



July 18, 2022

Kerri Malinowski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

**Re: Reporting Concept Draft Feedback**

Dear Ms. Malinowski:

The Sustainable PFAS Action Network (SPAN) is writing to express its concerns with the Concept Draft of the Maine PFAS in Products program reporting rules, released on July 1, 2022. The Concept Draft reflects that the rules soon to be proposed by the Department of Environmental Protection (DEP) would require, effective January 1, 2023, reporting of all products with intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS) prior to sale or distribution in the state of Maine.

SPAN is a coalition of PFAS users and producers that are committed to sustainable, risk-based PFAS management. Our members work to advocate for responsible policies that provide assurance of long-term environmental protection and also recognize the important contribution that certain PFAS have made to economic growth and competitiveness in global markets.

SPAN's members are very concerned about the terms of the Concept Draft. If DEP issues final rules without significant modifications to the current compliance date and scope of the affected products, an unprecedented bureaucratic burden will be imposed by the state that will surpass any federal reporting requirements concerning product content. The entities that would be required to comply with the rules as set out in the Concept Draft do not have the information and resources needed to meet the requirements within the current compliance date. It will take months, if not years, for the businesses subject to the rules to begin to identify all of the products they might manufacture or distribute that could contain PFAS and for which reporting could be required. It is not reasonable for DEP to expect businesses that produce products distributed in Maine to contact the suppliers of all of the components that comprise their products to identify and track even negligible sources of PFAS throughout the international supply chains upon which SPAN members rely.

SPAN is committed to environmental regulations that protect the health of Maine residents, and intends to work with DEP to develop practical reporting regulations to implement the underlying law. However, the reporting requirement set forth in the Concept Draft will place a burden on Maine businesses and employers that will ultimately hinder DEP's stated purpose. The time and resources that will be required for reporting businesses to fully comply with the requirements envisioned in the Concept Draft, and the resources required for DEP to implement such rules, will far outweigh any benefit to be derived from the information submitted. Moreover, the effort required will distract from making further progress in phasing out uses of potentially harmful PFAS.

In accordance with these overarching concerns, we are providing the following suggestions and comments with regard to several specific provisions in the Concept Draft:

**1) Compliance Date and Reporting Methods**

The current compliance date of January 1, 2023 is unrealistic and vastly underestimates the amount of time, research, and information needed to collect, catalogue, and compile the data required to fully satisfy the reporting requirement. Many PFAS substances that would presumably require reporting have not been regulated by DEP or by other state or federal regulatory bodies. To identify and collect information on the presence of PFAS in products on this scale has never been undertaken in any major economic market. Doing so will require significant time simply to research the potential sources of PFAS in products and to contact the appropriate parties in the product and component supply chains. On June 29, 2022, several dozens of companies, industry associations and coalitions requested an extension to the January 1, 2023 reporting deadline of **one year after promulgation of the final rule. SPAN reiterates its support for this extension.** The statute requires only that the reporting *process* begin on January 1, 2023. Imposing a deadline for the submission of reports on that date will unnecessarily burden DEP's resources, and generate enormous new reporting obligations on US companies and their international suppliers of products and product components. A reporting deadline of January 2023 will lead to widespread non-compliance and poor quality reports. DEP should have an understanding that further extensions may be required to allow businesses to fully ascertain the potential presence of PFAS in products comprised of multiple, complicated component parts. **SPAN recommends DEP consider phased in reporting requirements, with reporting to be required at later intervals for more complex (multi-component) products in specific categories.**

Additional time will likely be required for DEP to establish reporting technologies and to communicate with the regulated community how to access and use what may be an untested reporting platform (such that DEP proposes to use). The Interstate Chemicals Clearinghouse (ICC) platform will inevitably experience glitches and will require time to train staff on proper reporting procedures, as well educating those who must file reports. DEP should seek administrative efficiencies and to rely on databases and reporting systems that are already familiar to reporting entities and which can be expanded for purposes of this new program. Where other states in the US are implementing similar reporting requirements, there are likely efficiencies that can be gained by relying on existing reporting technologies when possible. For these same reasons, DEP should consider delaying any reporting deadlines in Maine until after the US Environmental protection Agency (EPA) has issued its reporting rule under the Toxic Substances Control Act (TSCA). There may be ways in which DEP might harmonize the information it intends to collect and the reporting systems that must be used with the EPA rule when it is released later this calendar year.

**2) Scope of PFAS and Products to be Reported**

The definition of PFAS as any substance "containing at least one fully fluorinated carbon atom" is overly broad and has no bearing on the likelihood that contamination in Maine could be caused by a product containing a minimum of one substance with a single fully fluorinated carbon. If it is not modified, the PFAS definition DEP intends to use will cause substantial confusion and the scope of products that will be implicated will increase the likelihood of potential noncompliance. This definition is far too broad and encompasses many substances that have been deemed of low risk which should be excluded from such a notification

requirement. For example, the active pharmaceutical ingredient (APIs) in crucial medications, such as the Covid-19 antiviral Paxlovid, fits within Maine's statutory PFAS definition. This definition also encompasses compounds that have been used to be able to comply with other Maine laws. For example, the hydrofluoroolefin (HFO) technology that was used in 2021 to comply with LD266 (Maine Public Law Chapter 192), which required the state to impose regulations sunsetting the use of the potent greenhouse gases, also fits within the scope of the DEP's expansive PFAS definition. These products have clear and tangible societal benefits that are being disregarded and which could instead be further encouraged if DEP were to consider specific, limited exemptions to the current PFAS definition.

