Environmental Law and Science PLLC
8389 Seneca Pointe
Eden Prairie, MN 55347

Telephone: 952-426-8279 **Email:** js.envirolawsci@att.net

May 21, 2025

VIA ELECTRONIC SUBMISSION: https://minnesotaoah.granicusideas.com

Honorable Judge Jim Mortenson
600 North Robert Street
St. Paul, MN 55101

Re: Minnesota Pollution Control Agency's Notice of Intent to Adopt New Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per- and Polyfluoroalkyl Substances (PFAS), Revisor's ID Number R-04828, OAH docket number 5-9003-40410

Dear Judge Mortenson

Environmental Law and Science PLLC appreciates the opportunity to respond to the Minnesota Pollution Control Agency's (MPCAs) request for comments on the proposed PFAS in Products Reporting and Fee Rule. These rules implement subdivision 2 of Minn. Stat. 116.943, also as known as Amara's Law (referred herein as the statute). The following comments are being submitted on behalf of one of our clients, who is both a major employer in Minnesota and a supplier of advanced products for individuals, business and industry.

1. **MPCA Needs to Extend the Reporting Start Period**

The PFAS reporting and fee rule deadline is unrealistic and unreasonable, especially for manufacturers of complex products and those with complicated supply chains. By the time the rules and reporting system are finalized, companies will have insufficient time to prepare information to submit PFAS product reports. The reporting deadline should be extended well beyond the current deadline of January 1, 2026.

Among many reasons, more time is needed because of the time and the effort needed: (1) for suppliers and customers to determine their respective reporting responsibilities and develop legally binding reporting agreements between them, if group reporting is elected; (2) to obtain complete and accurate PFAS information from component suppliers; (3) to collect and standardize data collection and reporting processes across supply chains to report information consistent with new rule requirements and definitions; and (4) to achieve alignment of suppliers where PFAS knowledge varies across the value chain.

MPCA needs to learn from Maine's experience when it tried to implement the product reporting provisions of its 2021 PFAS law (PL 2021, Chapter 477). The Minnesota legislature essentially copied and pasted the product notification requirements of the Maine law into Amara's law. Maine DEP initially received over 2800 reporting extension requests from

manufactures. This led to the Maine legislature first extending the reporting period in 2023, and in 2024, functionally eliminating the PFAS product reporting requirement, except for very narrow future situations where PFAS use in a product was deemed unavoidable.

It is requested that the reporting deadline be delayed to at least 12 months after the final rules and reporting system are approved and released. To the extent MPCA believes that the January 1, 2026 deadline cannot be changed without legislative action, MPCA should announce that it will exercise enforcement discretion and not enforce the reporting requirement for 12 months following promulgation of the final rule. MPCA should also amend the Chapter 7026.0060 rules to automatically provide a six month extension to any manufacturer as a matter of right without having to comply with the more extensive proposed requirements for extension contained therein.

2. Pre-Sale New Product Reporting - Proposed Chapter 7026.0030

The second sentence of proposed Chapter 7026.0030 states, "A manufacturer or group of manufacturers of **a new product** with intentionally added PFAS after January 1, 2026, must submit a report **before the product** can be sold, offered for sale, or distributed in the state." This presale reporting requirement for new products exceeds the reach of the statute and conflicts with proposed Minn. R. 7026.0040, Subpart 1, which requires reporting by February 1"if during the previous 12 months … a new product was sold, offered for sale, or distributed in or into the state."

The statute mandates that, "A manufacturer must submit the information required under this subdivision whenever a new product that contains intentionally added PFAS is **sold, offered** for sale, or **distributed** in the state." By using the past tense, the statute is clearly only authorizing post-sale reporting of new products, and not pre-sale reporting. MPCA's pre-sale notification requirement in Chapter 7026.0030 is in conflict with the plain intent of the statute. It is also burdensome, unreasonable and not necessary.

The proposed Minn. R. 7026.0040, Subpart 1 will provide MPCA with timely information regarding the sale of new products with intentionally added PFAS in the state. The proposed rolling reporting requirement for new products provides no benefit, requires duplicative reporting of new products, both before and after introduction and increases the already substantial burden on manufacturers. Moreover, the SONAR is completely silent regarding why this pre-sale reporting is reasonable or necessary.

