



JUL - 4 2001

Mr. Paul Muldoon
Executive Director and Counsel
Ms. Theresa McClenaghan
Counsel
Canadian Environmental Law Association
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Mr. Arlin Hackman
Vice-President, Conservation
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410 - 245 Eglinton Avenue East
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Dear Messrs. Muldon and Hackman and Ms. McClenaghan:

Thank you for your letter of April 11, expressing your joint Notice of Objection regarding the proposed Order, published in Part I of the *Canada Gazette* on February 10, respecting the addition of the *Pest Control Products Act* (PCPA) and the *Pest Control Products Regulations* (PCPR) to Schedule 2 of the *Canadian Environmental Protection Act, 1999* (CEPA, 1999).

I have carefully considered your request that I establish a Board of Review. In my opinion, it is not appropriate for such a Board to advise me on the issues you have raised in your Notice of Objection. Accordingly, I have decided to decline your request. I have reached this conclusion for the following reasons.

Under subsection 81(7) of CEPA, 1999, the Governor in Council has the exclusive responsibility to determine whether the PCPA and PCPR meet the two statutory requirements referred to in paragraph 81(6)(a) of the Act. These two requirements are, first, that any Act and regulations proposed for addition to Schedule 2 must provide for notice to be given before a substance regulated under the Act and regulations may be manufactured, imported or sold in Canada. Second, the Act and applicable regulations must provide for an assessment of whether substances regulated under that legislation are toxic or capable of becoming toxic. These are the only two criteria that must be met in order for the Governor in Council to be able to exercise its discretion under paragraph 81(7)(a) of CEPA, 1999. Since subsection 81(7) provides that those requirements are to be met by or under the other Act of Parliament, or regulations made under that Act, it is not required that all of the details of how the requirements are met must be exhaustively detailed in the Act or regulations. Nor is it required that the legislative scheme under the other Act must be identical or equivalent to that in CEPA, 1999.

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In recommending the proposed Order to the Governor in Council, along with my colleague, the Minister of Health, I am satisfied that the PCPA and PCPR create a legislative scheme that meets these two criteria of notice and assessment. Before a new pesticide may be sold, imported, or used in Canada, it must be registered in accordance with the requirements of the PCPA and PCPR. The application for registration of the pesticide provides the notice required by paragraph 81(6)(a). The information requirements that must be met by the applicant provide the means by which the health and environmental risks are assessed before a decision is made on the application. There can be no doubt that this satisfies the first criterion in paragraph 81(6)(a).

Moreover, the assessment of new pesticides under the PCPA and PCPR clearly satisfies the second criterion in paragraph 81(6)(a). The assessment process under the PCPA and PCPR considers the safety of all new pesticides with respect to environmental and human health effects. In doing so, it captures each of the elements referred to in the description of "toxic" in section 64 of CEPA, 1999. Although the language used in the PCPA and PCPR is different from that used in CEPA, 1999 and the New Substances Notification Regulations made thereunder, I am satisfied that the legislative scheme of the PCPA and PCPR, when viewed in its entirety, meets the second criterion in paragraph 81(6)(a).

I note that, in your Notice of Objection, you refer to the fact that application of the precautionary principle is a duty binding on the Government of Canada in the administration of CEPA, 1999. In my view, the proposed Order is consistent with this principle. Fundamentally, the whole approach to pesticide regulation under the PCPA is precautionary. No pesticide may be used in Canada unless its health and environmental risks and its value have been determined to be acceptable.

As you know, if the PCPA were not added to Schedule 2, potential duplication and overlap could result if both the Pest Management Regulatory Agency (PMRA) and Environment Canada were to have a shared responsibility for pesticides management under the PCPA and CEPA, 1999, respectively. In this regard, the proposed Order is also consistent with the duty imposed by paragraph 2(1)(m) of CEPA, 1999, which requires the Government of Canada to:

... ensure, to the extent that is reasonably possible, that all areas of federal regulation for the protection of the environment and human health are addressed in a complementary manner in order to avoid duplication and to provide effective and comprehensive protection.

I also note your reference to certain differences between CEPA, 1999 and the PCPA respecting the issues of virtual elimination and public notice. You should be aware that the federal government's Toxic Substances Management Policy (TSMP), which provides for the virtual elimination of persistent bioaccumulative and toxic substances, applies in the administration of both the PCPA and CEPA, 1999, and has been implemented by the PMRA under its TSMP Implementation Strategy. In addition, I understand that the PMRA has instituted procedures for public consultation prior to final registration decisions on new pesticide-active ingredients.

In closing, I note your comment that your aim in filing this Notice of Objection is to underscore the need for legislative review of the PCPA. The federal government has a long-standing commitment to amend the PCPA, including commitments made in the House of Commons. We remain committed to legislative renewal, and I am working closely with the Minister of Health and my other colleagues toward the development of renewed pesticides legislation.

Your continued interest in pesticides management and environmental matters is much appreciated.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "David Anderson", with a stylized flourish at the end.

David Anderson, P.C., M.P.

cc: The Honourable Allan Rock, P.C., M.P.