

Environmental Health Law and Regulation – Opportunities for Engagement

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Making the Links Environmental Justice Project December 2010



Introduction: Division of Powers in Canada

- Federal government has some responsibilities pertaining to environmental health
- Provinces and territories have others
- Many powers operate in related areas
- Aboriginal governments also have powers and responsibilities; some of the federal statutes explicitly recognize these powers
- Within provinces and territories, municipalities and local governments also have powers and responsibilities (delegated)
- Actions are appropriate and necessary at each scale

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Jurisdictional opportunities

- These varying jurisdictions give rise to matching opportunities for engagement and input in environmental health law and regulation:
 - Local – regional or municipal input on matters such as local programming or municipal by-laws
 - Provincial – input as individuals, groups, associations, professionals on specific agenda items such as provincial occupational health law or toxics regulation
 - Federal – recommendations for new substances, evaluation of efficacy of existing laws, testing of participation provisions

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Action at different scales

- An example of the intersection of municipal and international action and law occurred in the *Hudson* pesticide by-law case –
 - a municipal by-law to control pesticides was upheld by the Supreme Court of Canada in part because of Canada's international obligations; the Court said that Canada's governments, including municipalities, had responsibilities as trustees of the environment, and were entitled to pursue a precautionary approach endorsed by Canada in various environmental agreements

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Local to global – an example

- Most environmental health and equity concerns have key elements which need attention by each of the jurisdictions
- For example, in the case of reducing exposure to toxic substances,
 - Municipalities may pass right to know by-laws as in Toronto
 - Provinces may pass a Toxic Reduction Act as in Ontario
 - Canada may pursue regulation of toxic substances as under CEPA
 - The international community may control some toxic or hazardous substances under treaties like Stockholm or Basel

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Multi-scale environmental health issues

- We could give similar examples in other areas of environmental health including energy poverty, management of garbage and waste, drinking water protection, pesticides control or healthy shelter and consumer products to name a few
- Establishing international norms such as the World Health Organization in its definition of the determinants of health; programmatic action, such as by Canada under its health spending power and its support of research; provincial regulation of pollution; and programs by local health units are all examples of essential aspects of a comprehensive approach to these issues

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Canadian and Ontario Environmental Health Statutes

- This presentation focuses on some specific opportunities for input and engagement under some of our key environmental health statutes in Canada and Ontario
- Choices can be made about where to focus attention; often engaging at one point in the overall regulatory arena highlights areas for input and engagement on a related topic at another level
- For example, those interested in advocating for better content labelling of cosmetics and pharmaceuticals may initially explore those issues at a local level and then decide that other opportunities to engage also exist at federal and international levels

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Overview of Statutes

- Canada Labour Code
- Canadian Environmental Protection Act
- Hazardous Products Act
- Consumer Safety Products Act
- Pest Control Products Act
- Food and Drug Act
- Ontario Occupational Health and Safety Act
- Ontario Toxic Reduction Act
- Ontario Environmental Protection Act and Ontario Water Resources Act
- Ontario Municipal Act
- Ontario Clean Water Act
- Ontario Safe Drinking Water Act
- Health Protection and Promotion Act (Ontario)
- Nutrient Management Act (Ontario)

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Canada Labour Code

- Purpose of part II is to prevent accidents and injury to health arising out of, linked with or occurring during course of employment
- Priority is specified to first eliminate hazards, then reduce hazards, then provide personal protective clothing, equipment and materials
- Every employer has a general duty to ensure that the health and safety at work of every employee is protected

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Canada Labour Code

- Every employer also has duty to ensure that concentrations of hazardous substances in the workplace are controlled in accordance with prescribed standards (ie regulations)
- Also that hazardous materials are stored, handled and labelled as per regulations
- Material data safety sheets regarding controlled substances, ingredients on Ingredients Disclosure List, chemical identity of any substances that employer believes may be harmful

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Opportunities for Engagement – Canada Labour Code

- Review Material Safety Data Sheets at your own workplace; ensure currency
- Ensuring practices at the individual workplace are consistent with the MSDS and other recommended practices
- Provide feedback to employers or the party responsible for the MSDS (manufacturer or importer) if the information is incomplete
- Monitor standard setting process and provide input into the Canada Labour Code regulations – subscribe to the Liaison bulletins www.celaw.ca/liaison

