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

Comments by the Canadian Environmental Law Association to the First Meeting of the POPs Review Committee under the Stockholm Convention on Persistent Organic Pollutants, November 7-11, 2005, Geneva

Submitted to:

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The Canadian Environmental Law Association is submitting this letter for your consideration in your capacity as the Canadian designated expert to the POPs Review Committee established under the Stockholm Convention on Persistent Organic Pollutants (POPs). This letter is also intended to provide advice to Canada on its positions regarding the first meeting of the POPs Review Committee.

As you know CELA has a long standing interest in policy reform efforts that promote the elimination of persistent toxic substances, in particular POPs at all levels of society. CELA along with other non-governmental organizations in Canada and through the International POPs Elimination Network (www.ipen.org) has actively monitored and provided extensive comments to Parties throughout the negotiations of the Stockholm Convention. The Stockholm Convention on POPs provides an unique opportunity for the global community to take action on some of the most hazardous substances. In this regard, the first meeting of the POPs Review Committee has a critical role to play in reviewing and assessing POPs for addition to the Stockholm Convention. CELA is very interested in the outcome of the meetings of the POPs Review Committee.

Most recently, CELA provided substantive comments to Canada on its draft National Implementation Plan. The work of the POPs Review Committee is an integral component of Canada's ability to meet its obligations under the Stockholm Convention. The NGO submission on Canada's NIP focuses on the importance of identifying, reviewing and adding POPs to the Convention. Since the Convention came into force in May 2005, implementation activities by Parties have heightened in importance. Similarly, we want to acknowledge that NGOs view the first meeting of the POPS Review Committee with considerable interest as it aims to focus some attention on other POPs that urgently require attention from the global community.

Throughout the negotiations and first Conference of the Parties (COP1) for the Stockholm Convention, Parties dedicated considerable discussion time to the composition of the Committee and terms of reference. The added value of the Convention aside from taking immediate action on the twelve POPs targetted under the Convention was to have a process in place to add POPs. In fact, we were pleased to see that the urgency to act on POPs has not diminished globally. The nomination of additional POPs by various Parties at the conclusion of COP1 by various Parties in Uruguay was well received.

We hope Canada's involvement in the POPs Review Committee will reflect the level of enthusiasm demonstrated by the Parties at the conclusion of COP1 and the type of leadership that was evident from Canada at the onset of the negotiations of the Convention. We commend the efforts taken by Canada throughout COP1 in the contact group to discuss the POPs Review Committee.

Below we have briefly highlighted issues and comments that Canada should consider as the work of the POPs Review Committee begins.

Canada's Overall Objectives for the POPs Review Committee

- Canada contributed significantly throughout COP1 in the discussion that focused on establishing the POPs Review Committee. We expect this level of commitment and leadership to be transparent at the first meeting of the POP Review Committee. Specifically, we are pleased that Canada's efforts at COP1 focused on ensuring that the Review Committee is effective, transparent, and participatory body for evaluating new POPs to the Convention.

- Recognizing that resources (technical and financial) remain barriers for some Parties for taking action on POPs, these barriers should not reduce the importance of the work before the POPs Review Committee. The overarching objective for the Review Committee is to review and make recommendations based on the chemical profiles submitted for each of the POPs nominated under the Stockholm Convention regime.

- Canada should ensure that the Review Committee take a precautionary approach when the members review and consider the scientific justification provided for each of the POPs nominated.

- As the Review Committee reviews the nominated POPs, they should be reminded that Parties to the Convention are:

  > Aware of the health concerns, especially in developing countries, resulting from local exposure to persistent organic pollutants, in particular impacts upon women and, through them, upon future generations,…
  >
  > Are determined to protect human health and the environment from the harmful impacts of persistent organic pollutants. (Stockholm Convention of POPs)

- Given that the Convention specifically focuses its attention to the impacts of POPs on our own Arctic regions and makes specific reference to future generations, Canada should advise the Review Committee that developing recommendations for adding POPs under the Stockholm Convention on POPs is not only an opportunity to enhance the obligations of the Convention but a critical step towards creating opportunities that highlight the need for safe alternatives to POPs.

- The role of public interest groups and other stakeholders in the POPs Review Committee remains vague. Public interest organizations, both health and environmental, have made significant contributions on this file and continue to monitor and respond to various aspects of implementation of the Stockholm Convention. Further given the impacts of POPs in the Canadian environment, Canada

should establish a stakeholder process to focus on matters regarding the work of the POPs Review Committee.

