



Public Health and Environmental Hazards

Key Canadian Legislation
Theresa McClenaghan

Executive Director and Counsel, Canadian Environmental Law
Association

Lakehead University June 2009

Overview

- Criminal Code (federal)
- Canada Labour Code (federal)
- Canadian Environmental Protection Act (CEPA) (federal)
- Hazardous Products Act (federal)
- Pest Control Products Act (federal)
- Pesticides Act (Ont) & Pesticides Code (Que)
- Food and Drug Act (federal)
- Bill C-6, Canadian Consumer Products Safety Act (federal)
- Occupational Health and Safety Act (Ont)
- Toxic Use Reduction Act (Ont)
- Environmental Protection Act / Ontario Water Resources Act (Ont)
- Municipal Act (Ont)
- Clean Water Act (Ont)
- Public Health and Promotion Act (Ont)
- Nutrient Management Act (Ont)
- Technical Standards and Safety Act (Ont)

Introduction: Division of Powers in Canada

- Federal government has some responsibilities pertaining to environmental health
- Provinces and territories have others
- Many powers operate in related areas
- Aboriginal governments also have powers and responsibilities; some of the federal statutes explicitly recognize these powers
- Within provinces and territories, municipalities and local governments also have powers and responsibilities (delegated)
- Actions are appropriate and necessary at each scale

Occupational Health and Safety

- Canada Criminal Code
- **Section 2.17.1** Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.
 - Added following Westray Mine disaster

Canada Labour Code

- Part II of Canada Labour Code deals with Occupational Health and Safety
- “Danger” is defined: “means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system;”

Canada Labour Code

- “Hazardous Substance” is also defined: “includes a controlled product and a chemical, biological or physical agent that, by reason of a property that the agent possesses, is hazardous to the safety or health of a person exposed to it;”
- “safety” means protection from danger and hazards arising out of, linked with or occurring in the course of employment;
- Reference is made to the Hazardous Products Act for meaning of controlled product, label, material data safety sheet, and Ingredient Disclosure List

Canada Labour Code

- Purpose of part II is to prevent accidents and injury to health arising out of, linked with or occurring during course of employment
- Priority is specified to first eliminate hazards, then reduce hazards, then provide personal protective clothing, equipment and materials
- Every employer has a general duty to ensure that the health and safety at work of every employee is protected

Canada Labour Code

- Every employer also has duty to ensure that concentrations of hazardous substances in the workplace are controlled in accordance with prescribed standards (ie regulations)
- Also that hazardous materials are stored, handled and labelled as per regulations
- Material data safety sheets regarding controlled substances, ingredients on Ingredients Disclosure List, chemical identity of any substances that employer believes may be harmful

Canada Labour Code

- Employees have prescribed duties as well (such as to wear protective gear)
- Employees may refuse to work if danger
- Provisions for resolving work stoppages and assessment of danger
- Employee who is pregnant or nursing has additional right to cease work if she believes continuing any of her current functions may present a danger to her or foetus or child
- Employee must consult a medical practitioner

Canadian Environmental Protection Act (CEPA)

- CEPA adopted 1999; extensively amended since then
- Preamble commits to sustainable development, pollution prevention, virtual elimination of the most persistent and bioaccumulative toxic substances, precautionary principle, polluter pay,
- Recognizes science and aboriginal traditional knowledge

CEPA overview

- Aimed at protection of the environment, human health and biodiversity
- Notes importance of cooperation with provinces, territories, and aboriginal peoples
- Specifies that risk of toxic substances in the environment is a matter of national concern
- Notes particular responsibility for federal and aboriginal lands

CEPA DUTIES

- Imposes duties on federal government to exercise its powers in manner that protects environment and human health; applies the precautionary principle; promotes enforceable pollution prevention approaches; takes preventive and remedial measures; implements ecosystem approach; encourages participation of people of Canada; establishes nationally consistent standards of environmental quality

CEPA DUTIES contd

- Human health is referenced specifically throughout the duties section, including to be protected, and from risk of adverse effects of toxic substances, pollution, waste, use of biotechnology
- Long term human and human health benefits are to be considered in decisions
- Government is required to act expeditiously to assess whether existing or new substances are toxic or capable of becoming toxic, and assess the risk they pose to the environment and human life and health

CEPA definitions

- “air pollution”, and “pollution prevention”, are defined in relation to human health as well as environmental health
- “sustainable development” specifically encompasses future generations’ needs
 - POLLUTION PREVENTION
- Minister may require pollution prevention plans for certain substances

CEPA PROVISIONS

- An Environmental Registry is established
- Whistle blower protection for employees
- The Ministers (Health and Environment) are required to conduct research relating to hormone disrupting substances including re detection, effects, preventive, control and abatement
- Minister of Health is required to conduct research regarding role of substances in illnesses or in health problems & distribute to the public

Notices requiring information

- Persons notified by Gazette and otherwise to provide information regarding substances on Priority Substances List; potentially toxic substances; those potentially released to water or air or at sea
- National Pollutant Release Inventory established (NPRI)
- Minister of Health to issue objectives, guidelines, codes of practice re elements of the environment that may affect the life and health of Canada

