

**ENGO Comments on
Proposed Revisions to the Federal Mobile PCB Treatment
and Destruction Regulations, May 2006 Consultation Document**

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Endorsed by:

Citizens for Renewable Energy
Georgia Strait Alliance
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Summary of Comments

Canada is committed through the Stockholm Convention on POPs to eliminate the generation of certain POPs, including PCBs and dioxins and furans. The appendix to our brief details these obligations and the ways in which this proposed regulation fails to meet these obligations. Also, Canada has targeted dioxins and furans for virtual elimination under Canada's *Toxic Substances Management Policy*. Our judgments of Environment Canada's proposed revisions to the *Federal Mobile PCB Treatment and Destruction Regulations* are based upon these objectives, which are critically important to protect human and wildlife health. As a result, we believe that this regulation should meet the following principles:

1. PCB waste must be destroyed.
2. There must be no harmful emissions as a result of the process.
3. The residues of the process must all be contained and confined.

Unfortunately, these proposals fall significantly short of these principles:

1. Incineration inevitably releases significant quantities of persistent organic pollutants. Rather than requiring or encouraging non-incineration technologies, the regulation codifies incineration as an acceptable, and probably only, form of treatment.
2. The regulation endorses the release of PCBs and dioxins and furans at levels that exceed virtual elimination.

We urge Environment Canada to revise this proposed regulation to correct these major flaws in the proposal. Our section-by-section comments below detail the changes that should be made to achieve this goal.

In addition, we ask Environment Canada to provide more information on specific aspects of the proposal and to provide for more public consultation after that information is made available. The information needed is described in our section-by-section comments.

Section-by-Section Comments

1.1 “PCB destruction facilities” are defined here as “facilities capable of destroying PCBs by thermal or chemical means.” We would like to ensure that this definition is broad enough so as to not exclude new technologies that may come on-stream, such as physical-chemical and bioremediation methods.

Recommendation: *Change definition of PCB destruction facilities to read “facilities capable of destroying PCBs such that the relevant obligations of the Stockholm Convention are met.”*

1.3: Environment Canada’s consultation process would be enhanced if it provided more detail on the international commitments regarding these issues and if it provided information on the various technologies for destruction of PCBs, including alternative technologies now being developed.

1.3.1: The document lists one objective of the consultation as assessment of the economic impact of the proposed revisions. The Regulatory Impact Analysis Statement should not just cover costs to the regulated community. It should also address the costs to the public and the community at large if proper destruction does not occur. Economic concerns should not influence these standards; best available practices should determine them. The options being explored at the recent Sydney Tar Ponds hearing provide an example of the need for an assessment that is not just economic, but includes

consideration of the risk of negative environmental impacts from potential future leakage. This would be a useful example for the Regulatory Impact Analysis Statement. The impact assessment should also provide a range of estimates of the total quantities of POPs that may be released to the environment as a result of implementing the proposed regulation.

2.0: The proposed regulatory provisions are inconsistent with the three guiding principles we listed above.

3.1: This section states that the regulations are not intended to apply to destruction facilities authorized by provinces or territories to which PCBs from federal lands are sent. This approach is not acceptable. A potentially lower standard should not apply to PCBs for which the federal government is responsible just because they are taken to a waste facility permitted by a province or territory. This could encourage government departments to seek out facilities elsewhere than on federal lands to avoid the tougher standards. For example, in the case of the Sydney Tar Ponds, the government intends to site the incinerator on federal crown lands, but will transfer the property to the province. This means that the federal regulations would not apply. The federal government should only send PCBs to provincially approved facilities if the standards are just as stringent as those in this regulation. Although the revised Regulations may not apply to PCB destruction facilities regulated under provincial or territorial law, the federal government may require by contract that federal standards are met when PCBs for which the federal government is responsible are destroyed. The wording in the current regulation, which does not exclude facilities authorized under another Canadian law from meeting the federal standards, is preferable.

Recommendation: Replace the statement: “The Regulations are not intended to apply to destruction facilities authorized by provinces or territories to which PCBs from federal lands may be sent” with the following statement:

“PCBs from federal lands may not be sent to destruction facilities authorized by provinces or territories unless those facilities can meet standards at least as stringent as those in this regulation.”

Also the statement in the application part of the current regulation should be included:

“3. These Regulations apply in respect of mobile PCB destruction systems and mobile PCB treatment systems that are operate

(a) on federal land or on aboriginal land; or

(b) anywhere in Canada by or under contract with a federal institution.

