

Summary of Public Comments Received on the Draft Order to Amend Schedule 3 (the “Export Control List” or “ECL”) of the *Canadian Environmental Protection Act, 1999*.

Formal comments made during the 30-day public comment period that took place from November 2, 2010 to December 1, 2010 on the Draft Order to Amend Schedule 3 (the “Export Control List” or “ECL”) of the *Canadian Environmental Protection Act, 1999* were provided by the Canadian Environmental Law Association and one private citizen.

A summary of the comments and responses is included below, organized by topic:

Summary Table

Topic	Comment	Response
Listing to Part 1 of the ECL	Pentachlorobenzene should be considered for addition to Part 1 of the ECL rather than Part 3, since the Stockholm Convention on POPs list this chemical for elimination.	A substance may be listed to Part 1 of the ECL if its use is prohibited in Canada. Pentachlorobenzene is controlled via the <i>Prohibition of Certain Toxic Substances Regulations, 2005</i> which makes exemptions for certain uses. As a result, the authorities to list a substance under section 100 of CEPA 1999 do not provide for listing pentachlorobenzene to Part 1 of the ECL
	Further consideration should be given to listing PFOS under Part 1 of the ECL. Currently PFOS and its salts are targeted for restriction under the Stockholm Convention. Canada could provide leadership in the area of prohibiting use of PFOS.	As previously stated, a substance may be listed to Part 1 of the ECL pursuant to Section 100 of CEPA 1999 only if its use is prohibited in Canada. The existing <i>Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations</i> do not prohibit but rather restrict the use of PFOS. Therefore, this substance does not presently qualify for listing to Part 1. It is proposed for listing on Part 3 of the ECL due to the present restrictions on its use and will be reconsidered for listing in Part 1 should the use be prohibited in the future.
Listing of additional substances	The listing for asbestos to the ECL should be more inclusive and capture all asbestos fibres including chrysotile.	<p>The following types of asbestos listed in Annex III of the Rotterdam Convention are neither mined nor exported from Canada: actinolite, anthophyllite, amosite, crocidolite, and tremolite. There are no exports of these materials to be controlled. Listing these substances in the ECL is therefore not necessary. This is in line with the Cabinet Directive on Streamlining Regulations.</p> <p>Chrysotile is not listed in Annex III of the Rotterdam Convention. As such, it is not listed in the ECL.</p>
Rotterdam Convention substances	The ECL is incomplete because it does not include all substances listed in Annex III of the Rotterdam Convention.	CEPA 1999 provides the Ministers of Environment and Health with the discretion to add or delete substances to the ECL. To that effect Environment Canada's approach is not to list substances which are no longer exported from Canada This is in line with the Cabinet Directive on Streamlining Regulations .

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	The government should use the same grouping name as indicated under the Rotterdam Convention to list the tributyltin substances.	The listing in Annex III of the Rotterdam Convention indicates "all tributyl tin compounds including:" and provides the 7 species. Since the intent is to mirror the listing in Annex III of the Convention, the description for tributyl tins in the draft Order was modified to match the listing in Annex III of the Rotterdam Convention.
Stockholm Convention substances	The following POPs are listed under the Stockholm Convention but are not on the ECL: polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), hexabromobiphenyl, hexabromodiphenyl ether, heptabromodiphenyl ether, tetrabromodiphenyl ether, and pentabromodiphenyl ether.	<p>There is no authority under CEPA 1999 to list substances solely based on their inclusion in the Stockholm Convention. Substances listed on the ECL must be either prohibited or restricted for use in Canada, or listed in Annex III of the Rotterdam Convention.</p> <p><u>PCDD/PCDF:</u> This substance is listed in Annex C of the Stockholm Convention. This Annex has no export obligations.</p> <p><u>Hexabromobiphenyl:</u> This substance is captured as "polybrominated biphenyls" in the current ECL Part 1.</p> <p><u>PBDE Congeners:</u> Environment Canada's approach is not to list substances which are no longer exported from Canada. This is in line with the Cabinet Directive on Streamlining Regulations. The use of these particular congeners is prohibited in Canada, as is their import.</p>