Toxic Substances

- Definition of toxic substances includes danger to the environment on which life depends; or danger to human life or health (“constitutes or may constitute”)
- Examples asbestos, lead, mercury, vinyl chloride, benzene – 85 substances on Schedule 1 of which 3 are pending
- Virtual elimination defined as below a specified level (as per schedule – basically detection limit); Virtual Elimination List established
- Domestic Substances List – all substances manufactured or imported between 1984 and 1986 in at least 100 kg quantity or in Canadian commerce or used for commercial manufacturing in Canada in that time frame

Toxic substances

- Determination of toxicity under the Act is to be based on data and investigations regarding whether short term exposure causes significant effects; potential for wide exposure; whether there are multiple pathways; impact on metabolic function of organisms; ability to cause delayed or latent effects over a lifetime; ability to cause reproductive or survival impairment; potential to contribute to population failure of a species from exposure; ability to cause transgenerational effects; quantity, use and disposal; manner of release; extent to which substance can be dispersed and will persist in the environment; development and use of alternatives; methods of controlling; methods of reducing quantities used or concentrations, or quantities or concentrations released into the environment

Disclosure obligation

- If a person imports, manufactures, transports, processes, distributes or uses in manufacturing and obtains information that reasonably supports the conclusion that the substance is toxic, that person is obligated to disclose to the Minister

Categorization

- Act established a seven year deadline to categorize substances on the Domestic Substances List based on available information, to identify those that may present the greatest potential for exposure to individuals, and are persistent, bioaccumulative and inherently toxic to human beings or non human organisms

Priority Substances List

- To establish substances for priority in assessments as to toxicity
- Weight of evidence approach and precautionary principle to be applied in conducting and interpreting results of screening level risk assessments, other jurisdictions' decisions and Priority Substances List toxicity assessments

Toxicity declaration

- If the substance may have long term effect, persistent and bio-accumulative, inherently toxic to human or non-human organisms, and results primarily from human activities; shall be declared toxic; and shall be proposed for virtual elimination (but not if a naturally occurring radionuclide or a naturally occurring inorganic substance)
- After assessment, one option for the Minister is to require plans for virtual elimination of a substance from specified persons

Notice of objection

- If Ministers decide not to include substance on list of toxic substances, any person may within 60 days file a notice of objection requesting a board of review, with reasons for the objection
- CELA has used this section to file Notices of Objection (Kathleen Cooper will give some examples)

Risk Management Tools under CEPA

- Regulations to restrict the use or release of a chemical substance, set limits on the concentrations allowed under various conditions, or prevent the use of chemical substances in certain products;
- Pollution prevention notices that require companies to develop and implement actions to minimize or avoid the creation of pollution or waste;
- Guidelines or codes of practice on the best ways to manage the use, release or dispose of a chemical;
- Voluntary Environmental Performance Agreements; and,
- Significant New Activity notices which aim to identify substances for which some concerns may have been identified.

New Substances

- New substances may not be manufactured or imported unless prescribed information provided and assessment period expires (default is 90 days)
- Mandatory obligation of Ministers to do the assessments, determine toxicity and allow substance or not, with or without conditions
- Information requirements also applied to substances new between 1987 and 1994
- Significant new activity ie significantly greater concentrations or quantities or exposures also have information requirements and assessment period

Amending Lists & Limits of CEPA

- New Substances List; Priority Substances List: List of Toxic Substances; Domestic Substances List and Non-domestic Substances List and others may all be amended
- Substances otherwise regulated by Canada “in a manner that provides in the opinion of the Governor in council” sufficient protection to the environment and human health are not regulated as toxic substances under CEPA – i.e. pesticides, fertilizers and animal feeds

Release of Toxic Substances

- Requirements to report, prevent, remedy releases; notify the public
- Personal liability protection and whistle blower protection, including for employees
- Remedial measures include public notice; notice to those in the production and supply chain; requirement to replace substance or product with a substitute; accept returns and other measures

Export Control List

- Provides for listing of substances prohibited from use in Canada; listing of substances subject to international agreements requiring notice and consent of country of destination; listing of substances with restricted use in Canada
- Examples include Alachlor, Aldrin, Chlordane, Dieldrin, Heptachlor, Lindane, Mercury Compounds, Parathion, Chlorofluorocarbon, Endrin among the 54 substances on the three lists
- Export of such substances either prohibited or regulated – for example Aldrin, Chlordane, DDT, Dieldrin, Lindane and Mercury compounds among others may be exported as pesticides with Export Permits

Biotechnology “Animate Products”

- Living organisms as animate products of biotechnology are added to the Domestic Substances List (manufactured or imported in Canada 1984 – 1986 and 1987 to 1994)
- If not specified on DSL, then not to be manufactured or imported unless prescribed information provided and assessment period expired
- Significant new activity provisions apply similarly to other substances; also assessments for toxicity

Biotechnology – Animate Products cont'd

- Regulation powers explicitly include power to implement international agreements, regardless of whether the living organisms are on the DSL
- And power to make regulations respecting safety of the environment or human health including safe transfer, handling, and use of organisms moved across a boundary
- But not controlled under CEPA if controlled by Pesticides, Seeds, Fertilizers, Feeds or Health of Animals legislation

Pollution and Waste

- Nutrient levels in cleaning products and water conditioners limited by regulation (eg phosphates)
- Power to require notice, returns and replacement
- Power to set objectives, guidelines and codes of practice to prevent marine pollution from land-based sources, including point and diffuse; by water, air or directly from coast

