



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

February 14, 2007

Director
Chemicals Sector Division
Pollution Prevention, Environment Canada
Ottawa, ON
K1A 0H3

Via email to the attention of:

France Jacovella: France.Jacovella@ec.gc.ca and Greg Carreau: Greg.Carreau@ec.gc.ca

Dear Ms Jacovella,

RE: Regulations on Perfluorooctane Sulfonate and its Salts and Certain Other Compounds
Response to Proposed Regulations in Canada Gazette, Part 1, Vol. 140, No. 50 – December 16, 2006

The Canadian Environmental Law Association (CELA) has closely monitored and provided detailed comments in response to the Canadian government's ongoing decision-making process concerning the environmental and health risks and associated regulation of perfluorochemicals.

In response to the above-noted Canada Gazette public notice, and as follow-up to several previous submissions on these matters, CELA offers the following comments.

We continue to express strong support for the addition of PFOS, its Salts and its Precursors to Schedule 1 of the *Canadian Environmental Protection Act* (CEPA) and generally support the approach taken in these implementing regulations with the following suggestions for clarification and improvement.

In particular, we strongly support the decision to strengthen these draft regulations over previous proposals with the extension of prohibitions to include imported items containing PFOS. This move demonstrates a significant step forward in addressing concerns related to these substances specifically and in regulating toxic substances in consumer products more generally. However, the proposal can be improved to ensure that it effectively prevents the import of such products.

First, the prohibition is clear that it applies to *all* items containing PFOS (with the exceptions noted). However, what is not entirely clear, and very much needs to be, is the list of chemicals included in this prohibition. The Regulatory Impact Analysis Statement (RIAS) to the draft regulation provides examples of relevant products. However, the regulatory language is clear that the prohibition applies to all products and the regulation does not specifically list individual

products. We support this approach. This kind of clarity and comprehensiveness is a dramatic improvement over the inefficiency and reactive nature of the more typical product-by-product approach followed under the *Hazardous Products Act*. However, this clarity needs to be extended to the chemicals themselves.

In particular, the RIAS notes that PFOS will be managed as a group. We also strongly support this approach but note that the regulation does not yet do so effectively. To do so would require a comprehensive list of these chemicals and clarity that the prohibition required in the regulation applies to all chemicals on the list.

The RIAS notes the following:

Given the conclusions of the screening assessment report, PFOS, ... will be managed as a group...with the objective of achieving the lowest level of releases to the environment that is technically and economically feasible from all sources.(Canada Gazette Part 1, December 16, 2006, pg 4268)

While the inclusion of imported consumer products is a marked improvement towards addressing “all sources” of PFOS, management of these chemicals as a group demands that a comprehensive list of which chemicals are included be provided. This step was not taken with the general manner in which the group of perfluorochemicals were added to Schedule 1 of CEPA. This situation can be remedied in these regulations by including direct reference to a comprehensive list.

Appendix 1 to the PFOS Risk Management strategy, published in July of 2006, provides a “List of PFOS, its Salts and its Precursors.” It also notes that the list “is not considered to be exhaustive and does not preclude PFOS precursors.” Such language is commendable in that it implies that more chemicals are to be considered as covered within the strategy.

Hence, the Appendix to the Risk Management strategy provides the beginnings of a comprehensive approach and list. We therefore recommend that these regulations include, either directly or by reference, a list that provides the full range of PFOS and its precursors to which the regulations apply. In the government announcement in December 2006 regarding the Chemicals Management Plan, it was estimated that about 50 PFOS would be captured under the proposed regulation. A comprehensive list can also be created via tapping into recent actions taken in countries around the world, particularly with respect to seeking ways to include these chemicals in the Stockholm Convention on Persistent Organic Pollutants. It is reasonable and necessary for these regulations to be very specific as to their application.

Moreover, this list can be used as a screen against which any applications for approval are received under the New Substances Notification regime. Applications for new substances on this list could be automatically and efficiently refused. If such requests are screened against a regulatory list, applications for new uses would also then receive equal treatment in terms of the applicability of these new regulations to consumer products.

In this light, CELA remains concerned that a different approach was taken recently with respect to the regulation of fluorotelomer-based substances. We note that a similar prohibition on the import of manufactured items was not accepted for the four fluorotelomer-based substances targeted for addition to the *Prohibition of Certain Toxic Substances Regulations*. In fact, the proposed regulations included a proposal to add a new annex that would exempt the prohibition of imports of manufactured items containing the four fluorotelomer based substances.

These four fluorotelomer-based substances have similar applications to that of PFOS and were found to be “toxic” under CEPA section 64 through the notification process of the New Substances Notification Regulations. The choice made in the draft PFOS regulations to extend their application to imported products should be just as rigorously applied to any future applications for new uses of chemicals from the larger group of perfluorochemicals.

In conclusion, we see these regulations as demonstrating an important first step towards accomplishing a regulatory approach to control and ultimately eliminate an entire group of chemicals on the basis of inherently dangerous properties. Alongside the improvements suggested above, we see the need to continue to advocate for further regulatory action on the broader group of perfluorochemicals, so that they are progressively eliminated, avoided in the future, and for which inherently safer alternatives need to be found.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Publication #562



Kathleen Cooper
Senior Researcher



Fe deLeon
Researcher