Federal Government Publishes State Of PFAS Report And Risk Management Approach

The Government of Canada published the final "*State of per- and polyfluoroalkyl substances (PFAS) report*" (State of PFAS Report), the "*Risk management approach for per- and polyfluoroalkyl substances (PFAS), excluding fluoropolymers*" (Risk Management Approach) and a proposed Order adding a toxic substance (the class of PFAS excluding fluoropolymers)[1] to Part 2 of Schedule 1 of the *Canadian Environmental Protection Act, 1999* (CEPA) (Proposed Order) in the Canada Gazette on March 8, 2025. These documents are open for public consultation until May 7, 2025.

The State of PFAS Report concludes that the class of PFAS, excluding fluoropolymers, are entering or may enter the environment in a quantity or concentration or under conditions that have or may have immediate or long-term harmful effects on the environment or its biological diversity, and that constitute or may constitute a danger in Canada to human life and heath. The publication of the State of PFAS Report and Risk Management Approach follows drafts of these reports originally published in May 2023 and updated in July 2024.

PFAS are a class of thousands of human-made substances that are commonly known as "forever chemicals" due to their persistent chemical stability (which results in them breaking down very slowly). PFAS have a wide range of uses in everyday

consumer products such as food packaging, non-stick cookware, clothing and cosmetics. PFAS are also used in industrial products and specialized applications such as firefighting foams, lubricants and oil/water repellents.

State of PFAS Report

The State of PFAS Report concludes that all substances in the class of PFAS, excluding fluoropolymers, are toxic under paragraphs 64(a) and (c) of CEPA:

64 … a substance is toxic if it is entering 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.

The State of PFAS Report concludes that the class of PFAS does not meet the criterion in paragraph 64(b) of CEPA, which requires that substances be entering the environment in a quantity or concentration or under conditions that "constitute or may constitute a danger to the environment on which life depends".

The conclusion that the class of PFAS, excluding fluoropolymers, is "toxic" under CEPA is in part due to the extreme environmental persistence and long-range transport of PFAS, the ubiquitous presence of multiple PFAS occurring in the environment, the continuous exposure of humans to PFAS, the potential for PFAS to bioaccumulate and the potential for these substances to cause adverse effects.

The State of PFAS Report acknowledges that there are uncertainties associated with understanding the characteristics of all substances within the class of PFAS,

and that the specific hazards associated with mixtures of PFAS are largely unknown. However, it indicates that there is evidence suggesting that concerns identified for well-studied PFAS are more broadly applicable to other PFAS substances, and that it is reasonable to expect that cumulative effects may also occur from exposure to multiple PFAS. The State of PFAS Report states that a precautionary, class-based approach for PFAS is needed to protect the environment and humans from anticipated adverse effects.

Risk Management Approach

The Government recommends that the class of PFAS, excluding fluoropolymers, be added to Part 2 of Schedule 1 of CEPA[2]. Adding a substance to Schedule 1 enables the Government to implement risk management measures for that substance under CEPA.

The Government is proposing the following new risk management actions through a phased prohibition under CEPA:

- Phase 1: prohibition of the use of PFAS, excluding fluoropolymers, not currently regulated in firefighting foams.
- Phase 2: prohibition of the uses of PFAS, excluding fluoropolymers, not needed for the protection of health, safety or the environment, which includes consumer applications, with prioritization of uses for prohibition informed by costs and benefits, availability of suitable alternatives and other socio-economic considerations. Proposed uses to be regulated in Phase 2 include:
    - cosmetics
    - natural health products and non-prescription drugs
    - food packaging materials, food additives, non-industrial food contact products such as paper plates, bowls and cups

        - paint and coating, adhesive and sealant and other building materials available to consumers
        - consumer mixtures such as cleaning products, waxes and polishes
        - textile uses (including in personal protective equipment such as firefighting turnout gear); and
        - ski waxes.
    - Phase 3: prohibition of the uses of PFAS, excluding fluoropolymers, requiring further evaluation of the role of PFAS for which currently there may not be feasible alternatives and taking into consideration socio-economic factors, including:
        - fluorinated gas applications
        - prescription drugs (human and veterinary)
        - medical devices
        - industrial food contact materials
        - industrial sectors such as mining and petroleum; and
        - transport and military applications.

At each phase of risk management, exemptions will be considered when necessary, with attention to feasible alternatives and socio-economic factors.

The proposed environmental and human health objectives regarding PFAS are to reduce releases of PFAS to the environment, and to reduce exposure of the general population to these substances to levels that avoid adverse effects and are protective of human health. The proposed risk management objective is to achieve the lowest levels of environmental and human exposures over time that are technically and economically feasible.

The Risk Management Approach discusses data collection initiatives to address information gaps, including the current section 71 Notice with respect to certain per- and polyfluoroalkyl substances (PFAS) published on July 27, 2024, and future initiatives that could include PFAS reporting to

the National Pollutant Release Inventory under CEPA. The Risk Management Approach also discusses complementary voluntary risk management actions under consideration by the Government, including increased disclosure of information through labelling and highlighting industry-led voluntary phase-out of PFAS, among others.

Fluoropolymers

The Government has excluded PFAS meeting the definition of fluoropolymers[3] from the State of PFAS Report and the Risk Management Approach. Although fluoropolymers are a PFAS chemical, they may have significantly different exposure and hazard profiles when compared with other PFAS and for this reason, the Government has determined further assessment is warranted. Fluoropolymers have been added to the proposed Plan of Priorities under CEPA for further assessment commencing in the fall of 2026.

Next Steps

The State of PFAS Report, the Risk Management Approach and Proposed Order are open for public consultation until May 7, 2025.

The Government has also asked stakeholders to provide additional information by this date to inform risk management decision-making, including information on the availability of alternatives to PFAS, or lack thereof, in products and applications, estimated timeframe to transition to alternatives to PFAS, including any challenges, socio-economic impacts of replacing PFAS, including costs and feasibility of elimination or replacement, and the quantities and concentrations of PFAS substances in products manufactured in, imported into, and sold in Canada (if such information is not already provided through the section 71 notice, discussed here).

The Risk Management Approach sets out estimated dates for risk management actions as follows:

Steps	Estimated Dates for Risk Management Actions
Phase 1	Consultation: Summer/Fall 2025 Proposed Regulation: Spring 2027
Phase 2	Consultation to follow the publication of proposed Phase 1 Regulations: 2027
Phase 3	Consultation to follow Phase 2 risk management: To be determined

Companies should take steps to prepare for greater scrutiny and regulation of PFAS moving forward. This may include making submissions to the Government regarding the information requested above, including the availability of alternatives to PFAS in their products or applications.

Footnotes

1 The following would be added as a "toxic substance": "[c]ompounds that contain at least one fully fluorinated methyl or methylene carbon atom (without any hydrogen, chlorine, bromine or iodine atoms bonded to it), excluding polymers made by polymerization or copolymerization of olefinic 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."

2 The class of PFAS (excluding fluoropolymers) was not found to meet the criteria set out in subsection 77(3) of CEPA for addition to Part 1 of Schedule 1 of CEPA. However, the Risk Management Approach notes that this could be revised in the future if regulations specifying further criteria for classification under subsection 77(3), including the classification of substances that pose the highest risk, become available.

3 The State of PFAS Report defines fluoropolymers as: as polymers made by polymerization or copolymerization of olefinic monomers (at least 1 of which contains fluorine bonded to 1 or both of the olefinic carbon atoms) to form a carbon-only polymer backbone with fluorine atoms directly bonded

to it.

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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