

April 15, 2011

Bob Krauel
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transmission by email

Re: Comments on Proposed Pollution Prevention Planning Notice for Bisphenol A (BPA) – Consultation March 16, 2011

Dear Mr. Bob Krauel:

As a follow-up to the March 16, 2011 consultations on Proposed Pollution Prevention Plans for Bisphenol A, the Canadian Environmental Law Association (CELA) and Chemical Sensitivities Manitoba (CSM) are submitting the following comments for your further consideration. These comments are intended to accompany and in some cases, expand on the comments we made during the BPA consultations.

However, it should be noted that a joint submission dated December 15, 2010 in response to the *Canada Gazette*, Part I: Notices and Proposed Regulations, Vol. 144, No. 42 (October 16, 2010) for proposed P2 plans for BPA, continue to be relevant for your department's on-going BPA industrial effluent consultation.

In this submission, we highlight a few of the substantial issues that were not adequately addressed in the March 16th, 2011 consultation. It is our view that further improvements to the issues noted below are required before we can fully support the provisions outlined.

Issues:

- 1) The absence of proposed targets for reduction or elimination of the toxic substance and timelines for achieving targets does not ensure the overall reduction or elimination of the targeted toxic chemical.
- 2) The perpetuation of control measures will not achieve pollution prevention in the long term.
 - The government has proposed P2 plans as the single option to manage releases of BPA to the environment. We urge the government to consider other CEPA measures, in particular regulatory measures that will build on efforts to achieve use reduction of BPA.
- 3) Proposed threshold (100 kg) for requiring P2 plans has been set too high; this threshold does not require all facilities to develop pollution prevention plans.

- There is on-going concern that all users will not be required to prepare and implement P2 plans. It is uncertain how many facilities will not be required to meet the requirements of the P2 planning notice.

4) Opportunities to promote alternatives in a pollution prevention approach are limited.

- Although the proposed P2 plans mention the consideration given to alternatives, these proposed requirements are not mandatory. It remains uncertain whether the use of P2 plans will result in significant shifts by industry to find and use safe alternatives to BPA.

5) Consideration of full life cycle is absent in P2 plans.

- The proposals presented continue to focus on emissions to water only. Risk management options should address BPA releases to all environmental media.

We offer additional comments on some of the issues noted above. The following comments are intended to address issues raised in the presentations made during the March 16th, 2011 consultation.

➤ **Presentation: Background and Process Overview**

Page 5: Why Propose a P2 Planning Notice?

- Since most facilities examined in the socio-economic study did not expect to release BPA into the environment, it is unclear if the study also included monitoring data that would support this claim. To validate this comment, the government should include a requirement for industries to submit data through testing to confirm no releases of BPA to the environment.

➤ **Presentation: BPA Risk Management Instrument Development: Actions Taken to Date**

Page 4: Proposed Risk Management Actions

- Second bullet under 'considerations' – EC notes that “the media of concern is the release to water”. The effects of separating issues relevant to health and environment are apparent in these discussions. Health Canada should be as concerned about the releases of BPA to food and drink from food packaging materials containing BPA. So far, measures preventing BPA migration to food have not been sufficiently aggressive, particularly for products used by babies/children and pregnant women. Health Canada has not provided a venue for discussing any follow-up to its efforts to address BPA releases from food and drink packing materials. In this regard, Health Canada and Environment Canada should enhance their efforts with all stakeholders to

discuss the full scope of concerns that may exist with regards to BPA releases that affect the environment and health.

- Third bullet under “considerations’ - EC should specifically state what other sources will be investigated.

