

Public Right-to-Know – CEPA 1999
ENGO Delegation to the Parliamentary Review of CEPA 1999
October 2005

Summary

- Public right-to-know is essential since it recognizes the inherent right of people to know the hazards that may be in their communities. It also provides the information that allows the public to work for solutions to these problems. Public disclosure also improves environmental performance because it stimulates polluters and governments to make positive changes.
- The National Pollutant Release Inventory (NPRI) has proven to be a very valuable right-to-know provision of CEPA but improvements under NPRI have stalled in recent years.
- Information gathered under other CEPA provisions, such as research and enforcement activities and other inventories, is not as readily available to the public as is the information gathered under the NPRI.
- The power of the Ministers to require polluters to collect and submit information under CEPA is not strong enough.
- Confidentiality provisions in CEPA restrict the public's right-to-know.

Background – Provisions for Public Right-to-Know in CEPA 1999

CEPA 1999 has the following main provisions designed to enhance the public's right-to-know about pollutants in the environment:

- The National Pollutant Release Inventory (NPRI), which requires selected polluters to report annually on their on-site releases to air, water and land, and their transfers off-site for disposal and recycling [CEPA 1999, sec. 48]. This facility-specific information is available at www.ec.gc.ca/npri.
- Other inventories in various parts of CEPA 1999, which vary substantially in terms of the ease of public access.
- State of the environment reporting, which is supposed to provide Canadians with information in a non-technical manner about current environmental issues.

Considerations

The NPRI: This is the most useful and publicly accessible of the inventories collected under CEPA. However, efforts to improve and expand the NPRI have stalled since 2002. Since that time there has been a lack of commitment by the government to improve the program and a lack of staffing and financial resources to support the program. This has meant that PCBs, metals such as thallium, beryllium and barium, and radionuclides have still not been added to the NPRI, after a number of years of being on the table for discussion. In other cases, e.g., nickel, the thresholds for reporting have not been lowered, even though such changes were proposed by Environment Canada. Another example is the failure of Environment Canada to revise the current reporting exemption for mining activities other than the processing of mined materials. The failure to add greenhouse

gases to NPRI is an example of a missed opportunity to make the NPRI a comprehensive, one-stop-shopping location for the public to access data. In addition, with input from a multi-stakeholder group, Environment Canada is currently assessing ways to change NPRI, including streamlining it. ENGOs fear that this process may result in some weakening of the public's right-to-know.

There is inadequate validation of NPRI data submitted by polluters. Rarely does Environment Canada carry out an actual audit of a polluter's report. This reduces the ability of the public to have confidence in the data contained in the NPRI.

Public Access to other Inventories: Public access to information is still very limited. With the exception of the NPRI, information gathered by the federal government under CEPA is usually not made publicly available, and even when it is, the data is usually not in accessible or useable formats. For example, under the ocean dumping requirements, what is permitted for dumping is reported but not what is actually dumped. Likewise the contents of manifests for the import and export of hazardous wastes are not made publicly available, meaning that the public does not have information on hazardous wastes being transferred through their communities and being handled or disposed of in their communities.

State of the Environment Reporting: These reports provide the public with access to very useful information. Unfortunately, in recent years, the government has substantially reduced the resources available for state of the environment reporting.

Provisions for Confidentiality: CEPA contains provisions that allow polluters to request that the government hold data submitted to them in confidence from the public. As part of the CEPA review, the confidentiality provisions and their implementation should be assessed.

Restrictions on Governments Right to Require Information: Under CEPA, government can only require that information be reported that "may be in the possession of that person or to which the person may reasonably be expected to have access" [sec. 46(1)]. This means, for example, that some substances that should be added to NPRI are sometimes left off because polluters don't now gather the information needed.

Recommendations

The CEPA Review should address the following questions:

- What can be done to improve public access to the information gathered under CEPA?
- What can be done to limit confidentiality provisions?
- What can be done to maximize the comprehensiveness and validity of the NPRI?
- What can be done to ensure that NPRI reporting is appropriately expanded?
- What can be done to require polluters to gather and report information that they do not currently gather?
- What can be done to improve state of the environment reporting?