

MEMORANDUM

TO: CELA ENVIRONMENTAL CONTAMINANTS COMMITTEE
(Doug Edward, Joe Castrilli, Kate Davies) and Steve
Frank, Marcia, Doug, Eva

FROM: TOBY

DATE: OCTOBER 8, 1985

At the CELA Board meeting on October 7th, a small committee of Doug, Joe and Kate was established to liaise with me on the proposed amendments to the Environmental Contaminants Act and the consultative committee process. As well, CELA is attempting to represent the other two environmental law groups. For background information, I have attached a copy of my briefing letter to Linda Duncan at the Environmental Law Centre. This should outline the process and issues that will be discussed at our next meeting on October 28 and 29 in Ottawa. I have also attached a copy of the draft minutes from the meeting. It was agreed that the minutes in draft form should be kept confidential. However, this again will keep you informed of the progress of the committee. Since writing the letter to Linda, I have had further discussions on the matter of whether the definition of chemical should include biotechnology. I think that we should state for the record that while legislation should be developed by Environment Canada, it should be a separate scheme rather than part of the new chemical amendments to the Environmental Contaminants Act.

Key issues to be discussed at our next meeting are the definition of "chemical", the inventory and, as noted on page 3, the matter of cost/benefit analysis. I will be circulating a brief document on our position on the issues listed on pages 2 and 3 of my letter to the committee prior to the 28th. Please have any comments to me by the 18th of October. I may give you a call before then to discuss this.

Draft Summary Record
ENVIRONMENTAL CONTAMINANTS ACT AMENDMENTS
Consultative Committee
September 25-26, 1985

1. Adoption of agenda

The agenda was adopted as distributed.

2. Chairman's introductory remarks; introduction of participants

The Chairman noted the complexity of the task delegated to the Committee, and observed that much patience and firm determination will be required if a consensus is to be reached.

It was agreed that limited numbers of observers and resource people be allowed to attend Committee meetings. Those members and observers in attendance during the first meeting are listed in attachments to this Summary Record (see: Attachments No. 1, No. 2).

The Secretary to the Committee was introduced and his duties discussed.

It was agreed that a typed copy of the minutes of Committee meetings be prepared by the Secretary immediately after the completion of each meeting. The Chairman will confirm the content of the minutes and copies of the draft minutes will then be sent to each member (and his or her alternate). Comments are to be forwarded to the Secretary.

3. Committee terms of reference; timetable; reporting requirements; the preparation of legislation

The role that the Committee's final report will play in the legislative decision making process was discussed. It was noted that the report and its recommendations will go directly to the Ministers of Environment and Health

and Welfare. It may then be attached as a reference document in the appendices of a Memorandum to Cabinet.

All members agreed that the report of the Committee must reflect, in its final form, the consensus that is developed at the consultation meetings. Dissenting views will be accounted for in the report. The Chairman guaranteed that the minutes and the final report of the Committee will be agreed to by all members before being released for public information.

It was suggested that general statements of support for the role of the Committee be provided by all stakeholders. D. Bennett (CLC) stated that something less than a promise of commitment but more than an indication of support is required from the federal government. J. Buccini (EC) stated that he will, before the next meeting, seek a letter of endorsement from the Deputy Minister or Minister of Environment, reiterating the commitment of the federal government to a serious review, and to the final report of this Committee.

It was agreed that the Chairman request a press release endorsed by the Minister.

It was agreed that an additional clause be inserted in the Terms of Reference to provide for the inclusion of minority comments in the final report of the Committee. The responsibilities of the Committee through its members therefore now include "clearly identifying issues where consensus agreement was not reached and reporting on the differing views held by each stakeholder". With this addition, it was agreed that the revised terms of reference be annexed to the minutes (see: Attachment No. 3).

4 Committee procedures; resourcing

It was agreed that the minutes are to be regarded as in draft form until accepted at the next meeting of the Committee. Information to constituents is to be provided on a need-to-know basis only. There are to be no statements to the press or interviews by individual members while the

consultations are underway. All inquiries are to be directed to the Chairman.

