

May 19<sup>th</sup>, 2023

Susan Lessard, Chair  
Maine Board of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

**RE: MSCC Written Comments on Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances**

Chair Lessard and members of the Board of Environmental Protection:

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 draft rule for Chapter 90 – Maine’s 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 30<sup>th</sup>, 2022, and the follow up meeting on October 27<sup>th</sup>, 2022 - and recently at BEP public hearing on April 20<sup>th</sup>, 2023 - the broad impact of the reporting aspect of this law became apparent very quickly. Many participants had numerous questions that could not be addressed 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 and 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.

We hope the Board will recognize the difficulties the current regulatory structure has placed on the business community in Maine. We have consistently been hearing from our members expressing concerns that the law has been effective since January 1, 2023 – yet the rules on how to comply are not yet adopted, and we just recently had the public hearing on the rule. 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 Board 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 draft rules is 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 in order to continue to sell that car into Maine. This is an incredible amount of work to try and test for 15,000 different PFAS compounds.

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 therefore, 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.

Additionally, it is further problematic given how PFAS is currently defined. When the Department presented this rule to the Board back in February, we heard the concerns from the Board about this – and we thank the Board for recognizing that. The current definition in this law encompasses 15,000 different chemical compounds. That is essentially impossible to be able to test for and we do not have the lab capacity across the county to do this. The Chamber recently was given a presentation from a top PFAS in products testing lab in the entire country – and they indicated to us that they could only test for between 30-40 different PFAS compounds. So, in the current structure, it is impossible for the regulated community to comply with.

It further brings out the problems around testing capacity, lab capacity, and costs to do this. First, labs across the entire country are burdened right now. As we work to eliminate PFAS from our drinking water, PFAS from our agricultural lands, and now attempting to remove PFAS from products – we simply do not have the lab capacity or technology to do this yet. We heard from one of our members who tried back in August of 2022 to comply with this law – the closest lab they could find to test their products was in Pennsylvania, and that lab indicated they would not even be able to begin testing until 8 months from the original request. Then you factor in the time to test all their parts, it would be very lengthy. Right now, we do not even have the ability test in Maine. So, we are going to be requiring companies based in Maine to pay for their products to be shipped out of state and tested. The costs associated with that will be incredibly problematic for our businesses.

We do thank the Department for several changes made from the first concept draft to the second concept draft, and now to the “draft rule” before the Board. We do have a few specific areas we would like to address in the draft rule in hopes the Board will consider. First, the 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 draft has raised concerns. As the Chamber has previously stated, there is serious cost 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 adding additional fees to report to the Department is going to add additional costs. We hope this can be

reconsidered and the Chamber would be happy to work with the Department/Board and share some 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/Board might 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.

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. In addition, there are several additional questions and concerns raised by the proposed rule – right now, the 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.

Lastly, I want to make sure the Board is aware there is Legislation that just got unanimous support of the Environment and Natural Resources Committee of a proposal impacting this law. We certainly heard a lot from Board members at the public hearing stating they are just doing what the Legislature told them to do. And while that is accurate, we want to highlight that when this was voted in the Legislature back in July of 2021 – it was in the COVID legislative session, and it was very difficult to get members of the public to come forward and testify and engage in the legislative process, and we feel the legislative process was difficult to deal with and this is a more accurate reflection of the impacts of the law.

Thank you for the opportunity to provide these comments and please contact Ben Lucas at [blucas@mainechamber.org](mailto:blucas@mainechamber.org) with any questions.

Sincerely,

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