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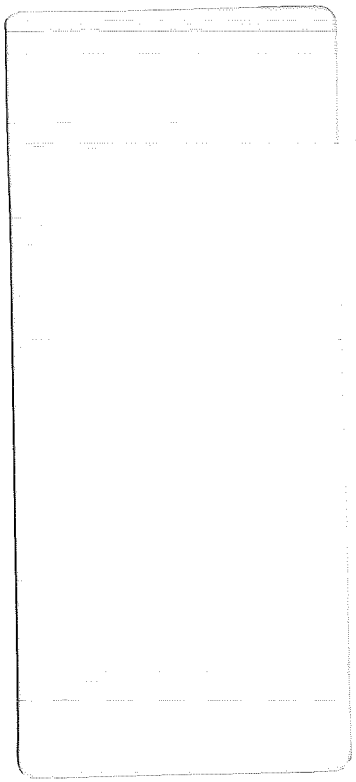

BOARDROOMS, BACKROOMS AND BACKYARDS: ENVIRONMENTAL REGULATION-MAKING IN THE '80s

1982 CELRF CONFERENCE

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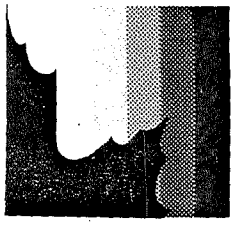

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BOARDROOMS, BACKROOMS & BACKYARDS: ENVIRONMENTAL REGULATION-MAKING IN THE '80s

Time	Topic	Speaker(s)
9:00-9:10	Introduction	CELRF
9:10-10:00	Regulation-Making as a Bargaining Process	Andrew Thompson (U.B.C. Faculty of Law, Westwater Research Centre, E.C.C. Regulatory Reference)
10:00-10:15		Coffee
10:15-12:15	The Process in Action: The Transportation of Dangerous Goods Act	Panel: 1. Lead-off, Duncan Ellison, Director, Transportation of Dangerous Goods Branch, Transport Canada 2. Comments: a. A. G. Sharp, Manager, Truck Transportation Office, Ontario Ministry of Transportation & Communications; Federal-Provincial-Territorial Committee b. Dr. Derek Wisdom, Provost Cartage, Montreal; Canadian Truckers' Association, Dangerous Goods Committee c. T. McTague, General Manager, Canadian Industrial Traffic League; Co-ordinating Committee on Dangerous Goods d. R. W. Fallow, Superintendent of Dangerous Commodities, C. P. Rail; Railway Association of Canada
12:15-12:45		Cocktails, Aloha Lounge
12:45-1:15		Luncheon, Aloha Lounge
1:15-2:00	Keynote Address: Prospects for Regulatory Reform in the '80s	James Peterson, M.P. (Willowdale), Chairman of the House of Commons Special Committee on Regulatory Reform
2:00-3:00	Regulation-Making at Environment Canada	George Cornwall, Director General Water Pollution Control Directorate Environment Canada
3:00-3:15		Coffee
3:15-4:00	Formulation of Regulations under the Ontario Occupational Health and Safety Act	Alan Heath, Director, Standards and Programs Branch, Occupational Health and Safety Division, Ontario Ministry of Labour
4:00-5:00	The Municipal Regulation under the Ontario Environmental Assessment Act	David Young, Senior Environmental Planner, Environmental Assessment Section, Ontario Ministry of the Environment

ENVIRONMENTAL REGULATION--BOARDROOMS, BACKROOMS AND BACKYARDS

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REGULATION-MAKING AS A BARGAINING PROCESS

Under its mandate from Canada's First Ministers to explore the prospects of "deregulation", the Economic Council of Canada commissioned the [1] Westwater Research Centre at UBC to carry out the environmental regulation component of the Reference. For this purpose Westwater commissioned six case studies [2] and three theme papers.[3]

In the case studies the attempt was made to understand

- how much environmental regulation is costing private industry and government
- how these costs are distributed between private and public sectors
- whether costs and benefits of this regulation can be assessed
- whether overlapping and conflicting government jurisdictions cause serious inefficiencies
- how effectively knowledge and information are being used by regulators
- how well are the public involved in regulatory processes
- what can be done to improve the regulatory processes.

When these studies were completed the task fell to me as Project Director to write an Overview, summing up the results of the studies and forming my own views about their conclusions and recommendations. This Overview is now published by Westwater under the title Environmental Regulation in Canada.[4]

The very clear answers supported by the case studies were as follows:

- the administrative cost of environmental regulation is minimal, both in the private and public sectors;
- operational costs are extremely difficult to quantify, but seem to be within the limits reported for other countries and not excessive in general
- much of these operational costs is redistributed from the private sector to the public sector through the operation of taxes and allowances
- it is likely that in general the benefits of regulation substantially exceed costs; but this cannot be proved
- at the margin it is usually not possible to establish that the benefits of a given control measure will outweigh its costs
- overlapping and conflicting jurisdictions do not impose serious inefficiencies and sometimes, as in the case of fish and forests, are beneficial
- the regulatory system fails to use knowledge and information effectively
- the public is inadequately involved in the regulatory process
- legal enforcement procedures are ineffective
- bargaining characterizes the regulatory process.

What surprised me the most about the study results was the pervading tone that we are caught in a process where lack of information, misinformation and uncertainty are the characteristic and normal elements. As a lawyer, I have been trained in the positivist tradition, much like the physical scientist, the economist and the

engineer, to believe that issues can be reduced to identifiable and manageable parts if only we try hard enough. Consequently this pervading tone runs counter to my professional biases.

But I should not have been surprised. It is in the nature of man-caused environmental effects that dealing with them is knowledge-dependent in a special way. By definition they are the unintended spillovers from purposeful activities, usually of a commercial nature. As such, they must be identified and traced - - their potential for harm must be measured and in many cases they cannot be clearly connected to any particular activity. Physical impacts on land and water are difficult enough to monitor. But biological effects are more complex, and most are not understood at all in terms of a total ecology. Yet is is injury to natural life, including human beings, that is most often the focus of environmental concerns.

Ideally, cause and effect relationships between the questioned activity and the apprehended environmental harm must be established. With that knowledge the questions of alternatives and mitigation can be addressed. For this purpose a thorough understanding of available technologies is required. But, since we are talking about government regulation of the questioned activity, the question of social utility must be answered as well. Given our understanding of cause and effect and of available alternatives and mitigative technologies, should the activity be regulated at all? Some attempt must be made to calculate the tradeoffs between the benefits of the activity and the costs of its regulation.

Nor does the need for inquiry stop here. Obviously an analysis of costs and benefits in a broad social sense tells little about the

impacts that will be felt by individuals. The distribution of costs and benefits must be foreseen as well, because equity and fairness are major societal values for which governments carry special reponsibility. Finally, the alternate methods of accomplishing regulation, and the costs of these alternatives, must enter into this ideal decision-making.

Having identified these uncertainties as the central difficulty in pollution control regulation, I was perplexed to read in the Report of the Parliamentary Sub-Committee on acid rain - "Still Waters: The Chilling Reality of Acid Rain" - that there are no "serious difficulties" in specifying emission standards or abatement technologies with respect to SOx and NOx (pp.86.87). Either the results of our case studies were seriously at odds with this view or I was misinterpreting this statement in the Report.

Now I believe that the latter explanation is the correct one. To explain this briefly (for I will come back to this later), specifying emission standards and abatement technology for SOx and NOx is easy provided you put to one side the questions of benefits to be achieved and costs to be borne. It was in this context that the Report says there are no serious difficulties.

But the case studies make clear that, beyond any given technological process, the uncertainties inherent in environmental regulation mean that standards, prohibitions and penalties are normally displaced by negotiation and bargaining. Not only is the mode one of negotiation and bargaining, but this mode is "likely the only system that can work in present circumstances" [5] and "the only one that can cope with the uncertainties of environmental regulation in a practical way." [6].

This conclusion runs counter to the intuitive view that bargaining is something which goes on because regulators are too weak or too venal to enforce environmental standards. Since most environmentalists argue for stricter standards, more rigorous enforcement and stiffer penalties, this finding requires further analysis and justification. My purpose in this paper is to examine (1) what are the limitations of science and technology in the context of government regulation; (2) why are the traditional forms of regulation by prohibition and penalty ineffective; and (3) what are the implications of these difficulties for regulating in a case such as acid rain?

The Limitations of Science and Technology in Government Regulation

Brought to a head by the recombinant DNA controversy, questions about the legitimate role of science are preoccupying science philosophers today.[7] In the DNA case the question was whether even pure scientific research should be regulated in the public interest. More often the questions concern the application of new bio-science technologies in fields such as pre-natal diagnosis or genetic screening. In general, studies of science policy show that, on one hand, the expectations of science as a source of solutions to human problems is unrealistically high and, on the other hand, the use of science as a basis for decisions is unexpectedly low. It is remarkable that three recent studies, two Canadian and the other American, both reveal, contrary to our expectations, that scientific research and analysis play relatively peripheral roles in government decision-making in such fields as health and safety.[8] It was not that regulators

were not confronted with scientific controversy. In the United States study, institutional restraints were identified as limiting resort to science. In particular, legal requirements stood in the way of scientific decision analysis.[9] Uncertainty also undermines the use of science. "Since scientific evidence remains uncertain, regulators need a way to deal with this uncertainty just as much as they need better scientific evidence."[10] Without systematic methods for taking account of uncertainty, the tendency of the regulator is to obscure the fact that scientific controversy exists. This tendency in turn reinforces the public's unrealistic expectations that science and technology can supply the answers. Closely related to the uncertainty problem is the fact that scientific conclusions, when they are applied to solving human problems, invariably incorporate a range of value judgements. If these are acknowledged, the tendency of the pragmatic professional is to say that, since the issue involves value questions, it might as well be confronted as a political choice without the need for an expensive and time-consuming scientific analysis.
Alternatively, the regulator may ignore the value question and carry forward the pretense that his decision is a purely technical one. In this case it is better not to pursue the scientific inquiry too far!

Why Enforcement by Prohibition and Penalty is Ineffective

Debate is long standing about the appropriateness of prohibitions and penalties as instruments for gaining compliance with regulatory goals of government where the offending conduct lacks the moral turpitude that we normally associate with criminal conduct. On one hand it is argued that the criminal law and procedure are placed in

disrespect when employed indiscriminately as compliance mechanisms without regard to fault or misdeed.[11] They are seen to be too heavy handed, to encourage unnecessary evasion strategems, and to operate haphazardly because of the safeguards (loopholes) that are designed for the serious offences with which the criminal law is intended to deal. Or, if prosecution and penalty are successfully imposed, the inappropriate criminal nature of the process is seen as vindictive, stimulating behaviour resentful of law and order. On the other hand, regulatory requirements are often onerous, penalties must be proportionate and procedural safeguards are necessary to protect the citizen from an overreaching bureaucracy.[12] Besides, the criminal law and procedure are there and ready to be used. So why not use them, especially since a substantial number of regulatory offences do cross the border into truly criminal territory.

The Law Reform Commission of Canada, in its Report 3, Our Criminal Law[13], takes the position that "regulatory offences should be excluded from the Criminal Code, should involve no stigma, and should not be punished by imprisonment". An exception would apply in the case of intentional and serious breach of a regulation amounting to a real crime such as fraudulent violation of weights and measures regulation.

But these arguments about the appropriate use of criminal law are not the arguments that one hears with respect to environmental regulation, particularly in relation to pollution control. Rather, when the emotional rhetoric about the evils of pollution dies down, the ensuing debate will be characterized by frustrated consensus that regulatory controls are not working. The environmentalists blame weak and uncommitted enforcement agencies while the regulators plead technological and economic constraints. The economists believe that

they have the solution if only discharge or pollution rights could be traded in a market place, knowing the while that two decades of theory have failed to achieve a viable pollution rights system in Canada or the United States.[14]

There are fundamental reasons why criminal law enforcement procedures are inappropriate. In all branches of obligation the common law requires a sufficient degree of certainty in specification of defaulting conduct so that a finding of fault can be based on known criteria. This is as necessary for the adjudicating tribunal as it is fair to the alleged offender because otherwise the tribunal can rely only on unbridled discretion without any basis for an objectively-determined judgement, which is the essence of impartiality in such decision-making. Where criminal sanctions are involved the required standard of certainty is at its highest for obvious reasons. This means, in the case of pollution, that the ingredients of a pollution offence must be specified with certainty in advance of any prosecution.

But that is not all. It is of the essence of the criminal law that any offence be of general application to a class of potential offenders. It is a truism that punishment must fit the crime, but we do not tailor the crime to fit the individual. Consequently, the offence that is specified with certainty must be one that applies to a class of polluters and not one that is separately defined for each individual polluter. Finally, the criminal law, as the heaviest hand of the state, depends more than other branches of the law on a rational relationship between apprehended harm and the weight of legal consequences.

Now we can define the series of dilemnas confronting the effort to use the criminal law and procedure to sanction pollution offences. First, because of our limited knowledge of natural systems and of the effects of introducing new substances or initiating new processes into the environment, it is virtually impossible to define the ingredients of offences in a way that is specific to the harm done. It is generally acknowledged that pollution standards ought to be ambient standards that are indicia for actual harm done to the specific environment affected. But because our science and technology usually cannot provide these ambient standards, we can achieve certainty in creating offences only by specifying point discharge standards - i.e. so many parts per million of the pollutant measured at the end of the stack or discharge pipe. If such point discharge standards are specified for a particular operating plant such as a smelter, we offend the principle that crimes must not be tailored to individuals. If we then fall back on point discharge standards of general appliction we produce either meaningless or irrational results. The meaninglessness is usually disguised by a statement that the standards are to take effect only as guidelines. Then the bargaining begins to achieve either an exemption from the standards for a particular plant or a specification of new standards to be tailored to the specific plant operation by the terms and conditions of a pollution control permit or licence. Those charged with this task - making rules for a particular plant operation - are bound to see their task, not as creating and enforcing criminal law, but as ongoing regulation of an industry. Because the pollution is part of a beneficial production technology and because control of pollution is itself an evolving technology,

rationality requires the regulator to make trade-offs both between the costs and benefits of the abatement procedures and between what can reasonably be accomplished now and what can be left to be accomplished at a future date.

To sum up, the knowledge gaps about environmental cause and effect, the uncertainties about abatement technologies, the difficulties in calculating costs and benefits, and the persistence of the environment in being unique at any given time and place combine to produce a state of affairs where it is virtually impossible to specify a pollution prohobition and penalty that will meet criminal law tests of certainty, generality and rationality. Hence a bargaining mode!

Some Comments on the Acid Rain Controversy

Again, these conclusions are at cross purposes with the parliamentary report. It argues for national emission standards for point source discharges (Recommendation 23), higher penalties, a special environment enforcement tribunal, additional prosecutors, class action suits and private prosecutions (Recommendations 26 and 27). Were it dealing with "midnight dumpers" who poison our rivers, there would be no disagreement. But the Report is dealing with automobiles, power plants and factories, and I do disagree.

A sociologist from Syracuse University, Dr. Allan Mazur, studies the phenomena of protest movements, using media coverage as an indicator. He shows that acid rain, like most such crises, was first recognized in scientific journals - as recently as 1975 in North America. It vaulted into popular focus with unprecedented speed, hitting peaks which only nuclear issues had previously scaled. Already the peak has passed and the curve is on a downward slope. One question in the mind of Dr. Mazur is whether the decline will be as spectacular as the rise - not likely, because the phenomenon of acid rain, itself, will not disappear!

Why this spectacular rise? After all, "acid rain" is really only a new name for air pollution. We have taken lung cancer and respiratory disease in our stride. Does "acid rain" somehow conjure visions of apocalypse? - of a heavenly retribution taking a toll of life in our lakes? Whatever psychological underpinnings this fear of acid rain may have, there is one contributing factor of more prosaic origin. No previous pollution issue in Canada has involved government in the forefront of inciting popular concerns. Through four ministers and two governments since 1975 the federal Ministry of Environment has maintained a steady media barrage, extending its message into the United States. I do not deny the serious potential of the acid rain phenomenon - along with other mega-environmental concerns such as the greenhouse effect of CO_2, the interference with the ozone layer, the disposal of toxic waters and nuclear arms proliferation. But I am driven to explain the acid rain campaign, at least in some substantial part, as self-serving and self-deluding.

For federal offical s, the acid rain controversy takes the heat off other environmental issues. It's a convenient issue because the targets are non-federal responsibilities - smelters and power plants which are provincially regulated - and the United States. Federal ministers can indeed sound self-righteous. For the federal bureaucracy there is a potential payoff as well. Now that the Department of Fisheries and Oceans has cut its sybling ties with Environment, there is a need for new legislation that will give Environment the clout that exists in the Fisheries Act but is lacking in the provisions of the Clean Air Act and the Canada Water Act. A sense of national emergency, or at least of national concern, is essential for both political and constitutional reasons if Parliament is to take control over

interprovincial air and water quality. For air, federal control is exactly what the Parliamentary report recommends (Recommendation 23).

The self-delusion is the emotional high we gain out of blaming the Americans and labelling INCO and Ontario Hydro as criminals for emitting the offensive oxides. It helps to assuage our personal guilt over polluting automobiles and excessive consumption of energy and metals.

Raising public consciousness over acid rain has been essential and the hype may have been necessary but my concern is that these measures will have been in vain if we do not bring effective measures to bear on the problem. It is here that I believe we are going seriously wrong. The question involves the basic stance that we should adopt in our approach to environmental regulation.

In a recent article entitled Acid Precipitation in North America: The Case for Transboundary Cooperation [15], Professors Douglas Johnston of Dalhousie and Peter Finkle of the University of Victoria, masterfully assess the scientific dimensions of the problem and the steps taken in Europe and North America to deal with it. In two brief paragraphs they describe what they identify to be a major shift in the approach to environmental regulation in Canada. They say that the "orthodox management approach" that "involves a major technical and scientific effort" and aims to establish controls which are "economically appropriate to the contemplated harm", is now discredited because of undue delay and of abuse by those opposed to strict regulation. I quote:[16].

> "The emphasis on adjusting the degree of control on emission sources to the regional air quality and the costs of abatement can, and generally does, result in inadequate control standards".

I find this projection of a new regulatory style in Canada to be a startling and alarming one. It likely explains why the Parliamentary Report found that there would be no serious difficulties in prescribing uniform control standards and abatement technologies for SOx and NOx. For, if you eliminate science, disregard regional air quality requirements and ignore costs, technical solutions are simple - just as simple as the "tall stack" technology of the 1950's and '60's.

I must conclude on a constructive note and give an alternate set of prescriptions. These, I believe, are firmly supported by the case studies:

(1) Stop looking for scapegoats - it is our needs and wants - yours and mine - that are the root of the problem.

(2) Don't abandon science - and the search for technology that does try to identify the specific harm with the appropriate technology to deal with it. Also there must be a search for new strategies of science that will enable us to better cope with the uncertainties that cannot be resolved.

(3) It is environmentally unsound to ignore costs, which is another word for the trade-offs that cannot be avoided in an holistic and interdependent environment. It is unjust to ignore the question of who pays these costs.

(4) Finally, face the fact that even if uniform strict standards enforced by severe penalties are set, the resulting process will likely resolve into a bargaining and negotiating one. At least, that is what has happened with ss.33(2) of the federal Fisheries Act and with the provincial pollution control statutes, and that's what the case studies document.

My belief is that if environmental regulation is seen in its true nature, much can be learned and applied to improve the process. The bureaucrat as bargainer is not well understood and infrequently studied. How is his mandate actually defined? What are the ingredients of his bargaining power? What kind of instruments other than regulations and criminal sanctions might he use? How are arbitrary and excessive use of power to be restrained? And possibly most difficult - how does the bureaucrat avoid being outgunned and overreached by those he regulates?

These are issues to which environmentalists can profitably turn their analytical talents.

Footnotes

1. The final report of the Regulation Reference is entitled *Reforming Regulation, 1981*, Economic Council of Canada, Ottawa,

2. Bibliography # 7, 11, 13, 17, 18, 27.

3. Bibliography # 1, 5, 15.

4. Bibliography # 26.

5. *Ibid*. p. 51.

6. *Ibid*. p. 50.

7. A bibliography of readings on the limits of science has been compiled by the staff of the Science Council of Canada Committee on Science and the Legal Process.

8. Bibliography # 4, 6, 21.

9. Bibliogrpahy # 4, at p. 5.

10. *Ibid*., at p. 15.

11. Bibliography # 10, p. 55.

12. *Ibid*.

13. *Ibid*., pp. 18, 19.

14. Bibliography # 5. Also # 26, p. 47 *et seq*.

15. 14 Vanderbilt Jo. of Transnational Law, 787 (1981).

16. *Ibid*., p. 835.

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3. Campbell, H and Scott, A. Postponement v. Attenuation. An Analysis of Two Strategies for Predicting and Mitigating the Environmental Damage of Large-Scale Uranium Mining Projects, The University of British Columbia, Programme in Natural Resource Economics, Paper ##26, August 1978.

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OUTLINE OF REMARKS

BY

A.G. (TONY) SHARP

MINISTRY OF TRANSPORTATION AND COMMUNICATIONS

PROVINCE OF ONTARIO

PRESENTED TO THE

CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION

CONFERENCE

TORONTO, ONTARIO

MARCH 30TH, 1982

FEDERAL/PROVINCIAL CONSULTATIVE PROCESS IN THE FORMULATION OF A TRANSPORTATION OF DANGEROUS GOODS PROGRAM

I WOULD LIKE TO SPEAK TO YOU NOT ONLY ABOUT FEDERAL/PROVINCIAL CONSULTATION AS IT OCCURRED IN THIS PROGRAM, BUT ALSO THAT PROCESS AS IT OCCURRED WITHIN THE PROVINCIAL GOVERNMENT AND BETWEEN THE PROVINCIAL GOVERNMENT AND MUNICIPAL GOVERNMENTS.

TO START WITH, THE FEDERAL/PROVINCIAL PROCESS. AS YOU HAVE HEARD FROM DUNCAN ELLISON, THIS PROCESS BEGAN BACK IN 1973-74 WHEN THE TWO LEVELS OF GOVERNMENT WERE CONVINCED OF THE NEED FOR UNIFORM CANADIAN REGULATION COVERING THE TRANSPORTATION OF DANGEROUS GOODS. THE FIRST ATTEMPTS AT DRAFTING LEGISLATION WERE MET WITH PRETTY SOLID OPPOSITION BY THE PROVINCES. THIS WAS BECAUSE OF OUR PERCEPTION THAT CONSTITUTIONALLY THE FEDERAL GOVERNMENT DID NOT HAVE THE JURISDICTION TO "COVER THE WORLD" AS THEY ATTEMPTED. INITIAL FEDERAL ARGUMENTS THAT THE LAW WOULD BE VIEWED AS CRIMINAL LAW AND THEREFORE THEY, THE FEDERAL GOVERNMENT CLEARLY HAD JURISDICTION WERE NOT ACCEPTED. THE PROVINCIAL VIEW WAS THEN, AND STILL REMAINS TODAY, THAT WHAT WE ARE DEALING WITH IS TRANSPORT LAW AND THEREFORE REALATIVELY CLEAR LINES OF JURISDICTION EXIST.

WHILE WE DID NOT CONVINCE THE FEDERAL GOVERNMENT OF OUR POSITION, AND STILL HAVEN'T, THROUGH THE NEGOTIATION PROCESS WE WERE ABLE TO CONVINCE THEM THAT RATHER THAN APPLY THE FEDERAL ACT TO AREAS OF PROVINCIAL RESPONSIBILITY THEY ALLOW THE PROVINCES OPTIONS OF ADOPTING, INTO PROVINCIAL LAW THE SAME OR SIMILAR STATUTES. THE FEDERAL GOVERNMENT HOWEVER, IN SUBSECTION 32(4), DO RESERVE THE RIGHT TO PROCLAIM THE ACT TO COME INTO FORCE IN ANY PROVINCE SHOULD NO SUCH AGREEMENT BE REACHED.

THE CONSULTATIVE PROCESS HAS CONTINUED BOTH THROUGH A FEDERAL/PROVINCIAL COMMITTEE AND BI-LATERAL NEGOTIATIONS TO THE POINT WHERE MOST PROVINCES HAVE OR ARE ABOUT TO FINALIZE PLANS FOR THE ADOPTION OF THE REGULATIONS WHICH, I BELIEVE, ARE ACCEPTABLE TO THE FEDERAL GOVERNMENT SO THAT I DO NOT SEE ANY USE OF SUBSECTION 32(4) BEING MADE.

THE MAJORITY OF PROVINCES WILL BE DOING THIS BY PROVINCIAL STATUTE, SUCH AS THE DANGEROUS GOODS TRANSPORTATION ACT WHICH RECEIVED ROYAL ASSENT IN ONTARIO IN LATE 1981. TO MAKE CLEARER EACH GOVERNMENTS' ROLE IN THE PROGRAM, ADMINISTRATIVE AGREEMENTS ARE BEING NEGOTIATED BETWEEN EACH PROVINCE AND THE FEDERAL

GOVERNMENT FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE PROGRAM. IN ONTARIO, AS AN EXAMPLE, THE PROVINCE WILL BE RESPONSIBLE FOR HIGHWAY TRANSPORTATION, AS CONTAINED IN OUR NEW ACT, PLUS SEVERAL OTHER AREAS, SUCH AS STATIONARY STORAGE AND TRANSFER FACILITIES OF GASOLINE AND PROPANE PRODUCTS AS THEY ARE NOW UNDER EXISTING PROVINCIAL STATUTES, WITH THE FEDERAL GOVERNMENT HAVING RESPONSIBILITY FOR THE OTHER MODES AND MOST SHIPPERS ACTIVITY. THIS DIVISION OF RESPONSIBILITY IS DETAILED IN THE AGREEMENT I JUST MENTIONED WHICH IS NOW VERY CLOSE TO COMPLETION. I AM VERY HAPPY TO SAY, THAT WHILE NOT ALWAYS AGREEING, THE CONSULTATIVE PROCESS BETWEEN OUR TWO LEVELS OF GOVERNMENT, HAS WORKED EXTREMELY WELL WITH A MAXIMUM AMOUNT OF CO-OPERATION FROM BOTH SIDES.

NOW, THE REGULATIONS AND THE CONSULTATIVE PROCESS. LET ME BEGIN THIS PORTION OF MY REMARKS BY SAYING THAT THERE EXISTS NO AREA OF TECHNICAL EXPERTISE WITH MY MINISTRY, WHICH INCIDENTALLY WAS GIVEN THE LEAD MINISTRY ROLE FOR ONTARIO, BY CABINET ORDER, IN THE NEGOTIATION PROCESS. IN RESPONDING TO THE MANY DRAFTS WE DID NOT CONCENTRATE IN THAT AREA, LEAVING IT TO MR. ELLISON'S EXPERTS AND INDUSTRY. PROVIDING THOSE TWO

GROUPS AGREED THE PROVINCE OF ONTARIO WOULD ACCEPT THE OUTCOME. OUR AREA OF IMPUT WAS AND CONTINUES TO BE, THE SIMPLICITY, OR LACK THEREOF, AND THE ENFORCIBILITY OF THE REGULATION. BY THE VERY NATURE OF THE BEAST, COMPLEXITY IS BUILT IN. WHEN YOU CONSIDER THE REGULATION COVERS 9 CLASSES, SOME 20 SUB-CLASSES OR DIVISIONS, APPROXIMATELY 2600 INDIVIDUAL PRODUCTS, 4 MODES OF TRANSPORT, SHIPPERS, CONSIGNEES, WAREHOUSEMEN, FREIGHT FORWARDERS PLUS AN INTERFACE WITH INTERNATIONAL REGULATIONS, YOU CAN READILY SEE THAT COMPLEXITY IS INHERENT NO MATTER HOW YOU WRITE IT. HOWEVER, OUR MOST SERIOUS CONCERN, AND THE ONE WHICH HAS TAKEN MOST OF OUR ENERGIES IN RESPONDING TO THE FEDERAL DRAFTS, IS THAT OF ENFORCIBILITY. WE MUST INSIST ON HAVING A REGULATION THAT INDUSTRY AND THE CARRIERS CAN COMPLY WITH. IF A REGULATION IS SO COMPLEX THAT THOSE SUBJECT TO ITS PROVISIONS CANNOT COMPLY BECAUSE OF THIS COMPLEXITY THEN YOU MAY AS WELL NOT HAVE REGULATION.

OF COURSE WE DO NOT KNOW HOW EFFECTIVE WE HAVE BEEN AND WE WILL NOT KNOW UNTIL THE REGULATION APPEARS IN PART 1 OF THE CANADA GAZETTE. IF WE HAVE NOT MET WITH SUCCESS

WE MUST THEN DECIDE WHETHER OR NOT TO JOIN THE PUBLIC DEBATE. EVEN IF WE DON'T, WE WILL STILL CONTINUE, BOTH THROUGH THE FEDERAL/PROVINCIAL COMMITTEE I ALLUDED TO EARLIER AND BI-LATERAL DISCUSSIONS WITH THE FEDERAL GOVERNMENT.

I WOULD LIKE NOW TO SAY SOMETHING ABOUT THE EFFECT THIS PROGRAM HAS HAD ON ONTARIO AGENCY RELATIONS AND EFFORTS WITHIN THE PROVINCIAL GOVERNMENT TO RESPOND TO THE FEDERAL INITIATIVE.

EARLY IN THE PROCESS, THERE WERE 11 EXISTING ACTS ADMINISTERED BY 7 MINISTRIES WHICH WERE IDENTIFIED AS BEING IMPACTED BY THE NEW PROGRAM. DISCUSSIONS BEGAN, WITH M.T.C. AS THE INITIATOR WITH EACH OF THESE MINISTRIES. EACH PROVINCIAL ACT HAD TO BE ANALYSED AND COMPARED WITH THE FEDERAL ACT. THE SAME, OF COURSE WAS DONE WITH ATTENDANT REGULATIONS. AT THE END OF THAT EXERCISE WE WERE LEFT WITH 6 ACTS WHICH DEFINITELY WERE IMPACTED. THESE WERE THE HIGHWAY TRAFFIC ACT, THE GASOLINE HANDLING ACT, THE ENERGY ACT, THE FIRE MARSHALL'S ACT, THE PESTICIDES ACT AND THE ENVIRONMENTAL PROTECTION ACT. NEGOTIATIONS WERE THEN STARTED WITH EACH OF THE MINISTRIES RESPONSIBLE FOR THE

ADMINISTRATION OF EACH OF THOSE NAMED ACTS. DECISIONS HAD TO BE MADE REGARDING WHICH PARTS OF THESE PROVINCIAL ACTS WERE TO BE ALLOWED TO CONTINUE IN FORCE AND WHICH WERE TO BE PRE-EMPTED BY THE TRANSPORT OF DANGEROUS GOODS ACTS, BOTH FEDERAL AND PROVINCIAL. MANY POLICY DECISIONS WERE MADE, WITH SEVERAL BEING RESOLVED AT THE CABINET LEVEL. BUT SUFFICE TO SAY, LIKE THE EXPERIENCE WE HAD WITH THE FEDERAL GOVERNMENT, THIS WAS PRODUCTIVE TO THE POINT WHERE NOW I BELIEVE, WE HAVE THE GROUNDWORK LAID FOR A VERY SUCCESSFUL PROGRAM.

MY FINAL COMMENTS ARE REGARDING THE THIRD AREA OF THE RESPONSE ..... THAT OF THE INVOLVEMENT OF MUNICIPAL GOVERNMENTS. QUITE EARLY IN THE PROCESS IT WAS EVIDENT THAT MUNICIPALITIES MUST BE INVOLVED IN THE PROCESS. THESE ARE THE PLACES WHERE DANGEROUS GOODS ARE MANUFACTURED, PROCESSED, CONSUMED AND THROUGH WHICH THEY ARE TRANSPORTED. THEIR INPUT WAS ESSENTIAL; LET US NOT FORGET MISSISSAUGA.

IN ONTARIO, WE CHOSE TO DO THIS BY INVITING MUNICIPAL ASSOCIATIONS TO JOIN US, IN COMMITTEE, TO DISCUSS THE PROGRAM AND SPECIFICALLY TO ASCERTAIN WHAT THEY THOUGHT

THEIR INVOLVEMENT SHOULD BE. MEETINGS WERE HELD ONCE A MONTH OVER THE PAST YEAR DURING WHICH PROVINCIAL AND FEDERAL OFFICIALS APPEARED TO ADVISE AND GUIDE THE COMMITTEE IN ITS DELIBERATIONS. THIS HAS PROVED TO BE A VERY SUCCESSFUL EXERCISE. NOT ONLY DID IT ALLOW THE MUNICIPALITIES TO BECOME AWARE OF THE PROGRAM, BUT THEY BECAME INVOLVED AND CONSIDERED THEMSELVES TO BE PART OF THE PROCESS, WHICH THEY WERE. THE COMMITTEE FILED A REPORT WITH THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING WHICH CONTAINS MANY RECOMMENDATIONS RANGING FROM A REQUEST TO ALLOW THE DESIGNATION OF DANGEROUS GOODS TRUCK ROUTES TO BEING GIVEN CERTAIN RESPONSIBILITIES IN THE AREA OF EMERGENCY RESPONSE. THE PROVINCE IS NOW ANALYSING THOSE RECOMMENDATIONS, SOME WHICH IF ACCEPTED WILL MEAN FURTHER LEGISLATIVE AMENDMENTS, AND A RESPONSE TO THE REPORT WILL BE FORTHCOMING IN THE VERY NEAR FUTURE.

I WOULD LIKE TO CONCLUDE BY SAYING THAT FROM A GOVERNMENT POINT OF VIEW, EVEN THOUGH WE DID NOT ALWAYS AGREE WITH CERTAIN FEDERAL ACTIONS, NOR THEY WITH PROVINCIAL ACTIONS, THAT THE PROCESS HAS BEEN A HIGHLY SUCCESSFUL EXERCISE, OR PROCESS, IN INTER-GOVERNMENTAL CO-OPERATION. I HOPE IT CONTINUES WHEN THE PROGRAM IS ACTUALLY PUT INTO PRACTICE.

THANK YOU.

Basis of Remarks made by

Dr. Derek J. Wisdom

Technical Director, Provost Corporation

and

Chairman of the CTA Dangerous Goods Committee

THE INVOLVEMENT OF THE CANADIAN TRUCKING ASSOCIATION IN THE DEVELOPMENT OF DANGEROUS GOODS LEGISLATION

Presented to:

CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION CONFERENCE

TORONTO, ONTARIO

MARCH 30th 1982

THE STRUCTURE OF CANADIAN TRUCKING ASSOCIATION

The CTA is a federation of seven regional(provincial) associations - with affiliated organisations in the two territories - which together represent most of the 14,000 for hire trucking companies in Canada. All members of regional associations can avail themselves of the CTA's services which are funded by the local associations.

Unlike most other industries, trucking is not dominated by a few giants controlling an overwhelming proportion of the business . Instead it is comprised of a large number of small to intermediate size companies. Consequently, it is essential for the CTA to be able to represent the diverse interests of such companies which, because of their size, often lack time, money and resources to participate fully.

The CTA's has a Board of Directors which deals with general policy matters and a National Standards Councils which deals with the uniformi and compatibility of various provincial, national and international regulations. Both of these policy groups include at least two representatives from each region with one usually being the local association manager and the other a carrier. In addition, as required, specialised sub-committees - such as the Dangerous Goods Committee - are set up with every effort made to ensure regional representation. To encourage full participation by all sizes of carrier, the CTA covers the travelling and accomodation expenses of regional representatives. Also meetings are rotated between different parts of the country to facilitate participation. Consequently, the CTA can justifiably claim to represent the varied interests of a diverse industry.

The highway transport industry, falling under a mixture of federal and provincial control, has for a long time suffered from non-uniform regulations concerning, Licensing, Weights, Dimensions, Sales Tax, Fuel Tax, Vehicle Inspections, etc... However in the past five years there have been considerable improvements in many of these areas (CAVR, IF1, Uniform Bill of Lading) which can be attributed both to the efforts of the CTA Standards Council and to an increased willingnes on the part of the different provinces to work together. This co-operation must continue since there are still many problems unresolved.

DANGEROUS GOODS REGULATIONS - THE BACKGROUND

As in other areas, the industry has been subject to a variety of non-uniform dangerous goods regulations which have increased in number and complexity with every serious transportation incident. This has been of concern to the industry since the late 1960's and we are on record from that time as being fully in favour of a Uniform Dangerous Goods Code.

Obviously, the production of a comprehensive code is a considerable undertaking and so plagiarism of the tried and tested US. Code (Title 49 was the obvious route, especially since some 70% of our foreign trade is with the US. From 1972-1974 a Government-Industry committee worked on the Canadianisation of Title 49. However in 1974, on the election of Canada to the UN Committee of Experts on the Transportation of Dangerous Goods, Transport Canada (DOT) became more inclined to the IMCO-UN rules than to compatibility with our major trading partner. With this change in policy there was no apparent progress for a couple of years whilst Transport Canada started again from scratch and based its code on the IMCO-UN rules. This change of direction was understandably opposed by a section of our industry. However since we did not want delay the code - any code - we finally agreed not to oppose the change as long as certain conditions were met. These were that:

1) there would be arrangements for reciprocity with the US.
2) the Code would be an improvement on Title 49 (ie comprehensible)
3) it would apply to shippers, carriers and receivers alike
4) it would be uniform across Canada and allow compatibility for all modes.

The first draft of the 'new' Dangerous Goods Code was distributed in 1977 and since that time we have seen 4 drafts with the last being issued in October 1980.

Concurrently with this we have seen a deluge of other regulations concerning dangerous goods emanating from a variety of departments of the different levels of government.

Because of the slow development of the Canadian Code most of the Canadian trucking industry has voluntarily adopted the US. regulations This however gives us considerable problems since we have to encourage and train shippers to meet foreign requirements when there is no legal obligation for them to do so.

You may have noticed recently that trucks are now being placarded with Product Identification Numbers rather than words. This is a result of changes in the US. regulations and is not directly related to the efforts of Transport Canada.

To conclude I wish to repeat that - despite what the Mayor of Mississa might say - the trucking industry has been on record for many years as consistently supporting the production and implementation of a Uniform Canadian Dangerous Goods Code. There have been a variety of excuses for the slow progress: Translation into French, Translation into legales Economic Impact Studies, etc.. We have indicated that we are prepared to be flexible in our approach if it will expedite the affair. However to date note of the delays are of our making.

THE DEVELOPMENT OF THE INDUSTRY'S POSITION

A comprehensive Dangerous Goods Code - even in its simplest form- is by necessity a complex undertaking. No one person can reasonably be expected to fully understand all of the ramifications of such a Code and so the work has to be delegated to a number of specialists. There is no doubt that the Transport Canada personnel have, whilst writing the code, become experts in their respective areas. However, this dependency on a few individuals could cause problems with consistency of interpretation of these complex rules if these people should move to greener pastures in the future.

Because of the complex technical nature, the CTA formed a special sub-committee to develop an industry position on the various dangerous goods regulations. Fortunately, we were able to limit our committee to eight members and still represent all regions and types of trucking.

A meeting of the Dangerous Goods Committee would be convened two or three weeks after the publication of each new draft of the Code. The meeting would last two full days and the Code would be studied clause by clause.

First we would agree on what was a literal interpretation of the clause and then we would discuss its desirability, feasibility and practicalit The only occasion when we would impute an intent would be if something was inexplicably omitted and then we might assume that the omission was intentional. For example Bill C-25 defined 'means of transport' as 'any vehicle, aircraft,waterborne craft or other contrivance'. We were suspicious as to why railway wagons were not specifically included

especially since the railways always seem reticient about accepting uniform intermodal regulations. Also Bill C-25 only applied to people "handling and transporting dangerous goods" which in our opinion left an enormous loophole for the many shippers who do not physically handle their products. I should add that both of these defects have now been remedied.

The most difficult part of the process was agreeing on a literal interpretation. Often our committee would read two divergent meanings into a particular clause and on requesting clarification from Transport Canada we would obtain a third interpretation. There were sections of the code which, even after considerable study, remained incomprehensible to us. Part of the problem was inconsistent terminology which stemmed from the composite nature of the Code. Emergency Response Forms would suddenly become Action Forms and Partially Regulated Goods could, at the turn of a page, be transformed into Other Regulated Materials.

Our finalized submissions on the draft Code were divided into two parts. The first part would contain a general overview and points of major concern whilst the second would contain detailed comments to support our case.

With regard to developing general policy statements or alternative proposals to unacceptable requirements the committee used the 'Straw Man' approach. The most capable person would write the

proposal unassisted and then the committee would pull it apart and modify it until it was acceptable to all. This approach proved to be the most efficient way of reaching a consensus within the severe time constraints.

The submissions on the Act itself were developed by the CTA's executive director (a lawyer), since it was a legal rather than technical document, and then studied by the Dangerous Goods Committee. This was a wise move since the Act contains many legal pitfalls for the trucking industry which would probably have not been grasped by th technically oriented committee. For example: the reversal of onus of proof of negligence, the criminal nature of the offences, the fact that an employee may be charged with an offence without the company being charged, the open-ended civil liability that the industry already faces even though the code of regulations is not in effect (i.e. The transporter has a liability even though the shipper is not yet required to describe his product).

The finalized submissions on the Act and Code were distributed to the CTA's Board of Directors, The Standards Council and the Regional Associations for approval. Invariably they were accepted as written, with few comments, which seems to indicate that the Dangerous Goods Committee did an excellent job of representing the industry's feelings. On the other hand, it might indicate that anything is better than being obliged to read a draft of Transport Canada's Dangerous Goods Code.

INTERACTION WITH TRANSPORT CANADA

Fortunately, despite differences of opinion, we have managed to retain a fairly cordial relationship with Transport Canada. We can usually understand their problems if not their solutions.

Certainly we have no complaint about the amount of consultation. Indeed at one stage we suspected that it was a deliberate strategy to snow us under with paper so that we would stop reading it. (It almost worked).

Whenever we would raise a specific concern we would be brushed off with a statement such as "this is modified in the next draft" (which we would not have, at that point, received). The next draft would indeed be different except that the problem would not be solved, only modified. It is virtually impossible to reach an agreement on anything without starting from some common ground. To make things even more difficult Transport Canada has a marvellous capacity to confuse in the process of explaining.

Despite considerable 'consultation' and a non-adversarial relationship we feel that we have not had much influence on the code to date. Perhaps other groups with diametrically opposed views feel the same way.

The US. DOT. used Transport Canada's early proposals as a justification for requiring Product Identification Numbers to be marked on placards. International Uniformity with <u>enacted</u> regulations is usually desirable

but it must not be used to obtain something which is domestically unacceptable.

Because of the complexity of the legislation and the large number of interest groups there is certainly need for improvement in the quality of consultation. In particular a procedure must be established by which the respective merits of opposing viewpoints may be judged.

INTERACTION WITH PROVINCIAL AND MUNICIPAL GOVERNMENTS

The trucking industry has also had considerable contact with both provincial and municipal governments concerning a variety of dangerous goods regulations. The problems encountered were essentially the same as with the federal government. Sometimes they would agree that certain requirements were impractical- even impossible - but they would not modify their proposals nor tell us how we might achieve compliance.

Our major problem with provincial and municipal proposals stems from vague definitions which leave considerable doubt as to how the rules would be applied. Sometimes attempts would be made to reassure us with statements implying that the particular section would not be strictly enforced. However we would always make literal interpretation of the proposals and would assume that they would be fully enforced.

Unfortunately legislation writers, for some reason,are unable to write regulations which are clear, concise and unambiguous to the people who must comply with them. The indications are that frequently even the people who are required to enforce regulations have problems interpreting them. This applies to all levels of Government and is also a problem in the US. DOT.

Chapter 36 Section 25 requires the federal and provincial governments to come to an agreement for the application of the Federal Act to provincially regulated trucking. What the proposed agreement seemed to do was to apply a Provincial Act to federally regulated trucking.

If I have misunderstood the agreement I make no apologies. The proposal was badly written from a communications point of view with multiple negatives in a single sentence. For example: Interprovincial trucking was described as "transport other than that which does not extend beyond the limits the Province of Ontario. To test the agreement's readability I applied the Gunning Fog Index and found that it should be easily understood by someone with 42 years scholarity.

Sometimes dangerous goods regulations are sprung upon us in disguise. In 1979 the Ministry of Consumer and Commercial Relations gazetted regulations under the title 'Notice of Intent to Regulate Existing Buildings'. To our surprise a section hidden in the middle contained detailed requirements for tank trucks.

Occasionally regulations purporting to improve safety are little more than a thinly disguised public relations exercise. For example, the Ontario MTC has proposed additional stringent inspection standards for road tankers when (1) its own surveys show that these vehicles are generally better maintained than others and (2) the transport of dangerous goods has no significant effect on the numbers of highway deaths or injuries.

If Governments were required to write regulations and their justificatio in a clear unambiguous manner it would considerably reduce the burden on industry and indeed it would facilitate enforcement.

INTERACTION WITH OTHER INDUSTRY GROUPS

An area of great concern to the trucking industry is the transport of packaged dangerous goods. At the suggestion of Transport Canada the CTA committee met with a shipper group from the Retail Council who apparently held diametrically opposed views.

This attempt at reconciling our differences was a total failure for two simple reasons:

1) The CTA position was based on a literal interpretation of Draft 3 whilst the shippers was based on what Transport Canada had said was the intent of Draft 3 (The intent differed considerably from the literal interpretation).
2) The CTA's problems related essentially to retail goods sold in hardware stores whilst the shipper group represented drug, cosmetic and grocery stores.

Our position, proposals and acceptable alternatives were all rejected out of hand and no concrete counter proposals were offered. Despite the fact that our position on this issue has been clearly set out in writing it has been consistently misrepresented by both the shipper and Transport Canada. We found this reaction surprising since we thought that our proposals had many advantages for all parties.

CONCLUSIONS

Whilst the time spent in consultation with the various governments has been more than ample the results were less than might reasonably be expected.

The CTA has tried to deal in the written rather than the spoken word. We have found that by preparing written positions we clarify our ideas in our own minds and also provide a concrete base for negotiation. Invariably negotiations fail because of the lack of a common, agreed starting point which allows one or both parties to modify their arguments in mid-stream. However it is essential that any such written positions be clearly expressed in simple, unambiguous terms.

Governments, if they genuinely desire meaningful input, must write regulations in a form understandable by those to whom they apply. Also where certain requirements are shown to be impractical then the problem should be directly addressed and resolved.

A study in the US. concerning Title 49 has indicated that a major reason for non-compliance is a failure to understand the requirements.

Since the raison d'être of dangerous goods regulations is safety, it is extremely important that such legislation be comprehensible. Clear, unambiguous legislation is in everybody's interest.

THE PROCESS IN ACTION: THE TRANSPORTATION OF DANGEROUS GOODS ACT

BY

T.J. McTAGUE

GENERAL MANAGER, CITL

TO

CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION

THE SHERATON CENTRE
TORONTO, ONTARIO

MARCH 30, 1982

GOOD MORNING LADIES AND GENTLEMEN. IT'S A PLEASURE TO BE HERE WITH YOU THIS MORNING TO SAY A FEW WORDS ON THE CANADIAN INDUSTRIAL TRAFFIC LEAGUE, THE DANGEROUS GOODS CODE COORDINATING COMMITTEE, THAT GROUP'S COMMENTS TO TRANSPORT CANADA ON THE PROPOSED CODE AND ITS ENABLING LEGISLATION - AND THE CURRENT STATUS OF THE DANGEROUS GOODS CODE COORDINATING COMMITTEE.

FIRST, A LITTLE ON THE CANADIAN INDUSTRIAL TRAFFIC LEAGUE - THE CITL. THE CITL WAS FORMED IN 1916 TO REPRESENT THE TRANSPORTATION INTERESTS OF CANADA'S INDUSTRIAL AND COMMERCIAL COMPANIES, I.E. THE USERS OF THE TRANSPORTATION SERVICES - THE PAYERS OF THE FREIGHT BILL. OUR CURRENT STRENGTH STANDS AT ABOUT 475 COMPANIES REPRESENTED BY ABOUT 1000 PERSONS.

"VANCOUVER POLICE AND FIRE OFFICIALS ARE NOW WORKING AROUND THE LOCK TO PUT TOGETHER SOME GUIDELINES FOR DEALING WITH ACCIDENTS INVOLVING DANGEROUS LOADS".

"FIREMEN BATTLING MONDAY'S SPILL SIMPLY USED HOSES TO FLUSH THE CHLORINE-WHICH COMBINES WITH WATER TO FORM HYDROCHLORIC ACID - INTO THE SEWER SYSTEM".

SO SCREAMED NEWSPAPER REPORTS FOLLOWING THE SPILL OF TWO 100 GALLON CANISTERS INTO A DOWNTOWN VANCOUVER INTERSECTION. THE DILEMMA OF THE VANCOUVER FIREMAN IS MERELY THE TIP OF THE ICEBERG IN A SEA OF VARYING DEGREES OF HAZARDOUS MATERIALS REGULATION AND NON-REGULATION IN CANADA.

AS MR. ELLISON STATED A FEW MOMENTS AGO, CONFUSION EXISTS MAINLY BECAUSE ALTHOUGH LEGISLATIVE BASES FOR TRANSPORTATION OF DANGEROUS GOODS REGULATIONS DO EXIST, THEY EXIST NOT ONLY IN LAWS COVERING THE VARIOUS MODES (SEA, AIR, RAILWAY, ETC.) BUT ALSO IN ACTS COVERING PRODUCTS THEMSELVES SUCH AS GASOLINE. SHIPPERS AT PRESENT, HAVE TO TRY TO DISCOVER WHICH, IF ANY, RULES APPLY TO ANY GIVEN SHIPMENT AND, IF THEY ARE INCONSISTENT, WHICH PREVAIL.

...2

THIS GAME OF CATASTROPHE ROULETTE IS PLAYED MOST FREQUENTLY IN CANADA WHEN MAKING SHIPMENTS BY TRUCK.

PRESENT REGULATIONS OF DANGEROUS GOODS MOVEMENT INVOLVES OVER 100 FEDERAL ADMINISTRATIVE AND REGULATORY AGENCIES, VARIOUS PROVINCIAL AUTHORITIES MUNICIPAL AUTHORITIES, BRIDGES, TUNNELS, WAREHOUSES AND STORAGE TERMINALS. THEN THERE ARE EXTERNAL AUTHORITIES RE INTERNATIONAL TRADE - U.S. TITLE 49, UN RECOMMENDATIONS, THE IMCO CODE AND THE IATA CODE.

NOTING THE LACK OF COMPREHENSIVE REULATIONS AND THE MULTIPLICITY OF REGULATIONS AND RESPONSIBLE AGENCIES, MR. JEAN MARCHAND, TRANSPORT MINISTER AT THAT TIME, IN 1973 SET UP AN INTER-DEPARTMENTAL COORDINATION COMMITTEE ON THE TRANSPORTATION OF DANGEROUS GOODS.

SUBSEQUENTLY IN MAY 1974 THE MINISTER ANNOUNCED THE FORMATION IN TRANSPORT CANADA OF:

(A) "A PERMANENT SECRETARIAT TO PREPARE A SINGLE REFERENCE CODE ON THE TRANSPORT OF DANGEROUS GOODS".

(B) "AN INTERDEPARTMENTAL COORDINATING COMMITTEE ON THE TRANSPORT OF DANGEROUS GOODS....TO:

-COORDINATE ACTIVITIES IN THIS AREA
-ENSURE THE COMPREHENSIVENESS AND ADEQUACY OF THE REGULATIONS; AND
-PROVIDE UNIFORMITY.

IN RESPONSE TO PROVINCIAL AND INDUSTRIAL PRESSURES, MR. JEAN MARCHAND INVITED THE PROVINCES TO JOIN WITH HIM IN ESTABLISHING AN OFFICIALS COMMITTEE TO CONSIDER HOW MOTOR VEHICLE REGULATIONS MIGHT BE BROUGHT INTO PLACE. AS A RESULT OF INITIAL TALKS, IT WAS RECOMMENDED TO CABINET IN OCTOBER 1974 THAT THE FEDERAL GOVERNMENT SHOULD INTRODUCE LEGISLATION ENABLING THE PROMULGATION

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OF REGULATIONS FOR THE MOTOR VEHICLE MODE OF TRANSPORT. THE LEGISLATION SHOULD ALSO RECOGNIZE THE NEED FOR INTERMODAL HARMONY AND WOULD BE UTILIZED BY THE PROVINCES AS A SOURCE OF REGULATIONS FOR MOTOR VEHICLE TRANSPORT COMING UNDER THEIR JURISDICTION.

IT WAS AGREED THAT THE NEW CODE WOULD INCLUDE THE FOLLOWING BROAD AREAS:

(1) DEFINITION OF CLASSES OF DANGEROUS GOODS AND PACKAGING GROUPS.
(2) LISTING BY CORRECT SHIPPING THE NAME OF ALL DANGEROUS GOODS.
(3) PACKAGING AND PERFORMANCE REQUIREMENTS.
(4) LIMITATIONS ON COMBINATIONS OF DANGEROUS GOODS AND PACKAGE FOR EACH MODE OF TRANSPORT.
(5) HANDLING AND STORAGE REQUIREMENTS.
(6) RECORD KEEPING AND DOCUMENTATION PROCEDURES.
(7) REPORTING OF ACCIDENTS/INCIDENTS, AND
(8) HAZARD INFORMATION SYSTEM.

MOVING ALONG IN TIME, TRANSPORT MINISTER OTTO LANG ANNOUNCED ON AUGUST 4TH, 1977 THAT THE NEW CODE WHICH WOULD "REDUCE THE NUMBER AND ELIMINATE THE INCONSISTENCIES OF EXISTING REGULATIONS THAT NOW IMPOSE A COSTLY BURDEN ON SOME MANUFACTURERS AND SHIPPERS OF DANGEROUS GOODS" WOULD SOON BE INTRODUCED IN FIRST DRAFT STAGE FOR COMMENT FROM INDUSTRY AND THE PROVINCES. HE ADDED THAT THE CODE WOULD FORM THE BASIS FOR REGULATIONS UNDER A TRANSPORTATION OF DANGEROUS GOODS ACT WHICH WOULD BE INTRODUCED IN PARLIAMENT.

DRAFT NO. 1 OF THE PROPOSED DANGEROUS GOODS CODE WAS DISTRIBUTED BY TRANSPORT CANADA IN OCTOBER 1977 WITH A DEADLINE FOR INDUSTRY COMMENT, OF JANUARY 30, 1978.

THE CANADIAN INDUSTRIAL TRAFFIC LEAGUE RESPONDED TO THE CHALLENGE OF REVIEWING THE DRAFT CODE BY RETAINING A CONSULTANT EXPERT ON THE HANDLING OF HAZARDOUS MATERIALS.

MR. FRANK PETHICK WHO, BEFORE RETIREMENT WAS TRAFFIC MANAGER OF IMPERIAL OIL LTD., WAS ABLE TO REVIEW QUICKLY THE DRAFT, CANVAS LEAGUE MEMBERS FOR THEIR INPUT AND SUBMIT THE LEAGUE'S PRELIMINARY COMMENTS ON THE DRAFT BY THE END OF JANUARY 1978 AND FOLLOWED UP WITH A COMPREHENSIVE REVIEW OF THE DRAFT BY APRIL 18TH, 1978.

CO-INCIDENTAL WITH MR. PETHICK'S WORK ON DRAFT 1, A PROPOSAL WAS CONSIDERED TO INVITE OTHER GROUPS TO JOIN WITH THE LEAGUE IN A JOINT STUDY OF THE DRAFT CODE AND BILL C-53 WHICH WAS DESIGNED TO PROVIDE "ENABLING" LEGISLATION FOR THE NEW CODE AND WHICH WAS INTRODUCED ON MAY 5, 1978.

THE LEAGUE CIRCULARIZED SEVERAL INDUSTRIAL GROUPS ON FEBRUARY 1ST INVITING THEM TO UNITE IN AN EFFORT TO DEVELOPE JOINTLY, ON A COST SHARING BASIS, A SHIPPER POSITION ON THE CODE. THE LEAGUE OFFERED ITS SERVICES IN RESPECT TO COORDINATION, LIAISON, AND PROVISION OF A SECRETARIAT. THIS TYPE OF JOINT APPROACH IS NO STRANGER TO THE LEAGUE - SINCE 1973 WE HAVE ACTED AS A NUCLEUS OF 27 SHIPPER ASSOCIATIONS TO NEGOTIATE WITH THE CANADIAN RAILWAYS IN REGARD TO RULES AND CHARGES COVERING RAILCAR FREE TIME THAT SHIPPERS AND RECEIVERS HAVE AVAILABLE WHEN LOADING OR UNLOADING.

WELL, THIRTEEN ASSOCIATIONS, INCLUDING THE CANADIAN INDUSTRIAL TRAFFIC LEAGUE DID AGREE TO THIS JOINT EFFORT. MR. PETHICK WAS COMMISSIONED TO DO THE CONSULTING WORK FOR THE GROUP. THE FOUNDING MEETING FOR THE GROUP WAS HELD ON MARCH 9, 1978.

OBJECTIVES OF THE GROUP WERE ESTABLISHED AS:

(1) JOINT ANALYSIS AND COORDINATION OF THE CODE
(2) CONSENSES OF PROPOSED CHANGES
(3) CONSENSES ON POSSIBLE ALTERNATIVES
(4) RESOLUTION OF MINORITY SITUATIONS
(5) STATEMENT OF CONSENSUS RECOGNIZING MINORITY POSITIONS

THE THIRTEEN ASSOCIATIONS WHICH BECAME MEMBERS OF THE GROUP WERE:

(1) ADHESIVES & SEALANTS MANUFACTURERS OF CANADA
(2) CANADIAN AGRICULTURAL CHEMICALS ASSOCIATION
(3) CANADIAN CHEMICAL PRODUCERS' ASSOCIATION
(4) CANADIAN FERTILIZER INSTITUTE
(5) CANADIAN INDUSTRIAL TRAFFIC LEAGUE
(6) CANADIAN MANUFACTURERS ASSOCIATION
(7) CANADIAN MANUFACTURERS OF CHEMICAL SPECIALTIES ASSOCIATION
(8) CANADIAN PAINT MANUFACTURERS ASSOCIATION
(9) CANADIAN PULP & PAPER ASSOCIATION
(10) COMPRESSED GAS ASSOCIATION INC. CANADIAN DIVISION
(11) DRUG & TOILET GOODS TRAFFIC CONFERENCE
(12) PACKAGING ASSOCIATION OF CANADA
(13) PROPANE GAS ASSOCIATION OF CANADA INC.

DURING THE STUDY AND COMMENT PERIODS ON THE ~~GOUD~~ FOUR DRAFTS OF THE CODE AND ON THE FOUR "ENABLING" BILLS (C-53, C-17, C-25 AND C-18), MR. PETHICK PREPARED ANALYSES OF THE DRAFTS WHICH WERE THOROUGHLY DISCUSSED AT SEVERAL MEETINGS OF THE DGCCC GROUP. APPROPRIATE BRIEFS AND COMMENTARIES WERE SUBMITTED TO MR. ELLISON'S OFFICE. IN THE CASE OF THE BILLS, COMMENTS WENT TO THE MINISTER AND/OR TO THE HOUSE OF COMMONS TRANSPORTATION COMMITTEE AS APPROPRIATE.

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YOU SHOULD REALIZE THAT WITH THE DIVERSE INDUSTRIAL ACTIVITIES REPRESENTED ON THE DGCC, CONCERNS ADDRESSED BY THE GROUP OF NECESSITY WERE BROAD IN NATURE - WE COULD NOT HOPE TO ADDRESS PROBLEMS CONCERNING A CERTAIN TYPE OF PRODUCT FOR EXAMPLE;

NOW, AS FAR AS BILL C-18 IS CONCERNED, INDUSTRY, ALTHOUGH SUCCESSFUL IN INFLUENCING SOME CHANGES IN THE BILLS, WAS VERY DISAPPOINTED IN THE POTENTIAL PROBLEMS IMPOSED BY SOME SECTIONS SUCH AS -

- THE EXTENSIVE LIABILITIES PLACED AGAINST PERSONS FOR DIRECT OR INDIRECT INVOLVEMENT WITH AN ACCIDENT, INCIDENT OR OMISSION.

- THE UNDULY SEVERE PENALTIES POSSIBLE FOR INFRACTIONS - A MAXIMUM OF $100,000 FOR EACH OFFENCE OR A MAXIMUM IMPRISONMENT OF TWO YEARS.

- TICKETABLE OFFENCES CHARGEABLE BY INSPECTORS AT RATES NOT TO EXCEED $1,000. THIS MAY PROVE TO BE A BURDENSOME PROVISION.

- THE PROVISION THAT PERSONS MAY BE REQUESTED OR DIRECTED TO ACT IN EMERGENCY SITUATIONS WITHOUT ADEQUATE PROTECTION AGAINST POTENTIAL LIABILITIES AND WITHOUT ANY ALLOWANCE FOR COST RECOVERY.

- THE PROVISION FOR PROHIBITION OF THE DISCLOSURE OF INFORMATION "KNOWINGLY" GIVEN AS OPPOSED TO THE ABSOLUTE PROHIBITION REQUIRED TO PRESERVE INDUSTRIAL SECRETS LEAVES INDUSTRY ONLY PARTIALLY PROTECTED IN RESPECT TO CONFIDENTIALITY.

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THE LATEST DRAFT OF THE CODE, THE FOURTH DRAFT ELICITED SEVERAL COMMENTS FROM THE DGCCC SUCH AS:

A THREAT OF REGULATORY IMPOSED OBSOLESCENCE

THESE REGULATIONS THREATEN UNNECESSARY OBSOLESCENCE THROUGH POTENTIAL REDUCTION IN THE LIFE-SPAN OF EXISTING EQUIPMENT AND POSSIBLE PREVENTION OF CONTINUING MANUFACTURE WITH DEMONSTRABLE EVIDENCE OF SIGNIFICANT DEFICIENCES. PROVISION SHOULD BE MADE FOR THE CONTINUING MANUFACTURE AND USE OF CURRENTLY AUTHORIZED CONTAINMENTS, INCLUDING PACKAGINGS, CONTAINERS, PORTABLE TANKS, TANK CARS AND TANK TRUCKS.

DISRUPTION OF INTERNATIONAL TRADE US/CANADA - THE SHIPPING BOTTLENECK

THERE IS AN ABSOLUTE NECESSITY FOR COMPATABILITY WITH U.S. REGULATIONS IN THE INTEREST OF SMOOTH FLOWING CROSS-BORDER TRAFFIC. THE PROPOSED PROVISIONS DEMAND COMPLIANCE WITH CANADIAN REGULATIONS IN RESPECT TO CLASSIFICATION, MARKING, LABELLING, PLACARDING AND DOCUMENTATION NECESSITATING REVISION AT THE BORDER ON BOTH EXPORTS AND IMPORTS. THE RESULTANT BOTTLENECK AT BORDER CROSSINGS AND THE UNREASONABLE ECONOMIC BURDEN CONSTITUTES AN UNJUSTIFIABLE BARRIER TO INTERNATIONAL TRAFFIC, WHICH FOR MANY YEARS HAS MOVED TO THE POINT OF USE IN CANADA OR FROM THE POINT OF PRODUCTION IN CANADA WITHOUT EVIDENCE OF ANY DISADVANTAGE TO PUBLIC SAFETY.

INTERNATIONAL AIR TRAFFIC - A REGULATORY VACUUM

THERE IS NO PROVISION FOR ACCEPTANCE OF THE IATA RESTRICTED ARTICLES REGULATIONS UNDER WHICH CANADIAN AND MANY FOREIGN AIRLINES OPERATE TODAY. THIS CREATES A MAJOR PROBLEM IN THAT RECIPROCITY HAS NOT BEEN NEGOTIATED PERMITTING USE OF CANADIAN REGULATIONS EXTERNALLY.

INTERPRETATION

THERE IS NEED FOR MORE AND BETTER DEFINITIONS, MORE CROSS-REFERENCES. THE INCLUSION OF AN INTERPRETATION SECTION IN THE CODE ACKNOWLEDGES THE NEED FOR INTERPRETATION OF THE CODE, BUT THERE IS INSUFFICIENT RECOGNITION OF ITS PRIME IMPORTANCE TO USERS. THERE SHOULD BE A MORE GENEROUS OFFERING OF DEFINITIONS, FURTHER REVISION IN SOME OF THE EXISTING DEFINITIONS AND MORE EXTENSIVE CROSS-REFERENCING.

CLASSIFICATION

THE VITAL GROUPING OF COMMODITIES IN CLASSES.
THE 9 CLASSES OF DANGEROUS GOODS ARE DESCRIBED ALONG FLASH POINTS AND CLASSIFICATION CRITERIA. MOST SHIPPERS ARE FAMILIAR WITH ALL THESE CLASSES EXCEPT POSSIBLY CLASS 9, WHICH HAS THREE DIVISIONS -

- 9.1 - MISCELLANEOUS PRODUCTS, SUBSTANCES OR ORGANISMS
- 9.2 - ENVIRONMENTALLY DANGEROUS SUBSTANCES
- 9.3 - DANGEROUS WASTES

SPECIFIC ARTICLES ARE LISTED IN SUPPLEMENTARY SCHEDULES (VOLUME L - "BOOKS 2 AND 3"), WHICH PROVIDE THE ONLY AUTHORIZED SHIPPING NAME ALONG WITH SPECIFIC REQUIREMENTS NOT OTHERWISE SHOWN IN THE REGULATIONS.

THERE MAY STILL BE PROBLEMS WITH EXEMPTIONS RELATED TO CONSUMER COMMODITIES AND LIMITED QUANTITIES.

THERE HAS BEEN A GREAT DEAL OF COMMENT REGARDING THE INADEQUACY OF EXEMPTIONS ON QUANTITIES WHICH HAVE HAD AN EXCELLENT SAFETY RECORD OVER THE YEARS. THERE IS GREAT CONCERN OVER LIMITS SET DOWN FOR SAFE QUANTITIES AGGRAVATED FURTHER BY THE FACT THAT EVEN SO-CALLED "SAFE QUANTITIES" REQUIRE IDENTIFIABLE MARKING.

DELIBERATIONS HAVE PRODUCED REASSURANCES RELATIVE TO PROPOSED REVISION, BUT SHIPPERS MUST AWAIT PUBLICATION IN THE CANADA GAZETTE TO DETERMINE HOW THEY ARE REALLY AFFECTED BY REGULATIONS ON DOCUMENTATION, LABELLING/PLACARDING AND MARKING. SHIPPERS OF TOILETRIES AND OTHER SMALL PACKAGINGS CONTINUE TO HAVE GREAT CONCERN IN THIS AREA DESPITE THEIR NUMEROUS APPEALS TO TRANSPORT CANADA THROUGH THE DGCCC AND OTHER TRADE GROUPS. STOP AND THINK ABOUT THIS FOR A MOMENT: THE GOODS WE'RE TALKING ABOUT HERE ARE THE SMALL CONTAINERS OF PERFUME, SHAVING LOTION, PAINT CLEANER AND OTHER PRODUCTS WHICH YOU AND I CARRY HOME FROM THE STORE EVERY "SHOPPING DAY".

