



AmericanCoatings

ASSOCIATIONSM

April 26, 2023

Senator Brenner, Representative Gramlich and members on the Joint Standing Committee of Environment and Natural Resources
100 State House Station
Augusta, Maine 04333-0100

Re: Committee Hearing on PFAS Related Bills, in Support of LD 1214

Dear Senator Brenner, Representative Gramlich and members on the Joint Standing Committee of Environment and Natural Resources:

The American Coatings Association (“ACA”)¹ appreciates the opportunity to comment on LD 1214, *An Act to Clarify the Laws to Combat Perfluoroalkyl and Polyfluoroalkyl Substances Contamination*, and other PFAS-related bills currently before the committee. The Association’s membership represents 90% of the paint and coatings industry, including downstream users of chemicals who manufacture end-use formulated products. ACA appreciates the committee’s willingness to interact with stakeholders during this process. We are optimistic that through continued involvement with the public and stakeholder community, Maine will successfully implement a program to manage products containing PFAS chemicals.

PFAS encompasses a variety of fluorinated chemistries with very distinct physical and chemical properties, used in a variety of products. Maine’s adoption of a broad PFAS definition inevitably captures a diverse range of reportable chemicals, whose reporting through one standardized approach proves challenging, due to complexities in the supply chain and difficulty in identifying reportable chemicals across thousands of products. This complexity is compounded by the current compliance date of January 1, 2023. To date, Department of Environment (hereinafter, “DEP”) has not finalized implementing rules specifying reporting methods.

ACA is testifying in support of LD 1214. LD 1214 addresses problems in implementation of *An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances* (L.D. 1503, 130th Legislature) that prevent effective reporting of products containing PFAS chemistries. LD 1214 would focus the definition of PFAS, provide

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA’s membership represents over 90 percent of the total domestic production of paints and coatings in the country.

a blanket extension for reporting and specify a standard for claims related to confidential business information.

I. LD 1214 would provide a more feasible definition of PFAS.

By modifying the definition of PFAS to include compounds with two or more sequential fully fluorinated carbon atoms, the bill would allow companies and DEP to focus on tracking chemicals that are associated with contamination. The focus of remediation programs has been on fluorinated chemistries of 3-4 fluorinated carbons or more. EPA recently proposed listing PFAS chemicals as hazardous under CERCLA focusing on 7 PFAS chemicals that are all longer than one fluorinated carbon atom.² Typically, contamination is not associated with short chained PFAS substances of one carbon with fluorine.

The change in definition proposed in LD 1214 also harmonizes with the federal definition EPA proposed in its PFAS reporting rule under the *Toxic Substances Control Act*. EPA's definition is:

any chemical substance or mixture that structurally contains the unit R-(CF₂)-C(F)(R')R".
Both the CF₂ and CF moieties are saturated carbons. None of the R groups (R, R' or R") can be hydrogen.³

Here, EPA's definition includes compounds with two or more fluorinated carbons, but not one fluorinated carbon. Again, the purpose here is to require reporting of PFAS chemistries associated with contamination, while reducing some of the complexity of compliance. Even with this "streamlined" definition, the agency is likely to receive information related to about 600 or more fluorinated chemicals and thousands of products.

II. LD 1214 harmonizes reporting times with a blanket extension and uniform reporting date.

ACA also supports the extension of the reporting deadline to January 1, 2024, as proposed in LD 1214. DEP is in the process of finalizing reporting requirements while developing an online submission platform. When complete, companies that reported by January 1, 2023 would need to supplement their notification in the online system. By providing a blanket extension, the agency would be able to manage submissions within one uniform timeframe while companies also can rely on one submission date, assuming DEP is able to finalize rules sufficiently in advance of a compliance date.

Several companies received extensions of the reporting deadline. These extensions would presumably remain in effect with passage of LD 1214. DEP provided reporting extensions for 2,400 companies. These companies would be required to submit reports within six months after DEP finalizes its implementing rules.

² EPA's Advanced Notice of Proposed Rulemaking addressing PFAS contamination is available online at: <https://www.federalregister.gov/documents/2023/04/13/2023-07535/addressing-pfas-in-the-environment>

³ See EPA rulemaking EPA-HQ-OPPT-2020-0549, 86 Fed. Reg. 33926 (Vol. 86, No. 121, June 28, 2021).

III. LD 1214 establishes a benchmark for claims related to confidentiality.

ACA further supports the proposal in LD 1214 to allow for claiming confidential information under the “laws of the State and the Uniform Trade Secrets Act.” This reference would provide a general standard related to claiming confidential information. Under the Act, CBI claims are evaluated based on consideration of economic value derived from protection of claimed CBI from disclosure. This concept is adopted into the Uniform Trade Secrets Act at 10 M.R.S. 1542(4). The act also provides general definitions related to CBI.

IV. LD 1537 would implement an unrealistic reporting deadline and an unnecessary product phase-out requirement.

While noting its support for LD 1214, ACA does not support changes to PFAS reporting proposed in LD 1537. LD 1537 would implement a new reporting deadline for products with intentionally added PFAS by October 1, 2023. This deadline is not feasible, considering that DEP struggled to evaluate and grant extensions, currently in effect, for the prior reporting deadline of January 1, 2023. DEP is also in the middle of a rulemaking process that is unlikely to be completed with enough compliance time to meet a deadline of October 1. Product manufacturers require ample time to track and report PFAS through their supply chain.

LD 1537 would also implement an unnecessary and vague requirement for DEP to adopt one “product category” to phase-out per year, starting January 1, 2025 through December 31, 2029. Under LD 1503, Section 5, currently in effect, DEP already has the authority to identify products with intentionally added PFAS that cannot be sold or distributed in the State.

V. Conclusion

ACA appreciates the opportunity to comment on bills to manage PFAS in the State of Maine. For the reasons articulated herein, ACA supports passage of LD 1214 and does not support passage of LD 1537. Please feel free to reach out to me if I can provide any additional information.

Respectfully submitted,

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