April 7, 2025

The Honorable Ben Allen
Member of the Senate
1021 O Street, Suite 6610
Sacramento, CA 95814

RE: SB 682 (Allen) - Environmental health: product safety: perfluoroalkyl and polyfluoroalkyl substances – OPPOSE

Dear Senator Allen:

The undersigned organizations are writing to regretfully inform you of our opposition to your SB 682, legislation proposing to create a sweeping and complex new regulatory program at the Department of Toxic Substances Control (DTSC) to regulate all commercial and consumer products that may contain, as well as any industrial manufacturing processes that may use perfluoroalkyl and polyfluoroalkyl (PFAS) substances.

As outlined below, we have identified several concerns including the bill's generalized characterization of PFAS chemistries, the significant impact on the diverse array of products, applications, and industries on which California's economy relies, including industries in which both California and the federal government heavily invest and seek to expand, such as clean energy, and a vague DTSC process that provides little regulatory certainty to the business community.

Under SB 682, manufacturers that use PFAS chemistries must petition DTSC and receive a determination that the use of PFAS in a product is a "currently unavoidable use." Otherwise, the product is prohibited beginning January 1, 2033. Additional product categories, including products to manufacture semiconductors, motor vehicles, and gases for heating, venting, and air conditioning products would be prohibited January 1, 2040. DTSC would evaluate petitions on a variety of criteria, including whether "the function provided by PFAS in the product is necessary for the product to work" and whether the "product is critical for health, safety, or the functioning of society."

Thousands of companies, and the hundreds of thousands of products and product components these companies manufacture, could only remain in the marketplace pending a determination by DTSC staff that may or may not have any expertise with the chemistry involved, the manufacturing process, the function of the product or the complicated (often global) supply chains that bring these products and product components to California.

SB 682 is built on a foundation that incorrectly characterizes all PFAS substances as equal, regardless of any unique properties and uses, environmental and health profiles, potential exposure pathways, and any potential risk. PFAS substances can be a solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) or a gas (e.g., hydrofluorocarbon refrigerants). The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another. The very distinct physical and chemical properties of the three types demonstrate how varied they are and how imposing a "one-size fits all" approach as proposed would be inappropriate.

Given the bill includes a definition of PFAS that is extremely broad and provides no reasonable threshold for triggering compliance (arguably one detectable molecule of PFAS in a product or piece of equipment is all that would be necessary*), thousands if not hundreds of thousands of products sold or used in the state would be subject to a reporting requirement and potentially a use restriction.* These include smart phones and laptops, solar panels, electric vehicles, HVAC units,

cookware, electric appliances, plumbing components, paints and coatings, components of agricultural equipment, telecommunications infrastructure and advanced transportation and aerospace applications to name just a few.

One key type of PFAS in use today is fluoropolymers, a type of specialty material. Fluoropolymer uses include:

- **Automotive: Gaskets**, rings, valves, and hoses in the fuel system; wiring and circuit boards; pull cables; shock absorbers and bushings.

- **Aerospace (military and civilian):** High performance navigation and communication antennae; lubricants for wing flap mechanisms and landing gear; fuel-oxygen separation systems.

- **Clean Energy**: Electric vehicle batteries, hydrogen fuel cells, solar panels, battery storage, spray foam, electric heat pumps, wind turbines, and sheathing for power cables and coatings for electrical wire.

- **Electronics and Electric Appliances:** Computers and other electronic equipment and related components and accessories.

- **Industrial Processes:** Linings for pipes, valves, and tanks to prevent corrosion; gaskets in high temperature, high pressure production processes to contain reactive substances.

- **Medical:** Surgically implanted medical devices (e.g. stents); COVID testing equipment and respirator tubing; catheters and guide wires; transfer and storage bags for biological fluids; personal protective equipment.

- **Connections:** Seals, o-rings, gaskets, tapes, and connectors which provide functions multiple functions, such as flexibility, corrosion resistance, heat and cold resistance, fugitive emissions control, and tight seals for working with challenging substances and/or in challenging operating environments.

