Elizabeth Morrow

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?
See attached submission.

If you represent a product manufacturer or industry group, what industry(ies) do you represent?
See attached submission.

If you represent a product manufacturer, what types of components, products, or product categories do you manufacture that you will be requesting a CUU determination for?
See attached submission.

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 attached submission.

Do you have any recommended changes or other considerations that you think the MPCA should take into account when defining the term "alternative"? *(Please review the proposed definitions in the rule concept document prior to answering)*
See attached submission.

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 attached submission.

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 attached submission.

Should each request for a CUU determination be limited to a single product category, or should applicants be allowed to submit a request for a CUU determination for multiple product categories?
See attached submission.

What safety or other standards require the use of PFAS in a product? *(Please include the specific citation)*
See attached submission.

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 attached submission.

The MPCA has developed a preliminary list of potentially eligible data categories that may be considered for trade secret requests. *(Please review the rule concept document for the list of potentially eligible data)*

- Do you have any concerns about unintended consequences with this proposal?
- Do you have any alternative recommendations for data that should or should not be eligible for trade secret requests?

See attached submission.

What are the potential ongoing costs to society if the commissioner issues a positive currently unavoidable use determination for the continued use of PFAS within a product or product category? *(For example: environmental, human health, or remediation costs)*
See attached submission.

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.

Not applicable

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 does not 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.
Not applicable

For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 1 of 2). *Please provide your best estimates or rough orders of magnitude (for example "primary cost is CapEx"). Precise accounting data is not necessary to answer this question.*

If you have identified a technically viable non-PFAS alternative for one of your products that contains intentionally added PFAS, does implementing this alternative require Capital Expenditure (such as purchasing new molds, retooling machinery) or primarily Operational Expenditure (such as purchasing more expensive raw materials)?

- Please estimate the ratio of Capital Expenditure to Operational Expenditure (or indicate which category is the dominant cost driver).

See attached submission.

For manufacturers: Expenditure considerations when seeking non-PFAS alternatives (Part 2 of 2).

If you have not identified a technically viable non-PFAS alternative for one of your products that contains intentionally added PFAS, have you conducted a Research & Development (R&D) feasibility study?

- If so, what was the cost of that study?

See attached submission.

For manufacturers: Research and development safety validation cycles.

What is the typical duration of the R&D and safety validation cycle for a reformulated product in your sector (from concept to market entry)?

Does this cycle align with the 5-year renewal period typically associated with regulatory exemptions?

- If not, please explain the specific technical barriers that would require a longer validation period.

See attached submission.

Please provide any additional information or documentation needed to support your answers to any of the questions posed.
See attached submission.

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 attached submission.

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March 26, 2026

Submitted via the Minnesota Pollution Control Agency Rulemaking Website

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

RE: Consumer Technology Client Comments on MPCA's Draft Rule Concept for PFAS in Products: Currently Unavoidable Use Determinations

Dear Commissioner Kessler:

On behalf of a client that is a worldwide leader in the manufacture of consumer technology products, thank you for the opportunity to provide comments on the Minnesota Pollution Control Agency (MPCA) draft rule concept for currently unavoidable use (CUU) determinations under Minn. Stat. § 116.943. MPCA's current rulemaking is critically important because it will establish the criteria and process by which the agency determines which products or product categories may remain available to Minnesotans beginning in 2032.

Our client supports sound, workable regulations, and continued efforts to transition away from PFAS uses where technically feasible and where alternatives are reasonably available. At the same time, any CUU rule must be grounded in the statute and the realities of modern society. For many consumer technology products, PFAS remain essential to product performance, safety, durability, and reliability. For these products, no reasonably available alternatives yet exist at the scale, performance level, and qualification status needed for replacement across global supply chains. MPCA's final rule should be designed to preserve access to products that are foundational to health, safety, and the functioning of society, while also providing a clear and efficient pathway for category-based CUU determinations.

Our client is concerned with certain aspects of MPCA's concept language and respectfully requests that MPCA implement the following suggestions:

- Define key terms taking into account that consumer technology and information technology equipment are "essential for health, safety, or the functioning of society";
- Adopt a more realistic understanding of "reasonably available" that reflects qualification cycles, safety validation, supply availability, and redesign burdens;
- Make CUU determinations applicable to all manufacturers of the relevant product;
- Incorporate a deadline by which MPCA must act on CUU submissions; and
- Provide that timely filed requests preserve the ability to continue sales unless and until MPCA denies the request.

