Arnold & Porter

Lawrence E. Culleen
+1 202.942.5477 Direct
Lawrence.Culleen@arnoldporter.com

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VIA E-MAIL

Ms. Christina Paradiso
Executive Director, Chemicals Management
Environmental Protection Branch, Department
of the Environment
351 Saint-Joseph Boulevard
Gatineau, Quebec K1A 0H3

Re: Canada Gazette, Part I, Volume 156, Number 20 of May 14, 2022;
Prohibition of Certain Toxic Substances, 2022

Dear Ms. Paradiso:

The Chemical Users Coalition (CUC) is providing comments in response to the recently published proposed *Prohibition of Certain Toxic Substances Regulations, 2022* (the proposed Regulations) in the Canada Gazette I (CGI).

CUC is an association of companies from diverse industries interested in chemical management policy from the perspective of those who use, rather than manufacture, chemical substances.[1] CUC encourages the development of chemical-regulatory policies that protect human health and the environment while simultaneously fostering the pursuit of technological innovation in the context of international markets and the global economy.

The CUC appreciates your consideration of these comments. If you have any questions relating to this submission, please feel free to contact me.

Sincerely,

Lawrence E. Culleen

Enclosure

[1] The members of CUC are Airbus S.A.S., The Boeing Company, Carrier Corporation, HP Incorporated, IBM Company, Intel Corporation, Lockheed Martin Corporation, the National Electrical Manufacturers Association, Raytheon Technologies Corporation, Sony Electronics, Inc., and TDK U.S.A. Corporation.

Before the Canada Department of the Environment and Department of Health
Canada Gazette, Part I, Volume 156, Number 20:
Proposed *Prohibition of Certain Toxic Substances Regulations, 2022*
May 14, 2022
Pursuant to the Canadian Environmental Protection Act, 1999
Comments of the Chemical Users Coalition

Introduction

The Chemical Users Coalition ("CUC") appreciates the opportunity to provide these comments in response to the proposed regulations prohibiting the manufacture, use, sale and import of decabromodiphenyl ethane (DBDPE, CAS Registry Number 84852-53-9), Dechlorane plus, Perfluorooctane sulfonate (its salts and precursors), Perfluorooctanoic acid (its salts and precursors), long-chain perfluorocarboxylic acids (LC-PFCAs, and their salts and precursors) and polybrominated diphenyl ethers (PBDEs) while providing exemptions to the prohibitions, Canada Gazette, Part I, Volume 156, Number 20 – May 14, 2022: Prohibition of Certain Toxic Substances Regulations, 2022 (the "Draft Regulations").

CUC is an association of companies from diverse industries that typically acquire and use, rather than manufacture, chemical substances.[1] CUC Members produce and distribute highly complex materials and products, including critical microscopic circuits, major devices, appliances and intricate equipment. Our members depend on the availability of certain existing substances for which there are currently no known alternatives proven to meet the various technical feasibility standards applicable to a variety of critical uses. CUC has consistently supported measures that protect health and the environment in a manner that enables the regulated community to pursue technological innovation simultaneously with economic development and growth. This is critical in the area of chemical regulatory policy, which necessarily addresses emerging information about health and environmental risk.

CUC supports efforts undertaken by entities such as Environment and Climate Change Canada ("ECCC") to address chemicals of concern with responsible and balanced regulations. CUC acknowledges that in the context of the Draft Regulations, ECCC has proposed exemptions and identified timelines to accommodate the need to gradually phase down certain uses of DBDPE, particularly in manufactured items ("articles") that may be manufactured or assembled outside of Canada, but are imported for distribution, sale, or use in Canada. However, certain provisions in the Draft Regulations will impose considerable challenges, especially as it relates to a prohibition on the manufacture, use, sale and import of DBDPE, and products containing DBDPE. CUC is acutely aware of the challenges faced by importers and manufacturers of articles that contain complex component parts. Such parts may contain levels of DBDPE, but composition and/or concentration are not known definitively due to the many layers of global supply chains and lack of transparency of chemical compositions for such articles (or manufactured items). If the restrictions on DBDPE are enacted as currently drafted, the potential for supply chain disruption is significant, particularly for manufactured items imported into

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Canada. It will be challenging for persons subject to the proposed rules to identify which products might contain DPDPE, and then to timely make the requisite requests for exemption, even assuming ECCC would be able to promptly review and would consider granting such requests. Such issues are not likely to be ameliorated in the context of certain highly complex products even with the proposed time-limited exemptions and permit process. Furthermore, the restrictions on DBDPE are still novel and do not currently exist under any other country's chemical management laws and regulations, creating compliance complexities. Accordingly, CUC asks that ECCC revise the proposed regulatory provisions to allow for greater flexibility in the implementation of the restrictions to minimize supply chain and other economic disruptions.