Disposal at Sea

- Applicable to ships, aircraft, platforms or other structures
- Applicable to dredged material; seabed storage or storage on ice; abandonment etc.
- Disposal of substances in normal operations and abandonment if placed for non-disposal purposes not precluded
- No import or export for disposal at sea
- Incineration of waste generated on board ship or platform is allowed with permits

Fuels

- Powers to regulate additives; physical or chemical properties of fuels; characteristics of fuels; blending of fuels; transfer and handling of fuels
- Power to require submission of information regarding these matters as well as a new provision regarding adverse effects from use of the fuel on the environment, human life or health, and on combustion and control equipment

Vehicle, Engine and Equipment Emissions

- Applicable to vehicles other than aircraft, railway stock or large ships
- Manufacture and importing of vehicles must conform to national emissions standards

International Air Pollution

- Deals with air pollution to other countries or in violation of international agreements
- If not federal source, government must consult with the provincial or territorial government & offer it opportunity to regulate
- If the other country does not reciprocate with respect to controlling air pollution, Canada may decide to take no action

International Water Pollution

- Applicable to water pollution that endanger health, safety or welfare of humans; animal life; enjoyment or property; potential damage to property or degrades an ecosystem to an extent that it is detrimental to its use by humans, animals or plants
- If would create water pollution in another country or violate an international agreement
- To offer province or territory opportunity to regulate if not a federal source

Movement of Hazardous Waste

- Permit system to import, export, or move in transit a hazardous waste, hazardous recyclable material or prescribed materials for final disposal
- Prohibitions may be imposed (for example PCB waste export limited to the U.S. & only for disposal)
- Minister may refuse permit if would not be managed to protect environment or human health
- Applies to movement within Canada as well

Environmental Matters from Emergencies

- Emergency means actual or likely uncontrolled, unplanned or accidental release, or release in contravention of regulations or interim orders
- Powers limited to environmental emergencies that may have immediate or long-term harmful effect on the environment and are or may be a danger to the environment on which human life depends or a danger to human life or health
- Power for guidelines, codes of practice and requiring of environmental emergency plans for toxic substances or otherwise

Environmental Emergencies

- Owners of substances are strictly liable for restoration; reparation of public costs and expenses; including prevention and repair costs incurred by public authorities
- Potential for reduction of costs if due to war, hostility or insurrection; or by a third party with intent to cause damage

Federal, Aboriginal Land and Government Operations

- Applies to federal departments, boards and agencies; federal works and undertakings; aboriginal land; federal land; and Crown corporations
- Not applicable to Yukon
- May set objectives, guidelines and codes of practice
- May require environmental management systems; pollution prevention; pollution prevention plans; emergency plans; reporting requirements; emission standards; packaging and labelling; sampling; importing, exporting, manufacturing; sale; etc
- Employee whistle blower protection

Other powers

- Economic instruments and market based approaches may be developed to further purposes of the Act; including deposits, refunds and tradeable units
- Regulations may incorporate by reference standards, guidelines, methods, procedures or practices as amended from time to time

Specific Regulations

- Reports on sulphur content and fuel additives
- Phosphorus concentration for laundry detergents
- Mobile PCB treatment and destruction
- Chlor-Alkali Mercury release regulations (plastics for example)
- Lead in gasoline (limited to 5 mg/L); phosphorus in gasoline limited to 1.3 mg/L

Specific CEPA Regulations cont'd

- Asbestos Mines and Mills - release of asbestos fibres to ambient air from crushing, drying, milling, dry rock storage, drilling limited to 2 asbestos fibres per normal cubic cm
- Chlorobiphenyls Regulations (PCBs) – prohibited from manufacture, processing, use, sale or import except for electrical capacitors and transformers and certain heat transfer equipment
- Ambient release limit 50 ppm of the liquid; 5 ppm for road application; and 1 gram per day for pre 1980 / 1977 electrical equipment

Specific Sector Regulations cont'd

- Secondary Lead Smelter release regulations – permitted amounts depending on type of furnace or type of material – eg .046 grams per cubic metre; and 63% of the particulate matter released to an equivalent amount
- Pulp and Paper Mill Effluent – chlorinated dioxins and furans regulations – not to release any measurable concentrations of certain dioxins and furans

Sector Regulations

- Pulp and Paper Mill Defoamer and Wood Chip regulations – not to use a chlorine bleach defoamer unless below specified dioxin and furan concentrations
- PCB Storage Regulations
- Vinyl Chloride Release Regulations – limit of 10 ppm and 2 kg per day; among others requirements to control fugitive emissions and plans to prevent accidental release

Sector Regulations cont'd

- Benzene in Gasoline regulations – primary suppliers limited to 1.0% by volume; reports on composition of gasoline must be submitted for each refinery, blending facility and province of importation
- Ozone-depleting substances regulations – for example no person may manufacture or import a product with CFC or other specified ozone depleting substances

Sector specific regulations

- Sulphur in gasoline regulations – limited to 80 mg/kg; Sulphur in diesel fuel regulations – limited to 15 mg/K with some ongoing phase-in
- Persistence and Bioaccumulation Regulations – how to determine – for example, half life persistence if equal to or greater than 2 days in air; or subject to remote transport; half life greater than 182 days in water; 365 days in sediment; and 182 days in soil

