



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

Citizens' Network on
Waste Management

Great Lakes United



**Environmental Non-Governmental Organizations' Comments
On Proposed Regulatory Provision
for an Extension to the 2009 End-of-Use Deadline
for the Proposed PCB Regulations**

Submitted to:
Environment Canada

Prepared for:
Canadian Environmental Network
Toxics Caucus

Prepared by:
John Jackson
Great Lakes United and Citizen's Network on Waste Management

Fe de Leon
Canadian Environmental Law Association

Daniel Green
Société pour vaincre la pollution

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ENGO Comments Regarding Environment Canada's Proposed Regulatory Provision for an Extension to the 2009 End-of-Use Deadline for the Proposed PCB Regulations

Recommendations:

1. We support Environment Canada's proposal to maintain the 2009 end-of-use deadline for PCBs.
2. We support Environment Canada's proposal to allow regulatees to request an extension to the end-of-use deadline by a maximum of five years to 2014, provided none of the provisions in Environment Canada's proposal are weakened.
3. We urge Environment Canada to require the inclusion of the following information in an application for extension:
 - a. records of inspections of the PCBs in equipment, etc, for the past 5 years to provide certainty of its safety;
 - b. a plan outlining the proposed location for storage of the PCB-containing equipment and the proposed type of technology to be considered for destruction and elimination of PCBs.
4. We urge Environment Canada to change the word "shall" in section 19. (2) to "may" to maintain the Minister's discretionary power.
5. We urge Environment Canada to add the following requirement to the request for extension process:
 - a. The public should be given a minimum of sixty days to comment on any request for end-of-use extension. The request should be posted on the CEPA registry and advertised in the local newspapers where the PCBs are in use at least sixty days prior to the end of the comment period.
6. We urge Environment Canada to add the following requirements to the annual reports from those granted extensions:
 - a. Persons to whom extensions of the deadlines are granted should be required to provide in their annual report an estimate of the quantities of PCBs released to the environment during the year.
 - b. Persons to whom extensions of deadlines are granted should be required to provide in their annual report the quantity of PCBs sent off-site for destruction and the technological process used for this activity, if applicable.
 - c. Annual reports from those who have been granted extensions should be available to the public.
7. To facilitate the public's right-to-know, Environment Canada should publish maps showing the facilities where extensions have been granted for the use of PCBs beyond the 2009 deadline. To facilitate this mapping, latitudinal and longitudinal coordinates should be required in the request for extension application.
8. Environment Canada should assess all existing and future permits for PCB destruction facilities in Canada to ensure that they meet the CEPA objective of virtual elimination of PCBs from the environment.

Comments

The Canadian Environmental Law Association, Citizens' Network on Waste Management, Great Lakes United, and Société pour vaincre la pollution have been chosen through the Canadian Environmental Network's delegate selection process to put together comments on Environment Canada's *Proposed Regulatory Provision for an Extension to the 2009 End-of-Use Deadline for the Proposed PCB Regulations*. These views do not necessarily reflect the views of all environmental groups across Canada.

Maintaining the 2009 End-of-Use Deadline for PCBs

The continued use of PCBs increases the possibilities for accidents resulting in major releases of PCBs into the environment and on-going slow leakage from PCB-containing equipment. Therefore, we are pleased that Environment Canada has not responded to the requests of regulatees by proposing to grant blanket exemptions to the 2009 deadline.

In addition, this proposal to provide a discreet and formal process to review each application on a case-by-case basis is necessary for Canada to meet its obligations under its domestic and international commitments to eliminate the use and storage of PCBs.

Recommendation: We support Environment Canada's proposal to maintain the 2009 end-of-use deadline for PCBs.

Allowing Applications for Extensions of Deadline

We recognize that there may be cases in which it would be reasonable to grant strictly limited-term extensions and, therefore, support Environment Canada's proposal to allow the regulated community to apply for an extension in the two types of cases that Environment Canada has specified in its proposal:

- the equipment is being replaced with equipment that is engineered to order, and it is not technically feasible to replace the equipment on or before December 31, 2009, or
- the equipment is located at a facility that is scheduled for permanent closure on or before December 31, 2014.

