

Order Amending Schedule 3 to the Canadian Environmental Protection Act, 1999

Statutory authority

Canadian Environmental Protection Act, 1999

Sponsoring departments

Department of the Environment and Department of Health

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Order.)

Issue and objectives

Canada has committed to shared responsibility and cooperative efforts to address the international trade of chemicals and pesticides. The Export Control List (ECL) in Schedule 3 to the *Canadian Environmental Protection Act, 1999* (CEPA 1999) and the associated regulations help Canada to meet its international obligations. ([see footnote 1](#)) The ECL is a list of substances whose exports are controlled because their use in Canada is prohibited or restricted, or because Canada has accepted to control the export under the terms of an international agreement (for example, the Rotterdam Convention). Section 100 of CEPA 1999 provides the Ministers of the Environment and of Health with the authority to add or delete substances from the ECL by order. The ECL is subject to amendments that are published in the *Canada Gazette*.

The proposed *Order Amending Schedule 3 to the Canadian Environmental Protection Act, 1999* (hereinafter referred to as the proposed Order) proposes several additions and modifications to the ECL. The proposed Order updates the ECL with new substances and groups of substances recently added to Annex III of the Rotterdam Convention ([see footnote 2](#)) and also adds new substances to the ECL that have recently been banned or restricted in Canada under domestic controls. Some of these substances have recently been added to the Stockholm Convention. ([see footnote 3](#))

These changes are important to meet Canada's continued compliance with its international obligations under the Rotterdam Convention and to support the implementation of the Stockholm Convention through domestic export control regulations. Further modifications are proposed to provide greater clarity and reference for exporters.

Environment Canada is also proposing revisions to the existing regulations which control exports of substances on the ECL to include provisions relating to the Stockholm Convention. This would ensure that substances subject to the Stockholm Convention are appropriately controlled domestically. The revisions to the regulations are being done separately.

Background

The Export Control List

Substances listed to the ECL are grouped according to the following criteria:

- Part 1 includes substances whose use is prohibited in Canada. Under the authority of CEPA 1999, these substances can only be exported under very limited circumstances (such as for destruction).
- Part 2 includes substances for which notification or consent for export is required pursuant to an international agreement. These substances are subject to the Prior Informed Consent (PIC) procedure of the Rotterdam Convention, which is an international convention promoting shared responsibility and cooperative efforts amongst Parties in the international trade of certain hazardous chemicals.
- Part 3 includes substances whose use is restricted in Canada. Examples of these substances include ozone-depleting substances which may be exported subject to domestic export controls. These substances can be exported subject to the Minister being notified in advance.

Two regulations apply to exports of substances listed on the ECL:

- The *Export Control List Notification Regulations* (ECLN Regulations) describe the manner in which to notify the Minister of exports of all substances listed in the ECL.
- The *Export of Substances Under the Rotterdam Convention Regulations* (ESURC Regulations) apply to exports of substances on the ECL, destined to another Party to the Rotterdam Convention. The main purpose of these Regulations is to ensure that substances on the ECL, subject to the Prior Informed Consent (PIC) procedure, are not exported to Parties to the Convention, unless the importing Party has provided prior consent to the shipment. These Regulations require the exporters to have an export permit so that exports comply with the PIC procedure. Also under the Rotterdam Convention, Canada is obligated to notify an importing Party when exporting a substance that is subject to a domestic ban or severe restriction for health or environmental reasons. In such cases, the Regulations are a means of collecting the necessary information through the application for an export permit.
- Work is concurrently underway for the development of a new instrument which merges and streamlines the above regulations and introduces new provisions to allow Canada to deliver more efficiently on export-related commitments made under the *Stockholm Convention on Persistent Organic Pollutants*.

The Rotterdam Convention

Annex III of the Rotterdam Convention, which entered into force in February 2004, establishes a list of substances that have been banned or severely restricted by Rotterdam Parties for health and environmental reasons. The Convention facilitates information exchange between Parties in which the "prior informed consent" of the importing Party is required prior to export. This Convention facilitates the process of "export notification" through which the exporting Party is obligated to notify and send information when exporting a substance subject to domestic prohibition or restriction on use.