- **Semiconductors:** Ultra-low contamination semiconductor manufacturing; wafer etching; chemical piping and storage.

SB 682 Proposes to Replicate an Unproven Policy

Where similar laws have been adopted, implementation has proven to be extremely challenging. In the European Union, industries have submitted thousands of comments on the widespread consequences of a ban and the lack of suitable alternatives. As a result, EU authorities have had to delay implementation given the complexity of the issue, the number of industries and applications impacted, and the potential consequences for the EU's long-term sustainability, public health, and economic growth goals.

Since 2021, the Maine Department of Environmental Protection (DEP) has struggled to implement a similar mandate. The Maine DEP has issued more than 2400 extensions to companies for just its PFAS reporting requirement due to a variety of reasons including complicated supply chains for

manufacturers to determine if PFAS is included, lack of an operational database for manufacturers to submit product information, limited lab capacity within the US to test products for PFAS and lack of protection for confidential business information.

As a result, Maine Governor Janet Mills (D) signed LD 1537 last year that substantially reformed the initial law. Changes included extending some compliance deadlines, streamlining reporting requirements, including protections for confidential business information and exempting several broad product categories.

Minnesota, which more recently enacted a comprehensive ban on PFAS, has already run into complications resulting from this law. Minnesota lawmakers worked last year to sign amendments into law that delay enforcement provisions. Now, Minnesota businesses are struggling with unsellable inventory due to the law's restrictions, and state lawmakers are actively discussing further possible revisions.

Implementation Concerns and Questions

SB 682 contains several provisions that result in greatly expanding the scope of potentially impacted industries and products beyond generally consumer-facing applications. The bill also includes vague terms and criteria that provide little to no regulatory certainty to manufacturers. For example,

- Section 4 includes an expanded definition of "intentionally added PFAS" that includes "any source of PFAS that is reasonably known to be present…" This language introduces a level of subjectivity into the determination of whether PFAS is intentionally added, which complicates implementation and enforcement. It also fails to consider unintentional contaminants that are beyond a manufacturer's control (e.g. cross-contamination, background levels, test method limitations, and variabilities, etc.). Arguably, one molecule of a PFAS substance would require a manufacturer to submit a petition for a "currently unavoidable use" determination to DTSC for review.

- Section 4 defines safer alternative as "an alternative that, in comparison with another product or product manufacturing process, has *reduced potentially adverse impacts* or potential exposures associated with PFAS." The bill provides no insight into what criteria DTSC would use to determine whether "reduced potentially adverse impact" has been achieved or what magnitude of reduction would be considered meaningful.

- The bill does not adequately define key terms and improperly delegates to DTSC discretion to make several decisions relating to whether PFAS in a product or product category is a "currently unavoidable use." The bill does not provide sufficient guidelines or criteria for DTSC to make determinations about whether the function provided by PFAS in a product is "necessary for the product to work" or "required to perform its primary function," whether there have been "significant efforts to develop a safer alternative," and whether PFAS in a product is "critical for health, safety, or the functioning of society." This lack of guidance increases the risk of inconsistent, unsubstantiated, and scientifically unsupported determinations regarding whether PFAS in a product or product category is a "currently unavoidable use."

We also question whether DTSC has the technical expertise to make any of these decisions given that virtually every manufactured product that contains a fluorinated substance would be subject to review and approval by department staff.

- The envisioned petition process would likely require manufacturers to submit complex, detailed, and perhaps proprietary information about their products, manufacturing processes, or suppliers, yet the bill provides no protection for confidential business information. In fact, the bill requires DTSC to "provide an opportunity for public comment" when making its "currently unavoidable use" determinations, further increasing the opportunity to expose trade secret or confidential business information.