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The screenshot shows the website of the Canadian Labour Code, specifically the Liaison Bulletin No. 80 - September 2009. The page is titled "Labour" and "Liaison Bulletin No. 80 - September 2009". It contains a table of contents with links to various sections: Overview, Deputy Minister, Did you know, News and Events, Employment Standards, Health and Safety, Workers' Compensation, Fire Protection, Labour Relations, Equality in the Workplace, Labour Law, Workplace Trends, Labour and Globalization. The main content area is titled "Proposed amendments to the Aviation Occupational Health and Safety Regulations" and discusses the notification of pre-publication in Part I of the Canada Gazette on September 14, 2009. It mentions that amendments are proposed to the Aviation Occupational Health and Safety Regulations (AOHSR) and the Canadian Aviation Regulations (CARs). The proposed amendments are made under Part II of the Canada Labour Code, and prescribe health and safety standards for federally regulated employers in the aviation sector. While similar to the AOHSR, the proposed amendments take into account the particular characteristics of the aircraft as a workplace to better protect the health and safety of employees (e.g., transport cabin crew members, which includes pilots and flight attendants). The most significant amendments include the provision of more adequate sanitary conditions for employees working on board aircraft in operation; enhanced protection regarding noise reduction; electrical safety; materials handling and deficiency in reporting procedures.

Canadian Environmental Protection Act

- Human health is to be protected from risk of adverse effects of toxic substances, pollution, waste, use of biotechnology
- Long term human and human health benefits are to be considered in decisions
- Government is required to act expeditiously to assess whether existing or new substances are toxic or capable of becoming toxic, and assess the risk they pose to the environment and human life and health

CEPA PROVISIONS

- An Environmental Registry is established
- Whistle blower protection for employees is set out
- The Ministers (Health and Environment) are required to conduct research relating to hormone disrupting substances including re detection, effects, preventive, control and abatement
- Minister of Health is required to conduct research regarding role of substances in illnesses or in health problems & distribute it to the public

CEPA Opportunities for Engagement

- Review registry notices
- Review research conducted
- Suggest research needed to Environment Canada and Health Canada
- Provide input into standards and risk management such as the Chemicals Management Plan
- Call for extension of regulations; eg phosphorous in dishwasher soaps

CEPA – Opportunities for Engagement cont'd

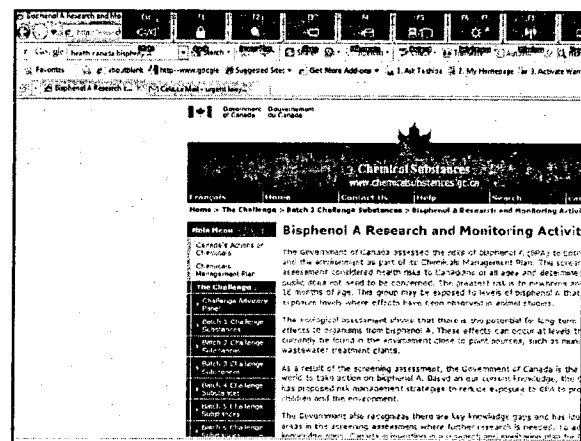
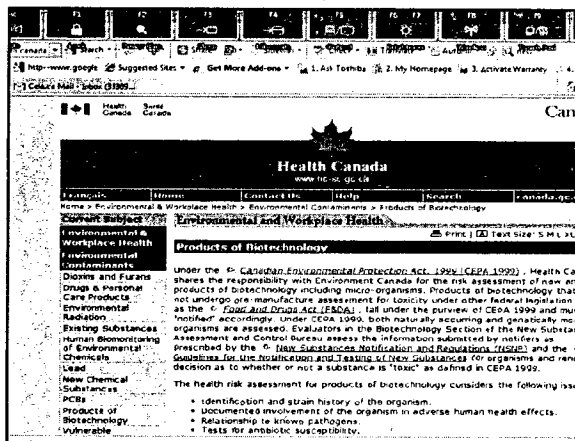
- Monitor Gazette
- Use NPRI and Pollution Watch
- Follow and comment on developing guidelines etc
- Try to get onto relevant advisory committees
- Suggest additions to schedules or bring new information to attention of Minister
- Use federal petition process
- Advocate for new fuel and emissions standards

CEPA – Opportunities for Engagement cont'd

- Review and respond to notices regarding potential declarations of toxicity
- Review and respond to draft chemical management plans
- Advocate for addition of substances to Export Control List (if controlled under international agreements)
- Provide suggestions for needed new controls or regulations pertaining to animate substances

