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April 13, 2013

Mr. Bruce Gillies
Air Pollution Control Engineer
Ministry of the Environment
Environmental Sciences and Standards Division
Standards Development Branch
40 St. Clair Avenue West - Floor 7
Toronto ON M4V 1M2

RE: EBR Registry No. 011-8107 – Pulp & Paper Industry Standard

Dear Mr. Gillies,

Please accept this submission as formal input from the Canadian Environmental Law Association, EcoJustice, and Environment Hamilton regarding the draft **Pulp and Paper Industry Standard under the Local Air Quality Regulation (O. Reg. 419/05: Air Pollution – Local Air Quality)**.

We would like to preface our detailed comments by stating that we continue to have a fundamental concern with the proposed approach to using technical standards for large industrial facilities in Ontario. Our collective understanding was that, when proposed as another ‘compliance option’, technical standards were being introduced as a way for small to medium-sized enterprises (SMEs) with similar emissions issues to be able to work together towards compliance with the provincial air standards. We were told that this approach was justified because the cost to SMEs to pursue a site specific standard was too great a burden and another option needed to be created.

Our concern now is that we are evolving beyond what we were led to believe would be the scope of the application of technical standards. The draft Pulp & Paper Industry Standard serves as a prime illustrative example of our fears becoming reality. The standard applies to a large sector and it has also been written in a manner that it will encompass all contaminants potentially released by this sector, not just the contaminants for which facilities are unable to meet provincial air quality standards. This approach begs the question: “What is the point of developing air standards in Ontario that are protective of human health and the environment when we could be going down a path where these standards will no longer apply to the majority – and some of the

most problematic - industrial facilities in the province?” This concern was raised back in 2004 when the MOE was seeking public comment on three position papers related to the proposed new Local Air Quality Regulation. In that submission, stakeholders including CELA underscored their concern to the MOE that exceptions to compliance with the air standards must not become the norm (See Appendix A for full text of 2004 submission).

One reason we have been given for the growing number of both industry and equipment-based technical standards for larger industries is that a technical standard enables the inclusion of more prescriptive operation and maintenance requirements at a given facility. However, it is important to recognize that the technical standard approach removes important public participation and legal accountability functions provided by the provincial *Environmental Bill of Rights* (EBR). In contrast, incorporating such prescriptive requirements into an Environmental Compliance Approval (ECA) would preserve the public’s ability to exercise comment and third party leave to appeal rights under the provincial *Environmental Bill of Rights*. The case of the industry standard for coke ovens and associated by-product plants offers a prime example of a scenario where this approach is clearly viable. The operation and maintenance requirements set out in the US EPA equivalent (Method 303) are universal requirements that are applied across the iron & steel sector in the US. Therefore, the prescriptive requirements being imposed to ensure proper coke oven operation and maintenance will be the same whether it is a coke oven in Hamilton or in Sault Ste Marie. Another significant benefit of incorporating these prescriptive requirements into an ECA is enforceability; unlike a technical standard where specific steps will need to be taken to set out penalties for non-conformity, every element of an operational protocol like the US EPA’s Method 303 (Determination of Visible Emissions from By-Product Coke Oven Batteries) would become an enforceable condition under an ECA. As environmental non-governmental organizations, we are very concerned about the public rights lost under the EBR when a technical standard route is pursued.

We also have substantial concerns about the lack of openness and transparency where technical standards and public reporting are concerned. Unlike Emission Summary Dispersion Models (ESDMs), there are no requirements under a technical standard to report to the public on any problems or progress with implementation. We have put forward suggestions to MOE staff on how this might effectively be done within the context of a technical standard. We have pointed to the approach used by the US Environmental Protection Agency (EPA) under the Maximum Achievable Control Technology (MACT) approach.

The US EPA has a comprehensive system in place to ensure high levels of openness and transparency. This is achieved through the Agency’s Enforcement & Compliance History On-Line or ECHO system. As explained on the ECHO website, the system “... provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. The site allows users to find inspection, violation, enforcement action, informal enforcement action, and penalty information about facilities for the past three years. Facilities regulated under the following environmental statutes are included: Clean Air Act (CAA) Stationary Source Program, Clean Water Act (CWA) National Pollutant Elimination Discharge System (NPDES), Resource Conservation and Recovery Act (RCRA), and Safe Drinking Water Act (SDWA)” (See http://www.epa-echo.gov/echo/about_site.html). The site also provides public access to ECHO reports which “... provide a snapshot of a facility’s environmental record, showing dates and types of violations, as well as the state or federal government’s response. ECHO reports also contain demographic information from the National Census. EPA, state and local environmental agencies, and the facilities collect/report the data that are submitted to EPA

databases. For more information on the data included, please see the [About the Data](http://www.epa-echo.gov/echo/index.html) page” (See <http://www.epa-echo.gov/echo/index.html>).

