

March 3, 2017

The Honourable Catherine McKenna
Minister of Environment and
Climate Change

The Honourable Jane Philpott
Minister of Health

Transmission by email: ec.ministre-minister.ec@canada.ca;
 Hon.Jane.Philpott@Canada.ca

Dear Minister McKenna and Minister Philpott:

Re: Comments and Recommendations to inform Canada's position to the Conferences of the Parties (COP) to the Stockholm and Rotterdam Conventions April 24 – May 5, 2017 in Geneva, Switzerland

The Canadian Environmental Law Association is submitting the following brief comments and recommendations for your consideration in developing Canada's position for the upcoming Conferences of the Parties (COP) to the Stockholm, Basel, and Rotterdam Conventions, scheduled between, April 24 – May 5, 2017 in Geneva, Switzerland.

The following comments and recommendations focus on the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. While we limit our comments to specific issues related to the Stockholm and Rotterdam Conventions, we are available to discuss issues relevant to all three conventions. Generally, CELA urges Canada to advance its efforts to contribute to the global elimination of all POPs listed and proposed for listing under the Stockholm Convention, including ensuring that the full lifecycle of POPs including POPs waste and stockpile management issues are addressed under the Basel Convention with an aim to ensure that POPs are not released or available in the environment and pose harm to human health. Finally, we also express the importance of these Conventions to promote effective and full engagement of all stakeholders in all phases of implementing and changes to these Conventions.

Public engagement should be strengthened and expanded

CELA participated in the TripleCOP Webinar held by Environment and Climate Change Canada and Health Canada (Pest Control Regulatory Agency) on January 19, 2017. CELA has participated in consultations on these Conventions for almost two decades, particularly on the Stockholm Convention on POPs. Multi-stakeholder consultations form an important element of the process to inform the government's position on key issues expected to be central to upcoming negotiations. Unfortunately, the consultation approach exercised by government departments in recent years, and with the TripleCOP, has been very limited and sparse to promote

constructive and transparent dialogue between stakeholders on many issues to be addressed under these Conventions. ***We urge you to review the approach and reset a robust framework for stakeholder engagement on each of the Conventions.***

In the past, a robust consultation approach was followed. It included several teleconference calls and face to face multi-stakeholder consultations to respond to Canada's position on key matters. This approach worked well with international conventions such as the Stockholm Convention on POPs and the negotiations of the Minamata Convention on Mercury. Such an approach also included participation by non-governmental organizations on the Canadian delegation to negotiating meetings. The lack of these opportunities in the recent COPs of these conventions has resulted in poor dialogue on a number of issues facing Canada and the global community.

We wish to express our concern that the absence of effective and transparent public engagement at critical phases of the negotiations and implementation efforts undertaken under each Convention has had some effect on Canada's progress in achieving its obligations under the Conventions. The national activities that are pursued and intended to fulfill the obligations set out in the Conventions can benefit significantly from the concerns expressed from a global perspective. Conversely, Canada has also been a leader in many aspects to address concerns on hazardous substances, particularly POPs and mercury. We wish for Canada to resume its leadership role in these negotiations by taking strong positions to advance the key goals set out in each of the conventions. However, it will struggle to achieve this if it does not pursue a healthy and robust public engagement component on these matters.

We offer the following brief comments on several issues covered under the Conventions.

Stockholm Convention on Persistent Organic Pollutants (POPs)

A) Listing of new POPs: There are three new POPs proposed for listing to Annex A (elimination):

- * decabromodiphenyl ether (commercial mixture, c-decaBDE),
- * hexachlorobutadiene (HCBd), and
- * short-chained chlorinated paraffins (SCCPs)

We urge the government to support the listing to Annex A (Elimination) for decabromodiphenyl ether (commercial mixture, c-decaBDE), hexachlorobutadiene (HCBd), and short-chained chlorinated paraffins (SCCPs) to Annex C (unintentional by products). Substantial regulatory measures are in place in Canada to address these substances. It should be noted that HCBd is listed under Annex A (elimination). HCBd is regulated in Canada under the Prohibition of Certain Toxic Substances Regulations, 2012 in Schedule 1, Part 1. Canada should support the additional listing of HCBd under Annex C (unintentional production). Similarly, C-decaBDEs and SCCPs are also regulated under the Prohibition of Certain Toxic Substances Regulations. However, the listing for c-decaBDEs under Schedule 1, Part 2 of the regulation indicates that these POPs will continue to be permitted in products. Since 2008, Canada has

delayed releasing measures to address decaBDEs in products. The delays in this area are resulting in the on-going presence and release of these POPs into the environment. Furthermore, the current waste management regulatory framework across the country (at the province/territorial level) has not addressed this emerging problem associated with POPs in recycling process and waste management framework.

