Federal Court  Cour fédérale

**Date: 20160425**

**Docket: T-1707-13**

**Citation: 2016 FC 466**

**Ottawa, Ontario, April 25, 2016**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**GOODYEAR CANADA INC.**

**Applicant**

**and**

**THE MINISTER OF THE ENVIRONMENT**
**THE MINISTER OF HEALTH**

**Respondents**

# JUDGMENT AND REASONS

## I. Overview

[1] Since 1999, Canadian authorities, scientists, and private companies have been reviewing and assessing the environmental and health impact of the industrial use of an antioxidant compound called BENPAT (short for N,N'-mixed phenyl and tolyl derivatives of 1,4-benzenediamine). The applicant, tire manufacturer Goodyear Canada Inc, is the largest user of BENPAT in Canada. Goodyear uses BENPAT to increase the durability and safety of its tires.

[2] In 2011, the two responsible Ministers, the Environment Minister and the Health Minister, found that BENPAT was toxic and should be added to the List of Toxic Substances under Schedule I of the *Canadian Environmental Protection Act*, SC 1999, c 33, [CEPA] (provisions cited are set out in an Annex). Goodyear then requested that the Environment Minister convene a board of review under Part 11 of CEPA, to reassess that conclusion, relying on new studies. The Minister refused on the basis that the new data did not affect her earlier conclusions about the release of BENPAT to the environment both as a result of tire road-wear and industrial releases into water.

[3] Goodyear challenges the Minister's refusal to convene a board of review, arguing that the decision was not arrived at fairly and, in any case, was unreasonable in light of the evidence before her. Goodyear asks me to quash the Minister's decision and order her to establish a board of review.

[4] In my view, the Minister arrived at her decision fairly after giving stakeholders, including Goodyear, numerous opportunities to make submissions on the issues before her. In addition, I am satisfied that the Minister's decision was not unreasonable on the evidence. The Minister did not overlook or unreasonably discount the relevant scientific evidence. Accordingly, I will dismiss this application for judicial review.

[5] There are two main issues:

1. Was the Minister's decision unreasonable?
2. Did the Minister breach a duty of fairness owed to Goodyear?

[6] In addition, there is a preliminary issue regarding the admissibility of three affidavits filed by Goodyear on this application.

## II. Statutory Framework and Factual Background

[7] The Ministers of the Environment and Health jointly determine which substances are potentially toxic to human health and the environment. Toxic substances are those that present the greatest potential for exposure, and are inherently toxic and persistent (*ie*, take a long time to break down) or bioaccumulative (*ie* tend to accumulate in the tissues of living organisms) (s 73). In 2006, the Ministers found BENPAT to be inherently toxic, persistent, and bioaccumulative, and the compound became a high priority for a subsequent mandatory screening assessment (s 74). The Ministers notified stakeholders of their finding by way of a publication in the Canada Gazette Part I.

[8] Later, in 2009, the Ministers announced that a draft screening assessment would be published no later than October 2010. They contacted stakeholders, including Goodyear, requesting information on BENPAT. Goodyear was specifically asked to provide copies of technical studies it had sponsored and was granted extensions to make its submissions.

[9] Officials within Environment Canada reviewed the evidence filed and conducted their own research on BENPAT. The draft screening assessment was also provided to a panel of scientists (the Challenge Advisory Panel) which was charged with providing advice on the application of the "precautionary principle" and the "weight of evidence approach", both of which are recognized in CEPA (preamble and ss 2, 76.1). The Panel found that those guiding

principles had been appropriately weighed in the draft screening assessment, and agreed with the assessment's proposed conclusion that BENPAT may have a harmful effect on the environment or on biodiversity, and that it may be both persistent and bioaccumulative.

[10] The Ministers published a summary of the draft screening assessment on October 2, 2010 in the Canada Gazette Part I. Based on the assessment's conclusions, the Ministers proposed that BENPAT be added to the List of Toxic Substances. A 60-day public comment period followed. Goodyear and other stakeholders provided further information and data during that period. Environment Canada officials also met with representatives from Goodyear, and the parties exchanged documents.

