C&L Aerospace

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VIA ELECTRONIC MAIL
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Re: Comment on Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

Chair Lessard, members of the Board of Environmental Protection, and Mr. Margerum:

Thank you for the opportunity to comment on the Maine Department of Environmental Protection's (Department's) proposed Chapter 90 rule: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances.

C&L Aviation Group (C&L Aerospace, LLC and C&L Aviation Services, LLC, collectively "C&L") is a global aviation services and aftermarket-support provider for regional and corporate aircraft. We are a Federal Aviation Administration (FAA) regulated and European Union Aviation Safety Agency-approved industry leader in servicing, maintaining, and supporting operators in the corporate and regional aviation industry. In addition to aircraft and engine sales and leasing programs, C&L offers parts support, heavy maintenance, interior refurbishment, component repair, avionics installations, and aircraft painting.

In 2010 we decided to relocate our international company headquarters to Bangor, where we operate out of a 200,000 square-foot facility at the Bangor International Airport. We now employ more than 250 people, including 200 in Maine. Approximately 80% of our operations occur here in Maine, and we have a proven dedication to our community. For example, we support Doughty Middle School in Bangor, we provide a full-tuition college scholarship for a Bangor-area high school senior, we have hosted a plane-pull to support Big Brothers Big Sisters of Mid-Maine youth mentoring programs, and we have an apprenticeship program that provides on-the-job training in Bangor.

As a Maine-based company, C&L fully supports the Department's effort to reduce harmful contaminants in Maine and hopes that our comments assist the Department in crafting a rule governing PFAS in products that achieves that goal. The proposed Chapter 90 rule implementing the notification requirement and associated immediate ban of products that do not meet the notification requirement in 38 MRS §§ 1614(2) and (7), however, is impossible for manufacturers across industries to comply with. The result of this rule would be an immediate ban of federally regulated products essential to the functioning of society, such as aircraft, unless an extension or exemption is granted by the Department. Because compliance presently is unattainable for a multitude of manufacturers, it is likely that industries manufacturing essential products would simply move their operations outside of Maine and/or cease selling products into Maine. Surely, that is not the intent of the Maine Legislature.

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As the Department was made aware in the multitude of comments it received on its two concept drafts of the proposed rule, the information it seeks in 38 MRS § 1614(2) is not readily available to most manufacturers in Maine. In fact, complex supply chains and the *hundreds of thousands* of component parts with myriad subcomponents in any vehicle, including aircraft, render compliance with the rule in the near future a near impossibility. Not only is the information the Department seeks unavailable across our supply chains, but many of our suppliers are located outside of Maine and likely are unaware of Maine's statutory notification requirement for both our products and theirs. And even if aware, many of our suppliers are hesitant to provide confidential chemical information.

Further complicating compliance with the rule is the beneficial reuse of aircraft parts that is a large part of our business. Rather than source new aircraft parts, we often are able to beneficially reuse existing parts from aircraft that are being disassembled. Not only is reporting of any PFAS in such parts unclear under the proposed rule, but the rule may have the unintended effect of forcing greater use of new parts (where PFAS information may be more readily available) instead of the more environmentally-friendly reuse of parts. Because of these realities of information availability as well as the importance of aviation products to the functioning of society, in December 2022 C&L requested an extension of the 38 MRS § 1614(2) notification requirement, which was granted on January 20, 2023.[1]

However, C&L maintains that it is crucial that the Department make clear in this rule that products such as ours that are federally regulated are exempt from Chapter 90. Federal laws and regulations administered by the FAA strictly control what products are put on aircraft. C&L therefore has no ability to switch component parts where a supplier cannot timely provide C&L with information as to the presence or absence of PFAS in that part. Because this federal regime mandates what products and components may be utilized on aircraft, to ensure the highest level of safety of those aircraft, the FAA therefore "governs the presence of PFAS" in aircraft. The State of Maine cannot dictate what products and product components are and are not available in the aviation industry.

