Canada Moves To Add PFAS To List Of Toxic Substances; Proposes Risk Management Strategy

On March 5, 2025, Environment and Climate Change Canada and Health Canada co-published the final version of their *State of per- and polyfluoroalkyl substances (PFAS)* report (State of PFAS Report)[1], as well as their accompanying *Risk management approach for per- and polyfluoroalkyl substances (PFAS), excluding fluoropolymers* report (Risk Management Report)[2].

The State of PFAS Report indicates that all PFAS (except fluoropolymers) meet the applicable criteria for toxic substances. The Risk Management Report sets out a proposal for the regulation of these PFAS in Canada. While the Risk Management Report does not propose immediately prohibiting these PFAS in Canada, it proposes a three-phase process aimed at reducing human and environmental exposure to them by restricting their manufacture, use, sale, marketing or import in the future, subject to consultation.

What you need to know

- **PFAS to be added to toxic substances list.**The State of PFAS Report concludes that the entire class of PFAS (excluding fluoropolymers) meet one or more of the

criteria set out in the *Canadian Environmental Protection Act, 1999* (CEPA) for "toxic substances" and should be classified as such.

- **First regulations as early as 2027.**The Risk Management Report proposes a three-phase framework to restrict the use of most PFAS in Canada:
    - **Phase 1:** Prohibition of PFAS in aqueous film-forming foams (AFFF) as early as Spring 2027;
    - **Phase 2:** Prohibition of PFAS not needed for the protection of health, safety or the environment (including in consumer applications); and
    - **Phase 3:** Prohibition of PFAS for which there currently may not be feasible alternatives, taking into consideration socio-economic factors.
- **Risk management plan is not final.** The Risk Management Report explicitly states that the approach it proposes is subject to change, with exemptions to be considered at each phase.
- **Public consultation now open.** The Risk Management Report is open to consultation to all interested parties until May 7, 2025.

Background

The term "PFAS" refers to a broad group of chemicals. The definition of "PFAS" developed by the Organisation for Economic Co-operation and Development (OECD) in 2021 captures tens of thousands of known "fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom (without any H/Cl/Br/I atom attached to it), that is with a few noted exceptions, any chemical with at least a perfluorinated methyl group (–CF3) or a perfluorinated methylene group (–CF2–)".

PFAS have a wide range of uses in consumer products and in commercial and industrial applications, including in firefighting foams; food packaging materials; pharmaceuticals

and natural health products; medical devices; cosmetics; pesticides; textiles such as carpets, furniture, clothing and diapers; vehicles; electronics; paints and building materials; cleaning products; and waxes and polishes[3].

Canada has been regulating and considering further regulation of certain PFAS for a number of years. Certain types of PFAS, such as perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), have been classified as toxic substances since 2008 and 2016 respectively, with their use largely prohibited in Canada. In April 2021, the Government of Canada published a Notice of Intent to move forward with activities to address PFAS as a class. In May 2023 and July 2024, Environment and Climate Change Canada and Health Canada released joint draft reports outlining their qualitative assessment of PFAS data and seeking public input. The latest State of PFAS Report, released March 5, 2025, follows the public consultations for the prior draft reports and is the final version. On the basis of the findings of the State of PFAS Report, the accompanying Risk Management Report recommends certain risk management measures to manage the potential environmental and human health risks associated with PFAS.

The State of PFAS Report

The State of PFAS Report concludes that PFAS (excluding fluoropolymers) meet one or more of the criteria under CEPA for a “toxic substance”. Toxic substances are those that may have immediate or long-term harmful effects on the environment, or that may constitute a danger to human life or health. Toxic substances listed in Schedule 1 of CEPA may be subjected to significant regulatory controls, including restrictions on use, purchase, sale, import, export, marketing, and labelling.

The State of PFAS Report defines “PFAS” under the 2021 OECD definition as compounds that contain at least one fully

fluorinated methyl or methylene carbon atom (without any hydrogen, chlorine, bromine or iodine atoms bonded to it). Notably, this definition is broader in some respects (but narrower in others) than the definition of PFAS adopted in 2023 by the U.S. Environmental Protection Agency (EPA), which specifically rejected the OECD definition as too broad and likely to capture substances that do not have the same environmental and/or human health impacts as PFAS of concern. The EPA estimates its definition captures approximately 9,400 substances, while the OECD definition captures approximately 23,000 additional substances[4].

The conclusions in the State of PFAS Report are stated to be based on a qualitative assessment of the sources, occurrence, fate, and potential impacts of PFAS on the environment and human health; however, as the report notes, this assessment is based on "toxicological and epidemiological information available for approximately 50 PFAS, with most research focused on PFOA and PFOS".

