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Submitted via email: Sarah.Sheffield@hc-sc.gc.ca

Re: Regulation of Lead and Cadmium in Selected Consumer Products

Response to proposed amendments to the *Children's Jewellery Regulations* and to the proposed *Consumer Products Containing Lead Regulations* published in *Canada Gazette*, Part 1, on December 3, 2016.

Dear Ms Sheffield,

About CELA

The Canadian Environmental Law Association (CELA) is a legal aid clinic providing direct representation and 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 and human health.

CELA has a longstanding interest and involvement with the regulation of lead in the environment and consumer products. One of our main priorities is the human health impact of toxic substances. We have conducted extensive research and law reform advocacy on the greater vulnerability of children to environmental contaminants, particularly lead. We write today in response to the above-noted consultations concerning regulation of lead and cadmium in selected consumer products.

Background and Context

In September of 2009, we responded in detail to the consultation on the Consumer Products Containing Lead (Contact with Mouth) Regulations SOR/2010-273, when they were in draft form.¹ That submission was highly critical of the inherent flaws and excessive delay in

¹ Canadian Environmental Law Association, 2009. Consumer Products Containing Lead (Contact with Mouth) Regulations, Consultation comments to Chemistry & Flammability Hazards Division of Health Canada. Online at: <http://www.cela.ca/publications/consumer-products-containing-lead-contact-mouth-regulations>

implementation of Health Canada's "Lead Risk Reduction Strategy," the latter first proposed in 1997, that is, twenty years ago.

Again in 2012, we responded to the consultation on proposed "Group 2 Regulations under the Lead Risk Reduction Strategy for Consumer Products."² These regulations, proposed fully five years ago, are the subject of the current consultation, i.e., the proposed *Consumer Products Containing Lead Regulations*.

Across this twenty year time horizon, there have been dozens of lead-related product recalls, particularly for lead in jewellery but also in other products such as children's clothing. Likewise, scientific research on the health effects of low-level lead exposure continues to advance. Both of these realities reinforce our concerns with the federal government's slow approach to regulating lead in products for the reasons we raised with Health Canada in 2012 and that remain relevant now:

- Children in Canada remain at significant risk from lead exposure given that lead is unsafe for a fetus or young child at any exposure level and average blood-lead levels although reflective of significant lowering in recent years, remain over 100 times higher than in pre-industrial human populations.
- Strong scientific evidence demonstrates that lifelong lead exposure, at very low levels, is causally associated with hypertension. Studies also indicate possible associations between long term low level lead exposure and cardiovascular disease, type 2 diabetes, and Alzheimer's disease.³
- The legacy of lead in old paint will remain a significant exposure risk for decades into the future, particularly for children living in poverty. This legacy underscores the need to stringently control ongoing and new uses of lead in consumer products.
- Health Canada's Lead Risk Reduction Strategy (LRRS) was initiated 20 years ago with the then-stated rationale of getting beyond an inefficient, reactive, product-by-product approach. It included, among several worthwhile objectives, the elimination of lead from non-essential product applications. Instead, the initial objectives were abandoned and the strategy has been an extremely slow and reactive process of parsing out regulations for multiple products or product categories.
- Enough is known about the hazards of lead to insist that, worldwide, lead should be highly controlled, including a ban on all non-essential uses in consumer products. Such an approach is being implemented in Canada for the non-essential use of mercury in consumer products.
- Regardless of the reality of global lead contamination, it remains entirely reasonable to regulate lead in products such that the original goal of the Lead Risk Reduction Strategy, i.e., to eliminate non-essential uses of lead in products, can be met by setting regulatory limits at low levels to eliminate its use while accounting for the reality of global

² Canadian Environmental Law Association (2012) Response to Proposed Group 2 Regulations Under the Lead Risk Reduction Strategy for Consumer Products (LRRS). On-line at: <http://www.cela.ca/publications/response-proposed-group-2-regulations-under-lead-risk-reduction-strategy>

³ As reviewed in Cooper K et al (2011) 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.

contamination. This approach has been in place in Canadian regulations since the introduction of lead-free gasoline in the 1970s.

The Current Regulatory Proposals

Notwithstanding the foregoing concerns about the overall legitimacy of the LRRS, we have the following response to each of these regulatory proposals.