In fact, if the rule does not make clear that federally regulated products are exempt under Section 4, Chapter 90 (and the underlying statute) would directly conflict with the federal oversight of aviation products, and therefore would be federally preempted. C&L nevertheless remains committed to regulatory compliance, and to assist the Department in crafting a rule with which industries operating in Maine can comply, offers these specific comments:

1. Exemptions

It is of utmost importance that the Department understand that federally regulated products and product components that may have intentionally added PFAS cannot simply be switched for products that do not. The FAA must approve every product and product component that goes into an aircraft, and service and maintenance operations such as ours are further limited to manufacturers' manuals, which dictate what products we may use and how. Because the products

[1] C&L notes that the applicability of 38 MRS § 1614 and the Chapter 90 rule implementing that statute to C&L is unclear. C&L maintains that it is not a "manufacturer" as defined in this statute. While we provide aviation services and sales, 98% percent of our sales are outside of Maine, and our manufacturing in Maine is limited to building ground-support equipment (e.g., engine stands and containers). Until the rule more clearly specifies its inapplicability to, or exemption of, federally regulated products that are largely consumed out-of-state, C&L sought and received an extension of the 38 MRS § 1614(2) notification requirement and are submitting these comments. Full regulatory compliance is our goal, and we hope to assist the Department in ensuring that industries such as ours remain in good standing with the Department.

and product components in the aviation industry are controlled by the FAA, they must be exempt under Section 4 of Chapter 90. Presently, the rule does not clarify what is meant by "A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority." The ban on the sale of products under Section 7 where the reporting requirements of Section 3 cannot be met – a ban effective right now – would result in the State dictating what products are and are not available in the aviation industry. This directly conflicts with federal oversight of those products such that the state's authority is preempted, as the rule should make clear.

However, as presently drafted, the rule does not make clear that it does not apply to industries and products where such application would create a conflict whereby regulated entities could not comply with both federal regulation (dictating what products and product components are available) and the state's regulation (banning certain products and product components). As presently drafted, there can be no aviation industry in Maine without full and complete information regarding the presence of PFAS in the hundreds of thousands of components parts on an aircraft. Certainly, this was not the intent of the Legislature.

In fact, the Legislature's intent to regulate only non-essential products is clear. Exemptions beyond those listed in 38 MRS § 1614(4) are allowed pursuant to 38 MRS § 1614(5)(C) ("Products in which the use of PFAS is a currently unavoidable use as determined by the department may be exempted by the department by rule."). But the present rulemaking puts the cart before the horse. Pursuant to 38 MRS § 1614(10), a 38 MRS § 1614(5)(C) exemption for currently unavoidable uses of PFAS (use of PFAS that the Department has determined to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available) is subject to major substantive rulemaking. Because the Legislature explicitly directed the DEP to "collect information regarding the use of PFAS in and to phase out the sale of certain nonessential products containing PFAS," the determination as to what products are essential products must come first. *An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*, L.D. 1503 (the Act), Emergency preamble (emphasis added).

It makes no sense that, at some point in the unknown future, products that are essential for the functioning of society will be exempt from the notification requirement, but they are not exempt from 38 MRS § 1614(2) notification now because the major substantive rulemaking deeming their use of PFAS as unavoidable hasn't yet happened. The Legislature did not intend to ban essential products and did not intend for manufacturers to have to go through the costly and burdensome process of testing for PFAS now to comply with notification, when their products will eventually be exempt from notification. The Department should either put this rulemaking on hold until it has made its determination on what products will be exempted from the notification requirement (and further extend any granted extensions until final adoption of its rule making such determination), or exempt now products "that if unavailable would result in a significant increase in negative healthcare outcomes, an inability to mitigate significant risks to human health or the environment, or significantly interrupt the daily functions on which society relies."

There is nothing in the Act that prohibits such exemption of federally-regulated and essential products now. The Department's obligation to adopt rules to every provision other than subsection 5(C), including the 38 MRS § 1614(4) "Exemptions" and the 38 MRS § 1614(7) "Failure to provide notice," is subject to the present routine technical rulemaking. The Department therefore is free to clarify in this rulemaking what products qualify for exemptions in Section 4 or Section 7 of Chapter 90. Doing so will ensure that Chapter 90 is not federally preempted and that the intent and directive of the Legislature to "collect information" applies only to "nonessential" products. Subjecting

federally-regulated and essential products to the Section 7 ban where compliance with the Section 2 notification is an impossibility is simply illogical.

