



Chemicals Management



Assembly of First Nations

Technical Backgrounder: Canada's Chemicals Management Plan

2012/2013



Chemicals Management

Background

The Assembly of First Nations (AFN) Chiefs-in-Assembly have noted their ongoing concerns about environmental health, contaminants and toxins, and have mandated the AFN to explore funding opportunities that will build capacity for First Nations to address environmental contaminants. It is

appropriate to note that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) contains a number of articles relevant to the protection and promotion of a healthy environment and the health of First Nations (Articles 21, 23, 24, 25 and 29).

*Article 29:
Indigenous peoples have the right to
the conservation and protection of
the environment and the productive
capacity of their lands or territories
and resources...*

- UNDRIP

Canada's Chemicals Management Plan (CMP) was first launched in 2006 and renewed again in 2011 for a further five years. These two phases are discussed in further detail below. The CMP is jointly administered by Environment Canada and Health Canada under the *Canadian Environmental Protection Act (CEPA), 1999* and aims to assess and manage risks to human health and the environment from all chemical substances in use in Canada. The CEPA, 1999 requires all new chemicals made in or imported into Canada to be assessed against specific criteria, although in reality many chemicals enter the market without thorough assessment or understanding of their potential impact on human or environmental health.

Section 64, CEPA, 1999 defines a chemical substance as toxic: "...if it is entering or may enter the environment in a quantity or concentration or under conditions that:

- a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
- b) constitute or may constitute a danger to the environment on which life depends; or,
- c) constitute or may constitute a danger in Canada to human life or health.

CMP Phase 1

In 2006, 23,000 substances of the Domestic Substances List were categorized according to the potential risk they posed to human health and the environment. This set the priority with which substances were to be assessed under the CMP, starting with the chemicals thought to pose the greatest risk. Under the first phase of the CMP, approximately 200 chemicals were categorized as high risk and were divided into twelve "batches". This was a way to organize work on



Chemicals Management

collecting information, conducting risk assessments and proposing and publishing risk management approaches. Under the first phase of the CMP, risk assessments were conducted for approximately 1,100 substances, re-evaluation of approximately 360 older pesticides was completed and pre-market evaluations for over 1,800 substances new to Canada were conducted.

CMP Phase 2: Groupings Initiative

The Government of Canada aims to address a further 1,500 chemical substances by the end of Phase 2 in 2016. This approach currently includes nine Groupings to be assessed under the second phase of the CMP. The nine groups of substances are:

1. Aromatic azo- and benzidine-based substances;
2. Substituted diphenylamines;
3. Cobalt-containing substances;
4. Methylenediphenyl diisocyanates and diamines (MDI/MDA) substances;
5. Internationally classified substances;
6. Selenium-containing substances;
7. Certain organic flame retardants;
8. Phthalates; and,
9. Boron-containing substances.

The selection of substances for each Grouping was based upon chemical similarities, efficiencies for risk assessment, risk management and similar timing with assessment under international treaties and in other jurisdictions. There is also a Petroleum Sector Stream Approach of 160 high priority substances which are further divided into four main groups:

- Stream 1 - Substances not expected to be transported off refinery, upgrader or natural gas processing facility sites;
- Stream 2 - Substances that may leave a petroleum-sector facility and be transported to other industrial facilities but that do not reach the public market;
- Stream 3 - Substances that are primarily used as fuels; and,
- Stream 4 - Substances that may be present in products available to the consumer.

To date, progress on the Petroleum Sector Stream Approach has not been as quick as other areas under the CMP.



Chemicals Management

Section 71 notices under CEPA, 1999

Section 71 of CEPA, 1999 enables the government to require companies to report to the government on specific chemical substances. This can include information on how much was imported, manufactured or used by the company in addition to how the substance is used, for what purpose and in which industrial sector. This type of information is invaluable in order to conduct accurate risk analysis and to inform risk management. If a particular substance is deemed toxic under the CEPA, it is best to know how that substance is currently being used and in what quantity in order to take actions to reduce the risk of exposure to humans and the environment.

Since 1994, it has been required that Canada be notified of all new chemical substances before they are imported or used in manufacturing in order to assess whether they pose a risk to human health or the environment. Approximately 450 - 500 new chemicals are pre-evaluated in this manner each year. One drawback with this approach is that chemicals in products are not necessarily reported as importers may not know all chemical ingredients in the finished products they are importing. Often confidential business information is claimed by manufacturers to avoid reporting all ingredients and concentrations of chemicals. Furthermore, manufacturers overseas may be reluctant to comply with requests by their customers if they fear a loss of sales or repercussions.

