

October 17, 2014

Virginie Poter
Director General
Chemical Production Division
Environment Canada
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Gatineau, QC K1A 0H3

Transmission by email: Virginia.Poter@ec.gc.ca

Dear Ms. Poter:

Re: CELA's response to Consultation Document – Proposal to Control the Trade of Mercury

The Canadian Environmental Law Association (CELA) is submitting the following comments in response to its consultation document titled *Consultation Document on the Proposal to Control the Trade of Mercury (Draft for discussion)*, released for public comment in September 2014.

While CELA is interested in the full scope of measures under consideration by the government addressing on-going challenges of mercury in Canada that will allow Canada to meet the obligations under the Minamata Convention on Mercury (Minamata Convention), we will limit our comments to the following issues:

- 1) Ratification Process;
- 2) Mercury emissions;
- 3) Regulating mercury export;
- 4) Proposed regulations to prohibit mercury in product; and
- 5) Public Engagement.

Comments:

- 1) *Ratification Process:* CELA is pleased to see the government has taken the first step towards ratification of the Minamata Convention on Mercury on October 10, 2013. However, CELA is concerned that the government has not expressed its definitive plan for the ratification of the Minamata Convention. Given the legacy of mercury contamination in Canada, particularly in the Great Lakes-St. Lawrence Ecosystem, where mercury has been a focus of management and monitoring programs since 1980s, a re-commitment for mercury elimination is necessary for the long term protection of the environment and human health. Mercury contamination continues to be a challenge for indigenous communities across Canada, including at Grassy Narrows, and threatens the health of wildlife populations across

the country. CELA urges the government to proceed with its ratification protocol without further delay and begin a process to develop a national action plan for mercury elimination.

Recommendation: CELA recommends Canada to expedite its ratification of the Minamata Convention on Mercury.

Recommendation: CELA urges the government to develop a National Action Plan for Mercury Elimination.

- 2) *Mercury Emissions*: According to the Canada's National Pollutant Release Inventory (NPRI), the pollution releases and transfer of mercury for the years between 2010-2013 have not demonstrated a clear decline in releases and transfer. See following table.

Table: National Pollutant Release Inventory, Releases and Transfer data for Mercury and its compounds (kg)¹

Year	Total On-site Releases (kg)	Total Disposal (kg)	Total (kg)
2010	3,678	207,429	211,107
2011	3,001	63,497	66,498
2012	6,833	59,992	66,825
2013*	2,801	6,223,599**	6,226,400

Note: * 2013 NPRI data has yet to be validated.

** The disposal data for 2013 is due in large part to one facility's reporting for on-site disposal of mercury and its compounds.

The above table outlines mercury data for the past four years. While there has been a general decrease in the total mercury releases and disposal data between 2010 and 2012, the dramatic increase in disposal of mercury to 2013 to 6,223,599 kg is a troubling development. There is no obvious explanation for this mercury disposal data. Further, the increase in on-site mercury releases between 2010 and 2012 from 3,678 kg to 6,833 kg, demonstrates the ongoing concerns associated with mercury releases from facilities that are not subject to regulatory action. The NPRI data on mercury releases continue to suggest that a more substantial action plan on mercury with targeted reduction levels and timelines is needed in Canada. Based on the NPRI data, there is no confidence that mercury releases will decline from year to year without regulatory requirements to achieve reductions or promote pollution-prevention strategies. Furthermore, the mercury disposal data also raises the issue for the need to be vigilant on the safety of disposal facilities. Mercury releases to air continue to be the significant environmental medium that requires additional attention.

Recommendation: Environment Canada should prepare annual reports quantifying all mercury sources (e.g. facilities' releases and emissions, exports and imports, and products) which should include NPRI data.

¹ <http://ec.gc.ca/inrp-npri/donnees-data/index.cfm?lang=En>

Recommendation: Environment Canada should outline prevention strategies for the reduction of mercury releases to the Canadian environment, with a focus on air releases.

- 3) *Regulate Mercury Export:* The government's proposal to regulate mercury export is necessary to ensure adequate protection and certainty of the end-use of mercury. Of the two regulatory options to control mercury export, CELA supports stronger requirements for prohibiting the export of mercury intended for any use.