Comment Summary: MPCA should strike pre-sale reporting from the proposed rule.

3. **Product and Component Group - Chapter 7026.0030, Subpart 1.A(1)(a) and (b)**

The proposed reporting rule explicitly allows "grouping of similar products comprised of homogenous materials." Grouping is allowed where, for a given group of products, the PFAS chemicals, their concentration range and function are the same and the products have the same basic form and function. Minn. R. 7026.0030, Subpart 1.A(1)(a).

The proposed rule also makes product components a distinct reporting element requiring that the manufacturer "must report each component under the product name provided in the brief description of the product." Where a product consists of multiple PFAS-

containing components, the manufacturer is required to report each component under the product name, but the proposed rule allows grouping of similar components if they meet the same criteria used for grouping products. Minn. R. 7026.0030, Subpart 1.A(1)(b). The statute defines product component" to mean "an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component." The proposed rule defines component itself to mean "a distinct and identifiable element or constituent of a product." Minn. R. 7026.0010, Subpart 7. Grouping is allowed for similar components, where the PFAS chemicals, their concentration range and function are the same, and the products have the same basic form and function.

MPCA is to be commended for allowing the grouping of products and product components. It will somewhat lighten the reporting burden for manufacturers. Nonetheless, MPCA must make several changes to the product and component grouping requirements to reflect product realities.

MPCA needs to clarify the level of complexity within which products can be grouped, that is, what is meant by the "same." For example, the TSCA PFAS Reporting Rule allows grouping of complex products (e.g., automobiles and computers) and reporting of PFAS concentrations for the complex product. MPCA needs to confirm that it will allow grouping for complex products.

In addition, manufacturers often obtain components from multiple suppliers. The reporting system needs to accommodate the reality of variability of PFAS content in products within the same high-level product group. Grouping products for reporting should accommodate the range of PFAS that might be used within a product group. The reporting system needs to allow for variability in PFAS content between units product units under the same higher-level numerical product code due multi-sourcing of supplier components that may contain different types and concentrations of PFAS chemicals and differences in product configurations that may result in differences in the quantity and types of components or assemblies.

The reporting system needs to allow for the potential PFAS content of a product within a product group under a high-level numeric product code with the understanding a unit of product sold may or may not have all the PFAS listed in the report. The report would be a conservative estimate of the PFAS content that may be present, recognizing that not every listed PFAS would be necessarily present in any given unit of product sold under the same high-level numeric product code. The reportable concentration ranges need to allow for the understanding that the concentration is a conservative estimate that could be lower or even zero (not intentionally added) if certain supplier parts with unique PFAS chemicals are not used in individual units of product sold when there is an alternate supplier parts without that PFAS chemical was used in assembling the product.

In sum, MPCA should consider allowing grouping of products and components with functionally similar PFAS and not limit grouping to the same PFAS. While these components are interchangeable, functionally equivalent and identical to a customer, the specific PFAS chemical and concentration may vary from component to component. The manufacturer may often lack specific PFAS information for any particular components, although they may know that any

given components would have one of a discreet subset of PFAS. Accordingly, MPCA should allow grouping and reporting of these products and components even though the specific PFAS and concentration will vary.

Comment Summary: MPCA should allow grouping of similar products and components with functionally similar PFAS, not limit grouping to the same PFAS and allow reporting of potential PFAS under one product report instead of multiple reports.

4. Chemical Name and CAS No - Proposed Rule 7026.0030, Subpart 1.B

The proposed rule requires reporting on PFAS chemicals used in the product or its components as identified by the chemical name and the Chemical Abstracts Service Registry number (CASRN) or, if no CASRN exists, another chemical identifying number. It is possible that, despite their diligent efforts, manufacturers may be unable to obtain the required chemical identity information from suppliers because of supplier trade secret claims or non-responsiveness. To address such situations, MPCA should allow the reporting manufacturer to provide a generic name, description or class of the PFAS, as allowed under EPA's TSCA PFAS Reporting Rule**.**

Comment Summary: MPCA should allow reporting a generic name, description or class of the PFAS when one cannot otherwise be reasonably determined.