I. Consumer Technology Products Are Essential to Health, Safety, and the Functioning of Society

MPCA's concept definition of "essential for health, safety, or the functioning of society" correctly recognizes that products may be essential where loss of the product's service would lead to a significant increase in negative health outcomes, an inability to mitigate significant risks to human health or the environment, or a significant disruption of commercial, public, or ecosystem services. The concept materials specifically list "data" and "communications" among the utilities and services on which society relies, which recognizes the important point that in modern society, many services on which the public depends are delivered through communications and information systems.

Consumer technology products have become foundational to the functioning of modern society. Phones, computers, routers, servers, cloud infrastructure, networking equipment, batteries, cables, connectors, and replacement parts are not merely consumer conveniences. They are the infrastructure through which individuals access emergency services, employers conduct business, schools educate students, hospitals manage records and operations, utilities maintain service continuity, and governments communicate with the public. The definition of "essential for health, safety, or the functioning of society" must be sufficiently broad to reflect that information technology products are indispensable to those services.

MPCA should therefore revise Section C(2) of its concept definition and should clarify elsewhere in the rule or Statement of Need and Reasonableness that consumer technology products, communications equipment, data-center infrastructure, networking equipment, and associated components and replacement parts may qualify as essential where their unavailability would disrupt communications, emergency response, healthcare, utilities, or other core societal services. This change would not expand the statute beyond its text. It would simply make explicit what the current concept already implies: that products enabling data, communications, and other modern services can be essential to health, safety, and the functioning of society. Our client suggests that Minnesota harmonize its definition with Maine's corresponding definition, which would be consistent with the above points and encourage consistency among state CUU determinations.[1]

II. MPCA's CUU Standard Must Be Practical, Flexible, and Grounded in Real-World Supply Chains

MPCA is seeking feedback on its proposed definitions for "essential," "alternative," and "reasonably available." The feasibility of the CUU program will depend largely on whether those terms are applied in a practical and administrable way. MPCA's concept language risks an unduly narrow application. MPCA's process summary shows that the rule is intended to establish criteria and procedures for deciding CUU requests, not to create unnecessary barriers to them. The final rule should avoid narrow or overly subjective tests that could produce arbitrary outcomes and it

[1] 38 M.R.S.A. § 1614(1)(B-1).

should recognize both end products and the upstream components and processes needed to produce them. The final rule also should recognize that evidence of consumer, commercial, or industrial demand in Minnesota is relevant to whether a product contributes to the functioning of society.

MPCA should revise its "reasonably available" definition to align more closely with Maine's application-specific approach. MPCA's concept defines "reasonably available" to mean that one or more alternatives can perform comparably to PFAS in a product or component and are currently available in sufficient quantity, such as alternatives used in equivalent products or components. For complex consumer technology products, that formulation is too abstract. The question is not merely whether a substitute exists somewhere in the marketplace, or whether it has been used in some other product. The question must include whether the substitute is actually available in sufficient quantity and performs as well as or better than PFAS in a specific application, taking into account product safety, durability, life expectancy, manufacturability, and supply continuity. Maine's current Chapter 90 rule is closer to the mark because it defines "reasonably available" as a PFAS alternative that is readily available in sufficient quantity and at a comparable cost and that "performs as well as or better than PFAS in a specific application of PFAS in a product or product component."[2]

For the consumer technology sector, "reasonably available" must mean realistically implementable in the specific product application, at scale, and without unreasonable redesign, qualification, performance, or supply-chain burdens. Electronics products often contain thousands of parts sourced through global supply chains. A material change in one part can require redesign, retesting, requalification, manufacturing equipment updates, safety assessments, workforce training, and new supplier validation. A narrower standard would risk denials of CUU status for uses where no workable substitute exists.

The final rule also should expressly acknowledge that "essentiality" can arise from product reliability, fire safety, weather resistance, data integrity, long service life, and the avoidance of premature failure. MPCA's proposed "extreme conditions of use" definition already points in this direction by referencing high or low temperatures, corrosivity, humidity, voltage requiring dielectric strength, oxidation or fire risk, and similar demanding operating environments. Those attributes are not abstract engineering preferences; they are integral to whether technology products can perform safely and reliably in the field. A CUU rule that does not account for these operational realities would fail to implement the statute in a workable way for products whose safe functioning depends on these characteristics.

III. CUU Determinations Should Be Category-Based, Available to Similarly Situated Manufacturers, and Extend to Necessary Components and Supply-Chain Uses

MPCA's concept materials acknowledge that the statute authorizes MPCA to identify "specific products or product categories" for which a PFAS use is currently unavoidable. MPCA also

[2] Maine DEP, Chapter 90 § 2.

envisions a definition of "product category" as a group of similar products used for a similar purpose and that could functionally replace each other for that purpose. MPCA's envisioned process would make final determinations apply only to the manufacturers listed in the request, and even where MPCA has already issued a positive CUU determination for a product in the same product category, a new applicant still would have to submit a request and go through public comment. Our client believes that framework would be both inefficient and inconsistent with the statute's product-category orientation.