This option represents an opportunity for Canada to actively reduce availability of mercury in the global market and seek protection of the environment and health of receiving jurisdictions. The data presented in section 3 of the consultation document shows that Canada's mercury import and exports were relatively low between 2008 and 2010 (less than 20 tonnes). However, the import and export levels increased significantly between 2010 and 2011 (> 90 tonnes for imports and approx. 118 tonnes for exports) with few details provided by NPRI to explain these increases. In part, these increases may be the result of the mercury export ban enforced by the United States in 2011. If Canada does not proceed to take similar regulatory action to ban mercury exports, Canada becomes a desirable destination for countries wishing to export mercury to North America and makes Canada a potential dumping ground for mercury. This concern is heightened with the impending prohibitions on the use of mercury in specific products required under the Minamata Convention. Without sufficient details about where imported mercury is stored and managed in Canada, and the adequacy of the technology to manage mercury, CELA is concerned that on-going mercury imports and the movement of mercury for export may increase risk to some communities in Canada. A regulation to ban mercury export from Canada would create the pressure necessary to stop mercury imports.

In addition, a ban on the export of mercury is preferred over the need to obtain prior informed consent for mercury export as prior informed consent does very little to deter Parties to the Convention from stopping the global movement of mercury. Canada is adequately positioned to use existing regulations to manage its mercury waste through the Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations under the *Canadian Environmental Protection Act, 1999*. Based on the economic considerations presented in Section 7 of the consultation document, Canada does not expect to make substantial economic gains from mercury export and re-export activities. Canada should focus its resources to further find safe alternatives to mercury used in products and facilitate the development of technology for environmentally sound management of mercury and its stockpiles.

Recommendation: CELA urges Canada to develop a regulation to prohibit mercury export for any use.

- 4) *Proposed regulations to prohibit mercury in product:* The Convention provides a list of products containing mercury that will be permitted for those Parties that seek exemptions. Canada should take the necessary steps to limit its need for exemptions for any of the products listed in the Convention. It took steps as early as 2006 to consider a regulation to

restrict mercury in specific products, releasing a proposed regulation² for public consultation in May 2011. The focus of this proposed regulation was to prohibit the manufacture, import and sale of products containing mercury, with some exemptions for essential products which have no viable alternatives (e.g. lightbulbs and dental amalgam). Yet this proposed regulation was not finalized. CELA urges the government to prohibit the use of mercury in all products and invest resources to facilitate finding and developing safe alternatives for those products that continue to rely on mercury. If Canada is to take significant steps towards addressing mercury in products, it should finalize the proposed regulation and take necessary steps to phase out exemptions for all products containing mercury within a specified timeframe (e.g. five-year timeframe) to find suitable safe alternatives. No extensions for exemptions should be permitted.

Recommendation: Canada should take steps to finalize its proposed regulation to prohibit the manufacture, use, sale and import of products containing mercury.

Recommendation: Exemptions for products containing mercury under the proposed regulation should expire no later than five-years of the regulation entering into force to provide opportunity to find suitable safe alternatives.

5) *Public Engagement:* The opportunity given to public stakeholders on the consultation document is appreciated. However, we have seen an erosion of comprehensive public engagement on this file since the onset of the negotiations. At the onset, the government-scheduled workshops and included NGO participation on the Canadian delegation at the negotiations in the early phases. This level of engagement no longer exists. In our view, these types of engagement provide substantial benefits to the Canadian negotiators and decision makers.

CELA continues to raise its concerns regarding the quality of public consultation on matters of significant relevance for public health protection such as management of mercury. We are particularly concern that consultations through teleconference, when scheduled, are very short in duration, which does not allow for full engagement and discussion, nor provide stakeholders an opportunity to understand Canada's position. CELA urges the government to reconsider its approach to public consultation and put into place a process that seeks full, transparent and comprehensive engagement well in advance of the government's efforts to develop its position for implementing the Minamata Convention.

Recommendation: CELA urges the government to reconsider its approach to public consultation and put in place a process that seeks full, transparent and comprehensive engagement well in advance of the government's efforts to develop its position for implementing the Minamata Convention on Mercury.

² Government of Canada. Regulations Respecting Products Containing Certain Substances Listed in Schedule 1 to the Canadian Environmental Protection Act, 1999. Accessed at <http://www.gazette.gc.ca/rp-pr/p1/2011/2011-02-26/html/reg4-eng.html>

Recommendation: CELA recommends the government include NGO participation in the Canadian delegation to these negotiations.

Thank you for your consideration to our submission. CELA is available to discuss the contents of its submission. If you have questions, please do not hesitate to contact Fe de Leon at 416-960-2284 ext 223.

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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