



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT



April 18, 2012

The Honourable Jim Bradley
Minister of the Environment
77 Wellesley Street West
11th Floor, Ferguson Block
Toronto ON
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Dear Minister Bradley:

Re: Exemption of Transportation of Hazardous Waste from Licensing Requirements

We are writing to you to express our concerns regarding the Ministry of Environment's proposal to exclude the transportation of hazardous waste from the requirement to obtain an Environmental Compliance Approval (ECA). The Ministry is instead proposing to simply require that this activity be registered under the newly established Environmental Activity and Sector Registry (EASR). Consequently, the Ministry's proposal, if implemented, will mean that there will no longer be a detailed review and assessment before carriers of hazardous waste are allowed to commence operation in Ontario.

We wrote to you last month and enclosed a brief with our preliminary comments regarding the proposal to exempt the transportation of hazardous waste, ready-mix concrete and concrete product manufacturing from the ECA process. The transportation of hazardous waste, however, raises a unique set of problems and therefore we have confined our comments in this letter to this aspect of the Ministry's proposal.

In 1985, under your leadership, Ontario expanded the manifesting and waybilling requirements to include solid hazardous waste as well as liquid industrial wastes. Generators of hazardous waste were required to register with the Ministry and to provide information on the types and amounts of waste they produced, collected, handled and stored. These regulatory amendments placed Ontario at the forefront of hazardous waste management amongst North American jurisdictions.

The Ministry's proposal, however, threatens to weaken the regulatory framework governing hazardous waste management in Ontario and significantly increases risk to the environment, human health and safety. Moreover, the proposal is fundamentally at odds with the evaluative criteria established by the Ministry for the selection of activities and sectors for inclusion under the EASR. The poor compliance rate by members of the hazardous waste industry is another factor which makes it unsuitable for inclusion in the EASR regime. The proposal is also at odds with the preventative approach for managing toxic substances. Furthermore, the proposal appears to contravene Canada's obligations under the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (Basel Convention), the international treaty governing the domestic and transboundary movement and management of hazardous waste.

FAILURE TO MEET EVALUATIVE CRITERIA

Two years ago, when the Ministry sought to introduce the EASR regime in Ontario, it indicated that it would determine the suitability of activities and sectors based on an objective analysis of several factors. These included the risk posed by the activity to the environment, human health and safety. According to the Ministry, EASR would apply to activities that were deemed to be of "lower risk" to the environment and human health.

The transportation of hazardous waste is an activity which by its very definition poses substantial risk. Some of the types of waste that would be subject to the EASR process, include hazardous industrial waste, ignitable waste, corrosive waste, severely toxic waste and leachate toxic waste. The hazardous waste stream includes substances that are classified as "toxic substances" under the *Canadian Environmental Protection Act*, and some metals, such as arsenic and chromium, are also listed as human carcinogens by the International Agency for the Research on Cancer. The seriousness of the environmental impacts from exposure to hazardous waste is reflected in the significantly higher penalties for these types of offences under the *Environmental Protection Act*, which was first introduced during your previous tenure as Environment Minister. The transportation of hazardous waste in Ontario, therefore, does not meet the Ministry's evaluative criteria as an activity which is of "lower-risk" to the environment and human health.

POOR COMPLIANCE RATE

The Ministry indicated that historical compliance rates would be considered in its determinations of the suitability of activities and sectors for EASR. In this regard, the hazardous waste industry has had a poor compliance rate with Ontario's environmental laws.

There have been at least six annual reports since 1991 by Ontario's Provincial Auditor which identified systemic non-compliance with regulatory requirements by members of this

industry. According to the Provincial Auditor, half of the carriers' applications for a certificate of approval were missing the required documentation such as a detailed operational plans and proof of specialized driver training. The Provincial Auditor also noted discrepancies in the amount of hazardous waste shipped from that received and that carriers were transporting hazardous waste without the requisite approval from the Ministry. The Provincial Auditor found that that there was a "significant level of repeat non-compliance" within the hazardous waste industry.

The hazardous waste industry has been the subject of investigations and prosecutions by the Ministry's Investigation and Enforcement Branch and a number of these involved serious violations of Ontario's environmental laws.

At the federal level, Environment Canada environmental enforcement officers have undertaken enforcement action to quell the illegal transportation of hazardous waste. In 2009, to mark the 20th anniversary of the Basel Convention, Environment Canada's environment enforcement officers joined forces with the U.S Environmental Protection Agency, state and provincial agencies and customs authorities to target vehicles transporting hazardous waste. The operation, which focused on major transportation routes in Ontario, resulted in 350 vehicles checked, 140 violations and eight investigations launched.

The hazardous waste industry's poor compliance rate as well as the significant number of repeat offenders makes it an inappropriate candidate for inclusion under the EASR regime.

FAILURE TO ADOPT PREVENTATIVE APPROACH

The EASR regime only requires applicants to register their activity with the Ministry but would not provide for a careful review of applications and supporting documents before a carrier is allowed to commence operation in Ontario.

The Ministry's proposal indicates that it will be undertaking audits of registrations to ensure compliance with regulatory requirements. However, this approach does not provide the level of regulatory oversight that exists under a licensing system whereby Ministry staff carefully review and assess individual applications to ensure the safe transportation of hazardous waste in the province. Unlike the EASR regime, a licensing system allows the regulator to take preventative measures to weed out unsuitable candidates, preventing them from commencing operations in the first place. Given the obvious risks associated with the transportation of hazardous waste and the poor compliance rates in this industry, it is important that the Ministry undertake a preventative approach by requiring that transportation of hazardous waste be subject to licensing requirement through an ECA.

PROPOSAL CONTRAVENES THE BASEL CONVENTION

The Ministry's proposal also appears to contravene the provisions in the Basel Convention which imposes obligations on parties to ensure that hazardous waste is managed and disposed in an environmentally sound manner. Canada participated in the development of the Convention and was one of the original signatories on March 22, 1989. Subsequently, Canada ratified the Convention and therefore is obligated to meet the requirements governing the domestic and transboundary movement and management of hazardous waste.

Article 4(7)(a) of the Convention states that each Party shall "prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or such other wastes unless such persons are authorized or allowed to perform such types of operations" (emphasis added). The term "authorized" clearly contemplates that a permit or licensing system will be required for persons transporting hazardous waste. By proposing to remove the transportation of hazardous waste from the requirement to obtain an ECA, the Ministry's proposal appears to be a contravention of Canada's international commitments under the Basel Convention.

In conclusion, in view of the foregoing reasons we recommend that the Ministry not include the transportation of hazardous waste under the EASR regime. We would be pleased to meet with you or members of your staff to discuss this matter further and to respond to any questions or comments you may have with respect to this letter.

Yours truly,



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