Canadian Environmental Law Association
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Jacqueline Gonçalves
Director General
Science and Risk Assessment Directorate
Environment and Climate Change Canada
Email: Jacqueline.Goncalves@ec.gc.ca

Greg Carreau
Director General
Safe Environments Directorate
Health Canada
Email: greg.carreau@hc-sc.gc.ca

Jacinthe David
Director General
Industrial Sectors and Chemicals Directorate
Environment and Climate Change Canada
Email: Jacinthe.David@ec.gc.ca

Executive Director
Program Development and Engagement
Division
Department of the Environment
Gatineau, Quebec K1A 0H3
Email: substances@ec.gc.ca

Re: Response to Per- and polyfluoroalkyl substances (PFAS): Order to add PFAS as a class, excluding fluoropolymers, to Schedule 1 Part 2 of CEPA and Risk Management Approach for (PFAS)

The Canadian Environmental Law Association (CELA), established in 1970, is incorporated under federal law and is also a provincial legal aid clinic under Ontario law providing legal assistance to low-income and disadvantaged individuals and groups experiencing environmental problems who are otherwise unable to afford legal representation. Potential clients come to CELA seeking legal assistance with respect to problems caused by the creation, use, or release of toxic substances in their communities. Our assistance to them may come in the form of summary advice, legal representation, law reform advocacy, or community outreach. CELA has a long history participating in the review of the *Canadian Environmental Protection Act* (CEPA) and responding to implementation activities related to CEPA Part 5 pertaining to Toxic Substances.

CELA is providing comments and recommendations in response to the following documents released for public comments:

- *Canada Gazette*, Part I, Volume 159, Number 10: Order Adding a Toxic Substance to Part 2 of Schedule 1 to the *Canadian Environmental Protection Act, 1999* Order to add PFAS as a class, excluding fluoropolymers, to Schedule 1 Part 2; and
- Risk Management Approach for Per- and polyfluoroalkyl substances (PFAS), excluding fluoropolymers, (Risk Management Approach document) released by Environment and Climate Change Canada Health Canada (March 2025)

1) Order to Add PFAS as a class, excluding fluoropolymers to Schedule 1 of CEPA

CELA is pleased with the finding in the Updated State of the PFAS Report by Environment and Climate Change Canada and Health Canada that PFAS as a class, excluding fluoropolymers, meets the criteria for toxic under section 64 of the *Canadian Environmental Protection Act* ("*CEPA*"). Furthermore, the finding supports as appropriate listing PFAS as a class, excluding fluoropolymers to Schedule 1 of *CEPA*. However, the proposed listing of PFAS as a class, excluding fluoropolymers, to Schedule 1 Part 2 of *CEPA* does not align well with the body of evidence used in the Updated State of the PFAS Report respecting findings of toxicity. Particularly, a listing to Part 2 rather than Part 1 is not adequate given the ubiquitous presence of PFAS substances and health and environmental impacts. Many PFAS substances warrant a listing to Part 1 of Schedule 1 of *CEPA*.

CELA articulated its concern with the proposal to list PFAS as a class, excluding fluoropolymers, under Schedule 1, Part 2 in its blog issued on March 25, 2025 entitled: Slow-Walking Toward Justice on "Forever Chemicals"

> *Substances in Part 1 are eligible for total, partial, or conditional prohibition. Indeed, existing regulated PFAS, like PFOS, have been placed in Part 1.*
>
> *By a process of elimination, substances in Part 2, would be presumed to have none of the above characteristics. Yet many other PFAS class chemicals appear to have characteristics that should place them in Part 1 as well but are all slated to go to Part 2 under the government's March 2025 announcement.*
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> *Thus, placement of the PFAS class of chemicals in Part 2 appears legally counter-intuitive, if not wholly inconsistent with the government's final scientific assessment report on PFAS chemicals released the same week as the proposed designation order. The report found, for example, that while a small number of PFAS have been the focus of a majority of studies, there is a growing body of evidence suggesting that concerns identified for these well-studied substances are more broadly applicable to other PFAS than previously believed.*
>
> *Placement in Part 2, unfortunately, has potentially serious legal and policy consequences; such chemicals are not slated for total, partial, or conditional prohibition. Rather they would*

