

Proactive Approach to European Chemicals Agency (ECHA) proposal to ban per- and polyfluoroalkyl substances (PFAS)

February 2023



Proposed PFAS Ban

On February 7th, the European Chemicals Agency (ECHA) published a proposal to ban per- and polyfluoroalkyl substances (PFAS).

While marked “do not cite”, the [Proposal for a Restriction](#) clearly indicates the intent to phase out all PFAS within roughly the next decade. Companies based in North America will see the impact in their supply chains and customer expectations, particularly those based in Europe. Equally as concerning, the ban may serve as a precedent for future regulations in the US.

SUBSTITUTION CHALLENGES

“Based on the experience with European regulatory activities on PFASs since 2014, it is expected that PFASs restricted individually or per arrowhead group (e.g., PFOA and related substances) might simply be replaced with slightly different non-restricted PFASs (e.g., ADONA or HFPO-DA) with similar risks. This observation provides the main motivation to include all PFASs having equivalent hazard and risk in a single restriction, to avoid regrettable substitution by other PFASs.” - [Substitution Challenges](#)

ERM Insight: If the proposed restriction is accepted, substituting one form of PFAS for another to achieve the same commercial benefit may not be an option. Product manufacturers may benefit from evaluating whether achieving the level of performance associated with PFAS chemistry is necessary for personal and non-military use.

Taking Action to Influence Regulatory Developments

A six-month public consultation on the proposed ban will begin on March 22, 2023, giving stakeholders the opportunity to submit information on their uses of PFAS and the availability of fluorine free alternatives. In ERM’s experience, companies can benefit by responding early on the scope or timing of the proposed derogations that affect them if they wish to ensure that regulators have time to take their input into consideration. A first submission deadline is set by end of May. ERM strongly recommends submitting comments by then, which will require companies to begin developing an assessment report as soon as possible.

DETERMINE RELIANCE OF SUPPLY CHAIN ON PFAS

“While in some sectors and uses PFASs have been increasingly replaced by fluorine-free alternatives, in some cases substitution is not happening even though PFAS-free alternatives are available. Additionally, numerous sources indicate that globally fluoropolymer production will increase significantly in the next years.” - [Determine reliance of supply chain on PFA](#)

ERM Insight: The comprehensive nature of the proposed restriction is partly motivated/justified by the delayed adoption of fluorine-free alternatives. While the restriction is being considered, product manufacturers may benefit from critically determining the reliance of their supply chain on PFAS and contingency planning to respond should the restriction be accepted.

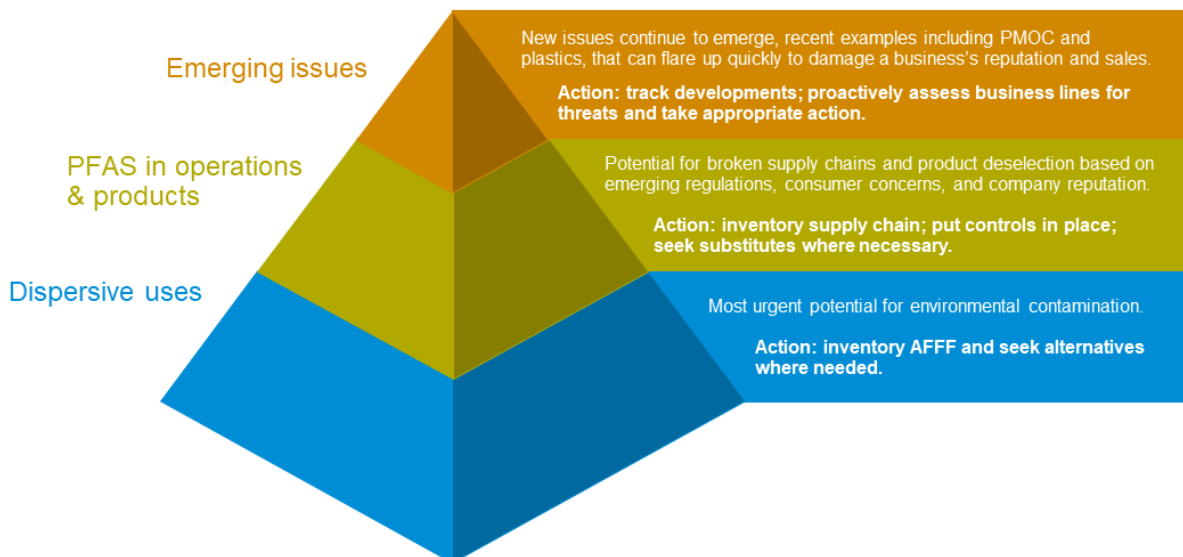
Taking Action to Achieve “PFAS-free” Products.

Even after a substance is banned or restricted, manufacturers may take some time to come into compliance or to diminish the stocks of already-manufactured inventory of products containing PFAS. Assurance throughout your supply chain that no supplied materials contain PFAS can be difficult to obtain. Industry-wide pressure on suppliers may lead to more transparency. Methodical review of supplier data, particularly for parts or functions known to be associated with PFAS, offers the best assurance. In some cases – as evidenced by a recent lawsuit over a product positioned as “free from harmful chemicals” that contained PFAS – it can be prudent to test certain products or components for the presence of PFAS.

Substitution is not always easy: alternatives must be readily available and offer the right function at the right price without creating new environmental or human health issues. The properties of a chemical that enable it to perform an important function in a product often affect its toxicity and ecotoxicity; in consequence, substitutes for an undesired chemical can present similar hazards. Research and development teams must consider, among others, these characteristics of potential substitutes:

- Hazards, which can be screened using Structure Activity Relationships, if needed.
- Potential for exposure, considering the use in the product, physical properties, and persistence among other factors.
- Regulatory status.

Working within an ever-more restrictive global regulatory environment can seem like a nearly impossible task given the vast array of PFAS and PFAS containing products. Methodical analysis of products in the context of a company’s risk management philosophy, illustrated in the graphic below, can enable a company to identify and manage their business risks.



To avoid disruption, companies will need to proactively evaluate PFAS in products throughout the supply chain in the near term to provide adequate lead time for identifying or developing replacements that meet required specifications.

Key contacts

For more information, contact your current ERM consultant or one of the following PFAS experts below:

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