- CELA is disappointed that Canada has not provided a nomination for a list of POPs for consideration by the POPs Review Committee. They have undertaken several assessments of POPs substances over the past 10 years that can easily be reviewed by the POPS Review Committee. See below.

Recommendation: CELA expects Canada to demonstrate its leadership at the meetings of the POP Review Committee by ensuring that the process remains an effective, transparent, and a participatory body for evaluating new POPs to the Convention. This would include operationalizing a process for observer participation.

Recommendation: Canada should ensure that the Review Committee take a precautionary approach when the members review and consider the scientific justification provided for each of the POPs nominated. Canada should ensure substances prioritized in the Arctic through the Northern Contaminants Process are considered.

Recommendation: Canada's advice to the Review Committee should provide added emphasis on the impact of POPs to vulnerable communities such as aboriginal communities, women and children.

Recommendation: Canada should establish a stakeholder process to advise and provide input to issues related to the work of the POPS Review Committee.

Recommendation: CELA is disappointed that Canada has not nominated POPs for the Review Committee to consider given its efforts to complete assessments of several POPs in the past 10 years.

Canada's National Regime on POPs

- Under Canada's draft National Implementation Plan, Canada identified the on-going process to categorize the 23,000 substances under the Domestic Substances List under the CEPA as a tool for identifying POPs.

- Under Section 73 of CEPA, the Departments of Health and Environment are required to categorize the DSL for persistence or bioaccumulation and inherent toxicity by September 2006. This CEPA obligation should be considered the main source of information of POPs in Canada that should be considered under the Stockholm Convention.
    - It is estimated that about 400 substances are expected to meet the criteria for persistent, bioaccumulative and inherently toxic to the environment from the categorization exercise.

  - These substances have been identified as priorities by Environment Canada for further work under the Screening Level Risk Assessment.

- Under CEPA there are several mechanisms that may also contribute to the knowledge around persistent organic pollutants. For example, public nominations on substances of interest can be submitted under Section 76, full assessments of substances can be undertaken through section 77, and the New Substances Notification Regulation covers substances that are not on the Domestic Substances List. Canada should articulate how these mechanisms will be considered in the work of the POPS Review Committee.

- The Persistent and Bioaccumulation Regulations under CEPA is a key piece of regulation that commits the government of Canada to target POPs for virtual elimination.

- To ensure that Canada is well positioned to support the inclusion of POPs to the Convention with the domestic regime outlined under CEPA

Recommendation: Canada should articulate how the various CEPA mechanisms will be considered in the work of the POPS Review Committee.

Recommendation: Canada should develop a annual report that focuses on, among other things how information collected through the various CEPA tools and mechanisms will be reviewed and reported to the public.

Recommendation: CELA urges Canada to take immediate action on those substances that may include further assessments and phase out of these substances identified as persistent, bioaccumulative and inherently toxic under the categorization process (section 73 of CEPA).

- The Partners of Canadian Partnership for Children's Health and Environment released its report, *Child Health and the Environment - Primer*, in September 2005. Among its list of recommendations, the partners outline its support to the POPs nominations by the European Commission in 2004.[1] This report would can be found on www.healthyenvironmentforkids.ca.

- CELA supports the following nominations:
  - Norway of the flame retardant pentabromodiphenyl ether (penta-BDE);
  - Mexico to nominate the pesticide lindane (gamma isomer of HCH and all HCH isomers);
  - Sweden on perfluorooctane sulfonate (PFOS); and
  - the European Union on chlordecone and hexabromodiphenyl ether.

[1] Canadian Partnership for Children's Health and Environment. 2005. *Child Health and the Environment - Primer.* P. 81.

Recommendation: CELA strongly urges Canada to advise the members of the Review Committee to support the nomination for penta-BDE, lindane, perfluorooctane sulfonate and chlordecone and hexabromodiphenyl ether.

Nominated Substances

Below are brief comments to support the above nominations. The main source of information is Environment Canada Green Lane (CEPA Review and Registry Page).

Pentabromodiphenyl ether and hexabromodiphenyl ether (Brominated Flame Retardants)

- In its draft assessment of PBDEs, Environment Canada and Health Canada recommended that pentabrominated diphenyl ethers (penta-BDEs) and hexabromodiphenyl ether be targetted for virtual elimination under CEPA.
    - There is great concern that there has been a significant delay in releasing the final assessments on PBDEs. While the draft assessments were released for public comment in 2004, they have yet to be finalized.