Comments

CUC's comments which follow focus primarily, but not exclusively on DBDPE.

I. DBDPE is a critical substance for which replacements are not readily available or feasible.

DBDPE performs a valuable function by reducing the flammability of the products where it is used. Those products include not just consumer devices and appliances, but also airplanes and motor vehicles. Alternatives to DBDPE for use in all these applications are not available. Consequently, without the use of DBDPE, there will be an increased risk posed by the potential flammability of affected products that cannot immediately be addressed.

Furthermore, the process of finding appropriate and technically viable substitutes is neither simple nor quick. Global product and manufactured article producers must consider a broad range of product safety and design factors that are hopefully "standard" across chemical regulatory regimes in global markets. Identifying feasible substitutes can also require seeking governmental regulatory agency approvals beyond the jurisdiction of ECCC.

Even once a potentially feasible substitute has been identified, the engineering and certification of certain products or manufactured items is often a time-consuming process that can take many years to complete. Additionally, a substitution or product reengineering will often pose considerable financial costs.

CUC Member companies design products to meet relevant safety standards, and, in many cases, highly technical product specification. Such specification may include customer and government requirements which are not negotiable (or are only subject to changes that require extensive periods to approve). Given the lack of known and commercially available alternatives for DBDPE that can be shepherded through such qualification processes, in addition to currently undefined costs to achieve such objectives, CUC believes that ECCC should re-consider and revise its approach in restricting DBDPE (and specifically manufactured articles containing DBDPE), in the Canadian market, to minimize the potential disruptions that will be created within supply chains and the ensuing business disruption that will occur if the regulation is not modified.

II. The proposed exemptions and permit process will not mitigate supply chain issues resulting from the prohibitions

The proposed exemptions and permit processes do not adequately address the aforementioned product design and supply chain issues. For example, the 20-year exemption for use in replacement parts may only confer limited help in servicing products that are already in commerce, as it may be insufficient for products with a long life span that may need replacement parts for many years. Thus, CUC recommends that replacement parts be exempt indefinitely. This approach ensures administrative simplicity and reduces the likelihood that materials and existing products that do contain DBDPE will need to be disposed of prematurely. Additionally, ECCC should recognize that certain products containing DBDPE may be repaired abroad, and prohibiting their re-import (after the 5-year grace period) would impact the useful life of such products. Accordingly, we respectfully request that the reimport of repaired products be allowed.

While a 5-year exemption may be sufficient for some applications, this grace period may not be sufficient for all categories of electrical and electronic equipment ("EEE") parts. A 5-year exemption for new products (i.e., those produced during the year the final rules are released and the year immediately thereafter) is not sufficient as there may still not be an alternative for DBDPE within 5 years – when used in certain applications. Research and design for the manufacturers of complex and highly specialized products, such as CUC Member companies, is a time-consuming process that has already begun in many instances, and which may not lead to an easily-identified near-term chemical alternative. For example, parts listed in Schedule 1 under Item 26, subitem(2)(a-e) may require an as-yet undetermined amount of time to phase out the use of DBDPE. Although manufacturers are continuing to assess the availability of feasible alternatives, finding a functional alternative has proven to be difficult for such a wide variety of applications. Therefore, we request that subitems(2)(a-e) be provided permanent exemptions.

The permit process as proposed is an insufficient mechanism for long-term planning for manufacture and certification of products. It is of limited utility, a time-intensive process, and subject to government discretion, which fails to provide the transparency and predictability needed for product planning and production. Furthermore, the permit process as discussed in the proposal is allowed only for activities that are currently not listed as authorized activities under Schedule 1. CUC requests that the permit process (a) be made available for authorized activities as well as those not identified in Schedule 1, and (b) allow for the submission of permit applications both during or after the 5-year transition period. Further, to avoid significant disruptions in the supply chain, importers should be allowed to continue the import of products during the permit application review period, given uncertainty regarding how long the review process will take to complete. The proposed amendment indicates that the permit process is allowed for a maximum of three years, but CUC requests the process be allowed for renewal beyond three years if no feasible alternatives are available during the initially allotted time.

