# Ryan Carra

Who is commenting? *(choose the best fit)*
Representative of a product manufacturer(s)

If you are commenting as a representative, what is the name of the entity you are commenting on behalf of?
I submit comments on behalf of a client who is a worldwide leader in the manufacture of consumer technology products.

If you represent a product manufacturer or industry group, what industry(ies) do you represent?
Consumer technology

Do you have any recommended changes or other considerations that you think the MPCA should take into account when defining the term "essential for health, safety, or the functioning of society"? *(Please review the proposed definitions in the rule concept document prior to answering)*
See enclosed. <br> <br>MPCA should align its definition with Maine's corresponding definition under 38 M.R.S.A. § 1614(1)(B-1): <br> <br>'Essential for health, safety or the functioning of society' means a use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in: <br>(1) A significant increase in negative health outcomes; <br>(2) An inability to mitigate significant risks to human health or the environment; or <br>(3) A significant disruption of the daily functions on which society relies. <br> <br>While the two definitions are similar, Minnesota's concept definition differs from Maine's definition in two ways that restrict CUU eligibility. First, under subsection (C)(3) of the concept definition, a product is "essential for health, safety, or the functioning of society" if a "significant disruption of commercial, public, or ecosystem services on which society relies" could occur should the product become unavailable. Unlike Maine's definition, the MPCA concept definition enumerates such services, including a category for "other services…that serve the basic needs of human beings." Additionally, subsection (C)(1) uses the language "bare necessities for human survival." <br> <br>It is foreseeable that this language will unnecessarily limit CUU determinations in a way that does not reflect modern realities. Minnesotans heavily depend on their consumer technology products every day for critical purposes like working, communicating with loved ones, and having access to emergency services. There is no indication the Legislature intended for this definition to exclude technology products from CUU eligibility. An unnecessarily restrictive definition would run counter to EU PFAS restriction proposals that contain appropriate derogations for technology products, as well as Maine's definition. <br>

Do you have any recommended changes or other considerations that you think the MPCA should take into account when defining the term "reasonably available"? (*Please review the proposed definitions in the rule concept document prior to answering*)
See enclosed. <br> <br>MPCA should align its definition with Maine's corresponding regulatory definition at 06-096 C.M.R. ch. 90: <br> <br>"Reasonably available" means a PFAS alternative which is readily available in sufficient quantity and at a comparable cost to the PFAS, to include changes to the manufacturing process, it is intended to replace and performs as well as or better than PFAS in a specific application of PFAS in a product or product component. <br> <br>For the reasons described below, Maine's enacted definition is preferable to Minnesota's concept language. In addition, it benefits both MPCA and the regulated community to promote harmony among state CUU programs. <br> <br>Our client supports MPCA's inclusion of the phrase "currently available in sufficient quantity" in the definition because an alternative cannot be reasonably available unless it is available at production quantities. However, in addition to quantity, assessments of chemical alternatives should consider cost as a factor. The fact that an alternative is available at production quantities does not mean that the alternative is "reasonable" because its cost could raise the product's price to a level at which consumers would not be willing or able to pay. For example, Maine's definition asserts that the alternative must be available "at a comparable cost to the PFAS it is intended to replace." <br> <br>Furthermore, MPCA's current proposed definition presumes that "alternatives that are in use in equivalent products or components are considered 'reasonably available.'" This presumption should be removed because it creates an automatic elimination from CUU eligibility if any manufacturer supplies a similar product without PFAS. The fact that one manufacturer is creating a non-PFAS product does not necessarily mean that product has reasonable performance or service life. In order to implement the above concepts, Minnesota should harmonize its definition with Maine's. <br>

