



## **DRAFT ENVIRONMENTAL PERFORMANCE AGREEMENT RESPECTING 2-BUTOXYETHANOL**

### **BETWEEN**

**Her Majesty the Queen in Right of Canada, as represented by the Minister of the Environment who is responsible for Environment Canada, and the Minister of Health, who is responsible for Health Canada**

### **AND**

**Participating Paint and Coatings Companies**

### **AND**

**The Canadian Paint and Coatings Association (“CPCA”)**

WHEREAS the presence of toxic substances in the environment is a matter of national concern;

WHEREAS the Minister of the Environment and the Minister of Health have determined that 2-butoxyethanol (“2-BE”) is entering the environment in a quantity or concentration or under conditions that constitute or may constitute a danger in Canada to human life or health, under paragraph 64(c) of the *Canadian Environmental Protection Act, 1999* (“CEPA 1999”);

WHEREAS pursuant to recommendations made by the Minister of the Environment and the Minister of Health, on March 9, 2005, 2-BE was added to the List of Toxic Substances in Schedule 1 of CEPA 1999;

WHEREAS on July 9, 2005, proposed *Regulations Respecting 2-Butoxyethanol* (the “*Regulations*”) were published in the *Canada Gazette*, Part I, followed by a 60-day comment period which ended on September 7, 2005;

WHEREAS the proposed *Regulations* seek to establish concentration limits for 2-BE in commercial and consumer products designed for indoor use (e.g. cleaners, paints and coatings) in order to reduce health risks;

WHEREAS during the 60-day comment period, paint and coatings companies have stated that commercial paint and coatings are only sold to industrial and commercial applicators and not to the general public, and whereas the CPCA therefore suggested, as an alternative to regulations, an Environmental Performance Agreement (EPA) to control commercial paint and coatings;

WHEREAS the Minister of the Environment recognizes voluntary actions by Industry as an efficient means to achieve health and environmental objectives, and undertakes to amend the proposed *Regulations* to exclude commercial paint and coatings from its application in light of comments received during consultation with Industry;



THEREFORE, in consideration of the following terms and conditions, the Parties agree as follows:

## **1. PURPOSE**

The objective of this agreement is to provide assurance that all paint and coatings companies will take specific actions to ensure that any commercial paint and coatings for indoor use containing 2-BE with a concentration exceeding the limit set out in Schedule 1 of the *Regulations* will only be sold to industrial and commercial applicators and not to the general public.

## **2. PARTIES AND LEGAL STATUS**

- 2.1 This agreement is an agreement between Her Majesty the Queen in Right of Canada as represented by the Minister of the Environment and the Minister of Health, the CPCA, and any company listed in Appendix 1 provided it is a signatory to this agreement (herein called a “participating company”). An agreement is made with each participating company upon signature by the Minister of the Environment and the Minister of Health, the CPCA and a participating company. Each participating company agrees to abide by the terms and conditions of this agreement, regardless of whether other companies listed in Appendix 1 are signatories to this agreement.
- 2.2. This agreement does not and is not intended to create legally binding obligations among the Parties, nor does it constitute any admission of liability by any of the Parties.

## **3. UNDERSTANDINGS**

- 3.1 Upon signing this agreement, and for as long as it remains in effect, participating companies agree not to sell commercial paint and coatings for indoor use with a concentration of 2-BE exceeding the limit set out in Schedule 1 of the *Regulations* to the general public.
- 3.2 Nothing in this agreement precludes the federal government from taking future legislative or regulatory action or measure it deems warranted. Nothing in this agreement precludes a participating company from implementing additional environmental initiatives.
- 3.3 Parties to this agreement that no longer wish to participate in it may notify Environment Canada, by letter or by completing the attached reporting form (Appendix 2), indicating that they do not and will not sell commercial paint and coating products for indoor use containing 2-BE with a concentration exceeding the limit set out in Schedule 1 of the *Regulations*.
- 3.4 Any new and existing commercial paint and coating companies that may in the future manufacture, import, sell or offer for sale the said product in Canada for



indoor use containing 2-BE with a concentration above the limit set out in Schedule 1 of the *Regulations* will be encouraged to take the proper steps to sign this Agreement to ensure that the products are not sold to the general public.

