March 29, 2026

Katrina Kessler
Commissioner
Minnesota Pollution Control Agency
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164-0620

Re: Currently Unavoidable Use Concepts, Minnesota PFAS in Products
Submitted online at: https://mpca.commentinput.com/

Dear Commissioner Kessler:

The American Coatings Association ("ACA")[1] appreciates the opportunity to provide comment regarding concepts towards developing rules addressing CUU (Currently Unavoidable Use) of PFAS in products, implementing Minnesota Session Law, Ch. 60, Art. 3, Sec. 21 (Minnesota Statutes 116.943), subdivision 2, known as *Amara's Law*. The Association's membership represents 90% of the U.S. paint and coatings industry, including downstream users of chemicals who manufacture end-use formulated products such as paint, coatings, sealants and adhesives. ACA appreciates the agency's willingness to interact with stakeholders during this process. ACA provides

[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.

comments below in response to MPCA's (Minnesota Pollution Control Agency's) request for comment.

Paint products contribute directly to sustainability by providing resistance and durability to products upon application. Paint offers vital functions for infrastructure, consumer goods and industrial applications; contribute to a safe and healthy environment for communities; and add color and protection to buildings, homes and a variety of goods and machinery. Further noting the far-reaching impact of the ban on PFAS in products, paint applications include protection of critical water delivery systems, bridges, buildings and other socially valuable infrastructure. Applications include reflective coatings enhancing building energy efficiency, EV battery coatings, bridge paints, solar-panel coatings, etc.

ACA recommends realigning the CUU analysis to focus on evaluating PFAS as used in a product, instead of focusing on PFAS alternatives. Alternatives analysis is one element within a broader evaluation of how PFAS is used in a product, its function, overall product safety, environmental effects of use, social benefits, etc. Revising CUU evaluation criteria in this manner would also align with Maine's criteria for CUU evaluation. ACA also provides several administrative suggestions related to timing of reviews and application submission, trade secret protections, public consultations, expiry of CUU designations and reapplication.

Please consider the following:

I. Essential for health, safety or the functioning of society.

MPCA's proposed definition of *essential for health, safety or the functioning* of society establishes criteria that could be overly restrictive, prone to an interpretation that would bar socially valuable products for less effective and less safe products. MPCA's proposed criteria assumes that all PFAS pose a risk. To obtain a CUU designation, a manufacturer would need to demonstrate that a product without PFAS results in a *significant* increased risk of negative health outcomes, inability to mitigate *significant* environmental or health risks or *significant* social disruption to commercial, public or ecosystem activities. The criteria focuses on an alternatives analysis rather than essential use of the product at issue. ACA recommends refocusing criteria on the essential use of the product, while considering reasonably available alternatives as one factor in the CUU analysis.

As used in coatings, fluoropolymers pose little to no health or environmental risk. Due to heightened regulatory scrutiny, coatings manufacturers only use fluoropolymers to meet performance requirements, after considering product safety and potential environmental effects. MPCA's CUU factors do not provide for adequate consideration of product efficacy, considering when health and environmental risk are minimal. Compared to current coatings formulations, alternatives, if available, will have some

increased environmental or health risk due to being less effective. Environmental risk of alternatives may be indirectly related to using a less effective coating, resulting in more frequent recoating, increased resource use, increased transport costs and carbon emissions, increased use of packaging, etc. Because coatings are not a source of PFAS contamination, MPCA cannot factor the cost of PFAS remediation as a detriment associated with continued use of high-performance coatings products. (*See* Section V below detailing why cost of PFAS remediation is not an appropriate consideration when considering a CUU application).

Additional details related to "PFAS" use in paint demonstrate the need for efficacy considerations in the "essential use" concept. Fluorinated chemistries are sometimes necessary to meet high performance standards, often reducing raw materials and energy usage due to durability of the fluorinated product. Further, paint manufacturers may formulate products to meet standardized performance requirements, such as AAMA 2605-20 (2020) *Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels (with Coil Coating Appendix)* or *SSPC Paint 47, Highly Weatherable Fluoropolymer Topcoat, Performance-Based***.** Federal agency specifications and municipal codes may adopt these and other related performance standards as requirements for coatings. Another application includes intumescent coatings on industrial buildings used to delay or stop the spread of industrial fires.

