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Some things last forever: Government of Canada proposes regulatory measures for PFAS

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On March 5, 2025, the Government of Canada proposed new regulatory measures for per- and polyfluoroalkyl substances (PFAS), which it outlines in the final State of Per- and Polyfluoroalkyl Substances (PFAS) Report [PDF] (the Report) and the Risk Management Approach for PFAS, excluding fluoropolymers [PDF] (the Risk Management Approach).

In this Update, we briefly describe the conclusions of the Report and the Risk Management Approach, including the government's intention to (i) classify PFAS as "toxic" under the *Canadian Environmental Protection Act, 1999* (CEPA) and (ii) introduce additional regulatory instruments to further restrict the manufacture and use of PFAS. We also briefly describe the implications for industry.

Scientific assessment of PFAS: The State of Per- and Polyfluoroalkyl Substances (PFAS) Report

As described in our prior Osler Update, PFAS have been labeled as "forever chemicals" because of their persistence in the environment. They include thousands of chemicals which are widely used in consumer, commercial and industrial goods. Products such as lubricants, firefighting foams, food packaging, drugs, cosmetics, pesticides, textiles, vehicles and electronics may contain PFAS.

The Report sets out the Government of Canada's scientific assessment of PFAS as a class of substances. The Report concludes:

- Exposure to PFAS "can lead to adverse effects on the environment and human health".
- PFAS qualify as "toxic" under sections 64 (a) and (c) of CEPA because they enter the environment in a way that has or may have an immediate or long-term harmful effect on the environment or its biodiversity, and that constitutes or may constitute a danger to human life or health.

As a result, Environment and Climate Change Canada and Health Canada propose to add PFAS (other than fluoropolymers[1]) to Part 2 of Schedule 1 of CEPA. Adding a substance to Schedule 1 allows the government to put in place risk management measures that restrict the use, importation, manufacture and release of substances (through regulations,

guidelines and codes of practice).[2]

Regulation and prohibition of PFAS: proposed Risk Management Approach

The proposed Risk Management Approach [PDF], which was released along with the Report, calls for PFAS as a class of substances to be regulated. If implemented as proposed, the Risk Management Approach has the potential to greatly expand the scope of federal PFAS regulation in Canada beyond the existing regulation of perfluorooctane sulfonate PFOS), perfluorooctanoic acid (PFOA), and long-chain perfluorocarboxylic acids (LC-PFCAs), which are already prohibited under CEPA.[3]

The Risk Management Approach seeks to expand the regulation of PFAS through a three phase approach:

- Phase 1 – Firefighting foams (spring 2027): First, the government proposes to prohibit the use of all remaining categories of PFAS in firefighting foams. Spring 2027 is the targeted date for a regulation implementing this proposal.
- Phase 2 – Consumer products with available alternatives (late 2027): Second, the government proposes to prohibit the use of PFAS in consumer products where alternatives are currently available. Uses of PFAS targeted by the government for prohibition include de-greasing agents in food packaging, food additives, cosmetics, clothing, paints, adhesives, sealants and ski wax. The government proposes consultation in 2027, followed by publication of proposed regulations.
- Phase 3 – Remaining substances (to be determined): Finally, the government proposes to prohibit uses of PFAS for which there currently may not be feasible alternatives. The date of this prohibition, and the specific measures to be adopted, will be determined at a later date following additional consultation. Uses of PFAS with no readily available substitute include refrigerants, aerosol propellants, prescription drugs, medical devices, and military applications.

The government has indicated that, at each phase, exemptions will be considered, with attention given to socio-economic factors and whether feasible alternatives exist.

In addition, the Risk Management Approach identifies certain existing and planned information gathering initiatives for PFAS, including the following:

- Gathering information on 312 different PFAS under a mandatory Notice with respect to PFAS issued under section 71 of CEPA in the *Canada Gazette* (the PFAS Notice). The PFAS Notice had a mandatory reporting deadline of January 29, 2025, although many reporting entities were granted up to a six-month extension to report.
- Adding 163 different PFAS to a new Part 1, Group C of the National Pollutant Release Inventory (NPRI), which occurred on March 8, 2025, via publication in the *Canada Gazette*. Facilities that meet the employee threshold and that manufacture, produce or otherwise use 1 kg or more of these 163 PFAS at a concentration of 0.1% by weight or more, will be required to report quantities of PFAS that are released, disposed of, and recycled.

Implications for industry

Stakeholders and members of the public may submit comments on the proposed Risk Management Approach for PFAS by submitting comments to Environment and Climate Change Canada (substances@ec.gc.ca) prior to May 7, 2025.

While the regulatory proposals in the Risk Management Approach are not final, companies will be considering the impact of the proposed measures on their business and products, including whether any PFAS alternatives exist that can be utilized in product manufacturing, and where PFAS may be found in their operations.

For assistance in navigating the evolving regulation of PFAS in Canada, please contact a member of Osler's Environmental group, which has considerable experience advising clients on PFAS- related regulation, reporting, compliance, and litigation.

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[1] The Report does not consider fluoropolymers, a subgroup of PFAS, which the government intends to assess under CEPA separately, as outlined in the Government of Canada's Proposed Plan of Priorities.

[2] Notably, adding PFAS to Schedule 1 of CEPA does not itself result in additional regulatory restrictions on the use, import, manufacture and release of substances. Rather, it provides the Government of Canada with the authority to prescribe risk management measures in respect of PFAS.

[3] Prohibition of Certain Toxic Substances Regulations, 2012, SOR/2012-285.