



April 27, 2011

Honourable Peter Kent, P.C., M.P.
Minister of Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, QC K1A 0H3

Dear Minister:

As national trade associations representing a broad spectrum of Canada's product manufacturing, export and retail sectors, we are filing this Notice of Objection and request for a Board of Review to resolve the serious issues arising from the publication of Proposed *"Regulations Respecting Products Containing Certain Substances Listed in Schedule 1 to the Canadian Environmental Protection Act, 1999"*, published in *Canada Gazette*, Part I, February 26, 2011 (the proposed regulation).

It is our collective opinion that moving the proposed regulation toward a *Canada Gazette*, Part II, is unsupportable at this time.

Page 761 of the *Canada Gazette*, Part I, publication states *"notice is hereby given, pursuant to subsection 332(1) of the Canadian Environmental Protection Act, 1999, that the Governor in Council, pursuant to subsection 93(2) of that Act, proposes to make the annexed Regulations Respecting Products Containing Certain Substances Listed in Schedule 1 to the Canadian Environmental Protection Act, 1999"* and *"Any person may...within 60 days after the date of publication of this notice, file with that Minister a notice of objection requesting that a board of review be established under section 333 of that Act and stating the reasons for the objection."*

We are filing this Notice of Objection by the required date of April 27, 2011. We request that you establish a Board of Review or otherwise deal with our objection as required under Canadian law and regulation. We believe that:

- Important principles were breached when the proposed regulation was published in *Canada Gazette*, Part I, February 26, 2011.
- It is not clear on what authority this proposed regulation could be created and can be applied generically to all substances on Schedule I in products.
- A generic risk management instrument is being identified to manage or mitigate risk (i.e., the nature and extent of the danger posed) related to other substances in products, but those risks are not defined.
- It is not clear how the cost/benefit rationale operates generically for this proposed regulation.

We further request that you assess the proposed regulation in light of section 93(4) of CEPA, that *"The Governor in Council shall not make a regulation under subsection (1) in respect of a substance if, in the opinion of the Governor in Council, the regulation regulates an aspect of the substance that is regulated by or under any other Act of Parliament in a manner that provides, in the opinion of the Governor in Council, sufficient protection to the environment and human health."*, as this has not been taken into consideration.

Specific rationales for our Notice of Objection include:

1. No transparency or open consultation. The industries that will be affected by the potential scope of this proposed regulation have not been fully consulted. As representatives of food and consumer product industries, it is unprecedented that a proposed generic product regulation would appear attached to a specific consultation and proposed regulation for mercury.
2. The publication was only communicated via an email list serve as an email entitled “mercury” and to a few other stakeholders. The publication was not directly communicated to any of our associations or our members. It is only by accident that we have learned about the full scope of this proposal.
3. The publication is confusing and misleading. Many stakeholders still do not appreciate the extension of scope of the proposed regulation to all products and potential Schedule 1 substances. The Executive Summary states: “*The proposed Regulations are designed to allow for the future possibility of controlling products containing other substances listed in Schedule 1 to the Canadian Environmental Protection Act, 1999, by adding them to the schedule of the Regulations*”. Yet, all twenty-six pages of supporting information accompanying the ten-page regulatory text pertain to mercury. The language in the regulatory text persists in confusing between mercury and broad application.
4. No basis is provided for extending the scope of the proposed regulation beyond mercury. No information is provided as to if or how it would manage actual health or environmental dangers and how such situations are already managed by the many existing Acts, Regulation and Statutes in Canada. No information is provided as to how additional regulation will serve an unmet health or environmental protection need. There is nothing written in the proposed regulation that would ensure there is a cost/benefit analysis demonstrating the effective management of a health or environmental danger; and nothing that would ensure consultation for future substances. In fact, we have been told by officials that future substances could be added by a “simple 30-day amendment”, bypassing future due process. There is also the possibility of having two Acts regulating a single product label – which is not consistent with the Government’s Best Placed Act rule.
5. No opportunity for meaningful dialogue even at this late juncture. We have had only until May 12, 2011, to comment on this nearly final regulation. Due to the federal election, restrictions have been placed on public consultations.
6. Extending the regulation beyond mercury is unsuitable for a great many reasons. Many product-specific regulations exist or are being developed in Canada. Where concentrations of substances are regulated and these safe limits are met, the products are not and should not be subject to additional prejudicial barriers. Whereas in the proposed regulation, provisions are being established to require such things as permitting, renewal each three years, labelling and the need for a new product to demonstrate it “plays an important role in the protection of the environment or human health”. This is clearly unreasonable for the vast majority of substances and products, which are designed to be safe, but unlike drugs, are not explicitly designed to “protect health”. Perversely, drugs are the only category exempt from the proposed regulation; yet no rationale related to health or environmental protection is provided for this exemption.

It is our view that moving the proposed regulation toward a *Canada Gazette*, Part II, is unsupportable. It is the view of our associations that, unless the Government of Canada renames the proposed regulation to focus on *mercury only* and rewrites the Proposed Regulation to remove any wording for a generic application for controlling products containing other substances listed on Schedule 1, then our Objection needs to be investigated thoroughly before further work on this proposed regulation is undertaken.

We will be pleased to elaborate further on these matters and to assist the appropriate review process to deal with this Objection via a Board of Review.

Sincerely,

A handwritten signature in blue ink that reads "Darren Praznik".

Darren Praznik
President and Chief Executive Officer
Canadian Cosmetic, Toiletry
and Fragrance Association (CCTFA)

A handwritten signature in blue ink that reads "Derek Nighbor".

Derek Nighbor
Senior Vice-President
Public and Regulatory Affairs
Food & Consumer Products of Canada (FCPC)

A handwritten signature in black ink that reads "Shannon Coombs".

Shannon Coombs
President
Canadian Consumer Specialty Products Association (CCSPA)

cc Paul Boothe, Deputy Minister, Environment Canada
Glenda Yeates, Deputy Minister, Health Canada
Coleen Volk, Assistant Deputy Minister, Environmental Stewardship Branch
Hilary Gellar, ADM, Healthy Environments & Consumer Products