ACA encourages MPCA to consider the necessity of fluoropolymers to meet specifications. Fluoropolymer binders are essential for providing the kind of durability, safety, and sustainability that permit long lifespan protective coatings for critical infrastructure such as bridges, buildings, and other structures; and fluoropolymers are specified to meet several architectural industry performance standards, such as AAMA 2605, SSPC Paint 47, etc. Less effective technologies will lead to greater waste and replacement costs and higher risk of structural deterioration and aesthetics reduction.

a. OECD publication regarding PFAS in paints and coatings notes that replacements do not perform at the same level as coatings with fluoropolymers.

In January 2022, the OECD published *Per- and Polyfluoroalkyl Substances and Alternatives in Coatings, Paints and Varnishes (CPVs) (Report on the Commercial Availability and Current Uses)*.[2] For most uses, OECD concludes that performance characteristics of coatings with fluoropolymers make them more desirable products than their non-performing alternatives.[3] Use of coatings with fluoropolymers is limited

[2] *Alternatives in Coatings, Paints and Varnishes (CPVs) (Report on the Commercial Availability and Current Uses)* (hereinafter, "OECD Report") is available online at: https://www.oecd.org/chemicalsafety/portal-perfluorinated-chemicals/per-and-polyfluoroalkyl-substances-alternatives-in-coatings-paints-varnishes.pdf
[3] OECD Report at p. 65-66

by need where a buyer is willing to pay additional costs for high-performance characteristics. When considering bridge paint, the OECD concludes that,

> [I]t would cost approximately 26% more with the FP (fluoropolymer) based coating compared to polyurethane. However, after 30 years it was concluded that the total cost for the polyurethane coating would cost 16 % more than the FP-based coating, owing to the faster degradation of the non-PFAS coating and therefore a need for more frequent recoating, with associated labour and material costs.

CEPE (The European Council of the Paint, Printing Ink, and Artist's Colours Industry), in collaboration with ECCA (European Coil Coating Association), engaged an external consultant that conducted an in-depth life cycle assessment of the various coil coating systems. This work concluded that PVDF coatings, when compared with other systems used by the coil coating industry, has the lowest environmental impact – 74% lower than commonly-used polyester coating.

The lower environmental impact is driven by the durability of PVDF coatings, which has double the life expectancy (30 years) of polyester coatings (15 years). The increased durability of PVDF lowers the frequency of the need for repainting and replacement of a building's metal cladding.[4] The study demonstrates that additional material and manufacturing costs associated with non-fluoropolymer alternates have an environmental impact from increased use of raw materials, energy consumption, waste production and disposal, etc.

b. Fluoropolymers used in coatings are not a source of contamination, due to physical characteristics that vary from PFAS contaminants.

Fluoropolymers are considered *polymers of low concern* (PLC) recognized by several regulators, since they are chemically stable, non-toxic, non-bioavailable, non-water soluble and non-mobile. Recently, Ecology (i.e. Washington Department of Ecology), when considering fluoropolymers as part of its review of PFAS under *its Safer Products for Washington* program, concluded:

> Fluoropolymers have been found to have thermal, chemical, photochemical, hydrolytic, oxidative, and biological stability (Henry et al., 2018; Korzeniowski & Buck, 2019a). They are almost insoluble in water and not subject to long-range transport. With very high molecular weight (greater than 100,000 Da), fluoropolymers cannot cross the cell membrane. They are neither bioavailable nor bioaccumulative. Clinical

[4] Submission to the Public Consultation on the Proposed PFAS Restriction: The Use of PVDF and FEVE Fluoropolymers in the European Coil Coating Industry, by Dr T.J.Goodwin, Sustainability Director, ECCA; 21st August 2023.

> studies of their use in medical devices has demonstrated lack of chronic toxicity or carcinogenicity and no reproductive, developmental, or endocrine toxicity.[5]

The two studies Ecology relies on, from *Henry, et. al*. and *Korzeniowski*, evaluated criteria to conclude that fluoropolymers are not mobile, bioavailable or bioaccumulative. Further, they do not transform into long chain, non-polymeric chemistries associated with PFAS contamination. Fluoropolymers are a fundamentally different chemistry from non-polymeric PFAS chemicals associated with contamination. Because of these qualities, fluoropolymers have been classified as *polymers of low concern* by regulators.[6] For these reasons, Canada proposed to exclude fluoropolymers from its definition of PFAS for regulatory purposes, proposed in its *Updated Draft State of Per- and Polyfluoroalkyl Substances (PFAS) Report*[7].

