



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

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Bernard Madé
Director, Chemical Production Division
Environment Canada
200 Sacré-Coeur Blvd., 3rd Floor
Gatineau, Quebec,
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Transmission: SEC-ECS@ec.gc.ca

Dear Bernard Madé:

**Re: Consultation on the draft Order Amending Schedule 3 to CEPA 1999 -
endosulfan**

The Canadian Environmental Law Association (CELA) is submitting this letter in response to the "Draft Order Amending Schedule 3 to the *Canadian Environmental Protection Act, 1999*, the Export Control List."

CELA supports efforts by the Canadian government to implement obligations required under key international agreements on chemicals management, such as the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*. The proposal to add the pesticide endosulfan to Schedule 3 of CEPA 1999 is a positive step in this direction, as it implements the decision contained in RC-5/5 from the fifth Conference of the Parties to the Rotterdam Convention (COP5) held between June 20-24, 2011, where it was decided to "amend Annex III to the Convention to list the following chemical: Endosulfan (CAS RN: 115-29-7), Pesticide."¹ As a result of this decision, endosulfan will be subject to Prior Informed Consent (PIC) procedures prescribed in the Rotterdam Convention. PIC procedures require exporters to provide information on the hazardous substances listed on Annex III to importing jurisdictions. This information is essential for disclosing information on

¹ Secretariat of the Rotterdam Convention – UNEP, *Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals and Pesticides in international trade*. See at : <http://www.pic.int/TheConvention/ConferenceOftheParties/Decisions/tabid/1728/language/en-US/Default.aspx>

the hazardous properties of listed substances and their impact to health and the environment. It also requires information on safe handling, use, and disposal for listed substances. Decision RC-5/5 noted that for endosulfan, "this amendment shall enter into force for all Parties on 24 October 2011."²

As demonstrated in the decision RC-5/5 at COP5 of the Rotterdam Convention, the global community, agreed to global measures on endosulfan based on its inherent toxic properties and its impacts on the environment and human health. The global community also agreed to the elimination of endosulfan by listing it to Annex A of the *Stockholm Convention on Persistent Organic Pollutants* (Stockholm Convention) at the fifth COP held April 2011.

The proposal to add endosulfan to Part 2 of Schedule 3 is supported by CELA in a general manner as it appropriately responds to Canada's obligations under the Rotterdam Convention and facilitates the implementation of the PIC procedures.

However, listing endosulfan to Part 2 of Schedule 3 may not fully support the goals of elimination for production and use of endosulfan as expressed in the Decision SC-5/3 from the COP5 of the Stockholm Convention. Based on Decision SC-5/3 of COP5, endosulfan and its related isomers are listed to Annex A, with goals for elimination of production and use and lists specific exemptions for production and use.³ Canada has yet to ratify the addition of endosulfan and its related isomers to the Stockholm Convention.

Acknowledging that the current proposal to amend Schedule 3 will allow Canada to achieve its obligation under the Rotterdam Convention, CELA has the following concerns regarding the future uses of endosulfan in Canada and how the proposed listing to Schedule 3, Part 2 may not effectively uphold the goals of the Stockholm Convention for endosulfan:

1) Based on the purpose of Schedule 3 of CEPA, endosulfan may be exported for environmentally sound disposal or exported to another country that has authorization to use endosulfan under the Convention. It is not yet understood what constitutes good environmentally sound disposal for endosulfan. Under Article 6 (Measures to reduce or eliminate releases from stockpiles and wastes) of the Stockholm Convention, para 2 states:

The Conference of the Parties shall cooperate closely with the appropriate bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal to, inter alia:

² Ibid.

³ United Nation Environment Programme. Stockholm Convention on Persistent Organic Pollutants. See at: <http://chm.pops.int/Convention/ThePOPs/TheNewPOPs/tabid/2511/Default.aspx>

(a) Establish levels of destruction and irreversible transformation necessary to ensure that the characteristics of persistent organic pollutants as specified in paragraph 1 of Annex D are not exhibited...⁴

The obligations of the Basel Convention are not addressed by the Schedule 3, Export Control List. Additional consultation on the matter of environmentally sound disposal of endosulfan is warranted.

2) Canada made a commitment to phase out the use of endosulfan by the end of 2016.

The decision:

- outlines a phase out strategy that includes allowing the use endosulfan insecticides until December 31, 2016.
- provides growers time to develop alternative pest control tools.
- requires applicators to observe new measures to protect the health of workers.⁵

By the end of 2016, Pest Management Regulatory Agency (PMRA) expects that endosulfan supplies will be exhausted.

Despite establishing a target date for the phase out of endosulfan, there will be a number of significant problems associated with endosulfan after the end of its allowable uses that will pose substantial problems for both the environment and human health. First, the expectation that all endosulfan supplies will be exhausted may not be fully achieved by 2016. This may result in potential endosulfan stockpiles and waste that has not been addressed in the phase out framework. PMRA's note dated February 8, 2011 does not outline a provision to require reporting on inventories of endosulfan production, use, exports, imports or stockpiles. Second, there is no consideration for the presence of residual levels of endosulfan or other POPs in the framework. Third, establishing levels to determine residual levels of POPs has not been addressed in the framework. Article 6 of the Stockholm Convention applies to these matters. Therefore, listing of endosulfan to Schedule 3 of CEPA should address these issues and ensure that the listing can adequately support the goals intended in the Stockholm Convention.

3) The listing of endosulfan in Schedule 3 (refers to CAS RN: 115-29-7) while Annex A of the Stockholm Convention refers to Technical endosulfan (CAS No: 115-29-7) and its related isomers (CAS No: 959-98-8 and CAS No: 33213-65-9).⁶ Therefore, we encourage the government to ensure that the listing of endosulfan to Schedule 3 should

⁴ Secretariat of the Stockholm Convention. Stockholm Convention on Persistent Organic Pollutants (POPs) as amended in 2009: Text and Annexes. See at: <http://chm.pops.int/Convention/ConventionText/tabid/2232/Default.aspx>

⁵ Pest Management Regulatory Agency, Health Canada. *Re-evaluation Note REV2011-01 Discontinuation of Endosulfan*, 8 February 2011. See at: http://www.hc-sc.gc.ca/cps-spc/alt_formats/pdf/pubs/pest/decisions/rev2011-01/rev2011-01-eng.pdf

⁶ Ibid.

be sufficiently broad to ensure that all relevant speciations of endosulfan noted in Annex A of the Stockholm Convention is captured in the listing.

Given the extensive impacts of POPs to the Canadian environment and communities, we eagerly anticipate Canada's successful ratification of the amendments to the Stockholm Convention to list endosulfan and other new POPs. Upon ratification, we encourage a swift response by the government to address amendments required for listing endosulfan in Schedule 3 of CEPA.

Finally, as efforts to finalize the proposal to amend Schedule 3 by listing endosulfan, we hope the comments and issues submitted by CELA in this submission are considered and reflected in the government's final decision.

Please do not hesitate to contact us should you have questions regarding our submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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

Fe de Leon
Researcher