

November 8, 2010

The Honourable John Baird
Minister of the Environment
Environment Canada
10 Wellington Street
Gatineau, Quebec K1A 0H3

The Honourable Leona Aglukkaq, P.C., M.P.
Minister of Health
Health Canada
0916A Brooke Claxton Building, 16th Floor
Tunney's Pasture
Ottawa, Ontario K1A 0K9

Transmission by email

Dear Minister Aglukkaq and Minister Baird:

Re: Response to Publication of a Notice of Intent - Export controls for perfluorooctane sulfonate (PFOS) and lindane

Please accept the following submission by the Canadian Environmental Law Association (CELA) and Chemical Sensitivities Manitoba (CSM) in response to the ***Notice of Intent regarding export controls for perfluorooctane sulfonate (PFOS) and lindane*** published in *Canada Gazette*, Part I: Notices and Proposed Regulations, Vol. 144, No.37 (September 11, 2010).

We support the proposal to develop export controls for perfluorooctane sulfonate (PFOS), its salts and certain other compounds that contain the C₈F₁₇SO₂, C₈F₁₇SO₃ or C₈F₁₇SO₂N groups and lindane, which have been added for global elimination under the Stockholm Convention on Persistent Organic Pollutants (POPs).

As Canada takes steps to develop export controls for PFOS and lindane, we offer the following comments and recommendations on their proposed domestic activities:

- Our organizations have been urging the Canadian government for a swift ratification of the amendments made to the Stockholm Convention on POPs for the global elimination of nine POPs, including PFOS and lindane. Although the government tabled its intent to ratify the amendments to the Stockholm Convention in June 2010, at the end of the spring session of the House of Commons, there has been no public announcement on the completion of the ratification process. We urge the House of Commons to give priority to the completion of the ratification process that confirms Canada's commitment for the global elimination of nine POPs including PFOS and lindane.
- The development of export controls for these chemicals is urgently needed to build on existing Canadian management efforts towards the elimination of toxic chemicals

such as PFOS and lindane. However, there has been a lack of focus on the export streams for these chemicals.

- Perfluorooctane Sulfonate and Its Salts and Certain Other Compounds Regulations (herein noted as PFOS Regulations) under CEPA 1999 seek to prohibit and restrict the manufacture, use, offer for sale or import of PFOS.¹ The PFOS Regulation could be considered as an appropriate regulation which could be amended to include measures for export control. If so, the intent for including export measures in the PFOS Regulation should seek to require a complete prohibition on export of PFOS and all products containing PFOS.

Should the government give serious consideration to the PFOS Regulations for inclusion of export controls for PFOS, there are some concerns that the PFOS Regulations currently includes extensive exceptions, exemptions and permitted uses for PFOS. Despite the intent of the PFOS Regulations to reduce exposure of Canadians of this toxic chemical to Canadians, it is our view that the exceptions,² permitted use³ and exemptions⁴ as outlined in the PFOS Regulations currently,⁵ will hinder progress to achieve the elimination of PFOS in Canada. These elements of the Regulations may fall short of achieving the goals of the Stockholm Convention on POPs. Despite the government's claim that the PFOS Regulations can effectively meet the international obligations under the Stockholm Convention,⁶ there should be substantial and careful consideration in addressing the following issues that will continue to promote the on-going use and release of PFOS in the Canadian environment.

Under Article 6 of the Stockholm Convention of POPs, Parties are required to meet obligations regarding POPS stockpiles and waste. For example, Parties are required to

- (b) Identify, to the extent practicable, stockpiles consisting of or containing chemicals listed either in Annex A or Annex B ...;*
- (d) Take appropriate measures so that such wastes, including products and articles upon becoming wastes, are:*
 - (i) Handled, collected, transported and stored in an environmentally sound manner;*

¹ Government of Canada. *Canada Gazette*, Part II. Official Regulations (2008-06-11). Registration, SOR/2008-178 May 29, 2008. Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations. Accessed at <http://canadagazette.gc.ca/rp-pr/p2/2008/2008-06-11/html/sor-dors178-eng.html>.

² Note: As it applies to hazardous waste, hazardous recyclable material or non-hazardous waste, pesticide control products, as a contaminant in chemical feedstock, etc.

³ Note: For example, for photo development and aviation hydraulic fluids.

