**Before the Oregon House Committee on Water**
**Testimony on HB 4043**
**Alan J. Olson, P.E.**
**February 11, 2020**

Chair Helm, Vice-Chair Leif, Vice-Chair Reardon and Members of the Committee: Thank you for the opportunity to testify today in support of HB 4043.

My name is Alan Olson. I am a registered Professional Engineer in Ohio and consultant to the American Chemistry Council. I have been the chairman of the Ohio Registration Board for Professional Engineers and Surveyors, and I have been the president of the Ohio Society of Professional Engineers. I also have experience at NSF International in Ann Arbor, MI, the independent body that certifies potable water pipe, plumbing, fittings and fixtures and drinking water additives for the U.S. and other countries. At NSF, I helped develop the protocol and equations that are still in place for testing and certifying all types of potable water pipe, fittings and joining materials against national drinking water standards. I have experience as a regulator responsible for the health, safety and welfare of the public; and as a technical expert on potable water pipes and plumbing, and drinking water quality.

Previous testimony amply explained how HB 4043 helps Oregon by allowing competition to drive down costs while strengthening engineers' ability to select the most suitable material to fulfill project needs and protect water quality. I certainly agree that this is simple approach will save taxpayers money. I will make a few points relevant to the materials and procurement procedures in question.

HB 4043 does not rescind or prohibit the use of local standard specifications. There is no change to the relationship between the project engineers and procurement. There is no pre-emption of local control or procurement except for the prohibition on restricting certified materials. Any such restriction on certified material choice certainly narrows innovation and competitiveness.

Moreover, it will not be difficult or disruptive for jurisdictions that have outdated restrictions to review and add new materials to their standard specifications. Communities in Oregon and across the country already have variants of performance based, or open, specifications in use. Model specifications are widely available and incorporated into numerous state and regional compacts such as the "Green Book" of Standard Specifications for Public Works Projects or the Oregon State Construction Standards for Drinking Water Services that provide a material neutral set of performance requirements for ductile iron, PVC, and HDPE pipes.

Regarding the selection of materials. This is the engineer's job and ACC does not believe in picking winners and losers. The bill puts the ASTM, AWWA and NSF (ANSI) requirements into statute to ensure that any acceptable piping material has the structural characteristics such as inner and outer dimensions and pressure class to meet its intended use. Drinking water pipes are a special case and all piping materials that will touch or deliver drinking water must meet the same American National Standard, NSF/ANSI 61: *Drinking Water System Components – Health Effects*. NSF 61 establishes requirements to help ensure the health and safety associated with use of products, components and materials used in drinking water systems.

NSF International tests and certifies all different types of piping material, including ductile iron, copper and cement pipe as well as five categories of plastic: PVC, PP, PEX, PET and PE.

I understand there have been concerns raised about how this bill may change the potential for liability for Oregon professional engineers. A legal opinion from Gregory Chaimov of Davis Wright Tremaine states clearly, "Nothing in HB 4043 changes the professional standard of care for PEs in Oregon or otherwise alters what a plaintiff must prove in a tort claim against a PE. Accordingly, HB 4043 will not affect the potential liability of PEs in Oregon." It continues, "all avenues by which an Oregon professional engineer may specify piping material (approval by the owner, reliance on national or international standards) practically shield the professional engineer from liability, with or without HB 4043."

Similarly, HB 4043 would not affect municipal or public official liability. Unsuccessful bidders will still be able to challenge, under state or local law, the rejection of their bids, just as before. And the grounds for challenging the government's decision will remain the same. HB 4043 does nothing to change the competitive bidding process itself. It is not surprising then that no one is coming forth and saying they currently have liability issues where they have multiple materials included in their standard specifications or bid documents.

Perhaps what I can best offer is my opinion as an engineer and former regulator that HB 4043 is a simple, easy-to-implement bill that will result in cost savings and infrastructure modernization.

HB 4043 is a reasonable step codifying existing practice to help reduce the total cost of infrastructure improvements within finite funding.

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