#### **4. ROLES AND RESPONSIBILITIES**

##### **The CPCA**

- 4.1 The CPCA will provide information to non-member and member companies about this agreement and will be invited to participate or be involved in the annual verification process described in section 5. The CPCA will manage this agreement, with Environment Canada.

##### **Participating companies**

- 4.2 Participating companies will take all necessary means to ensure that commercial paint and coatings are not available to the general public.
- 4.3 For the duration of this agreement, participating companies will maintain documentation, data or information that demonstrate that they are meeting the objectives of this agreement, and participate in annual reporting and verification audits under this agreement.
- 4.4 Participating companies will complete and submit the reporting form in Appendix 2 to Environment Canada by February 28<sup>th</sup> each year beginning in 2007.
- 4.5 Participating companies agree to share best practices with the CPCA and other Parties to the agreement.

##### **Environment Canada**

- 4.6 Environment Canada will monitor progress under this agreement, and oversee the administration of this agreement, including public reporting of results achieved.
- 4.7 Environment Canada will post a summary of progress made under this agreement, updated from time to time, on the Green Lane at <http://www.ec.gc.ca/epa-epe>. If the objectives of this agreement are not being met, Environment Canada will determine if further steps are necessary.

##### **Health Canada**



4.8 Health Canada will oversee this agreement with Environment Canada and provide comments if necessary to ensure that the results of this agreement are achieved.

**5. VERIFICATION**

5.1 As part of this agreement, Environment Canada and the CPCA will develop a verification program by December 2006. Information on the verification program is outlined in Appendix 3.

5.2 Verification will be conducted annually by a third party. The third party will be selected by the CPCA and Environment Canada. The verification by the third party will start in 2008.

5.3 Environment Canada will post the results of the annual verification publicly on Environment Canada’s Green Lane at <http://www.ec.gc.ca/epa-epe>.

**6. TIMELINE**

This agreement will be in effect for 5 years from the date of signing by Environment Canada unless terminated or renewed by the Parties before that date.

**SIGNED FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT AND THE MINISTER OF HEALTH**

By Cécile Cléroux, Assistant Deputy Minister, Environmental Stewardship Branch, Environment Canada

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

And by Paul Glover, Director General, Safe Environment’s Programme, Health Canada

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SIGNED FOR THE CANADIAN PAINT AND COATINGS ASSOCIATION**



By Jim Quick, President

SIGNATURE:

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DATE:

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**ENVIRONMENTAL PERFORMANCE AGREEMENT RESPECTING  
2-BUTOXYETHANOL**

**SIGNED FOR** \_\_\_\_\_ **BY:**  
(Full Company Name)

Name: \_\_\_\_\_  
(print name)

Title: \_\_\_\_\_  
(print title)

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



## **APPENDIX 1 Paint and Coatings Companies**

We are expecting 22 companies that will sign the agreement.



**APPENDIX 2**

**Draft Reporting Form for the Environmental Performance Agreement with  
paint and coatings companies respecting 2-butoxyethanol (2-BE)**

*Companies will complete and submit a copy of this report to Environment Canada by  
February 28<sup>th</sup> for every year this agreement is in effect (beginning the year 2007).*

**Purpose of the Agreement:** To ensure that any commercial paint and coatings for indoor use containing 2-butoxyethanol (2-BE) with a concentration exceeding the limit set out in Schedule 1 of the *Regulations Respecting 2-Butoxyethanol* are only sold to commercial and industrial applicators and not to the general public.

**1. Company identification:**

Name of Company and Location: \_\_\_\_\_  
Contact Person and Title: \_\_\_\_\_  
Location of store(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Activities relating to the identification of 2-BE in commercial paint and coating for indoor use:**

Was inventory screened for any commercial paint and coating for indoor use containing higher than regulated concentrations of 2-BE?

