



# CANADA'S CHEMICALS MANAGEMENT PLAN

# CHEMICALS IN THE AMERICAS CONFERENCE

**HARRY DAHME**

November 30, 2017



# CANADA'S CHEMICAL MANAGEMENT PLAN

## Overview

- **Jurisdiction over chemical substances**
- ***Canadian Environmental Protection Act* (“CEPA”)**
  - Toxic Substances
  - CEPA Review
- **Case law**
- **Questions**

# JURISDICTION OVER CHEMICALS

## Federal

- *Canadian Environmental Protection Act*
- *Pest Control Products Act*
- *Food and Drugs Act*

## Provincial

- Environmental protection legislation
- Pesticides

# JURISDICTION OVER CHEMICALS (*CONT'D*)

## Municipal

- **By-laws**

# CANADIAN ENVIRONMENTAL PROTECTION ACT

## Part 5: Controlling Toxic Substances

- **“Toxic”**
  - enters or may enter the environment in a quantity or a concentration or under conditions that:
    - may have an immediate or long-term harmful effect on the environment or its biological diversity
    - constitutes a danger to the environment or to human life or health

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Lists

- **Domestic Substances List (“DSL”)**
  - Manufactured or imported into Canada between January 1, 1984 and December 31, 1986 in a quantity greater than 100 kg. in a calendar year
- **Non-Domestic Substances List (“NDSL”)**
  - Substances other than those on the DSL
- **List of Toxic Substances (Schedule 1)**
- **Virtual Elimination List**

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

- **Ministerial Conditions**
- **Significant New Activities Notices**

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Domestic Substances List

- **The Chemical Management Plan**
  - Categorization of substances on the DSL
    - 2800 chemicals reviewed to date
    - Further 1500 chemicals to be reviewed by 2020
  - Section 71 Notices
    - DSL inventory updates
    - Risk management notice



# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Domestic Substances List

- Screening Assessment
  - Persistence and Bio-accumulation Regulations
  - Weight of Evidence Approach
  - Application of Precautionary Principle
  - Determination of “Toxic” (Section 64)
  - List of Toxic Substances
  - Risk Management Measures

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Non-Domestic Substances List

- New Substances Notification Regulations (“Chemical and Polymers”) and (“Organisms”)
  - Threshold: 1,000 kg.
    - Information requirements (1,000 kg. and 10,000 kg. in a calendar year)
- **Chemicals not on either the DSL or the NDSL**
  - Threshold 100 kg. per calendar year
    - Information requirements (1,000 kg. and 10,000 kg. in a calendar year)

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Other Applicable Regulations

- **Restricting concentration and/or use**
- **Examples:**
  - VOC Regulations
  - Ozone Depleting Substances Regulations
  - Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## CEPA Review

- **Issues Raised**
  - Not all substances which are P&B are part of the Plan
  - The P&B Criteria are too permissive
  - Categorization of Health Effects do not include endocrine toxicity
  - DSL needs to be updated
  - Data gaps should lead to application of precautionary principle
  - Risk Management options do not focus on safer alternatives
  - Failure to coordinate with National Pollutant Release Inventory

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

- Inadequate data required for new substances
- Lack of public participation and transparency on new substances
- Make the risk assessment more stringent

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

**The Parliamentary Committee recommended corresponding changes to CEPA. Other recommendations include:**

- requiring a reverse burden approach for substances of high concern including carcinogenic, mutagenic, toxic to reproduction, very persistent and very accumulative and substances that are PBT.
- including consideration of vulnerable populations
- redefining “toxic” to include an assessment of aggregate exposure to and cumulative and synergistic effects of substances
- updating the Persistence and Bioaccumulation Regulations to be consistent with best available science, including OECD jurisdictions

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## **Additional recommendations:**

- require mandatory evaluation of a substance when another jurisdiction determines that it is “Toxic”
- establish a mandatory duty to assess alternatives with a goal of replacing toxic substances with safer alternatives

# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Next steps

- Complete assessment of 1500 substances
- Amend CEPA
- Publication of Risk Management Scope and Approach documents
- International coordination: Strategic Approach to International Chemicals Management
- Stakeholder discussions on chemicals management beyond 2020



# CANADIAN ENVIRONMENTAL PROTECTION ACT (CONT'D)

## Cases

- **Siloxane D5 Board of Review**
  - Issues include:
    - Screening Assessment Procedures
    - Persistence and Bio-accumulation
    - “Toxic”
- **Goodyear Canada v. Minister of Environment and Climate Change**
  - Issues include:

# CANADIAN ENVIRONMENTAL PROTECTION ACT

- **Goodyear Canada v. Minister of Environment and Climate Change**
  - Issues include:
    - Authority of the Minister to refuse a Board of Review
    - Appeal of Decision to name a substance as being (“Toxic”)

**QUESTIONS?**

# CONTACTS



## Harry Dahme



[harry.dahme@gowlingwlg.com](mailto:harry.dahme@gowlingwlg.com)



416-862-4300