III. The lack of harmonization with other regulatory regimes poses compliance and supply chain challenges

At present, there is no precedent - globally - for the risk management measures for DBDPE set out in the proposed regulations. No regulatory authority in the world has proposed risk management measures as sweeping as those set out in the Draft Regulations. In contrast, the United States Environmental Protection Agency (U.S. EPA) is not currently conducting a risk evaluation for DBDPE and is not contemplating risk management measures, although it is looking at other flame retardants.

ECCC should recognize that DBDPE is not regulated in other regions, and that upstream suppliers of complex goods may not be fully aware of the use of DBDPE in their products. Thus, we request that another form of relief, aside from the permit process, be provided in the event that a downstream manufacturer or importer is made aware of the use of DBDPE in their products. A mechanism is needed by which manufacturers and importers of finished goods can respond in good faith and undertake mitigation measures in the event they discover DBDPE has been used (or continues to appear) in their products beyond the 5-year exemption period. ECCC should establish that manufacturers and importers who have relied in good faith in the representations and assurances that have been provided by their component and product suppliers will not be penalized if the manufacturer or importer takes steps to address the issue as soon as it learns the prior representations a product or component supplier provided were in error.

IV. Changes and clarifications needed to address compliance challenges for several categories

In addition to the foregoing global concerns, CUC is concerned by compliance uncertainties and challenges posed by the Draft Regulations and recommends that EEEC consider the following changes and clarifications:

a. The proposed restrictions should be based on the manufacture date of the products, regardless of the place of manufacture. Not all companies that import or distribute products in Canada manufacture their products in Canada. Therefore, ECCC should consider exempting all products manufactured prior to the prohibition date, even if the products are manufactured beyond Canada's borders, such as overseas. This would prevent many already-manufactured products from being disposed of and would allow the manufacturers to continue to provide Canadian consumers with products without disrupting the distribution in commerce.

b. ECCC should establish de minimis or allowable quantity (i.e., concentration) thresholds for DBDPE. Doing such would help industry determine if products meet the regulatory requirements and would allow companies to specify material compositions to suppliers.

c. The factors and rationale that ECCC considered to grant the time-limited exemptions for EEE in vehicles apply equally to aerospace, space, and marine vessel components. Accordingly, CUC requests that ECCC confirm and clarify that the term 'vehicles' indeed includes aircraft, spacecraft, and marine vessels. EEEC should explicitly state such, as

this would allow for clarity, prevent confusion, and allow affected entities to ensure compliance with the regulations.

d. Schedule 1 should be clarified to allow affected parties to easily understand the requirements under the regulations. Specifically, for some authorized activities in Schedule 1, no conditions for those activities are provided under Column 4. For such activities, we would like ECCC to clarify that those activities can continue indefinitely.

e. CUC encourages ECCC to strive for global harmonization with existing regulations in regard to thresholds and exemptions where possible. For example, CUC requests that the Draft Regulations align with PFOA exemptions under the Stockholm Convention (which include photolithography or etch processes used in the manufacturing of semiconductors).

f. LCPFCAs are listed as regulated substances under the proposed prohibitions. CUC requests clarification regarding the conditions for continued use of LCPFCAs in semiconductors; such uses should be specifically exempted and made clear.

g. Under Section 4 of the proposed regulations, information under Schedule 2 must be submitted to the Minister in the event a substance is used for research purposes. CUC requests R&D uses should not require notification to the government of Canada. If a specific exemption for R&D is not provided, ECCC must clarify who the responsible party is to submit such information to the Minister.

Conclusion

As articulated above, CUC is concerned that the proposed risk management measures for DBDPE as presented in the draft Regulation have the potential to cause significant socioeconomic impacts, including severe disruptions to global supply chains. The proposed measures are not aligned with global efforts, and do not allow for the needed time, effort, and resources to ensure that essential products that meet safety standards remain available to the marketplace and consumers.

CUC Members would be pleased to meet with ECCC personnel to discuss these comments and related issues as ECCC continues its efforts to develop and promulgate the *Prohibition of Certain Toxic Substances Regulations, 2022.*