⁴ Note: It includes chromium electroplating and etchings and, electroless nickel-polytetrafluoroethylene plating.

⁵ Ibid.

⁶ Government of Canada. *Canada Gazette*, Part I: Notices and Proposed Regulations, Vol. 144, No. 37 (September 11, 2010). Notice of Intent to recommend that export controls for perfluorooctane sulfonate, its salts and certain other compounds that contain C8F17SO2, C8F17SO3 or C8F17SO2N groups and lindane be developed under the *Canadian Environmental Protection Act, 1999*.

(ii) Disposed of in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that they do not exhibit the characteristics of persistent organic pollutants or otherwise disposed of in an environmentally sound manner when destruction or irreversible transformation does not represent the environmentally preferable option or the persistent organic pollutant content is low,...

(iii) Not permitted to be subjected to disposal operations that may lead to recovery, recycling, reclamation, direct reuse or alternative uses of persistent organic pollutants; and

(iv) Not transported across international boundaries without taking into account relevant international rules, standards and guidelines...⁷

- The obligations of the Stockholm Convention on POPs to address POPs waste and stockpiles should be upheld in Canada's effort to address PFOS and lindane. In order to achieve these obligations, it will require Canada, as a Party to the Convention, to develop measures designed to promote the complete destruction of POPs; develop strategies to effectively identify such waste and stockpiles; and not permit disposal methods that lead to recovery or recycling of these POPs.
- The measures taken in Canada on lindane are inadequate to address the requirements noted in Article 6 of the Stockholm Convention.
- In the case of PFOS, the PFOS Regulations does not apply to hazardous waste, hazardous recyclable and non-hazardous waste. The exclusion of these sources of PFOS in the PFOS Regulations may not meet the obligations required in the Stockholm Convention.
- Article 6 will use the Basel Convention on Transboundary Movement of Hazardous Waste to manage POPs waste. However, there is growing concern that the Basel Convention does not sufficiently establish levels of POPS (e.g. PFOS) that is protective of the environment or human health. The PFOS Regulations should be expanded to apply to these sources of waste containing PFOS. In addition, a full analysis of the efficacy of the Basel Convention in promoting the POPs destruction should be undertaken by the Canadian government.
- Furthermore, the PFOS Regulations permit acceptable levels of PFOS in specific applications. For example, continued use of aqueous film forming foam containing PFOS is permitted so long as it meets the acceptable level established at 0.5 ppm. If the levels exceed 0.5 ppm, the products may be used so long as it was manufactured prior to the enforcement of the PFOS Regulations.⁸ Such a level does not constitute a complete phase out of PFOS but it will perpetuate its use at these low levels. In fact, the permitted level of

⁷ Stockholm Convention on Persistent Organic Pollutants. Accessed at <http://chm.pops.int/Convention/tabid/54/language/en-US/Default.aspx#convtext>, Article 6.

⁸ Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations P.C. 2008-974 May 29, 2008.

0.5 ppm could result in chronic low-level exposure to PFOS. Therefore, we urge the government to eliminate the permitted concentration levels of 0.5 ppm of PFOS.

- The presence of the permitted levels of 0.5 ppm in specific uses for PFOS is cause for substantial concern as it may be used as the basis for international negotiations in efforts to establish the criteria to define PFOS waste, for example, in the Basel Convention. Indeed, a substantial public review of this permitted level for PFOS content is needed in Canada.
 - Exemptions are listed for various uses of PFOS, including photography development processes and as fume suppressants, electroplating and etching processes that involve chromium or nickel plating. A five year exemption for continued PFOS usage in these applications is permitted in the PFOS Regulations. The deadline for these exemptions is 2013.⁹ We urge the government to avoid continuance of exemptions beyond 2013.
 - The exceptions and permitted uses provided under the PFOS Regulations will result in PFOS stockpiles and wastes. The current PFOS regulations do not effectively address the end of life waste stream nor does it take into consideration the impact of permitting the presence of PFOS through the 0.5 ppm concentration level for specific applications and uses. Further consideration of this source of a POP is urgently required when permitting a 0.5 ppm concentration level.
- The Notice of Intent does not outline the details and elements that will be considered for export control for PFOS and lindane. However, we urge that such controls aim for the complete prohibition of export for PFOS and lindane including products that may contain these POPs as intentional ingredients or as residues in products. We urge the government to adopt a regulatory measure to address exports of PFOS and lindane and products containing these POPs. Focusing on export activities in Canada demonstrates a high level of commitment by this government to protect the global environment and human health. Given Canada's vulnerability to the deposition of these POPs, a commitment to prevent the export of PFOS and lindane to other jurisdictions is praised. Exports activities may include developing countries or countries with economies in transition that do not have protective regulatory frameworks or disposal mechanisms to manage these chemicals.
 - Current measures on lindane include de-registration of lindane on January 1, 2005 for use in agricultural pest control use under the *Pest Control Products Act*.¹⁰ There are no current uses of lindane in veterinary drugs. However, there is continued use of lindane under the *Food and Drugs Act* in pharmaceutical products, with its primary use as a second-line treatment for lice and scabies in Canada.¹¹ While we are pleased