[11] Based on this further review, a final assessment report was published concluding that BENPAT did not meet the criteria to be considered bioaccumulative. However, the other conclusions relating to harm, biodiversity and persistence from the draft screening assessment were confirmed. The final assessment included consideration of additional evidence both from Environment Canada and from Goodyear, and removed reference to a study that Goodyear claimed was outdated.

[12] In 2011, based on the final screening assessment, a summary of the public comments on the draft assessment, and departmental responses to those comments, the Ministers published a Notice in the Canada Gazette Part I stating that BENPAT may be harmful to the environment, meeting the statutory definition of toxicity in s 64(a) of CEPA, and that they would be proposing to the Governor in Council to add BENPAT to the List of Toxic Substances. This was a final

decision. The Governor in Council approved the Ministers' proposal and published a proposed order to add BENPAT to the List of Toxic Substances (under s 90(1)). This led to another 60-day public comment period (s 332(1)).

[13] In response to the Governor in Council Order, Goodyear filed a notice of objection and asked the Minister to establish a board of review (pursuant to ss 332, 333). In an 11-page submission, Goodyear provided additional information and maintained that the screening assessment relied on a poor model for predicting emissions, made unrealistic assumptions, failed to take into account some of BENPAT's inherent properties (*eg*, low solubility), and ignored the fact that BENPAT was not toxic to aquatic organisms at concentrations lower than its maximum solubility.

[14] The departmental officials reviewed the notice of objection and prepared a Technical Analysis in response, completed in July 2013. In particular, at Goodyear's urging, officials reviewed a 2010 study on chemical emissions from tire manufacturing. This emission data was also included in a later 2012 tire study and showed that releases of BENPAT into the environment were likely lower than was estimated in the final screening assessment. Still, the authors of the Technical Analysis did not accept Goodyear's objections or depart from the overall findings of the final screening assessment.

[15] In September 2013, the Minister concluded, based on the Technical Analysis, that a board of review should not be convened because no new scientific data or information had been provided that would contradict the conclusions of the final screening assessment.

## III. Issue One – Are Goodyear's affidavits admissible?

[16] Goodyear asks me to consider three affidavits on this application for judicial review that were not before the Minister when the decision was made not to convene a board of review. Goodyear contends that the affidavits merely provide background and context, not new evidence. The respondent argues that the affidavits are inadmissible because they address the merits of the Minister's decision, emphasizing and repeating Goodyear's grounds for disputing that decision, and contain evidence that was not before the Minister.

[17] I find that that the affidavits, in part, provide useful information about some of the scientific assumptions underlying the Minister's decision. However, to the extent that they go beyond that subject, I will disregard them. The following is a summary of the relevant contents of the affidavits.

[18] Dr Keith Solomon, who previously served on a board of review (regarding Siloxane D5), states in his affidavit that the decision to add BENPAT to Schedule I of CEPA was not based on the best available scientific information at the time. In particular, it did not take account of the fact that an inherent property of BENPAT is that it naturally transforms into other products and, therefore, should not be regarded as persistent in the environment. Dr Solomon explains that BENPAT oxidizes in the presence of oxygen and ozone, in preference to rubber, thereby extending the life of rubber products, such as tires. This reaction, he says, shows that BENPAT readily transforms into other products. Had the authors of the screening assessment taken this into account, he maintains, its conclusions would have been different.

[19] Dr Solomon also claims that the screening assessment ignored other properties of BENPAT – low solubility, a tendency to partition into hydrophobic organic materials (like rubber), and to exist as a solid at temperatures lower than 90°C. These characteristics, says Dr Solomon, suggest that BENPAT will resist release from rubber into water or air. The screening assessment, in his view, overestimated the amount of BENPAT that would be lost to water during commercial and consumer use.

[20] Most strikingly, Dr Solomon says that the test on which the assessment relied for data on water entering wastewater treatment facilities – the so-called Mega Flush test – "does not pass the laugh-test". He views the Mega Flush test as inapt for purposes of addressing the release of BENPAT through contact with water. It is suitable only for down-the-drain consumer products.

