Canadian Environmental Law Association
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March 7, 2014

Consumer Products Safety Program
Health Canada

Via email: CCPSA-LCSPC@hc-sc.gc.ca

RE: Response to "Consumer Product Safety Program Risk Assessment Framework Draft"

In response to Health Canada's above-noted consultation document, dated November 2013, we offer the following comments.

The Canadian Environmental Law Association (CELA) is a public interest organization founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

CELA has a long history of work addressing the regulation of toxic substances at the international, national, provincial and municipal levels. This work has frequently included a strong focus on consumer products where these products contain toxic chemicals assessed under the *Canadian Environmental Protection Act* (CEPA) but often managed under the *Hazardous Products Act*, the more recent *Canada Consumer Products Safety Act (*CCPSA*),* or the *Food and Drugs Act (*FDA*).*[1]

We have conducted extensive research, summarized the scientific literature, and have created a wide range of public outreach materials, about associations between toxic substances and impacts on fetal development and child health.[2] During 2011, we completed a scoping review of the literature concerning early environmental exposures and associations with several chronic diseases.[3]

Toxic substances arising from consumer products figure prominently in the results of this research and thus remain within our top priorities for seeking regulatory action and conducting public outreach to encourage exposure reduction measures. We have also conducted extensive

[1] See multiple resources posted to CELA website on-line collection, *Toxic Substances in Consumer Products* at: http://www.cela.ca/collections/pollution/toxic-substances-consumer-products
[2] See multiple resources contained on the website of the Canadian Partnership for Children's Health and Environment www.healthyenvironmentforkids.ca
[3] Cooper K, Marshall L, Vanderlinden L, and Ursitti F (2011) *Early Exposures to Hazardous Chemicals/Pollution and Associations with Chronic Disease: A Scoping Review*. A report from the Canadian Environmental Law Association, the Ontario College of Family Physicians and the Environmental Health Institute of Canada. http://www.cela.ca/publications/EE-and-CD-Scoping-Review

research and made detailed recommendations for the regulation of toxic substances through our monitoring and involvement in the Chemicals Management Plan,[4] and in addressing substances contaminating the Great Lakes ecosystem.[5]

Across this work it has become apparent that exposure to toxic substances has changed substantially in recent years such that this exposure frequently occurs indoors and arising from the purchase and use of consumer products. Disposal, through both recycling and waste streams, can contribute to further exposure via environmental pathways.

CELA has also been closely involved in efforts to expand the purview of the Stockholm Convention on Persistent Organic Pollutants wherein, despite international progress in banning these substances, we remain concerned about the lack of a comprehensive approach for elimination of persistent toxic substances from product recycling and waste streams.[6]

We closely followed the federal government's actions towards modernizing consumer product safety legislation and supported many long-overdue measures included in the CCPSA such as product recall powers, new reporting and record-keeping obligations for manufacturers, importers and retailers, an expanded range of inspection and enforcement tools and the ability to levy large penalties. We also strongly support the expanded purview of the Act beyond the out-dated focus on lethal or acute dangers to consider chronic effects. The preamble to the bill also notes the need to act with precaution.

In reviewing the Draft Risk Assessment Framework, we note that it is limited by the reactive and product-focused nature of the CCPSA. As such, within the constraints of the CCPSA and despite language about "active prevention" in the Food and Consumer Safety Action Plan (FCSAP), the overall approach in this Draft Framework is one of reacting to problems that may arise after individual products or, occasionally, "product-types" are on the market.

Nevertheless, within these constraints, we found the document to be reasonably comprehensive but for the following exceptions and observations.

1. **The Draft Framework Should Include More Direct Links to the Chemicals Management Plan**: The "active prevention" principle of the FCSAP refers to, among other things, "systematic risk assessment," "increased scientific knowledge," and "early identification of safety issues."

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[4] See multiple resources posted to the CELA website on-line collection, *Chemicals Management in Canada* at: http://www.cela.ca/collections/pollution/chemicals-management-canada

[5] See e.g., Canadian Environmental Law Association and Lowell Centre for Sustainable Production (2009)*The Challenge of Substances of Emerging Concern in the Great Lakes Basin: A review of chemicals policies and programs in Canada and the United States.* A report prepared for the International Joint Commission Multi-Board Work Group on Chemicals of Emerging Concern in the Great Lakes Basin. 174 pp. http://www.cela.ca/publications/challenge-substances-emerging-concern-great-lakes-basin-full-report

[6] See multiple resources posted to CELA website on-line collection, *Persistent Organic Pollutants: Collection of materials related to negotiation and implementation of the Stockholm Convention on POPs* at: http://www.cela.ca/persistent-organic-pollutants-pops

The Draft Framework alludes to various activities and measures to accomplish these goals such as via “monitoring and trend analysis” (page 5) and “information from a number of sources…” (and via further information noted in footnote #1 on page 6 notably the activities of “other federal regulators”). With respect to the aim of “active prevention” as well as monitoring and trend analysis and the activity of other federal regulators, the Chemicals Management Plan (CMP) and notably the application of the precautionary principle under CEPA would obviously be included, indeed should play a key role in achieving “active prevention”, and yet the CMP is not mentioned in this document but for a passing reference in a footnote on page 20.