Fluoropolymers[5] are notably excluded from the PFAS class addressed in the State of PFAS Report (despite falling within the technical OECD definition), from the scope of its conclusions, and from the decision to list PFAS as toxic substances. Other fluorinated polymers remain in scope[6]. The State of PFAS Report concludes that fluoropolymers do not appear to degrade under natural environmental conditions, may not be as mobile and bioavailable as other PFAS, and therefore may have significantly different exposure and hazard profiles when compared with other PFAS. The State of PFAS Report indicates that fluoropolymers will be considered in a future assessment.

The Risk Management Report

CEPA authorizes the creation of regulations on the use, sale, purchase, import, export, and labelling of toxic substances

and related products. Any such regulations must first be proposed in the context of a risk management framework. The Risk Management Report proposes such a framework, involving three phases, each targeted at different groups of PFAS (again excluding fluoropolymers) products and likely affecting different industries:

- **Phase 1**: Prohibiting PFAS in AFFF, if not already regulated. The timeline for Phase 1 proposes consultation in Summer/Fall 2025, with a target date of Spring 2027 for proposed regulations.
- **Phase 2**: Prohibiting PFAS not needed for the protection of health, safety or the environment, with a focus on consumer applications where alternatives are known to exist. Target products include cosmetics, natural health products, food packaging and additives, paint and other building materials, cleaning products, waxes and polishes, and textiles. The timeline for Phase 2 proposes consultation in 2027, following the publication of proposed Phase 1 regulations.
- **Phase 3:** Prohibiting PFAS for which there may not currently be feasible alternatives, taking into consideration socio-economic factors and the need for further evaluation of the role of PFAS. Target products would include spray-foam insulation, refrigeration, prescription drugs, medical devices, industrial, mining and petroleum, and transport and military applications. The timelines for Phase 3 are yet to be determined.

The Risk Management Report expressly characterizes the above actions as preliminary and subject to change. The report further states that exemptions will be considered at each phase of risk management, with attention paid to feasible alternatives and socio-economic factors.

The Risk Management Report has been accompanied by a notice that advises of a 60-day consultation period on the proposed

risk management approach[7], including the proposed regulations preventing or controlling the use of PFAS in Canada. Additional information obtained from the public comment periods will be considered in the development of the risk management approach.

Implications

If implemented, Environment and Climate Change Canada and Health Canada's proposed risk management approach contemplates sweeping changes to the use of PFAS in Canada. Torys will continue to monitor and report on these developments.

In the meantime:

- The deadline to provide comments on the proposed risk management framework is May 7, 2025, and the process is open to any member of the public.
- None of the proposed phases of the risk management plan are final; each is subject to further changes and exemptions where warranted.
- Manufacturers, sellers, importers, and exporters of PFAS-containing products or suspected PFAS-containing products should take the opportunity now to consider the impact of the proposed regulations on affected industries and products.
- The Risk Management Report identifies the following information as particularly relevant to the decision-making around an appropriate risk management framework:
    - availability of alternatives to PFAS, or lack thereof, in current products and applications;
    - estimated timeframe to transition to alternatives to PFAS, including any challenges;
    - impacts of replacing PFAS, including costs and feasibility of elimination or replacement; and
    - quantities of PFAS in products manufactured in, imported into, and sold in Canada.

- Businesses facing PFAS litigation should seek advice on potential new or increased litigation risks associated with the inclusion of PFAS on the toxic substances list.

Footnotes

1. Government of Canada, *State of per- and polyfluoroalkyl substances (PFAS) report*, March, 2025. This final version supersedes draft reports previously released in May 2023 and July 2024.

2. Government of Canada, *Risk management approach for per- and polyfluoroalkyl substances (PFAS), excluding fluoropolymers*, March 2025.

3. Government of Canada,*Per- and polyfluoroalkyl substances (PFAS) and your health*, February 28, 2025.

4. Environmental Protection Agency, *Pre-publication notice: Toxic Substances Control Act reporting and recordkeeping requirements for perfluoroalkyl and polyfluoroalkyl substances*, September 28, 2023.

5. Fluoropolymers are defined in the Report as polymers made by polymerization or copolymerization of op>nic monomers (at least one of which contains fluorine bonded to one or both of the olefinic carbon atoms) to form a carbon-only polymer backbone with fluorine atoms directly bonded to it.

6. Including side-chain fluorinated polymers (SCFP) and perfluoropolyethers (PFPE).

7. *Canada Gazette, Part I, Volume 159, Number 10*, March 8, 2025.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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