[21] In a very detailed analysis of the available data, Dr Frank Gobas confirms Dr Solomon's opinion that Environment Canada did not adequately consider the solubility and sorptive capacities of BENPAT. He agrees that the Mega Flush test results were not detailed or well-supported. In his view, a board of review should have been convened because the screening assessment did not take account of data found to be significant by a previous board of review (Siloxane D5).

[22] Goodyear also filed an affidavit sworn by Ms Julie Panko, a Certified Industrial Hygienist. She believes the screening assessment was not based on the best available evidence and that Environment Canada had not justified its reliance on less reliable data. For example, the assessment relied on a 2004 OECD technical paper whose assumptions were later, in 2009,

shown to be incorrect. In addition, Environment Canada did not take into account studies showing the relatively low risk posed by tire road wear particles. In her view, the best available data shows that industrial releases of BENPAT do not pose a risk to the environment. Ms Panko agrees with Dr Solomon that the Mega Flush test results are not verifiable.

## IV. Issue Two – Was the Minister's decision unreasonable?

[23] Goodyear contends that the Minister's decision was not supported by the best available evidence and was, therefore, unreasonable. Goodyear points specifically to the evidence of its experts, summarized above, as well as the conclusions of the Siloxane D5 board of review, in support of this argument.

[24] It is not the role of the Court to resolve disputes among scientists. Rather, the question is whether the Minister's decision falls within the range of possible, acceptable outcomes that can be defended with reference to the facts and the law. In my view, the Minister's decision not to appoint a board of review falls within that range.

[25] As outlined above, Goodyear's experts faulted the conclusions of the screening assessment for its alleged failure to recognize some of BENPAT's inherent physical and chemical characteristics (eg, insolubility, boiling point, oxidation, etc.) and for the assessment's reliance on questionable test data (eg, Mega Flush). In my view, these opinions amount mainly to disputes about the weight and value of some of the evidence analyzed in the screening assessment. They do not persuade me that the Minister's decision was unreasonable.

[26] In particular, the screening assessment did not ignore the physical and chemical properties of BENPAT. It repeatedly cited those properties in the analysis of BENPAT's potential impact on the environment. In fact, a section of the assessment is entitled "Physical and Chemical Properties" and includes a table setting out BENPAT's melting point, boiling point, water solubility and other relevant characteristics. The text notes that solubility "is one of the key parameters in the characterization of the chemical's fate when it is released into the environment". It specifically refers to BENPAT's low solubility in water. The assessment also mentions BENPAT's antioxidant properties and the mechanism by which it prevents degradation of rubber products, such as tires and hoses.

[27] I cannot conclude, therefore, that the screening assessment failed to take account of BENPAT's inherent physical and chemical properties.

[28] Goodyear's experts also discounted the value of certain modeling data cited in the screening assessment, most particularly the results of the Mega Flush test. This criticism was also set out in Goodyear's notice of objection and addressed in the Technical Analysis. The latter explained that, where possible, "available evidence regarding intrinsic properties of BENPAT, its quantities in commerce and estimations of potential environmental releases, was critically reviewed and used as weight of evidence in preparation of the risk quotients for this substance". However, in some cases, in the absence of real-world data, models such as Mega Flush were used and applied in a precautionary fashion:

> Assumptions made in Mega Flush scenarios remain protective in light of the many uncertainties encountered with respect to BENPAT releases to water compartment from consumer uses. These include lack of data for characterization of tire road wear

> run-off in stormwater, variability of stormwater management practices across Canada and impact of these practices on BENPAT removal.

[29] Goodyear correctly points out that the Siloxane D5 board of review found that the Mega Flush test (and others) that had been relied on in the screening assessment for that compound were limited and likely inaccurate. However, the board came to that conclusion only after reviewing more recent and more reliable data: "Now that empirical monitoring data are available, the Board gave greater weight to these measured values than the initial estimates made by the Mega Flush model . . .". That board did not conclude that the Mega Flush model was so unreliable that it should not be used at all.

[30] Accordingly, I find that the Minister arrived at a reasonable conclusion on the evidence that was before her, including Goodyear's numerous and substantial submissions.