It was agreed that the minutes shall be written in synopsis form, reflecting general positions. All attachments are to be marked as "Working Documents".

The relevance of the Access to Information Act to the Committee's undertakings was discussed.

The possibility of holding at least one meeting at a location other than Ottawa was noted.

It was deemed to be preferable (but not to be a precondition) that both members and their alternates attend each meeting. Note was taken of those alternates already identified (see: Attachment No. 4).

There was some discussion with regard to the demographic, political and industrial considerations that were involved in selecting the provincial representatives to the Committee.

It was agreed that the Secretary be designated as the Chairman's alternate. Environment Canada will provide an alternate notetaker in such a circumstance.

A discussion of the Committee's timetable ended with the suggestion that the Chairman contact the Minister's office to confirm the working period of the Committee (originally contemplated to be the six to nine month period after the first meeting).

It was noted that the costs of providing Chairman and Secretariat services to the Committee are being shared by the Departments of Environment and Health and Welfare. Certain of the constituent groups represented on the Committee have asked for assistance.

W. Neff (CCPA) stated that the costs and likely impacts on the Canadian economy of any amendment proposal must be considered by the Committee. J. Buccini (EC) noted that Environment Canada will seek a written legal opinion from the Department of Justice as to whether or not there is a legal requirement to undertake a socio-economic impact analysis. A distinction was made by D. Bennett (CLC) as to the relative importance to his organization of distinguishing private versus public sector costs.

5 Consideration of amendment proposals; introduction and general discussion

Presentations were made by the chairpersons of the three federal interdepartmental working groups on upgrading amendments, export notification amendments and new chemical amendments.

There was a discussion of the definition of "export control" and the control of chemicals currently regulated under other legislation (pesticides in particular). Reference was made to existing OECD and UNEP principles.

The new chemical amendments discussion focused on the definition of chemical, inventory development, minimum data requirements, proposed exemptions and the comments received during the public consultation process. The jurisdictional overlap of federal and provincial responsibilities for occupational health and safety, and the sharing of confidential data with the federal, provincial and foreign governments, were also discussed.

6. Other business

Each member was asked by the Chairman to describe the role and constituency of the group or organization that he or she represents.

D. Bennett (CLC) outlined his organization's view of the three groups of amendment proposals. Specific mention was made of the notion of an inventory of new chemicals, and the roster of testing procedures that are to be required for such chemicals. It was suggested that the federal government, as a stakeholder in the consultation process, make specific proposals in light of the comments that it has received on the amendments, and that such

proposals be co-ordinated with the provinces. As a member of various international organizations, the CLC holds strong views on matters related to export notification. It was requested that a legal opinion on whether amendment of the ECA will require a socio-economic impact assessment be obtained by the federal government and presented at the next meeting. CLC concern with public sector costs was reiterated.

S. Skinner (PSAC) noted the importance of agreeing on a mechanism to define a new chemical.

W. Neff (CCPA) and J. Dillon (CMA) stressed the importance of determining what the ultimate economic impact of the future recommendations will be. Expanding the power of the Minister, and additional requirements with respect to record-keeping, investigations and the providing of information are also of concern. Provincial occupational health and safety regulations need to be co-ordinated with federal controls on chemicals.

T. Vigod (CELA) stated that policy areas should be identified initially, and disagreed with any attempt to make a socio-economic impact a part of the final decision-making apparatus.

J. Smith (Ont. MOE) reiterated the importance of avoiding jurisdictional overlap and properly identifying the respective roles of each constituency.

R. Vles (FE) stated that the mechanisms for controlling the introduction of new chemicals into the environment are inadequate, and that Canada's obligations in this regard extend beyond national boundaries.

