



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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R.M. Götts, Director
Waste Management Branch
Ministry of the Environment
135 St. Clair Avenue West
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CELA PUBLICATIONS:
Canadian Environmental Law Association; Timberg,
Robert K.
CELA Publication no. 120a; Re: mobile PCB destruction
facilities

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Dear Mr. Götts:

RE: Mobile PCB Destruction Facilities

We are writing in reply to the Minister's letter of 18 February 1983 asking for our comments on the Ministry's proposals for the regulation of mobile PCB destruction facilities. We commend the Ministry for allowing all interested parties the opportunity to comment on the proposals, and trust that we and all others will be given a similar opportunity in the future to comment on other proposed regulatory schemes.

Various methods have been proposed in the past for the destruction of PCB liquid wastes. Many have involved the use of large-scale destruction facilities such as the cement kilns of the St. Lawrence Cement Company in Mississauga. The present method, on the other hand, proposes that the wastes be destroyed on a community by community basis using mobile destruction facilities.

We understand that PCB liquid wastes are presently found in approximately 180 communities across Ontario, with about 75% of the wastes being concentrated in 13 communities. Under present legislation, a person intending to establish a mobile destruction facility in a particular community must comply with the procedure set out in Part V of the Environmental Protection Act (EPA) which includes a public hearing before the Environmental Assessment Board (EAB). The procedure would be repeated each time the destruction facility is moved to a new location.

We have considered the 5 stage procedure proposed by the Ministry and have reviewed carefully the guidelines document issued on 18 February. ~~The proposed procedure includes the incorporation of the technical aspects of the guidelines into a draft regulation under the EPA (the regulation would also release the Ministry from the~~

requirement under Part V of holding public hearings each time the facility is moved to a new location) and a hearing by the EAB on the draft regulation, guidelines and the general regulatory strategy.

While we would be agreeable to a procedure which would obviate the need for a public hearing each time a mobile destruction facility is moved to a new location, we believe that the proposed procedure must be strengthened considerably if it is to result in a decision which will be acceptable to the people of Ontario. Of particular concern is the fact that the proposed Ministry procedure does not allow for a consideration by the EAB of the various types of mobile facilities. The proposed procedure is intended to lead to specific performance criteria which a facility will be expected to meet before approval for its use is given. However, whether a particular facility can meet the criteria is not a matter which will be considered under the proposed procedure. It should be noted by way of comparison that even the existing Part V procedure under the EPA allows for a consideration and analysis of a technology used in a waste disposal operation.

We believe that the Ministry's proposed procedure can be strengthened immeasurably by subjecting each of the various types of destruction technologies to the full Environmental Assessment Act (EAA) process. In other words, before a facility is approved for use in an Ontario community, it should be dealt with under the EAA. If more than one proponent is forthcoming and seeking approval for its particular facility, we can see the possibility of the EAB holding a joint hearing on the facilities, thereby saving time and expense and, at the same time, resulting in a better overall decision.

The EAA, as noted at page 4 of the guidelines document, has a much broader definition of environment than that given in the EPA. The EAA process will deal with a particular type of facility and its impact on the environment, a matter which as noted above would not be dealt with under the Ministry's proposed procedure. As well, the process would consider alternatives to the undertaking (the undertaking could be, for example, the disposal of PCB liquid wastes in Ontario using mobile destruction facilities) and alternative methods of carrying out the undertaking. This would include a consideration of disposal using a stationary source such as a cement kiln as opposed to a mobile facility, and disposal using other types of mobile facilities. The proponent of the facility would also be expected to provide an operational plan for using its facility to dispose of the wastes in the 180 Ontario communities. The plan would include, among other things, a listing of the communities to which the proponent intends to take its facility (this will provide notice to those communities), the sequence in which the communities will be visited and, if the list does not include all of the approximately 180 communities which presently store PCBs, a description of the means by which the PCB wastes will be transported to the disposal location. Since there will not be a public hearing at each location at which the mobile facility is to be used, ~~it would be appropriate for the Ministry to cover the costs (for example, travel and accommodation costs) of those who travel from their community to participate in the hearing.~~

The Ministry procedure is to establish specific performance criteria and then decide later whether a particular facility meets the criteria. While we certainly agree that performance criteria must be established, we believe that it will be possible to do so in the context of a full EAA hearing on the facility.

We have discussed with the owners or licensees of many of the mobile destruction facilities when their facilities might be ready for use in Ontario. It is clear from our discussions that only one, and at the most two, of the technologies may be available in the near future.

The remaining technologies will not be available for at least one year, in one case, and for longer periods of time in other cases. It is entirely possible that some of the facilities may never become available. Thus, with one and perhaps two technologies soon being ready for use, it is clear that the EAA process can be immediately invoked.

The Minister has stated in both his 3 February and 18 February letters that mobile destruction facilities may be acceptable to citizens who would otherwise be opposed to the establishment of large-scale permanent destruction facilities within their community. Whether this is so will depend to a large extent on the procedure which is established to regulate the mobile facilities, and the best procedure, in our opinion, is one which uses the EAA.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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Counsel

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