[31] Goodyear also contends that the Minister's decision not to convoke a board of review was unreasonable because it was based on a standard that is not provided for in CEPA and, in fact, is incompatible with the statutory scheme.

[32] I am satisfied that the Minister applied an appropriate standard and that the decision was not unreasonable on the evidence.

[33] The Minister declined Goodyear's request for a board of review on the basis that its notice of objection "did not bring forth any new scientific data or information that would support a change in the conclusion of the assessment". Goodyear suggests that this standard amounts to

the Minister saying "You need to convince me that my staff reached the wrong conclusion in their screening assessment or I will not appoint a board of review". Goodyear contends that such a test is inappropriate because:

- In effect, it would require Goodyear to show that BENPAT was not harmful to the environment. If Goodyear were able to accomplish this through its notice of objection, the Minister would then simply reverse its finding and therefore a board of review would be unnecessary, indicating a redundancy in the legislation;
- It imposed a burden on Goodyear to persuade the very same officials who drafted the assessment, who had already made up their minds about BENPAT;
- It is unlikely that an affected party could come up with new data within the statutory 60-day period;
- A challenge demonstrating that previous data were unreliable would be insufficient as Goodyear would have to present "new" data in order to be granted in its request;
- It is contrary to the emphasis in CEPA on participation by stakeholders and other members of the public; and
- It is inconsistent with the tests applied in relation to other requests for a board of review.

[34] I disagree with Goodyear's characterization of the Minister's test. In my view the test amounts to the following: "You have had numerous opportunities to present evidence supporting your position and to challenge the data on which the screening assessment was based, all of which has already been considered. Your notice of objection does not raise anything new that would affect the conclusion reached in that assessment. Therefore, I have decided not to establish a board of review". In other words, the Minister's threshold must be read in the context of the entire process leading up to the decision, not in isolation.

[35] It follows that I do not accept Goodyear's submission that the Minister's test would be impractical to apply and would render boards of review redundant. Nor does it conflict with CEPA's emphasis on participation. Nor does it depart substantially from the test applied in relation to other decisions declining to convene boards of review, all of which required new evidence that would justify appointing a board of review. While the Minister may have articulated a slightly higher standard here by adding that the new evidence "would support a change in the conclusion", it was not, in the circumstances, an unreasonable test to apply given all the opportunities provided to Goodyear to file evidence and submssions throughout the process leading up to the Minister's decision. In fact, this was explained to Goodyear in the Technical Analysis responding to Goodyear's notice of objection:

> Since a board of review would be essentially revisiting and repeating much of the work that went into the multi-step, consultative process that led to the proposed Order, it is reasonable for the Minister(s) to expect that the notice of objection be accompanied by new information that provides credible, compelling evidence that carrying out a review will justify the delay and expense that would be incurred.

## V. Issue Three – Did the Minister breach a duty of fairness owed to Goodyear?

[36] Goodyear submits that the Minister had an obligation to treat it fairly when deciding whether to convene a board of review. The Minister failed to discharge that duty, according to Goodyear, by failing to disclose a 2012 tire study showing that industrial releases of BENPAT may be lower than estimated in the screening assessment.

[37] I disagree with Goodyear's submission. The Minister did not owe Goodyear a duty of fairness; even if such a duty existed, the Minister did not, in the circumstances, breach it.

[38] The Minister did not make an administrative decision relating to Goodyear's rights, privileges or interests. Rather, the Minister's decision was a general one relating to the regulatory treatment of a chemical compound taking into account the overall public interests at stake. Neither the Minister's decision whether to convene a board of review, nor the mandate of the board itself, relates to individual rights, interests or privileges (*Syncrude Canada Ltd v Canada (Attorney General),* 2014 FC 776 at para 158).

[39] Goodyear complains that Environment Canada was clearly aware of the 2012 tire study as it was specifically cited in a risk management update statement released just two days after the Minister's decision not to convoke a board of review, yet the study was not cited in the screening assessment and was not disclosed to Goodyear until after the Minister had made her decision. The Minister's conduct was contrary, says Goodyear, to its legitimate expectation that the Minister would consider all available scientific evidence as part of the weight of evidence approach, and to its entitlement to know the case it had to meet in order to persuade the Minister to strike a board of review.

