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Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333
RE: Request for reporting extension for 38 M.R.S. §1614, sub 2-A
Mark.T.Margerum@Maine.Gov

Re: Maine PFAS in Product Program

The Association of Equipment Manufacturers (AEM)¹ appreciates the opportunity to comment on the Maine Department of Environmental Protection's (DEP) draft rule; *Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances*, hereafter referred to as the Proposed Rule. We look forward to sharing the expertise and technical knowledge of our industry sectors. We believe it is critically important when developing regulations, that the interests of all stakeholders be considered and understood.

The off-road equipment manufacturing industry understands the value and importance of using sound science to inform future policymaking decisions. AEM strives to be a key stakeholder in these policymaking discussions. To ensure that new rules meet their objectives with accurate and complete data, AEM requests that MDEP take into consideration the following points:

1. AEM recommends that MDEP extend the effective date of the reporting provision and introduce more streamlined reporting requirements, such as a de minimis threshold, identified list of PFAS substances with CAS numbers, and CBI protections, to help accommodate the structural difficulties of collecting data for complex article manufacturers.
2. AEM requests further clarification from MDEP on the level of specificity needed to fulfill the notification requirement in the proposed rule. AEM recommends harmonizing all reporting provisions with the EPA's impending PFAS reporting rule.
3. AEM requests that MDEP explicitly mention agriculture, utilities, forestry and mining in the list of products covered under the definition for "Essential for health, safety, or the functioning of society."
4. AEM recommends that MDEP adopt more streamlined and prioritized reporting requirements for industry and work with EPA to adopt a single reporting platform.
5. AEM requests that MDEP provide more clarity regarding the distinction between parts and finished products, as well as the distinction between a finished product, its components, and groupings of components under the proposed fee structure.
6. AEM requests that MDEP not put filing fees on individual parts and components.

Reporting Requirement:

The recently promulgated Act, passed by the Maine State Legislature, requires all companies introducing a product for sale in the state that contains intentionally added Per- and Polyfluoroalkyl Substances (PFAS) to submit a notification to the Maine Department of Environmental Protection (MDEP) on the PFAS content of

¹ AEM is the North American-based international trade group representing Non-Road Mobile Machinery (NRMM) equipment manufacturers and suppliers with more than 1,000 member companies and over 200 product lines in the construction, agriculture, mining, forestry and utility industries. The equipment manufacturing industry in the United States supports 2.8 million jobs and contributes roughly \$288 billion to the economy every year. Our industries remain a critical part of the U.S. economy and represent 12 percent of all manufacturing jobs in the United States. Our members develop and produce a multitude of technologies in a wide range of products, components, and systems that ensure NRMM equipment remains safe and efficient, while at the same time reducing carbon emissions and environmental hazards. Finished products have a life cycle measured in decades and are designed for professional recycling of the entire product at the end of life. Additionally, our industry sectors strive to develop climate friendly propulsion systems and support robust environmental stewardship programs around the world.

their products by January 1st, 2023. As of the date of this letter, the MDEP has yet to finalize their regulatory text or implement a reporting platform for manufacturers to submit their data. The reporting requirement effective date in Section 3 of the proposed rule are both arbitrary and capricious in nature, as the required effective date clearly violates the Maine's Administrative Procedure Act². MDEP cannot require compliance dates that precede the passage of the establishing regulation. The situation leaves potentially affected manufacturers unable to fully comply with the requirements of the law and adds immense regulatory uncertainty for firms looking to sell and operate in the State of Maine.

Any timeline to comply with the obligations of the Act need to account for the tremendous work needed to gather, collate and submit the required data. The definition of PFAS in the Act is overly broad, unnecessarily including thousands of individual PFAS substances under the scope of coverage. The lack of a *de minimis* threshold ensures manufacturers need to account for trace amounts of PFAS in their products, which may require expensive lab testing to confirm. Furthermore, current analytical test methods for detecting PFAS and overall global laboratory testing capacity do not exist to account for the sheer volume and variety of PFAS across all industries as required under this rule. There are no standard test methods found to measure PFAS in some uses of electronics and electronic equipment incorporating semiconductors, fluorinated gases and refrigerants, medical devices, oil gas and mining applications, metal plating, flame retardants and resins. In total, there are only standard methods for detecting between 10 and 30 different unique PFAS chemicals out of the over 10,000 different PFAS known to exist. Furthermore, the typical cost for a battery of tests to identify the chemical composition on an individual solid component costs roughly \$10,000 for a final report. With around 250 different product types in the off-road sector, each containing roughly 100,000 different components, and roughly 1,000 different equipment manufacturers required to test their products to determine where PFAS may be in their product; the total cost of testing will exceed 250 trillion dollars. The total testing costs to industry will be much higher, as this estimate is only applicable to the off-road equipment sector. This rule promulgates an overly broad, costly, and impossible reporting requirement, which duplicates and potentially conflicts with an ongoing EPA PFAS reporting rule under consideration at the Federal level. This rule as promulgated leaves no viable compliance pathway for companies looking to sell into the State of Maine.

