

October 28, 2005

By Mail and E-mail

The Honourable Stéphane Dion, P.C., M.P.
Minister of Environment Canada
10 Wellington Street
Gatineau, QC K1A 0H3

Dear Minister Dion:

RE: Green House Gases (GHG) and Canada Gazette Notice Part I September 3rd, 2005 - Order Adding Toxic Substances to Schedule 1 to the Canadian Environmental Protection Act, 1999

On September 13th, CCPA wrote to you providing our comments on the Notice of Intent to Regulate Greenhouse Gas Emissions by Large Final Emitters. In that letter CCPA also addressed the question of adding GHGs to Schedule 1 of CEPA as is proposed in the above sited Canada Gazette Notice. We stated:

CCPA still does not understand the approach that the government is taking in regulating greenhouse gases under CEPA. To help Canada achieve our climate change goals, legislation needs to work in as simple and straightforward way as possible. There is a solution under CEPA — the International Air Pollution provisions that were designed for and intended to address situations such as climate change. However, these provisions are not being used and we have never had a satisfactory answer as to why. Insisting instead on using the very complex and ill-fitting toxics provisions in CEPA has resulted in creating one unnecessary problem after another, including those listed below.

- It would be inappropriate for CO₂ to be labeled as toxic under CEPA. Just as Cabinet recognized that it would be inappropriate and confusing to the public to label road salt as toxic, the same conclusion should be reached for CO₂.
- We do not believe that there is a scientific basis for assessing CO₂ as toxic under CEPA. If this is to be done, we believe it should be on the basis of a joint recommendation to Cabinet based on both a health and environmental effects assessment by both the Minister of Environment and the Minister of Health as co-administrators of the CEPA legislation, and not on an environment assessment alone. Climate change is not just an environmental issue.
- The attempt to remove the “toxic” label from CEPA in the climate change provisions of the Budget Bill could have been a step in the right direction, except that the Department, for some unknown reason, proposed the change so that the term “toxic” was only partially removed, which affected the virtual elimination provisions. These provisions have nothing to do with climate change. However, the approach would have, at best, created uncertainty about the virtual elimination provisions and at worst changed these from risk based to hazard based provisions. The Department’s refusal to make the simple correction that was needed to fix this problem lead CCPA to oppose the change the government wanted in the Parliamentary Committee.



The Honourable Stéphane Dion, P.C., M.P.

October 28, 2005

Page 2

In writing to you again on this issue on the basis of the September 3rd Canada Gazette Notice, CCPA continues to be very concerned about managing climate change under Part 5 of CEPA (*CO2 is a staple of life, not a toxic substance*) and we recommend that, although development of framework and sectoral climate change regulations should continue, greenhouse gasses (GHGs) should not be declared toxic under Part 5 and placed on Schedule 1 until Parliament has had a chance to determine if there is a more appropriate regulatory underpinning under CEPA – including consideration of amendments. This should be able to be done through the CEPA review, which is supposed to have started by now, in time for the regulations to come into force in 2008 – more than 2 years from now.

We also note that in the September 3rd Gazette Notice in the section on “Alternatives”, the possibility of using the sections in CEPA governing international air pollution (Part 7, Division 6, Sections 166 – 174), which were designed for seeing that international agreements such as the Kyoto Protocol are implemented, has not even been analyzed as an alternative to the proposal to use Part 5 of CEPA.

We have doubts that the information presented in the Gazette Notice, based on the third party assessment report of the IPCC, leads to a credible conclusion that GHGs constitute or may constitute a danger to the environment upon which life depends in terms of the legal test that is required under CEPA. Therefore, in CCPA’s view, the Gazette proposal does not satisfy criteria set out in Section 64 of CEPA99 for adding substances to Schedule 1. Also as stated in our previous September 13th letter to you and as noted above, we believe that since climate change is not just an environmental issue, the Minister of Health as a co-administrator of CEPA, should also conclude that GHGs and in particular CO2 is toxic under CEPA, if Cabinet is to make a decision to include GHGs on Schedule 1. We note that the Minister of Health has made no such conclusion.

We also do not believe that the Gazette Notice has done an adequate job of assessing the economic and competitiveness implications of regulating GHGs, which should be done before they are considered for adding to Schedule 1. All the Notice says on this critical issue is:

“There will be no incremental costs to the public, industry or governments associated with this proposed Order for adding the six GHG substances to Schedule 1 of CEPA 1999. The costs and benefits would be assessed during the risk management phase, when the Government will undertake an appropriate assessment of the potential impacts of a suite of instruments. These measures and technologies are expected to be considered in consultation with various federal government departments, provincial and territorial governments and other stakeholders.”

We believe it is misleading to say adding GHGs to Schedule 1 will not result in costs; and an analysis of the economic impact of regulations or other instruments or measures that will result from adding GHGs to Schedule 1 needs to be considered by Cabinet as they consider adding GHGs to Schedule 1. To do otherwise would be inconsistent with the Smart Regulation Policy.

The Honourable Stéphane Dion, P.C., M.P.
October 28, 2005
Page 3

On the basis of the above, CCPA disagrees with the proposal to add greenhouse gases to Schedule 1 and would request that either a Board of Review be established under Section 333 of the Act to consider this issue or, as stated above, this issue be reviewed by Parliament as part of the CEPA review before such a determination is made. We need to take the time to do this right, and not rush into dealing with GHGs under Part 5 of CEPA. CCPA urges the Cabinet Committee on Environment and Sustainable Development to thoroughly review all industry submissions on both the proposal to add greenhouse gases to Schedule 1 and the Notice of Intent to Regulate Greenhouse Gas Emissions by Large Final Emitters before coming to a decision on this matter.

Sincerely,



Richard Paton
President & CEO

c.c.:

The Honourable Anne McLellan, Deputy Prime Minister, Minister of Public Safety
and Emergency Preparedness
The Honourable Reg Alcock, President of Treasury Board
The Honourable Geoff Regan, Minister of Fisheries and Oceans
The Honourable Tony Valeri, Leader of the Government in the House of Commons
The Honourable John Efford, Minister of Natural Resources
The Honourable Ujjal Dosanjh, Minister of Health
The Honourable David Emerson, Minister of Industry
The Honourable John Godfrey, Minister of State, Infrastructure and Communities
Alan Tonks, M.P. Chair, House of Commons Standing Committee on
Environment and Sustainable Development
Bob Mills, M.P. Member, House of Commons Standing Committee on
Environment and Sustainable Development
Samy Watson, Deputy Minister, Environment Canada
Cynthia Wright, Director General, Strategic Priorities
Mike Beale, A/Director General, Greenhouse Gas Reductions Directorate