

Amendment of the Export and Import of Hazardous Wastes Regulations

Initial Consultation Summary Report

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**Transboundary Movement Division
Environment Canada**

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1 INTRODUCTION

The Government of Canada adopted the *Export and Import of Hazardous Wastes Regulations (EIHWR)* in 1992 under the authority of the *Canadian Environmental Protection Act, 1988 (CEPA '88)*. The *EIHWR* were intended to protect Canada's environment from the risks posed by unregulated traffic in hazardous wastes and to implement Canada's international obligations to protect the environment of other countries from uncontrolled hazardous waste exports from Canada

A number of developments, including changes to the international control regime and enhanced authorities in CEPA '99, along with a normal requirement to periodically review the operation of government regulations, have led to the initiation of an anticipated three-year process to amend and renew the *EIHWR*.

In preparation for these amendments, Environment Canada (EC) undertook a number of background studies over the last two years. As a follow-up to these studies and prior to initiating broad consultations on the amendments, EC identified a need to begin the process of engaging stakeholders as key concepts and options are further defined. The goal of this process was to initiate consultations with stakeholders, including provinces, industry and environmental groups, as part of the regulatory development process, culminating in the preparation of a comprehensive Discussion Paper for use in the second round of broad based consultations in mid-2001.

There were three main objectives for this phase of consultations:

1. To inform a broad range of stakeholders and interested groups of the EIHWR amendment process and the key issues being addressed in that process.
2. To seek input from these stakeholders and groups on the key issues identified for discussion and, should they wish, additional issues of concern to them.
3. To collate this input and apply the information and views in a manner that assists EC in making decisions on the most novel and controversial of the anticipated amendments.

This stage of consultations will be followed by a comprehensive amendment proposal from Environment Canada that will be set out in a full consultation document and followed by a multi-stakeholder consultation in the fall of 2001.

2 CONSULTATION PROCESS

2.1 INITIAL CONSULTATION PROCESS

This initial consultation process was specifically designed to take place prior to Environment Canada having formulated its own policy choices on the key issues surrounding the amendment of the

EIHWR. These key issues were selected jointly by the consultants and Environment Canada, based on the new powers set out in CEPA 1999, changes to the international agreements, and specific implementation issues that have arisen over the course of the application of the EIHWR. Thus, the consultation was not open ended, but focuses on the key new policy issues facing Environment Canada in the amendment process.

The initial consultation was designed to provide information to and solicit input from Environmental Non-Governmental Organizations (ENGOS), local community groups, provinces and industry on these key issues at a very early stage in the amendment timeline. The primary means of achieving this was a series multi-stakeholder sessions held at five locations across the country:

- Moncton – February 28, 2001;
- Montreal – March 7, 2001;
- Edmonton – March 19, 2001;
- Vancouver – March 22, 2001; and
- Toronto – March 27, 2001.

Stratos Inc., Environment Canada's consultants for this process, developed an invitation list from lists used for a number of previous consultations and contacted individuals primarily by e-mail. Members of the CCME Hazardous Waste Technical Group (Provincial Representatives) were invited to participate in this process during their meeting in the week of January 15th. In advance of the sessions, a discussion paper was prepared and circulated to all potential participants. Environment Canada also posted the paper on the CEPA Registry web site.

At each of the sessions, a two-person team facilitated and recorded the proceedings, with an EC representative on hand to respond to specific questions and provide clarification on issues. A copy of the agenda is included in Appendix A and the list of attendees at all five sessions is included in Appendix B. Individual reports were prepared for each of the sessions, and sent to all participants for validation. All of the session reports were synthesized into this report.

Some of the multilateral sessions were followed by bilateral meetings including some discussions with EC Regional Staff (Program and/or Enforcement). Various industry representatives also submitted written comments and position papers on the discussion paper. This report summarizes those submissions.

The Canadian Environmental Network (CEN), a network of hundreds of environmental non-governmental organizations across the country, coordinated ENGO input to this process. Members of the CEN Toxics Caucus attended 4 of the 5 sessions and produced a position paper on the issues raised in the discussion paper. This paper also summarizes points raised in the ENGO discussion paper have also been synthesized into this report. A copy of the CEN Discussion Paper is posted on the CEN website.