> *primarily be subject to regulation, meaning that they remain in commerce and inevitably the environment.*[1]

In its Regulatory Impact Analysis Statement (RIAS), the government acknowledged the concerns by NGOS, stating

> *NGOs also expressed concern that a listing on Part 2, instead of Part 1, of Schedule 1 to the Act will not sufficiently address the impacts associated with the class of PFAS with respect to risk management actions that may follow the listing of the substances. Government officials noted that while PFAS meet the criteria for persistence set out in Persistence and Bioaccumulation Regulations, the bioaccumulation potential for PFAS cannot reasonably be determined according to these Regulations. They further noted that substances listed on Part 2 can still be prohibited.*[2]

Despite the government response that substances listed in Part 2 can still be prohibited, the proposed government approach outlined in its Risk Management Approach document is unclear on how this will occur. *CEPA* relies on substances meeting the criteria set out in the *Persistence and Bioaccumulation Regulations* to make listing determinations for Part 1, Schedule 1. However, while data are available for well-studied PFAS, there are data gaps for many other substances in this class. Thus, these substances are more likely to end up in Part 2 where they will be subject to regulation, not prohibition and, therefore, remain in commerce and the environment.

CELA supports: (1) the conclusion that PFAS as a class, excluding fluoropolymer, is toxic under section 64 of *CEPA*; and (2) the proposal to add PFAS as a class, excluding fluoropolymers, to Schedule 1 of the Act.

Recommendation 1: Canada should list PFAS as a class to Schedule 1 Part 1 of *CEPA*.

2) Excluding Fluoropolymers in the PFAS as a class results in an incomplete government approach

The State of the PFAS Report was revised from the original draft State of the PFAS Report released in 2023 that primarily excluded fluoropolymers from PFAS as a class. The State of the PFAS Report continues to use the 2021 definition by the OECD to identify PFAS substances. Fluoropolymers met the OECD definition for PFAS. However, the Updated State of PFAS Report finalized in March 2025 excluded fluoropolymers. The rationale provided for excluding fluoropolymers from PFAS as a class remains inadequate. Many comments were submitted in response to the Updated Draft State of the PFAS Report released on July 13, 2024 expressing concern with the focused exclusion of fluoropolymers as part of the PFAS as a class approach. The response by CELA, Citizens' Network on Waste Management, Health and Environment

[1] Canadian Environmental Law Association. March 2025. Blog: Walking Toward Justice on "Forever Chemicals" by Joseph F. Castrilli and Fe de Leon, see: https://cela.ca/blog-slow-walking-toward-justice-on-forever-chemicals/

[2] Regulatory Impact Analysis Statement, in *Canada Gazette*, Part I, Volume 159, Number 10: Order Adding a Toxic Substance to Part 2 of Schedule 1 to the Canadian Environmental Protection Act, 1999, Department of the Environment and Department of Health. See: https://gazette.gc.ca/rp-pr/p1/2025/2025-03-08/html/reg2-eng.html

Justice Support, Clean Production Action, NorthWatch in response to the draft updated State of the PFAS Report outlined studies including Kwiatkowski et. al. 2020, a study demonstrating that fluoropolymers: (1) meet the definition of PFAS; (2) are considered a subgroup in the PFAS class; and (3) the impacts of PFCAs in the environment come from fluoropolymer production.[3,4] Industry groups such as the Fluid Sealing Association acknowledge that "PFAS are a group of chemicals used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water." [5]

The RIAS noted that:

