

## Chapter 7: Consumer Products

<b>7.1 INTRODUCTION .....</b>	<b>215</b>
<b>7.2 THE REGULATORY FRAMEWORK .....</b>	<b>215</b>
<b>7.2.1 <i>Product Inspection</i> .....</b>	<b>216</b>
<b>7.3 PROHIBITED PRODUCTS.....</b>	<b>217</b>
<b>7.4 RESTRICTED PRODUCTS.....</b>	<b>218</b>
<b>7.4.1 <i>Children’s Products Containing Plastics</i>.....</b>	<b>219</b>
<b>7.4.2 <i>The Toys Regulations</i>.....</b>	<b>220</b>
<b>7.4.3 <i>The Pacifiers Regulations</i>.....</b>	<b>221</b>
<b>7.4.4 <i>The Infant Bottle Nipples Regulations</i>.....</b>	<b>221</b>
<b>7.4.5 <i>The Glazed Ceramics and Glassware Regulations</i> .....</b>	<b>221</b>
<b>7.4.6 <i>The Children's Sleepwear Regulations</i> .....</b>	<b>221</b>
<b>7.4.7 <i>The Cribs and Cradles Regulations</i>.....</b>	<b>222</b>
<b>7.4.8 <i>The Carriages and Strollers Regulations</i>.....</b>	<b>222</b>
<b>7.4.9 <i>The Playpens Regulations</i>.....</b>	<b>222</b>
<b>7.4.10 <i>The Liquid Coating Materials (Paint) Regulations</i>.....</b>	<b>222</b>
<b>7.5 CONCLUSIONS .....</b>	<b>223</b>
<b>7.6 RECOMMENDATIONS .....</b>	<b>224</b>
<b>7.7 REFERENCES CITED.....</b>	<b>225</b>

## Chapter 7: Consumer Products

### 7.1 INTRODUCTION

This chapter addresses an area of exclusive federal jurisdiction: the standard-setting process governing consumer products. It describes the regulatory framework followed by Health Canada and focuses on those products of most relevance to children.. [For a more detailed review of lead in consumer products, see Section 8.4.6 of Case Study #1.] A Materials Use Policy is proposed as a means of proactively augmenting the current approach of reacting product-by-product to problems associated with hazardous substances in consumer products.

### 7.2 THE REGULATORY FRAMEWORK

Consumer products are regulated by Health Canada under authority of the *Hazardous Products Act*.<sup>1</sup> This Act controls the sale, importation and advertisement of dangerous or potentially dangerous consumer and industrial products. Such products are organized into two schedules under the Act, depending on the degree of hazard that they pose. *Prohibited* products (Schedule I, Part I) may not be advertised, sold or imported in Canada.<sup>2</sup> The advertisement, sale and importation of *restricted* products (Schedule I, Part II) is limited by conditions that are set out in product-specific regulations promulgated under authority of the Act.<sup>3</sup> Finally, *controlled* products (Schedule II) are relevant to the work place. Sections 7.3 and 7.4 discuss prohibited and restricted products respectively.

The Act does not include any general product requirements. Consequently, only those products that are included in one of the Act's two schedules are regulated, and in the case of restricted products, governance is confined to the terms of the relevant regulation. This approach greatly limits the applicability of the Act. It ensures the safety of only those individual products that have been centred out as requiring control measures via the drafting of a regulation. Because it is a product-centred approach, it is time and labour intensive. Moreover, in the few cases where more general provisions exist,<sup>4</sup> the applicability of the Act is not always clear, allowing for uncertainty regarding which products are required to satisfy safety stipulations, and which are not. The issue of children's products containing plastic is a case in point, as discussed in Section 7.4.1 below.

To determine the threat posed by a particular product, Health Canada undertakes a risk assessment.<sup>5</sup> If the assessment indicates that a consumer product poses an unacceptable risk to the public, the ministry has few available options for minimizing that risk. Specifically, Health Canada has no power to mandate product

---

<sup>1</sup> *Hazardous Products Act*, R.S.C. 1985, c. F-27.

<sup>2</sup> *Hazardous Products Act*, s. 4.

<sup>3</sup> *Ibid.*

<sup>4</sup> See, for example, Schedule I, Part II, paragraph 13 (p), regarding toys and other children's products that contain toxic substances.

