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

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Dear Ms. Galatone and Mr Leigh:

Re: Response to *Canada Gazette*, Part I Notice and Proposed Regulations Vol. 145, No. 30 — July 23, 2011 on Prohibition of Certain Toxic Substances Regulations, 2012

The Canadian Environmental Law Association (CELA) is providing the following response to the ***Canada Gazette*** **Notice and Proposed Regulations Vol. 145, No. 30 — July 23, 2011 on Prohibition of Certain Toxic Substances Regulations, 2012**. The proposed regulations include the listing of the following toxic substances for prohibition:

- Benzenamine, N-phenyl-, reaction products with styrene and 2,4,4-trimethylpentene (BNST),
- short-chain chlorinated alkanes,
- polychlorinated naphthalenes (PCNs); and
- tributyltins (TBTs) for non-pesticidal uses.

CELA supports the listing of these toxic chemicals for prohibition under the Prohibition on Certain Toxic Substances Regulations, 2012 on the basis of the results of the screening assessment completed on these substances through CEPA 1999. These four toxic chemicals were found to cause harm to the environment and all met the criteria for persistence and bioaccumulation set out in the Persistence and Bioaccumulation Regulations under CEPA 1999.

CEPA 1999 calls for the virtual elimination of these substances. In accordance with CEPA 1999, the proposed regulations seek to prohibit the manufacture, use, sale, offer for sale or import of these toxic substances as well as products containing these toxic substances.

Short chain chlorinated alkanes (carbon chain length 10-13) and polychlorinated naphthalenes (PCN) are substances that have been added to the Protocol for Persistent Organic Pollutants under the United Nations Economic Commission for Europe (UNECE) Convention on Long-range Transboundary Air Pollution (LRTAP). The addition of these toxic chemicals for prohibition provides Canada the regulatory basis required to consider ratification of the amendments to LRTAP. CELA supports the efforts needed to make progress on the ratification process under LRTAP and, generally, to seek reduction of exposure of POPs to the global environment.

In addition, CELA supports the listing of hexachlorobenzene (HCB) to Part 1 Schedule 1 of the proposed regulation for complete prohibition. This listing represents a stronger commitment to prevent the release of HCB and supports Canada's activities to achieve obligations on HCB under the Stockholm Convention on POPs.

While we support the general scope of the proposed Prohibition of Certain Toxic Substances Regulation, there are gaps in the proposal relating to the level of management measures required on these toxic substances. Below is a list of some of our concerns on the gaps identified in the proposed Prohibition of Certain Toxic Substances, 2012 in relation to specific toxic substances. These are not comprehensive but warrant further consideration.

BNST

- The government's proposed risk management measures on BNST prepared in August 2009 document would be achieved with BNST listing for prohibition.[1] However, given the hazardous properties of this chemical (persistence, bioaccumulation and long range atmospheric potential), careful consideration should be given for additional regulatory measures that address releases of BNST from products through export activities and disposal methods associated with BNST stockpiles and waste. The Prohibition of Certain Toxic Substances Regulations does not adequately address these activities.

- The availability of alternatives to BNST have been identified. It is essential that this regulation include a requirement to assess the safety of these alternatives. The results of assessments conducted on alternatives should be incorporated into a reporting requirement and made available to the public. There is concern that chemical alternatives may possess similar or greater toxicity which may result in dangerous impacts to the environment or human health.

- The proposed two year timeframe for "temporary permission" to use of BNST and "to allow industry to conduct additional research to determine new formulations and to obtain international product level performance certification for redesigned products

[1] Environment Canada and Health Canada. August 2009. Proposed Risk Management Approach for Benzenamine, N-phenyl-, Reaction Products with Styrene and 2,4,4-Trimethylpentene (BNST) Chemical Abstracts Service Registry Number (CAS RN) 68921-45-9. Accessed at http://www.ec.gc.ca/ese-ees/default.asp?lang=En&n=136D3FBF-1

containing substitutes for BNST"[2] has no sound basis. The timeframe to allow for continued use of major applications for BNST, including in lubricant oils and additives in engine oil, should be reduced from 2 years.

- The proposal indicated that "the proposed Regulations would allow these temporary permitted uses for two years as indicated in Column 3 of Part 2 of Schedule 2." Despite the timeframe outlined for permitted use, it appears that industry is also able to "request a permit as specified in section 6 of the proposed Regulations." Requests for permits are reviewed by the Minister and must meet the conditions outlined in section 7 of the Proposed Regulations. However, the conditions outlined do not include specific criteria by which to assess the adequacy of the request and does not include a component for public engagement in the process.