AEM indicated in their comments on the EPA's PFAS recordkeeping and reporting rule that full compliance would take a minimum of three years to achieve. The off-road equipment industry builds hundreds of products, some with as many as 100,000 unique parts, purchased from a supply chain that can run 14 layers deep. Furthermore, the off-road industry does not currently possess an industry wide reporting system, similar to those found in other sectors. AEM's member companies are working on evaluating their supply chains to determine whether and to what extent PFAS chemicals are contained in their current product offerings. However, most companies in the wider supply chain remain unaware of these new reporting requirements, along with its provisions, requirements, and timelines. Many of these same companies do not have the subject matter expertise to report on the chemical composition of the articles they manufacture. The lack of a *de minimis* provision and the thousands of unique chemicals that fall under the perfluoroalkyl and polyfluoroalkyl family of substances only exacerbate these challenges. The complexities of the off-road industry's supply chain combined with the supplier education issues will foster widespread data quality problems, resulting in missing, poor, and inaccurate data from the equipment manufacturing sector.

These issues, endemic throughout the supply chain, are compounded by the compliance and operating environment many of these companies operate in. The off-road industry does not specify parts and components based on chemical or material content. Parts are specified for safety and performance characteristics. For this reason, the manufacturing supply chain lacks the data infrastructure needed to collect this information on short notice, which is only exacerbated by the sheer number of PFAS chemicals that exist (>10,000 unique chemical entities). Furthermore, smaller manufacturers of components often do not store chemicals above the reporting thresholds required under the EPA's CDR or Sara 313 reporting rules. As a result, many companies in our supply chains never cultivated the systems or expertise needed to gather and store the relevant chemical data for the components and parts they manufacture and distribute. Other companies, who do manufacture PFAS chemicals and may understand the reporting requirements,

² Maine Administrative Procedure Act, PL 1993, c. 362, §3 (1977 [AMD])
<https://legislature.maine.gov/statutes/5/title5sec8052.html>

have little to no confidential business information (CBI) protections leaving them hesitant to share their data until the rule comes into force. To protect their businesses, many bulk chemical manufacturers choose to conceal the composition of their products, delaying and complicating downstream reporting, making data collection an impossible task in the given timeframe.

The off-road equipment sector needs an appropriate amount of time to identify, collect, and report the PFAS found in the off-road equipment sector. Without an appropriate transition period, the data collected will be low quality and unreliable for the purposes of crafting future responsible public policy. The minimum time equipment manufacturers would need to comply with this rule is 3 years. This estimate is based on several assumptions, such as de minimis reporting thresholds, a limited and pre-defined list of PFAS substances, and CBI provisions for industry to realistically comply with this timeline. Deadlines for reporting that provide inadequate lead times produce unintended consequences, including both under-reporting and over-reporting of PFAS in products. AEM appreciates the fact that the Maine DEP granted a six-month extension to a large group of manufacturers. While we appreciate the willingness of Maine DEP to provide an extension of the reporting deadline, we do not believe that a six-month extension is sufficient, and we respectfully request a three-year extension to the deadline for reporting purposes.³

Recommendation:

AEM recommends that MDEP extend the effective date of the reporting provision and introduce more streamlined reporting requirements, such as a de minimis threshold, identified list of PFAS substances with CAS numbers, and CBI protections, to help accommodate the structural difficulties of collecting data for complex article manufacturers.

Reporting Rule Clarifications:

Section 3 of the proposed rule details the notification requirements placed on manufacturers of a product for sale in the State that contains intentionally added PFAS. AEM requests further clarification on several of the reporting requirements highlighted in the rule. The off-road equipment sector manufactures machines for a variety of intended uses. The intended uses of our products include, but are not limited to, the following applications: construction, forestry, agriculture, mining, and utility applications. Certain product offerings may differ between construction and utility applications over the course of a single week. Furthermore, the manufacturers of these products will not know the eventual intended use, nor do they have the capacity to obtain this information on a product-by-product basis. In their proposed TSCA Section 8 – PFAS Reporting Rule, EPA used broad definitions on intended uses, such as industrial, consumer, medical. Harmonizing the Section 3 reporting requirements in the Chapter 90 Products Containing PFAS proposed rule with the current EPA proposal will help streamline the data collection efforts across reporting entities and increase the quality of data. Streamlining the Section 3 reporting requirements will also lead to reducing the total compliance burden on the industry, which will contribute to a more complete and verified dataset.

Recommendation:

AEM requests further clarification from MDEP on the level of specificity needed to fulfill the notification requirement in the proposed rule. AEM recommends harmonizing all reporting provisions with the EPA's impending PFAS reporting rule.

Essential for Health, Safety, or the Functioning of Society Definition:

The MDEP provides a definition for products that are considered “Essential for Health, Safety, or the Functioning of Society”. MDEP included a variety of product examples, including construction, which meet this definition. AEM requests that MDEP includes other off-road product applications, such as agriculture, forestry, mining and utility sectors. Each of these industry sectors provides crucial services for society that if

³ For a comprehensive outline of the off-road industry's estimated timelines, please reference AEM's PFAS Position Paper.

made unavailable would result in a significant disruption to a variety of key aspects of daily life, including the nation's food security and the ability to maintain the country's utility infrastructure.

