

June 1, 2016

Environment Canada
ec.dechetsdemercure-mercurywastes.ec@canada.ca

Re: Consultation on Proposed Code of Practice for the Environmentally Sound Management of End-of-life Lamps Containing Mercury

To whom it may concern,

We write concerning the above-noted consultation and as follow-up to having commented via email in November of 2014 on the Discussion Paper – *Proposed Elements for a Code of Practice for the Environmentally Sound Management of End-of-Life Mercury-containing Lamps and Targeted Guidance for the North*,¹ and in a recent letter to the Canadian Council of Ministers of the Environment (CCME).²

The Canadian Environmental Law Association (CELA) is a non-profit public interest organization and legal aid clinic focused on environmental law, law reform, and public legal education. We have worked for many years on matters related to the management of toxic substances and human health particularly with respect to the greater vulnerability of early life stages, especially during pregnancy and early childhood. We have called for comprehensive regulatory and policy measures at the domestic and international level to reduce exposure to mercury, a potent developmental neurotoxin.

We offer the follow comments on the Proposed Code of Practice.

1. Context and Delay – The Basel Convention and a Brief Window of Time to Get This Right

The Basel Convention Controlling Transboundary Movement of Wastes and Their Disposal, (ratified by Canada in 1992), adopted technical guidelines concerning mercury wastes in 2011 (as referenced in the proposed Code of Practice and discussed further below). The need for Canada to deal with mercury wastes from end-of-life lamps has been identified for many years, within the Basel Convention, within the CCME discussions about Extended Producer Responsibility, within the Environment Canada discussion paper in 2014 and now this draft Code of Practice another two years later.

¹ Environment Canada (2014) Discussion Paper: Proposed elements for a code of practice for environmentally-sound management for end of life mercury-containing lamps.

² Canadian Partnership for Children’s Health and the Environment, February 22, 2016 letter to David Heurtel, President, CCME Re: Seeking a Canada-wide Standard for Extended Producer Responsibility for mercury-containing compact fluorescent lightbulbs (CFLs). On-line at: <http://www.cela.ca/publications/seeking-canada-wide-standard-extended-producer-responsibility-mercury-containing-compac>

Current context includes the ongoing phase-out of incandescent bulbs, the ongoing end-of-life for older high-mercury CFLs, and an increasing phase-out of CFLs with the introduction and expansion of LED technology. Environment Canada's own estimates, as cited in the 2014 Discussion Paper, note that only 10 to 15 percent of CFLs sold in Canada are recycled; the rest go to landfills. Moreover there is widespread public lack of knowledge about safe handling of broken CFLs and safe disposal. There is perhaps a ten year window of time to ensure that millions of mercury-containing lights are carefully collected for proper disposal.

2. Basel Convention Commitments Support a More Robust and Coordinated Approach

Paragraph 2 (b) of Article 4, of the Basel Convention requires each party to take the appropriate measures to:

“ensure the availability of adequate disposal facilities for the environmentally sound management of hazardous or other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal”,

while in paragraph 2 (c) it requires each party to:

“ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment”.

We also note that in technical guidance in support of environmentally sound management (ESM) of mercury under the Basel Convention³ recommendations are quite specific, including with respect to reduction and phase-out of mercury in products and industrial processes, and establishment of ESM schemes. For example, the guidance includes, at page 13, the following:

39. The reduction and phase-out of mercury in products and industrial processes is one of the most effective ways to reduce releases of mercury to the environment.

40. Parties should develop and enforce a legislative or regulatory framework for a phase-out programme. An effective regulatory framework supports the proper organization of extended producer responsibility (EPR) obligations (as discussed in chapter III, E, 3), which depend on shared responsibilities among stakeholders. One approach to securing a legislative or regulatory framework for a phase-out programme involves establishing a cut-off date for banning the use of mercury in products and processes (except for those for which there are no technically or practically viable alternatives or exemptions.). After this date, mercury use should be banned and EPR collection and treatment schemes on ESM, in cooperation with all stakeholders, should be established. This approach

³ “Technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury,” As adopted by the tenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (decision BC-10/7) Cartagena, Colombia, October 2011

encourages large-scale users and producers of mercury and mercury-containing products to comply with the requirement to embark on a mercury phase-out programme.

