



March 1, 2023

Chairman Fong Hawj
Senate Environment, Climate & Legacy Committee
95 University Avenue West
St. Paul, Minnesota 55103

Re: Concerns Regarding Senate File 834

Dear Chairman Hawj:

The Sustainable PFAS Action Network (SPAN) is writing to express concerns about SF834, which requires manufacturers of products containing intentionally added PFAS (perfluoroalkyl and polyfluoroalkyl substances) to submit a notice of that fact to the commissioner of the Pollution Control Agency (Agency), beginning January 1, 2025. The bill also prohibits the sale, offer for sale or distribution for sale of carpets or rugs, cleaning products, cookware, cosmetics, fabric treatments, juvenile products, textile furnishings, ski wax, or upholstered furniture containing intentionally-added PFAS beginning January 1, 2025, and subsequently all products containing intentionally-added PFAS beginning January 1, 2030. As discussed in further detail below, SPAN is concerned, among other things, about the breadth of products that will be subject to the legislation's notification requirement and ban, the timing of the obligations, the economic impacts and burdens the reporting requirements will impose, the lack of specific exemptions for products and PFAS uses that are of critical importance in the United States, as well as the lack of protections for Confidential Business Information that the bill would require to be submitted to the state.

Background on SPAN. SPAN is a coalition of PFAS users and producers that are committed to sustainable, risk-based PFAS management. Our members advocate for responsible policies grounded in science that provide assurance of long-term human health and environmental protection while recognizing the critical need for certain PFAS materials as a direct contributor to US economic growth and competitiveness in global markets. PFAS substances are essential building blocks for a vast number of sectors that impact critical issues such as America's national security, leadership in the tech industry, and response to climate change. SPAN was formed with these various and critical uses in mind, to ensure the health of the environment and consumers while maintaining America's global economic edge. We recommend against enacting this legislation as currently drafted.

SPAN Members' Concerns. Our members are very concerned about the breadth of the legislation and its economic and environmental impacts. Similar legislation recently enacted in other states such as Maine, California, and New Hampshire suggest that such an expansive class-based approach to regulating the presence of PFAS in all products can be burdensome and is premature and unnecessary. On September 29, 2022, Governor Gavin Newsom vetoed legislation in California that would have established a similar class-wide PFAS reporting requirement. In his veto message, the governor stated that the US Environmental Protection Agency (EPA) is currently undertaking a Congressionally-mandated

rulemaking that will require reporting on PFAS import, manufacture, and use, and that “[b]ased on this activity, this bill may be premature.”

In Maine, regulators have experienced significant implementation difficulties and delays after becoming the first state to enact a class-wide reporting requirement for PFAS-containing products. The Maine Department of Environmental Protection (DEP) is understaffed and has been overwhelmed by the vast undertaking required to implement the reporting requirements, and has not yet published final rules for the program that supposedly took effect on January 1, 2023. As a result, Maine DEP has elected to grant more than 2,000 individual and group requests for deadline extensions, including to all of SPAN’s members, providing a six-month extension on the reporting requirement following the effective date of the yet-to-be-issued final rules. Maine DEP is continuing to struggle to address the numerous comments it has been receiving from the regulated community while also responding to the numerous requests for an extension to the reporting deadline from the numerous entities filing last minute requests. Moreover, the DEP in Maine reports they anticipate the state legislature is actively considering amending to the underlying statute.

In New Hampshire, the House Committee on Commerce and Consumer Affairs voted unanimously not to move forward with a similar reporting requirement in October 2022, citing cost, the forthcoming federal regulations, and the difficulties being experienced in Maine.

Due to the complexities and breadth of PFAS uses in the modern economy, federal and state entities have consistently underestimated the financial cost of implementing class-wide PFAS regulation programs. In a [notice](#) published late last year, EPA announced that it had reassessed the estimated economic impacts of the forthcoming Toxic Substances Control Act (TSCA) Section 8 PFAS reporting rule and was increasing the Agency’s original \$10.8 million estimate to \$875 million. Governor Gavin Newsom expressed this same concern regarding a similar reporting requirement in California, stating in his veto message that a program with such a significant fiscal impact should be given more careful consideration during the state’s budget process. In Maine, Governor Janet Mills proposed appropriating \$40 million to address PFAS issues long before the current implementation issues arose. The reporting requirement in SF834 will be similarly expensive, to the point of being prohibitive for both manufacturers required to comply and the Pollution Control Agency to implement and enforce.

