ERM MARKET ALERT:

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Reporting Obligations for PFAS: Developments and Updates

HOW COMPANIES ARE RESPONDING TO CHANGES AND PREPARING FOR REPORTING

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The PFAS reporting landscape is complex, spanning state, US, and international requirements. Many industries have struggled to collect data and report PFAS under a multitude of national and global reporting programs. Adding to this complexity, deadlines and enforcement under some programs may be uncertain under the new administration.

The following regulatory drivers may be changing, creating dynamic stakeholder concerns and a complex compliance environment for business:

Toxic Release Inventory (TRI) Reporting Program - As previously reported in ERM's market update in August 2024, starting with Reporting Year 2024, all Per- and Polyfluoroalkyl Substances (PFAS) currently regulated under the TRI Program have been designated as "Chemicals of Special Concern," thus removing the de minimis exemption and significantly impacting who must report PFAS releases under the TRI Reporting Program. Now ALL concentrations of regulated PFAS in mixtures, no matter how small, must be considered in TRI threshold applicability assessments. With this change, many facilities that previously fell below the annual 100-pound 'manufactured,' 'processed,' and 'otherwise used' TRI reporting thresholds for each PFAS while using the de minimis exemption will now be required to report. This change requires companies to start reporting PFAS by 1 July 2025 and annually thereafter.

Toxic Substances Control Act (TSCA) Reporting Rule - As previously reported in ERM's market update in November 2023, the TSCA reporting rule requires companies that have manufactured (including as byproducts or impurities) or imported PFAS substances and/or PFAS-containing articles for a commercial purpose in any year since 1 January 2011 to report on those activities. Companies must report information that is "known to or reasonably ascertainable by" the company, which requires them to perform a certain standard of due diligence. This reporting rule is challenging even for chemical sector companies used to complying with TSCA and has caught many companies outside the chemical sector unaware, as it includes reporting on "articles" (parts and assemblies) which are commonly outside the scope of TSCA. Even though the US Environmental Protection Agency postponed the reporting deadline to 2026, the reporting requirements are extensive and onerous and many companies will find it hard to meet the deadline.

US State PFAS Requirements - While the US Environmental Protection Agency has focused on collecting PFAS information, other authorities in the US have moved to ban or restrict the use of PFAS in addition to requiring reporting. Three states have banned PFAS in a wide range of products; others have focused on specific products such as cleaning products or personal care products. Further, 32 unique retail chains have committed to eliminating or reducing PFAS in food packaging, textiles, and/or other products.

Canadian PFAS Regulations – In Canada, perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid (PFOA), and long-chain perfluorocarboxylic acids (LC-PFCAs) are already prohibited. Additionally, a similar reporting requirement under the Canadian Environmental Protection Act (CEPA) for Canada entitled "Notice with respect to certain per- and polyfluoroalkyl substances (PFAS)" and its short, 6-month reporting timeline caught many companies by surprise. Businesses manufacturing, importing, or using PFAS-containing products for applicable activities were required to report by 29 January 2025 to avoid penalties. Canada also proposed a phased approach for future PFAS legislation in 2024.

1 in 4

consumers can name a brand that they bought/ did not buy because of the brand's sustainability record.

- Data from ERM Shelton's EcoPulse® study

EU Corporate Sustainability Reporting Directive (CSRD) – Under CSRD, companies doing business in the EU must report on releases of Substances of Very High Concern (SVHC), including some PFAS, and the measures they are taking to reduce pollution resulting from SVHC. The CSRD reporting requirement and other sustainability reporting schemes are driving US-based clients who sell their products globally to develop plans for product sustainability and circularity, and to seek to eliminate toxic chemicals. While the EU Omnibus Regulation is attempting to streamline CSRD's reporting burden with other related legislation and may delay reporting deadlines, the specific ask for PFAS data is not going away, and the challenge of collecting this data remains.

Consumer Demands and Shareholder Pressure - In the midst of this dynamic regulatory environment, consumer demand is growing – companies report that their customers are expecting more sustainable products. Many companies are feeling direct pressure from shareholders to deliver on sustainability goals. As their data on the use of PFAS become available through reporting programs such as TRI, TSCA, CSRD, and US state requirements, the pressure will only grow as transparency on PFAS use increases.