Recommendation: Canada should support the recommendation by Norway to add PBDEs to the Stockholm Convention on POPs. Refer to UNEP/POPs/POPRC.1/5. And UNEP/POPS/POPRC.1/7.

Recommendation: Canada should immediately finalize and release its assessment of PBDEs to ensure that the development of management strategies on these substances are underway as soon as possible.

Lindane

Commission of Environmental Cooperation has recently released for public comment the *North American Regional Action Plan (NARAP) on Lindane and other Hexachlorocyclohexane Isomers* under its Sound Management of Chemicals Program. Under the North American Free Trade Agreement, Canada, US and Mexico co-operate on specific environmental matters. The regional Action plans lays out a 10 year plan to assess and manage lindane including efforts to review alternatives to lindane. Under the plan, Canada agrees to assess and manage the risks from its sole remaining use of lindane as a pharmaceutical drug. Mexico proposes to phase out lindane from various uses.

- Hexachlorocyclohexane is identified under *the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem* as a substance of concern. It is listed as a Tier II substance under this Agreement which includes substances identified as having the potential for causing widespread impacts, or have already caused local adverse impacts on the Great Lakes environment. There are 26 substances on this list including 17 PAHs.

- The Pest Management Regulatory Agency (PMRA) phased out all uses of lindane for which alternatives exist by 2002. A complete phase out of lindane was scheduled by the end of 2004. This decision was based on the determination of unacceptable risks through occupational exposure.[2] All pesticide registrants, with the exception of Crompton Co discontinued uses of lindane. A board of review to examine the PMRA decisions for phase out of lindane was established. The Board's report to the Minister of Health was scheduled to be completed by Summer of 2005.

- Sufficient evidence is available to demonstrate the need for global action on lindane and the availability of safe alternatives to various uses of lindane make it an ideal candidate for global action under the Stockholm Convention.

Recommendation: Canada should strongly support Mexico's nomination to add lindane to the Stockholm Convention. Refer to UNEP/POPS/POPRC.1/8.

Recommendation: Canada should demonstrate leadership and phase out the use of lindane immediately given the availability of safe alternatives.

Recommendation: Canada should direct additional resources to the development and promotion of alternatives to lindane as well as other persistent toxic substances.

Chlordecone

- Targetted for action under the UNECE Long Range Transport Air Pollutants on POPs. Canada is has ratified this Agreement.

- Health impacts from chlordecone include: recognized carcinogen, recognized developmental toxicant and suspected as endocrine toxicant, gastrointestinal or liver toxicant; kidney toxicant; neurotoxicant; reproductive toxicant.[3]

Recommendation: Canada should strongly support the European Union's nomination for chlordecone to be added to the Stockholm Convention. Refer to UNEP/POPS/POPRC.1/6

Perfluorooctane sulfonate

- Canada completed in draft its assessment of PFOS in fall of 2004 but this assessment has not been finalized. Under the draft assessment, it was concluded that PFOS is considered toxic under CEPA.
- Although Canada does not manufacture PFOS the volumes found in the manufacturing consumer products is significant.

Recommendation: Canada should support the nomination made by Sweden to add PFOS to the Stockholm Convention. Refer to UNEP/POPS/POPRC.1/9.

[2] See http://www.pmra-arla.gc.ca/english/highlights/in20050704-e.html.
[3] See: Health Effects page on www.scorecard.org.

Recommendation: Canada should finalize its assessment for PFOS immediately to ensure that the development of management strategies in Canada is initiated immediately with an aim of phase out of these substances.

Other POPS for consideration

We recognize that the first meeting will focus on the specific substances mentioned above. We also recognize that the foundation for the Review Committees's work for considering other POPs will be firmly established after the first meeting. There are a number of POPs substances that have been long recognized by different agencies or jurisdications as substances of concern. For example, the United National Economic Commission identified other POPs that further consideration under the Stockholm Convention, including hexachlorobutadiene, pentachlorobenzene, polychlorinated naphthalenes, and short chain paraffins. The European Commission (http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0537en01.pdf) and IPEN also proposed lists of POPs that require further consideration. IPEN's list include: other brominated flame retardants; dicofol; endosulfan; perfluorinated chemicals, including but not limited to perfluorooctane sulfonate (PFOS); chlorinated paraffins; organotins; brominated dioxins and bromo-chloro-dioxins; polychorinated napthalenes (PCN); and octachlorostyrene (OCS).