SOR/2000-105, s.2”

3.2: The purpose section should include a statement regarding virtual elimination and meeting Canada’s international obligations to eliminate release of certain substances. The reference to the federal regulations not applying to provincial and territorial facilities should be struck from this section.

Recommendation: Add a purpose statement to the regulation regarding meeting the virtual elimination objective and Canada’s obligations under international agreements.

3.4: As discussed earlier, the application provisions should not be weakened by excluding facilities “authorized under any other Canadian law.”

Recommendation: Retain the wording in the existing regulation, which does not exclude facilities authorized under any other Canadian law from meeting the federal standards.

3.5: The proposal says that the regulatory requirements are being harmonized with the Canada-wide Standards. These standards are inadequate for POPs. Instead, the standards should be harmonized with best available practices worldwide. The consultation document should include information on how the proposed new standards should be compared with the best standards elsewhere in the world, such as the European Union and the US.

Recommendation: Environment Canada should supply information to the public on regulations on PCB destruction standards elsewhere in the world. This information should be provided to the public before the public consultation on this proposed regulation ends.

3.5.2.4 & 3.5.2.6 & 3.5.2.7: The proposed standards for dioxins and furans in gases, liquids and solids are not low enough. As the consultation document states, dioxins and furans are “targeted for virtual elimination from the environment in accordance with the Government of Canada’s Toxic Substances Management Policy.” Although we have concerns with the definition of “virtual elimination” that is used under CEPA, i.e., the level of quantification (LoQ), for the purposes of this regulation we will make our arguments on the basis of the federal government’s definition. In these three sections, the proposed standards are 2.5 times higher than the LoQ. It will be impossible to ever achieve the Canadian virtual elimination target if we continue to permit releases of dioxins and furans at levels 2.5 times higher than the LoQ.

Recommendation: The proposed standards for dioxins and furans should be reduced by 2.5 times to mesh with the current limit of quantification. Every two years, Environment Canada should review the LoQ to determine whether this level is now lower. If it is, the regulation should automatically be revised to be at the new lower LoQ limit.

3.6.: We are concerned that a central focus of the proposed regulation is the requirement for an Environmental Management System (EMS). We have major concerns that the addition of an Environmental Management System (EMS) requirement to the regulation will legitimize the use of an EMS and downplay formal, measurable standards. There should be rigorous, enforceable, transparent standards. There should be an enforcement and compliance policy. If the regulations include rigorous standards that are adequately enforced, an EMS requirement is unnecessary.

However, if the EMS requirement is retained in the regulation, it must be made more meaningful. Enforcement should not just focus on whether or not an EMS has been

developed, but on whether standards in the regulation and elsewhere will be met. The proposed regulatory provision needs to address specific questions such as:

- What is the rationale for introducing EMS requirements?
- What will an EMS look like?
- Who will prepare the EMS?
- How will it be prepared?
- How will it be used?
- How will the public be consulted?
- Will it be transparent and accessible to the public?
- How will an EMS protect the community?
- How will facilities be held accountable for the contents of their EMS?

A provision should also be included that requires that each EMS contain an external audit requirement, and the results of the audit should be made available to the public.

Recommendation: *Environment Canada should provide more detail on how Environmental Management Systems would be applied in this regulation and should provide further opportunity for consultation once this information has been provided.*

3.6.3: The proposed reporting requirements are inadequate. The following changes *also require the operator to make these reports easily available to the public at the same time as they are* should be made:

- The information in 18(a) regarding information to be provided about the operator and plans for the site should be made available 30 days *prior to* the beginning of the operation instead of the proposed 30 days *after* start up.
- The information in 18 (b) regarding annual reports should have the amounts of pollutants released to the air, water and land and in residues added to the requirements. The ways in which the residues are stored or disposed of should also be detailed.
- The information in 18(c) regarding a report at the end of the operation should also have requirements for data on releases to air, water, and land and in residues added to it.

Recommendation: *Environment Canada should revise the reporting requirements to have the preliminary report available 30 days before the start of operation and to include information on releases to air, water and land and on residues include in all reports. The regulation should submitted to the Minister.*

Enforcement

Under the Criminal Code and Canadian common law, every person already has the right to initiate a private prosecution against an alleged offender. However, to promote and encourage enforcement of the standards required in this regulation, language similar to that of the current *Fisheries Act* should be added to the regulation to facilitate private

prosecutions and permit the splitting of fines between the Crown and the private informant.

Recommendation: *Environment Canada should add language similar to that of the current Fisheries Act to the regulation to facilitate private prosecutions and permit the splitting of fines between the Crown and the private informant.*