Any interruption in the supply of essential products to consumers in Maine cannot have been the intention of the Legislature. It therefore is incumbent on the Department to ensure through this rulemaking that Chapter 90 be drafted such that it does not conflict with federal regulations and instead requires collection of information regarding the use of PFAS in only "nonessential products containing PFAS."

2. Notification

C&L appreciates the Department's efforts to clarify the types of information sought in Chapter 90 Section 3, but the rule as proposed fails to take into account the more than 12,000 substances that may fit the State's definition of PFAS and the lack of methods currently available to test the vast majority of those substances. In fact, the citation to "methods approved by the U.S. Environmental Protection Agency (EPA)" links to a general webpage describing categories of methods, none of which are specific to PFAS. EPA's webpage dedicated to "PFAS Analytical Methods Development and Sampling Research"[2] indicates that EPA is still developing validated analytical methods for drinking water; groundwater; surface water; wastewater; and solids, "which may eventually become standard methods or research methods." The rule should be limited to those PFAS substances for which there are currently available and validated analytical methods, and it should specify what those methods are. Otherwise, as the rule is presently drafted, manufacturers appear responsible for developing a way to identify unknown compounds within their products or product components.

Furthermore, the rule does not appear to account for the likelihood that a singular product may contain hundreds of thousands of product components, requiring an immense effort to identify those required notifications across the hundreds of thousands of components supplied to C&L, each of which may contain multiple PFAS substances with different CAS registry numbers. It further is unclear if the manufacturer of the final product or the manufacturer of each product component is required to file the 38 MRS § 1614(2) notification, and how a manufacturer would know which of its product components were already on file with the Department. Furthermore, it is unclear when a product is "branded" by a manufacturer in instances where we may sell product components off the shelf that also are used in the aircraft we maintain or refurbish.

3. Extension of notification

Should the Department not exempt via this rulemaking federally regulated and essential products, it should provide for extensions of the 38 MRS § 1614(2) notification deadline until such time as it has made its determination as to what products are exempt under 38 MRS § 1614(7)(A). The statute expressly provides for such an extension of this deadline, which the Department recognizes in its proposed Chapter 90 Section 7(A) prohibition on the sale of products for which notification is not made "unless granted an extension in accordance with 38 M.R.S. §1614(3)."

As of March 28, 2023, the Department had granted extensions of the 38 MRS § 1614(2) notification deadline to approximately 2,500 entities, who have made clear that "more time is needed" to come into compliance. Rather than continue to field extension requests, or requests for further extensions,

[2] Available at: https://www.epa.gov/water-research/pfas-analytical-methods-development-and-sampling-research

it makes sense for the Department to instead issue a blanket extension in this rulemaking. Nothing in the statute prohibits it from doing so.

An initial transition period to allow companies to gather the required information, and to develop a reporting procedure, would recognize the breadth of the rule, the hundreds of thousands of product components (such as electronics) that often go into one singular product, the complexity of supply chains, the lack of information at the manufacturer and often at the supplier level, and the fact that no final rule implementing the notification requirement (or establishing the Department's online notification system) was available at the time of the January 1, 2023 deadline. These realities, as well as the Department's time and resources granting further extensions, would be well-served by a blanket extension of the 38 MRS § 1614(2) notification deadline.

4. Fees

The fact that a singular product may contain hundreds of thousands of product components that contain PFAS, each with different CAS registry numbers, would require the payment of fees well in excess of the Department's reasonable administrative costs. The Department should make clear that the fee is for the aggregate product, and not for each product component that contains PFAS.

In conclusion, C&L reiterates its support for the Department's efforts to obtain information on intentionally added PFAS in products sold in Maine, and thanks the Chair for the opportunity to provide these comments. The present rulemaking must make such efforts manageable, however, both for the Department and for the regulated community. Compliance with the rule as presently drafted will be unattainable for many manufacturers in Maine, including those that are bound by federal regulatory regimes and that produce essential products. Such manufacturers may determine that it is more cost effective to remove their products from Maine and/or move their manufacturing operations outside of the State, which represents a very small market for global manufacturers. Where compliance is more costly and difficult than no longer selling products into Maine, many manufacturers may choose to exit this market, which certainly is not what the Legislature intended. Therefore, revisions to the proposed Chapter 90 are necessary before the Department considers adopting a final rule.

Thank you,

Chris Kilgour, CEO
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