[40] In fact, as mentioned above, the 2012 tire study was based on data contained in an earlier 2010 study that was provided to Goodyear and taken into account by the Minister. That data simply did not allay Environment Canada officials' concerns about industrial releases of BENPAT into the environment.

[41] I cannot conclude, therefore, that the Minister breached any duty of fairness to Goodyear. In fact, as outlined above, Goodyear had many opportunites to participate in the process leading up to the Minister's decision. It was not treated unfairly.

## VI. Conclusion and Disposition

[42] While Goodyear was not owed a duty of fairness by the Minister, it was, in fact, treated fairly in the process leading up to the Minister's decision not to convene a board of inquiry into BENPAT's impact on the environment. Further, given the extent of that process and the opportunities given to Goodyear to participate in it, I cannot conclude that the Minister applied an unreasonable test when she decided that, before appointing a board of review, Goodyear needed to provide evidence that would support a change in the screening assessment's conclusions. Finally, the Minister's decision was not unreasonable based on the evidence before her about BENPAT's physical and chemical properties and its potential effect on the environment. Therefore, I must dismiss this application for judicial review, with costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed, with costs.

"James W. O'Reilly"

Judge

ANNEX

| *Canadian Environmental Protection Act*, SC 1999, c 33 | *Loi canadienne sur la protection de l'environnement*, LC 1999, ch 33 |
|---|---|
| Toxic substances | Substance toxique |
| **64.** For the purposes of this Part and Part 6, except where the expression "inherently toxic" appears, a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that | **64.** Pour l'application de la présente partie et de la partie 6, mais non dans le contexte de l'expression « toxicité intrinsèque », est toxique toute substance qui pénètre ou peut pénétrer dans l'environnement en une quantité ou concentration ou dans des conditions de nature à : |
| (a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity; | a) avoir, immédiatement ou à long terme, un effet nocif sur l'environnement ou sur la diversité biologique; |
| Categorization of substances on Domestic Substances List | Catégorisation des substances inscrites sur la liste intérieure |
| **73.** (1) The Ministers shall, within seven years from the giving of Royal Assent to this Act, categorize the substances that are on the Domestic Substances List by virtue of section 66, for the purpose of identifying the substances on the List that, in their opinion and on the basis of available information, | **73.** (1) Dans les sept ans qui suivent la date où la présente loi a reçu la sanction royale, les ministres classent par catégories les substances inscrites sur la liste intérieure par application de l'article 66 pour pouvoir déterminer, en se fondant sur les renseignements disponibles, celles qui, à leur avis : |
| (a) may present, to individuals in Canada, the greatest potential for exposure; or | a) soit présentent pour les particuliers au Canada le plus fort risque d'exposition; |
| (b) are persistent or bioaccumulative in accordance with the regulations, and inherently toxic to human beings or to non-human organisms, as determined by laboratory or other studies. | |
| Information | Renseignements |
| (2) Where available information is | (2) Si les renseignements disponibles |

insufficient to identify substances as referred to in that subsection, the Ministers may, to the extent possible, cooperate with other governments in Canada, governments of foreign states or any interested persons to acquire the information required for the identification.

sont insuffisants, les ministres peuvent, dans la mesure du possible, coopérer avec les autres gouvernements au Canada, les gouvernements à l'étranger ou tout intéressé en vue d'obtenir les renseignements requis.

Application of subsection 81(3)

(3) When categorizing substances under subsection (1), the Ministers shall examine the substances that are on the Domestic Substances List to determine whether an amendment should be made to the List to indicate that subsection 81(3) applies with respect to those substances.

Application du paragraphe 81(3)

(3) Lorsqu'ils classent par catégories des substances inscrites sur la liste intérieure, les ministres les examinent afin de déterminer s'il y a lieu de modifier la liste en vue d'y indiquer qu'elles sont assujetties au paragraphe 81(3).

