

## **Canadian Environmental Protection Act (CEPA) 1999**

*The Canadian Environmental Protection Act (CEPA)*, last revised in 1999, contains provisions for toxic substances management, emergency preparedness, pollution prevention, investigation and assessment of substances, fuels, international air and water pollution, motor emissions, nutrients, environmental effects of government operations, export/import of wastes, and several other environmental areas. It includes powers for gathering of information, creation of a pollutant release inventory, development of objectives, guidelines and codes of practice, and broad enforcement powers.

CEPA needs more flexibility for the creation and implementation of administration and equivalency agreements, based upon effect, to facilitate local control. Environment Canada (EC) has in the past indicated a willingness to move to 'smart regulation' that is performance based, with flexibility on how performance is achieved. However, they will need to develop a CEPA instrument to accomplish this.

The impact of CEPA is far-reaching, overshadowing many environmental areas that are traditionally the domain of Provincial Governments. Now, as many of its provisions are implemented, CEPA commands constant attention; for example, through new programs related to "virtual elimination" of certain toxic substances, priority substances reviews, toxic substance regulation reviews, and the National Pollutant Release Inventory (NPRI).

The current 5-year review of CEPA is now apparently in abeyance, albeit in its final stages. The Federal Government is working to finalize the changes; however, with the current economic issues, minority government situation and uncertainty about US policy on climate change, the schedule for revising CEPA is uncertain.

More recently the Federal government has announced its intention to regulate greenhouse gases (GHG) and criteria air contaminant (CAC) emissions. CACs include particulate matter, sulphur oxides, ozone, carbon monoxide, oxides of nitrogen, etc. GHGs have now been added to Schedule I of CEPA.

Environment Canada (EC) and / or Health Canada may designate substances as "toxic" under CEPA. The Federal Government appears to be attempting to claim authority over many potentially hazardous or toxic substances and activities related to those substances. Upon declaring a substance or related activity to be 'CEPA toxic', Federal control will be added, often over Provincial Government authority.

Under CEPA 1999, the approach to the management of the "Track 1" toxic substances under the 'Toxic Substances Management Policy' has been changed from the accepted, science-based method of risk assessment and management, to the current unrealistic hazard elimination model. This model seeks to achieve 'zero risk' through the "virtual elimination" of these undesirable chemical substances. While this group of man-made, persistent, bio-accumulative and toxic substances is worthy of special attention, the management method that has been chosen is impractical and unachievable.

"Virtual Elimination" of specified toxic substances under EC rules is 'virtually impossible'. By setting the "level of quantification" for virtual elimination at or near the 'detection limit', EC ensures that those wrestling with virtual elimination of such substances in their processes will never reach closure in the effort. As technology allows lower and lower detection limits, the level for meeting virtual elimination targets will be continuously lowered, and the objective can never be fully achieved.

For substances that are deemed to meet the criteria for 'Virtual Elimination', a better approach would be to assess the current detection thresholds vs. a level for practical concern. In cases where the detection thresholds are already sufficiently small, a simple threshold regulation could be used instead of this notion of ever-increasing analytical capability. In this way, business can proceed in a more predictable, compliance-certain, and otherwise practical manner.

EC has taken an approach of forcing the application of the CEPA provisions intended for individual toxics, to broad and heterogeneous groups of substances. Included in this respect are the wide-ranging groups of, e.g., 'road salts' 'particulate matter less than ten microns', and 'precursors of fine particulate

matter'. This approach is inappropriate, because the legislation was not developed on that premise, and it does not contain the tools to allow appropriate management of internally diverse groups of substances on the basis of a broad-brush designation of the entire group as 'toxic' under CEPA.

While CEPA facilitates the regulatory implementation of international commitments, there is no mechanism to consult on these beforehand in order to control international commitments before they are made. There is a need to align less with the release control measures of other countries, and more with the requirements for risk management in Canada, based on risk assessment here. Related to this there is a need for more and better State of the Environment reporting, and to simplify and revise the NPRI to trigger on significant releases rather than primarily on the use of materials or other parameters.

In order to attain Federal control, EC has demonstrated a tendency to treat localized problems (e.g. the road salt issue) as if they are national in scope. Local issues should be handled locally as much as possible, to provide maximum flexibility, ease of discussion, and to ensure that the solution matches the problem. Dealing with a distant Federal Government to resolve localized problems is not an effective approach.

The Provinces have been controlling CACs for many decades including having their own 'Clear Air' acts, regulations and permitting. While the Federal government is rightly concerned with deteriorating air quality, duplicating control of CAC emissions under CEPA is likely not the best approach to correct this trend. It has thus been refreshing to have the Federal government move into the Comprehensive Air Management System (CAMS) through the Canadian Council of Ministers of the Environment (CCME), in place of their initial proposals for regulating CACs under CEPA.

It appears the 'notice' provision in CEPA for data gathering is being overused by Environment Canada. The Notices that are currently extant include the NPRI, GHG emissions, twelve 'Batches' of priority substances, and the reporting for some 550 substances on the Domestic Substances List. Notices that are published do not go through the same rigorous process as regulations but can still have the same effect. As a notice generally requires extensive paperwork for documentation and reporting, Environment Canada needs to increase the coordination of the various notices being released to ensure businesses are not overburdened.

It is interesting to note that although EC has the authority to control unregulated CAC vehicle emissions under CEPA, they have chosen instead to first tackle industrial emissions which are already provincially regulated. Although they have recently committed to the control of vehicle fuel efficiencies, the failure to tackle other vehicle emissions in high traffic air-sheds seems to be an inappropriate setting of priorities.

The above illustrates how Federal expansion into this area through CEPA creates double regulation and reporting. It also shows the lack of federal – provincial coordination and cooperation in these matters.

The potential for dual regulation, and all of the associated negative features, is increased. CEPA needs more flexibility for the creation and implementation of administration and equivalency agreements, based upon effect, to facilitate local control. EC has in the past indicated a willingness to move to 'smart regulation' that is performance based, with flexibility on how performance is achieved. However, they will need to develop a CEPA instrument to accomplish this.

## **Recommendations**

That the federal government:

1. Rectify the lack of a risk management approach in, and especially the following major concerns with, the *Canadian Environmental Protection Act (CEPA)* during the most current 'review':
  - The approach to the management of the "Track 1" toxic substances under the 'Toxic Substances Management Policy' must be changed back to the accepted, science-based method of risk assessment and management, rather than the current hazard elimination model.

- The definition of “virtual elimination” must be changed to become achievement of acceptable risk, with closure being achievable by reassessment of risks after control measures have been implemented, using a measure(s) such as a simple threshold regulation. This must replace the current system of ascribing the detection limit as the goal, and having no mechanism to check whether or when measures taken are sufficient to protect human health and the environment.
  - The designation of CEPA-toxic must not be used to address broad, heterogeneous groups or categories of substances, (recognizing that another category or categories may be needed for this).
2. Reduce the documentation / reporting burden of its CEPA notices. Particularly, e.g., the NPRI should be reduced and focused only upon significant releases, and the Section 71 requirements for reporting on other lists of substances should focus only upon what is likely to be significant.
  3. Continue with the Comprehensive Air Management System process through the Canadian Council of Ministers of the Environment.