

**SUBMISSION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON  
ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

**REVIEW OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT  
(CEPA 1999)**

**Comments and Highlights on Review**

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STORM Coalition (Ontario), a non-profit advocacy organization, was established in 1989. STORM was instrumental in bringing in provincial legislation seeking to protect the Oak Ridges Moraine (the Oak Ridges Moraine Act, 2001). For the past 8 years, in the capacity of a representative of Environmental Non-Government Organizations (ENGOS), STORM has been actively involved in numerous environmental consultations related to CEPA. STORM served on the Advisory Committee for the CEPA Review (ACCR) for 2004-05.

## **Introduction**

The opportunity to provide comment on Parliament's legislative review of CEPA 1999 is most welcome. I trust that this submission will be of some assistance to the Committee in its preparation of its report on the Review.

The *Canadian Environmental Protection Act* (CEPA 1999) is Canada's principal piece of federal environmental legislation on the protection of human health and the environment. Since CEPA 1999 has been in force, we have had an opportunity to witness the application of the Act and assess its effectiveness in specific parts and as a whole.

While the preamble to CEPA has laudable principles and many features of the Act are commendable, there remain several elements and principles in the Act which have yet to be implemented or enforced and other instances where the Act needs to be strengthened so it can serve its fundamental purpose to protect human health and the environment. The lack of implementation of the Act to the extent that it is an effective and protective Act warrants serious consideration by this Committee and needs to be addressed.

This brief reinforces key themes and principles that have come forward during the review period and highlights areas which may not have been adequately addressed and require further attention.

## **Implementing the Precautionary Principle**

Specific measures are needed under CEPA in order to operationalize the Precautionary Principle throughout the decision-making process for the assessment and management of toxic substances. Otherwise human health and human lives will constantly be put at risk, which makes it absolutely certain that they will be harmed. In particular, the "cost-effective" constraint on the application of the precautionary principle in CEPA is a hindrance to applying caution and should be removed. The "cost-effectiveness" of industrial activities must not be assured at the expense of human health and human lives.

## **Pollution Prevention**

Rather than trying to "control" pollution after it is produced, it is far more effective not to produce it in the first place. Although pollution prevention (P2) is stated as Canada's "priority approach to environmental protection" in the Act, so far it is still at the stage of developing "pollution prevention plans". These plans include "factors to consider", and may set targets and timelines, but they are not enforceable. To date, eight such plans have been developed under CEPA 1999. None of them can be evaluated at this stage, because their implementation date is well removed into the future.

For example, base metal smelters are the single largest source in Canada of sulphur dioxide (SO<sub>2</sub>) emissions, as well as CEPA-toxic metals: arsenic, cadmium, lead, mercury and nickel. The P2 planning instrument that was recently finalized (April 2006) sets targets for SO<sub>2</sub> and Particulate Matter (PM), but these targets are "factors to consider", and not legally enforceable under CEPA 1999. There are no specific reduction targets or limits for metals, except for the single case of mercury, from HudBay, which is the single largest point source of air-borne mercury in North America. Even that limit (for 2008) is based on the Canada-wide Standard (CWS), an unenforced limit which only requires industry to make a "determined effort" to meet the reduction target specified.

## **Public Participation – Right-to-Know**

The Environmental Registry was established by CEPA 1999 as the main instrument for public dissemination of information on all issues covered by CEPA 1999. This has led to a significant improvement in information access. But access to information through the CEPA Registry has not always been adequate, public engagement in decision-making processes has not always happened at the appropriate time, and provisions for judicial action have rarely been utilized.

The National Pollutant Release Inventory (NPRI) has proven to be a very valuable public participation (right-to-know) provision of CEPA 1999. While there have been improvements to the NPRI in the past years, more recently, a number of stumbling blocks in improving the inventory have brought into question the “will” of the government to implement necessary improvements. For example, data quality issues have emerged for certain substances, such as the Criteria Air Contaminants (CACs), that could compromise the ability of Canada to demonstrate that it is meeting its national and international obligations. They are also potentially misleading to public users of the inventory.

From a public perspective, it is important that the committee consider how to improve and strengthen public transparency. Specifically, the committee should examine means by which the NPRI could be strengthened to have the necessary resources or powers to address data quality and other issues.

## **Assessment of Toxic Substances**

The CEPA Review Committee has received several submissions on this topic. The newly announced Chemicals Management Plan may address issues as to how the current Act manages and controls toxic substances. But in the context of the review itself, the Committee may want to focus on specific elements in CEPA to address the concerns expressed in the submissions.

For example,

- CEPA does not require that the safety of substances be assessed quickly enough to ensure that human health and the environment are protected;
- It does not invoke the precautionary principle;
- It does not require the use of safer alternatives or substitution;
- CEPA does not consider the synergistic effects of multiple exposures to chemicals;
- It does not adequately protect the most vulnerable and sensitive populations.

As a result, threats to the environment and human health have been allowed to remain and even increase, which is especially harmful for infants, children and other populations which are particularly vulnerable (e.g., because of chemical sensitivities).