2.2 COMMENTS ON PROCESS

Stratos distributed questionnaires at all five sessions to solicit feedback from participants on the consultations and the associated discussion paper. In addition, some of the written submissions provided comments on the process. Most feedback was positive, with many participants expressing their appreciation for being given an opportunity to provide input at this early stage. However, others felt that EC should have waited until it was able to consult on specific proposals. The comments below provide a reflective sampling of some of the more critical comments received from the participants:

- The format for the consultations was too limited in scope (focusing on specified key new policy issues). There is a need for a broader discussion on the nature of Canadian policy in this area, and its relationship to Canadian needs and priorities, in particular within the waste management and recycling sectors;
- The Minister of the Environment should establish a permanent Advisory Council on this issue;
- Environment Canada should post overhead slides, comments from previous workshops, participant lists, and written submissions on its web site;
- Environment Canada should ensure that the EIHWR reform process is more explicitly linked to the CCME.

3 COMMON THEMES

Throughout the workshops a number of common themes emerged. These are summarized below.

3.1 HARMONIZATION

Some participants at all sessions expressed a strong desire that this regulation be harmonized with hazardous waste and recycling requirements across Canada and in the US. Some expressed frustration over the amount of effort that has been expended in talking about harmonization of federal and provincial hazardous waste regulations in Canada, and the lack of progress in achieving it in practice. Specific comments concerning harmonization were made in reference to definitions, classification of wastes and recyclables as hazardous, coverage of recyclables in the regulation, and permits of equivalent levels of environmental safety (PELES). The non-coverage of certain recyclables in the US was brought forward by many industry representatives as a direction to seek in harmonization efforts. Other stakeholders sought the inclusion of the US “waste derived from” rules into Canadian definitions.

3.2 LINKAGE TO OTHER FEDERAL POLICIES

At all sessions, participants urged Environment Canada to link the work on this regulation with other EC and federal policies including: the Toxic Substances Management Policy, POPs and The Minerals and Metals Policy. The pollution prevention program was also specifically noted several times in this context.

3.3 THE RECYCLABLES DYNAMIC (1)

While participants generally supported the *principle* of meeting Canada's international commitments under Basel and OECD, some stakeholders urged Environment Canada to focus the regulation on the fact that approximately 95 % of transboundary movements of hazardous waste and recyclables are with the U.S.. They argued that EC should use the flexibility afforded in our international commitments to come up with an approach that takes into account the domestic regulatory regimes in Canada and the US and not put redundant or irrelevant requirements in place. These stakeholders urged that this approach be adopted to exclude many recyclables from the scope of an amended regulation.

3.4 THE RECYCLABLES DYNAMIC (2): DIFFERENTIATED CONTROLS FOR RECYCLABLE MATERIALS

While there were no specific proposals, participants at all session expressed a strong desire in some cases and understanding in other cases for different controls on recyclable materials than for hazardous wastes. Recognizing that differentiation already exists in the current regulations, some NGO representatives wanted any such differences limited to those recyclable materials that do not create a hazardous waste residue after recycling treatment. Industry representatives generally sought an expansion of differentiated controls, including introducing the concept of "blanket" approvals or permitting for repeated (but substantially similar) transboundary movements for recycling. There was debate over whether this would be best achieved through the PELES provisions or by incorporating it directly into the regulation.

3.5 USABILITY AND SIMPLICITY OF REGULATIONS

Many participants argued that the current regulations were written primarily to satisfy international commitments and were difficult to understand and apply. Many suggested that the classification process and use of lists in the regulation should be made more explicit. Related to this point, a number of participants were concerned by the number of related regulatory initiatives going on (PCB Regulations, Interprovincial Regulations, Prescribed Non-Hazardous Waste, etc.). They urged EC to use this convergence of processes as an opportunity to consolidate these initiatives into an overall harmonized framework.

3.6 FOCUS OF ENFORCEMENT ACTIVITIES

At all sessions, participants raised the issue of enforcement. Many argued that EC has focused too much on enforcement of administrative issues rather than identifying and prosecuting more serious illegal practices. At some sessions participants suggested that the EIHWR regime incorporate the “ticketing” activity for minor violations provided for in CEPA, 99.

3.7 REGIONAL OR WORKSHOP SPECIFIC COMMENTS

While there were a number of themes common to all five sessions, some comments were made only at individual sessions:

- In Montreal some participants argued that the EIHWHMR regime should explicitly address marine transportation issues; and
- One participant in the Vancouver session discussed the use of a market based regime (i.e. trading in waste credits).

