

May 17 2017

The Honourable Catherine McKenna
Minister of Environment and
Climate Change

The Honourable Jane Philpott
Minister of Health

Transmission by email: ec.ministre-minister.ec@canada.ca;
 Hon.Jane.Philpott@Canada.ca

Dear Minister McKenna and Minister Philpott:

Re: Response to government proposal to develop regulations respecting formaldehyde (Canada Gazette, Vol. 151, No. 11 — March 18, 2017)

The Canadian Environmental Law Association (CELA) submits the following comments in response to the *Canada Gazette* (Vol. 151, No. 11 — March 18, 2017) Notice of intent to develop regulations respecting formaldehyde.

Formaldehyde has been listed toxic under Schedule 1 of the *Canadian Environmental Protection Act, 1999* (CEPA 1999). The notice summarizes the range of health impacts associated with exposure to formaldehyde that include elevated exposure causing irritation of the eyes, nose and throat area and worsen asthma symptoms, while long term exposure can lead to respiratory symptoms and allergic sensitivity in children as well as nasal cancer in situations where the exposure exceeds concentrations causing irritations and inflammation.¹

Promoting Pollution Prevention Approach to CEPA Toxic Formaldehyde

It should be noted that formaldehyde has been listed as toxic under CEPA 1999 because it is entering or may enter the environment in a quantity or concentration or under conditions that:

- b) constitute or may constitute a danger to the environment on which life depends.
- c) constitute or may constitute a danger in Canada to human life or health.

Furthermore, formaldehyde has been identified as a Track 2 substance under the Toxic Substances Management Policy (TSMP).² According to the TSMP, the government's approach to Track 2 substances includes "[p]ollution control and remediation strategies may be used... However, pollution prevention is often the most cost effective management strategy and in such cases will be promoted by the federal government as the preferred approach for Track 2 substances."

¹ Government of Canada. *Canada Gazette*, Vol. 151, No. 11 — March 18, 2017 - Notice of intent to develop regulations respecting formaldehyde. Accessed <http://www.gazette.gc.ca/rp-pr/p1/2017/2017-03-18/html/notice-avis-eng.php#footnote.51216>

²See: Formaldehyde. Access at <http://www.ec.gc.ca/toxiques-toxics/Default.asp?lang=En&n=98E80CC6-1&xml=223CB432-A28C-4C29-BCE9-D3F3EAF394A0>

The government's website further notes, "Elements and naturally occurring substances that are used or released as a result of human activity may be targeted under Track 2 for reduction to naturally occurring levels."³

To date, Canada has relied on a mixture of regulatory and non-regulatory measures to address formaldehyde but does not have a focus on pollution prevention approaches. While its approach consists of regulatory measures taken to address outdoor emissions of formaldehyde, and the use of the *Canada Consumer Product Safety Act* (CCPSA) to prohibit the manufacture, import, and sale of urea-formaldehyde-based thermal insulation, there has been no substantial action plan or strategy to assess applicability of pollution prevention approaches to address formaldehyde.

Several non-regulatory tools exist including standards developed by the Canadian Standard Association in 2016 (CAN/CSA-O160-16 — Formaldehyde emissions standard for composite wood products) to promote low formaldehyde emissions in specific products that reflect efforts by the state of California to reduce formaldehyde emissions from wood products. Given that these CSA standards are not regulatory obligations, they may not be applied across the sector, leaving significant concerns regarding emissions from the targeted products.

The current Canadian approach to formaldehyde does not effectively advance the approach of the TSMP for Track 2 substances which states a preference for pollution prevention and life cycle management of these chemicals. CELA submits that the notice of intent to develop regulations respecting formaldehyde is an appropriate approach to address formaldehyde in wood products. The government's interest in creating regulatory obligations will result in reduction of formaldehyde emissions in these products. We offer the following initial comments in response to the proposed elements of the regulatory approach to encourage a regulatory focus on pollution prevention for this sector.

Recommendation 1: CELA supports the government's regulatory approach on formaldehyde in wood products. However, the elements of the regulatory approach require several changes to shift from a focus on formaldehyde emissions reductions towards pollution prevention approach.

Alignment with US approach

The decision by the US Environmental Protection Agency in 2016 to promulgate the Formaldehyde Emission Standards for Composite Wood Products is an important advancement to achieve formaldehyde emission reductions. The US standard comes into effect on December 12, 2017. Under this measure, the US government set a uniform approach on formaldehyde emissions for wood products manufactured or sold in the country, establishes labelling

³ Environment and Climate Change Canada. Track 2 Life Cycle Management. Access at <http://www.ec.gc.ca/toxiques-toxics/Default.asp?lang=En&n=5F705766-1>

requirements for wood composite, third party certification program that ensures the compliance with the standards and requirements for record keeping by manufacturers.⁴ The purpose this standard is to reduce formaldehyde emissions and reduce exposure and health impacts.