We recognize that federal jurisdiction is limited with respect to waste management and that federal regulatory action has been taken to reduce the mercury content of CFLs. However, the federal commitment to the Basel Convention legitimately supports a more forceful approach by Environment Canada to ensuring the establishing of comprehensive ESM across Canada.

The statement on page 2 of the proposed code of practice that the measures described will “contribute to the implementation of the Canada-wide Action Plan for Extended Producer Responsibility” (CAP-EPR) is debatable. We compare this statement to the findings of a 2014 CCME Progress Report on this CAP-EPR that found progress on EPR in Canada has been slow, or inadequate, particularly with respect to

“Slower than anticipated progress by jurisdictions in implementing programs or requirements for some of the Phase 1 materials, including: mercury-containing lamps and other mercury-containing products.”

We are concerned that a voluntary Code of Practice from Environment Canada will not change this situation and the proposed Code of Practice does not provide any indication of how it will do so. The CCME Progress Report recognized differences across jurisdictions as an ongoing challenge to harmonization and coordinated action across Canada. This reality underscored our recent call for a Canada-Wide Standard for extended producer responsibility for the collection and disposal of CFLs. A more rigorous approach to this problem would be equally well served by Bill C-238, An Act Respecting Development of a National Strategy for the Safe Disposal of Lamps Containing Mercury, currently before the House of Commons.

3. General Support for the Overall Approach but for Handling, Collection, Packaging and Storage

We generally support the overall approach in the proposed code of practice with the exception of section 4.4 concerning “Handling, Collection, Packaging and Storage.”

The practices noted in Section 4.4 include multiple suggestions for safe handling of what are very fragile items. In our, albeit small survey of CFL recycling bins offered by large retailers, it appeared that those who set up/maintained such bins were oblivious to the fact that CFLs are easily broken and thus a source of mercury vapour in these very public locations. The same approach is apparent at recycling facilities provided at some municipal landfills, although, again, our survey of such facilities has been limited.

A central problem with Section 4.4, as written, is a basic contradiction with advice provided elsewhere in the document (e.g., Section 5.1 – Managing Spills and Broken Lamps) and on Health Canada’s website (<http://healthycanadians.gc.ca/security-securite/radiation/devices-dispositifs/consumer-consommateur/cfl-afc-eng.php>). Such advice includes multiple precautionary actions to reduce mercury exposure.

In contrast, recommendations in Section 4.4 are too far removed from reality. The notion that staff need training on handling CFLs is important but ignores the fact customers drop CFLs in bins, not staff. The document recommends providing instructions that clearly indicate placing bulbs one at a time in a bin and avoiding “free fall of the lamp to the extent possible.” How is this to be implemented in a retail take-back setting? Such practices are decidedly not the case now although some bins may have the suggested interior baffles.

It also notes that “containers should be located in a well-ventilated area, and away from high-traffic areas to avoid accidental bumping or tipping of the container.” What is intended by the “well-ventilated” recommendation here? Is this to allow mercury vapour to dissipate? It is reasonable to assume that the amount of mercury vapour coming from a bin full of CFLs, even in the unlikely event that it contains only a single vs. many broken bulbs, is as important a mercury source that prompts the kind of advice made by Health Canada about clearing a room and leaving windows open for 15 minutes before attempting a careful clean-up.

Section 4.4 also includes curious advice about having sufficient space available for sorting and storing lamps begging questions as to who is doing this work (teenage workers, women of child-bearing age, pregnant women?) and are they sorting bulbs from a bin containing broken bulbs?

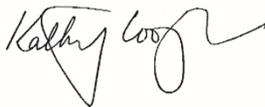
In short, Section 4.4 seems at odds with the fact that CFLs are made of fragile glass. Rather, the types of measures recommended in Section 5.1 and elsewhere, about how to avoid exposure to mercury vapour from broken CFLs must be provided for take-back locations and other areas where the public and workers may be at risk.

Finally, we also find the document quite lengthy and repetitive. For it to be useful on the “shop floor” we recommend a good copy edit and perhaps also the preparation of brief, plain language summaries of key sections.

All of which is respectfully submitted.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'Kathleen Cooper', with a stylized flourish at the end.

Kathleen Cooper
Senior Researcher and Paralegal