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May 21, 2025

Ms. Katrina Kessler, P.E.
Commissioner
Minnesota Pollution Control Agency
Submitted Electronically

RE: MPCA Draft Rule – PFAS and Fee Rules

Dear Commissioner Kessler,

Thank you for the opportunity to submit comments regarding the draft Proposed Rules for New Chapter 7026; Revisor ID R-4828, relating to PFAS in Products; Reporting and Fees by the Minnesota Pollution Control Agency (MPCA). These comments are provided on behalf of The Toy Association and its 900+ members, representing manufacturers, importers, designers, retailers, inventors, and toy safety testing labs, all working to ensure safe and fun play for children and families in Minnesota and across the country and world.

Toy safety is the number one priority for the toy industry. The Toy Association and its members have been global leaders in advancing toy safety, both physical and chemical, for over nine (9) decades. The industry is well aware of the concerns re: the use of PFAS in manufacturing products and many companies are voluntarily phasing out PFAS usage in all aspects of their product line. Unfortunately, the MPCA rules, as currently drafted, set unreasonable, accelerated timelines and reporting requirements that will make it nearly impossible for toy manufacturers to comply.

While the MPCA notes in the *Statement of Need and Reasonableness* (SONAR) dated April 2025 that the proposed rule is "expected to clarify some of the definitions"[1], there remain many unanswered questions surrounding the definitions and unfortunately some of the new rule language has created additional questions and some confusion among manufacturers. As detailed below in our comments, the accelerated and unreasonable timeframe for compliance, high administrative costs, and the breadth of covered products represent our top concerns with the proposed Rules, as currently drafted.

1. **Timeframe: The current highly accelerated and unreasonable reporting and compliance timeframes and deadlines do not provide sufficient time for manufacturer preparedness, which unavoidably lead to involuntary non-compliance, despite best efforts.**

   First, there are serious concerns with the timing requirements set forth in the proposed rules. The proposed, accelerated timeframe (first reporting due in six months (6), i.e., Jan

[1] MPCA Statement in Need of Reasonableness: In the Matter of Proposed Minnesota Rules New Chapter 7026; Revisor ID No. RD-4828 April 2025 Page 10

1, 2026, and annually thereafter) is unrealistic and unachievable, especially given that the necessary framework and required details are not in place as of today. Typical state reporting requirements recognize the need to allow manufacturers ample time to staff up and familiarize themselves with new regulations and rules.

The level of investigation and preparation required for companies to be able to prepare for upcoming compliance with the proposed rule presents a significant, overly onerous administrative burden on affected companies, across the toy industry, other industries, and complex supply chains, even without considering the aspects that are as-yet undefined, ambiguous or unclear.

Without an extended and realistic period for manufacturer preparation, beginning *after* the implementation date of the rule, it will not be possible for companies with even the simplest product ranges or supply chains to complete the necessary investigations in time, effectively causing unavoidable non-compliance.

The proposed rule's shared responsibility structure (§7026.0020) is novel and does not have an equivalent or comparable requirement in any other state or federal regulation. This model will require time both for the identification and determination of other potential reporting entities, and for the negotiation for assumption of responsibility for each product report. Both elements, even when there is a clear picture of the respective applications, will take more time for assessment, determination and outreach *for just one product, never mind for* the entire reporting structure (which is then repeated annually thereafter). For entities with multiple product ranges and/or supply chains, this becomes exponentially more complicated and unachievable.

The proposed rule states that coverage applies to "…product sold, offered for sale, or distributed in the state…" (§ 7026.0020). This does not consider that manufacturers may, and do in most cases, offer a product for sale in a different timeframe from when it may eventually be sold or distributed in the state by retailers or other entities – and manufacturers do not have any means of determining movements in the supply chain subsequent to the original direct sale or procurement into the U.S. market as a whole. Unless the manufacturer is the entity selling directly to consumers, retailers and third-party agents are the business entities that determine whether and when products are sold in which U.S. state.

