



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

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Submitted via e-mail: mary_korpan@hc-sc.gc.ca

Dear Ms Korpan,

Re : Proposed *Phthalates Regulations* for Soft Vinyl Children's Toys and Child Care Articles

The Canadian Environmental Law Association (CELA) is a non-profit public interest organization and legal aid clinic providing legal services to low income and vulnerable Ontario communities. We also undertake law reform, public legal education and community development work that advances protection of the environment. CELA has a longstanding interest and involvement with the regulation of toxic substances in the environment and consumer products. One of our priority areas of focus is children's environmental health, an area in which we have conducted extensive research and law reform advocacy on the greater vulnerability of children to environmental contaminants.

We write today in response to the above-noted consultation concerning regulation of phthalates in children's articles.

We wish to strongly support this proposal to harmonize Canadian regulation of six phthalates with actions already taken in the United States and the European Union.

We also wish to support the "consequential" amendment to Subsection 12(2) of the *Hazardous Products (Toys) Regulations*. As clarified with you via email, we understand this amendment to mean that it will provide the assurance that only those plasticizers that are currently considered acceptable for use in the manufacture of food packaging materials and food containers will be considered acceptable to be used in plasticized toys for children under 3 years of age at concentrations up to 1%. Further, we understand that this amendment ensures that the 6 phthalates in the proposed Phthalates Regulations are excluded from the allowance of plasticizers to be used at concentrations up to 1% and that if used, the six phthalates must not exceed the concentration of 0.1%.

We also wish to emphasize our support for statements made in the Regulatory Impact Analysis Statement (RIAS) discussion about the consultation held during 2007. The RIAS notes a

comment from a trade association representing the plastics industry that seeks a higher regulatory level of 3% and also requests that the prohibition be applied only to children's products "intended to be mouthed" since young children will mouth anything. The RIAS states that Health Canada does not support these changes, noting the following:

... limiting the prohibition to products intended to be mouthed by young children is not considered by Health Canada to be sufficiently protective of children's health. It is recognized that young children, particularly once they become mobile, mouth a variety of items in the home, including items not intended to be mouthed, since this is how these children explore their world. It is also recognized that parents cannot always be watching their children and controlling what they put in their mouth. It is impossible and impractical to control through legislation what people have in their homes or what children put in their mouths. However, it is a priority for Health Canada to set legislation which ensures that children's products are as safe as possible. A prohibition limited in scope to products intended to be mouthed by young children is too narrow to be protective of health given that an estimated 75% of items mouthed by young children are those not designed for or intended to be mouthed according to a study on *Research into the mouthing behaviour of children up to 5 years old* (July 2002) by the Consumer and Competition Policy Directorate, Department of Trade and Industry, United Kingdom, available at www.berr.gov.uk/files/file21800.pdf. This study also found that nearly half of all the toys and other objects mouthed by young children were made of plastic, likely because plastic is so common in the home. A broader product scope is required for the prohibition.

We highlight this statement because it is the kind of logic describing the real-world circumstances of how children live, play and share toys and other objects in their environments. This reasoning should be consistently applied across all product regulation to avoid and reduce children's exposures to toxic substances in consumer products.

Finally, we wish to note that the RIAS does a reasonable job of noting the extensive body of scientific literature that exists in support of regulating these six phthalates. In particular, it provides an indication that a more thorough canvassing of the literature was done to redress the fact that the federal government's existing assessment reports, conducted under the *Canadian Environmental Protection Act* (CEPA) and by the Consumer Products Division at Health Canada, are excessively out of date. However, the RIAS does not include reference to extensive human biomonitoring data, available from large datasets in the US and other countries, that finds phthalate exposure to be ubiquitous in the human population. The RIAS also largely dismisses concerns about phthalate exposure from multiple additional sources and does so by relying upon the CEPA assessments of three phthalates that are ten to fifteen years out of date.

Specifically, the RIAS notes:

CEPA assessments of DEHP, DBP and BBP showed that the major exposures are from mouthing of soft vinyl children's products by young children (DEHP) and ingestion of food by the general population (DEHP and BBP). Exposures to all three phthalates from ambient

air, indoor air, drinking water and soil are considerably lower and not of concern to health. Since the presence of phthalates in the environment could be attributed in part to leaching of phthalates from vinyl consumer products during use or after disposal, and given that these levels are very low, it is reasonable to conclude that vinyl consumer products that contain phthalates, other than the products subject to this regulatory proposal, are not harmful to the health of Canadians. A joint effort on risk communication between Health Canada and industry could be considered.

We note several concerns with these statements. First, as noted above, the CEPA assessments, on their own, are not a reliable source of information as they are seriously out of date. For example, they did not address two key exposures sources of concern – breast milk and house dust, and nor do they address the cumulative impact of multiple phthalates from multiple exposures sources nor evidence of toxicological properties of phthalate metabolites. The conclusion of “not of concern to health” is highly debatable; it certainly cannot be supported by the woefully out of date information contained in the CEPA assessments. On this basis, we strongly oppose the suggestion of “a joint effort on risk communication between Health Canada and industry” unless and until a more rigorous review of multiple sources of multiple phthalates and their metabolites is undertaken and a conclusion of “not of concern to health” is widely agreed upon by recognized and impartial experts.

In conclusion, we strongly support the proposed regulation of these six phthalates and recommend that the level of 1000 mg/kg be consistently applied to the consequential amendment to the *Hazardous Products Act (Toys) Regulation*.

All of which is respectfully submitted.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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