The proposed amendments to the *Children's Jewellery Regulations*

In 2004 we responded to the initial regulatory proposal for these regulations.⁴ We raised two overall concerns including 1) the fundamental problem of only regulating jewellery marketed to children leaving the lion's share of the problem of lead in costume jewellery unaddressed, and 2) the reliance on out-of-date information to make a distinction between total lead vs. migratable lead.

Ignoring the much larger problem and associated risks of lead in costume jewellery

The current regulatory proposal continues to narrowly focus the regulation of lead in jewellery on those items marketed to children.

As a result we again urge Health Canada to pursue the alternative of a regulatory ban on all lead-containing jewellery. We remain opposed to the rationale of avoiding regulation of lead in all costume jewellery because of the perceived negative impact on the costume jewellery trade as stated in the 2004 Regulatory Impact Analysis Statement. Trade considerations, no matter how trivial, continue to trump health and safety concerns. As a persistent substance that is highly toxic at very low levels of exposure, lead use should be restricted to only those few uses where alternatives are not available. We reiterate that to continue to base a regulatory strategy on protecting the economic interests of the costume jewellery trade over the health of children is unsupportable.

We continue to object to the notion that marketing to children is the only way that such jewellery can become available to them. The appeal to children is that this jewellery is attractive and extremely inexpensive. It is purchased and worn by children or given to them as gifts, regardless of whether it is advertised or packaged in a manner that aims at children under 15 years of age. Even if not purchased by children, they will play with such inexpensive jewellery items, put them in their mouths, and swallow them, contributing to the U.S. poisoning statistics cited in the December 2016 Regulatory Impact Analysis Statement. We also reject the acceptability of thousands, or more likely millions of pieces of poor quality lead-bearing jewellery continuing to be on the market and ultimately disposed of in landfill.

Removing the distinction between total lead and migratable lead

We strongly support the decision to remove the distinction between total lead and migratable lead in these regulations. We advanced this position in 2004 in response to the regulations when they were first proposed. At the time this distinction was based on out of date scientific evidence

⁴ Submissions of the Canadian Environmental Law Association in response to Health Canada's Draft Children's Jewellery Regulations and Candles Regulations (February 6, 2004). On-line at: <http://www.cela.ca/publications/submissions-canadian-environmental-law-association-response-health-canada%E2%80%99s-draft-child>

about the dangers of lead. Setting an absolute limit of 90 mg/kg total lead limit is a step forward. However, while we support this action with respect to lead in children's jewellery, it is undermined by the continued refusal to regulate lead in the much larger costume jewellery trade, as discussed above.

Adding a limit of total cadmium content in children's jewellery items small enough to be swallowed by a young child

We support this addition of a limit on another toxic substance. But again, the notion of making these specific distinctions (i.e., "small enough to be swallowed by a young child") is inadequately protective. Highly toxic substances like cadmium should just be banned in all costume jewellery regardless of who it is marketed to.

The proposed Consumer Products Containing Lead Regulations

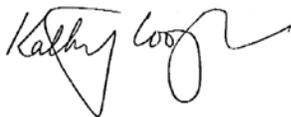
As noted on many occasions we do not support the federal government's chosen regulatory approach of parsing out lead regulations via an extremely slow exercise of addressing individual products or product categories.⁵ We also remain concerned that the LRRS is overly focused on establishing regulations in terms of how products are promoted or marketed, i.e., those aspects of products that generally end when the packaging is removed. Such a regulatory approach inadequately considers how products are actually used, shared, given as gifts, etc., by children and adults in families, in homes, schools and child care settings. It is also contradictory to the approach taken at the same time by the federal government in the regulation of phthalates in toys; an approach that begins to include a more realistic recognition of children's activities and behaviour.

Nevertheless, within the limits of this chosen regulatory approach, we support the expansion of products to be covered by these proposed regulations and recommend that they be implemented with no further delay, noting that the consultation on whether to establish this regulation occurred fully five years ago.

All of which is respectfully submitted.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Kathleen Cooper
Senior Researcher and Paralegal

⁵ Submissions of the Canadian Environmental Law Association in response to Health Canada's Draft Lead Risk Reduction Strategy (2004) Online at: <http://www.cela.ca/publications/submissions-canadian-environmental-law-association-response-health-canada%E2%80%99s-draft-lead->; and CELA (2009) *op. cit.*