CEPA – Further Opportunities for Engagement

- File Notices of Objection requesting a Board of Review if Ministers decide not to include substance on list of toxic substances
- Advocate for more stringent international controls on air and water pollution
- Participate in reviews such as the National Energy Board's current review on Arctic Drilling
- Call for more responsibility on part of emitters, oil and gas drillers etc (contra liability limits in current legislation)



Movement of Hazardous Waste

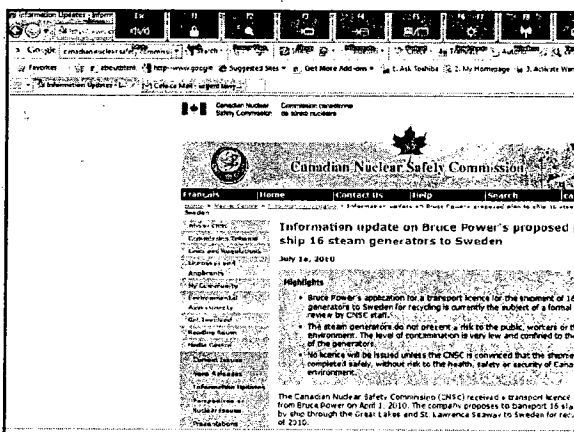
- CEPA sets out a permit system to import, export, or move in transit a hazardous waste, hazardous recyclable material or prescribed materials for final disposal
- Prohibitions may be imposed (for example PCB waste export is limited to the U.S. & only for disposal)
- Minister may refuse permit if would not be managed to protect environment or human health
- Applies to movement within Canada as well

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Hazardous Waste – CEPA – Opportunities for Engagement

- Radioactive steel recycling issue (also with Canadian Nuclear Safety Commission)
- Asbestos
- Exports of computer parts – argue for stringent controls; checks on safety in recipient countries

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Specific Regulations

- Reports on sulphur content and fuel additives
- Phosphorus concentration for laundry detergents
- Mobile PCB treatment and destruction
- Chlor-Alkali Mercury release regulations (plastics for example)
- Lead in gasoline
- Asbestos Mines and Mills - release of asbestos fibres to ambient air
- Chlorobiphenyls Regulations (PCBs)

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Specific Sector Regulations cont'd

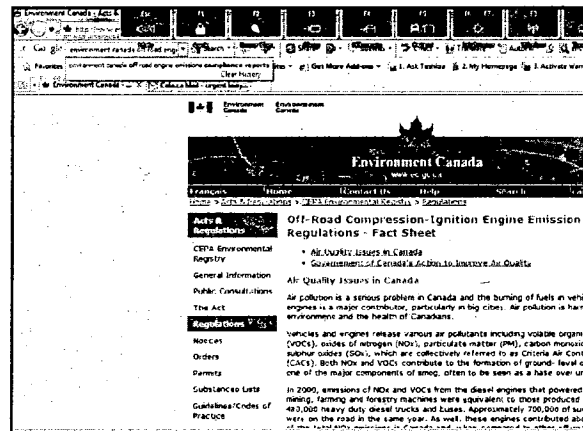
- Secondary Lead Smelter release regulations –
- Pulp and Paper Mill Effluent – chlorinated dioxins and furans regulations –
- Vinyl Chloride Release Regulations
- Benzene in Gasoline regulations
- Ozone-depleting substances regulations –
- Sulphur in gasoline regulations
- Storage tanks for petroleum products

Sector Specific Regulations

- On-Road Vehicle and Engine Emissions and Off-road engine emission regulations
- Dry-Cleaning – Tetrachloroethylene use and reporting
- Solvent Degreasing – reducing use of trichloroethylene and tetrachloroethylene
- Federal Halocarbon Regulations – (refrigeration and air-conditioning)

Opportunities for Engagement

- For any of the Sector specific regulations, ask for monitoring, annual reports, compliance reports
- How is the regulation working – ask for departmental analyses conducted, or engage in such an analysis
- Is it accomplishing what it was meant to do; are there resources for inspection and compliance
- Suggest these questions to federal commissioner for sustainable development



Hazardous Products Act

- Now in transition due to passage of Bill C-36 (below)
- Products may be prohibited from advertisement, sale or importation by listing in regulation
- Products may be restricted in accordance with regulation
- Scope does not apply to products covered under other statutes
 - (pesticides, explosives, food and drugs or cosmetics or devices covered by the Pest Control Products Act, Explosives Act or Food and Drug Act)

Hazardous Products Act - Medical professionals and confidentiality

- Regulations may specify that medical professionals be supplied with MSDS information in order to make a diagnosis or deal with a medical emergency;
- Regulations may also require medical professionals to keep such information confidential except for the purpose for which disclosed