Screening level risk assessment

**74.** The Ministers shall conduct a screening assessment of a substance in order to determine whether the substance is toxic or capable of becoming toxic and shall propose one of the measures described in subsection 77(2) if

Évaluation préalable des risques

**74.** Une fois qu'ils ont établi qu'une substance correspond aux critères énoncés aux alinéas 73(1)a) ou b), les ministres en effectuent une évaluation préalable pour pouvoir, d'une part, déterminer si elle est effectivement ou potentiellement toxique et, d'autre part, choisir, parmi les mesures énumérées au paragraphe 77(2), celle qu'ils ont l'intention de prendre à son égard; ils font de même à l'égard d'une substance inscrite sur la liste intérieure en application de l'article 105.

(a) the Ministers identify a substance on the Domestic Substances List to be a substance described in paragraph 73(1)(a) or (b); or

(b) the substance has been added to the Domestic Substances List under section 105.

Addition to List of Toxic Substances

Inscription sur la liste des substances

toxiques

Weight of evidence and precautionary principle

**76.1** When the Ministers are conducting and interpreting the results of

(a) a screening assessment under section 74,

(b) a review of a decision of another jurisdiction under subsection 75(3) that, in their opinion, is based on scientific considerations and is relevant to Canada, or

(c) an assessment whether a substance specified on the Priority Substances List is toxic or capable of becoming toxic,

the Ministers shall apply a weight of evidence approach and the precautionary principle.

Poids de la preuve et principe de prudence

**76**.1 Les ministres appliquent la méthode du poids de la preuve et le principe de la prudence lorsqu'ils procèdent à l'évaluation et aux examens ci-après mentionnés et à l'évaluation de leurs résultats:

a) l'évaluation préalable en vertu de l'article 74;

b) l'examen, en vertu du paragraphe 75(3), de la décision d'une autre instance qui, de leur avis, est, à la fois, fondée sur des considérations scientifiques et pertinente pour le Canada;

c) l'examen afin de déterminer si une substance inscrite sur la liste des substances d'intérêt prioritaire est effectivement ou potentiellement toxique.

**90.** (1) Subject to subsection (3), the Governor in Council may, if satisfied that a substance is toxic, on the recommendation of the Ministers, make an order adding the substance to the List of Toxic Substances in Schedule 1.

**90.** (1) S'il est convaincu qu'une substance est toxique, le gouverneur en conseil peut prendre, sur recommandation des ministres, un décret d'inscription de la substance sur la liste de l'annexe 1.

Publication of proposed orders and regulations

**332.** (1) The Minister shall publish in the Canada Gazette a copy of every order or regulation proposed to be made by the Minister or the Governor in Council under this Act, except a list, or an

Publication des projets de décret, d'arrêté et de règlement

**332.** (1) Le ministre fait publier dans la Gazette du Canada les projets de décret, d'arrêté ou de règlement prévus par la présente loi; le présent paragraphe ne s'applique pas aux listes visées aux articles 66, 87, 105 ou 112 ou aux

amendment to a list, referred to in section 66, 87, 105 or 112 or an interim order made under section 94, 163, 173, 183 or 200.1.

arrêtés d'urgence pris en application des articles 94, 163, 173, 183 ou 200.1.

Notice of objection

(2) Within 60 days after the publication of a proposed order or regulation in the Canada Gazette under subsection (1) or a proposed instrument respecting preventive or control actions in relation to a substance that is required by section 91 to be published in the Canada Gazette, any person may file with the Minister comments with respect to the order, regulation or instrument or a notice of objection requesting that a board of review be established under section 333 and stating the reasons for the objection.

Avis d'opposition

(2) Quiconque peut, dans les soixante jours suivant la publication dans la Gazette du Canada des projets de décret, d'arrêté, de règlement ou de texte — autre qu'un règlement — à publier en application du paragraphe 91(1), présenter au ministre des observations ou un avis d'opposition motivé demandant la constitution de la commission de révision prévue à l'article 333.

Single publication required

(3) No order, regulation or instrument need be published more than once under subsection (1), whether or not it is altered after publication.

Exception

(3) Ne sont pas visés par l'obligation de publication les projets de décret, d'arrêté, de règlement ou de texte — autre qu'un règlement — déjà publiés dans les conditions prévues au paragraphe (1), qu'ils aient ou non été modifiés.