When considering the proposed definition of "product category", how broadly should the agency group product categories? *(Examples: "vehicles" versus "sedans, SUV's, vans, trucks, RV's" or "printers" versus "receipt printers, thermal printers, label printers, residential printers, commercial printers, etc.")*
See enclosed. <br> <br>MPCA should group consumer electronics into broad categories. The type of PFAS, the location of the PFAS, and the functions performed by PFAS within consumer electronics are likely to be similar. Broad product grouping will also make the CUU program more workable. MPCA has not estimated a timeline for reviewing CUU applications, and it will receive potentially hundreds or thousands of CUU requests from companies within those industries. Therefore, MPCA should make its workstreams more efficient. An actionable way to do this is to broadly group consumer electronics. MPCA should also coordinate with other states considering CUU rulemaking requests to help ensure harmony of scoping and language across different jurisdictions. <br> <br>Under the current draft concept language, if MPCA grants a company or group of companies a CUU, that CUU grant is only applicable to that company or group of companies. If another

company requests a CUU for the same product, that company will have to go through the full public comment process. It would be a much more efficient use of agency and manufacturer resources to harmonize with Maine's "notification and fee" system at 38 M.R.S.A. § 1614(2). Under this approach, manufacturers can benefit from positive CUU determinations obtained by other manufacturers of the same product categories. Instead of submitting a full CUU request, the manufacturer can submit a notification form to the agency and pay a fee to keep their product on the market.

The agency is seeking feedback on the potential that the initial positive CUU determination duration for existing products will expire eight years from the date of issuance regardless of product category. This is intended to stagger renewal deadlines and ease the administrative burden of processing renewals.

- Do you have any concerns about unintended consequences with this proposal?
- Do you have any alternative recommendations to stagger renewal deadlines?

See enclosed. <br> <br>MPCA has not established a deadline by which it will respond to CUU requests. MPCA's concept language states that any CUU proposals would be due January 1, 2030, but it does not estimate when MPCA will respond to or review such requests. Because manufacturers may lose market access based on MPCA's CUU determinations, manufacturers need greater certainty about MPCA's timeline in order to plan, budget, and market accordingly. MPCA should be transparent and consistent in ensuring that all complete and timely submitted CUU proposals will receive due consideration prior to the prohibition date.

**For manufacturers: Administrative cost of requesting a CUU determination (Part 1 of 2).** *Please provide your best estimates or rough orders of magnitude (for example "approx. 200 hours"). Precise accounting data is not necessary to answer this question.*

If your company currently possesses information regarding intentionally added PFAS (to the CAS number level) for all components in your product lines, please estimate the number of technical staff hours that were required to establish this baseline.
More than 500 hours

**For manufacturers: Administrative cost of requesting a CUU determination (Part 2 of 2).** *Please provide your best estimates or rough orders of magnitude (for example "approx. 200 hours"). Precise accounting data is not necessary to answer this question.*

If your company <u>does not</u> possess information regarding intentionally added PFAS (to the CAS number level) for all components in your product lines, please estimate the number of technical staff hours needed to obtain this data from your Tier 2 or 3 suppliers for a single product line.

More than 500 hours

Do you have any additional questions or comments regarding the PFAS in products: Currently unavoidable use rule? *(Please note that we may be unable to respond to specific questions regarding rule content in this phase of the rulemaking process)*
See full comment letter enclosed. <br> <br>The draft concept contemplates a requirement to maintain records for “at least ten years after issuance of a positive CUU determination” and to provide those records to MPCA if requested. Records would include “communications, findings, and justifications for the request for a CUU determination and the research of alternatives to PFAS and ongoing assessments.” There is no stated purpose for such a recordkeeping requirement and there is no precedent to require such recordkeeping. Therefore, the finalized CUU application should function as a sufficient record.

