

17 June 2015

The Honourable Leona Aglukkaq  
Minister of Environment  
Les Terrasses de la Chaudière  
10 Wellington Street, 28th Floor  
Gatineau, Quebec  
K1A 0H3  
[Minister@ec.gc.ca](mailto:Minister@ec.gc.ca)

The Honourable Rona Ambrose  
Minister of Health  
Brooke Claxton Building, Tunney's Pasture  
Postal Locator: 0906C  
Ottawa, Ontario  
K1A 0K9  
[Minister\\_Ministre@hc-sc.gc.ca](mailto:Minister_Ministre@hc-sc.gc.ca)

Honourable Ministers,

**Re: Regulation of DecaBDE in Imported, Manufactured Products**

In light of the current consultation on proposed amendments to the *Prohibition of Certain Toxic Substances Regulations, 2012*, including limited prohibitions on PBDEs (polybrominated diphenyl ethers), we write to express our grave concern about the continuing delay in fully implementing the 2010 revised risk management strategy for PBDEs.<sup>1</sup>

PBDEs are a highly toxic class of chemicals used in three commercial flame retardant mixtures: PentaBDE, OctaBDE and DecaBDE. PBDEs were added to the List of Toxic Substances in Schedule 1 to CEPA 1999 in 2006, triggering a requirement for risk management.

In February of 2007 we filed a formal Notice of Objection<sup>2</sup> to regulations announced in 2006 that banned the import of two out of three PBDE commercial mixtures but exempted the most widely used mixture, known as DecaBDE. Our Notice of Objection argued that the government's

---

<sup>1</sup> Environment Canada (2010) Risk Management Strategy for Polybrominated Diphenyl Ethers (PBDEs) Final Revised: August, 2010.

<sup>2</sup> Wilkins, Hugh (2007) Notice of Objection Re: Proposed Polybrominated Diphenyl Ethers Regulation Filed by Sierra Legal Defence Fund on behalf of the David Suzuki Foundation, Environmental Defence and Canadian Environmental Law Association, February 14, 2007. Online at: <http://s.cela.ca/files/uploads/NOO1.07.04.23.pdf>

scientific assessment of DecaBDE was outdated. We called for a comprehensive ban on all PBDEs. **We are compelled to renew this call and urge you to expand the scope of the currently proposed amendments to the Prohibition of Certain Toxic Substances Regulations, 2012 to include a prohibition on DecaBDE in manufactured products.**

As a result of our Notice of Objection, Environment Canada undertook to update its assessment of DecaBDE. Three years later, in 2010, based on the findings of this updated scientific review the federal government rejected our Notice of Objection but reached conclusions about the toxicity and environmental harm of DecaBDE that matched those raised in our Notice of Objection.<sup>3</sup> Moreover, the Final Revised Risk Management Strategy for PBDEs, published in 2010,<sup>4</sup> recommended matching European restrictions on DecaBDE in electronics and effectively banning DecaBDEs in plastics and textiles (to be implemented by 2013).

At the time we welcomed the final revised risk management strategy. It complemented the *Polybrominated Diphenyl Ethers Regulations* that serve to ban the lower congener PBDEs, providing a comprehensive package that would essentially ban all PBDEs in Canada. It was crucially important that the revised risk management strategy addressed DecaBDE in imported products, the primary (if not sole) source of ongoing exposure in Canada.

Thereafter, another three years passed before further consultations occurred on individual elements of the Risk Management strategy for DecaBDE. A consultation in the fall of 2013 focused on a “Proposed Risk Management Instrument for Products Containing Polybrominated Diphenyl Ethers (PBDEs).”<sup>5</sup> Alongside actions taken to ban the lower congener PBDEs via inclusion in the Stockholm Convention on Persistent Organic Pollutants, this proposed risk management instrument would have restricted DecaBDE in any product, and be in line with DecaBDE limits then in place or planned in Europe and the US. We were concerned that the timeline for actions set out in the Revised Risk Management Plan had not been adhered to, but recognized the proposed actions were in the right direction, albeit late.

Another two years have now passed and the proposed regulatory instrument for products containing PBDEs has not materialized. Instead, within the current consultation regarding amendments to the *Prohibition of Certain Toxic Substances Regulations, 2012*, existing prohibitions on production, use, sale, offer for sale or import of PBDE commercial mixtures are extended to DecaBDE. However, these prohibitions do not extend to the main source of exposure – imported, manufactured products, containing DecaBDE.