DoE (Department of Energy) recently concluded that fluoropolymers are distinct from non-polymeric PFAS chemicals in its report, *Assessment of Fluoropolymer Production and Use with Analysis of Alternative Replacement Materials* (published January 2024). DoE explains that due to relatively smaller molecular weight, non-polymeric PFAS are mobile in a variety of media, increasing particle dispersion. Significantly higher molecular weight of all forms of fluoropolymers, over non-polymeric PFAS, makes fluoropolymers stable and non-water soluble compared to non-polymeric forms. The report notes that literature suggests that fluoropolymers are generally non-mobile and cannot permeate the cell membrane. Some reports disputing these conclusions note evidence related to polymers rather than fluoropolymers.

The DoE further explains that,

> The unique characteristics of fluoropolymers can enhance product durability, sustainability and safety. Products that are lighter and longer-

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[5] Washington Department of Ecology, *Per- and Polyfluoroalkyl Substances Chemical Action Plan*, p. 97, Sept. 2022 revision of original publication from April 4, 2021, available online at: https://apps.ecology.wa.gov/publications/documents/2104048.pdf.

[6] See Henry, B.J., Carlin, J.P., Hammerschmidt, J.A., Buck, R.C., Buxton, L.W., Fiedler, H., Seed, J. and Hernandez, O. 2018, *A critical review of the application of polymer of low concern and regulatory criteria to fluoropolymers*, Integr Environ Assess Manag, 14: 316-334, available online at: https://doi.org/10.1002/ieam.4035;
See also Korzeniowski, S.H., Buck, R.C., Newkold, R.M., El kassmi, A., Laganis, E., Matsuoka, Y., Dinelli, B., Beauchet, S., Adamsky, F., Weilandt, K., Soni, V.K., Kapoor, D., Gunasekar, P., Malvasi, M., Brinati, G. and Musio, S. 2022. *A critical review of the application of polymer of low concern regulatory criteria to fluoropolymers II: Fluoroplastics and fluoroelastomers*. Integr Environ Assess Manag, available online at: https://doi.org/10.1002/ieam.4646.

[7] See the Executive Summary in the Canadian Gazette, July 2024: https://www.gazette.gc.ca/rp-pr/p1/2024/2024-07-13/html/notice-avis-eng.html#ne3.

lasting will generally have lower life cycle costs, embodied energy, transportation-related emissions, and safety risks.

Benefits of fluoropolymer usage in building construction and infrastructure are covered in Section 2.4.3, page 2-11 of DoE's Report. Fluoropolymer coatings can reduce building cooling costs and improve energy efficiency by up to 22%. Fluoropolymer coatings reduce building maintenance by extending building life, even in harsh environments, while enhancing overall stability. Fluoropolymer coatings also are resistant to dirt adhesion enhancing their solar reflective and protective properties.

c. MPCA must consider efficacy and lack of significant risk of PFAS as used in a product.

Considering the lack of risk from PFAS as used in coatings, MPCA must update the essential use / CUU concept to consider overall product efficacy, safety and environment impact of the product at issue that contains PFAS. To accomplish this, MPCA should consider how PFAS is currently used in the product, rather than focusing on risk associated with alternatives. For example, MPCA could include a factor:

- *PFAS as used in the product is unlikely to result in significant negative health or environmental outcomes, considering controlled use, proper disposal and other factors*.

MPCA should not focus the CUU assessment on risk of a hypothetical reformulated product *without* PFAS. Instead, MPCA must first consider safety, environmental risk and efficacy of the product at issue. If intended use of a product raises safety or environmental concerns, MPCA must then consider degree of risk without PFAS. As such, MPCA must delete the following phrase from the proposed definition of *essential for health, safety, or the functioning of society*:

> *. . . such that the unavailability of the PFAS for use in the product would cause the product's service to be unavailable, which would result in:*
> *A.A significant increase in negative health outcomes;*
> *B.An inability to mitigate significant risks to human health or the environment; or,*
> *C.A significant disruption of commercial, public, or ecosystem services on whichsociety relies, including:*
> *1. Provision of food, water, shelter, health, hygiene, or bare necessities for human survival;*
> *2. Provision of transportation and utilities such as gas, electricity, data, communications, and sewer;*
> *3. Provision of personal, occupational, or public safety particularly for extreme conditions of use; and,*
> *4. Other services not covered under subitems (1) through (3) that serve the basic needs of human beings*.

