



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

December 1, 2010

Manager, RM Ozone Depleting and PIC Substances
Chemical, Production Division
Environment Canada

Transmission by email: SES-ECS@ec.gc.ca

Dear Manager, RM Ozone Depleting and PIC Substances:

RE: Response to Amendments to the Export Control List under CEPA 1999

The Canadian Environmental Law Association (CELA) is pleased to see the government's efforts to update the Export Control List under the *Canadian Environmental Protection Act 1999* (CEPA 1999). We are taking this opportunity to respond to the consultation document titled, *Draft Order Amending Schedule 3 to CEPA 1999- the Export Control List* (ECL), with specific comments focused on the proposed listing or changes of listing category for selected substances to the ECL. CELA will also provide comments on the absence of chemicals of concern from the ECL that warrant consideration based on national and international focus.

The proposed amendments to the ECL are the first effort undertaken by the federal government since 2002. These changes to the ECL are long overdue. They are considered necessary to reflect the current status of toxic chemicals being managed under the CEPA 1999 and other federal statutes responsible for assessments and registration of substances (e.g. *Pest Control Products Act*). In our review of the consultation document, we are pleased to see that several chemicals that have been declared toxic under CEPA 1999 will be added to the ECL. For example, these include listing for Perfluorooctane Sulfonate (PFOS) and its Salts including Compounds that contain one of the following groups: C₈F₁₇SO₂, C₈F₁₇SO₃ or C₈F₁₇SO₂N, Benzidine and benzidine dihydrochloride, which have the molecular formula C₁₂H₁₂N₂ and C₁₂H₁₂N₂.2HCl, respectively (CAS 92-87-5, CAS 531-85-1) to Part 3 of ECL.

Similarly, we are pleased to see the addition or changes in category listing for several substances that have been listed under two key international conventions on toxic management - Rotterdam Convention on Prior Informed Consent (PIC)¹ and the Stockholm Convention on Persistent Organic Pollutants (POPs)². Under the Stockholm Convention on POPs, the proposal to add the following toxic substances to Part 1 is supported as they are a focus for global elimination.

ECL - Part 1

- Chlordecone (CAS 143-50-0) (proposed listing #12)
- 13. Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8, 8a-octahydro-exo-1,4-exo-5,8-dimethanonaphthalene) (CAS 72-20-8) (proposed listing #13)

¹ Rotterdam Convention for Prior Informed Consent. Accessed at <http://www.pic.int/home.php?type=t&id=5&sid=16>.

² Stockholm Convention on Persistent Organic Pollutants. Accessed at <http://chm.pops.int/Convention/tabid/54/language/en-US/Default.aspx>.

- Toxaphene (CAS 8001-35-2) (proposed listing #14)
- alpha-HCH (CAS 319-84-6) (proposed listing #15)
- beta-HCH (CAS 319-85-7)(proposed listing #16)

The following toxic substances are also listed under the Stockholm Convention and will be added to Part 3 of the ECL:

ECL - Part 3

- Perfluorooctane Sulfonate (PFOS) and its Salts including Compounds that contain one of the following groups: $C_8F_{17}SO_2$, $C_8F_{17}SO_3$ or $C_8F_{17}SO_2N$ (proposed listing #17 and 18)
- Pentachlorobenzene, which has the molecular formula C_6HCl_5 (CAS 608-93-5) (proposed listing #15)

Pentachlorobenzene should be re-evaluated and considered for addition to Part I of the ECL rather than Part 3, since the Stockholm Convention on POPs list this chemical for elimination.

Some further consideration should also be given to listing PFOS under Part 1 of the ECL. Currently, PFOS and its salts are targeted for restriction under the Stockholm Convention. Canada could provide leadership in the area of prohibiting use of PFOS and its salts with the exemption for destruction purposes. The regulations³ pertaining to PFOS contain limited exemptions for use of PFOS for specific applications. However, the 5 year exemptions outlined in the regulations are due to expire in 2013. It has been the recommendation of CELA that the government re-evaluate the measures taken on PFOS and its salts as this deadline approaches and as the implementation of the Stockholm Convention on POPs focusing on PFOS proceeds.⁴

CELA also supports the addition of the following substances under Part 2 of ECL because it includes chemicals already identified under the Rotterdam Convention.

- Dustable powder formulations containing a combination of: benomyl at or above 7% (CAS 17804-35-2), carbofuran at or above 10% (CAS 1563-66-2), thiram at or above 15% (CAS 137-26-8) (proposed listing #27)
- Seven tributyltin compounds (proposed listing #28):
 - Tributyltin oxide (CAS 56-35-9)
 - Tributyltin fluoride (CAS 1983-10-4)
 - Tributyltin methacrylate (CAS 2155-70-6)
 - Tributyltin benzoate (CAS 4342-36-3)
 - Tributyltin chloride (CAS 1461-22-9)
 - Tributyltin linoleate (CAS 24124-25-2)
 - Tributyltin naphthenate (CAS 85409-17-2)

³ *Canada Gazette*, Part II, Registration, SOR/2008-178 May 29, 2008, CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999, Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations P.C. 2008-974 May 29, 2008. Accessed at <http://canadagazette.gc.ca/rp-pr/p2/2008/2008-06-11/html/sor-dors178-eng.html>.