Examples of prohibited products

- yo-yo's with stretchable cord,
- children's furniture and other articles with lead in paint over 600 mg/Kg,
- textile fabrics and children's sleepwear that do not meet specified flame retardant tests,
- cellulose nitrate in eyeglass frames (highly flammable),
- toys with mercury, arsenic

Bill C-36 Canadian Consumer Products Safety Act

- Just passed by House of Commons and has received first reading in the Senate
- Repeals Part 1 ("Prohibited and Restricted Products") and Schedule 1 of Hazardous Products Act (prohibited products) to replace them with this new law
- Addresses consumer products specifically
- Defines consumer products as likely to be obtained by an individual for non-commercial purposes
- Provides new definitions for controlled and hazardous products remaining under HPA (non-consumer)

Bill C-36 cont'd

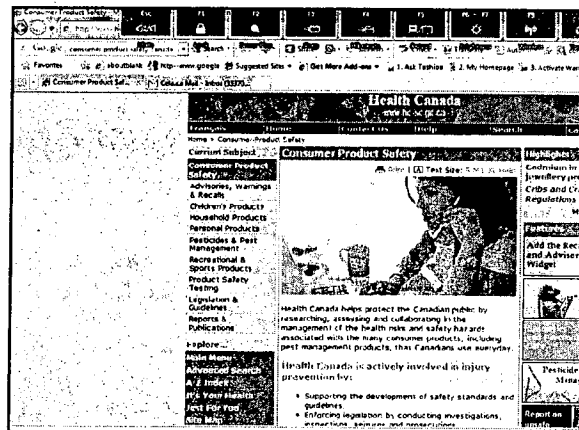
- A new definition of "danger to human health or safety" — "unreasonable hazard — existing or potential — that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death of an individual exposed to it or have an adverse effect on that individual's health — including an injury — whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may reasonably be expected to have a chronic adverse effect on human health." (emphasis added)

Bill C-36 cont'd

- Applies to products both manufactured within Canada and imported
- Provides for prohibitions on import, sale, manufacture or advertising specified products — Schedule 2 carries over some items from Hazardous Products Act
- General regulation making power may be applicable to any consumer products including provisions for warnings, recalls, as well as standards

Bill C-36 cont'd

- New general prohibition on manufacturing, selling etc products that are a danger to human health or safety, or recalled products (either voluntary or ordered recalls)
- Requirement to report incidents (such as accidents, recalls) to Minister
- Minister may disclose to the public information about a danger to human health or safety that a consumer product poses



Pest Control Products Act

- This legislation allows the Minister to register a pesticide in Canada if it is shown to have "acceptable value";
 - "value" is defined with reference to efficacy (in controlling pests); effect on host organisms; and health, safety and environmental benefits, and social and economic impact
- Minister has an obligation to minimize health and environmental risks and to encourage lower risk products and other measures
- If a registration is granted, it is made conditional on the "label" which outlines the allowed uses and certain conditions of use such as protective wear and frequency of use, concentration limits allowed and other matters.

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Applicant's burden – pesticide registration

- Applicant to register a pesticide has the burden of proof: to prove that the health and environmental risks of the product are acceptable
- Minister is to apply a science based approach
- For pesticide registration decisions, or re-evaluations, the Minister must consider aggregate exposure, including dietary, drinking water, use in and around homes and schools, and cumulative effects of pesticides with a common mechanism of toxicity

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Opportunity for Engagement

- Review some of these pesticide assessments
- Take advantage of the reading room
- Audit some of the assumptions and inputs
- Seek information about adverse effects reports
- Make suggestions for special reviews
- Any person may ask for reconsideration of registration decisions; export decisions; or cancellation of export permits

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Pest Control Products Register

- The register contains information about products, applications, registrations, re-evaluations and special reviews
- Including active ingredients and uses allowed or sought;
- decision on applications, conditions
- Information that was provided in support of applications, information considered by the Minister; reports on evaluation of health and environment risks and value and other matters

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Contaminants of Health or Environmental Concern

- Three lists are maintained by the regulations
- For example, a list of formulators that are of concern due to the ability to cause anaphylactic - type reactions includes fish, wheat, tree nuts, soy, sulfites, crustaceans, sesame seeds and milk
- The contaminants list includes certain dioxans and furans