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Submitted via the Minnesota Pollution Control Agency Rulemaking Website

Katrina Kessler
Commissioner, Minnesota Pollution Control Agency
520 Lafayette Road N
Saint Paul, MN 55155-4194

**Re: Consumer Technology Client Response to Draft Rule Concept for PFAS in Products: "Currently Unavoidable Use" Determinations**

Dear Commissioner Kessler:

On behalf of a client who is a worldwide leader in the manufacture of consumer technology products, we submit the following comments on the Minnesota Pollution Control Agency (MPCA) "currently unavoidable use" (CUU) rule concept language. This concept language contemplates procedures for determining CUU exemptions under Minn. Stat. § 116.943 (Amara's Law). Our client supports MPCA's overall objectives in implementing Amara's Law. Our client also appreciates the work that has gone into developing the draft rule concept and MPCA's acceptance of public feedback at such an early stage in the rulemaking process. Maine has already enacted a working CUU framework, and the European Union has spent years developing sector-specific PFAS derogations through an extensive stakeholder process. MPCA has a rare opportunity to build on those existing models rather than construct a novel third regime that consumes regulatory and industry capacity on process compliance instead of advancing the elimination of PFAS that Amara's Law exists to achieve.

Our client respectfully urges MPCA to incorporate this feedback, aimed at consistency across jurisdictions, regulatory certainty, and workability. Our client urges MPCA to amend the concept definitions to reflect the realities of modern society and technology and to harmonize with enacted definitions in Maine. Our client also encourages MPCA to commit to timely responses to CUU requests, broadly group categories of consumer electronics, and make CUU grants product category-specific.

## I. Minnesota's Definition of "Essential for Health, Safety, or the Functioning of Society" Should Be Harmonized with Maine's (Responsive to MPCA Question #5).

MPCA should align its definition with Maine's corresponding definition under 38 M.R.S.A. § 1614(1)(B-1):

> 'Essential for health, safety or the functioning of society' means a use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in:
>
> (1) A significant increase in negative health outcomes;
> (2) An inability to mitigate significant risks to human health or the environment; or
> (3) A significant disruption of the daily functions on which society relies.

While the two definitions are similar, Minnesota's concept definition differs from Maine's definition in two ways that restrict CUU eligibility. First, under subsection (C)(3) of the concept definition, a product is "essential for health, safety, or the functioning of society" if a "significant disruption of commercial, public, or ecosystem services on which society relies" could occur should the product become unavailable. Unlike Maine's definition, the MPCA concept definition enumerates such services, including a category for "other services…that serve the basic needs of human beings." Additionally, subsection (C)(1) uses the language "bare necessities for human survival."

It is foreseeable that this language will unnecessarily limit CUU determinations in a way that does not reflect modern realities. Minnesotans heavily depend on their consumer technology products every day for critical purposes like working, communicating with loved ones, and having access to emergency services. There is no indication the Legislature intended for this definition to exclude technology products from CUU eligibility. An unnecessarily restrictive definition would run counter to EU PFAS restriction proposals that contain appropriate derogations for technology products, as well as Maine's definition.

## II. Minnesota's Definition of "Reasonably Available" Should be Harmonized with Maine's (Responsive to MPCA Question #7).

MPCA should align its definition with Maine's corresponding regulatory definition at 06-096 C.M.R. ch. 90:

> "Reasonably available" means a PFAS alternative which is readily available in sufficient quantity and at a comparable cost to the PFAS, to include changes to the manufacturing process, it is intended to replace and performs as well as or better than PFAS in a specific application of PFAS in a product or product component.

For the reasons described below, Maine's enacted definition is preferable to Minnesota's concept language. In addition, it benefits both MPCA and the regulated community to promote harmony among state CUU programs.

Our client supports MPCA's inclusion of the phrase "currently available in sufficient quantity" in the definition because an alternative cannot be reasonably available unless it is available at production quantities. However, in addition to quantity, assessments of chemical alternatives should consider cost as a factor. The fact that an alternative is available at production quantities does not mean that the alternative is "reasonable" because its cost could raise the product's price to a level at which consumers would not be willing or able to pay. For example, Maine's definition asserts that the alternative must be available "at a comparable cost to the PFAS it is intended to replace."

