

December 30, 2008

Honourable Jim Prentice  
Minister of the Environment  
Environment Canada  
Minister's Office (TLC)  
10 Wellington Street  
Gatineau, Quebec  
Canada K1A 0H3

***Transmission by fax: (819) 953-0279***  
***Transmission by email***

Dear Minister Prentice:

**Re: Domestic Substances List Inventory Update: Scope and Process**

The Canadian Environmental Law Association (CELA) ([www.cela.ca](http://www.cela.ca)) is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate for environmental law reform. It is also a legal aid clinic that provides legal services to citizens or citizens' groups who are unable to afford legal assistance. In addition, CELA has also undertaken substantive environmental policy and legislation reform activities in the area of access to justice, pollution and health, water sustainability and land use issues since its inception. Under its pollution and health program, CELA has been actively involved in matters that promote the prevention and elimination of toxic chemicals addressed in the *Canadian Environmental Protection Act (CEPA)*, including the categorization process and implementation of the Chemicals Management Plan.

Chemical Sensitivities Manitoba (CSM), a volunteer organization, was founded in 1997 by four individuals who saw the need to address the affects of toxic chemicals on human health and the possible link between the onset of chemical sensitivities and chemical exposure and, in particular, chronic low-level exposure. CSM raises awareness of the presence of toxic chemicals in the home and the environment and strongly advocates for the safe substitution of these toxins.

For your careful consideration, CELA and CSM with the support of the undersigned Canadian environmental and health non government organizations (NGOs) (listed below) are submitting the following comments to respond to an important initiative undertaken by your department to update the Domestic Substances List (DSL). The DSL was compiled under the *Canadian Environmental Protection Act (CEPA)* to list all substances in use, manufactured or imported in Canada between January 1, 1984 - December 31, 1986. The DSL was published in the *Canada Gazette* in 1994 and listed approximately 23,000 substances.

The DSL remains Canada's only inventory that lists substances in use, manufactured or imported in Canada; the update of the DSL is the foundation for understanding the type and number of substances in use in Canada. It is also the list of chemicals the government uses to identify existing substances that require assessment and management activities. The DSL also provided the basis for which the government conducted its categorization process required under CEPA between 1999 and 2006. Through categorization, it was recognized that the information provided to the DSL was 20 years old.

We want to take this opportunity to thank your department for initiating a process to update the DSL through a stakeholder workshop that was organized in Ottawa in November 2009.

In response to this workshop we have several substantive comments focused on the process to undertake the DSL update and the scope of the DSL update.

## **Process:**

We want to express our extreme disappointment in the current government process to engage stakeholders on the DSL update was organized with very short notice, therefore preventing more NGOs from participating in the workshop. As part of the Chemicals Management Plan (CMP), the government noted at several meetings since 2006 that efforts to update the DSL would be undertaken. However, no substantive discussions with public interest organizations to the scope and process for a DSL update was organized or requested. It is our view that the half-day workshop coordinated in November 2008 on this initiative does not demonstrate full transparency or effective public engagement. Very short notice was provided to potential NGO participants to this workshop which contributed to lack of time for effective and meaningful engagement. The limited engagement by NGOs is further entrenched by the lack of background documents provided by government to outline its proposed approach to workshop participants, and the very timeframe provided for written feedback to the information presented. While NGOs would like to respond to the government's proposal on the DSL Inventory Update, the short turn around time in which to do so is not very practical. This approach implies that there is very little opportunity to change the government's course of direction for the proposed work to be undertaken on the DSL.

**Recommendation:** We urge the government to establish a multi-stakeholder taskforce for the DSL Update. The taskforce should be modelled after the taskforce established in the early 1990s for the development of a national inventory on pollutant releases, which proved to be an effective process for developing an inventory. The taskforce should be mandated to investigate issues related to the DSL update, develop consensus based recommendations for updating the DSL and identify issue areas that require further discussions. The process was very effective for the development of the National Pollutant Release Inventory (NPRI).