> *Industry expressed support for the exclusion of fluoropolymers and requested the exclusion of other PFAS (such as HFOs and other fluorinated polymers). They further requested that these PFAS be assessed separately, similarly to fluoropolymers. As mentioned in the Summary of State of PFAS Report section, fluoropolymers were excluded from consideration in the Report as they may have significantly different exposure and hazard profiles when compared with other PFAS. Government officials responded that these PFAS (for example HFOs and other fluorinated polymers) were determined to contribute to the cumulative risk of the class of PFAS, and that the potential for cumulative exposure and effects are important considerations as most wildlife and human exposures involve an unknown mixture of PFAS.*[6]

Despite claims that fluoropolymers have different exposure and hazard profiles when compared with other PFAS, the current evidence does not fully support the need for government to exclude fluoropolymers from development of risk management options. The government has not provided a full explanation of these differences in hazard profiles despite understanding that production of fluoropolymers requires PFAS substances and that fluoropolymers transformation products include more persistent PFAS. However, we know as with many PFAS in commerce, there are substantial data gaps including studies focused on the impacts to the environment and health. This is concerning and should not be the reason to keep this work separated from the rest of the PFAS class approach.

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[3] Kwiatkowski, Carol F.; Andrews, David Q.; Birnbaum, Linda S.; Bruton, Thomas A; DeWitt, Jamie C.; Knappe, Detlef R. U. ; Maffini, Maricel V.; Miller, Mark F.; Pelch, Katherine E.; Reade, Anna; Soehl, Anna; Trier, Xenia; Venier, Marta;. Wagner, Charlotte C.; Wang, Zhanyun; Blum, Arlene. Scientific Basis for Managing PFAS as a Chemical Class. *Environ. Sci. Technol. Lett.* 2020, 7, 8, 532–543. *(accessed April 29 2025)*

[4] CELA, Citizens' Network on Waste Management, Health and Environment Justice Support, Clean Production Action, and NorthWatch. September 11 2025. Response to Footnote: Canadian Environmental Law Association, Citizens' Network on Waste Management, Health and Environment Justice Support, Clean Production Action, NorthWatch, September 11 2025. Response to Updated Draft State of Per- and Polyfluoroalkyl Substances (PFAS) Report. Access: https://archive.celafoundation.ca/archive-item/submission-response-to-updated-draft-state-of-per-and-polyfluoroalkyl-substances-pfas-report/

[5] Fluid Sealing Association, PFAS and Fluoropolymers. In Volume 41, June 2023, 100795. Accessed: https://www.fluidsealing.com/pfas-fluoropolymers/, dated April 29 2025

[6] Regulatory Impact Analysis Statement. Canada Gazette, Part I, Volume 159, Number 10: Order Adding a Toxic Substance to Part 2 of Schedule 1 to the Canadian Environmental Protection Act, 1999, Department of the Environment and Department of Health. Accessed: https://gazette.gc.ca/rp-pr/p1/2025/2025-03-08/html/reg2-eng.html.

It has been noted in the RIAS analysis that industry supports the government approach excluding fluoropolymers from PFAS as a class (along with other PFAS substances). However, the government's own admission that fluoropolymers contribute to cumulative risk and exposure to PFAS substances should be sufficient reason to include rather than exclude fluoropolymers from PFAS as a class. There is an urgency to treating all PFAS as a class. It is particularly important to include fluoropolymers in PFAS, as a class approach better informs assessment of cumulative impacts. The government approach should not be to exclude fluoropolymers from PFAS as a class but rather to adopt preventative and precautionary measures.

Recommendation 2: Canada should support the use of OECD 2021 definition for PFAS in the determination of PFAS as a class and include fluoropolymers in the class.

Recommendation 3: Include fluoropolymers in the listing of PFAS as a class under Schedule 1 of CEPA and subsequently ensure precautionary regulatory measures are taken on fluoropolymers.

Recommendation 4: Complete the assessment on fluoropolymers by 2026 to ensure alignment with the management requirements under CEPA for PFAS as a class.

