Henry L. Ingwersen
Senator, District 32

THE MAINE SENATE
132nd Legislature

3 State House Station
Augusta, Maine 04333

January 27, 2025

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

Dear Board of Environmental Protection,

Thank you for the opportunity to make some comments on the draft rules for LD 1537, *An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution and to Provide Additional Funding*. The following comments are divided up into the sections of the draft they refer to.

Definitions

1. The draft rule defines chemically formulated as "a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources". However, there are times when PFAS is added to the substance and doesn't chemically "change" the natural substance. This definition needs to take into account instances when that occurs.

2. The definition of clothing in the draft rule states "Clothing item" means an article of wearing apparel designed to be worn on or about the human body. The definition does not include clothing items that are accessories or special clothing, such as jewelry, watches, purses, handkerchiefs, scarves, ties, headbands, belts, or shoes. While the law doesn't specifically define clothing, this definition excludes all of the above-mentioned items that could be considered "clothing items". The definition needs to be clearer.

3. Under the definition for "Commercially available analytical method" the Department states that "Commercially available analytical methods do not need to be performed at a third-party laboratory". I disagree, because industry, in deference to fairness and transparency, should not be allowed to test their own materials. Experience has shown the public that industry has not always been trustworthy and transparent when it comes to the health impacts of PFAS or the use of PFAS in certain products. I believe that industry should be required to use a third party to test to prove that the information is correct and valid.

4. Under the definition of "cookware" the draft states "NOTE: The definition of cookware is limited to houseware. Cookware does not encompass items intended for use in and market exclusively for use in commercial, industrial, or institutional settings." By limiting cookware to "houseware" this definition does not encompass the intent of the statute. LD 1537 in section A-10, states that the definition of cookware "Cookware product" means a durable houseware product intended to be used to prepare, dispense or store food, foodstuffs or beverages, including, but not limited to, a pot, pan, skillet, grill, baking sheet, baking mold, tray, bowl and cooking utensil." In the statute there is no exemption for industrial or commercial cookware.

5. Fluorinated Container. The draft defines a fluorinated container as "any container which has been treated with fluorine atoms to create a permanent barrier." The statute makes no exceptions for the purpose for which containers are fluorinated. To narrow the scope of the definition based on a single purpose, "to create a permanent barrier" is contrary to statute. Fluorinated containers should be covered regardless of purpose for the fluorine treatment, which may be different than "to create a permanent barrier". The agency does not have the authority to narrow the definition of a statutory term. Instead, the definition should read *"any container which has been treated with fluorine atoms".*

6. For the definition of semiconductor, part of the definition states "intended to perform electronic and other related functions". Since this will be an exemption from the law, this definition needs to be clear and detailed, specifying the purpose of semiconductors to avoid an unnecessarily broad definition.

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8. Reasonably available: The draft definition states that a PFAS alternative is "reasonably available" if "readily available in sufficient quantity and at a comparable cost to PFAS." Comparable cost should not be included in this definition. The concept of a "comparable" cost is too vague, given that the costs can vary dramatically from product to product. In fact, an alternative product may drop in price as it is found to be an available alternative to the use of PFAS. The definition also includes "intended to replace and perform as well as or better than PFAS in a specific application of PFAS in a product or product component". Performance is irrelevant to the concept of "reasonably available" and should be removed.

Currently Unavoidable Use

1. In the currently unavoidable use section A(3)(b) the draft states "The required specific characteristic or combination of characteristics that necessitate the use of PFAS chemicals." Industry should have to provide additional information as to why this characteristic(s) is necessary for the products' function in health, safety, or the functioning of society. A justification for the need for PFAS for the function of the product alone should not be sufficient for a Currently Unavoidable Use (CUU) exemption.

I would recommend that the State establish clear criteria for making CUU decisions so that the required information being requested clearly connects to the corresponding criteria. This clear correspondence between criteria and information requests which will be used to make CUU decisions serves two purposes: it weeds out unnecessary questions and makes the entire process easier to understand for all parties. Finally, the criteria should line up with international scientific work on this, which is also reflected in the European Union guiding principles and criteria for the essential use concept. As it currently is, the draft does not make clear what criteria will be used to determine CUU designation and how the information requested aligns to the criteria, so that a justified decision can be made.

2. Under section A(4)(e) "A comparison of the known risks to human health and the environment between PFAS and the materials identified in Subsection A". It makes no sense to require risk based criteria to get a currently unavoidable risk designation. When the law was passed, it was passed because there is agreement that the use of any PFAS is a problem and that we need to stop all uses that we can. It is settled science that PFAS, in almost any amount, is a risk to human health. This is the essential use concept. This statute was not intended to set up a risk-based framework, and goes against the intent of the law that *any use of PFAS must be necessary for the "health, safety, and functioning of society".*

I appreciate the work you are undertaking in regards to this very important statute. Thank you for your deliberation.

Respectfully submitted,

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Arundel, Biddeford, Dayton, Hollis and Lyman

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