II. MPCA must consider the social benefits of the product at issue in the CUU application, as manufactured with PFAS.

Minnesota's proposed criteria for social benefits analysis is contained within the third element of its concept for what is *essential to health, safety and functioning of society*. Under this element, any coatings formulation without PFAS is assumed to be superior, unless the manufacturer can show that the PFAS-free formulation would cause:

> *A significant disruption of commercial, public, or ecosystem services on which society relies, including:*
> *1. Provision of food, water, shelter, health, hygiene, or bare necessities for human survival;*
> *2. Provision of transportation and utilities such as gas, electricity, data, communications, and sewer;*
> *3. Provision of personal, occupational, or public safety particularly for extreme conditions of use; and,*
> *4. Other services not covered under subitems (1) through (3) that serve the basic needs of human beings.*

The use of *significant* in this context is significantly vague and could readily be construed to set an unattainable standard to maintain use of PFAS, even where PFAS can be used safely, with minimum to no environmental effects, while providing an important social function, such as infrastructure protection, corrosion protection for water delivery systems, etc. The criteria assumes that: a) a PFAS free alternative is available; and b) that alternative, even if performing poorly, would not *cause a significant disruption of commercial, public or ecosystem services*. This proposal conflates the alternatives analysis component with a benefits analysis of the product at issue.

ACA recommends that MPCA consider the social benefits of the product with PFAS as equivalent considerations to health effects, environmental effects and overall product safety. If considering all factors in the aggregate indicates that use of a product with PFAS has a significant risk, while considering social benefits, MPCA should consider social benefits and risks associated with possible alternatives only after assessing the product identified in the CUU application.

Maine provided further clarification to their *essential use* concept that could inform Minnesota's definition. MDEP (Maine Department of Environment) offered guidance on its website in May 2023 in relation to applications for CUU (currently unavoidable use) designations, explaining,

"Essential for the Functioning of Society includes but is not limited to climate mitigation, critical infrastructure, delivery of medicine, lifesaving equipment, public transport, and construction."

ACA recommends adopting this language into its *essential use* concept.

ECHA (the European Chemicals Agency) strategy towards essential uses and PFAS risk mitigation can also inform Minnesota's strategy. In 2023, the EU published an aggressive proposal to implement a uniform ban of all manufacture, import and use of fluorinated chemistries within 18 months of adoption. ECHA did not proceed with the proposal after carefully considering critical uses. In August 2025, ECHA came out with a revised proposal recommending further evaluation of PFAS uses in certain sectors, exploring the concept of critical use while considering a long-term phase out as needed. ECHA is also considering general risk mitigation strategies in lieu of a ban that could apply to all sectors such as general concentration limits and further hazard assessment and management by PFAS type. This development shows an evolution in the understanding of PFAS risk and risk mitigation.[8, 9]

III. MPCA must revise factors to address *alternatives* and when alternatives are *reasonably available*.

Maine's implementing rules are informative in that they include consideration of reasonably available alternatives as one factor when evaluating the overall essentiality of the product with PFAS. Other factors focus on how PFAS is used in the product that is the subject of the CUU application, including function of PFAS and why it is essential, standards or laws requiring use of PFAS, characteristics that necessitate use of PFAS, etc.

In Maine, consideration of reasonably available alternatives include:

(a) Identification of specific compounds, classes of materials, or combinations of materials identified as potential alternatives including the removal of PFAS without substitution;

(b) An assessment of how the materials meet or fail to meet the *essential for the functioning of society* criteria.