3) Subpopulations and Gender Based analysis consideration in Risk Management Approaches Falls Short on Transparency and Accessibility

The Risk Management Approach document notes that certain subpopulations (including pregnant people, children, Indigenous and northern communities in Canada, and firefighters) are more susceptible to the impacts of PFAS or more highly exposed. Similarly, the document also noted that the government has undertaken a gender-based analysis. The government failed to provide details in the Risk Management Approach document on what consideration has been undertaken and the data used to inform its approach on PFAS as a class. Progress to address the impacts to the groups that are racialized, disadvantaged or experience low income in addition to the subpopulations – pregnant women, children and Indigenous communities and workers is needed and requires data. If the government is to fully consider the risk to these subpopulations it must obtain and present the data used in its analysis, including how decisions are made based on the data. The process should be transparent and accessible. CEPA includes provisions to consider vulnerable populations, which should prompt additional focus and resources to obtain the data needed to inform decisions.

Recommendation 5: Adopt a precautionary and preventative approach for PFAS as a Class by strengthening and requiring data to inform gender based analysis and the impacts on subpopulations that are disadvantaged, racialized or experience low income as well as pregnant people, children and Indigenous people and workers) by requiring data for these groups.

Recommendation 6: Recognizing the scope of PFAS as a class and that certain subpopulations (racialized, disadvantaged groups, people of low income, pregnant people, children, Indigenous people, workers) may have elevated exposure and susceptible to

exposure to PFAS, the management process respecting PFAS as a class should include a cumulative impact analysis to account for PFAS in mixtures and acknowledge that PFAS is ubiquitous in the environment and sources are extensive.

4) Risk Management Approach

The following are specific issues relevant to the Risk Management Approach to Per – and Polyfluoralkyl substances.

a) **Focus on Prohibition of Uses:** We support the focus on prohibition of uses of PFAS in the different categories presented in Table 1 in the Risk Management Approach document for Phase 1 – aqueous fire fighting foam; Phase 2 – on range of consumer and personal products (e.g. cosmetics, natural health products and non-prescription drugs, food packaging materials, food, additives, non-industrial food contact, products such as paper plates, cups and bowls; 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 personal protective equipment such as firefighting turnout gear) ;ski waxes); and Phase 3 (covers fluorinated gas applications such as spray-foam insulation and refrigeration; prescription drugs (human and veterinary); medical devices; industrial food contact materials; industrial sectors such as mining and petroleum transport and military applications).

Notes associated with Table 1 states that "PFAS (excluding fluoropolymers) in pesticides will be managed separately under the Pest Control Products Act." The government identified that additional work on PFAS in pesticides was underway. However, the Risk Management Approach does not provide any specific details on how and when work on PFAS is underway or how decisions under PCPA will be evaluated against the objectives to address PFAS as a class. Beyond being listed as additional work on PFAS, this work remains disconnected form the overall approach. Health Canada and the Pest Management Regulatory Agency should coordinate communications material to demonstrate the progress and decisions made on pesticides products containing PFAS and their contributions to address PFAS in pest control products and pesticide formulations.

The aim to prohibit PFAS as a class through CEPA regulation should be inclusive and apply to all PFAS found in Canadian commerce rather than listing individual PFAS substances.

Recommendations 6: We support the focus on prohibition of PFAS using CEPA regulations to address the full scope of applications and uses identified in Table 1 of the Risk Management Approach Document.

Recommendation 7: We support CEPA regulations to prohibit all PFAS substances in keeping with the approach to address PFAS as a class, rather than listing individual PFAS substances.