The workshop presentation raised issues concerning carriers, including increased reliance on sub-contractors. The reaction to this issue was not universal, with participants from the Maritimes and Quebec providing a different perspective than those in Western Canada. Most participants encouraged EC to avoid regulating carriers, since they are already regulated under provincial legislation and the Transportation of Dangerous Goods Regulations.

4 WORKSHOP DISCUSSION

4.1 DEFINITIONS

Much of the discussion on definitions focused on harmonization. Specific recommendations included the need for a clear definition of treatment (to clarify rules on completion of treatment), and a distinction between broker/agent and generator in the regulations.

4.1.1 Decoupling Recycling and Disposal

There was mixed support for the decoupling of the definitions for recycling and disposal with two polarized points of view presented at most of the sessions:

- The desire on the part of industry to legitimize and remove the stigma attached to the recycling industry and to remove unnecessary impediments to the flow of recyclable materials;

- The concern that recyclable material may not in fact always be recycled, or may not always be recycled in an environmentally sound manner, and the need for controls to avoid “sham recycling”.

As CEPA 1999 was recognized as having resolved the debate on whether to have two definitions in favour of doing so, considerable debate took place on the balance to be struck in reconciling these two potentially polarizing positions.

There seemed to be general support for classifying material according to how it will be managed as opposed to how it could be managed (i.e. treat material as recyclable only if it is, in fact, recycled). NGO participants opposed the classification of materials as recyclable when their treatment creates hazardous waste residues. The merits of establishing criteria like a minimum “percentage of recycled material” for something to qualify as a recyclable were discussed. Several participants noted concerns with such an approach. For example, a participant in Edmonton argued that this would be a disincentive to recycling processes like the recovery of palladium from catalysts, where often less than 1 % of the material is recovered. An NGO participant suggested criteria that preclude materials that generate by-products containing CEPA toxic substances from being classified as recyclable. A number of participants argued that criteria should be material-specific, and could be linked to ESM criteria. Some industry representatives proposed that the distinction between waste and recyclables is significant enough to merit a separate regulation or, at least, two separate sections of the regulation.

4.1.2 Harmonizing Canadian Definitions, Tests, and Criteria

During the workshop a four-level approach to classification based on the work of the CCME on definitions, tests and criteria was presented:

- Determination of whether the material is a waste or a recyclable based on where it is going;
- Determination if the material is a listed waste or recyclable material;
- Determination if the material exhibits defined hazardous characteristic; and
- Provision for a case-by-case testing out mechanism or condition exclusion.

In Edmonton and Toronto some participants voiced strong opposition to the hierarchy of the approach presented and the requirement to test-out. Some suggested that the approach should be more flexible with lists only required by those who do not want to test for hazardous characteristics. Some argued that the proposed hierarchy shifts EC’s approach from an oversight role to a more “European” approach. Many urged EC to avoid burdensome test-out process like the de-listing protocol in the US. As one participant pointed out, a burdensome system creates a disincentive for reducing the hazard associated with the wastes and recyclable materials that generators produce. NGO participants suggested that the process should be transparent and also provide a mechanism for listing wastes.

Over the course of the workshops there were a number of proposals suggesting that lists should be included in the regulations: Basel Annexes XIII and IX; just Annex XIII; OECD Amber and Green Lists; and RCRA. Some participants suggested a protocol for characterizing waste. One participant suggested that the protocol be made specific to the individual management option specified (i.e. R or D option) and possibly linked to ESM. Some industry officials suggested that recyclable materials should not be subject to leachate testing if they are never going to be sent to landfill. Other participants believed this test remained important in relation to storage of recyclables on site or potential accidents. It was also recommended that EC remove imprecise R and D operations from the R and D lists. NGO representatives recommended that energy recovery should not be included in the definition of recycling operations.

4.1.3 Distinguishing Between Wastes/Recyclables and Products

Much of the discussion on this topic centered around the list of criteria included in the discussion paper for distinguishing between waste/recyclables and products. One participant suggested that this topic is complex enough to merit its own discussion paper and consultation process. Some participants found the criteria too vague and discretionary. There were conflicting opinions on whether the criteria should be included in the regulations or in a guidance document. It was suggested that EC should look more broadly at the management of hazardous materials and that the linkages in the regulatory regime between wastes/recyclables and products should be more explicit. More examples of how the criteria are used was thought to be needed before more meaningful comments could be provided.

