Mr. David Anderson  
Minister of Environment  
Ottawa, Ontario  
K1A 0H3, Canada  
Fax: (819) 953-3457

Dear Minister Anderson,

We, at the Basel Action Network (BAN), wish to express our strong concern over the proposal by Bennett Environmental, Inc. (“Bennett”) to build a hazardous waste incinerator in Kirkland Lake, Ontario, Canada.

Apart from the local immediate pollution concerns from the dioxin and furan fallout, we are especially alarmed by the fact that it is expected that 90% of the waste that will be incinerated will be brought in from sources outside of Canada, notably from USA sources and Mexico. In light of this, the hazardous waste must only be imported in accordance with principles laid out in the Basel Convention. Further, the wastes involved are polychlorinated biphenyls or PCBs, internationally acknowledged as persistent organic pollutants (POPs). These wastes must therefore be destroyed in accordance with principles laid down in the Stockholm Convention. Yet we believe that the Bennett Environmental plan violates both of these international treaty principles while Canada has ratified both.

BAN is a global non-profit, non-governmental network of toxics and development activist organizations, whose secretariat is based in Seattle, Washington, USA. BAN and its affiliates share a vision of international environmental justice that seeks to prevent all forms of “toxic trade” -- toxic wastes, products, and toxic technologies.
Incineration technology used for combusting hazardous waste, particularly POPs, has been increasingly recognized internationally as an unsound way of dealing with hazardous wastes, since it invariably involves new POPs outputs of dioxins and/or furans, which must then be subject to an imperfect and costly effort to capture and prevent their uncontrolled release.

The recently adopted Stockholm Convention on Persistent Organic Pollutants (“Stockholm Convention”), recognizes the problems inherent in incineration of POPs wastes, and has established a new disposal paradigm when it calls for Parties to take measures so that POPs wastes are:

“Disposed of in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that they do not exhibit the characteristics of persistent organic pollutants....” (Art. 6(1)(d)(ii))

Under the Stockholm Convention, POPs waste can thus no longer be simply “deposited” (e.g. landfilled) nor can such wastes be “processed” (e.g. incinerated) if the process results in outputs including residues or by-products, released into the environment or not, exhibiting POPs-like characteristics. As pronounced by the Convention, these wastes must rather be destroyed or transformed. The Bennett incineration proposal is thus a throwback to the days of unsound environmental practices, which the international community is now, under the new terms of the Stockholm Convention, obliged to abandon.

Indeed the Stockholm Convention has listed in its annexes, hazardous waste incinerators as a principle source of dioxins and furans. In addition to the standard of forbidding the creation of POPs-like by-products, the Stockholm Convention’s Article 5 adds even more weight against incineration when it calls for the use of substitute processes in order to prevent the formation and release of dioxins and furans. Thus, if disposal alternatives exist that do not produce dioxins and furans, they should be required in place of incineration.

These alternatives for POPs destruction, particularly for PCBs do, in fact, exist. Indeed one company leading in the field of POPs destruction using technology other than incineration exists in Canada – ELI Eco Logic, Inc. of Rockwood, Ontario.

Further, under the Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention), of which Canada is a Party, the Bennett proposal is likewise unacceptable, as it also likely violates Canadian obligations under that Convention.

Article 4 of the Basel Convention calls for all Parties to minimize the transboundary movements of hazardous waste. Article. 9 of the Basel Convention obligates Parties to ensure that transboundary movements are to be allowed only under certain well-defined situations. Art. 9(a), provides the first situation, if…
“the State of Export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner...”.

The USA and in fact Mexico, and most other OECD countries, as likely States of Export to Bennett, without question are in possession of the technical capacity to handle PCB wastes and thus import to the Bennett facility could not be justified under the Basel Convention.

The second possible import situation is defined by Article 9(b)...

“if the wastes in question are required as a raw material for recycling or recovery industries in the State of Import.”

The Bennett Proposal again does not meet this criterion since PCBs are never to be recycled but must be destroyed.

Having failed to meet the two existing situations for legitimate transboundary movement, the Bennett facility would legally be limited to receiving wastes only from non-OECD, developing countries, which according to the information at hand, are not, in fact, the sources Bennett intends to primarily tap. Thus, the Bennett proposal runs counter to Canada’s obligations under the Basel Convention. While the Basel Convention does allow bilateral agreements between countries such as the United States and Canada, such agreements must, according to Article 11 of the Basel Convention, be consistent with the obligations of the Convention.

Finally, by building an incinerator that caters to foreign wastes, transboundary movement of hazardous wastes will not be reduced, but will increase, and can only be expected to further increase as more and more POPs wastes become required for destruction under the timelines laid out in the Stockholm Convention. Thus, the Bennett proposal would further undermine Canada’s Art. 2(d) obligation to:

“Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movements.”

Clearly, massive imports of PCB waste into Canada for incineration not only will violate international agreements, but will also tax local and provincial governments both from economic and human health and environment standpoints. Hundreds of sea and overland shipments will be required placing communities at senseless risk. And this risk is additional to the ever-present risks inherent in incineration technology to both the local community and the planet at large.
Based on the foregoing arguments, BAN, strongly urges your office to reject the Bennett proposal. The violation of existing Canadian international obligations and the needless human and environmental risk makes this proposal clearly unacceptable.

Sincerely,

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cc. John Myslicki, Chief of Transboundary Movement Division, Environment Canada