The Stockholm Convention

The *Stockholm Convention on Persistent Organic Pollutants* (POPs) is a global treaty to protect human health and the environment from highly dangerous, long-lasting chemicals by restricting and ultimately eliminating their production, use, trade, release and storage.

Description and rationale

The proposed Order would make several additions and modifications to the Export Control List.

The proposed Order would add the following five substances to Part 1 of the ECL. These substances are prohibited in Canada and are therefore proposed for inclusion in Part 1 of the ECL:

- Chlordecone (Chemical Abstracts Service [CAS] registry number ([see footnote 4](#)) 143-50-0);
- Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8, 8a-octahydro-exo-1,4-exo-5,8-dimethanonaphthalene) [CAS 72-20-8];
- Toxaphene (CAS 8001-35-2);
- Alpha-HCH (CAS 319-84-6); and
- Beta-HCH (CAS 319-85-7).

The current listings for endrin (Part 3, item 7), toxaphene (Part 2, item 25), and the HCH isomers (Part 2, item 12) would be removed upon their addition to Part 1 of the ECL. All of these substances are listed in Annex A of the Stockholm Convention.

The proposed Order would add the following three groups of substances, which have been added to Annex III to the Rotterdam Convention, to Part 2 of the ECL:

- Dinitro-ortho-cresol (DNOC) and its salts (CAS 534-52-1; CAS 2980-64-5; CAS 5787-96-2; CAS 2312-76-7);
- Dustable powder formulations containing a combination of benomyl at or above 7% (CAS 17804-35-2), carbofuran at or above 10% (CAS 1563-66-2) and thiram at or above 15% (CAS 137-26-8); and
- All tributyltin compounds, including

1. Tributyltin oxide (CAS 56-35-9);
2. Tributyltin fluoride (CAS 1983-10-4);
3. Tributyltin methacrylate (CAS 2155-70-6);
4. Tributyltin benzoate (CAS 4342-36-3);

5. Tributyltin chloride (CAS 1461-22-9);
6. Tributyltin linoleate (CAS 24124-25-2); and
7. Tributyltin naphthenate (CAS 85409-17-2).

Moreover, a recent amendment to Annex III to the Rotterdam Convention added two substances that are currently in Part 3 of the ECL. These substances would be deleted from Part 3 of the ECL and added to Part 2:

- Tetraethyl lead (CAS 78-00-2); and
- Tetramethyl lead (CAS 75-74-1).

The proposed Order would add nine substances or groups of substances to Part 3 of the ECL. These additions are proposed because there are controls placed on these substances in Canada which restrict their use:

- Benzidine and benzidine dihydrochloride, which have the molecular formulas $C_{12}H_{12}N_2$ and $C_{12}H_{12}N_2 \times 2HCl$, respectively (CAS 92-87-5; CAS 531-85-1);
- 2-Methoxyethanol, which has the molecular formula $C_3H_8O_2$ (CAS 109-86-4);
- Pentachlorobenzene, which has the molecular formula C_6HCl_5 (CAS 608-93-5);
- Tetrachlorobenzenes, which have the molecular formula $C_6H_2Cl_4$ (CAS 12408-10-5; CAS 84713-12-2; CAS 634-90-2; CAS 634-66-2; CAS 95-94-3);
- Perfluorooctane sulfonate (PFOS) and its salts;
- Compounds that contain one of the following groups: $C_8F_{17}SO_2$, $C_8F_{17}SO_3$ or $C_8F_{17}SO_2N$;
- Azinphos-methyl (CAS 86-50-0);
- Phorate (CAS 298-02-2); and
- Terbufos (CAS 13071-79-9).

Pentachlorobenzene is listed in Annex A of the Stockholm Convention. Perfluorooctane sulfonate, its salts and perfluorooctane sulfonyl fluoride (contains the group $C_8F_{17}SO_2$) are listed in Annex B of the Stockholm Convention.

Aside from additions, the proposed Order would modify the ECL to ensure CAS registry numbers appear in the descriptions of all substances listed in all parts of the ECL (where applicable). CAS registry numbers are unique numerical identifiers and their inclusion within substance descriptions would provide exporters with an additional means of identifying substances.

