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July 13, 2022

The Honourable Steven Guilbeault
Minister of the Environment
c/o Christina Paradiso
Executive Director Chemicals Management, Environmental Protection Branch
Department of the Environment
351 Saint-Joseph Boulevard, Gatineau, Quebec K1A 0H3
Email: ec.interdiction-prohibition.ec@ec.gc.ca

RE: **Notice of Objection and Request for Board of Review in relation to proposed regulations prohibiting the manufacture, use, sale and import of decabromodiphenyl ethane (DBDPE, CAS Registry Number 84852-53-9) 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.**

Dear Minister Guilbeault,

The Association of Home Appliance Manufacturers (AHAM) writes to express our formal objection to the above-referenced regulatory proposal. As provided for by section 332(2) of CEPA 1999, AHAM is filing this Notice of Objection and respectfully request that a Board of Review be established, pursuant to section 333 of CEPA 1999, to “inquire into the nature and extent of danger” posed by **DBDPE** and **PBDEs** and is in disagreement with the conclusions of the Final Screening assessment for the reasons set out below.

AHAM is particularly concerned that the Canadian Government is still proceeding with the regulatory development process on **DBDPE** despite hearing very clearly from many affected industry associations about the challenges within the global supply chains to comply with any shortened compliance date and the impossibility of compliance given the lack of available alternatives.

Proposed Risk Management Measures May Lead to Severe Risk to Public Health and Safety

Flame retardants are used in many products to meet mandatory fire safety standards, such as the Canadian Standards Association (CSA) and Underwriter’s Laboratories (UL) safety standards. There is currently no clear path for manufacturers to meet fire safety standards without flame retardants. There is currently no viable substitute for **DBDPE** flame retardants available for some applications. The current

Gazette notice even states, “however, the availability of alternatives remains unknown for products containing **DP** and **DBDPE**.”¹ Substituting flame-retardants is not a simple process, and modified components require re-certification for fire safety standards. Product performance must be maintained, and compatibility testing is required with other substances. The substance manufacturer then requires sufficient time to fill the supply chain with enough substance volumes before the compliance date.

DBDPE was identified as the alternative to other flame retardants, such as **PBDE** homologue **decaBDE**, which were banned in 2018.² The recently proposed regulations are now making **DBDPE** a ‘regrettable substitution.’ A safe and available substitute must be identified for **DBDPE** to prevent another ‘regrettable substitution’ on the initial **decaBDE** ban.

Proposed Risk Management Measures for DBDPE are Not Aligned with Other Regulatory Agencies or Agreements

AHAM recognizes the government’s policy objective and commitment to protecting human health and the environment from persistent organic pollutants. However, we request that the proposed **DBDPE** amendments to Canada’s substances regulations align internationally with our major trading partners, particularly the United States. It is essential for manufacturers that chemical restrictions in products are coordinated globally, and Canada should not attempt to move faster or more stringently.

ECCC has noted that Canada is a party to the Stockholm Convention on Persistent Organic Pollutants (POP), and that the proposed risk management measures would allow Canada to meet “its international commitments implementing amendments to the Stockholm Convention.” Yet, **DBDPE** is not listed as a POP under the Stockholm Convention. ECCC also cites meeting the goals of the Great Lakes Water Quality Agreement as a justification for its proposed risk management measures, even though **DBDPE** is not listed as a Chemical of Mutual Concern as part of the agreement. Accordingly, neither rationale justifies the proposed risk management measures.

The economic impact regarding changes to production, retooling, and possibly redesign will be immense, assuming there is an acceptable **DBDPE** alternative for all applications. An abrupt prohibition – unique to Canada – of all products containing these chemicals will cause severe disruptions to industry and will drastically reduce consumer choice. An exemption must be allowed for legacy products and spare and replacement parts for products already in the marketplace.

