

**Harmonization – Equivalency Agreements (Canada-wide Standards) – CEPA 1999
ENGO Delegation to the Parliamentary Review of CEPA 1999
October 2005**

Summary

- The outcome of harmonization of environmental standards through the Canadian Council of Ministers of the Environment processes (CCME) of Canada-wide Standards (CWSs) has led to low-level unenforceable “standards” that barely give a modicum of protection of the health and environment of Canadians.
- While smog and air-related illnesses are on the rise in Canada, effecting the most vulnerable populations, governments have agreed to a CWS for smog precursors that they acknowledge to not be protective of human health and the environment.
- The newly formed government committee of the CCME on managing air-related issues and the CWSs does not lend itself to public participation and public scrutiny.
- Harmonization via the CCME is taking a path of maximum obscurity and minimum public transparency and seemingly not the intent in the Accord and has resulted in the erosion of federal powers.
- The federal government has abrogated its role in setting quality national standards through such weak equivalency "agreements".

Background

According to the preamble of CEPA 1999, the Government of Canada is to “endeavor to enter into intergovernmental agreements for the purpose of achieving the highest level of environmental quality throughout Canada”. Part 1 of the Act includes provisions that allow for equivalency agreements as a means of harmonizing environmental standards.

The primary mechanism for “harmonization” to date has been through CCME processes, mainly Canada-Wide Standards (CWS) which fall under the framework of the Canada-wide Accord on Environmental Harmonization and the Standards Sub-Agreement (1998).

All jurisdictions except for Québec are signatories to this agreement.

CWSs have been developed for specific substances of national concern to human health and the environment - particulate matter (PM) and ozone, dioxins and furans, mercury, benzene and petroleum hydrocarbons in soil. Multi-stakeholder consultation has been an essential component of the process of developing the CWSs.

Considerations

- Decisions of the CCME on the CWS are reached through consensus of all jurisdictions (including federal). Differences in jurisdictional priorities and political will-power (landscape) make such a process unwieldy and result in delays, deadlock and a less-than-satisfactory outcome – the lowest common denominator.
- CWSs have no legal force and in that sense, not standards but more in the nature of “guidelines”. In that they are not requirements, facilities are expected to make “determined efforts” to attain the CWS.
- Implementation of the CWS is in the hands of individual jurisdiction which can lead to inconsistency within a jurisdiction itself and on a national level.

- Any jurisdiction can withdraw from the CWS upon a 3 month notice.
- Québec is not a signatory to any CWS.
- The Air Management Committee (AMC), a newly created government body in CCME, is the forum for federal-provincial dialogue on air-related issues and air-related CWSs including monitoring, reporting, assessment and review. However, the AMC is not conducive to meaningful multi-stakeholder engagement.

Pertaining to specific CWSs:

PM and Ozone:

- The CWSs for PM_{2.5} (particulate matter less than 2.5 microns) and Ozone are acknowledged to not be fully protective of health and the environment.
- Even though precursors to PM₁₀ have been declared toxic under CEPA, a CWS for coarse particulate matter (PM less than 10 microns) has been delayed due to provincial debate as to its merit.

Mercury:

- The mercury CWS for smelters is an intensity rate (emissions per production) for 2008, and is far too weak to have any major impact.
- The draft CWS for mercury emissions from coal-fired power plants, the largest sector source of emissions of mercury to air in Canada, is so flawed in many ways - it leaves the door open for expansion of these facilities without caps.

Dioxins and Furans:

- Implementation of the CWS for pulp and paper boilers burning salt-laden wood in British Columbia has been repeatedly delayed.
- In Ontario, the CWS for waste incineration have been applied to some facilities but not others.

A five-year review of the harmonization agreement prepared for the CCME in 2003 showed that in some cases, the CCME processes resulted in actions that would not have otherwise been taken, e.g., the dioxins and furans CWS which has led to the phase out of conical waste burners in Newfoundland and Labrador. However, the review also pointed out inconsistencies in implementation to date. While the review was primarily anecdotal, it did show the problems of outcomes based on the lowest common denominator and of deadlock flowing from the CCME's consensus-based decision-making processes.

Recommendations:

- A rigorous, comprehensive and independent review of the outcomes of federal-provincial processes of harmonization, in particular the CWSs, is needed to assess whether such processes adhere to the principles of CEPA 99.
- Mechanisms need to be in place to ensure that equivalency provisions of CEPA protect the environment and human health in all parts of Canada, and if not, they cannot qualify as equivalency agreements.
- The role of the CCME and its newly formed AMC needs to be examined as to whether this committee contravenes the intent of the Harmonization Accord.
- The role of the federal government in setting national environmental standards has been weakened with harmonization. Strong federal leadership is a necessity in setting national standards and must be called for in the CEPA Review.