DOCUMENTATION

THE CODE ESTABLISHES THE USE OF A DANGEROUS GOODS DECLARATION FOR EACH SHIPMENT AND INTRODUCES THE UNITED NATIONS PRODUCT IDENTIFICATION SYSTEM. THIS SYSTEM INVOLVES THE DISPLAY OF A COMMODITY IDENTIFICATION NUMBER ON SHIPPING DOCUMENTS, LABELS AND PLACARDS. THIS PROCEDURE QUICKLY ACQUAINTS PEOPLE AT THE SCENE OF AN ACCIDENT - POLICE, FIRE, ENVIRONMENTAL PERSONNEL - WITH IDENTIFICATION OF THE COMMODITY. THIS INFORMATION SUPPORTED BY REFERENCE TO APPROPRIATE MANUALS PERMITS PROMPT APPLICATION OF PRELIMINARY PROTECTION MEASURES INCLUDING POPULATION EVACUATION IF NECESSARY.

INDUSTRY'S COSTLY CONTRIBUTION TO SAFETY.

INDUSTRY'S APPARENT ACCEPTANCE OF THE NEW SYSTEM CONSTITUTES A SIGNIFICANT AND COSTLY CONTRIBUTION TO THE DEVELOPMENT OF THE CODE. DGCCC CONTINUIES TO HAVE RESERVATIONS SUCH AS:

- THE PRESENCE OF SOME REDUNDANCY IN RELATION TO "EMERGENCY ACTION" INFORMATION REQUIRED ON THE DECLARATION.

- THE QUESTION AS TO HOW FULLY AUTOMATED TERMINALS CAN SATISFY REQUIREMENTS.

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REDUNDANCY OF CERTIFICATION REQUIREMENTS.

THE DECLARATION MUST INCLUDE A CERTIFICATION CONTAINING PRESCRIBED WORDING INDICATING THAT THE SHIPMENT COMPLIES WITH THE ACT. INDUSTRY CONSIDERS THE CERTIFICATION TO BE REDUNDANT IN THAT THE OFFERING OF A SHIPMENT FOR TRANSPORTATION EXPOSES THE CONSIGNOR TO HIS FULL RESPONSIBILITIES UNDER THE CODE.

DUPLICATED REGULATION OF STORAGE.

THE SECTIONS OF THE CODE ENTITLED "IN-TRANSIT STORAGE, HANDLING AND TERMINAL FACILITIES" APPEAR TO EXTEND THE CODE'S SCOPE BEYOND ITS INTENDED COVERAGE OF TRANSPORTATION. REQUIREMENTS COVERING STORAGE SEEM TO BE ADEQUATELY COVERED BY OTHER REGULATIONS, PERMITTING THE CODE TO CONFINE ITSELF TO THE NEEDS OF TRANSPORTATION, A SUFFICIENTLY COMPLEX PROBLEM IN ITSELF.

AN UNNECESSARY BURDEN ON IMPORTING CONSIGNEES

THE CODE REQUIRES A CONSIGNEE TO ENSURE THAT, IN THE CASE OF IMPORTS, THE CONSIGNOR IS AWARE OF APPLICABLE REGULATIONS AND OF ANY RESTRICTIONS. IT IS FELT THAT THIS IS AN UNNECESSARY BURDEN TO BE IMPOSED ON INNUMERABLE CONSIGNEES WHO, UNLESS THEY ARE CONSIGNORS THEMSELVES, ARE UNDERSTANDABLY LESS AWARE OF REGULATORY AND TRANSPORTATION PROBLEMS THAN THE FEWER CONSIGNORS. CERTAINLY AN EXCEPTION SHOULD BE MADE FOR SHIPMENTS ORIGINATING FROM AREA GOVERNED BY C.F.R. TITLE 49 (UNITED STATES), THE IMDG CODE (INTERNATIONAL MARINE) AND IATA (INTERNATIONAL AIR).

NEED FOR DELAYED IMPLEMENTATION - TRAINING.

THE FOREGOING DISPOSES OF REMARKS DIRECTLY REFERENCED TO THE CODE ITSELF. THE TOPIC CANNOT BE CLOSED, HOWEVER, WITHOUT MENTION OF THE TIMING OF IMPLEMENTATION GENERALLY AND SPECIFICALLY.

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TRANSPORT CANADA REALIZES THE NECESSITY FOR TRAINING PROGRAMMES AND ACCORDINGLY THEY HAVE BEEN DEVELOPING PACKAGES DIRECTED TOWARDS GOVERNMENT PERSONNEL AND EMERGENCY RESPONSE FORCES SUCH AS IN THE FIRE, POLICE AND ENVIRONMENTAL SERVICES. THIS NEED APPLIES ALSO TO CARRIERS AND INDUSTRY, WHO ARE BEDEVILLED BY THE TIME CONSTRAINTS OF TRAINING PROGRAMMES RELATED TO A CODE THE CONTENTS OF WHICH REMAIN UNSETTLED AND INCOMPLETE. ACTING INDEPENDENT OF ITS CONNECTION WITH THE DGCCC, THE CITL HAS PREPARED AND IS CONDUCTING A SERIES OF SEMINARS ARRIVED AT EDUCATING SHIPPERS, AND ANYONE ELSE INTERESTED, ON THE REQUIREMENTS EXPECTED TO BE FORTHCOMING UNDER BILL C-18 AND THE NEW CODE. AND, SINCE THERE IS NO FINALIZED CODE AT THE MOMENT, WE'RE USING DRAFT 4 AS THE BASIS FOR THE PRESENTATION.

I HOPE THESE COMMENTS HAVE GIVEN YOU AN OVERVIEW OF THE INVOLVEMENT OF THE LEAGUE AND THE DANGEROUS GOODS COORDINATING COMMITTEE IN THE EVALUATION TO DATE OF THE DANGEROUS GOODS CODE. THE DGCC CURRENTLY IS INACTIVE STATUS. IT WILL BE RECONSTITUTED AND WILL BEGIN ANALYSING THE CANADA GAZETTE DRAFT 5 OF THE CODE AS SOON AS IT BECOMES AVAILABLE TO US. I REGRET TO SAY THAT OUR ENERGETIC AND CAPABLE CONSULTANT FRANK PETHICK PASSED AWAY IN JANUARY. THIS LOSS IS SURE TO BE FELT BY OUR GROUP WHEN WORK BEGINS ON DRAFT 5. NEVERTHELESS, WE'LL DO OUR BEST TO HELP PREPARE A CODE THAT IS WORKABLE, THAT WILL PROTECT THE WELL-BEING OF THE PEOPLE AND ENVIRONMENT OF CANADA YET WILL NOT RESULT IN A FINANCIAL DISASTER FOR SHIPPERS AND RECEIVERS. WITH THE ECONOMY OF TODAY, THE LAST THING WE NEED IS ANOTHER FINANCIAL DISASTER.

NOTES FOR AN ADDRESS TO

THE ENVIRONMENTAL LAW RESEARCH FOUNDATION

12:30 P.M.

MARCH 30, 1982

SHERATON CENTRE, TORONTO

BY

DR. JAMES SCOTT PETERSON

B.A., LL.B., LL.M., D.C.L.

MEMBER OF PARLIAMENT, WILLOWDALE

INTRODUCTION

1. IN GENERAL

I AM PLEASED TO HAVE BEEN INVITED TO ADDRESS THE 1982 CONFERENCE OF THE CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION, NOT ONLY BECAUSE YOUR WORK HAS SPEARHEADED MANY REFORMS, BUT ALSO BECAUSE WE HAVE NOT WON THE BATTLES AGAINST POLLUTION AND UNSAFE WORK PLACES.

THE GREATEST ENEMY OF REFORM IS THE PRESENT RECESSION AFFECTING ALL WESTERN INDUSTRLIZED COUNTRIES, INCLUDING CANADA AND THE UNITED STATES. LIMITED PUBLIC AND PRIVATE SECTOR FUNDS, COMPETING DEMANDS FOR INCREASED PRODUCTIVITY AND COST REDUCTIONS EVERYWHERE, ARE TAKING THEIR TOLL ON OUR ENVIRONMENT AND ON OUR WORKPLACES. COMPETITION FOR SCARCE FUNDS FOCUSES BOTH PUBLIC AND PRIVATE SECTOR THINKING ON SHORT-TERM SOLUTIONS, MOST OF WHICH INVOLVE COST CUTTING.

NEW EXPENDITURES TO CLEAN UP OUR FORESTS, RIVERS, LAKES AND AIR, OR TO INTRODUCE GREATER HEALTH AND SAFETY IN OUR WORKPLACES, DO NOT, UNFORTUNATELY, BECOME A PRIORITY OF BUSINESS, LABOUR, OR GOVERNMENT DURING THESE TIMES.

2. HOW WE RATIONALIZE POLLUTION

THIS ATTITUDE IS, IN MY VIEW, DISASTROUS. WE CANNOT SET THESE ISSUES ASIDE UNTIL ECONOMIC GROWTH RETURNS, UNTIL TIMES GET BETTER. SOME WILL SAY WE CAN. THEIR RATIONALIZATIONS TAKE THE FOLLOWING FORMS:

A. "WE HAVE BEEN DESTROYING WORKER HEALTH AND THE ENVIRONMENT SINCE THE DAYS OF THE INDUSTRIAL REVOLUTION. A FEW MORE MONTHS OR YEARS OF DESECRATION WON'T MATTER." OR AS ONE MICHIGAN POLITICIAN SAID: "LET'S VIOLATE THE LAW ONE MORE YEAR".

B. "WE ARE NOW AWARE OF THE ISSUES. WE HAVE ENVIRONMENTAL AND SAFETY GROUPS WHO MONITOR POLLUTION AND WHO WILL NOT LET THINGS GET OUT OF HAND. WE HAVE ALREADY TAKEN STEPS TO INSTALL ANTI-POLLUTION EQUIPMENT, AND TO CLEAN UP EMISSIONS. OUR HIGHER STACKS DISPERSE CONTAMINATION MORE EQUITABLY AMONST THE PUBLIC."

C. "AND BESIDES, WE DON'T REALLY HAVE TO WORRY TOO MUCH ABOUT CANADIAN EMISSIONS, WHEN MOST ACID RAIN IS GENERATED BY OUR NEIGHBOUR TO THE SOUTH. NEVER MIND HOW UNITED STATES LEGISLATORS AND REGULATORS LOOK ON OUR EFFORTS, INCLUDING A RECENT ONTARIO ORDER-IN-COUNCIL TO DO AWAY WITH ENVIRONMENTAL HEARINGS FOR COAL-FIRED GENERATORS THAT WOULD EXPORT ELECTRICITY TO NEW JERSEY, AND NOW SCOFF AT OUR ENTREATIES THAT THEY MUST CLEAN UP THEIR BACKYARD FIRST."

3. <u>THE NEED TO ACT</u>

BUT I DO NOT BELIEVE WE CAN OR SHOULD PUT THESE ISSUES

ON THE BACK BURNER UNTIL OUR ECONOMY IMPROVES. WHEN WE DECIDE TO GET REALLY SERIOUS ABOUT OUR ENVIRONMENT AND WORKPLACES, WHAT WILL IT COST TO UNDO THE DAMAGE WE HAVE DONE? HOW MANY TOURIST DOLLARS ARE WE LOSING BECAUSE OUR LAKES AND OUR FISHERIES HAVE BEEN KILLED BY ACID RAIN? HOW MUCH MORE WILL IT COST TO CLEAN UP THAN TO HEAD OFF POLLUTION AT THE PASS?

HOW MUCH DOES IT COST IN INCREASED MEDICAL CARE TO TREAT THOSE WHO HAVE SUFFERED FROM OUR SHORTSIGHTEDNESS? HOW CAN ONE EVEN CONSIDER THAT THERE IS AN ACCEPTABLE DOLLAR TRADE-OFF FOR LOSS OF HEALTH, LIFE, OR LIMB? ARE WE GOING TO SAY TO OUR CHILDREN: "WE SKIMPED TO MAKE YOU WEALTHY. IT'S YOURS TO ENJOY, BUT DON'T GO NEAR THE WATER."

AN AMERICAN POLITICIAN SUMMED IT UP WELL WHEN HE SAID, "I DON'T SEE ANYTHING WRONG WITH SAVING HUMAN LIFE. THAT WOULD BE GOOD POLITICS, EVEN FOR US." THE RECESSION SHOULD

NOT BE VIEWED AS AN EXCUSE FOR INACTION. I DON'T REGARD SUCH COSTS AS EXPENDITURES. RATHER, THEY ARE AN INVESTMENT, AN INVESTMENT THAT WILL PAY DIVIDENDS NOT ONLY IN FUTURE REVENUES AND FUTURE COST SAVINGS, BUT WILL PAY THE MOST IMPORTANT DIVIDENDS OF ALL--INCREASED WELFARE AND HEALTH FOR US, AND FOR FUTURE GENERATIONS OF CANADIANS. IN THE WORDS OF ONE BEFUDDLED AMERICAN POLITICIAN, "THERE COMES A TIME TO PUT PRINCIPLE ASIDE AND DO WHAT IS RIGHT."

II THE NEED FOR REGULATORY REFORM

1. IN GENERAL

WHILE I BELIEVE IT REGRESSIVE AND SHORT-SIGHTED TO LET ECONOMIC CONSIDERATIONS SIDE-TRACK US FROM ENVIRONMENTAL REFORMS, THE COSTS OF THESE REFORMS SIMPLY CANNOT BE IGNORED.

WHICH BRINGS ME TO THE MAIN TOPIC OF DISCUSSION--REGULATORY REFORM IN GENERAL. THE BEST WAY TO BRING ABOUT THE WORKPLACE AND ENVIRONMENTAL REFORMS WE SEEK, AND TO MAKE ALL REGULATORY INTRICACIES MORE RESPONSIVE TO THE NEEDS OF CANADIANS AND MORE COST-EFFECTIVE AT THE SAME TIME, IS BY FIRST CLEANING UP THE PROCESSES BY WHICH WE MAKE REGULATIONS.

2. EXTENT OF REGULATION

AT THE FEDERAL LEVEL ALONE, WE HAVE 114 REGULATORY STATUTES, AND OVER 13,000 PAGES OF REGULATIONS. THE SHEER EXTENT OF GOVERNMENT REGULATION SHOWS TREMENDOUS POTENTIAL IN THIS AREA FOR COST SAVINGS. WHILE IT IS IMPOSSIBLE TO PUT A PRECISE COST ON REGULATIONS, PRESIDENT REAGAN SAID ON FEBRUARY 5, 1981 THAT "REGULATIONS...ADD $100 BILLION OR MORE TO THE COST OF THE GOODS AND SERVICES WE BUY." A HIGHLY CONSERVATIVE GUESS WOULD BE THAT REGULATORY COSTS IN CANADA ARE ABOUT $10 BILLION PER YEAR. FOR EXAMPLE, THE ECONOMIC COUNCIL OF CANADA INDICATED THAT AGRICULTURAL AND TRANSPORTATION REGULATIONS ALONE COST CANADIAN CONSUMERS MORE THAN $2 BILLION PER YEAR.

3. SAVINGS CAN BE ENORMOUS

AS A START, THEREFORE, WE MUST REVIEW ALL EXISTING REGULATORY PROGRAMS IN TERMS OF THEIR COST-EFFECTIVENESS, SCRAPPING THOSE WHICH NO LONGER SERVE THE PUBLIC INTEREST, AND MODIFYING THOSE WHICH CAN BE MADE MORE COST-EFFECTIVE. THE ELIMINATION OF OVERLAPPING OR CONTRADICTORY REGULATIONS COULD LEAD TO SIGNIFICANT SAVINGS IN BOTH THE PUBLIC AND PRIVATE SECTORS. FOR EXAMPLE, THIRTEEN DIFFERENT FEDERAL DEPARTMENTS REGULATE IN THE FIELD OF OCCUPATIONAL HEALTH AND SAFETY, AND THE CONSTRUCTION OF ONE WESTERN PETRO-CHEMICAL PLANT REQUIRED 67 DIFFERENT FEDERAL, PROVINCIAL, AND MUNICIPAL REGULATORY APPROVALS.

ACCORDINGLY, THERE IS AMPLE EVIDENCE THAT SAVINGS FROM EXISTING REGULATORY PROGRAMS ALONE WOULD GO A LONG WAY TOWARDS A NECESSARY PROGRAM OF FISCAL RESTRAINT AND REDUCING

INFLATION, AND AT THE SAME TIME LESSEN THE BURDEN OF REGULATION ON THE PRIVATE SECTOR. THE SAVINGS GENERATED THROUGH COMPREHENSIVE REGULATORY REFORM IN GENERAL COULD HELP BY OFFSET THE ADDITIONAL COSTS THAT WILL PROBABLY NECESSARILY FLOW FROM INCREASED REGULATION IN THE ENVIRONMENTAL AND OCCUPATIONAL HEALTH FIELDS.

III REGULATORY REFORM IN THE UNITED STATES

1. IN GENERAL

IN THE UNITED STATES, REGULATORY REFORM HAS BECOME ONE OF PRESIDENT REAGAN'S MAJOR ECONOMIC PLANKS. THE TERM "DE-REGULATION" HAS ACQUIRED ALL THE MYTHOLOGY AND EMOTIONAL CLAPTRAP THAT USUALLY ATTACHES TO NEW RELIGIOUS MOVEMENTS. TO BELIEVE IN "DE-REGULATION" IS TO BE ON THE SIDE OF THE ANGELS. A DE-REGULATOR ACQUIRES ALL THE RESPECTABILITY ASSOCIATED WITH SUCH OTHER "IN" CULTS AS SUPPLY-SIDE ECONOMICS AND JELLY BEANS.

2. PRESIDENT CARTER

REGULATORY REFORM IN THE U.S. FALLS SQUARELY UNDER THE RUBRIC OF DE-REGULATION. EFFORTS IN THIS FIELD WERE BEGUN UNDER PRESIDENT CARTER. HE TOOK SIGNIFICANT STEPS IN DE-REGULATING INDUSTRIES SUCH AS AIRLINES, TRUCKING AND RAILROADS.

3. PRESIDENT REAGAN

PRESIDENT REAGAN PRESUMABLY WANTS TO GO FURTHER THAN CARTER AND HIT AT SOCIAL REGULATION IN AREAS SUCH AS WORKPLACE SAFETY AND HEALTH, EQUAL EMPLOYMENT, ENVIRONMENT AND CONSUMER PROTECTION. THE CORE OF HIS PHILOSOPHY IS THAT GOVERNMENT INTRUSION INTO THE PRIVATE SECTOR IS JUSTIFIABLE IF, AND ONLY IF, TWO CONDITIONS ARE SATISFIED. FIRST, THE BENEFITS MUST OUTWEIGH THE COSTS, AND SECOND, THE REGULATION CHOSEN MUST BE THE LEAST EXPENSIVE OF THE ALTERNATIVES.

ON THE DAY AFTER HIS INAUGURATION, PRESIDENT REAGAN CREATED THE PRESIDENTIAL TASK FORCE ON REGULATORY RELIEF, CHAIRED BY VICE-PRESIDENT BUSH. THE MAJOR PROGRAM TO BE IMPLEMENTED UNDER THE TASK FORCE'S DIRECTION IS EXECUTIVE ORDER 12291, ISSUED FEBRUARY 17, 1981. ITS MAJOR REQUIREMENTS ARE AS FOLLOW:

A. A COST-BENEFIT ANALYSIS MUST BE APPLIED TO ALL NEW REGULATIONS. IT IS MANDATORY THAT THE LEAST COSTLY REGULATORY APPROACH BE ADOPTED.

B. AN IMPACT ANALYSIS MUST BE PREPARED FOR ALL MAJOR RULES(THOSE ESTIMATED TO COST MORE THAN $100 MILLION IN ONE YEAR). THIS ANALYSIS MUST SET FORTH THE COST-BENEFIT ANALYSIS AND FEASIBLE ALTERNATIVES. THESE ANALYSES AND RULES MUST THEN BE SUBMITTED TO THE OFFICE OF MANAGEMENT AND BUDGET ("OMB") BEFORE BEING IMPLEMENTED. THE OMB CAN REQUEST FURTHER CONSULTATION. IF THE OMB AND THE AGENCY DISAGREE, THEN VICE-PRESIDENT BUSH'S TASK FORCE CAN MAKE THE FINAL DECISION. THUS, THERE IS A REVIEW AND CONSULTATION PROCESS INHERENT IN ALL NEW REGULATION.

C. LASTLY, A REGULATORY AGENDA MUST BE PUBLISHED BY EACH AGENCY EVERY APRIL AND OCTOBER. THE AGENDA WOULD OUTLINE

CONTEMPLATED REGULATORY INITIATIVES IN ORDER THAT THE PRIVATE SECTOR CAN INTERVENE.

IT IS DIFFICULT AT THIS POINT TO ASSESS THE SUCCESS OF THE AMERICAN PROGRAM BECAUSE THE REAL COSTS, IN HUMAN TERMS, MAY NOT SHOW UP FOR MANY YEARS, PARTICULARLY IN THE AREAS OF THE ENVIRONMENT AND OCCUPATIONAL HEALTH AND SAFETY.

BUT ON A PURELY FACTUAL NOTE, THE OMB LAST YEAR REVIEWED 2,800 REGULATIONS, AND ORDERED 35 IMPACT ANALYSES TO BE DONE.

4. U.S. ENVIRONMENTAL REGULATION

IN THE AREA OF ENVIRONMENTAL REGULATION, THE U.S. RECORD IS MIXED.

ON ONE HAND, THE U.S. CLEAN AIR ACT REQUIRES EACH STATE TO FILE WITH THE ENVIRONMENTAL PROTECTION AGENCY A "STATE

IMPLEMENTATION PLAN" OUTLINING HOW IT WILL COMBAT WHATEVER POLLUTION PROBLEMS IT HAS. THE EPA DECIDES WHETHER OR NOT IT WILL APPROVE THE PLAN. IF A STATE DOES NOT SUBMIT A PLAN, THE EPA CAN IMPOSE ONE. IN ANY CASE, THE FEDERAL EPA ENFORCES ALL STATE POLLUTION PROGRAMS.

IN PRACTICE, THOUGH, THINGS WORK QUITE DIFFERENTLY. STATES CAN REQUEST CHANGES OR RELAXATIONS IN THEIR POLLUTION GUIDELINES. THIS YEAR ALONE, THE EPA HAS GRANTED CHANGES THAT WILL RESULT IN ONE MILLION MORE TONS OF SO2 BEING MITTED IN THE U.S. THAN IN THE PREVIOUS YEAR. CONSIDERING THAT U.S. TOTAL SO2 EMISSIONS ARE IN THE NEIGHBOURHOOD OF 30 MILLION TONS PER YEAR, THIS IS A SUBSTANTIAL INCREASE.

THE EPA IS, HOWEVER, WORKING ON CREATIVE ALTERNATIVES TO DIRECT STANDARDS REGULATION. ONE OF THE MOST INTERESTING

IS THE "BUBBLE" CONCEPT, IN WHICH ACCEPTABLE POLLUTION STANDARDS ARE SET FOR A GEOGRAPHICAL AREA, AND THE POLLUTERS MUST NEGOTIATE AMONG THEMSELVES TO KEEP LEVELS BELOW THE STANDARD. THERE ARE NOW 20 BUBBLES OPERATING IN THE U.S., WITH 100 APPLICATIONS PENDING.

THE REDUCTION IN COSTS TO THE PRIVATE SECTOR ARE DRAMATIC. SO FAR, EACH "BUBBLE" HAS RESULTED IN AN AVERAGE SAVING TO THE FIRMS INVOLVED OF $2 MILLION PER YEAR PER BUBBLE.

IV REGULATORY REFORM IN CANADA

1. TASK FORCE REPORT

A. IN GENERAL

UNLIKE THE U.S., WHICH HAS FOCUSED ALMOST EXCLUSIVELY ON DE-REGULATION, CANADA'S THRUST HAS BEEN TO REFORM THE PROCESS BY WHICH REGULATIONS ARE MADE.

THE HOUSE OF COMMONS SPECIAL COMMITTEE ON REGULATORY REFORM RECOMMENDED A TWO-PRONGED ATTACK:

(i) CLEAN UP OLD REGULATIONS

(ii) ENSURE THAT NEW REGULATIONS ARE MORE COST-EFFECTIVE

B. NOTICE AND COMMENT

THE MAIN ELEMENT INVOLVED IN MAKING BETTER, MORE COST-EFFECTIVE REGULATIONS IS GREATER PRIVATE SECTOR INPUT THROUGH ADVANCE NOTICE AND CONSULTATION.

TO PUT IT SIMPLY, GOVERNMENT MUST MAKE IT EASIER FOR THE PRIVATE SECTOR TO BE HEARD. OUR TASK FORCE SUGGESTED:

(i) THAT REGULATORS DEVELOP PUBLIC LISTS OF GROUPS THAT WOULD BE CONCERNED WITH THEIR REGULATORY INITIATIVES, AND WHO MUST BE CONSULTED, OR AT LEAST GIVEN THE OPPORTUNITY TO BE HEARD.

(ii) THAT REGULATORS PUBLISH A REGULATORY AGENDA OUTLINING PLANNED INITIATIVES

(iii) THAT, IN ALL CASES, IMPACT ANALYSES BE MADE TO DEFINE CLEARLY THE PROBLEM AND ALTERNATIVES.

C. PUBLIC INTEREST GROUPS

IN ADDITION, THE TASK FORCE RECOMMENDED APPROPRIATE FUNDING FOR PUBLIC INTEREST GROUPS, SO THAT CONSULTATION WOULD NOT BECOME ONLY THE PREROGATIVE OF THE MOST WEALTHY GROUPS. CONSULTATION CANNOT BE EFFECTIVE IF ONE CONSULTS ONLY WITH SOME OF THE INTERESTS INVOLVED. THE TASK FORCE CONCLUDED THAT REGULATIONS CREATE WINNERS AND LOSERS, AND THAT THE MAKING OF REGULATIONS IS ESSENTIALLY AN ADVERSARIAL PROCESS. THE BEST RESULTS ARE FOUND WHEN ALL PARTIES ARE PRESENT, INFORMED AND WELL REPRESENTED. I WAS VERY ENCOURAGED THAT THE ECONOMIC COUNCIL OF CANADA SUPPORTED THIS RECOMMENDATION IN ITS FINAL REPORT, AND SOME PROGRESS HAS BEEN MADE IN INCREASING THE FUNDING TO THOSE GROUPS WHO REPRESENT THE PUBLIC INTEREST.

2. WHAT WE HAVE ACCOMPLISHED

REGULATORY REFORM IS AN ISSUE THAT DOES NOT OFTEN GRAB HEADLINES. WE CAN, HOWEVER POINT WITH PRIDE TO SEVERAL POSITIVE DEVELOPMENTS OVER THE PAST TWO YEARS.

A. OFFICE OF THE COORDINATOR OF REGULATORY REFORM

THE GOVERNMENT HAS SET ABOUT IN WHAT I BELIEVE TO BE A RESPONSIBLE, ALBEIT LOW-KEY FASHION TO IMPLEMENT MANY OF THE REFORMS THAT HAVE BEEN PROPOSED TO IT BY OUR TASK FORCE, BY THE ECONOMIC COUNCIL, AND BY OTHERS, SUCH AS THE LAMBERT COMMISSION AND THE JOINT STANDING COMMITTEE ON STATUTORY INSTRUMENTS AND REGULATIONS.

IN THE FALL OF 1980, THE HONOURABLE DON JOHNSTON, PRESIDENT OF THE TREASURY BOARD, ESTABLISHED THE OFFICE OF THE COORDINATOR OF REGULATORY REFORM ("OCRR"). OVER THE PAST TWO YEARS, OCRR HAS UNDERTAKEN A 12-POINT PROGRAM. THE MAJOR COMPONENTS WERE:

(i) A MASSIVE CLEAN-UP OF OUTDATED REGULATIONS AND STATUTES.

(ii) ELIMINATING THE BURDEN OF RECORD RETENTION BY BUSINESS. THE OCRR ESTIMATES THAT BUSINESS STORES OVER 170,000,000 CUBIC FEET OF RECORDS AT A COST PER YEAR OF $500,000,000.

(iii) ENCOURAGING DEPARTMENTS AND AGENCIES TO PUBLISH REGULATORY AGENDAS, SIGNALLING NEW REGULATORY INITIATIVES TO THE PRIVATE SECTOR.

THE WORK OF THE OCRR HAS ALREADY HAD SOME WELCOME EFFECTS. BOTH THE NATIONAL ENERGY BOARD AND THE ATOMIC ENERGY COMMISSION HAVE RECENTLY PUBLISHED THEIR FIRST REGULATORY AGENDAS. BOTH AGENCIES ARE COMMITTED TO PUBLISHING FURTHER AGENDAS TWICE A YEAR, AND STATE THAT THEIR INTENT IS TO MAKE IT EASIER FOR INTERESTED INDIVIDUALS AND GROUPS TO PARTICIPATE IN HEARINGS.

B. PRIVY COUNCIL OFFICE AND DEPARTMENT OF JUSTICE

SINCE OUR TASK FORCE REPORTED TO PARLIAMENT, BOTH THE PCO AND THE DEPARTMENT OF JUSTICE HAVE UNDERTAKEN FURTHER STUDIES OF REGULATORY REFORM.

THE JUSTICE DEPARTMENT IS WORKING ON A NUMBER OF THE TECHNICAL ASPECTS, INCLUDING A CLEARER DEFINITION OF "REGULATION".

WHEREAS THE OCRR HAS DEVOTED ITS ATTENTION TO FEDERAL GOVERNMENT DEPARTMENTS, THE PRIVY COUNCIL OFFI E REPORT DEALS WITH REGULATORY AGENCIES. IT HAS NOT BEEN RELEASED, BUT I ANTICIPATE THAT ITS RECOMMENDATIONS WILL COVER AREAS SUCH AS HOW APPOINTMENTS ARE MADE, AND METHODS OF STREAMLINING THE HEARING PROCESS BUT AT THE SAME TIME ALLOWING FOR THE GREATEST POSSIBLE PRIVATE SECTOR INPUT.

C. DEPARTMENT OF THE ENVIRONMENT

OF GREATEST INTEREST TO THIS GROUP, I AM SURE, WILL BE

THE 4-POINT PUBLIC CONSULTATION PROGRAM ANNOUNCED BY THE HONOURABLE JOHN ROBERTS LAST FALL.

ITS STATED OBJECTIVES ARE:

(i) TO ALLOW GREATER PUBLIC CONSULTATION

(ii) TO OPEN THE REGULATION-MAKING PROCESS TO PUBLIC SCRUTINY

(iii) TO MAKE DEPARTMENTAL REPORTS AND OTHER INFORMATION MORE WIDELY AVAILABLE TO THE PUBLIC

(iv) TO PROVIDE FUNDING FOR TRANSPORTATION COSTS INCURRED BY GROUPS WHEN MAKING REPRESENTATIONS

IN A SPEECH LAST OCTOBER, MR. ROBERTS SAID: "WE HAVE CONFIRMED AGAIN AND AGAIN THE VALUE OF CONSULTATION WITH AS MUCH OF OUR PUBLIC AS POSSIBLE. THE INFORMED, RESPONSIBLE DIALOGUE THAT CAN TAKE PLACE IN AN ATMOSPHERE OF RESPECTFUL CONSULTATION IS ESSENTIAL TO ACHIEVING OUR COMMON GOALS."

JOHN ROBERTS IS ON THE RIGHT TRACK, AND I WISH TO COMMEND HIM PUBLICLY FOR HIS SERIOUS COMMITMENT TO REG-

ULATORY REFORM, AND FOR HAVING TAKEN WORTHWHILE STEPS TO IMPLEMENT IT IN HIS DEPARTMENT. HIS EXAMPLE WILL HOPEFULLY ENCOURAGE OTHER DEPARTMENTS AND MINISTERS TO FOLLOW SUIT.

D. TASK FORCE ON ACID RAIN

THE WIDELY-QUOTED STILL WATERS REPORT ON ACID RAIN ALSO MADE SEVERAL RECOMMENDATIONS THAT FOLLOW THE KIND OF APPROACH WE SUGGESTED IN THE TASK FORCE ON REGULATORY REFORM. RECOM-ENDATION 25 OF STILL WATERS CALLED FOR A UNIFORM NOTICE AND COMMENT TYPE PROCEDURE UNDER THE CLEAN AIR ACT, AND THE REPORT ALSO SUGGESTED THAT THE GOVERNMENT CONSIDER ALTERNATIVE REGULATORY APPROACHES, SUCH AS THE AMERICAN "BUBBLE" CONCEPT.

3. OUR MAJOR FAILURE: NO ACCOUNTABILITY TO PARLIAMENT

THERE ARE STILL AREAS WHERE WE HAVE NOT YET BEEN AS SUCCESSFUL. TO ME, ONE OF THE MOST IMPORTANT REFORMS PROPOSED BY THE REGULATORY REFORM TASK FORCE WAS THE FORMATION OF A SPECIAL HOUSE COMMITTEE ON REGULATORY REFORM, MADE UP OF TEN

MEMBERS FROM ALL PARTIES, WITH A TWO-YEAR MANDATE. ITS JOB WOULD BE TO REVIEW NEW REGULATIONS, AND TO OVERSEE THE IMPLEMENTATION OF THE GOVERNMENT'S REFORM PROGRAM. WE, AS A COMMITTEE, FELT THAT IT WAS IMPORTANT TO ALLOW PARLIAMENT MORE INPUT, AND TO PROVIDE A FORUM FOR REGULATORS TO ACCOUNT TO PARLIAMENT.

THIS SPECIAL COMMITTEE HAS NOT YET BEEN ESTABLISHED.

V CONCLUSION

EVEN STILL, I AM HEARTENED BY THE RECENT GENERAL TREND TOWARD MORE OPENNESS IN GOVERNMENT, WHICH FALLS DIRECTLY IN LINE WITH OUR TASK FORCE REPORT. JONATHAN SWIFT, THE 18TH CENTURY POET AND POLITICAL OBSERVER MADE THIS COMMENT ON GOVERNMENT ACTIVITY:

"PROVIDENCE NEVER INTENDED TO MAKE THE MANAGEMENT OF PUBLIC AFFAIRS A MYSTERY, TO BE COMPREHENDED ONLY BY A FEW PERSONS OF SUBLIME GENIUS, OF WHICH THERE ARE SELDOM THREE BORN IN AN AGE."

I FEEL THAT AN IMPORTANT KEY TO UNLOCKING THE MYSTERY OF PUBLIC AFFAIRS IS AN ENHANCED ROLE FOR PARLIAMENTARY COMMITTEES. IMPERFECT AS THEY ARE, THEY OFFER A PUBLIC FORUM FOR SPECIFIC ISSUES. FOR EXAMPLE, FIVE MAJOR BUDGET ITEMS HAVE BEEN REFERRED TO THE FINANCE COMMITTEE; AND THAT COMMITTEE HAS ALSO BEEN ASKED BY THE HOUSE OF COMMONS TO MAKE SUBSTANTIVE POLICY RECOMMENDATIONS WITH RESPECT TO BANK PROFITS. THE JUSTICE COMMITTEE WILL SOON BEGIN SPECIAL CONSIDERATION OF THE PROBLEM OF SOLICITING FOR THE PURPOSES OF PROSTITUTION, AND THE HEALTH AND WELFARE COMMITTEE RECENTLY COMPLETED A SPECIAL REFERENCE ON FAMILY VIOLENCE.

THE CRY FOR PARLIAMENTARY REFORM ENGENDERED BY THE IMPASSE IN THE HOUSE OF COMMONS THIS MONTH WILL, I HOPE, BE AN OPPORTUNITY FOR FURTHER COMMITTEE REFORM. OUR TASK FORCE RECOMMENDED THAT COMMITTEES BE SMALLER, WITH LIMITED SUBSTITUTION OF MEMBERS, AND BE EMPOWERED TO HIRE EXPERT STAFF. THE TREND TOWARD ASKING COMMITTEES TO MAKE SUB-

STANTIVE POLICY SUGGESTIONS IS A GOOD ONE, AND WILL, IF CONTINUED, AID OUR REGULATORY REFORM EFFORTS SIGNIFICANTLY.

THE VALUE OF GREATER CONSULTATION AND DISCUSSION BEFORE REGULATIONS ARE IMPLEMENTED IS RECOGNIZED BY BOTH THE HOUSE OF COMMONS AND THE PRIVATE SECTOR. FOR THE LATTER, CONSULTATION RESULTS IN BETTER REGULATIONS. FOR PARLIAMENT, CONSULTATION AVOIDS THE NEED FOR HARD-LINE POLITICAL DECISIONS WHICH ARE DIFFICULT TO REVERSE IN THE LIGHT OF PRACTICAL REALITIES.

THE IMPORTANCE OF REFORMING OUR REGULATORY PROCESSES GOES TO THE HEART OF OUR SYSTEM OF GOVERNMENT. THE LATE PRESIDENT OF THE UNITED STATES, JOHN F. KENNEDY, SAID IT BEST:

"THE MEN WHO CREATE POWER MAKE AN INDISPENSIBLE CONTRIBUTION TO THE NATION'S GREATNESS. BUT THE M,EN WHO QUESTION POWER MAKE A CONTRIBUTION JUST AS INDISPENSIBLE, ESPECIALLY WHEN THAT QUESTIONING IS DISINTERESTED. FOR THEY DETERMINE WHETHER WE USE POWER OR POWER USES US."

THIS, LADIES AND GENELEMEN, IS THE CHALLENGE WE FACE IN THE NEXT DECADE. THE PROCESS OF REFORM HAS BEGUN. IT IS OUR TASK--THE TASK OF ALL OF US--TO MAINTAIN ITS MOMENTUM.

SEMINAR ON ENVIRONMENTAL REGULATION

"BOARDROOMS, BACKROOMS AND BACKYARDS"

CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION

MARCH 30, 1982

TOPIC: OPENING UP THE REGULATORY PROCESS:

A CHALLENGE FOR THE EIGHTIES

PRESENTED BY: GEORGE CORNWALL

DIRECTOR GENERAL, WATER POLLUTION CONTROL DIRECTORATE

ENVIRONMENTAL PROTECTION SERVICE

ENVIRONMENT CANADA

I'D LIKE TO BEGIN BY SAYING THAT I'M HAPPY TO REPRESENT ENVIRONMENT CANADA AT THIS SEMINAR, SPONSORED BY THE CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION. I FOUND ITS TITLE INTRIGUING, AND NOT A LITTLE PROVOCATIVE. "BOARDROOMS, BACKROOMS AND BACKYARDS--ENVIRONMENTAL REGULATION". I WONDER JUST WHO IS SUPPOSED TO BE REPRESENTING WHOM? ANY CORPORATE NEGOTIATOR WOULD BE HAPPY TO BE CALLED A REPRESENTATIVE OF THE BOARDROOM; THE TITLE HAS A RING OF SUCCESS TO IT. THE INTERESTS OF THE BACKYARD--THOSE OF THE MAN IN THE STREET--ARE OBVIOUSLY INTENDED TO BE REPRESENTED BY OUR CAPABLE PUBLIC INTEREST GROUPS. DOES IT FOLLOW, THEN, THAT THE GOVERNMENT PERSONNEL HERE ARE RELEGATED

TO HAVING JUST COME FROM THEIR SMOKE FILLED BACKROOMS? I CERTAINLY HOPE THAT IS NOT THE PERSPECTIVE.

IN EXPLORING THE TOPIC "OPENING UP THE REGULATORY PROCESS: A CHALLENGE FOR THE EIGHTIES" I WILL WANT TO REFLECT, IN A NON-DETAILED WAY, WHERE WE'VE BEEN AND WHERE WE'RE HEADED IN A REGULATORY PROCESS SENSE IN ENVIRONMENT CANADA.

GOVERNMENT AGENCIES ARE OFTEN CAUGHT IN THE MIDDLE; THEY GET IT FROM BOTH SIDES IN THE TENSION OF THE ONGOING DEBATE BETWEEN INDUSTRY AND PUBLIC INTEREST GROUPS. FROM ONE SIDE COME COMPLAINTS OF "STRANGLING RED TAPE" AND OVER-REGULATION; FROM THE OTHER THE CONSTANT CRY THAT REGULATIONS DO NOT GO FAR ENOUGH IN PROTECTING THE PUBLIC INTEREST, AND THAT BOTH EVER STRICTER CONTROLS AND MORE RIGOROUS ENFORCEMENT ARE NEEDED. WHILE DUCKING THIS CROSSFIRE, GOVERNMENT MUST ALSO ALWAYS BE CONSCIOUS OF ITS FURTHER RESPONSIBILITIES FOR THE GENERAL ECONOMIC WELFARE OF THE COUNTRY, AND FOR ENSURING THAT ALL OF THE COMPETING INTEREST GROUPS WITHIN SOCIETY HAVE ACCESS TO THE DECISION MAKING PROCESS.

ACTUALLY, THE NECESSITY FOR ENVIRONMENTAL REGULATION IS RECOGNIZED IN ALL QUARTERS OF OUR SOCIETY, BY REPRESENTATIVES OF INDUSTRY AS WELL AS ENVIRONMENTALISTS. THAT REGULATIONS SHOULD PROTECT THE ENVIRONMENT AND THE HEALTH AND SAFETY OF CANADIANS IS NOTHING MORE THAN JUST AND REASONABLE. EVEN THOUGH INDUSTRY REPRESENTATIVES MAY SOMETIMES CONSIDER SOME REGULATIONS TO BE ONEROUS, ENVIRONMENTAL PROTECTION REGULATION IS PART OF THE GAME, AND MOST EXECUTIVES LOOK UPON IT AS A LEGITIMATE PART OF DOING BUSINESS IN OUR SOCIETY. IT IS EXPECTED THAT GOVERNMENT WILL OVERSEE INDUSTRY IN THOSE AREAS WHERE THE

WELLBEING OF CITIZENS MUST BE PROTECTED. PETER STAUFT, A VICE PRESIDENT OF IMPERIAL OIL AND ITS NATURAL RESOURCES COORDINATOR, WAS RECENTLY QUOTED IN AN INDUSTRY PUBLICATION:

> "TAKE ENVIRONMENTAL MATTERS, OR DRILLING PRACTICES AND SAFETY STANDARDS. ALL OF US HAVE TO RECOGNIZE THAT PEOPLE EXPECT THEIR GOVERNMENTS TO LOOK OUT FOR SOCIETY'S INTERESTS IN THESE AREAS."

THE QUESTION, THEN, IS NOT WHETHER TO REGULATE OR NOT TO REGULATE, BUT HOW TO DESIGN THE BEST REGULATORY PACKAGE POSSIBLE: ONE THAT PROTECTS SOCIETY AND THE ENVIRONMENT, YET IS FAIR TO ALL PARTIES CONCERNED; THAT IS COMPREHENSIVE YET EFFICIENT; THAT WILL MEET THE CHALLENGES THAT ARE ONLY JUST BECOMING KNOWN TO US AS OUR SCIENTIFIC KNOWLEDGE EXPANDS AT AN EXPONENTIAL RATE; AND THAT CAN BE FORMULATED WITH A MAXIMUM OF INPUT FROM ALL SECTORS OF OUR SOCIETY. AS PROFESSOR THOMPSON PUT IT IN AN EARLIER PAPER ON ENVIRONMENTAL LAW IN THE EIGHTIES, THE CASE CAN BE MADE, NOT NECESSARILY FOR <u>MORE</u> REGULATION, BUT FOR <u>BETTER</u> REGULATION.

ACTUALLY, IT COMES AS A BIT OF A SURPRISE TO MOST PEOPLE TO FIND OUT JUST HOW LITTLE REGULATORY AUTHORITY THE FEDERAL GOVERNMENT REALLY HAS IN THE ENVIRONMENTAL FIELD. TAKE JUST ONE EXTREMELY IMPORTANT EXAMPLE, THE MANAGEMENT OF HAZARDOUS WASTES. UNDER PRESENT LEGISLATION, THE FEDERAL GOVERNMENT HAS A DIRECT MANDATE IN THREE AREAS ONLY, AND THAT MANDATE COVERS ONLY A PORTION OF POSSIBLE REGULATORY ACTIVITIES:

1. IT HAS RESPONSIBILITY FOR THE INTERNATIONAL AND INTER-PROVINCIAL MOVEMENT OF HAZARDOUS WASTES UNDER THE AUTHORITY OF THE TRANSPORTATION OF DANGEROUS GOODS ACT. (THIS ACT IS PRIMARILY

NOW THIS MIGHT SOUND LIKE QUITE A FORMIDABLE BUREAUCRACY; ONE WHOSE INITIALS COULD BE REDUCED TO A SATISFYINGLY IMPENETRABLE AND INDECIPHERABLE ALPHABET SOUP. BUT I WOULD LIKE TO RETURN TO THE POINT I MADE EARLIER: ENVIRONMENT CANADA'S ENFORCEMENT RESPONSIBILITIES FALL UNDER THE MANDATE OF ONLY FIVE ACTS, AND OUR DUTIES IN SUCH AREAS AS WASTE MANAGEMENT AND THE CARRYING OUT OF ENVIRONMENTAL ASSESSMENTS UNDER THE ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS ARE STRICTLY LIMITED TO JURISDICTIONS UNDER FEDERAL CONTROL.

SO I THINK IT IS A BIT UNFAIR FOR PEOPLE TO TALK OF STRANGLING RED TAPE, OR EXCESSIVE FEDERAL REGULATION, WHEN IT IS SURPRISING HOW LIMITED OUR MANDATE REALLY IS, AND JUST HOW MUCH AUTHORITY FOR THE ENVIRONMENT LIES WITH THE PROVINCES. WHILE OUR COOPERATION WITH THE PROVINCIAL GOVERNMENTS HAS BEEN EXCELLENT, AND THERE ARE MANY PROGRAMS AND AREAS OF ASSISTANCE THAT I MIGHT MENTION, IT CAN HARDLY BE SAID THAT ENVIRONMENT CANADA HAS EITHER THE MANDATE OR THE POWERS TO CARRY OUT A STRICT AND UNIFIED PROGRAM OF ENVIRONMENTAL REGULATION ACROSS CANADA.

I DON'T MEAN TO IMPLY THAT WE SHOULD INSTANTLY BE GIVEN SUCH A MANDATE EITHER. I WOULD LIKE TO DISPELL ANY NOTION THAT I ADVOCATE THE COLLECTION OR CONSOLIDATION OF THE VARIOUS FEDERAL INSTRUMENTS FOR ENVIRONMENTAL PROTECTION UNDER THE ENVIRONMENT CANADA ROOF; EMPHATICALLY NOT! ENVIRONMENT CANADA HAS AN "ADVOCACY" MANDATE WHICH CAN AND MUST ENSURE THAT THE FEDERAL GOVERNMENT GIVES ATTENTION TO THE PRESERVATION OF ENVIRONMENTAL QUALITY IN ITS POLICIES, PROGRAMS AND DECISION. IN THE SAME WAY, WHEN AN ENIVRONMENTAL QUALITY ISSUE IS UNDER PROVINCIAL JURISDICTION WE WILL ADVOCATE; PROBABLY EVEN PROD AND CAJOLE, THE PROVINCE INTO PROPERLY FULFILLING ITS RESPONSIBILITES FOR

MAINTAINING ENVIRONMENTAL QUALITY.

I HAVE GIVEN THIS VERY BRIEF SKETCH OF OUR REGULATORY RESPONSIBILITIES TO ILLUSTRATE A PARADOX: NO MATTER WHAT REGULATIONS ARE ACTUALLY ON THE BOOKS, ENVIRONMENT CANADA IS CAUGHT IN A BIND--SOME VERY LOUD VOICES WILL COMPLAIN OF OVER-REGULATION, AND OTHERS WILL BE BOUND TO SAY THAT PRESENT REGULATIONS DON'T GO NEARLY FAR ENOUGH.

WE ARE ESPECIALLY SENSITIVE TO THE COMMENTS AND CRITICISMS OF INTERESTED PARTIES FROM ALL SECTORS OF SOCIETY NOWADAYS, SINCE BOTH ENVIRONMENTAL REGULATIONS AND THE WAY IN WHICH THEY ARE FORMULATED ARE IN A STATE OF FLUX. THIS IS QUITE NATURAL, BECAUSE THE VERY WAY IN WHICH CANADIAN SOCIETY SEES ITSELF AS EXISTING IN THE ENVIRONMENT IS ALSO CHANGING, ALONG WITH OUR KNOWLEDGE AND UNDERSTANDING OF THE ECOSYSTEM. THE ENVIRONMENTAL ISSUES WHICH CONFRONT US NOW ARE SUBSTANTIALLY MORE COMPLEX, AND AT THE SAME TIME MORE SUBTLE, THAN THE PROBLEMS WHICH WERE FACED IN THE SIXTIES AND SEVENTIES.

IN THOSE DAYS, WE BEGAN TO COPE WITH WHAT MIGHT BE CALLED "GROSS AND OBVIOUS" SOURCES OF POLLUTION--CHIMNIES BELCHING BLACK SMOKE, UNTREATED MUNICIPAL SEWAGE AND THE ACCELERATED EUTROPHICATION OF SOME OF THE GREAT LAKES, INDUSTRIAL PLANTS USING OUR WATER RESOURCES TO DISCHARGE UNTREATED OR UNDERTREATED EFFLUENT. OUR FIRST EFFORTS OF NECESSITY HAD TO BE DIRECTED TOWARD PROBLEMS SUCH AS THESE, WHICH WERE SEVERE IN NATURE AND WIDESPREAD IN SCOPE, BUT WHOSE SOLUTIONS WERE NONETHELESS RELATIVELY STRAIGHTFORWARD.

NOW THE SHIFT IS AWAY FROM THE "SIMPLE" DAYS OF SINGLE-SUBSTANCE,

SINGLE-MEDIA CONCERNS; PROBLEMS OF A MULTI-SUBSTANCE MULTI-MEDIA NATURE ARE MUCH MORE COMPLEX. WE ARE FACED WITH MORE SUBTLE AND INSIDIOUS POLLUTION PROBLEMS. OFTEN, MUCH EFFORT HAS TO BE EXPENDED IN THE ASSESSMENT OF WHETHER A GIVEN SUBSTANCE EVEN PRESENTS A HIGH-HAZARD DANGER. IN MANY AREAS, THE STATE OF OUR KNOWLEDGE IS SUCH THAT THIS MUST BE DONE AT THE COST OF GREAT TIME AND EXPENSE, BEFORE WE CAN EVEN BEGIN TO TAKE MEASURES TO COPE WITH A PROBLEM. IN THE CASE OF DIOXINS, IT HAS BEEN DECIDED THAT THEY PRESENT A CLEAR ENOUGH DANGER, IF IMPROPERLY HANDLED, THAT WE ARE PROPOSING TO TAKE PRUDENT CONTROL ACTIONS WITHOUT WAITING TO CARRY OUT FURTHER MASSIVE AND EXPENSIVE TESTS.

THE CASE OF DIOXIN PROVIDES A GOOD EXAMPLE OF THE PRINCIPLES OF "ACCEPTABLE RISK". THE SUBSTANCE IS SIMPLY SO TOXIC THAT THE RISKS ASSOCIATED WITH IT POSE TOO GREAT A THREAT TO SOCIETY FOR IT TO CONTINUE AS AN UNCONTROLLED SUBSTANCE, EVEN THOUGH FURTHER TESTS COULD STILL BE CARRIED OUT. OFTEN, IN THE PUBLIC'S PERCEPTION, ANY RISK IS UNACCEPTABLE. YET RISKS ARE INEVITABLE, SINCE THE ATTAINMENT OF ZERO RISK, OR ZERO POLLUTION IS, FOR PRACTICAL PURPOSES, UNATTAINABLE. THERE ARE NO "SAFE" LEVELS OF POLLUTION; THERE ARE, RATHER, ACCEPTABLE LEVELS OF RISK, THE DETERMINATION OF WHICH ENTAILS SOCIAL, ECONOMIC AND ENVIRONMENTAL TRADE-OFFS. THIS IS ONE REASON WHY THE SOCIO-ECONOMIC IMPACT ANALYSIS CAN BE SUCH A VALUABLE TOOL. WHEN SEIAS ARE USED TO ASSESS A PROPOSED REGULATION, THE RESULTS MUST BE MADE PUBLIC PRIOR TO PROMULGATION, SO THAT SOCIETY CAN HAVE THE OPPORTUNITY TO WEIGH THE COSTS AND BENEFITS OF REGULATION AGAINST THE PROSPECTS OF NON-REGULATION. IF A GOOD REGULATION IS ONE THAT IS ACCEPTED BY SOCIETY AS NEEDED AND WORTH THE COSTS OF ENFORCEMENT THEN THE SENSE OF NEED AND WORTH SHOULD BE EXAMINED FROM ALL PERSPECTIVES, NOT JUST THE ECONOMIC ONE. THE SEIA FORMULA IS A USEFUL ONE. IT IS ONE WHICH I ENDORSE AS

BRINGING MORE DISCIPLINE INTO THE PROCESS WHEREBY SOCIETY MARSHALS ITS EVIDENCE AND MAKES ITS DECISION.

THE SITUATION IS COMPLICATED BEYOND THE NECESSITY OF ACTING ON THE BASIS OF RISK, WHICH IS OFTEN INTANGIBLE AND UNKNOWABLE. THE MENACE OF TOXIC CHEMICALS DEMANDS IMMEDIATE ACTION, YET SOCIETY DOES NOT SEEM WILLING TO GIVE UP ITS MODERN LIFESTYLE, WHICH WOULD BE IMPOSSIBLE WITHOUT CHEMICALS. NOR DO WE SEEM QUITE READY AS YET TO ASSUME THE RESPONSIBILITIES AND COSTS OF THE MEASURES WHICH MUST BE TAKEN IN THE TOXICS FIELD FOR PROTECTION, PRESERVATION AND CLEANUP.

AS WE ALL KNOW, THE PROBLEMS ARE ENORMOUS, AND ENORMOUSLY PRESSING. OVER 60,000 CHEMICALS ARE IN COMMON USE, AND A HIGH PERCENTAGE OF THEM ARE TOXIC. WE PRODUCE OVER ONE MILLION TONS OF CHEMICAL WASTE ANNUALLY IN CANADA, AND IT HAS BEEN ESTIMATED THAT 85% OF IT IS DISPOSED OF IN AN UNSATISFACTORY MANNER. IN THE PROVINCE OF ONTARIO ALONE, A HAZARDOUS WASTES INVENTORY PROGRAM HAS IDENTIFIED OVER 17 MILLION POUNDS OF PCBs AWAITING DISPOSAL.

NOW THERE ARE WAYS OF SAFELY DISPOSING OR INCINERATING SUCH SUBSTANCES, AND IT IS IMPERATIVE THAT WE DO SO. HOWEVER, CHEMOPHOBIA, PUBLIC CYNICISM AND THE NOT-IN-MY-BACKYARD (NIMBY) SYNDROME ARE ALL QUITE PERVASIVE THESE DAYS. WHILE THE TOXICS PROBLEM IS QUITE CLEAR AND VERY URGENT, THE SOLUTIONS TO IT ARE ANYTHING BUT STRAIGHTFORWARD. NEW AND MORE EFFECTIVE TECHNIQUES OF COMMUNICATING WITH THE PUBLIC WHOSE "BACKYARDS" ARE AFFECTED ARE DESPERATELY NEEDED. FURTHER, THE TIMES OF ECONOMIC RETRENCHMENT IN WHICH WE LIVE COMPLICATE THINGS EVEN MORE.

AND THE TOXICS DILEMMA IS BUT ONE ITEM ON THE ENVIRONMENTAL AGENDA FOR THE EIGHTIES. ACID RAIN HAS BEEN WELL IDENTIFIED, AND THE SUBJECT OF A GREAT DEAL OF STUDY, YET THE PROBLEM IS MULTI-FACETED. ITS SOLUTION, WHICH WE ARE ALL LONGING FOR, WILL NOT BE FOUND IN A SINGLE QUARTER. LIKEWISE, AS OUR POPULATION GROWS AND OUR SOCIETY CONTINUES OR INCREASES ITS DEMANDS FOR ENERGY, RAW MATERIALS AND LIVING SPACE, OUR SEARCH FOR RESOURCES WILL INTENSIFY. ARCTIC AND OFF-SHORE DEVELOPMENT, MANAGEMENT OF OUR WATER SUPPLIES, INSURING THE CONTINUED PRODUCTIVITY OF OUR FOREST RESOURCES, CONTINUED MONITORING OF OUR NUCLEAR ACTIVITIES; ALL THESE DUTIES MUST BE PERFORMED WITH INCREASING SOPHISTICATION. JUST AS THE GOOD CRAFTSMAN CHOOSES THE PROPER TOOL FOR THE TASK AT HAND, CANADIAN SOCIETY MUST DEVELOP THE PRECISE REGULATORY INSTRUMENTS THAT WILL ENABLE IT TO COPE WITH THE ENVIRONMENTAL CHALLENGES OF THE FUTURE. THESE NEW REGULATORY TOOLS WILL BE AS SOPHISTICATED AS THE PROBLEMS THEY WILL BE DESIGNED FOR, AND THEY WILL UNDOUBTEDLY HAVE TO BE RE-FORGED AND SHARPENED THROUGH USE.

THE NECESSITY BOTH FOR FORMULATING SUCH REGULATIONS AND FOR INSURING MAXIMUM PUBLIC INPUT FROM ALL SECTORS OF SOCIETY IN THE PROCESS OF THEIR FORMULATION HAS BEEN RECOGNIZED FOR QUITE SOME TIME. IN JULY OF 1978, THE PRIME MINISTER ASKED THE ECONOMIC COUNCIL OF CANADA TO DEVELOP GUIDELINES WHICH GOVERNMENTS, BOTH FEDERAL AND PROVINCIAL, COULD USE TO DETERMINE WHAT PRACTICAL CHANGES IN PUBLIC POLICY MIGHT BE UNDERTAKEN TO IMPROVE GOVERNMENT REGULATION, AND WHAT AREAS OF REGULATION MIGHT BE LIKELY TO HAVE A SIGNIFICANT ECONOMIC IMPACT. THE COUNCIL'S INTRIM REPORT, PRODUCED IN NOVEMBER, 1979, WAS TITLED "RESPONSIBLE REGULATION" AND IT IDENTIFIED SEVERAL SHORTCOMINGS IN THE FORMULATION OF NEW REGULATIONS.

THESE INCLUDED:

-- INADEQUATE NOTICE OF NEW REGULATORY INITIATIVES TO INTERESTED PERSONS.

-- INADEQUATE CONSULTATION WITH INTERESTED PERSONS DURING THE DEVELOPMENT OF PROPOSALS FOR NEW REGULATIONS.

-- INADEQUATE PUBLIC ACCESS TO INFORMATION REGARDING THE REGULATORY ACTIVITIES OF GOVERNMENTS.

-- UNEQUAL OPPORTUNITIES FOR PARTICIPATION IN DECISIONS CONCERNING NEW REGULATIONS AND EXISTING REGULATORY PROGRAMS BY THOSE WHO HAVE AN INTEREST IN THEM.

THE REPORT ALSO URGED GOVERNMENT DEPARTMENTS AND AGENCIES "TO CONTINUE AND, WHEN APPROPRIATE, EXPAND THEIR INFORMAL PROCEDURES FOR CONSULTATION WITH INDIVIDUALS AND GROUPS THAT MIGHT BE AFFECTED BY REGULATORY INTERVENTION."

I FIND THESE RECOMMENDATIONS COGENT AND TO THE POINT. INDEED, THEY FORM A CORNERSTONE OF ENVIRONMENT CANADA'S NEW INFORMATION AND CONSULTATION POLICY, AND WILL HAVE A SIGNIFICANT IMPACT ON THE WAY IN WHICH NEW REGULATORY INSTRUMENTS WILL BE DEVELOPED.

IN THE PAST, AND UNTIL QUITE RECENTLY, ADMINISTRATIVE POLICIES AND PROCEDURES FORMULATED BY DEPARTMENTS HAVE NOT BEEN SUBJECT TO PUBLIC SCRUTINY. PERHAPS THE RATIONAL FOR THIS WAS A PERCEIVED NECESSITY FOR BUREAUCRATS AND ADMINISTRATORS TO GO ABOUT THEIR WORK UNHINDERED. AN UNFORTUNATE CONSEQUENCE WAS THAT REGULATORY DECISION MAKING THROUGHOUT THE GOVERNMENT HAS OFTEN LEGITIMATELY BEEN THOUGHT OF AS REMOTE AND SECRETIVE. IN THE ENVIRONMENTAL FIELD, HOWEVER,

THE INDUSTRY OR GROUP TO BE REGULATED HAS HAD SIGNIFICANT OPPORTUNITY TO UNDERSTAND AND INFLUENCE THE INTERNAL DEPARTMENTAL REGULATORY DECISION-MAKING PROCESS. THIS WAS MADE POSSIBLE BY INDUSTRY PARTICIPATION IN THE PROCESS AT THE INVITATION OF EPS OFFICIALS.

THIS SELECTIVE INVOLVEMENT BY INDUSTRY HAS BEEN JUSTIFIED ON TWO GROUNDS: FIRST, IN ORDER TO ASCERTAIN THE NATURE AND EXTENT OF A GIVEN THREAT TO HUMAN HEALTH OR THE ENVIRONMENT IT IS ESSENTIAL TO OBTAIN INFORMATION WHICH ONLY A GIVEN INDUSTRY ITSELF POSESSES; SECOND, INDUSTRY COOPERATION IS NECESSARY TO ENSURE THAT THE CONTROL MEASURES DEVELOPED ARE OPERATIONALLY FEASIBLE AND CAN ACTUALLY BE PUT IN PLACE. THIS CONSULTATIVE APPROACH TO REGULATION HAS BEEN CALLED THE GOVERNMENT-INDUSTRY TASK FORCE APPROACH.

ONE OF ITS GIVENS IS THAT GOVERNMENT MUST PLAY A DUAL ROLE IN THE PROCESS, AS BOTH REPRESENTATIVE OF THE PUBLIC AND MEDIATOR BETWEEN THE PUBLIC AND INDUSTRY. PERHAPS IT WOULD BE MORE ACCURATE TO SAY TRIPLE OR EVEN QUADRUPLE ROLE, SINCE GOVERNMENT DECIDES WHAT THE REGULATORY POLICY ULTIMATELY WILL BE, AND IS ALSO CHARGED WITH ENFORCEMENT.

THE TASK FORCE APPROACH WAS FOUND TO HAVE ITS INADEQUACIES, PARTICULARLY IN THE AREA OF PUBLIC PARTICIPATION. ONE OF THE PRINCIPAL RECOMMENDATIONS OF THE DECEMBER, 1980, REPORT OF THE SPECIAL HOUSE COMMITTEE ON REGULATORY REFORM WAS THAT "PUBLIC INTEREST GROUP PARTICIPATION IN THE FEDERAL REGULATORY PROCESS BE ENCOURAGED, AND SUPPORTED BY HIGHER LEVELS OF FINANCIAL ASSISTANCE." TODAY A CONSENSUS HAS EMERGED ON THE DESIRABILITY OF GREATER PUBLIC INVOLVEMENT IN GOVERNMENT DECISION MAKING GENERALLY. THE DEPARTMENT OF

THE ENVIRONMENT AND THE ENVIRONMENTAL PROTECTION SERVICE HAVE RESPONDED BY DEVELOPING INITIATIVES IN THE AREAS OF PUBLIC ACCESS TO INFORMATION AND EPS REGULATION MAKING.

AS THE OCTOBER, 1981, DEPARTMENTAL POLICY STATEMENT "POLICY FOR PUBLIC CONSULTATION AND INFORMATION AVAILABILITY" MAKES CLEAR, THE MINISTER OF THE ENVIRONMENT ACTIVELY ENCOURAGES PUBLIC DEBATE ON ENVIRONMENTAL ISSUES, AND STRONGLY SUPPORTS PUBLIC INVOLVEMENT IN ENVIRONMENTAL PROTECTION. THE DEPARTMENT'S POLICY ON PUBLIC CONSULTATION HAS FOUR COMPONENTS INTENDED TO ACHIEVE THIS RESULT:

1. ANNUAL FORUMS WILL BE ARRANGED FOR THE EXCHANGE OF INFORMATION BETWEEN THE PUBLIC AND SENIOR DEPARTMENTAL OFFICIALS.
2. THERE WILL BE CONSULTATIONS WITH THE PUBLIC AT THREE CRITICAL STAGES IN THE DEVELOPMENT OF NEW REGULATIONS.
3. INFORMATION IN A BROAD RANGE OF CATEGORIES WILL BE DISSEMINATED OR MADE AVAILABLE UPON REQUEST.
4. THE DEPARTMENT WILL CONTRIBUTE TO THE TRANSPORTATION EXPENSES OF MEMBERS OF PUBLIC INTEREST GROUPS IN ORDER TO FACILITATE ATTENDANCE AT DESIGNATED MEETINGS.

THUS, ALL SIGNIFICANT NEW REGULATIONS WILL BE SUBJECT TO AN EXPLICIT PROCEDURE THAT WILL ALLOW FOR PUBLIC COMMENT AT ALL STAGES OF THEIR DEVELOPMENT. WE AT ENVIRONMENT CANADA HOPE THAT THESE MEASURES WILL ENSURE A GENUINE PLURALISM IN THE DEVELOPMENT OF NEW REGULATIONS, BY GUARANTEEING A RELIANCE ON PUBLIC INPUT DURING POLICY GENERATION, AND BY FOSTERING THE OPEN EXCHANGE OF VIEWS AND PUBLIC ACCESS TO INFORMATION. I WOULD LIKE TO ADD THAT I

THINK ENVIRONMENT CANADA HAS ALREADY ESTABLISHED SOME NEW GROUND IN THIS AREA THROUGH ITS HISTORY OF PUBLIC CONSULTATION AND ITS POLICY OF MAKING INFORMATION AVAILABLE, AS WELL AS ITS LONG RECORD OF COOPERATING WITH AND EVEN SUPPORTING SUCH PUBLIC INTEREST GROUPS AS POLLUTION PROBE, OPERATION CLEAN-NIAGARA, THE PUBLIC INTEREST ADVOCACY CENTRE, AND EVEN THE CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION, TO NAME A FEW.

NEW AND BETTER REGULATIONS TO ENABLE US TO DEAL WITH THE ENVIRONMENTAL PROBLEMS OF THE EIGHTIES ARE ON THE WAY, AND WHILE THEY ARE ABSOLUTELY NECESSARY, AND WILL BE DEVELOPED IN THE MOST OPEN WAY POSSIBLE, THEY ARE NOT OF THEMSELVES THE COMPLETE ANSWER TO ALL OF THE ENVIRONMENTAL PROBLEMS THAT FACE US. EVEN IF THE STRICTEST OF ENVIRONMENTAL REGULATIONS WERE TO GO INTO EFFECT TOMORROW, SO THAT ALL CONTAMINANT DISCHARGE WERE TO CEASE FORTHWITH, WE WOULD STILL NEED TO BUILD TREATMENT AND DISPOSAL FACILITIES TO HANDLE THE VAST AMOUNTS OF WASTES THAT HAVE ALREADY ACCUMULATED. THIS IS ONE REASON WHY EVERYTHING POSSIBLE MUST BE DONE TO REDUCE CYNICISM, AND ENSURE COOPERATION AMONG ALL SEGMENTS OF SOCIETY. SEEN IN THIS LIGHT, THE TASK OF REFORMING THE REGULATORY PROCESS AND DEVELOPING NEW REGULATIONS HAS THREE PARTS: THERE IS THE PROBLEM OF ENCOURAGING PUBLIC COMMENT AND OVERCOMING THE NIMBYATTITUDE, THE PROBLEM OF DRAFTING REGULATIONS ON A SOUND BASIS OF KNOWLEDGE, AND THE PROBLEM OF SECURING INDUSTRY CONFIDENCE, COOPERATION AND INVOLVEMENT.

