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Re: CELA and CNWM Response to Proposed Watch List Approach

The following comments and recommendations are submitted by the Canadian Environmental Law Association (“CELA”) and Citizens’ Network on Waste Management (“CNWM”) on the proposed Watch List Approach (“the Approach”) required under the Canadian Environmental Protection Act (CEPA) and as published in the *Canada Gazette*, Part I, Vol. 158, No. 40, on October 5, 2024 for public comments.¹

CELA, established in 1970, is incorporated under federal law and is also a provincial legal aid clinic under Ontario law providing legal assistance to low-income and disadvantaged individuals and groups experiencing environmental problems, who are otherwise unable to afford legal representation. Potential clients come to CELA seeking legal assistance with respect to problems caused by the creation, use, or release of toxic substances in their communities. Our assistance to them may come in the form of summary advice, legal representation, law reform advocacy, or community outreach. CELA has a long history of participating in the review of the *Canadian Environmental Protection Act* and has responded to implementation activities related to CEPA Part 5 pertaining to Controlling Toxic Substances.

The Citizens’ Network on Waste Management (CNWM) is a network of citizens’ groups throughout Ontario working on municipal waste, radioactive waste, and hazardous waste issues since 1981. The CNWM is dedicated to minimizing material and energy consumption, maximizing reuse of used materials, eliminating waste disposal, and eliminating toxic contamination of the environment. John Jackson of the CNWM was part of the multi-stakeholder

¹ Government of Canada. October 2024. *Implementing the modernized Canadian Environmental Protection Act: proposed Watch List Approach* URL: <https://www.canada.ca/en/health-canada/services/chemical-substances/chemicals-management-plan/initiatives/implementing-modernized-cepa-proposed-watch-list-approach.html>

group who developed the National Pollutant Release Inventory (NPRI) in 1992 and has been a member of the NPRI Multi-Stakeholder Working Group ever since.

Specifically, section 75.1 of CEPA states:

75.1 (1) The Minister shall compile and may amend from time to time a list that specifies substances that the Ministers have reason to suspect are capable of becoming toxic or that have been determined to be capable of becoming toxic.²

The Approach document provides very little details on the ultimate purpose of the Watch List but rather outlines the number of conditions that will be applied by the Ministers of Environment and Climate Change and Health to add a substance to the Watch List, specifically noting the following:

The Minister of the Environment may add a substance to the Watch List:

- When the Ministers propose addition to the Watch List following an assessment under Part 5 of CEPA
- When a review of a decision of another jurisdiction under subsection 75(3) that, in the Ministers' opinion, is based on scientific considerations and is relevant to Canada indicates that the substance is capable of becoming toxic; or
- Based on the evaluation of other information by the Ministers³

Environment and Climate Change Canada and Health Canada should provide details on what the Watch List will achieve overall and any specific objective for each chemical listed on the Watch List. One substantial focus presented for use of the Watch List has been to indicate concern about specific chemicals. An indirect outcome for listing, could be for current and potential users of chemicals listed to the Watch List to avoid or reduce their use. If this is one of the intended objectives of the Watch List, the Approach would need to be improved by adding commentary on each condition that will be reviewed for chemicals to be added to the Watch List. For example, the proposed Approach would be strengthened if there is a stronger emphasis on use of hazard properties such as the persistence, bioaccumulation and inherent toxicity of chemicals (e.g. evidence of endocrine disrupting substance, carcinogens, mutagens, reproductive and developmental impacts, etc.) for adding chemicals to the Watch List. Currently, the Ministers of Health and Environment and Climate Change may consider the following information for adding chemicals to the Watch List:

- the severity or type of effect
- the physical or chemical properties of the substance
- the function and use of the substance
- the environmental fate of the substance
- the potential for increases or changes in current uses and exposures; or

² Canadian Environmental Protection Act, 1999 (S.C. 1999, c. 33). URL: <https://laws-lois.justice.gc.ca/eng/acts/C-15.31/page-7.html#s-75.1>

³ Government of Canada. Implementing the modernized Canadian Environmental Protection Act: proposed Watch List Approach, URL: <https://www.canada.ca/en/health-canada/services/chemical-substances/chemicals-management-plan/initiatives/implementing-modernized-cepa-proposed-watch-list-approach.html>

- the potential for future uses and exposures⁴

The information above is not presented in any particular order of importance or outline how each information will be considered in the process to consider addition to the Watch List. The Ministers should provide more details and outline the conditions or amount of information that must be available for adding a chemical to the Watch List. Availability and adequacy of data may not be available at the time of consideration.

However, a clear intention that should be built into the decision making process is placing more emphasis and consideration on the impacts to human and wildlife health or the environment, of each potential chemical. In the proposed Approach, additional details or conditions should be outlined in a transparent manner for each category of information that will be considered by the Ministers for adding the chemical to the Watch List.

Recommendation: Require additional information for each of the conditions that will be considered for adding a chemical to the Watch List and outline how each condition will be evaluated in the decision making process for adding chemicals to the Watch List.

Recommendation: Hazardous properties (particularly regarding the type of effect as well as physical or chemical properties of the substance such persistence, bioaccumulation and inherent hazard) should ultimately be given priority for listing to the Watch List.

The Approach lists a number of follow-up activities for the Watch List substances. One area of activity included is to conduct environmental monitoring and biomonitoring. We support activities that conduct environmental and biomonitoring for each of these substances. In addition, consideration should be given to track the releases and transfers of chemicals using the existing pollution database such as the use of the National Pollutant Release Inventory. Section 46 (1) of CEPA outlines the authority for the federal government to collect data, stating:

The Minister may, for the purpose of conducting research, creating an inventory of data, formulating objectives and codes of practice, issuing guidelines or assessing or reporting on the state of the environment, publish in the Canada Gazette and in any other manner that the Minister considers appropriate a notice requiring any person described in the notice to provide the Minister with any information that may be in the possession of that person or to which the person may reasonably be expected to have access, including information regarding the following:...

(b) substances that have not been determined to be toxic under Part 5 because of the current extent of the environment's exposure to them, but whose presence in the environment must be monitored if the Minister considers that to be appropriate;..⁵

On this basis, all chemicals on the Watch List should be added for reporting under Canada's National Pollutant Release Inventory. The information reported on releases and transfers to all

⁴ Government of Canada. Implementing the modernized Canadian Environmental Protection Act: proposed Watch List Approach, URL: <https://www.canada.ca/en/health-canada/services/chemical-substances/chemicals-management-plan/initiatives/implementing-modernized-cepa-proposed-watch-list-approach.html>

⁵ Canadian Environmental Protection Act, 1999 S.C. 1999, c. 33

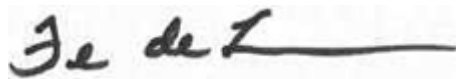
environmental media for each chemical under the NPRI on the Watch List will provide an important source of information on chemicals that would not be otherwise available to the departments and to the public, and can inform whether more measures (including reconsideration of toxicity under CEPA) on these chemicals should be considered.

Recommendation: CELA and CNWM support environmental and biomonitoring for all chemicals listed to the Watch List.

Recommendation: Require all chemicals on the Watch List to be added for reporting under the NPRI automatically as they are listed.

Thank you for your consideration.

Yours truly,



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