Further, the SONAR's assumption that the proposed deadline for implementation, January 1, 2026, is 'reasonable'[2] because it is the date listed in statute does not consider, as mentioned above, the real-world application of compiling needed data in a global supply chain. At the same time, MPCA assumes that there will be a "potential large amount of extension requests"[3], which is likely an acknowledgement of the unworkable timeframe.

Request:

- **Once the reporting framework has been developed and proven, we request a more realistic and representative implementation timeline for reporting and compliance be implemented to ensure sufficient time for company preparedness and to reduce unnecessary administrative burdens.**

[2] MPCA Statement in Need of Reasonableness: In the Matter of Proposed Minnesota Rules New Chapter 7026; Revisor ID No. RD-4828 April 2025 Page 28
[3] MPCA Statement in Need of Reasonableness: In the Matter of Proposed Minnesota Rules New Chapter 7026; Revisor ID No. RD-4828 April 2025 Page 28

2. **Covered products and components: The rule does not adequately define 'PFAS' nor 'intentionally added PFAS' nor does it establish de minimis levels acceptable in manufacturing, failing to take into account the complexity of sourcing and supply chains**

   The proposed rule is unnecessarily broad and onerous as it provides no definition for what is considered to be 'PFAS" nor what constitutes 'intentionally added PFAS'..

   While the definition for 'function' (§ 7026.0010) indirectly addresses 'intentional' by referring to a PFAS that is "…intentionally incorporated at any stage *in the process* of preparing a product or its constituent components…" (emphasis added), the sentence directs attention to the process, not the product. In reality, one or more PFAS may be incorporated (in the manufacturing process) but not be present or part of the product or component subsequently produced, but this is not taken into account in the phrasing of the proposed rule.

   The proposed rule does not provide consideration for a minimum level of reportable PFAS, especially considering that the definition of 'function' addresses potential presence of PFAS in the manufacturing process that can, and often will, have no presence or intended function in the finished product or component.

   As a real-world function of the supply chain, in many cases products contain components that are sourced from open-market providers and designed or manufactured for other markets. In these cases, downstream manufacturers have neither the visibility nor the ability to determine the data points required in the proposed rule. A common example of open-market components are (internal) electronic components that are purchased for inclusion in consumer products; the manufacturer of the final product does not have the supply chain reach to design and manufacture these components, and instead purchases the necessary components from existing (multiple) sources.

   The due diligence requirements listed in § 7026.0080 impose an unachievable requirement by stating that "A manufacturer or group of manufacturers must request detailed disclosure of information […] from their supply chain *until all required information is known*." (emphasis added). Even taking into consideration the reality that such requests take time to identify, contact and compile (beyond the timeframe currently being considered) and the associated administrative and financial burdens, as is demonstrated in this document, due to many factors it will not be possible for manufacturers to attain *all* of the required information.

   The Toy Association recommends that MPCA aligns the due diligence requirements in the proposed rule with the existing application of the 'reasonably ascertainable' definition under the Environmental Protection Agency's (EPA) Toxic Substance Control Act (TSCA) [4], which includes a due-diligence allowance framework for instances where PFAS presence or level may not be reasonable to ascertain[5].

[4] 40 CFR 704.3, TSCA Section 8(a)(2) "Known to or reasonably ascertainable by" is defined as to include "all information in a person's possession or control, plus all information that a reasonable person might be expected to possess, control or know"
[5] Federal Register Vol. 88, No. 195, p 70520 'C. What is the reporting standard of this rule?'

Request:

- **Reassess the scope and coverage in the proposed rule to provide the applicability parameters necessary for compliance consideration.**
- **Provide for a *de minimis* reporting threshold and include a definition that identifies 'intended function' as relating to the intention for presence in the finished product.**
- **Revise the proposed rule to provide achievable requirements.**

3. **Administrative Fees and Cost Structure: The per-product cost structure proposed by Minnesota is excessively high and will be crippling for business; it is certain that businesses will be unable to absorb these proposed fees or do business in Minnesota, especially for the small businesses that comprise 96% of the US toy industry; it will force companies not to sell their products in Minnesota, to avoid exorbitant fees, or it will encourage non-reporting.**

