

April 5, 2013

Chemicals Management Division
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Via email: GR-RM@ec.gc.ca

RE: Response to Consultation Document for Polybrominated Diphenyl Ethers

In response to Environment Canada's consultation document for PBDEs we offer the following comments.

The Canadian Environmental Law Association is a public interest organization founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

CELA has a long history of work addressing the regulation of toxic substances. For example, we have conducted extensive research, summarized the scientific literature, and have created a wide range of public outreach materials, about associations between toxic substances and impacts on fetal development and child health.¹ We have conducted extensive research and made detailed recommendations for the regulation of persistent toxic substances, including PBDEs, contaminating the Great Lakes ecosystem.²

As well, we were closely involved in efforts to expand the purview of the Stockholm Convention on Persistent Organic Pollutants to include PBDEs wherein we remain concerned about the lack of a comprehensive approach for elimination of PBDEs from product recycling and waste streams.³ In particular, as part of our involvement with the work of the International POPs Elimination Network (IPEN), we remain concerned that the IPEN recommendations were not heeded during the negotiations conducted during the Fifth Conference of the Parties to the Stockholm Convention of Persistent Organic Pollutants, held in Geneva in 2011. Specifically, IPEN had urged Parties to implement the recommendations of the Persistent Organic Pollutants

¹ See multiple resources contained on the website of the Canadian Partnership for Children's Health and Environment www.healthyenvironmentforkids.ca

² See e.g., Canadian Environmental Law Association and Lowell Centre for Sustainable Production (2009) *The Challenge of Substances of Emerging Concern in the Great Lakes Basin: A review of chemicals policies and programs in Canada and the United States*. A report prepared for the International Joint Commission Multi-Board Work Group on Chemicals of Emerging Concern in the Great Lakes Basin. 174 pp. <http://www.cela.ca/publications/challenge-substances-emerging-concern-great-lakes-basin-full-report>

³ See multiple resources posted to CELA website on-line collection: *Persistent Organic Pollutants: Collection of materials related to negotiation and implementation of the Stockholm Convention on POPs* at: <http://www.cela.ca/persistent-organic-pollutants-pops>

Review Committee (POPRC) with particular emphasis on recycling of articles containing PBDEs, placing emphasis on the need to protect vulnerable groups such as workers and communities. The aim of the POPRC recommendation was to urge Parties to take necessary steps that would result in the phase-out or prohibit the recycling of POP-containing products so that specific exemptions allowing the recycling of POP-containing wastes would be deleted from the final agreement. It remains IPEN's contention that the exemption for PBDEs included in the PBDEs listing to the Convention and that permits recycling of articles containing POP-BDEs could result in new products containing POPs, thereby creating on-going environmental contamination and human exposure.

At CELA we have also recently completed a comprehensive scoping review of the literature concerning early environmental exposures and associations with several chronic diseases.⁴ PBDEs, alongside other dangerous persistent organic pollutants figure prominently in the results of this research and thus remain within our top priorities for seeking regulatory action and conducting public outreach to encourage exposure reduction measures.

We have closely followed the federal government's actions towards regulating PBDEs including being involved in the Notice of Objection filed by several environmental organizations, including CELA, in response to the first set of regulations proposed in December of 2006.⁵ After several more years of deliberations by the federal government, we were gratified that the conclusions reached in our Notice of Objection about the risks of PBDEs were ultimately matched by the federal government. This reconsideration of the scientific evidence underscores the need to act.

