

W. Scott Thurlow, MA LL.B.
Thurlow.law
98 Country Club Drive, Ottawa, ON
K1V9Y7

April 3rd, 2023

The Honourable Stephen Guilbeault, P.C., M.P.
Minister of the Environment
c/o The Executive Director Program Development and Engagement Division
Department of the Environment
Gatineau, Quebec K1A 0H3

Sent by email: eccc.substances.eccc@canada.ca

Re: Notice of Objection and Request for Board of Review in relation to the Proposed Order to add ‘Crude Tall Oil’ to Schedule 1 to the *Canadian Environmental Protection Act, Canada Gazette, Part I, Volume 157 (February 18, 2023), Number 7: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999*

This submission responds to the February 18, 2023 Gazette Notice in which the Governor in Council, on the recommendation of the Minister of the Environment (“Minister”), proposed an Order to add “Crude Tall Oil” (CTO) to Schedule 1 of the *Canadian Environmental Protection Act, 1999* (“CEPA”) (hereafter referred to as “Proposed Order”). We would like to formally object to the Proposed Order, and request that you establish a Board of Review under Section 333 of the *Canadian Environmental Protection Act, 1999* (the Act) to review the recommendation.

For the consideration of the Minister, we have provided a newly released peer-reviewed publication entitled “The crude tall oil value chain: Global availability and the influence of regional energy policies.” (Aryan and Kraft, 2021¹) This paper speaks to the economics associated with CTO production and was not available to the Ministers at the time of the decision by the Governor in Council. This study confirms that only certain plants around the world can produce CTO. This is in contrast to the conclusions of the Final Screening Assessment (FSA), which erroneously assumes that all kraft pulping facilities in Canada have the potential to release the CTO.

We believe that the FSA cements a scientific error relating to CTO releases from existing facilities. To be clear, it is our understanding that CTO is not an inadvertently generated by-product of kraft pulp manufacturing. It can only be produced at mills with a separate, self-contained tall oil plant operating under strongly acidic conditions and elevated temperatures. **It cannot be inadvertently produced in mill effluents.**

¹ Aryan V. and A. Kraft, 2021. The crude tall oil value chain: Global availability and the influence of regional energy policies. *Journal of Cleaner Production*. 280 (2021) 124616. <https://doi.org/10.1016/j.jclepro.2020.124616>

CTO is a valuable product and as such it is not released to the environment. It is worthwhile noting that the absence of available information on CTO losses also confirms that, on a routine basis, kraft pulping facilities operating CTO production plants do not intentionally sewer any amounts of CTO to their wastewater treatment system. So doing would be a considerable economic loss.

Consultation Process:

Finally, we believe that ECCC/HC's publication of the FSA and Risk Management Approach (RMA) for CTO embedded significant updates to its ecological risk assessment methodology that were not present in the draft screening assessment (DSA), and it did so without consulting with affected stakeholders. We feel that this is inappropriate. It is our view that this was undertaken in contravention of the principles that underly Section 4.1 of the Cabinet Directive on Regulation, and specifically the Policy on Regulatory Development.

We were surprised to learn that in the FSA ECCC/HC significantly altered the proposed approach for the estimation of CTO releases into the environment and did not provide the opportunity for comment. This is a stark departure from the established precedent under the current Chemicals Management Plan (CMP). By way of example only, when completing the DSA for the substance Tetrahydrofuran (The Furans Group), the government learned of new routes of exposure. Rather than making adjustments and finalizing the screening assessment, ECCC/HC re-released an updated DSA for additional public comment (March 18th, 2023). We believe that would have been an appropriate approach for CTO given the material changes that were made to the scientific approach.

Conclusion:

As currently published, the FSA for CTO mischaracterizes the pulp and paper sector in Canada with respect to CTO releases to the environment. As noted in the proposed Risk Management Scoping Document, this mischaracterization has the potential to require a costly system, the implementation of which will have no measurable effect on the final effluent release of a substance that is not expected to be present in process waters headed to wastewater treatment.

I would be pleased to answer any questions you have.

Sincerely,



W. Scott Thurlow, MA LL.B.
LUSC 47722P
613-863-5676
Thurlow.law