Furthermore, MPCA's current proposed definition presumes that "alternatives that are in use in equivalent products or components are considered 'reasonably available.'" This presumption should be removed because it creates an automatic elimination from CUU eligibility if any manufacturer supplies a similar product without PFAS. The fact that one manufacturer is creating a non-PFAS product does not necessarily mean that product has reasonable performance or service life. In order to implement the above concepts, Minnesota should harmonize its definition with Maine's.

## III. MPCA Should Group Categories of Consumer Electronics Broadly to Promote Workability (Responsive to MPCA Question #8).

MPCA should group consumer electronics into broad categories. The type of PFAS, the location of the PFAS, and the functions performed by PFAS within consumer electronics are likely to be similar. Broad product grouping will also make the CUU program more workable. MPCA has not estimated a timeline for reviewing CUU applications, and it will receive potentially hundreds or thousands of CUU requests from companies within those industries. Therefore, MPCA should make its workstreams more efficient. An actionable way to do this is to broadly group consumer electronics. MPCA should also coordinate with other states considering CUU rulemaking requests to help ensure harmony of scoping and language across different jurisdictions.

## IV. The Administrative Cost of a CUU Determination Request Will Be Significant (Responsive to MPCA Question #14).

Completing and submitting each CUU application will exceed 500 hours. This is especially true for the consumer electronics industry because many product contain several complex, integrated components. Each component containing intentionally added PFAS will require an alternatives assessment, including identification of potential alternatives; assessment of production quantity and functionality; calculations of cost; and determination of a transition timeline. Each of these steps of the alternatives assessment will require careful coordination between scientists of different disciplines, engineers, business leads, and others. Therefore, the CUU determination request process will exceed 500 hours, resulting in a high administrative cost.

## V. MPCA Should Commit to Timely Responses to CUU Requests (Responsive to Question #11).

MPCA has not established a deadline by which it will respond to CUU requests. MPCA's concept language states that any CUU proposals would be due January 1, 2030, but it does not estimate when MPCA will respond to or review such requests. Because manufacturers may lose market access based on MPCA's CUU determinations, manufacturers need greater certainty about MPCA's timeline in order to plan, budget, and market accordingly. MPCA should be transparent and consistent in ensuring that all complete and timely submitted CUU proposals will receive due consideration prior to the prohibition date.

## VI. CUU Grants Should Be Product Category-Specific, Not Company-Specific (Responsive to Questions #8 and #9).

Under the current draft concept language, if MPCA grants a company or group of companies a CUU, that CUU grant is only applicable to that company or group of companies. If another company requests a CUU for the same product, that company will have to go through the full public comment process. It would be a much more efficient use of agency and manufacturer resources to harmonize with Maine's "notification and fee" system at 38 M.R.S.A. § 1614(2). Under this approach, manufacturers can benefit from positive CUU determinations obtained by other manufacturers of the same product categories. Instead of submitting a full CUU request, the manufacturer can submit a notification form to the agency and pay a fee to keep their product on the market.

## VII. The CUU Rulemaking Should Not Include Recordkeeping Requirements (Responsive to MPCA Question #20).

The draft concept contemplates a requirement to maintain records for "at least ten years after issuance of a positive CUU determination" and to provide those records to MPCA if requested. Records would include "communications, findings, and justifications for the request for a CUU determination and the research of alternatives to PFAS and ongoing assessments." There is no stated purpose for such a recordkeeping requirement and there is no precedent to require such recordkeeping. Therefore, the finalized CUU application should function as a sufficient record.

## VIII. Conclusion

For the reasons outlined above, our client respectfully urges MPCA to revise the draft rule concept to better ensure consistency across jurisdictions, regulatory certainty, and workability. Established CUU frameworks in Maine and the EU provide Minnesota a proven foundation on which to build. Creating a third, divergent regime imposes real costs on manufacturers and erodes the cross-jurisdictional predictability that makes compliance achievable. Our client appreciates MPCA's continued engagement with stakeholders and looks forward to continued collaboration with MPCA.