



April 15, 2002

Paula Caldwell St-Onge
Director General
National Programs Directorate
Environment Canada
Ottawa, Ontario
K1A 0H3

Re: Drafting Instructions for Emergency Planning Regulations under CEPA s.200

Dear Ms. St.-Onge

I am writing to you in response to your letter of April 9, 2002 regarding the proposed Environmental Emergency Regulations under s.200 of CEPA.

The Pembina Institute strongly supports the Department's efforts to operationalize these provisions of CEPA, a step which, as we have indicated in our previous correspondence with the Minister of the Environment on this matter, is long overdue. We have the following comments on the proposed drafting instructions for the regulations.

The Substance List

The Department continues to propose emergency planning on the basis of the CRAIM list.

The Institute continues to feel very strongly that the initial substance list for emergency planning needs to reflect Canadian policy priorities more effectively. This is particularly true in light of the comments in the Commissioner for Environment and Sustainable Development's 1999 report on toxics substances management, highlighting the need to make connections among different federal programs dealing with substances declared toxic for the purposes of the Canadian Environmental Protection Act (CEPA).

In particular, we believe that all current CEPA toxics and substances proposed by the Ministers for addition to the List of Toxic Substances (CEPA Schedule 1) should be covered in the initial emergency planning regulation. The ARET substances should also be considered in this context. Planning should be triggered on the basis of standard thresholds for manufacturing, processing, storage or otherwise using these substances, in a manner similar to the approach taken under the NPRI, including lower alternative thresholds for micropollutants, rather than applying separate

thresholds for each substance. Common thresholds with NPRI would also likely be of assistance to facilities, manufacturing, processing, using or storing substances, as they would know that if they are NPRI reporters would likely be subject to emergency planning requirements as well, and be able to undertake reporting and planning simultaneously.

A great deal of work regarding the status of CEPA toxic and ARET substances with respect to listing on the Domestic Substances List, and their manufacturing, processing and use in Canada has already been done by Environment Canada for NPRI purposes and could be easily employed for emergency planning purposes.

The Institute would see the addition of pesticides to the E2 list as an early priority for the next steps in the application of emergency planning requirements given the significance of the pesticide stocks in agricultural supply stores in rural areas. In general the department should be seeking to established a single integrated, comprehensive source of information on the presence of hazardous materials at facilities, including commercial chemicals, hazardous by-products, pesticides, and radionuclides, that can be accessed by emergency response agencies immediately in emergency situations, similar to the approach that is now being taken with the gathering of pollution data through NPRI.

Notice Contents

The Institute strongly supports the on-site storage reporting proposed as part of the first declaration. We believe that it is essential that emergency response agency and public have access to this information through the CEPA registry. Emergency Response agencies, in particular, must have access to information on all substances present at a facility, regardless of business confidentiality or security concerns. Business confidentiality claims should be dealt with in the same way that they are addressed under the NPRI.

Annual updates of on-site storage information should be required in addition to the proposed 10% change updating rule. The approach proposed in the regulation is similar to that employed by the Ontario Ministry of the Environment in its original hazardous waste generator system, adopted in 1985. This ultimately lead to the deterioration of the reliability of the data system to a point where it was virtually useless, as facilities did not provide updated information in a timely manner. Ontario has recently introduced requirements for annual hazardous waste generator registration to address this problem.

Initial notices should also be required to include information on facility accident history over the preceding five years, and reports of in-year accidents should be included in annual updates of facility information. Accident history information is critical for planning enforcement and emergency response activities by all levels of government. Furthermore, Justice O'Connor highlighted the importance of the building complete and accessible pictures of facility history by regulatory agencies in his recent report on the Walkerton tragedy.

Plan Contents

In general, the department should be as specific as possible in terms of the content of plans, as it may be very difficult to add new requirements once the initial regulations are adopted. It is essential that plans address the issue of the role of local emergency response agencies, and that plans be provided to these agencies.

Submission and Access to Plans

It is the Institute's position that plans should be required to be submitted to Environment Canada and made available to local emergency response agencies. We know of no constitutional or statutory reason why facilities could not be required to provide copies of their plans to local emergency response agencies, or to provide access to them on request. Access to plans by local agencies is essential to the effectiveness of the emergency-planning regime proposed by Environment Canada.

Provision should also be made for public access to plans or, at a minimum, plan summaries, as is the case under the provisions of *Emergency Planning and Community Right to Know Act* and the *Clean Air Act* in the United States.

Security Issues

With respect to security issues, we note that on-site storage information has been available through EPCRA in the United States for nearly 15 years, and to the best of our knowledge there have been no incidents of this information being used for criminal or other inappropriate purposes. At the same time public availability of this information has caused host communities to pressure facilities to reduce the amounts of hazardous substances that they store on-site, thereby further reducing the possibility of adverse incidents.

I would be pleased to discuss our comments on this matter with you or your staff.

Yours sincerely,

Mark S. Winfield, Ph.D.
Director, Environmental Governance

Cc: Barry Stemshorn, Assistant Deputy Minister, Environmental Protection Service.
Aziz Hazra, Chief, Emergencies Prevention Division.