4.1.4 Updated International Waste Lists

At all sessions participants had questions concerning the relevance of the Basel and OECD lists. EC was requested to provide guidance on classification with the amended regulation, including which lists are relevant and how they relate. Participants encouraged EC to review international lists prior to making any decisions on what should be listed as a waste in Canada, and to make a concordance table cross-referencing Canadian, US, and International lists. There was no consensus on which lists should be included in the regulations.

4.2 ENVIRONMENTALLY SOUND MANAGEMENT

There was general support for the principle of ESM. Both industry and NGO participants suggested that ESM should be applied at the facility level. Due to the early state of policy development on this issue and lack of detail provided in the discussion paper, participants questioned whether anything meaningful could be implemented in this regulation at this time. Some suggested that it would be premature to proceed with ESM implementation in Canada given the uncertainty on the international scene.

At a number of sessions EC was encouraged to use a multi-stakeholder process to establish Canadian criteria for ESM. There was some debate over who should set ESM standards: government or industry, but there was general agreement on the need for a backstop of regulation. One participant suggested that there should be clear CCME standards for ESM and not discretionary criteria. In Vancouver, a “non-circumvention criterion” was proposed to prohibit imports or exports where the receiving jurisdiction has a lower standard of management for a particular waste or recyclable material. As with the criteria for distinguishing between products and waste/recyclables, participants expressed concern about the Minister’s discretionary powers, and suggested that these be subjected to a review or appeal process. Some participants expressed concern over both the “extra-territoriality” of imposing ESM on foreign importers and the potential erosion of provincial powers. Others had concern about leaving ESM to the discretion of the provinces, due to NAFTA considerations.

A number of industry participants supported the idea of a voluntary program to implement ESM supported by incentives. The importance of oversight/verification in such a regime was stressed, and EC was asked to identify who would be responsible for overseeing ESM at the domestic and international level, and to ensure that adequate resources would be in place.

During the workshop presentations, EC officials described one of the triggers for implementing ESM was the increase of imports due to perceived lower standards in Canada, specifically for landfilling. It was suggested by some stakeholders that waste and recycling options are generally environmentally sound, and that the authorities on ESM should be applied where problems exist and not universally.

4.3 WASTE REDUCTION PLANS

At all sessions, EC was asked to provide clarification concerning the intent of this provision: is it to reduce the generation of waste, to reduce waste exports for disposal, or to promote diversion of wastes to recycling when possible? The answers to this question will impact the design of this requirement in the regulation. Participants suggested that implementation of these powers could create an incentive to send waste to inappropriate facilities or to encourage volume reduction over hazard reduction. While some industry representatives suggested that this requirement would be difficult to implement (particularly for small quantity generators and brokers), many NGO participants supported its intent but suggested that its scope of application was too limited and should be expanded to include recyclable materials. Some NGO’s also complained that this issue has been structured to protect countries exported to and not Canada. EC was urged to ensure that waste reduction plans are part of a comprehensive integrated approach and that they take into account other pollution prevention planning initiatives and NPRI. A number of participants were concerned that waste reduction plans were an “end of pipe” approach and, to be effective, these provisions must take a life cycle approach that considers upstream activities, in particular including product design. There were a number of specific suggestions for implementing the authority for waste reduction plans, including:

- That they be targeted at specific sectors or to those areas where “problems” exist, based on an analysis of import and export data;
- That there be a trigger level, like NPRI;
- That they not be applied directly to small quantity generators, but that codes of practice and educational resources be developed and distributed when they apply for a permit;
- That there be a requirement to use best available technology; and
- That EC consider starting with a pilot project to test the concept.

4.4 CHANGES TO INTERNATIONAL AGREEMENTS

4.4.1 Insurance and Liability

Participants at all sessions asked how EC intends to apply the insurance and liability requirements in the regulation. It was suggested that EC should define the problem these provisions will address. Participants explained that, currently, insurance requirements are usually met by the carrier and only provide coverage during transport. At the Montreal session, it was stressed that responsible operators carry adequate insurance, and that the real problem is one of enforcement with those operators that do not carry the required level of insurance. Participants at all sessions questioned how the current insurance levels were set. It was suggested that the amounts seemed low, and it was recommended that they should be based on risk and hazard, not on whether the material is destined for disposal or recycling. The proposal to apply a rate per tonne as per the Basel Protocol was not widely supported. EC was encouraged to consult with the insurance industry in determining insurance requirements.