<sup>5</sup> For a discussion regarding the Health Canada risk assessment for plastic mini-blinds, see section 8.4.6.4 in Case Study #1.

recalls.<sup>6</sup> On those occasions where a dangerous product is removed from retail shelves, it is the result of voluntary industry action. Health Canada's limited authority regarding product availability is the power, under the *Hazardous Products Act*, to seize products. This power is restricted to products that are regulated under the Act, and is primarily utilized at the point of product storage. A product seizure takes place when a provision of the *Hazardous Products Act* has been contravened. In contrast to a product recall, which would involve (if the federal government had the authority to require it) the removal of a product from store shelves, a seizure takes place at the point of product storage and is therefore of a much smaller scale than a full product recall and does not involve the removal of products from store shelves.<sup>7</sup>

The department's primary tool in the control of hazardous products, including both regulated and unregulated products, is the release of public advisories and warnings.<sup>8</sup> Advisories are issued in relation to a class of products, while warnings are specific to a particular product, of a specific brand. In those cases where an advisory or warning is deemed to be insufficient to protect the public, and industry chooses not to voluntarily recall its product, Health Canada's only option is to adopt a regulation under the *Hazardous Products Act*.

### 7.2.1 Product Inspection

The recent discoveries of so many unexpected and very hazardous sources of lead in consumer products (as discussed in the Lead Case Study) belies any assumptions that the public may have concerning product safety. Many people reasonably assume that if a product is on the shelf, especially if it is intended for children, that it has been tested in some way or is otherwise considered safe. However, for both regulated and non-regulated products, there is no mechanism formally in place regarding pre-market assessment. Health Canada simply doesn't have the resources to check products prior to them being made available to the public for consumption.<sup>9</sup>

In the case of products that are regulated under the *Hazardous Products Act*, post-market inspection can take place when Health Canada receives complaints regarding a product. Health Canada maintains a database of such complaints which it assesses yearly for trends. An inspection can also be triggered when a Health Canada inspector believes there to be a potential risk from a product. In addition, a cyclical enforcement program is currently being developed by Health Canada. Under this program, all regulated products would be inspected at least once, and some several times, in the space of a six year period. The frequency of inspection for a given product would be dependent on a number of factors such as the risk it poses, exposure, and Health Canada's capacity to conduct investigations, among others.<sup>10</sup>

Products that are not regulated under the *Hazardous Products Act* are inspected on a case-by-case basis in

---

<sup>6</sup> Unlike the *Hazardous Products Act*, both the *Food and Drug Act* and the *Radiation Emitting Devices Act* provide for product recalls however even under those statutes, the process is largely voluntary and industry-driven. For information on Product Recall Procedures under these two laws, see: [www.hc-sc.gc.ca/hpb-dgps/therapeut/zfiles/english/crisis/recall\\_e.html](http://www.hc-sc.gc.ca/hpb-dgps/therapeut/zfiles/english/crisis/recall_e.html)

<sup>7</sup> Personal Communication, Andy Teliszewsky, Project Officer, Product Safety Bureau, Health Canada, May 19, 1999.

<sup>8</sup> Under authority of the *Department of Health Act*, R.S.C. 1996, c. H-3.2.

<sup>9</sup> Personal communication, Jonathan Williams, Product Safety Officer, Health Canada. (May 6, 1999).

<sup>10</sup> Personal communication, Greg Whalen, Product Safety Officer, Health Canada. (May 5, 1999)

response to complaints, or irregularities or potential dangers that are perceived by inspectors. The inspection process may involve a risk assessment (if Health Canada is not already aware of the risk involved), and a consideration of potential risk management actions. Options available to Health Canada include the issuance of a warning to the public via an advisory, pressuring industry to respond to the safety problem, and ultimately, the adoption of a regulation.<sup>11</sup>

### 7.3 PROHIBITED PRODUCTS

Products that are prohibited under the *Hazardous Products Act* and that are directly relevant to children include:

- furniture and other articles, intended for children, painted with a liquid coating material containing lead compounds of which the lead content is in excess of 0.50 per cent of the total weight of the contained solids, including pigments, film solids and driers;<sup>12</sup>
- toys, equipment and other products for use by a child in learning or play that:
  - have applied to them a decorative or protective coating that contains lead, antimony, arsenic, cadmium, selenium, barium or mercury;<sup>13</sup>
  - in whole or in part are made of, or impregnated with celluloid or cellulose nitrate;<sup>14</sup> or
  - contain a number of substances<sup>15</sup> that, under reasonably foreseeable circumstances, could become accessible to a child;<sup>16</sup>
- pencils and artists' brushes that have applied to them a decorative or protective coating that, when dry, contains more than 0.5 per cent weight to weight of lead;<sup>17</sup>
- among others.<sup>18</sup>

Note that a level of 0.5 per cent to weight of lead is equivalent to 5000 parts per million. As discussed in more detail in Case Study #1, this level was established in the early 1970s, based on health effect information that is now woefully out of date. A child exposed to dust or paint chips containing 5000 parts per million of lead would be in danger of serious lead poisoning. Further, the "prohibitions" in this section of the Act are mostly just a restatement of the restrictions, for example on lead content in paints and other coatings, noted in the regulations on restricted products discussed below.

---

<sup>11</sup> Personal communication, Greg Whalen, Product Safety Officer, Health Canada. (May 5, 1999)

<sup>12</sup> *Hazardous Products Act*, *supra* note 1, Schedule I, Part I, s. 2.

<sup>13</sup> *Ibid.*, s. 9.

<sup>14</sup> *Ibid.*, s. 7.

<sup>15</sup> carbon tetrachloride, methyl alcohol, petroleum distillates, benzene, turpentine, boric salts, salts of boric acid or ethyl ether.

<sup>16</sup> *Hazardous Products Act*, Schedule I, Part I, s. 8.

<sup>17</sup> *Hazardous Products Act*, s. 18.

<sup>18</sup> See Schedule I, Part I, ss. 5, 10, 11, 13, 14, 15, 20, 21, 27, 28, 35.

## 7.4 RESTRICTED PRODUCTS

The *Hazardous Products Act* allows for the establishment of restricted products and the setting of regulations governing these products. Several of these regulations are relevant to children.

Toys, equipment and other products for use by a child in learning or play that contain a toxic substance are restricted products under paragraph 13 (p) of Schedule I, Part II of the *Hazardous Products Act*. This section includes all toxic substances that are not mentioned elsewhere in the Act, including heavy metals such as lead.<sup>19</sup> Under the *Hazardous Products (Toys) Regulations*,<sup>20</sup> (discussed further below), every product described in paragraph 13 (p) must meet at least one of three requirements:

- a) the product, by reason of its nature, physical form, size or any other characteristic, shall be such that the toxic substance or the substance or part containing the toxic substance cannot be ingested, inhaled or absorbed through the skin;
- b) the total quantity of the available toxic substance shall not exceed one-hundredth of the acute oral or dermal median lethal dose, whichever is the lesser, calculated for a child having a body weight of 10 kg; or
- (c) the toxicity of the toxic substance does not exceed the limits prescribed by Schedule I:  
A substance shall be considered excessively toxic for humans if:
  - (a) the acute oral LD50 value for rat is 5 grms or less per kilogram body weight;
  - (b) the acute dermal LD50 value for rabbit is 2 grams or less per kilogram body weight;
  - and
  - (c) where gas, vapour, mist or dust is likely to be encountered when the substance is used in any reasonably foreseeable manner, the LC50 value for a one-hour exposure determined using rats, is 20,000 parts per million by volume of gas or vapour or less, or 200 milligrams per litre by volume of mist or dust or less.

These Toy Regulation requirements also apply to playpens, carriages and strollers by authority of the *Playpens Regulations*<sup>21</sup> and the *Carriages and Strollers Regulations*.<sup>22</sup> Each of these regulations is further discussed in turn below in Sections 7.4.2 through 7.4.10.

First however, it should be noted that the general provisions suffer from a number of important shortcomings including the fact that it is not at all clear which products are included within paragraph 13 (p). Moreover, the toxicity tests that form the basis for regulatory action are difficult to decipher and are based on complicated laboratory data that are not readily available. It is difficult to determine whether a particular children's product is regulated under this section of the *Hazardous Products Act and Regulations*, and if so, whether it is in compliance with the regulatory stipulations.