[8] Committee for Risk Assessment (RAC) Committee for Socio(-economic Analysis (SEAC) *Background Document to the Opinion on the Annex XV dossier proposing restrictions on Per- and polyfluoroalkyl substances (PFASs)* (June 24, 2025), available online at: https://echa.europa.eu/documents/10162/cd583492-f5d4-e2e7-9938-a1d602084c72

[9] ECHA, *Consultation on the SEAC draft opinion on restricting per- and polyfluoroalkyl substances (PFAS) – Guidance for respondents* (March 2026), available online at: https://echa.europa.eu/documents/10162/cd583492-f5d4-e2e7-9938-a1d602084c72

(c) An assessment of whether the compound is anticipated to be available in sufficient quantities to meet production needs without regard to cost;
(d) An assessment of the anticipated cost difference between obtaining PFAS for use in a product and obtaining the material identified for the same purpose;

(e) A comparison of the known risks to human health and the environment between PFAS and the materials; and

(f) An assessment of whether there are feasible changes to the manufacturing process of the product that would eliminate the need for PFAS.

(Section 9(A)(4) of *Department of Environment Rules*, 06-096 C.M.R. Ch. 90)

ACA also recommends adding *commercial availability of the potential alternative* to the listed assessment criteria. ACA has encountered situations where an agency identifies an alternative, but the alternative is not readily available in necessary quantities on the U.S. market, nor is increasing production or imported amounts possible while maintaining a viable cost. ACA requests that the CUU application process include consideration of commercial availability of alternatives as a separate factor. Although commercial availability is linked to costs, separating costs and commercial availability as separate factors highlights the need for consideration of production and/or import volumes of an alternative in relation to costs.

ACA also recommends modifying the definition of *alternative* to allow a product manufacturer to use a safer fluorinated chemistry as a substitute or transitional substitute for a PFAS. The change would allow for transition to lightly fluorinated or compounds with a single carbon-fluorine bond where safety and environmental effects can be minimized. Changing the definition of "alternative" would merely allow MPCA to maintain flexibility to consider options on a case-by-case basis. It would not automatically allow continued use of PFAS. This flexibility is also needed to allow transition away from PFAS for certain high-performance products that would need some high-performance fluorinated content, while R&D continues to identify a non-fluorinated substitute. The definition can be easily modified to remove reference to "non-PFAS chemical."

ACA also notes that the concept of "functional equivalence" is prone to a broad interpretation that would render it meaningless. ACA encourages MPCA to incorporate efficacy of a product into its understanding of functional equivalence. For example, an architectural coating without PFAS providing protection for a 30-year period should not

be deemed the functional equivalent of a high-performance coating. ACA requests MPCA add explanation in the definition of alternative that emphasizes efficacy.

Focusing on efficacy is critical since products with PFAS typically do not have functional equivalents, ultimately impacting potential for environmental effects. Because of the scrutiny around PFAS, coatings manufacturers have carefully analyzed PFAS use to determine that incorporating PFAS is needed to obtain a performance benefit, considering the low risk of contamination or health impact. That is, often PFAS is the safest, most environmentally friendly and most effective alternative. Substituting out PFAS could result in a less effective product that is not a functional equivalent.

Incorporating these changes, ACA suggests the following definition of alternative:

> *Alternative* means a ~~non-PFAS~~ chemical, substance, material, manufacturing process change, non-chemical change, or other product that, if used in place of a current PFAS in a product or a PFAS-containing product, would result in a functionally equivalent product, considering product performance and efficacy.

ACA also recommends adding the list of considerations from Maine's PFAS in Products Law, listed above and at Section 9(A)(4) of *Department of Environment Rules*, 06-096 C.M.R. Ch. 90. As noted above, ACA also recommends adding *commercial availability of the potential alternative* to the list of considerations.

IV. MPCA should allow a broad interpretation of product category for the purpose of CUU applications

In order to maintain efficiency in the application process, ACA recommends allowing multiple types of products that have a similar, although non-identical function, within one CUU application as one *product category*. For example, a coatings manufacturer can include several formulations within one CUU application where the PFAS type is similar, performing a similar, but perhaps non-identical, function in the product. This would streamline MPCA's review, consolidating evaluation of similar products. The manufacturer could also include descriptions of performance differences in coatings formulations in one application.

MPCA's proposed definition of *product category* would need to be modified to accommodate similar products that are variations of the same product, but not "functional equivalents." For example, a commercial deck sealer with fluoropolymers is similar in function and PFAS use to a high-performance bridge coating with fluoropolymers, but they are not functional equivalents that can be substituted.