There was broad support for the concept of residual generator liability. However, most participants suggested strongly that it not be modeled on the US “Superfund” regime. Some suggested that apportioning liability is a very complex topic and would be difficult to enforce. It was recommended that there be a joint liability scheme shared between the generator and the trucker and that this could be incorporated into the contract.

4.4.2 Basel Ban

At those sessions where participants commented on this issue, NGO’s expressed strong support for Canada to ratify the Basel Ban amendment. In Toronto, EC was asked when it will make a decision on this issue. One participant indicated that there had been UN studies that suggested that the Basel ban amendment would have the opposite effect from its intention.

4.4.3 OECD Changes

There was general support for the amendments to OECD Decision C(92)39 presented at the workshops. EC was asked to consider increasing the small quantity exemption to one drum (2051)

for recycling operations to allow for testing. It was also suggested, however, that for some high risk materials there should be no small quantity exemption. At the session in Moncton, a question was raised as to where the substances on the disbanded Red List will be placed (i.e. under full Basel controls or under the OECD amber list controls).

4.5 PELES

Although there was general support for the concept of PELES, some participants argued that they would be unnecessary if the regulation was right in the first place. NGO representatives were concerned that they could create loopholes through a politicized decision-making process. EC was urged to harmonize this process with that in the Interprovincial regulations. Participants who had experience with the TDG permitting process found it very time consuming and cumbersome. It was recommended that EC establish adequate resources to administer the program, set a specified time for consideration of a permit, and, due to the discretionary nature of this authority, that there be a review or appeal mechanism. A number of participants wanted to ensure that there was provincial input to the process. There were several suggestions for openness and transparency in the process, including the requirement for public hearings or posting PELES applications in local and major newspapers. Questions were raised about the precedential nature of PELES -- whether the issuing of a permit will create rights for others in similar situations. Some recommended that provision be made for emergency PELES. Some also recommended that EC should incorporate the provisions of some PELES into the regulation over time.

4.6 MISCELLANEOUS ISSUES

4.6.1 Requirements for Carriers

Participants generally agreed that carrier requirements are addressed by TDG and provincial standards and that these should not be duplicated. Training and testing for requirements specific to this regulation (i.e. documentation and customs requirements) would be appropriate – possibly as an endorsement added to a TDG certificate. One recommendation was for EC to develop standard carrier numbering modeled on the U.S. system. Participants at one session supported the idea of a list or registry of approved carriers. It was recommended that EC provide more guidance on requirements at the border.

4.6.2 Completion of Shipments, Treatment

Issues concerning the completion of shipment were seen as primarily administrative, requiring clear direction from EC. It was suggested that the particular problem of U.S. receivers not handling Canadian manifests properly would be alleviated through an e-filing and tracking system. One participant recommended that those facilities that do not comply should be “de-certified”, and not permitted to receive future shipments. Participants who had experienced trucks being tied up for

extended periods of time as a result of off-specification shipments, suggested a mechanism to allow for the timely return or rerouting of shipments without penalty.

There were a number of suggestions from participants to provide flexibility on the proposed one year time limit for completion of treatment, including: allowing an increase of up to three years for recycling operations or setting up a mechanism for granting an extension of the time limit. The difficulty in tracking the treatment of liquids and some solids that are “bulked” was also discussed with no specific suggestions made except that EC should provide guidance.

4.6.3 Access to Information

At each of the sessions there was a discussion of the trade-offs between the need for business confidentiality and the need for local citizens to know what is going on in their communities. Many industry participants felt that adequate information is available already through provincial facility reporting requirements and NPRI. A number of NGO participants indicated that it is difficult to find and interpret this information, and that this is complicated by different policies across Canada on the release of information. It was suggested that there are two levels of information: aggregate public policy reporting information, and more specific local information. An NGO representative in Toronto suggested the type of information required: type and quantity of waste, importer and exporter, and location of facility. Industry representatives countered that final destinations can be confidential business information, and urged EC to provide context when presenting information to the public.

4.6.4 Other Issues

Other issues touched on briefly during the workshops included clarification of additional definitions and improving enforceability, as well as reducing paper burden. There was broad support for the use of e-filing and a specific suggestion in Vancouver to set up a bar coding system modeled on those used by couriers including a centralized notice and tracking system.

5 WRITTEN SUBMISSIONS

Environment Canada received eight written submissions following the workshops: 7 from industry representatives including both individual companies and industry associations, and one written submission from CEN endorsed by 14 ENGOs. Five of the submissions addressed all or most of the issues raised in the discussion paper, and two submissions commented on specific issues that applied to those organizations. Many of the submissions reiterated points raised during the workshops and so only those points unique to the written submissions are summarized below.

