow runabout or small fishing boat can have over a thousand stock keeping units (SKUs). Larger boats with all the accessories required for galleys, heads, salons, and sleeping quarters identifying the chemicals in the parts of these components is beyond comprehensible. One NMMA boat manufacturer informed NMMA that its outboard powered 23-foot runabout has 1,013 distinct SKUs. This boat manufacturer's 35-foot cabin cruiser has 2,516 individual SKUs.

If all these accessories and components, which are often manufactured outside the U.S., are required to identify the chemicals used in the manufacture of components in articles, our manufacturers would have to purchase special software and hire additional, dedicated staff to track, monitor, and report this information to the State of Maine. This is in addition to the monumental task of determining, as a threshold matter, whether all these accessories and components contain PFAS.

Based on our knowledge of the capabilities of the recreational marine manufacturing industry, we recognize that the State of Maine is proposing a requirement beyond the capabilities and resources of businesses in this sector.

Marine Industry Efforts with EPA and the EU to Address the PFAS and other Chemical Issues

On a national level, the recreational marine industry has worked with EPA as they are trying to develop a PFAS reporting and recordkeeping program. EPA acknowledges in the Proposed PFAS Reporting Rule that manufacturers can only report information to the extent that the information is known to or reasonably ascertainable by the manufacturer (see TSCA Section 8(b)(2)). “Known to or reasonably ascertainable by” would be defined to include “all information in a person’s possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.” *Id.* at 33,928. This reporting standard would require reporting entities “to evaluate their current level of knowledge of their manufactured products (including imports), as well as evaluate whether there is additional information that a reasonable person, similarly situated, would be expected to know, possess, or control. This standard carries with it an exercise of due diligence, and the information-gathering activities that may be necessary for manufacturers to achieve.” *Id.* Given what we know about the state of members’ knowledge of article contents, the standard articulated by EPA in the proposal would impose a significant burden on already resource-constrained small businesses and present an insurmountable compliance challenge.

As an example of this challenge, currently our larger manufacturer members selling boats and marine engines in the European Union must track and report chemicals in articles. These large boat manufacturers retain companies that coordinate the outreach to international suppliers and domestic distributors to determine whether an EU-regulated chemical is found in a boat manufacturer’s parts or accessories. Not only are these companies very expensive at roughly \$70,000/year, but the large boat manufacturers also have found that there is less than a 50% accuracy rate with regard to the data collected by these companies. The reason for the questionable data is that in many cases, the particular chemical additive in question is produced many steps prior to the finished good and often produced in a country lacking environmental regulations that would facilitate the tracking of that chemical. For parts and components, it’s our members’ collective experience that accurate tracking prior to the final accessory is nonexistent.

Given the issues raised in the first section of these comments, the Maine PFAS Reporting Rule has two major flaws that must be addressed before the rulemaking can move forward. First, including all importers of articles within the scope of the PFAS Reporting requirements will have a disproportionate adverse economic impact on small businesses. As noted above, most marine businesses impacted by this rule are small businesses. Maine needs to recognize the economic burden that its small business

marine manufacturers will face associated with retaining outside assistance to identify articles with covered chemicals and then undertake the requisite tracking, recordkeeping, and reporting.

Second, as noted earlier, the EU requires U.S. businesses exporting boats and marine engines to the EU to track and report chemicals in articles. NMMA members' data show a 50% accuracy rate in the information obtained. NMMA strongly urges the Maine DEP to further evaluate existing tracking programs to determine their accuracy prior to imposing the need for such an implementation requirement on U.S. small businesses.

Conclusion

We understand the need to determine the quantity and specific use of PFAS in products sold not only in Maine, but throughout the U.S. Given the persistent and bioaccumulative nature of these chemicals we believe that this effort is best served by limiting the reporting requirements initially to those PFAS chemicals that are imported as bulk chemicals or intentionally added after the article is sold to the marine manufacturer.

Perhaps a logical way to approach this would be for Maine to exempt marine manufacturers and installers and work with our respective trade associations to identify the PFAS chemicals in articles in a recreational boat. We can then collectively evaluate both alternatives and the environmental impact following up with common sense regulations where a PFAS phase-out makes sense. The MMTA, NMMA, and MRAA are ready to assemble a team of industry professionals to assist in such a project. Our respective trades associations depend on a clean healthy environment where boaters can enjoy outdoor recreation on the water. We support phasing out chemicals that harm the environment, especially clean water. We strongly urge the State of Maine to work with us to develop a program that provides lasting results.

Thank you for the opportunity to provide comments on this important rulemaking. If you have any addition questions or would like to discuss supporting information, feel free to contact us at stacey@mainemarinetrades.com or 207-773-8725 or jmcknight@nmma.org or 202-257-3754, or chad@mraa.com or 978-569-5127.

Sincerely,



Stacey Keefer
Executive Director
Maine Marine Trades Association



John McKnight
Senior Vice President EH&S
National Marine Manufacturers
Association

A handwritten signature in black ink, appearing to read 'C. Tokowicz', with a long horizontal stroke extending to the right.

Chad Tokowicz
Government Relations Manager
Marine Retailers Association of the Americas