Recommendation 8: Require additional coordination by Health Canada and PMRA to set priorities and timelines to address pesticides containing PFAS and communicate the

progress and decisions are disseminated as part of the overall risk management approach on PFAS.

b) **Defined Timelines Needed for all Phases of Risk Management:** The proposed phased approach to manage PFAS falls short on outlining the definitive timelines beyond Phase 2 of the Risk Management Approach. While a date of 2027 has been proposed for Phase 1 and Phase 2, it is unclear when regulatory measures will be released for those products listed in Phase 2. There are no timelines for Phase 3 which represents a wide source of PFAS applications. It is understandable that the use of PFAS in these applications have uncertainty associated with safe alternatives but the lack of a timeline for this Phase of the work removes adequate signals in the government approach to stimulate industrial innovation and development of safe PFAS free alternatives.

Recommendation 9: Complete CEPA regulations for prohibiting PFAS as a class concurrently for Phase 1 and Phase 2 consumer and personal care products for 2027.

Recommendation 10: Establish definitive timelines to complete CEPA regulations for prohibiting PFAS as a class for Phase 3 (e.g., military applications, medical devices, industrial applications in petroleum and transportation sectors) no later than 2029.

c) **Exemptions:** The Risk Management Approach document notes the need for exemptions in the development of CEPA Regulations. We have concerns respecting how exemptions are identified and confirmed in CEPA regulations. Based on exemptions used in CEPA regulations on well studied PFOS, PFOA, and LC-PFCAs, existing exemptions continue to be a source of PFAS releases to the environment and exposure sources to human health. It takes a long time to remove exemptions for well studied PFAS. The first regulation under CEPA on PFAS was passed in 2008, and amended in the *Prohibition of Certain Toxic Substances, 2012*. This regulation includes long standing exemptions. The government proposed to remove some exemptions in 2021. The government has not yet finalized the regulations to remove the exemptions on well studied PFAS.

Where the government is considering exemptions to CEPA regulations, the process should be more transparent and accessible to stakeholders. In cases where exemptions may be necessary, the government should undertake to assess rigorously the need for exemptions and the progress needed to identify PFAS free alternatives in those situations. The challenge of absence of available and economic feasibility to adopt PFAS free alternatives should not be the only factors to consider in issuing exemptions. Consideration of the costs to health and environment of continuing an exemption should also be factored in this decision. All exemptions should be time limited to ensure that affected sectors invest resources and time to develop PFAS free alternatives.

Recommendations 11: Avoid exemptions except where an essential need for the application has been identified and where no alternatives are available.

Recommendation 12: Apply time limited exemptions if exemptions are deemed necessary and are for essential use only.

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d) **CEPA Section 71 results and transparency:** The results of the Section 71 survey issued by the government on PFAS in 2023 was completed in 2024 but have not been disclosed in the Risk Management Approach Document. Disclosure of the information collected in the survey would be essential to indicate if the Phased approach could be improved.

Recommendation 13: Disclose the results of the Section 71 survey on PFAS without disclosing each survey respondent.

e) **Transparency and Disclosure of Information on PFAS:** The new requirements for reporting on 163 PFAS substances to the National Pollutant Release Inventory (NPRI) starting with release and transfer data for the year 2025 fills a substantial data gap in Canada. Communities across Canada will have access to data on PFAS that has not been compiled before. Further efforts by Environment and Climate Canada should be undertaken within the year to expand on the number of PFAS substances for reporting. Blogs by CELA and Citizens' Network on Waste Management, titled, PFAS – "Forever" and "Everywhere" Chemicals Added to Canada's National Pollutant Release Inventory, dated April 30th 2025 makes the following statement "Many Canadians do not know what PFAS substances are being released or their source."[7]

Recommendation 14: We support the requirements to report releases and transfers of PFAS substances under the National Pollutants Release Inventory (NPRI) to promote publicly accessible data for community right to know.

