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July 19, 2019

Elizabeth Callahan
MassDEP
One Winter Street
Boston, MA 02108

RE: Comments of Associated Industries of Massachusetts (AIM) to proposed amendments to 310 CMR 40.0000 - the Massachusetts Contingency Plan (MCP)

Dear Ms. Callahan:

Associated Industries of Massachusetts (AIM) is pleased to provide the following comments to the above-mentioned proposed regulations.

AIM is the largest general trade association in Massachusetts. AIM's mission is to promote the prosperity of the Commonwealth of Massachusetts by improving the economic climate, proactively advocating fair and equitable public policy, and providing relevant, reliable information and excellent services.

BACKGROUND

Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that were manufactured and used in a variety of industries in the United States and around the globe since the 1940s. They were phased out of American manufacturing in the mid-2000s. They were not manufactured in Massachusetts but were present in many raw materials used here as well as present in consumer goods.

PFAS in drinking water is an important emerging issue nationwide. PFAS are water soluble and can stay in the environment for a long time and do not break down easily. In May 2016, the United States Environmental Protection Agency (EPA) issued a lifetime Health Advisory (HA) of 70 parts per trillion (ppt) for the combination of two PFAS chemicals, Perfluorooctanesulfonic acid (PFOS) and Perfluorooctanoic acid (PFOA), in drinking water.

In June 2018, due to similar health concerns, MassDEP established an Office of Research and Standards Guideline (ORSG) level for drinking water that extended the EPA advisory to include the following three additional PFAS chemicals: Perfluorononanoic acid (PFNA), Perfluorohexanesulfonic acid (PFHxS), and Perfluoroheptanoic acid (PFHpA) because these compounds share very similar chemical structures and the available data indicates they are likely to exhibit similar toxicities. The ORSG level is 70 ppt and applies to the summed level of all five compounds.

Between 2013 and 2015 in Massachusetts, six PFAS compounds (the five above plus Perfluorodecanoic acid (PFDA)) were detected at nine Massachusetts drinking water sources above EPA's specified reporting limits.

In January 2019, MassDEP announced its intention to initiate the process to develop a drinking water standard. Review and stakeholder input are ongoing. On April 19th, MassDEP proposed a groundwater cleanup standard (GW-1) of 20 ppt for the sum of six PFAS - (PFOA, PFOS, PFHxS, PFNA, PFHpA, PFDA).

Comments on the proposed changes are due by July 19, 2019.

AIM's comments are not intended in any way to discount the dangers of PFAS or to in any way impugn the work of MassDEP's engineers and scientists in setting the levels proposed. Our concern revolves around the impacts of these new standards on businesses, both public and private, and cities and towns. In fact, AIM supports setting standards that are protective of public health, based on solid science.

We want to thank the Department for continuing this discussion in an open and transparent manner.

PFAS-CONTAINING COMPOUNDS ARE UBIQUITOUS AND MASSDEP MUST PROPERLY EDUCATE THE PUBLIC ON THEIR RISKS

In addition to their uses in some types of firefighting foam used by the military, local fire departments, and airports, PFAS were historically used in nonstick pans, stain repellants, waterproof clothing, stain-resistant carpets, food packaging, leather goods and some medical equipment. Closed and existing landfills likely contain everyday products that contain PFAS and even wastewater treatment plants and septic tanks could be a source of PFAS contamination. Ironically, the use of PFAS in some products, such as firefighting foam and medical equipment, likely saved thousands of lives.

As testing becomes more widespread and available, the amount of reported contamination may increase. Indiscriminate and unregulated PFAS testing by activist groups and others not related to MassDEP's efforts could occur in some areas. Therefore, MassDEP must address these issues beforehand to avoid undo concern, particularly as some levels may approach the limits of testing or background and in some cases its presence may not be of great health concern. In addition to making sure any testing follows valid MassDEP protocols, MassDEP should also develop educational resources on the specific health threats posed by the presence of PFAS.