⁴ Response to Publication of a Notice of Intent - Export controls for perfluorooctane sulfonate (PFOS) and lindane, letter to Minister John Baird and Minister Leona Aglukkaq dated November 8, 2010. Accessed at <http://www.cela.ca/sites/cela.ca/files/752%20--NoI%20for%20export%20control%20for%20PFOS%20and%20lindane%20%28Nov%202010%29.pdf>.

However, we also offer the following comments and recommendations with regards to the listing of substances to the ECL from the Rotterdam Convention for PIC and the Stockholm Convention on POPs.

- The list on ECL is incomplete as it does not include all chemicals listed under Annex III of the Rotterdam Convention.⁵ For example, Asbestos Crocidolite (12001-28-4) is listed in Part II of the ECL. However, the ECL does not include the other asbestos chemicals listed under the Rotterdam Convention such as Actinolite (77536-66-4), Anthophyllite (77536-67-5), Amosite (12172-73-5), Tremolite (77536-68-6).

This is a significant gap and these chemicals (i.e., Actinolite (77536-66-4), Anthophyllite (77536-67-5), Amosite (12172-73-5), Tremolite (77536-68-6) should be added to the list in this round of amendments to the ECL.

- It is unclear what the reasons are for their exclusion from the ECL. This piecemeal approach which includes listing of only certain chemicals in a chemical group may cause significant problems for future listing of all chemicals from the same chemical group. There is ongoing and current consideration of asbestos chrysotile to Annex III of the Rotterdam Convention. Public interest environmental and health organizations in Canada are urging the federal government to apply a ban on export of all asbestos including asbestos chrysotile due to its impact to human health with particular to workers and their families. The addition to the Rotterdam Convention of chrysotile asbestos would mean significant protection of workers and other vulnerable communities in developing countries. Should there be adequate support from Parties to the Rotterdam Convention to add asbestos chrysotile to Annex III, it will raise the question on the process taken by the Canadian government necessary to add these chemicals to the ECL under CEPA.

To correct this approach, the listing for asbestos to the ECL should be a general listing of asbestos which would be more inclusive and could capture all asbestos including asbestos chrysotile.

- Similarly, the listing of tributyl tin to Part II of the ECL provides a listing of 7 tributyl tins. However, the original listing for tributyl tins under the Rotterdam Convention is for "tributyltins." We would not want the listing under ECL to be more restrictive than what is called for under the Rotterdam Convention. ***Therefore, we suggest the government use the same grouping name as indicated under the Rotterdam Convention to ensure the list of substances to be targetted under the ECL is not limited.***
- POPs listed under the Stockholm Convention that have not been added to the ECL include the following: polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), hexabromobiphenyl, hexabromodiphenyl ether, heptabromodiphenyl ether, tetrabromodiphenyl ether and pentabromodiphenyl ether. There has been no rationale provided in the consultation document for their exclusion.
- PCDD/PCDF may be produced unintentionally as a result of industrial processes or combustion processes but this should not deter the inclusion of these chemicals as they are in the same category as pentachlorobenzene and hexachlorobenzene, which are both listed under the Stockholm Convention and Rotterdam Convention. Under the Stockholm Convention these POPs have been listed as pesticides and by-products from industrial processes. ***It is our view,***

⁵ Rotterdam Convention on PIC. Annex III – Chemical List. Accessed at <http://www.pic.int/print.php?ptype=t&pid=29>.

that polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/PCDF should be added to the ECL in this round of amendments.

- **The brominated flame retardants captured by the listing of hexabromobiphenyl, hexabromodiphenyl ether, heptabromodiphenyl ether, tetrabromodiphenyl ether and pentabromodiphenyl ether should also be added to the ECL.** Not only are they listed under the Stockholm Convention but they are also recognized as toxic under CEPA 1999 and measures are already in place to manage many of these substances under the Polybrominated Diphenyl Ethers Regulations.⁶ Additional management activities are expected to be developed by the government on decabromodiphenyl ether in the near future. While these brominated flame retardants are not a focus under the Stockholm Convention at the moment, additional national focus on these substances will be expected on these toxic substances with respect to export control activities.

Background on the Canadian Environmental Law Association

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 otherwise unable to afford legal assistance. In addition, CELA also undertakes substantive environmental policy and legislation reform activities in the areas of access to justice, pollution and health, water sustainability and land use issues since its inception. 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*, including the categorization process and implementation of the CMP.

CELA hopes the above comments are given full consideration.

Should you have questions regarding our comments and recommendations, please do not hesitate to contact Fe de Leon at 416-960-2284 ext 223.

Kind regards,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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Researcher

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⁶ Government of Canada. *Canada Gazette*, Part II, Registration SOR/2008-218 June 19, 2008, *Canadian Environmental Protection Act*, 1999, Polybrominated Diphenyl Ethers Regulations P.C. 2008-1271 June 19, 2008. Accessed at <http://canadagazette.gc.ca/rp-pr/p2/2008/2008-07-09/html/sor-dors218-eng.html>.