Page 5: Scope of Application

- Under Comments, first bullet –Regarding unintentional and residual users, have any of them been monitored for releases so that their exclusion could be justified? In an attempt to better understand and quantify the level of BPA releases to the environment, CELA and CSM urge the government not to apply such an exemption until further investigations are undertaken to evaluate the BPA releases from these facilities.
- We provided substantial comments in our original submission of December 15, 2010 regarding the proposal by EC to apply “a minimum threshold of 100 kg”.
- EC should provide appropriate documentation to justify the application of the 100 kg threshold in an Appendix.
- Under “Considerations”, bullet two – The focus on monitoring is on environmental media. Our organizations think that it is essential to have a better understanding of the BPA monitoring program including such elements as release timelines and frequency of BPA monitoring. Our organizations urge that monitoring programs should include longitudinal monitoring for certain locations across Canada including the Great Lakes, arctic regions, and indigenous communities. In addition, a report on the significance of the data is seen as being essential to the general public.

Page 6: Exemptions

- The timeline for the assessment of the BPA monitoring data from the pulp and paper recycling sector should be clearly defined in the government document (even though it was stated in another presentation).
- Our organizations have on-going concerns about the presence of BPA in thermal paper cash register receipts and we recognize that this was not fully investigated by EC. It is our view that the government should review and strengthen the existing Pulp and Paper Regulations to address BPA releases from deinking processes. Furthermore, it may be too premature to provide an exemption to the Pulp and Paper sector for deinking activities without a public review of the findings of the pulp and paper effluent monitoring efforts.

Page 7: Economic Impact

- Comment – We do not support the comments made. To create a level of certainty in the outcome, a regulation is preferred. The economic considerations have only focused on the industry but no additional focus has

been made to consider the potential impacts to the environment that may be required.

- Considerations – As noted in our introductory commentary, the use of safe alternatives is not a mandatory requirement. This weakens the P2 planning provisions. The federal government should coordinate a multi-stakeholder taskforce to investigate safe alternatives to BPA in various industrial sectors.

Page 9: Sampling and Analysis

- To be discussed further on.

➤ **Presentation: Overview of Socio-Economic Study and Monitoring Results**

Page 5: Key Findings in the Study

- Although BPA releases to the aquatic environment have been significantly reduced, special attention should be paid to the differences in the effective removal of BPA from waste water treatment plants (WWTPs) as this would impact on estimated releases of BPA to surface water. Currently, the range of BPA removal is between 15-92%. The range of effective removal is too wide and the government should not rely on WWTPs to address BPA releases. It is further noted that it is unclear how many of the communities across Canada are not serviced by secondary WWTPs where the removal levels for BPA are between 80-99%. The primary focus on a prevention strategy is preferred.
- The range for the number of facilities (45-80) meeting the 100 kg threshold is very wide. We have provided comments on the uncertainty regarding the number of facilities that may not be captured in the notice. The 100 kg threshold should be removed so that all facilities are required to report. The Investment Casting sector has been identified as the most significant contributor of BPA release to the aquatic environment. Additional information should be released to better understand how facility operations from this sector result in BPA releases. Furthermore, there needs to be disclosure on the coordination and communication activities that have been undertaken with this sector to discuss the approaches that may be taken to reduce BPA releases.

Pages 7 & 10: End user: Usage and Release

Epoxies (slide 7)

- It was stated that the three largest epoxy manufacturing facilities in Canada are no longer using BPA. Is EC able to provide further information on why these facilities have stopped using BPA and what has replaced BPA, if applicable? Finally, if the alternatives to BPA have been applied, does EC

know if these alternatives have been assessed for their safety to health and the environment?

Metal Can Manufacturing (slide 10)

- It is noted that facilities in this sector currently do not release effluent containing BPA. However, it would be useful to know if BPA is released in other phases of the manufacturing process in this sector? If so, how is BPA releases captured and managed? Our concerns originate from our support for a management regime to address all sources of BPA releases not only the BPA released in effluent.

Page 12: Final Statements on Socio-Economic Study

- While it is appreciated that financial burdens for impacted sectors could result from the proposed management for BPA, as public interest groups we are concerned about the effects of this substance on the environment and public health. We recognize that there are significant limitations to effectively assess the dollar value to these concerns. However, any socio-economic study regarding the financial impacts should include the consideration of factors beyond the economic gains and account for the cost to the public health system and the protection of the ecosystem.