5.1 DEFINITIONS

5.1.1 *Decoupling Recycling and Disposal*

A number of the written submissions from industry supported the decoupling of recycling and disposal, but argued that this must be accompanied by a relaxation or removal of controls on recyclable materials. EC was urged to deal openly with the issue of residuals and to ensure that generation of hazardous residuals does not affect the status of bona fide recycling facilities. Two written submissions suggested that, if it can be demonstrated that a receiving facility meets ESM standards, then recyclable material destined for that facility should be treated as a product (and not be subject to the regulations).

The NGO submission stressed that the focus of the regulations should be on reducing hazardous waste, that this would be best achieved through reduced primary production, and that the regulations should not create incentives for increased recycling that does not lead to reduced primary production. During the workshop many NGOs opposed a more lax regime for hazardous recyclable materials unless “recycling” is strictly defined to mean that no hazardous waste residue is created as a result of the recycling process.

5.1.2 *Harmonizing Canadian Definitions, Tests, and Criteria*

One of the written submissions from industry made some very specific proposals for classification that had not been discussed during the workshops:

- The regulations should clearly delineate two separate management systems: one for materials destined for final disposal and a separate system for materials destined for recycling. It is feasible that one particular material, (for example, end-of-life electronics) could be considered a waste in one instance when destined for landfill and would be subject to all applicable waste regulations, but when destined for recycling would be exempt from such waste regulations. This, it was suggested, would be a system similar to the US Universal Waste Rule under RCRA;
- Once the management of the material has been determined, it was suggested that specific conditions, tests or lists be applied to each management scenario. The key is that these conditions, tests, and lists should be *different* depending on the material and the management of the material. In particular, the application of the leachate test to materials that will never be landfilled was presented as a completely inappropriate test of hazard for recyclables. In short, it was argued that Environment Canada should first determine the management scenario, followed then by the development of conditions, tests and or lists appropriate for that management scenario;
- Facilitate recycling if facilities can prove ESM: If a facility can prove that it practices ESM (however it may evolve), the regulation should allow the facility to import recyclable materials in

an unfettered manner. The onus to provide information to EC to prove ESM would fall to the facility, perhaps as part of its provincial permitting process.

5.1.3 Distinguishing Between Wastes/Recyclables and Products

An industry submission provided some suggestions on clarification of waste/non-waste criteria:

- Rather than asking questions that demand a yes or no answer, the criteria should assess the degree of risk to human health and the environment;
- EC should clarify its criteria of “sufficient transformation”. According to the submission, it is not clear how much work, if any, is required to transform a waste into a product.
- Any criteria developed should be applied to the exporter of the material rather than the initial producer of the material. If the criteria are always applied to the initial generator of the waste it will be unclear when a waste from one industry could ever be recognized as a product, a valuable raw material for another industry.

5.2 ENVIRONMENTALLY SOUND MANAGEMENT

One industry submission suggested that recyclable materials should be exempted from the ESM provisions in the regulation, while another suggested that ESM could be the means for exempting recyclable materials from notification requirements (as described above in 5.1.2).

The NGO submission made the following recommendations concerning ESM:

- The ESM provisions must be used to raise standards to the highest and not the lowest common denominator for the whole system. Special concern should be given to ESM requirements for storage and treatment of recyclables to balance the effect of “decoupling.”
- Clear ESM criteria for treatment and disposal facilities that are at least as strong as those in the U.S. will also be necessary for hazardous waste import challenges under NAFTA and FTAA. To achieve this, a strong definition of ESM is necessary.
- ESM could be incorporated into an international certification system to ensure uniform high standards for waste movements but should only apply to OECD countries where controls and verification are possible.

5.3 WASTE REDUCTION PLANS

While one industry submission questioned how this provision could be applied to facilities with “bulk” hazardous waste, another suggested that these companies be challenged to find markets for these materials as either products or recyclables, or they could become brokers and attempt to identify beneficial societal uses for their “wastes/materials” gathered.