NONETHELESS, DESPITE ALL THE DIFFICULTIES, WE MUST PROCEED, AND THIS IS WHAT ENVIRONMENT CANADA IS TRYING TO DO. IN THE FIELD OF TOXICS, TO CHOOSE AN AREA THAT IS PROMINENT IN EVERYONE'S MIND, PROVISIONS FOR THE CRADLE-TO-GRAVE TRACKING OF DANGEROUS CHEMICALS, THE "CHEMICAL PASSPORT" OR BIRTH CERTIFICATE

FOR NEWLY DEVELOPED CHEMICALS, AND CLOSE COMPLIANCE WITH THE OECD TOXICS PROGRAM ARE A FEW OF THE INITIATIVES THAT MIGHT BE LOOKED FOR. IN THE WASTE MANAGEMENT AREA, A TIGHT REGULATORY PROGRAM MIGHT WELL ENCOURAGE RECYCLING AND REUSE AS THE LOWEST COST-CONTROL OPTION. THIS WILL UNDOUBTEDLY LEAD TO NEW AND INGENIOUS METHODS OF MANAGING WASTES. HOWEVER, HUMAN INGENUITY ALONE, WITHOUT PROPER REGULATORY PROCEDURES, IS A LIMITED SOLUTION--JUST CONSIDER THE DIFFICULTIES OUR SOCIETY HAS GOTTEN INTO AS A RESULT OF A LACK OF REGULATIONS!

INDUSTRY MUST BE CONVINCED THAT, IN THE WORDS OF RAY ROBINSON, FORMER ASSISTANT DEPUTY MINISTER, EPS, "EFFECTIVELY DEVELOPED AND BROADLY SUPPORTED REGULATORY INSTRUMENTS ARE INDUSTRY'S BEST GUARANTEE OF THE STABLE SOCIAL AND POLITICAL SETTING NEEDED FOR PROSPEROUS ECONOMIC ACTIVITY". IF REGULATORY PROCEDURES ARE MANAGED THROUGH A PROCESS THAT INVOLVES ADVANCE NOTICE, PRIOR ASSESSMENT AND PERIODIC RE-EVALUATION, AS HAS BEEN SUGGESTED, IMPACT ON INDUSTRY CAN BE MINIMIZED.

THE PUBLIC--INDUSTRY AS WELL AS CITIZENS--MUST BE KEPT UP TO DATE ON THE STATUS OF REGULATORY DEVELOPMENTS AS THEY PROCEED, AND MUST BE GIVEN THE OPPORTUNITY TO INFLUENCE THAT PROCESS. THE SEARCH FOR THE BEST METHOD OF SOLICITING INPUT IS FAR FROM OVER. I WOULD PLEAD FOR YOUR PATIENCE AND UNDERSTANDING WHILE THE PROCESS IS BEING FORMULATED AND WHILE ALL PARTIES LEARN HOW BEST TO USE IT.

WHEN ENVIRONMENT CANADA WAS DEVELOPING NEW REGULATIONS FOR PCBS UNDER THE ENVIRONMENTAL CONTAMINANTS ACT, THE PROPOSED REGULATIONS WERE SENT OUT, ALONG WITH A COVERING LETTER REQUESTING COMMENTS, TO 122 AGENCIES. THESE

INCLUDED THE PROVINCES, ENVIRONMENTAL GROUPS, INDUSTRY ASSOCIATIONS, ETC. ONLY NINE REPLIES WERE RECEIVED. HOW ELSE ARE WE TO SOLICIT PUBLIC COMMENT? ARE WE TO GO AHEAD AND DO SOMETHING, WAIT FOR THE INEVITABLE STORM OF REACTION FROM THE LOCAL PEOPLE OR THE INDUSTRY DIRECTLY AFFECTED, AND THEN HOLD HEARINGS? AFTER-THE-FACT CONSULTATION IS WHAT WE ARE TRYING TO AVOID. LIKEWISE, THERE MUST BE A BETTER WAY OF ANNOUNCING PROPOSED REGULATORY CHANGES THAN MERELY PUBLISHING THEM IN THE CANADA GAZETTE.

IN THE LONG RUN, SOCIETY MUST DECIDE WHAT IT REALLY WANTS, AND HOW MUCH IT IS PREPARED TO PAY FOR THE LUXURY OF ENVIRONMENTALLY UNSOUND ACTIONS. THOSE WHO USE THE ENVIRONMENT AS A RECEPTICAL FOR POLLUTANTS, OR TO CUT CORNERS IN PRODUCTION--AND I EMPHASIZE THAT HERE I INCLUDE CONSUMERS, BECAUSE WE ARE ALL GUILTY--MUST BE PREPARED TO DIRECTLY PAY FOR THE FULL COST OF THAT ENVIRONMENTAL ABUSE. FOR PAY WE SHALL, IF NOT IN DOLLARS, THEN IN SOCIAL COST. WE WILL HAVE TO STRIKE A BALANCE BETWEEN ENVIRONMENTAL PROTECTION AND OUR APPETITES FOR ENERGY, RESOURCES AND THE LUXURIES AND NECESSITIES THAT SUCH THINGS AS CHEMICALS CAN PROVIDE US WITH. THIS IS ESSENTIALLY A MORAL AND ETHICAL QUESTION THAT GOES FAR BEYOND THE SOCPE OF MY PRESENTATION HERE TODAY. I MENTION THE PROBLEM BECAUSE IT ALSO MUST BE DECIDED ON A BASIS OF CONSENSUS, WITH A MAXIMUM OF PARTICIPATION. PERHAPS THE REFORMATION OF OUR REGULATORY PROCESS, AND OUR EXPERIENCES IN FORGING THE BEST POSSIBLE REGULATORY GUIDELINES FOR OUR SOCIETY WILL BENEFIT US IN THE FUTURE, AS WE PASS ON TO THE LARGER QUESTION. THE FACT THAT SYMPOSIA SUCH AS THIS ONE ARE BEING HELD SIGNALS THE FACT THAT OUR SOCIETY HAS ALREADY BEGUN TO CONSIDER IT.

AT ANY RATE, YOU CAN BE ASSURED THAT NEW REGULATIONS ARE COMING; AND

THAT THEY WILL BE FORMULATED IN SUCH A WAY AS TO ENSURE THE MAXIMUM POSSIBLE PARTICIPATION FROM ALL CONCERNED. ALL SECTORS OF OUR SOCIETY WILL HAVE INPUT, BUT ULTIMATELY, ALL SECTORS OF OUR SOCIETY WILL ALSO HAVE RESPONSIBILITIES. WE MUST PRODUCE WITH MORE EFFICIENCY AND LESS WASTE; WE MUST ALSO CLEAN UP AFTER OURSELVES. ENVIRONMENTAL REGULATIONS ARE BUT A MEANS TO AN END: THE ENSURING OF THE BEST POSSIBLE QUALITY OF LIFE FOR OUR OWN AND FUTURE GENERATIONS OF CANADIANS.

MARCH 30, 1982

AN OPEN AND CONSULTATIVE APPROACH TO REGULATION

I PROPOSE TO OUTLINE FOR YOU THIS AFTERNOON THE PROCESS THAT HAS BEEN USED FOR THE DESIGNATION OF SUBSTANCES IN ONTARIO UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT.

AT PRESENT, TWO SUBSTANCES HAVE BEEN DESIGNATED, THOSE BEING LEAD AND MERCURY. SIX OTHER SUBSTANCES ARE PROPOSED FOR DESIGNATION. THEY ARE, ISOCYANATES, VINYL CHLORIDE, SILICA, ASBESTOS, NOISE AND COKE OVEN EMISSIONS.

I SHOULD EXPLAIN THAT IN THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE WORD "SUBSTANCES" MEANS ANY BIOLOGICAL, CHEMICAL, OR PHYSICAL AGENT OR COMBINATION THEREOF. YOUR PROGRAMME FOR TODAY STATES THAT IN ONTARIO, CONSULTATION AT TWO STAGES IS REQUIRED PRIOR TO THE PROMULGATION OF A DESIGNATED SUBSTANCE REGULATION AND THAT I WILL BE DEALING WITH THIS TWO-STAGE APPROACH. IN FACT, I WILL ATTEMPT TO DEMONSTRATE THAT THE CONSULTATIVE PROCESS IS A MULTISTAGE PROCESS RATHER THAN A TWO-STAGE PROCESS. THE TWO-STAGE APPROACH IS PROVIDED FOR IN SECTION 22 OF THE ACT WHICH SPECIFIES THAT PRIOR TO A SUBSTANCE BEING DESIGNATED, THE MINISTRY OF LABOUR MUST PUBLISH IN THE ONTARIO GAZETTE A NOTICE STATING THAT THE SUBSTANCE MAY BE DESIGNATED AND CALLING FOR BRIEFS OR SUBMISSIONS IN RELATION TO THE

DESIGNATION. FURTHERMORE, IT REQUIRES THAT A NOTICE BE PUBLISHED IN THE ONTARIO GAZETTE SETTING FORTH THE PROPOSED REGULATION RELATING TO THE DESIGNATION, AT LEAST SIXTY DAYS BEFORE THE REGULATION IS FILED WITH THE REGISTRAR OF REGULATIONS UNDER THE REGULATIONS ACT.

THE NOTICE OF INTENTION TO DESIGNATE IS PROVIDED FOR IN SECTION 22(A) OF THE ACT. THE NOTICE WITH RESPECT TO LEAD, MERCURY, ISOCYANATES, VINYL CHLORIDE, SILICA, ASBESTOS, NOISE AND COKE OVEN EMISSIONS WAS PUBLISHED IN THE ONTARIO GAZETTE ON JUNE 28, 1980. THE PROPOSED REGULATIONS FOR THOSE SUBSTANCES WERE PUBLISHED IN THE ONTARIO GAZETTE IN AUGUST OF 1980. THE NOTICE READ:

> TAKE NOTICE THAT THE SUBSTANCES LISTED HEREIN MAY BE DESIGNATED AS SUBSTANCES TO WHICH THE EXPOSURE OF A WORKER IS PROHIBITED, REGULATED, RESTRICTED, LIMITED OR CONTROLLED UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978.
>
> ASBESTOS
> LEAD
> MERCURY
> NOISE
> ISOCYANATES
> SILICA
> VINYL CHLORIDE
> COKE OVEN EMISSIONS
>
> AND TAKE NOTICE THAT BRIEFS AND SUBMISSIONS ARE CALLED FOR

IN RELATION TO THE PROPOSED DESIGNATIONS AND ARE REQUESTED TO BE SUBMITTED ON OR BEFORE JULY 25, 1980. ALL BRIEFS AND SUBMISSIONS RECEIVED WILL BE MADE AVAILABLE FOR EXAMINATION BY MEMBERS OF THE PUBLIC.

FOLLOWING THE PUBLICATION OF THE NOTICE OF INTENT SOME 40 BRIEFS WERE RECEIVED MOST OF WHICH DEALT WITH THE DRAFT REGULATIONS THAT HAD BEEN PUBLISHED IN 1978 UNDER THE INDUSTRIAL SAFETY ACT, MANY BRIEFS DID HOWEVER COMMENT ON THE INTENTION TO DESIGNATE. SOME RESPONDENTS SUGGESTED THAT IT WOULD NOT BE POSSIBLE FOR THEM TO PROVIDE MEANINGFUL COMMENT ON THE INTENTION TO DESIGNATE WITHOUT DETAILS AS TO THE REGULATIONS INTENDED. THE NOTICE OF INTENT WAS CRITICIZED ON TWO COUNTS.

(1) THAT THE INFORMATION AS TO THE FORM OF THE REGULATION WAS NOT AVAILABLE; AND,

(2) THAT BACKGROUND INFORMATION AS TO THE NEED FOR REGULATION SUCH AS THE EXTENT TO WHICH WORKERS WERE EXPOSED TO THE HAZARDS OF THE SUBSTANCES WAS NOT AVAILABLE FOR REVIEW.

IT WAS IN FACT NOT POSSIBLE TO INDICATE AT THE TIME OF THE ANNOUNCEMENT IN ANY DEFINITIVE WAY THE FORM WHICH THE REGULATION WOULD TAKE SINCE THE FORMAT FOR THE REGULATION HAD NOT BEEN FINALIZED AT THE TIME OF PUBLICATION. THE FORM AND STRUCTURE OF THE PROPOSED REGULATIONS WERE UNDER DEVELOPMENT. THESE WERE WAS BASED ON AN ANALYSIS OF REGULATORY STRUCTURES USED IN OTHER JURISDICTIONS

AND THE INTERNAL RESPONSIBILITY CONCEPT ENNUNCIATED IN THE REPORT OF THE ROYAL COMMISSION ON THE HEALTH AND SAFETY OF WORKERS IN MINES KNOWN AS THE "HAM REPORT". I THINK IT IS NOW ACKNOWLEDGED THAT REGULATIONS THAT HAVE BEEN DEVELOPED HAVE MANY UNIQUE FEATURES SOME OF WHICH ARE NEW IN AND UNIQUE TO ONTARIO AND SOME OF WHICH ARE UNIQUE IN THE FIELD OF OCCUPATIONAL HEALTH AND SAFETY. AS INDICATED A MOMENT AGO THE REGULATIONS FOR DESIGNATED SUBSTANCES ARE BASED UPON THE INTERNAL RESPONSIBILITY SYSTEM. THEY PROVIDE FOR:

AN ASSESSMENT OF THE WORKPLACE;

A CONTROL PROGRAM;

DUTIES AND RESPONSIBILITIES FOR EMPLOYERS, WORKERS, JOINT HEALTH AND SAFETY COMMITTEES AND PHYSICIANS THAT ARE IN ADDITION TO THOSE PROVIDED IN THE ACT;

TIME WEIGHTED AVERAGE EXPOSURE VALUES, SHORT TERM EXPOSURE VALUES, AND CEILING EXPOSURE VALUES;

MANDATORY MEDICAL EXAMINATIONS AND CLINICAL TESTS FOR WORKERS;

ENGINEERING CONTROLS, WORK PRACTICES AND HYGIENE PRACTICES AND FACILITIES AS CONTROL MEASURES;

THE MAINTENANCE OF EXPOSURE RECORDS AND MEDICAL

RECORDS AND THEIR RETENTION OVER THE WORKING LIFE OF THE WORKER;

MANDATORY REMOVAL OF THE WORKER FROM EXPOSURE UNDER PRESCRIBED CIRCUMSTANCES;

CONFIDENTIALITY OF HEALTH INFORMATION;

LEGALLY ENFORCEABLE CODES OF PRACTICE NOT IN THE REGULATION ITSELF THOUGH REFERENCED THEREIN; AND

THE CONCEPT OF EQUIVALENCY WITH THE CODES REFERENCED IN THE REGULATION.

IT WAS EXPECTED THAT THE PUBLICATION OF THE NOTICE OF INTENT WOULD GENERATE A COMMENTARY ON THE FORM AND STRUCTURE THAT THE REGULATIONS FOR OCCUPATIONAL HEALTH AND SAFETY IN ONTARIO WOULD TAKE AND THAT SUCH COMMENTARY WOULD HELP STAFF REFINE THE MATERIAL ALREADY IN THE DEVELOPMENTAL STAGE. UNFORTUNATELY, FEW OF THOSE WHO COMMENTED CHOSE TO PROVIDE THE MINITRY WITH GUIDANCE AS TO THE PREFERRED FORM FOR THE REGULATION. IT WOULD APPEAR THAT IT IS EASIER FOR INTERESTED PARTIES TO COMMENT ON A CONCRETE PROPOSAL THAN IN A VACUUM. WITH RESPECT TO THE SUBSTANCES THAT ARE NOW BEING CONSIDERED FOR DESIGNATION THE MINISTRY HAS COMMISSIONED CONSULTANTS TO UNDERTAKE A NUMBER OF STUDIES. FOR EXAMPLE, STUDIES HAVE BEEN CONDUCTED ON BENZENE, FORMALDEHYDE, ACRYLONITRILE, CHROMIUM, STYRENE, DIESEL EMISSIONS, BIOLOGICAL AGENTS, ETHYLENE OXIDE, CHLORINATED HYDROCARBONS, ARSENIC AND CADMIUM; A NUMBER OF

ADDITIONAL STUDIES ARE IN PROGRESS. THE CONSULTANTS ARE REQUIRED TO PRODUCE MATERIAL FOR INCLUSION IN REPORTS IN SUPPORT OF GUIDELINES AND REGULATIONS THAT MAY BE PREPARED FOR THE CONTROL OF WORKER EXPOSURE TO VARIOUS SUBSTANCES.

THE MATERIAL THE CONSULTANTS HAVE BEEN ENGAGED TO PRODUCE INCLUDES INFORMATION ON:

THE EXTENT OF THE CURRENT AND POTENTIAL USE OF THE SUBSTANCES IN ONTARIO;

THE CAUSES AND EXTENT OF EMISSIONS THAT OCCUR; THE METHODS AVAILABLE FOR DETERMINING THE CONCENTRATIONS OF THE SUBSTANCES IN WORKPLACE AIR;

THE NUMBER OF WORKERS AT RISK BY OCCUPATIONAL CATEGORY AND INDUSTRY SECTOR;

THE MEANS OF ASSESSING WORKER EXPOSURE BY USE OF PERSONAL SAMPLING DEVICES;

THE OPTIONS AVAILABLE FOR CONTROLLING EXPOSURE AND THE FEASIBILITY OF IMPLEMENTING AND MAINTAINING CONTROL MEASURES;

THE PROBABLE REACTION OF EMPLOYERS TO THE INTRODUCTION OF CONTROL MEASURES;

THE ACUTE AND CHRONIC HEALTH EFFECTS ATTRIBUTED TO EXPOSURE TO THE SUBSTANCES WITH PARTICULAR EMPHASIS ON HUMAN HEALTH EFFECTS AND EPIDEMIOLOGICAL STUDIES;

THE REASONS WHY WORKERS ARE SEEKING OR MAY SEEK THE ESTABLISHMENT OF CONTROLS;

THE FACTORS THAT MUST BE CONSIDERED IN ASSESSING THE ECONOMIC IMPACT OF CONTROLS; AND

THE OCCUPATIONAL EXPOSURE LIMITS IMPOSED IN OTHER JURISDICTIONS.

THE CONSULTANTS HAVE BEEN DIRECTED DURING THE COURSE OF THE STUDIES TO MEET WITH A NUMBER OF INTERESTED AND AFFECTED PARTIES TO OBTAIN THEIR VIEWS ON THE MANNER IN WHICH THE SUBSTANCE MIGHT BE REGULATED. THEY ARE INTRODUCED TO THE INTERESTED PARTIES BY MEANS OF A LETTER SIGNED BY THE MINISTER ADDRESSED TO THE CHIEF EXECUTIVE OFFICERS IN ORDER TO ENSURE THAT THE HIGHER ECHELONS OF THE CORPORATIONS, UNIONS AND ASSOCIATIONS ARE AWARE OF ACTION BEING CONSIDERED BY THE MINISTRY. THE NUMBER OF UNIONS AND COMPANIES CONSULTED FOR EXAMPLE WERE:

108 IN THE CASE OF BENZENE
109 IN THE CASE OF FORMALDEHYDE
84 FOR ACRYLONITRILE
87 FOR DIESEL EMISSIONS

INFORMATION AS TO THE MANNER IN WHICH THE MINISTRY MAY PROCEED IS THEREFORE WIDELY DISSEMINATED LONG BEFORE CONSIDERATION IS GIVEN TO PUBLISHING A NOTICE OF INTENT. I MUST EMPHASIZE THAT EVEN THOUGH THE STUDIES HAVE BEEN CONDUCTED ON THE SUBSTANCES NAMED THOSE SUBSTANCES MAY NOT ALL IN FACT BE DESIGNATED. THE STUDIES THEREFORE PROVIDE AN ALERT MECHANISM SO THAT THOSE AFFECTED BY ANY LEGISLATIVE INITIATIVES WILL HAVE AN OPPORTUNITY TO ASSEMBLE BACKGROUND MATERIALS ON THE SUBSTANCE BEING CONSIDERED FOR CONTROL. IT GIVES THEM THE TIME TO DEVELOP CONTROL STRATEGIES OF THEIR OWN AND TO PUT IN PLACE PROGRAMS THAT WILL PROPERLY PROTECT WORKERS AGAINST THE HAZARDS OF EXPOSURE BEFORE ANY REGULATORY INITIATIVE IS INTRODUCED. THE APPROACH BEING TAKEN SHOULD ENSURE THAT ACTION BY THE MINISTRY OF LABOUR WILL NOT TAKE AFFECTED PARTIES BY SURPRISE.

AS INDICATED EARLIER, THE PROPOSED REGULATIONS WERE PUBLISHED ON AUGUST 16, 1980. FOLLOWING PUBLICATION, SOME TWO TO THREE HUNDRED BRIEFS WERE RECEIVED. THE NOTICE ACCOMPANYING THE PUBLICATION OF THE PROPOSED REGULATIONS INVITED THE SUBMISSION OF COMMENTS ON THE PROPOSED REGULATIONS TO THE STANDARDS AND PROGRAMS BRANCH IN THE MINISTRY OF LABOUR. THIS NOTICE DID NOT INDICATE THE TIME THAT WOULD BE ALLOWED FOR COMMENT, BUT IT DID INDICATE THAT THE PROPOSED REGULATIONS COULD BE FILED WITH THE REGISTRAR OF REGULATIONS, SIXTY DAYS AFTER THE PUBLICATION OF THE NOTICE. COMMENTS WERE IN FACT RECEIVED DURING THE PERIOD SEPTEMBER 3, 1980, TO DECEMBER 31, 1980 AND ALL WERE ANALYZED SECTION BY SECTION.

COPIES OF THE BRIEFS THEMSELVES WERE DISSECTED IN ORDER TO ASSEMBLE A

CONSOLIDATION OF THE COMMENTS ON EACH SECTION IN THE REGULATIONS AND CODES. THESE CONSOLIDATIONS WERE MADE AVAILABLE FOR REVIEW BY THE PUBLIC IN THE LIBRARY OF THE MINISTRY OF LABOUR. IN ADDITION, COPIES OF THE BRIEFS THEMSELVES WERE DEPOSITED IN THE LIBRARY OF THE MINISTRY OF LABOUR FOR REFERENCE. THIS IS AN EXAMPLE OF THE CONSOLIDATION THAT WAS PREPARED. AT ABOUT THE SAME TIME, REPORTS ON THE DESIGNATION OF THE SUBSTANCES WERE PREPARED AND MADE AVAILABLE FOR PUBLIC SCRUTINY. THESE REPORTS, REFERRED TO AS THE INTERIM REPORTS ON THE DESIGNATION OF THE SUBSTANCES, WERE INTENDED TO OUTLINE THE SCOPE OF THE EXPOSURE PROBLEM IN ONTARIO, THE HEALTH EFFECTS OF EXPOSURE TO THE SUBSTANCE AND THE MANNER IN WHICH THE REGULATIONS WERE STRUCTURED. THE APPENDIX IN THE REPORTS CONTAINED THE REGULATIONS AND THE CODES AND A HEALTH EFFECTS DOCUMENT. THIS IS AN EXAMPLE. THE COMMENTS WHICH WERE RECEIVED WERE ANALYZED BY THE STAFF IN THE STANDARDS AND PROGRAMS BRANCH OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION. THE ANALYST RESPONSIBLE FOR REVIEWING THE COMMENTS REFERRED THEM, AS NECESSARY, TO PROFESSIONAL STAFF IN OTHER BRANCHES OF THE MINISTRY FOR THEIR REVIEW, ASSESSMENT AND COMMENT. THE STAFF TO WHICH THE COMMENTS WERE REFERRED, INCLUDED PHYSICIANS IN THE SPECIAL STUDIES AND SERVICES BRANCH THAT HAD BEEN RESPONSIBLE FOR THE HEALTH EFFECTS DOCUMENT CONTAINED IN THE INTERIM REPORT, PHYSICIANS IN THE OCCUPATIONAL HEALTH BRANCH THAT HAD BEEN RESPONSIBLE FOR THE DEVELOPMENT OF THE CODE FOR MEDICAL SURVEILLANCE, HYGIENISTS IN THE OCCUPATIONAL HEALTH BRANCH THAT HAD BEEN RESPONSIBLE FOR THE DEVELOPMENT OF THE CODES FOR RESPIRATORY PROTECTION AND SCIENTISTS IN THE OCCUPATIONAL HEALTH LABORATORY THAT HAD BEEN RESPONSIBLE FOR THE DEVELOPMENT OF CODES FOR AIR MEASUREMENT AND SAMPLING.

WHERE AN AFFECTED PARTY SUBMITTED A BRIEF WHICH INDICATED A PARTICULARLY PRESSING CONCERN PRIVATE MEETINGS WERE HELD WITH THESE PARTIES TO DISCUSS THE PROBLEMS THEY WERE HAVING WITH THE PROPOSED REGULATION.

BECAUSE OF THE WIDE INTEREST GENERATED BY THE PUBLICATION OF THE PROPOSED REGULATIONS, THE NUMBER OF COMMENTS THAT WERE RECEIVED, THE QUALITY AND EXTENT OF THE COMMENTARY AND THE NUMBER OF REVISIONS THAT WERE MADE TO THE PROPOSED REGULATION FOLLOWING A REVIEW OF THE COMMENTARY, IT WAS DETERMINED THAT IT WOULD BE APPROPRIATE TO CONVENE PUBLIC MEETINGS TO PRESENT TO THE INTERESTED AND AFFECTED PARTIES THE REVISIONS THAT HAD BEEN MADE TO THE PROPOSED REGULATION. ACCORDINGLY ALL INTERESTED AND AFFECTED PARTIES WERE INVITED TO ATTEND A SERIES OF PUBLIC MEETINGS AT WHICH THE AMENDED REGULATIONS WERE PRESENTED AND EXPLANATIONS GIVEN AS TO WHY CHANGES WERE OR WERE NOT MADE IN RESPONSE TO THE COMMENTS RECEIVED. THE NOTICE OF THE MEETINGS READ, IN PART, AS FOLLOWS:

> "AS ONE OF THOSE WHO SUBMITTED COMMENTS ON ONE OF THESE REGULATIONS, OR THOSE PUBLISHED PREVIOUSLY IN THE ONTARIO GAZETTE IN JULY 1978, YOU OR YOUR REPRESENTATIVE ARE INVITED TO ATTEND THE APPROPRIATE MEETING(s) AT WHICH THE MINISTRY WILL PRESENT ITS ANALYSIS OF THE SUBMISSIONS AND THE AMENDMENTS WHICH MAY BE MADE TO THE REGULATION BEFORE SUBMITTING IT TO THE ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL SAFETY FOR COMMENT.

IT IS OUR BELIEF THAT OPENNESS AND CONSULTATION WITH THE INTERESTED PARTIES WILL RESULT IN IMPROVED REGULATIONS. WE INVITE YOU TO PARTICIPATE.

THE MEETING WILL COMMENCE WITH A PRESENTATION BY THE MINISTRY OF APPROXIMATELY ONE AND A HALF HOURS, FOLLOWED BY A PERIOD OF TWO AND ONE HALF HOURS FOR QUESTIONS OR COMMENTS. THE PURPOSE OF THE PROCESS IS TO ENSURE THAT YOU HAVE AN OPPORTUNITY TO HEAR ABOUT THE MINISTRY OF LABOUR'S INTENTIONS REGARDING THE REGULATIONS AND TO GIVE YOUR VIEWS ON THE PROPOSED AMENDMENTS."

THESE MEETINGS WERE GENERALLY STARTED WITH AN INTRODUCTION BY THE DEPUTY MINISTER OF LABOUR FOLLOWED BY AN OVERVIEW OF THE REVISED REGULATION BY THE ASSISTANT DEPUTY MINISTER OF OCCUPATIONAL HEALTH AND SAFETY. THEN THE CO-ORDINATOR IN THE STANDARDS AND PROGRAMS BRANCH THAT HAD BEEN RESPONSIBLE FOR THE ANALYSIS OF THE BRIEFS IN CONSULTATIONS WITH PROFESSIONALS IN THE DIVISION AND THE PREPARATION OF THE INTERIM REPORTS, MADE A PRESENTATION HIGHLIGHTING THE COMMENTS RECEIVED, THE ISSUES THAT HAD BEEN ADDRESSED AND THE REVISIONS MADE TO THE REGULATION. THESE MEETINGS WERE ATTENDED BY THE PROFESSIONALS IN THE OCCUPATIONAL HEALTH AND SAFETY DIVISION COMPETENT TO ANSWER QUESTIONS THAT MIGHT BE RAISED BY INTERESTED PARTIES. THEY INCLUDED THE OCCUPATIONAL HEALTH PHYSICIANS THAT HAD BEEN RESPONSIBLE FOR THE PREPARATION OF A HEALTH EFFECTS DOCUMENT, THE STAFF OF THE OCCUPATIONAL HEALTH BRANCH THAT HAD BEEN RESPONSIBLE FOR THE DEVELOPMENT OF THE CODES, AND LEGAL COUNSEL. AFTER THE PRESENTATION OF APPROXIMATELY AN HOUR AND A HALF THE

MEETINGS WERE OPEN FOR QUESTIONS AND DIALOGUE.

CONSIDERABLE INTEREST WAS EXHIBITED BY THE AFFECTED PARTIES AND GENERALLY SPEAKING THE MEETINGS CONTINUED FOR THE FULL FOUR HOURS THAT HAD BEEN ALLOCATED. ATTENDANCE AT THE MEETINGS RANGED FROM A LOW OF ABOUT FIFTY FOR THE REGULATION FOR COKE OVEN EMISSIONS WHICH APPLIES ONLY TO THREE PLANTS IN ONTARIO TO FIVE TO SIX HUNDRED PERSONS FOR THE PRESENTATION OF THE NOISE REGULATION. THE CO-ORDINATOR DEALT WITH THE REGULATIONS ON A SECTION BY SECTION BASIS. THE SECTIONS OF THE PROPOSED REGULATIONS, THE REVISED REGULATIONS AND THE ISSUES THAT HAD BEEN RAISED WERE DISPLAYED ON A SCREEN FOR ALL TO REVIEW DURING THE PRESENTATION. COPIES OF THE REVISED REGULATIONS AND CODES WERE MADE AVAILABLE FOR REVIEW TO MEMBERS OF THE ASSEMBLED GROUPS.

FOLLOWING THESE MEETINGS A FURTHER PERIOD FOR COMMENT WAS ALLOCATED AND BRIEFS WERE RECEIVED ON THE MODIFICATIONS THAT HAD BEEN MADE. THESE WITH THE ORIGINAL PROPOSED REGULATION WERE ANALYZED AND REVIEWED WITH THE SPECIALIST STAFF WITHIN THE DIVISION. ISSUES PAPERS WERE PREPARED FOR PRESENTATION TO THE ASSISTANT DEPUTY MINISTER, THE DEPUTY MINISTER AND THE MINISTER. REVISIONS WERE MADE WHERE APPROPRIATE TO REFLECT THE CONCERNS OF AFFECTED PARTIES AND TO CLARIFY THE LANGUAGE OF THE REGULATION BEFORE SUBMITTING THE REGULATION TO THE ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL SAFETY FOR A REVIEW OF THE PROCESS USED FOR THE DEVELOPMENT OF THE REGULATIONS.

THE ADVISORY COUNCIL ON OCCUPATIONAL HEALTH AND OCCUPATIONAL

SAFETY WAS ESTABLISHED UNDER THE PROVISIONS OF SECTION 10 OF THE ACT TO MAKE RECOMMENDATIONS TO THE MINISTER RELATING TO THE PROGRAMS OF THE MINISTRY AND OCCUPATIONAL HEALTH AND SAFETY AND TO ADVISE THE MINISTER ON MATTERS RELATING TO OCCUPATIONAL HEALTH AND SAFETY WHICH MAY BE BROUGHT TO ITS ATTENTION OR REFERRED TO IT. THE COUNCIL MUST BE COMPOSED OF NOT FEWER THAN TWELVE AND NOT MORE THAN TWENTY MEMBERS APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL ON THE RECOMMENDATION OF THE MINISTER. THE MEMBERS OF THE ADVISORY COUNCIL MUST BE REPRESENTATIVE OF MANAGEMENT, LABOUR AND TECHNICAL PROFESSIONAL PERSONS AND THE PUBLIC WHO ARE CONCERNED WITH AND HAVE KNOWLEDGE OF OCCUPATIONAL HEALTH AND SAFETY. THE MINISTER HAS ASKED THE COUNCIL TO REVIEW THE REGULATIONS AND TO PROVIDE HIM WITH RECOMMENDATIONS ON THE REGULATIONS THAT ARE SUBMITTED TO THE COUNCIL.

THE COUNCIL AFTER REVIEWING THE REGULATION AND THE FINAL REPORT WHICH OUTLINES THE COMMENTS RECEIVED ON THE PROPOSED REGULATION AND PRESENTS THE CHANGES MADE AND PROVIDES AN ANALYSIS OF THE CHANGES MADE MEETS WITH THE STAFF OF THE OCCUPATIONAL HEALTH AND SAFETY DIVISION TO SEEK CLARIFICATION AS TO THE PROVISIONS OF THE REGULATION AND TO MAKE SUGGESTIONS FOR MODIFICATIONS AND CHANGES. THE COMMUNICATIONS OF THE ADVISORY COUNCIL ARE PUBLISHED IN THE ANNUAL REPORT OF THE COUNCIL.

AFTER RECEIPT OF COMMENTS FROM THE ADVISORY COUNCIL THE REGULATION IS FURTHER REVIEWED WITH A VIEW TO MAKING MODIFICATIONS AND CHANGES AND IT IS THEN PRESENTED TO THE MINISTER FOR SUBMISSION TO CABINET. FOLLOWING EXAMINATION BY CABINET AND APPROVAL BY THE

LIEUTENANT GOVERNOR-IN-COUNCIL, THE REGULATION IS FILED WITH THE REGISTRAR OF REGULATIONS UNDER THE REGULATIONS ACT AND TAKES EFFECT ON THE DATE OF FIILNG. FOR THE TWO REGULATIONS THAT HAVE BEEN PROMULGATED TO DATE THE MINISTRY HAS ARRANGED FOR EXTENSIVE COMPLIMENTARY DISTRIBUTION OF THE REGULATIONS UNDER AN ANNOUNCEMENT SIGNED BY THE MINISTER. THIS PROCEDURE FOR DISTRIBUTION OF THE PROMULGATED REGULATIONS HAS BEEN WELL RECEIVED, PRESUMABLY BECAUSE IT PLACES, IN THE HANDS OF THOSE AFFECTED BY THE REGULATION, A COPY OF THE OFFICE CONSOLIDATION OF THE REGULATION AND THE CODES A FEW DAYS AFTER FILING.

I BEGAN MY TALK THIS AFTERNOON BY REFERRING TO THE UNIQUE TWO-STEP APPROACH TO REGULATIONS FOR DESIGNATED SUBSTANCES BUT IT SHOULD BE CLEAR TO YOU THAT IN THE PROCEDURE THAT IS USED BY THE MINISTRY OF LABOUR TO DEVELOP; REGULATIONS THERE ARE ESSENTIALLY SIX AND SOMETIMES EVEN MORE STEPS THAT THE MINISTRY TAKES BEFORE THE REGULATION ULTIMATELY BECOMES LAW. TO SUMMARIZE WHAT THE STEPS ENTAIL: THE MINISTRY BEGINS THE PROCESS WITH A STUDY OF THE HAZARDS OF THE SUBSTANCE BEING CONSIDERED FOR DESIGNATION: FIRMS AND UNIONS LIKELY TO BE AFFECTED BY ANY REGULATORY INITIATIVE ARE CONSULTED ABOUT THE POSSIBILITY OF REGULATION AND THE PROBLEMS INVOLVED WITH THAT PARTICULAR SUBSTANCE. THE MINISTRY THEN PUBLISHES UNDER SECTION 22 OF THE ACT NOTICE OF INTENT TO DESIGNATE AND REQUESTS BRIEFS FROM PARTIES. THIS IS FOLLOWED BY PUBLICATION OF AN INTERIM REPORT. THE NEXT STEP IS A PUBLICATION OF THE PROPOSED REGULATION, AGAIN, PURSUANT TO SECTION 22 OF THE ACT. THE MINISTRY THEN TAKES THE COMMENTS RECEIVED FROM PARTIES AND COMPILES THEM INTO A REPORT. THE AMENDED REGULATION IS PRESENTED IN A PUBLIC FORUM TO AFFECTED

PARTIES. THE COMMENTS RECEIVED THEN ARE AGAIN ANALYSED. THE REGULATION IS REVISED AND IS PRESENTED TO THE ADVISORY COUNCIL, ANOTHER PUBLIC BODY, WHICH AGAIN CAN COMMENT AND REQUEST REVISIONS UNTIL THE REGULATION IS PRESENTED TO CABINET AND FILED WITH THE REGISTRAR OF REGULATIONS.

THE DESIGNATION OF A SUBSTANCE IS NOT THE ONLY WAY THAT SUBSTANCES CAN BE REGULATED UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT. THERE ARE PROVISIONS IN SECTION 20 OF THE ACT FOR THE ISSUING OF ORDERS DEALING WITH THE EXPOSURE OF WORKERS TO SUBSTANCES AND FURTHERMORE, THERE ARE PROVISIONS IN THE REGULATIONS FOR INDUSTRIAL ESTABLISHMENTS, MINES AND MINING PLANTS AND CONSTRUCTION PROJECTS THAT PERMIT THE ISSUING OF ORDERS TO CONTROL THE EXPOSURE OF WORKERS TO TOXIC SUBSTANCES. HOWEVER, TIME DOES NOT PERMIT, TODAY, TO REVIEW THE PROVISIONS OF SECTION 20 OF THE ACT OR THE SECTIONS IN THE REGULATIONS.

THE ENVIRONMENTAL ASSESSMENT ACT'S REGULATIONS FOR MUNICIPALITIES: A CASE STUDY IN ENVIRONMENTAL REGULATION-MAKING

PRESENTED TO

1982 CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION CONFERENCE

"BOARDROOMS, BACKROOMS AND BACKYARDS: ENVIRONMENTAL REGULATION-MAKING IN THE '80S"

BY

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THE ENVIRONMENTAL ASSESSMENT ACT'S REGULATIONS FOR MUNICIPALITIES: A CASE STUDY IN ENVIRONMENTAL REGULATION-MAKING

INTRODUCTION

I HAVE BEEN ASKED TO SPEAK TODAY ON THE SUBJECT OF THE FORMULATION OF THE MUNICIPAL REGULATIONS UNDER ONTARIO'S ENVIRONMENTAL ASSESSMENT ACT AS AN EXAMPLE OF HOW REGULATION-MAKING IS CARRIED OUT.

I DO NOT PROPOSE TO DWELL AT ANY LENGTH ON THE DETAILS OF THE REGULATION ITSELF, BUT RATHER TO EMPHASIZE THE PROCESS OF REGULATION DEVELOPMENT. OUT OF THIS, I HOPE TO BE ABLE TO CONVEY TO YOU SOME OF THE LESSONS TO BE LEARNED FROM OUR EXPERIENCE AND TO SUGGEST SOME IDEAS FOR THE DESIGN OF AN IMPROVED APPROACH TO REGULATION-MAKING.

TO GIVE YOU SOME CONTEXT FOR THIS EXERCISE, HOWEVER, I NEED TO BEGIN WITH A LITTLE BACKGROUND ON THE EVOLUTION OF ONTARIO'S ENVIRONMENTAL ASSESSMENT PROGRAM.

BACKGROUND ON ENVIRONMENTAL ASSESSMENT

FIGURE 1* OUTLINES SOME OF THE MAJOR HIGHLIGHTS OF THE POLICY DEVELOPMENT PROCESS WHICH LED TO ONTARIO'S ENVIRONMENTAL ASSESSMENT LEGISLATION. IT IS SIGNIFICANT THAT THIS PROCESS INCLUDED SUBSTANTIALLY MORE PUBLIC INVOLVEMENT THAN HAD TRADITIONALLY BEEN THE CASE IN THE DEVELOPMENT OF ONTARIO LEGISLATION. IN PARTICULAR, THIS WAS THE FIRST CASE IN ONTARIO WHERE A GREEN PAPER, SETTING OUT OPTIONAL COURSES OF ACTION FOR PUBLIC DISCUSSION WAS ISSUED AS PART OF THE PROCESS OF LEGISLATION DEVELOPMENT.

I SHOULD ALSO NOTE THAT THERE WAS A DELIBERATE PAUSE AFTER FIRST READING OF THE ENVIRONMENTAL ASSESSMENT LEGISLATION IN MARCH, 1975 TO ALLOW TIME FOR FURTHER PUBLIC INPUT ON THE ACTUAL WORDING OF THE LEGISLATION. AS A RESULT OF THIS INPUT, VERY SUBSTANTIAL CHANGES WERE MADE TO THE NATURE OF THE LEGISLATION DURING THE STAGE OF COMMITTEE CONSIDERATION OF THE BILL.

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* FIGURES APPEAR AT THE END OF THE PAPER.

ONE OF THE MAJOR CHANGES RESULTING FROM PUBLIC INPUT AFFECTED THE SCOPE OF APPLICATION OF THE ENVIRONMENTAL ASSESSMENT LEGISLATION. WHILE THE MINISTRY OF THE ENVIRONMENT HAD ORIGINALLY PROPOSED THAT THE LEGISLATION APPLY ONLY TO UNDERTAKINGS DESIGNATED, EITHER GENERALLY OR PARTICULARLY, BY REGULATIONS, THIS PRINCIPLE WAS CHANGED INSOFAR AS THE PUBLIC SECTOR IS CONCERNED. AS FIGURE 2 SHOWS, FOR THE PUBLIC SECTOR, ALL UNDERTAKINGS ARE SUBJECT TO THE ACT UNLESS EXEMPTED OUT BY REGULATION OR BY ORDER.

THIS CHANGE IN THE PRINCIPLE OF APPLICATION OF THE ACT HAD SIGNIFICANT RAMIFICATIONS FOR THE WAY IN WHICH THE ACT COULD BE IMPLEMENTED. IN ESSENCE, THE ACT COULD NOT BE BROUGHT INTO FORCE UNTIL A SCREENING PROCESS HAD BEEN CARRIED OUT FOR THE PURPOSE OF IDENTIFYING AND EXEMPTING THOSE PUBLIC SECTOR UNDERTAKINGS WHICH DID NOT MERIT REVIEW UNDER THE ENVIRONMENTAL ASSESSMENT ACT. FIGURE 3 SHOWS THE BASIC STEPS OF THIS SCREENING PROCESS.

THIS NOW SETS THE STAGE FOR THE DEVELOPMENT OF THE MUNICIPAL ENVIRONMENTAL ASSESSMENT REGULATIONS. PRIOR TO APPLYING THE ENVIRONMENTAL ASSESSMENT ACT TO MUNICIPALITIES, IT WAS NECESSARY TO CARRY OUT A SCREENING PROCESS TO DETERMINE WHICH UNDERTAKINGS OF MUNICIPAL GOVERNMENTS BELONGED UNDER THE ACT AND WHICH SHOULD BE EXEMPTED. TO ALLOW TIME FOR THIS PROCESS TO TAKE PLACE, MUNICIPALITIES WERE GRANTED A TEMPORARY EXEMPTION WHEN THE ENVIRONMENTAL ASSESSMENT ACT WAS FIRST PROCLAIMED IN FORCE.

GIVEN THIS BACKGROUND, I WILL NOW TURN TO WHAT I HOPE WILL BE A SPEEDY REVIEW OF A NOT SO SPEEDY PROCESS WHICH CULMINATED WITH THE IMPLEMENTATION OF ENVIRONMENTAL ASSESSMENT ACT REGULATIONS FOR MUNICIPALITIES.

DEVELOPMENT OF THE MUNICIPAL REGULATIONS: THE CASE HISTORY

1975

SHORTLY AFTER THE ENVIRONMENTAL ASSESSMENT ACT WAS GIVEN ROYAL ASSENT IN JULY OF 1975, AN EXCHANGE OF CORRESPONDENCE BETWEEN THE MINISTRY OF THE ENVIRONMENT AND THE MUNICIPAL ENGINEERS' ASSOCIATION RESULTED IN THE DECISION TO FORM A "MUNICIPAL WORKING GROUP" TO CARRY OUT FOR MUNICIPAL UNDERTAKINGS THE SCREENING PROCESS WHICH I HAVE DESCRIBED EARLIER. INITIALLY, THIS GROUP WAS TO CONSIST OF REPRESENTATIVES FROM THE MEA, CHOSEN TO REPRESENT ONTARIO MUNICIPALITIES OF VARIOUS SIZES, AND REPRESENTATIVES FROM THE MINISTRY OF THE ENVIRONMENT. HOWEVER, AS THE GROUP WAS BEING ESTABLISHED, THE MUNICIPAL LIAISON COMMITTEE (WHICH WAS THE UMBRELLA ORGANIZATION REPRESENTING MUNICIPALITIES, AT THE POLITICAL LEVEL, IN DISCUSSIONS WITH THE PROVINCE) REQUESTED THAT ADDITIONAL REPRESENTATION BE ADDED TO THE WORKING GROUP. AS IT WORKED OUT, THE MUNICIPAL WORKING GROUP ULTIMATELY CONSISTED OF ENGINEERING AND PLANNING STAFF FROM VARIOUS MUNICIPALITIES IN ONTARIO AND OF REPRESENTATIVES FROM THE MINISTRY OF THE ENVIRONMENT.

THE FIRST MEETINGS OF THE WORKING GROUP TOOK PLACE IN LATE 1975.

1) It analyzed the submissions received in response to the Discussion Paper prepared by the Municipal Working Group.

2) It presented the Ministry of the Environment response to the report of the Planning Act Review Committee, which had commented on the relationship between the Planning Act and the Environmental Assessment Act.

3) It advanced the Minister of the Environment's proposed strategy both for applying the Environmental Assessment Act to municipalities and, secondly, for streamlining the relationship between the Environmental Assessment Act and the Planning Act.

One of the novel proposals contained in the Ministry's Position Paper was the idea that there should be an automatic exemption for projects with an estimated completion value of less than $1,000,000 unless these projects were of a type which had been specifically mentioned by the Municipal Working Group as activities meriting environmental assessment. The purpose of this approach, as stated in the Position Paper, was to overcome the administrative difficulty involved in trying to screen all municipal undertakings:

> "The large number of municipalities and the wide range of activities in which they engage make in unlikely that all of the undertakings requiring exemption could be identified in advance of making the Act applicable to municipalities. This would place municipalities and the Ontario Government in the undesirable situation of, respectively, applying for and processing large numbers of exemptions on a regular basis."

As a result of the $1,000,000 exemption proposal, the debate widened. The Environmental Assessment Steering Committee, appointed by the Premier to oversee the implementation of the Environmental Assessment Act, and chaired by the prominent environmentalist, Dr. Donald Chant of the University of Toronto, came into the picture. Concerned that the proposed $1,000,000 exemption would be

SEEN BY ENVIRONMENTAL GROUPS AS A REVERSAL OF THEIR HARD-FOUGHT GAIN IN HAVING THE ACT APPLICABLE TO ALL PUBLIC SECTOR UNDERTAKINGS ACCEPT THOSE SPECIFICALLY EXEMPTED OUT, THE CHAIRMAN OF THE STEERING COMMITTEE INITIATED DISCUSSION OF THE MINISTRY'S PROPOSALS WITH THE ENVIRONMENTAL GROUPS AS REPRESENTED BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION.

OUT OF THESE DISCUSSIONS, A SIGNIFICANT PROPOSAL EMERGED. WHILE CELA COULD RECOGNIZE THE ADMINISTRATIVE DIFFICULTY IN ATTEMPTING TO SCREEN ALL ACTIVITIES OF ONTARIO'S 835 MUNICIPALITIES ON A CASE-BY-CASE BASIS, IT WAS CONCERNED THAT THE ARBITRARY $1,000,000 CUT-OFF WOULD LEAD TO THE EXEMPTION OF SOME PROJECTS WHICH HAD SIGNIFICANT ENOUGH ENVIRONMENTAL CONCERNS TO MERIT ENVIRONMENTAL ASSESSMENT. CELA THUS PROPOSED THAT IT COULD LIVE WITH THE $1,000,000 EXEMPTION APPROACH PROVIDED THE GOVERNMENT AGREED TO ESTABLISH AN INDEPENDENT "WATCHDOG" BODY TO WHICH CITIZENS COULD TAKE CONCERNS ABOUT SPECIFIC PROJECTS WHICH THEY FELT SHOULD BE MADE SUBJECT TO THE ACT OR EXEMPTED FROM IT.

MEANWHILE, THE MINISTRY OF THE ENVIRONMENT HAD DEVELOPED A CONCEPTUAL OUTLINE OF REGULATIONS TO APPLY THE EA ACT TO MUNICIPALITIES. FIGURE 4 SHOWS THIS OUTLINE.

1978

As we moved into 1978, submissions in response to the Ministry's position paper, "The Environmental Assessment Act and Municipalities", started to dribble in. The responses were generally favourable, but continued to emphasize the concern about having streamlining solutions in place by the time municipal undertakings became subject to the Act.

In January, 1978, the Premier accepted CELA's proposal regarding a "watchdog" mechanism, and asked the Environmental Assessment Steering Committee to take on this role on an interim basis, with a commitment to establish a permanent screening mechanism if experience proved the necessity for one.

Work on drafting regulations continued within the Ministry of the Environment, and by March a draft acceptable to the Registrar of Regulations had been prepared.

A ministerial shuffle took place during this period, resulting in some delay. However, the Environmental Assessment Steering Committee and the Municipal Liaison Committee strongly urged the Ministry to release the draft regulations for public discussion and this was done on June 16, 1978.

During the summer of 1978, the municipalities were carrying out their review of the proposed regulations. The municipal staff who had participated in the initial Municipal Working Group were brought together to work on the municipal critique of the proposed regulations.

During the same period, within the bureaucracy, staff of the Ministry of the Environment and the Ministry of Housing were working out the last details of an agreement to streamline arrangements between the Environmental Assessment Act and the Planning Act. Municipalities and the public were not yet aware that an agreement was imminent.

Briefs in response to the draft regulations flowed into the Ministry of the Environment during the summer and early fall of 1978. The environmental groups played a much more active role at this stage of the consultations than they had earlier.

To give you an idea of the tone of some of the municipal comments, here are a couple of quotations. One municipality commented as follows:

> "Proposed regulation ... is difficult to assess at this time but would appear to be fairly limited and therefore not too objectionable, and on this basis, it was recommended that your correspondence be received and filed".

THAT CERTAINLY HELPED US A GREAT DEAL! IN A SOMEWHAT DIFFERENT TONE, A REGIONAL MUNICIPALITY COMMENTED:

> "IT IS APPRECIATED THAT MORE CONCERNS HAVE BEEN RAISED THAN THE FEW SOLUTIONS THAT HAVE BEEN OFFERED AND INDEED THIS IS AT THE HEART OF ANY EFFORT TO APPLY FIXED STATUTORY REGULATIONS TO A DYNAMIC CHANGING BEING, NAMELY, THE ENVIRONMENT. IT IS EVIDENT THAT SATISFACTORY PROCESS IS HOWEVER BEING MADE AND WITH GOOD WILL, ENTHUSIASM AND PATIENCE A GOOD REGULATORY PROCESS CAN BE ATTAINED".

THAT, OF COURSE, TOUCHED OUR HEARTS!

BY OCTOBER, 1978, THE PROVINCIAL-MUNICIPAL LIAISON COMMITTEE SERVED, ONCE AGAIN, AS THE FORUM FOR THE DIALOGUE TO CONTINUE. THE MUNICIPALITIES PRESENTED THEIR RESPONSE TO THE DRAFT REGULATIONS. THE MINISTER RESPONDED, HINTING AT GOOD PROGRESS HAVING BEEN MADE ON THE STREAMLINING ISSUES, AND INDICATING THAT THERE WAS SOME ROOM FOR ACCOMMODATION ON OTHER ISSUES RAISED BY THE MUNICIPALITIES.

1979

From the October 1978, meeting through much of 1979, the issue appeared to lie dormant. Behind the scenes, one can surmise, the waters were being carefully tested. In October, 1979 a revealing exchange took place between the Minister of the Environment and the environmental critic of the NDP. Explaining why the municipal regulations had not yet been put in place, the Minister of the Environment stated:

> "Let me say there are zero who have come forward wishing for this. You'd think that if there was that great enthusiasm there for the Act, that I wish was there and that you are wishing was there, one of the enlightened municipalities out of the 700 or whatever would say, 'This is a great thing: why don't we have it?'. But they are not. That has to say something to both of us. Whether we like what it says is another matter. But they are not coming forward."

The Minister also suggested that a reason for the delay was the necessity to first find time to bring forward legislation to implement the proposed arrangements to eliminate duplication of hearings:

> "Cabinet has fully agreed with the proposals that we have put forward to eliminate the duplication of hearings. That will require an amendment to the Act, and that has been agreed to by Cabinet. It's a matter of House time, on that particular one; nothing more, nothing less".

1980

Moving into 1980, the pace picked up substantially. In January, a major brief was received from the Association of Municipalities of Ontario setting out the Association's remaining concerns about the Ministry's proposed approach.

On February 15th, the Minister of the Environment once again met with the Municipal Liaison Committee, this time to respond to the AMO's Brief. Without getting into the details of the response, the Minister indicated that he could agree with five of the eight points raised by the AMO, and could go part way toward meeting their concern on the other three. Then, in a surprise move, the Minister announced that he would raise the proposed cut-off exemption to $2,000,000.

As might be expected, the municipal response was highly favourable. Obviously feeling that the Government and the municipalities were as close to agreement as they were likely to get, the Minister ended his remarks by stating he intended to seek Cabinet concurrence to proceed with the proposed municipal environmental assessment regulations in the immediate future.

FIVE DAYS LATER, ON FEBRUARY 20, CABINET GAVE THE MINISTER APPROVAL IN PRINCIPLE TO PROCEED WITH THE MUNICIPAL REGULATIONS AND TO PREPARE COMPREHENSIVE STREAMLINING LEGISLATION TO ELIMINATE DUPLICATION OF HEARINGS.

ON MARCH 11, THE SPEECH FROM THE THRONE CONFIRMED THE GOVERNMENT'S INTENT:

> "MUCH VALUABLE EXPERIENCE HAS BEEN GAINED FROM THE APPLICATION OF THE 1975 ENVIRONMENTAL ASSESSMENT ACT TO APPROPRIATE PROJECTS OF PROVINCIAL AGENCIES. THIS HAS PROVED TO BE A CONSTRUCTIVE INITIAL STEP TOWARDS APPLYING ENVIRONMENTAL ASSESSMENTS TO ALL MAJOR PROPOSALS. IN KEEPING WITH THE GOVERNMENT'S COMMITMENT, AND FOLLOWING EXTENSIVE CONSULTATION WITH MUNICIPALITIES THROUGH THE PROVINCIAL-MUNICIPAL LIAISON COMMITTEE, THE ACT WILL BE EXTENDED TO ENVIRONMENTALLY SIGNIFICANT MUNICIPAL PROJECTS. THE NECESSARY REGULATIONS WILL COME INTO EFFECT SHORTLY.
>
> MEASURES WILL ALSO BE INTRODUCED TO STREAMLINE THE HEARING PROCEDURES OF THE ONTARIO MUNICIPAL BOARD AND THE ENVIRONMENTAL ASSESSMENT BOARD. THE NEW PROCEDURES WILL ELIMINATE DUPLICATION AND DELAY BY ALLOWING A TRANSFER IN JURISDICTION BETWEEN THESE TWO BODIES ON CRITICAL ENVIRONMENTAL AND LAND USE ISSUES."

ON JUNE 3, 1980, ALMOST FIVE YEARS AFTER THE ENVIRONMENTAL ASSESSMENT ACT WAS PASSED BY THE LEGISLATURE, THE MINISTER OF THE ENVIRONMENT ANNOUNCED TO THE HOUSE THAT THE MUNICIPAL ENVIRONMENTAL ASSESSMENT REGULATIONS WERE COMING INTO EFFECT THAT DAY.

CONSULTATION WITH THE MUNICIPALITIES CERTAINLY DID NOT END WHEN THE REGULATIONS BECAME EFFECTIVE. THE ENVIRONMENTAL ASSESSMENT SECTION HAS CARRIED OUT AN EXTENSIVE EDUCATION PROGRAM TO COMMUNICATE THE IMPLICATIONS OF THE REGULATIONS TO MUNICIPAL OFFICIALS, BOTH AT THE POLITICAL AND THE STAFF LEVELS. TO IMPLEMENT THE REGULATIONS A FURTHER FOUR WORKING GROUPS HAVE BEEN SET UP TO DEVELOP CLASS ENVIRONMENTAL ASSESSMENTS FOR VARIOUS CATEGORIES OF MUNICIPAL PROJECTS.

PERHAPS MOST IMPORTANTLY, IN IMPLEMENTING THE MUNICIPAL REGULATION, THE MINISTER OF THE ENVIRONMENT MADE IT CLEAR THAT THE REGULATION WAS ESSENTIALLY A STRUCTURE FOR STARTING THE APPLICATION OF THE EA ACT TO MUNICIPAL UNDERTAKINGS. IN AN OPEN LETTER TO ALL MUNICIPALITIES, AFTER THE REGULATION WAS PASSED, THE MINISTER MADE THE COMMITMENT TO BE "OPEN-MINDED TO POSSIBLE REVISIONS OF THE REGULATION" AS EXPERIENCE WAS GAINED. THIS COMMITMENT HAS INDEED BEEN KEPT, AND THE REGULATION HAS ALREADY BEEN AMENDED SEVERAL TIMES TO DEAL WITH VARIOUS DIFFICULTIES THAT HAVE ARISEN IN ITS APPLICATION AND INTERPRETATION.

SO WHAT LESSONS HAVE WE LEARNED FROM THIS FIVE YEAR SAGA?

LESSONS LEARNED

OUT OF MY INVOLVEMENT IN THIS PROCESS OF DISCUSSION, I CAN DRAW SEVERAL LESSONS THAT I WOULD CERTAINLY WANT TO TAKE INTO ACCOUNT IF STARTING ANEW ON A CONSULTATIVE PROCESS FOR MAJOR NEW REGULATIONS.

FIRST, ONE SHOULD RECOGNIZE THAT THERE ARE LIKELY TO BE MANY DIFFERENT ACTORS WITH MANY DIFFERENT PURPOSES WHO WILL ATTEMPT TO INFLUENCE THE PROCESS IN ONE WAY OR ANOTHER. FROM OUR EXPERIENCE, I WOULD ADVOCATE THAT IT IS IMPORTANT TO INVOLVE ALL OF THE POTENTIALLY AFFECTED SECTORS AND NOT JUST THE PARTICULAR "CLIENT GROUP" WHICH IS PROPOSED TO BE REGULATED. IT SHOULD ALSO BE RECOGNIZED THAT NOT ALL OF THE ACTION WILL TAKE PLACE WITHIN THE BOUNDARIES OF THE PROCESS IN WHICH PEOPLE HAVE BEEN INVITED TO PARTICIPATE. SOME OF THE "PLAY" WILL TAKE PLACE ELSEWHERE. TO BE SUCCESSFUL, PARTICIPANTS NEED TO KEEP TRACK OF BOTH "ON ICE" AND "OFF THE ICE" ACTION.

SECOND, IN ANY CONSULTATIVE PROCESS, CONFLICT IS LIKELY OVER THE ISSUE OF "WHOSE AGENDA?". WHILE SOME PARTIES MAY ENTER INTO THE PROCESS ACCEPTING THAT THE OBJECT IS TO DEVISE AN EFFECTIVE REGULATION TO ACHIEVE SOME END, OTHER PARTIES MAY BE OPPOSED IN PRINCIPLE TO THAT CONCEPT.

WHILE SUCH OPPOSITION IN PRINCIPLE DOES NOT EXACTLY PROVIDE THE ATMOSPHERE FOR CO-OPERATIVE RULE-MAKING, IF IT DOES EXIST IT NEEDS TO BE DEALT WITH AND BROUGHT TO SOME KIND OF RESOLUTION. OTHERWISE, IT WILL CONTINUE TO FESTER, WITH THE ONE CERTAINTY BEING THAT IT WILL EVENTUALLY BREAK OUT AT SOME POINT IN THE PROCESS.

THIRD, IT IS HIGHLY LIKELY THAT THE ORIGINAL OBJECTIVES OF THE EXERCISE WILL BE REVISED AS A RESULT OF THE CONSULTATIVE PROCESS. IN THE CASE I'VE JUST TALKED ABOUT, WE STARTED OUT ON THE TRACK TO MAKE SOME REGULATIONS. WHILE WE ULTIMATELY GOT TO THAT OBJECTIVE, WE ALSO ENDED UP WITH NEW LEGISLATION IN THE FORM OF THE CONSOLIDATED HEARINGS ACT, AND A NEW ADMINISTRATIVE MECHANISM IN THE FORM OF THE PROMISED ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE.

FOURTH, IT WOULD BE DESIRABLE TO HAVE FROM THE OUTSET A WELL UNDERSTOOD PROCESS, WITH WHICH ALL PARTIES AGREE, RATHER THAN AN AD HOC, EVOLVING PROCEDURE. I SAY THIS BEARING IN MIND WHAT I SAID EARLIER ABOUT SOME OF THE ACTION INEVITABLY TAKING PLACE OUTSIDE OF THE DEFINED PROCESS. BUT I THINK THAT EVEN WITH THAT CONSIDERATION, THE EXERCISE WOULD PROCEED MUCH MORE SMOOTHLY IF THERE WAS A GENERAL UNDERSTANDING AS TO THE KEY DECISION POINTS AND THE TIME FRAME.

FIFTH, PROPER CONSULTATION INEVITABLY TAKES TIME. THIS CAN BE A PROBLEM IN CASES WHERE THERE IS A GREAT URGENCY TO BRING INTO FORCE A REGULATION ON SOME KEY ISSUE. BUT PERHAPS THIS PROBLEM COULD BE DEALT WITH BY AN ARRANGEMENT WHEREBY A TEMPORARY REGULATION COULD BE PUT INTO FORCE ON THE UNDERSTANDING THAT IT WOULD EXPIRE UNLESS RENEWED BY A CERTAIN DATE WHICH WOULD BE SET SO AS TO ALLOW SUFFICIENT TIME FOR PROPER CONSULTATION. THIS POINTS TO ANOTHER TIME-RELATED PROBLEM WHICH WE EXPERIENCED: NAMELY, THERE MUST BE SOME MEANS OF BRINGING A CONSULTATIVE PROCESS TO CLOSURE. OTHERWISE, ITS ALMOST INEVITABLE THAT SOME PARTY WILL FIND IT IN ITS INTEREST TO KEEP THE ISSUES ON THE MERRY-GO-ROUND.

MODEL PROCESS FOR REGULATION DEVELOPMENT

IF I AM BOLD ENOUGH TO SUGGEST THAT THERE ARE SOME LESSONS TO BE DRAWN FROM OUR EXPERIENCE, I GUESS I ALSO HAVE SOME RESPONSIBILITY TO SUGGEST HOW I MIGHT DESIGN A PROCESS FOR REGULATION DEVELOPMENT IF I WAS GIVEN THE OPPORTUNITY TO DO IT AGAIN. FIGURE 5 SHOWS THE MAIN POINTS OF THE PROCESS I WOULD SUGGEST.* LET ME TALK ABOUT EACH OF THESE POINTS BRIEFLY.

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* I WOULD LIKE TO ACKNOWLEDGE THE CONTRIBUTION MADE TO THESE IDEAS, THROUGH MANY DISCUSSIONS, BY RUSS HOULDIN AND MIKE PRATT. MR. HOULDIN, FORMERLY AN ENVIRONMENTAL PLANNER IN THE ENVIRONMENTAL ASSESSMENT SECTION, IS NOW WITH THE MINISTRY OF ENERGY. MR. PRATT IS AN ENVIRONMENTAL PLANNER WITH THE ENVIRONMENTAL ASSESSMENT SECTION.

1. Background Research

In this phase, the Ministry would undertake preliminary research to help identify and focus the major issues. Potentially affected parties and interested parties would be identified and "low key" preliminary discussions would be held. Research would be undertaken to see if other jurisdictions had dealt with the problem at hand. A starting bibliography would be prepared.

2. Develop General Concepts, Alternatives

On the basis of the background research phase, a paper would be prepared setting out the general concepts and the main alternatives involved in dealing with the issue at hand. Workshops and working groups involving the various affected parties would be used at this stage.

3. Publish Discussion Paper

A discussion paper (much like a green paper) outlining the main issues and alternatives would then be published. The paper would be sent directly to the most senior person in all of the affected groups or organizations that had been identified. In addition, wide public notice of the availability of the paper would be given in the general media and in specialized business, professional and interest group publications.

4. Public Response to Discussion Paper

The response from the public would take place in a number of formats. This could involve meetings, structured as appropriate (e.g., seminars, small groups, etc.) with participation from one particular segment of the public or from persons representing a cross-section of the public. Formal written submissions from individuals or organizations would also be invited.

5. Analyze and Evaluate Public Response

Ministry staff would then analyze the public response to the preliminary discussion paper and provide this analysis to the Ministry's senior management and the Minister for their evaluation and direction.

6. Publish Position Paper with Draft Regulation

A position paper would then be prepared and issued. The paper would describe the response received to the earlier discussion paper, and would set out the Ministry's preferred approach and the justification for it. Included with the position paper would be a draft of the proposed regulation to implement the Ministry's preferred approach.

7. Public Response to Position Paper

Response to the position paper and draft regulation would be obtained in much the same way as the response to the earlier discussion paper.

8. Analyze and Evaluate Response

Ministry staff would again analyze the response and provide it to the Ministry's senior management and the Minister.

9. Select Preferred Approach

The Minister of the Environment would select the approach that he was prepared to take to Cabinet.

10. Cabinet Submission

A Cabinet Submission would be prepared setting out the Ministry's recommended approach. As is customary, the Cabinet Submission would also contain information on the entire public consultation program, the nature of the response received, and a discussion of the alternative courses of action which had been considered and the reasons for their rejection.

So that, in very brief outline, is how I might structure the process for developing a major new regulation. Of course, I should note that the process would contain opportunities for feedback and iteration among the various stages if necessary.

CONCLUSION

To close, let me offer you a few quotations.

The first comes from a rather timid fellow:

> "There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain of success, than to take the lead in the introduction of a new order of things."
>
> Niccolo Machiavelli, The Prince, c. 6.

The next comes from a more sublime soul:

> "Every reform, however necessary, will by weak minds be carried to an excess, that itself will need reforming."
>
> S.T. Coleridge, Biographia Literaria, c. 1.

The last from a futurist who did not neglect hindsight. Speaking of England, but with words that might well apply to other parliamentary democracies we know and love, he said,

> "In England we have come to rely upon a comfortable time-lag of 50 years or a century intervening between the perception that something ought to be done and a serious attempt to do it."
>
> H.G. Wells, The Work, Wealth and Happiness of Mankind, c.II.

With respect to regulatory reform, I think the perception has arrived. I hope that it will not take that long and that our minds and wills are equal to what we know will be a difficult task.

HIGHLIGHTS OF EA POLICY DEVELOPMENT

- JUNE 1972: IN HIS STATEMENT APPOINTING SOLANDT COMMISSION, PREMIER DAVIS SAYS PERMANENT ENVIRONMENTAL REVIEW MECHANISM NEEDED.