⁹ Ibid.

¹⁰ Government of Canada. *Canada Gazette*, Part I: Notices and Proposed Regulations, Vol. 144, No. 37 (September 11, 2010). Notice of Intent to recommend that export controls for perfluorooctane sulfonate, its salts and certain other compounds that contain C8F17SO2, C8F17SO3 or C8F17SO2N groups and lindane be developed under the *Canadian Environmental Protection Act* 1999.

¹¹ Ibid.

to see the use of lindane in pest control products and veterinary drugs eliminated, we are extremely disappointed that Canada expects to submit a five year exemption for the use of lindane in pharmaceutical products for lice and scabies treatment under the Stockholm Convention of POPs. Given the impacts of lindane to health, particularly for children, and the availability of safe alternatives, we urge the Canadian government to re-consider its position for a 5 year exemption. Rather, we would like to see focus on developing of an action plan for the elimination of all uses of lindane including measures to prohibit this use and thereby implement safe substitutes for lindane in the immediate future.

- Export control measures should also include PFOS and lindane found in products or feedstock intended for disposal or further waste management. Under the PFOS Regulations, the deadline for exemptions will end in 2013, which may result in the presence of waste or POPs stockpiles of these chemicals. With efforts to promote the complete destruction of the waste and stockpiles from these POPs, it is important that Canada addresses the waste stream in the development of export controls. Canada should aim to promote the complete destruction of all waste containing these POPs, including waste stockpiles that may be considered for export activities.
- We urge the government to develop and follow an effective and transparent public engagement process in the development of export controls that include participation by environmental, health, labour, industry and indigenous representatives.

Description for Canadian Environmental Law Association and Chemical Sensitivities Manitoba

CELA (www.cela.ca) is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate for environmental law reform. It is also a legal aid clinic that provides legal services to citizens or citizens' groups who are unable to afford legal assistance. CELA also undertakes substantive environmental policy and legislation reform activities in the area of access to justice, pollution and health, energy policy, water sustainability and land use issues. Under its pollution and health program, CELA has been actively involved in matters that promote the prevention and elimination of toxic chemicals addressed in the *Canadian Environmental Protection Act* and related statutes, including the categorization process and implementation of the CMP. CELA has also been actively engaged in the international negotiation and implementation activities to promote the global elimination of persistent organic pollutants under the Stockholm Convention on Persistent Organic Pollutants.

Chemical Sensitivities Manitoba (CSM), a volunteer organization, was founded in 1997 by four individuals who saw the need to address the affects of toxic chemicals on human health and the possible link between the onset of chemical sensitivities and chemical exposure and, in particular, chronic low-level exposure. CSM raises awareness of the presence of toxic chemicals in the home and the environment and strongly advocates for the safe substitution of toxic substances.

Finally, CELA and CSM encourage the government to initiate these discussions as soon as possible in order to minimize the delay in Canada's efforts to ratify the Stockholm Convention on POPs.

We look forward to responding to your proposals on export control. Please do not hesitate to contact us should you have questions.

Thank you for your consideration.

Yours truly,

[signatories]

Fe de Leon
Canadian Environmental Law Association
130 Spadina Avenue, Ste. 301
Toronto, ON M5V 2L4
Tel: 416-960-2284
Fax: 416-960-9392
Email: deleonf@cela.ca
CELA publication no.: 752
ISBN: 978-1-926602-73-8

Sandra Madray
Chemical Sensitivities Manitoba
71 Nicollet Avenue
Winnipeg, MB R2M 4X6
Tel: 204-256-9390
Email: madray@mts.net