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Food and Drug Act

- Defines cosmetic – for complexion, hair, skin, teeth, including deodorants and perfumes
- Defines drug – referring to disease and disinfection among other things
- Defines food – includes food or drink for human beings, includes chewing gum and anything that may be mixed with food whatsoever

Food and Drug Act

- Prohibits labelling or advertising *food* as treatment for list of conditions in Schedule A (long list from alcoholism to diabetes to thyroid conditions)
- Regulations permit sale of *drugs* as preventive for those conditions so long as not labelled as treatment or cure
- General prohibition on selling food that is adulterated, contaminated, unfit, prepared under unsanitary conditions

Food and Drug Act cont'd

- Standards for food may be prescribed and there is a prohibition on importing or inter-provincial conveyance unless consistent with the standard
- Food may not be sold if subject to a list of drugs any of which were administered to the animals (including meat, eggs, milk)
 - For example, clenbutarol (a steroid) or chloramphenicol (an antibiotic)

Food and Drug Act Claims and Labelling

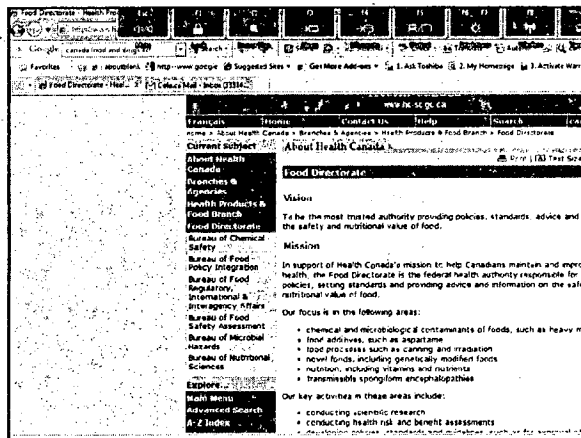
- Extensive provisions regarding nutrition content, claims and labelling (eg "protein"; "meat extenders"; "kosher"; energy content; and other matters; nutrient claims; form of labelling; quantities; packaging)
- Division 16 of the regulations deals with food additives including Ministers' approval, maximum residue limits if applicable, labelling

Cosmetics

- General prohibition on sale of any cosmetic that may injure health
- Standards may be prescribed; labels and packages that may be mistaken for the standard are prohibited unless in compliance with those standards

Opportunities for engagement – Food and Drugs Act

- Call for additional labelling
- Seek credible lists of substances of concern
- Provide input to the regulation making process
 - For example whether a particular ingredient should not be allowed to be used in cosmetics



Ontario Occupational Health and Safety Act

- Part IV deals with Toxic Substances
 - Where a biological, chemical or physical agent, or combination is used or to be used in a workplace,
 - and its presence or manner of use is likely to endanger the health of a worker, in the opinion of the Director,
 - the Director shall order it be prohibited or limited or restricted as the Director specifies
 - Or subject to such controls and conditions such as work place practices, engineering controls and time limits as the Director specifies

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Occupational Health and Safety

- Toxic substances orders are to be posted; and must identify the agents of concern and the reasons
- Employer, worker or trade union may appeal to the Minister
- Factors to be considered include interactions of agents, quantities, extent of exposure, availability of other processes or agents for the intended use, data regarding the effect on health, any regulatory criteria

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Occupational Health and Safety

- New biological or chemical agents are not to be used in a workplace without submitting to the Minister the composition and generic names
- Minister may require further information and assessment
- Employers must ensure all hazardous materials in the workplace are listed and that current material safety data sheets are supplied (they must be updated at least every 3 years)
- At the request of any person the Medical Officer of Health *shall* request a copy of a material safety data sheet and make it available to the person (and may not disclose the name of the person who requested it)

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Occupational Health and Safety

- Regulations may require employers to assess all agents in the workplace to determine if there are hazardous materials
- If employer is advised a worker has an occupational illness, must advise Director, trade union and health and safety committee

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Occupational Health and Safety

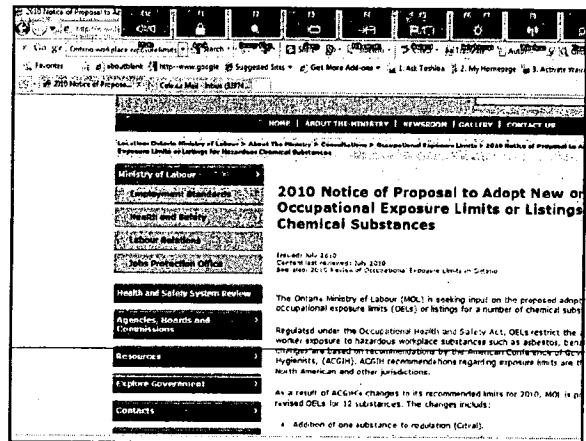
- Act has 34 regulations dealing with array of specific contexts, including
 - control of exposure to biological or chemical agents;
 - specific regulations for certain designated substances such as arsenic, asbestos, vinyl chloride and others;
 - Regulations for farming, health care, teachers,
 - eg 860 regarding the WHMIS, Workplace Hazardous Materials Information System

