

July 11, 2008

The Honourable John Baird
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3

By Fax to: (819) 953-0279

Dear Minister Baird:

Re: Polybrominated Diphenyl Ethers (PBDE) Regulations

I write concerning the *Polybrominated Diphenyl Ethers Regulations*, which were published in Vol. 142, No. 14 of Part II of the *Canada Gazette* on July 9, 2008.

Ecojustice Canada, on behalf of our clients, David Suzuki Foundation, Environmental Defence, and the Canadian Environmental Law Association, filed a Notice of Objection pursuant to sections 332(2) and 333 of the *Canadian Environmental Protection Act, 1999* (“*CEPA*”) in February 2007 regarding these regulations, as initially proposed in December 2006. The regulations as finalized largely do not address the issues raised in the Notice of Objection, and we remain concerned that PBDEs – in particular Deca-BDE – will not be adequately regulated to protect human health and the environment in Canada.

The regulatory impact analysis statement published with the regulations in Part II of the *Canada Gazette* indicates that you are still considering the issues we raised in our Notice of Objection 16 months ago and that your decision will be informed by a State of the Science Report on the Bioaccumulation and Transformation of Deca-BDE. We would like to know why the release of this report has been delayed, given that the scientific peer review was completed on January 8, 2008 and further, when you anticipate responding to our Notice of Objection.

We would also like to discuss with you the timing and scope of forthcoming regulations to address PBDEs in imported, manufactured products. According to Environment Canada’s Risk Management Strategy for PBDEs, these regulations were to be published in Part I of the *Canada Gazette* in the fourth quarter of 2007. The regulatory impact analysis statement published with the current regulations indicates that regulations to address PBDEs in manufactured products are still under development and that Environment Canada will endeavour to harmonize with the European Union’s Restrictions on Hazardous Substances (RoHS) Directive. We note that the European

RoHS Directive now prohibits Deca-BDE, as well as Penta- and Octa-BDE, as a result of an April 1, 2008 decision by the European Court of Justice that overturned an earlier – and unlawful – exemption. Table 2 in the regulatory impact analysis statement is inaccurate or out of date in this respect.

More broadly, we would also be interested in discussing Environment Canada's intentions with regards to effective and timely regulatory action under *CEPA* for the large number of remaining chemicals now being assessed under the federal Chemicals Management Plan. We are disappointed with the slow pace and limited scope of action on PBDEs, and concerned about what this portends for the management of other chemicals in Canada.

Our clients remain committed to discussing these issues with you and your staff and working with you to ensure that comprehensive and rigorous regulations concerning PBDEs are enacted. To this end, we reiterate our request for a meeting to discuss this important issue of environmental and human health protection with you.

Yours truly,



Justin Duncan
Staff Lawyer
Ecojustice Canada
(formerly Sierra Legal Defence Fund)