

# PFAS: legal responsibilities

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# Introduction

ACADÉMIE  
DES SCIENCES  
INSTITUT DE FRANCE

Rapport de l'Académie des sciences - 25 mars 2025

La pollution aux PFAS : état des lieux des  
connaissances et enjeux de société

the forever pollution project

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Le nettoyage des PFAS pourrait coûter  
jusqu'à 26 milliards à la Suisse ces vingt  
prochaines années

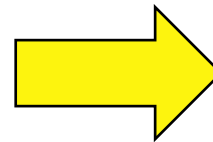
Dialogue

Modifié le 16 janvier 2025 à 15:56

Résumé de l'article

Partager

- PFAS: forever pollutants, ubiquitous, toxic
- They accumulate in the environment and in living organisms, causing major environmental and health risks
- All ecosystems are affected
- Healthcare and remediation costs (where technically feasible) amount to billions of Swiss francs.

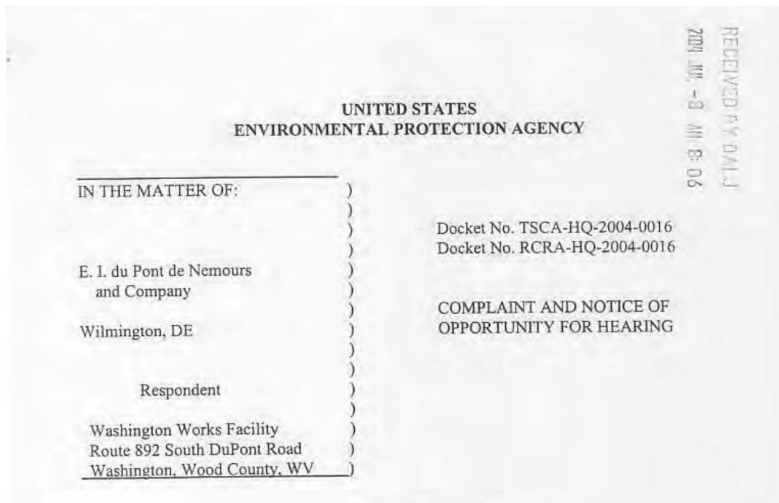


How did we get here?

# Introduction



- Since 1950: used in numerous industrial and household products
- Since 1970: The chemical industry has been aware of PFAS toxicity
- 2004: Two EPA lawsuits against E.I. DuPont de Nemours for unlawfully concealing risks associated with PFOA
  - *DuPont failed to report critical internal studies—some dating back to 1981—demonstrating PFOA's presence in foetal cord blood and local drinking water*
- Settlement reached in 2005 (USD 16.5 million)





# Introduction

- Europe and Switzerland: Awareness among authorities, regulators, and the public is recent
- Trigger: in 2020, the European Food Safety Authority (EFSA) revised the so-called "acceptable weekly intake" value
- The regulatory framework is still highly fragmented and incomplete
- Legal action is increasing abroad



# Introduction

What are the legal means and responsibilities for preventing and remediating environmental and health damage caused by PFAS?

- Prevention: control, restriction, prohibition of use, and setting concentration limits (public health law and environmental law)
- Remediation of environmental damage: restoration of the natural environment and coverage of associated costs (public law)
- Remediation of personal, material and economic damage: compensation under civil liability law

# **Prevention: Few bans or restrictions currently apply to PFAS use**

International law	European law	Swiss law
<b>Aarhus Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (1979)</b> Annex I (ratified by Switzerland in 2000): PFOS must no longer be produced and must be restricted to certain specific uses, such as photographic coatings or certain medical devices.	Regulation (EC) No 850/2004 POP  Regulation (EC) No 1907/2006 REACH	Chemicals Ordinance (OChim)  Ordinance on the Reduction of Risks from Chemical Products (ORRChim): Annex 1.16: <u>Per- and polyfluoroalkyl substances</u> : contains prohibitions and exceptions
Stockholm Convention on Persistent Organic Pollutants entered into force on 17 May 2004: <ul style="list-style-type: none"> <li>• Restriction on the use of PFOS (2009);</li> <li>• Ban on PFOA (2019)</li> <li>• Ban on PFHxS (2023)</li> </ul>	January 2023: Germany, Denmark, the Netherlands, Norway and Sweden submitted a restriction proposal to ECHA covering a wide range of these substances	OChim and ORRChim adapted to European law (revision adopted on 29 October 2025 by the Federal Council)