- The bill allows DTSC to impose an earlier effective date for the prohibition for any product or product category based only on whether it has already been banned by any other state or country. The bill also allows DTSC to rely on another jurisdiction's ban on PFAS in a product or product category as the basis for denying a petition for a "currently unavoidable use" determination.[1] Both of these determinations could therefore be made without regard to the evidence supporting that action or whether that evidence was actually considered by the subject jurisdiction. Additionally, we have questions and concerns about the implementation of these provisions if other jurisdictions enact wholesale PFAS-in-product bans that similarly fail to take into consideration the critical and essential uses of PFAS in commercial and consumer products.

- Given the volume of products in commerce in California that would likely be subject to the SB 682 process, the five-year expiration period for "currently unavoidable use" determinations would require an indefinite cycle of petitions, regulatory reviews, and agency determinations, necessitating an exceptionally large stand-alone program at DTSC to regulate a single group of substances. The fiscal and programmatic implications of this proposal are staggering.

- SB 682 also does not consider new products that may be introduced into the California market after January 1, 2033, which stifles innovation and economic development.

- SB 682 does not ensure due process for manufacturers. For example, the bill allows DTSC to review petitions for "currently unavoidable use" determinations but contains no requirement that DTSC issue its decision in writing (or a timeframe for that decision) and no process through which a manufacturer can appeal that decision. Written notice of DTSC's decision is critical when DTSC denies a petition because SB 682 allows DTSC to make a decision "without evaluating all the criteria … if the determination can be made based on fewer criteria."

- SB 682 allows DTSC to review, or any person to request that DTSC review, a "currently unavoidable use" determination based on a significant change in information but contains no procedures for notifying a manufacturer that an applicable "currently unavoidable use" determination is being reviewed, allowing a manufacturer to participate in the review

[1] This also raises the question of why the bill does not give similar weight to critical or essential use determinations, or other similar exemptions or exceptions, for PFAS in products or product categories granted by other jurisdictions.

process, notifying a manufacturer of DTSC's decision, or allowing a manufacturer to appeal DTSC's decision.

- Relatedly, the bill does not provide any mechanism for a stay of the January 1, 2033, effective date pending DTSC's review of a petition for a "currently unavoidable use."

Failure to Leverage DTSC's Existing Chemical Management Authority

We also question the need to create an entirely new and separate regulatory program given DTSC's existing chemical management authority.

Under the Safer Consumer Products (SCP) statute, DTSC has broad authority to identify chemical/product combinations and, if warranted, impose use restrictions. Additionally, California Code of Regulations, title 22, section 69501.4(b) authorizes DTSC to request information from product or chemical manufacturers, importers, assemblers, or retailers that it determines necessary to implement the SCP's framework regulations, via an information call-in. DTSC may use the information obtained through call-ins for several purposes, including identifying product-chemical combinations to evaluate as potential priority products; identifying and analyzing alternatives to eliminate or reduce potential exposures and adverse impacts; and filling data gaps to improve understanding and reduce research time.

In 2022, your own legislation (SB 502) expanded DTSC's authority to require manufacturers to provide specific information including:

- information on ingredient chemical identity, concentration, and functional use;
- existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations; and
- data on state product sales, or national product sales in the absence of state product sales data.

We continue to believe that leveraging the existing SCP program to regulate PFAS in commercial and consumer products would not only address some of the more significant concerns we raise in this letter but is the more prudent approach.

Collectively, we support the responsible production, use and management of fluorinated substances, including regulatory requirements that are protective of human health and the environment, taking into consideration the diversity of physical and chemical properties and the environmental and health profiles of these substances.

Though we are opposed to SB 682, we remain committed to an on-going dialogue on chemical policy in California that is grounded in strong scientific principles, protective of human health and the environment, leverages existing state and federal regulatory requirements, encourages innovation and economic development, and provides regulatory certainty to the business community.

Thank you for the opportunity to share these concerns.

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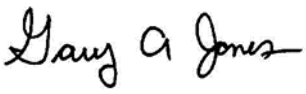

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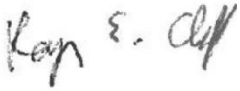

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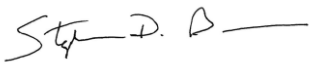

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