

REMTECH 2023

# Legal Aspects of PFAS in Canada – What You Need to Know to be Prepared

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# Overview

1. Current Legislative Landscape
2. Recent Developments
3. PFAS Litigation
4. Navigating the Legal Risks of PFAS





# 1. Current Legislative Landscape

# Regulation of PFAS in Canada

## Summary

- **Federal**
  - Regulation concentrated on the most widely studied PFAS substances – PFOS, PFOA, and LC-PFCAs.
  - First regulations enacted under the *Canadian Environmental Protection Act, 1999* (“CEPA”) in 2008, last updated in 2016.
  
- **Provincial**
  - British Columbia
    - *Drinking Water Guidelines & Contaminated Sites Regulation.*
  - Alberta
    - *Tier 1 and Tier 2 Soil and Groundwater Remediation Guidelines.*
  - Ontario
    - *Drinking Water Guidelines and Bulletin on PFAS-related Risks.*



# Regulation of PFAS in Canada (Federal)

## Timeline

- **2008** – *Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations*.
  - Restricted the use, sale, and import of PFOS, subject to certain categories of acceptable uses.
- **2009** – PFOS added to the List of Toxic Substances and the Virtual Elimination List under *CEPA*.
- **2016** – 2008 *PFOS Regulations* repealed and replaced by *Regulations Amending the Prohibition of Certain Toxic Substances Regulations, 2012*.
  - Similar in nature to the 2008 *PFOS Regulations* while also regulating PFOA and LC-PFCAs.



## 2. Recent Developments

# Regulation of PFAS in Canada (Federal)

## Recent Developments

- **April 2021** – Federal Government published Notice of Intent to address the broad class of PFAS.
- **May 2022** – Proposed *Prohibition of Certain Toxic Substances Regulations, 2022*.
- **May 2023** – Draft State of PFAS Report and Risk Management Scope.
- **June 2023** – Bill S-5, *An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act*, received Royal Assent.



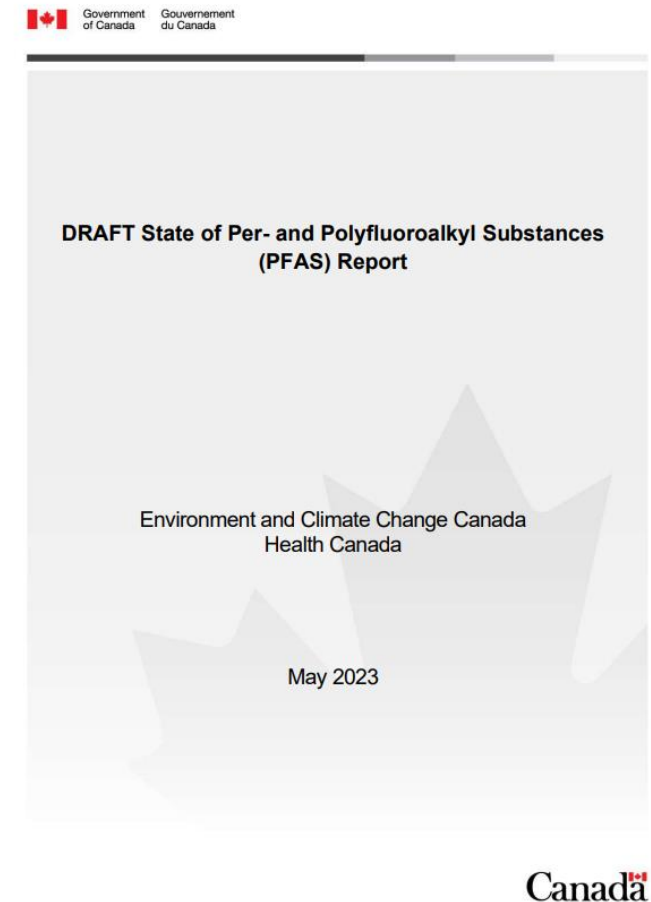


# Regulation of PFAS in Canada (Federal)

## Draft State of PFAS Report

### ○ Key Findings & Outcomes:

- PFAS have extreme environmental persistence and long-range transport properties, which result in long-term exposure.
- Multiple PFAS are widely present and co-occur in the environment, wildlife, and humans across Canada (and have been shown to bioaccumulate).
- Proposes to take the rare and significant step of concluding that the **entire class** of PFAS have the potential to cause harm to the environment and human health, and therefore should be considered “toxic substances” pursuant to sections 64(a) and (c) of *CEPA*.



# Regulation of PFAS in Canada (Federal)

## What's Next?

- Stakeholder input on Draft State of PFAS Report and proposed Risk Management Scope.
- Data collection initiatives – mandatory information gathering notice under section 71 of *CEPA* slated for **Q4 2023**.
- Final Draft State of PFAS Report and further consultation – **TBD**.
- Canadian Food Inspection Agency (“CFIA”) – interim standard for PFAS in biosolids (consultation ongoing).



# Regulation of PFAS in Canada (Federal)

## Bill S-5: Strengthening Environmental Protection for a Healthier Canada Act

- Received Royal Assent on June 13, 2023.
- Attempts to modernize *CEPA*.
- Introduces a more risk-based approach to chemical management, which prioritizes the prohibition of high-risk toxic substances
- New “Watch List” for substances that can pose a risk if uses change or exposure increases.
- Repeals the *Perfluorooctane Sulfonate Virtual Elimination Act*.