Regulatory Uncertainty - The new US administration has created uncertainty about the state of federal PFAS regulations, whether certain deadlines will stay in place, and if enforcement will be a concern for businesses. The underlying issue behind these struggles and the resulting overwhelm is that many companies simply do not have complete and reliable data on what and where PFAS are present in their supply chains. Ultimately, PFAS have been used in a wide array of products found in most companies' supply chains. While US federal regulations may change under the new administration, requirements under state and global regulations and pressure from stakeholders remain. Data collection on where PFAS are present in company value chains remains a critical element for managing compliance, as well as strategizing on sustainability claims, brand positioning, and potential liability risks.

Navigating PFAS Challenges

PFAS Supply Chain Inquiry

How are companies obtaining PFAS data from their suppliers?

Over the past 5 years, ERM has worked with many clients on building and implementing data collection programs and compliance strategies to prepare for reporting PFAS, as well as managing PFAS-related risks, under these challenging regulatory programs. Many companies have struggled with assigning adequate resources – whether internal or external – to these reporting requirements; while some companies remain unaware of them or have delayed addressing the need to prepare. We have seen this manifest in client organizations in several ways. In one instance, a responsible individual asserted a potentially unsubstantiated belief there are no PFAS in their supply chain. In another, there was an inability or unwillingness to assess the question more methodically to align with requirements like the TSCA "known to or reasonably ascertainable by" guidelines. Understanding where PFAS are in your supply chain is the foundational data needed to support all subsequent regulatory applicability assessments, to identify and quantify PFAS-related risks and opportunities, and then develop strategies to manage material risks and capitalize on select opportunities.

PFAS Data Challenges

Why is it so hard to get and use PFAS data from your company's supply chain?

Many companies have struggled to obtain data on the presence of PFAS in their supply chain, or if the data exist, the data source, management, and quality are unclear and inconsistent. The following challenges have arisen in our work with various clients and industries:

- **Safety Data Sheets (SDS) historically did not contain PFAS information, and still largely do not for most PFAS.** This reflects several aspects of historic and current hazard communication regulations. SDSs do not include PFAS at low concentrations, PFAS considered to be trade secret, or those for which no toxicity data are available. Further, SDSs may not be available for articles, many of which contain PFAS. As companies predominantly rely on SDSs to determine whether purchased materials contain a regulated chemical like PFAS, they largely remain unaware of their presence.

- **Historically, few companies have contractually required suppliers to either restrict the use of PFAS or disclose them.** Even when a company requires "full material disclosure," there are still often caveats in place to allow for "proprietary" or "confidential" ingredient claims that allow PFAS to remain undisclosed.
- **Different regulatory schemes focus on different definitions of PFAS and lists of regulated chemicals.** These multitude of different historical and current regulatory definitions of PFAS have made it very challenging to compile, assess, and appropriately report on PFAS under differing regulations.
- **Suppliers often provide no data, incomplete data, or the wrong data in response to PFAS inquires.** Requests to suppliers for information, while required under the "known to or reasonably ascertainable by" standard under the TSCA reporting rule, often do not produce quality information. We have observed that suppliers often respond to specific questions tailored to identify PFAS specified under the TSCA and/or TRI reporting rules with:
    - Information relevant to another regulation (e.g., Restriction of Hazardous Substances Directive (RoHS), or Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) that does not answer the question
    - An indication that they have no knowledge of PFAS (and no indication when they may have knowledge)
    - A statement that the product contains "No PFAS" (even when a part of the description includes a known PFAS name like "Teflon")
- **Connecting supplier data to company data is hard.** For example, linking import and purchasing records to chemical composition records has been a substantial challenge for many companies, as the internal teams that manage these data sets typically work in isolation from each other.
- **PFAS composition data changes constantly.** Recognizing the ongoing challenges with obtaining supply chain PFAS information, some companies are planning a second round of supplier inquiry a few months before the TSCA reporting deadline to collect new or revised information and have recognized that PFAS inquiry will be an ongoing requirement to support TRI Program reporting.

ERM has been supporting PFAS data collection and management systems for diverse purchasing/ operational/environmental datasets, while building a sustainable data collection and reporting process to support clients' PFAS reporting and compliance assurance needs.

