



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

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Dear Mr. Leigh and Mr. Madé:

Re: Response to Canada Gazette, Part I, Vol. 145, No. 31 — July 30, 2011 Order Amending Schedule 3 to the Canadian Environmental Protection Act, 1999

The Canadian Environmental Law Association (CELA) is providing the following response to the *Canada Gazette*, Part I, Vol. 145, No. 31 — July 30, 2011 Order Amending Schedule 3 to the *Canadian Environmental Protection Act, 1999* (CEPA 1999).

Proposed listing to Part 1 in Schedule 3

The government proposes to add the substances listed below to the Export Control List (ECL) in Schedule 3 of the CEPA 1999.

The following five substances are proposed to be included in Part 1 of the ECL. These substances are prohibited in Canada and should be included in Part 1 of the ECL.

- Chlordecone (Chemical Abstracts Service [CAS] registry number 143-50-0);
- 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];
- Toxaphene (CAS 8001-35-2);

- Alpha-HCH (CAS 319-84-6); and
- Beta-HCH (CAS 319-85-7).

CELA supports the inclusion of the above toxic substances to Part I of ECL.

These toxic chemicals have been used as pesticides but are no longer registered for use in Canada for pesticide applications according to Health Canada's Public Registry for active ingredients.¹ Export of these toxic chemicals will be permitted under limited circumstances. However, the Regulatory Impact Analysis Statement (RIAS), or the proposed Regulatory Text, does not provide specific limitations by which exports of these substances are permitted. For substances listed to Part I in Schedule 3, CEPA 1999 section 101(2) requires that:

....no person shall export a substance specified in Part 1 of the Export Control List in Schedule 3 unless the export of the substance
1.(a) is for the purpose of destroying the substance or complying with a direction under subparagraph 99(b)(iii);²

Furthermore, these toxic chemicals have been identified as persistent organic pollutants (POPs) and are listed under Annex A (elimination) of the Stockholm Convention on Persistent Organic Pollutants. As a Party to the Stockholm Convention, Canada is committed to the goal of elimination of these toxic chemicals. Therefore, exports of these toxic chemicals should be for purposes of destruction only, and only in situations where appropriate and effective destruction technologies cannot be undertaken within the boundaries of Canada. This approach would be in keeping with CEPA 1999 section 101(2) as stated above

CELA adds that "purpose of destroying" should fulfill requirements as outlined in Article 6 (1) (d) of the Stockholm Convention. It states:

1. In order to ensure that stockpiles consisting of or containing chemicals listed either in Annex A or Annex B and wastes, including products and articles upon becoming wastes, consisting of, containing or contaminated with a chemical listed in Annex A, B or C, are managed in a manner protective of human health and the environment, each Party shall:....

(d) Take appropriate measures so that such wastes, including products and articles upon becoming wastes, are:...

(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,³

Proposed Listing to Part 2 in Schedule 3

The proposed amendments to ECL will include the addition of the following substances to Part 2 in Schedule 3.

- Dinitro-ortho-cresol (DNOC) and its salts (CAS 534-52-1; CAS 2980-64-5; CAS 5787-96-2; CAS 2312-76-7);

¹ Health Canada. Public Registry (Application by Active). Accessed at: <http://pr-rp.hc-sc.gc.ca/pi-ip/index-eng.php>.

² Government of Canada. Canadian Environmental Protection Act, 1999 (CEPA 1999). Accessed at <http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=24374285-1&offset=6&toc=show>

³ United Nations Environment Programme. Stockholm Convention on Persistent Organic Pollutants. Accessed at: <http://chm.pops.int/Convention/ConventionText/tabid/2232/Default.aspx>

- 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) and thiram at or above 15% (CAS 137-26-8); and
- All tributyltin compounds, including
 1. Tributyltin oxide (CAS 56-35-9);
 2. Tributyltin fluoride (CAS 1983-10-4);
 3. Tributyltin methacrylate (CAS 2155-70-6);
 4. Tributyltin benzoate (CAS 4342-36-3);
 5. Tributyltin chloride (CAS 1461-22-9);
 6. Tributyltin linoleate (CAS 24124-25-2); and
 7. Tributyltin naphthenate (CAS 85409-17-2).

In addition, the following chemicals are also to be added to Part 2 in Schedule 3.

- Tetraethyl lead (CAS 78-00-2); and
- Tetramethyl lead (CAS 75-74-1).

CELA supports the listing of the above toxic chemicals to Part 2 in Schedule 1 to meet its international obligations under Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Proponents that export these toxic chemicals will be required to provide information on the chemical based on the prior informed consent process in the Rotterdam Convention.

