



May 10, 2023

Mark Margerum
Maine Department of Environmental Protection
17 State House Station
Augusta ME, 04333-0017

RE: Comments on Proposed Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

Dear Mr. Margerum:

I am writing to comment on the proposed regulation *Proposed Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances*. I am the Vice President of Environmental, Health, and Safety for RPM International Inc. (RPM), a company whose subsidiaries manufacture and market coatings, specialty coatings, sealants, and other building materials. We cater to consumers and professionals in the building and infrastructure construction trade. I am submitting these comments on behalf of RPM.

Because *38 M.R.S. §1614 Products containing PFAS* spells out with specificity many of the requirements of this PFAS notification and ban mandate, I will focus my comments on our need for clarification of a select Section of your proposal.

First, I commend Maine's Department of Environmental Protection (D.E.P.) for its access and outreach to RPM when we had questions about earlier drafts and all of us dealing with the statutory 1/1/2023 notification mandate.

I have some concerns about specific gaps in the rule. Specifically, I want to draw D.E.P.'s attention to the following:

7. Failure to Provide Notice.

A. Unless granted an extension in accordance with 38 M.R.S. §1614(3) or a waiver in accordance with Section 3(A)(2) above, a person may not sell, offer for sale, or distribute for sale in the State of Maine a product containing intentionally added PFAS if the manufacturer has failed to provide the information required under Section 3...

(2) The Department may exempt a product from the prohibition under this subsection if the Department has determined that the use of PFAS in the product is a currently unavoidable use.

Questions-

1. How does a company obtain an "unavoidable use" determination?
2. Does a company notifying D.E.P. that a product is an "unavoidable use" toll the notification mandate found in Section 3?

3. Does obtaining an unavoidable use determination exempt the product's manufacturer from reporting Section 3?

This rule's Section 5C creates a potential conflict with D.E.P.'s V.O.C. rules that are key to complying with the Clean Air Act's (C.A.A.) ozone reduction mandate (e.g., D.E.P. Rules 151 and 152).

5. Prohibition on Sale of Products Containing Intentionally Added PFAS.

C. Effective January 1, 2030, a person may not sell, offer for sale, or distribute for sale in the State of Maine any product that contains intentionally added PFAS. This prohibition does not apply to the sale or resale of a used product.

PCBTF is a solvent that air regulators – including the Ozone Transport Commission, which includes Maine – have urged the coatings and building materials manufacturers to use because it is exempt from many V.O.C. limits. PCBTF falls under your current PFAS (Section 2P) definition and is subject to the 2030 PFAS ban found in Section 5C. There are no substitutes for this substance's role in coatings, nor are any alternatives on the horizon. Even if one were to be found,

- it will take years to see if it works under various climate and performance conditions;
- is available in enough quantities;
- is affordable; and
- its use will not result in any unintended harmful consequences.

A ban on PCBTF before a substitute is found will significantly limit the coatings and materials sold in Maine, or D.E.P. will need to raise the V.O.C. limits – pathways no one wants to go down and would also be inconsistent with the OTC VOC limits. This dilemma can paralyze the building material industry's R&D and possibly place D.E.P. in the unenviable position of either not meeting its C.A.A. State Implementation Plan mandates or severely limiting what coatings will be on the shelves, especially on exterior coatings. We urge D.E.P. to work with the Maine Legislators to fix this issue by creating a PFAS ban off-ramp that resolves this conflict.

We appreciate being allowed to speak at your April 20th hearing and submit these comments. Thank you for your attention to this matter.

Sincerely,

RPM International Inc.



Lee A. Bowers
Vice President
Environmental, Health and Safety

Cc: H. Berman, E4 Strategic Solutions