

Public Participation - CEPA 1999
ENGO Delegation to the Parliamentary Review of CEPA 1999
October 2005

Summary

- Under CEPA 1999, the government has committed to “encourage the participation of the people of Canada in the making of decisions that affect the environment”.
- **Meaningful** public participation requires the dedication of appropriate resources to ensure that involvement and participation of civil society is valued, not merely token, and conducive to formulating sound decisions on policy. The public must have ready access to information, be actively engaged in consultations and decision-making processes from the onset, be able to comment on all matters under the rubric of CEPA and be provided with the **capacity** to exercise their rights to initiate legal action against alleged violations of the Act without fear of reprisal.
- Since the Act came into force, there has been a significant change in information access. *However, deficiencies in access to information through the CEPA Registry have been noted, public engagement in consultations and decision-making processes from the onset have not necessarily happened, and provisions for bringing forth judicial action have rarely been utilized.*

Background - Provisions for Public Participation in CEPA 1999 (Part 2)

- The Environmental Registry, established by CEPA 1999, is the main instrument for dissemination of information to the public. The Registry is a comprehensive on-line source of documents related to CEPA 1999 such as regulations, notices, orders, permits, substance lists, monitoring and research, guidelines, codes of practices, policies, enforcement and compliance. The Registry also indicates opportunities for public stakeholder participation.
- Provisions in Part 2 of the Act that enable the public to initiate actions where there is reasonable likelihood of offences committed under the Act include the right to request that the Minister investigate an alleged violation of the Act, new citizen right-to-sue provisions, and enhanced whistle-blower protection.
- In addition, CEPA 1999 gives the public the opportunity to participate in decisions related to toxic substances, including the right to request the addition of a substance to the Priority Substances List, file a notice of objection and request a Board of Review, and provide comments on various initiatives.

Considerations

CEPA Registry: The Registry has been useful in disseminating the voluminous amount of information under CEPA, but has not fulfilled its potential as a tool for public access to information and public engagement in decision-making. Despite the number of “hits” recorded, the public, by-and-large, remain unaware of its existence.

- While the Registry posts documents including risk assessments, and risk management measures and tools and scientific research for public review and comment, it does not post proposed permits and approvals for public comment (as is the case in Ontario under the *Environmental Bill of Rights*).

- The structure of the Registry itself – in terms of system reliability, readily accessible links, user friendliness and breadth of information, and procedure for submitting comments to Notices - needs to be examined. The site is not easy to navigate and is time-consuming.
- The fact that public information is available primarily via the Internet is an issue for those who do not have access to the required technology.

CEPA Provisions: Few public applications for investigations or public environmental protection actions have been initiated¹. Factors that could contribute to the lack of use of these provisions are the lack of public awareness of the Act and the tools' existence, the difficulty in applying the tools, and the inadequacy of resources to initiate judicial action.

Consultations: Environment Canada's public consultation practices have been usually better than that of other federal agencies, including Health Canada, but are often not as comprehensive as they should be or at the onset of such processes. It is also not clear whether the public has any bearing on policy decisions. Furthermore, not all members of the public have the same level of access to government, for instance, industries are able to consult frequently and privately with government but ENGOs and other public interest groups have very limited resources that hinder such "consultations".

Recommendations

The review should examine the level of engagement of the public in consultations and decision-making processes, the mechanisms for the public to pursue judicial actions, deficiencies in the Registry, and changes to CEPA to provide for greater public transparency, involvement and accountability in decision-making. For example, the review should address the following;

- Does CEPA 1999 provide the necessary and sufficient tools and resources to encourage public participation?
- How can public awareness of CEPA and its provisions be enhanced?
- What are the barriers preventing citizens from using their rights to act and how can these barriers be removed?
- How can the level of participation of the public in consultations by both Environment Canada and Health Canada be enhanced?
- What communication mechanisms (in addition to the Registry) should be utilized to disseminate information to the public?
- Improvements to the Registry, for example by
 - Posting all proposed permits and approvals for public comment².
 - Improving transparency, accessibility, user-friendliness, breadth of information, and mechanisms for making comments.

¹ One environmental protection action was initiated under a Section 22 request, but this action was dismissed by the Minister.

² Such permits include, for example: ocean dumping permits; import and export permits for wastes; exports of substances; waivers regarding new substances notification; conditions or prohibitions on the manufacturing, import or use of new substances or living organisms not on the Domestic Substances List and significant new activities regarding these organisms or substances; waivers regarding fuels regulations; exemptions from vehicle or engine emissions standards; and permits regarding equivalent safety.