Asbestos

CELA is extremely disappointed that the government has not proposed to add asbestos, in particular chrysotile asbestos, to the ECL. At the recent Conference of the Parties meeting of the Rotterdam Convention, the Parties had the opportunity to add chrysotile asbestos to Annex III for PIC. Canada was one of a few countries that did not show support for this listing. Based on the evidence of harm of exposure to asbestos, international agencies such as the World Health Organization and several health-based organizations including the Canadian Medical Association and Canadian Cancer Society advocated for the inclusion of chrysotile asbestos to the Rotterdam Convention. Appropriately, a listing of chrysotile asbestos to the Rotterdam Convention and the ECL would require exporters to provide critical data on this chemical to importing countries. This requirement would enhance transparency and access to information, necessary measures to protect health of workers and the community. CELA continues to urge this government to take the necessary steps in its legal framework to prohibit the use of all forms of asbestos in Canada and cease exports of this chemical. The listing of asbestos to ECL would represent a step towards this goal.

Proposed listing to Part 3 in Schedule 3

- Benzidine and benzidine dihydrochloride, which have the molecular formulas C₁₂H₁₂N₂ and C₁₂H₁₂N₂×2HCl, respectively (CAS 92-87-5; CAS 531-85-1);
- 2-Methoxyethanol, which has the molecular formula C₃H₈O₂ (CAS 109-86-4);
- Tetrachlorobenzenes, which have the molecular formula C₆H₂Cl₄ (CAS 12408-10-5; CAS 84713-12-2; CAS 634-90-2; CAS 634-66-2; CAS 95-94-3);

- Azinphos-methyl (CAS 86-50-0);
- Phorate (CAS 298-02-2); and
- Terbufos (CAS 13071-79-9).

CELA supports the listing of the above toxic chemicals to Part 3 in Schedule 3 of ECL. Control measures are in place for these toxic chemicals under CEPA 1999. However, the listing of these toxic chemicals in Part 3 does not provide explicit conditions to their export that aim to reduce exposure of these toxic substances to humans or the environment. It appears that exports are permitted “subject to the Minister being notified in advance.”⁴ Despite Canada’s decision to place restriction on these toxic substances due to their impacts to human health or the environment, the onus remains on the importing countries to determine the safety measures that should be practiced related to these chemicals.

Perfluorooctane sulfonate (PFOS) and its salts and Compounds that contain one of the following groups: C8F17SO2, C8F17SO3 or C8F17SO2N

Further consideration on the listing of Perfluorooctane sulfonate (PFOS) and its salts to Part 3 in Schedule 3 should be undertaken.

PFOS and its salts are listed in Annex B of the Stockholm Convention on POPs and under Schedule 1 of CEPA 1999. In Canada, PFOS and its salts are regulated under the Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations (2008) and the Perfluorooctane Sulfonate Virtual Elimination Act (2009). CELA is expressing its concern that listing of PFOS and its salts to Part 3 may not provide the adequate protection for Canadian environment and its population and should be listed under Part 1 in Schedule 3. The Canadian government’s commitment for virtual elimination of PFOS and its salts may be hampered by the listing to Part 3. Export of these substances would be allowed without restrictions under Part 3. The government should consider permitting export of PFOS for the purposes of destruction only, as required under Part 1.

Furthermore, under Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations (2008), there are a number of specific exemptions for uses of PFOS and its salts. These exemptions are set to expire by 2013. It is unclear how the listing of PFOs and its salts to Part 3 may change, if at all, once these exemptions have expired. CELA is concerned that PFOS stockpiles and waste containing PFOS and its salts would be available for exporting but would not be limited for the purposes of destruction. CELA recommends that stringent limits for export of PFOS and its salts be applied and the listing to Part 1 may be more appropriate.

Pentachlorobenzene, which has the molecular formula C6HCl5 (CAS 608-93-5)

Pentachlorobenzene was added to the Stockholm Convention on POPs under Annex A (use and production) for elimination and Annex C (unintentional by-product). The listing to Part 3 in Schedule 3 of the ECL is considered inappropriate and limiting based on these pre-existing listings.

⁴ Government of Canada. Canada Gazette, Part 1, Vol. 145, No. 31 — July 30, 2011 Order Amending Schedule 3 to the Canadian Environmental Protection Act, 1999.

The aim for elimination of use and production of this chemical would not be supported should exports be permitted as they are under Part 3 of Schedule 3 of ECL. These chemicals should be listed under Part 1 in Schedule 3 to discourage the use and releases of pentachlorobenzene. Under Part 3, the discretion is left to the Minister to establish the grounds for refusal of permits for export. Unless the controls or restrictions in place in Canada on this substance include exports, it would be assumed that there is very limited ability to determine if the chemical will be used in a safe manner by the importing country.

Should you have questions, please do not hesitate to contact us. Thank you for your consideration.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Fe de Leon", with a long horizontal stroke extending to the right.

Fe de Leon
Researcher

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