Sector Regulations

- 2-BTE – to eliminate or reduce use of 2-butoxyethanol (used in coatings, stain removers, carpet cleaners...)
- Storage tanks for petroleum products
- PBDEs – Polybrominated Diphenyl Ethers – (flame retardants) prohibited in certain benzene derivatives and as listed on the toxics substances list

Sector Specific Regulations

- On-Road Vehicle and Engine Emissions
- Dry-Cleaning – Tetrachloroethylene use and reporting
- Solvent Degreasing – reducing use of trichloroethylene and tetrachloroethylene
- Federal Halocarbon Regulations – (refrigeration and air-conditioning)
- Off-road engine emission regulations

Hazardous Products Act

- Products may be prohibited from advertisement, sale or importation by listing in regulation
- Products may be restricted in accordance with regulation
- Scope does not apply to pesticides, explosives, food and drugs or cosmetics or devices covered by the Pest Control Products Act, Explosives Act or Food and Drug Act

What may be prohibited or restricted

- Any product, material or substance
- that is or contains a poisonous, toxic, flammable, explosive, corrosive, infectious, oxidizing or reactive product, material or substance or other product, material or substance of a similar nature
- that the Governor in Council is satisfied is or is likely to be a danger to the health or safety of the public

What may be prohibited or restricted cont'd

- Any product designed for household, garden or personal use, for use in sports or recreational activities, as life-saving equipment or as a toy, plaything or equipment for use by children
- that the Governor in Council is satisfied is or is likely to be a danger to the health or safety of the public by reason of its design, construction or contents.
- May be described by properties, characteristics or criteria and may incorporate law, standard or specification by reference

Manufacturers May Request Board of Review

- Any manufacturer or distributor may request Board of Review within 60 days
- Board has inquiry powers, may hear evidence from the manufacturer or distributor or any other person affected
- Board to issue report to Minister; normally to be made public

Disclosure

- Minister may require disclosure by manufacturers where Minister is considering adding a product to one of the schedules
- Of information relating to the formula, composition, chemical ingredients or hazardous properties of the product, material or substance
- That disclosure is confidential

Controlled Products

- Requires suppliers and importers to provide material data safety sheets if the material is intended for use in a work place (See Reg SOR 88-66, Controlled Products Regulations for details on determination of toxicity)
- To disclose chemical identity of controlled products, or of ingredients on Ingredient Disclosure List or any ingredient that the supplier or importer believes to be harmful to any person, and to disclose concentrations (See Reg SOR/88-64)
- May be generic chemical identity in some cases

Medical professionals and confidentiality

- Regulations may specify that medical professionals be supplied with MSDS information in order to make a diagnosis or deal with a medical emergency;
- Regulations may also require medical professionals to keep such information confidential except for the purpose for which disclosed

Disclosure of Ingredients

- Minister may require disclosure by manufacturers, importers, processors, packagers or vendors to determine if the substance, product or material would be a danger to health or safety of any worker who would handle it or be exposed to it in a workplace
- Of formula, composition, chemical ingredients or hazardous properties of the product, material or substance
- Such information disclosed is confidential

Enforcement powers

- Search, seizure, examination powers on premises of manufacturers, processors, packagers etc, may take samples, examine data, take labels, advertising material
- Summary or indictable offences; officers and directors' liability

Examples of restricted products

- Certain consumer chemicals and containers (for example, flammable, corrosive, poisonous etc); glass doors; corded window coverings; electric toys; many other toys; plush toys; finger paints; rattles; strings for toys; science sets; matches; charcoal; cribs; playpens; pacifiers; kettles that release lead into boiled water; flammable carpets; surface coatings; tents; mattresses; lighters; children's gates; cellulose insulation; booster seats; carriages, strollers, baby nipples; childrens' sleepwear; pop bottles

Substances of Special Concern under HPA (Consumer Chemicals and Containers)

- Examples: Carbon tetrachloride any concentration “very toxic”; Diethylene glycol 5% or more “harmful” or ethylene glycol 5 to 10% “harmful”; over 10% “toxic”; methylene glycol 1% or more and 5ml or more “toxic”; ethyl acetate 5% or more “harmful” – etc – see the regulation at SOR/2001-269
<http://laws.justice.gc.ca/PDF/Regulation/S/SOR-2001-269.pdf>
- Substances categorized “very toxic” are prohibited, for example inhalation risk, dermal exposure risk etc

Examples of prohibited products

- Jequirity beans (lethally toxic), yo-yo's with stretchable cord, children's furniture and other articles with lead in paint over 600 mg/Kg, textile fabrics and children's sleepwear that do not meet specified flame retardant tests, cellulose nitrate in eyeglass frames (highly flammable), toys and children's products containing carbon tetrachloride or several other substances, toys with mercury, arsenic and other substances or with plant seeds as stuffing or noise makers

Examples of prohibited products cont'd

- Kite strings that are conductors, wheeled baby walkers, ice hockey helmets and masks that do not meet certain standards, candles that re-ignite spontaneously, certain textile coatings, smoke detectors, alarms and heat detectors that do not meet certain standards, urea formaldehyde foam insulation for buildings, children's jewellery (except merit badges etc) with more than 600 mg/Kg lead or 90 mg/Kg migratable lead

Interim Order power

- If Minister believes that immediate action is needed to deal with a significant risk to health or safety, direct or indirect, may make an interim order
- Examples of use of interim order?