Finally, the proposed Order would amend the descriptions of certain substances currently listed in Part 2 of the ECL. The changes would harmonize the descriptions of these substances with those listed in Annex III of the Rotterdam Convention. Specifically, the proposed Order would do the following:

- Replace "2,4,5-T (CAS 93-76-5)" (item 1) with "2,4,5-T and its salts and esters;"
- Replace "Dinoseb and dinoseb salts (CAS 88-85-7)" (item 9) with "Dinoseb and its salts and esters;"
- Replace "Pentachlorophenol (CAS 87-86-5)" (item 17) with "Pentachlorophenol and its salts and esters;"
- Replace "Monocrotophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient / L) (CAS 692322-4)" (item 18) with "Monocrotophos (CAS 6923-22-4);"
- Replace "Methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient) (CAS 29800-0)" (item 20) with "Emulsifiable concentrates containing methyl parathion at or above 19.5% and dusts containing methyl parathion at or above 1.5% (CAS 298-00-0); and"
- Replace "Parathion (all formulations — aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR) and wettable powders (WP) — of this substance are included, except capsule suspensions (CS)) (CAS 56-38-2)" (item 21) with "Parathion (CAS 56-38-2)."

Benefits and costs

The economic impact of the proposed Order is estimated to be low. The impacts are difficult to quantify but likely small in magnitude. They are discussed qualitatively below.

Industry

Substances on the ECL are subject to the provisions of the ECLN Regulations and the ESURC Regulations. While the proposed Order is adding 15 substances or groups of substances to the ECL, none

of these substances are known to be exported from Canada. Administrative costs for export permit applications and export notifications are estimated to be zero in the absence of exports of these controlled substances.

Competitiveness

The proposed Order is not expected to decrease competitiveness for any firm. Although it should be noted that there are currently no known exports of these listed substances, exports could continue, subject to the requirements of the ECLN Regulations and the ESURC Regulations. In fact, the proposed Order may improve the competitiveness of firms using safe alternatives by confirming Canada's adherence to its international agreements regarding the international trade of toxic substances.

Government

The cost to Government of the proposed Order would be negligible. Additional resources to administer and enforce the regulations which are linked to the ECL are not expected as a result of the proposed Order. Administrative costs for export permit application and notice of export processing are estimated to be zero in the absence of exports of these controlled substances.

Canadians

The proposed Order would benefit Canadians by allowing Canada to remain in good standing with its international export commitments under the Rotterdam Convention. Canada's participation in this international convention provides benefits to Canadians by ensuring that substances in international trade are used in an environmentally sound manner which reduces damage to the global and domestic environment and ecosystems.

Consultation

Public consultations involving all known stakeholders took place through a 30-day online process open to the public, completed on December 1, 2010. Identified stakeholders with known activities relating to the substances were targeted with direct mailings to inform them of the consultation and of the opportunity to comment. These stakeholders were directed to Environment Canada's CEPA Environmental Registry Web site to see the substances affected and review a consultation document.[\(see footnote 5\)](#)

Two comments were received and considered during the course of this pre-consultation. The comments were not about the specific additions of substances and did not identify any concerns about meeting export obligations for the substances being added. Rather, these comments pertained to the listing of some of these substances on Part 1 of the ECL where greater restrictions would apply to their export, and the possible addition of other substances to the ECL.

Environment Canada's response is that adding other substances to the ECL is outside the scope of this initiative, although further additions may be considered in future regulatory proposals. With respect to placing substances on Part 1 of the ECL, the placement of substances to the three parts of the ECL is prescribed by section 100 of CEPA 1999 on the basis of the domestic controls and the international conventions which pertain to these substances.

Every order made under CEPA 1999 must be published in the *Canada Gazette*, and is subject to a public review period, during which any person may provide comments or file a notice of objection, requesting that a board of review be established. The review period will last 75 days for this proposed Order.