Recommendation:

AEM requests that MDEP explicitly mention agriculture, utilities, forestry and mining into the list of products covered under the definition for "Essential for health, safety, or the functioning of society."

Interstate Clearinghouse:

Public Law c. 477, *An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution* requires MDEP to start collecting data on January 1st, 2023. As of the date of this letter, MDEP has yet to indicate how stakeholder companies are expected to report their data. The MDEP indicated that they would develop and maintain a state level database (Interstate Clearinghouse) to accommodate the reporting requirements expected from the various regulated stakeholder entities. AEM requests clarification on a number of issues related to the use of this Interstate Clearinghouse from MDEP. More specifically, AEM requests further clarification regarding:

1. The implementation timeline for this database,
2. The level of involvement between the State of Maine and the development of this clearinghouse, and
3. Whether the scope of the current reporting to the Interstate Clearinghouse is limited only to PFOS and PFOA, or a more expansive list.

AEM's member companies have extensive experience working with the European Chemicals Agency's (ECHA) Database for Substances of Concern in Products (SCiP). This database, created under the EU's Waste Framework Directive, mandates the reporting of Substances of Very High Concern (SVHC) in articles above the reporting threshold concentration of 0.1% weight by weight. Despite the SVHC list only consisting of 233 chemicals, the reporting costs for industry is estimated between €48bn and €67 billion annually. The list of reportable PFAS substances proposed by the MDEP in the proposed rule is well over 10,000 unique chemical substances, with no corresponding reporting threshold. The reporting requirement promulgated in this proposed rule will make the total cost and complexity of this data request exponentially larger than those found in any other regulatory jurisdiction on earth.

In order to mitigate the costs and complexity of the reporting requirement found in the proposed rule, AEM recommends that MDEP adopt the provisions outlined in the first section of this comment. Specifically, MDEP should establish a finite list of identifiable PFAS substances for companies to report against. AEM recommends that MDEP establish a reporting threshold to help policy makers focus on higher risk PFAS substances. Finally, AEM recommends that MDEP review existing chemical reporting database structures to create harmonization of reporting standards across regulatory jurisdictions. The EPA already has an established CDX reporting system, which they intend to use for reporting purposes in their TSCA Section 8 PFAS Reporting Rule. EPA uses this system extensively to gather chemical data from manufacturers across the United States for a variety of different reporting rules. Leveraging this existing system will reduce the costs to MDEP, simplify the reporting burden for affected stakeholders, and harmonize reporting standards across the U.S.

Recommendation:

AEM recommends that MDEP adopt more streamlined and prioritized reporting requirements for industry and work with EPA to adopt a single reporting platform.

Filing Fee & Product Definitions Clarifications:

Section 6 of the proposed rule requires regulated stakeholders to file fees with MDEP to cover the associated costs of administering the PFAS program. The NOTE under Section 3 subsection (a) indicates that parts and components incorporated into the finished product do not require a separate notification.

However, one could conclude that parts and components offered or distributed in the State of Maine that are not incorporated into a finished product will require a separate notification filing. This section is unclear in how it relates to the off-road equipment industry. Are parts that are registered in a product, but sold as replacement and maintenance parts separately covered under the initial product notification? How does MDEP define “an individual product or product component of a group thereof reported as a single category,” as described in Section 3? These terms can vary in their meaning for complex article manufacturers that sell products with thousands of different components for a wide variety of product types. More precise definitions would provide clarity and regulatory certainty for business entities and industry generally, and consequently would lead to higher compliance levels.

Recommendation:

AEM requests that MDEP provide more clarity regarding the distinction between parts and finished products, as well as the distinction between a finished product, its components, and groupings of components under the proposed fee structure.

Filing Fees:

Section 6 of the proposed rule requires filing fees of \$250 for the first three notifications, and \$50 per each additional notification. Equipment in the field requires replacement parts and components to ensure the continued operation of the machine. Replacing components and maintaining the machine ensures the machine can operate in a safe and legal manner. Some machines have over 100,000 unique parts, many of which cost much less than \$50. Requiring a \$50 notification fee for each individual part that falls under the scope of the proposed rule will destroy the profitability of most manufacturers' spare parts businesses and risk the continued operation and availability of spare parts in the State of Maine. These spare parts are crucial for repairing and maintaining equipment in the field. Without access to these parts, equipment operators and owners will not be able to maintain their equipment, leaving their machines inoperable.

Recommendation:

AEM requests that MDEP not put filing fees on individual parts and components.

AEM Appreciates your consideration of these comments.

Please feel free to contact me at Jmalcore@aem.org if you have any questions or require any further information.

Best Regards,



Jason Malcore
Director, Global Standards & Compliance
Association of Equipment Manufacturers (AEM)