

Federal Government Mulls Tough New Environmental Restrictions for PFAS



All ‘forever chemicals’ pose environmental and health hazards, the government contends.

The federal government has decided to drop the green hammer on a class of chemicals known as Polyfluoroalkyl Substances (PFAS). On May 20, Environment and Climate Change Canada published a report concluding that all PFAS pose potential hazards to human health and the environment and should be regulated as a class of toxic chemicals under the *Canadian Environmental Protection Act* (CEPA). Here’s a quick briefing on the report, which bears the catchy name of ‘Draft State of Per- and Polyfluoralkyl Substances Report’ (which we’ll refer to as the ‘Draft Report’) and its practical significance.

PFAS

PFAS are a group of human-made substances that are incredibly stable and take a very long time to break down’hence their nickname ‘forever chemicals.’ These properties make PFAS ideal for food packaging, clothing, cosmetics, non-stick cookware and many other consumer use products, as well as industrial and specialized applications such as lubricants, oil/water repellents and foams for firefighting. According to the government, there are currently over 4,700 kinds of FSAS with more rolling out of the developmental pipeline every day.

Unfortunately, the same stability and everlasting properties that make PFAS suitable for consumer and industrial uses make them a potential menace to the environment. Thus, PFAS have a way of turning up at solid waste landfills and contaminated sites across the country. In addition to their harmful environmental effects, PFAS bioaccumulate in humans and other organisms, including cancer, liver damage, decreased fertility and increased risk of asthma and thyroid disease, according to the US Centers for Disease Control and Prevention (CDC).

Current Regulation of PFAS

The federal government has banned the manufacture, use, sale, offer for sale and import of 3 subgroups of PFAS and their salts and predecessors, including:

- Perfluorooctane sulfonates (PFOS');
- Perfluorooctanoic acids (PFOAs); and
- Long-chain perfluorocarboxylic acids (LC-PFCAs).

The current PFAS subgroup bans are subject to limited exemptions depending on the substance. However, the Draft Proposal calls for tightening the current exemptions even further.

The Proposed Changes to PFAS Regulations

Specifically, the government wants to lump the different PFAS subgroups together as a single **class of** substances, to be known as PFAS, subject to the CEPA's requirements for toxic substances. In other words, all substances in the class would be considered 'toxic' justifying the imposition of the law's restrictions. Under Section 64 of the CEPA, a substance is toxic if it enters or may enter the environment 'in a quantity or concentration or under conditions that:

(a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity;. . .

(c) constitute or may constitute a danger in Canada to human life or health’.

By making all PFAS a class, the government will no longer have to perform a substance-specific risk assessment to determine if the substance meets the CEPA criteria for ‘toxic.’ The government acknowledges that it’s casting a broad net and that all PFAS are not exactly alike in physical characteristics and the hazards they pose. However, the Draft Report continues, PFAS have become so large in number and widespread in use that continuing to develop rules based on substance-specific risk assessment would be prohibitively time-consuming and unwieldy. Besides, the government contends that the real health and environmental hazards come not from exposure to a single substance but cumulative exposure to multiple PFAS.

Practical Impact

The government will be fielding public comments on the Draft Report through July 19, 2023. Based on the feedback, the government will issue a final report determining whether to follow through with the proposal.

There’s a lot on the line. If the Draft Proposal is adopted in its current form, the new class of PFAS constituting a broad range of substances that had previously been subject to more granular and substance-specific regulation will be added to CEPA’s Schedule 1 List of Toxic Substances. That’s a big deal because once PFAS are added to Schedule 1, the federal government would have broad authority to impose new CEPA rules requiring producers and users to reduce both releases into the environment and levels of exposure to the general population to protect public health. The government will then need to create new CEPA regulations to flesh out the critical implementation details.