Our comments on the DSL Inventory Update, listed below, are brief due to time constraints. We are presenting comments to ensure that an update of the DSL is comprehensive and useful for work to be undertaken under the CMP and utilize the range of tools presented under CEPA relating to other substances not identified through categorization.

We urge you to take these comments into consideration. We are available to discuss or provide further detail, if needed.

The scope of the DSL Inventory Update should consist of the following elements:

### **1) Scope of DSL Update should be Relevant and Comprehensive**

- a. *The 23,000 substances identified under the DSL as of 1994 should be targeted for the DSL update.* The government's proposal is to conduct a partial DSL Update that would focus on the substances identified through the categorization process plus substances considered "uncertain." We do not support this approach as it would result in a DSL inventory that does not reflect the full list of substances that are in use, manufactured and imported in Canada. An update of the DSL (substances used between 1984-1986), should include:
  - i. results of categorization;
  - ii. CEPA "toxic" chemicals; and
  - iii. Full list of DSL substances (23,000) including those substances targeted for Significant New Activities (SNACs). Identification of SNACs would confirm those substances that require additional notification.

The failure to conduct a comprehensive update may mean that Canada's efforts to understand the type and amount of chemicals that are in use, manufacture and imported in Canada would be set back at least 20 years.

- b. *An update should capture chemicals added to DSL through the New Substances Program.* To date, several hundred chemicals have been added to the DSL through the New Substances Program. There is no government inventory to outline current level of use, manufacture or import of these chemicals. The Canadian public do not have a comprehensive understanding where chemicals evaluated through the New Substances Program have increased in use, manufacture or import since being added to the DSL.
- c. *Establish better linkages between current chemicals data such as the National Pollutant Release Inventory (NPRI) (on pollution releases and transfers) and the results of the Chemicals Management Plan (CMP - focused on the results of categorization) are appropriate and necessary for supporting effective assessment and management processes on toxic substances.* Currently, Canada's inventories and the CMP remain loosely linked. For example, not all substances identified under categorization are reported under the NPRI and not all pollutants reported under NPRI are a focus under the CMP. The use, manufacture and import data collected through the DSL should be publicly accessible and linked by government on those substances reported through under NPRI.
- d. *Approach for DSL update should not follow a phased-in process.*
  - i. The government proposals to update the DSL have focused only on those substances identified through categorization. No proposals have been outlined to include the full list of DSL substances. We would object to a phased-in approach to update the DSL as it will mean that decision-makers and the public do not have a good understanding of what chemicals are in use, manufactured or imported in Canada. Through the CMP, the government is receiving data on chemicals of high concern through the Industry Challenge through mandatory surveys (section 71) and voluntary questionnaires. However, no information is being submitted by industry for chemicals that are not identified as high priority chemicals under the CMP. Nor is there a sense of confidence that toxicity data is submitted on substances through section 70 of CEPA.

It is our view that attention should be provided by government to collect data on those substances that are not addressed presently under the CMP. Updated information on DSL chemicals will support the utility of various CEPA tools such as proposing substances for addition to the priority substances list under CEPA (section 77(3) – Consideration of request)<sup>1</sup>. An update of the DSL will address this gap.

## **2) Annual Reporting to Public on DSL Information Required**

- a. The public should have access to current data on the type of chemicals that are in use, manufactured, and imported in Canada on an annual basis. The government proposals, as presented in the November 2008 DSL Update workshop, outline a list of essential areas for data collection which should be reviewed and discussed further.
- b. Evaluating data collected is essential in making the database useful

---

<sup>1</sup> Under the Canadian Environmental Protection Act, 1999, section 76(3) states:

*Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substances to the List.*

- i. The government should conduct an analysis of the data collected. For example, reviewing the trends in use levels and types of uses of chemicals are integral to public reporting.

The DSL information, particularly data on trends should be useful to establish priorities for future assessments or conduct follow-up on past decisions made by government to act on chemicals. For example, there are a number of chemicals identified in Batches 1-3 of the CMP which have been identified as CEPA toxic substances through draft or final assessment results and for which the government plans to monitor changes in use patterns. Currently, it is unclear how the government plans to achieve this. The update to the DSL is one way by which this could be achieved.