Yes  Date: \_\_\_\_\_ If yes, attach list and description of products  
No  If no, please comment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does your company manufacture, import, sell or offer for sale any commercial paint and coating for indoor use containing higher than regulated concentrations of 2-BE?

Yes  Date determined (and how):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

No  If no, and your company does not manufacture, import, sell or offer for sale any commercial paint or coating products for indoor use containing higher than regulated concentrations of 2-BE, please provide written comments below indicating how and when this was determined.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**3. Activities related to the sale or offer for sale of commercial paint and coating**

Have stores that sell or offer for sale any commercial paint and coating for indoor use containing higher than regulated concentrations of 2-BE been identified?

Yes  No  If no, please comment:

\_\_\_\_\_  
Were types of customers and purchasers at these stores identified?

Yes  No

Are all stores aware of the requirement to sell these products only to commercial and industrial applicators and not to the general public? Yes  No

Are there policies and/or procedures in place to ensure stores are aware of this requirement? Yes  No  If no, comment

\_\_\_\_\_  
If yes, identify examples that apply:

Training: Yes  No  If yes, date: \_\_\_\_\_

Communications: Yes  No  If yes, date: \_\_\_\_\_

Information \_\_\_\_\_ If yes, date: \_\_\_\_\_

Provide details (attach program information if available): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I declare that this report is accurate and complete.**

\_\_\_\_\_  
Signature of person submitting this report  
or person authorized to act on behalf of  
person submitting this report

\_\_\_\_\_  
Name, title (print)

\_\_\_\_\_  
Date, place



### **APPENDIX 3**

#### **Verification Program Outline**

**Objective:** To provide assurance to the signatories of this agreement, the public and other interested parties, that commercial paint and coatings containing 2-BE with a concentration exceeding the limit set out in Schedule 1 of the *Regulations Respecting 2-Butoxyethanol* are only sold to commercial and industrial applicators and not to the general public.

Other objectives of the verification program may include assisting signatory companies to build capacity in implementing this agreement and to improve the quality of information reported to Environment Canada.

**Roles and Responsibilities for Verification:** The Canadian Paint and Coatings Association (CPCA) and Environment Canada will jointly develop the verification program, select a verifier or verifying organization and follow up on the results of verification.

A detailed program description will be developed for the program, including items such as terms of reference, verifier qualifications, methodology, audit protocol, budget, payment mechanism, implementation schedule, audit report form and follow up mechanism. Each signatory company will participate in annual verification audits as required. The verifying organization will select individual verifiers to review the audit protocol and conduct the audit, and will forward an audit report of results to Environment Canada and the CPCA.

**Resource Requirements for Verification Program:** Local “auditors/verifiers” will be selected in the region in which the audit will take place.

**Type of Verification:** Verification will start in 2008 by a third party and conducted annually for every year this agreement is in effect. The verification audit will consist of a number of site visits to stores or points of sale, by a verifier posing as a member of the general public, to determine whether the commercial paint and coating in question can be purchased. The testing elements will be developed in the audit protocol.

**Methodology:** A representative number of sites in various locations will be selected for a verification audit each year. Results of verification audits will be reviewed for future actions and will inform the implementation of the following year’s audit (e.g. implementation of corrective actions may be verified in subsequent audits). Testable elements of the audit would be developed (e.g. was paint out of reach, did verifier have to ask questions, did staff ask whether they are using this indoors, if they work for someone who has trained them on how to use it safely, to review instructions, etc.).

**Verification Report:** The third party verifier will complete an audit report form summarizing the findings and corrective actions needed, and submit it to Environment Canada and the CPCA.



**Following-up on audit findings:** The results of verification audits will be used by Environment Canada to monitor progress and follow up with participating companies as required, in order to ensure compliance with this agreement. Non-conformity rules or guidance for corrective actions will be developed. The verification audit will be adjusted from year to year as required, based on the verification results..