The situation with respect to children's products made of or containing plastics is even more obscure. While this matter is also discussed in Case Study #1, it bears repeating in this context since plastic is a component of so many children's products, not just toys, and it appears to be very nearly unregulated by

<sup>19</sup> Personal Communication, Jonathan Williams, Product Safety Officer, Health Canada, May 11, 1999.

<sup>20</sup> *Hazardous Products (Toys) Regulations*, C.R.C., c. 931.

<sup>21</sup> *Playpens Regulations*, C.R.C., c. 932.

<sup>22</sup> SOR/85-379.

Health Canada.

#### 7.4.1 *Children's Products Containing Plastics*

Toys, equipment and other products for use by a child in learning or play that are or are likely to be used by a child of less than three years of age and which are made of or contain any plastic material are regulated under Paragraph 13 (r) of Schedule I, Part II. The *Hazardous Products (Toys) Regulations*, mandate that the use of resins, plasticizers, antioxidants, dyes, pigment and other substances in the manufacture of any plastic material found in these products be limited by those regulations that govern the manufacture of food packaging material and food containers. Toxic substances such as lead are routinely added to plastic toys to serve the above listed functions. The *Food and Drug Regulations*, under the *Food and Drugs Act*, stipulate that food may not be sold in a package that may yield to its contents any substance that may be injurious to the health of a consumer of the food. It is far from clear whether or how this standard for food packaging is applied to the plastics found in children's toys.

When the mini-blinds discovery was made Greenpeace and others had long been warning about the other hazards of polyvinyl chloride (PVC) plastics, most notably the fact that they create deadly dioxin when they are burned, for example in a garbage incinerator. The discovery of lead in mini-blinds made Greenpeace suspect similar contamination in children's products made with PVC plastics. In 1997, Greenpeace investigated the lead and cadmium content of a range of plastic children's products. During the course of this report's investigation, after several conversations with officials from Health Canada and Justice Canada, it was finally apparent that plastic children's products that are, or are likely to be used, by children of three years of age or older, are not regulated at all under (either) the *Hazardous Products Act*.<sup>23</sup> (or the *Food and Drugs Act*.)

Greenpeace revealed alarmingly high levels of both lead and cadmium in a variety of plastic children's products that were readily available and commonly used across Canada and the US.<sup>24</sup> Products tested include plastic backpacks, rain clothes and toy cables. While Health Canada has proposed, as a guideline, a maximum total lead content in children's products of 15 ppm,<sup>25</sup> lead levels as high as 18,750 ppm were found in the products tested. Further tests into the level of extractable lead in these products, as well as the release of lead-containing dust from the products revealed exceedances of the daily ingestion limits set by the European Union (0.7 µgrams) and the U.S. Consumer Product Safety Commission (15 µgrams). High levels of lead and cadmium in children's products were confirmed by Greenpeace in a further, 1998 study.<sup>26</sup>

Greenpeace has also revealed similarly dangerous levels of toxins called phthalates in these products. These plastic additives leach out of products when sucked or chewed by children. The specific chemical, diethylhexyl phthalate (DEHP – the plasticizer in pacifiers, nipples, teethers and flexible toys) was

---

<sup>23</sup> Personal communication with Louise McGuier-Wellington, Justice Canada, May 18, 1999.

<sup>24</sup> Di Gangi, J., 1997. *Lead and Cadmium in Vinyl Children's Products: A Greenpeace Exposé*; Greenpeace Canada Briefing, Oct. 9, 1997, Vinyl Children's Products Pose Lead and Cadmium Hazard.

<sup>25</sup> Health Canada, *Strategy for Reducing Lead in Children's and Other Consumer Products*, Discussion Paper, Draft II, August, 1997.

<sup>26</sup> Greenpeace Release, Nov. 1998, Greenpeace testing results for lead and cadmium in PVC plastic (vinyl) consumer products bought in Canada in late October, 1998; and Greenpeace Media Release, Nov. 16, 1998. Leading child health and environmental organizations urge removal of hazardous vinyl children's products from sale.

assessed in the early 1990s under the *Canadian Environmental Protection Act* Priority Substances List process<sup>27</sup> and was found to be “CEPA-toxic” (see discussion of CEPA in Chapter 6). The only action taken since then by the federal government has been to suggest further research. There is no regulatory limit for phthalate levels in children's plastic products in Canada.