ACA recommends the following change to MPCA's proposed definition:

> "Product category" means a group of similar products that are used for a similar purpose. ~~and that could functionally replace each other for that~~

~~purpose and does not mean variations within a product that do not affect the product's primary function.~~

V. MPCA's proposed consideration of the cost of PFAS remediation when evaluating a CUU is arbitrary.

MPCA suggests that costs of PFAS remediation will be factored into CUU applications when determining whether to allow continued use of a product. This approach is arbitrary, not authorized under administrative requirements for agency rules and not related to the essential use concept. Further, considering the severe restriction on interstate commerce, any restriction must be narrowly tailored to address a clearly articulated public health or environmental benefit.

Here, many products that are subject to this ban have no relationship to PFAS contamination in the state. Restricting such products has no relationship to public health or environmental benefits. In results published in the UCMR 5 (*Fifth Unregulated Contaminants Monitoring Rule*), EPA found that legacy forms such as PFOA and PFOS were by far the greatest contributors of PFAS contamination with the greatest number of public water systems of all sizes reporting concentrations above maximum contaminant levels.[10] The types of PFAS used by the paint industry, fluoropolymers and a solvent with a single carbon-fluorine bond, are not contributing to contamination.

Other EPA monitored contaminants noted include HFPO-DA (Gen X), PFHxS, PFNA and others. Results are in EPA's *Fifth Unregulated Contaminant Monitoring Rule (UCMR 5),* published in January 2026.[11] The study is designed to provide a data set to federal and state regulators to address water contamination. EPA monitored public water supply systems for 29 designated PFAS substances, listed as unregulated contaminants, with public engagement, considering likelihood of occurrence as a contaminant, health endpoints, monitoring methods, etc.[12]

VI. MPCA should streamline the application submission and review process by removing public consultation period and allowing additional time for corrections to the application.

ACA recommends that manufacturers be allowed to correct an application for at least 60 days after notification of a deficiency. This time is needed to correct for delays in notification, which are common in electronic systems, and for time to develop an adequate response to identified deficiencies. Responding may involve gathering additional information. Electronic systems commonly misdirect communications or

[10] See Table 4.

[11] *Fifth Unregulated Contaminant Monitoring Rule*,

[12] EPA Office of Water (MS-140), *EPA Program Overview Fact Sheet: The Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) (December 2021)* at p. 3, available online at: https://www.epa.gov/system/files/documents/2022-02/ucmr5-factsheet.pdf

the designated staff may not receive timely notice due to changes in staff, leave, sickness or other reasons. Without additional time, the applicants can be severely penalized.

ACA also recommends that MPCA allow corrections to *existing chemicals* CUU applications after the deadline without changing the application status to an application for a "novel product." Change in application status amounts to a severe penalty that could result in removal of a product from the market to meet the January 2032 deadline. ACA anticipates that some manufacturers, despite best efforts to respond in a timely manner, may face delays. Designation as a "novel product" would occur even if a company is just a day late in filing corrections. ACA requests flexibility in this process to correct for unanticipated systematic errors in the filing process that will occur despite best efforts of all participants, including MPCA's good faith effort to establish a viable electronic system. ACA recommends that late corrections join the cue as "existing products" and not "novel products."

ACA also recommends that MPCA remove the public consultation process. Evaluating use of PFAS in products involves consideration of highly specialized information related to chemical identity, chemical properties, chemical function, environmental chemistry, workplace safety, etc. Rather than directly addressing relevant issues, the public consultation is likely to yield general information regarding PFAS contamination and generalized health effects that are not directly relevant to PFAS as used in a product. In effect, the public consultation process adds to delays in the CUU evaluation without offering relevant information. ACA recommends removing public consultation from the proposal. Public consultation is not required in *Amara's Law*.

VII. Timing of reviews: MPCA should clarify a start date for accepting applications and issue a preliminary CUU when it requires additional time past the prohibition deadline to review applications.

ACA recommends opening the CUU application process as soon as possible, but in any case, not later than January 2028, preferably opening by January 2027. This assumes that MPCA is prepared to begin evaluating applications. An earlier start time will assist with MPCA's goal of staggering deadlines for reapplication. The proposed rules and *Amara's Law* are silent on when MPCA will begin accepting applications, while noting a proposed filing deadline of January 1, 2030. Most manufacturers will want to submit a CUU application in advance of this date for planning purposes, since the consequences of not obtaining a CUU prior to January 2032 will be product removal.