5. **PFAS Function - Proposed Rule 7026.0030, Subpart 1.D**

The proposed rule requires reporting on "the function that each PFAS chemical provides to the product or its components." MPCA needs to be aware that an individual PFAS chemical may provide multiple functions in a product. For example, PTFE may be present in multiple materials in the product and used as insulation in one material and a lubricant in another material. Accordingly, the reporting system needs to allow the reporting of multiple functions for each PFAS chemical used in a product.

***Comment Summary: MPCA should construct the reporting system to accommodate situations where an individual PFAS may provide multiple functions in a product*.**

6. **Report Update Time Period – Proposed Rule 7026.0040, Subpart 1.A**

The proposed rule requires that "By February 1 each year, a manufacturer or group of manufacturers must submit an update to the report submitted under part 7026.0030 if during the previous 12 months: (1) a significant change was made to a product; (2) new product information was provided to a manufacturer; or (3) a new product was sold, offered for sale, or distributed in or into the state."

As drafted, the timing provision is unclear. MPCA uses the phrase previous 12 months when it appears that the intent is to cover the previous calendar year. Further, MPCA should clearly indicate that the first reporting updates will be required starting February 1, 2027 for calendar year 2026**.**

Comment Summary: MPCA should revise Subpart 1.A as follows: "By February 1, 2027 and each year thereafter, a manufacturer or group of manufacturers must submit an

update to the report submitted under part 7026.0030 if during the previous ~~12 months~~ calendar year. …"

7. **Report Updates Significant Change– Proposed Rule 7026.0040, Subpart 1.A**

The proposed rule requires reporting when there is a **significant change** in information. The proposed rule defines a "significant change" to mean "when there has been a change in the composition of a product that results in the addition of a specific PFAS not previously reported in a product or component or a measurable change in the amount of a specific PFAS from the initial amount reported that would move the product into a different concentration range." Proposed rule 7026.0010, Subpart 18.

MPCA needs to clarify whether significant change reporting is required when a PFAS is entirely removed from a previously reported product. If so, MPCA should allow manufacturers to merely provide a simple notice when a PFAS is entirely removed from a previously reported product and exempt such reporting from fee requirements.

Comment Summary: MPCA should allow manufacturers to provide a simple notice when a PFAS is entirely removed from a previously reported product and exempt such reporting from fee requirements

8. **Report Updates New Product Information – Proposed Rule 7026.0040, Subpart 1.A**

It appears MPCA is requiring reporters to amend a previously submitted report when there is "new product information." An update based on "new product information" is not specifically authorized by the statute. In the SONAR, MPCA failed to identify what specific new information would trigger reporting. The proposed rule is vague and not well explained. It is unclear how this reporting differs from updates that would be provided under the significant change reporting requirement.

Comment Summary: MPCA should delete the reporting requirement for new product information.

9. **Annual Recertifications - Minn. R. 7026.0040, Subpart 2.**

The proposed rule creates an annual recertification requirement for previously submitted reports. This requirement is outside the scope of the statute. It is burdensome overreach, with no technical or economic value.

The proposed rule creates an annual recertification requirement for previously submitted reports. This requirement is outside the scope of statute. Other than the initial reporting due January 1, 2026, the statute authorizes reporting in three circumstance: (1) when a new product is sold, offered for sale, or distributed in the state; (2) when there is significant change in the information; or (3) when requested to do so by the commissioner. Minn. Stat. 116.943, subd. 2(c). The statute is silent regarding recertification.

Requiring recertification is burdensome overreach, with no technical or economic value. MPCA provides little justification, merely saying that it is "reasonable to require the manufacturer to verify that the information submitted in the initial report … is still correct to ensure that the MPCA has the most accurate data available for those products." SONAR p. 32.