Canada should adopt key elements of the US approach in its regulatory approach to formaldehyde. CELA considers the use of third party certification of products, labelling requirements and record keeping by manufacturers as important elements of the US approach that should be adopted in Canada. However, there are several elements in the US approach that CELA encourages greater analysis and discussion with stakeholders on including:

- * establishing acceptable emission limits on formaldehyde;
- * identifying opportunities for alternatives to formaldehyde in these applications;
- * public reporting on compliance efforts by government; and
- * timelines for implementation of regulations.

At the minimum and on an interim basis, emission measures for formaldehyde required under the US approach for wood products may be necessary until other elements to promote pollution prevention are adopted. With the US measure coming into effect in mid-December 2017, Canada is at risk of being a dumping ground for US products that do not meet the US standard requirements. This matter becomes a larger problem with any delays in Canada's effort to develop and finalize its regulatory approach.

Recommendation 2: CELA supports several key elements of the US Formaldehyde Emission Standards for Composite Wood Products including requirements for third party certification, labelling and record keeping by manufacturers.

Recommendation 3: CELA urges Canada to adopt an approach in support of pollution prevention on formaldehyde that would include adopting safe alternatives and analysis of the proposed emission concentration of formaldehyde with an aim to achieve a phase out of formaldehyde.

Recommendation 4: CELA urges Canada to adopt stringent regulatory measures that set, as a minimum and on an interim basis, the US emission measures on formaldehyde as well as strict timelines that prevent Canada from being a recipient for products in non-compliance in the US.

Exemptions

The government should avoid outlining exemptions from the regulatory measure under development. The US regulatory requirements were comprehensive in their reach on wood

⁴ US Environmental Protection Agency. Formaldehyde Emission Standards for Composite Wood Products. Access at <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0461-0001>

products covered, including requirements for laminated boards. Canada should not provide exemptions to domestic or importing manufacturers including smaller operators. Such exemptions could lead to unnecessary exposure and impacts to health and the environment.

Recommendation 5: CELA urges the government to avoid providing exemptions to facilities that import or domestically manufacture wood products as it creates unnecessary exposure to health and the environment.

Focus on management of product and substance stockpiles

The government should ensure that developing regulations provide consideration for stockpiles of products and chemicals. Currently, there is no indication that the issue of stockpiles is within the scope of this notice of intent. The lack of consideration for this issue could result in the ongoing exposure of workers, the environment and consumers to formaldehyde. Such an approach should not include exporting non-compliant products.

Recommendation 6: CELA urges the government to ensure that regulatory development includes measures to address product stockpiles and excess substance inventory.

Comprehensive Government Approach to Formaldehyde Required

While the Notice of Intent to develop regulations respecting formaldehyde aims to address a significant route of indoor air exposure, there is more work to be done in Canada to regulate formaldehyde. Canada should aim to prohibit formaldehyde which would require consideration of regulatory measures on remaining sources of formaldehyde. According to the Priority Risk Assessment completed in 2001, formaldehyde is used in a wide range of industrial applications including medical, detergent, cosmetic, food, rubber, fertilizer, metal, wood, leather, petroleum and agricultural industries (WHO, 1989), and as a hydrogen sulfide scavenger in oil operations.⁵ Current regulatory measures are restricted to on and off road vehicle emissions, prohibition of formaldehyde in thermal insulation under the Canadian Consumer Products Safety Act, and use of non-regulatory tools such as the restriction of formaldehyde under the Cosmetic Ingredient Hotlist of the Cosmetic Regulations. Opportunities should be explored to discuss how formaldehyde should be eliminated in these applications.

Recommendation 7: CELA urges the government to develop a comprehensive regulatory strategy to phase out formaldehyde from all industrial and consumer applications, which would require that the Notice of Intent focus on regulating formaldehyde in wood products.

As the process to develop regulations proceeds, please include CELA in consultation planning. We expect to respond as this work advances. Please do not hesitate to contact us should you

⁵ See: <http://www.hc-sc.gc.ca/ewh-semt/pubs/contaminants/psl2-lsp2/formaldehyde/index-eng.php#a221>

have questions on our submission. Thank you for considering the comments and recommendations.

Yours respectfully,

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, MPH
Researcher

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