ACA requests that MPCA explore options for allowing continued use of products with pending CUU applications as of January 1, 2032. One option authorized by the statute would be to preliminarily grant a CUU for these products pending more detailed review. A preliminary CUU in this instance would be appropriate since most products do not cause an imminent environmental or health risk, while the cost of product removal is

severe. Further, removal of coatings products would have an immediate impact on construction, public infrastructure, equipment manufacturing, household remodelling and other sectors. To avoid these unnecessary social and cost impacts, it is critical that MPCA allow continued use of products past the January 1, 2032 deadline while it reviews CUU applications. The statute authorizes continued use with a preliminary CUU determination, while MPCA takes time to conduct a more detailed review.

VIII. MPCA should maintain flexibility in determining time of expiration of a CUU.

Allowing MPCA the flexibility to designate validity of a CUU beyond the proposed standardized expiry times (8 years for existing products and 5 years for novel products) would streamline agency review by minimizing the need for reassessment when a manufacturer can provide adequate information to justify a longer timeframe. Some products will require longer phase out times due to the complexity of substituting PFAS. Chemical substitution is a resource intensive and time consuming process that includes research and development, further field and other testing, product certification for certain uses (government contracts, agency approvals, etc.), customer testing and approval, etc. Generally, coatings manufacturers estimate that the substitution process takes about 10-years for a high performance coating, assuming R&D identifies a viable substitute.

ACA appreciates that MPCA has included an option to reapply, at the latest, one year prior to expiry. In construction and other sectors relying on coatings, the reapplication process introduces significant uncertainty about whether a coating will be available, stopping long-term project planning. In certain instances, MPCA does not need to reevaluate a product. A manufacturer can provide adequate information during the initial CUU process to describe and provide supporting information justifying a longer timeframe for expiry. ACA recommends modifying the proposal so MPCA has the option to make case-by-case determination on expiry, while designating an 8-year minimum for existing product CUU applications with a 5-year minimum for novel product applications.

IX. MPCA must maintain trade secret information as confidential.

MPCA must develop strong data privacy and protective measures to maintain confidentiality of trade secret information submitted as part of the CUU process. Eliminating the proposed public engagement process would enhance protections of trade secret information, further considering that the public process is unlikely to provide the MPCA with information specific to the product at issue. Product manufacturers have relevant information, often being trade secret information. Review would be most efficient when conducted under protection in a non-public process. MPCA should appreciate that companies operate in a highly competitive environment, with competitors, both foreign and domestic, actively seeking to reverse engineer

products. Even the disclosure of the type of PFAS used in a product can result in competitors appropriating confidential formulations. Competitors can use this information to develop products in foreign markets. Once the trade secret is disclosed anywhere in the world, it breaks protection in the U.S.

Strong trade secret protections are also the foundation of chemical substitution for safer chemistries. Coatings manufacturers spending millions to develop effective and safe coatings products, over years, relying on protection of their information and investment in the product. In effective protection of information is a disincentive for further research and substitution of fluorinated chemistries. Similarly, MPCA should remain open to substitution with single fluorinated or lightly fluorinated compounds when they can be used safely.

ACA appreciates MPCA's listing of key data elements that are eligible for trade secret protection. ACA is in favor of maintaining this list, while allowing MPCA to maintain discretion to identify other data elements on a case-by-case basis that should be maintained as trade secret, especially data already subject to trade secret protection by actions taken by the manufacturer to protect the information.

X. Conclusion

ACA appreciates that implementation of *Amara's Law* presents significant challenges due to the diversity of PFAS types used across a variety of complex and socially valuable products. CUU evaluation requires consideration of technical, economic and social information. ACA appreciates MPCA's willingness to collect information from the stakeholder community during this process. ACA recommends revising the CUU concept to focus on evaluation of the product at issue with PFAS, with alternatives analysis as one consideration within a broader essential use analysis.

ACA provides the following analysis and suggestions:

- The criteria focuses on an alternatives analysis rather than essential use of the product at issue. ACA recommends refocusing criteria on the essential use of the product, while considering reasonably available alternatives as one factor in the CUU analysis.
- Considering the lack of risk from PFAS as used in coatings, MPCA must update the essential use / CUU concept to consider overall product efficacy, safety and environment impact of the product at issue that contains PFAS.
- Fluoropolymers are considered polymers of low concern (PLC) recognized by several regulators, since they are chemically stable, non-toxic, non-bioavailable, non-water soluble and non-mobile.