# Prevention: responsibilities related to the marketing and use of chemicals

Environmental Protection Act	Chemicals Act
Protects humans, animals, and plants—as well as their biocoenoses and biotopes—from harmful or adverse effects, and ensures the conservation of natural resources, particularly biological diversity and soil fertility, in a sustainable manner.	Protects human life and health from the harmful effects of substances or preparations.
Art. 26 ff. LPE: prohibition on the marketing of dangerous substances, self-monitoring by manufacturers.	Art. 5: Self-monitoring: Anyone who, as a manufacturer, places substances or preparations on the market must ensure that they do not endanger life or health.
Enforcement by the cantons, except where competence is reserved to the Confederation	<b><u>Control by the enforcement authorities (Art. 42 ChemA)</u></b>



## Responsibilities for remediating environmental damage under public law

- The enforcement (implementation) of environmental protection law, in the broad sense, is the responsibility of the cantons, except for areas reserved for the Confederation as provided by law.
- Authorities must intervene (anticipatory substitution) in the event of imminent danger to the environment or water resources.
- Application remains restrictive and limited in cases of long-term existing pollution.
- Authorities may impose the costs of enforcement measures taken by substitution on disturbers ("*perturbateurs*"), in accordance with Art. 32 EPA (polluted sites), Art. 58a EPA, and Art. 54 Water Protection Act.





## **Responsibilities for remediating environmental damage under public law**

- The competent authority may only require a polluter to carry out remediation or clean-up measures, or impose restrictions on use, if there is a legal basis for doing so.
- The party required to take the measures under public law shall bear the costs, unless an express legal basis provides otherwise; Art. 2 EPA and Art. 74 Cst (polluter-pays principle) are not immediately applicable!
- Art. 32d EPA allows those who have borne the costs of investigating, monitoring and remediating sites contaminated by PFAS (and other substances) to recover these costs from other responsible parties.
- This provision is limited to the law on polluted sites.
- Public law regimes and cost responsibilities vary significantly depending on the type of damage and the source of the pollution.



# Responsibilities for PFAS-contaminated sites

The scope of the law on contaminated sites is limited to the following:

- Sites of limited size contaminated by waste (Art. 2 OSites):
  - final storage sites
  - operating areas
  - accident sites
  - Exhaustive list – what about fire brigade training grounds?
- Public gardens and playgrounds where young children play, polluted by diffuse substances (Art. 32c EPA, which came into force on April 1st, 2025)
  - Difference in treatment compared to private gardens and playgrounds?



# Responsibilities for PFAS-contaminated sites

- Reference concentration limits for evaluating environmental damage in water and soil?
- Maret Motion: [22.3929 | Définition dans les ordonnances de valeurs spécifiques aux PFAS | Objet | Le Parlement suisse \(parlament.ch\)](#)



## Responsibilities for PFAS-contaminated sites

- The obligation to carry out investigation, monitoring and remediation measures generally lies with the site owner (Art. 20 OSites).
- Any interested party may request the authority to issue a decision on the allocation of the costs of the necessary measures.
- The authority allocates costs among the various « *perturbateurs* » (by conduct and situation) in accordance with the principles of Art. 32d EPA.
- If there are several polluters by conduct, each shall bear a share of the costs proportional to their responsibility.
- The holder of the site (*perturbateur par situation*) shall also bear a share of the costs, but to a lesser extent. Exemption is possible.
- The authority shall determine the causal shares and then adjust them fairly.



## Principles for allocating financial liability under art. 32d EPA

- No joint liability between polluters; the share of any defaulting polluter is borne by the public authority (Art. 32d para. 3 EPA).
- No absolute limitation period for obligations arising from the OSites and Art. 32d LPE. Claims based on Art. 32d LPE are not subject to a limitation period as long as the need for remediation persists (*TF 1C-524/2014 of February 24, 2014*).
- A limitation period of five years applies once the decision has been rendered and has become final.
- 5% interest accrues from the date of the request for cost allocation.



## Legal nature of liability under art. 32d EPA

- The polluter-pays principle is a cost allocation principle and is not intended to penalise unlawful behaviour. It also applies to environmental damage that is tolerated by the legal system (*ATF 142 II 232, consid. 3.4 p. 236 with references*).
- The designation of polluters is independent of illegal behaviour, fault, or omission; these elements only influence the allocation of remediation costs among the responsible parties (*Federal Supreme Court, 1A.250/2005 of December 14, 2006, consid. 5.3*).
- However, unlawfulness is required in cases of omission: the authority must demonstrate that the polluter had a legal duty to act at the time of the events and that they failed to comply (*Federal Supreme Court, 1C\_524/2014 and 1C\_526/2014 of February 24, 2016*).
- The obligation to remediate contaminated sites and bear the costs exists regardless of whether the act complied with the state of the art at the time and had been approved by the authorities (*Federal Supreme Court, 1C\_315/2020 of March 22, 2021*).