#### 7.4.2 *The Toys Regulations*

Under the *Hazardous Products (Toys) Regulations*,<sup>28</sup> toys that contain a toxic substance<sup>29</sup> must meet at least one of the following requirements:

- a) it cannot be possible for the toxic substance or the part of the product containing the toxic substance to be ingested, inhaled or absorbed through the skin;
- b) the total quantity of available toxic substance cannot exceed one one-hundredth the acute oral or dermal median lethal dose (whichever is less), as calculated for a child with a body weight of 10 kg; or
- c) the toxicity of the toxic substance cannot be greater than the permissible toxicity limits set in Schedule 1 of the Regulation.<sup>30</sup>

Toys that contain a corrosive substance, irritant or sensitizer must meet one of the following requirements:

- a) the corrosive substance, irritant or sensitizer cannot come into contact with the skin, or
- b) the corrosive substance, irritant or sensitizer cannot be excessively corrosive or irritant or an excessively strong sensitizer as determined by tests set out in Schedule II of the Regulation.<sup>31</sup>

The Regulation also requires that the grade, quality, quantity and proportions of resins, plasticisers, antioxidants, dyes, pigments and other substances that are used in the manufacture of any plastic material that is in turn used in products that are, or are likely to be used by a child of less than three years of age satisfy the following requirements:

- a) the grade, quality, quantity and proportions of resins, plasticisers, antioxidants, dyes, pigments and other substances that will be permitted shall be those considered acceptable for use in the manufacture of food packaging materials and food containers; and
- b) substances other than heavy metals, heavy metal compounds, carbon tetrachloride, methyl alcohol, petroleum distillates, benzene, turpentine, boric acid, ethyl ether, and decorative or protective coatings containing lead, antimony, arsenic, cadmium, selenium, mercury or barium (in

---

<sup>27</sup> Government of Canada, Environment Canada, Health Canada, *Canadian Environmental Protection Act: Priority Substances List Assessment Report, bis(2-ethylhexyl) phthalate*, 44 p. undated.

<sup>28</sup> *Hazardous Products (Toys) Regulations*, C.R.C., c. 931.

<sup>29</sup> other than a toxic substance named in item 8 of Part I of Schedule I of the Hazardous Products Act: carbon tetrachloride, methyl alcohol, petroleum distillates, benzene, turpentine, boric acid and ethyl ether.

<sup>30</sup> *Hazardous Products (Toys) Regulations*, C.R.C., c. 931, s. 10.

<sup>31</sup> *Ibid.*, s. 11.

accordance with section 9, Part 1, Schedule 1 stipulations) may be present in plastic materials in the amount of one percent or less.<sup>32</sup>

### **7.4.3 The Pacifiers Regulations**

The *Hazardous Products (Pacifiers) Regulations*<sup>33</sup> stipulate that no product, or part or component of a product shall contain more than 10 micrograms/kg total volatile N-nitrosamines. It further requires that pacifiers meet the requirements of section 10 of the *Hazardous Products (Toys) Regulations*.

### **7.4.4 The Infant Bottle Nipples Regulations**

Under authority of the *Hazardous Products (Infant Feeding Bottle Nipples) Regulations*,<sup>34</sup> infant bottle nipples that may be advertised, sold and imported into Canada are limited to those products and parts that do not contain greater than 10 micrograms/kg total volatile N-nitrosamines.

### **7.4.5 The Glazed Ceramics and Glassware Regulations**

The *Hazardous Products (Glazed Ceramics and Glassware) Regulations*<sup>35</sup> establish cadmium and lead leachability limits for products completely or partially covered with a coating/glaze decoration containing cadmium or lead. This regulation requires that products that are not intended for food use, but that release lead or cadmium in excess of the leachability limits be identified as unsuitable for food use either through the use of a design feature or through the display of a warning.