We urge Canada to support the listing of c-decaBDEs to Annex A without exemptions for recycling. Including exemptions for recycling of products containing c-decaBDEs will perpetuate the presence of these POPs in final manufactured products and its release into the environment. We have seen specific exemptions applied to recycling processes for products containing penta-BDEs and octaBDEs. These exemptions have weakened the main objectives of elimination under the Stockholm Convention. ***We urge Canada to align with the recommendations of the POPs Review Committee on c-decaBDEs and oppose the exemptions for recycling.***

B) Ratification Status of POPs: There are several POPs listed under the Stockholm Convention for several POPs which Canada has yet to ratify. The absence of Canada's ratification on these chemicals is concerning. Since the Stockholm Convention entered into force in 2004, Canada has been a leader in all areas of addressing the environmental and health concerns associated with POPs under the Convention particularly given its impacts to the Northern regions of Canada and its impact on the indigenous communities that rely on the environment. Canada was the first country to sign and ratify the Convention in 2001. However, Canada's efforts on the POPs most recently added to the Stockholm Convention reflect a change in its commitments to POPs.

- 1) Endosulfan was added to Annex A (elimination) and entered into force in 2011. Canada is well positioned to ratify the addition of endosulfan under Annex A. Based on the Re-evaluation Note REV2011-01, Discontinuation of Endosulfan, the use of endosulfan ended on December 31, 2016. The production and sale of endosulfan pesticides expired on December 21, 2014, while the sale of endosulfan pesticide products is not permitted after December 31, 2015.¹ ***CELA strongly urges Canada to expedite the ratification on endosulfan.***
- 2) Hexabromocyclododecane (HBCD) or 1,2,5,6,9,10-hexabromocyclododecane (CAS number 3194-55-6) was added to the Annex A (elimination) but includes an exemption for use in Expanded polystyrene and extruded polystyrene in buildings in accordance with the provisions of part VII of Annex A. The entry into force for HBCD was 2013. In Canada, HBCD has been added to the Prohibition of Certain Toxic Substances Regulations, 2012 under CEPA in Schedule 1, Part 1 which reflects the exemption outlined in Annex A. There are no concrete timelines for Canada to review and consider

¹ Pest Control Regulatory Agency. Re-evaluation Note REV2011-01, Discontinuation of Endosulfan. See at http://www.hc-sc.gc.ca/cps-spc/pubs/pest/_decisions/rev2011-01/index-eng.php

moving away from permitted exemptions to HBCD in products. ***We strongly urge the government to take the necessary steps to ensure it is a one-time exemption and that HBCD be subject for full elimination as intended under the Stockholm Convention and in Canada.***

- 3) Pentachlorophenol (PCP) was added in 2015. In a NGO submission on chlorinated naphthalenes (CNs), Hexachlorobutadiene (HCBD) and pentachlorophenol (PCP) dated April 21, 2015, we noted that the government should “develop and implement a plan to phase-out the manufacture and use of PCP in Canada.” This recommendation was submitted after the POPs Review Committee determined that pentachlorophenol (PCP) meets scientific criteria as a POP for its persistence, bioaccumulation, and adverse effects, and that it will, as a result of its long-range environmental transport, “lead to significant adverse human health and environmental effects such that global action is warranted” and follows the meeting of the POPRC in October 2014, where the POPRC recommended the listing of PCP in Annex A of the Convention. PCP was added to Annex A (elimination) with specific exemptions from COP9.² Canada has made no commitment to ratify PCP. We are expressing our concerns on Canada’s position on PCP. Its Re-evaluation Note REV2013-05 - Heavy Duty Wood Preservative (HDWP) - Risk Management Plan indicates that it will rely on voluntary measures and industry stewardship programs to manage PCP.³ This approach is inadequate. Given that at least 36 countries have banned the use of PCP because of its high toxicity and its hazards to environmental and human health, Canada’s current approach on PCP will mean that Canada will lag in its effort to address PCP as a global problem. Canada, along with the US, are the major users of PCP at the global level.