Finally, the US EPA has in place a statutory requirement for the review of its MACT technical standards in the US Clean Air Act under section 112 c 6. The requirement is that a review be undertaken no less often than every eight years:.

6) Review and revision

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

We believe a similar statutory requirement for review of technical standards is necessary in Ontario. Otherwise, there is no guarantee that these standards will be routinely reviewed and updated.

In conclusion, while we support the notion of clearer, more readily implemented requirements for technical upgrades, and more effective operation and maintenance of industrial facilities in Ontario, we have significant concerns about the proposed use of technical standards as the method for realizing these goals at large industrial facilities in Ontario. Instead, as we have pointed out, we believe that incorporating the prescriptive requirements being contemplated for technical standards into ECAs is a more viable option that will enable the MOE to achieve greater openness and transparency while also ensuring that industrial facilities in the province continue to make progress towards meeting air standards set to be protective of human health and the environment.

We thank you for this opportunity to comment on the draft Technical Standard for the Pulp & Paper Sector.

Yours truly,



Lynda Lukasik, PhD – *on behalf of*
Executive Director

Dr. Elaine McDonald – Senior Scientist, Ecojustice
& Ms. Ramani Nadarajah, Counsel – CELA Publication No. 894

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cc The Honourable Jim Bradley – Ontario Minister of the Environment
Gord Miller – Environmental Commissioner of Ontario

Position of the Canadian Environmental Law Association, Citizens Environment Alliance, International Institute of Concern for Public Health, Occupational Health Clinic for Ontario Workers, Pembina Institute for Appropriate Development and Toronto Environmental Alliance on new air toxic standards for Ontario – October 18, 2004.

October 18, 2004

Cathy Grant
Standards Development Branch
Ontario Ministry of the Environment
135 St. Clair Avenue, 4th Floor
Toronto, Ontario, M4V-1P5

Dear Ms. Grant:

I am writing to you on behalf of the Canadian Environmental Law Association, the Citizens Environment Alliance of Southwestern Ontario, the International Institute of Concern for Public Health, the Occupational Health Clinic for Ontario Workers, the Pembina Institute for Appropriate Development and the Toronto Environmental Alliance.

We are pleased to respond to the three position papers released by the Ministry of the Environment on the regulation of Local Air Quality:

Updating Ontario's Regulatory Framework for Local Air Quality – A Position Paper;
Proposed Guideline for the Implementation of Air Standards in Ontario – A Risk-Based Decision Making Process; and
Updating Ontario's Air Dispersion Models – A Discussion Paper.

We firmly believe that our primary goal as a society must be to prevent toxic pollution from being produced and released in the first place, rather than simply to better manage it once it is created. This will require adopting a precautionary approach that is based on pollution prevention, with a goal of zero discharge for toxic substances.

Ontario's current regulatory framework for protecting human health from the impacts of toxics released into the air from point sources is based on a Point of Impingement approach that is outdated and in need of reform.

The need for immediate improvements is clear. The list of substances for which new or updated standards are proposed include some of the most toxic substances emitted to Ontario's air – several of which are suspected or associated with four or more health effects of concern (see attached). Most of these substances are also released in large quantities, as evidenced by the fact that most are on Health Canada's draft list of substances for which there is the greatest potential for exposure (GPE) in Canada.

The health effects and exposure potential of these very hazardous substances provides a dramatic illustration of the broader points being made in this submission and we urge the Ministry to accelerate its assessment of health-based standards for other substances.

The three position papers put forward by the Ministry of Environment make proposals on how to improve the existing framework. We support the general thrust of these proposals, if the final version includes the recommended improvements discussed below, as improvements over the status quo. We would also, however, like to identify other changes that are required with regards to the regulation of air toxics, but could be dealt with outside of Regulation 346.

We strongly support the update of the thirty year old air dispersion modelling system to assess compliance with standards, as the new models developed by the U.S. EPA more accurately predict exposure levels at ground level.

We also support the shift to effects-based air standards, defined as "values that are based on health and environmental impacts without consideration of technology or economic issues", rather than incorporating economic criteria in the standard itself.