THE COST OF PFAS TREATMENT WILL BE HIGH AND THEREFORE MASSDEP SHOULD CONCENTRATE ON TREATING DRINKING WATER

There is no dispute that PFAS substances were widely used by state and federal agencies, municipalities, businesses and by residents and its presence in soils is widespread. Since every town in Massachusetts has a fire department, landfill, a form of wastewater treatment and businesses/consumers that have used or contain PFAS-containing materials, this ubiquitous nature makes it extremely important that MassDEP understand

the costs and health benefits of cleanup options and plan their responses accordingly.

As a result, we believe DEP should concentrate their resources on options which ensure that residents have drinking water free from PFAS contamination.

DEP cannot effectively clean up or monitor thousands of potential sites that may contain PFAS and classifying these sites as contaminated may stigmatize them or cause problems related to the transfer or redevelopment of commercial and industrial property, including areas formerly owned by the federal government or the state. It could also impact residential transfers if PFAS is detected in private wells or septic system leaching fields.

Because PFAS was not specifically reportable to MassDEP when used in production, MassDEP has little knowledge of historical users of PFAS. In fact, because these materials were used in consumer products and are water soluble, it is entirely possible that some contaminants could be the result of contamination from homeowner septic systems. It is unfair to force companies that once used PFAS containing materials to shoulder the burden of paying for cleanup, even though their contribution to the overall contamination level was small. This is particularly true where ground contamination or groundwater contamination will not result in health impacts.

Concentrating on drinking water allows the MassDEP to generate the biggest health benefit outcome for the smallest amount of money. Since the types of treatment for drinking water are well known, the cost can be smaller and spread more easily.

COORDINATION OF RESOURCES IS REQUIRED FOR EFFECTIVE TREATMENT

Since the cost of cleanup will likely cross state agencies and sectors of the economy MassDEP must coordinate with other agencies and others on efforts to solve this problem. MassDEP should not pick only the low hanging fruit or dismiss any responsible parties, including state and federal government, homeowners or businesses from their obligations.

Coordination will not only be cheaper but will result in better outcomes. With the type of wide-ranging cost estimates to treat PFAS in drinking water, MassDEP must look at only the most cost-effective treatment options. Also, coordination may result in treatment options that include other contaminants at the same time.

Since some of this contamination resulted from operations on land once under federal control but now state or locally controlled, coordination is particularly tricky. Federal and state standards are different and that could lead to disagreements, and funding may be spotty. AIM is happy to help work with our Congressional delegation in order to assist MassDEP and other agency's efforts to coordinate efforts with the federal government or secure funding.

Further, since other states are also addressing PFAS, MassDEP would be wise to undertake an action plan with them in order to transfer knowledge and resources.

FINANCIAL RESOURCES SHOULD BE MADE AVAILABLE FOR CLEANUP AND TREATMENT

Because PFAS was contained in materials used by cities and towns and even the state, there is widespread contamination in areas owned by these entities that are not likely to have the money to treat the problem or clean up legacy issues. Homeowners could also be impacted if they are on private wells. Likely, cities, towns, private entities and residences will struggle to fund the filtration projects that are required to remove PFAS from drinking water to protect their health and the health of their residents.

As such, MassDEP must create a state-wide comprehensive approach with a focus on funding clean water filtration systems for businesses, homeowners and municipalities with state assistance. A regional/state comprehensive approach will require funding/support at the state level. AIM is happy to support these efforts.

DISPOSAL OF LEGACY PFAS-CONTAINING PRODUCTS SHOULD BE ADDRESSED

Finally, one goal should be to not make the problem worse. As part of their consumer awareness campaign, DEP must educate the public on what daily products contain PFAS compounds and support the reduction or elimination of the use of PFAS-containing products. With products entering the waste stream for many years, particularly from homeowners, existing disposal methods could make the problem worse. It is known that incineration, in the form of waste-to-energy treatment, can destroy the PFAS in consumer goods, such as carpeting, etc. As such MassDEP should at least encourage this or other appropriate methods so as not to add to the problem.

Thank you for allowing us to make these comments and we look forward to working with your office in any way possible on this and other issues.

Should you have any questions please do not hesitate to contact me.

Sincerely yours,



Robert A. Rio, Esq.
Senior Vice President and Counsel
Government Affairs