## Responsible parties (*perturbateurs*)

- Party responsible by conduct = a person who directly causes damage or danger through their own actions or omissions or those of a third party under their responsibility (*Federal Supreme Court, 1C\_18/2013 of December 15, 2023; Federal Supreme Court, 1C\_315/2020 of March 22, 2021, c. 2.1*). *Share of costs: between 70% and 90%.*
- Party responsible by situation (holder) = a person who has effective or legal control over the object that directly constitutes the source of the danger or harm (*ATF 139 II 106 c. 3.1; ATF 131 II 743 c. 3*). *Share of costs: between 10% and 30%.*  
Exemption possible.
- The distinction between a party responsible by situation and a party responsible by conduct often cannot be determined solely on the basis of the external course of causality; classification also depends on a critical assessment of the contribution of the act in question (*ATF 142 II 232*).



## Immediate causality

- Immediate causality: the cause itself exceeds the threshold of endangerment (*Federal Supreme Court, 1A.250/2005 of December 14, 2006, consid. 5.3; TF, 1A.366/1999 of September 27, 2000, consid. 2c, in ZBl 102/2001 p. 547*).
- The existence of a direct causal link is assessed based on the degree of preponderant probability when direct and absolute material evidence is not possible due to the nature of the matter (*ATF 144 II 332; ATF 132 III 715*)





## Circle of potentially liable parties

- The operator of an undertaking that has used or currently uses PFAS.
- The operator of a landfill site where PFAS-containing waste has been stored.
- The depositor of waste when the act of storage is the immediate cause of the pollution (*Federal Supreme Court, 1C\_524/2014 and 1C\_526/2024 of February 24, 2016*).
- The fire brigade that used PFAS-containing firefighting foams?
  - OTAS compensation for sites polluted by PFAS-containing firefighting foams (40% of attributable costs)



## Circle of potentially responsible parties

- Authorities for failure to supervise or act?
  - Authorities can be held accountable if they unlawfully violate their duty of supervision. However, such a violation cannot be established solely on the grounds that a specific injury could have been prevented through appropriate supervisory activity.
  - It requires that the authorities have breached an essential official duty, failed to take a specific supervisory measure that is imperatively prescribed, or exercised their discretionary power in an erroneous manner or in disregard of general principles of law (*TF, 1C\_18/2023 of December 15, 2023*).
- What about regulatory inaction?



## Circle of potentially responsible parties

- Authorities for failure to supervise or act?

Case law on the (denied) liability of the Confederation regarding clean-up costs for a former civil defence training centre (DEP 2000/8, p. 785 ff.):

- Federal law requires the cantons to build and manage training centres.
- The Confederation could only be required to bear the costs if the type and method of execution prescribed by it inevitably led to the environmental damage in question.
- The Confederation prescribes the construction of facilities for firefighting training and provides for the drainage of water from these facilities used for fire drills, without expressly mentioning environmental protection measures.
- It is the duty of the cantons to ensure that this drainage complies with all applicable law, in particular water protection legislation, to prevent any damage to the soil and water.



## Circle of potentially responsible parties

- Authorities for failure to supervise or take action?

Case law on the potential liability of the Confederation because federal law requires municipalities to provide shooting ranges for compulsory shooting (*Federal Supreme Court, 1C\_223/2015 of 23 March 2016*)

- The mere fact that federal law requires certain activities to be carried out by cantons or private individuals is not sufficient to consider the Confederation responsible for all environmental damage caused by these activities. It is the responsibility of those subject to the law to carry out these activities without causing pollution.
- The Confederation may be held liable only if it prescribes a method or activity that inevitably causes damage to the environment or soil, or if, in violation of its supervisory duty, it fails to prevent pollution.



## Circle of potentially responsible parties

- Producers/distributors of these foams as "*Zweckveranlasser*" (ATF 138 II 111; ATF 131 II 743)?
- The current owner: completely exempt if they could not have anticipated PFAS contamination when acquiring the plot
  - Relevant date for presumed knowledge of these risks?
  - What about contaminated plots not registered in the land registry/on indicative soil contamination maps?