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PROPOSED REGULATORY TEXT

Notice is hereby given, pursuant to subsection 332(1) ([see footnote a](#)) of the *Canadian Environmental Protection Act, 1999* ([see footnote b](#)), that the Minister of the Environment and the Minister of Health, pursuant to section 100 of that Act, propose to make the annexed *Order Amending Schedule 3 to the Canadian Environmental Protection Act, 1999*.

Any person may, within 75 days after the date of publication of this notice, file with the Minister of the Environment comments with respect to the proposed Order or, 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. All comments and notices must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be sent by mail to the Director, Chemical Production Division, Environment Canada, Gatineau, Quebec K1A 0H3, by fax to 819-994-5030 or by email to SEC-ECS@ec.gc.ca.

A person who provides information to the Minister of the Environment may submit with the information a request for confidentiality under section 313 of that Act.

Ottawa, June 23, 2011

PETER KENT
Minister of the Environment

Ottawa, June 17, 2011

LEONA AGLUKKAQ
Minister of Health

ORDER AMENDING SCHEDULE 3 TO THE CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

AMENDMENTS

1. Item 1 of Part 1 of Schedule 3 to the *Canadian Environmental Protection Act, 1999* ([see footnote 6](#)) is replaced by the following:

1. Mirex (Dodecachloropentacyclo [5.3.0.0^{2,6}.0^{3,9}.0^{4,8}] decane) (Chemical Abstracts Service (hereinafter "CAS") 2385-85-5)

2. Items 4 to 11 of Part 1 of Schedule 3 to the Act are replaced by the following:

4. Alachlor (2-chloro-2', 6'-diethyl-N-methoxymethyl acetanilide) (CAS 15972-60-8)

5. Leptophos (O-(4-bromo-2,5-dichlorophenyl) O-methylphenylphosphonothioate) (CAS 21609-90-5)

6. Phosphamidon (2-chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate) (CAS 13171-21-6)

7. Cyhexatin (tricyclohexyltin hydroxide) (CAS 13121-70-5)

8. 2,3,4,5-bis(2-butylene)tetrahydro-2-furfural (CAS 126-15-8)

9. Bis(chloromethyl) ether that has the molecular formula C₂H₄Cl₂O (CAS 542-88-1)

10. Chloromethyl methyl ether that has the molecular formula C₂H₅ClO (CAS 107-30-2)

11. (4-Chlorophenyl)cyclopropylmethanone, O-[(4-nitrophenyl)methyl]oxime that has the molecular formula C₁₇H₁₅ClN₂O₃ (CAS 94097-88-8)

Formula C₁₇H₁₃Cl₂O₂ (CAS 51027-00-0)

12. Chlordecone (CAS 143-50-0)

13. Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8, 8a-octahydro-exo-1,4-exo-5,8-dimethanonaphthalene) (CAS 72-20-8)

14. Toxaphene (CAS 8001-35-2)

15. Alpha-HCH (CAS 319-84-6)

16. Beta-HCH (CAS 319-85-7)

3. Item 1 of Part 2 of Schedule 3 to the Act is replaced by the following:

1. 2,4,5-T and its salts and esters

4. Item 9 of Part 2 of Schedule 3 to the Act is replaced by the following:

9. Dinoseb and its salts and esters

5. Item 12 of Part 2 of Schedule 3 to the Act is repealed.

6. Items 17 and 18 of Part 2 of Schedule 3 to the Act are replaced by the following:

17. Pentachlorophenol and its salts and esters

18. Monocrotophos (CAS 6923-22-4)

7. Items 20 and 21 of Part 2 of Schedule 3 to the Act are replaced by the following:

20. Emulsifiable concentrates containing methyl parathion at or above 19.5% and dusts containing methyl parathion at or above 1.5% (CAS 298-00-0)

21. Parathion (CAS 56-38-2)

8. Item 25 of Part 2 of Schedule 3 to the Act is repealed.

9. Part 2 of Schedule 3 to the Act is amended by adding the following after item 28:

29. Dinitro-ortho-cresol (DNOC) and its salts (CAS 534-52-1; CAS 2980-64-5; CAS 5787-96-2; CAS 2312-76-7)

30. Dustable powder formulations containing a combination of benomyl at or above 7% (CAS 17804-35-2), carbofuran at or above 10% (CAS 1563-66-2) and thiram at or above 15% (CAS 137-26-8)