Bill C-6 Canadian Consumer Products Safety Act

- Amended by Committee; not yet passed
- Introduced for second time this Parliament
- Repeals Part 1 (“Prohibited and Restricted Products”) and Schedule 1 of Hazardous Products Act (prohibited products)
- Addresses consumer products specifically
- Defines consumer products as likely to be obtained by an individual for non-commercial purposes

Bill C-6 cont'd

- A new definition of “danger to human health or safety”
“*unreasonable hazard* — existing or potential — that is posed by a consumer product during or as a result of its *normal or foreseeable* use and that may *reasonably* be expected to cause the death of an individual exposed to it or have an adverse effect on that individual’s health — including an injury — whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may *reasonably* be expected to have a chronic adverse effect on human health.” (emphasis added)

Bill C-6 cont'd

- Applies to products within Canada and imported
- Provides for prohibitions on import, sale, manufacture or advertising specified products – Schedule 2 carries over some items from Hazardous Products Act
- General regulation making power may be applicable to any consumer products including provisions for warnings, recalls, as well as standards

Bill C-6 cont'd

- New prohibition on manufacturing, selling etc products that are a danger to human health or safety, or recalled products whether voluntary or ordered
- Requirement to report incidents (such as accidents, recalls) to Minister
- Minister may disclose to the public information about a danger to human health or safety that a consumer product poses

Bill C-6 cont'd

- Inspectors have examination, inspection, seizure, order powers
- Regulations to include, amend or exempt consumer products are to be laid before Parliament
- Prohibited and restricted product definitions under HPA repealed
- New definitions for controlled and hazardous products under HPA

Bill C-6

- Schedule 1 lists products to which the consumer safety bill does not apply, such as explosives, feeds, cosmetics, food, drugs, pesticides, vehicles, fertilizers, vessels, firearms, seeds, animals (all dealt with in other legislation)
- Schedule 2 lists prohibited products

Pest Control Products Act

- “Pest Control Product” - that is manufactured, represented, distributed or used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects
- In order for a pest control product to be used in Canada, it must be registered by the Minister of Health through the federal agency, the Pest Management Regulatory Agency.

General prohibition

- Prohibition on:
- manufacture, possess, handle, store, transport, import, distribute or use
- a pest control product that is not registered under this Act
- Provincial and municipal provisions therefore subject to this over-arching requirement that any products permitted to be used, sold etc must be registered under the federal legislation

Pest Control Products Act

- This legislation allows the Minister to register a pesticide in Canada if it is shown to have “acceptable value”; “value” is defined with reference to efficacy (in controlling pests); effect on host organisms; and health, safety and environmental benefits, and social and economic impact
- Minister has an obligation to minimize health and environmental risks and to encourage lower risk products and other measures
- If a registration is granted, it is made conditional on the “label” which outlines the allowed uses and certain conditions of use such as protective wear and frequency of use, concentration limits allowed and other matters.

Applicant's burden

- Applicant to register a pesticide has the burden of proof: to prove that the health and environmental risks of the product are acceptable
- Minister to apply a science based approach
- For pesticide registration decisions, or re-evaluations, the Minister must consider aggregate exposure, including dietary, drinking water, use in and around homes and schools, and cumulative effects of pesticides with a common mechanism of toxicity

Registration decisions

- Minister must also apply appropriate margins of safety that take into account animal data, and different sensitivities of major identifiable subgroups including pregnant women, infants, children, women and seniors;
- Must apply a tenfold factor of safety for threshold effects to take into account potential pre- and post-natal toxicity and completeness of the data unless reliable data indicates a different margin appropriate
- Protection in the Act for children also extends to future generations

Maximum Residue Limits

- Minister may specify maximum residue limits; based only on health risks of the product, its components or derivatives
- To be based on aggregate exposure, non occupational exposure, other products with common mechanism, cumulative effects, use in home and schools and special sensitivities of sub-groups as for registration; and to apply a ten-fold safety margin for threshold effects

Additional information requirements and mandatory reporting

- Minister may ask for additional information including the conducting of tests
- Reporting of prescribed information regarding health and environment risks by applicant or registrant
- Public consultation of registration decisions (see below)

Re-evaluation

- Minister may re-evaluate if there has been a change in information required or methods used
- Products registered after 1995 must be re-evaluated within 16 years
- Pre 1995 registrations to be re-evaluated by 2005 or 16 years after registration

Special Review

- Minister to initiate a special review if Minister has reasonable grounds to believe the health or environmental risks or the value of the product are unacceptable
- When an OECD country prohibits an active ingredient for health or environment reasons, the Minister must initiate a special review
- Any person may request a special review (Minister decides whether to initiate)

Cancellation of Registration

- If Minister cancels registration, the decision may provide for continued distribution of remaining stocks; or alternatively may require disposal
- Precautionary principle applies

Pest Control Products Act – Public Participation

- There are important opportunities for public participation in the pesticides registration, re-evaluation and other processes under the new PCPA.
- For example, one can view notices of applications for registration, comment on proposals, see lists of substances under-going re-evaluation, comment, petition... seek special review, and view studies and data in special reading rooms (so long as not for commercial purposes)

Export Controls

- A Pest Control Products Export Control List is established with certain criteria
- Permits may be granted under regulations
- No export if forbidden by another Act

Reconsideration of Decisions

- Any person may ask for reconsideration of registration decisions; export decisions; or cancellation of export permits