J. Buccini (EC) and P. Toft (NHW) reaffirmed that their respective departments speak as one voice for the purposes of the Committee. The positions of the federal government departments with regard to the proposed amendments will vary, depending upon the specific issue involved, just as it will for constituents of other members of the Committee. A general level of commitment exists for all of the matters under consideration, but some issues

will be of greater importance to the federal government than others. A survey of the federal government's constituency will be undertaken, and a position will be advocated at future meetings.

It was agreed that a complete list of members, alternates and organizations represented be compiled as soon as possible.

It was agreed that the agenda for the first day of the next meeting should include a discussion of the intent of the provisions of new chemicals, the definition of a new chemical, the definition of a chemical, the concept of a chemical inventory and premarket versus premanufacture notification. Information on existing inventory schemes is to be collectively gathered by members. Each member is to prepare one line statements of principle on each of the latter items for use at the meeting, in bilateral discussions and in conferring with constituents. The second day of the next meeting is to be used for the exploration by members of the more contentious issue of notification, as it relates to the proposals for new chemicals amendments.

It was agreed that members who wish to attach documents or materials to the minutes shall forward such items to the Secretary, who shall distribute them to members, no later than 14 days before the date of the next meeting.

It was agreed that a one-page summary of each of the three interdepartmental working group reports be submitted by the respective chairpersons of those groups to the Secretary for distribution before the next meeting.

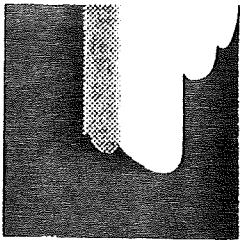
The utility of arranging a trip for Committee members to a toxicology laboratory, or a half-day seminar on what toxicology can and cannot do, in association with a future Committee meeting, was discussed. It was agreed that proposals in this regard will be entertained on the second day of the next meeting.

It was agreed that the next meeting will be held on October 28-29. The Province of Ontario's Department of Labour alternate will be in attendance on the first day of that meeting.

It was agreed that the third meeting of the Committee will be held on December 17-18. New chemicals will be the topic of discussion for most of this third meeting. Half of the second day will be used to discuss export notification.

It was noted that the Chairman is to submit a progress report on the work of the Committee by the end of December.

It was agreed that the question of applicability of a socio-economic impact analysis will be on the agenda for the next meeting. It was suggested that members should try to assemble any available cost data on the various testing procedures that may be involved for such analyses, to assist in developing an accurate cost perspective.



Canadian Environmental Law Association
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September 30, 1985

Ms. Linda Duncan
Environmental Law Centre
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Edmonton, Alberta
T5J 1B2

Dear Linda,

Re: Environmental Contaminants Act Consultative Committee

This should be the first of many notes regarding the ECA consultative process. I will call you on October 7 with more information when I return from a week in Washington.

On the whole, the two-day meeting held in Ottawa on September 25 and 26 was very profitable. Most of the time was taken up with procedural matters and briefings from Environment Canada on the three areas of (1) new chemical amendments; (2) upgrading features; and (3) export notification. We then discussed our upcoming meetings and agenda. I have enclosed a copy of the document summarizing the comments they received for your information. The following are the members of the Committee:

David Bennett (CLC)	John Buccini (EC)
Stu Skinner (PSAC)	Peter Toft (HWC)
Silver Lupul (Alberta Env.)	Ray Vles (FOE)
Jim Smith (Ont MOE)	myself
Jean Roy (Quebec Ont)	1 rep. from Atlantic Prov.
Bill Neff (CCPA)	John Dillon (CMA)

The facilitator is Otto Greiner, a retired chemical engineer associated with the University of Western Ontario. Ray, Bill Neff and Dave Bennett apparently interviewed him during the summer and were satisfied that he could do the job.