Recommendation 15: We encourage further work to be undertaken to expand the list of PFAS substances for reporting under the NPRI.

f) **Residual levels of PFAS:** The Risk Management Approach document mentions residual levels of PFAS in Section 4.2.1, where it discusses PFAS-containing firefighting foams and PFAS fire-suppressing agents, and specifically notes "residual levels of PFOS (and its salts and precursors) that remain in firefighting equipment from historical use of the substance" as well as "to accommodate residual levels of PFOS, PFOA and LCPFCAs (and their salts and precursors)". Further mention is made in Section 7.1.2 related to Provinces and Territories, with specific reference to Quebec which "bans the spreading on agricultural land of industrial biosolids and de-inking residuals containing PFAS as well as all other residuals containing PFOS and PFOA."[8] The presence of residual levels of PFAS is important in the work to address PFAS as a class. No definition on what is considered "residual" has been presented in the Risk Management Approach Document.

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[7] Citizens' Network on Waste Management and CELA. April 30 2025. PFAS – "Forever" and "Everywhere" Chemicals Added to Canada's National Pollutant Release Inventory. Accessed: https://cela.ca/blog-pfas-forever-and-everywhere-chemicals-added-to-canadas-national-pollutant-release-inventory/

[8] Environment and Climate Change Canada Health Canada. Risk Management Approach for Per- and polyfluoroalkyl substances (PFAS), excluding fluoropolymers. March 2025.

Establishing a definition for residual levels will help inform government and the public if the measure (regulatory or non regulatory) is adequately protecting health and the environment. Residual levels of PFAS should not be considered inconsequential and could have substantial impacts to the environment and health since PFAS is known to persist in the environment for a long time, even hundreds of years and can be a source of problems in certain situations such as in application of biosolids containing PFAS to agricultural land or even in quality of drinking water. Once a residual level has been determined, substantial monitoring and surveillance should be in place to assess potential impacts to the surrounding environment and community and respond in a precautionary way to ensure impacts are prevented.

Health Canada has taken steps to establish an objective value for drinking water at 30 ng/L ppt for the sum of 25 PFAS substances as well as establish a guideline for PFAS at 50 µg/kg in biosolids. Any levels below these values are deemed to be safe. Indeed, concerns persist with respect to the values set for drinking water and biosolids despite claims that these values represent protective levels. For biosolids, the guidelines only applies to PFOS, which has been used to characterize indication of other PFAS. No scientific rational has been presented to support the final guideline value or that PFOS is the only PFAS that should measured.

Recommendation 16: Define what is considered "residual" PFAS in all contexts and establish legally enforceable standards.

Recommendation 17: Substantial surveillance and monitoring for values set as guidelines, objectives, residual levels, and standards should be designed and implemented. Such data should be released and publically accessible.

Recommendation 18: Drinking Water Objectives Values for PFAS should be legally binding and enforceable.

Recommendation 19: Health Canada and the Canadian Food Inspection Agency should disclose the scientific basis used to establish the 50 µg/kg for PFOS and demonstrate why measuring PFOS is adequate to capture other PFAS substances in biosolids.

g) **PFAS Contaminated Sites:** Federally owned sites such as airports and military bases have been assessing PFAS released on site as a result of fire fighting training and have been discovered to contaminate sites and surrounding environment, and pose a substantial threat to drinking water sources to nearby communities. The work on the Federal Contaminated sites Inventory has undergone modifications to allow access to information on PFAS contaminate sites under the federal government across Canada. This work has included additional search features on its inventory specifically on PFAS. While the opportunity to access this information is a positive move, there are significant problems with the way the search functions provide results. For example, a search for the term "PFAS" is possible but a search for "per- and polyfluoroalkyl substances" does not provide results. Furthermore the level of details on PFAS contamination on a site differs from site to site, making is difficult to fully understand and access information on PFAs contamination for all federal sites covered by the Inventory.

Recommendation 20: Improve the search function on the Federal Contaminate Sites Inventory for PFAS.

Thank you for your consideration of our comments and recommendations.

If you have any further questions, please do not hesitate to contact Fe de Leon at deleonf@cela.ca.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Fe de Leon, MPH
Researcher and Paralegal