• Enforcement

- Extensive enforcement provisions including search and seizure, prosecution for offences, inspection and sampling

Pest Control Products Register

- The register contains information about products, applications, registrations, re-evaluations and special reviews
- Including active ingredients and uses allowed or sought;
- decision on applications, conditions
- Information that was provided in support of applications, information considered by the Minister, reports on evaluation of health and environment risks and value and other matters

Formulants and Contaminants of Health or Environmental Concern

- Three lists are maintained by the regulations
- For example, a list of formulants that are of concern due to the ability to cause anaphylactic – type reactions includes fish, wheat, tree nuts, soy, sulfites, crustaceans, sesame seeds and milk
- The contaminants list includes certain dioxans and furans

Other regulations

- Other PCPA regulations cover reporting of sales data (by province and territory); reporting of incidents; and the general regulations to implement the Act

Provincial Pesticides Legislation

- In addition to the requirement for a federal registration for a particular pesticide, there are also provincial requirements in most provinces and territories such as Ontario's Pesticides Act
- The requirements and provisions vary among the provinces. Many contain a classification system of pesticides, training and licensing of vendors requirements, provisions regarding the sale of certain classes of pesticides, training and licensing of agriculture, forestry and commercial pesticide applicators

Provincial Pesticides Legislation

- Additional requirements may be specified with respect to certain pesticides such as storage requirements for certain classes of toxicity and signage when application by commercial applicators.
- Provincial programs for rural and agricultural collection of unused agricultural pesticides have been operated at various times since the 1970's, including collection of quantities of banned pesticides that people still had in possession, such as DDT, even as recently as Ontario's 1995 collection program.

Provincial Pesticides Legislation

- Quebec recently passed a Pesticides Code that prohibits certain lawn pesticides; prohibits application of mixed fertilizer / pesticide combinations; prohibits almost all lawn pesticides near schools and daycares; sets distances to streams etc.
- Ontario has now just completed legislation and regulations to prohibit a list of lawn and garden pesticides from use or sale in the province

Municipal Regulation of Pesticides

- In the 1960's and 1970's, municipal collection programs were developed in many locations to collect pesticides such as DDT that were being phased out of use.
- Even today, municipal hazardous waste collection programs may have quantities of DDT or other banned pesticides turned in that people have discovered in basements and garages.

Municipal Regulation of Pesticides

- Hudson, Quebec, Chelsea, Quebec and other Quebec communities in 1991, and since, a large number of municipalities in Canada have passed by-laws to control and reduce the use of pesticides within municipal boundaries.
- Most of these by-laws to date are directed at the non-essential use of “cosmetic” pesticides, i.e. aesthetic lawn and garden pesticides.
- The municipal jurisdiction to pass pesticide control by-laws within the municipal territory was challenged by the pesticide / applicator industry in Hudson, Quebec, and eventually appealed to the Supreme Court of Canada. In that case, all three levels of Quebec and Supreme Court of Canada courts upheld the by-law and the municipal authority to pass it under the Quebec Cities and Towns Act; later the same was true for the City of Toronto’s pesticide by-law appealed through the Ontario courts.
- The Supreme Court of Canada also confirmed that Canada’s international commitments to the precautionary principle are to be respected in municipal rule making as well as in federal and provincial decisions.

Food and Drug Act

- Defines cosmetic – for complexion, hair, skin, teeth, including deodorants and perfumes
- Defines drug – referring to disease and disinfection among other things
- Defines food – includes food or drink for human beings, includes chewing gum and anything that may be mixed with food whatsoever

Food and Drug Act

- Prohibits labelling or advertising *food* as treatment for list of conditions in Schedule A (long list from alcoholism to diabetes to thyroid conditions)
- Regulations permit sale of *drugs* as preventive for those conditions so long as not labelled as treatment or cure
- General prohibition on selling food that is adulterated, contaminated, unfit, prepared under unsanitary conditions

Food and Drug Act cont'd

- “Adulterated” does not include agricultural chemical if sold under an “interim marketing authorization” and the food does not exceed Maximum Residue Limit; same for veterinary drug; same for pest control product
- Standards for food may be prescribed and then prohibition on importing or inter-provincial conveyance unless consistent with the standard

Food and Drug Act cont'd

- No drug may be sold adulterated and must comply with labelling requirements
- Schedules and standards prescribe standards, or refer to standards; and prescribe form
- Prohibition on sale of certain drugs in Schedule F

“Adulterated”

- Regulation prescribes some substances such as mineral oil, paraffin wax, nuts in excess of a specified amount of aflatoxin
- But sausage casing not adulterated if uses mineral oil under specified level
- Vegetable not adulterated if coated (paraffin wax) if “good manufacturing practice” requires the coating

BSE

- BSE – Bovine Spongiform Encephalopathy
- Regulation defines specified risk material – including brain, skull, eyes, tonsils, spinal cord
- Prohibition on sale or import of food containing specified risk material
- Unless import is from a country designated in regulations as being free of BSE

Drugs in animals

- Food may not be sold if subject to a list of drugs any of which were administered to the animals (including meat, eggs, milk)
- For example, clenbutarol (a steroid) or chloramphenicol (an antibiotic)