Critical to our acceptance of these possible extensions are the following provisions that are in Environment Canada's proposal:

- That the extension not go beyond 2014.
- That the only argument for a delay in replacing PCBs is that it is not "technically feasible." Any reference to "economic feasibility" would render the proposal unacceptable.
- That "all necessary measures" are being taken to "minimize or eliminate any harmful effect of the PCBs in the equipment on the environment and human health."
- That a plan has been prepared to end the use.
- That a plan has been prepared for monthly inspections as long as the PCBs are in use.

Weakening of any of these proposed provisions is not acceptable.

Recommendation: We support Environment Canada's proposal to allow regulatees to request an extension to the end-of-use deadline by a maximum of five years to 2014, provided none of the provisions in Environment Canada's proposal are weakened.

In addition to the information required in an application for extension in the proposed regulation, the government should require the inclusion the information in the following recommendation to promote transparency and accountability.

Recommendation: We urge Environment Canada to require the inclusion of the following information in an application for extension:

- records of inspections of the PCBs in equipment, etc, for the past 5 years to provide certainty of its safety;
- a plan outlining the proposed location for storage of the PCB-containing equipment and the proposed type of technology to be considered for destruction and elimination of PCBs.

Environment Canada's proposal says that the Minister "shall" grant the extension provided certain conditions are met. We believe that this limits the Minister's discretion in exercising her/his powers because it implies that the applicant has a right to the extension. Prevention of harm to human and wildlife health from PCB-contamination is so critically important that the Minister should maintain a high degree of discretion on this matter.

Recommendation: We urge Environment Canada to change the word "shall" in section 19. (2) to "may" to maintain the Minister's discretionary power.

The continued use of PCBs may be a threat to those living in the community where the facility is located. Therefore, the public should have the right to comment on any request for extension of PCB use. The public should be given a comment period that is at least sixty days in length. A time of less than sixty days would not provide community members working on their volunteer time with enough time to investigate the proposed extension, to talk with their neighbours about the proposal, and to talk with the owner or operator of the facility that is asking for the extension.

Notice of a request for extension to the PCB end-of-use deadline should be published in local newspapers at least sixty days prior to the end of the public comment period. Notice on the CEPA Registry is inadequate because community members cannot be expected to be checking this Registry. Community members probably are not even aware that the CEPA Registry exists for this purpose.

Recommendation: The public should be given a minimum of sixty days to comment on any request for end-of-use extension. The request should be posted on the CEPA registry and advertised in the local newspapers where the PCBs are in use at least sixty days prior to the end of the comment period.

We support the requirement in section 19. (5) of Environment Canada's proposal for an annual report from anyone to whom an extension of the deadline has been granted. The information required in the annual report should be expanded to include an estimate of the quantity of PCBs released to the environment during the year as a result of an accident, spill or fugitive emission during use. The annual report should also include the quantity no matter how small of PCBs sent off-site for destruction and the technological process used for this activity, if applicable. These pieces of information are critical in assessing whether the facility owners and operators are doing an adequate job of protecting the environment.

In addition, it should be specified that the annual report must be made available to the public.

Recommendation: Persons to whom extensions of the deadlines are granted should be required to provide in their annual report an estimate of the quantities of PCBs released to the environment during the year.

Recommendation: Persons to whom extensions of deadlines are granted should be required to provide in their annual report the quantity of PCBs sent off-site for destruction and the technological process used for this activity, if applicable.

Recommendation: Annual reports from those who have been granted extensions should be available to the public.

Because of their threat to the environment and human health, PCBs have been designated by the Canadian government as CEPA toxic and are under Track 1 with a target of virtual elimination from the environment. The public has a right to know threats to their health and to the environment that are in their communities. Therefore, Environment Canada should make information on the location of PCBs easily accessible to the public. To facilitate this, we recommend that Environment Canada provide maps at a 1:10 000 scale showing where facilities are located that have been granted extensions for the use of PCBs beyond the 2009 deadline to end their use.

To facilitate this mapping, the applicant should be required to submit details of the location of PCB equipment and storage sites that included latitudinal and longitudinal coordinates under 19(3)(e) in addition to the " name, civic address, function and technical description of the facility where the equipment is located."