### **7.4.6 The Children's Sleepwear Regulations**

The *Hazardous Products (Children's Sleepwear) Regulations*<sup>36</sup> stipulate that no product that is treated with a flame retardant, and no component extracted or broken down from the treated product, and no flame retardant used to treat the product shall cause:

- a) death as a result of oral exposure to a dose of 500 mg/kg body weight or less;
- b) death as a result of dermal exposure to a dose of 1000 mg/kg body weight or less;
- c) redness or swelling greater than established limits;
- d) genetic mutation or chromosomal aberration; or
- e) tumors.

---

<sup>32</sup> *Ibid.*, s. 12.

<sup>33</sup> *Hazardous Products (Pacifiers) Regulations*, C.R.C., c. 930.

<sup>34</sup> *Hazardous Products (Infant Feeding Bottle Nipples) Regulations*, SOR/84-271.

<sup>35</sup> *Hazardous Products (Glazed Ceramics and Glassware) Regulations*, SOR/98-176.

<sup>36</sup> *Hazardous Products (Children's Sleepwear) Regulations*, SOR/87-443.

#### **7.4.7 The Cribs and Cradles Regulations**

The *Cribs and Cradles Regulations*<sup>37</sup> prohibit the advertisement, sale or importation into Canada of cribs or cradles that have applied to them a decorative or protective coating that contains:

- a) lead pigments;
- b) more than 0.5 per cent weight to weight of lead in the total solids contained in such a coating;
- c) any compound of antimony, arsenic, cadmium, selenium or barium if more than one-tenth of one percent of such compound dissolves in five per cent hydrochloric acid after stirring for ten minutes at twenty degrees Celsius; or
- d) any compound of mercury introduced as such.

#### **7.4.8 The Carriages and Strollers Regulations**

Under authority of the *Carriages and Strollers Regulations*,<sup>38</sup> these products must meet the requirements of section 10 of the *Hazardous Products (Toys) Regulations*. In addition, they may not contain any of the substances referred to in items 8 or 9 of Part I of Schedule I of the Act.<sup>39</sup>

#### **7.4.9 The Playpens Regulations**

The *Playpens Regulations*<sup>40</sup> dictate that all playpens must comply with paragraphs 10 (a) to (c) of the *Hazardous Products (Toys) Regulations*.

#### **7.4.10 The Liquid Coating Materials (Paint) Regulations**

The *Hazardous Products (Liquid Coating Materials) Regulations*<sup>41</sup> stipulate that paints, enamels and other liquid coating materials that contain more than 0.5 per cent weight to weight lead may only be advertised, sold or imported into Canada when:

- they are for use on the exterior surface of a building and are labeled according to stipulations set out in the regulation;
- they are for use on an interior or exterior surface, or on furniture for use in any industrial or commercial premises or any other premises not ordinarily used or frequented or likely

---

<sup>37</sup> *Cribs and Cradles Regulations*, SOR/86-962.

<sup>38</sup> *Carriages and Strollers Regulations*, SOR/85-379.

<sup>39</sup> Several examples of such substances include carbon tetrachloride, methyl alcohol, petroleum distillates and benzene. See the statute for a complete listing.

<sup>40</sup> *Playpens Regulations*, C.R.C., c. 932.

<sup>41</sup> *Hazardous Products (Liquid Coating Materials) Regulations*, C.R.C., c. 928.

to be used or frequented by children, as long as they are labeled according to regulation stipulations.

## 7.5 CONCLUSIONS

The answer to the question as to whether standards for consumer products are intentionally protective of children is a very qualified yes and limited to only those products for which regulations have been established in reaction to identified problems. But, for children's products containing plastic the answer is unclear and probably no. For lead in consumer products the answer is decidedly no. The matter of Health Canada's response to lead in consumer products is discussed more fully in Case Study #1. As discussed therein, while the regulation of lead in consumer products in Canada is a sorry tale, there are hopeful signs that this situation may be about to change, if international trade agreements and industry opposition do not undermine the preventative efforts currently proposed.

Only a qualified yes is possible in response to the question since the regulatory framework is an entirely reactive one. Only once problems or poisonings have been identified have regulations been established, after the fact, to be intentionally protective of children.

Like the chemical-by-chemical approach to regulating toxic chemicals or pesticides, the *Hazardous Products Act* only regulates those individual products for which problems have indicated the need for control measures via the drafting of a regulation. As a product-centred approach, it is time and labour intensive. Where a few more general provisions exist the applicability of the Act is not always clear. It becomes uncertain which products are required to satisfy safety stipulations, and which are not. Children's products containing plastic are a case in point.