Page 15: Pulp and Paper Sampling

- We are not in agreement with a voluntary study of BPA in the effluents and sludge from pulp and paper facilities. While it was noted that 10 Canadian Pulp and Paper mills are participating in the monitoring study, it is unclear what the percentage of mills this represents. Furthermore, it is unclear if these participating mills are representative of all the mills in the pulp and paper sector
- With a range of 3 – 6 samples being proposed as the number to be collected for BPA from these mills, there is concern that this may be insufficient to determine trends or to give an accurate picture of the concentration of BPA in the effluent. Six samples or more would provide a more accurate picture of the concentration of BPA in the effluent. Furthermore, the time selected for sampling and the time interval for sampling are also important factors for consideration.

Page 16: Targeted Facility Sampling

- The two facilities submitting a total of 12 samples had very high levels of emissions. This raises several questions:
 - What investigations have been undertaken to gain a better understanding of the processes involved that contribute to the high BPA releases at these facilities (1990 – 3620 ug/L)?

- Would the proposed P2 planning notice be adequate to address these BPA releases?
- And, if so, are there any indications as to how these levels would be decreased using the P2 planning strategy?

➤ **Presentation: Comments Received on the Bisphenol A P2 Planning Notice**

Pages 4 & 5: Scope of Application – Thresholds

- We are in agreement with EC's position that more research is required to have a better understanding of the effects of unintentional or residual BPA in effluent releases. This information should be publicly available and the rationale for the subsequent decision on possible inclusion or exclusion should be clearly defined in a public document.
- Comments on the current exemption of the pulp and paper sector have been made previously.

Page 6: RM Objectives – 1.75 ug/L

- We have provided comments above on the effectiveness of WWTPs to remove BPA in effluents. Substantial focus should be given towards identification and use of safe alternatives by affected industries.
- While the government "encourages continual improvements beyond the RMO of 1.75 ug/l", the establishment of a review of this level should be undertaken within 2 years to reflect monitoring data and other data on impacts of BPA.

Page 8: Factors to Consider – Alternatives

- P2 Plans should place more emphasis on finding and using safe alternatives to BPA. However, the government should require industry to give priority and commitment towards safe alternatives as industry may consider safe alternatives as the last resort to meeting effluent limits. Some affected industries have already made BPA substitutions. Where producers of epoxy resins have ceased to use BPA in Canada, no information was available as to the alternatives being used by these facilities.
- There is also concern about the safety to the environment from releases of BPA alternatives. The government should give careful consideration to the wording of the impact of environment releases from alternatives as the intent is to significantly reduce or eliminate impacts to the environment and human health.

Page 9: Factors to consider – Sampling and Analysis

- A guidance document is recommended for sampling and analysis.
- While the government does not want to be too prescriptive in its approach for sampling, it should incorporate some consistent elements in the sampling

approach to be taken at each facility. For example, seasonal variability and peak production periods are issues that should be prescribed by the government.

- The government should also address potential interest by the local community or public interest groups regarding the process to require additional monitoring of facilities releasing BPA.
- We recommend in cases where there is continual use of BPA, a minimum of 6 times a year for sampling.
- For batch production, sampling of each batch should be undertaken. Should the batch production extend beyond one month, additional monitoring should also be required.
- It was noted that there are about 3-5 labs in Canada that are equipped to undertake BPA testing. The monitoring data supplied by facilities should be validated by a third party to ensure public accountability.
- Currently, no monitoring regime has been proposed beyond the implementation phase of P2 plans. It is our position that an additional monitoring regime be developed targeting all facilities releasing BPA that extends beyond the P2 plan requirements.

If you have any questions, regarding our comments, please do not hesitate to contact us.

Yours truly,

**CANADIAN ENVIRONMENTAL
LAW ASSOCIATION**



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