   The draft rule proposes that each product must be presented under its own report, unless it meets a very restrictive set of grouping permissions (§7026.0030). As such, the same component containing one or more 'intentionally added PFAS' for each identifiable product offering, even when the reportable component(s) may be identical in type or PFAS presence for more than one product type, will require manufacturers to meet a duplicative and excessively onerous administrative requirement (separate reports for each distinct product type) in addition to a concurrent, duplicative and onerous fiscal burden imposed for each new product type. As an example, a manufacturer with 100 separate product types would be forced to pay a fee of $100,000 (one hundred thousand dollars) for the first reporting of any new product offerings introduced per annum. Many industries, including the toy industry, are innovation-driven and a significant proportion of new product introductions occur each year as a necessary function of the market in which they operate, leading to significant new report obligations for each year. For larger companies, the number of new product types introduced each year can exceed 1,000, leading to costs of over $1,000,000 (one million dollars) each year for the fees alone, even without considering the administrative and resource burdens. Even though the proposed rule states that the annual update/re-certification fees are a flat fee of $500, this annualized cost does not take into account the logistical costs associated with managing and reviewing these requirements across even a small number of product types. Each of these considerations conflicts with MPCA's belief that "manufacturers are anticipated to bear minimal costs to comply with the reporting rule"[6]. We urge MPCA to carefully consider cost structure and reduce fees, if any, to minimal amounts.

   Additionally, the proposed rule does not consider the additional excessive and onerous cost burdens being imposed on manufacturers by (a) the fact that most PFAS do not have associated recognized test methodologies (and even where there are defined tests, these are largely associated with testing for water which is not applicable to testing of solid materials), (b) the testing timeframes and costs associated with assessing all covered products across a manufacturer's product offerings just to demonstrate compliance would render any such product economically unviable to bring to market even before the product is introduced into the market but after all of the necessary development and production costs have already been borne, and (c) testing for Total

[6] MPCA Statement in Need of Reasonableness: In the Matter of Proposed Minnesota Rules New Chapter 7026; Revisor ID No. RD-4828 April 2025 Page 42

Organic Fluorine (ToF) screen testing will introduce false positive reporting instances since the screen itself identifies the presence of an element that *might* be PFAS and would trigger reporting (plus the associated ongoing reporting burden and fees detailed later in this document) without providing a reliable or representative level of accuracy as to whether or not PFAS are actually present.

The proposed fees rule states that, even though there is a recognition that while a product or its components may relate to more than one manufacturer, reporting obligations (including associated fees) can be addressed by one entity, but then introduces a requirement that each and every entity must pay an unnecessarily onerous and burdensome fee of $1,000 per product report and this requirement applies separately for each associated manufacturer.

Request:

- **MPCA itself, in the SONAR, acknowledged that excessive fees "would deter manufacturers from reporting"[7] and we respectfully request that the fee structure be reevaluated given the information provided above.**
- **Reporting fees should be reduced to bare minimal levels, on a per product basis, not a function of how many companies in the manufacturing stream may be associated with that product.**
- **Provide for a volume discount structure for businesses reporting multiple products**

Conclusion

Thank you for the opportunity to submit comments on this important MCPA rulemaking. The Toy Association is committed to open and constructive dialogue regarding PFAS policy and we look forward to continuing and productive work with MPCA on this issue. If you have any questions, please do not hesitate to contact me.

Sincerely,

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CC: Charlotte B. Hickcox, Director, State Government Affairs, The Toy Association

[7] MPCA Statement in Need of Reasonableness: In the Matter of Proposed Minnesota Rules New Chapter 7026; Revisor ID No. RD-4828 April 2025 Page 40

About The Toy Association and the toy industry:

The Toy Association is the North America-based trade association; our membership includes more than 900 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. The toy sector is a global industry of more than US $90 billion worldwide annually, and our members account for more than half of this amount.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard that has been adopted as a mandatory toy safety standard for all toys sold in the U.S. under the Consumer Product Safety Improvement Act (CPSIA) in 2008. It also serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children. The 2023 revision to ASTM F963 was accepted by the Commission and came into force in April 2024. The Toy Association continues to work with medical experts, government, consumers and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.