- Fluoropolymer coatings reduce building maintenance by extending building life, even in harsh environments, while enhancing overall stability. Fluoropolymer coatings also are resistant to dirt adhesion enhancing their solar reflective and protective properties.
- MPCA must consider the social benefits of the product at issue in the CUU application, as manufactured with PFAS.
- MPCA can also consider the environmental and health effects of PFAS as used in the product by including the following factor in its CUU criteria:
  PFAS as used in the product is unlikely to result in significant negative health or environmental outcomes, considering controlled use, proper disposal and other factors.
- MPCA must delete the following phrase from the proposed definition of *essential for health, safety, or the functioning of society*:

  > *. . . such that the unavailability of the PFAS for use in the product would cause the product's service to be unavailable, which would result in:*
  > *A.A significant increase in negative health outcomes;*
  > *B.An inability to mitigate significant risks to human health or the environment; or,*
  > *C.A significant disruption of commercial, public, or ecosystem services on whichsociety relies, including:*
  > *1. Provision of food, water, shelter, health, hygiene, or bare necessities for human survival;*
  > *2. Provision of transportation and utilities such as gas, electricity, data, communications, and sewer;*
  > *3. Provision of personal, occupational, or public safety particularly for extreme conditions of use; and,*
  > *4. Other services not covered under subitems (1) through (3) that serve the basic needs of human beings*.

- MPCA should adopt alternatives assessment criteria included in the Maine PFAS in products implementing rule, at Section 9(A)(4) of *Department of Environment Rules*, 06-096 C.M.R. Ch. 90
- ACA also recommends adding *commercial availability of the potential alternative* to the listed assessment criteria.
- ACA also recommends modifying the definition of *alternative* to allow a product manufacturer to use a safer fluorinated chemistry as a substitute or transitional substitute for a PFAS.

- In order to maintain efficiency in the application process, ACA recommends allowing multiple types of products that have a similar, although non-identical function, within one CUU application as one *product category*. MPCA's proposed definition of *product category* would need to be modified to accommodate similar products that are variations of the same product, but not "functional equivalents."
- ACA recommends the following change to MPCA's proposed definition:

  "Product category" means a group of similar products that are used for a similar purpose. ~~and that could functionally replace each other for that purpose and does not mean variations within a product that do not affect the product's primary function.~~

- MPCA should streamline the application submission and review process by removing public consultation period and allowing additional time for corrections to the application.
- MPCA must not generally consider costs of PFAS remediation in evaluating a CUU application since consideration of remediation costs would be arbitrary and not related to the product's impact on public health, environment or product performance, for most products.
- Manufacturers should be allowed to correct an application for at least 60 days after notification to correct for delays in notification of deficiency, delays caused by electronic errors and other possible delays.
- MPCA should allow corrections to existing chemicals CUU applications after the deadline without changing the application status to an application for a "novel product."
- MPCA should remove the public consultation process since CUU evaluation requires consideration of detailed technical information held as trade secret by manufacturers, rather than generalized information about PFAS contamination and health effects.
- MPCA should clarify a start date for accepting applications and issue a preliminary CUU when it requires additional time past the prohibition deadline to review applications.
- MPCA should maintain flexibility in determining time of expiration of a CUU. Allowing MPCA the flexibility to designate validity of a CUU beyond the proposed standardized expiry times (8 years for existing products and 5 years for novel products) would streamline agency review by minimizing the need for reassessment when a manufacturer can provide adequate information to justify a longer timeframe.

- MPCA must develop adequate electronic protections of trade secret information once submitted to the agency. ACA supports the proposed data elements as being eligible for trade secret protections while noting that protection cannot be limited to this list, considering companies may have established protection of other data elements.

Please feel free to contact me if I can provide any additional information.

Respectfully submitted,

Riaz Zaman
Sr. Counsel, Government Affairs
American Coatings Association
202.719.3715 | rzaman@paint.org
901 New York Ave NW, Suite 300 West
Washington, DC 20001 | www.paint.org