We also support the increased transparency with regard to how standards are set and how exemptions will be granted, although we suggest a number of improvements below to increase transparency and fairness in how the new standards are applied.

Off-setting these tougher health-based standards, however, is a 'risk-based approach' to implementation and enforcement which means that facilities will be able to seek temporary exemptions from these tougher standards if compliance would cause unacceptable levels of economic hardship.

Care must be taken to ensure that the beneficial effect of the higher standards isn't undercut by the implementation of this risk-based approach. We are concerned that the risk-based approach, in its current form, is more concerned with the avoidance of economic risk to facilities than risks to human health and effectively puts economic values ahead of health and environmental values.

Furthermore, exemptions cannot be the norm: the rules must discourage automatic applications for exemptions that would overwhelm the system. This should be done by making the application process for interim limits transparent, sufficiently rigorous to discourage frivolous applications, and guided by tightly defined criteria that ensure consistency and discourage abuse. To this end, we make the following recommendations.

Recommendations:

- 1) To prevent exemptions from becoming the norm and to ensure a level playing field in the risk assessment process for those facilities seeking exemptions, the government should place the burden of proof on polluters seeking exemptions from the new standards. This would include ensuring that facilities seeking exemptions from the health-based standards:
 - Publish notices in newspapers of general circulation in host communities that the facility is requesting an exemption from standards via a 'risk-based' approach, in a format approved by the Ministry and developed through public consultation.
 - Make all materials related to the request publicly available and easily accessible, in line with the principle of community Right-to-Know, in a format approved by the Ministry and including an easy-to-use summary.

- Make appropriate intervenor funding available to local public health unit and/or community organizations to hire experts of their choice to review facility proposals.
 - Be required to demonstrate how they have incorporated comments from the public consultation into their proposal and risk assessments.
 - Be granted a maximum 5-year, one-time exemption, with annual reports on progress made available to the public.
 - If granted an exemption, the facility should be considered to be out of compliance with the requirements of Regulation 346. Their risk-based plan to emit at a level above the standard (but below the 'intolerable' region) should be incorporated into control orders, rather than take the form of Certificate of Approval amendments.
- 2) Point of Impingement standards look at the effects on the surrounding air of a single source, but if there is more than one source in the area then local communities may be exposed to much higher levels than anticipated. Therefore, the proposal should be modified to provide greater balance: if standards can go down due to the economic situation of a particular firm (as proposed), then they must also be able to go up to take into account situations where there are higher human health and environmental risks due to high cumulative loadings from multiple sources in a given area.
- 3) The proposal also needs much more specific criteria for exemptions, including:
- Risk Criteria: There needs to be a much stronger floor in terms of acceptable health risks. Currently, the proposal establishes the level at which the concentrations of a toxic substance enters the 'intolerable' region as a one-in-ten thousand risk of cancer, which is 100 times less stringent than the health-based standard as recommended by Cancer Care Ontario. In their May 2003 report Targeting Cancer: An action plan for cancer prevention and detection, they state: "No Ontarian will be exposed to ambient levels of environmental carcinogens from all sources above the minimum risk level of one in a million excess cancer risk for candidate substances."
 - Technological criteria: There are some elements of a pollution prevention approach in the new rules, although the language is framed as 'should' rather than 'must', i.e. "While End-of-Pipe options are essential for many industries and processes, preference should always be given to Cleaner Production options. Efficiency, resource conservation, raw material substitution, process modification, product substitution, and incorporating environmental concerns into designing and delivering services are valued higher than End-Of-Pipe controls." We believe that any firm seeking an exemption must be able to demonstrate that no technology exists (including process change and product redesign) that would allow a facility to meet the required emission standard.
 - Economic criteria: The firm seeking an exemption must demonstrate that the facility is not viable if compelled to adopt prevention/ control technology. In the case of technological and economic criteria, the risk/health criteria must override. If there are unacceptable health/environmental risks and no technologically or economically viable options for the facility, then the facility should reduce production or close.
- 4) The province must clarify that facilities must take immediate action (including reducing production) if their emissions are in the 'Intolerable Region.' Currently, the guidelines state that "Facilities will not be allowed to operate at these levels for any extended period of time,"

Position of the Canadian Environmental Law Association, Citizens Environment Alliance, International Institute of Concern for Public Health, Occupational Health Clinic for Ontario Workers, Pembina Institute for Appropriate Development and Toronto Environmental Alliance on new air toxic standards for Ontario – October 18, 2004.