Claims and Labelling

- Extensive provisions regarding nutrition content, claims and labelling (eg “protein”; “meat extenders”; “kosher”; energy content; and other matters; nutrient claims; form of labelling; quantities; packaging
- Division 16 of the regulations deals with food additives including Ministers’ approval, maximum residue limits if applicable, labelling

Cosmetics

- General prohibition on sale of any cosmetic that may injure health
- Standards may be prescribed; labels and packages that may be mistaken for the standard prohibited unless in compliance

Regulations

- May declare that food, drug or cosmetic is adulterated if a specified substance or class of substances is present or added or extracted or omitted (the result of which is that they are prohibited from commerce)
- May control labelling and packaging
- Regarding use of any ingredient in food, drug, cosmetic or device
- Regarding standards of purity, composition, quality, strength,

Food and Drug Act regulations cont'd

- Regulations may also specify mode of manufacture, packing, storing, testing,
- May regulate importation of food, drugs, cosmetics and devices
- May regulate testing requirements
- May exempt any food, drug, cosmetics or devices from the requirements of the Act and the conditions of same

Analysis and Testing

- Regulations may require analysis
- Regulation may require assessment of food, drug, cosmetics and devices regarding the effect on the environment or on human life or health

Exports

- Act does not apply to products (food, cosmetics, drugs, devices) clearly marked “for export” and not for consumption in Canada
- Certificates to be issued that the product does not contravene the law of the country to be consigned

Occupational Health and Safety Act (Ontario)

- Act defines “occupational illness”: “ a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits...”
- Act also defines “hazardous material” and “hazardous physical agent” as set out in regulations

Occupational Health and Safety Act cont'd

- Limitations: Act not applicable to workers in private residences; nor to farm workers or teachers except as prescribed in regulations
- Duties of employers and supervisors, such as informing workers as to workplace hazards
- Duties of employees such as wearing protective equipment

Occupational Health and Safety cont'd

- Part IV deals with Toxic Substances
- Where a biological, chemical or physical agent, or combination is used or to be used in a workplace, and its presence or manner of use is likely to endanger the health of a worker, in the opinion of the Director, the Director shall order it be prohibited or limited or restricted as the Director specifies, or subject to such controls and conditions such as work place practices, engineering controls and time limits as the Director specifies

Occupational Health and Safety

- Toxic substances orders to be posted; identify the agents of concern and the reasons
- Employer, worker or trade union may appeal to the Minister
- Factors to be considered include interactions of agents, quantities, extent of exposure, availability of other processes or agents for the intended use, data regarding the effect on health, any regulatory criteria

Occupational Health and Safety

- New biological or chemical agents are not to be used in a workplace without submitting to the Minister the composition and generic names
- Minister may require further information and assessment
- Employers must ensure all hazardous materials in the workplace are listed and that current material safety data sheets are supplied (they must be updated at least every 3 years)
- At the request of any person the Medical Officer of Health *shall* request a copy of a material safety data sheet and make it available to the person (and may not disclose the name of the person who requested it)

Occupational Health and Safety

- Regulations may require employers to assess all agents in the workplace to determine if there are hazardous materials
- Right to refuse work (but not available to police officers, fire fighters or certain corrections workers, nor to workers in hospitals, long term care homes and other medical facilities, ambulance workers or laboratory workers)
- One of the grounds to refuse work is the physical condition of the workplace

Occupational Health and Safety

- If employer is advised a worker has an occupational illness, must advise Director, trade union and health and safety committee
- Act has 34 regulations dealing with array of specific contexts, including control of exposure to biological or chemical agents; specific regulations for certain designated substances such as arsenic, asbestos, vinyl chloride and others; farming, health care, teachers, and Reg 860 regarding the WHMIS, Workplace Hazardous Materials Information System

The Toxics Reduction Act (Ontario)

- Brand new legislation just passed in Ontario (Royal Assent on June 5 / 09); to be proclaimed
- Intent is to reduce use of toxics in air, land, water and consumer products
- Regulations need to be developed; expect first suite of regulations summer of 2009
- Facilities will be required to track specified toxic substances they use
- They will also have to develop plans to reduce use of those toxics, and make summaries of the plans public

Toxics Reduction Act (Ontario)

- At least every five years the minister must consult and consider adding to the list of toxic substances
- Substances of concern may be specified by regulation and regulation powers allow the LGiC to prohibit or regulate the manufacture, sale, distribution of toxic substances or substances of concern including anything that contains a toxic substance or substance of concern

Environmental Protection Act (Ontario)

- “Adverse effect” is defined among many things to include an adverse effect on health of any person, or impairment of the safety of any person, or rendering any property, plant or animal life unfit for human use
- General prohibition on discharging contaminants into the environment
- Contaminant means any solid, liquid, gas, odour, heat, sound, vibration, radiation...from human activities...that causes or may cause an adverse effect

Environmental Protection Act (Ontario)

- Many powers available – preventive orders, stop orders, remedial orders
- Spills dealt with in Part X includes obligation to give notice to Ministry, municipalities and others of spills
- Extensive spills provisions
- Brownfields dealt with in Part XV.1 “Records of Site Condition”; an Environmental Site Registry is established; emergency powers are provided
- Property cleanups either meet standards or may file a site specific risk assessment for approval

Environmental Protection Act (Ontario) regulations cont'd

- Industry emissions and Emissions trading (sulphur dioxide and nitrous oxide); modelling for local air quality and local air quality standards; ethanol in gasoline; wine and beer container deposits and returns; spill prevention and contingency plans; records of site condition; environmental penalties for spills; and coal facility phase-out regulation

