



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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December 22, 2004

Ministry of Environment
Frank Coschi
Waste Management Policy Branch
135 St. Clair Avenue West, 7th floor
Toronto, Ontario, M4V 1P5

EBR REGISTRY NUMBER RA04E0016
**DRAFT REGULATION: PRE-TREATMENT REQUIREMENTS FOR HAZARDOUS
WASTES PRIOR TO LAND DISPOSAL (LAND DISPOSAL RESTRICTIONS)**

Dear Mr. Coschi:

The Canadian Environmental Law Association (CELA) is a non-profit organization founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizen's groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. CELA also undertakes public education, community organization, and law reform activities funded by government and private foundations.

The purpose of this brief is to provide CELA's comments on Pre-treatment Requirements for Hazardous Wastes Prior to Land Disposal (Land Disposal Restrictions (LDR)) - Draft Regulation. The Draft Regulation was originally placed on the Environmental Bill of Rights Registry for public notice and comments (EBR Registry Number RA04E0016), with a comment period ending on November 27, 2004. The posting was later amended to allow additional time for comment ending on December 31, 2004, for a total comment period of 94 days. It is our understanding that the Ministry of Environment has consulted on the LDR program over a period of years, and that the Draft Regulation is based on the U.S. EPA's LDR regulation.

CELA has undertaken research and published numerous briefs and submissions to government on a great number of proposed environmental legislative and policy reforms concerning waste management. As such, CELA is well positioned to provide comments on the Draft Regulation for Land Disposal Restrictions.

CELA strongly supports the Ministry's proposals for the LDR program in principle and its purposes of strengthening hazardous waste rules for Ontario, and reducing the potential of

hazardous wastes being imported into Ontario to avoid pre-treatment requirements in the United States. CELA welcomes the implementation of the land disposal restrictions as yet another step in the government's efforts to enhance mechanisms to strengthen environmental protection, subject to the following comments.

Lab Packs

CELA is not in support of the proposal that would allow Lab packs to be incinerated to meet LDR requirements. Lab packs, which consist of a number of different types of wastes, may contain substances, which alone or in combination, may be totally inappropriate for incineration. In fact, the incineration of certain combinations of wastes may create even more extremely hazardous waste by-products.

Small Quantity Exemptions

CELA does not support the implementation of a "small quantity exemption" aimed at reducing impacts of the LDR program on small quantity generators. The priority issue should not be the amount of wastes involved, but the nature of the waste substances involved. For example, Persistent Organic Pollutants should never be exempted from LDR requirements. The LDR restrictions are of high importance, and all generators of hazardous wastes should be subject to the same requirements, regardless of the amount they generate.

Phase-In

CELA supports the phase-in of standards based on waste streams and/or sectors over a 5-year period, but is concerned about the potential for longer phase-in periods, contingent on industry presenting data and analysis supporting such longer phase-in periods. Industry, which has been extensively consulted on the framework for the management of hazardous waste, has undoubtedly begun to prepare for the financial impacts of the LDR program in addition to planning for the establishment of treatment facilities. In CELA's opinion, the 5-year phase-in period allows ample time for all industry sectors to meet the LDR standards.

Recommendation:

All LDR treatment standards requirements should proceed by the originally scheduled date of within 5 years of the regulation being filed.

LDR integration with source protection plans

In light of the province's extensive work on water source protection since Justice O'Connor's report of the Walkerton Inquiry, all LDR treatment standards and the proposed phase-in for all waste streams must be integrated with the ongoing development of watershed based source protection plans.

Recommendation:

All LDR treatment standards and the proposed phase-in schedule for all waste streams must be integrated with the province's current initiative in developing watershed based source protection plans.

Thank you for the opportunity to submit these comments. CELA strongly supports the Land Disposal Restrictions Draft Regulation in principle, and subject to the recommendations and modifications noted in this brief.

Sincerely,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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