

NEWELL AUGUR

157 Capitol Street
Suite 3
Augusta, ME 04330

PH 207.791.1281
FX 207.623.9367
naugur@pierceatwood.com

pierceatwood.com

Admitted in: ME

April 27, 2023

Stacy Brenner, Senate Chair
Lori Gramlich, House Chair
Legislative Committee on Environmental and Natural Resources
100 State House Station
Augusta, ME 04333-0100

RE: Legal Impact of PL 2021 c. 477 on C&L Aerospace

To the Members of the Committee on Environment and Natural Resources:

I appreciate the opportunity to provide you with further information regarding the legal consequences of PL 2021 c. 477 ("the PFAS reporting law") on our client, C&L Aerospace (C&L), specifically to address an erroneous claim made at the public hearing on LD 1214.

As Chris Kilgour, CEO of C&L, indicated, approximately 40% of the company's business consists of repairing and refurbishing aircraft. C&L must obtain any one of 400,000 different parts to repair a standard aircraft depending upon the type of work being performed. Roughly half of those parts are brand new.

Every one of these new aircraft parts would be considered a "product" under 38 MRSA §1614 1 (G), defined as "an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial or industrial use, including for use in making other products."

Whether the manufacturer is deemed to have sold the "product" to C&L for purposes of repairing the aircraft or C&L is deemed to have sold the "product" to the end user, the PFAS reporting law as written covers the sale of that aircraft part. Pursuant to 38 MRSA §1614 5 (D) and the Department's interpretation of the law, the Department of Environmental Protection (DEP) has the authority to ban the use of that aircraft part if it contains intentionally added PFAS.

The other half of C&L's business is selling aircraft parts. Most of these parts come from aircraft that are decommissioned. Since these parts are used, the DEP would not be empowered to prohibit the sale or resale of those products. However, 20% of the parts C&L sells are new, and would be subject to DEP prohibition.

Further, the reporting requirement of the statute, 38 MRSA §1614 (2), applies to all products. As we understand the Department's interpretation of the law, C&L is obligated to report on the presence of PFAS in anything it sells, *irrespective of whether the part is new or used*. Thus, C&L is unable to comply with the reporting requirements of the PFAS reporting law. Compliance would be extraordinarily costly, take multiple years to complete and would not even cover the majority of PFAS substances for which there are no available analytic testing methods.

Accordingly, we would reiterate our support for an amendment to PL 2021 c. 477 that would clarify federal preemption language as outlined in Chris' written testimony. Alternatively, the Committee should direct the DEP to identify the uses of PFAS that are essential to the health, safety or the functioning of society and for which alternatives are not available and exempt those uses from the reporting requirement. We would be pleased to work with the Committee to accomplish this objective.

Respectfully submitted,



Newell A. Augur
On behalf of C&L Aerospace

Cc: Senator Joseph Baldacci
Mark Highland
Sarah Woodbury

Newell Augur
C&L Aerospace
LD 1214

April 27, 2023

Stacy Brenner, Senate Chair
Lori Gramlich, House Chair
Legislative Committee on Environmental and Natural Resources
100 State House Station
Augusta, ME 04333-0100

RE: Legal Impact of PL 2021 c. 477 on C&L Aerospace

To the Members of the Committee on Environment and Natural Resources:

I appreciate the opportunity to provide you with further information regarding the legal consequences of PL 2021 c. 477 ("the PFAS reporting law") on our client, C&L Aerospace (C&L), specifically to address an erroneous claim made at the public hearing on LD 1214.

As Chris Kilgour, CEO of C&L, indicated, approximately 40% of the company's business consists of repairing and refurbishing aircraft. C&L must obtain any one of 400,000 different parts to repair a standard aircraft depending upon the type of work being performed. Roughly half of those parts are brand new.

Every one of these new aircraft parts would be considered a "product" under 38 MRSA §1614 1 (G), defined as "an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial or industrial use, including for use in making other products."

Whether the manufacturer is deemed to have sold the "product" to C&L for purposes of repairing the aircraft or C&L is deemed to have sold the "product" to the end user, the PFAS reporting law as written covers the sale of that aircraft part. Pursuant to 38 MRSA §1614 5 (D) and the Department's interpretation of the law, the Department of Environmental Protection (DEP) has the authority to ban the use of that aircraft part if it contains intentionally added PFAS.

The other half of C&L's business is selling aircraft parts. Most of these parts come from aircraft that are decommissioned. Since these parts are used, the DEP would not be empowered to prohibit the sale or resale of those products. However, 20% of the parts C&L sells are new, and would be subject to DEP prohibition.

Further, the reporting requirement of the statute, 38 MRSA §1614 (2), applies to all products. As we understand the Department's interpretation of the law, C&L is obligated to report on the presence of PFAS in anything it sells, irrespective of whether the part is new or used. Thus, C&L is unable to comply with the reporting requirements of the PFAS reporting law. Compliance would be extraordinarily costly, take multiple years to complete and would not even cover the majority of PFAS substances for which there are no available analytic testing methods.

Accordingly, we would reiterate our support for an amendment to PL 2021 c. 477 that would clarify federal preemption language as outlined in Chris' written testimony. Alternatively, the Committee should direct the DEP to identify the uses of PFAS that are essential to the health, safety or the functioning of society and for which alternatives are not available and exempt those uses from the reporting requirement. We would be pleased to work with the Committee to accomplish this objective.

Respectfully submitted,

Newell A. Augur
On behalf of C&L Aerospace

Cc:Senator Joseph Baldacci, Mark Highland, Sarah Woodbury