## Responsibilities for PFAS-contaminated soil

- Subsidiary application of soil protection law (Art. 33 to 35 EPA and OSol) when soil fertility is threatened in the long term by diffuse or point sources of contamination and the sites do not qualify as contaminated sites within the meaning of OSites (*Federal Supreme Court, 1C\_404/2021 of 24 February 2022 c. 4.1*)
- Assessment of environmental impact by the Confederation and the cantons according to the reference values, investigation thresholds and remediation values in the OSol annexes, or set on a case-by-case basis.
- No values for PFAS (Maret motion).
- Restrictions on use if the investigation thresholds set for certain uses are exceeded (Art. 34 para. 2 EPA)
- Possible health recommendations/ban on the sale of contaminated food products
- Remediation measures apply only to agricultural, horticultural (and forestry) land (*Art. 35 para. 2 EPA and Art. 10 para. 2 OSol*), but remediation is limited by technical feasibility and the principle of proportionality.



# Responsibilities for PFAS-contaminated soil

- Restrictions, prohibitions and remediation measures to be borne by the land owner
- No cost allocation under public law:
  - Art. 32d EPA does not apply
  - Art. 2 EPA: no immediate application according to the Federal Supreme Court (ATF 138 II 111; 1C\_366/2015 c.3.3)
  - Art. 58a EPA: only if the authorities take safety measures to prevent imminent damage (to soil fertility)



# Civil liability: legal actions on the rise worldwide

## DuPont Reaches \$27M Settlement in New York PFAS Contamination Case.

July 11, 2025 —Chemical giant DuPont has agreed to pay \$27 million to settle a class-action lawsuit over drinking water contamination in Hoosick Falls, New York. The settlement, announced on July 10, 2025, comes after nearly nine years of legal battles and brings the total recovery in the case to \$92.25 million. DuPont was the last remaining defendant in the lawsuit after Saint-Gobain Performance Plastics, Honeywell International, and 3M agreed to a \$65.25 million settlement in 2021. The agreement was reached just days before a jury trial was set to begin and is now awaiting final approval from U.S. District Judge Mae A. D'Agostino.

## DuPont's historic \$2.5B PFAS settlement with New Jersey.

August 5, 2025 —DuPont's historic \$2.5B PFAS settlement with New Jersey represents a watershed moment in environmental litigation, as the chemical manufacturing giant takes responsibility for decades of contamination by agreeing to an unprecedented cleanup and remediation program spanning multiple polluted locations across the state.



REPORTAGE FRANCE

## Lyon: action judiciaire de masse contre les PFAS dans la «vallée de la chimie»

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## Civil liability: legal actions on the rise worldwide

- Damages claims against manufacturers, including DuPont, 3M, Arkema, Chemours, etc.
  - DuPont annual report 2024:

*"DuPont is a science company. Founded in 1802, DuPont puts science to work by creating sustainable solutions essential to a better, safer, healthier life for people everywhere."*
  - Page F-42 2024 annual report DuPont (SEC Filing): long list of legal actions against the company
- Actions seek compensation for personal injury, medical monitoring, soil and water remediation, drinking water treatment



## And in Switzerland?

Implementation of civil liability law:

- Who is harmed by PFAS pollution?
- Who can claim damages under civil liability law?
- What is the cause of the pollution?
- Who is civilly liable for the damage caused by this pollution?
  - There must be a responsible party and proof of all the conditions set out in the relevant liability standard.

## And in Switzerland?

Identification of the person responsible and ground of liability	Damage	Causality
<ul style="list-style-type: none"> <li>▪ Art. 59a EPA (facility posing a particular danger to the environment)</li> <li>▪ Art. 1 LRFP (producer/distributor of defective products)</li> <li>▪ Art. 41 CO (unlawful act, fault)</li> <li>▪ Art. 58 CO (owner of a structure)</li> <li>▪ Art. 679/684 CC (excessive exercise of property rights)</li> </ul>	<ul style="list-style-type: none"> <li>▪ No compensation for 'pure' ecological damage unless expressly provided for by law (Art. 15 LFSP, 24<sup>e</sup> LPN)</li> <li>▪ Damage to health (high concentration of PFAS in the blood)</li> <li>▪ Material and economic damage (loss of agricultural yield, water treatment or replacement costs)</li> </ul>	<ul style="list-style-type: none"> <li>▪ How to identify the responsible party in cases of diffuse pollution?</li> <li>▪ How is causality assessed when multiple sources are involved?</li> <li>▪ How to establish causality between health damage and exposure?</li> </ul>



## Concluding remarks

- The proliferation of legal actions reflects shortcomings in regulations governing hazardous substances such as PFAS.
- Civil liability mechanisms are limited and do not provide full compensation for PFAS-related damage.
- The polluter-pays principle does not ensure accountability for all responsible parties.
- Its scope is very limited in cases of diffuse pollution.
- How can we better account for the negative externalities associated with the use of polluting substances?
- Prevention is key!

**Thank you for your attention!**