Short Chain Chlorinated Alkanes

- Based on the assessment and proposed risk management strategy completed on chlorinated paraffins (CPs) in August 2008, all CPs met the criteria set out in section 64 of CEPA 1999.[3] However, a proposal to prohibit only short chain chlorinated alkanes has been released to date When does the government expect to propose listing of remaining CPs to Schedule 1 of CEPA 1999 and develop options for management?

- The proposed regulation fails to address the elimination of short chain chlorinated alkanes from the disposal stream. If unaddressed, on-going releases of short chain chlorinated alkanes will occur and continue to impact the environment.

- Short chain chlorinated alkanes are being evaluated under the Stockholm Convention on Persistent Organic Pollutants. Since Canada has completed its assessment of these chemicals and is an active member of the POPs Review Committee, an expert committee whose mandate is defined by the COP to the Stockholm Convention, some additional consideration is warranted by the government of Canada to develop a regulatory measure that will address the full life cycle of these toxic substances. Furthermore, this process should also give consideration to identify safe alternatives that exist for short chain chlorinated alkanes.

TBT

- The listing of TBTs to Part 3 of Schedule 2 is limiting. The proposed prohibition would not apply to:

> (a) tetrabutyltin containing a concentration of less than or equal to 30% by weight of TBTs; and

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[2] Government of Canada. *Canada Gazette* Part I, Vol. 145, No. 30 — July 23, 2011
Prohibition of Certain Toxic Substances Regulations, 2012, REGULATORY IMPACT ANALYSIS STATEMENT. Accessed at http://www.gazette.gc.ca/rp-pr/p1/2011/2011-07-23/html/reg1-eng.html#reg

[3]Environment Canada and Health Canada. August 2008. Proposed Risk Management Approach for Chlorinated Paraffins. Accessed at http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=D048964A-1#s1.2

> (b) mono- and dibutyltins [in applications such as polyvinyl chloride (PVC) processing, glass coating or as catalysts], because TBTs are incidentally present in these products.[4]

These exemptions represent a significant presence of TBTs. The Regulatory Impact Analysis Statement (RIAS) suggests that "any associated releases are being addressed by other risk management measures, or have limited environmental impact."[5] The RIAS outlined the use of the Environmental Performance Agreement (EPA) and Code of Practice (CoP) as management tools for tetrabutyltin and mono- and dibutyltin. As non-regulatory tools, the government notes that they are being implemented but no data is available to determine their effectiveness in controlling these chemicals. We consider the use of these non-regulatory tools inadequate to address the concerns related to TBTs. The government had received similar comments from ENGOs in earlier consultations on this matter. No change in the approach to these other organotin substances has been processed. We continue to have concerns relating to the government's reliance on non-regulatory tools. We call on the government to reconsider its approach and require mandatory controls to tetrabutylytin, mono- and dibutyltins. Furthermore, the results of implementing these non-regulatory mechanisms should be released to the public for review and comments.

- In addition, the exemption does not provide a clear numeric limit to what is considered "incidentally present"[6]. Other jurisdictions, including the European Union adopted a decision in May 28, 2009 to prohibit the use of triorganotin compounds and dibutyltin in articles.[7] The prohibition of dibutlytin takes effect in January 2012. Canada should follow this approach and expand the prohibition to include dibutyltin, at a minimum.

PCNs

- CELA noted in its response to the *Canada Gazette*, Part I, Vol. 145, No. 32 — August 6, 2011 to add PCNs to the Schedule 1 of CEPA 1999 that additional consideration should be given to include monochlorinated naphthalene, which may also be released along with other PCNs as unintentional by-products of industrial applications (e.g., cement and magnesium production, waste incineration, and metal refining.). Waste or emissions from these processes may contain a mixture of chlorinated naphthalene. Their appropriate and environmental safe disposal is a source of concern. The proposed regulation does not adequately address disposal methods for these toxic substances.

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[4] Government of Canada. *Canada Gazette* Part I, Vol. 145, No. 30 — July 23, 2011
Prohibition of Certain Toxic Substances Regulations, 2012, REGULATORY IMPACT ANALYSIS STATEMENT. Accessed at http://www.gazette.gc.ca/rp-pr/p1/2011/2011-07-23/html/reg1-eng.html#reg
[5] Ibid.
[6] Ibid.
[7] Ibid.

Additional comments on proposed regulations

- Reporting requirements are proposed for any facility or person using substances that have been permitted under the regulation as well as those that exceed limits of toxic chemicals established in the regulations. Reporting requirements should be required by any facility or person that use toxic chemicals listed in the Regulations regardless of threshold. This will allow the government to track current users. Furthermore, reporting requirements should be expanded to require information from facilities or persons regarding alternatives available to replace their current use of toxic chemicals. The reporting should also include information from facilities or persons using alternatives.

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

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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