MPCA mistakenly believe the statute authorized it to create a dynamic statewide PFAS product inventory, which is poor use of limited agency resources. MPCA claims this requirement "**reduces the reporting burden** for manufacturers that made changes by requiring them to only reverify that the information previously provided has not changed." SONAR p. 32. It does the opposite. It increases the reporting burden on manufacturers and collectively increases their financial burden as well.

To the extent MPCA would claim recertification is allowable under the provision that requires to report "whenever requested to do so by the commissioner" such a claim would be misplaced. First, the plain language of the statute indicates that this applies to case by case requests and not a blanket recertification requirement for all reporting manufacturers. Further, MPCA failed to raise such an argument in the SONAR.

***Comment Summary: MPCA should withdraw the recertification requirement*.**

10. Due Diligence - Chapter 7026.0080

The statute does not mandate a specific reporting standard. MPCA proposed an onerous "due diligence" standard which is both unclear and unreasonable. Minn. R. 7026.0080. It requires manufacturers to carry out a mandatory and apparently exhaustive request that their supply chain provide "detailed disclosure of information required in part 7026.0030" that must continue "until all required information is known." Minn. R. 7026.0080, Subpart 2

This requirement is both vague and goes beyond what might be required under typical due diligence (generally, a reasonable person standard). MPCA is requiring manufacturers "to actively engage with their supply chain" and requires a mandatory and apparently exhaustive request to the supply chain that must continue "until all required information is known." SONAR p. 37. The Agency asserts that this effort is required in the name of promoting accountability and transparency across the entire supply chain. Id. That is not the goal of the statute. MPCA overstates the usefulness of information it seeks and moreover, its ability to use and translate this information into policy and future regulations.

MPCA's proposed due diligence requirement is naïve and burdensome and ignores supply chain realities. By definition, the rule cannot impose requirements for the "entire supply chain" because the reach of the statute is limited to sales only in Minnesota.

Without any discussion in the SONAR, MPCA has apparently rejected using the "known to or reasonably ascertainable" reporting standard used by EPA under TSCA. EPA and companies have considerable experience with the known to or reasonably ascertainable reporting standard starting with the Chemical Data Reporting (CDR) rule. See 40 CFR Part 711. EPA has experience and issued guidance regarding known to or reasonably ascertainable reporting standard under the CDR. EPA has adopted this as the reporting standard for the TSCA 8(a)(7) PFAS Reporting Rule. 40 CFR Part 705. Further, EPA has issued guidance regarding known to or reasonably ascertainable reporting standard under the PFAS Reporting Rule. Moreover, many of the same companies subject to the Minnesota PFAS reporting requirements have already conducted their product due diligence of TSCA reporting following the known to or reasonably ascertainable reporting standard.

In contrast to the objective known to or reasonably ascertainable reporting standard under TSCA, the contours of MPCA's proposed due diligence requirements are unclear and subjective. Under the proposed rule, there are no explicit off ramps for situations where suppliers or others are non-responsive. Compare this to EPA's recognition that "if manufacturers do not know nor can reasonably make estimates for certain data elements, except for production volumes, they may indicate such information is Not Known or Reasonably Ascertainable (NKRA) to them. 88 FR 70516, 70521 (October 11, 2023).

Comment Summary: MPCA should adopt a reporting standard that is realistic and consistent with EPA's Known to or Reasonably Ascertainable reporting standard.

Closing Statement

In closing, on behalf of my client, we appreciate the opportunity to provide comments on the proposed PFAS Product Reporting and Fee rules. Our is hope that the agency will hear the concerns of my client and other commenters and honestly consider them.

We recognize that the legislature was well intentioned in passing Amara's Law. We believe and that MPCA made a good faith effort in drafting the proposed rules. Nonetheless, good intentions notwithstanding, the law and the proposed rules make it difficult and costly for companies of all sizes to comply. These pending requirements have already has resulted in some manufacturers of products that are critical to the successful functioning of Minnesota society to consider not selling products in Minnesota.

We look forward to a fruitful sharing of ideas that will result in improved rules that facilitate the reporting of practical information without burdening companies doing business in Minnesota. Such information might help inform public policy decisions regarding PFAS.

Best regards,

Jeffery Sepesi