The following recommendations on these issues are presented for the Committee’s consideration:

- Examine mechanisms to accelerate the timelines in the assessment process;
- Provide CEPA with the authority to regulate toxic substances in consumer products;
- Require the use of safer alternatives to hazardous chemicals;
- Shift the burden of proof to industry to prove that a substance is safe before it is allowed to enter into and/or remain in commerce;
- Seek to improve the Act to effectively restrict and ban the most persistent and bioaccumulative toxic substances.

## **Virtual Elimination**

Under CEPA 1999, virtual elimination applies to substances that are persistent, bioaccumulative and not naturally occurring. The Act defines virtual elimination as the ultimate reduction in the release of the quantity or concentration of a specific substance to below the “level of quantification” (LOQ), that is, the lowest concentration that can be accurately measured using sensitive but routinely available technology.

To date, no substance is actually on the virtual elimination list. Finally, it has been announced that one substance, Hexachlorobutadiene (HCBD), will be put on the list. This substance was initially proposed to be on the list in 2002, so clearly the process has taken far too long. In any case, this substance has never been commercially produced in Canada and has not been imported or used in Canada for a number of years.

The committee should consider measures to ensure that those substances that require virtual elimination are rapidly identified and placed on the virtual elimination list. It should also consider replacing the LOQ criterion which is contrived and subject to manipulation, with zero discharge, that is elimination of the use and release of the substance to the environment.

## **Accountability and Enforcement**

Enforcement and accountability as well as implementation of the polluter-pay principle are essential for CEPA’s regulatory tools to be effective. These powers in CEPA have rarely been used. Both the will and the resources to enforce it properly seem to be lacking. Enforcement activities are entirely discretionary, and Environment Canada has seemed reluctant to use them.

## **Harmonization –Federal/ Provincial processes - Canada-Wide Standards (CWS)**

Under the Canadian Council of Ministers of Environment Harmonization Accord, Canada-Wide Standards (CWS) on air emissions from selected sectors were developed for 6 substances of concern. Québec is not a signatory to the Accord. However, the CWS exercise has resulted in unenforceable “standards” that are not necessarily health-based, and are neither adopted nor monitored consistently in all jurisdictions. The following example is cited to indicate that there are major problems relating to the CWS.

Mercury, toxic under CEPA, is one of the most pervasive bioaccumulative toxic substances known. The CWS was chosen as the instrument to reduce emissions of mercury to the atmosphere from specific sectors, including coal-fired electric power plants. These facilities are the largest single anthropogenic source of atmospheric mercury emissions in Canada, representing approximately 35% of the total.

Seven years after the CWS process began, a CWS for coal-fired electric power plants has finally been adopted in 2006, but the limits (caps) for mercury emissions are inadequate, and they do not incorporate new plants. Nor does the CWS deal with the critical issue of preventing pollution in the first place, for example by requiring the use of coal with the lowest mercury content.

Ontario, which committed to close its coal-fired plants by 2009, was initially given a cap of zero by 2010. However, the province has postponed the closure of its coal-fired electric power plants for several

more years. This effectively means that there is no cap at all for mercury emissions from coal-fired electric power plants in Ontario for the foreseeable future. This clearly demonstrates the ineffectiveness of the CWS for mercury.

In all the time it has taken to develop this CWS, mercury emissions from coal-fired electric power plants have continued unabated, and the accumulation of mercury in the environment has grown. A CEPA regulation that mandates major reductions in emissions with the overall goal of preventing mercury emissions from these industrial facilities should have been enacted in the first place and is long overdue.

In its final Report, the Committee should address whether federal-provincial processes of harmonization, in particular CWS, adhere to the principles of CEPA 1999, and protect the environment and human health equally in all parts of Canada, rather than reducing the level of protection to the “lowest common denominator”. This could also be a serious problem if federal powers are devolved to the provinces.

### **International Agreements**

Canada has signed and ratified many key international agreements and protocols on toxic substances, waste, air and water pollution. However, there is no mechanism in CEPA to gather enough sufficiently accurate data to ensure that these commitments are being met, to make the Government of Canada properly accountable for implementing its commitments under these agreements. Further consideration should be given to establishing such mechanisms within CEPA.

### **Conclusion**

The Act itself may require changes or adjustments in a number of areas to address its weaknesses, but overall, its fundamental principles are sound. Many of the problems with CEPA are a result of a failure to fully implement CEPA rather than problems with the actual words in the legislation. The federal government has not allocated sufficient human and fiscal resources to implement the Act. It has diverted much of its attention to harmonization agreements with the provinces and territories (devolution) and the promotion of voluntary, as opposed to regulatory, environmental protection measures. The Committee should place its efforts on ensuring that CEPA is implemented and enforced to establish real accountability, so that the Act fulfils its key function to protect human health and the environment for Canadians.

There are concerns that the Parliamentary Review process has not been comprehensive enough. A number of critical issues under the aegis of CEPA have not been sufficiently covered or even addressed, such as water pollution, waste disposal and harmonization. Furthermore, the process has not engaged the public to the extent that a review of such an important Act necessitates.

In closing, I appreciate the opportunity to present this brief to the Committee and look forward to the Committee’s Report on the CEPA review.

Sincerely,

Anna Tilman