**Before the**
**Minnesota Pollution Control Agency**
**Request for Comments**
**Possible Rules Governing Reporting and Fees Paid by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828**
**ID Number R-4828**

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## Comments of the Chemical Users Coalition

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The Chemical Users Coalition ("CUC") appreciates the opportunity to provide our comments on the Possible Rules Governing Reporting and Fees Paid by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Revisor's ID Number R-4828 (the "Planned Rule") that will be promulgated by the Minnesota Pollution Control Agency (the "MPCA" or the "Agency") pursuant to Minnesota Statutes 116.943, subdivision 2 ("Amara's Law"). CUC is an association of companies from diverse industries that are interested in chemical management policy from the perspective of those who use, rather than manufacture, chemical substances.[1] CUC encourages the development of chemical regulatory policies that protect human health and the environment while simultaneously fostering the pursuit of technological innovation. Aligning these goals is particularly important in the context of chemical management policy in a global economy. CUC Members have been actively engaged with federal and state regulators on PFAS-related legislation and regulation.

CUC submitted comments in response to the September 25, 2023, Notices of Request for Comments (attached). CUC appreciates that MPCA will consider those comments. However, CUC wanted to take this opportunity to highlight specific issues that are of utmost importance to our members.

- **Maintaining Uniformity and Avoiding Duplication of Efforts** - CUC requests that the MPCA carefully consider the importance of maintaining uniformity of regulation from state to state. Specifically, the MPCA should carefully learn from the experience with Maine's Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution. Collaboration with Maine is encouraged, so that Maine's experience can aid the MPCA in crafting a rule that is workable and achieves stated policy objectives. Additionally, as the United States Environmental Protection Agency ("EPA") has promulgated a rule that mandates the reporting of PFAS related information, the MPCA should use the data gathered under that effort to the greatest degree possible before mandating any new data collection. At a minimum, the MPCA should waive reporting for any entity that already reported information to EPA.

- **The Definition of "PFAS"** - Amara's Law currently defines "Intentionally added" PFAS as "PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function." CUC

[1] The members of CUC are Airbus S.A.S., The Boeing Company, Carrier Corporation, HP Incorporated, IBM Corporation, Intel Corporation, Lockheed Martin Corporation, National Electrical Manufacturers Association, RTX Corporation, Sony Electronics Inc., and TDK U.S.A. Corporation.

recommends that the MPCA clarify that the definition does not include manufacturing byproducts and impurities that might be unintentionally present in a product in commerce, PFAS degradants that might be formed during product manufacturing but also be considered unintended components, and PFAS that is reasonably believed to be present in the final product as a contaminant.

Additionally, CUC requests that the MPCA establish a threshold (e.g., de minimis) level for PFAS content in manufactured articles, beneath which level no reporting would be required (such as PFAS present at 0.1% by product weight or greater). The de minimis level of 0.1% is practical and is generally understood by the manufacturers and distributors of manufactured articles that move among various international markets because the level aligns with the level imposed in European Union for substances of very high concern when present in articles.

Furthermore, CUC recommends MPCA focus first on PFAS which are known to be of greater risks before moving on to lower risk PFAS, such as fluoropolymers. A phased-in approach allows the MPCA to assess the efficacy of the program and resources needed, and to make needed adjustments incrementally.

- **The Definition of "Manufacturer"** - Amara's Law defines "Manufacturer" as "the person that creates or produces a product or whose brand name is affixed to the product." There are circumstances when two different entities meet that definition: one may manufacture the product and the other may legally affix their name to the product. In such a circumstance, it is not clear who the "manufacturer" is and therefore which entity has the notification requirement. Furthermore, many companies have subsidiaries, and it is not clear which entity would be considered the "manufacturer." The Agency should clarify with the greatest degree of specificity possible which entity has the primary obligation to report.

- **The Definition of "Product Component" -** Amara's Law defines "product component" as "an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component." The MPCA needs to clarify the intent behind the "identifiable components." In a complex manufactured item, such as a fabricated product known as an 'article,' many components are not visible due to the manner in which the product is assembled. Additionally, often individual components are assembled from other distinct components. It is not clear as to what "identifiable" means in this context. Articles are particularly challenging, as downstream users are often separated by multiple layers in the supply chain, and thus may not be aware of the presence of PFAS-containing parts or components. Given the broad definition of PFAS in the law, it will be imperative to protect downstream users of articles against the undisclosed presence of PFAS by an upstream supplier. CUC strongly recommends that *safe harbor* provisions be granted to downstream users of articles and sufficient time be granted in the event of subsequent discovery of PFAS.

- **Product Descriptions** - Amara's Law provides that the notification must include a description of the product. CUC requests greater clarity as to what is meant by "a description." Does it refer to common distinctions such as consumer use vs. commercial use; or for retail distribution vs. for wholesale distribution; or into product categories such as toy/consumer electronic/furniture etc.? Would it also include (as a requirement) the principal intended uses of the product? CUC recommends that MPCA define a reasonable level of standardization for the elements of the "description."

Additionally, Amara's Law provides that a description of the product, including a UPC, should be reported. The MPCA should take into consideration the amount of time/resources required to report based on UPC. Furthermore, UPC are not used in all manufacturing sectors, such as aerospace and defense. A more generic classifier (such as those based on product category) is preferable. The MPCA should consider use of alternative code systems, including the Harmonized Tariff Schedule ("HTS"), which is widely used around the world. HTS will not, however, be an adequate replacement for all products since it is not required for products shipped domestically within the U.S. and manufacturers therefore may not have this data readily available. An HTS determination is a complex process that requires detailed knowledge of both product and tariff schedule.

- **Confidential Information -** CUC asks that the MPCA recognize that PFAS content could be classified as "Confidential Business Information" ("CBI"). To address the situation where PFAS content information cannot be obtained from a supplier due to CBI, trade secret, or non-responsiveness concerns, CUC suggests that the MPCA authorize and implement an optional joint submission system. Such a system would allow manufacturers to submit their suppliers' contact information when such suppliers were reluctant to provide chemical substance information to the customers due to confidentiality concerns. The system would directly contact the upstream suppliers so that those suppliers could submit the needed information directly to the state. The duty to report would then lie with the suppliers, and the reporting manufacturers would have fulfilled their notification obligation by providing the supplier contact information.

  The MPCA must address situations where disclosure of PFAS content may be prohibited due to national security interests and Department of Defense concerns. Aside from addressing methods of disclosing such information, if not exempted, the MPCA must address whether or not a submission that does not disclose all PFAS related information due to these concerns is considered complete and therefore in compliance with the law.

- **PFAS Content** – The MPCA should follow the lead of the State of California and delay enforcement of any restriction or reporting requirements based on the presence of PFAS until the MPCA develops an accepted testing methodology for determining PFAS content. It must then allow for the regulated community to become familiar with and use such testing methodology and for laboratories to become familiar with the methodology and ensure sufficient testing capacity is available before enforcing any such requirement or restriction.

- **Fees -** CUC recommends that fees, if they must be imposed, should be assessed per each reporting entity or product group instead of by individual product.

**Conclusion**

CUC appreciates the opportunity to submit the foregoing comments and reserves its right to submit additional or modified comments at a later date. We would welcome the opportunity to meet with the MPCA staff to address our comments and to assist in crafting implementing rules.