In addition to the financial cost, the economic cost of irresponsibly regulating PFAS compounds would be enormous, and have vast implications for the 21st century economy. In a recent study by INFORUM, a Washington-based economic consulting firm, critical sectors of the modern economy that rely on PFAS would be inadvertently impacted by careless PFAS regulations. The automotive, aerospace, air conditioning and refrigeration, medical devices and pharmaceuticals, battery supplies, and semiconductor industries together account for more than six million jobs, annual wages over \$600 billion, and more than \$1 trillion to the nation’s gross domestic product. These industries use PFAS compounds in a responsible manner that is approved for their products’ final usage. The regulations proposed in SF834 would impact these industries in unintentional ways that have dire economic implications.

SPAN is committed to supporting risk-based, scientifically-valid environmental legislation and regulations that protect the health of Minnesota residents. However, the reporting requirement set forth in this bill, as well as the product bans, will place an undue burden on Minnesota businesses and employers that will ultimately hinder the legislation’s stated purpose. The time and resources that will

be required for both reporting businesses and the Pollution Control Agency to fully comply with the requirements envisioned in the bill will far outweigh any benefit to be derived from the information submitted. Moreover, the effort required will distract from making further progress in phasing out specific PFAS which have been identified as presenting the greatest health or environmental concerns (i.e., those substances that have been shown to be toxic, bioaccumulative, persistent, and mobile in the environment).

Efforts are underway at the federal level to prepare a comprehensive reporting program for PFAS compounds. State proposals to mandate class-wide reporting programs of these compounds will be duplicative of the federal rulemaking that is expected to be completed this year, and waste considerable state financial resources without a well-defined objective. It is critical for PFAS regulation to be led by a uniform federal approach that will standardize any reporting that is necessary.

SPAN has the following specific concerns regarding the provisions set forth in the legislation, which is untenable as written:

1) Definition and Scope of Chemicals and Products Covered

The definition of PFAS as any substance that includes “any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom” is overly broad and has no bearing on the likelihood that contamination in Minnesota could be caused by a product containing a substance qualifying under this definition. The breadth of this current definition is so broad it will cause substantial confusion about the list of chemicals and scope of products that would be implicated. The resulting confusion will increase the likelihood of potential noncompliance. This definition encompasses many substances that have been deemed of low risk. For example, several active pharmaceutical ingredients (APIs), present in crucial everyday medications, fit within the bill’s PFAS definition. Reporting on all products containing substances that fit within this definition will overwhelm businesses and will provide information of little value to the state when attempting to formulate practical environmental regulations. In addition, giving the commissioner authority to institute additional product bans by rule increases that likelihood that PFAS-containing products that have been deemed safe for their intended-use, could become subject to an irresponsible ban with unintended consequences. SPAN suggests using the definition adopted by the state of Delaware last year through the enactment of HB8, *An Act to Amend Title 29 of the Delaware Code Relating to Drinking Water*:

“‘PFAS’ means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least 2 fully fluorinated carbon atoms, excluding gases and volatile liquids. ‘PFAS’ includes PFOA and PFOS.”

Furthermore, SF834 defines “product” (the category of products for which reporting would be required) to be inclusive of not only consumer products but also any other product intended for commercial or industrial use too. Thus, the scope of products for which reporting will be required will include virtually any material that may be in US commerce, including pharmaceuticals, agricultural products, transportation equipment and vehicles, military and aerospace materials, equipment used in workplaces and in manufacturing, as well as educational tools and building materials. The scope of the reporting requirement cannot be overstated, and the costs of reporting will be staggering if significant amendments are not made to the legislation.

2) Compliance Date & Time

The current effective date for the notification requirement and product bans beginning January 1, 2025, is unrealistic and vastly underestimates the amount of time, research, and information needed to collect, catalog, and compile the data required to fully satisfy the law. Gathering the information required to comply with this reporting requirement will require significant time simply to research the potential sources of PFAS in products and to contact the appropriate parties in the product and component supply chains. As has been seen in Maine, implementing such a wide-ranging requirement requires a more significant amount of time than the one allotted in this legislation. The legislation also does not incorporate phased-in reporting, which is a critical need for the makers of complex multi-component products.