Canada should make a commitment to review and reconsider its position on PCP considering there are safe and economically viable non-chemical alternatives (e.g. naturally resistant hardwoods, concrete, steel, and fibreglass reinforced composite) readily available and are used broadly in Canada. ***We urge Canada to take steps to ratify PCP under the Stockholm Convention, develop a national phase out plan for PCP, and investigate the safe alternatives available (non-chemical) for PCP.***

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

² April 21, 2015. NGO letter to the Ministers ReRe: Listing chlorinated naphthalenes (CNs), Hexachlorobutadiene (HCBD) and pentachlorophenol (PCP) for elimination under the Stockholm Convention on POPs. See at http://www.cela.ca/toxic_substance_elimination

³ Pest Control Regulatory Agency. 2013. Re-evaluation Note REV2013-05, Heavy Duty Wood Preservative (HDWP) - Risk Management Plan. See at: http://www.hc-sc.gc.ca/cps-spc/pubs/pest/_decisions/rev2013-05/index-eng.php

CELA jointly with the Canadian Association of University Teachers' prepared a response to the Notice of Intention to Develop Regulations respecting Asbestos - Canada Gazette, Volume 150, Number 51 - December 17, 2016 dated January 17, 2017. In this response, we indicated that Canada should take the necessary steps to advance the regulatory measures needed to prohibit asbestos in Canada, and ensure that "the comprehensive ban on asbestos in Canada must aim to reduce and prevent new incidences of asbestos related diseases." The impacts of asbestos in Canada have been devastating with significant loss of lives and devastation to families affected by asbestos. According to Statistics Canada, asbestos related diseases continue to rise with new cases of mesothelioma, a rare form of cancer caused by exposure to asbestos in the workplace, increasing from 335 cases in 2000 to 580 cases in 2013 and with another 1900 new cases of asbestos-induced diseases (e.g. lung cancers and asbestosis) expected on an annual basis.

Part of an effective national strategy on asbestos must also include expanding the Prior Informed Consent requirements under the Rotterdam Convention to include chrysotile asbestos. Prior to 2015, Canada's position on listing chrysotile asbestos under Annex III of the Rotterdam Convention has been in opposition to the listing. In 2015, Canada did not oppose the listing of chrysotile asbestos. This position was a dramatic shift for Canada. ***We urge Canada to align with the global community and Parties to the Convention in support of listing chrysotile asbestos to Annex III of the Convention. Given the commitments made by Canada to ban asbestos, an explicit expression of support to listing chrysotile asbestos is strongly encouraged as it is expected that there are remaining asbestos mining countries that will continue to stand in opposition to the listing. Canada should send a strong message in support of the listing of chrysotile asbestos during the plenary of the coming COP of the Rotterdam Convention.***

The Rotterdam Convention operates based on a consensus approach. Since the second meeting of the Conference of the Parties, efforts have been undertaken by Parties to review the Rules of Procedures as noted in UNEP/FAO/RC/COP.8/3 - Item 4 of the provisional agenda on Rules of procedure for the Conference of the Parties. These discussions are significant in the context of listing chrysotile asbestos under the Rotterdam Convention's Annex III. The unsuccessful listing of chrysotile asbestos over the years has been crippled by the approach to reach consensus. Substantial efforts are needed to apply the Rules of Procedure in these instances. Currently, Paragraph 1 of rule 45, relating to the adoption of decisions on substantive matters, reads as follows:

The Parties shall make every effort to reach agreement on all matters of substance by consensus. [If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, by the financial rules referred to in article 18, paragraph 4 of the Convention or by the present rules of procedure.]⁴

⁴ Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain

Canada should pursue and support decisions to delete the bracketed text of Paragraph 1 of Rule 45. The failure to adopt rule 45 (with removal of bracketed text) on the Rule of Procedures creates unnecessary hurdles for Parties interested in advancing efforts for Prior Informed Consent procedures that aim to support improved protection for human health and environment. ***CELA urges Canada to support the deletion of the bracketed text in Paragraph 1 of Rule 45 on Rules of Procedure.***

Closing Comments

We welcome the opportunity to discuss our comments and recommendations with you. Please do not hesitate to contact me at 416-960-2284 ext 7223.

Thank you for your consideration.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Fe de Leon, MPH
Researcher

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