Establishment of board of review

**333.** (1) Where a person files a notice of objection under subsection 77(8) or 332(2) in respect of

Danger de la substance

**333.** (1) En cas de dépôt de l'avis d'opposition mentionné aux paragraphes 77(8) ou 332(2), le ministre, seul ou avec le ministre de la Santé, peut constituer une commission de révision chargée d'enquêter sur la nature et l'importance du danger que représente la substance visée soit par la décision ou le projet de règlement, décret ou texte du gouverneur en conseil, soit par la décision ou le projet d'arrêté ou de texte

des ministres ou de l'un ou l'autre.

(a) a decision or a proposed order, regulation or instrument made by the Governor in Council, or

(b) a decision or a proposed order or instrument made by either or both Ministers,

the Minister or the Ministers may establish a board of review to inquire into the nature and extent of the danger posed by the substance in respect of which the decision is made or the order, regulation or instrument is proposed.

Establishment of board of review

(2) Where a person files a notice of objection under subsection 9(3) or 10(5) in respect of an agreement or a term or condition of the agreement, the Minister may establish a board of review to inquire into the matter.

Accords et conditions afférentes

(2) En cas de dépôt de l'avis d'opposition mentionné aux paragraphes 9(3) ou 10(5), le ministre peut constituer une commission de révision chargée d'enquêter sur l'accord en cause et les conditions de celui-ci.

Mandatory review for international air and water

(3) Where a person or government files with the Minister a notice of objection under subsection 332(2) with respect to regulations proposed to be made under section 167 or 177 within the time specified in that subsection, the Minister shall establish a board of review to inquire into the nature and extent of the danger posed by the release into the air or water of the substance in respect of which the regulations are proposed.

Rejet d'une substance dans l'atmosphère ou l'eau

(3) En cas de dépôt, dans le délai précisé, de l'avis d'opposition mentionné au paragraphe 332(2), le ministre constitue une commission de révision chargée d'enquêter sur la nature et l'importance du danger que représente le rejet dans l'atmosphère ou dans l'eau de la substance visée par un projet de règlement d'application des articles 167 ou 177.

Mandatory reviews for certain regulations

Règlements — partie 9 et article 118

(4) Where a person files with the Minister a notice of objection under subsection 332(2) with respect to regulations proposed to be made under Part 9 or section 118 within the time specified in that subsection, the Minister shall establish a board of review to inquire into the matter raised by the notice.

(4) En cas de dépôt, dans le délai précisé, de l'avis d'opposition mentionné au paragraphe 332(2) à l'égard d'un projet de règlement d'application de la partie 9 ou de l'article 118, le ministre constitue une commission de révision chargée d'enquêter sur la question soulevée par l'avis.

Review for permits

Plaintes quant aux permis

(5) Where a person files with the Minister a notice of objection under section 134 within the time specified in that section, the Minister may establish a board of review to inquire into the matter raised by the notice.

(5) En cas de dépôt, dans le délai précisé, de l'avis d'opposition mentionné à l'article 134, le ministre peut constituer une commission de révision chargée d'enquêter sur la question soulevée par l'avis.

Mandatory review for toxics

Toxicité de la substance

(6) Where a person files with the Minister a notice of objection under section 78 in respect of the failure to make a determination about whether a substance is toxic, the Minister shall establish a board of review to inquire into whether the substance is toxic or capable of becoming toxic.

(6) Lorsqu'une personne dépose un avis d'opposition auprès du ministre en vertu de l'article 78 pour défaut de décision sur la toxicité d'une substance, le ministre constitue une commission de révision chargée de déterminer si cette substance est effectivement ou potentiellement toxique.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-1707-13 |
| **STYLE OF CAUSE:** | GOODYEAR CANADA INC. v THE MINISTER OF THE ENVIRONMENT, THE MINISTER OF HEALTH |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | SEPTEMBER 23, 2015, SEPTEMBER 24, 2015 |
| **JUDGMENT AND REASONS:** | O'REILLY J. |
| **DATED:** | APRIL 25, 2016 |

**APPEARANCES:**

| | |
|---|---|
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| Lynn Marchildon | FOR THE RESPONDENTS |

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