Recommendation: To facilitate the public's right-to-know, Environment Canada should publish maps showing the facilities where extensions have been granted for the use of PCBs beyond the 2009 deadline. To facilitate this mapping, latitudinal and longitudinal coordinates should be required in the request for extension application.

The Disposal of PCBs

We support the removal of PCBs from use and from storage as planned in the PCB regulations. However, it is imperative that Environment Canada ensure that PCBs sent to

so-called “destruction facilities” do not result in environmental contamination problems. Unfortunately, most high-level PCBs taken out of use and storage in Canada are sent to the Swan Hills Waste Treatment Centre in Alberta. This facility has had a disastrous impact on the surrounding environment.

In 1997, Alberta Health and Wellness issued food consumption advisories for wild game and fish caught within thirty kilometers of the Swan Hills facility. After continued extensive studies, Alberta Health and Wellness decided in 2004 that conditions were such that the food consumption advisories should stay in place.¹ Those recommendations to restrict the consumption of wild game and fish remain in place today.

A study by Blais et al of PCBs around the Swan Hills facility² found elevated levels of PCBs in spruce needles and snow east of the facility and in a sediment core from a nearby lake. The Alberta Health and Wellness studies found elevated levels of PCBs and dioxins and furans (by-products of burning PCBs) in the liver and muscle of deer and brook trout.

The Alberta Health and Wellness original food consumption advisory and the Blais study were stimulated by a major accidental release at the plant in October 1996. However, their studies showed that elevated levels of PCBs and dioxins and furans are also caused by on-going regular emissions from the plant. The Blais study found that PCB levels in vegetation, snow and sediments had been gradually increasing ever since the opening of the hazardous waste treatment plant in 1987. The Alberta Health and Wellness studies showed that levels continued to rise through their most recent reported studies in 2001.

It is imperative that Environment Canada ensure that facilities permitted to destroy PCBs do not themselves become a source of PCBs. The federal government should not rely on provincial permitting processes for determining whether PCBs may be sent to a facility for treatment or “destruction”.

Recommendation: Environment Canada should assess all existing and future permits for PCB destruction facilities in Canada to ensure that they meet the CEPA objective of virtual elimination of PCBs from the environment.

The proposed amendment to the PCB Regulation does not include a requirement for facilities using PCB-containing equipment and PCB storage sites to include plans for destruction. To promote transparency and accountability by facilities, it is necessary that the PCB Regulation acknowledge and refer to the necessary requirements identified in the other related PCB regulations that address destruction of PCBs under the Federal

¹ Alberta Health and Wellness, *Swan Hills Waste Treatment Centre Long-Term Follow-up Health Assessment Program 1997-2002*, June 2004.

² Jules Blais, Kenneth Froese, Lynda Kimpe, Derek Muir, Sean Backus, Michael Comba and David Schindler, “Assessment and Characterization of Polychlorinated Biphenyls Near A Hazardous Waste Incinerator: Analysis of Vegetation, Snow, and Sediments”, *Environmental Toxicology and Chemistry*, Vol. 22, No. 1, 2003, pp. 126-133.

Mobile PCB Treatment and Destruction Regulations (1990). We have included a recommendation in the information required under section 19(5) to reflect this need.

The PCB Regulation

Our endorsement with some suggestions for improvement of Environment Canada's *Proposed Regulatory Provision for an Extension to the 2009 End-of-Use Deadline for the Proposed PCB Regulations* should not be interpreted as endorsement of all parts of Environment Canada's new PCB Regulations. During the consultation period over the past several years on those regulations, environmentalists have raised concerns and made suggestions. We have not repeated these here because they are beyond the scope of Environment Canada's current consultation topic.

Submitted by:

Fe de Leon, Canadian Environmental Law Association, tel: 416-960-2284,
deleonf@lao.on.ca (CELA Publication #597)

John Jackson, Citizens' Network on Waste Management and Great Lakes United,
tel: 519-744-7503, jjackson@glu.org

Daniel Green, Société pour vaincre la pollution (SVP), tel: 514-844-5477,
greentox@total.net

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