

International Agreements – CEPA 1999

November 2005

Summary

- Canada has ratified many key international agreements and protocols on toxic substances, waste, air and water pollution, including the Stockholm Convention on Persistent Organic Pollutants (POPs), the Basel Convention on Hazardous Waste, the Rotterdam Convention on Prior Informed Consent, the Long-Range Transboundary Air Pollution (LRTAP) and the Kyoto Protocol. However, there is no mechanism in CEPA that makes Canada accountable for implementing its commitments under these agreements.
- While CEPA 1999 provides the Minister of the Environment with the authority to regulate on domestic and international pollution issues, these powers have been under-utilized. In particular, no such action has been initiated for Canadian sources of international air and water pollution despite the continuation and in some cases increasing levels of emissions of trans-boundary pollutants from Canadian sources.
- Federal and provincial responsibilities for pollution (water, air and waste) are not consistent or complete, leaving gaps and disputes among jurisdictions that present barriers to developing a strong national position in international negotiations and hindering the implementation of international agreements.
- The provisions for public involvement and information are inadequate.

Background - CEPA Provisions

Part 7 of CEPA 1999 contains a number of provisions that pertain to international issues:

- Section 7.2 on Protection of the Marine Environment provides *conditional* federal authorities to prevent and reduce marine pollution from land-based sources, to supplement authorities in other Canadian jurisdictions and to enable Canada to meet its international obligations under the United Nations' Convention on the Law of the Sea.
- Under Section 7.3, CEPA regulates disposal of waste at sea within Canadian jurisdictions and by Canadian ships in international waters. CEPA includes a list of substances that may be disposed of at sea and when wastes cannot be disposed of at sea. Notices of applications for a disposal permit are required to be published in newspapers in the vicinity of the disposal site.
- Sections 7.6 and 7.7 on International Air and Water Pollution provide the Minister of the Environment with the authority to regulate or require pollution prevention plans for Canadian sources that pollute or may pollute the air or water in another country or violate an international agreement binding on Canada where another Canadian government is unwilling or unable to deal with the pollution source.
- Section 7.8 on Waste provides authority for regulations governing the export and import of hazardous waste, including hazardous recyclable materials and prescribed non-hazardous waste. Changes to regulations are intended to enable Canada to meet its international obligations on hazardous waste as well as to align with U.S. rules.

Considerations

- There are no requirements for the Minister to ensure that Canada is meeting its international obligations. For example:
 - The enabling powers in these sections are available to the Canadian government only if the provincial or territorial jurisdiction from which the source of pollution emanates is unwilling or unable to act. The Minister has never acted under these provisions, even when international jurisdictions and/or authorities have asked the Minister to act when a Canadian jurisdiction has refused to do so. For example, no action has been taken on acutely toxic pollution leaching from the Tulsequah Chief Mine on the international transboundary Taku River in British Columbia.
 - No requirements are specified for the Minister to act to implement international air agreements such as the UNECE's Convention on Long-Range Transboundary Air Pollution (LRTAP) and the Kyoto Protocol. For example, under LRTAP, a number of Canadian provinces have not collected or submitted mapping information related to acid rain, which is a requirement in the Convention.
- There is inadequate opportunity provided for public involvement. For example:
 - Notice of a permit for disposal at sea is provided only after it is granted. As a result, citizens in the vicinity of ocean disposal activities do not have the opportunity to register their concerns.
 - While the public can know the contents of a permit, there is no requirement to publicly report how much and what is actually dumped into the ocean.
 - The regulations for hazardous and non-hazardous wastes do not require notification to communities receiving the wastes.
- Some critical approaches in CEPA are not applied to international provisions. For example:
 - The pollution prevention provisions in the hazardous wastes sections are weak.
 - The polluter pays approach is not applied to ocean dumping permit fees.
- Pollution from marine-based aquaculture operations may not be covered by CEPA because these operations may not be defined as land-based.

Recommendations

- How can CEPA be changed to require that Canada meet its obligations under the international agreements that it has ratified?
- How can CEPA be changed to ensure the full application of the pollution prevention and polluter pays approaches to its international provisions?
- How can CEPA be changed to improve public participation opportunities in its international aspects?
- How can CEPA be clarified to ensure that the marine environment from land-based pollution provisions include marine-based aquaculture operations?