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

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Don Gutzman
Head, Exposure Unit
Environment Canada
351 St Joseph Boulevard
Gatineau, Quebec
Canada K1A 0H3

Transmission by email: Don.Gutzman@ec.gc.ca

Dear Don:

Re: Categorization of DSL substances under CEPA 1999: Application of rapid screening tools for categorized substances of low concern

Thank you for meeting with us on June 19th to discuss our preliminary comments on the rapid screening tools proposed by Environment Canada for those substances meeting the categorization criteria which have been identified as low concern. As promised, we have included below a number of comments and issues that we strongly urge your department to consider in your development of the screening assessment methodologies for these substances.

As noted during our call, we welcome Environment Canada's proposal to perform screening assessment on all substances meeting the criteria for categorization, in particular those substances identified as low concern.

However, at this time, the proposal to apply the rapid screening tools to low concern substances suspected of being used in low volume is inappropriate. During our call, CELA noted that the application of the proposed tools is useful in identifying substances that may need to be elevated to higher priority levels for further work. However, no substances should be "set aside" or deemed to require no further work as a result of the application of these tools alone. The reasons that these tools are inadequate to make such a determination are as follows:

- These PiTs and BiTs have been identified as low concern because they "have a low likelihood of causing harmful effects due to believed low quantities in commerce (<=1000 kg across Canada)" (slide 4). Thus, government has concluded that they have a "low probability of meeting the s. 64(a) criterion" (slide 4). The rapid screening tool is being proposed as a means of verifying whether or not the substances meet, or are likely to meet, the "inherently toxic" criteria under s. 64. "Inherent toxicity" is evaluated on the basis of both hazard and exposure. With respect to hazard, it must be emphasized that these substances have already met the specific criteria of categorization (PiTs or BiTs)

due to their hazard properties. However, exposure cannot be accurately assessed under the proposed tools due to the reliance on volume data which is twenty years out of date.

- The tool is based on the substances' volumes as reported at the time they were nominated for the DSL in 1986, 20 years ago. Every part of the subsequent "assessment" builds upon these outdated assumptions. Despite the department's claim that "conservative estimates of exposure" (slide 9) are being applied, the tools fail to address the likelihood that these volumes have increased dramatically over the last 20 years. Drawing on other jurisdictions and databases to determine changes in volume and use is not sufficient to identify volumes in use in Canada.
- Since the quantity data available for DSL substances is 20 years old, industry should provide updated information. The application of surveys for this purpose would be both appropriate and timely.
- EC has never discussed how the human health toxicity data will be reviewed at the screening assessment phase for substances that are low priority. Despite the fact that Health Canada may not identify these substances as high priorities, there is nonetheless a need to consider toxicity data and exposure data from human health together with ecological data. For example, if the substance has been found to be inherently toxic to humans, this would suggest that additional attention is required at the assessment phase. We would like to see an assessment scheme that better integrates the consideration of available human health and ecological data.
- The Raidar model can estimate how far a substance may travel from its original source through partitioning. As additional information becomes available (ie. biomonitoring, updated use and release data), the Raidar model could be reapplied to those substances that remain low priorities to determine if the substances remains a substance of low concern. It is hoped that the assessment results of higher priority substances will be issued in a timely manner and therefore allow for additional substances to be elevated to higher priority groups when warranted.

Other issues of concern related to volume data:

- The only attempt to verify volumes is a comparison to international (not Canadian) HPV lists. If the substance appears on one of these lists, it will receive some indeterminate "further evaluation". Contrary to government's claim that few of these substances are used in higher volumes today, they have already identified over 400 of these so-called low priorities which appear on the international lists. How many others are used in high volumes today, but have not been captured by an HPV program? How accurately do the international HPV lists reflect quantities in use in Canada?

- For each substance not appearing on one of the HPV lists, government proceeds with its assessment under the assumption that the volume in use is no larger than 1000 kg. This figure represents the total quantities notified by all companies using the substance in 1986. Again, it is to be expected that more companies would have begun using the substance after it was added to the DSL in 1986, but government does not appear to take this into account.

- The databases and inventories under review only require reporting by facilities when specific thresholds are met. Thus, they do not capture situations where large quantities of the substances are used and released from numerous smaller facilities. Failing to consider additive volumes falsely supports the notion that these substances are indeed low volume. For example, Canada's National Pollutant Release Inventory (NPRI) requires facilities to report on a number of pollutants based on specific thresholds including the number of employees, quantity of releases, application of emission factors, etc. NPRI currently does not capture many facilities that do not meet the reporting thresholds (i.e. auto body shops, drycleaners, etc.).

- To improve information collected on DSL substances, in particular for volume and range of use for substances on the DSL, government should require mandatory reporting by all facilities every five years.

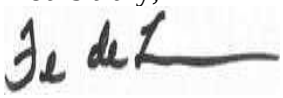
Absence of process for prioritizing with other CEPA "feeders"

Over the past year, NGOs have asked both EC and HC to articulate a process for setting priorities on substances identified through other CEPA feeders (ie. public nomination, emerging science, other jurisdictions) relative to the categorized in substances. Details on how substances identified from these other streams will be addressed and when they will be addressed in light of the categorization process is of critical importance. The process and criteria for establishing these substances as priorities should be transparent.

In conclusion, we would like to reiterate that the rapid screening tools, including the Raidar model. are useful for *prioritizing* substances on the basis of their hazard profiles alone. They should not presume to assess "risk" levels, since risk is based on exposure and these tools cannot predict exposure with any degree of accuracy. For the same reason, they should not be used as a basis for determining inherent toxicity under s. 64.

We look forward to further engagement on this issue. Please do not hesitate to contact us should you have questions.

Yours truly,



Fe de Leon
Researcher

Jessica Ginsburg
Counsel, Special Projects

c.c. David Morin, EC