31. All tributyltin compounds, including:

(a) Tributyltin oxide (CAS 56-35-9)

(b) Tributyltin fluoride (CAS 1983-10-4)

(c) Tributyltin methacrylate (CAS 2155-70-6)

(d) Tributyltin benzoate (CAS 4342-36-3)

(e) Tributyltin chloride (CAS 1461-22-9)

(f) Tributyltin linoleate (CAS 24124-25-2)

(g) Tributyltin naphthenate (CAS 85409-17-2)

32. Tetraethyl lead (CAS 78-00-2)

33. Tetramethyl lead (CAS 75-74-1)

10. Items 1 to 4 of Part 3 of Schedule 3 to the Act are replaced by the following:

1. Chlorofluorocarbon: totally halogenated chlorofluorocarbons that have the molecular formula $C_nCl_xF_{(2n+2-x)}$ where "n" is less than or equal to 3 and "x" is greater than or equal to 1 and less than "2n+2" and also represents the number of atoms

2. Allyl alcohol (2-propen-1-ol) (CAS 107-18-6)

3. Carbon tetrachloride (tetrachloromethane) (CAS 56-23-5)

4. DBCP (1,2-dibromo-3-chloropropane) (CAS 96-12-8)

11. Items 7 to 15 of Part 3 of Schedule 3 to the Act are replaced by the following:

7. Lead arsenate, which has the molecular formula $PbHAsO_4$, and its basic form, which has the molecular formula $Pb_4(PbOH)(AsO_4)_3$ (CAS 7784-40-9; CAS 1327-31-7)

8. Strychnine (CAS 57-24-9)

9. Bromochlorodifluoromethane that has the molecular formula CF_2BrCl (CAS 353-59-3)

10. Bromotrifluoromethane that has the molecular formula CF_3Br (CAS 75-63-8)

11. Dibromotetrafluoroethane that has the molecular formula $C_2F_4Br_2$ (CAS 124-73-2)

12. Tributyltetradecylphosphonium chloride (CAS 81741-28-8)

13. Benzidine and benzidine dihydrochloride, which have the molecular formulas $C_{12}H_{12}N_2$ and $C_{12}H_{12}N_2 \times 2HCl$, respectively (CAS 92-87-5; CAS 531-85-1)

14. 2-Methoxyethanol, which has the molecular formula $C_3H_8O_2$ (CAS 109-86-4)

15. Pentachlorobenzene, which has the molecular formula C_6HCl_5 (CAS 608-93-5)

16. Tetrachlorobenzenes, which have the molecular formula $C_6H_2Cl_4$ (CAS 12408-10-5; CAS 84713-12-2; CAS 634-90-2; CAS 634-66-2; CAS 95-94-3)

17. Perfluorooctane sulfonate and its salts

18. Compounds that contain one of the following groups: $C_8F_{17}SO_2$, $C_8F_{17}SO_3$ or $C_8F_{17}SO_2N$

19. Azinphos-methyl (CAS 86-50-0)

20. Phorate (CAS 298-02-2)

21. Terbufos (CAS 13071-79-9)

COMING INTO FORCE

12. This Order comes into force on the day on which it is registered.

[31-1-o]

[Footnote 1](#)

The Export Control List Notification Regulations and the Export of Substances Under the Rotterdam Convention Regulations.

[Footnote 2](#)

The full title of the Convention is the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

[Footnote 3](#)

The full title of the Convention is the Stockholm Convention on Persistent Organic Pollutants.

[Footnote 4](#)

CAS RN: Chemical Abstracts Service registry number. Registry numbers are unique numerical identifiers of the Chemical Abstracts Service, property of the American Chemical Society.

[Footnote 5](#)

www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=B0C2EF8E-1

[Footnote 6](#)

S.C. 1999, c. 33

[Footnote a](#)

S.C. 2004, c. 15, s. 31

[Footnote b](#)

S.C. 1999, c. 33