The increased complexity of PFAS data reporting requires a robust and sustainable data governance strategy. This includes planning for the lack of readily available PFAS data, along with potential data discovery, when supply chain inquiry is required. Relying on status quo data practices not only creates the potential for regulatory non-compliance but also presents risks with external B2B and B2C stakeholders.

Navigating PFAS Risks

How are companies managing the risks associated with discovering PFAS in their supply chain?

- **The solution starts with data**. Leading companies are developing and implementing a data-driven strategy to:
  - Understand their manufacture, import, purchase, and use of PFAS and/or PFAS-containing materials,
  - Assess their regulatory obligations based on continually updating PFAS information,
  - Evaluate their options for continued use of PFAS and/or PFAS-containing materials or identify substitutions, while maintaining alignment with the company's enterprise-wide risk strategy, and
  - Develop thoughtful communications for employees, shareholders, and customers reflecting the company's values and efforts regarding PFAS.

- **Understand and align with your company's enterprise-wide risk management strategy.** Different clients have varying appetites for compliance and business risk related to PFAS based on where they are within the supply chain. One company we work with, cautious of their global reputation given the types of products that it produces, has aimed for "1,000% compliance." Others are more willing to accept some risk and aim for an effort at uncovering PFAS that is defensible under regulatory standards.
- **Work closely with legal counsel.** Recognizing the sensitivity associated with PFAS, many of the companies we are working with are compiling information under attorney-client privilege.
- **Think broadly about the implications of PFAS.** Some companies are using the exercise of compiling PFAS information to think further about the potential business risks of working with PFAS-containing materials, whether that means the potential emissions from product manufacture/use/waste disposal, limitations in the supply chain, or loss of market share (e.g., customer de-selection of their products based on PFAS content). Concerns over PFAS have also catalyzed leading companies to re-assess their policies on chemical usage to avoid "the next PFAS."
- **Understand and use Confidential Business Information (CBI) Designations.** TSCA allows for certain data elements to be designated as "Confidential Business Information." To claim CBI, certain documentation is required, and companies who have not worked significantly under TSCA previously may have not yet grappled with the details. Understanding the requirements and implications of CBI is critical to a company's disclosure strategy.
- **Work collaboratively to ensure alignment and consistency in reporting across multiple regulations (e.g., CSRD).** It is imperative that a company's PFAS reporting strategy is consistent across regulatory frameworks to limit potential liability. Focus on connecting with legal and other reporting teams to verify that the PFAS information reported is accurate and consistent across regulatory frameworks.

How ERM Can Help

As the only global pure-play sustainability consultancy, ERM is uniquely positioned to help our clients develop and implement PFAS risk management strategies that build long-term business resilience. We work with organizations across a wide range of industries and geographies to develop tailored strategies and programs to address and mitigate PFAS-related business risks. ERM also has decades of experience efficiently completing complex regulatory reporting under both TRI (including supplier notifications) and TSCA, from individual facilities to product and facility portfolios.

Our holistic approach to PFAS risk management and reporting examines process, data, technology, and cultural elements alongside risk mitigation strategies to improve confidence and accuracy in data and reporting. Our team's deep experience with identifying and tracking PFAS in supply chains and product portfolios make us an excellent partner to help our clients:

- Identify PFAS in the supply chain
- Assess regulatory requirements on PFAS in products and operations and implications for our clients
- Assist with upcoming reporting under TRI and TSCA for US-based operations
- Evaluate business risks related to PFAS in raw materials, products or operations, and the resulting potential for environmental release/exposure
- Assess "PFAS-free" claims or support messaging
- Specific to Reporting PFAS under CSRD – our experts can help companies:
  - Assess the need to report on releases of SVHC, including PFAS, and develop the report
  - Create and implement pragmatic plans to phase out the use of PFAS, incorporating safeguards to avoid so-called regrettable substitution
  - Track progress on PFAS goals
  - Identify pricing premiums that consumers will pay for more sustainable products
  - Tell your product's sustainability story that creates competitive advantage without greenwashing

ERM Can Help You Navigate the Complexities of PFAS Reporting

For more information, contact your current ERM consultant or any of our experts:

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