Environmental Protection Act (Ontario)

- Many specific regulations provided – such as for Foundries, Boilers, soft drink containers, sewage discharge from pleasure boats, disposable milk containers, waste management, hot mix asphalt, marinas, mobile PCB destruction facilities, ozone depleting substances, sewage systems, sulphur content of fuels, PCB waste management, gasoline volatility, municipal waste recycling and composting, packaging reduction, refrigerants, dry cleaners, fire extinguishers, solvents, landfill standards, motor vehicles (drive clean), spills, certificates of approval for emissions to air, airborne contaminant monitoring,

Ontario Water Resources Act (Ontario)

- Prohibits discharge of material into any waters that may impair the waters
- Director may define an area that includes a source of public water supply and prohibit acts that diminish or impair the water
- The act controls taking of water from ground or surface water i.e. In excess of 50,000L per day
- Rules for drilling of wells
- Rules for sewage works and water works

Municipal Act (Ontario)

- Municipalities have extensive powers regarding health, safety and nuisance, and regarding the natural environment
- Broad authority to govern their affairs as they deem appropriate
- Municipalities may regulate for the health, safety and well being of the inhabitants of the municipality in matters not specifically provided in the Municipal Act

Clean Water Act (Ontario)

- Clean Water Act passed in 2006 to protect sources of drinking water
- Source protection planning areas are established on a watershed basis and source protection planning committees must oversee the assessment of threats and risks to sources of drinking water
- Threats that are significant require mandatory implementation of source protection plans which are to be approved by the Minister
- Matters provided in the plans will supersede other legislation such as land use planning rules

Safe Drinking Water Act (Ontario)

- Safe Drinking Water Act passed in 2002
- It imposes drinking water standards, establishes rules for operators of facilities, for drinking water systems, for laboratories that do drinking water testing, and for training and certification of operators, among other matters
- Adverse test results from treated water testing must be reported to system owner / operator, Ministry of Environment and medical officer of health and addressed
- Testing and reporting must be made public

Health Protection and Promotion Act (Ontario)

- Mandatory public health programs include community sanitation, safe drinking water, and prevention of communicable disease, among others
- Other mandatory programs include disease prevention, including cardiovascular, cancer and others, and health services to infants, pregnant women in high risk categories and others
- Complaints of health hazard in occupational or environmental health are investigated in conjunction with the relevant ministry

Health Protection and Promotion Act (Ontario)

- Medical Officers of Health have a positive statutory duty to keep themselves informed with respect to occupational and environmental health
- Various ministries have obligations to supply information to the Medical Officer of Health
- Responsibility for Small Drinking Water Systems
- Extensive order powers such as vacating premises, removing materials
- Food premises inspection
- Communicable diseases responsibilities

Health Protection and Promotion Act (Ontario)

- Responsibility to determine potability of community's water
- Issuance of Boil Water Advisories or Drinking Water Advisories is by Medical Officer of Health (pursuant to protocols developed by the Ministry of Health and Long Term Care)

Nutrient Management Act (Ontario)

- Act passed in 2002
- A primary aim is to keep pathogens from surface or ground-water supplies
- Establishes rules regarding application of “nutrients” such as animal manure or municipal sewage biosolids to land, separation distances from wells etc

Technical Standards and Safety Act (Ontario)

- Among other things, inspects, licences and certifies to technical standards such as underground fuel tanks
- Order powers for hazards; Safety and compliance orders
- Regulations for propane storage and handling
- Fuel oil regulations
- Liquid Fuel Regulations



Conclusion

- Extensive array of statutes, jurisdictions and bodies with responsibility for environmental health
- Many cases where cooperation is required
- Important to be familiar with roles, responsibilities, and tools
- Many opportunities to use existing tools and powers for greater public and environmental health protection
- Many opportunities to improve the legislative framework and its application in practice

Canadian Environmental Law Association

HOME SEARCH SITEMAP CELA BULLETIN FRANÇAIS LIBRARY external website



Our Work

- News & Events
- Core Programs
- Topical Collections
- CELA in the Courts
- FAQ
- Newsletter

About CELA

Who We Are



Featured Items and Collections

Water Source Protection

Collection of materials about protecting drinking water sources

Energy Costs and Low Income Ontario Residents

Collection of materials related to energy conservation and affordable electricity pricing in Ontario

Nuclear Phase-Out

Collection of materials related to CELA's position in support of nuclear phase-out in Canada

Partnership for Pesticide Bans

News & Events

May 17 2004

Canada Must Build on Toxics Treaty

May 14 2004

CELA Requests Environmental Commissioner To Investigate Ontario's Refusal To Fix Deficient Water Well Regulation

May 11 2004

Energy conservation could save Ontario \$14 billion: new study

VIEW ALL NEWS AND

Contact information

128

Canadian Environmental Law Association

130 Spadina Ave., Ste. 301
Toronto, ON M5V 2L4
Tel.: 416-960-2284



CELA web site: www.cela.ca
Low Income Energy Network: www.lowincomeenergy.ca
CPCHE website: www.healthyenvironmentforkids.ca
PollutionWatch Website: www.PollutionWatch.org
Water Guardians website: www.thewaterhole.ca
Environment & Law Resource Library: www.ecolawinfo.org