

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU DROIT ET DE LA POLITIQUE DE L'ENVIRONNEMENT

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Comments on EBR Posting RA00E0002 - Hazardous
Waste Regulations

April 6, 2000

RN 27348

Stephen Radcliffe
Senior Project Coordinator
Waste Management Policy Branch
Ministry of the Environment
7th Floor, 135 St. Clair Ave. W.
Toronto, Ontario M4V 1P5

Re: EBR Posting RA00E0002 -- Hazardous Waste Regulations

Dear Mr. Radcliffe:

We are writing in response to the Ministry's proposed changes -- posted on the EBR Registry on February 3, 2000 -- to the province's hazardous waste management regime.

The Ministry proposes three changes to the regulation (O.Reg.347). These changes will bring Ontario's rules more into line with federal requirements under the Canadian Environmental Protection Act (CEPA), and with US rules set by the Environmental Protection Agency (EPA) under the laws of that country.

The Proposed Changes

1. The first change will replace an outdated "toxicity characteristic" test with a newer, better, test used in the US since the late 1980's and will increase the number of wastes subject to the test.

2. The second change will include a "derived-from" rule in the regulation, which will mean that substances "derived from" hazardous wastes will also be subject to hazardous waste management rules. The Ministry intends to exempt four substances from the rule only for the reason that they are exempt in the United States. The substances are:

- a) the sludge left over after lime is used to stabilize waste pickle liquor (a by-product of the iron and steel industry);
- b) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining; oil reclaimed from oil-bearing hazardous wastes from petroleum refining; used oil that is recycled and also a characteristic hazardous waste;



- c) nonwastewater residues resulting from high temperature processing of K061, K062 or F006 waste (metal processing wastes);
- d) sludge from the treatment of organic waste and wastewaters from the production of carbamates and carbamoyl oximes.

We note that each of these exemptions from the "derived-from" rule in the US arises either because the substances will be *beneficially used*, or no longer *pose enough of a threat to warrant hazardous waste regulation*. We comment on this in more detail below.

3. The third proposed change is to update Ontario's hazardous waste lists to more-or-less match the EPA's hazardous waste lists.

What These Changes Mean

These changes will increase the number of substances in the province potentially subject to hazardous waste regulation. The Institute supports the proposed changes for this reason.

Why These Changes Are Not Enough

Increasing the number of regulated substances improves only one part of the hazardous waste management regime. In order to genuinely protect human health and the environment from the dangers posed by hazardous waste, there must also be strict controls on how these substances are handled, transported, treated, stored and disposed. Without adequate controls over all these activities, the regime is not sufficient to protect human health and the environment, no matter what the number of regulated substances.

Ontario's regime is not complete. And, while emulating EPA lists is a positive step, the context in Ontario raises concerns about the emulated *exemptions*.

For example, the US exemptions from the "derived from" rule for hazardous waste fuels and oil reclaimed from oil-bearing hazardous waste -- listed above in paragraph 2, point b)-- operate in a regulatory context far stricter than Ontario's. Given the potential for heavy metal contaminants in these and other exempted wastes (such as pickle liquor sludge) we are not convinced that these substances should be exempted unless safeguards comparable to the American regime are also enacted and enforced.

This specific example illustrates our larger point: the present changes are a step in the right direction, but can only be seen as the first step on the road to a truly comprehensive hazardous waste management regime in Ontario.

More Improvements Must Be Made

A comprehensive hazardous waste management regime would include at least the following elements (which currently are not in place in Ontario):

- annual or biennial reporting requirements for hazardous waste generators and receivers
- publicly-available annual or biennial reports compiling data submitted by generators and receivers
- regulated emergency preparedness procedures for generators and receivers of hazardous waste
- regulated construction, design and operating standards for treatment and disposal facilities
- provision for full public participation at the permit application stage for all new storage, treatment and disposal facilities
- regulatory standards for waste storage and handling equipment such as drums, tanks and impoundments
- restrictions on the land disposal of untreated hazardous wastes
- regulated operating and emission standards for facilities burning hazardous waste for destruction or energy/materials recovery
- financial assurance requirements calculated on the estimated most-expensive closure cost of a facility.

We believe that the absence of requirements such as these (all of which are in place in the United States) have contributed to the four-fold increase in hazardous waste imports from the US to Ontario since 1994.

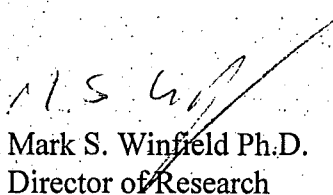
In December, 1999, we asked the Ministry to review the hazardous waste management regime in this province. We believe the proposed changes take some steps in the right direction in addressing the concerns we have raised. But, to genuinely 'harmonize' with the regime in the United States, Ontario has several steps yet to take.

We would be pleased to respond to any questions that you may have regarding our comments on this proposal.

Yours sincerely



Anne Mitchell
Executive Director



Mark S. Winfield Ph.D.
Director of Research

cc: Gordon Miller, Environmental Commissioner for Ontario