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Ontario Workplace health and safety

- Input regarding the workplace exposure limits to toxic substances
 - Suggestions of new substances to assess
 - Suggestions or requests for reviews of existing standards
 - Suggestions for reviews of existing practices and protective methods
 - Suggestions for reviews of potential for interaction with other substances

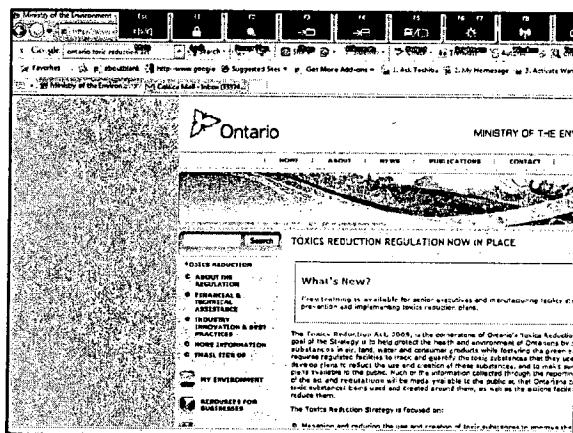


The Toxics Reduction Act (Ontario)

- Legislation passed in Ontario 2009
- Intent is to reduce use of toxics in air, land, water and consumer products
- Facilities will be required to track specified toxic substances they use
- Facilities must develop plans to reduce use of those toxics, and make summaries of the plans public
- At least every five years the minister must consult and consider adding to the list of toxic substances

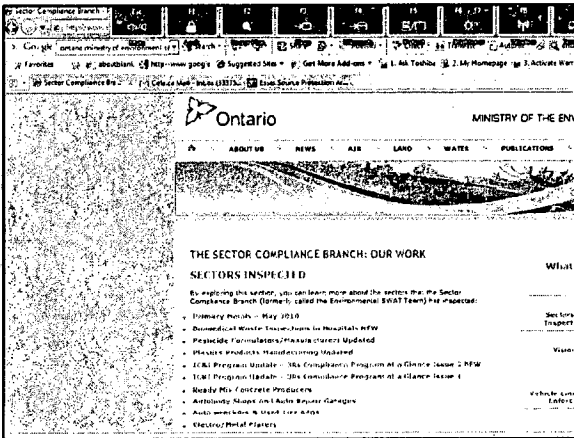
Opportunities for engagement – Toxics Reduction Act

- Get involved in preparation of employers toxic reduction auditing and preparation of plans
- Review plans as they are developed in your vicinity
- Review reductions achieved as reported in later years
- Suggest additional substances to be added to the regulations under the Act
- Ask Moe for reports of results of the Bill



Protection Act & Ontario Water Resources Act

- Ask MoE for sector based compliance info
- Ask MoE for emissions information in a community or from general monitoring
- Ask MoE for data on whether the regulations are reducing pollution or conduct a study on such a question



Municipal Act (Ontario)

- Municipalities have extensive powers regarding health, safety and nuisance, and regarding the natural environment
- They have broad authority to govern their affairs as they deem appropriate
- Municipalities may regulate for the health, safety and well being of the inhabitants of the municipality in matters not specifically provided in the Municipal Act

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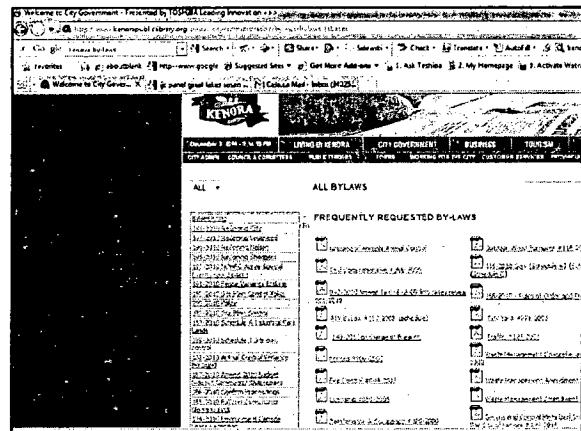
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Municipal Act - Opportunities for Engagement

