

**Statement of the American Chemistry Council on House Bill 78  
Proposing to Define Perfluorochemicals as Hazardous Substance under the Minnesota  
Environmental Response and Liability Act**

The American Chemistry Council and its members support a comprehensive approach to managing per- and polyfluoroalkyl substances (PFAS). However, we strongly believe that such an approach should utilize existing national and state regulatory processes and not take the unprecedented step of designating an entire class of chemistry as hazardous as contemplated by this bill. Implementation of this proposal would have broad unintended negative consequences on the economy and on local governments throughout the state.

**The Legislation Goes Well Beyond Expected Federal Action**

The Biden Administration has indicated that addressing PFAS is a priority of his Environmental Protection Agency (USEPA). Among the USEPA's first steps will be consideration of the two most common PFAS – PFOA and PFOS – under the Comprehensive Environmental Response, Compensation and Liability Act, also referred to as CERCLA or just Superfund. These two legacy substances have been out of production in the United States for several years. Listing these two substances as hazardous under CERCLA would allow for the designation of parties responsible for cleanup. CERCLA is a blunt instrument, however, that does not discriminate among sources of contamination and often leads to protracted litigation and extended delays.

As originally enacted by the legislature, Minnesota's Environmental Response and Liability Act defers to EPA in determining whether to designate a substance as hazardous. Given the potentially wide-ranging impacts of such a designation, the state should defer any decision on listing until EPA has made a determination.

**Designation of all PFAS as hazardous substances will not address priority issues related to PFAS**

A legislative mandate requiring designation of all PFAS as hazardous substances would ignore the fact that there are vast differences within the PFAS family of chemistry and that different PFAS vary widely in chemical profiles, physical and chemical properties, uses, and potential toxicity. Today's PFAS, which are supported by a substantial body of health and safety data, are present in a large number of essential products used by industry, commercial operations, and consumers every day. These essential products and activities would be inappropriately captured in the liability net created by this legislation.

As one example, concerns about the mobility of PFAS, such as PFOA and PFOS, do not apply to fluoropolymers which are neither bioavailable nor bioaccumulative and which are considered

“polymers of low concern” that do not present a significant concern to human health or the environment.<sup>1</sup>

As noted, assigning liability for contamination is often a protracted process that can take years to resolve. The prospect for significant delays would be exacerbated considerably by the addition of hundreds – perhaps thousands – of substances. Current activities within the state’s Pollution Control Agency and Department of Health provide a more effective approach to addressing priority PFAS issues than that contemplated by this legislation.

**CERCLA Designation will not result in timely action and, in fact, will likely create a significant delay in any clean-up or remediation priorities**

PFOS, PFOA, and other legacy PFAS were in use for decades. A hazardous designation for these substances would lead to cleanup liability at many sites and for many entities not previously swept into the potentially onerous liability created by a hazardous designation. Moreover, it could lead to the “re-opening” of thousands of sites that have previously completed remediation. Any facility that manufactured or used products that contained PFAS could be a potential source of release of those materials to the environment. In addition, any third-party location where such products were sent for disposal could be a potential source of release of PFAS to the environment and therefore a potential source of liability.

The reality is that given the nature and scope of liability, entities often end up engaging in drawn out litigation over whether they are responsible parties. This can result in years-long delay of actual remediation efforts.

**CERCLA Designation will have a significant socio-economic impact**

The strong fluorine-carbon bond allow PFAS to provide products with strength, durability, stability, and resilience. These properties are critical to the reliable and safe function of a broad range of products that are important for industry and consumers. PFAS play a vital role in everything from designing automobiles with lower emissions and improved safety, reliability and fuel-efficiency to manufacturing semiconductors, solar panels and high performance electronics. Multiple other industries depend on high-performance PFAS including aerospace, alternative energy (solar), healthcare, building and construction, electronics, chemicals and pharmaceuticals, oil and gas, and outdoor apparel and equipment, just to name a few. Right now, PFAS are being used to support COVID-19 testing equipment and to provide lifesaving protection in medical garments – both uses that are helping save lives around the world in the midst of this pandemic. PFAS are vital to enabling our lives in the 21st century.

---

<sup>1</sup> Henry BJ *et al.* A critical review of the application of polymer of low concern and regulatory criteria to fluoropolymers. *Integ Environ Assess Manag* 14(3):316-334 (2018). [Open Access.](#)

The Environmental Response and Liability Act does not distinguish between the potential source of the substance designated as hazardous – whether it comes from industrial, commercial, municipal or household source. Whether the substance is a consumer product, a manufacturing byproduct, or an element of a waste stream is irrelevant. Quantity or concentration is not a factor either.

Typically, the lower the cleanup standard that is required, the higher the cost of cleanup. Therefore, if EPA or the state promulgate very low standards that apply to all PFAS or multiple PFAS, the budgetary impacts on both private and governmental entities (and the concomitant impacts on prices and taxes) could be huge.

Increased attention on less obvious potentially responsible parties also would result should the legislature enact this proposal. For example, parties pulled into litigation may include not only the original manufacturers and disposal sites but also wastewater treatment plants producing biosolids that may contain PFAS, organizations recycling carpets that may be treated with PFAS, transportation companies, medical device manufacturers, food packaging manufacturers, and others.

A designation as hazardous could also impact basic services like financial lending. Lenders have a safe harbor under the law but may be concerned about potential liability associated with properties and facilities that are used to secure loans. Designating all PFAS as hazardous likely will discourage lenders from providing loans to entities with facilities that handle PFAS containing products or wastes, further extending the negative socio-economic impacts.

### **Designation will also impact critical public entities and local governments**

Once a substance is designated as hazardous, the law makes no distinction as to the source of the material. As a consequence, enactment of HF 78 will impact a wide variety of parties not contemplated by the bill's sponsors. These could include:

- Industries making or recycling electronics, wire and cable insulation, other electrical insulation products, medical devices, various kinds of paints and coatings, stain- and water-repellent clothing, carpets, and other textiles, paper food packaging, cookware, polishes, waxes and various cleaning products;
- Publicly-owned facilities that used products containing PFAS, such as airports, fire stations, and fire training facilities;
- Municipal facilities that handled wastes and wastewaters containing traces of PFAS, such as publicly operated treatment works (POTWs) and the waters into which they discharged;

- Solid waste landfills that accepted wastes from industrial or commercial manufacturers or users or consumers of any of the above products and construction and demolition debris landfills; and
- Farms at which biosolids from POTWs were applied.

The bottom line is that hazardous substance designation is a blunt, inefficient tool for addressing priority issues. Such designation is complicated, results in extensive delays and is fraught with unintended consequences.

Although we oppose the current proposal, ACC supports strong, science based regulation of PFAS and we look forward to continuing to engage on this issue.