Canada is well positioned to focus some of its resources on several of the substances listed above. For example:

1) Hexachlorobutadiene (HCBD)

- This substance is identified as one of 25 substance under the Priority Substances List II.

- According to the summary of the assessment report on HCBD, this substance has never been commercially produced in Canada. HCBD was imported into Canada and used in solvents. Available data indicate that HCBD meets the criteria for persistence and bioaccumulation according to the Persistence and Bioaccumulation Regulations of the Canadian Environmental Protection Act, 1999(CEPA 1999). It also considered to be "toxic" under Section 64 of Canadian Environmental Protection Act, 1999(CEPA 1999). Hexachlorobutadiene is the first substance to be proposed for the virtual elimination list under CEPA (Section 65) in 2004.

- HCBD has been found in Canadian water, air, biota, and sediment. Canada is vulnerable to exposure to HCBD via long range transport from other sources such as the US. Data also show that HCBD are a byproduct of combustion. The preliminary information indicates that combustion sources of HCBD are similar to those of dioxins, furans and hexachlorobenzene. Initiatives undertaken for the prevention or reduction of dioxins and furans will also reduce the releases of HCBD and other chlorinated substances such as hexachlorobenzene. While Canada does not use

HCBD commercially, no management strategies have been approved to prevent the reintroduction of HCBD in Canada.

2) Pentachlorobenzene

- Canada is well positioned to focus on pentachlorobenezene. It was one of the 44 substances assess as a Priority Substance under CEPA. The initial assessment report was completed in 1993 and a follow-up report was completed in 2003.

- The assessment report concluded that pentachlorobenzene is persistent, bioaccumulative, predominantly anthropogenic and are considered "toxic" under Paragraph 64(a) of CEPA 1999. This substance also meets the criteria for Track 1 substances under the Toxic Substances Management Policy. The goal for this substances is virtual elimination of releases to the environment. Given that there is no commercial demand for this substance in Canada, the options to prevent their reintroduction into the Canadian market should be explored.

- Canada's follow-up assessment report also focused on medium and long chain paraffins as well.

3) Short chain paraffin

- Canada is well positioned to submit its nomination for short chain paraffin.

- It is one of 44 substances listed under the PSL I. The assessment report was published in 1993. It concluded that short chain paraffins were toxic to human health. In a follow-up report, still in draft form, Environment Canada and Health Canada proposed that short chain paraffins are toxic to humans and environment under CEPA, 1999. Environment Canada proposed that these substances are candidates for virtual elimination.

4) Octachlorostyrene (OCS)

- Identified under the Canada-Ontario Agreement as a substance of concern. Is one of 11 critical pollutants identified by the International Joint Commission, plus critical pollutants identified in the Niagara River and lake Ontario Toxic Management Plans and the Lake Superior Binational Program. Tier I pollutants are targeted for virtual elimination.

- Limited data is available on the emission levels from OCS, however, it is known that processes such as magnesium production and chlorine manufacturing resulted in emissions of OCS. There is evidence that hydroxyheptachlorostyrene, a metabolite of OCS has been detected in polar bear and human plasma in the Arctic.[4]

[4] Arctic Monitoring and Assessment Programme (2004), AMAP Assessment Report 2002: Persistent Organic Pollutants in the Arctic. p. 15.

Recommendation: Canada should develop a list of POPs for further consideration and nomination to the POPs Review Committee no later than September 2006. This effort should be based on the result of the DSL categorization under CEPA to identify all DSL substances that meet the criteria for persistence and/or bioaccumulation and inherent toxicity.

Concluding Comments

Now that the implementation efforts under the Stockholm Convention are well underway, the positions and advice by Canada to the POPS Review Committee will be one area where expectations will be high, in particular given its domestic obligations under Section 73 of CEPA and its completion of assessments on many of the POPs substances under CEPA. Based on the conclusion of these efforts and the known health and environmental concerns on POPs, Canada is well positioned to support the nominations of made by Norway (penta-BDE); Mexico (lindane); Sweden (PFOS); and the European Union on chlordecone and hexabromodiphenyl ether.

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