CUU determinations should instead be issued for product categories, component categories, or use categories and made available to all manufacturers whose products fall within the scope of the determination. A manufacturer-specific regime would force duplicative submissions on materially identical use cases, consume agency resources, increase compliance costs, and risk inconsistent outcomes. Maine and New Mexico both provide more workable models in this respect. Maine's framework allows a notification pathway for products covered by an existing CUU determination, and Maine's response-to-comments document states that CUU determinations may be utilized by one or multiple additional manufacturers after the Department has made the determination.[3] New Mexico's proposed rules likewise allow CUU proposals to be submitted by manufacturers "individually or collectively" and require separate proposals by product category and associated industrial sector, rather than locking the determination to a single named manufacturer.

This section of the rule also should make clear that determinations extend not only to end products but to the components, spare parts, replacement parts, and supply-chain production activities necessary to produce and maintain those products. A determination limited to the end product could be substantially undermined if upstream products and processes necessary to manufacture that product are not also covered. This is especially true in the consumer technology sector, where final products depend on complex chains of materials, coatings, cables, connectors, batteries, lubricants, and other components. Without coverage for necessary components and supply-chain uses, a nominal determination for the finished product would not preserve ongoing and reliable access to that product.

MPCA also requested feedback on whether applicants should be able to submit a request for multiple product categories. The answer should be yes. Manufacturers should be permitted to include multiple product categories in a single request where the PFAS use, essentiality rationale, and alternatives analysis are sufficiently similar. That approach would align with MPCA's own effort to avoid duplicative reporting and would reduce both applicant and agency burden. It would also better reflect how product lines are actually designed and manufactured in the consumer technology sector.

[3] Maine DEP, Chapter 90 § 3; Maine DEP, *Basis Statement and Response to Comments for Chapter 90* at 70, available at: https://www.maine.gov/dep/bep/2025/04-07-25/Chapter%2090%20Basis%20Statment%20and%20RTC.pdf.

IV. MPCA Must Adopt Firm Deadlines for Agency Action and Protect Against Sales Disruption While Requests Are Pending

MPCA's concept materials describe a detailed CUU application process. They contemplate a completeness review, a 30-day period to correct deficiencies, a public comment period, and a rebuttal period. They also propose a January 1, 2030 deadline for "existing products," and indicate that products introduced after the CUU-request deadline would be treated as "novel products." What MPCA has not provided, however, is a firm deadline by which the agency itself will issue a final determination on a complete request. Instead, the concept materials state that it is unknown how long the MPCA will take to issue final determinations and that the proposal is intended to ensure the agency has at least two years or more to process requests for existing products. Our client is concerned with this approach.

The final rule should require MPCA to act on CUU requests within defined timelines. At minimum, the rule should establish deadlines for completeness review, issuance of a draft determination, and issuance of a final determination. Regulated entities need this certainty to plan product design, budgeting, supply contracts, and inventory. Because denial or delay of a CUU request may determine whether a product remains available for sale in Minnesota, a framework that leaves the timing of agency action entirely unspecified is not workable. New Mexico's proposed rule is instructive here. For CUU proposals tied to the January 1, 2027 sales prohibitions, New Mexico requires proposals to be submitted by October 31, 2026 and provides that complete proposals received by that date will be considered approved pending review, with a final determination to approve or deny issued by March 1, 2027.[4] Even if MPCA chooses a different schedule, a decision deadline is far superior to the envisioned approach.

Additionally, timely filed and facially complete CUU requests should preserve the ability to continue selling the covered product unless and until MPCA issues a final denial. A product should not lose access to the Minnesota market solely because the agency has not acted in time. If the MPCA fails to timely respond to a request, that delay should not force products off the market. MPCA should consider approaches, including enforcement discretion, to allow the continued sale of products for an appropriate period if MPCA cannot timely respond to a CUU request.

[4] NMED, *Final Proposed New Rule* § 20.13.2.11(A), available at: https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2026/03/NMEDs-Attachment-A-Final-Proposed-Rule-Clean-and-Redlined.pdf.

V. Conclusion

Our client appreciates your attention to these comments and welcomes the opportunity to respond to questions or engage with MPCA further.

Sincerely,

Elizabeth Nugent Morrow
Associate