Given the central role of CEPA within the CMP in evaluating toxic substances via risk assessment and risk management exercises, both pre- and post-market, we believe the CMP should be directly referenced in this framework document . Greater clarity in this document in the role of and links to CEPA is particularly important given the fact that there has been a heavy emphasis under the CMP to conduct risk assessment work under CEPA but to defer risk management activities for products to the CCPSA and FDA. It should be much clearer in this Draft Framework concerning when and how the research, monitoring, trend analysis, risk assessment, and risk management activities within both the CMP and the FCSAP are coordinated within the federal government’s risk assessment framework for products.

Specifically, in Section 2.3 (Guiding Legislation) and Section 4 (Risk Assessment Principles) of the Draft Framework, we recommend that specific reference be made to the role of CEPA in directing the risk assessment of toxic substances given the extensive and overlapping scientific information under consideration during the evaluation of toxic substances found in consumer products. The Draft Framework should reference the manner in which the decision making process is applied under CEPA for assessing toxicity of chemicals (both for existing substances and new substances) as this relates to risk assessments under this Draft Framework that may occur on products containing these same chemicals. This reference should occur across Section 4 including an indication as to transparency and public availability of information and the decision-making process given high public concern about products containing toxic substances.

2. **The Draft Framework Should Recognize Real-World Circumstances in Setting Priorities and Evaluating Evidence**: In the priority setting exercise described in Section 4.1 the otherwise narrow focus of the CCPSA on individual products/product types can benefit from the somewhat broader perspective allowed for under the CMP where risk assessments address individual chemicals and groups of chemicals that may be present in multiple products. Moreover, the monitoring, trend analysis, and research that is being either conducted by the federal government or monitored for the sake of chemical risk assessment also allows for a broader perspective. These efforts are increasingly addressing aggregate exposures to, if not multiple and different substances, at least

aggregated exposure to multiple sources of the same substance or to multiple substances with common mechanisms of toxicity.[7]

It is well established in the scientific literature that exposure to numerous toxic substances arises from diverse consumer products and that these exposures often occur indoors through multiple pathways with indoor air and house dust of particular concern.[8] Further, this reality of multiple exposures can often present the greatest risk to young children.[9]

The priority-setting exercise described in Section 4.1 and the exercise of evaluating evidence and applying professional judgment, described in Section 4.2 will fall short when this work is narrowly focused on one product/product type at a time.

While the Draft Framework may imagine a broader perspective during priority setting and evaluation of evidence, the document should explicitly say so. Again, reference to the CMP and related efforts within the Canada Health Measures Survey and the Canadian House Dust Study would provide some assurance that this Draft Framework will proactively consider and evaluate the potential health risks that can arise from aggregate exposure to multiple toxic substances most of which originate in consumer products. Additionally relevant research conducted within the CMP or otherwise, includes investigations of the environmental fate of products resulting from routine use, particularly personal care products.

3. **The Draft Framework Should Recognize Fetal Vulnerability:** Section 4.5 of the Draft Framework states that risk assessments consider population variability and vulnerability and specifically notes the importance of considering the greater vulnerability of children, among other populations. This recognition should extend to pregnant women for the sake of ensuring protection from harm for their developing fetuses. The scientific literature about the greater risk of the young to toxic chemicals is very clear that the time of greatest vulnerability during early life is in the womb.[10]

4. **Risk Assessment decisions can have international implications:** Decisions made under the Draft Framework may have implications on international initiatives addressing chemicals in products, including the United Nations Environment Programme's Chemicals in Products Programme. Canada plays a key role in many of these international initiatives. We note the relevance of the Stockholm Convention on POPs where the focus on POPs contained in products has increased in recent years with the addition of multiple compounds such as brominated flame retardants and perfluorinated compounds for which exposure is primarily due to their use in consumer products. This

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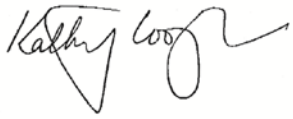
[7] Kortencamp A et al (2009) *State of the Art Report on Mixture Toxicity*. Prepared for the European Commission.
[8] Roberts JW et al (2009) Monitoring and Reducing Exposure of Infants to Pollutants in House Dust. *Reviews of Environmental Contamination and Toxicology*; 201:1-39.
[9] Landrigan PL et al (2004) Children's health and the environment: public health issues and challenges for risk assessment. *Environmental Health Perspectives;* 112:257-265.
[10] Barouki R et al (2012) Developmental origins of non-communicable disease: Implications for research and public health. *Environmental Health* 11: 42-59.

exposure results from the entire life cycle of products containing these substances including during disposal, recycling, or in wastewater effluents. Among other relevant initiatives we also note the binational efforts to restore and clean up the Great Lakes-St. Lawrence River Basin from toxic chemicals, where, again, many of the chemicals of ongoing concern in the Great Lakes originate in consumer products, often due to their presence in wastewater effluents.

Hence, we reiterate that the narrow focus of the CCPSA on products/product-types continues to be an overall shortcoming by insufficiently considering the full product life cycle, including disposal/recycling and related environmental implications. The Draft Framework could more adequately account for the extent to which toxic substances in consumer products may contribute to environmental pollution including challenges facing the global environment by making clear reference to the risk assessment of products that have occurred in relation to POPs, the Stockholm Convention on POPs, and other international initiatives addressing product safety issues and that continue to include Canadian involvement.

All of which is respectfully submitted. We welcome opportunities to discuss these comments. You can reach us at 416-960-2284 ext. 221 or 223.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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