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June 30, 2025

Administrative Law Judge Jim Mortenson
Minnesota Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Re: In the Matter of Proposed New Rules Governing the Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and Polyfluoroalkyl substances (PFAS); Revisor's ID Number R-4828
OAH Docket 5-9003-40410
Rebuttal Comment

Dear ALJ Mortenson:

The Chemical Users Coalition (CUC) has provided comments in response to the Minnesota Pollution Control Agency's (MPCA) Proposed Permanent Rules Relating to PFAS in Products; Reporting and Fees (the "Proposed Rule"). Upon review of the MPCA's Response to Comments, CUC is compelled to address certain issues and to file these comments in response.

CUC is an association of companies from diverse industries 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 in the context of international markets and the global economy.

As mentioned in our previously submitted comments (enclosed), and as acknowledged by MPCA in the Response to Comments, the scope and complexity of the Rule may pose significant compliance challenges, particularly for manufacturers and importers of complex products that may contain components with PFAS content. For complex manufactured products, the number of component parts can be in the thousands. The number of companies involved in the manufacture of any constituent part can be numerous, difficult if not impossible to track, and even if they could be identified, many suppliers globally may simply refuse to cooperate. Consequently, the required reporting of PFAS that may be present in such products creates a significant challenge.

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

The due diligence standard proposed by MPCA (the reporting entity "must request . . . until all required information is known") is simply unworkable and not realistic. CUC, along with many other commenters, noted this, and pointed to the standard used by the Environmental Protection Agency for its reporting requirements ("EPA") of "known to or reasonably ascertainable." MPCA's rejection of this standard demonstrates a profound lack of understanding of EPA's standard, how it has been utilized for years for mandated reporting, and the true complex nature of manufacturing and supply chains.

The EPA's due diligence standard of "known to or not reasonable ascertainable" is used for purpose of the PFAS Reporting Rule under (8)(a)(7) of the Toxic Substances Control Act (TSCA) and numerous other reporting requires imposed under TSCA. Unlike what MPCA appears to presume, the TSCA standard is not used solely for the type of retrospective reporting required in the Section 8(a)(7) rule. EPA has used this standard for its Chemical Data Rule (CDR) reporting[2] (which is required every 4 years) as well as for the submission of New Chemical Premanufacture Notices (PMNs)[3] (which, by definition are "forward-looking" submittals). EPA has developed extensive guidance on the application of this standard. It is unclear MPCA's basis for asserting that "'(r)easonably ascertainable' is not an enforceable standard" when a federal regulatory agency – EPA – has been using that due diligence standard for decades. It also is difficult to understand why MPCA concludes that its legal mandate to collect information is so vastly different than other regulatory programs (including federal programs that in some cases require a federal agency to make regulatory determinations based on the submitted information) that MPCA must require a unique – and impossible to satisfy – due diligence standard.

CUC disagrees with MPCA that "(i)t is reasonable to ask manufacturers to *continue to pursue* all information regarding PFAS use in their products." As currently interpreted by MPCA, the imposition of such a standard could require an entity subject to the State's reporting rule to continue making inquiries of its suppliers *ad infinitum*. Asking another entity for the same information numerous times does not guarantee an eventual response. As noted above and in CUC's previously-submitted comments, in the case of complex manufactured products with many component parts (some which may include assembly steps involving intricate parts from multiple suppliers), requiring such endless inquiries simply is not logical, is impractical, and simply sets up product manufactures and importers for failure and potential exposure to enforcement actions. In addition, it may lead to manufacturers simply opting not to do business in Minnesota.

MPCA's reference to Oregon as another jurisdiction with a high standard for due diligence further demonstrates that MPCA is either not aware of the infeasibility of the Proposed Rule's due diligence standards or may not care. Oregon's Toxic-Free Kids Act requires reporting on a very

[2] 40 CFR Part 711
[3] 40 CFR 720.65 (c)(vi)

discreet set of substances, which are listed, in a specific product category. MPCA's Proposed Rule requires reporting not on a single substance, or even a finite list of identified substances, but rather a class of substances that can encompass thousands of varying substances, some of which are proprietary. Furthermore, the Proposed Rule requires reporting on the presence of PFAS in literally everything that enters commerce in Minnesota. The amount of effort required for compliance with the Proposed Rule is simply not comparable to the referenced Oregon requirements. To suggest that the due diligence standard should be the same for both belies a lack of understanding of the nature of the substances, the product categories, and complex (international) supply chains.

The CUC believes that the Proposed Rule's due diligence standard is impractical, unworkable, and borders on being arbitrary and capricious. CUC respectfully requests that MPCA replace the standard currently in the Rule with the standard EPA has used successfully for decades.

The CUC appreciates your consideration of these comments. If you have any questions relating to this submission, please feel free to contact me.

Sincerely,

Judah Prero
Counsel to the Chemical Users Coalition

Enclosure