- 1972-1974:
  - CABINET APPROVES IDEA OF LEGISLATION;
  - LEGISLATION PROMISED IN TWO SUCCESSIVE THRONE SPEECHES;
  - GREEN PAPER ISSUED;
  - CABINET APPROVES LEGISLATION FOR INTRODUCTION.

- MARCH-JULY, 1975:
  - FIRST READING OF EA BILL IN MARCH, 1975;
  - CELA WRITE-IN CAMPAIGN;
  - STANDING COMMITTEE HEARS PUBLIC SUBMISSIONS;
  - BILL REPORTED OUT OF COMMITTEE WITH 38 AMENDMENTS;
  - THIRD READING WITH SUPPORT OF ALL PARTIES.

FIGURE 1

APPLICATION OF E.A. ACT

PUBLIC SECTOR

EVERYTHING IS SUBJECT UNLESS EXEMPTED

PRIVATE SECTOR

EVERYTHING IS EXEMPT UNLESS DESIGNATED

FIGURE 2

SCREENING PROCESS PRECEDES IMPLEMENTATION

- TWO CHOICES: EXEMPT OR SUBJECT
- SCREENING CRITERIA
    1. SIGNIFICANCE OF EFFECTS
    2. AVAILABLE RESOURCES
    3. ADEQUACY OF EXISTING APPROVALS
- DECISION IS A JUDGEMENT CALL - MADE BY CABINET
- THREE TYPES OF EXEMPTION HAVE BEEN GRANTED
    1. COMPLETE - WHERE NO E.A. MERITED
    2. WHERE PROJECT IN ADVANCED STAGE
    3. TEMPORARY

FIGURE 3

CONCEPTUAL OUTLINE OF REG.

1. EXEMPT UNDERTAKINGS BELOW $1 MILLION.

2. NOTWITHSTANDING 1, INCLUDE CERTAIN TYPES OF UNDERTAKINGS.

3. EXEMPT CERTAIN UNDERTAKINGS VALUED OVER $1 MILLION.

4. GRANDFATHER EXEMPTIONS.

5. TRANSITIONAL EXEMPTIONS.

FIGURE 4

MODEL PROCESS FOR REGULATION DEVELOPMENT

1. BACKGROUND RESEARCH

2. DEVELOP GENERAL CONCEPTS, ALTERNATIVES

3. PUBLISH DISCUSSION PAPER

4. PUBLIC RESPONDS TO DISCUSSION PAPER

5. ANALYZE AND EVALUATE PUBLIC RESPONSE

6. PUBLISH POSITION PAPER WITH DRAFT REGULATION

7. PUBLIC RESPONDS TO POSITION PAPER

8. ANALYZE AND EVALUATE PUBLIC RESPONSE

9. SELECT PREFERRED APPROACH

10. CABINET SUBMISSION

FIGURE 5

REPORT ON REGULATORY REFORM

Treasury Board of Canada | Conseil du Trésor du Canada

Office of the Coordinator
Regulatory Reform

Issue No. 1 September 1981

THE OFFICE OF THE COORDINATOR, REGULATORY REFORM, AND ITS ROLE

The Office of the Coordinator, Regulatory Reform (OCRR), was established in October 1979. In the spring of 1980, the Prime Minister gave a special assignment to the Honourable Donald J. Johnston, President of the Treasury Board, to coordinate the federal government's regulatory reform activities.

On October 9, 1980, Cabinet endorsed an 18-month regulatory reform work program proposed by Mr. Johnston. This program has two major objectives: first, to improve public administration through reforms to the federal regulatory process; and second, to reduce the regulatory burden on the Canadian economy.

The functions of the Office of the Coordinator are:
- to advance and coordinate action on the reform work program, in conjunction with central agencies, regulating departments, and regulatory agencies;
- to provide policy advice on regulatory matters to the President of the Treasury Board and to the Cabinet Committee on Government Operations;
- to provide regulatory policy advice to the Ministries of State for Social and Economic Development and the Privy Council Office, as well as to regulatory departments and agencies;
- to provide analysis of proposals for deregulation and reforms to the regulatory process, and to make recommendations to Cabinet.

The Office will function until June 1982 and is administratively located within the Treasury Board Secretariat.

SELECTED REGULATORY REFORM GOALS

- repeal of obsolete federal statutes by an omnibus bill;
- elimination of unenforceable, obsolete, contradictory and duplicative regulations;
- improved departmental regulatory impact assessments prior to decisions on new regulations;
- inclusion of regulatory policies/programs in departmental evaluation schedules;
- policy decision on procedures for Cabinet review of regulatory agency rulings;
- decision on government policy directives to regulatory agencies;
- preparation of job descriptions for positions on federal regulatory agencies; and
- decision on policy for funding of public interest groups;
- legislative amendments to reduce and rationalize requirements for the retention of records by the private sector;
- improved private sector access to the regulatory process, e.g., consultative mechanisms, agendas, access to information, funding;
- departmental responses and decisions on selective deregulation;
- public notice of new records retention requirements.

"... and please grant me and the rest of the board the grace not to abuse deregulation."

Drawing by Donald Reilly © 1981 The New Yorker Magazine Inc

UPDATE ON SOME CURRENT OCRR PROJECTS

Omnibus Repeal Bill

The purpose of this project is to repeal obsolete, duplicative or unnecessary federal statutes. Approximately 130 such statutes have been identified. Cabinet will be asked to approve preparation of the necessary bill, which should be presented to Parliament in the fall of 1981.

Records Retention

The private sector has been burdened with the necessity of complying with 69 different records retention periods. The OCRR is implementing a 1980 Cabinet recommendation that sets out six categories and reduced time limits for records retention. The different statutory provisions will be brought into line through an omnibus amendment bill.

Regulatory Agenda

The OCCR is examining the feasibility of a regulatory agenda as a way of providing early notice to the private sector and stimulating consultation on new regulation. Each regulating department or agency would produce an agenda once or twice

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a year listing all its forthcoming regulatory initiatives. Two departments are presently compiling agendas that will provide valuable information on their utility to the private sector.

Public Interest Group Support

It has been suggested by such bodies as the Economic Council of Canada and the Special House Committee on Regulatory Reform that public interest groups are at a disadvantage in obtaining access and making representations to regulators unless they are provided with assistance. The government is examining the issue of support for public interest groups, including different methods of assistance, the identification of target groups, and the criteria for determining eligibility.

Consensus Standards

The aim of this project is to promote greater use by federal regulators of the consensus process when developing technical specifications for legislation, and to encourage reliance on voluntary standards as an alternative to mandatory regulations. Work on this project is proceeding in close cooperation with the Standards Council of Canada.

Federal-Provincial Consultative Committee on Government Regulation

The Committee was set up to provide a forum for advice, consultation and the exchange of information during the life of the Economic Council of Canada's work on regulation. At the May 26, 1981 meeting in Ottawa, members favoured continuation of the Committee in its present role until at least June, 1981. The President of the Treasury Board has written to his provincial colleagues requesting their approval of extending the term of the Committee.

EXCERPTS OF SPEECHES MADE BY THE PRESIDENT OF THE TREASURY BOARD

To the Advisory Committee of the Canadian Manufacturers' Association (Toronto, January 1981), the President outlined the government's plans for regulatory reform and the importance of assessing the impact of new regulations.

"The message that I wish to bring to you today is that the federal government is committed to improving the regulatory process. My colleagues and I share a commitment to improving consultation as well as to improving the process of developing new regulations."

"As many of you know, Treasury Board Canada administers the socio-economic impact analysis, or SEIA Program. SEIA requires that departments carry out and publish detailed socio-economic analyses for proposed major federal regulations in the area of health, safety, and fairness. These analyses require an assessment of potential costs, benefits, shifts of income, and effects on competition and market structure. . . . I am interested in improving knowledge in the private sector on the federal SEIA Program and knowledge within the senior management of federal departments on the benefits to be gained by utilizing this type of analysis."

To the National Conference on Regulatory Reform (Montreal, June 1981), the President spoke about the Economic Council of Canada's Final Report on the Regulation Reference and gave a status report on the government's regulatory reform program. In summary, he stressed that:

"The Council's recommendations, despite what some commentators thought, will not be placed on the shelf. There is a strong resolve in the government to introduce reforms that will allow sectors of the economy to meet the challenges they face. The federal government will play its part, and so too, I hope, will the provincial and local governments, the private sector, labour and the consumer organizations. This is not the time to stand back and rest, leaving government to go it alone. For support from all, not just the federal government, will be needed in accomplishing reform."

CONTACTS AND AREAS OF RESPONSIBILITY

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Wendy Porteous, Coordinator

Margot Priest
- Public interest group support
- Regulatory Agenda
- Liaison with PCO review group and agencies, Department of Justice, and Law Reform Commission
- Monitor U.S. regulatory scene

Bob Sowden
- Records retention
- Service to the public
- Review consultative techniques

Celia Asselin
- Consultation and communications

Tony Ellison
- Regulatory impact analysis
- Deregulation

Eric Milligan
- Legislative amendments
- Immediate review and elimination of existing regulations
- Evaluation of departmental regulatory policies and programs
- Parliamentary reform

DANGEROUS GOODS CODE COORDINATING COMMITTEE
SUITE 708, 67 YONGE STREET, TORONTO, ONTARIO. M5E 1J8
(416) 863-1944 Telex: 065-23857

November 14th, 1980.

Mr.T.D.Ellison,
Transport of Dangerous Goods,
Place de Ville,
Ottawa,
Ontario.
K1A ON5.

Dear Duncan:

We wish to present our views on your "mock-up" of Volume I of the Code, which we shall refer to as "Draft 4" in the interest of ready reference. Frankly, we were astounded by the volume of new and significantly changed material in this draft, the little response to our proposals and a quite significant regression from our previous interpretation of both written material and verbal reassurances.

Most of our offering will be made by way of annotations to specific pages of the draft as requested. However, we believe that several points can best be handled in this letter and we propose to proceed with them at this time.

APPLICATION (Part I)

We continue to be disturbed about the uneconomic and impracticable aspects of creating unnecessary obsolescence as affecting existing containments and new construction. Existing containments should be allowed to run a reasonable life span and new construction must be given ample time for changeover. There have been reassurances with regard to potential protection during development of standards and the Lists and even discussion of delayed implementation and "grandfather's rights" at the proposed Advisory Council (Committee). However, we are faced with the immediacy of these regulations and their attendant liabilities. We recommend the inclusion, under Application or in Part V, sections 2 and 3, page 79, of some provision that would have the effect of permitting -

(a) the ongoing manufacture of currently authorized containments, and
(b) the ongoing use of those containments as presently authorized.

IMPORT/EXPORT - CANADA/U.S. (Part I - section 3.)

D.G.C.C.C. throughout deliberations on this Code consistently has maintained the absolute necessity of compatibility with U.S. regulations and until very recently received continual reassurances from you in this respect. Failure to satisfy this need not only will create a very serious economic burden but will present an unjustifiable and unacceptable barrier to international trade. We recommend that dangerous goods, which are being

cont'd.....

passed or have been passed between Canada and the United States in compliance with the requirements of C.F.R.Title 49 must be deemed to comply with these regulations to the point of use or consumption in Canada or from the point of production in Canada.

INTERPRETATION. (Part II)

Our previous proposals were dictated by our constant concern to achieve simplification. There was obscurity arising from the nomenclature system, which has been considerably, but not completely, clarified and a deficiency in extent of definition and cross-reference. We recommend:

1. Inclusion of all definitions contained in the Act (Bill C18).
2. Provision of definitions for key terminology used in the Code such as "marking","labelling" and "placarding".
3. Repetition of or cross-referring to all the definitions which are interspersed through the Code.
4. Certain other revisions and specific additions, which we have included in our annotations.

Consumer Commodities and Limited Quantities (Part III,subsection 20(6)(7))

We appreciate the concerns relative to satisfying the requirements of emergency response personnel at the scene of an accident or incident. However, consumer packaged goods supplied by manufacturers will not be of primary concern to emergency response personnel in crisis situations,since the level of danger is relatively low and relatively localized. The primary concern with which the regulations should deal in respect of leakage of packaged products of manufacturers should be the provision of information to transportation personnel.

We wish to make specific comments as follows:

Documentation - Requirements of Part IV, section 5, in our view are designed to meet special situations relating to ferry crossings only. There seems to be no justification for this costly and administratively impracticable burden on the myriad of daily transportation transactions that involve only surface transportation.

Placarding - We can reluctantly accept the use of a "Danger" placard on any shipment of a single consumer commodity of 5,000 kg or more (Part IV, subsection 37 (d)), but we must warn against the involvement of mixed loads of that volume. Historical records show conclusively that such loads, which are frequent, present a relatively low level of danger.

The differing characteristics of the various consumer commodities which might be included in such loads call for different control measures and different handling, with the result that any system of placarding is likely to be useless or actively misleading. The great number of vehicles so placarded would destroy the attention-getting value of the placard thus dissipating the warning value of the placard in areas of real concern.

cont'd.....

Marking - We recognize that there continues to be some concern for consumer commodities which have been exempted from labelling because of the relatively lower level of danger. Accordingly we are prepared to provide a marking on containments which will give transportation personnel suitable information to deal with potential problems arising from product damage or leakage. We are confident that this offer represents a substantial contribution to the promotion of safety without imposing a costly and impracticable burden on shippers.

Now we request you to turn to our Annotations, which differ in degree of specificity rather than importance.

Yours truly,

THMcT/jh.

Thos.J.McTague,
Chairman.

Encl.

DANGEROUS GOODS CODE COORDINATING COMMITTEE
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A N N O T A T I O N S

T O

"DRAFT 4" OF THE CODE

SUPPLEMENTING THOSE RECOMMENDATIONS CONTAINED IN OUR COVERING LETTER, WE HAVE NOTED OTHER REMARKS AND PROPOSALS CONCERNING VARIOUS AREAS OF THE CODE INVOLVING THE FOLLOWING PAGES:

1, 2, 3, 5, 7, 8,

9, 10, 11, 12, 15, 26,

30, 36, 37, 40, 44, 47,

48, 49, 62, 63, 64, 71,

79, 80, 84(d) 85, 101, 110,

111, 154, 155, 157.

117

PART I - APPLICATION

1. Pursuant to paragraph 3(3)(a) of the Act, the following are excepted from the application of these regulations:

(a) the movement of dangerous goods on private property to which access by the public is controlled;

(b) the handling, offering for transport or transporting of dangerous goods by highway where the goods are being delivered to a purchaser from a retail outlet;

(c) the handling and transporting of samples of dangerous goods in motor vehicles by manufacturers' or distributors' representatives acting in the course of their employment;

(d) the transporting of dangerous goods in any means of transport operated or licensed by a federal, provincial, regional or municipal government for emergency services;

(e) the transporting of dangerous goods required for the operation or safety of a means of transport, provided that the packaging or means of transport in which those goods are carried complies

Commensurate with our very strong views that storage as well as movement on private property should be exempted, we propose revision of line 1 to read - "(a) the movement or storage of".

with all applicable design, construction and operating standards prescribed by or pursuant to any Act of Parliament or of a province; and

(f) goods conforming to the requirements of subsection 20(2) to 20(5) of Part III.

Suggest changing line 3 to "subsection 20 (2) to 20 (5) and 20 (8)".

SEE PAGES 34 - 36

2. For the purpose of paragraph 3(3)(b) of the Act, dangerous goods will be deemed to be handled, offered for transport or transported under the sole direction or control of the Minister of National Defence when the means of transport is operated exclusively by or for the Department of National Defence in accordance withthe applicable Department of National Defence regulations or authorized procedures, and n the case of highway transport, is escorted by Department of National Defence personnel in a separate vehicle.

3. (1) Consignments of dangerous goods that are being imported or exported from Canada shall be deemed to be offered, handled for transport or transported in compliance with these regulations if they are classified, marked, labelled, documented, placarded, packed and loaded in conformity with the IMDG Code when they are destined to be, or have been, transported by international marine carriers.

We believe that the intent is to regulate dangerous goods rather then consignments (see also note on Part IV, Section 40) and suggest deletion of line 1 resulting in opening with "Dangerous".

Presumably the omission of a provision in respect to IATA relative to air transport was an oversight. We recommend the following revision:
Prefix line 11 with "(a)";
Add following in line 15 after word "carriers" -
(b) the IATA Restricted Articles Regulations, when they are destined to be, or have been transported by international air transport.

(c) shipments of dangerous goods that are being imported or exported from Canada to the United States of America shall be deemed to be offered, handled for transport and transported in compliance with these regulations if they are packed and loaded in conformity with Title 49 of the United States Code of Federal Regulations provided that they are classified, marked, labelled, placarded and documented in conformity with the requirements of Part IV of these regulations.

Recommendations in our covering letter respecting compatibility can be achieved by substitution as follows:

1. Delete all words in lines 1 to 4 substitute the following "(2) Dangerous Goods which are being imported or have been imported into Canada from the United States"

2. Delete all words in lines 9 to 12 and substitute – "regulations if they are classified, marked, labelled, documented, placarded, packed and loaded in conformity with Parts 100 to 199 of Title 49 of the United States Code of Federal Regulations".

3. Close with word "Regulations" in line 12 and delete the remainder.

(2) The description of the goods shall not make use of or refer to any code or abbreviation that is not authorized or prescribed.

(3) Where the goods are described by a "not otherwise specified" (n.o.s.) shipping name, the declaration shall show the technical name of the goods or of the dangerous substances in any mixture in parentheses immediately following the shipping name.

(4) Declarations accompanying Class 3 goods destined for international marine transport that have been classified according to the requirements of the IMDG Code shall indicate the use of that system by inserting the letters "IMCO" immediately before the Class and Division numbers.

(5) A mixture or solution comprised of a dangerous good identified in Schedule A by technical name and a non-dangerous good may be described using the shipping name of the dangerous good, if:

(a) the mixture or solution is not specifically listed in Schedule A;

(b) the Class or Division of the mixture or solution is the same as that of the dangerous goods; and

(c) the qualifying word "mixture" or "solution", as appropriate, is added as part of the shipping name.

Disclosure of the technical names of "N.O.S." substances can be extremely destructive to the maintenance of proprietary information within Companies and result in long, unwieldy shipping names leading to confusion rather than clarity.

Moreover, we feel enlarged descriptions are unnecessary except possibly for systemic poisons. Docket proposals in the U.S. lead us to propose the following action:

Delete present wording and substitute the following:

(3) Where Division 6.1 goods are described by a "not otherwise specified "(N.O.S.) shipping name, the name of the compound or principal constituent that causes the goods to meet the definition of Division 6.1 shall be entered on the shipping paper in parenthesis immediately following the shipping name. This subsection does not apply to:

(i) Goods having a proper shipping name that includes the chemical element or group which causes the goods to be a poison.

(ii) Limited quantities.

(iii) Consumer quantities.

(iv) To compounds or principal constituents that would cause death or corrosive destruction to tissue rather than by systemic poisoning.

PART V - RESPONSIBILITIES

General

1. Each person who handles, offers for transport or transports dangerous goods or who performs any activity related to the manufacture, distribution, sale, repair or reconditioning of packagings, containers, cargo compartments or means of transport that are subject to these regulations shall ensure that his employees and agents are familiar with and capable of fulfilling their responsibilities under the Transportation of Dangerous Goods Act and regulations.

Manufacturer

2. (1) Each manufacturer of packagings, containers or cargo compartments of vehicles intended to be used for the transportation of dangerous goods shall ensure that

(a) they comply with the safety standards and specifications prescribed by these regulations; and

(b) they display the prescribed safety marks.

(2) Packagings intended for radioactive materials shall be made and marked in compliance with the Atomic Energy Control Act and regulations.

3. (1) Packagings, containers or cargo compartments of a type governed by an approved standard listed in Schedule C

In line with the observations in our covering letter, we recommend the inclusion here or under Part I - Application of some provision that would have the effect of continuing current C.T.C. Regulations.

CHAPTER 36

CHAPITRE 36

An Act to promote public safety in the transportation of dangerous goods

Loi visant à accroître la sécurité publique en matière de transport des marchandises dangereuses

[*Assented to 17th July, 1980*]

[*Sanctionnée le 17 juillet 1980*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

SHORT TITLE

Short title

1. This Act may be cited as the *Transportation of Dangerous Goods Act*.

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur le transport des marchandises dangereuses*.

INTERPRETATION

Definitions

2. In this Act,

"analyst" *«analyste»*

"analyst" means any person designated as an analyst pursuant to subsection 13(1);

"container" *«conteneur»*

"container" means an article of transport equipment, including one that is carried on a chassis, that is strong enough to be suitable for repeated use and is designed to facilitate the transportation of goods by one or more means of transport without intermediate reloading, but does not include a vehicle;

"dangerous goods" *«marchandises dangereuses»*

"dangerous goods" means any product, substance or organism included by its nature or by the regulations in any of the classes listed in the schedule;

"handling" *«manutention»*

"handling" means loading, packing or placing, unloading, unpacking or removing or reloading, repacking or replacing dangerous goods in or from any container, packaging or means of transport or at any facility for the purposes of, in the course of or following transportation and includes

DÉFINITIONS

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

«analyste» *"analyst"*

«analyste» La personne désignée à ce titre conformément au paragraphe 13(1).

«conteneur» *"container"*

«conteneur» Contenant—même monté sur châssis—assez résistant pour permettre un usage répété et destiné au transport, sans rechargement intermédiaire, de marchandises par un ou plusieurs moyens de transport. La présente définition exclut les véhicules.

«document d'expédition» *"shipping..."*

«document d'expédition» Tout document accompagnant des marchandises dangereuses au cours de leur manutention ou de leur transport, ou qui font l'objet d'une demande de transport et en donnant la désignation ou fournissant des précisions à leur sujet. Sont notamment inclus dans la présente définition les connaissements, les manifestes, les ordres d'expédition, les feuilles de route et les bulletins de manœuvre.

storing dangerous goods in the course of transportation;

"inspector" «*inspecteur*» "inspector" means any person designated as an inspector pursuant to subsection 13(1);

"means of transport" «*moyen de transport*» "means of transport" means any road or railway vehicle, aircraft, water-borne craft, pipeline or any other contrivance that is or may be used to carry persons or goods whether or not the goods are in packaging or containers;

"Minister" «*Ministre*» "Minister" means the Minister of Transport;

"packaging" «*emballage*» "packaging" means any receptacle or enveloping material used to contain or protect goods, but does not include a container or means of transport;

"prescribed" (*version anglaise seulement*) "prescribed" means prescribed by the regulations;

"safety mark" «*indication...*» "safety mark" includes any design, symbol, device, sign, label, placard, letter, word, number, abbreviation or any combination thereof that is to be displayed on dangerous goods or containers, packaging, means of transport or facilities used in the handling, offering for transport or transporting of dangerous goods;

"safety requirements" «*règles...*» "safety requirements" means requirements for the handling, offering for transport or transporting of dangerous goods, for the reporting of those activities, for the training of persons engaged in those activities and for the inspection of those activities;

"safety standards" «*normes...*» "safety standards" means standards regulating the design, construction, equipping, functioning or performance of containers, packaging, means of transport or facilities used in the handling, offering for transport or transporting of dangerous goods;

"shipping document" «*document...*» "shipping document" means any document that accompanies dangerous goods being handled, offered for transport or transported and that describes or contains information relating to the goods and, in particular, but without restricting the generality of the foregoing, includes a bill of lading, cargo manifest, shipping order, way-bill and switching order.

«emballage» "*packaging*" «emballage» Tout ce qui enveloppe, contient ou protège des marchandises. La présente définition exclut les moyens de transport et les conteneurs.

«indication de danger» "*safety mark*" «indication de danger» Toute information destinée à signaler les risques présentés par des marchandises dangereuses, ou la conformité aux normes de sécurité, quels que soient sa forme et son support, à placer en évidence sur ces marchandises et les conteneurs, emballages et moyens de transport utilisés pendant leur manutention ou leur transport ou à l'occasion d'une demande de transport les concernant, ainsi que sur les installations utilisées à leur égard.

«inspecteur» "*inspector*" «inspecteur» La personne désignée à ce titre conformément au paragraphe 13(1).

«manutention» "*handling...*" «manutention» Toute opération, indépendamment des installations où elle a lieu, de chargement, de déchargement, de conteneurisation ou d'emballage de marchandises dangereuses effectuée en vue de leur transport, au cours de celui-ci ou par après. Les opérations d'emmagasinage effectuées au cours du transport sont incluses dans la présente définition.

«marchandises dangereuses» "*dangerous...*" «marchandises dangereuses» Produits, matières ou organismes compris dans les classes énumérées à l'annexe soit par leur nature, soit en vertu des règlements.

«Ministre» "*Minister*" «Ministre» Le ministre des Transports.

«moyen de transport» "*means of...*" «moyen de transport» Tout engin utilisé ou utilisable pour le transport des personnes ou des marchandises, que ces dernières soient ou non emballées ou conteneurisées. Sont inclus dans la présente définition les engins se déplaçant sur terre, dans les airs ou sur l'eau, ainsi que les canalisations.

«normes de sécurité» "*safety standards*" «normes de sécurité» Normes régissant les caractéristiques, la réalisation, l'équipement et l'utilisation des conteneurs, des emballages, des installations et des moyens de transport utilisés en vue de la manutention ou du transport des marchandises dangereuses, ou à l'occasion d'une demande de ce transport."

«règles de sécurité» "*safety requirements*" «règles de sécurité» Règles régissant la manutention, la demande de transport et le transport des marchandises dangereuses,

APPLICATION OF ACT

Application

3. (1) Subject to subsections (3) to (6), this Act applies to all handling, offering for transport and transporting of dangerous goods, by any means of transport, whether or not for hire or reward and whether or not the goods originate from or are destined for any place or places in Canada.

Idem

(2) Subject to subsections (3) to (6), this Act applies to all transporting of dangerous goods by ships, vessels and aircraft registered in Canada, whether in or outside Canada.

Exceptions

(3) This Act does not apply to any handling, offering for transport or transporting of dangerous goods

(*a*) to the extent that it is exempted from such application by the regulations;

(*b*) under the sole direction or control of the Minister of National Defence or deemed under the regulations to be under his sole direction or control; or

(*c*) for which the Minister or a person designated by the Minister issues a permit in accordance with the regulations.

Idem

(4) This Act does not apply to any handling, offering for transport or transporting of oil or gas by pipeline that is governed by the *National Energy Board Act* or the *Oil and Gas Production and Conservation Act* or by the law of a province.

Idem

(5) Subject to section 28, this Act does not apply to any handling, offering for transport or transporting of dangerous goods in bulk in vessels within the meaning of the *Canada Shipping Act*.

Definition of "in bulk"

(6) For the purposes of subsection (5), "in bulk" means confined only by the permanent structures of a ship or vessel, without intermediate containment or packaging.

l'établissement de rapports à cet égard, la formation des personnes qui se livrent à ces activités et l'inspection de ces activités.

DOMAINE D'APPLICATION

Domaine d'application

3. (1) Sous réserve des paragraphes (3) à (6), la présente loi s'applique à la manutention, à la demande de transport et au transport, à titre onéreux ou gratuit, de marchandises dangereuses, qu'elles aient ou non le Canada comme lieu d'origine ou de destination.

Idem

(2) Sous réserve des paragraphes (3) à (6), la présente loi s'applique à toutes les opérations de transport effectuées par des navires ou des aéronefs immatriculés au Canada, même s'ils ne s'y trouvent pas.

Exceptions

(3) La présente loi ne s'applique pas à la manutention, à la demande de transport ou au transport des marchandises dangereuses dans la mesure où ces opérations:

a) sont exclues de son application par ses règlements;

b) sont sous la seule responsabilité, de fait ou présumée en vertu des règlements, du ministre de la Défense nationale;

c) font l'objet d'un permis délivré en vertu des règlements par le Ministre ou une personne qu'il désigne.

Idem

(4) La présente loi ne s'applique pas aux demandes de transport ni aux opérations de manutention ou de transport d'hydrocarbures par canalisation régies par la *Loi sur l'Office national de l'énergie*, la *Loi sur la production et la conservation du pétrole et du gaz* ou par une loi provinciale.

Idem

(5) Sous réserve de l'article 28, la présente loi ne s'applique pas aux demandes de transport ni aux opérations de manutention ou de transport de marchandises dangereuses en vrac par bâtiment au sens de la *Loi sur la marine marchande du Canada*.

Définition de «en vrac»

(6) Pour l'application du paragraphe (5), «en vrac» s'entend du transport des marchandises dangereuses non emballées chargées pêle-mêle à bord du navire transporteur.

Application to Crown

(7) This Act is binding on Her Majesty in right of Canada or a province and any agent thereof.

Obligation de la Couronne

(7) La présente loi lie Sa Majesté du chef du Canada ou d'une province et ses mandataires.

OFFENCES

INFRACTIONS

Offences

4. No person shall handle, offer for transport or transport any dangerous goods unless

(*a*) all applicable prescribed safety requirements are complied with; and

(*b*) all containers, packaging and means of transport comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

Infractions

4. La manutention, la demande de transport et le transport des marchandises dangereuses sont interdits sauf respect des conditions suivantes:

a) observation des règles de sécurité applicables prescrites par règlement;

b) conformité des conteneurs, emballages et moyens de transport aux normes de sécurité réglementaires et apposition sur ce matériel des indications de danger réglementaires applicables.

Idem

5. No person shall

(*a*) put any prescribed safety mark on any container, packaging or means of transport used or intended for use in handling or transporting dangerous goods, or

(*b*) sell, offer for sale, deliver or distribute any container, packaging or means of transport used or intended for use in handling or transporting dangerous goods, on which any prescribed safety mark is displayed,

unless the container, packaging or means of transport complies with all applicable prescribed safety standards.

Idem

5. Sont interdites, sauf conformité aux normes de sécurité réglementaires applicables:

a) l'apposition, sur les conteneurs, emballages ou moyens de transport servant ou destinés à la manutention ou au transport de marchandises dangereuses, d'indications de danger réglementaires;

b) la vente, l'offre de vente, la livraison et la distribution du matériel, visé à l'alinéa *a*), sur lequel sont apposées des indications de sécurité réglementaires.

Punishment

6. (1) Every person who contravenes or fails to comply with section 4 or 5, or a direction under section 28 of which he has been notified in accordance with the regulations, is guilty of an offence and is liable

(*a*) on summary conviction, to a fine not exceeding fifty thousand dollars for a first offence, and not exceeding one hundred thousand dollars for each subsequent offence; or

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years.

Peines

6. (1) Quiconque contrevient aux articles 4 ou 5 ou ne se conforme pas, après en avoir reçu notification réglementaire, à un ordre donné en vertu de l'article 28 est coupable d'une infraction et passible:

a) sur déclaration sommaire de culpabilité, d'une amende maximale de cinquante mille dollars pour la première infraction et de cent mille dollars par récidive;

b) sur déclaration de culpabilité par voie de mise en accusation, d'une peine d'emprisonnement maximale de deux ans.

Idem

(2) Every person who contravenes or fails to comply with any provision of this Act or the regulations for which no other punishment is provided by this Act is guilty of an offence and is liable

Idem

(2) Lorsque la présente loi ne prévoit aucune autre peine à cet égard, quiconque contrevient à la présente loi ou à ses règlements est coupable d'une infraction et passible:

(*a*) on summary conviction, to a fine not exceeding ten thousand dollars; or

(*b*) on conviction on indictment, to imprisonment for a term not exceeding one year.

a) sur déclaration sommaire de culpabilité, d'une amende maximale de dix mille dollars;

b) sur déclaration de culpabilité par voie de mise en accusation, d'une peine d'emprisonnement maximale d'un an.

Time limit

(3) No proceedings by way of summary conviction under this section may be instituted after two years from the day the offence was committed.

Prescription

(3) Les poursuites par voie de déclaration sommaire de culpabilité fondées sur le présent article se prescrivent par deux ans à compter de la date de l'infraction.

Ticket offences

7. (1) Notwithstanding anything in this Act, the Governor in Council may by regulation designate any offence under this Act as an offence with respect to which

(*a*) notwithstanding the provisions of the *Criminal Code*, any person designated as an inspector pursuant to subsection 13(1) may lay an information and issue and serve a summons by completing a ticket in the form prescribed pursuant to this section, affixing his signature thereto and delivering the ticket to the person alleged to have committed the offence specified therein at the time the offence is alleged to have been committed, or

(*b*) the summons may be served on an accused by mailing the summons to him at his latest known address,

and any regulations made under this section shall establish a procedure for entering a plea of guilty and paying a fine in respect of each offence to which the regulations relate and shall prescribe the amount of the fine to be paid in respect of each such offence.

Contraventions

7. (1) Nonobstant les autres dispositions de la présente loi, le gouverneur en conseil peut, par règlement, déterminer, parmi les infractions à la présente loi:

a) celles pour lesquelles, par dérogation au *Code criminel*, l'inspecteur visé au paragraphe 13(1) peut, lors de leur prétendue perpétration, remplir et signer le formulaire de contravention établi par règlement d'application du présent article et le remettre, avec citation, au prévenu;

b) celles qui peuvent faire l'objet d'une citation signifiée au prévenu, par la poste, à sa dernière adresse connue.

Le règlement d'application du présent article fixe, d'une part, la procédure permettant au prévenu de plaider coupable et d'acquitter l'amende prévue, et, d'autre part, le montant de l'amende pour chaque infraction.

Fines

(2) A fine prescribed in respect of an offence by regulations made under subsection (1) may be lower for a first offence than for any subsequent offence but in no case shall it be greater than one thousand dollars.

Amendes

(2) Le montant des amendes prévues par le règlement d'application du paragraphe (1) peut être plus élevé en cas de récidive, sans dépasser mille dollars par infraction.

Defence

8. No person is guilty of an offence under this Act if he establishes that he took all reasonable measures to comply with this Act and the regulations.

Disculpation

8. Peut se disculper d'une infraction prévue à la présente loi celui qui établit qu'il a pris toutes les précautions raisonnables pour assurer l'observation de la présente loi et de ses règlements.

ENFORCEMENT

Prosecutions and Evidence

Competent court

9. A complaint or information in respect of an offence under this Act may be heard, tried or determined by any competent court of criminal jurisdiction in and for a province if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

Offences by employee or agent

10. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he took all reasonable measures to prevent its commission.

Officers, etc., of corporation

11. Any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of an offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Certificate or report of inspector or analyst

12. (1) Subject to subsections (3) and (4), a certificate or report appearing to have been signed by an inspector or analyst stating that he has made an inspection or analyzed or examined a product, substance or organism and stating the results of the inspection, analysis or examination is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate or report.

Copies or extracts

(2) Subject to subsections (3) and (4), a copy or an extract made by an inspector pursuant to paragraph 14(2)(*b*) and appearing to have been certified under his signature as a true copy or extract is admissible in

EXÉCUTION

Poursuite et preuve

Tribunal compétent

9. Peut connaître de toute plainte ou dénonciation en matière d'infraction à la présente loi, indépendamment du lieu de sa perpétration, le tribunal de juridiction criminelle qui est compétent dans la province où l'accusé réside ou exerce une activité commerciale.

Infraction perpétrée par un salarié ou mandataire

10. Dans les poursuites pour infraction à la présente loi, il suffit, pour établir l'infraction, de prouver qu'elle a été commise par un salarié ou un mandataire de l'accusé, que ce salarié ou mandataire ait été ou non identifié ou poursuivi. L'accusé peut se disculper en prouvant que l'infraction a été perpétrée à son insu ou sans son consentement et qu'il avait pris toutes les précautions raisonnables pour l'empêcher.

Dirigeants, etc., de sociétés

11. Les dirigeants, administrateurs ou mandataires d'une société qui ont ordonné ou autorisé la perpétration d'une infraction ou qui y ont consenti ou participé sont parties à l'infraction et sont passibles de la peine prévue, que la société ait été ou non poursuivie ou déclarée coupable.

Certificats et rapports des inspecteurs et analystes

12. (1) Sous réserve des paragraphes (3) et (4), les certificats ou rapports où l'inspecteur ou analyste déclare avoir procédé à une visite ou étudié tels produits, substances ou organismes et où il donne ses résultats sont admissibles en preuve dans les poursuites engagées pour infraction à la présente loi, sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ni la qualité officielle du signataire; sauf preuve contraire, les certificats ou rapports font foi de leur contenu.

Copies ou extraits

(2) Sous réserve des paragraphes (3) et (4), les copies ou extraits que l'inspecteur fait en vertu de l'alinéa 14(2)*b*) et qu'il certifie conformes sont admissibles en preuve dans les poursuites engagées pour infraction

evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the copy or extract and, in the absence of any evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

à la présente loi, sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ni la qualité officielle du signataire; sauf preuve contraire, les copies ou extraits ont la force probante d'un original déposé en preuve de la façon normale.

Attendance of inspector or analyst

(3) The party against whom a certificate or report is produced pursuant to subsection (1) or against whom a copy or an extract is produced pursuant to subsection (2) may require the attendance of the inspector or analyst who signed or appears to have signed the certificate, report, copy or extract for the purposes of cross-examination.

(3) La partie contre laquelle sont produits les certificats ou rapports prévus au paragraphe (1) ou les copies ou extraits prévus au paragraphe (2) peut exiger la présence de l'inspecteur ou de l'analyste pour contre-interrogatoire.

Présence de l'analyste ou de l'inspecteur

Notice

(4) No certificate, report, copy or extract referred to in subsection (1) or (2) shall be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced a notice of such intention together with a duplicate of the certificate, report, copy or extract.

(4) Les certificats, rapports, copies et extraits prévus aux paragraphes (1) et (2) ne sont admissibles en preuve que si la partie qui entend les produire donne de son intention à la partie qu'elle vise un préavis accompagné d'un double de ces documents.

Préavis

Inspectors and Analysts

Inspecteurs et analystes

Inspectors and analysts

13. (1) The Minister may, in accordance with any applicable regulations, designate any person whom he deems qualified to be an inspector or an analyst for the purposes of this Act or any provision thereof.

13. (1) Le Ministre peut, conformément aux règlements applicables, désigner toute personne qu'il estime qualifiée pour remplir les fonctions d'inspecteur ou d'analyste dans le cadre de la présente loi.

Inspecteurs et analystes

Inspector to show certificate

(2) An inspector shall be furnished with a certificate of his designation showing the purposes, classes of dangerous goods, means of transport and the buildings or places for which he has been designated and, on entering or inspecting any building, place, container, packaging or means of transport he shall, if so required, produce the certificate to the person in charge thereof.

(2) L'inspecteur reçoit un certificat indiquant les fins, les classes de marchandises dangereuses, les moyens de transport et les locaux ou lieux pour lesquels il a compétence; à son arrivée ou au cours de sa visite, il est tenu de présenter son certificat, sur demande, au responsable des locaux, lieux, conteneurs, emballages ou moyens de transport qui font l'objet de sa visite.

Certificat

Certificate

(3) Where an inspector inspects or seizes or takes a sample of anything under this Act, he shall, if the thing is sealed or closed up, provide the person in charge of it with a certificate in prescribed form evidencing such inspection, seizure or taking of a sample.

(3) Lorsqu'un inspecteur procède à une visite, une saisie ou à la prise d'un échantillon en vertu de la présente loi, il doit si l'objet est scellé ou fermé, remettre au responsable une attestation réglementaire de la visite, de la saisie ou de la prise d'échantillon.

Attestation

Effect of certificate

(4) A certificate provided under subsection (3) relieves the person to or for whose benefit

(4) L'attestation prévue au paragraphe (3) libère la personne à qui ou en faveur de qui

Conséquences

it is provided of liability with respect to the inspection, seizure or taking of a sample evidenced by the certificate but does not otherwise exempt that person from compliance with this Act and the regulations.

elle est remise de toute responsabilité découlant de la visite, de la saisie ou de la prise d'échantillon mentionnée à l'attestation mais ne l'exempte pas des dispositions de la présente loi et de ses règlements.

Powers of inspectors

14. (1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, at any time, enter and inspect any building or place for which he is designated where he believes on reasonable and probable grounds that dangerous goods are being handled, offered for transport or transported, and request the opening and inspection of or open and inspect any container, packaging or means of transport for which he is designated whereby he believes on reasonable and probable grounds that dangerous goods are being handled, offered for transport or transported.

Pouvoirs des inspecteurs

14. (1) L'inspecteur peut, dans le but de faire observer la présente loi et ses règlements, pour des motifs raisonnables et probables et dans le cadre de sa compétence, pénétrer en tous locaux ou lieux où s'effectueraient des opérations de manutention ou de transport de marchandises dangereuses, ou des demandes de ce transport, y faire procéder ou procéder à des visites et faire ouvrir ou ouvrir les conteneurs, emballages ou moyens de transport éventuellement utilisés en vue de la manutention ou du transport de ces marchandises, ou à l'occasion d'une demande de ce transport.

Inspection

(2) On inspecting any building, place, container, packaging or means of transport pursuant to subsection (1), an inspector may,

(*a*) for the purpose of analysis, take samples of anything found therein that he believes on reasonable and probable grounds to be dangerous goods; and

(*b*) subject to subsections 23(4) and (5), examine and make copies and extracts of any books, records, shipping documents or other documents or papers that he believes on reasonable and probable grounds contain any information relevant to the administration or enforcement of this Act and the regulations.

Visites

(2) Au cours des visites prévues et compte tenu de la condition mentionnée au paragraphe (1), l'inspecteur peut:

a) procéder pour analyse aux prélèvements d'échantillons qu'il estime nécessaires;

b) sous réserve des paragraphes 23(4) et (5), procéder à l'examen, à la reproduction ou à l'établissement d'extraits de tous documents, notamment livres, dossiers et documents d'expédition, susceptibles de contenir des renseignements utiles à l'application de la présente loi et de ses règlements ou au contrôle de cette application.

Safety measures, entry and turning back shipments

(3) Where an inspector is satisfied on reasonable and probable grounds that any dangerous goods are being handled, offered for transport or transported otherwise than in compliance with the applicable prescribed safety marks, safety requirements, safety standards and shipping documents, he shall, wherever possible, request the taking of or take any measures necessary to remedy the failure to comply; and, where the transportation of dangerous goods originating from any place or places outside Canada is involved and such remedial measures are not, in his opinion, possible or desirable, he may refuse entry into Canada of the goods and any

Mesures de sécurité, entrée et renvoi

(3) L'inspecteur, s'il a des motifs raisonnables et probables de croire que des opérations de manutention ou de transport des marchandises dangereuses, ou des demandes de ce transport, s'effectuent dans des conditions qui contreviennent aux règlements applicables en matière d'indications de danger, de règles et normes de sécurité et de documents d'expédition, fait prendre ou prend, dans la mesure du possible, les correctifs nécessaires; si, dans le cas de marchandises provenant de pays étrangers, la prise de pareils correctifs est, à son avis, impossible ou inopportune, il peut en interdire l'entrée au Canada ou les faire renvoyer, ainsi que leurs conteneurs,

containers, packaging or means of transport therefor or take measures to turn them back to the place or places of origin.

Assistance to inspectors

(4) The owner or person who has the charge, management or control of any building, place, container, packaging or means of transport inspected pursuant to subsection (1) and every person requested to act under subsection (3) shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act.

Obstruction of inspectors

(5) No person shall, while an inspector is exercising his powers or carrying out his duties and functions under this Act,

(*a*) fail to comply with any reasonable request of the inspector;

(*b*) knowingly make any false or misleading statement either verbally or in writing to the inspector;

(*c*) except with the authority of the inspector, remove, alter or interfere in any way with anything seized or removed by the inspector; or

(*d*) otherwise obstruct or hinder the inspector.

Seizure, Removal and Forfeiture

Seizure and removal

15. (1) Where an inspector is satisfied on reasonable and probable grounds that

(*a*) there is occurring or has occurred a discharge, emission or escape of dangerous goods or an emission of ionizing radiation exceeding levels or quantities prescribed pursuant to the *Atomic Energy Control Act* from any container, packaging or means of transport by means of which the goods are being handled or transported,

(*b*) there exists a serious and imminent danger of such a discharge, emission or escape by reason of any condition, or

(*c*) any provision of this Act or the regulations is being or has been contravened,

he may, where he considers it necessary to do so in order to prevent or reduce any serious and imminent danger to life, health, property or the environment,

(*d*) seize any dangerous goods, container, packaging or means of transport by means

emballages et moyens de transport, à leur point de départ.

Assistance

(4) Le propriétaire ou responsable des locaux, lieux, conteneurs, emballages ou moyens de transport qui font l'objet des visites autorisées par le paragraphe (1), ainsi que les personnes à qui l'inspecteur a fait prendre les correctifs ou procéder aux renvois visés au paragraphe (3), sont tenus, dans la mesure du possible, de lui prêter assistance dans l'exercice de ses fonctions.

Entrave

(5) Lorsque l'inspecteur agit dans l'exercice de ses pouvoirs et fonctions, il est interdit:

a) de manquer à toute exigence ou directive raisonnable qu'il peut formuler;

b) de lui faire sciemment, oralement ou par écrit, une déclaration fausse ou trompeuse;

c) de toucher, sans son autorisation, aux choses saisies ou déplacées par lui;

d) d'une façon générale, d'entraver son action.

Saisie, déplacement et confiscation

Saisie et déplacement

15. (1) L'inspecteur, s'il a des motifs raisonnables et probables de croire:

a) soit qu'il y a ou qu'il y a eu, en provenance du matériel — conteneurs, emballages ou moyens de transport — servant à la manutention ou au transport de marchandises dangereuses, des émissions, fuites ou pertes de ces marchandises ou des émissions de rayonnements ionisants en quantités supérieures à celles réglementées en application de la *Loi sur le contrôle de l'énergie atomique*,

b) soit qu'il y a un risque grave et imminent de voir se produire, pour une cause quelconque, les émissions, fuites ou pertes mentionnées à l'alinéa *a*),

c) soit qu'il y a ou qu'il y a eu infraction à la présente loi ou à ses règlements,

peut, s'il l'estime nécessaire pour empêcher ou limiter un risque grave et imminent de

of or in relation to which he believes on reasonable and probable grounds the discharge, emission, escape or condition has arisen or the contravention has occurred,

(*e*) remove or direct the removal of the seized goods, container, packaging or means of transport to an appropriate place, and

(*f*) take such other measures as are practicable to protect persons and property.

dommages corporels ou matériels ou de dommages à l'environnement:

d) saisir les marchandises ou le matériel qui sont, à son avis, la cause directe ou indirecte des émissions, fuites ou pertes, du risque ou de l'infraction;

e) placer ou faire placer les marchandises ou le matériel saisis dans un endroit qu'il estime convenable;

f) prendre toute autre mesure possible pour assurer la protection des personnes et des biens.

Abandoned or deteriorated dangerous goods

(2) Any dangerous goods that on reasonable and probable grounds appear to an inspector to be abandoned or to have deteriorated and to be a danger to persons, property or the environment may be destroyed or otherwise disposed of by the inspector in such manner as is appropriate in the circumstances.

Marchandises dangereuses abandonnées ou détériorées

(2) L'inspecteur, s'il a des motifs raisonnables et probables de croire que des marchandises dangereuses sont abandonnées ou détériorées ou constituent un risque pour les personnes, les biens ou l'environnement, peut prendre à leur égard les dispositions qui s'imposent dans les circonstances et, notamment, les détruire.

Seized property to be returned unless proceedings instituted

(3) Any property seized under this section shall be returned to the person from whom the seizure was made or any other person who appears on reasonable and probable grounds to be entitled thereto

(*a*) after the provisions of this Act and the regulations have, in the opinion of an inspector, been complied with,

(*b*) after the danger to life, health, property or the environment has, in the opinion of an inspector, been prevented or adequately reduced, or

(*c*) not later than thirty days from the day of the seizure

whichever first occurs, unless before that time proceedings are instituted in respect of an offence under this Act or the regulations in relation to the property seized, in which case it may be detained until the proceedings are finally concluded unless the prosecutor agrees otherwise.

Restitution sauf procédures

(3) Les biens saisis en vertu du présent article sont restitués au saisi ou à la personne qui semble raisonnablement et probablement y avoir droit dès que se réalise l'une des conditions suivantes:

a) constatation, par l'inspecteur, de l'observation de la présente loi et de ses règlements;

b) suppression ou diminution suffisante, de l'avis de l'inspecteur, des risques de dommages corporels ou matériels ou à l'environnement;

c) expiration d'un délai de trente jours à compter de la date de la saisie.

Toutefois, si des procédures intentées au sujet des biens saisis pour infraction à la présente loi ou à ses règlements sont en cours, la restitution peut être différée, sauf avis contraire du poursuivant, jusqu'à ce que les procédures soient terminées.

Application for return of seized property

(4) Where proceedings referred to in subsection (3) have been instituted, any person from whom property that is the subject-matter of the proceedings was seized or any other person who appears on reasonable and probable grounds to be entitled to that property may apply to the court before which the proceedings were instituted for an order that

Demande de restitution

(4) Le saisi ou la personne qui semble raisonnablement et probablement avoir droit aux biens saisis qui font l'objet des procédures mentionnées au paragraphe (3) peut demander leur restitution au tribunal chargé de l'affaire. Le tribunal peut faire droit à la demande et ordonner la restitution, sous réserve des modalités qu'il juge nécessaires

the property be returned to the applicant, and where the court is satisfied that

(*a*) sufficient evidence for the purposes of the proceedings exists or may reasonably be produced without detaining the property, and

(*b*) no danger to life, health, property or the environment would be occasioned by the release of the property,

it may grant the application and order the return of the property forthwith to the applicant, subject to any terms and conditions that appear necessary or desirable to ensure that the property is safeguarded and preserved for any purpose for which it may subsequently be required.

ou souhaitables pour la protection des biens et leur conservation dans un but ultérieur, s'il constate la réunion des conditions suivantes:

a) il existe ou il peut être produit suffisamment d'éléments de preuve pour que la rétention des biens soit inutile;

b) la mainlevée n'entraînerait aucun risque de dommages corporels ou matériels ou de dommages à l'environnement.

Forfeiture and disposal

(5) Where a person has been convicted of an offence under this Act, any property seized under this section by means of or in relation to which the offence was committed may, in addition to any punishment imposed on conviction, be forfeited to Her Majesty in right of Canada by order of the convicting court, whether or not it has been returned under this section, and on the making of such order the property shall be forfeited and may be disposed of as the Minister directs.

Confiscation

(5) Sur déclaration de culpabilité de l'auteur d'une infraction à la présente loi, le tribunal peut, outre la peine prononcée et indépendamment de la restitution éventuelle, en vertu du présent article, des biens saisis, ordonner leur confiscation au profit de Sa Majesté du chef du Canada; il peut dès lors en être disposé suivant les instructions du Ministre.

Where no forfeiture ordered

(6) Where any property is seized under this section and proceedings referred to in subsection (3) are instituted but no forfeiture is ordered at the final conclusion of the proceedings, the property shall, if not earlier returned under this section, be returned to the person from whom the seizure was made or any other person who appears on reasonable and probable grounds to be entitled thereto, unless that person has been convicted of an offence under this Act, in which case the property may be detained until any fine imposed on conviction has been paid, or sold under execution in satisfaction of the fine or any part thereof.

Non-confiscation

(6) Au cas où le tribunal, une fois les procédures terminées, ne rend pas une ordonnance de confiscation, les biens saisis doivent, si ce n'est déjà fait, être restitués au saisi ou à la personne qui semble raisonnablement et probablement y avoir droit. Toutefois, si ces derniers ont été déclarés coupables d'une infraction à la présente loi, les biens peuvent être retenus jusqu'au paiement de l'amende imposée en conséquence ou être vendus par exécution forcée en paiement intégral ou partiel de l'amende.

Application by person claiming interest

16. (1) Where any property has been destroyed or otherwise disposed of under subsection 15(2) or ordered to be forfeited under subsection 15(5), any person who claims an interest therein as owner, mortgagee, lien holder or holder of any like interest may, within thirty days after the destruction or disposition or the making of the order

Revendication d'un droit

16. (1) Quiconque revendique—à titre de propriétaire, de créancier hypothécaire ou de titulaire d'une sûreté, ou à un titre analogue—un droit sur des biens qui ont fait l'objet des dispositions prévues au paragraphe 15(2) ou dont la confiscation a été ordonnée par le tribunal en vertu du paragraphe 15(5) peut, dans les trente jours suivant

of forfeiture, apply to any superior court of competent jurisdiction for an order under subsection (4) whereupon the court shall fix a day for the hearing of the application.

la mise en œuvre de ces dispositions ou la prise de l'ordonnance de confiscation, requérir de toute cour supérieure compétente l'ordonnance visée au paragraphe (4); sur ce, la cour fixe la date d'audition de la requête.

Notice

(2) An applicant for an order under subsection (4) shall, at least thirty days prior to the day fixed for the hearing of the application, serve a notice of the application and of the hearing on the Minister and all other persons claiming an interest in the property that is the subject-matter of the application as owner, mortgagee, lien holder or holder of any like interest of whom he has knowledge.

Avis

(2) Le requérant fait signifier un avis de la requête et de la date fixée pour l'audition au moins trente jours avant cette date au Ministre et à tous ceux qui, à sa connaissance, revendiquent sur les biens en cause les droits visés au paragraphe (1).

Notice of intervention

(3) Each person, other than the Minister, who is served with a notice under subsection (2) or who intends to appear at the hearing of the application to which the notice relates shall, at least ten days prior to the day fixed for the hearing, file an appropriate notice of intervention in the record of the court and serve a copy thereof on the Minister and on the applicant.

Avis d'intervention

(3) A l'exception du Ministre, toute personne qui reçoit signification de l'avis ou se propose de comparaître lors de l'audition de la requête dépose au greffe de la cour, au moins dix jours avant la date fixée pour l'audition, un avis d'intervention, dont elle fait signifier une copie au Ministre et une au requérant.

Order declaring nature and extent of interests

(4) Where, on the hearing of an application under this section, the court is satisfied that the applicant or the intervenors, if any, or any of them,

(*a*) are innocent of any conduct or complicity in any conduct that caused the property to be subject to destruction or disposition or to forfeiture and of any collusion in relation to any such conduct, and

(*b*) exercised all reasonable care in respect of the persons permitted to obtain possession and use of the property to satisfy themselves that it was not likely to be used contrary to the provisions of this Act and the regulations or, in the case of a mortgagee or lien holder (other than the holder of a maritime lien or statutory right *in rem*) that they exercised such care with respect to the mortgagor or the lien giver,

those of the applicant and the intervenors in respect of whom the court is so satisfied are entitled to an order declaring that their interests are not affected by the destruction, disposition or forfeiture and declaring the nature and extent of each of their interests and the priorities among them, and the court may, in addition, order that the property to

Ordonnance du tribunal

(4) Les requérants et les intervenants ont le droit d'obtenir une ordonnance préservant leurs droits des effets de la confiscation des biens saisis ou des dispositions prises à l'égard de ceux-ci et déclarant la nature et l'étendue de leurs droits ainsi que leur rang respectif s'ils démontrent au tribunal, lors de l'audition de la requête, l'existence des deux conditions suivantes:

a) ils ne sont coupables ni des agissements ni de complicité ou de collusion dans les agissements qui ont amené la confiscation des biens en cause ou la prise à l'égard de ceux-ci des dispositions prévues au paragraphe 15(2);

b) ils ont fait toute diligence pour s'assurer que les personnes habilitées à la possession et à l'utilisation des biens en cause ne risquaient pas en cette qualité de contrevenir à la présente loi et à ses règlements ou, dans le cas de créanciers hypothécaires ou de détenteurs de privilège—à l'exclusion des détenteurs d'un privilège maritime ou d'un droit *in rem* créé par une loi—ils ont fait toute diligence en ce sens à l'égard des débiteurs hypothécaires ou des débiteurs ayant consenti le privilège.

which the interests relate be delivered by the Minister to one or more of the persons found to have an interest therein or that an amount equal to the value of each of the interests so declared be paid by the Minister to the persons found to have those interests.

Le tribunal peut en outre ordonner que le Ministre remette les biens sur lesquels s'exercent ces droits en possession d'une ou de plusieurs des personnes dont les droits sont constatés ou verse à chacune d'elles une somme égale à la valeur de leurs droits respectifs.

DANGEROUS OCCURRENCES

Reports and Remedial Measures

CAS DE DANGER

Rapports et correctifs

Duty to report

17. (1) Where there occurs a discharge, emission or escape of dangerous goods or an emission of ionizing radiation exceeding levels or quantities prescribed pursuant to the *Atomic Energy Control Act* from any container, packaging or means of transport, the persons who at the time have the charge, management or control of the dangerous goods, shall, in the manner and circumstances set out in any regulations applicable thereto, report the discharge, emission or escape to an inspector or to such person as is prescribed.

Rapports

17. (1) En cas de survenance des situations prévues à l'alinéa 15(1)*a*), les personnes responsables des marchandises dangereuses en cause à ce moment sont tenues d'en faire rapport, selon les modalités réglementaires, à l'inspecteur ou à toute personne désignée par règlement.

Duty to take reasonable emergency measures

(2) Every person required to make a report under subsection (1) shall, as soon as possible in the circumstances, take all reasonable emergency measures consistent with public safety to repair or remedy any dangerous condition or reduce or mitigate any danger to life, health, property or the environment that results or may reasonably and probably be expected to result from the discharge, emission or escape.

Obligation de prendre des mesures d'urgence

(2) Les personnes tenues au rapport prévu au paragraphe (1) doivent prendre toutes les mesures d'urgence compatibles avec la sécurité publique pour remédier aux situations visées à ce paragraphe, pour les empêcher de se produire ou pour limiter les risques réels ou éventuels de dommages corporels ou matériels ou de dommages à l'environnement.

Power to request or take reasonable emergency measures

(3) Where an inspector is satisfied on reasonable and probable grounds that a discharge, emission or escape referred to in subsection (1) has occurred and that immediate action is necessary in order to carry out any reasonable emergency measures referred to in subsection (2), he may request that any such measures be taken by any person he considers qualified to do so or take them himself.

Pouvoir de prendre ou d'ordonner des mesures d'urgence

(3) L'inspecteur, s'il a des motifs raisonnables et probables de croire qu'est survenu un cas visé au paragraphe (1) et que les mesures d'urgence prévues au paragraphe (2) s'imposent immédiatement, peut les faire prendre par toute personne qu'il estime qualifiée ou les prendre lui-même.

Access to property

(4) Any inspector or other person required, requested or authorized to take reasonable emergency measures pursuant to subsection (2) or (3) may enter and have access to any place or property and may do

Accès

(4) L'inspecteur et les personnes qui prennent les mesures d'urgence prévues aux paragraphes (2) et (3) ont accès en tout lieu et peuvent prendre toute décision justifiable dans les circonstances.

all reasonable things in order to comply with those subsections or either of them.

Personal liability

(5) Any person requested to act under subsection (3) is not personally liable either civilly or criminally in respect of any act or omission in the course of complying with the request unless it is shown that he did not act reasonably in the circumstances.

(5) Les personnes tenues de prendre les mesures visées au paragraphe (3) n'encourent, sauf décision injustifiable prouvée, aucune responsabilité personnelle, ni au civil ni au criminel, pour les actes qu'ils auront accomplis ou les omissions dont ils auront été responsables en application de ce paragraphe.

Responsabilité personnelle

Recovery of Costs and Expenses

Recouvrement des frais et dépens

Recovery of reasonable costs and expenses by Her Majesty

18. (1) Her Majesty in right of Canada may recover the costs and expenses of and incidental to the taking of any measures pursuant to subsections 14(3) or 15(2) or section 17 jointly and severally from any persons who, through their fault or negligence or that of others for whom they are by law responsible, caused or contributed to the causation of a failure to comply referred to in subsection 14(3) or a discharge, emission or escape referred to in subsection 17(1), to the extent that such costs and expenses can be established to have been reasonably incurred in the circumstances.

18. (1) Sa Majesté du chef du Canada peut recouvrer les frais et dépens directs et indirects entraînés par les mesures visées aux paragraphes 14(3) ou 15(2) ou l'article 17 auprès des personnes qui, par leur faute ou leur négligence ou par celles des personnes dont elles sont légalement responsables, ont causé ou contribué à causer le manquement aux règlements applicables mentionné au paragraphe 14(3) ou les cas visés au paragraphe 17(1). Ces personnes sont tenues conjointement et solidairement au remboursement des frais et dépens dans la mesure où ceux-ci se justifient dans les circonstances.

Recouvrement des frais et dépens par Sa Majesté

Presumption

(2) For the purposes of proceedings under this section, a defendant engaged in any activity to which this Act applies is deemed to have been at fault or negligent unless he establishes, on a balance of probabilities, that he and any others for whom he is by law responsible took all reasonable measures to comply with this Act and the regulations.

(2) Le défendeur qui se livre à une activité régie par la présente loi est présumé, lors des procédures intentées en vertu du présent article, coupable de faute ou de négligence, sauf s'il établit, toute probabilité pesée, que les personnes dont il est légalement responsable et lui-même ont pris toutes les précautions raisonnables pour assurer l'observation de la présente loi et de ses règlements.

Présomption

Procedure

(3) All claims pursuant to this section may be sued for and recovered by Her Majesty in right of Canada with costs in proceedings brought or taken therefor in the name of Her Majesty in such right in any court of competent jurisdiction.

(3) Les créances revendiquées en vertu du présent article, ainsi que les frais de justice afférents, peuvent faire l'objet d'une action en recouvrement qui peut être intentée au nom de Sa Majesté du chef du Canada devant tout tribunal compétent.

Procédures

Recourse or indemnity

(4) Nothing in this section shall be construed as limiting or restricting any right of recourse or indemnity that any person who is liable under subsection (1) may have against any other person.

(4) Le présent article ne limite pas les recours qu'une personne responsable en vertu du paragraphe (1) peut avoir contre des tiers.

Recours contre des tiers

Civil remedies

(5) No civil remedy for any act or omission is suspended or affected by reason only that the act or omission is an offence under

(5) Le simple fait qu'un acte ou une omission constitue une infraction à la présente loi ou entraîne la responsabilité prévue au pré-

Recours civils

this Act or gives rise to liability under this section.

Operator's liability under *Nuclear Liability Act*

(6) Nothing in this section relieves an operator within the meaning of the *Nuclear Liability Act* from any duty or liability imposed on that operator under that Act.

Limitation period

(7) No proceedings in respect of a claim under this section may be instituted after two years from the day the events in respect of which the proceedings are brought or taken occurred or became evident.

Application

(8) This section does not apply in any case where a person who otherwise would be liable to proceedings thereunder is liable to proceedings by or on behalf of Her Majesty in right of Canada for the recovery of costs and expenses in respect of the same occurrence pursuant to any Act of the Parliament of Canada other than this Act.

sent article n'a aucun effet, suspensif ou autre, sur d'éventuels recours civils.

Responsabilité de l'exploitant en vertu de la *Loi sur la responsabilité nucléaire*

(6) Le présent article ne libère pas un exploitant, au sens de la *Loi sur la responsabilité nucléaire*, des obligations ou de la responsabilité que lui impose cette loi.

Prescription

(7) Les poursuites intentées en vertu du présent article se prescrivent par deux ans à compter de la date des événements en cause ou du moment où ils deviennent évidents.

Limitation

(8) Le présent article ne s'applique pas aux événements qui peuvent donner lieu à des poursuites en recouvrement intentées au nom de Sa Majesté du chef du Canada en vertu d'une autre loi du Parlement.

Financial Responsibility

Evidence of financial responsibility

19. (1) The Minister may require any person who engages or proposes to engage in handling, offering for transport or transporting dangerous goods or any class thereof to provide evidence of financial responsibility in the form of insurance or an indemnity bond satisfactory to the Minister or in any other form satisfactory to him.

Appointment of agent

(2) Where a person who handles, offers for transport or transports dangerous goods destined for Canada, or for any place outside Canada through Canada, is not resident in Canada or has his chief place of business or head office in a place outside Canada, that person, if required by the regulations to do so, shall file with the Minister the name of a person in Canada, or having his or its chief place of business or head office in Canada, that is willing to act as an agent, together with proof of such willingness, and on such filing that person is deemed to be the person handling, offering for transport or transporting for the purposes of this Act.

Solvabilité

Preuve de solvabilité

19. (1) Le Ministre peut exiger des personnes qui se livrent ou ont l'intention de se livrer à la manutention ou au transport des marchandises dangereuses, ou qui demandent ou ont l'intention de demander ce transport, qu'elles fournissent de leur solvabilité la preuve — assurance, cautionnement ou autre justificatif — qu'il estime acceptable.

Désignation de mandataires

(2) Les personnes qui ne résident pas au Canada ou qui n'y ont pas leur principal établissement commercial ou leur siège social et qui se livrent à la manutention ou au transport des marchandises dangereuses destinées au Canada ou à y transiter, ou qui demandent ce transport, peuvent être tenues par règlement de déposer auprès du Ministre d'une part le nom de la personne physique résidente du Canada ou de la personne morale y ayant son principal établissement commercial ou son siège social qui accepte d'être leur mandataire, d'autre part la preuve de l'acceptation; cette personne est alors réputée, pour l'application de la présente loi, être le manutentionnaire ou le transporteur ou celui qui demande le transport.

Inquiries

Minister may direct inquiry

20. (1) Where a discharge, emission or escape of dangerous goods or ionizing radiation described in paragraph 15(1)(*a*) in the course of their handling or transporting has resulted in death or injury to any person, danger to the health or safety of the public or damage or danger to property, the Minister may direct a public inquiry to be made in the manner directed and may authorize any person or persons he deems qualified to conduct the inquiry.

Powers of persons conducting inquiries

(2) For the purposes of an inquiry under subsection (1), any person authorized by the Minister under that subsection has and may exercise all the powers of a person appointed as a commissioner under Part I of the *Inquiries Act*.

Compatible procedures and practices

(3) The person or persons authorized to conduct an inquiry under subsection (1) shall ensure that, as far as practicable, the procedures and practices for the inquiry are compatible with any investigation procedures and practices followed by any appropriate provincial authorities, and for such purposes may consult with any such authorities concerning compatible procedures and practices.

Report

(4) As soon as possible after the conclusion of an inquiry under subsection (1), the person or persons authorized to conduct the inquiry shall submit a report with recommendations to the Minister, together with all the evidence and other material that was before the inquiry.

Publication

(5) A report made pursuant to subsection (4) shall be published by the Minister within thirty days after he has received it.

Copies of report

(6) The Minister may supply copies of a report published pursuant to subsection (5) in such manner and on such terms as he considers proper.

Enquêtes

Pouvoir d'ouvrir une enquête

20. (1) Le Ministre peut ordonner l'ouverture d'une enquête publique sur les cas prévus à l'alinéa 15(1)*a*) qui sont survenus à la suite de la manutention ou du transport des marchandises dangereuses et qui ont fait des victimes — morts ou blessés — ou entraînent un risque pour la santé ou la sécurité du public ou des dommages ou un risque pour les biens. Il peut autoriser toute personne qu'il estime qualifiée à mener l'enquête.

Pouvoirs de l'enquêteur

(2) Les personnes autorisées par le Ministre à faire enquête en vertu du paragraphe (1) ont les pouvoirs des commissaires nommés en vertu de la partie I de la *Loi sur les enquêtes*.

Compatibilité des modalités d'enquête

(3) Les personnes visées au paragraphe (1) sont tenues de veiller à la compatibilité des modalités de l'enquête qu'elles mènent avec celles des enquêtes éventuellement menées par des autorités provinciales. A cette fin, elles peuvent procéder auprès de celles-ci à toute consultation utile.

Rapport

(4) Une fois terminée l'enquête prévue au paragraphe (1), l'enquêteur remet au Ministre, dans les meilleurs délais, un rapport contenant ses recommandations et accompagné des éléments de preuve et autres pièces dont il a disposé pour l'enquête.