- c. The information collected under the DSL update should be released annually, similar to the government's approach to the NPRI annual update. The government's full DSL Update should draw upon its experience in collecting data from facilities through its NPRI program.

### **3) Thresholds for Reporting under DSL Update on Chemicals Need to Reflect Use of Chemicals in all Industrial and Consumer Uses**

- a. Reporting under the DSL Update for chemicals should be lowered from current 100 kg to capture the full range of uses for each chemical such as for scientific purposes. Furthermore, a reduction in reporting threshold of 100 kg is appropriate for other areas of usage since some substances are used below that threshold but could possibly have significant health and environmental effects. A lower threshold would result in a greater number of facilities reporting its use, manufacture and import data to the DSL.
- b. Require additional details of use in consumer products and industrial applications should they be beyond use codes.
  - i. Chemicals in products that will come into contact with children should be identified. Currently, government proposals presented in November 2008 outline the government's intent to include this data requirement. We support this inclusion.
  - ii. The data collected should also include the type of imported finished products in which the substance may be utilized.
  - iii. Substances that have been identified as a CEPA toxic chemical should be identified appropriately. The government proposals do not include proposals to track current use levels of CEPA toxic chemicals in a substantive way. This gap should be addressed.
- c. Use the DSL Update to operationalize Section 70 of CEPA by requiring the submission of toxicity data, in particular, on endocrine disruption and neurodevelopmental toxicity. A focus should be on those substances identified through categorization and CMP regardless of whether the chemical is identified in the Industry Challenge.

### **4) Information should be web based and searchable**

- a. In addition to an Annual Report (as describe under #2, above), the DSL Update should be web based and searchable by CAS Registry number, scientific names and common names. Many chemicals have several common names so multiple options for searches should be made available.
- b. Public access to DSL information on substances should also include linkages to the various CMP activities, NPRI and other relevant Canadian regulations and programs.

## 5) Other issues

While we raised a number of important issues and elements related to a comprehensive DSL Update, there are several issues we have not discussed, but remain important. For example, the issues related to confidentiality provisions continue to limit the public's access to data. Further discussions on related to these matters are appropriate in updating the DSL.

To conclude, should the update of the DSL only focus on a partial update, we are concerned that Canada's efforts to keep pace with other jurisdictions in assessing and managing chemicals in an effective and comprehensive manner may be compromised. **While the government has directed much of its resources to implement the CMP, we strongly urge that the DSL Update be comprehensive in scope rather than merely focused on the results of categorization. All chemicals in use, manufactured or imported in Canada should be monitored on an annual basis.**

We welcome an opportunity to discuss this matter with you in greater detail. Please do not hesitate to contact us. Thank you for your consideration.

Yours truly,



Theresa McClenaghan  
**Canadian Environmental Law Association**  
Tel.: 416-960-2284



Sandra Madray  
**Chemical Sensitivities Manitoba**  
Tel.: 204-256-9390

*CELA Publication 636*  
*ISBN No. 978-1-926602-08-0*

The following organizations support this letter:

Rohini Peris, **Association pour la santé environnementale du Québec**, Tél.: 514-683-5701  
Gideon Forman, **Canadian Association of Physicians for the Environment**, Tel.: 416-306-2273  
Derek Coronado, **Citizens Environment Alliance of southwestern Ontario**, Tel.: 519-973-1116  
Mary Richardson, **Crooked Creek Conservancy Society of Athabasca**, Tel: 780-675-3144  
Mark Butler, **Ecology Action Centre**, Tel.: 902-429-5287  
Gabrielle Kretschmar, **New Brunswick Partners in Agriculture**, Tel.: 506-488-2407  
Kathleen Ruff, **RightonCanada.ca**, email: kruff@bulkley.net  
Sean Griffin, **Toxics Free Canada**, Tel: 604-785-6771

c.c. George Enei, Environment Canada; Canadian Environmental Network