In addition to the above activities, our work within the Canadian Partnership for Children's Health and Environment (CPCHE) has long called for action on PBDEs because of concerns about multiple health effects and the significance of indoor dust as a key exposure source of concern for pregnant women, infants, and young children. CPCHE is a national partnership of organizations that, since 2001, have been working together across traditional boundaries to advance the protection of children's health from the risks posed by toxic chemicals and pollutants. During 2007, CPCHE convened a national policy consultation that provided a six-city, multi-stakeholder forum to exchange information on the scope and nature of known and suspected threats to fetal and child health and development. Using the results of this consultation, in 2008 CPCHE published a vision and strategy statement, *First Steps in Lifelong Health*⁶ that

⁴ Cooper K, Marshall L, Vanderlinden L, and Ursitti F (2011) *Early Exposures to Hazardous Chemicals/Pollution and Associations with Chronic Disease: A Scoping Review*. A report from the Canadian Environmental Law Association, the Ontario College of Family Physicians and the Environmental Health Institute of Canada. <http://www.cela.ca/publications/EE-and-CD-Scoping-Review>

⁵ Notice of Objection Re: Proposed Polybrominated Diphenyl Ethers Regulation, Filed by Sierral Legal Defence Fund on behalf of the David Suzuki Foundation, Environmental Defence and Canadian Environmental Law Association. February 14, 2007. <http://www.cela.ca/publications/notice-objection-re-proposed-polybrominated-diphenyl-ethers-regulation>. See additional information in CELA website collection related to PBDEs: PBDEs - Flame Retardants as problematic as PCBs: Collection of information about CELA's advocacy to ban toxic flame retardants, at: <http://www.cela.ca/collections/pollution/pbdes-flame-retardants-problematic-pcb>

⁶ Canadian Partnership for Children's Health and Environment, 2008. *First Steps in Lifelong Health: A Vision and Strategy for Children's Health and Environment in Canada*.

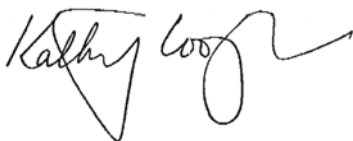
included a diverse set of recommendations. Therein, the document included a list of top priority areas requiring immediate regulatory action. On the basis of knowledge about exposure and health risks, action on PBDEs was included in this priority list. CPCHE called for a ban on the manufacture, import, use, and sale of *all* PBDEs and PBDE-containing products. As well, in diverse outreach activities conducted within CPCHE across Canada, whether in workshops for service providers or in public educational messages, exposure to PBDEs, particularly in house dust, underscores our choices for priority areas of focus where parents and prospective parents can take actions to reduce exposures in the face of the daily reality of exposure to multiple toxic substances.

In light of the foregoing, and recalling detailed comments made over the past several years in response to previous iterations of proposed risk management actions on PBDEs,⁷ we are underwhelmed by the limited purview of risk management measures under consideration in this current consultation document in particular the delay in addressing commitments made in the Final Revised Risk Management Strategy for PBDEs published three years ago. In that document, a timeline is provided for implementation of proposed regulatory actions. It states that the federal government intends to revise the existing regulations to include all PBDEs and to regulate PBDEs in products. Only the first of these actions is contemplated in the current consultation with a vague and incomplete timeline that appears to extend at least two years beyond the commitment made in the Risk Management Strategy, i.e., to publish final regulatory controls in 2013. The more important regulation to address PBDEs in products is noted as “being considered.”

While we obviously support continued regulation of PBDEs up to and achieving a full ban on all manufacture, use, import, and sale of PBDE-containing products, we offer our support for the limited, first-step, regulatory measure contemplated in this current consultation document and strongly urge a much swifter implementation timeframe than is proposed. We also urge the federal government to expand the purview of these regulations to ensure that PBDE-containing products are diverted from the waste recycling stream to prevent the incorporation of these toxic substances in new consumer products.

All of which is respectfully submitted.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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http://www.healthyenvironmentforkids.ca/sites/healthyenvironmentforkids.ca/files/cpche-resources/CPCHE_VandS.pdf

⁷ E.g., Canadian Environmental Law Association (2009) Re: State of the Science and Revised Risk Management Strategy for PDBEs. Letter to Vincenza Galetone, Environment Canada. May 27, 2009. At: <http://www.cela.ca/publications/state-science-and-revised-risk-management-strategy-pdbes>