Significant New Activity (SNAc) Provisions

Canada uses the Domestic Substances List to assess whether a chemical substance is new to Canada which was originally compiled of chemicals in use in Canada in the mid-1980's. An update to this list is currently being undertaken to develop an accurate representation of which chemicals are currently in use in Canada. For chemicals that do not currently meet the toxicity criteria under Section 64 of the CEPA, 1999, the CMP can use a provision under the Domestic Substances List known as a Significant New Activity (SNAc). This provision is applied if it is suspected that using a particular chemical in a new way would result in it being released in a quantity or manner that would meet the criteria for toxicity. It requires all potential users, manufacturers or importers of the particular chemical to provide additional information under the CMP prior to its use so that the potential impact can be assessed prior to the chemical being used, manufactured or imported.



Chemicals Management

Risk management under the CMP

If a chemical screened under the CMP is found to meet any of the risk criteria in Section 64 of CEPA, 1999 there are different options that the Ministers of Health Canada and Environment Canada can propose:

1. Take no further action;
2. Refer the chemical to the Priority Substance List which will result in further assessment; or,
3. List the substance under Schedule 1 of the Act as a Toxic Substance.

If a chemical is listed under Schedule 1 of the CEPA, 1999, regulations may be enacted that limit or outright prohibit the use, manufacture or import of the substance in Canada. Once such a regulation comes into force, industry may be given a number of years to phase out their use of the chemical. Exceptions to the prohibition are also often given to using the chemical in certain ways, especially when a safer alternative substance has not been identified as being readily available. Risk management actions may be taken under a variety of legislation including the CEPA, 1999, the *Food and Drugs Act*, the *Pest Control Products Act* or the *Hazardous Products Act*.

In January 2012, Canada introduced what has become known as the “one-for-one” rule which stipulates that a current regulation must be removed whenever a new regulation is introduced. In practice, this leaves Health Canada and Environment Canada looking for a regulation to remove when one is added to address the health and environmental harm posed by a chemical. The “one-for-one” rule requires an offset of an equal amount of administrative burden by the new regulation. In this way, measures to protect human health and the environment may come at the expense of weakened protections elsewhere.

Timelines

The CMP endeavours to assess 4,300 chemicals by 2020, and lays out timelines for each category of chemicals to be assessed. However, to date the CMP process has rarely published risk assessment documents or risk management decisions ahead of their own deadlines. This is troubling when a substance is declared toxic under the CEPA and risk management measures are only scheduled to come into effect years after the initial conclusion that a substance is toxic and may pose harm to human health or the environment.



Chemicals Management

The gravity of toxic designation should be acted upon with the swiftness that is required to reduce harm to First Nations and the environment that First Nations depend on for sustenance, economic activities, health and spiritual and cultural strength. The media attention and public concern that was raised around bisphenol A (BPA) pressured the government to take concrete action much faster than other measures that have been implemented under the CMP. If enough submissions and concern is raised regarding specific chemicals, the government may respond faster with more immediate effect as it did with BPA.

BPA was
banned for use
in baby bottles
in 2010.

Providing Input

There are a number of documents that the CMP releases for a 60 day public comment period throughout the year. These documents tend to be highly technical in nature and focus on specific chemical substances as they progress through the risk assessment, risk management and regulatory phases. Notice of these documents is only published online. However, you can register for email notifications for when these documents are published on the CMP website listed below.

The CMP also has a Stakeholder Advisory Council which meets twice a year on which the AFN holds a seat. This advisory council includes members from industry, environment and health non-governmental organizations, consumer groups and National Aboriginal Organizations. It provides a forum where comments of a more general and high level nature can be provided to Health Canada and Environment Canada on the process of the CMP. This may include comments on overall progress, proposed risk assessment and management decisions and which chemicals should be prioritized for assessment. The advisory council is not considered a consultative body and summaries from the meetings are posted on the CMP website.

The AFN raises issues that First Nations are known to face in regards to toxic exposure, contaminants in food, water, air and soil and general concerns regarding the use and presence of chemicals in the environment. Some of the recommendations that the AFN has advanced to the government include the need to:

- Refine communications materials for relevancy to First Nations;
- Incorporate First Nations' issues and perspectives into the risk assessment process;
- Provide meaningful funding to First Nations to conduct surveillance and monitoring programs;



Chemicals Management

- Use the results of these programs to inform the risk assessment and risk management process under the CMP;
- Regulate substances in a timely and effective manner that would protect First Nations' health, traditional territories and economies; and,
- Meaningfully engage First Nations in the CMP process.

The AFN is interested in advancing any concerns that First Nations may have about the CMP, specific substances or chemicals in general. Contact information is provided below.

More information on the CMP as well as email notifications can be found online at:

<http://www.chemicalsubstanceschimiques.gc.ca>

Or by contacting the Environmental Stewardship Unit, AFN at:

environment@afn.ca

tel: 613-241-6789

toll-free: 1-866-869-6789

fax: 613-241-5808

Factsheets on specific chemicals, hazard and risk are available at: www.afn.ca

Further information on First Nations environmental health can be found through the First Nations Environmental Health Innovation Network at: www.fnehin.ca