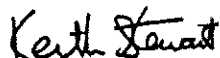
which begs the question of what constitutes an "extended period" and thus is open to abuse.

- 5) The Ministry of Environment should prepare annual reports on compliance with these regulations and maintain an on-line list of any requests for exemptions.
- 6) The Ministry of Environment should prepare a schedule for establishing health and environmental effects-based air standards for substances beyond the 29 substances included in the proposal.

With these improvements, the new standards will represent a significant improvement in the way that Regulation 346 is implemented.

Yet no single regulatory tool can serve all purposes. For example, a rate-based approach such as Point of Impingement standards is inappropriate for the regulation of persistent and bio-accumulative substances, where the concern is for total loading. Therefore we urge the Minister to quickly introduce measures to move Ontario away from point of impingement standards and towards a regulatory framework that fully incorporates pollution prevention, zero discharge and the precautionary principle, with health-based standards that look at total ecosystem loading.

Sincerely,



Keith Stewart, Ph.D.
Toronto Environmental Alliance

On behalf of:

Canadian Environmental Law Association,
Citizens Environmental Alliance
International Institute of Concern for Public Health,
Occupational Health Clinic for Ontario Workers
Pembina Institute for Appropriate Development
Toronto Environmental Alliance

cc Leona Dombrowsky, Ontario Minister of the Environment
Gord Miller, Environmental Commissioner of Ontario
Stephane Dion, Federal Minister of the Environment
Toby Barrett, Conservative Environment Critic
Marilyn Churley, NDP Environment Critic
Sheela Basur, Chief Medical Officer of Health
Elizabeth Leach, Executive Director of the Ontario Public Health Association

Position of the Canadian Environmental Law Association, Citizens Environment Alliance, International Institute of Concern for Public Health, Occupational Health Clinic for Ontario Workers, Pembina Institute for Appropriate Development and Toronto Environmental Alliance on new air toxic standards for Ontario
 - October 18, 2004.

Health Effects Suspected or Associated with Substances Proposed for New or Updated Standards¹

CASH or NA group allocation	Substance or Group of Substances	On nDSL	On DSL and GPE list	Suspected Carcinogen	Recognized Developmental Toxin	Suspected Developmental Toxin	Suspected Endocrine Toxin	Suspected Immunotoxin	Suspected Neurotoxin	Recognized Reproductive Toxin	Suspected Reproductive Toxin	Suspected Respiratory Toxin	Thyroid Hormone interference
NA - 02	INORGANIC ARSENIC COMPOUNDS			X	X	X			X			X	
95-47-6	O-XYLENE		X			X		X	X		X	X	
79-01-6	TRICHLOROETHYLENE		X	X		X			X		X	X	
75-09-2	DICHLOROMETHANE		X	X			X		X		X	X	
75-05-8	ACETONITRILE		X			X			X		X	X	
7440-47-3	CHROMIUM (CR6+)		X	X				X			X	X	
7440-02-0	NICKEL		X	X		X		X	X		X	X	
NA - 11	NICKEL COMPOUNDS					X		X			X		
624-83-9	METHYL ISOCYANATE	X				X		X			X	X	
1330-20-7	XYLENE (MIXED ISOMERS)		X			X		X	X		X	X	
127-18-4	TETRACHLOROETHYLENE		X	X		X			X		X	X	
117-81-7	BIS(2-ETHYLHEXYL) PHTHALATE		X	X		X	X				X	X	
108-95-2	PHENOL		X			X			X		X	X	X
108-38-3	M-XYLENE		X			X		X	X			X	
67-64-1	ACETONE		X						X			X	
7440-43-9	CADMIUM		X	X	X		X	X	X	X		X	
110-82-7	CYCLOHEXANE		X						X				
117-84-0	DI-N-OCTYL PHTHALATE		X				X						
822-06-0	HEXAMETHYLENE-1,6-DIISOCYANATE		X					X				X	
110-54-3	N-HEXANE		X			X			X		X	X	
74-90-8	HYDROGEN CYANIDE		X				X		X		X	X	
584-84-9	TOLUENE-2,4-DIISOCYANATE		X	X				X	X			X	
91-09-7	TOLUENE-2,6-DIISOCYANATE		X	X				X				X	

¹ Adapted from Kathleen Cooper, Toxic Substances - Focus on Children - Developing a Canadian List of Substances of Concern to Children (Canadian Environmental Law Association and Pollution Probe, 2004).