The NGO submission had a number of specific points concerning waste reduction plans:

- The EIHWR regulations should be reciprocal; importers should show how they plan to reduce the generation of wastes they dump in Canada.
- Recyclable wastes remain a threat to the environment and should therefore also require reduction plans.
- Waste reduction plans, above and beyond the concept of Environmentally Sound Management, need to be partnered with pollution prevention programs (CEPA 1999) and any current or emerging provincial plans for waste reduction (CCME). Waste reduction plans should be developed to include all upstream linkages to the generation of the waste and be aimed at waste avoidance and elimination. All factors including manufacturing and production regimes, marketing and consumption patterns, alternative products, component materials and production techniques, trade regulations and international trade agreements (NAFTA, FTAA), should be considered in a waste reduction analysis and strategy;
- Voluntary waste reduction programs should not be substituted for regulated ones unless they are more stringent and proven dependably accountable.
- Each waste reduction plan must include specific reduction targets with timelines. To supply some level of accountability, above and beyond government compliance monitoring, these plans and their targets must be available to the public.
- Future permit applications from the same applicant should be refused if reduction targets outlined in waste reduction plans have not been met.
- Diversion of hazardous wastes from disposal into the recycling stream as an alternative to (or in avoidance of) reduction should be evaluated for its impact on overall reduction goals and net environmental impacts.

5.4 CHANGES TO INTERNATIONAL AGREEMENTS

5.4.1 Insurance and Liability

One of the industry submissions suggested that shipments of recyclables should be exempted from insurance requirements over and above what would be required for shipping a commodity.

The NGO written submission recommended that the revised regulation concur with the spirit of the 1999 Basel Protocol to set realistic minimum insurance requirements and strict liability of the exporter. They submitted that residual liability should remain with the generator as is done in the U.S. rather than being transferred to the receiving facility as is the current practice in Canada, and that Canada should consider adopting the US Superfund approach.

5.5 PELES

Two industry submissions recommended guidelines as to what criteria should be addressed under a PELES application, and how long a PELES is valid and a maximum period for deciding whether to issue or deny the permit.

The NGO submission recommended that PELES should not be part of the regulations.

5.6 MISCELLANEOUS ISSUES

5.6.1 *Completion of Shipments, Treatment*

One of the industry submissions referred to a consensus reached at the OECD concerning Certificates of Recovery that could be issued within 365 days of a material being “introduced” into a recycling process, and recommended that EC consider adopting this approach.

5.6.2 *Access to Information*

The NGO submission had a number of specific recommendations concerning accountability and information:

- EC should post notices of imports and exports on the CEPA Registry that include not only the name and country of the exporter or importer and the type of waste, but also the quantity and frequency of their shipments, the actual destination of proposed shipments and reduction plan information (including their past records of reduction). This information should be provided for the actual shipments – not just proposals for shipments;
- The company applying for a permit to export or import hazardous wastes for disposal or recycling should be required to provide public notice in the community that would receive the wastes. This notice should include the details listed in the previous paragraph as well as contact information for both the applicant and the government jurisdiction that the application has been made to, and a timeframe for making public comment;
- The CEPA Registry should be modified to make it easier for people to gather information on waste imports and exports. Postings should be made at least monthly (preferably weekly) and should be searchable by community, district or county, waste type, hauler, disposal or recycling company, and generator;
- The process for listing and de-listing of waste should include public involvement; and

- To ensure overall accountability of the whole system an Ombudsman for Hazardous Wastes Movements (both domestic and trans-boundary) could be appointed outside and independent of the Department.

6 CONCLUSIONS

This report summarizes the results of an initial round of consultation on amendments to the EIHWR. The input from stakeholders summarized above indicates that there is consensus on some issues and widely divergent views on others. Operationalizing the waste/recyclable distinction and the PELES, achieving the goal of real harmonization of definitions and standards, establishing environmentally sound management standards, and instituting waste reduction plans will be major issues of concern to all stakeholders.

On more than one occasion during the consultations, longer-time participants in discussions on the export and import of hazardous wastes and recyclables did recognize, and express appreciation for, a greater willingness on the part of often “opposing” stakeholders to address the differences between wastes and recyclables in the context of the international obligations. However, it is clear that significant differences in views as to the scope of appropriate regulatory treatment of each remains. This dynamic will likely continue to play out during the amendment process.

For the next round of consultations, stakeholders are expecting much more developed proposals, including a description of EC’s intent in a number of key areas including ESM, waste reduction plans, and insurance/liability.