Reporting on all products containing all substances that fit the PFAS definition will overwhelm businesses and will provide information of little value to DEP when attempting to formulate practical environmental regulations. To limit unnecessary reporting on substances that do not merit DEP's scrutiny, SPAN recommends:

- **DEP create a concrete list of specific PFAS the presence of which need to be reported**, providing Chemical Abstracts Service (CAS) Registry Numbers and chemicals names.
- **Fluoropolymers should be exempted**, as they have unique properties distinct from other PFAS, and meet internationally recognized criteria for polymers of lower concern which are not expected to have significant environmental and health impacts.

### **3) Reporting Levels & Group Reporting**

**SPAN recommends DEP establish a *de minimis* level for PFAS content in a product, beneath which no reporting would be required. This level should be no less than 0.1% by product weight.** This would align with actions taken in the European Union for substances of very high concern when present in articles. After this reporting threshold is established, SPAN recommends DEP permit entities to be able to report on product categories and to report within such categories based on ranges of PFAS present within such products. Currently, the Concept Draft would appear to limit notification of products as a group to circumstances where the products contain the same amount of PFAS or are within the same concentration range. This is an oversimplified approach that does not recognize the complexity of various product markets. Different manufacturing batches of the commercially identical product by a single manufacturer might have considerable variation in the amount of PFAS used, particularly when PFAS is only present in negligible amounts. Wherever possible, it would be preferable to report the quantity of PFAS in ranges, rather than exact amounts that could change, particularly if measured using arbitrary or differing testing method. Ranges used in the High Priority Chemicals Data System (HPCDS) developed by Interstate Chemicals Clearinghouse for Oregon and Washington provide useful points in determining appropriate ranges for given products.

### **4) Eliminate Duplicative Reporting and Clarify Specific Provisions**

Given the scope of products and entities responsible for reporting, there is bound to be overlap between what different businesses report and confusion over who is responsible. Further clarification is required from DEP as to who is responsible for which products along the supply chain, such as clarifying which entity is required to report when the entity that distributes a component or a finished product in Maine acts solely as a "distributor" (and is not the entity that manufactured the component or product, nor the company with its "brand name" on the component or product). DEP also must identify which federal laws it interprets to preempt the state reporting requirements such that manufacturers of such products would be exempt from reporting. Many compounds classified as PFAS by the Concept Draft's definition have already

been approved for their end-use applications by provisions of the Clean Air Act (CAA) and Toxic Substances Control Act (TSCA), and requiring their reporting would be burdensome and unnecessary.

SPAN is concerned that the Concept Draft suggests that changes in personnel at a reporting entity's business would trigger a report of a "significant change". SPAN is also concerned the Draft suggests the omission of a PFAS would be a trigger for "significant change" reporting. Such changes are not relevant to the reasons for the reporting requirements and should be dropped from the reporting rules when proposed. SPAN recommends a "significant change" should be defined as the changes of the PFAS content of a product by more than 50% by weight of the overall PFAS content.

**5) Confidential Business Information**

It is critical that DEP establishes a process by which Confidential Business Information (CBI) throughout various parts of the supply chain be protected. CBI will pose several hurdles to timely acquisition of information about PFAS composition when a manufacturer is working with suppliers in a highly competitive field with technologically sophisticated products. It is critical that DEP establish internal procedures and data security capabilities to reliably ensure that any such CBI not be disclosed. When necessary for reporting of confidential information that might not be transparent between a supplier and the final product manufacturer, DEP will need to establish a process for making joint submissions when this would satisfactorily accomplish DEP's reporting goal. Similarly, DEP will need to make clear what pieces of information are subject to CBI procedures and how such claims may be asserted.

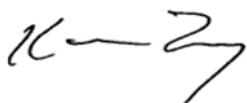
**6) Fees**

Fees should not be applied to individual products, as it will provide no additional health or environmental benefits for Maine residents, but it will create onerous burdens and significant costs for manufacturers. SPAN recommends applying a small fee to product classes.

Given the numerous concerns SPAN has with the Concept Draft of the Maine PFAS in Products reporting requirement, we expect to engage in further dialogue with Maine DEP to further clarify rules and establish procedures that benefits Maine residents and businesses. If implemented as is, the rules in the Concept Draft would impose unnecessary and burdensome requirements that will do little to further protect human health and environment.

Thank you for your consideration. Please do not hesitate to reach out if you have any questions or need any further information.

Sincerely,



Kevin Fay  
Executive Director  
Sustainable PFAS Action Network (SPAN)