Complete harmonization must include concentration threshold levels and substance classification and compliance timelines. **PBDEs** have been largely phased out in Canada yet the proposed regulation will have a very direct impact by reducing the concentration threshold level. The proposed concentration threshold level for **PBDEs** will be 100x tighter than the RoHS concentration threshold level, which is the de-facto global benchmark. An example of how this will be highly problematic is in plastic wiring connectors for electrically powered devices. These connectors are manufactured on a commodity scale

¹ <https://gazette.gc.ca/rp-pr/p1/2022/2022-05-14/html/reg2-eng.html>; section of *Regulatory analysis, Benefits and costs, and Compliance costs*

² <https://www.canada.ca/en/environment-climate-change/services/management-toxic-substances/list-canadian-environmental-protection-act/polybrominated-diphenyl-ethers.html>

for the global market. RoHS sets the generally accepted threshold concentration level. The issue is that **Canada's** proposed PBDE threshold concentration levels are 100x lower than the RoHS levels. Under the proposed regulations, unique 'Canada-only' models will be required. In many cases, it is likely manufacturers will elect not to make these Canada-only models, and product availability in Canada will be significantly decreased.

The proposed risk management measures for **PBDEs**, therefore, could put Canada at odds with some of its largest trading partners and consideration should be given to global regulatory alignment, circularity goals, and potential disruptions to critical sectors in the country. The proposed regulation on **DBDPE** will create even further compliance issues as concentration threshold values have not been established.

Proposed Risk Management Measures May Lead to Supply Chain Disruptions

The Canadian home appliance industry as it has virtually complete reliance on imports to meet Canadian consumer demand. Many appliance manufacturers that sell products in Canada generally design and manufacture products for the entire North American market, not for any specific country, province, or state. The Canadian home appliance market is approximately 1/10th the size of the U.S. market, and the design and manufacturing of products are intended to meet both markets' needs together. One logical scenario that may play out shortly is that manufacturers determine that the Canadian market is not justified with its proposed substance restrictions and simply elect to reduce the appliance models sold into Canada or even pull out completely. Apart from consumer frustration, this could negatively impact migrating our consumers to higher efficiency appliances which would have supported the Canadian government's near-future federal energy goals.

RECOMMENDATIONS:

1. ECCC's screening assessment indicates **DBDPE** release to the environment is most likely to occur during manufacturing, formulation or industrial use.³ However, it does not apply to the Canadian home appliance industry Canada's home appliance industry is the virtual complete reliance on imports to meet Canadian consumer demand. As such, AHAM requests an exemption for home appliances.
2. Substance concentration threshold levels must be included in the regulations to avoid incorrect compliance assessments due to unintentional trace amounts. It would be most efficient to harmonize the **PBDE** concentration threshold level to any existing global or continental regime. Using RoHS's limit of max 0.1% w/w would create this alignment for Canada. The proposed concentration threshold level is 100x more restrictive than RoHS, which is generally used globally for the limit.

³ <https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/screening-assessment-certain-organic-flame-retardants-substance-grouping-benzene-ethanediyl-bis-pentabromo-decabromodiphenyl-ethane-dbdpe.html>

3. Substance concentration threshold levels must be established for **DBDPE**. Currently, no concentration threshold levels will create future compliance issues.
4. Work toward international and North American alignment on **flame retardant** prohibitions to eliminate the risk of unintended negative consequences on Canada's domestic and international trade and the ability of Canadian businesses to compete.
5. There is no broad prohibition until Canada finishes the assessment of the remaining **flame retardants** under CMP to ensure viable substitution is chosen.
6. Substance concentration threshold levels must be within the practical precision that chemical testing labs can achieve. It should also be noted that the testing costs are directly proportional to the requested level of accuracy. Currently, PFAS (**PFOS** and **PFOA**) have a proposed 1ppm max limit which requires testing equipment capable of very tight 0.3ppm precision.

Based upon the facts and arguments set out above we ask the Minister to appoint a Board of Review to "inquire into the nature and extent of danger" posed by **DBDPE** and **PBDEs**.

Please do not hesitate to contact me should you have any questions.

Respectfully submitted,



Greg Hall
Director of Regulatory Affairs and Standards
Association of Home Appliance Manufacturers (AHAM) /
Association des fabricants d'appareils électroménagers (AFAE)

About AHAM Canada:

AHAM represents major, portable and floor care home appliances manufacturers and suppliers to the industry. AHAM Canada represents more than 150 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in Canada. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the Canadian economy. The industry drives nearly \$6 billion in economic output throughout Canada and manufactures products with a factory shipment value of more than \$5 billion. Home appliances are also a success story regarding energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.