- At local level find out if any actions or by-laws have been taken under municipal act powers such as Toronto's recent Right to Know By-law
- Suggest such actions – eg mercury thermometer take back programs; more stringent sewer use by-laws; lead pipe replacement programs

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Clean Water Act (Ontario)

- Clean Water Act passed in 2006 to protect sources of drinking water
- Source protection planning areas are established on a watershed basis and source protection planning committees must oversee the assessment of threats and risks to sources of drinking water
- Threats that are significant require mandatory implementation of source protection plans which are to be approved by the Minister
- Matters provided in the plans will supersede other legislation such as land use planning rules

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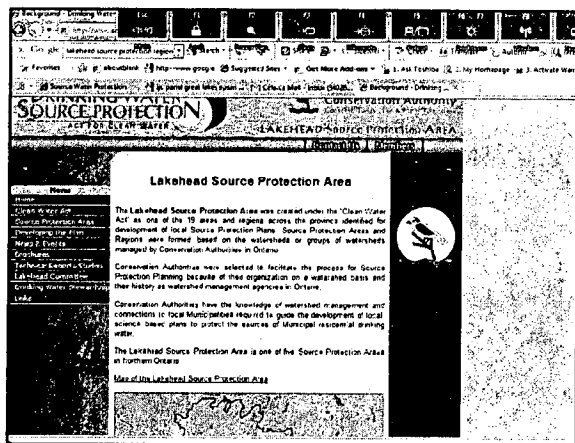
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Opportunities for Engagement – Clean Water Act

- Follow meetings of local drinking water source protection committee
- Ask to be on mailing lists
- Give input re threats assessment report
- Give input re source protection plan once proposed
- Support stringent measures for significant threats to drinking water sources

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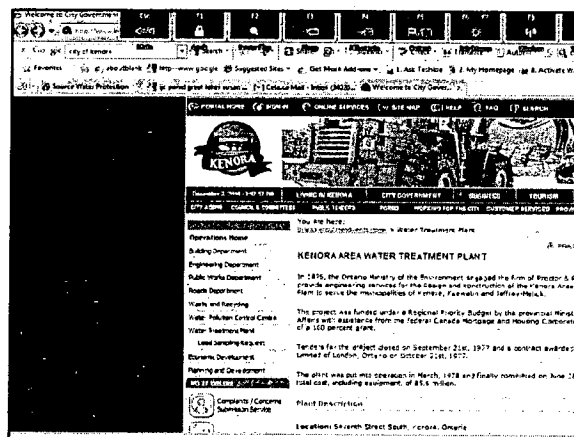


Safe Drinking Water Act (Ontario)

- Safe Drinking Water Act passed in 2002
- It imposes drinking water standards, establishes rules for operators of facilities, for drinking water systems, for laboratories that do drinking water testing, and for training and certification of operators, among other matters
- Adverse test results from treated water testing must be reported to system owner / operator, Ministry of Environment and medical officer of health and addressed
- Testing and reporting must be made public

Opportunities for engagement – Safe Drinking Water Act

- Look up water testing reports
- Ask questions
- Know sources in your community
- Know how your local water is treated
- Provide input for water system planning and financing



Summary Report

January 1st 2009 – December 31st 2009

Prepared by Warren Ortlieb

Provide details on the notices submitted in accordance with subsection 16(1) of the Drinking-Water Act or section 16-4 of Schedule 16 of O.Reg.170/03 at the Spills Action Centre

Incident Date	Parameter	Result	Unit of Measure	Corrective Action
Feb 13/2009	Total Coliform in distribution system.	Present	P/A	Suspected sampling error. 2 consecutive resamples taken hours apart. Both samples indicate an absence of TC and EC.
July 31/2009	Fecal Streptococcus in highlift header.	Present	P/A	Suspected sampling error. Resample taken from highlift header and

Health Protection and Promotion Act (Ontario)

- Mandatory public health programs include community sanitation, safe drinking water, and prevention of communicable disease, among others
- Other mandatory programs include disease prevention, including cardiovascular, cancer and others, and health services to infants, pregnant women in high risk categories and others
- Complaints of health hazard in occupational or environmental health are investigated in conjunction with the relevant ministry

Health Protection and Promotion Act (Ontario)