# 3. PFAS Litigation

## ○ United States

- Producers of PFAS
  - E.I. du Pont de Nemours and Company & 3M
- Retailers & Restaurants
  - Fast Food Chains
  - Cosmetics Manufacturers
- Insurance Coverage Disputes

## ○ Canada

- PFAS-Related Class Action
- Workplace Illnesses and Occupational Hazards
- Protection Orders under *CEPA*



# PFAS Class Action in Canada: *Egan et al. v. National Research Council of Canada et al.*

- In 2021, Ontario class action certified against the National Research Council of Canada (“NRC”).
- Alleged PFAS contamination of 69 properties surrounding the National Fire Laboratory in Mississippi Mills, Ontario.
- From 1981 to 2016, NRC used the facility site to conduct research and development of fire safety related matters, including the testing of firefighting foams containing PFAS.
- Allegations that NRC allowed PFAS contaminants to enter the surface water and groundwater at its National Fire Laboratory facility site and to migrate onto adjoining properties.
- Adjacent properties sought damages for the loss in land value caused by the contamination of the groundwater of some of the class members’ properties and stigma attached to all class members’ properties in the immediate area.



# 4. Navigating the Legal Risks of PFAS

# Navigating the Legal Risks of PFAS

## Audit PFAS Risk Sources

Conduct a thorough audit of potential PFAS-related risks.

## Review Insurance Policies

Carefully review all insurance policies for any PFAS-related exclusions.

## Allocate Risk

Consider contractual allocation of PFAS-related regulatory and environmental liabilities.







Questions?

# Thank You

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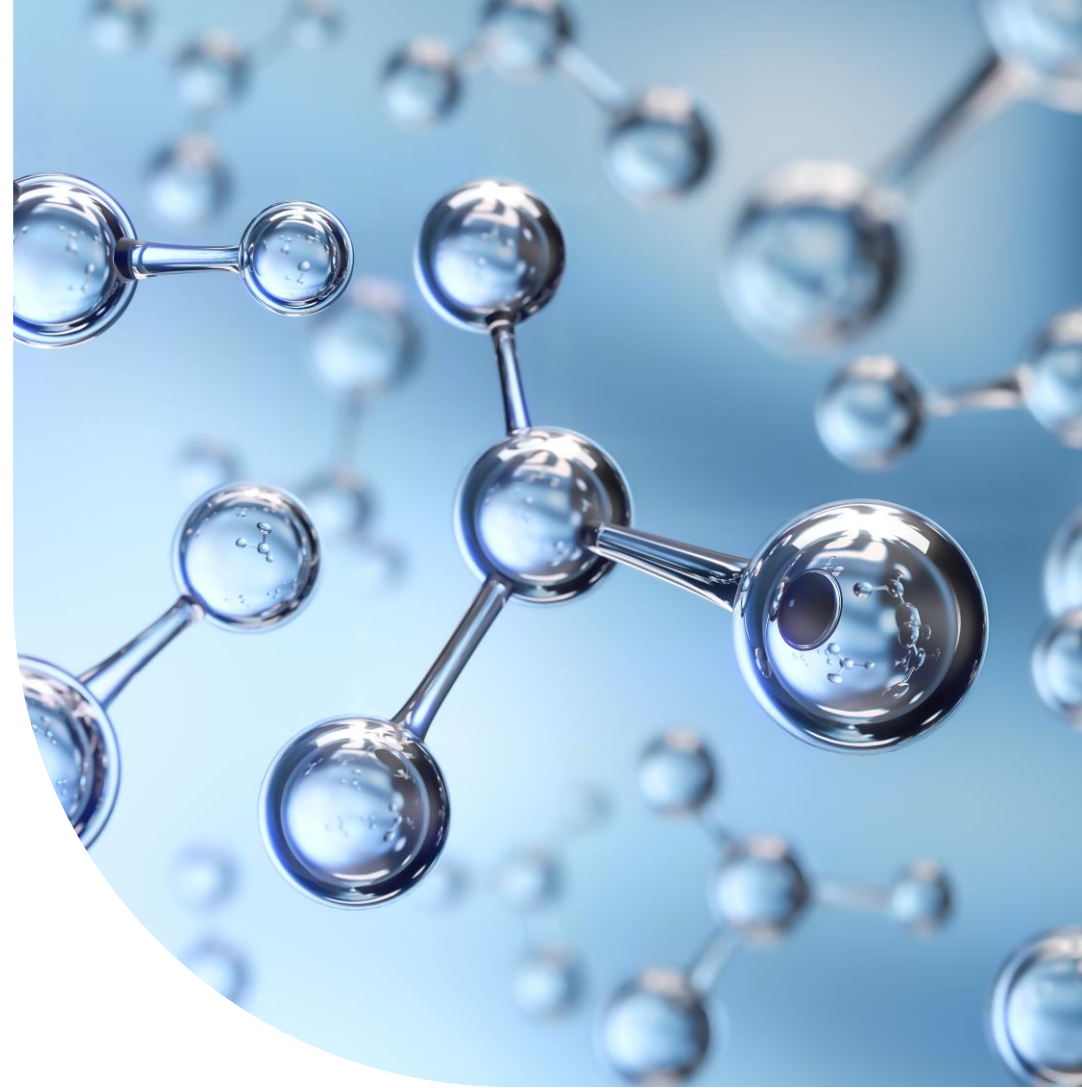
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