Publication

(5) Le Ministre publie le rapport dans les trente jours suivant sa réception.

Diffusion

(6) Le Ministre peut diffuser le rapport de la manière et aux conditions qu'il juge indiquées.

REGULATIONS

Regulations

21. The Governor in Council may make regulations generally for carrying out the purposes and provisions of this Act and, in particular, but without restricting the generality of the foregoing, may make regulations

RÈGLEMENTS

Règlements

21. Le gouverneur en conseil peut prendre des règlements d'application de la présente loi, en vue, notamment:

(*a*) prescribing products, substances and organisms to be included in the classes listed in the schedule;

(*b*) establishing divisions, subdivisions and groups of dangerous goods and classes thereof;

(*c*) specifying, for each product, substance and organism prescribed pursuant to paragraph (*a*), the class listed in the schedule and the division, subdivision or group into which it falls;

(*d*) determining or providing the manner of determining the class listed in the schedule and the division, subdivision or group into which any dangerous goods not prescribed pursuant to paragraph (*a*) falls;

(*e*) exempting from the application of this Act and the regulations or any provision thereof the handling, offering for transport or transporting of dangerous goods in such quantities or concentrations, in such circumstances, at such places, premises or facilities, for such purposes or in such containers, packaging or means of transport as are specified in the regulations;

(*f*) prescribing the manner of identifying any quantities or concentrations of dangerous goods exempted pursuant to paragraph (*e*);

(*g*) prescribing the circumstances in which any dangerous goods shall be deemed to be under the sole direction or control of the Minister of National Defence;

(*h*) prescribing the manner in which a permit under paragraph 3(3)(*c*) shall be applied for and issued;

(*i*) prescribing circumstances in which the handling, offering for transport or transporting of dangerous goods is prohibited;

(*j*) specifying dangerous goods that shall not be handled, offered for transport or transported in any circumstances;

(*k*) prescribing safety marks, safety requirements and safety standards of general or particular application;

(*l*) prescribing shipping documents and other documents to be used in the handling, offering for transport or transporting of dangerous goods, the information to

a) de déterminer les produits, matières ou organismes à inclure dans les classes énumérées à l'annexe;

b) de déterminer les divisions, subdivisions et groupes des marchandises dangereuses ainsi que des classes de celles-ci;

c) de préciser dans quelle classe de l'annexe et dans quels division, subdivision ou groupe tombe chacun des produits visés au paragraphe *a*);

d) de déterminer ou de prévoir la façon de déterminer la classe de l'annexe, la division, la subdivision ou le groupe dans lesquels tombent les marchandises dangereuses que ne précisent pas les règlements pris en vertu de l'alinéa *a*);

e) d'exclure de l'application de la présente loi et de ses règlements ou de certaines de leurs dispositions la manutention, la demande de tranport ou le transport de marchandises dangereuses et de déterminer à cette fin des critères relatifs à la quantité et à la concentration des marchandises, aux circonstances, aux lieux, locaux ou installations, aux objectifs, aux emballages, aux conteneurs ou aux moyens de transport;

f) de préciser la façon de déterminer les quantités et concentrations des marchandises dangereuses exclues en vertu de l'alinéa *e*);

g) de préciser les circonstances dans lesquelles on présumera que la responsabilité de certaines marchandises dangereuses est attribuée exclusivement au ministre de la Défense nationale;

h) de préciser les formalités de demande et de délivrance du permis visé à l'alinéa 3(3)*c*);

i) de préciser les circonstances dans lesquelles la manutention, la demande de transport ou le transport des marchandises dangereuses sont interdits;

j) de préciser les marchandises interdites de manutention, de demande de transport ou de transport;

k) de déterminer les indications de danger et les règles et normes de sécurité d'application générale ou particulière;

be included in such documents and the persons by whom and manner in which such documents are to be used and retained;

(*m*) for the qualification, training and examination of inspectors, prescribing the forms of the certificates referred to in subsections 13(2) and (3) and prescribing the manner in which inspectors shall carry out their duties and functions under this Act;

(*n*) prescribing the circumstances in which fees shall and shall not be paid for inspections under this Act and determining the amount of any such fees;

(*o*) prescribing any person to whom a report is to be made under subsection 17(1), the manner of reporting, the information to be included in the report and the circumstances in which a report need not be made;

(*p*) prescribing the persons by whom and circumstances in which an agent shall be appointed pursuant to subsection 19(2);

(*q*) prescribing the manner in which a permit shall be applied for and issued under subsection 27(1) and providing for the appeal or review of any decision not to issue a permit; and

(*r*) providing for the notification of persons directed to do anything under section 28, for the effect, duration and appeal or review of such directions and for any matters incidental thereto.

l) de déterminer les documents d'expédition ou autres obligatoires pour la manutention, la demande de transport ou le transport des marchandises dangereuses, les précisions à y porter, les personnes qui doivent en faire usage et les conserver, ainsi que leurs modalités d'usage et de conservation;

m) de fixer les conditions de compétence, de formation et d'examens à satisfaire par les inspecteurs, de déterminer les formulaires à utiliser lors de la délivrance des certificats prévus au paragraphe 13(2), et des attestations prévues au paragraphe 13(3), de prévoir la façon dont les inspecteurs doivent exécuter les fonctions que leur confère la présente loi;

n) de préciser les circonstances dans lesquelles des droits sont ou non à payer pour les visites des inspecteurs et de fixer le montant de ces droits;

o) de désigner la personne destinataire du rapport visé au paragraphe 17(1), de fixer la forme du rapport, de déterminer les renseignements à y porter et de préciser les circonstances dans lesquelles il n'est pas obligatoire;

p) de désigner les personnes tenues de nommer un mandataire en vertu du paragraphe 19(2) et de préciser les circonstances dans lesquelles une désignation doit se faire;

q) de préciser les modalités de demande et de délivrance du permis visé au paragraphe 27(1) et de prévoir un recours en appel ou en révision d'une décision de refus d'un permis;

r) de prévoir la notification de l'ordre prévu à l'article 28 aux personnes qu'il vise, ainsi que les effets de l'ordre, sa durée d'application, les modalités d'appel à son endroit et toute question connexe.

Proposed regulations to be published

22. (1) Subject to subsection (2), a copy of each regulation that the Governor in Council proposes to make under section 21 shall be published in the *Canada Gazette* and a reasonable opportunity shall be afforded to interested persons to make representations to the Minister with respect thereto.

Publication des projets de règlement

22. (1) Sous réserve du paragraphe (2), les projets des règlements que le gouverneur en conseil se propose de prendre en vertu de l'article 21 sont publiés dans la *Gazette du Canada* et tout intéressé doit avoir la possibilité de présenter au Ministre ses observations à leur sujet.

Single publication required

(2) No proposed regulation need be published more than once under subsection (1) whether or not it is altered or amended after such publication as a result of representations made by interested persons as provided in that subsection.

Exception

(2) Un projet de règlement déjà publié conformément au paragraphe (1) n'a pas à l'être de nouveau, qu'il ait été modifié ou non à la suite des observations présentées en vertu de ce paragraphe.

DISCLOSURE OF INFORMATION

COMMUNICATION DES RENSEIGNEMENTS

Disclosure of information

23. (1) The Minister may, by registered mail, send a written notice to any manufacturer or distributor requesting the disclosure of information relating to the formula, composition or chemical ingredients of any product, substance or organism and such other information as the Minister deems necessary for the proper enforcement of this Act.

Communication des renseignements

23. (1) Pour l'application de la présente loi, le Ministre peut demander, dans un avis envoyé en courrier recommandé, à leurs fabricants ou distributeurs de lui en communiquer la formule, la composition chimique ou les éléments constitutifs, ou de lui fournir à leur sujet tous autres renseignements qu'il juge utiles.

Idem

(2) Every person who receives a notice under subsection (1) shall disclose to the Minister, within the time and in the manner specified in the notice, any information described in subsection (1) that is requested in the notice and in the possession of that person.

Idem

(2) Le destinataire de l'avis mentionné au paragraphe (1) est tenu de donner au Ministre, dans le délai et en la forme que précise l'avis, les renseignements demandés qu'il a en sa possession.

Privileged information

(3) Subject to subsection (4), information disclosed to the Minister pursuant to this section and information of a similar nature obtained pursuant to paragraph 14(2)(*b*) or an inquiry under section 20 is privileged and notwithstanding any other Act or law, no person shall be required, in connection with any legal proceedings other than legal proceedings relating to the administration or enforcement of this Act, to produce any statement or other writing containing any such information or to give evidence relating to any such information.

Caractère confidentiel des renseignements

(3) Sous réserve du paragraphe (4), les renseignements communiqués au Ministre conformément au présent article ou ceux de nature comparable obtenus en vertu de l'alinéa 14(2)*b*) ou lors d'une enquête tenue en vertu de l'article 20 sont confidentiels. Par dérogation à toute autre loi ou règle de droit, nul ne peut être tenu de les divulguer, oralement ou par écrit, au cours d'un procès qui ne concerne pas l'application de la présente loi.

Exception

(4) The privilege provided by subsection (3) does not apply to information referred to in that subsection

(*a*) to the extent that it relates only to the dangerous properties of any product, substance or organism without revealing the formula, composition or chemical ingredients thereof; or

(*b*) to the extent that it is required to be disclosed or communicated for the purposes of an emergency involving the health or safety of any person or the public.

Exception

(4) Les renseignements visés au paragraphe (3) sont exclus de l'application de ce paragraphe dans l'un ou l'autre des cas suivants:

a) ils ne portent que sur les propriétés dangereuses des produits, matières ou organismes en cause, sans en révéler la formule ni la composition chimique ou autre;

b) leur divulgation ou leur communication est exigée de toute urgence pour des raisons de santé ou de sécurité publique ou privée.

Disclosure of privileged information

(5) No person to whom any privileged information has been provided shall knowingly, without the consent in writing of the person by whom the information was provided,

(*a*) communicate or allow to be communicated to any person, or

(*b*) allow any other person to inspect or have access to

any such information except for the purposes of the administration or enforcement of this Act.

Divulgation des renseignements confidentiels

(5) Ceux qui détiennent des renseignements confidentiels ne doivent pas sciemment, sans le consentement écrit de la personne qui les a fournis et sauf pour l'application de la présente loi:

a) les communiquer ou en permettre la communication à qui que ce soit;

b) permettre à quiconque de les examiner ou d'y avoir accès.

Disclosure of other relevant information

(6) Any information described in subsection (1) that is provided pursuant to an Act of the Parliament of Canada other than this Act may, notwithstanding anything in that other Act, be disclosed to the Minister or a person designated by the Minister for the purposes of the administration or enforcement of this Act with the consent in writing of the person by whom the information was provided.

Communication d'autres renseignements utiles

(6) Les renseignements visés au paragraphe (1) et déjà fournis en vertu d'une autre loi du Parlement peuvent, par dérogation à cette loi et avec le consentement écrit de la personne qui les a fournis, être communiqués au Ministre ou aux personnes qu'il aura désignées pour l'application de la présente loi.

ADMINISTRATION

GESTION

Orders amending schedule

24. (1) The Governor in Council may, by order, amend the schedule.

Décrets modifiant l'annexe

24. (1) Le gouverneur en conseil peut modifier l'annexe par décret.

Tabling of orders

(2) An order under subsection (1) shall be laid before Parliament not later than the fifteenth sitting day of either House of Parliament after it is issued.

Dépôt du décret

(2) Le décret prévu au paragraphe (1) est déposé devant le Parlement au plus tard le quinzième jour de séance de l'une ou l'autre chambre suivant la date où il a été pris.

Agreements with provinces respecting implementation and enforcement

25. (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with the government of a province

(*a*) for the implementation of this Act and the regulations or any provision thereof in that province with respect to any mode of transport other than one referred to in paragraphs 4(*a*) to (*e*) of the *National Transportation Act*; and

(*b*) with respect to the administration and enforcement of this Act and the regulations or any provision thereof in that province.

Accord avec les provinces

25. (1) Avec l'approbation du gouverneur en conseil, le Ministre peut conclure avec le gouvernement d'une province un accord portant:

a) mise en œuvre totale ou partielle de la présente loi et de ses règlements dans la province dans la mesure ou ceux-ci s'appliquent à des moyens de transport différents des modes de transport mentionnés aux alinéas 4*a*) à *e*) de la *Loi nationale sur les transports*;

b) application totale ou partielle de la présente loi et de ses règlements dans la province et contrôle de cette application.

Costs, expenses, revenues and related matters

(2) An agreement entered into under subsection (1) may provide for any matters necessary for or incidental to the implementation, administration or enforcement agreed

Clauses complémentaires et répartition des frais

(2) L'accord visé au paragraphe (1) peut prévoir toute clause complémentaire nécessaire ou utile à sa mise en œuvre, ainsi que la répartition des frais ou revenus afférents.

on and for the apportionment of any costs, expenses or revenues arising therefrom.

Technical research and publication

26. The Minister may

(*a*) cause to be undertaken, alone or in cooperation with any government, agency, body or person, whether Canadian or otherwise, programs of technical research and investigation into the development and improvement of safety marks, safety requirements, safety standards and regulations under this Act and coordinate such programs with other similar programs undertaken in Canada;

(*b*) publish and cause to be distributed information relating to the programs referred to in paragraph (*a*) or the results thereof in such form and manner as may be most useful to the public, the Government of Canada or the governments of the provinces; and

(*c*) publish and cause to be distributed in such form and manner as may be most useful to the public, the Government of Canada or the governments of the provinces, a national Code on the transportation of dangerous goods including applicable regulations and standards, accepted practices and other information to facilitate understanding and enforcement of this Act and the regulations.

Recherches

26. Le Ministre peut:

a) lancer, seul ou en collaboration avec tous gouvernements, organismes ou personnes intéressés, canadiens ou non, des programmes de recherches techniques portant sur l'établissement et la révision des indications de danger, normes et règles de sécurité et des règlements d'application de la présente loi; il peut aussi en assurer la coordination avec d'autres programmes canadiens semblables;

b) publier et diffuser des renseignements relatifs aux programmes visés à l'alinéa *a*) ou à leurs résultats de la façon la plus utile au public et aux gouvernements du Canada et des provinces;

c) publier et diffuser de la façon la plus utile au public et aux gouvernements du Canada et des provinces un code national du transport des marchandises dangereuses, y compris les règlements et normes applicables, la mention des usages reçus en la matière et tous autres éléments d'information de nature à faciliter la compréhension et l'application de la présente loi.

Permit for equivalent standards

27. (1) The Minister or a person designated by the Minister may, in accordance with the regulations, issue a permit, subject to any terms and conditions specified in the permit, authorizing the handling, offering for transport or transporting of dangerous goods in a manner that does not comply with this Act and the regulations where he is satisfied that such manner of handling, offering for transport or transporting provides a level of safety at least equivalent to that provided by compliance with this Act and the regulations.

Normes équivalentes

27. (1) Le Ministre ou la personne qu'il désigne peut, conformément aux règlements, délivrer des permis, assortis de conditions, autorisant la manutention, la demande de transport ou le transport des marchandises dangereuses d'une manière qui n'est pas conforme à la présente loi ou aux règlements mais qui, il en est convaincu, fournit un niveau de sécurité au moins équivalent à celui qu'assure l'observation de la présente loi et de ses règlements.

Presumption

(2) Compliance with a permit issued pursuant to subsection (1) shall be deemed to be compliance with this Act and the regulations.

Présomption

(2) L'observation des conditions du permis délivré en vertu du paragraphe (1) vaut observation de la présente loi et de ses règlements.

Protective directions

28. Where the Minister or a person designated by the Minister considers it to be necessary for the protection of public safety,

Protection du public

28. Dans les cas où ils l'estiment nécessaire pour la protection de la sécurité publique, des biens ou de l'environnement, le

property or the environment in any case not provided for by this Act and the regulations, he may, subject to any regulations made pursuant to paragraph 21(*r*), direct any person engaged in handling, offering for transport or transporting dangerous goods to cease any such activity or to carry it on in the manner directed.

Ministre ou la personne qu'il désigne peuvent, sous réserve des règlements pris en vertu de l'alinéa 21*r*), ordonner à des personnes déterminées qui se livrent à des opérations de manutention ou de transport des marchandises dangereuses, ou qui demandent ce transport, soit de cesser ces opérations, soit de les mener de la façon requise.

Advisory councils

29. (1) The Minister may, by order,

(*a*) establish one or more advisory councils to serve for the period or periods specified in the order for the purpose of advising the Minister on matters concerning existing or proposed safety marks, safety requirements and safety standards or on any other matters specified in the order; and

(*b*) provide for any matters relating to the advisory councils or their members as he considers necessary.

Comités consultatifs

29. (1) Le Ministre peut, par arrêté:

a) constituer pour un ou plusieurs mandats déterminés un ou plusieurs comités consultatifs chargés de le conseiller sur les indications de danger ou les règles ou normes de sécurité existantes ou en projet ou sur toute autre question déterminée;

b) prendre toute décision utile concernant les comités consultatifs ou leurs membres.

Membership

(2) The Minister may determine the membership of any advisory council that he proposes to establish under this section after such consultation with the representatives of the transportation and related industries, the governments of the provinces, other interested persons and bodies and the public as he considers appropriate.

Consultation

(2) Le Ministre peut, avant de fixer la composition des comités consultatifs, procéder aux consultations qu'il estime indiquées auprès du secteur des transports et des secteurs connexes, des gouvernements provinciaux, des groupes et personnes intéressés, ainsi que du public.

Annual report

30. The Minister shall, as soon as possible after the end of each year, prepare and cause to be laid before Parliament a report on the administration and enforcement of this Act for that year.

Rapport annuel

30. Au début de chaque année, le Ministre établit et dépose devant le Parlement, dans les meilleurs délais, un rapport sur l'application de la présente loi au cours de l'année précédente et sur le contrôle de cette application.

INCONSISTENT PROVISIONS

INCOMPATIBILITÉ

Inconsistent provisions

31. In the event of any inconsistency between the regulations made pursuant to this Act and any orders, rules or regulations made pursuant to any other Act of Parliament, the regulations made pursuant to this Act prevail to the extent of the inconsistency.

Incompatibilité

31. Les dispositions des règlements d'application de la présente loi l'emportent sur les dispositions incompatibles des textes d'application de toute autre loi du Parlement.

COMING INTO FORCE

ENTRÉE EN VIGUEUR

Coming into force

32. (1) This Act or any provision thereof shall come into force

(*a*) with respect to the handling for transport, offering for transport and transporting of dangerous goods by all or any of the

Entrée en vigueur

32. (1) La présente loi ou telle de ses dispositions entre en vigueur:

a) à la date ou aux dates fixées par proclamation pour ce qui est de la manutention, de la demande de transport ou du

modes of transport described in paragraphs 4(*a*) to (*e*) of the *National Transportation Act*, whether or not that transport is for hire or reward, on a day or days to be fixed by proclamation; and

(*b*) with respect to the handling for transport, offering for transport and transporting of dangerous goods by any other mode of transport, in the manner provided for in subsections (2) to (4).

Proclamation with respect to transport in a province

(2) Where an agreement is entered into with a province pursuant to paragraph 25(1)(*a*), the Governor in Council may, by proclamation, provide that this Act and the regulations or any provision thereof specified in the proclamation shall come into force in that province with respect to such handling, offering for transport and transporting of dangerous goods, such places, such means of transport, such persons and such purposes as have been agreed on and specified in the proclamation.

Amendment or revocation of proclamation

(3) Any proclamation made in relation to a province pursuant to subsection (2) may be amended or in whole or in part revoked, in the manner provided by a further agreement entered into with that province pursuant to paragraph 25(1)(*a*), by a further proclamation made by the Governor in Council.

Proclamation where no agreement reached

(4) Where the Minister is satisfied that, despite reasonable efforts over a period of twelve months after the commencement of negotiations or such longer period as the Minister considers reasonable, an agreement pursuant to paragraph 25(1)(*a*) has not been entered into with a province, the Governor in Council may, on the recommendation of the Minister, by proclamation, make any provision authorized under subsection (2) as if an appropriate agreement had been entered into.

transport de marchandises dangereuses par les modes de transports mentionnés aux alinéas 4*a*) à *e*) de la *Loi nationale sur les transports*, que le transport se fasse à titre onéreux ou gratuit;

b) de la façon prévue aux paragraphes (2) à (4) pour ce qui est de la manutention, de la demande de transport et du transport de marchandises dangereuses par tout autre mode de transport.

Proclamation relative aux transports dans les provinces

(2) En cas d'accord conclu en application de l'alinéa 25(1)*a*), le gouverneur en conseil peut, par proclamation, prévoir que la présente loi ou ses règlements, ou celles de leurs dispositions mentionnées dans la proclamation, entrent en vigueur dans la province concernée pour ce qui est des opérations de manutention et de transport des marchandises dangereuses, des demandes de ce transport, des lieux, des moyens de transport, des personnes et des fins qui ont fait l'objet de l'accord et qui sont mentionnées dans la proclamation.

Modification ou révocation de la proclamation

(3) Le gouverneur en conseil peut, par proclamation et selon les modalités prévues par accord conclu avec une province en application de l'alinéa 25(1)*a*), modifier ou révoquer en tout ou en partie toute proclamation antérieure relative à un précédent accord.

Absence d'accord

(4) Au cas où le Ministre constate, à l'issue de douze mois de négociations ou de tout autre délai qu'il juge convenable, le non-aboutissement, malgré des tentatives sérieuses, des efforts déployés pour conclure avec une province l'accord prévu à l'alinéa 25(1)*a*), le gouverneur en conseil peut par proclamation, sur la recommandation du Ministre, prendre à l'égard de la province les mesures et les modalités d'entrée en vigueur autorisées, en cas d'accord, par le paragraphe (2).

SCHEDULE

Class 1—Explosives, including explosives within the meaning of the *Explosives Act*

Class 2—Gases: compressed, deeply refrigerated, liquefied or dissolved under pressure

Class 3—Flammable and combustible liquids

Class 4—Flammable solids; substances liable to spontaneous combustion; substances that on contact with water emit flammable gases

Class 5—Oxidizing substances; organic peroxides

Class 6—Poisonous (toxic) and infectious substances

Class 7—Radioactive materials and prescribed substances within the meaning of the *Atomic Energy Control Act*

Class 8—Corrosives

Class 9—Miscellaneous products, substances or organisms considered by the Governor in Council to be dangerous to life, health, property or the environment when handled, offered for transport or transported and prescribed to be included in this class

ANNEXE

Classe 1—Explosifs, y compris les explosifs au sens de la *Loi sur les explosifs*

Classe 2—Gaz comprimés, liquéfiés, dissous sous pression ou liquéfiés à très basse température

Classe 3—Liquides inflammables et combustibles

Classe 4—Solides inflammables; matières sujettes à l'inflammation spontanée; matières qui, au contact de l'eau, dégagent des gaz inflammables

Classe 5—Matières comburantes; peroxydes organiques

Classe 6—Matières toxiques et matières infectieuses

Classe 7—Matières radioactives et substances réglementées, au sens de la *Loi sur le contrôle de l'énergie atomique*

Classe 8—Matières corrosives

Classe 9—Produits, matières ou organismes dont la manutention, la demande de transport ou le transport présentent, de l'avis du gouverneur en conseil, des risques de dommages corporels ou matériels ou des menaces pour l'environnement et qui sont inclus par règlement dans la présente classe

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OTTAWA, 1980

SUBMISSION TO CAN. SENATE
REF. ACT + REGS.

ATTACHMENT #1

SUBMISSION

OF THE

CANADIAN TRUCKING ASSOCIATION

TO THE

STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

JANUARY 29, 1981

EXECUTIVE SUMMARY

The Canadian Trucking Association has, for over ten years, been in favour of the development of a single national Code of regulations for the transportation of dangerous goods by highway. While the passage of the Legislation last summer has made this almost a reality, certain problems exist both with the Legislation and the Code that need to be rectified.

First of all, there must be uniform adherence to and interpretation of the Legislation in all provinces. Further, the proclamation of the Legislation in its entirety in November 1980 has meant that the absolute liability regime is now in effect without the benefit of the regulations requiring the correct product description to be provided. In addition, for practical reasons, consideration should be given to limiting the open-ended third party liability envisaged under the Legislation.

With respect to the Code, this still remains an extremely complex document with the opportunity for many exemptions.

The importance of reciprocity between Canadian and U.S. regulations should be recognized and included unambiguously in the Code.

The adequate training and retraining of personnel in the trucking industry is of major concern and will take time. Plans are afoot to implement training programs.

1. INTRODUCTION

The Canadian Trucking Association is a federation of seven provincial and regional trucking associations which, in turn, represent through their membership most of the for-hire trucking industry in Canada. The constituent associations of the Canadian Trucking Association are:

British Columbia Motor Transport Association

Alberta Trucking Association

Saskatchewan Trucking Association

Manitoba Trucking Association

Ontario Trucking Association

Trucking Association of Quebec, Inc.

Atlantic Provinces Trucking Association

In addition, affiliated organizations exist in the two territories.

There are approximately 14,000 regulated for-hire motor carriers in Canada whose total annual inter-city revenues exceed $4 billion. In addition, many provincial associations have separate divisions dedicated to the interests of private carriers. No equivalent revenue figures are available for private truck operators, but they are known to be a significant element of the Canadian trucking industry.

The principal characteristic of the industry, evident to even the most casual observer, is its heterogeneity. Companies vary from the many small single truck operations right up to sophisticated companies employing hundreds of people and using hundreds of vehicles.

Another key characteristic of the trucking industry that must be appreciated in order to understand the potential impact of the Dangerous Goods Legislation and Code is that of the 14,000 regulated companies, only about 1600 of them fall into the category of inter-provincial undertakings operating between two or more jurisdictions. These, again, run the gamut of small, medium and large corporations.

Finally, and of great consequence, is that by far the greatest portion of industry revenues (likely up to 75% of the total) are earned on purely intraprovincial operations. That is, where the consignor and consignee are resident in the same province.

2. BACKGROUND

The Canadian Trucking Association has been on record for over ten years as being in favour of a single national uniform set of regulations to govern the transportation of dangerous goods by highway. This position was originally adopted as a result of tentative moves by several provinces to implement comprehensive regulations that threatened to be inconsistent with one another. Eventually, enough interest had been kindled so that by the early 1970s parallel government and industry committees were at work developing a draft national code of regulations. In fact, a representative of the Canadian Trucking Association co-chaired the industry/government committee from 1972 to 1974.

Mention should also be made of the consultative process that has taken place over the past three years in order to develop the draft Code of regulations. We have prepared several lengthy and detailed submissions proposing improvements to the Draft Code of Regulations. Our intent has always been to improve the Code to enable it to be introduced as soon as possible.

These activities are not listed to seek applause from the Senators. They have merely been the reaction of a responsible industry. Rather, they are cited to put into context the following remarks about the legislation and the Code. We believe the problems we foresee are genuine and significant and deserve the scrutiny of the Senate Committe

To reiterate, we have had a long-term and continuing commitment to the development of the Code. We want to see it implemented as soon as possible but the final version must be understandable and practical in its application.

3. SUBSTANTIVE ISSUES

3.1 The Legislation

The first issue concerns the coming into force of the Act, specifically with respect to its application to segments of industry regulated at the provincial level. In the Introduction to this submission, we pointed out the complex nature of the trucking industry split as it is between intra and interprovincial undertakings. Furthermore, there is considerable interlining of freight among carriers in order to facilitate the distribution of freight nationwide by carriers that may only have regional operations.

This situation underscores the need for a uniform set of regulations. Nevertheless, we have been concerned by recent developments at the provincial level which would seem to endanger this uniformity. The most obvious example was the recent attempt by the Province of Ontario to implement dangerous goods legislation. Although the Bill was not passed, it was drafted in such a way that it could have impeded the successful implementation of the federal regulations.

A major deficiency in it was the restriction of the application of the Act to the transport function alone, ignoring totally the "offering for transport" of dangerous goods. In our view, the inclusion of the "offer for transport" provision in the federal legislation was an essential improvement by making the regulations applicable throughout the distribution chain. Under the proposed Ontario legislation, by limiting the applicability of the Act purely to on-highway transport, there would not be any onus for shippers to describe, label or provide placards for dangerous goods if they were manufactured by companies certified under provincial law which were shipping goods intraprovincially.

We use this example merely to point out the extreme care that needs to be taken with the wording of complementary provincial legislation and the desirability of tracking the wording of the Federal Bill. Failure to do so will create inconsistencies in the application of the Act and the Regulations which will make the routine handling of these products an administrative nightmare. Further, safety will not be enhanced.

Another aspect of the uniformity problem centres on the issue of consistent enforcement. Under the legislation, a class of inspectors is created to ensure that industry complies with the regulations developed as the Dangerous Goods Code. Our concern is not with the creation of inspectors per se but with the likelihood

of non-uniform application of the Code throughout the country as certain responsibilities will be exercised by provincial officials.

In meetings we have had with provincial government representatives, we have found that, generally speaking, very little thought has been given to the inspection issue other than by viewing it as an ancillary task for officials empowered to enforce other Acts and Regulations. This is disturbing, to say the least, and serious consideration must be given to ensuring uniform application and enforcement of the Code throughout the country. It would be inconsistent to have the responsibilities assigned to weigh scale operatives in one province but restricted to highly trained environmental protection service officers in another. The trucking industry has seen the inconsistent application of federal regulations in the past and does not care to anticipate it again.

Another major concern with the legislation stems from its proclamation in its entirety last November. The legal opinion we have received is that the proclamation is only inoperative where regulations are not in place because a dangerous good is defined as one which is included by its nature or by the regulations in any of the Classes listed in the schedule to the Act. In practice, this means that Section 15 with respect to seizure, removal, and forfeiture is effective because it is not dependent on regulations. Further, the legal liability for clean-up costs and expenses (Section 18) is partly in force. The only case where it is not operative is in the case of Section 14(3) of the Act where inspectors can request the taking of preventative safety measures.

Thus, the liability for costs and expenses is in force as of November 1, 1980 with respect to goods dangerous by their nature and because they are not required to be prescribed as dangerous by regulations. It should be immediately apparent that this situation is extremely sensitive as far as highway carriers are concerned. The principal benefits we saw in the legislation and the regulations was the requirement for the shipper to describe unambiguously the product being transported. We are now in a situation where we are exposed to the full liability for transporting dangerous goods but without the partial offsetting benefit of correct information. Clearly, every effort must be made to bring the Code into effect as soon as possible so as to relieve this intolerable situation.

Another important aspect of the liability issue concerns the ability of carriers to obtain adequate insurance coverage. It is our understanding that even such gigantic organizations as the two transcontinental railways are having problems obtaining third party liability coverage much above $100 million. It is not difficult

to see the problems that much smaller privately owned highway common carriers will have in obtaining insurance sufficient to cover the liabilities created under the Act. Thus, we believe that consideration should be given to putting a ceiling on liabilities perhaps on the basis of the mode of transport and the amount of dangerous goods transported at a given time. It bears repetition that the air and marine modes are already operating under such liability ceilings and it seems arbitrary to exclude the two surface modes of transport.

3.2 The Code

As indicated in an earlier part of this submission, the Canadian Trucking Association has carefully reviewed various versions of the Code over the past few years. The most recent draft of the Code which incorporates the concepts of National Standards and Accepted Practices is a significant improvement on earlier drafts. Nevertheless, the Code is still an extremely complex document and before it will be useable by even the most sophisticated highway transport companies, it will need to be modified greatly. For small trucking companies infrequently handling dangerous goods, the Code is even now effectively impenetrable.

In earlier representations to Transport Canada, we suggested that it would be logical to base the proposed Canadian regulations on the existing U.S. ones. The reason for proposing this was that a large part of the Canadian tank truck industry is intimately familiar with the existing U.S. regulations that have been in force for a long time.

Even so, a recent U.S. National Transportation Safety Board report declared that even these well-known and long-standing regulations are often difficult to interpret at the operating level. This has reinforced our belief that every effort should be made to streamline and simplify the draft Code before it is imposed upon the shipping and transporting industries. This issue of complexity of regulations brings us to a major point of contention concerning less-than-truckload freight. While the most visible transportation of dangerous products by highway is probably that undertaken in tank transport vehicles, large amounts of dangerous goods are transported in less-than-truckload lots consolidated with other goods in van trailers. In many ways, the transportation of these dangerous goods is more sensitive as only compatible products should be transported together and separation must be maintained, for example, between poisonous substances and foodstuffs. Clear and accurate information is obviously essential.

To prevent over-regulation, certain highly packaged and small amounts of dangerous goods should be exempted from the full stringency of the regulations (consumer toiletries would probably fall into this category). However, once these limited exemptions have been catered to, the regulations must require essential information to be provided to trucking companies so that they, in turn, can improve their operating safety through awareness of the products they are transporting. Only in this way can effective countermeasures be taken - both before and after an accident.

An examination of the current version of the Code reveals that there are four categories of exemptions: limited quantities, consumer quantities, named exemptions and specific acceptable dilutions/ concentrations. Taken together, these exemption categories virtually emasculate the application of the Code for the transportation of non-bulk products. In our view, this treatment is inconsistent with the philosophy of the Code which we have assumed is to be the improvement of safety in handling dangerous goods.

Coupled with this, the exemption categories themselves are complicated; they overlap and no precedence system for their application is given. The remaining provisions of the Code could be circumvented merely by adjusting the consignment size. Thus, the application of the Code to non-bulk items could soon become a mockery. What would remain would be a complicated paper edifice to mislead the unwitting public into believing there was a comprehensive regime for these products. In fact, this would not be the case. There is no practical way in which a carrier can responsibly handle dangerous goods if essential information on their dangerous characteristics is not provided. The four categories of exemptions contemplated in the Code do not require the provision of relevant information and, at the same time, unduly complicate the Code.

This issue is not an insignificant one. The product related information is not only required by the carrier at the point at which the load is consolidated for over-the-road transport but is also required by emergency personnel in the event of an accident.

We might add, at this point, that we have made real efforts over the past year to reach an acceptable compromise with shipper groups. Unfortunately, we have found them to be most unwilling to consider our predicament. At no point have we received a thorough or exhaustive discussion of the proposals we have made. The position taken by officials of the Department is that the socioeconomic impact analysis they have conducted does not justify the provision of more information. We have yet to see this analysis, but we know the trucking industry is notorious for its lack of adequate statistics. Further, if the products are not currently described for carriers so that accidents

can be assigned to particular movements, how can an adequate basis for an analysis be constructed? Common sense should overrule such an arbitrary approach.

A final issue concerning the application of the Code deals with reciprocity between Canada and the U.S. via the partial admissibility of the U.S. regulations. The following statement on page 3 of the draft Code is simply not adequate:

> "Consignments of dangerous goods that are being imported or exported from Canada to the United States of America shall be deemed to be offered, handled for transport and transported in compliance with these regulations if they are packed and loaded in conformity with Title 49 of the United States Code of Federal Regulations provided that they are classified, marked, labelled, placarded and documented in conformity with the requirements of Part IV of these regulations".

Reciprocity with the U.S. must be complete or it will not work. If the statement above remains unamended, discrimination will follow. Trans-border traffic will become even more laborious and the requirements for additional labelling and placarding are odious to contemplate. It should be noted that the overwhelming majority of goods (by value) transported between Canada and the U.S. is transported by the highway mode.

In supporting the development of the Code, the Canadian trucking industry has always been assured that the U.S. would accept materials labelled, and placarded in accordance with the forthcoming Canadian regulations provided that reciprocity was offered to materials labelled in a similar fashion in accordance with the U.S. Title 49 regulations. This proposed highly limited reciprocity clearly requires major modifications.

CONCLUDING REMARKS

It would be simplistic to view the Dangerous Goods Code as the only regulations that are being developed to control the handling or transportation of dangerous goods. In fact, there are many instances of other regulations being developed at the provincial and municipal levels oriented either towards transport per se or towards the environmental effects of spills of dangerous goods. This is another

reason, in our view, why the development of the Code should be expedited. It seems that many of these regulations are being developed on the basis that none exist at the moment, therefore, the void must be filled. In commenting on these developments, we are repeatedly proposing that the regulations and by-laws should be consistent with the terminology and practices in the Federal Code. Unfortunately, the credibility of this approach suffers as the implementation date of the Code is put back further and further.

In conclusion, we have well developed plans to conduct training seminars and to publish a digest of the Code suitable for operating level personnel once the regulations are Gazetted. Even so, it must be admitted that we are not optimistic that the trucking industry, which is highly decentralized, can be informed of the ramifications of the regulations within a short period of time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

CANADIAN TRUCKING ASSOCIATION
ASSOCIATION CANADIENNE DU CAMIONNAGE

GENERAL COMMENTS DRAFT 2 - REGULATIONS

CANADIAN TRUCKING ASSOCIATION
ASSOCIATION CANADIENNE DU CAMIONNAGE

SUBMISSION OF THE CANADIAN TRUCKING ASSOCIATION'S STANDARDS COUNCIL

ON

THE SECOND DRAFT

OF THE

"TRANSPORTATION OF DANGEROUS GOODS CODE"

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Second drafts of the following material have been reviewed in detail: Volume I (Parts II to V), Volume I Lists (Schedules A to F) and Volume II (Parts I and III).

It will be appreciated that due to the magnitude and complexity of the subject matter being reviewed, it is impossible to reproduce each section of the Code along with the comments on it. Thus, with the exception of the 'General Observations' a copy of the second draft of the Code will be required as a reference when reading this submission.

1. General Observations

The overall impression remaining after reviewing the second draft of the Transportation of Dangerous Goods Code is that it does not perform the functions the trucking industry had in mind when it petitioned for a national system of regulations some six or seven years ago. In our view, scant consideration has been given to how the Code will be used in the way the Code is structured. The organization of the Code must reflect the functions it will ultimately serve and, in this instance, we would cite the U.S. Title 49 regulations as a far more usable and practical document. As the second draft of the Code was supposedly to be reviewed solely for its detailed content, this comment on organization is a very disappointing one to have to make.

The overall quality of the material contained in the second draft is deficient in several key respects as follows:

1) A reconciliation of the contents of the Code needs to be undertaken as in many instances there are overlaps in content. As a result of this, the Code is replete with inconsistencies.

2) Much of the language is inexpertly drafted. Seminal points are frequently vague; conversely, obscure parts of the Code contain unnecessary detail. It must be remembered that much of the information has to be conveyed to truck drivers and dock personnel who are not legal or technical specialists.

3) Sections are frequently misplaced in the Code, for example, there are articles pertaining to shippers under the "carrier's responsibility" section.

4) In some instances the language of the Code is inconsistent with Bill C-17.

5) There are major questions with respect to the extent to which the Code is multimodal in its application - particularly in the case of the rail mode, where existing CTC regulations are cited. This fundamental question must be answered unequivocally - are the requirements for each mode uniform?

6) The numbering system employed in the Code is severely deficient. Volume numbers, parts and page numbers, etc. are referred to with a mixture of roman and arabic numerals. Further, there is no consistency in the method of identifying subsections or sub-subsections which makes the use of the Code extremely difficult.

7) Cross references between various interrelated sections of the Code must be provided. The second draft of the Code is grossly inadequate in this regard.

On a purely practical note, if the final version Code is published in a single volume it should be in a looseleaf form with the English and French texts separate. An individual can then choose which language he will care to refer to, but will only have to carry half the total text with him.

We also recommend that two commodity lists should be prepared. One list would be the master to which reference could be made from the second subsidiary list. One of the lists would contain product names in alphabetical order and the other would contain products listed by consecutive U.N.number. These would contain all the specific requirements for a particular commodity (see comments on Volume I Lists).

Our third proposal with respect to the organization of content is that material should be grouped both by mode and by Class of product. This would enable relevant extracts to be made according to a carrier's or shipper's special circumstances.

Further, certain parts of the Code which are extremely remote from the transportation function - such as packaging standards and specifications - should be produced in a completely separate volume from the "operational" part of the Code. Too much unnecessary information will merely confuse the issue at the loading dock.

Finally, careful consideration must be given to the phasing in of regulations so as not to produce instant obsolescence of equipment now operating. This problem will be particularly severe with tank vehicles which may have a proven safety record and yet, may differ in some detailed specifications from those required under the Code.

In conclusion, with respect to the overall organization of the Code, given that CTA is still committed to the concept of a national regime of regulations, we are prepared to work independently or in concert with other trade associations or government officials to develop and refine an acceptable and practical format for the Code.

GENERAL COMMENTS DRAFT 3

CANADIAN TRUCKING ASSOCIATION
ASSOCIATION CANADIENNE DU CAMIONNAGE

D-100

December 20, 1979

Major Points of General Concern with Respect to Draft 3 of the Transportation of Dangerous Goods Code, Volume 1 (TP 1050 79 10 01)

PREAMBLE

The following material has been assembled pursuant to an intensive examination undertaken by trucking industry experts of the third draft of Volume 1 of the Dangerous Goods Code.

The issues are assembled according to general topic since they transcend the many minor points picked up during the detailed review of the Code. Rectification of these problems is deemed to be absolutely crucial in enhancing the ultimate enforceability of the regulations. However, this document does not compromise previous comments respecting certain parts of the Dangerous Goods Code which have not been reissued in revised draft form (such as the lists, tank specs, etc.).

Further, it is a matter of record that the Canadian Trucking Association, either through its constituent provincial associations or through the efforts of its National Provincial Standards Council, has petitioned and worked for many years for the implementation of uniform national dangerous goods regulations. Thus, the following observations should be viewed in the context that the Canadian trucking industry desires regulations that are comprehensible, enforceable, and readily applicable to those in operating trades throughout the whole physical distribution system - whether they be shipper, carrier or consignee personnel.

1) COMPLEXITY

While the third draft of Volume 1 shows many changes and improvements in language over the second draft, it is unfortunate that most of these are of a cosmetic nature and are simply corrections of obvious errors or completely untenable propositions. What disturbs us most is that our original principal criticism, i.e. that the Code is unnecessarily complicated and unsuitable for direct practical implementation, has been virtually ignored.

A recent study in non-compliance of hazardous materials safety regulations in the United States (National Transportation Safety Board special study NTSB HZM79-2) has indicated that unduly complex regulations can reduce the level of compliance.

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Simply stated, our position is that it is counterproductive to increase the complexity of regulations beyond the point where the level of compliance starts to fall off.

The complexity of the third draft could be dramatically reduced thereby making it a much more practical document by:

1) Reworking the sub-division and groups in each class (see point 2 below)

and

2). Reworking the minimum quantities and concentrations (see point 3 below).

This issue of complexity is such a seminal one that the following extracts from the NTSB report are included to emphasize this position:

On page 18, referring to "Regulation Understandability", the following paragraph occurs:

> "Most large shippers accept responsibility for compliance with the regulations. The shipping personnel employed by these firms work with the regulations daily and have developed a thorough understanding of them as a result of constant use. However, personnel who only infrequently have a need to refer to the regulations were reported as finding them very difficult to understand. It is apparent that a high school graduate, working as a shipping clerk, could have difficulty in determining the correct hazardous material shipping procedure using current complex requirements of the harzardous material regulations and the applicable revisions. If the regulations are to be followed faithfully in the shipping of hazardous materials so that the transfer is accomplished safely, as intended by the DOT, then the regulations must be written so that everyone who is expected to use them can understand them".

To this self-explanatory paragraph, we would merely add that if a shipping clerk, who is probably dealing with a relatively limited number of commodities, can find the regulations confusing, carrier personnel who are exposed to many shippers and their commodities find themselves in an even more complex situation.

Further, on page 21 of the NTSB report under "CONCLUSIONS", it is noted that: "The regulations are difficult to understand, especially for those personnel who use them infrequently, and it is difficult to keep current on the latest revisions to the regulations".

Given this finding in the U.S. - a comparable economy in terms of industrial maturity both in production processes and transportation systems - we believe that this warning should be heeded and that every effort should be made within the next few months, before the Code is implemented, to simplify it further.

We would also add that the third draft of the Code is considerably more complex than the U.S. Title 49 regulations. Surely if, as this group has long requested, the Secretariat will not agree to adopt Title 49 in its entirety, we can infer this is because the Canadian regulations are meant to be an improvement on Title 49 - the intention perhaps being to learn from weaknesses in the U.S. Code. The Dangerous Goods Code must be greatly simplified or, as the United States authorities are now aware, serious incidents may result.

2) PRODUCT CLASSIFICATION

The product classification system is, in our view, the core of the unworkability of the Dangerous Goods Code. We believe that clarification and simplification of this classification scheme is absolutely essential in order to make it more readily comprehensible to consignors, carriers and consignees. It is our contention that by making the Code a document which simplifies the activities of the people handling dangerous goods, it will become a manual that will be extensively used and upon which reliance can be placed.

Thus, we request that the danger and compatibility groups be eliminated. These groupings, on top of classes and sub-classes, introduce too many variables in abstract form which makes the Code extremely difficult to follow. Few people can handle this degree of codification. "What is a group?" they say "Is it a class?". The need for groups is not understood once the commodities are listed by class. Safety is not served by this unnecessary complexity. It should be clearly understood, however, that the intent is not to remove or soften the requirements for products currently covered by the danger and compatibility designators, but rather to upgrade packaging standards to a higher common denominator and to eliminate the inordinate number of permutations respecting handling requirements. The charts included in the Code, supposedly to facilitate the use of the danger groups, cause confusion due to their complexity even among knowledgeable individuals. Surely, the classification and sub-classification should be required only with respect to the dangers the products

present during handling and transportation. As currently written, the classifications deal with characteristics which are of secondary importance in handling hazards (e.g. viscosity) and yet, omit characteristics of poisons - e.g., inhalation, ingestion and absorption - which are of prime importance.

Also, while the sub-group to which a product belongs affects the manner in which it should be transported, there is no onus on the shipper to indicate the sub-group on the declaration, thereby allowing the carrier to verify compliance. For example, a poisonous flammable liquid will be defined as a poison if it acts through inhalation but as a flammable, it is poisonous by ingestion. This inconsistency and unverifiability is of prime concern.

Specifically, with regard to poisons, there should be four sub-divisions:

1) Ingestion;
2) Inhalation;
3) Absorption;
4) Infection;

The groups should be discarded. It is far more important to have the above information when responding to an incident than to know the toxicity to white rats.

On the subject of flammables, the sub-divisions and groups can, and should, be combined with a simple clause to exempt viscous liquids.

Explosives are already divided into five sub-divisions and, as if this were not enough, there are twelve compatibility groups. If it is necessary to define so many groups with regard to the handling then general freight handlers will certainly encounter problems. On the other hand, if they are not absolutely necessary theyshould be removed from the Code.

Finally, on this topic, we are extremely nervous of the extensive use of Class and Division numbers without accompanying verbal descriptions. We believe that these numbersshould never be used alone or where words can be used instead. For example, while it may be very convenient for those people who handle a particular type of material 100% of the time to talk in terms of, say, a Class 1 product, we do not believe that the fact that it is explosive should ever fade from the attention of those less informed who are handling the product.

3) "PARTIALLY REGULATED GOODS" AND "OTHERWISE REGULATED MATERIAL" AND "MINIMUM QUANTITIES"

We find a major deficiency in the Code in that partially regulated goods and otherwise regulated materials are exempted from its provisions. While it is understood that pressures have been brought to bear that commonly available articles obtainable at retail stores should not be subjected to the same stringent regulations as bulk shipments, we maintain that these products are still inherently dangerous. We are concerned that marketing concerns outweigh the safety of our employees. Thus, we propose that the PRG and ORM categories should be scrapped in their entirety. Instead, specific exemptions should be allowed where these are appropriate and these exemptions should be direct and not defined by circumlocution.

Further, with respect to shipping papers, there should be no minimums at all as the commodity descriptions should be exact and accurate. If a product is dangerous at all, the carrier must be in a position to take preventative action. To reiterate, commodities must be named and their UN numbers and danger class descriptions must be listed on all shipping papers.

In addition, if material is being shipped in quantities greater than a certain package size (which should be specified in the regulations) then the packages should be labeled accordingly. Finally, if quantities above a certain aggregate level are being shipped (and we support the 2000 kilo limit proposed in the Code) then placards should be required. This suggested approach seems to us to be a far simpler and more coherent approach to the problem of dealing with generally available dangerous goods than that proposed in the Code as it recognizes the need for exemptions while, at the same time, ensures that adequate information is contained on documentation to allow adequate preventative action to be taken.

4) ORGANIZATION OF THE CODE

While there is some improvement over the second draft in the organization of the material in the third draft of the Code, there is still much work that needs to be done in order to make it a readily usable document free from ambiguities.

In particular, there is a great need to eliminate duplicate numbering; (for example, there are several Appendix 1s, several Table 1s, etc.).

This problem could well be eliminated by the use of consecutive numbering of paragraphs throughout (e.g. 3.03.01). This would go a long way in strengthening the structure of the Code and removing ambiguities.

5) LANGUAGE & MEASUREMENT UNITS

There is a need for enhanced consistency in terminology both within the Code and between the Act and the Code. Perhaps the most important instance of this need is with respect to the term "handle" (which is used in the Act) and the term "offer" (which is used in the Code). From our point of view, the term "offer" clearly established an onus on all segments of the physical distribution system from consignor to consignee and, thus, makes the general applicability of the regulations clear.

While the intent of the government in moving towards metric conversion is understood, it should also be clearly recognized that metric measurement is not used universally throughout Canadian industry. Furthermore, there is a significant amount of international trade in dangerous goods with the United States which is significantly behind Canada in the metric conversion process. Thus, we believe there should be a relaxation of the proposal to use only metric terminology in the Code. The metric terms should be followed by their imperial equivalent. This is especially important when it is recalled that in the second draft of the Code there were some significant errors with respect to converting imperial measures into metric ones. If the people drafting the regulations can be misled or mistaken, the possibility of error in the user community is likely that much greater.

Furthermore, all abbreviations should be consolidated together in a table at the beginning of the Code to simplify understanding.

6) COVERAGE

In some parts of the Code, the regulations go far beyond what is reasonable and would change the safe practices now in existence in our industry. We firmly believe that the topics covered in the Code should be restricted to those which can be reasonably and meaningfully regulated. Industry will then follow the intent of the Code while, at the same time, providing flexible services in a safe manner.

7) ACCIDENT AND INCIDENT REPORTING

No definitions are provided for "accident" and "incident". We suggest that definitions are required and we want to be consulted with respect to the levels of property damage, etc., which relate to these terms. It is crucial that they be set at reasonable levels so as to burden neither industry nor government with unnecessary reporting requirements which would obscure the statistical trends.

8) GRANDFATHERING

The grandfathering of equipment is not included in the Code nor is it contemplated in the Act. We believe it should be considered so as not to render currently used safe equipment illegal and so cause an unnecessary cost burden.

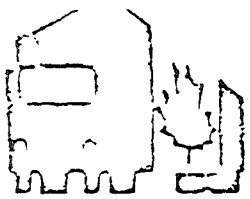
9) CLARIFICATION OF THE RESPECTIVE ROLES OF FEDERAL AND PROVINCIAL INSPECTORS

It is understood that a certain number of the inspection responsibilities, contemplated under the Dangerous Goods Act and Code, will be undertaken by provincial employees and the remainder will be undertaken by inspectors directly under the employ of Transport Canada. It would be extremely useful if some preliminary indication of the respective role of these two categories of inspectors could be obtained.

Further, we believe that the safety record of the industry is generally good and that in all instances where self-regulation and self-certification are possible, then this approach should be closely examined.

All of which is respectfully submitted,

CANADIAN TRUCKING ASSOCIATION
ASSOCIATION CANADIENNE DU CAMIONNAGE



GENERAL COMMENTS DRAFT 4

CANADIAN TRUCKING ASSOCIATION
ASSOCIATION CANADIENNE DU CAMIONNAGE

DRAFT

ITEMS OF GENERAL CONCERN WITH RESPECT TO THE "DRAFT CODE FOR THE TRANSPORTATION OF DANGEROUS GOODS" DATED OCTOBER 10, 1980.

INTRODUCTION

While, in some instances, the latest draft of the Code is an improvement on previous versions - principally because of the explicit recognition of the role of National Standards and Accepted Practices - there are stil items that require extensive modification prior to the regulations being promulgated. The effectiveness of any regulations depends upon their comprehensibility and ultimate enforceability and the following comments are oriented towards achieving these goals:

1. COMPLEXITY AND PRODUCT CLASSIFICATION

In previous submissions, we have repeatedly emphasized the need to simplify the Code to make it readily understandable and to eliminate redundancy. In addition, we have commented extensively on the overly complex method employed to classify products. Once again, after reviewing the Code, we maintain there is an inordinate number of divisions and compatibility groups. Clarification and simplification of the product classification scheme is absolutely essential in order to make it readily comprehensible to operating level personnel. It should be noted that the trucking industry makes extensive use of part time workers and making these people aware of extremely complex regulations will be a virtual impossibility.

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Further, it should be recalled that there is no onus upon shippers to state the group in the information they provide to carriers. Thus, it would seem that once the packaging process has been accomplished, the use of this information is essentially impossible.

Before, we have proposed the reclassification of poisons in a manner that we still believe to be preferable to the one contained in the Code which is not helpful. This proposes the creation of:

1) A division with respect to ingestion.
2) A division with respect to inhalation.
3) A division with respect to absorption.
4) A division with respect to infection.

Clearly, it is far more important to have the above information about the nature of the hazard when responding to an incident than to know the overall toxicity of the product. Thus, the current system of groups should be discarded in favour of the four divisions shown.

2. TREATMENT OF 'LIMITED QUANTITIES' AND OTHER EXEMPTIONS

In the current version of the Code, there are four categories of exemptions:

Limited Quantities

Consumer Commodities

Named Exemptions

Specific acceptable dilutions/concentrations

Taken together, these exemptions virtually emasculate the application of the Code to the transportation of non bulk items. This treatment is inconsistent with the philosophy of the Code which we have assumed is to improve the safety record in handling dangerous goods.

Coupled with this, the exemption categories are complicated, they overlap and no precedence system for their application is given. It can be foreseen that the remaining provisions of the Code could be easily circumvented by shippers merely by adjusting the consignment size. Thus, the application of the Code to non bulk items becomes a mockery. It is merely a complicated paper edifice to bamboozle the unwitting public as there is no practical way in which a carrier can responsibly handle dangerous goods if information as to their inherent nature is not provided. The four categories of exemptions contemplated in the Code essentially prevent the transfer of the relevant information Once again, we would urge you to consider our proposal for limited quantities which takes into account experience in handling these products but which provides for the transfer of essential information.

3. RECIPROCITY WITH THE UNITED STATES

Sub-section 3(2) on page 3 of the Draft Code attempts to deal with reciprocity between Canada and the U.S. via the partial admissibility of Title 49 regulations. This statement is not adequate. Reciprocity with the U.S. must be complete or it will not work. If it remains unamended, discrimination will follow the application of the statement

as drafted here. The trucking industry has always worked on the assumption that the U.S. would accept materials described, labelled and placarded in accordance with the Canadian regulations provided that reciprocity was offered to materials labelled in a similar fashion in accordance with the CFR Title 49 regulations. With this in mind, this sub-section clearly requires major modifications.

4. MEASUREMENT UNITS

This version of the Code uses only metric terminology. It should be noted that the bill of lading will not require metric units alone for many years to come. The introduction of metric units into the distribution system is being deccelerated by some shipper groups as they find the costs of conversion greater than anticipated.

With dual units being employed extensively when shipping products, it is logical to produce a Code that recognizes this.

5. EFFECTIVE DATE OF REGULATIONS

The effective date on which the regulations come into force must permit an adequate period in which the industry can train its personnel after the regulations have been finalized. Immediate full compliance is clearly not feasible due to the decentralized nature of the industry; a twelve month lead-in time would clearly be desirable. Even then, this is not a guarantee that all parts of the industry could comply - especially small carriers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

CANADIAN TRUCKING ASSOCIATION
ASSOCIATION CANADIENNE DU CAMIONNAGE

BILL 93

1ST SESSION, 32ND LEGISLATURE, ONTARIO
30 ELIZABETH II, 1981

Dangerous Goods Transportation Act, 1981

THE HON. J. W. SNOW
Minister of Transportation and Communications

TORONTO
PRINTED BY ALAN GORDON, QUEEN'S PRINTER FOR ONTARIO

BILL 93 1981

Dangerous Goods Transportation Act, 1981

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpretation

(*a*) "analyst" means any person designated as an analyst under the *Transportation of Dangerous Goods Act* (Canada); 1980, c. 36 (Can.)

(*b*) "container" means transport equipment, including equipment that,

(i) is carried on a chassis,

(ii) is strong enough to be suitable for repeated use, and

(iii) is designed to facilitate the transportation of goods without intermediate reloading,

but does not include a vehicle;

(*c*) "dangerous goods" means any product, substance or organism included by its nature or by the regulations in any of the classes listed in the Schedule;

(*d*) "highway" means a highway as defined in the *Highway Traffic Act*; R.S.O. 1980, c. 198

(*e*) "inspector" means any person designated as an inspector by the Minister under this Act;

(*f*) "Minister" means the Minister of Transportation and Communications;

(*g*) "packaging" means any receptacle or enveloping material used to contain or protect goods, but does not include a container or a means of transport;

(*h*) "prescribed" means prescribed by the regulations;

(*i*) "regulations" means the regulations made under this Act unless the context indicates otherwise;

(*j*) "safety mark" includes any design, symbol, device, sign, label, placard, letter, word, number, abbreviation or any combination thereof that is to be displayed on dangerous goods, packaging or containers or vehicles used in the transporting of dangerous goods;

(*k*) "safety requirements" means requirements for the transportation of dangerous goods, the reporting of the transportation, the training of persons engaged in the transportation and the inspection of the transportation;

(*l*) "safety standards" means standards regulating the design, construction, equipping, functioning or performance of containers, packaging or vehicles used in the transporting of dangerous goods;

(*m*) "shipping document" means any document that accompanies dangerous goods being transported and that describes or contains information relating to the goods and, in particular, but without restricting the generality of the foregoing, includes a bill of lading, cargo manifest, shipping order or way-bill;

R.S.O. 1980, c. 198

(*n*) "trailer" means a trailer as defined in the *Highway Traffic Act*;

1980, c. 36 (Can.)

(*o*) "*Transportation of Dangerous Goods Act* (Canada)" means the *Transportation of Dangerous Goods Act* (Canada), as amended from time to time and includes the regulations made under that Act from time to time unless the context indicates otherwise;

(*p*) "vehicle" means a vehicle as defined in the *Highway Traffic Act*.

Where Act does not apply

2.—(1) This Act does not apply to dangerous goods transported in a vehicle,

(*a*) while under the sole direction or control of the Minister of National Defence for Canada; or

(*b*) for which a permit is issued under subsection (2) while there is compliance with the permit.

Permit

(2) The Minister or a person designated by him may issue a permit exempting, from the application of this Act, the transportation of dangerous goods in a vehicle.

(3) A permit issued under subsection (2) is subject to such terms and conditions as the issuer considers appropriate and are contained in the permit. Idem

(4) The Minister may designate in writing any person as a person authorized to issue a permit referred to in subsection (2).. Person designated

(5) This Act binds the Crown. Application to Crown

3. No person shall transport any dangerous goods in a vehicle on a highway unless, Offences

(*a*) all applicable prescribed safety requirements are complied with; and

(*b*) the vehicle and all containers and packaging in it comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

4.—(1) Every person who contravenes section 3 is guilty of an offence and is liable, Penalty

(*a*) on the first conviction to a fine of not more than $50,000; and

(*b*) on each subsequent conviction to a fine of not more than $100,000,

or to imprisonment for a term of less than two years.

(2) Every person who contravenes any provision of this Act or the regulations for which no other penalty is provided by this Act is guilty of an offence and is liable on conviction to a fine of not more than $10,000 or to imprisonment for a term not exceeding one year. Idem

(3) No proceedings under this section may be instituted after two years from the day the offence was committed. Time limit

5. It is a defence to a charge under this Act for the accused to establish that he took all reasonable measures to comply with this Act. Defence

6. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, but it is a defence for the accused to establish that the offence was committed without his knowledge and that he took all reasonable measures to prevent its commission. Offences by employee or agent

Officers, etc., of corporation

7. Any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of an offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted.

Certificate or report of inspector or analyst

8.—(1) Subject to subsections (3) and (4), a certificate or report appearing to have been signed by an inspector or analyst stating that he has made an inspection or analyzed or examined a vehicle, product, substance or organism and stating the results of the inspection, analysis or examination is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate or report.

Copies or extracts

(2) Subject to subsections (3) and (4), a copy or an extract made by an inspector under clause 10 (2) (*b*) and appearing to have been certified under his signature as a true copy or extract is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the copy or extract and, in the absence of any evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

Attendance of inspector or analyst

(3) The party against whom a certificate or report is produced under subsection (1) or against whom a copy or an extract is produced under subsection (2) may require the attendance of the inspector or analyst who signed or appears to have signed the certificate, report, copy or extract for the purposes of cross-examination.

Notice

(4) No certificate, report, copy or extract referred to in subsection (1) or (2) shall be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced a notice of such intention together with a duplicate of the certificate, report, copy or extract.

Designation of inspectors

9.—(1) The Minister may designate any person as an inspector for the purposes of this Act.

Inspector to show certificate

(2) An inspector shall be furnished with a certificate of his designation and, on inspecting any container, packaging or vehicle he shall, if so required, produce the certificate to the person in charge of the thing being inspected.

Certificate

(3) Where an inspector inspects or takes a sample of anything under this Act he shall, if the thing is sealed or closed up, provide

the person in charge of it with a certificate in prescribed form evidencing the inspection or taking of the sample.

Effect of certificate

(4) A certificate provided under subsection (3) relieves the person to or for whose benefit it is provided of liability with respect to the inspection or taking of a sample evidenced by the certificate, but does not otherwise exempt that person from compliance with this Act and the regulations.

Powers of inspectors

10.—(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, at any time, stop and inspect a vehicle and its load where he believes that dangerous goods are being transported, and request the opening and inspection of or open and inspect any container, packaging or vehicle on a highway wherein or whereby he believes that the dangerous goods are being transported.

Inspection

(2) On inspecting any container, packaging or vehicle under subsection (1), an inspector may,

(*a*) for the purpose of analysis, take samples of anything found therein that he believes on reasonable and probable grounds to be dangerous goods; and

(*b*) examine and make copies and extracts of any books, records, shipping documents or other documents or papers that he believes on reasonable and probable grounds contain any information relevant to the administration or enforcement of this Act and the regulations.

Assistance to inspectors

(3) The owner or person who has the charge, management or control of any container, packaging or vehicle inspected under subsection (1) shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act.

Obstruction of inspectors

(4) No person shall, while an inspector is exercising his powers or carrying out his duties and functions under this Act,

(*a*) fail to comply with any reasonable request of the inspector;

(*b*) knowingly make any false or misleading statement either verbally or in writing to the inspector;

(*c*) except with the authority of the inspector, remove, alter or interfere in any way with anything removed by the inspector; or

(*d*) otherwise obstruct or hinder the inspector.

Regulations

11.—(1) The Lieutenant Governor in Council may make regulations,

(*a*) prescribing products, substances and organisms to be included in the classes listed in the Schedule;

(*b*) establishing divisions, subdivisions and groups of dangerous goods and classes thereof;

(*c*) specifying, for each product, substance and organism prescribed under clause (*a*), the class listed in the Schedule and the division, subdivision or group into which it falls;

(*d*) determining or providing the manner of determining the class listed in the Schedule and the division, subdivision or group into which any dangerous goods not prescribed under clause (*a*) falls;

(*e*) exempting from the application of this Act and the regulations or any provision thereof the transporting of dangerous goods in such quantities or concentrations, in such circumstances, for such purposes or in such vehicles as are specified in the regulations;

(*f*) prescribing the manner of identifying any quantities or concentrations of dangerous goods exempted under clause *e*;

(*g*) prescribing the manner in which a permit under clause 2 (1) (*b*) shall be applied for and issued;

(*h*) prescribing safety marks, safety requirements and safety standards of general or particular application;

(*i*) prescribing shipping documents and other documents to be used in respect of the transporting of dangerous goods in a vehicle on a highway, the information to be included in such documents and the persons by whom and manner in which such documents are to be used and retained;

(*j*) prescribing forms for the purposes of this Act and the regulations;

(*k*) amending the Schedule;

(*l*) fixing the form, amount, nature, class, terms and conditions of insurance or bond that shall be provided and carried by persons or classes of persons while transporting dangerous goods in a vehicle or class of vehicle on a highway;

(*m*) prohibiting the transporting of dangerous goods under such circumstances as are prescribed;

(*n*) prohibiting the transporting of such dangerous goods as are prescribed;

(*o*) requiring persons having charge, management or control of dangerous goods escaping a container, packaging or vehicle on a highway to report the occurrence to a designated person, designating the person to whom the report is to be made and prescribing the information to be included in the report and the manner of reporting.

Code, etc., may be adopted by reference

(2) Any regulation made under subsection (1) may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary any code or standard, or any regulation made by the Government of Canada, and may require compliance with any code, standard or regulation that is so adopted.

Agreements respecting enforcement

12.—(1) The Minister may, with the approval of the Lieutenant Governor in Council, enter into an agreement with the Government of Canada with respect to the administration and enforcement of,

(*a*) this Act and the regulations or any provision thereof; and

(*b*) the *Transportation of Dangerous Goods Act* (Canada), or any provision thereof. 1980, c. 36 (Can.)

Costs, expenses, revenues and related matters

(2) An agreement entered into under subsection (1) may provide for any matters necessary for or incidental to the implementation, administration or enforcement agreed on and for the apportionment of any costs, expenses or revenues arising therefrom.

Annual report

(3) The Minister shall, as soon as possible, after the end of each year, prepare and cause to be laid before the Legislature, a report on the administration and enforcement of this Act for that year.

Act has primacy over R.S.O. 1980, cc. 40, 185, 198, 139, 376

13.—(1) Where a provision in,

(*a*) the *Boilers and Pressure Vessels Act*;

(*b*) the *Gasoline Handling Act*;

(*c*) the *Highway Traffic Act*;

(*d*) the *Energy Act*; or

(*e*) the *Pesticides Act*,

purports to require or authorize anything that is a contravention of this Act, this Act applies and prevails unless it is specifically provided that the provision is to apply notwithstanding this Act.

Interpretation

(2) For the purposes of subsection (1), a reference to an Act mentioned in subsection (1) includes all regulations, rules or orders made under the Act.

Commencement

14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. The short title of this Act is the *Dangerous Goods Transportation Act, 1981*.

SCHEDULE

Class 1 — Explosives, including explosives within the meaning of the *Explosives Act* (Canada)

Class 2 — Gases: compressed, deeply refrigerated, liquefied or dissolved under pressure

Class 3 — Flammable and combustible liquids

Class 4 — Flammable solids; substances liable to spontaneous combustion; substances that on contact with water emit flammable gases

Class 5 — Oxidizing substances; organic peroxides

Class 6 — Poisonous (toxic) and infectious substances

Class 7 —

Class 8 — Corrosives

Class 9 — Miscellaneous products, substances or organisms considered by the Lieutenant Governor in Council to be dangerous to life, health, property or the environment when transported in a vehicle on a highway and prescribed to be included in this class.