APPENDIX 1 – AGENDA

9:00 – 9:10	Welcome and Introductions	<i>Environment Canada Representative</i>
9:10 – 9:15	Agenda Review	<i>Facilitator</i>
9:15 – 9:45	Overview of current regulations and new CEPA authority	
9:45 – 10:30	Elements to be retained and harmonization	
10:30 – 10:45	Break	
10:45 – 12:00	Definitions	
12:00 – 12:45	Lunch	
12:45 – 1:45	Waste Reduction Plans	
1:45 – 2:15	Links to Environmentally Sound Management	
2:15 – 2:45	Permits of Equivalent Environmental Level of Safety	
2:45-3:00	Break	
3:00 – 4:00	Regulatory Efficiency	
4:00-4:30	Wrap Up, Next Steps and Adjournment	<i>Facilitator</i>

APPENDIX 2 – PARTICIPANTS

Moncton

1. David Besner, New Brunswick Department of Environment and Local Government
2. Anthony Bielecki, New Brunswick Power
3. Bill Borland, J.D. Irving Ltd.
4. Paul Deveau, Noranda
5. Ronald Fournier, Clearinghouse Group
6. Simone Godin, New Brunswick Department of Environment and Local Government
7. John Hendersen, Jacques Whitford
8. Jens C. Jensen, Fundy Region Solid Waste Commission
9. Sean Ledgerwood, Island Waste Management Corp.
10. Suzanne Leppinen, Environment Canada
11. Garry MacEwen, New Brunswick Department of Natural Resources and Energy
12. James MacLean, Dominion Ash
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22. Leonard Surges, Noranda Inc.
23. Joe Van Buskirk, Kimberly-Clark N.S.
24. Scott Winters, Safety-Kleen Ltd.

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8. Claude Carpentier, Bennett Environnement Inc.
9. Carl Chenier, Environnement Canada

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11. Nil Fortier, Transforce
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26. Isidore Wasungu, IBM Canada Ltée

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7. Robert Huang, Alberta Environment
8. Norm Jede, AB Economic Development
9. Patrick Kalita, Byram Industrial Services Ltd.
10. Jerry Keller, Environmental Services Association of Alberta
11. Skip Kerr, Canadian Waste Services
12. Myles Kitagawa, Toxics Watch Society of Alberta
13. Kevin Kropf, Canadian Waste
14. Suzanne Leppinen, Environment Canada
15. Howard Mann, Facilitator
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17. Zoltan Nevelos, Sensor Environmental Services Ltd.
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19. Paige Knapman, Newalta Corporation
20. Rhonda Rudnitski, Canadian Waste Services
21. Darrell Salewski, Nova Chemicals

22. Brian Smith, Natural Resources Canada
23. Tim Underwood, The Recycle Systems Company Inc.
24. Michael van Aanhout, Stratos Inc.

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1. Diana Bell, Cominco
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4. Wally Braul, West Coast Environmental Law Association
5. Delores Broten, Reach for the Unbleached!
6. Cindy Campbell, Quantum Remediation Services
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9. Lorne James, BC Hydro
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11. Rob Cook, Canadian Waste Management Association
12. Nada Davidovic, Hydro One Networks
13. Bryan Davis, Canadian Environmental Defence Fund
14. Ken De, Environment Canada
15. Fe de Leon, Canadian Environmental Law Association

16. Jim Downey, Department of National Defense
17. Nabila Elsaadi, Environment Canada
18. Larry Fedec, Gartner-Lee Ltd.
19. John Flynn, Canadian Electricity Association
20. Stéphane Gingras, Great Lakes United
21. Felix Gulston, Imperial Oil Ltd.
22. John Hall, Ontario Power
23. Eric Hunter, Safety-Kleen Ltd.
24. Rhonda Hustler, Rural Action on Garbage and the Environment
25. John Jackson, Citizen's Network on Waste Management
26. Ted Kelly, Oakside Chemicals Ltd.
27. Louis Laferriere, Canadian Chemical Producers' Association
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30. Heng Lim, Hotz Environmental Services Inc.
31. Brennain Lloyd, Northwatch
32. Pamela McAuley, Hotz Environmental Services Inc.
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37. Todd Murray, Sunoco Inc.
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41. Bill Preece, Contrans Corporation
42. Steven Radcliff, Ontario Ministry of Environment
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44. Robert Redhead, The Canadian Chamber of Commerce
45. Hussein Sabbour, General Motors Canada
46. Leonard Shaw, Canadian Association of Recycling Industries
47. Dave Shortt, Dow Chemical
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- 58. Genevieve Wong, Senes Consultants Limited
- 59. Noel Wylie, Hydro One Networks
- 60. Paul Zeman, PPG Canada