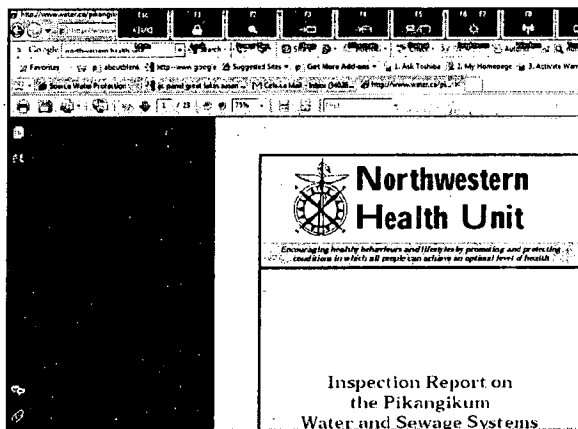
- Medical Officers of Health have a positive statutory duty to keep themselves informed with respect to occupational and environmental health
- Various ministries have obligations to supply information to the Medical Officer of Health
- This Act now includes responsibility for Small Drinking Water Systems
- Extensive order powers are provided under the Act, such as vacating premises, removing materials
- Food premises inspection powers are provided
- Communicable diseases responsibilities are set out

Health Protection and Promotion Act (Ontario)

- HPPA provides the Medical Officer of Health responsibility to determine potability of community's water
- Issuance of Boil Water Advisories or Drinking Water Advisories is by the Medical Officer of Health (pursuant to protocols developed by the Ministry of Health and Long Term Care)

Health Protection and Promotion Act

- Ask health unit about the small water systems inspection program
- Look at Drinking Water Advisories and Boil Water Advisories – are there any trends
- Ask questions of local medical officer of health
- Suggest environmental health issues be included in programming



Nutrient Management Act (Ontario)

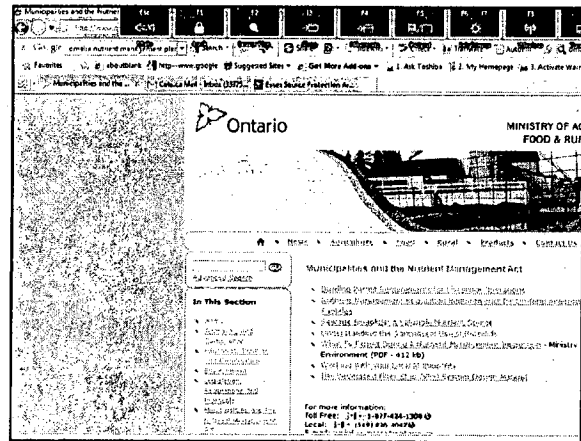
- Act passed in 2002
- A primary aim is to keep pathogens from surface or ground-water supplies
- Establishes rules regarding application of "nutrients" such as animal manure or municipal sewage biosolids to land, separation distances from wells etc

Opportunities for engagement – Nutrient Management

- Ask MoE, OMAFRA for nutrient management plans
- Find out what your municipality is doing with sewage biosolids
- Ask for reviews, compliance reports
- Ask for monitoring of outcomes
- In areas experiencing adverse effects, ask for special studies with follow up regarding sources (e.g. Lake Huron beaches)
- Advocate for additional measures such as new best management practices

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Conclusion

- There are an extensive array of statutes, jurisdictions and bodies with responsibility for environmental health
- Important to be familiar with roles, responsibilities, and tools that you might want to use
- Many opportunities to use existing tools and powers for greater public and environmental health protection
- Many opportunities to improve the legislative framework and its application in practice
- Many opportunities to know more about and get

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Environmental Health – the Safety Net model

- We can take a lesson for environmental health regulation from the lessons learned for drinking water protection in the Walkerton Inquiry
- A safety net of clear standards, roles, oversight, multiple barriers and strong public engagement was the recommended approach in that Inquiry, together with continuous improvement
- At same time, pursuing the safest system must never be put on hold on the basis of an alleged lack of "perfect" information

Implementing Environmental Health Protection

- Responsibility by a diversity of players is key to both the vision and the practical implementation of a strong and resilient approach to environmental health protection.
- Complex implementation of environmental health law and policy is enabled when it is established within a clear framework with well articulated methodologies
- Strong enforceability and new legal tools for implementation and enforcement in certain cases are also necessary to its success.



Contact information

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CELA web site: www.cela.ca

Low Income Energy Network: www.laer.ca

CPCHE website: www.cpcche.ca

PollutionWatch Website: www.pollutionwatch.ca

Water Guardians website: www.waterwatchers.ca

Environment & Law Resource Library: www.eclawlibrary.org