

KEEPING CURRENT

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Mandatory Survey for Manufacturers, Importers and Users of PFAS

By Rui M. Fernandes

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

Rui M. Fernandes
Partner
416.203.9505
rfernandes@grllp.com

On July 27, 2024, both the Minister for Environment and Climate Change and the Minister for Health of Canada issued a joint notice mandating that companies report information on the manufacture, import, and use of 312 types of Perfluoroalkyl and Polyfluoroalkyl Substances ("PFAS") by Jan. 29, 2025. The PFAS Notice was made pursuant to [section 71\(1\)\(b\) of *Canadian Environmental Protection Act, 1999*](#) ("CEPA"). Section 71(1) of the CEPA empowers the minister to issue mandatory information gathering notices to provide the prescribed information. Compliance with the PFAS notice is mandatory. A failure to report is a contravention of the CEPA and could result in fines of up to \$500,000 for a first offence, and \$1,000,000 for second or subsequent offences by a corporation.

PFAS Generally

Perfluoroalkyl and Polyfluoroalkyl Substances ("PFAS") are manufactured chemicals that have been used in industry and consumer products since the 1940s. Because of their widespread use and their

persistence in the environment, many PFAS are found in the blood of people and animals all over the world. One report by the Centers for Disease Control and Prevention in the U.S.A., found PFAS in the blood of 97% of Americans. There are thousands of different PFAS, some of which have been more widely used and studied than others.

Research is ongoing to determine how exposure to different PFAS can lead to a variety of health effects. Studies have shown that exposure to certain levels of PFAS may lead to:

- Increased risk of some cancers
- Increased cholesterol levels and/or risk of obesity
- Reduced ability of the body's immune systems to fight infections
- Low birth weight, accelerated puberty, bone variations, or behavioral changes
- Decreased fertility or increased high blood pressure in pregnant women

Most people in Canada and the United States have been exposed to some PFAS. People can be exposed to PFAS by touching, drinking, eating, or breathing in materials containing PFAS, which may be present in:

- drinking water contaminated by other sources of PFAS
- waste sites soil and water at or near landfills, disposal sites, and hazardous waste sites
- fire extinguishing foam used in training and emergency response events at airports and firefighting training facilities
- facilities chrome plating, electronics, and certain textile and paper manufacturers that produce or use PFAS
- consumer products stain- or water-repellent, or non-stick products, paints, sealants, and some personal care products
- food packaging grease-resistant paper, microwave popcorn bags, pizza boxes, and candy wrappers
- biosolids fertilizer from wastewater treatment plants used on agricultural lands seeping into ground and surface water
- food fish caught from water contaminated by PFAS and dairy products from livestock exposed to PFAS

Who Does the Notice Apply To?

The Notice applies to any person who, during the 2023 calendar year:

1. **manufactured** a total quantity greater than 1000 g of any substance listed in Schedule 1 of the Notice;
2. imported a total quantity greater than 10 g

of a substance listed in Part 1 of Schedule 1, or a total quantity greater than 100 kg of a substance listed in Part 2 or Part 3 of Schedule 1 whether the substance was

- a. alone;
- b. at a concentration equal to or above 1 ppm in a mixture, or in a product;
- c. at a concentration equal to or above 1 ppm in a manufactured item:
 - i. that is intended to be used by or for children under the age of 14 years,
 - ii. that is intended to come into contact with the mucosa of an individual,
 - iii. that is used as intended in a manner such that the substance may be inhaled, or come into dermal or oral contact with an individual,
 - iv. that is cookware, or a cooking or serving utensil that is intended to come into direct contact with heated food or beverage,
 - v. that is food packaging material, including single-serve/disposable bowls, plates, cups, other serving-ware, as well as food cans and lid liners, that are intended to or may come into direct contact with food or beverage,
 - vi. that is a reusable food or beverage container,
 - vii. that is food processing equipment, including conveyor belts, trays, vats, nozzles, moulds, and cutters that come into contact with food or beverage prior to packaging and distribution,

- viii. that is clothing or footwear, including life jackets, personal flotation devices, and other safety apparel,
 - ix. that is bedding, sleeping bags, or towels,
 - x. that is furniture, mattresses, cushions or pillows intended to be used by an individual, where the substance is contained in foam or leather or in a textile fibre, yarn or fabric,
 - xi. that is carpet, vinyl or laminate flooring, or foam underlay for flooring, intended to be used by an individual,
 - xii. such that the substance is intended to be released from the manufactured item;
3. **imported** a total quantity greater than 100 kg of any substance listed in Schedule 1 at a concentration equal to or above 1 ppm in a manufactured item other than those listed in paragraph 2(2)(c); or
4. **used** a total quantity greater than 10 g of any substance listed in Schedule 1, whether the substance was alone or at a concentration equal to or above 1 ppm in a mixture or in a product, in the manufacture of a mixture, a product or a manufactured item.

Exemptions

The Notice does not apply to a substance, whether alone, in a mixture, in a product or in a manufactured item that:

- a. is only in transit through Canada;
- b. is for personal use;
- c. is intended for use in a laboratory for Analysis, in scientific research or as a

laboratory standard;

- d. is, or is contained in, a hazardous waste or hazardous recyclable material within the meaning of the Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations and was exported or imported pursuant to a permit issued under these Regulations;
- e. is, or is contained in, a pest control product registered under the *Pest Control Products Act*;
- f. is, or is contained in a fertilizer or supplement registered under the *Fertilizers Act*;
- g. is, or is contained in, a feed registered under the *Feeds Act*; or
- h. is mixed with, or attached to, a seed registered under the *Seeds Act*.

The Notice does not apply to any person or class of persons who meet the definition of a micro-business (means an organization or company with fewer than five employees or less than \$30,000 in annual gross revenue).

The information required is set out in sections 7 to 14 of the Notice. See [Canada Gazette, Part 1, Volume 158, Number 30: SUPPLEMENT](#).

Manufacturers, importers and users whose products may or do include PFAS should carefully review the new reporting requirement to ensure their company is compliance by January of 2025.

Contact us

If you are in need of legal advice, please do not hesitate to contact [Rui Fernandes](#) at 416.203.9505 or rfernandes@grllp.com.

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