---

<sup>3</sup> Environment Canada (2010) Ecological State of the Science Report on Decabromodiphenyl Ether (decaBDE) Bioaccumulation and Transformation. [http://www.ec.gc.ca/lcpe-cepa/documents/substances/decabde/ess\\_report\\_decabde-eng.pdf](http://www.ec.gc.ca/lcpe-cepa/documents/substances/decabde/ess_report_decabde-eng.pdf)

<sup>4</sup> *Supra*, note 1

<sup>5</sup> Environment Canada (2010) Consultation Document on the Proposed Risk Management Instrument for Products Containing Polybrominated Diphenyl Ethers (PBDEs) <http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=B8B0071B-1>

Further, we note that the associated Regulatory Impact Analysis Statement (RIAS)<sup>6</sup> published in the April 4, 2015 *Canada Gazette* (Vol. 149 No. 14) contains incomplete information about DecaBDE production and uses at the international level. Notably, Section 2.3.1 refers to “the three main manufacturers of the DecaBDE commercial mixture operating in the United States voluntarily ceas[ing] exports of the DecaBDE commercial mixture to Canada in mid-2012.”

However, there is no mention in the RIAS of the fact that DecaBDE continues to be produced in China, India, and Japan and incorporated into manufactured goods (electronics, textiles, etc.) and presumably in other countries (including the U.S) who import DecaBDE for products manufacturing activities.<sup>7</sup>

In fact, the three U.S. producers of DecaBDE subject to the voluntary agreement to cease exports have never exported the commercial mixture to Canada to any significant extent.<sup>8</sup> Moreover, it is entirely reasonable to assume that DecaBDE continues to be widely used in manufactured goods that are imported from China, India, and likely other Asian countries that have become major players in the manufacture of products imported into Canada.

The currently proposed amendments to the prohibitions regulations are narrowly focused on commercial mixtures of PBDEs that are not produced in Canada and have not been imported into Canada for domestic manufacturing for at least three years if ever.<sup>9</sup> Hence, after nearly ten years of raising concerns about DecaBDE in manufactured, imported products we conclude that the CEPA process has yet to meaningfully reduce risks from this chemical entering the environment.

With the 2010 revised risk management strategy that followed our Notice of Objection, Environment Canada recognized that DecaBDE poses risks to the environment, identified imported manufactured products as the main source of exposure and committed to the prohibition of DecaBDE in imported products.

To maintain the integrity of the CEPA process and take meaningful action at last to reduce threats to the environment from PBDEs, we appeal to you to expand the scope of the currently proposed amendments to the *Prohibition of Certain Toxic Substances Regulations, 2012* to include a prohibition on DecaBDE in manufactured products. The government is already four years behind the timeline set out for this action in the Revised Risk Management Strategy and should not delay further.

---

<sup>6</sup> *Canada Gazette* Vol. 149, No. 14 — April 4, 2015 Regulations Amending the Prohibition of Certain Toxic Substances Regulations, 2012, Regulatory Impact Analysis Statement. <http://www.gazette.gc.ca/rp-pr/p1/2015/2015-04-04/html/reg2-eng.php>

<sup>7</sup> A more up to date and comprehensive description of DecaBDE production, use, and stockpiles is provided in the Report of the Persistent Organic Pollutants Review Committee on the work of its tenth meeting – Addendum, Risk profile on decabromodiphenyl ether (commercial mixture, c-decaBDE) (UNEP/POPS/POPRC.10/10/Add.2, Persistent Organic Pollutants Review Committee, Tenth meeting, Rome, 27–30 October 2014).

<sup>8</sup> See Environment Canada (2006) Proposed Risk Management Strategy for Polybrominated Diphenyl Ethers (PBDEs), and Environment Canada (2010) *Supra* note 1.

<sup>9</sup> According to the Regulatory Impact Analysis Statement published with the proposed amendments, “Currently, there are no known Canadian users or importers of the DecaBDE commercial mixture.”

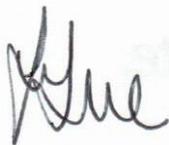
Yours very truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Kathleen Cooper, Senior Researcher

**DAVID SUZUKI FOUNDATION**



Lisa Gue, Senior Researcher and Analyst

**ECOJUSTICE**



Elaine MacDonald, Senior Scientist

**ENVIRONMENTAL DEFENCE**



Maggie MacDonald, Toxic Program Manager

c.c.

Executive Director, Chemicals Management Division

Environment Canada

351 St- Joseph boulevard (10th floor)

Gatineau, Quebec, K1A 0H3

[ec.interdiction-prohibition.ec@ec.gc.ca](mailto:ec.interdiction-prohibition.ec@ec.gc.ca)