The Process

By now you will probably have a letter from Ray indicating that he will be trying to coordinate the environmental groups. The letter was written before our meeting. It then became clear that

CELA was to represent the three environmental law groups and FOE the other environmental groups. Ray will be getting a contract from Environment Canada for funds to coordinate this effort and I will in fact be a sub-contractor to Ray. Therefore, I will be able to charge for all long-distance calls and xeroxing where necessary. You may want to call me collect and then I can call you back and pay for the call from my end. Ray and I have decided that he will continue to send all the environmental groups copies of correspondence relating to the consultation and I will send him copies of my letters. It would be most helpful if you could send copies of your comments on the substantive issues to Ray as well as myself so he can get them at the same time and we can coordinate our response for the next meeting.

The next meeting of the Committee is scheduled for October 28 and 29 in Ottawa. We also agreed that observers will be allowed at our meetings. Therefore, if any of you are in Ottawa at the time of a meeting please attend. In the event that I am unable to appear, WCELA (Bill Andrews) will be the named alternate. The Committee has undertaken to try to maintain a continuity of representatives. It looks like the entire process will last 6-9 months at which time a report will be issued. Areas of consensus and areas where consensus was not met will be clearly stated.

The Next Meeting

We have decided to tackle the new chemical amendments first. The areas that we will focus on are:

1. Intent of the provisions - this will focus our discussion and will attempt to answer why these amendments are needed, what gaps are to be filled, the extent of testing and notification required.
2. Definition of chemical - here I need your help in making a strong case for the addition of biotechnology. As you are probably aware, industry would like to see biotech regulated (if at all) by Agriculture Canada. I think the ECA and Environment Canada/HWC are regulators are the better choice. Let me know your thoughts.
3. Definition of a "new chemical".
4. The inventory - should this just be a list of chemicals or should there be more information required (ie. health and safety data, etc.).
5. Pre-market v. pre-manufacture notice. Any additional arguments you have regarding the necessity for pre-manufacture notice will be appreciated.

These items will no doubt take up between 1 and 1½ days. The rest of the time will be taken up with an "exploration of the

notification issue". Your general thoughts on this issue will be appreciated.

* One last issue we will be dealing with at the next meeting concerns the matter of a cost/benefit analysis. Bill Neff raised this issue and stated that industry wanted a cost/benefit analysis done before our report went to Cabinet. At first he put it that a SEIA should be done. I pointed out that SEIA did not apply to legislation, but only to regulations. Environment Canada has indicated that they will obtain a legal opinion of this for the next meeting. However, Neff was insistent that even if a formal SEIA is not required, our Committee should ensure that some sort of study be done. His point is that if the costs are not documented and then Cabinet asks for costs and they are shown to be prohibitive, the amendments and the work of the Committee may come to naught. I must say that my reaction to cost/benefit analysis is not usually positive, as we all know the environmental benefits are very difficult to quantify and the costs, if estimated by industry, are always inflated. However, I think that some sort of study may have to be done. We should really have a say of who does it, what assumptions are made and what the weight of such a study should have. It may also be a bit premature now as we have not even decided what will go into the Act. However, we clearly don't want a study started after the whole consultation is finished or we'll never see the amendments. My initial thoughts are that the Committee contract out such a study, that terms of reference be negotiated, and that, in any event, the study not be used as a final decision-making tool. Please let me know what you think. I would be very helpful if we could design such a study so that our concerns are addressed. I did state that the purpose of the ECA is to protect human health and the environment and that cost/benefit analysis is not required, only risk to human health and the environment is used to trigger regulation.

The Committee decided that each party will consult with their constituents and that a one-page document would be prepared with short statements on each of the above-noted issues, as well as the cost/benefit item. PLEASE FORWARD YOUR WRITTEN COMMENTS TO ME AS SOON AS POSSIBLE. In this case, it is unlikely that I will be able to get them to the Committee Secretary for circulation two weeks prior to the meeting, but I will want to mail out my compilation one week before the meeting. Therefore, if at all possible, could I have your comments by October 20th?

I believe that this consultative process is a big step forward in the development of legislation. Ray and myself will try to keep

the process on track - industry of course favours delay.

Hope this letter is helpful in bringing you up-to-date. I will call you on October 7th.

Best regards,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Toby Vigod
Counsel
TV/dm Encl.