Although many people might assume that if a product is on the shelf, especially if it is intended for children, that it has been tested in some way or is otherwise considered safe. No such pre-market assessment occurs for either regulated or non-regulated products. Some case-by-case inspection is done in response to complaints or irregularities or potential dangers that are perceived by inspectors.

When risks are identified, Health Canada has few options. Specifically, Health Canada has no power to mandate product recalls, it has limited power to seize products and in both cases it must rely on voluntary action by industry to remove dangerous products from retail shelves. The department's primary tool in the control of hazardous products, including both regulated and unregulated products, is the release of public advisories and warnings. Thereafter, Health Canada's only option is to adopt a regulation under the *Hazardous Products Act*.

The Act's provisions regarding the ability to set regulations for restricted products suffer from a number of important shortcomings. It is unclear which products can be included. The toxicity tests that underlie regulatory action are unclear and based on complicated laboratory data that are not readily available. It is difficult to determine whether a particular children's product is regulated under this section of the Act, and if so, whether it is in compliance with the regulatory stipulations. The situation with respect to children's products made of or containing plastics is even more obscure but appears to be very nearly unregulated by Health Canada. Further, despite the fact that the phthalate plasticizer in children's plastic products was determined more than 6 years ago to be "CEPA-toxic" (as defined by the *Canadian Environmental Protection Act*), this determination has not resulted in regulatory action to control or eliminate this chemical in children's products.

The reactive product-by-product nature of the *Hazardous Products Act* provides an important but very

limited tool for ensuring that consumer products are safe for children. Clearly, there is an enormous range of materials contained within consumer products and with which children come in contact on a daily basis. A Materials Use Policy would be a more proactive public policy measure that could work towards ensuring the safety of consumer products in a precautionary manner. Such a policy would require that consumer products be manufactured with materials that are inherently safe and would give manufacturers an incentive to search for safe materials and to begin and/or phase-in product substitution. Under such an approach, companion regulations are necessary as technology-forcing measures that serve to phase-down and phase-out the use of inherently toxic and hazardous materials in products with which children come in contact. Along the line of the precautionary principle and pollution prevention recommendations made in previous chapters, such regulations need to encourage as well as force the phase-down and phase-out in consumer products of persistent, bioaccumulative and inherently toxic substances such as heavy metals, asbestos, endocrine disruptors, phthalates and chlorinated hydrocarbons.

## 7.6 RECOMMENDATIONS

Note that additional recommendations with respect to consumer products are included in Case Study #1 with respect to the regulation of lead.

1. The *Hazardous Products Act* should be amended to provide Health Canada with the power to issue mandatory consumer product recalls.
2. Health Canada should develop a proactive Materials Use Policy that incorporates a precautionary and preventative approach to avoiding the use of toxic substances in consumer products.
3. An area for further research beyond the scope of the present study should include a review of the child-specific *Hazardous Products Act* regulations reviewed herein to determine whether they were developed in a precautionary manner or in reaction to identified hazardous or lethal situations.
4. Further research is necessary to investigate the impact of international trade agreements on both the ability and inclination of Canadian regulatory agencies to set child-protective domestic regulations.

## 7.7 REFERENCES CITED

Di Gangi, J., 1997. *Lead and Cadmium in Vinyl Children's Products: A Greenpeace Exposé.*

Government of Canada, Environment Canada, Health Canada, *Canadian Environmental Protection Act: Priority Substances List Assessment Report, bis(2-ethylhexyl) phthalate*, 44 p. undated.

Greenpeace Canada Briefing, Oct. 9, 1997, *Vinyl Children's Products Pose Lead and Cadmium Hazard.*

Greenpeace Media Release, Nov. 1998, Greenpeace testing results for lead and cadmium in PVC plastic (vinyl) consumer products bought in Canada in late October, 1998.

Greenpeace Media Release, Nov. 16, 1998. Leading child health and environmental organizations urge removal of hazardous vinyl children's products from sale.

Health Canada, *Strategy for Reducing Lead in Children's and Other Consumer Products*, Discussion Paper, Draft II, August, 1997.