BILL 93

Dangerous Goods Transportation Act, 1981

1st Reading

June 2nd, 1981

2nd Reading

November 10th, 1981

3rd Reading

December 18th, 1981

THE HON. J. W. SNOW
Minister of Transportation and
Communications

1981

THE MUNICIPAL REGULATION(S)

REGULATION 293

under the Environmental Assessment Act

GENERAL

1. In this Regulation,

(a) "development corporation" means a corporation under the *Development Corporations Act*;

Clause (a a) New definition related to new clause 5(3)(a)

(b) "operating" includes maintaining and repairing and any activities for operating, maintaining and repairing, and "operation" has a corresponding meaning;

(c) "$1,000,000" means the greater of $1,000,000 and $1,000,000 divided by the Non-residential Construction Input Index issued by Statistics Canada for the month of December, 1977, multiplied by the Non-residential Construction Input Index issued by Statistics Canada for the month in which the first contract for the construction of the undertaking is entered into, or, where no such contract is entered into, the month in which the commencement date for the undertaking falls and any other amount in dollars has a corresponding meaning. O. Reg. 836/76, s. 1; O. Reg. 468/80, s. 1.

2.—(1) All environmental assessments shall be submitted with a summary in Form 1.

(2) Written submissions and requirements for hearings made or given under subsection 7 (2) of the Act may be made in accordance with Form 2.

(3) Written submissions and requirements for hearings made or given under subsection 10 (1) of the Act or subsection 12 (1) of the Act may be made in accordance with Form 3.

(4) A requirement for a hearing given pursuant to section 13 of the Act may be made in accordance with Form 4. O. Reg. 836/76, s. 2.

3. The following bodies are defined as public bodies:

1. Algonquin Forestry Authority.
2. Authorities within the meaning of the *Conservation Authorities Act*.
3. Colleges, universities and other bodies, except the Royal Ontario Museum and municipalities, to which the *Ontario Universities Capital Aid Corporation Act* applies.
4. Development corporations.
5. Ontario Energy Corporation.
6. Ontario Hydro.
7. Ontario Northland Transportation Commission.
8. Ontario Telephone Development Corporation.
9. Ontario Transportation Development Corporation.
10. Toronto Area Transit Operating Authority.
11. Urban Transportation Development Corporation. O. Reg. 836/76, s. 3.

4.—(1) An undertaking, whether constructed or commenced before or after the coming into force of the relevant provisions of the Act, for the construction or commencement of which the approval of the Minister to proceed was not required is exempt with respect to its operation and retirement from the provision of subsection 5 (1) of the Act requiring the proponent not to proceed with the undertaking and from the provisions of subsection 6 (1) of the Act.

(2) A proponent of an undertaking of a type referred to in subsection (1) is exempt from the provisions of section 39 of the Act with respect to the requirement of submitting an environmental assessment to the Minister with respect to the operation or retirement of the undertaking. O. Reg. 836/76, s. 4.

5.—(1) This section does not apply to an undertaking of a body listed in section 3 that may be found to be a local board as defined in the *Municipal Affairs Act* or to be a board, commission or other local authority exercising power in respect of municipal affairs.

(2) In this section,

(a) "estimated cost" means the most current estimate prepared by an engineer, architect, official, planner or construction contractor of the cost of an undertaking which estimate has been submitted to the council or other governing body of a municipality or a committee thereof and has been accepted by it as the basis upon which the undertaking is to be proceeded with, but does not include any costs for,

(i) the acquisition of land,

(ii) feasibility studies and design carried out for the undertaking, or

(iii) the operation of the undertaking,

and where an undertaking is being constructed in phases includes the cost of all phases; and

(*b*) "exclusive right of way" when used in connection with a bus service means a roadway, including entrances and exists, constructed for use by buses and upon which the public is not permitted to drive motor vehicles but not including accesses to stations and stops, or turning, storage and service facilities not otherwise associated with such a right of way, nor a reserved bus lane on an existing road. O. Reg. 468/80, s. 2, *part*.

(3) An undertaking by a municipality for which an environmental assessment has not been submitted is exempt from the provisions of the Act where,

* (*a*) subject to subsection (4), it has an estimated cost of not more than $2,000,000 provided it is not an undertaking of a type described in clause 5 (*b*), (*c*) or (*d*);

(*b*) it is an undertaking by a board within the meaning of the *Education Act*;

(*c*) it is a drainage works regulated under the *Drainage Act*;

(*d*) it is a road shown on a plan of subdivision as being part of the subdivision being approved under section 36 of the *Planning Act*;

* (*e*) it is a waste disposal site that,

(i) is a transfer station for domestic waste that uses portable containers,

(ii) is an organic soil conditioning site certified under the *Environmental Protection Act*, or

(iii) is a transfer station for processed organic waste located at the sewage treatment works where it is generated or at the organic soil conditioning site where it is disposed of;

(*f*) it is an undertaking of a type which, save that the proponent is not Ontario Hydro, is described in Orders of the Minister dated the 14th day of October, 1976 and published as numbers OHB-2, OHC-3 and OHD-4 in the issue of THE ONTARIO GAZETTE dated the 13th day of November, 1976;

(*g*) it is an undertaking of a type which, save that the proponent is not Ontario Hydro, is described in the Order of the Minister dated the 14th day of October, 1976 and published as number OHF-6 in the issue of THE ONTARIO GAZETTE dated the 13th day of November, 1976 and it is proposed that its construction and maintenance be carried out in accordance with the standards that apply to such undertakings when carried out by Ontario Hydro; or

* (*h*) it is a work provided for in a subdivision agreement between a municipality and a subdivider other than an undertaking to which clause (*a*) does not apply by reason of clause (4) (*b*), (*c*), (*d*) or (*e*) or, except in the case of works being provided for management of storm water from the subdivision and other adjacent lands of the subdivider, clause (4) (*f*). O. Reg. 468/80, s. 2, *part*; O. Reg. 885/80, s. 1 (1).

(4) The exemption provided by clause (3) (*a*) does not apply in respect of,

(*a*) the construction of a new road or of a realignment of an existing road except where the road or realignment is,

(i) to be less than one kilometre in length,

(ii) to serve a municipally owned industrial, residential or commercial area, or

(iii) to provide internal circulation in a municipal recreation area or park;

(*b*) a new bus service on an exclusive right of way or a new rail transit system,

(*c*) a new station, terminal or marshalling yard for a rail transit system,

(*d*) a waste disposal site that,

(i) is a transfer station for processed organic waste,

(ii) is a site for the disposal of hauled liquid industrial waste or hazardous waste as designated in regulations made under Part V of the *Environmental Protection Act*, or

(iii) is a site for the disposal of any other waste that the Director ascertains under subsection 30 (1) of the *Environmental Protection Act* is the equivalent of the domestic waste of not less than 1,500 persons;

(*e*) a new water production works, sewage treatment works, or sewage lagoon and the storage, collection, transmission or distribution works associated therewith, or

(*f*) an undertaking which is or includes a work of a type listed in one of the first six groups of items in Column 1 of the Table in subsection 9 (2) and its construction has not commenced by the date set out opposite in Column 2 of the said Table. O. Reg. 468/80, s. 2, *part*.

** - New clause (g)

* (a)(e)&(h) replaced by (a)(e)(h)(i)

(a) - references to clauses 5(e)&(f) added to correct error in consolidation. Consolidation caught 5(c) and (d) in error. This amendment would have extended to them if they had not already been caught.

(e) - clause (iv) added to exempt emergency municipal disposal sites.

(h) - reparagraphed to correct a drafting error - the effect of the "other than..." is to make subject certain smaller works and have larger works of the same type exempt. The revision removes the inadvertent exemption for large works.

(5) An undertaking by a municipality, for which an environmental assessment has not been submitted is exempt from the provisions of the Act where,

* (a) before the 3rd day of June, 1980,

(i) the undertaking had been authorized by a resolution or by-law of the council or other governing body of the municipality,

(ii) land had been acquired by or on behalf of the municipality for the purpose of implementing the undertaking, or

(iii) the municipality or some other expropriating authority acting on behalf of the municipality served notice under the *Expropriations Act* of an application for approval to expropriate land to be used for the purpose of implementing the undertaking,

and at least 25 per cent of the estimated cost is scheduled to be spent or construction contracts for at least 25 per cent of the estimated cost are scheduled to be let within three years after the 3rd day of June, 1980;

(b) it is an undertaking of a type that, save that the proponent is not Ontario Hydro, is described in Orders of the Minister dated the 14th day of October, 1976 and published as numbers OHE-5 and OHG-7 in the issue of THE ONTARIO GAZETTE dated the 13th day of November, 1976, and construction of the undertaking is commenced within twelve months after an approval under the Act is issued to Ontario Hydro for an undertaking of that type;

** (c) it is an undertaking that consists of the expansion of an existing water works or sewage works where the expansion is commenced prior to the 31st day of January, 1982 and where, in the case of an expansion to a water treatment or sewage treatment facility, the expansion is located at the site of or adjacent to an existing water treatment or sewage treatment facility;

(d) it is an undertaking of a type with respect to which the Minister issued a notice under clause 7 (1) (b) of the Act on the 25th day of February, 1980, for the environmental assessment submitted by the Toronto Area Transit Operating Authority as number B-1 on the 5th day of March, 1980, for one of the environmental assessments submitted by the Toronto Area Transit Operating Authority as number B-2, B-3 or B-4 and construction of the undertaking is commenced within twelve months after an approval has been issued to the Toronto Area Transit Operating Authority for an undertaking of that type;

(e) it is an undertaking of a type that, save that the proponent is not Ontario Hydro, is described in the Order of the Minister dated the 14th day of October, 1976 and published as number OHL-12 in the issue of THE ONTARIO GAZETTE dated the 13th day of November, 1976 and construction of the undertaking is commenced within twelve months after an approval under the Act is issued to Ontario Hydro for an undertaking of that type; or

* * (f) it is an undertaking of a type that, save that the proponent is not the Minister of Transportation and Communications, is similar to any listed under "B" in the key contained in the Order of the Minister dated the 15th day of August, 1978 and published as number MTC-13 in the issue of THE ONTARIO GAZETTE dated the 16th day of September, 1978, and construction of the undertaking is commenced within twelve months after an approval under the Act is issued to the Minister of Transportation and Communications for an undertaking of that type or where the approval was issued before the 3rd day of June, 1980, within twelve months after that date. O. Reg. 468/80, s. 2, *part*; O. Reg. 885/80, s. 1 (2).

***

(6) An exemption under clause (5) (a) ceases to apply with respect to those parts of the undertaking that are not competed within three years after the 3rd day of June, 1980 unless at least 25 per cent of the estimated cost of the undertaking has been spent or construction contracts for at least 25 per cent of the estimated cost have been let prior to the end of the three year period.

(7) The obtaining of an option to acquire land or an interest in land by a municipality or the entering into an agreement to purchase land or an interest in land by a municipality, where the acquisition or purchase is conditional on compliance with the Act, is an undertaking that is exempt from the provisions of subsection 5 (1) of the Act. O. Reg. 468/80, s. 2, *part*.

(8) For purposes of subclause (5) (a) (i), an undertaking shall be deemed to have been authorized by resolution or by-law of the council or other governing body of the municipality where the council or other governing body of a municipality has passed a resolution or given second reading to a by-law prior to the 3rd day of June, 1980 authorizing any step, including any step necessary for the obtaining of or the making of an application for approval under any other Act, in connection with proceeding with the undertaking that indicates an intention by the council or other governing body to implement the undertaking at a specific site.

(9) In subsection (8), "any step" includes,

(a) any application for approval that may be necessary to facilitate the carrying out of the undertaking;

* Replaced by O.Reg. 383/81, copy attached

** - clause (c) replaced to expand and extend exemption
- clause (f) replaced to extend exemption

*** - new clause (g) provides interim exemption for non profit housing

- subsection (6) reworded to change June 3, 1983 to December 31, 1983.

(*b*) an amendment of an official plan or a restricted area by-law and any application therefor;

(*c*) the engaging of a consultant to prepare any material necessary to proceed with an undertaking or to obtain an approval;

(*d*) the advertising for or awarding of tenders to carry out any part of the undertaking;

(*e*) the approval of financing necessary to carry out any part of the undertaking; or

(*f*) the acquisition of land.

(10) Subsection (8) does not apply to the proposed waste disposal site of The Regional Municipality of Halton at the site in the Town of Milton known as site "F". O. Reg. 885/80, s. 1 (3).

6.—(1) Notwithstanding section 5, an undertaking which consists of establishing, constructing and operating a new hydro-electric generating facility in the Go Home Lake area of Ontario and associated transmission and transformation facilities is not exempt from the provisions of the *Environmental Assessment Act* and in this section "hydro-electric generating facility" includes a dam or other water storage or diversion facility for the purpose of storing, diverting or conducting water for the generation of electricity. O. Reg. 816/78, s. 1.

(2) Notwithstanding section 5, an undertaking that consists of establishing, constructing and operating an east-west arterial road located in the City of Cambridge, running easterly from the proposed Highway 8 By-pass in the direction of Franklin Boulevard and any associated facilities is not exempt from the provisions of the Act. O. Reg. 8/80, s. 1.

7.—(1) All undertakings and classes of undertakings by or on behalf of Her Majesty in right of Ontario and carried out by,

(*a*) the Minister of Revenue;

(*b*) the Minister of Labour;

(*c*) the Minister of Correctional Services;

(*d*) the Attorney General;

(*e*) the Minister of Colleges and Universities;

(*f*) the Solicitor General;

(*g*) the Minister of Community and Social Services;

(*h*) the Minister of Consumer and Commercial Relations;

(*i*) the Minister of Education;

(*j*) the Minister of Health;

(*k*) the Minister of Agriculture and Food; and

(*l*) the Minister of Housing,

are exempt from the provisions of the Act. O. Reg. 836/76, s. 6 (1); O. Reg. 94/77, s. 1.

(2) All undertakings and classes of undertakings by or on behalf of Her Majesty in right of Ontario and carried out by an agent of Her Majesty in right of Ontario who is not,

(*a*) a Minister of the Crown,

(*b*) acting on behalf of a Minister of the Crown; or

(*c*) defined as a public body,

are exempt from the provisions of the Act. O. Reg. 836/76, s. 6 (2).

8. Notwithstanding section 7, an undertaking that is being carried out by the Minister of Government Services on behalf of or at the request of,

(*a*) a Minister of the Crown named in section 7; or

(*b*) an agent of the Crown exempted by section 7,

that would be subject to the Act but for section 7 is not exempt from the Act. O. Reg. 836/76, s. 7.

9.—(1) In this section,

(*a*) "authority" means an authority within the meaning of the *Conservation Authorities Act*;

(*b*) "change in use" when used with respect to dam reconstruction means the addition of new uses or changing the highest level at which water may be stored;

(*c*) "commencement date" means,

(i) where contracts are to be awarded for the carrying out of part or all of the construction involved in the undertaking, the date on which the first such contract is awarded, and

(ii) where no such contract is to be awarded, the date on which construction commences;

(*d*) "cost" means the estimated total cost of the implementation of an undertaking at the time of its approval under the *Conservation Authorities Act* by the Minister of Natural Resources exclusive of any costs

for the acquisition of land or for any feasibility studies and design carried out for the undertaking, or the operation of the undertaking;

(e) "dam reconstruction" means the reconstruction or rebuilding of a dam that involves a change in use of the dam or reservoir from,

(i) the use being made immediately prior to the reconstruction taking place, or

(ii) a use being made within the ten years immediately prior to the reconstruction taking place where the construction involves the repair of a dam which has been wholly or partly inoperable due to damage.

* O. Reg. 636/77, s. 1, *part*; O. Reg. 468/80, s. 3.

(2) An undertaking by an authority, for which an environmental assessment is not submitted, is exempt from the provisions of the Act if,

(a) the undertaking,

* cost of the undertaking were scheduled

(i) was approved by the Minister of Natural Resources on or before the 31st day of January, 1978, and

(ii) was on a list of undertakings submitted to the Minister on or before the 4th day of July, 1978 by the authority proposing to carry out the undertaking and the list indicated that contracts for at least 25 per cent of the

to be awarded on or before the 31st day of December, 1980; or

(b) the undertaking is solely for the purpose of,

(i) reforestation and woodlot management,

(ii) restocking of indigenous wildlife, or

* (iii) provision of conservation area workshops and administration buildings,

or any combination thereof; or

(c) the undertaking,

(i) has a cost of not more than $1,000,000, and

(ii) has, for work described in Column 1 of the Table, a commencement date falling on or before the date in Column 2 of the Table opposite the first applicable item in Column 1

TABLE

Column 1	Column 2
Type of Work	Date
Construction of Dams and Reservoirs	December 31, 1980 *
Channelization, Stabilization or Diversion of Watercourses	December 31, 1981
Construction of Dykes and Levees	December 31, 1982
Lake Shoreline Alteration including creation of new shoreline	December 31, 1983
Dam Reconstruction	December 31, 1984
Wildlife, including fish, Habitat Manipulation	December 31, 1985
All other types	December 31, 1986

(3) For the purposes of this section, an undertaking shall be deemed to be a work described in Column 1 of the Table where any part of the undertaking is a work described in the said Column 1

(4) An undertaking exempt under clause (2) (a) ceases to be exempt under that clause with respect to those parts of it that were not completed by the 31st day of December, 1980, unless contracts for at least 25 per cent of the cost of the undertaking were awarded by the 31st day of December, 1980.

(5) Notwithstanding subsection (2), the activities of the Grand River Conservation Authority consisting of the planning, designing, providing, constructing, operating or retiring of water control facilities for which Grand River Conservation Authority General Membership Resolution Number 32-75 requires that an Environmental Impact Assessment be carried out are designated as undertakings to which the Act applies

(6) The acquisition of land or interests in land by an authority is exempt from the provisions of subsection 5 (1) of the Act. O. Reg. 636/77, s. 1, *part*.

10. The undertaking of making a loan, giving a grant, giving a guarantee of debts or issuing or

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* - new clause (f) to create additional minor exemptions for conservation authorities

- clause (a) remade to move misplaced line (2nd line) to correct location (blank in (ii))

- clause (b) expanded-(iii) expanded, (iv) (v) & (vi) new

- December 3, 1981 changed to 1982

granting a licence, permit, approval, permission or consent is exempt from the provisions of subsection 5 (1) of the Act. O. Reg. 836/76, s. 9.

11. Notwithstanding any provisions of this Regulation exempting any undertaking from the provisions of the Act, where an environmental assessment of an undertaking is submitted, all provisions of the Act apply in respect of that undertaking. O. Reg. 8/80, s. 2.

*

Form 1

Environmental Assessment Act

SUMMARY FORM FOR AN ENVIRONMENTAL ASSESSMENT SUBMISSION

Re: An Environmental Assessment received from ..... (name of proponent)

for ..... (title of Undertaking) to be located in ..... (location(s) of undertaking)

Environmental Assessment Number ..... (*Number to be issued by the Ministry of the Environment*)

For the public benefit, in a resume of an Environmental Assessment, the following headings should be expanded upon and cross-indexed to the Environmental Assessment where applicable. Additional headings can be used and any inapplicable headings deleted.

RESUME:

1. Purpose of the Undertaking.
2. Description of the Undertaking.
3. Justification of the need for the Undertaking.
4. Description of possible alternatives to the Undertaking.
5. Alternative implementation methods for both the Undertaking and the alternatives to it.
6. Geographic areas/boundaries *within which the Undertaking will be executed, and the same for the alternatives. Included should be a well marked, legible map. (This may be a 1:50,000 scale topographic map, plus a smaller simplified one for publication purposes).*
7. The environment affected *or possibly affected, either directly or indirectly for the areas mentioned in item 5. This would include the actual effects or possible effects of the various methods of carrying out the Undertaking and the alternatives, and may be explained on a map.*
8. Remedial measures *for any adverse effects mentioned in item 7.*
9. Advantages and disadvantages to the environment of the Undertaking and the alternatives.
10. All studies and reports done in connection with the Undertaking or matters related to the Undertaking, under the control of the Proponent: *list studies and reports.*
11. All studies and reports done in connection with the Undertaking or matters related to the Undertaking of which the Proponent is aware which are not under the control of the Proponent: *list studies and reports.*

ADDITIONAL INFORMATION:

Additional information, if any, may include such things as:

agencies or authorities contacted,

lists of public meetings affecting any decision relating to the Undertaking,

etc.

WORDS IN ITALICS, OTHER THAN NAMES OF FORMS OR THE ACT, MAY BE OMITTED.

O. Reg. 836/76, Form 1.

* New Section 12 - exemption for all research undertakings

THE ENVIRONMENTAL ASSESSMENT ACT, 1975

O. Reg. 383/81.
General.
Made—June 5th, 1981.
Filed—June 5th, 1981.

REGULATION TO AMEND
ONTARIO REGULATION 836/76
MADE UNDER THE
ENVIRONMENTAL ASSESSMENT ACT, 1975

1. Clauses 5 (5) (*a*) and (*d*) of Ontario Regulation 836/76, as made by section 2 of Ontario Regulation 468/80, are revoked and the following substituted therefor:

(*a*) at least 25 per cent of the estimated cost of the undertaking is scheduled to be spent or construction contracts for at least 25 per cent of the estimated cost are scheduled to be let, before the 31st day of December, 1983 and prior to the 3rd day of June, 1980,

(i) the undertaking was authorized by a resolution or by-law of the council or other governing body of the municipality,

(ii) land was acquired by or on behalf of the municipality for the purpose of implementing the undertaking, or

(iii) the municipality or some other expropriating authority acting on behalf of the municipality had served notice under the *Expropriations Act* of an application for approval to expropriate land to be used for the purpose of implementing the undertaking;

. . . . .

* (*d*) it is an undertaking of a type that, save that the proponent is not the Minister of Transportation and Communications, is similar to any listed under "B" in the key contained in the Order of the Minister dated the 15th day of August, 1978 and published as number MTC-13 in the issue of THE ONTARIO GAZETTE dated the 16th day of September, 1978 and construction of the undertaking is commenced before the 31st day of December, 1981. **

* R.R.O., 1980 in effect changes (d) to (f)

** New Regulation changes date to December 31, 1982

THE ENVIRONMENTAL ASSESSMENT ACT

O. Reg. 841/81.
General.
Made—December 17th, 1981.
Filed—December 17th, 1981.

REGULATION TO AMEND REGULATION 293 OF REVISED REGULATIONS OF ONTARIO, 1980 MADE UNDER THE ENVIRONMENTAL ASSESSMENT ACT

1. Section 1 of Regulation 293 of Revised Regulations of Ontario, 1980 is amended by adding thereto the following clause:

(*aa*) "hardship" means a situation where a person needs to sell his property quickly for health or financial reasons or to settle an estate but is unable to do so at a fair market value or where he has been refused a building permit because an undertaking, planned or proposed, involving his property has not received approval under the Act;

2.—(1) Clauses 5 (3) (*a*), (*e*) and (*h*) of the said Regulation are revoked and the following substituted therefor:

(*a*) subject to subsection (4), it has an estimated cost of not more than $2,000,000 provided it is not an undertaking of a type described in clause (5) (*b*), (*c*), (*d*), (*e*) or (*f*);

. . . . . .

(*e*) it is a waste disposal site that,

(i) is a transfer station for domestic waste that uses portable containers,

(ii) is an organic soil conditioning site certified under the *Environmental Protection Act*,

(iii) is a transfer station for processed organic waste located at the sewage treatment works where it is generated or at the organic soil conditioning site where it is disposed of, or

(iv) is a site certified under section 31 of the *Environmental Protection Act* for the disposal of waste other than hauled liquid industrial waste or hazardous waste as designated in regulations made under subsection 136 (4) of the *Environmental Protection Act*;

. . . . . .

(*h*) it is a work provided for in a subdivision agreement between a municipality and a subdivider other than,

(i) an undertaking of a type described in clause (4) (*b*), (*c*), (*d*), (*e*) or (*g*), or

(ii) an undertaking of a type described in clause (4) (*f*) unless it is a work being provided for the management of storm water from the subdivision and other adjacent lands of the subdivider; or

(*i*) it is a transfer of land initiated by the owner of the land,

(i) in a hardship situation, or

(ii) as part of an arrangement whereby the municipality is to provide a fence in return for a transfer of land.

(2) Subsection 5 (4) of the said Regulation is amended by striking out "or" at the end of clause (*e*), by adding "or" at the end of clause (*f*) and by adding thereto the following clause:

(*g*) an undertaking of a type that, save that the proponent is not Ontario Hydro, is,

(i) described in Orders of the Minister dated the 14th day of October, 1976 and published as numbers OHE-5, OHG-7 and OHL-12 in the issue of *The Ontario Gazette* dated the 13th day of November, 1976 and

(ii) except in the case of communication towers, designed to operate at a voltage of 115 kilovolts or more.

(3) Clause 5 (5) (*c*) and clause 5 (5) (*f*), as remade by section 1 of Ontario Regulation 383/81, of the said Regulation are revoked and the following substituted therefor:

(*c*) it is an undertaking that consists of the expansion of an existing water works or sewage works or a water works provided for in a subdivision agreement for which an approval under section 23 or 24 of the *Ontario Water Resources Act* is issued prior to the 31st day of December, 1982 and for which construction is commenced prior to the 31st day of December, 1983 and, in the case of an expansion to a sewage treatment facility, the expansion is located at the site of or abutting an existing sewage treatment facility;

. . . . . .

(*f*) it is an undertaking of a type that, save that the proponent is not the Minister of Transportation and Communications, is similar to any listed under "B" in the key contained in the Order of the Minister dated the 15th day of August, 1978 and published as number MTC-13 in the issue of *The Ontario Gazette* dated the 16th day of September, 1978 and advertising of tenders for the undertaking has occurred prior to the 31st day of December, 1982; or

** (*g*) it is an undertaking that consists of the construction of municipal non-profit housing facilities where advertising of tenders for the undertaking has occurred prior to the 1st day of July, 1983.

** replaced by clause 5(5) (g) of new regulation

** 3. Subsection 6 (1) of the said Regulation is revoked and the following substituted therefor:

(1) An exemption under clause (5) (*a*) ceases to apply with respect to those parts of the undertaking that are not completed by the 31st day of December, 1983 unless at least 25 per cent of the estimated cost of the undertaking has been spent or construction contracts for at least 25 per cent of the estimated cost have been let before the 31st day of December, 1983. O. Reg. 341/81, s. 3.

4.—(1) Subsection 9 (1) of the said Regulation is amended by adding thereto the following clause:

(*f*) "private land extension services" means those works carried out under an agreement with a private landowner for the purpose of,

(i) creation of shelter belts and wind breaks,

(ii) wildlife habitat management,

(iii) erosion control,

(iv) soil conservation,

(v) water conservation, or

(vi) water quality improvement,

where the estimated cost of any such works including all related projects does not exceed $10,000.

(2) Clauses 9 (2) (*a*) and (*b*) of the said Regulation are revoked and the following substituted therefor:

(*a*) the undertaking,

(i) was approved by the Minister of Natural Resources on or before the 31st day of January, 1978, and

(ii) was on a list of undertakings submitted to the Minister on or before the 4th day of July, 1978 by the authority proposing to carry out the undertaking and the list indicated that contracts for at least 25 per cent of the cost of the undertaking were scheduled to be awarded on or before the 31st day of December, 1980; or

(*b*) the undertaking is solely for the purpose of,

(i) reforestation and woodlot management,

(ii) restocking of indigenous wildlife,

(iii) provision of conservation area workshops, administration buildings, outdoor education and interpretive centres,

(iv) private land extension services,

(v) municipal tree replacement, or

(vi) agricultural land management of authority owned lands,

or any combination thereof; or

(3) The Table in clause 9 (2) (*c*) of the said Regulation is amended by striking out "December 31, 1981" in the second line of Column 2, and inserting in lieu thereof "December 31, 1982".

5. The said Regulation is amended by adding thereto the following section:

12.—(1) In this section,

(*a*) "research undertaking" means an undertaking that is carried out for the purpose of or that consists of research;

(*b*) "research" includes measuring, monitoring and testing.

(2) Research undertakings are exempt from the provisions of the Act. O. Reg. 341/81, s. 5.

** replaced by subsection 6(1) of new regulation

O. Reg. 140/82

REGULATION TO AMEND
REGULATION 293 OF REVISED REGULATIONS OF ONTARIO, 1980
MADE UNDER THE
ENVIRONMENTAL ASSESSMENT ACT

1.-(1) Clause 5(5)(d) and clause 5(5)(g), as made by subsection 2(3) of Ontario Regulation 841/81, of Regulation 293 of Revised Regulations of Ontario, 1980 are revoked and the following substituted therefor:

(d) it is an undertaking of a type with respect to which the Minister issued a notice under clause 7(1)(b) of the Act on the 25th day of February, 1980, for the environmental assessment submitted by the Toronto Area Transit Operating Authority as number B-1 or on the 5th day of March, 1980, for one of the environmental assessments submitted by the Toronto Area Transit Operating Authority as number B-2, B-3 or B-4 and construction of the undertaking is commenced on or before the 31st day of December, 1982.

. . . . .

(g) it is an undertaking that consists of the provision of municipal non-profit housing facilities where,

(i) in the case of non-profit housing facilities to be constructed for the municipality pursuant to tenders, the advertising of tenders for the undertaking has occurred, or

(ii) in the case of non-profit housing facilities to be provided in some way other than that described in subclause (i), the municipality has entered into a contract with the person who will provide the housing for the municipality for such purposes,

prior to the 1st day of July, 1983.

(2) Subsection 5(6) of the said Regulation is revoked and the following substituted therefor:

(6) An exemption under clause (5)(a) ceases to apply with respect to those parts of the undertaking that are not completed by the 31st day of December, 1983 unless at least 25 per cent of the estimated cost of the undertaking has been spent or construction contracts for at least 25 per cent of the estimated cost have been let before the 31st day of December, 1983.

2. Subsection 6(1) of the said Regulation, as remade by section 3 of Ontario Regulation 841/81, is revoked and the following substituted therefor:

6.-(1) Notwithstanding section 5, an undertaking which consists of establishing, constructing and operating a new hydro-electric generating facility in the Go Home Lake area of Ontario and associated transmission and transformation facilties is not exempt from the provisions of the Environmental Assessment Act and in this section "hydro-electric generating facility" includes a dam or other water storage or diversion facility for the purpose of storing, diverting or conducting water for the generation of electricity.

THE ENVIRONMENTAL ASSESSMENT ACT

and

MUNICIPALITIES

Response to the Report of the Municipal Working Group
Recommendations for the Designation and Exemption
of Municipal Projects under The Environmental Assessment Act

MINISTRY OF THE ENVIRONMENT

Presented by the Honourable George A. Kerr, Q.C.
at the meeting of the Provincial-Municipal Liaison Committee
October 21, 1977

SUMMARY

THE ENVIRONMENTAL ASSESSMENT ACT AND MUNICIPALITIES

This paper identifies, analyzes and prepares solutions for major problems and areas of concern relating to the implementation of The Environmental Assessment Act for municipalities.

The comments received in response to the Report of the Municipal Working Group focus on three major areas: administrative and financial implications of implementing the Act for municipalities; effects the environmental assessment process at the provincial level would have on municipal projects; and the interrelationship between The Environmental Assessment Act and The Planning Act.

Specific issues identified within these three areas include: the need to ensure that class environmental assessments will be relevant to municipal projects; delay in the issuing of licences and permits under Section 6 of the Act; the need to define more precisely the numbers and types of municipal projects to be affected; and the problems which could be created by the prohibition contained in Section 6 of the Act.

The potential for conflict and duplication between the application, review and hearing procedures of The Planning Act and The Environmental Assessment Act emerges as one of the key concerns in the municipal response to the Working Group Report.

In order to clarify the relationship between the two Acts and the implications of this relationship for municipalities, several points contained in the Report of the Planning Act Review Committee referring to The Environmental Assessment Act's application to municipal and municipally regulated undertakings are discussed. The main points are: the Committee's recommendation that the burden of proof should rest with the public authority to demonstrate that the undertaking is not in the public interest; the Committee's interpretation of the rationale for the broad definition of "environment" contained in The Environmental Assessment Act; and the Committee's presumption that The Environmental Assessment Act will be applied widely to matters adequately regulated under The Planning Act.

Despite the differences identified with some of the issues raised by the Committee, the Ministry of the Environment is in agreement with the Committee's view that all of the relevant planning legislation should be designed to operate in a coherent manner and that duplication should be avoided. The recommendations contained in this paper are designed both to reflect this objective and to respond to the major concerns expressed in the comments on the Municipal Working Group Report.

The recommendations are divided into two sections; one, which responds to the major concerns and another which outlines a strategy for developing a rational and coherent planning process responsive to both municipal and provincial interests within the framework of The Planning Act and The Environmental Assessment Act.

The recommendations in the first group are:

1. THAT TECHNICAL WORKING GROUPS COMPOSED OF A CROSS SECTION OF MUNICIPAL STAFF AND REPRESENTATIVES OF THE MINISTRY OF THE ENVIRONMENT BE ESTABLISHED TO REVIEW THE GUIDELINES RESULTING FROM PROVINCIAL CLASS ENVIRONMENTAL ASSESSMENTS AND REVISE THEM FOR APPLICATION TO MUNICIPALITIES.

2. THAT THE MUNICIPAL WORKING GROUP'S RECOMMENDATIONS WITH RESPECT TO INCLUSION OR EXEMPTION OF CERTAIN TYPES OF MUNICIPAL UNDERTAKINGS BE IMPLEMENTED BY REGULATION WITH THE ADDITION OF AN EXEMPTION PROVISION FOR MINOR PROJECTS, NOT ON THE INCLUSION LIST, BUT WITH AN ESTIMATED COMPLETION VALUE OF LESS THAN $1,000,000.

3. THAT THE ENVIRONMENTAL ASSESSMENT ACT BE APPLIED TO ALL MUNICIPALITIES.

4. THAT THE PROPOSAL CONTAINED IN THE REPORT OF THE MUNICIPAL WORKING GROUP REGARDING PHASING-IN PROVISIONS BE ACCEPTED.

5. THAT THE SUGGESTIONS CONTAINED IN SUBMISSIONS RESPONDING TO THE MUNICIPAL WORKING GROUP REPORT BE TAKEN INTO ACCOUNT, WHEREVER PRACTICABLE, IN DRAFTING THE REGULATION APPLYING THE ACT TO MUNICIPALITIES.

6. THAT BEFORE IT IS FINALIZED THE REGULATION BE CIRCULATED IN DRAFT FORM TO THE MUNICIPAL LIAISON COMMITTEE, TO THOSE WHO MADE SUBMISSIONS IN RESPONSE TO THE WORKING GROUP REPORT, AND TO ANY OTHER PERSON WHO SO REQUESTS.

7. THAT WHERE PROBLEMS OF LAND ACQUISITION AND ACCESS TO LAND EXIST, THEY BE DEALT WITH ON A CASE BY CASE BASIS.

The recommendations proposing the adoption of a rationalization strategy are based on three principles:

1. CONSIDERATION OF NATURAL ENVIRONMENTAL CONCERNS SHOULD BECOME AN INTEGRAL PART OF THE ADMINISTRATION OF THE PLANNING ACT AT THE LOCAL AND PROVINCIAL LEVEL.

2. THE ENVIRONMENTAL ASSESSMENT ACT SHOULD BE APPLIED TO MUNICIPAL OR MUNICIPALLY REGULATED UNDERTAKINGS ONLY IN THOSE SITUATIONS WHERE IT IS IN THE PROVINCIAL INTEREST TO DO SO.

3. IN ANY AREA WHERE DUPLICATION, OVERLAP, OR CONFLICT REMAINS, AN "OVERRIDE" OR "STREAMLINING" SOLUTION SHOULD BE DEVELOPED.

The report contains specific proposals based on the above principles which are intended to implement the strategy over an appropriate time period.

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THE ENVIRONMENTAL ASSESSMENT ACT AND MUNICIPALITIES

I. INTRODUCTION

I-A BACKGROUND

In December of 1976, the Report of the Municipal Working Group "Recommendations for the Designation and Exemption of Municipal Projects under The Environmental Assessment Act" was circulated to members of the Municipal Liaision Committee, the Municipal Engineers Association and to all municipalities and other interested bodies or individuals. The Report contained the recommendations of the Municipal Working Group, which was established in December 1975, in order to discuss the types of municipal projects which would require an environmental assessment under The Environmental Assessment Act. The Report first clarified the approach taken by the Working Group in determining which projects should be designated or exempted under the Act and then listed the types of municipal projects which were identified as requiring an environmental assessment. It noted also some of the concerns raised by the Working Group regarding the implementation of The Environmental Assessment Act by municipalities and contained a discussion of the extent of application of the recommendations to municipalities.

It should be noted that the Report was not intended to be legally precise; it was written with the intention of explaining the recommendations of the Municipal Working Group so that comments and suggestions from other municipal representatives and the public could be incorporated into the regulations required to implement The Environmental Assessment Act.

I-B FORMAT

It is the intent of this paper to identify, analyze and prepare solutions for major problems and areas of concern relating to the implementation of The Environmental Assessment Act for municipalities. First, an analysis is provided of the major points identified in the responses to the Report of the Municipal Working Group. In addition to discussing the main concerns this section notes those points in the Report which were misinterpreted in certain responses or which appear to require clarification. This is followed by a discussion of some of the issues in the Report of the Planning Act Review Committee which relate to The Environmental Assessment Act and municipalities. Finally, a strategy to implement the Act for municipalities directed toward resolving the problems which have been identified is put forward. The appendix contains a listing of specific issues identified in the responses to the Municipal Working Group's Report and statements of the total number of positive and negative responses. Where necessary, for clarification, a brief explanation of the reasons for the responses has been included.

II. ANALYSIS OF RESPONSE

II-A ATTITUDES TOWARD ENVIRONMENTAL ASSESSMENT

Before categorizing the various comments, the submissions were read to determine the attitude to environmental assessment reflected in them. Generally, the responses were in favour of some form of municipal involvement in environmental planning with reservations expressed about various possible administrative effects which could be associated with the implementation of The Environmental Assessment Act. For example, the need for guidelines, the number of projects to be affected, the implications of using the class EA approach or the phasing-in provisions were noted as areas of concern. In those few cases where the response was completely negative, cost and delay appeared to be the major concerns.

II-B ADMINISTRATIVE AND FINANCIAL CONCERNS

The major concerns in this category were the application of class environmental assessments to municipal projects, the potential delays and costs which could result from implementing The Environmental Assessment Act at the municipal level, and the determination of which municipal projects would require an environmental assessment.

(1) Class Environmental Assessments

The responses clearly indicated that the use of class environmental assessments requires additional explanation. Only one respondent obviously recognized that the projects subject to class EA's would not require individual provincial review and approval. There was widespread agreement that clarification was required with regard to the application of the conditions contained in the approval of the class environmental assessment, especially as to how the province would ensure that the conditions and criteria are implemented, and with regard to the interpretation of the provincial class assessments in terms which would be relevant to municipalities. The latter concern referred both to the problem of reflecting the diversity of municipal projects in the class assessment, for example, between municipal undertakings in northern and southern Ontario and to the difference in scale between provincial and municipal projects and between different sizes of municipalities. It was suggested, in some responses, that the class EA's would need to be rewritten by municipalities to take account of these differences and that guidelines would be required for this purpose.

Part IV of this report contains recommendations which respond to these concerns.

(2) Costs and Delays

Potential increased costs and delays were major concerns identified in the responses. The problems in these categories related mainly to what were described as "unknown factors" involved in implementing the Act for municipalities. In addition to the extra cost and time necessary for the preparation of the document, concerns were that:

- additional staff might be required
- the provincial review could unnecessarily delay the project
- funds would be used for preliminary studies for projects which ultimately, might not be approved by the municipal councils
- the delay in the issuing of licences and permits would unduly restrict municipalities in their planning (Section II C(1) of this report contains a suggested approach which would avoid this consequence)
- delay could be caused by applying the Act to too many projects.
- dangerous situations could be created if the Act would have to be applied in emergency situations and in making on-site adjustments.

Clearly, these concerns are related to factors which are basically unknown at the present time. It is expected that the first environmental assessment prepared by municipalities could cost more and take longer to prepare than later ones. The implementation period will be a learning experience which, with cooperation between the Ministry of the Environment and the municipalities, will provide the basis for a workable process. The class environmental assessment approach will facilitate this also by establishing a model planning procedure which municipalities will be able to use.

(3) Designation and Exemption of Projects

A number of respondents expressed concern about the legal approach to be used to bring municipalities under The Environmental Assessment Act. The Act provides that all public undertakings are subject to the Act unless specifically exempted, while private undertakings are exempt unless specifically designated. Therefore, when Ontario Government ministries and agencies were brought under the Act, those bodies or undertakings judged not to merit environmental assessment were specifically exempted.

The responses suggest that the exemption approach would create difficulties from an administrative and policy standpoint if translated directly to the municipal sector. The large number of municipalities and the wide range of activities in

which they engage make it unlikely that all of the undertakings requiring exemption could be identified in advance of making the Act applicable to municipalities. This would place municipalities and the Ontario Government in the undesirable situation of, respectively, applying for and processing large numbers of exemptions on a regular basis. Uncertainty about which projects required environmental assessment would create unnecessary paperwork and delay as applications to the Minister for exemptions would be required for even relatively minor projects. For these reasons, the responses indicated that the designation of municipal projects would be more acceptable than the exemption approach.

There was widespread agreement that the numbers and types of municipal projects to be affected needed to be defined more specifically. These suggestions dealt with:

- cut-off points used to determine which projects are to be subject to the Act.

- the potential application of Sections 30 and 41(f) of the Act; while some respondents felt application of these sections would provide flexibility, there was one comment expressing concern that they could be applied too often.

- concern that certain projects which are well advanced and therefore eligible for exemption under the phasing-in provisions should, in the public interest, be subject to environmental assessment.

Recommendations reflecting these concerns are contained in Part IV of this review.

II-C THE ENVIRONMENTAL ASSESSMENT PROCESS AT THE PROVINCIAL LEVEL

Many of the submissions raised general concerns about how the environmental assessment process as it would affect municipal projects and policies. The concerns reflected both an uncertainty about the nature of the legislation and the review process which it establishes and about the administrative implications and time schedules at the provincial level.

(1) Extent of Provincial Involvement

Several of the respondents expressed concern that the application of The Environmental Assessment Act to municipalities would allow the province too much control in the area of municipal planning and policy-making.

Underlying these concerns were questions about whether or not those people reviewing the environmental assessment document and the Environmental Assessment Board would take account of municipal interests.

In response to these questions it should be noted that the staff of the Ministry of the Environment who review the environmental assessment documents play a co-ordinating role in the review process, circulating the document to various ministries for comments. A wide range of opinions are therefore reflected in the review. If a hearing is then held by the Environmental Assessment Board there is opportunity for input from the municipalities and the public.

Related to the above points were suggestions that the responsibility for environmental approval be delegated to municipalities (this point is addressed in the recommendations contained in this report) and that Section 6 of the Act prohibiting the issuance of licences, permits, etc. be changed so that municipalities will not be prohibited from, for example, approving budgets, enacting by-laws or entering into agreements with other municipalities.

While Section 6 does prohibit the granting of licences, permits, etc., legal advice indicates that conditional approval could be granted. That is, negotiation prior to approval under the Act could proceed and permits, official plan amendments, funds, etc. could be granted subject to the condition that they become valid or effective only after the required approval under The Environmental Assessment Act has been granted.

(2) Land Acquisition

A number of respondents felt that the possibility that the municipality may be prohibited from acquiring land for an undertaking subject to the Act, before an environmental assessment is carried out and approvals obtained under the Act, could create additional problems. One suggestion was to consider an amendment to The Expropriations Act which would impose a freeze while the process is underway if property acquisition is involved. Another suggestion was that municipalities should be able to take conditional options on lands prior to receiving EA approval.

Recommendations dealing with this issue are made in Part IV of this report.

II-D CONCERN FOR PLANNING ACT/ENVIRONMENTAL ASSESSMENT ACT INTERRELATIONSHIPS

(1) Conflict Between EAA and Planning Act

Although several respondents expressed concern that there would be duplication or conflict between The Environmental Assessment Act and The Planning Act, a general opinion was

conveyed that The Planning Act and Official Plans could reflect more environmental concerns than they do at present. Many referred to the need for intensive study of the interrelationship between the two Acts and for discussions between the Ministry of Housing and the Ministry of the Environment with a view to streamlining the separate processes.

Recommendations which take account of these suggestions are made in Part IV of this report.

(2) Duplication of Hearings - EAB/OMB

Potential duplication of hearings of the Ontario Municipal Board and the Environmental Assessment Board was a major concern. There were a number of suggestions directed toward establishing a joint hearing system or streamlining the processes. The Ministry of the Environment recognizes the problems which could occur and makes recommendations in Part IV of this report with the objective of alleviating them.

II-E ADDITIONAL CONCERNS

(1) Screening Criteria

The screening criteria used as a basis by the MWG for determining which municipal projects could require an environmental assessment were criticized by several respondents on the grounds that they were too vague, broad and subjective and that there was no clear indication as to weighting of importance between the various criteria.

In fact, the criteria were appended to the Municipal Working Group Report only as an indication of the issues considered in reaching a "first cut" judgment as to whether an undertaking needed environmental assessment, might need it in some circumstances, or should be exempted. The criteria are recognized to be arbitrary and subjective, and are not intended, by themselves, to render decisions on the status of a project.

In the Municipal Working Group, judgments as to designation or exemption were made on the basis of past experience and it was concluded that input from municipalities regarding the designation and exemption of projects would provide further clarification for determining cut-off points for specific projects. In effect the criteria were used only as general guidelines in narrowing down the possible designations and exemptions.

A procedure for using and interpreting the criteria is available from the Ministry of the Environment but was not published in the Working Group Report. In retrospect, its inclusion would have alleviated the concerns expressed about the criteria.

III. REPORT OF THE PLANNING ACT REVIEW COMMITTEE

The potential for conflict and duplication between the application, review and hearing procedures of The Planning Act and The Environmental Assessment Act emerges as one of the key concerns in the municipal response to the Working Group Report. In its Report, the Working Group had noted that the Report of the Planning Act Review Committee would perhaps help to clarify the relationship between the two Acts and strongly suggested that the Ministries of Environment and Housing work to resolve the potential conflicts and duplication.

The Report of the Planning Act Review Committee (hereinafter referred to as the "Committee") has now been available for municipal scrutiny for several months. While the Committee's Report focuses mainly on the reform of The Planning Act and the municipal planning system, it does touch briefly on The Environmental Assessment Act and advances several recommendations concerning the Act's application to municipal and municipally regulated undertakings. (Chapter 17, Sections 17.20 to 17.35, pages 152-156).

Municipalities have rightfully insisted that Provincial actions in response to the Report of the Municipal Working Group on Environmental Assessment and to the Report of the Planning Act Review Committee should be mutually complementary and designed to integrate and streamline the planning process.

In this section, the Ministry of the Environment:

A. outlines and responds to the main issues arising from the Planning Act Review Committee's environmental assessment proposals,

B. comments on several other related matters raised by the Committee and,

C. summarizes this reaction and states conclusions.

III-A MAIN ISSUES

(1) Burden of Proof

The Committee expresses concern about the conflict in philosophy between The Environmental Assessment Act's stance that a proponent should bear the burden of proof to demonstrate that an undertaking should be allowed to proceed, and the Committee's recommendation that the burden should be on the public authority to demonstrate that the undertaking is not in the public interest (17.23).

On the grounds that proponents should accept responsibility for the consequences of their actions, the Ministry of the Environment takes the position that the person who is proposing to alter the state of the environment should take the responsibility for justifying the change. However, the Ministry recognizes that there is also a responsibility on the part of Government reviewers to justify their evaluation of the proposal. Where conflicts persist between proponent and reviewers, neither side is presumed to be right as the "Burden of Proof" concept might suggest; rather, the decision-maker in the environmental assessment process comes to a determination by evaluating the evidence on both sides.

The Committee's views on "Burden of Proof" have rather serious practical implications for both the provincial and municipal levels of government. Under the Committee's proposals, governments would be required to permit a proposed development unless the governments could demonstrate that the proposal was unacceptable. The governments would thus be put in the position of financing and carrying out the basic data collection and planning studies which are now put together by the proponent. In the Ministry of the Environment's view, the costs of providing data and staff for every project being proposed (including the large number which never get beyond the proposal stage) make the Committee's approach impractical.

On both philosophical and practical grounds, as set out above, the Ministry of the Environment rejects the Committee's "burden of proof" recommendation.

(2) Definition of "Environment"

A second major area of disagreement with the Committee concerns the broad definition of "Environment" used in The Environmental Assessment Act. The Report of the Committee indicates a serious misinterpretation of the reason why "Environment" has been defined in the Act to cover not only the "natural environment" but also the human environment, including social, economic and cultural concerns.

The broad definition resulted from suggestions by other ministries (especially Treasury, Economics and Intergovernmental Affairs; then responsible for regional planning and the administration of The Planning Act) during the interministerial consultations which preceded the release of the Green Paper on Environmental Assessment in September, 1973. While the Ministry of the Environment had put forward a proposal for environmental assessment dealing only with the "natural environment", the other agencies argued successfully that to conduct a project assessment solely on natural environment considerations would result in a document essentially useless to decision-makers. Rather than place each agency in the position of setting up its own parallel process requiring a proponent to submit an assessment dealing with its particular concerns (e.g. social,

economic, cultural, energy, technical, etc.), it would make sense to build all of these concerns into a single assessment document. Each agency would then be in a position to participate in a decision-making process where trade-offs could be explicitly identified and assessed and an overall Government decision made on whether a project's advantages outweighed its disadvantages and thus should be allowed to proceed.

The Planning Act Review Committee has obviously misunderstood this point. It repeatedly misconstrues The Environmental Assessment Act as resulting in "environmental approvals" and not in a Government decision in principle on whether an undertaking should be allowed to proceed (Sec. 6.27, 17.26, 17.32, 17.33, 17.34). The most explicit indication of the Committee's misinterpretation of this issue is found in the statement: "We are also concerned whether the Authority for determining that given economic or social changes should be allowed in a municipality should be assigned, in the final analysis, to the Environment Ministry, whose primary interest is matters of natural environment". (17.26)

In the actual working of the environmental assessment process, the economic and social aspects of the proponent's environmental assessment would be circulated for review to the agencies primarily responsible for these concerns (Ministry of Treasury, Economics and Intergovernmental Affairs, Ministry of Industry and Tourism, Ministry of Community and Social Services, Ministry of Culture and Recreation, etc.). The role of the Ministry of the Environment would be to coordinate this review.

Where conflicts arise amongst the reviews of the various government agencies, the Ministry of the Environment will attempt to get the relevant agencies to work out a solution. If no agreement can be reached, the matter is not resolved by the Ministry of the Environment, rather it will be referred upwards to the affected Deputy Ministers, Ministers or ultimately the Cabinet until a solution is reached.

As for "the final analysis", which must be the "go/no-go" decision, The Environmental Assessment Act clearly indicates that this decision is not made by the Ministry of the Environment alone, but rather by the Cabinet. The Committee's misinterpretation of this basic point represents a serious flaw in its reasoning, and invalidates the proposals stemming from its concerns about the broad definition of "environment".

(3) Extent of Potential Conflict and Duplication

The third main area of disagreement with the Committee also appears to arise from a basic misunderstanding by the Committee of the Government's approach to implementation of The Environmental Assessment Act. A number of the Committee's proposals (See 17.26, 17.29, 17.32, 17.34) apparently relate to a presumption by the Committee that the Government intends to

apply The Environmental Assessment Act extensively to the matters now regulated under The Planning Act. Based on this presumption, the Committee expresses concern that there will be a large number of projects subject to both The Environmental Assessment Act and The Planning Act with the possibility of extensive conflict and duplication in application and hearing procedures.

The Ministry of the Environment recognized the potential for overlap and duplication between the Ontario Municipal Board and the Environmental Assessment Board at the time The Environmental Assessment Act was being drafted and has repeatedly indicated its willingness to work on methods of resolving the potential problems. During 1974, as the proposed legislation was being considered by Cabinet, the Ministry agreed to and participated in a committee appointed by the AttorneyGeneral "to investigate methods of minimizing the number of hearings on undertakings to which The Environmental Assessment Act, 1974 will apply or of consolidating such hearings." In its report to the Attorney-General the Committee concluded:

> "...the difficulties in the way of adopting a general formula for substituting hearings by the Environmental Assessment Board for hearings by other tribunals or consolidating all hearings are insuperable...For these reasons the Committee is of the opinion that each undertaking or class of undertaking to which the Act is applied will have to be considered individually to determine whether there is an avoidable duplication of hearings. The Committee is informed that the Government will probably move slowly in extending the application of the Act to different undertakings or classes of undertakings and provision should be made at the time of any extension for minimizing duplication of hearings where this is practicable. One possibility would be to provide that ...after a hearing by the Environmental Assessment Board, the material put before the Board would be admissible on the relevant issues in subsequent hearing, avoiding duplication to this extent."

The Ministry of the Environment has carefully followed this advice in implementing the Act. In fact, a basic criterion for determining whether the Act should apply to a given class of undertakings is the adequacy of the existing approvals and hearing processes to which the class is subject. For example, the Minister of the Environment has clearly stated to the Legislature that The Environmental Assessment Act would not have general application to the residential housing industry in Ontario. This eliminates a large area of potential overlap between The Environmental Assessment Act and The Planning Act and their respective hearing processes.

The Planning Act Review Committee has apparently overlooked the Government's repeated statements that The Environmental Assessment Act is intended to apply only to under-

takings of major significance. As a consequence of the Committee's misconception that the Act will be applied to ordinary developments, the Committee has greatly overestimated the potential area of conflict between The Environmental Assessment Act and The Planning Act and proposed solutions which, in face of reality, are inappropriate or unnecessary.

Nevertheless, the Ministry of the Environment agrees with the view of the Committee that The Environmental Assessment Act should be directed at "developments of truly major or provincial significance" and has reflected this view in its administration of the Act to date. The Ministry recognizes - as did the Municipal Working Group - that since some such developments (although by no means all of them) will also be subject to The Planning Act, streamlining solutions are required for these situations. Recommendations are advanced later in this review.

III-B OTHER ISSUES

There are a number of other issues in the Committee's proposals on environmental assessments which, in the opinion of the Ministry of the Environment, merit comment.

(1) Holding By-laws

The Committee maintains (Sec. 17.24) "that holding by-laws can produce close to the desired results of The Environmental Assessment Act with respect to natural environment concerns". While the Committee's proposals with respect to holding by-laws can provide municipalities with a useful environmental management tool in environmentally sensitive areas by allowing time for review, this device by itself is unlikely to achieve the objective of The Environmental Assessment Act with respect to the natural environment. By definition, the kinds of areas for which the Committee proposes that holding by-laws be allowed are the areas where a municipality, assuming the burden of proof as suggested by the Committee, is going to face the most expense and difficulty in attempting to anticipate the effects of development proposals. Moreover, as The Environmental Assessment Act does not focus only on the natural environment, but seeks to balance all relevant effects of the undertaking and reasonable alternatives in order to arrive at an optimal solution, the holding by-law device hardly seems to be a suitable or sufficient substitute if a development of truly major or provincial significance is under consideration.

This is not to suggest that the Ministry of the Environment advocates the application of The Environmental Assessment Act to all development in the kinds of areas where the Committee proposes the use of holding by-laws. Suggestions for a more adequate procedure are outlined later in this review.

(2) Municipal Plans and Environmental Assessment

The Committee makes suggestions with regard to municipal plans being excluded from The Environmental Assessment Act (Sec. 17.28, 17.29). While at present the Ministry does not propose that they be included, it does have some reservations about the implication of this proposal occasioned by the Committee's view on comprehensiveness and legal status of municipal plans. If official or municipal plans were comprehensive (as they are now supposed to be), had legal status (as now) and contained policies satisfactory to the Ministry of the Environment on the natural environment there would probably be no need to subject them to an environmental assessment under the Act. This in fact, is the position arrived at by the Municipal Working Group on Environmental Assessment.

Recommendations pertaining to municipal plans are presented in Part IV of this report.

(3) Social and Economic Impacts

Apparently related to the Committee's misconception of the purpose and rationale for the broad definition of "environment" is a seeming ambivalence toward the consideration of social and economic impacts in decision-making. The Environmental Assessment Act provides an explicit framework for the consideration of social and economic impacts with respect to the major kinds of undertakings to which it will apply. Recognizing that much remains to be learned about social impact assessment, the Act reflects a consensus that it is nevertheless important to attempt to address social and economic issues. Where the treatment of these issues is subjective or speculative, as it often will be, this can be made obvious to both decision-makers and the public by explicitly identifying the assumptions on which the evaluation is based.

It should be emphasized that by being concerned with social and economic changes The Environmental Assessment Act is not attempting to prevent changes in Ontario communities but, rather, to manage change, to ensure that the changes which could result from an undertaking are clearly stated at a time when they can still be accommodated and when alternative approaches can still be implemented. This concept of "wise management" which is an explicit purpose of the Act was obviously totally misunderstood by the Review Committee, as reflected in the footnote on page 153 of the Report. In addition to suggesting that the planning process the Act envisions is designed to prevent rather than manage change, the footnote indirectly implies that the identification of potential social and economic changes should be avoided because it might lead to decisions based on prejudice. Surely the protection against such abuse lies not in ignoring the issue but in the exercise of the provincial interest in "ensuring civil rights and natural justice in the administration of municipal planning"? (Quotation from Summary, Item 1, Page 1)

(4) Private Sector Designation

The proposal that specifications for those private sector undertakings requiring an environmental assessment be written into the Act would create inflexibility and make the Act a less useful decision-making tool. The Government needs to be able to apply the Act, and its prohibition against proceeding, without delay where it is in the provincial interest. The constraints of time and priority to which legislation is subject suggest that changing provincial and municipal policies or social and economic realities might not be readily taken into account in determining when an environmental assessment should be carried out. In effect the system would be less responsive. Moreover, the fact that private undertakings may only be brought under the Act by designating regulation, authorized by statute, should satisfy the Committee's interest in ensuring that administrative action stems from proper authority.

III-C SUMMARY OF REACTION TO THE COMMITTEE'S ENVIRONMENTAL ASSESSMENT PROPOSALS

There are three fundamental issues on which the Ministry of the Environment is in disagreement with the Committee's environmental assessment proposals: The "burden of proof" issue, the Committee's interpretation of the rationale for the broad definition of "environment", and the Committee's presumption that The Environmental Assessment Act will be applied widely to matters adequately regulated under The Planning Act. On the first of these issues we have indicated a basic disagreement in principle; on the second and third issues we believe the Committee has formed its conclusions on the basis of a misunderstanding of the intent of The Environmental Assessment Act. The Committee has based its proposals for action with respect to environmental assessment in large part upon its assumptions in these three areas, and the Ministry of the Environment therefore concludes that the Committee's environmental assessment proposals are not acceptable in their present form.

Despite these differences, the Ministry of the Environment is in full agreement with the Committee's view that all of the relevant planning legislation should be designed to operate in a coherent manner, that duplication should be avoided and procedures be as straightforward and direct as possible, and that there be a clear identification of who is making the ultimate planning decisions and on what basis the decisions are made (See 17.35). The Ministry has further concluded that in responding to the Report of The Planning Act Review Committee, the Government has an unprecedented opportunity to rationalize and streamline the planning process. In this spirit, the Ministry has critically looked at the relationship between The Environmental Assessment Act and The Planning Act and has developed what it believes is a constructive approach to resolving the potential difficulties. This approach is set out, along with implementation proposals based on the response to the Municipal Working Group's Report, in the following section.

IV RECOMMENDATIONS

The previous sections have identified the major concerns expressed by the respondents tc the Report of the Municipal Working Group and the main differences between the recommendations of The Planning Act Review Committee and the Ministry of the Environment with respect to the implementation of The Environmental Assessment Act for municipalities. The following section contains two major groups of recommendations which, respectively:

A. respond to the major concerns expressed in the comments on the Municipal Working Group Report regarding the administrative implications of implementing The Environmental Assessment Act for municipalities.

B. outline a strategy for developing a rational and coherent planning process responsive to both municipal and provincial interests within the framework of both The Planning Act and The Environmental Assessment Act.

The recommendations are intended to both facilitate the implementation of the Act for municipalities and to resolve many of the possible problems particularly with reference to the relationship between The Planning Act and The Environmental Assessment Act, which have been identified.

IV-A IMPLEMENTATION OF THE ENVIRONMENTAL ASSESSMENT ACT FOR MUNICIPALITIES: ADMINISTRATION

1. IT IS RECOMMENDED THAT TECHNICAL WORKING GROUPS COMPOSED OF A CROSS SECTION OF MUNICIPAL STAFF AND REPRESENTATIVES OF THE MINISTRY OF THE ENVIRONMENT BE ESTABLISHED TO REVIEW THE GUIDELINES RESULTING FROM PROVINCIAL CLASS ENVIRONMENTAL ASSESSMENTS AND REVISE THEM FOR APPLICATION TO MUNICIPALITIES.

   The Ministry of the Environment recognizes that class environmental assessments would be a good means to establish a planning process consistent with The Environmental Assessment Act while avoiding a review process for every project. It is felt that a transitional period will be required during which the provisions in the provincial class assessments will have to be revised for application to municipal projects.

   In addition, consultation with municipal representatives will have to take place in order to discuss problems and questions which might arise and to develop guidelines where necessary. The Ministry of the Environment proposes to make the class environmental assessments available to municipalities well ahead of the time they are to come into effect in order to facilitate this consultation. An interim exemption would be provided for the various classes of activities identified for class treatment by the Municipal Working Group.

2. IT IS RECOMMENDED THAT THE MUNICIPAL WORKING GROUP'S RECOMMENDATIONS WITH RESPECT TO INCLUSION OR EXEMPTION OF CERTAIN TYPES OF MUNICIPAL UNDERTAKINGS BE IMPLEMENTED BY REGULATION WITH THE ADDITION OF AN EXEMPTION PROVISION FOR MINOR PROJECTS, NOT ON THE INCLUSION LIST, BUT WITH AN ESTIMATED COMPLETION VALUE OF LESS THAN $1,000,000.

   It appeared that, from an administrative standpoint, this approach would be the best solution in view of the difficulty of identifying all activities of all municipalities which should be exempt. The $1,000,000 cutoff point would mean exemption orders would not be required for minor activities not specifically identified for inclusion under the Act, thus minimizing the number of exemption orders to be processed yet providing for the screening of more significant activities. Exempting regulations would be enacted for types of projects not meriting environmental assessment as they were identified through the screening process.

3. IT IS RECOMMENDED THAT THE ENVIRONMENTAL ASSESSMENT ACT BE APPLIED TO ALL MUNICIPALITIES.

   Based on the response to the Report of the Municipal Working Group, it was determined that the requirement for the environmental assessment should be determined by the type of undertaking rather than the proponent.

4. IT IS RECOMMENDED THAT THE PROPOSAL CONTAINED IN THE REPORT OF THE MUNICIPAL WORKING GROUP REGARDING PHASING-IN PROVISIONS BE ACCEPTED.

5. IT IS RECOMMENDED THAT THE SUGGESTIONS CONTAINED IN SUBMISSIONS RESPONDING TO THE MUNICIPAL WORKING GROUP REPORT BE TAKEN INTO ACCOUNT, WHEREVER PRACTICABLE, IN DRAFTING THE REGULATION APPLYING THE ACT TO MUNICIPALITIES.

6. IT IS RECOMMENDED THAT BEFORE IT IS FINALIZED THE REGULATION BE CIRCULATED IN DRAFT FORM TO THE MUNICIPAL LIAISON COMMITTEE, TO THOSE WHO MADE SUBMISSIONS IN RESPONSE TO THE WORKING GROUP REPORT, AND TO ANY OTHER PERSON WHO SO REQUESTS.

   Two years of provincial-municipal dialogue on this subject have already taken place. Therefore, comments would be requested within a relatively short period of two or three months.

7. IT IS RECOMMENDED THAT WHERE PROBLEMS OF LAND ACQUISITION AND ACCESS TO LAND EXIST, THEY BE DEALT WITH ON A CASE BY CASE BASIS.

It is recognized that the prohibition (s.5(1)) against buying land for an undertaking subject to The Environmental Assessment Act before an approval for the undertaking may create difficulties for proponents in some situations. The Ministry of the Environment has carried out a background study of this potential problem and identified a number of alternative techniques for resolving the difficulties. Several additional techniques have been suggested by municipalities in their response to the Municipal Working Group. Review of the various techniques has led the Ministry to conclude that no one technique is appropriate for all situations. For example, a public authority with expropriation powers can handle the problem in ways not available to most private sector proponents. Further, as several municipalities have pointed out, some techniques (e.g. imposition of confidentiality, exclusion of site alternatives from the environmental assessment, or exemption of land acquisition) are less preferable than others from the perspective of the purpose of The Environmental Assessment Act. It is expected that as experience is gained, patterns will become evident and the Ministry will be in a position to legislate a more general solution.

IV-B IMPLEMENTATION OF THE ACT: PLANNING PROCESS

While the above recommendations are being implemented, it is proposed that the municipalities in co-operation with the Ministry of the Environment implement a strategy directed toward establishing a coherent and rational planning process within the framework of The Planning Act and The Environmental Assessment Act. The strategy has been designed to be phased in gradually so that municipalities can begin by working within the proposals put forward by the Municipal Working Group and then implement the other proposals over an appropriate time period.

(1) Principles On Which Strategy Is Based

The purpose of The Environmental Assessment Act is "the betterment of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment". The Ministry of the Environment suggests that there is no inherent conflict between this goal and the Planning Act Review Committee's goal of achieving a rational, coherent planning process responsive to both municipal and provincial interests.

Given that the goals are not in conflict, the Ministry of the Environment further suggests that there is no reason why the legal and administrative mechanisms for achieving these goals

cannot be rationalized. Towards this end, the main recommendation of the Ministry of the Environment is the adoption of a rationalization strategy based on three principles:

1. CONSIDERATION OF NATURAL ENVIRONMENTAL CONCERNS SHOULD BECOME AN INTEGRAL PART OF THE ADMINISTRATION OF THE PLANNING ACT AT THE LOCAL AND PROVINCIAL LEVEL.

2. THE ENVIRONMENTAL ASSESSMENT ACT SHOULD BE APPLIED TO MUNICIPAL OR MUNICIPALLY REGULATED UNDERTAKINGS ONLY IN THOSE SITUATIONS WHERE IT IS IN THE PROVINCIAL INTEREST TO DO SO.

3. IN ANY AREA WHERE DUPLICATION, OVERLAP, OR CONFLICT REMAINS, AN "OVERRIDE" OR "STREAMLINING" SOLUTION SHOULD BE DEVELOPED.

(2) Proposed Strategy

In order to implement the proposed strategy outlined above, the Ministry of the Environment makes the following specific proposals:

1. Implement the recommendations arising from the Municipal Working Group Report, as set out in section A, above.

2. Allow municipalities to establish policies and procedures to protect the "natural environment" and make such plans and procedures subject to the approval of the Minister of the Environment.

3. Provide for The Environmental Assessment Act to apply to municipal undertakings or municipally-regulated private undertakings which fall within criteria defining the provincial interest. The criteria would be interpreted by the municipality, subject to Provincial intervention. Suggested criteria are:

   a) Significant effects are outside of jurisdictional* boundaries of municipality.

   b) Some alternatives which should be considered are outside jurisdictional boundaries.

   c) Undertaking is primarily intended to serve people not mainly within the municipality.

   d) Areas or features which are provincially significant.
      - unique
      - scale

   e) Developments which affect the ability of the Province to attain stated objectives (natural environmental, social, economic).

