



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

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Existing Substances
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Transmission by email: David.Morin@ec.gc.ca

Dear David:

Re: Comments to draft Overview of The Existing Substances Program – Draft for Review

Further to our meeting on August 2, 2006, CELA is submitting this correspondence to highlight the comments we discussed as well as to provide additional input on the document, “Overview of The Existing Substances Program – Draft for Review”. We hope these issues are carefully considered as the government furthers its efforts to assess and manage substances under the DSL.

The list below is not exhaustive and is intended to highlight some of the issues and gaps identified in the document as well as in the government’s current approach to rolling out its post-categorization activities:

- 1) the document falls significantly short in its effort to outline a comprehensive plan for Canada’s assessment and management of substances under DSL. CELA and Environmental Defence, in letters dated July 7th, 2006 to the Ministers of Health and Environment as well as to the Deputy Ministers for Health and Environment, outlined a clear agenda for taking steps to address substances meeting the categorization criteria under CEPA. At this point in time, there is an expectation that the government should be proposing more details on their post-categorization activities.
- 2) the document lacks detail in the area of how specific assessments will be undertaken. The generality of the document is wholly unacceptable. The document does not provide any new additional information beyond that which was already presented during the past year as categorization was in progress.

More specifically, the absence of criteria and timelines for completing screening assessments on substances has been a focal point for ENGOs since the beginning of the categorization process. It is very concerning that government has not yet produced a

technical document outlining these issues, given the fact that categorization is nearing completion and no concrete plans have been put in place for enhancing transparency on these matters.

Other details that are absent but necessary in the document are:

- information on the triggers and factors which will guide the generation and collection of new data;
 - the types of modelling tools that will be used to complete assessments or to identify priorities for assessments;
 - how children's health issues will be considered in conducting assessments on substances;
 - how other information such as evidence of endocrine disruption, data from Canada's National Pollutants Release Inventory, etc. will be considered in the assessments;
 - how safe alternatives will be considered at the assessment phase
- 3) The absence of clear definitions for key concepts used in the document is very disturbing. Lack of definitions may potentially undermine the effectiveness of the government approach by opening the door to contradictory interpretations by stakeholders.

The document makes the assumption that concepts such as sustainable development, precautionary principle, weight of evidence, risk management and pollution prevention have the agreement and support of all stakeholders and have been applied in a consistent manner. This is not necessarily the case. Further, the document does not clarify what is meant by the term "risk communication" (section 2) or what the difference is between "substances" and "pollutants". A glossary of terms may be required.

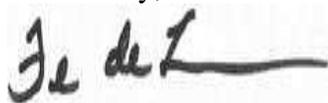
- 4) The document attempts to provide the policy and regulatory rationale for its approach by highlighting relevant federal policies and programs. However, several key federal initiatives and policies are absent from this section (Section 2 of the document), including the importance of the Federal Framework on Pollution Prevention and the Canada wide Standards. Not only is it necessary to include an explanation of these initiatives but to outline their role in Canada's approach to assessing and managing substances.
- 5) The title of the document is inappropriate as it implies a balanced and broad discussion of both the assessment and management processes. In fact, the document provides little or no guidance on how management options are developed, nor does it promote the need to eliminate some of the worst substances in current use in Canada. The document's main focus is on assessment.
- 6) The description of the various feeders in section 3 is very useful. However, substantive guidance and explanation on how these feeders will be applied is necessary. For example, more details are needed on how the results of categorization will influence the government's response to a public nomination of a substance that has not been categorized in. What type of information is considered adequate for a substance to merit further consideration? For those substances that have been prohibited or substantially

restricted by other OECD jurisdictions, Canadians should be provided with assurances that these substances will be prioritized and addressed in a timely manner through a precautionary approach. The government should require industry to provide data to demonstrate the safety of these substances within a strict timeframe; otherwise, they should be targeted as CEPA toxic.

- 7) The document effectively explains the need to promote an open and transparent process. The area that requires further attention regarding the public's role is in the section on sound science (Section 4, page 9). When external reviews are undertaken on draft risk assessments, the government should ensure that these are carried out in a more open forum or through multi-stakeholder dialogue. The current approach does not exclude the possibility that bilateral discussions to review draft assessments will be the approach adopted. External peer review should ensure that all reviewers have access to all the same information that is considered to support or challenge the findings of the assessment.
- 8) The document fails to explain how the state of environment or state of science reports currently being completed and released by the departments are considered in the proposed approach. How are comments submitted by the public on these reports impact the conclusions for assessment, and how do they impact the formal public comment period outlined in CEPA?

We hope these comments are helpful.

Yours truly,



Fe de Leon
Researcher



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