3) Premature and Duplicative Requirements

It is important for clarity, efficiency, and environmental effectiveness that any PFAS legislation enacted in Minnesota be carefully harmonized with existing and impending federal regulations. In October 2021, EPA released its PFAS Strategic Roadmap. EPA is soon expected to finalize new PFAS reporting rules proposed in June 2021 under TSCA Section 8. That rule will help characterize the sources and quantities of manufactured PFAS in the United States and manner in which PFAS is used. When the TSCA rule is finalized, it will render the reporting required under SF834 potentially unnecessary. Advancing the bill at this time will further perpetuate confusion, such as that caused by differences between the EPA's rule and SF834 on the appropriate definition of PFAS. EPA's impending TSCA rulemaking will establish federal reporting requirements and a PFAS definition that should allow states to harmonize their reporting requirements and definitions to avoid confusion and duplicative and burdensome requirements. The concerns regarding the burdens of reporting and lack of consistency are among the factors that have led to reconsideration of PFAS in products reporting legislation in other states, such as when California Governor Gavin Newsom vetoed a recent PFAS reporting bill. Minnesota should elect to postpone taking any actions now to further advance this legislation.

4) Implementation

If enacted, the bill will force the Pollution Control Agency to embark on a rulemaking process that will be logistically difficult for no practical gain or benefit to consumer health. As mentioned previously, SPAN has witnessed these concerns come to fruition in Maine as DEP regulators have struggled to implement their PFAS reporting rules efficiently and productively. Given these concerns, serious reconsideration needs to be given to SF834 before it can go forward in the state legislature. The legislation requires the commissioner to establish fees by rule upon completion of the notification requirement, without providing any guidelines for the commissioner to follow in establishing these fees. The legislation also states that the commissioner may "prioritize the prohibition of the sale of product categories products that, in the commissioner's judgment, are most likely to cause contamination of the state's land or water resources if they contain intentionally added PFAS." There is no further elaboration as to what standards the commissioner may use in determining such products, and to what extent the public should be involved in the process.

5) Waivers and Exemptions

SPAN applauds the inclusion of a waiver provision, allowing the Pollution Control Agency to waive the reporting requirement if the commissioner determines that "substantially equivalent information" is publicly available. The legislation also allows the commissioner to enter into a

shared information agreement with other states, and to extend the reporting deadline. These are critical inclusions for reporting legislation. However, significant clarification is needed before SF834 moves forward. “Substantially equivalent information” is not currently defined and could mean a number of things given the varied use of certain PFAS compounds. While the option to extend the reporting deadline is also critical, we have seen in Maine that such a procedure can be unclear and lead to significant confusion in complying with the law. These inclusions in the legislation highlight the importance of allowing for the federal government to take the lead in forming a uniform federal approach.

SPAN also applauds the inclusion of a provision allowing the Pollution Control Agency to exempt products by rule from prohibition if the commissioner determines that it is a “currently unavoidable use.” While this is a critical inclusion, more clarity is necessary on the process by which the Agency intends to determine whether a product is a currently unavoidable use, and the extent to which the public will be involved. There is also need for clarity on the scope of “currently unavoidable use,” as it also entails equipment and substances used in the manufacture of certain products, such as semiconductors and pharmaceuticals.

6) Proprietary Information

Currently, the legislation contains no provisions or articulated process for the Pollution Control Agency to ensure the protection of Confidential Business Information, which will be critical for manufacturers to ensure their practices are kept secure and the benefits that certain PFAS compounds provide can continue to be utilized.

Conclusion. Given these and numerous other concerns SPAN has with SF834, we strongly recommend that the bill be tabled until all stakeholder concerns can be addressed. As written, the bill would impose unnecessary and burdensome requirements that will do little to further protect human health of Minnesotans, and the environment in the state. This legislation is premature, given the state of PFAS-regulatory activities at the federal level, and will do little in the near-term to address existing contamination issues in the state. The requirements that would be imposed under the legislation are best addressed using a well-considered and organized federal approach. SPAN looks forward to the opportunity to continue a dialog with Minnesota legislators to ensure, when necessary, the development of responsible PFAS legislation that will protect human health and facilitate continued economic progress.

Thank you for your consideration. Please do not hesitate to reach out if you have any questions or need any further information.

Sincerely,

A handwritten signature in black ink that reads "Kevin Fay". The signature is written in a cursive, flowing style.

Kevin Fay
Executive Director
Sustainable PFAS Action Network (SPAN)