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* jurisdictional - mandate and spatial

f) Undertakings involving the management, development or use of a resource in a way which affects the interests of people outside the jurisdictional boundaries of the municipality.

g) Undertakings which must be carried out in the interests of a wider client group than within the jurisdiction of the municipality.

h) Undertakings which may affect the Province's financial well-being.

i) In cases where decision-making authority does not have an environmental plan and decision-making process acceptable to the Minister of the Environment.

j) Performance criteria for specific scale or type of undertaking.

k) X% Provincial funding which places projects in Provincial sphere.

4. Exempt or not designate undertakings where the municipality has an environmental plan, a decision-making process acceptable to the Minister and where the undertakings are not within the criteria defining provincial interest.

5. Where an acceptable regional environmental plan is in place, allow the region to determine whether the area municipality environmental plans are acceptable, subject to provincial approval or override.

6. Establish a procedure for regular updating of environmental components of plans and re-evaluation of the provincial interest criteria.

7. Provide that in cases where both The Environmental Assessment Act and The Planning Act apply, and a hearing is required under The Environmental Assessment Act, no hearing on the same undertaking may be required under The Planning Act and subsequent decisions for actions under The Planning Act must comply with approval under The Environmental Assessment Act.

IV-C ACTION ON RECOMMENDATIONS

1. IT IS RECOMMENDED THAT THE PROPOSALS SET OUT IN SECTIONS IV-A AND IV-B BE PROCEEDED WITH IMMEDIATELY ON THE UNDERSTANDING THAT ADJUSTMENTS WILL BE MADE IF REQUIRED AS A RESULT OF ACTION ARISING FROM THE PLANNING ACT REVIEW OR IF INDICATED BY EXPERIENCE IN THE COURSE OF IMPLEMENTATION.

APPENDIX

I. NUMBER OF RESPONSES

As of October 14, 1977, the Ministry has received 34 written submissions in response to the Municipal Working Group's Report. These include: 26 submissions from municipalities; 3 from municipal organizations; 1 from a consulting company; 1 from a special interest group; and 3 from different sections in the Ministry of the Environment. All are available for inspection by the public in the Main Library of the Ministry, 1st floor, 135 St. Clair Ave. W., Toronto.

DISTRIBUTION OF RESPONSE

II. ATTITUDES TOWARD ENVIRONMENTAL ASSESSMENT

Out of the 28 submissions where an opinion was expressed about environmental assessment in general, 20 indicated that they were in favour of environmental assessment and could perceive a need for municipal involvement in the process. Nine of these 20, however, indicated that a learning or clarification period would be necessary before municipalities could be prepared to participate in the process. There were 3 other submissions in agreement with this need for an extended period to prepare for environmental assessment who did not explicitly state their agreement with the concept reflected in The Environmental Assessment Act. There were 2 responses which stated explicitly that they disagreed with environmental assessment and the need for municipal involvement in the process.

III. ADMINISTRATIVE AND FINANCIAL CONCERNS

1. Class Environmental Assessments

Agree with approach - 19

Disagree with approach - 1

Clarification and Circulation Required - 13

While 9 of the responses explicitly expressed agreement with the concept of class environmental assessment as it was to be applied to municipalities, 5 of these expressed concern that there be additional clarification of the approach to be taken. The one expression of disagreement was due mainly to a concern that the conditions and criteria contained in the approval of class environmental assessments would be unable to reflect the diversity and complexity of municipal projects, in particular, as reflected in the differences between northern and southern Ontario. Even in this case, however, there was agreement that if the problems could be solved, in certain situations a class environmental assessment would be useful.

2. Costs

Concern for the potential increased cost to municipalities - 23

Cost should be absorbed by the Ministry of the Environment - 3 (of the 23).

3. Delay

Predict delay - 14

4. Guidelines

Request for guidelines for preparation of document - 6

5. Staff Pressures

Predict requirement for additional staff - 10

6. Phasing-In Provisions

Agree with criteria - 4

Disagree with criteria - 2

Disagreement related to the recommendation that the criteria for exemption of projects which are well advanced include that "construction contracts have been awarded". It was felt that this would penalize those projects requiring extended design periods, in particular where considerable capital spending had taken place over the design period. There were also suggestions in two responses that there be some means of evaluating the municipal council's decisions in certain cases even if the project is well advanced.

7. Permits For On-Site Investigations

Predict difficulty in carrying out on-site investigations on private property - 2

IV. THE ENVIRONMENTAL ASSESSMENT PROCESS AT THE PROVINCIAL LEVEL

1. Delay

Concern that review and approval process would create delay - 8

2. Exemption/Designation Approach

In favour of designation approach - 5

In favour of exemption approach - 1

In favour of both approaches - 2

Concern that application of S.30 and 41(f) too general - 1

3. Adequacy of MOE Staff

Concern about adequacy of MOE staff to enforce Act - 4.

It was felt that if there were not enough staff to review the environmental assessment documents, delay and complications would occur. One suggestions was to use the MOE Regional Offices more to enforce the Regulations.

4. Role of Provincial Government

Perceived increase in "watchdog" role of Province - 5.

Implicit in the statement was disapproval of the role. The concern was related to the opinion that the Province should not interfere, in particular, in the area of existing municipal decisions based on established official plans.

5. Establish Review Mechanisms at Municipal Level

Delegate environmental approval to municipality - 2.

It was felt that an arrangement of this type would be more readily integrated with existing planning procedures. It was not clear, however, if the environmental assessment would then be submitted to MOE.

6. Section 6, EAA: Issuance of Licences, Permits, etc.

Identified problems with Section 6 of Act - 6.

Concern related to the potential restriction of municipal initiatives, particularly with regard to taking options on land. Problems identified also involved the approving budgets, enactment of by-laws or official plan amendments, and agreements with other municipalities or levels of government. It was stated that Section 6 appears to prohibit a municipality from initiating other steps in the approval process, where environmental assessment is required. This could create complications and delay.

A specific problem was identified by the Municipality of Metropolitan Toronto. Section 65 of the Municipality of Metropolitan Toronto Act permits acquisition of land for sanitary landfill purposes only with the approval of the municipality in which the land is situated; or failing that, with the approval of the OMB subject to a public hearing. Section 6 would prohibit this.

7. Land Acquisition

Identified land acquisition as a problem - 17

In favour of ensuring the examination of site alternatives - 1

V. CONCERN FOR PLANNING ACT/ENVIRONMENTAL ASSESSMENT ACT INTERRELATIONSHIPS

1. Conflict Between EAA and Planning Act

Concern that there would be duplication or conflict between EAA and Planning Act - 15

2. Duplication of Hearings - EAB/OMB

Concern - 24

Establish Joint Hearings - 10

Develop a Streamlining Process - 6

Foresee Difficulty in Streamlining Process - 2

VI. ADDITIONAL CONCERNS

1. Application of EAA to Which Municipalities?

Four submissions referred to the question of which municipality should be subject to The Environmental Assessment Act. Suggestions included:

- should refer to location instead of geographic area;
- should be based on minimum population (particularly with regard to cities and towns);
- should apply to all municipalities with cut-off point

2. Minister's Discretion

There was one expression of concern that "the essential aspects of environmental assessment are not contained in the legislation, but are to be left to the Minister's discretion in the accompanying Regulations."

3. Screening Criteria

Concern with screening criteria - 6

Criticism of the screening criteria related to:
- they were too broad;

- they were vague;
- the definition of "significant" is questionable;
- economic significance is the key and should have been a priority.

4. Continue Municipal Working Group Meetings

Two respondents indicated that they would encourage the continuation of Municipal Working Group meetings.

5. Review of Application to Municipalities

Four respondents requested that a review process by MOE be established in order to evaluate the municipal role in environmental assessment after a few years.

6. Circulation of Draft Regulation

There were 7 requests for the circulation of the draft Regulation before final legislation is approved.

VII. PROJECTS: COMMENTS ON RECOMMENDATIONS

Following is a summary of comments which referred to the recommendations for an environmental assessment to be carried out for specific projects;

1. Bridges and Causeways

Unnecessary - 1

Cut-Off Point Required - 1

The "unnecessary" comment referred to a "simple modification of a water crossing."

2. Channelization and Flood Control

Unnecessary and clarification required - 1

Need for cut-off points in relation to size - 1

It was felt that the definitions of these projects were too general and could become too extensive, for example, there was concern that "site manipulation of authority-owned lands for recreation" could apply to any small adjustment that is made.

3. Communications Towers

One respondent expressed concern that the rigid technical requirements which must be accommodated in the construction of communications towers be taken into account before regulating these projects.

4. Electrical Utilities

Clarification required - 1

Respondent suggested a cut-off point of 230 kV in order to avoid the need for environmental assessment for local municipal utilities.

5. Drainage Projects

Should be exempt - 1

Designate both urban and agricultural trains with stipulation that if exempt in certain cases, all relevant authorities be consulted - 1

6. Parks

A potential contradiction was identified (in Metro Toronto) between the designation of parks on an individual basis and the projects under the "Channelization and Flood Control" category referring to "site manipulation of (Conservation) Authority-owned land" which would require an EA.

There was one other comment referring to parks which expressed concern that open green spaces be protected as much as possible.

7. Roads

Designate major expansions or upgrading of existing alignments - 1

Develop a cut-off point for roads so that minor projects would not be subject to environmental assessment - 2

8. Sewers, Waterworks and Associated Facilities

Cut-Off Point Required - 1

Clarification Required - 2

One respondent noted that, in both this category and with regard to transportation facilities, the environmental assessment should be confined to examination of alternative methods of carrying out a proposal undertaking when the facility is required to implement an official plan and is identified before the plan is signed by the Minister of Housing.

9. Transit Systems

It was suggested by one respondent that facilities for buses equivalent to those for light and heavy rail systems i.e., marshalling yards and maintenance facilities, should require an environmental assessment. It was felt that such facilities for buses cause a greater adverse effect on the environment than

many of those for trains. In particular, it was felt that exhaust fumes and noise from the vehicles could create problems and that it was extremely difficult to abate the problems once the facilities were established.

10. Waste Management Systems

Environmental Protection Act satisfactory for environmental assessment of waste management systems - 1

Clarification is required on whether EA's will be done for:

(a) Pumping Stations and Deep Wells.
(b) Existing Waste Disposal Sites.
(c) Spring Clean-up Sites.

Noted that particular attention should be paid to sludge disposal - 1

11. Waterfront Plans

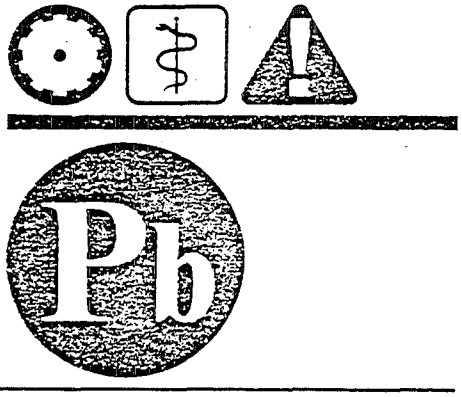
While there was agreement that municipal waterfront plans should be included, 1 submission noted that the Working Group did not address the problem from the multi-jurisdictional aspect. It referred to the possibility that there is considerable overlap among Transport Canada under the Navigable Waters Act, Environment Canada, Ministry of Natural Resources (Licences of Occupation) and the Ministry of the Environment.

There was also one respondent who noted the need to define the minimum size and/or length of interface above which this provision would apply.

Regulation respecting Lead – made under the Occupational Health and Safety Act

Revised Statutes of Ontario, 1980
Chapter 321

Filed August 14, 1981



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REGULATION RESPECTING LEAD AND

RELATED CODES

DESIGNATED SUBSTANCE - LEAD

1. In this Regulation,

(a) "joint health and safety committee" includes a joint health and safety committee established under section 3 of the Act, a committee of like nature and the workers or their representatives who participate in an arrangement, program or system conforming to subsection 3(2) of the Act;

(b) "lead" means elemental lead, inorganic compounds of lead and organic compounds of lead;

(c) "mg" means milligrams;

(d) "m^3" means cubic metre.

2. Lead is prescribed as a designated substance.

3. (1) This Regulation applies to every employer and worker at a work place where lead is present, produced, processed, used, handled or stored and at which the worker is likely to inhale, ingest or absorb lead.

(2) A person who is an employer to whom this Regulation applies and at whose work place construction is being carried out shall comply with sections 4 and 5 of this Regulation with respect to every worker who is not an employee of the employer and who,

(a) works on the construction, notwithstanding that the work is performed under a contract with another person; or

(b) is authorized or permitted to be in the work place.

(3) Subject to subsection (2) this Regulation does not apply to a constructor or to an employer on a construction project in respect of those workers who work at or on the project.

4. (1) Every employer shall take all necessary measures and procedures by means of engineering controls, work practices and hygiene practices and facilities to ensure that the time-weighted average exposure of a worker to airborne lead, except tetraethyl lead, shall not exceed 0.15 mg lead per m^3 of air, and in the case of exposure to tetraethyl lead 0.10 mg lead per m^3 of air.

(2) In complying with subsection (1) the maximum concentration of exposure to airborne lead shall not exceed 0.30 mg lead per m^3 of air in the case of tetraethyl lead and 0.45 mg lead per m^3 of air in the case of lead other than tetraethyl lead and the exposure of a worker to such maximum concentration,

(a) shall not exceed fifteen minutes at any one time;

(b) shall not occur more than four times in a work day; and

(c) shall not occur until at least sixty minutes have elapsed from the time of the last previous exposure to such concentration.

(3) Subject to section 5, every employer shall comply with subsections (1) and (2) without requiring a worker to wear and use respiratory equipment.

(4) The time-weighted average exposure of a worker to airborne lead shall be calculated in accordance with the Schedule and the result of the calculation of the exposure may be certified by an inspector.

(5) Every worker shall work in compliance with the work practices and hygiene practices in accordance with the provisions of the lead control program.

(6) On a prosecution for a failure to comply with subsection (1) it shall be a defence for an employer to prove that he has complied with subsection (1) and that a breach of subsection (1) occurred solely because a worker failed to work in compliance with the work practices and hygiene practices in accordance with the provisions of the lead control program and the employer has taken every precaution reasonable in the circumstances to require the worker to do so.

5. (1) Where the strict duty imposed by subsection 4(1) cannot be complied with because,

(a) an emergency exists; or

(b) the measures and procedures necessary to control the exposure of a worker to airborne lead,

(i) do not exist or are unavailable;

(ii) are not reasonable or practical for the length of time or frequency of exposure or the nature of the process, operation or work; or

(iii) are not effective because of a temporary breakdown of equipment,

the employer shall provide a worker with respiratory equipment which shall be used by the worker.

(2) Where respiratory equipment is provided by an employer and used by a worker, the respiratory equipment shall be appropriate in the circumstances for the type and the concentration of airborne lead and shall meet or exceed the requirements set out in the Code for Respiratory Equipment for Lead dated the 16th day of April, 1981, and issued by the Ministry.

(3) The employer shall provide training and instruction to a worker in the proper care and use of respiratory equipment provided by the employer.

6. (1) Every employer to whom this Regulation applies shall cause an assessment to be made in writing of the exposure or likelihood of exposure in a work place of a worker to the inhalation, ingestion or absorption of lead.

(2) In causing the assessment to be made, the employer shall consider and take into account such matters as,

(a) the methods and procedures used or to be used in the processing, use, handling or storage of lead;

(b) the extent and potential extent of the exposure of a worker to the inhalation, ingestion or absorption of lead; and

(c) the measures and procedures necessary to control such exposure by means of engineering controls, work practices and hygiene practices and facilities.

(3) In causing the assessment to be made, the employer shall consult thereon with the joint health and safety committee and the committee may make recommendations with respect to the assessment.

(4) A copy of the assessment made by an employer shall be given by the employer to each member of the joint health and safety committee.

7. (1) Where the assessment discloses or would, if made in conformity with section 6, disclose that a worker is likely to inhale, ingest or absorb lead and that the health of the worker may be affected thereby, the employer shall develop, establish, put into effect and maintain measures and procedures to control the exposure of the worker to lead and shall incorporate the same into a lead control program.

(2) The lead control program shall include provisions for,

(a) engineering controls, work practices, and hygiene practices and facilities to control the exposure of a worker to lead;

(b) methods and procedures to monitor the concentrations of airborne lead in the work place and the exposure of a worker thereto;

(c) personal records of the exposure of a worker to lead at the work place to be maintained by the employer;

(d) medical examinations and clinical tests of a worker; and

(e) records of medical examinations and clinical tests of a worker to be maintained by a physician who has examined the worker or under whose direction the clinical tests have been performed.

(3) In developing the measures and procedures mentioned in subsection (1) and the lead control program, the employer shall consult with the joint health and safety committee and the committee may make recommendations with respect to the same.

8. Where a change is made in a process involving lead, or in the methods and procedures in the use, handling or storage of lead and the change could result in a significant difference in the exposure of a worker to the inhalation, ingestion or absorption of lead, the employer shall cause a further assessment to be made forthwith and the provisions of sections 6 and 7 apply to the further assessment.

9. (1) Where disputes arise between an employer and a joint health and safety committee, as to an assessment required under section 6 or 8 or as to the measures and procedures mentioned in subsection 7(1) or the lead control program or its provisions required under section 7 or 8, the employer, a member of the joint health and safety committee or the committee may notify an inspector thereof who shall investigate and give a decision in writing to the employer, the member or committee.

(2) Nothing in subsection (1) applies so as to affect the power of an inspector to issue an order for a contravention of this Regulation.

10. (1) A copy of the lead control program put into effect by the employer shall be given by the employer to each member of the joint health and safety committee and the employer shall acquaint every worker affected by the lead control program with its provisions.

(2) A copy of the lead control program put into effect by the employer shall be made available by the employer in English and in the majority language of the work place.

11. Subject to section 17, the procedure for monitoring, sampling and determining the concentrations of airborne lead in the atmosphere of a work place and the exposure of a worker thereto shall be those set out in the Code for Measuring Airborne Lead dated the 20th day of March, 1981, and issued by the Ministry.

12. The results of monitoring the concentrations of airborne lead in the work place and the exposure of a worker thereto as provided by the lead control program shall be,

(a) posted forthwith by the employer, as soon as the results are available, in a conspicuous place or places at the work place where they are most likely to come to the attention of the workers affected thereby, for a period of a least fourteen days;

(b) furnished to the joint health and safety committee; and

(c) kept by the employer for a period of at least five years.

13. (1) A worker shall, at the expense of the employer, undergo the medical examinations and clinical tests required under the lead control program.

(2) The medical examinations and clinical tests required under the lead control program shall make provisions for,

(a) pre-employment and pre-placement medical examinations to include,

(i) a medical history,

(ii) a physical examination, and

(iii) clinical tests including analysis of blood or urine or both as required by the examining physician; and

(b) periodic medical examinations and clinical tests consisting of the items prescribed by clause a.

(3) Subject to section 17, the concentration of lead in the blood or urine of a worker shall be determined in accordance with the Code for Determination of Lead in Blood and Urine dated the 20th day of March, 1981, and issued by the Ministry.

(4) The medical history, physical examination and clinical tests shall meet the provisions of the Code for Medical Surveillance for Lead dated the 28th day of May, 1981, and issued by the Ministry.

14. (1) The records of the exposures of each worker to airborne lead at the work place to be maintained as provided by the lead control program shall identify the worker, including his date of birth, his jobs or occupations at the work place, the results of monitoring for exposure to airborne lead in his work area and the use by the worker of respiratory equipment and its type.

(2) The employer shall provide a copy of the records of the exposures of the worker to airborne lead as provided by the lead control program to the physician who examines the worker and under whose supervision the clinical tests of the worker are performed.

15. (1) The records of medical examinations and clinical tests of a worker obtained and made under this Regulation and of the exposures of the worker to airborne lead furnished by the employer under subsection 14(2) shall be kept in a secure place by the physician who has conducted the examinations and tests or under whose supervision the examinations and tests have been made for,

(a) a period of forty years from the time such records were first made; or

(b) a period of twenty years from the time the last of such records were made,

whichever is the longer.

(2) Where the physician is no longer able or willing to keep the records, the records shall be forwarded to the Chief Physician, Occupational Health Medical Service of the Ministry, or a physician designated by the Chief Physician and the provisions of subsection (1) shall, with necessary modifications, apply thereto.

16. (1) The physician conducting the physical examination or clinical tests or under whose supervision the examination or tests are made shall advise the employer, who shall act thereon, and the worker whether the worker is fit or because of a condition resulting from the inhalation, ingestion or absorption of lead is fit with limitations or unfit, without giving or disclosing to the employer the records or results of the examination or tests, and in advising that the worker is fit with limitations or unfit, the physician shall be governed by the provisions of the Code for Medical Surveillance for Lead referred to in subsection 13(4).

(2) Where a worker is removed from exposure to lead because a physical examination or clinical test discloses that the worker may have or has a condition resulting from the inhalation, ingestion or absorption of lead and suffers a loss of earnings occasioned thereby, the worker is entitled to compensation for the loss in the manner and to the extent provided by the Workmen's Compensation Act.

(3) Upon receiving the report of the analysis of a sample of blood or urine taken under the lead control program the physician shall advise in writing upon a confidential basis the joint health and safety committee of the concentration of lead in the blood or urine of a worker and in giving such advice shall indicate his opinion as to the interpretation to be placed thereon.

(4) Copies of the exposure records and the records and results of physical examinations and clinical tests of a worker shall be given by the physician conducting the examinations or tests,

(a) to the worker or his physician upon the request in writing of the worker, and

(b) in the case of a deceased worker, to the nearest next of kin or personal representative of the worker, upon the request in writing of such next of kin or personal representative,

and any authorization of another person by the worker or his nearest next of kin or personal representative is of no effect.

(5) Where the physician advises the employer that a worker, because of a condition resulting from exposure to lead, is fit with limitations or is unfit the physician shall forthwith communicate such advice to the Chief Physician, Occupational Health Medical Service of the Ministry.

17. For the purposes of this Regulation the methods and procedures that may be used or adopted may vary from the Codes issued by the Ministry if the protection afforded thereby or the factors of accuracy and precision used or adopted are equal to or exceed the protection or the factors of accuracy and precision in the Codes issued by the Ministry.

18. (1) This Regulation, except sections 4, 5, 7, 8 and 10 to 17 comes into force on the day this Regulation is filed with the Registrar of Regulations.

(2) Sections 4, 5, 7, 8 and 10 to 17 come into force ninety days after the day this Regulation is filed with the Registrar of Regulations.

SCHEDULE

The time-weighted average exposure of a worker to airborne lead shall be calculated as follows:

1. The average concentrations of lead to which a worker is exposed shall be determined from analyses of air samples representative of the exposure of the worker to lead during work operations as set out in the Code mentioned in section 11.

2. The results of the analyses are the concentrations expressed as elemental lead in mg per m^3 of air.

3. The concentrations shall be multiplied by the time in hours to which the worker is taken to be exposed to such concentrations.

4. $C_1T_1 + C_2T_2 + \ldots + C_nT_n$ = cumulative weekly exposure, where C_1 is the concentration found in an air sample and T_1 is the total time in hours to which the worker is taken to be exposed to concentration C_1 in a week.

5. The time-weighted average exposure shall be calculated by dividing the cumulative weekly exposure by 40.

CODE FOR RESPIRATORY EQUIPMENT FOR LEAD

MINISTRY OF LABOUR

OCCUPATIONAL HEALTH AND SAFETY DIVISION

16 April, 1981

TYPE OF RESPIRATOR REQUIRED

The respiratory equipment provided by an employer and used by a worker shall meet or exceed the following requirements:

(1) Lead: (metallic lead, inorganic lead compounds and organic lead compounds other than tetraethyl lead and tetramethyl lead)

Airborne Concentration (expressed as elemental lead)		Type of Respirator Required
Less than or equal to 1.5 mg/m^3	Lead Dust:	Reusable or replaceable filter-type air purifying dust respirator or Single-use respirators suitable for lead dust, fumes and mist.
	Lead Fume:	Replaceable filter-type air purifying fume respirator or Single-use respirators suitable for lead dust, fumes and mist
Less than or equal to 15 mg/m^3	Lead Dust:	Powered air purifying positive pressure dust respirator
	Lead Fume:	Powered air purifying positive pressure fume respirator
Greater than 15 mg/m^3	Lead Dust and Fume:	Positive pressure supplied air respirator (Type C)
Escape		Self-contained breathing apparatus with a full face-piece operated in pressure demand

Notes:
1. Dusts are particles of solids generated during certain operations such as abrasion, grinding, crushing, etc.
2. Fumes are a suspension in air of minute solid particles such as may arise upon heating a solid metal like lead.
3. If both dust and fumes are present, recommended respirator is that for fume.
4. Respirators need not be worn if the levels of lead in air are less than the TWAEL of 0.15 mg/m^3. However, if the worker wishes to use a respirator below the TWAEL, the correct type of respirator must be worn.
5. Supplied air respirator does not include a powered air purifying respirator.

(2) Tetraethyl and Tetramethyl Lead*

Airborne Concentration	Type of Respirator Required
Less than or equal to 0.70 mg/m^3	Supplied air respirator. However, reusable or replaceable air purifying chemical cartridge type respirator may be used where mobility is important and exposure is short term
Less than or equal to 3.50 mg/m^3	Supplied air respirator with full facepiece, helmet or hood
Less than or equal to 40 mg/m^3	Air-line (NIOSH Type C) supplied air respirator operated in pressure demand or other positive pressure or continuous flow mode
Escape	Self-contained breathing apparatus

* TWAEL - Tetraethyl Lead = 0.10mg/m^3
TWAEL - Tetramethyl Lead = 0.15mg/m^3

GENERAL REQUIREMENTS FOR THE USE OF RESPIRATORS

1. Subject to (1) and (2) above, respiratory protective equipment must be used in accordance with the procedure specified by the equipment manufacturer
2. Written standard operating procedures governing the selection and use of respirators must be established.
3. Written procedures on use and care of respirators must be reviewed with workers.
4. Workers must be trained in the proper use of respirators and their limitations.
5. Respirators must be fitted so that there is an effective seal between the respirator and the worker's face.
6. Where practicable, the respirators are to be assigned to individual workers for their exclusive use.
7. Compressed air, compressed oxygen, liquid air and liquid oxygen used for respirators are to meet CSA standards when applicable.
8. Respirators must be regularly cleaned, disinfected and inspected. Those issued for the exclusive use of one worker must be cleaned after each day's use, or more often if necessary, while those used by more than one worker, must be thoroughly cleaned and disinfected after each use.
9. Worn or deteriorated parts must be replaced.

10. Respirators for emergency use, such as self-contained devices, are to be thoroughly tested before each use, at least once a month, and serviced after each use.
11. All respirators and replacement parts must be stored in a convenient, clean and sanitary location.
12. Persons must not be assigned to tasks requiring use of respirators unless they are physically able to perform the work and use the equipment.
13. Workers required to wear respirators who experience breathing difficulty while using respirators must be referred to a physician for evaluation.
14. Records of frequency of use by the worker of respiratory equipment and its type are to be kept.

CODE FOR DETERMINATION OF LEAD IN BLOOD AND URINE

MINISTRY OF LABOUR

OCCUPATIONAL HEALTH AND SAFETY DIVISION

20 March, 1981

DETERMINATION OF LEAD (Pb) IN BLOOD

1. Principle of Method

(1) Whole blood samples are collected in lead free containers with anti-coagulant of choice and digested with nitric acid and hydrogen peroxide to destroy the organic matrix.

(2) The lead-containing residue is dissolved in dilute nitric acid.

(3) The lead solutions together with appropriate standards are aspirated into the oxidizing air-acetylene flame of an atomic absorption spectrophotometer (AAS) using a hollow cathode lamp for lead.

2. Apparatus

(1) An AAS equipped with an air-acetylene burner head.

(a) Lead hollow cathode lamp.

(b) Oxidant: compressed air.

(c) Fuel: acetylene.

(d) Pressure-reducing valves, a 2-gauge, 2-stage pressure-reducing valve and appropriate hose connections are needed for each compressed gas tank used.

(2) Adjustable, thermostatically-controlled hot-plate (to 230°C)

(3) Glassware, borosilicate.

(a) 150 mL Griffin beakers with watchglass covers.

(b) Pipettes, automatic, 10 mL (calibration to an accuracy of ± 1%).

(c) Pipettes, serological, disposable (calibrated to an accuracy of ± 2%).

3. Reagents

All reagents must be ACS Reagent Grade or better.

(1) Distilled or deionized water.

(2) Concentrated nitric acid.

(3) Hydrogen peroxide 30%.

(4) Dilute nitric acid (1 mL of concentrated nitric acid diluted to 100 mL with distilled or deionized water).

(5) Aqueous stock standard solution containing 1000 µg Pb/mL.

4. Procedure

(1) Cleaning of equipment:

(a) Before use, all new glassware must be cleaned to remove any residual grease or chemicals.

(b) Glassware must be cleaned by soaking in 20% v/v nitric acid for at least 6 hours, and then be rinsed thoroughly with tap water and distilled or deionized water, in that order, and then dried.

(2) Analysis of sample:

(a) Measure 10 mL of mixed blood sample, using a 10 mL disposable pipette, and transfer to a clean 150 mL Griffin beaker.

(b) Rinse the pipette thoroughly with distilled or deionized water and collect the washings in the 150 mL Griffin beaker.

(c) Set the hot-plate to 150°C.

(d) Add 10 mL of concentrated nitric acid from an automatic pipette. Cover with a watchglass and digest on the hot-plate for three hours.

(e) Remove the watchglass, adjust the hot-plate temperature to 120-130°C, and evaporate until the digest is just dry.

(f) Add a further 10 mL of concentrated nitric acid from an automatice pipette. Cover the beaker with the previously used watchglass and digest on the hot-plate at 120-130°C overnight.

(g) Remove the watchglass and evaporate until the digest is just dry.

Note: Check these samples frequently. Samples which bake on the hot-plate result in a dusty residue which is very difficult to dissolve in subsequent steps.

(h) Add 10 mL of hydrogen peroxide from an automatic pipette. Cover the beaker with the previously used watchglass and digest on the hot-plate at 130°C for two hours.

Note: Watch for violent bubbling when the hydrogen peroxide begins to react. It is sometimes necessary to remove the beaker from the hot-plate until the reaction subsides.

(i) Remove the watchglass and evaporate until the digest is just dry.

Note: Check these samples frequently. Samples which bake on the hot-plate result in a dusty residue which is very difficult to dissolve in subsequent steps.

(j) Add 10 mL of dilute nitric acid from a disposable pipette. Cover the beaker with the previously used watchglass and swirl gently to dissolve the residue.

(k) After calibration of the AAS (see section 5) aspirate the solutions and record the absorbance.

(l) If a sample gives results greater than 10 ug/mL it must be suitably diluted with nitric acid and re-read.

(m) Appropriate reagent blanks must be analyzed in accordance with the total procedure.

5. Calibration and Standards

(1) AAS operating parameters:

(a) Wavelength - 217.0 nm.

(b) Slit width - 0.7 nm.

(c) Light source - a lead hollow cathode lamp

(d) Flame type - an oxidizing air-acetylene flame.

(2) For the operating parameters quoted in section 5(1), the working range for lead is linear up to concentrations of 10 ug/mL.

Prepare fresh, each day, three working standards of 0.5, 1.0 and 3.0 ug Pb/mL in dilute nitric acid.

(3) Aspirate each of the standard solutions and record the absorbance of each.

(4) Prepare a calibration curve by plotting, on linear graph paper, the absorbance versus the concentration of each standard in ug Pb/mL.

Note: Many modern AAS have the capability of being calibrated to read directly in concentration. Under these conditions the preparation and use of a calibration graph of absorbance versus concentration becomes unnecessary.

6. Calculations

(1) Read the concentration in ug Pb/mL, corresponding to the total absorbance from the standard curve. Multiply by 10 to obtain the total amount of lead present in the sample.

(2) Corrections for the blank must be made for each sample.

(3) The concentration of the analyte in the blood sample must be expressed in ug/dL.

ug/dL = corrected amount of lead in the sample in ug x 10.

7. Sensitivity

(1) A standard containing 1 ug Pb/mL should give an absorbance reading of 0.020.

8. Detection Limit

(1) The detection limit was found to be 0.05 ug Pb/mL.

9. Precision

(1)

Standard solution being measured ug Pb/mL	Relative standard deviation percentage
0.05	45.7
0.10	26.7
0.20	10.6
0.40	5.3
0.60	3.9
0.80	2.3
1.00	2.4
5.00	0.8
10.00	0.4

Note: The data listed in sections 7 to 9 were obtained on a Perkin-Elmer model 603 AAS using a lead hollow cathode lamp and a deuterium arc background. The spectrophotometer was programmed to read directly in concentration.

(2) Determination of Lead in Urine

The determination of lead in urine is achieved by aspirating acidified urine samples on an AAS. The parameters, calibration and experimental values listed in the preceding method for blood lead also apply to the measurement of urinary lead.

The concentration of lead in a urine sample may be expressed as ug/L

$$\text{ug/L} = \text{ug Pb/mL} \times 1000$$

It is recommended that samples be collected toward the end of the workweek, and at the start of a shift. The end of the workweek is representative of week long exposure. Samples collected at the start

of the shift will reduce the problem of contamination from lead dust on hands and clothes.

Determination of Lead (Pb) in Blood By A Modified Delves Cup Atomic Absorption Procedure

1. Principle of Method

(1) Whole blood samples are collected into lead-free containers treated with an anticoagulant of choice.

(2) A known amount of blood is pipetted into a nickel cup and dried on a hot-plate.

(3) The dried blood in the nickel cup is inserted into the oxidising air-acetylene flame of an atomic absorption spectrophotometer (AAS) and the resultant signal is proportional to the amount of lead present in the sample.

2. Apparatus

(1) An AAS equipped with a triple slot air-acetylene burner head, a suitable recorder and a deuterum arc background corrector:

(a) Lead hollow cathode lamp.

(b) Oxidant: compressed air.

(c) Fuel: acetylene.

(d) Pressure-reducing valves, a 2-gauge, 2-stage pressure reducing valve and appropriate hose connections are needed for each compressed gas tank used.

(e) The Delves sampling accessory.

Note: Instructions for setting up and adjusting the Delves accessory are supplied by the manufacturer.

(2) Adjustable, thermostatically-controlled hot-plate (to 250°C).

(3) Heat control plate.

(4) Tweezers.

(5) Dessicator.

(6) An automatic pipette capable of delivering 10 µL and disposable polypropylene tips.

(7) Vortex mixer.

(8) Rotatary mixer.

3. Reagents

All reagents must be ACS grade or better.

(1) Deionised water.

(2) Concentrated nitric acid.

(3) Dilute nitric acid: dilute 1 mL of concentrated nitric acid to 100 mL with deionised water.

(4) Aqueous stock standard solution 1000 µg Pb/mL.

(5) Standard lead solution: 10 µg Pb/mL.

Dilute 5 mL of stock standard lead solution to 500 mL with dilute nitric acid. This solution can be stored for five days at 4°C.

4. Procedure

(1) The blood sample is thoroughly mixed by hand and then by using a Vortex mixer. This homogenizes the blood sample and helps to break up any small blood clots that may have formed. Finally, mix on a rotary mixer for approximately five minutes to remove any air bubbles that may have formed.

(2) Pipette 10 µL of blood and transfer it quantitatively to a nickel Delves cup. The cup must be conditioned in the flame before use until no lead signal is observed.

Note: The sensitivity of each new batch of cups must be checked by first conditioning them and then comparing the signal obtained when using them to run a known standard. Cups with approximately the same sensitivity are selected and used equally in future determinations: sensitivity gradually decreases with use. A batch of cups is generally usable for 30-40 determinations.

(3) Dry the sample on the hot-plate, set at 140°C, for approximately two minutes.

(4) Remove from the hot-plate and allow to cool for a few minutes.

(5) After calibration of the AAS (see section 5) introduce the sampling cup into the flame and measure the peak height shown by the recorder. All samples should be run in duplicate.

Note: The recorder trace will show a peak representing smoke and combustion products from the sample before the lead absorption peak.

5. Calibration

(1) AAS operating parameters:

(a) Wavelength - 217.0 nm.

(b) Slit width - 0.7 nm.

(c) Light source - a lead hollow cathode lamp.

(d) Flame - an oxidising air-acetylene flame.

Note: The 283.3 nm line may also be used. This is a less sensitive line and more susceptible to non-specific molecular radiation but it does give a wider range for a plot of concentration against recorder peak height.

(2) Prepare working standard lead solutions of 0.2, 0.4 and 0.8 µg Pb/mL by diluting 2.0, 4.0 and 8.0 mL of standard lead solution to 100 mL with deionised water.

(3) Pipette 10 µL of homogenized blood, known to be very low in lead content, into four previously conditioned nickel Delves' cups.

(4) Spike the first three cups with 10 µL of 0.2, 0.4 and 0.8 µg Pb/mL standard lead solution respectively. The fourth cup is not spiked.

(5) Dry the standards on a hot-plate set at 140°C, for two minutes.

(6) Remove the cups from the hot-plate and allow to cool.

(7) Introduce the spiked and unspiked cups successively into the flame and note the recorder peak heights.

(8) Prepare a calibration curve by plotting, on linear graph paper, the recorder peak height versus concentration for each standard, in µg Pb/mL, added.

(9) Graphically transpose the line so that the new line is parallel to the original one but passes through the original.

(10) Determine the slope of the tranposed line.

(11) For the operating parameters quoted in section 5(1), the linearity of peak height versus concentration of Pb added is valid up to at least 80 µg Pb/mL.

Notes: 1. The previously described calibration procedure is based upon "The Method of Additions". This is necessary because all blood contains some lead.

2. The direct use of aqueous standards results in non-linear response and poor reproducibility.

6. Calculations

(1) The method of additions is time consuming. It is convenient when analyzing large numbers of blood samples for lead content, to run a calibration series using the method of additions, transpose the experimental line so that it passes through zero and use the slope of this line in determining unknown blood samples. This technique assumes that the blood used in the calibration series has a similar matrix to that of the unknown samples.

(2) $X = \frac{Y}{M} \times 100$

X = Concentration of sample in µg Pb/100 mL.

Y = Recorder peak height of sample (see section 4 (5)).

M = Slope of calibration curve (see section 5 (10)).

Note: Blood values for lead are frequently expressed in µg/100 mL. The recommended convention (SI system) is µmol/L (10 µg Pb/100 mL = 0.483 µmol/L).

7. Detection Limit

(1) The detection limit was found to be 0.05 µg/mL (5.0 µg/100 mL).

8. Precision

Standard solution being measured µg/100 mL	Relative standard deviation percentage
19.0	6.9
40.0	6.3
79.0	6.6

Note: The data listed in sections 7 & 8 were obtained on a Perkin-Elmer model 603 AAS fitted with a Delves cup attachment and a Perkin-Elmer model 56 Recorder.

CODE FOR MEASURING AIRBORNE LEAD

MINISTRY OF LABOUR

OCCUPATIONAL HEALTH AND SAFETY DIVISION

20 March, 1981

SAMPLING METHOD FOR AIRBORNE INORGANIC LEAD PARTICULATE*

1. Principle of the Sampling Method

Air is drawn at a specified fixed flow rate for a known duration through a cellulose ester (membrane) filter of specified pore size and diameter held in a worker's breathing zone by a plastic closed-face filter holder. The particulate matter collected on the sample filter is then analyzed in a laboratory for the total quantity of lead present.

2. Equipment

The sampling train used to obtain an air sample of airborne inorganic lead particulate is to include the following components, and satisfy the criteria suggested:

(1) A battery operated portable pump which:

(a) is capable of delivering, for 6-8 hours, not less than 2 litres of air per minute with a filter in the sampling train. The maximum deviation from the prescribed flow rate is not to exceed ± 5% and the maximum pulsation allowable in the flow is ± 5% of the total flow rate;

(b) is intrinsically safe, i.e., certified by an accepted agency as safe for use in potentially explosive atmospheres;

(c) include a calibrated flow meter or a mechanism for maintaining a constant flow rate;

(d) has an on-off switch and flow rate control or adjustment mechanism which are tamper-proof.

* This method may also be used for area sampling at strategically selected locations by placing a sampling unit on a suitable support with the inlet port of the sampling train facing downward

(2) Cellulose ester (membrane) filters of appropriate size, preferably 37 millimetre (mm) in diameter, 0.8 micrometre in pore size.

(3) Filter support pads of the same size as the cellulose ester (membrane) filters used, preferably 37 mm in diameter.

(4) A closed-face filter holder of the same size as the cellulose ester (membrane) filters and the filter support pads used, preferably 37 mm in inner diameter and with an adapter which provides a leak-proof fit for connecting flexible tubing.

(5) A sufficient length of flexible tubing with appropriate wall thickness to prevent its collapsing when air is drawn through and with appropriate inner diameter which will provide a leak-proof connection to the filter holder adapter and to the inlet port adapter of the portable pump.

(6) A mercury thermometer for ambient air temperature measurement accurate to $\pm$ 1°C.

(7) A barometer for measuring atmospheric pressure accurate to $\pm$ 5 mm Hg.

3. Sampling Procedure

(1) Preparation of Pumps

(a) The pump battery pack must be fully charged according to the manufacturer's instructions, before use in any work-shift. If it is used for more than one shift, a fully-charged battery pack must be substituted for the used one.

(b) Flow meters, or constant flow devices on the pumps must be calibrated at 2.0 litres per minute (L/min), by using a primary standard such as a bubble meter by the procedure recommended in the manufacturer's instructions for using

the primary standard apparatus, with the filter-filter holder assembly in line after:

(i) not more than 40 hours of operation;
(ii) receiving unusually harsh or potentially damaging treatment;
(iii) being disassembled for maintenance.

(2) Preparation of Filter Holders

(a) Assemble the filter holders in a clean environment prior to initiation of sampling.

(b) Each filter holder must be prepared by the following procedure:

(i) Use only a clean filter holder and handle the filter support pad and filter with tweezers. Place a filter support pad and a cellulose ester filter of 37 mm diameter, in the base of a filter holder;

(ii) plug the inlet and outlet ports;

(iii) ensure that the joints of the filter holder are sealed with non-porous, shrinkable cellulose band or tape.

(3) Sampling

(a) The sampling train is assembled by fixing one end of the flexible tubing to the inlet port of the pump and the other end with the adapter to the outlet port of the filter holder.

(b) Check for air leaks in the sampling train by turning on the pump and inserting a clean plastic plug into the inlet port of the filter holder. The air flow indicator on pumps with a flow meter must drop to the zero flow position and oscillate slightly. If this does not occur, find and either repair the leak if possible, or replace the faulty component.

(c) Label the filter holder with an appropriate sample number.

(d) Attach the pump to the worker's belt preferably or place it in his pocket; place the flexible tubing over the shoulder and clip the filter holder to the clothing with the inlet port facing downward, as near as possible to the breathing zone. Ensure that the equipment will not interfere with the worker's movements.

(e) Check again that all equipment is properly assembled, remove the plastic plug from the filter holder's inlet port and switch on the pump. Allow the flow rate to stabilize for a short duration then adjust the rate to the pre-calibrated mark of 2 litres per minute, if the pump has a flow meter. Pumps with constant flow devices must not be reset after the flow rate control mechanism has been calibrated to deliver air at this rate. A calibrated external flow meter may be used to check the airflow rate.

(f) Note the following information for each sample:

(i) date of sampling;
(ii) company name;
(iii) model and serial number of the sampling pump;
(iv) calibration date of the sampling pump;
(v) name of worker;
(vi) job title;
(vii) work or operation performed;
(viii) filter holder or sample number;
(ix) air flow rate;
(x) time of initiation and termination of sampling.

(g) Ensure that for any sampling performed during any survey, two control or blank filters are prepared in the same manner as the sample filters. These blank filters must remain in sealed filter holders during the sampling (i.e. no air is to be drawn through these filters).

(h) Sampling may be carried out for a total duration of 6 - 8 hours, if feasible, to obtain a time-weighted average concentration. Where necessary, sequential air samples may be taken as opposed to single air samples. The total sampling duration may or may not include lunch breaks, depending on the nature of the work exposure to be measured. Total sampling duration may be shorter than 6 hours provided that the individual air samples taken during the selected periods are representative of the worker's exposure over the entire work shift.

(i) During the sampling interval, the sampling train must be checked periodically to ensure that it is functioning properly. The air flow rate must not be re-adjusted after the initial flow rate is set. If the flowrate changes significantly, terminate sampling and take another sample.

(j) The ambient air temperature and pressure in the sampling area must be recorded at least once.

(k) To terminate sampling, perform the following sequence of steps:

(i) check the air flow rate just prior to termination of air sampling;

(ii) record the time of termination of sampling;

(iii) switch off the pump and carefully remove the sampling train from the worker;

(iv) remove the filter holder and insert clean plastic plugs into the inlet and outlet ports;

(v) ship the filter and filter holder together to a laboratory and request analysis of the filter for lead.

(4) Sufficient area samples are to be taken at all work locations where necessary.

THE DETERMINATION OF LEAD (Pb) ON AIR SAMPLING FILTERS

1. **Principle of Method**

(1) A known volume of air is drawn through a cellulose ester (membrane) filter to collect the analyte.

(2) Filters are digested using aqua-regia to destroy organic matter and the lead-containing residue is dissolved in dilute nitric acid.

(3) The lead solutions together with appropriate standards are aspirated into the oxidizing air-acetylene flame of an atomic absorption spectrophotometer (AAS) using a hollow cathode lamp for lead.

2. **Apparatus**

(1) An air sampling device incorporating a mixed cellulose ester membrane filter.

(2) An atomic absorption spectrophotometer equipped with an air acetylene burner head:

(a) Lead hollow cathode lamp.

(b) Oxidant: compressed air.

(c) Fuel: acetylene.

(d) Pressure-reducing valves, a 2-gauge, 2-stage pressure reducing valve and appropriate hose connections are needed for each compressed gas tank.

(3) Glassware, borosilicate:

(a) 100 mL Griffin beakers with watchglass covers;

(b) Pipettes, automatic, 20 mL (calibrated to an accuracy of ± 1%).

(4) Adjustable, thermostatically-controlled hot-plate (to 250°C).

3. **Reagents**

All reagents used must be ACS Reagent Grade or better.

(1) Distilled or deionized water.

(2) Concentrated nitric acid.

(3) Concentrated hydrochloric acid.

(4) Aqua-regia. Prepared by mixing 3 volumes of concentrated hydrochloric acid with 1 volume of concentrated nitric acid.

(5) Dilute nitric acid (1 mL of concentrated nitric acid diluted to 100 mL with distilled or deionized water).

(6) Aqueous stock standard solution containing 1000 µg Pb per mL.

4. **Procedure**

(1) Cleaning of equipment:

(a) Before use, all new glassware should be cleaned to remove any residual grease or chemicals.

(b) Glassware should be cleaned by soaking in 20% v/v nitric acid for at least 6 hours, and then be rinsed thoroughly with tap water and distilled or deionized water, in that order, and then dried.

(2) Analysis of sample:

(a) Transfer each sample filter to a clean 100 mL Griffin beaker.

(b) Add 10 mL of aqua-regia from an automatic pipette. Cover with a watchglass and digest just below boiling on the hot plate for three hours.

(c) Remove the watchglass and evaporate until the digest is just dry.

(d) Add 20 mL of diluted nitric acid from an automatic pipette. Cover the beaker with the previously used watchglass and swirl gently to dissolve the residue.

(e) After calibration of the AAS (see section 5) aspirate the solutions and record the absorbance.

(f) If a sample gives results greater than 10 ug/mL it must be suitably diluted with dilute nitric acid and re-read.

(g) Appropriate filter blanks must be analyzed in accordance with the total procedure.

5. **Calibration and Standards**

(1) AAS operating parameters:

(a) Wavelength - 217.0 nm.

(b) Slit width - 0.7 nm.

(c) Light source - a lead hollow cathode lamp.

(d) Flame type - an oxidizing air-acetylene flame.

(2) For the operating parameters quoted in section (1), the working range for lead is linear up to concentrations of 10 µg/mL.

Prepare fresh, each day, three working standards of 1.0, 5.0 and 10.0 µg Pb/mL in dilute nitric acid.

(3) Aspirate each of the standard solutions and record the absorbance of each.

(4) Prepare a calibration curve by plotting, on linear graph paper, the absorbance versus the concentration of each standard in µg Pb/mL.

Note: Many modern AAS have the capability of being calibrated to read directly in concentration. Under these conditions the preparation and use of a calibration graph of absorbance versus concentration becomes unnecessary.

6. Calculations

(1) Read the concentration in µg Pb/mL, corresponding to the total absorbance from the standard curve. Multiply by 20 to obtain the total amount of lead present in the sample.

(2) Corrections for the blank are to be made for each sample provided that the amounts of analyte in all sample filters are greater than those in the field blank filters.

(3) The concentration of the analyte in the air sample can be expressed in mg/m^3 ($\mu g/L = mg/m^3$)

$$mg/m^3 = \frac{\text{corrected amount of lead in the sample in µg}}{\text{air volume sampled (litres)}}$$

7. Sensitivity

(1) A standard containing 1 µg Pb/mL should give an absorbance reading of 0.020.

8. Detection Limit

(1) The detection limit was found to be 0.05 µg Pb/mL.

9. Recovery Study

(1)

Amount of Pb added to sample	Amount of Pb recovered	% Recovery
µg	µg	
25.0	25.00	100.0
25.0	25.00	100.0
25.0	24.75	99.0
15.0	14.75	98.3
15.0	14.50	96.7
15.0	14.50	96.7
5.0	4.75	95.0
5.0	5.25	105.0
5.0	5.25	105.0

10. Precision

(1)

Standard Solution Being Measured µg Pb/mL	Relative Standard Deviation percentage
0.05	45.7
0.10	26.7
0.20	10.6
0.40	5.8
0.60	3.9
0.80	2.3
1.00	2.4
5.00	0.8
10.00	0.4

Note: The data listed in sections 7 to 10 were obtained on a Perkin-Elmer model 603 AAS using a lead hollow cathode lamp and a deuterium arc background. The spectrophotometer was programmed to read directly in concentration.

SAMPLING METHOD FOR TETRAETHYL LEAD AND TETRAMETHYL LEAD VAPOURS IN AIR

1. Principle of the Samoling Method

Air, possibly containing lead alkyls, is drawn at a specified flow rate for a known duration through a 0.8 micron, mixed cellulose acetate (membrane) pre-filter, two midget impingers connected in series

each containing an absorbing solution, a caustic thiosulphate trap and a charcoal trap. The lead alkyl vapours captured by the impinger absorbing media are analyzed for total lead content by a sensitive flame atomic absorption procedure. This method provides a means of monitoring the concentrations of airborne lead alkyl vapours at strategically selected locations in work areas where there is an exposure to lead alkyls.

2. Equipment

The sampling train used to obtain an air sample of airborne lead alkyl vapours is to include the following components, and satisfy the criteria suggested:

(1) A battery operated portable pump which:

(a) is capable of delivering, for 6 - 8 hours, not less than 1 litre of air per minute with the pre-filter, midget impingers containing absorbing solutions, and the two traps in the sampling train. The maximum deviation from the prescribed flow rate is not to exceed ± 5% and the maximum pulsation allowable in the flow is ± 5% of the total flow rate;

(b) is intrinsically safe, i.e., certified by an accepted agency as safe for use in potentially explosive atmospheres;

(c) includes a calibrated flow meter or a mechanism for maintaining a constant flow rate;

(d) has an on-off switch and flow rate control or adjustment mechanism which are tamper-proof.

(2) A pre-filter assembly incorporating:

(a) Cellulose ester (membrane) filters of appropriate size, preferably 37 millimetre (mm) in diameter, 0.8 micrometre in pore size;

(b) Filter support pads of the same size as the cellulose ester (membrane) filters used, preferably 37 mm in diameter;

(c) A closed-face filter holder of the same size as the cellulose ester (membrane) filters and the filter support pads used, preferably 37 mm in inner diameter and with an adapter which provides a leak-proof fit for connecting tubing.

(3) Two sample collection devices (midget impingers), each of which is:

(a) constructed completely from borosilicate (pyrex) glass and has a standard ground glass joint;

(b) is capable of holding up to 25 mL of solution and is calibrated at 10 mL.

(4) An absorbing solution which is 0.1 molar iodine monochloride. This solution is prepared by dissolving 16.24 g of iodine monochloride in 50 mL of concentrated hydrochloric acid and diluting to one litre with deionised water.

(5) A caustic thiosulphate trap which is an impinger or bubbler of appropriate size, capable of holding up to 25 mL of solution and is calibrated at 10 mL.

(6) A caustic thiosulphate solution which is prepared by dissolving 125 g of sodium thiosulphate pentahydrate and 40 g of sodium hydroxide in sufficient quantity of deionised water and diluting to one litre.

(iii) being disassembled for maintenance.

(2) Preparation of Pre-filter Assembly

(a) Assemble in a clean environment prior to initiation of sampling.

(b) Each filter holder must be prepared by the following procedure:

(i) use only a clean filter holder and handle the filter support pad and filter with tweezers. Place a filter support pad and a cellulose ester filter of 37 mm diameter, in the base of a filter holder;

(ii) plug the inlet and outlet ports;

(iii) ensure that the joints of the filter holder are sealed with non-porous, shrinkable cellulose band or tape.

(3) Preparation of Impingers

(a) Prepare the impingers in a clean environment prior to the initiation of sampling.

(b) To each clean impinger add 10 mL of fresh absorbing solution prior to sampling. Assemble the base and the top of the impinger and plug the inlet and outlet ports.

(4) Preparation of Caustic Thiosulphate Traps

To an impinger or a bubbler add 10 mL of fresh caustic thiosulphate solution prior to sampling. Assemble the base and top of the impinger after a light film of stopcock grease has been applied to the ground glass joint and plug the inlet and outlet ports.

(7) A charcoal trap which is a glass tube of appropriate size, containing a sufficient quantity of activated charcoal.

(8) Tubing of sufficient length with appropriate wall thickness to prevent collapsing when air is drawn through and with appropriate inner diameter which will provide leak-proof connections between the various consecutive components in a sampling train.

(9) A mercury thermometer for ambient air temperature measurement accurate to ± 1°C.

(10) A barometer for measuring atmospheric pressure accurate to ± 5 mm Hg.

3. Sampling Procedure

(1) Preparation of Pumps

(a) The pump battery pack must be fully charged according to the manufacturer's instructions, before use in any work-shift. If it is used for more than one shift, a fully-charged battery pack must be substituted for the used one.

(b) Flow meters, or constant flow devices on the pumps must be calibrated at 1.0 litres per minute (L/min), by using a primary standard such as a bubble meter and the procedure recommended in the manufacturer's instructions for using the primary standard apparatus, with the pre-filter assembly, impingers and traps in line after:

(i) not more than 40 hours of operation;

(ii) receiving unusually harsh or potentially damaging treatment;

(5) Preparation of Charcoal Trap

Pack a sufficient quantity of activated charcoal in a glass tube and seal both ends with glass wool and stoppers.

(6) Sampling

(a) Assemble the sampling train by connecting the various components in the sequence of pre-filter assembly, first and second impingers, caustic thiosulphate trap, charcoal trap and pump.

(b) Check for air leaks in the sampling train by turning on the pump and inserting a clean plastic plug into the inlet port of the filter holder. The air flow indicator on pumps with a flow meter must drop to the zero flow position and oscillate slightly. If this does not occur, find and either repair the leak if possible, or replace the faulty component.

(c) Label both impingers with appropriate sample numbers.

(d) Place the sampling train on a tripod or other suitable support. Ensure that it will not interfere with the workers' movements in the area.

(e) Check again that the sampling train is properly assembled, remove the plastic plug from the filter holder's inlet port and switch on the pump. Allow the flow rate to stabilize for a short duration then adjust the rate to the pre-calibrated mark of 1 litre per minute, if the pump has a flow meter. Pumps with constant flow devices must not be reset after the flow rate control mechanism has been calibrated to deliver air at this rate. A calibrated external flow meter may be used to check the airflow rate.

(f) Note the following information for each sampling train:

(i) date of sampling;

(ii) company name;

(iii) model and serial number of the sampling pump;

(iv) calibration date of the sampling pump;

(v) sampling location;

(vi) work or operation performed;

(vii) impinger or sample number;

(viii) air flow rate;

(ix) time of initiation and termination of sampling.

(g) Ensure that for any sampling performed during any particular survey, two control or blank impingers are prepared in the same manner as the sample impingers with absorbing solutions. These blank impingers must remain sealed during the sampling (i.e., no air is to be drawn through these impingers).

(h) Sampling must be carried out for at least two hours to ensure the collection of sufficient analyte for analysis per sample.

(i) During the sampling interval, the sampling train must be checked periodically to ensure that it is functioning properly. The air flow rate must not be re-adjusted after the initial flow rate is set. If the flowrate changes significantly, terminate sampling and take another sample.

(j) The ambient air temperature and pressure in the sampling area must be recorded at least once, and the air volumes are to be corrected for where necessary.

(k) To terminate sampling, perform the following sequence of steps:

(i) check the air flow rate just prior to termination of air sampling;

(ii) record the time of termination of sampling;

(iii) switch off the pump and carefully remove the sampling train from the support;

(iv) disconnect the various components of the sampling train and plug the inlet and outlet ports of both impingers;

(v) remove each impinger stem and tap the stem gently against the inside wall of the impinger to recover as much of the trapped solution as possible;

(vi) rinse the absorbing solution adhering to the inside of the inlet and the stem directly into the impinger flask with a small volume (1-2 mL) of deionised water;

(vii) stopper the impingers tightly or transfer the content of each impinger into a small glass bottle on which a leak proof and teflon-lined screw cap is placed;

(viii) ship the stoppered impingers or glass bottles in a protective container to a laboratory and ensure that they will not be overturned during transportation.

THE DETERMINATION OF TETRAETHYL LEAD AND TETRAMETHYL LEAD AS TOTAL LEAD IN AIR SAMPLING SOLUTIONS

1. Principle of Method

(1) Air is drawn for a known duration through a 0.8 micron mixed cellulose acetate pre-filter and then through two impingers connected in series, each containing a solution of iodine monochloride, to collect the lead alkyls. The impingers are followed by a caustic thiosulphate trap and a charcoal trap in the sampling train.

(2) The sample solutions and appropriate lead solution standards are aspirated respectively into the oxidising air-acetylene flame of an atomic absorption spectrophotometer (AAS) using a hollow cathode lamp for lead.

2. Apparatus

(1) An air sampling train incorporating the various components as described in the "Sampling Method for Tetraethyl and Tetramethyl Lead Vapours in Air".

(2) An atomic absorption spectrophotometer equipped with an air acetylene burner head:

(a) Lead hollow cathode lamp;
(b) Oxidant: compressed air;
(c) Fuel: acetylene;
(d) Pressure-reducing valves, a 2-gauge, 2-stage pressure reducing valve and appropriate hose connections are needed for each compressed gas tank used.

(3) Glassware, borosilicate:

(a) Assorted glassware including graduated cylinders, volumetric flasks and volumetric pipettes of appropriate sizes.

(4) A top-loading balance accurate to ± 10 mg.

3. Reagents

(1) Deionised water.

(2) Concentrated nitric acid.

(3) Iodine monochloride (ICl).

(4) Iodine monochloride, 0.1 molar solution:

Weigh 16.24 g of ICl into a 1,000 mL volumetric flask. Dissolve in 50 mL of concentrated hydrochloric acid and make up to volume with deionised water.

(5) Aqueous stock standard solution containing 1,000 ug Pb/mL, prepared from an inorganic lead salt. Standard solutions are commercially available.

(6) Concentrated hydrochloric acid.

(7) Caustic thiosulphate solution:

Weigh 125 g of sodium thiosulphate pentahydrate and 40 g of sodium hydroxide into a 1,000 mL volumetric flask. Dissolve in sufficient quantity of deionised water and then make up to volume.

4. Procedure

(1) Cleaning of equipment:

(a) Before use, all new glassware must be cleaned to remove any residual grease or chemicals;

(b) Glassware must be cleaned by soaking in an approximately one in five dilution of concentrated nitric acid for at least 6 hours, and then rinsed thoroughly with tap water and deionised water, in that order, and then dried.

(2) Analysis of Sample Solution:

(a) Measure the volume of the sample solution in a graduated cylinder;

(b) After calibration of the AAS (see Section 5) aspirate the sample solution and record the absorbance;

(c) If the sample solution gives results greater than 10 µg/mL it must be suitably diluted in 0.1 M ICl and reread;

(d) Appropriate field blank solutions must be analysed in accordance with the total procedure.

5. Calibration and Standards

(1) AAS operating parameters:

(a) Wavelength - 217.0 nm;

(b) Slit width - 0.7 nm;

(c) Light source - a lead hollow cathode lamp;

(d) Flame type - an oxidising air-acetylene flame.

(2) For the operating parameters quoted in Section 5(1), the working range for lead is linear up to concentrations of 10 µg/mL.

(3) Standard preparation:

(a) Prepare a 100 µg/mL lead stock solution by adding 10.0 mL of 1,000 µg Pb/mL standard to 2.5 mL of concentrated nitric acid, in a 100 mL volumetric flask, and diluting to 100 mL with deionised water;

(b) To four 100 mL volumetric flasks labelled 0.0, 1.0, 5.0 and 10.0 µg Pb/mL add, respectively, 0.0, 1.0, 5.0 and 10.0 mL of the stock solution prepared according to step 5(3)(a);

(c) Add iodine monochloride, 0.1M to the volume mark on each flask, cap and mix thoroughly.

(4) Aspirate each of the standard solutions and record the absorbance.

(5) Prepare a calibration curve by plotting, on linear graph paper, the absorbance versus the concentration of each standard in µg Pb/mL.

Note: Many modern AAS (atomic absorption spectrophotometers) have the capability of being calibrated to read directly in concentration. Under these conditions the preparation and the use of a calibration graph of absorbance versus concentration are unnecessary.

6. Calculations

(1) Read the concentration in µg Pb/mL, corresponding to the total absorbance from the standard curve. Multiply by the volume of the sample to obtain the total amount of lead present in the sample.

(2) Corrections for the field blank must be made for each sample provided that the various amounts of analyte in all sample solutions are greater than the amount of analyte in the field blank solution.

(3) The concentration of tetraethyl lead and tetramethyl lead vapours as total lead in the air sample, C, is expressed in mg/m^3.

$$C = \frac{\text{corrected amount of lead in the first impinger sample solution (micrograms)} + \text{corrected amount of lead in the second impinger sample solution (micrograms)}}{\text{air volume sampled, (litres)}}$$

7. Precision

(1)

Standard solution being measured, µg Pb/mL	Relative standard deviation, percentage
0.05	45.7
0.10	26.7
0.20	10.6
0.40	5.8
0.60	3.9
0.80	2.3
1.00	2.4
5.00	0.8
10.00	0.4

8. Detection Limited

The detection limit was found to be 0.05 µg Pb/mL.

9. Sensitivity

(1) A standard containing 1 µg Pb/mL should give an absorbance reading of 0.020.

Note: The data listed in Sections 8, 9 and 10 were obtained on a Perkin-Elmer Model 603 AAS using a lead hollow cathode lamp and a deuterium arc background. The spectrophotometer was

programmed to read directly in concentration. The equipment listed above is specified for clarification purposes only and should not be taken as an endorsement by the Ministry.

SAMPLING AND ANALYTICAL PROCEDURES USED BY THE OCCUPATIONAL HEALTH LABORATORY SERVICE WILL BE REVIEWED PERIODICALLY AND, IF NECESSARY, REVISED.

CODE FOR MEDICAL SURVEILLANCE FOR LEAD

MINISTRY OF LABOUR

OCCUPATIONAL HEALTH AND SAFETY DIVISION

28 May, 1981

MEDICAL SURVEILLANCE PROGRAM

1. **Purpose**

The objective of a medical surveillance program is to protect the health of workers by:

(1) ensuring fitness for exposure to lead;

(2) evaluating the absorption of lead in workers;

(3) enabling remedial action to be taken when necessary;

(4) providing health education.

2. **Program**

The medical surveillance program must consist of the following:

(1) Pre-employment and pre-placement examinations;

(2) Periodic medical examinations;

(3) Clinical tests;

(4) Health education;

(5) Record keeping.

3. **Medical Examinations**

The examination must include the following:

(1) **History**

The initial medical and occupational history must include enquiry for previous exposure to lead (both occupational and

non-occupational), personal habits (smoking and hygiene), history of present or past gastrointestinal, hemopoietic, renal, reproductive, endocrine, or nervous disorders. At the periodic examination the history must be updated to include:

(a) history of frequency and duration of exposure to lead since previous examination;

(b) enquiry for signs and symptoms that may be an early indication of lead intoxication e.g., abdominal pain, constipation, vomiting, asthenia, paraesthesia and psychological change.

(2) Physical Examination

A general physical examination is required. Particular attention must be directed to those systems which may be affected by lead. Personal hygiene must be noted.

4. Clinical Tests

Clinical tests aid in the assessment of a worker's fitness for and continued exposure to lead.

(1) Lead Absorption Tests

Blood lead concentration is a good indicator of the lead absorption of an individual worker (except when exposure has been to tetraethyl and tetramethyl lead). It does not indicate the total body burden of lead.

The urine lead concentration is less dependable as an indicator of lead absorption than blood, except with exposure to tetra-

ethyl and tetramethyl lead when it is the required test. Its continued use for inorganic lead exposure is justified in low risk work situations. The frequency of periodic blood and urine tests depends on the extent of the hazard, as well as the worker's previous test levels, and should usually be at one to three month intervals.

Workers for whom there is a particular health concern or whose blood lead level is greater than 0.60 mg/L or whose blood lead level is rising or fluctuating should be monitored more frequently.

(a) Action Levels

(i) Lead in Blood

Blood lead concentration is expressed as milligrams per litre of blood.

A concentration greater than 0.60 mg/L of lead in the blood requires enquiry regarding work practices and personal hygiene.

When the blood lead concentration of a worker is found to exceed 0.70 mg/L a further test must be undertaken immediately and if the result is confirmed the worker must be removed from lead exposure, although symptoms of lead intoxication are unlikely to be apparent at this level. If symptoms or signs of lead intoxication are present the worker must be removed from lead exposure regardless of blood lead level.

A determination by the physician must be made as to whether the worker is fit with limitations or unfit, and action taken in accordance with Section 16 of the Lead Regulation. Return to work may be permitted when the level of blood lead reaches 0.50 mg/L or less.

In order to safeguard a developing fetus a woman capable of bearing children must be removed from lead exposure when the blood lead concentration is found to exceed 0.40 mg/L.

(ii) Lead in Urine

Concentrations of lead in urine exceeding 0.15 mg/L are generally considered unacceptable, and when this level is exceeded the test must be repeated immediately to verify. If the result is confirmed in a worker exposed to tetraethyl or tetramethyl lead the worker must be removed from lead exposure. If the worker has been exposed to inorganic lead he may continue at work pending the result of an immediate blood specimen analysis and if the blood lead concentration exceeds 0.70 mg/L he must be removed from lead exposure.

In all cases a determination must be made by the physician as to whether the worker is fit with limitations or unfit, and action taken in accordance with Section 16 of the Lead Regulation. Return to work may be permitted if and when the level of blood lead reaches 0.50 mg/L or less in the case of workers exposed to inorganic lead, but for workers

exposed to tetraethyl and tetramethyl lead the examining physician must determine fitness to return to work on the basis of his examination.

(2) Heme Synthesis Interference Tests

Clinical tests may be used also to detect biochemical changes resulting from the effects of inorganic lead on heme synthesis.

(a) circulating red cells - reduction in delta-amino laevulinic acid dehydratase (ALAD).

- increase in protoporphyrin level

(b) urine - increased excretion of delta-amino laevulinic acid (ALA).

- increased excretion of coproporphyrin.

(c) total blood - reduction in haemoglobin.

(3) Sample Collection

(a) Blood - collect 5 ml of blood in a lead-free tube with anti-coagulant. Whole blood is assayed (see Code for Determining Lead in Blood).

(b) Urine - to minimize contamination of the specimen and obtain comparable samples the urine specimen must be collected at the end of the work week and prior to the beginning of the shift. Collect 50 ml in a lead-free plastic container with screw cap (no liner). Add six drops of glacial acetic acid to the specimen immediately after collection.

5. Health Education

Personal cleanliness is important and workers must be advised of the danger of eating, drinking and smoking in lead exposed areas. All workers must be made aware of the hazards from lead and their examination results must be discussed.

Women workers should be encouraged to notify the employer and the examining physician as soon as possible if they become pregnant. When a physician is informed that a worker is pregnant, the physician must advise the worker and the employer whether the worker should be removed from further exposure to lead.

6. Chelating Agents

Treatment of workers with chelating agents because of an increase in blood lead or symptoms of lead intoxication, is rarely necessary.

These agents must only be used under the direct supervision of a physician, knowledgeable in their use, and never as a general control measure in lead exposure.

7. Medical History and Examination Records

Under the provisions of the Lead Regulation the examining physician must maintain health records for each worker examined. Such records should include:

- name in full of worker;
- maiden surname of mother;
- date of birth;

- sex;
- Social Insurance Number;
- occupations or job titles;
- date occupations or jobs commenced;
- date occupations or jobs ended;
- the kinds of operations or processes in which the worker was involved;
- concentrations of airborne lead to which worker is exposed;
- use of respiratory equipment;
- date of visits to physician's office;
- medical examination reports;
- health assessments;
- results of clinical tests, e.g. blood and urine lead assays;
- copies of referral letter to a hospital or physician;
- copies of Forms 7 and 8 to the Workmen's Compensation Board if completed;
- all relevant correspondence concerning health, and any information concerning the actions taken in response to abnormal clinical tests.

A worker's health records must be kept in a secure place by the examining physician for:

(a) a period of forty years from the time such records were first made, or

(b) a period of twenty years from the time the last of such records were made,

whichever is the longer. Where the examining physician or his successor is no longer able or willing to keep the records, the records are to be forwarded to the Chief Physician of the Occupational Health Medical Service of the Ministry of Labour, who will keep them in a secure place.

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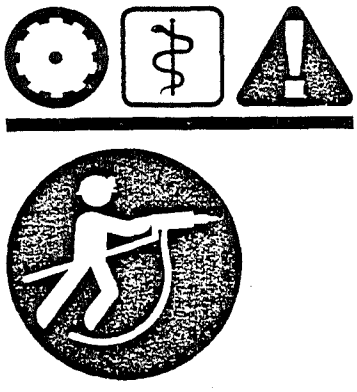
(Continued)

NOTES

The Occupational Health and Safety Act, 1978

Occupational Health and Safety Act, 1978
Statutes of Ontario, 1978, Chapter 83



Chapter 83

The Occupational Health And Safety Act, 1978

1. In this Act, Interpretation

1. "committee" means a joint health and safety committee established under this Act;

2. "competent person" means a person who,

   i. is qualified because of his knowledge, training and experience to organize the work and its performance,

   ii. is familiar with the provisions of this Act and the regulations that apply to the work, and

   iii. has knowledge of any potential or actual danger to health or safety in the work place;

3. "construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project;

4. "constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer;

5. "Deputy Minister" means the Deputy Minister of Labour;

6. "designated substance" means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled;

7. "Director" means an inspector who is appointed under this Act as a Director of the Occupational Health and Safety Division of the Ministry;

8. "employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

9. "engineer of the Ministry" means a person who is employed by the Ministry and who is registered as a professional engineer or licensed as a professional engineer under *The Professional Engineers Act*; R.S.O. 1970, c. 366

10. "factory" means,

   i. a building or place other than a mine, mining plant or place where homework is carried on, where,

      A. any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,

      B. in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,

         1. used to work any machinery or device, or

         2. modified in any manner,

      C. any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,

      D. any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or

      E. aircraft, locomotives or vehicles used for private or public transport are maintained,

ii. a laundry including a laundry operated in conjunction with,

A. a public or private hospital,

B. a hotel, or

C. a public or private institution for religious, charitable or educational purposes, and

iii. a logging operation;

11. "health and safety representative" means a health and safety representative selected under this Act;

12. "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation;

13. "industrial establishment" means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto;

14. "inspector" means an inspector appointed for the purposes of this Act and includes a Director;

15. "logging" means the operation of felling or trimming trees for commercial or industrial purposes and includes the measuring, storing, transporting or floating of logs and any such activities for the clearing of land;

16. "mine" means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel;

17. "mining plant" means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in paragraph 16;

18. "Minister" means the Minister of Labour;

27. "trade union" means a trade union as defined in *The Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a work place and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; R.S.O. 1970, c. 232.

28. "work place" means any land, premises, location or thing at, upon, in or near which a worker works;

29. "worker" means a person who performs work or supplies services for monetary compensation but does not include,

i. an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program, or

ii. a patient who participates in a work or rehabilitation program in a psychiatric institution, mental health or retardation centre or home, or rehabilitation facility. 1978, c. 83, s. 1.

PART I

APPLICATION

Application to Crown

2.—(1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown.

Application of other Acts

(2) Notwithstanding anything in any general or special Act, the provisions of this Act and the regulations prevail. 1978, c. 83, s. 2.

Application to private residences

3.—(1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

Farming operations

(2) Except as shall be prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to farming operations.

19. "Ministry" means the Ministry of Labour;

20. "occupational illness" means a condition that results from exposure in a work place 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 industrial disease as defined by *The Workmen's Compensation Act*; R.S.O. 1970, c. 505.

21. "owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee or occupier of any lands or premises used or to be used as a work place, and a person who acts for or on behalf of an owner as his agent or delegate;

22. "prescribed" means prescribed by a regulation made under this Act;

23. "project" means a construction project, whether public or private, including,

i. the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,

ii. mining development,

iii. the moving of a building or structure, and

iv. any work or undertaking, or any lands or appurtenances used in connection with construction;

24. "regulations" means the regulations made under this Act;

25. "shop" means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale;

26. "supervisor" means a person who has charge of a work place or authority over a worker;

Teachers etc.

(3) Except as shall be prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to,

(a) a person who is employed as a teacher as defined in *The Education Act, 1974*; or 1974, c. 109

(b) a person who is employed as a member or teaching assistant of the academic staff of a university or a related institution. 1978, c. 83, s. 3.

PART II

ADMINISTRATION

Delegation of powers

4. Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing delegate that power or duty from time to time to any officer or officers of the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. 1978, c. 83, s. 4.

Appointment of Inspectors and Directors

5. (1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors.

Director may act as inspector

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. 1978, c. 83, s. 5.

Certificate of appointment

6.—(1) The Deputy Minister shall issue a certificate of appointment, bearing his signature or a facsimile thereof, to every inspector.

Production of certificate

(2) Every inspector, in the exercise of any of his powers or duties under this Act, shall produce his certificate of appointment upon request. 1978, c. 83, s. 6.

Mandatory selection of health and safety representative

7. (1) Where the number of workers at a project regularly exceeds twenty, the constructor shall cause the workers to select at least one health and safety representative from among the workers on the project who do not exercise managerial functions.

Order appointing health and safety representatives

(2) Where no committee has been established under section 8, or where the number of workers at a project does

not regularly exceed twenty, the Minister may, by order in writing, require a constructor or an employer to cause the selection of one or more health and safety representatives for a work place or a part or parts thereof from among the workers employed at the work place or in the part or parts thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representative or representatives.

Idem (3) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative.

What Minister shall consider (4) In exercising the power conferred by subsection 2, the Minister shall consider the matters set out in subsection 4 of section 8.

Selection of representatives (5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the work place, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Powers of representative (6) A health and safety representative may inspect the physical condition of the work place or the part or parts thereof for which he has been selected, as the case may be, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford the health and safety representative such information and assistance as may be required for the purpose of carrying out the inspection.

Idem (7) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his findings thereon to the employer, the workers and the trade union or trade unions representing the workers.

Notice of accident, inspection by representative (8) Where a person is killed or critically injured at a work place from any cause, the health and safety representative may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings in writing to a Director.

Entitlement to time from work (9) A health and safety representative is entitled to such time from his work as is necessary to carry out his duties under subsections 6 and 8 and the time so spent shall

be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper.

Additional powers of certain health and safety representatives (10) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the constructor or the employer and the workers, has, in addition to his functions and powers under the provisions of the collective agreement or other agreement or arrangement the functions and powers conferred upon a health and safety representative by subsections 6, 7 and 8. 1978, c. 83, s. 7.

Application 8.—(1) Subject to subsection 3, this section does not apply,

(a) to a constructor or an employer who undertakes to perform work or supply services on a project; or

(b) to an employer in respect of those workers who work,

(i) in that part or those parts of a building used for office purposes,

(ii) in a shop where goods or services are sold or offered for sale to the public, except any part used as a factory,

(iii) in a building used for multiple residential accommodation,

(iv) in a library, museum or art gallery,

(v) in a restaurant, hotel, motel or premises for which a licence or permit has been issued under *The Liquor Licence Act, 1975* except that part used as a kitchen or laundry,

1975, c. 40

(vi) in a theatre or place of public entertainment, or

(vii) in premises occupied and used by a fraternal or social organization or a private club.

Establishment of joint health and safety committees (2) Subject to subsection 3, where,

(a) twenty or more workers are regularly employed at a work place;

(b) a regulation made in respect of a designated substance applies to a work place; or

(c) an order to an employer is in effect under section 20,

the employer shall cause a joint health and safety committee to be established and maintained at the work place unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate is, on the date this Act comes into force, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the health and safety of the workers equal to, or greater than, the benefits to be derived under a committee established under this section.

Minister's order (3) Notwithstanding subsections 1 and 2, the Minister may, by order in writing, require a constructor or an employer to establish and maintain one or more joint health and safety committees for a work place or a part thereof, and may, in such order, provide for the composition, practice and procedure of any committee so established. *New.*

What Minister shall consider (4) In exercising the power conferred by subsection 3, the Minister shall consider,

(a) the nature of the work being done;

(b) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a work place;

(c) the frequency of illness or injury in the work place or in the industry of which the constructor or employer is a part;

(d) the existence of health and safety programs and procedures in the work place and the effectiveness thereof; and

(e) such other matters as the Minister considers advisable.

Composition of committee (5) A committee shall consist of at least two persons of whom at least half shall be workers who do not exercise managerial functions to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Powers of committee (6) It is the function of a committee and it has power to,

(a) identify situations that may be a source of danger or hazard to workers;

(b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers,

(c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers; and

(d) obtain information from the constructor or employer respecting,

(i) the identification of potential or existing hazards of materials, processes or equipment, and

(ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge.

Minutes of proceedings (7) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector.

Powers of designated member (8) The members of a committee who represent workers shall designate one of the members representing workers to inspect the physical condition of the work place, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford that member such information and assistance as may be required for the purpose of carrying out the inspection.

Idem (9) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a work place from any cause and one of those members may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings to a Director and to the committee.

Posting of names and work locations (10) A constructor or an employer required to establish a committee under this section shall post and keep posted at the work place the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers.

Meetings (11) A committee shall meet at least once every three months at the work place and may be required to meet by order of the Minister.

Entitlement to time from work (12) A member of a committee is entitled to such time from his work as is necessary to attend meetings of the committee and to carry out his duties under subsections 8 and 9 and the time so spent shall be deemed to be work time for

which he shall be paid by his employer at his regular or premium rate as may be proper.

Additional powers of certain committees

(13) Any committee of a like nature to a committee established under this section in existence in a work place under the provisions of a collective agreement or other agreement or arrangement between a constructor or an employer and the workers has in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section.

Dispute resolution

(14) Where a dispute arises as to the application of subsection 2, or the compliance or purported compliance therewith by an employer, the dispute shall be decided by the Minister after consulting the employer and the workers or the trade union or trade unions representing the workers. 1978, c. 83, s. 8.

Summary to be furnished R.S.O. 1970, c. 505

9.—(1) For work places to which *The Workmen's Compensation Act* applies, the Workmen's Compensation Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the incidents of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting of copy of summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers.

Director to provide information

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally. 1978, c. 83, s. 9.

Advisory Council on Occupational Health and Occupational Safety

10.—(1) There shall be a council to be known as the Advisory Council on Occupational Health and Occupational Safety composed of not fewer than twelve and not more than twenty members appointed by the Lieutenant Governor in Council on the recommendation of the Minister.

Term of office of members

(2) The members of the Advisory Council shall be appointed for such term as the Lieutenant Governor in Council determines and shall be representative of management, labour and technical or professional persons and the public who are concerned with and have knowledge of occupational health and occupational safety.

Chairman and vice-chairman

(3) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman of the Advisory Council from among the members appointed.

Vacancies

(4) The Lieutenant Governor in Council may fill any vacancy that occurs in the membership of the Advisory Council.

Remuneration and expenses

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Lieutenant Governor in Council and shall be paid out of the moneys appropriated therefor by the Legislature.

Powers of Advisory Council

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings.

Idem

(7) The function of the Advisory Council is and it has power,

(*a*) to make recommendations to the Minister relating to programs of the Ministry in occupational health and occupational safety; and

(*b*) to advise the Minister on matters relating to occupational health and occupational safety which may be brought to its attention or be referred to it.

Annual report

(8) The Advisory Council shall file with the Minister not later than the 1st day of June in each year an annual report upon the affairs of the Advisory Council.

Idem

(9) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. 1978, c. 83, s. 10.

Advisory committees

11.—(1) The Minister may appoint committees, which are not committees as defined in paragraph 1 of section 1, or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable.

Remuneration and expenses

(2) Any person appointed under subsection 1 who is not an officer in the public service of the Province of Ontario may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. 1978, c. 83, s. 11.

Assessment to defray expenses R.S.O. 1970, c. 505

12.—(1) The Lieutenant Governor in Council may fix an amount that shall be assessed and levied by the Workmen's Compensation Board upon employers in Schedules 1 and 2 under *The Workmen's Compensation Act* to defray the expenses of the administration of this Act and the regulations and such amount shall not exceed $4,000,000 for the fiscal year in which this Act comes into force and shall be subject to increase in each subsequent fiscal year by a sum not exceeding 10 per cent of the amount fixed for the preceding fiscal year.

Method of collection

(2) The Workmen's Compensation Board shall add to the assessments and levies made under *The Workmen's Compensation Act* upon employers in Schedules 1 and 2 of that Act a sum calculated as a percentage of the assessments and levies and which percentage shall be determined as the proportion that the amount fixed under subsection 1 bears to the total sum that the Workmen's Compensation Board fixes and determines to be assessed for payment by employers in the said Schedules 1 and 2, and *The Workmen's Compensation Act* applies to such sum and to the collection and payment thereof in the same manner as to an assessment and levy made under that Act.

Idem

(3) The Workmen's Compensation Board shall collect the assessment and levy imposed under this section and shall pay the amounts so collected to the Treasurer of Ontario. 1978, c. 83, s. 12.

PART III

DUTIES OF A CONSTRUCTOR, EMPLOYER, SUPERVISOR, WORKER, OWNER AND SUPPLIER

Duties of constructor

13. (1) A constructor shall ensure, on a project undertaken by the constructor that,

(*a*) the measures and procedures prescribed by this Act and the regulations are carried out on the project;

(*b*) every employer and every worker performing work on the project complies with this Act and the regulations; and

(*c*) the health and safety of workers on the project is protected.

Notice of project

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. 1978, c. 83, s. 13.

Duties of employers

14.—(1) An employer shall ensure that,

(*a*) the equipment, materials and protective devices as prescribed are provided;

(*b*) the equipment, materials and protective devices provided by him are maintained in good condition;

(*c*) the measures and procedures prescribed are carried out in the work place;

(*d*) the equipment, materials and protective devices provided by him are used as prescribed; and

(*e*) a floor, roof, wall, pillar, support or other part of a work place is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under *The Building Code Act, 1974*. 1974, c. 74

Idem

(2) Without limiting the strict duty imposed by subsection 1, an employer shall,

(*a*) provide information, instruction and supervision to a worker to protect the health or safety of the worker;

(*b*) when appointing a supervisor, appoint a competent person;

(*c*) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;

(*d*) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;

(*e*) only employ in or about a work place a person over such age as may be prescribed;

(*f*) not knowingly permit a person who is under such age as may be prescribed to be in or about a work place;

(g) take every precaution reasonable in the circumstances for the protection of a worker; and

(h) post, in the work place, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the work place, outlining the rights, responsibilities and duties of workers.

Idem (3) For the purposes of clause *b* of subsection 2, an employer may appoint himself as a supervisor where the employer is a competent person. 1978, c. 83, s. 14.

Additional duties of employers **15.**—(1) In addition to the duties imposed by section 14, an employer shall,

(a) establish an occupational health service for workers as prescribed;

(b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;

(c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;

(d) accurately keep and maintain and make available, to the worker affected such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;

(e) notify a Director of the use or introduction into a work place of such biological, chemical or physical agents as may be prescribed;

(f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a work place and keep and post accurate records thereof as prescribed;

(g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;

(h) where so prescribed, only permit a worker to work or be in a work place who has undergone such medical examinations, tests or X-rays as prescribed and who is found to be physically fit to do the work in the work place; and

(i) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker.

without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;

(b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker; or

(c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct. 1978, c. 83, s. 17.

Duties of owners **18.**—(1) The owner of a work place that is not a project shall,

(a) ensure that,

(i) such facilities as may be prescribed are provided,

(ii) any facilities prescribed to be provided are maintained as prescribed,

(iii) the work place complies with the regulations, and

(iv) no work place is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations, and

(b) where so prescribed, furnish to a Director any drawings, plans or specifications of any work place as prescribed.

Mine plans (2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to a date not more than six months last past on such scale and showing such matters or things as may be prescribed.

Plans of work places (3) Where so prescribed, an owner or employer shall,

(a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a work place until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations; and

(b) keep a copy of the drawings as reviewed in a convenient location at or near the work place and

Idem (2) For the purposes of clause *a* of subsection 1, a group of employers, with the approval of a Director, may act as an employer. 1978, c. 83, s. 15.

Duties of supervisor **16.**—(1) A supervisor shall ensure that a worker,

(a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and

(b) uses or wears the equipment, protective devices or clothing that his employer requires to be used or worn.

Additional duties of supervisor (2) Without limiting the duty imposed by subsection 1, a supervisor shall,

(a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;

(b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and

(c) take every precaution reasonable in the circumstances for the protection of a worker. 1978, c. 83, s. 16.

Duties of workers **17.**—(1) A worker shall,

(a) work in compliance with the provisions of this Act and the regulations;

(b) use or wear the equipment, protective devices or clothing that his employer requires to be used or worn;

(c) report to his employer or supervisor the absence of or defect in any equipment or protective device of which he is aware and which may endanger himself or another worker;

(d) report to his employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he knows; and

(e) where so prescribed, have, at the expense of the employer, such medical examinations, tests or x-rays, at such time or times and at such place or places as prescribed.

Idem (2) No worker shall,

(a) remove or make ineffective any protective device required by the regulations or by his employer,

such drawings shall be produced by the owner or employer upon the request of an inspector for his examination and inspection.

Additional information (4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information.

Fees (5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. 1978, c. 83, s. 18.

Duties of suppliers **19.** Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a work place shall ensure,

(a) that the machine, device, tool or equipment is in good condition;

(b) that the machine, device, tool or equipment complies with this Act and the regulations; and

(c) if it is his responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition. 1978, c. 83, s. 19.

PART IV

TOXIC SUBSTANCES

Orders of Director **20.**—(1) Where a biological, chemical or physical agent or combination of such agents is used or intended to be used in the work place and its presence in the work place or the manner of its use is in the opinion of a Director likely to endanger the health of a worker, the Director shall by notice in writing to the employer order that the use, intended use, presence or manner of use be,

(a) prohibited;

(b) limited or restricted in such manner as the Director specifies; or

(c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies.

Contents of order

(2) Where a Director makes an order to an employer under subsection 1, the order shall,

(a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject matter of the order; and

(b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and his reasons in respect thereof, including the matters or causes which give rise to his opinion.

Posting of order

(3) The employer shall provide a copy of an order made under subsection 1 to the committee, health and safety representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the work place where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents.

Appeal to Minister

(4) Where the employer, a worker or a trade union considers that he or it is aggrieved by an order made under subsection 1, the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister.

Delegation

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection 4 be determined on his behalf by a person appointed by him for that purpose.

Procedure

(6) The Minister or, where a person has been appointed under subsection 5, the person so appointed, may give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chairman of a board of arbitration under subsection 7 of section 37 of *The Labour Relations Act*. R.S.O. 1970, c. 232

Substitution of findings

(7) On an appeal, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may substitute his findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section.

Matters to be considered

(8) In making a decision or order under subsection 1 or 7, a Director, the Minister, or, where a person has been appointed under subsection 5, the person so appointed, shall consider as relevant factors,

(a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;

(b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;

(c) the extent of exposure;

(d) the availability of other processes, agents or equipment for use or intended use;

(e) data regarding the effect of the process or agent on health; and

(f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation.

Suspension of order by Minister, etc., pending disposition of appeal

(9) On an appeal under subsection 4, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may suspend the operation of the order appealed from pending the disposition of the appeal.

Remuneration of appointee

(10) A person appointed under subsection 5 shall be paid such remuneration and expenses as the Minister, with the approval of the Lieutenant Governor in Council, may determine.

Application

(11) This section does not apply to designated substances.

No hearing required prior to making order

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection 1. 1978, c. 83, s. 20.

New biological or chemical agents

21.—(1) Except for purposes of research and development, no person shall,

(a) manufacture;

(b) distribute; or

(c) supply,

for commercial or industrial use in a work place any new biological or chemical agent or combination of such agents unless he first submits to a Director notice in writing of his intention to manufacture, distribute or supply such new agent or combination of such agents and the notice shall include the ingredients of such new agent or combination of agents and their common or generic name or names and the composition and properties thereof.

Report on assessment

(2) Where in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent or combination of such agents referred to in subsection 1 may endanger the health or safety of the workers in a work place, the Director shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent or combination of agents intended to be manufactured, distributed or supplied and the manner of use including, the matters referred to in subclauses i to vii of clause *l* of subsection 1 of section 28.

Interpretation

(3) For the purpose of this section, "new biological or chemical agent or combination of such agents" means any such agent or combination of such agents other than those used in one or more work places and included in an inventory compiled or adopted by the Ministry. 1978, c. 83, s. 21.

Designation of substances

22. Prior to a substance being designated under paragraph 14 of subsection 2 of section 41, the Minister,

(a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and

(b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. 1978, c. 83, s. 22.

PART V

REFUSAL TO WORK WHERE HEALTH OR SAFETY IN DANGER

Application

23.—(1) This section does not apply to,

(a) a person employed in, or who is a member of a police force, to which *The Police Act* applies; R.S.O. 1970, c. 351

R.S.O. 1970, c. 169

(b) a full-time fire fighter as defined in *The Fire Departments Act*; or

(c) a person employed in the operation of a correctional institution or facility, training school or centre, detention and observation home or other similar institution, facility, school or home.

Idem

(2) Where circumstances are such that the life, health or safety of another person or the public may be in imminent jeopardy, this section does not apply to a person employed in the operation of any of the following institutions, facilities or services whether granted aid out of moneys appropriated by the Legislature or not and whether operated for private gain or not,

1. A hospital, sanatarium, nursing home, home for the aged, psychiatric institution, mental health or mental retardation centre or a rehabilitation facility.

2. A residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental handicap.

3. An ambulance service or a first aid clinic or station.

4. A laboratory operated by the Crown or a laboratory licensed under *The Public Health Act*. R.S.O. 1970, c. 377

5. Any laundry, food service, power plant or technical service or facility belonging to, or used in conjunction with, any institution, facility or service referred to in paragraphs 1 to 4.

Refusal to work

(3) A worker may refuse to work or do particular work where he has reason to believe that,

(a) any equipment, machine, device or thing he is to use or operate is likely to endanger himself or another worker;

(b) the physical condition of the work place or the part thereof in which he works or is to work is likely to endanger himself; or

(c) any equipment, machine, device or thing he is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself or another worker.

Report of refusal to work

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of his refusal

to his employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

(a) a committee member who represents workers, if any,

(b) a health and safety representative, if any, or

(c) a worker who because of his knowledge, experience and training is selected by a trade union that represents the worker or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay.

Worker to remain near work station

(5) Until the investigation is completed, the worker shall remain in a safe place near his work station.

Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

(a) the equipment, machine, device or thing that was the cause of his refusal to work or do particular work continues to be likely to endanger himself or another worker,

(b) the physical condition of the work place or the part thereof in which he works continues to be likely to endanger himself, or

(c) any equipment, machine, device or thing he is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

Investigation by inspector

(7) An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 4.

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection 7, decide whether the machine, device,

thing or the work place or part thereof is likely to endanger the worker or another person.

Idem

(9) The inspector shall give his decision in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 4.

Worker to remain at a safe place pending decision

(10) Pending the investigation and decision of the inspector the worker shall remain at a safe place near his work station during his normal working hours unless the employer, subject to the provisions of a collective agreement, if any,

(a) assigns the worker reasonable alternative work during such hours, or

(b) subject to section 24, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

Duty to advise other workers

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the work place or the part thereof which is being investigated unless the worker to be so assigned has been advised of the refusal by another worker and the reason therefor.

Entitlement to time from work

(12) The time spent by a person mentioned in clause *a*, *b* or *c* of subsection 4 in carrying out his duties under subsections 4 and 7, shall be deemed to be work time for which the person shall be paid by his employer at his regular or premium rate as may be proper. 1978, c. 83, s. 23.

PART VI

REPRISALS BY EMPLOYER PROHIBITED

No discipline, dismissal, etc. by employer

24. (1) No employer or person acting on behalf of an employer shall,

(a) dismiss or threaten to dismiss a worker,

(b) discipline or suspend or threaten to discipline or suspend a worker,

(c) impose any penalty upon a worker, or

(d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations.

Arbitration

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection 1, the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply, with all necessary modifications, to the complaint.

Inquiry by Ontario Labour Relations Board

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection 2, and section 79 of *The Labour Relations Act*, except subsection 4*a*, applies with all necessary modifications, as if such section, except subsection 4*a*, is enacted in and forms part of this Act.

R.S.O. 1970, c. 232

Idem

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, sections 91, 92, 95, 97 and 98 of *The Labour Relations Act* apply, with all necessary modifications.

Onus of proof

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 1 lies upon the employer or the person acting on behalf of the employer.

Jurisdiction when complaint by Crown employee

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection 1.

Board may substitute penalty

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Exception

(8) Notwithstanding subsection 2, a person who is subject to a rule or code of discipline under *The Police Act* shall have his complaint in relation to an alleged contravention of subsection 1 dealt with under that Act. 1978, c. 83, s. 24.

PART VII

NOTICES

Notice of death or injury

25.—(1) Where a person is killed or critically injured from any cause at a work place, the constructor, if any,

and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations may prescribe.

Preservation of wreckage

(2) Where a person is killed or is critically injured at a work place no person shall, except for the purpose of,

(a) saving life or relieving human suffering;

(b) maintaining an essential public utility service or a public transportation system; or

(c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. 1978, c. 83, s. 25.

Notice of accident, explosion or fire causing injury

26.—(1) Where an accident, explosion or fire causes injury to a person at a work place whereby he is disabled from performing his usual work or requires medical attention, and such occurrence does not cause death or critical injury to any person, the employer shall give notice in writing, within four days of the occurrence, to a Director, and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed.

Notice of occupational illness

(2) Where an employer is advised by a worker or by a person on behalf of the worker that the worker has an occupational illness, the employer shall give notice in writing, within four days of being so advised, to a Director and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed.

Idem

(3) Subsection 2 applies, with all necessary modifications, where an employer is advised by a former worker of the employer or a person on behalf of such worker, that such worker has or had an occupational illness. 1978, c. 83, s. 26.

Accidents, explosions, etc., at a project site or mine

27. Where a notice or report is not required under section 25 or 26 and an accident, premature or unexpected

explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a project site, mine or mining plant, notice in writing of the occurrence shall be given to a Director and to the committee, health and safety representative and trade union, if any, by the constructor of the project or the owner of the mine or mining plant within two days of the occurrence containing such information and particulars as may be prescribed. 1978, c. 83, s. 27.

PART VIII

ENFORCEMENT

Powers of inspector

28. (1) An inspector may, for the purposes of carrying out his duties and powers under this Act and the regulations,

(a) subject to subsection 2, enter in or upon any work place at any time without warrant or notice;

(b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;

(c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;

(d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;

(e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a work place and for such purposes, take and carry away such samples as may be necessary;

(f) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him and use any equipment or materials required for such purpose;

(g) make inquiries of any person who is or was in a work place either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;

(h) require that a work place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;

(i) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;

(j) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,

(i) the load limits of a floor, roof or temporary work or part of a building, structure or temporary work,

(ii) that a floor, roof or temporary work is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or

(iii) that a floor, roof or temporary work, or part of a building, structure or temporary work is capable of supporting or withstanding all loads to which it may be subject without exceeding the allowable unit stresses for the materials used as provided under *The Building Code Act, 1974*, 1974, c. 74

(k) require in writing an owner of a mine or part thereof to provide, at his expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered, and

(l) require in writing an employer to produce any record or information, or to provide, at the ex-

pense of the employer, a report or assessment made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the inspector, of any process or biological, chemical or physical agents or combination of such agents used or intended to be used in a work place, and the manner of use including,

(i) the ingredients thereof and their common or generic name or names,

(ii) the composition and the properties thereof,

(iii) the toxicological effect thereof,

(iv) the effect of exposure thereto whether by contact, inhalation or ingestion,

(v) the protective measures used or to be used in respect thereof,

(vi) the emergency measures used or to be used to deal with exposure in respect thereof, and

(vii) the effect of the use, transport and disposal thereof. *New.*

Entry to dwellings

(2) An inspector shall only enter a dwelling or that part of a dwelling actually being used as a work place with the consent of the occupier or under the authority of a search warrant issued under section 16 of *The Summary Convictions Act*. R.S.O. 1970, c. 450

Representative to accompany inspector

(3) Where an inspector makes an inspection of a work place under the powers conferred upon him under subsection 1, the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of his knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of his knowledge, training and experience to represent them, the opportunity to accompany the inspector during his physical inspection of a work place, or any part or parts thereof.

Consultation with workers

(4) Where there is no committee member representing workers, health and safety representative or worker selected under subsection 3, the inspector shall endeavour to consult during his physical inspection with a reasonable number of the

workers concerning matters of health and safety at their work.

Entitlement to time from work

(5) The time spent by a committee member representing workers, health and safety representative or worker selected in accordance with subsection 3 in accompanying an inspector during his physical inspection, shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1978, c. 83, s. 28.

Orders by inspectors where non-compliance

29. (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, he may order, orally or in writing, the owner, constructor, employer, or person whom he believes to be in charge of a work place or the person whom he believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

Idem

(2) Where an inspector makes an oral order under subsection 1, he shall confirm the order in writing before leaving the work place.

Contents of order

(3) An order made under subsection 1 shall indicate generally the nature of the contravention and where appropriate the location of the contravention.

Orders by inspector where worker endangered

(4) Where an inspector makes an order under subsection 1 and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker he may,

(a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;

(b) order that work at the work place as indicated in the order shall stop until the order is complied with, or until the order to stop work is withdrawn or cancelled by an inspector;

(c) order that the work place where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is removed

(2) On a prosecution for a failure to comply with, Defence

(a) subsection 1 of section 13;

(b) clause *b*, *c* or *d* of subsection 1 of section 14; or

(c) subsection 1 of section 16,

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken.

(3) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused. 1978, c. 83, s. 37. Accused liable for acts or neglect of manager, agent, etc.

38. (1) In any proceeding or prosecution under this Act, Certified copies of documents etc. as evidence

(a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;

(b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector; or

(c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a work place or part thereof and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof.

(2) In any proceeding or prosecution under this Act, a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister, a Director or an inspector may be served, Service of orders and decisions

(a) personally in the case of an individual or in case of a partnership upon a partner, and in the case of a

corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the work place; or

(b) by registered letter addressed to a person or corporation mentioned in clause *a* at his or its last known place of business,

and the same shall be deemed to be good and sufficient service thereof. 1978, c. 83, s. 38.

Place of trial

39. An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Provincial Court having jurisdiction in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. 1978, c. 83, s. 39.

Limitation on prosecutions

40. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred. 1978, c. 83, s. 40.

PART X

REGULATIONS

Regulations

41.—(1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a work place.

Idem

(2) Without limiting the generality of subsection 1, the Lieutenant Governor in Council may make regulations,

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;

2. designating or defining any industry, work place, employer or class of work places or employers for the purposes of this Act, a part of this Act or the regulations or any provision thereof;

3. exempting any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;

4. limiting or restricting the application of a regulation or any provision thereof to any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;

5. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;

6. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;

7. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;

8. providing for and prescribing fees and the payment or refund of fees;

9. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;

10. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;

11. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;

12. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a work place;

13. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a work place;

14. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;

15. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any designated substance;

16. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and

requiring compliance with any code or standard that is so adopted;

17. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;

18. enabling the Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given;

19. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests, and examinations, and requiring that sampling, analyses, examinations, and tests be carried out and performed by a laboratory approved by the Minister;

20. requiring and providing for the registration of employers of workers;

21. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;

22. prescribing forms and notices and providing for their use; and

23. prescribing building standards for industrial establishments. 1978, c. 83, s. 41.

Posting of notice

(5) Where an inspector makes an order under this section, he may affix to the work place, or to any equipment, machine, device, article or thing, a copy thereof or a notice in the prescribed form and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector.

Idem

(6) Where an inspector makes an order in writing or issues a report of his inspection to an owner, constructor, employer or person in charge of the work place, the owner, constructor, employer or person in charge of the work place shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the health and safety representative and the committee, if any, and the inspector shall cause a copy thereof to be furnished to a person who has complained of a contravention of this Act or the regulations.

No hearing required prior to making order

(7) An inspector is not required to hold or afford to an owner, constructor, employer or any other person an opportunity for a hearing before making an order. 1978, c. 83, s. 29.

Entry into barricaded area

30. Where an order is made under clause *c* of subsection 4 of section 29, no owner, constructor, employer or supervisor shall require or permit a worker to enter the work place except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. 1978, c. 83, s. 30.

Injunction proceedings

31. In addition to any other remedy or penalty therefor, where an order made under subsection 4 of section 29 is contravened, such contravention may be restrained upon an *ex parte* application to a judge or local judge of the Supreme Court made at the instance of a Director. 1978, c. 83, s. 31.

Appeals from order of an inspector

32.—(1) Any employer, constructor, owner, worker or trade union which considers himself or itself aggrieved by any order made by an inspector under this Act or the regulations may, within fourteen days of the making thereof, appeal to a Director who shall hear and dispose of the appeal as promptly as is practicable.

Method

(2) An appeal to a Director may be made in writing or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the appeal is heard.

(*a*) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;

(*b*) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or

(*c*) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. 1978, c. 83, s. 33.

Information confidential

34.—(1) Except for the purposes of this Act and the regulations or as required by law,

(*a*) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;

(*b*) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations;

(*c*) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and

(*d*) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.

Compellability, civil suit

(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is not a compellable witness in a civil suit or any proceeding, except an inquest under *The Coroners Act, 1972*, respecting any information, material, statement

1972, c. 98

Parties

(3) The appellant, the inspector from whom the appeal is taken and such other persons as a Director may specify are parties to an appeal under this section.

Powers of a Director

(4) On an appeal under this section, a Director may substitute his findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Director shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector.

Order extended meaning

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector.

Decision of Director final

(6) A decision of the Director under this section is final.

Suspension of order by Director pending disposition of appeal

(7) On an appeal under subsection 1, a Director may suspend the operation of the order appealed from pending the disposition of the appeal.

Application

(8) This section does not apply to the order of a Director made under section 20. 1978, c. 83, s. 32.

Obstruction of inspector

33.—(1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations.

Assistance to inspector

(2) Every person shall furnish all necessary means in his power to facilitate any entry, inspection, examination, testing or inquiry by an inspector in the exercise of his powers or performance of his duties under this Act or the regulations.

False information, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his duties under this Act or the regulations.

Monitoring devices

(4) No person shall interfere with any monitoring equipment or device in a work place.

Obstruction of committee, etc.

(5) No person shall knowingly,

or test acquired, furnished, obtained, made or received under this Act or the regulations.

Power of Director to disclose

(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. 1978, c. 83, s. 34.

Copies of reports

35. A Director may, upon receipt of a request in writing from the owner of a work place who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by him copies of reports or orders of an inspector made under this Act in respect of the work place as to its compliance with subsection 1 of section 18. 1978, c. 83, s. 35.

Liability of certain persons

36.—(1) No action or other proceeding for damages, prohibition, or mandamus lies or shall be instituted against a Director, an inspector, an engineer of the Ministry, a health and safety representative, a committee member, a worker selected by a trade union or trade unions or a worker selected by the workers to represent them for an act or an omission done or omitted to be done by him in good faith in the execution or intended execution of any power or duty under this Act or the regulations.

Liability of Crown R.S.O. 1970 c. 365

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a Director, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. 1978, c. 83, s. 36.

PART IX

OFFENCES AND PENALTIES

Penalties

37.—(1) Every person who contravenes or fails to comply with,

(*a*) a provision of this Act or the regulations;

(*b*) an order or requirement of an inspector or a Director; or

(*c*) an order of the Minister,

is guilty of an offence and on summary conviction is liable to a fine of not more than $25,000 or to imprisonment for a term of not more than twelve months, or to both.

LEAD -- ONTARIO'S FIRST DESIGNATED SUBSTANCE

by

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SUMMARY

The lead regulation for Ontario is discussed with particular reference to its application, assessment of the work place, control programs, physicians responsibilities and confidentiality.

LEAD - ONTARIO'S FIRST DESIGNATED SUBSTANCE

Ontario Regulation 536/81, a Regulation respecting Lead and related codes made under the Occupational Health and Safety Act, was filed with the Registrar of Regulations for the province of Ontario on August 14, 1981 and thus became the first of a series of proposed designated substance regulations made under the Occupational Health and Safety Act, R.S.O. 1981, Chapter 321 ("the Act") to come into force.

Lead and its associated health effects have been the subject of much investigation and debate within the province and it was determined that occupational exposure to lead was a matter that would have to be addressed by way of a designated substance regulation in order to ensure that workers in the province of Ontario were adequately protected from the adverse effects of exposure thereto.

Section 2 of the Regulation prescribes lead as a designated substance. This is done pursuant to subsection 41 (2) 14. of the Act, which enables the Lieutenant Governor in Council to prescribe any biological, chemical or physical agent as a designated substance. Once a substance has been designated, then pursuant to subsection 41 (2) 15., regulations can be made prohibiting, regulating, restricting limiting or controlling the handling of, exposure to, or the use and disposal of the designated substance.

The formal process leading to the formulation of the designated substance Regulation for Lead commenced in June 1980 with the publication of a Notice of Intent to Designate pursuant to section 22 of the Act. A proposed regulation was published by the Ministry of Labour in August 1980 and thus began a lengthy process of public reaction to, and Ministry revision of, the original proposed regulation. The amended regulation was presented to a public forum of concerned parties in March 1981 and a number of additional comments and briefs were forthcoming.

In the light of these representations and with the advice and assistance of the Advisory Council on Occupational Health and Occupational Safety, the Ministry formulated the existing regulation which received the approval of Cabinet in the summer of 1981, and was filed on August 14, 1981.

The Lead Regulation incorporates a number of novel concepts and approaches and while these concepts and approaches share a degree of propinquity, they have not previously been linked in any legislative initiative of the Ministry of Labour. The concepts and approaches referred to above include:

(a) an assessment of the work place;
(b) a control program;
(c) a regulation providing duties and responsibilities for employers, workers, joint health and safety committees, and physicians that are different from and are in addition to those provided in the Act;
(d) the internal responsibility system;
(e) time-weighted average exposure levels;
(f) mandatory medical examinations and clinical tests for workers;
(g) engineering controls, work practices, hygiene practices and facilities as control measures;
(h) the maintenance of exposure records and medical records and their retention over the working life of the worker;
(i) mandatory removal of a worker from exposure under prescribed circumstances;
(j) confidentiality of health information;
(k) legally enforceable codes of practice, not in the regulation itself though referenced therein; and
(l) the concept of equivalency with the codes referenced in the regulation.

Because the Lead Regulation may be considered a prototype for ensuing designated substances regulations, it is essential that occupational health professionals should familiarize themselves with the major scope and approach of the lead regulation in order to ease

the period of transition from the status quo ante to the new approach with respect to occupational health regulation in the province of Ontario. This article is an attempt to interpret and explain the basic principles and parameters of the lead regulation and to alert occupational health professionals to the novel nature of designated substance regulations for Ontario.

THE SUBJECT MATTER OF THE REGULATION

Lead is found in a great many forms and different states and as a consequence many employers and employees will be unaware of the potential exposure to lead and indeed unaware of the very presence of lead in their respective workplaces.

Lead is defined in the Regulation to mean elemental lead, inorganic compounds of lead and organic compounds of lead. While this definition is exhaustive technically it does not assist the employer or employee in the determination of whether or not the substances with which they deal contain lead. To rectify this shortcoming the Ministry is preparing explanatory materials which will provide illustrations of substances falling within each of the respective categories within the definition of lead in the Regulation. For instance, examples of elemental lead include ammunition and solder, used in electrical or pumbing work; an example of an organic compound of lead is tetraethyl lead which is used as an anti-knock ingredient in gasoline; an example of an inorganic lead compound is lead nitrate found in matches, pigments and explosives and used in photography and the tanning industry.

The various forms and processes using lead are so pervasive that it is likely that lead will be found in a significant number of Ontario workplaces.

APPLICATION OF THE REGULATION

Subsection 3 (1) of the Regulation establishes the parameters for the application of the Lead Regulation as follows: "This Regulation applies to every employer and worker, at a workplace, where lead is present, produced, processed, used, handled or stored and at which the worker is likely to inhale, ingest or absorb lead ". It is important to appreciate the two conditions which must co-exist in order that this regulation apply to a workplace. These conditions are:

1. that lead is present in the workplace in some form; and
2. that a worker is likely to inhale, ingest or absorb some of the lead that is present in the workplace.

It follows that if lead is present in the workplace but there is no likelihood of worker exposure, the regulation does not apply. Such a situation would arise, for example, where lead is present in a workplace in sealed containers or aprons. In such instances, lead is present in the workplace but there is clearly no likelihood of of worker exposure.

It is important to note that the application section of the Regulation does not make application of the regulation dependent upon either:

1. the presence of a particular quantity of the designated substance,
   or
2. any particular degree of exposure of a worker to the designated substance.

Consequently, the presence of any quantity of the designated substance in a workplace combined with a likelihood of exposure to the designated substance will result in the application of this Regulation.

The safety regulations made under the Occupational Health and Safety Act have traditionally provided for a sectorial or industry-wide application of the regulation. Each regulation was designed and made applicable to specific workplaces, for example, the industrial establishment regulations apply only to industrial establishments as defined in the Act. In contrast, the new designated substance regulation states that the regulation applies to every employer and worker at a workplace where the conditions specified in subsection 3 (1) exist. As a consequence, there is no sectorial limitation on the application of the regulation and therefore the Regulation applies to all workers and employers covered under the Act. This application, which applies to workers as opposed to workplaces, can perhaps best be explained by the fact that the lead regulation is a health related regulation which addresses a hazard which has no particular relationship to a specific type of workplace, since the health of a worker can be affected by exposure to lead in any workplace in Ontario.

Workers who work at or on a construction project have been exempted from the application of the Regulation except in a circumstance where the construction is being carried out at a work place to which the lead regulation otherwise applies. Where, for example, construction is being carried out at a lead processing plant then the employer who is responsible for that work place is charged with certain responsibilities with respect to the protection of the construction workers from exposure to lead in that plant. The responsibility of the employer at whose work place the construction is being carried out with respect to the protection of the construction workers from exposure to lead in the work place is limited to ensuring that the exposure limits established in the regulation are complied with by means of engineering controls, work practices and hygiene practices and facilities or by means of the use of respirators, where such use is authorized by the Regulation.

CONSEQUENCES ARISING UPON THE APPLICATION OF THE REGULATION TO A WORKPLACE

Where the regulation applies to a workplace, employers, workers, members of the joint health and safety committee, the joint health and safety committee, and physicians are given duties and responsibilities pursuant to the Regulation which in certain respects differ from or are in addition to those duties and responsibilities outlined in the Act. The creation of additional duties and alteration of existing duties found in the Act is a quite different approach from that utilized in the safety regulations made under the Act.

An important consequence of the application of a designated substance regulation to a work place is that arising from subsection 8(2)(b) of the Act. This section requires a joint health and safety committee to be established in the work place if a designated substance regulation applies thereto. This requirement exists regardless of the number of workers in the work place. As a consequence of the application of the Lead Regulation, a number of work places which would not otherwise have been required to formulate a joint health and safety committee due to the fact that less 20 workers are regularly employed therein, will now be required to do so. The effect of such a provision may be to require the establishment of a joint health and safety committee in work places where as few as 1 worker is regularly employed. It will be apparent that with the advent of a significant number of designated substance regulations, the presence of a joint health and safety committee in the work place may become the rule rather than the exception.

The necessity of having a joint health and safety committee in a work place to which a designated substance regulation applies is reflected in the Lead Regulation in various provisions which rely implicitly upon an internal responsibility system functioning effectively within the work place. It is through the internal responsibility system that the workers are entitled by the Regulation: to have input into the assessment process and the establishment of the Lead Control Program; to receive information

on the health of workers exposed to lead; and, to gain access to the dispute settling mechanism established in the Regulation.

Duty to Perform an Assessment

The initial duty which the Regulation, where it applies, imposes on an employer is to cause an assessment to be made in writing of the exposure or likelihood of exposure, in the work place, of a worker to the inhalation, ingestion of absorption of lead. While the term assessment is not defined in the regulation is is apparent that the assessment must consider the type of lead present in the work place and the nature of its presence, the extent to which workers are exposed to lead in the work place and the possible procedures available to the employer for controlling such exposure.

The manner by which the assessment is conducted is a matter for the discretion of the employer after consulting with the joint health and safety committee. As noted above, every workplace to which the Regulation applies must have a joint health and safety committee to carry out the consultative function assigned to it. It is important to note that it is at the assessment stage where the first consideration is given to the extent of worker exposure to lead.

Because the Regulation requires that the assessment be done in writing, a copy of the assessment will normally be kept on file by the employer and consequently will be available for review by inspectors of the Ministry of Labour. The Regulation specifically requires the employer to furnish a copy of the assessment to each member of the joint health and safety committee for review.

Two results may follow from the assessment. The assessment may disclose that some workers are likely to inhale ingest and absorb lead and additionally, that the health of one or more workers may be affected thereby. If this is the case, the employer must establish a lead control program. Conversely, the assessment may disclose that despite the fact some workers are likely to inhale, ingest or absorb lead, there is no likelihood that their health will be affected by such exposure. In such a situation no further action is required on the part of the employer.

Even though the assessment may disclose that a lead control program is unnecessary and that further action on the part of the employer is not mandatory, the joint health and safety committee continues in existence so long as the regulation applies to that work place. The rational for the continued existence of the joint health and safety committee is the ongoing duty to monitor the work place for any changes of a significant nature which might require a further assessment to be conducted.

A subsequent assessment is required in each instance where a significant difference occurs in the exposure of workers to lead as a consequence of a change in the process involving lead or a change in the methods and procedures involved in the use, handling or storage of lead. Like the initial assessment, this assessment is the responsibility of the employer, who is required to consult thereon with the joint health and safety committee.

A subsequent assessment may have a number of consequences depending upon the conditions in the work place at the time the subsequent assessment is undertaken. Where a lead control program is already in place the subsequent assessment may indicate that there is a need for more stringent provisions in the lead control program or, alternatively, less stringent provisions would be appropriate or that a lead control program was no longer required at all. On the other hand, the circumstances may have been such that the initial assessment disclosed no need for a lead control program. In this instance a subsequent assessment may give rise to a duty on the employer to implement a lead control program.

Summary

To recaptitulate, it is apparent that the consequence of the application of the regulation to a work place is to create an incremental program designed to protect workers from undue exposure to lead. Initially, one must determine whether the regulation itself applies to the work place, taking into account the two conditions precedent for the regulation to apply, these being:

1) presence of lead in the work place, and
2) a likelihood of the inhalation, ingestion or absorption of lead by workers in the work place.

If the intial determination is that the regulation applies, then a joint health and safety committee is required to be established unless there is already a joint health and safety committee in the work place. After the joint health and safety committee has been established the employer must cause an assessment to be made in writing and in doing so must consult thereon with the joint health and safety committee. The assessment determines whether or not a lead control program is required in the work place, which determination depends upon whether the health of any worker may be affected by exposure to lead. Whatever the outcome of the initial assessment, both the employer and the joint health and safety committee should remain on the alert for any significant difference in the exposure of workers to lead resulting from a change in the processing, use, handling or storage of lead, which may warrant further assessment with its concomitant effects on the lead control program.

THE LEAD CONTROL PROGRAM

A lead control program is required in a work place where workers are likely to inhale, ingest or absorb lead and suffer health effects as a consequence. The actual provisions of the lead control program are determined by the employer after consultation with the joint health and safety committee. Thus it is the conception of the regulation that each work place will have its own unique lead control program. No two programs will be exactly alike. However, there will be many similiarities. This "different yet similiar" dichotomy results from the fact that the lead control program must meet a combination of mandatory and discretionary provisions. Because the nature of the presence of lead and the nature and extent of the exposure of workers thereto will be different in each distinct work place, it has been necessary to leave some of the details of the lead control program to the discretion of the parties involved. The theory is that the internal responsibility system can fashion a program which is best suited to the needs of the particular work place. However, there are certain aspects related to the control of worker exposure which are absolutely essential in any lead control program and the regulation details these mandatory requirements.

Thus, within the parameters of every lead control program are the following mandatory measures and procedures:

a) engineering controls, work practices, hygiene practices and facilities to control the exposure of a worker to lead;
b) methods and procedures to monitor the concentration of airborne lead in the work place and the exposure of the worker thereto;
c) personal records of the exposure of the worker to lead at the work place to be maintained by the employer;
d) medical examinations and clinical tests of a worker;
e) records of medical examinations and clinical tests of a worker to be maintained by a physician who has examined the worker or under whose direction the clinical tests have been performed.

While provision for these measures and procedures is mandatory in each lead control program the specific details respecting the provisions are in certain respects left up to the concerned parties and in other respects are subject to further provision of the Regulation. For example, with respect to the medical examinations, the employer, after consulting with the joint health and safety committee, can determine such matters as who will undergo the medical examinations; how often medical examinations will be required; and, who will conduct such examinations. However, the extent of the examination and action consequent thereon are required to be in accordance with the further applicable provisions of the Regulation and the Code for Medical Surveillance.

Similiarly, the need for and the extent of engineering controls, work practices and hygiene practices in the lead control program is determined by reference to the time-weighted average exposure provision of the Regulation. The actual type of controls and the manner implementing work practices is within the discretion of the employer. A prudent employer may deem it expedient to consult thereon with the joint health and safety committee.

The methods and procedures for monitoring the concentrations of airborne lead are specifically set out in the Code for Measuring Airborne Lead. In addition, the Regulation stipulates that the results of this monitoring must be: posted by the employer in the work place as soon as possible, for a period of at least 14 days; given by the employer to the joint health and safety committee; and, kept by the employer in his records for a period of at least five years.

The contents of the personal exposure records required to be maintained by the employer must, as a minimum, include the worker's name, date of birth, his job or occupation in the work place, the results of monitoring for exposure to airborne lead in his work area and the use by the worker of resipiratory equipment and its type. The regulation then requires that the entire contents of these personal exposure records be forwarded by the employer to the physician examining the worker.

Finally, there are three duties relating to the communication of the contents of the lead control program which are placed on the employer. The employer must furnish a copy of the lead control program to the joint health and safety committee, from which it can be inferred that the provisions of the lead control program must be in writing. Secondly, the employer must acquaint every worker affected by the program with its provisions. Thirdly, where English is not the majority language of the work place, the employer is required to supply a translation of the provisions contained in the lead control program.

DISPUTE RESOLUTION

In addition to the enforcement provisions to be found in the Act, the Regulation provides a unique dispute settling mechanism. This mechanism is found in section 9 of the Regulation. The issues which can be raised under this procedure are specifically limited. Only questions as to the need for an initial or subsequent assessment, the adequacy of the assessment conducted, the need for a lead control program, or the adequacy of the lead control program or its provisions can be raised.

The dispute over one of these issues must inherently arise as between the employer and the joint health and safety committee. Thus, not surprisingly only the employer, a member of the joint health and safety committee or the committee itself can utilize this procedure. It is clear that the limitation in this section is a reflection of the reliance on the internal responsibility system generally to give substance and form to the assessment and to the lead control program since it is the employer in consultation with the joint health and safety committee which is required to determine these two matters. The theory of the regulation is that the joint health and safety committee will develop an expertise with respect to the workplace and the health and safety concerns unique thereto. Hence it follows that if the joint health and safety committee does not perceive a problem to exist it is unlikely that a significant health concern in fact existed. The Regulation indicates the desire on the part of the Ministry of Labour to have the parties concerned work out these issues, identify the hazards and deal with them accordingly. Where the parties have agreed that the measures and procedures which they have implemented will deal adequately with the situation, then it is not generally the intention of the Ministry of Labour to become involved. However, where there is an obvious failure in the functioning of the internal responsibility system intervention will undoubtedly be forthcoming.

Where the intervention of an inspector is precipitated by either the employer, joint health and safety committee or a member of the committee, the Regulation imposes a duty on the inspector to investigate the matter and to give a decision in writing.

THE EXPOSURE LIMIT LEVELS

Section 4 of the regulation establishes the exposure levels for lead. The duty is on the employer to ensure that the exposure levels are not exceeded. The regulation sets two different types of exposure levels, a time-weighted average exposure level and a maximum concentration exposure level. Within each of these there are two further levels, depending on the type of lead to which a worker is exposed.

The maximum concentration levels are as follows:

1) in the case of tetraethyl lead - 0.30mg lead per m^3 of air; and,
2) in the case of other airborne lead - 0.45mg lead per m^3 of air.

Not only are there maximum concentrations to which a worker may be exposed but there are, as well, limits imposed on the frequency to which a worker may be exposed to those maximum concentrations. Thus, exposure of a worker to the maximum concentrations levels:

1) shall not exceed 15 minutes at any time;
2) shall not occur more than four times in a work day; and,
3) shall not occur until at least 60 minutes have elapsed from the time of the last previous exposure to such concentrations.

However, a worker can be exposed to levels below the maximum concentration levels for any amount of time and for any frequency provided that the time-weighted average exposure levels are not exceeded.

The time-weighted average exposure levels are as follows:

1) in the case of tetraethyl lead - 0.10 mg lead per m^3 of air; and,
2) in the case of other airborne lead - 0.15 mg lead per m^3 of air.

These levels are calculated over a 40 hour work week as provided for in the schedule attached to the regulation. As a consequence of the time-weighted average exposure levels, it is unlikely that a worker can be exposed to levels approaching the maximum concentration levels for any substantial degree of regularity or length of time without thereby exceeding the time-weighted average exposure levels.

The time-weighted average exposure levels and the maximum concentration levels must be met either by way of engineering controls, work practices or hygiene practices or facilities unless one of the exceptions detailed in Regulation exist. Where this is the case, the employer is permitted to control the exposure to lead by means of the use of respiratory equipment. The onus is on the employer to show that one of these exceptions exists before requiring the use of respirators.

The Regulation allows respirators to be utilized to control worker exposure to lead, in the following instances:

1) where an emergency exists; or
2) where the measures and procedures necessary to to control the exposure of a worker to airborne lead,
    a) do not exist or are not available;
    b) are not reasonable or practical for the length of time or frequency of exposure or the nature of the process, operation or work;
    c) are not effective because of a temporary breakdown of equipment.

The term "reasonable or practical" can be interpreted to include both economic and technical feasibility. In light of such an interpretation, if for the length of time that the exposure is likely to occur it would not be economically feasible for an employer to utilize engineering controls to achieve the exposure levels required then it would be permissible for the employer to require the use of respirators.

Where respiratory equipment is provided and used, the equipment so provided must comply with or exceed the requirements set out in the Code for Respiratory Equipment for Lead. The employer is also required to provide training and instruction to the worker using the respirator in the proper care and use of that respirator. Where the Regulation permits the employer to require the use of respirators, it places a corresponding duty on the worker to use the respirator so provided.

Where the employer is able to establish that the circumstances in the workplace are within one of the listed exceptions and respirators are used to control the exposure of workers to lead, the employer must provide these respirators to the worker. The duty is on the employer to provide this equipment and by inference to pay for it. This duty is a more stringent one than that required by the Act which only requires that the employer ensure that protective equipment is provided. The Act is silent as to who should bear the burden of paying for the particular protective equipment in question. However, in the Lead Regulation, the inference to be drawn from the wording is that the cost of the respiratory equipment must be borne by the employer. The rationale for imposing the cost of respirators on the employer arises from the fact that the use of respirators as a means of controlling worker exposure to lead is an exception to the employer's responsibility to control that exposure by means of engineering controls, work practices or hygiene practices, the cost of which would naturally fall to the employer.

The Regulation imposes a strict duty on the employer to ensure that no worker is exposed to lead in excess of the time-weighted average exposure levels or the maximum concentration levels. However, where those levels are exceeded because the worker fails to work in compliance with the work practices and hygiene practices required by the lead control program and where the employer has taken every precaution reasonable in the circumstances to require the worker to comply with the lead control program, the employer is provided with a defence to the contravention of the Regulation.

RESPONSIBILITIES OF PHYSICIANS

Another feature of the Lead Regulation is its reliance on the medical profession. The physician has been given an important role to play in the effective implementation of a lead control program. The jurisdiction to impose any requirements on physicians flows from subsection 41(2)11. of the Act which enables the Lieutenant Governor in Council to make regulations "respecting the reporting by physicians and others of workers effected by any biological, chemical or physical agents or combination thereof". Pursuant to this power, the physician is required by the Regulation to report certain prescribed matters to specified individuals in those instances where the physician has examined a worker referred to him as required by a lead control program.

The most important reporting duty of the physician is found in section 16(1) of the Regulation. The examining physician must give an opinion to the employer and to the worker as to whether the worker is fit or because of a condition resulting from the inhalation, ingestion or absorption of lead is fit with limitations or unfit. In making this determination the physician must be governed by the provisions of the Code for Medical Surveillance for Lead. Where the opinion is that the worker is fit with limitations or unfit, the physician is required to give this opinion to the employer without disclosing to the employer the records or results of the examination or tests.

The joint health and safety committee is also the recipient of part of the report of the physician. It is those aspects of the report, the actual results of blood and urine tests taken under the lead control program, disclosure of which is specifically denied to the employer, which forms the substance of the report by the physician to the joint health and safety committee. In addition to the actual results, the physician must give an opinion to the joint health and safety committee as to the interpretation that can be placed on those results.

When the physician concludes that a worker is fit with limitations or unfit the physician must also advise the Chief Physician, Occupational Health and Medical Service of the Ministry of Labour.

Finally, the regulation purports to require the physician to maintain records of the medical examinations and clinical tests obtained as examining physician. There is a further requirement to maintain the personal exposure records of the particular worker being examined. These records must be provided to the physician by the employer. Both of these sets of records must be kept by the physician in a secure place for a prescribed period of time. The purpose for imposing this dual record keeping function on the physician is to enable the physician to properly evaluate the health of and risk to the worker and for all records in respect of a worker, personal and otherwise, to be retained together in the same place and for the same time period. However, should the physician be no longer able or willing to keep these records the Regulation requires the physician to forward the records to the Chief Physician, Occupational Health Medical Service of the Ministry of Labour or to a physician designated by the Chief Physician. It is then up to the Ministry of Labour or the designated physician to maintain the records in a secure place for the required period of time.

The requirements placed on the physician to report to the employer, the joint health and safety committee and the Chief Physician, Occupational Health Medical Service of the Ministry of Labour are to be performed regardless of whether the consent of the particular worker involved has been obtained. At first glance this might appear to conflict with the physician's duty of confidentiality to his patient. This duty arises under the Health Disciplines Act, R.S.O. 1980, c. 196, which regulates the conduct of physicians in Ontario. Under that Act a physician is liable to be disciplined where he engages in professional misconduct, a term which is defined in the regulations under the Act to include the breach of confidentiality of a patient record.

However, the definition of professional misconduct goes on to provide that there is no professional misconduct where the disclosure of the record is made "as required by law". The Lead Regulation now requires the physician by law to disclose those medical records obtained by him pursuant to the Regulation. A failure to do so would result in the physician being in contravention of the Lead Regulation. Therefore the physician is entitled to disclose a patient's record without the patient's consent in the manner and to the parties prescribed by the Lead Regulation without running the risk of being disciplined for professional misconduct.

ASSESSMENT OF THE FITNESS OF EXPOSED WORKERS

One of the mandatory requirements of the lead control program is provision for medical examinations and clinical tests of workers exposed to lead. In order to ensure worker participation in the medical aspects of the lead control program it was considered necessary to impose a positive duty on the worker to submit to the medical examinations and clinical tests required under the lead control program. The Regulation makes it clear however that these examinations and tests are to be carried out at the expense of the employer. However, the Regulation does not state whether the choosing of the examining physician is to be made by the employer exclusively, the worker exclusively, or the joint health and safety committee. This permits a degree of flexibility but, since the employer is required to pay for the examinations and tests it would appear that the employer's agreement with the physician selected would be essential. A worker who refuses to undergo the examinations or tests will not only be in breach of the Regulation but will also need to be removed from any further exposure to lead.

The Regulation specifies that the medical examinations required under the lead control program will include pre-employment and pre-placement medical examinations and periodic medical examinations and clinical tests. The contents of the medical examinations and the manner of conducting the clinical tests are detailed in two codes, the Code for the Determination of Lead in Blood and Urine and the Code for Medical Surveillance for Lead. The examining physician must conduct the examination and tests in accordance with both Codes.

In those instances where the physician advises the employer that a worker is, because of a condition resulting from the inhalation, ingestion or absorption of lead, fit with limitations or unfit the employer is required by the regulation to act accordingly. Thus, if the physician were to advise that a worker is unfit to continue to work in a lead exposure occupation then it would be incumbent upon the employer to remove that worker from such exposure.

The Regulation does not specifically address what type of compensation scheme is to be provided to workers who have been removed from exposure to lead as a result of the advice of the physician to the employer. This matter is left for the parties to determine. However, the regulation does indicate that should the worker suffer a loss of earnings as a result of such removal from exposure to lead his entitlement to compensation is limited to that compensation to which he would be entitled under the Workmen's Compensation Act. The meaningfulness of this provision is limited. A regulation made under the Occupational Health and Safety Act could not affect a worker's entitlement to compensation under the Workmen's Compensation Act. However, what the provision may do is serve as a directive to the Workmen's Compensation Board indicating that a worker removed from work pursuant to the provision of the Lead Regulation is suffering from a potentially compensable occupational illness and the Workmen's Compensation Board should treat this fact as evidence of the worker's entitlement to compensation.

CONFIDENTIALITY

The confidentiality of health information in Ontario was the subject of a recent report by Mr. Justice Krever, entitled Report of the Commission of Inquiry into the Confidentiality of Health Information. The Commission examined the issue of confidentiality in detail and addressed questions arising under occupational health and safety legislation. The Commission concluded that joint health and safety committees should be given access to the results of biological monitoring of workers exposed to toxic substances.

The Lead Regulation puts this recommendation into effect and directs the physician to disclose the results of the clinical tests to the joint health and safety committee. However, the Regulation goes on to stipulate that the results are being disclosed on a confidential basis. This creates a duty upon the members of the joint health and safety committe not to disclose the results in a form from which the identity of the particular worker could be known. This duty is reinforced by the Act, in subsection 34 (1) (d) which states that "no person shall disclose any information obtained in any medical examination, test or X-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case".

The examining physician is required by the Regulation to make certain disclosures of medical records to certain people. With the exception of these prescribed disclosures, the physician is put under a strict duty not to disclose any of the records which he is keeping, including both the records of the medical examinations and tests and the personal exposure records of the worker, to anyone other than the worker himself or the worker's physician and then only upon the request in writing of that worker. Where a worker has died, the examining physician may disclose the records of the deceased worker to either the next of kin or the personal representative of that worker, but again only upon the request in writing of either of those two parties. The personal representative of a deceased worker will be either his executor if he died testate or an administrator appointed by the court if he died intestate.

An important aspect of the Regulation, with respect to the disclosure of confidential health records is that it invalidates any authorization by the worker of the release by the physician of the records being maintained by the physician to any person other than the worker or the worker's personal physician. Thus, should a collective agreement purport to authorize on behalf of all workers the receipt by the employer of medical records such a provision will now be invalid with respect to those medical records obtained under the Lead Regulation. Similiarily, any provision in a contract of employment which requires, as a condition of employment, that the worker authorize the release to the employer of the results of any medical tests will also be invalid with respect to those results obtained under the Lead Regulation.

THE CODES AND EQUIVALENCY

The Lead Regulation itself is very brief, essentially creating a framework within which to control the exposure of a worker to lead. Within the Regulation however reference is made to four codes, the Code for Respiratory Equipment for Lead, the Code for Determination of Lead in Blood and Urine, the Code for Measuring Airborne Lead, and the Code for Medical Surveillance for Lead. These codes are quite detailed and add the necessary guidance to the affected parties in the four areas addressed by the codes. The legal authority for using a code to detail more specific requirments to the Regulation comes from subsection 41(2)16. of the Act which allows the Lieutenant Governor in Council to make regulations, "adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is adopted". Thus, to the extent that the code has been referenced in the regulation it becomes legally enforceable, insofar as it sets out mandatory requirements.

The codes themselves are a combination of mandatory requirements, recommended practices and descriptive materials.

It should be noted that the equivalency clause of the Regulation applies to the codes. Therefore, an employer may vary from the methods and procedures required in the codes if the protection afforded to the worker or the factors of accuracy and precision are equal to or exceed those provided for in the code. The onus is on the employer to show that the variation being used is equal to or greater than that required in the applicable code. The equivalency provision of the Regulation applies only to the codes and does not apply to the other aspects of the Regulation itself.

CONCLUSION

The novel and unique concepts, which form the basis of the new Lead Regulation are indicative of the general direction which will be taken in the future for the regulation of designated substances in Ontario. As this article has attempted to indicate the success of the approach taken depends in great measure upon the existence of a knowledgeable and responsible internal responsibility system functioning effectively in the workplace. Clearly there is also an educational challenge ahead for all concerned parties.

The new Lead Regulation sets the stage for the identification and control of worker exposure to lead in Ontario. Like any new regulatory initiative the Regulation will be subjected to a number of interpretations. The Regulation will not answer all of the possible questions which arise. Indeed the regulation itself may stimulate new questions The resulting dialogue should give rise to a greater appreciation by all concerned parties of the hazards to a worker inherent in exposure to lead and the need to make a concerted effort to ensure the occupational health of workers in Ontario.

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