

Remarks to the Standing Committee on General Government on *Ontario Bill 167: Toxics Reduction Act*

Monday, May 25th, 2009, 5:30 PM

Good afternoon.

Thank you Mr. Chairman and Committee Members for providing the Cement Association of Canada the opportunity today to comment on Bill 167, the *Toxics Reduction Act*. With me, is Martin Vroegh, Environment Manager for St. Mary's Cement Group.

Background

Before we get into discussing the Toxics Reduction Act, I would like to provide you with some brief context on the cement manufacturing industry. Ontario's cement companies include: Lafarge, Holcim, Essroc, Federal White, and St. Marys Cement. Together they manufacture over 7 million tonnes of cement and meet all of Ontario's cement demand, employ more than 1,000 Ontarians and generate over \$1 billion of economic activity in the province.

Cement is a fine grey powder, which, when mixed with water becomes the glue that binds together the materials that form concrete. Cement has been made for thousands of years and still today, there is no substitute – so please understand, without cement there is no concrete. Concrete is an absolutely essential ingredient to Ontario's infrastructure renewal and sustainable development plans.

Toxics Reduction Act

Our member companies take their responsibility for sound environmental management seriously. Toxic substances present risks to human health and the environment, and these risks must be managed. Under the auspices of the World Business Council on Sustainable Development and in line with the Stockholm Convention, the Global Cement Industry has endorsed a global strategy for the reduction and elimination of risks associated with persistent organic pollutants (POPs) – those pollutants that pose the greatest risk due to their persistence in the natural environment and their tendency to bioaccumulate.¹ The cement sector is a responsible global citizen, and we take our responsibilities seriously.

It is therefore with great consideration that we offer the following recommendations with respect to the Ontario Government's proposed legislation for toxics risk management. We fully recognize that the proposed Act is framework legislation and as such does not present the full detail of the Government's approach; however, we believe that it is of paramount importance that the legislation not be unduly limiting, and that the full range of acceptable approaches be clearly articulated so as not to unintentionally limit the Ministry's interpretation or capacity to respond to the spirit of the legislation both efficiently and effectively.

We have three recommendations related to avoiding overlap and duplication, providing for a sector-specific approach, and ensuring regulation is risk-based with adequate consultation of affected parties.

Overlap & Duplication

¹ Formation and Release of POPs in the Cement Industry (Second Edition), World Business Council on Sustainable Development, 2006. See:

http://www.wbcds.org/DocRoot/piF5rKj2ulwpFpYRMI8K/formation_release_pops_second_edition.pdf

The approach to managing toxic substances outlined in the proposed Act has the potential to be duplicative of the approach being implemented by the federal government through the Chemicals Management Plan (CMP) and the designation of toxic substances under Schedule 1 (Toxic Substances List) of the Canadian Environmental Protection Act (CEPA, 1999). The federal toxics process has involved substantial consultation with industry, environmental non-governmental organizations and the general public – and it is broadly endorsed. In 2006, Canada became the first country to complete the risk-based prioritization or ‘categorization’ of the roughly 23,000 ‘existing substances’ being used domestically.

These substances were evaluated with regards to their toxicity, their persistence in the natural environment, and their potential for bioaccumulation. Through the Chemicals Management Plan, the Government of Canada has initiated an information gathering and risk assessment process for the highest priority substances identified through this ‘categorization’ process. Where warranted as a result of these assessments, the federal approach also provides for extensive measures to control the use and/or release of a substance.

I would like to remind Honourable Members that in 1998, Ontario, as part of the Canadian Council of Ministers of the Environment (CCME), pledged to take a harmonized approach to toxics management. To be consistent with this eleven year old pledge, we recommend that the Toxics Reduction Act:

1. Formally recognize that the potential for overlap and duplication with Federal efforts, including the Chemicals Management Plan and the CEPA Toxics process, exists; and
2. Provides the Minister of Environment and his staff with a specific directive to avoid overlap and duplication.

Sector-Specific Approach

Approximately 70% of the substances considered for designation as toxic substances have been identified as relevant to the cement manufacturing sector. However, most of these substances are present in the raw materials, and when processed by the industry, pose no risk to human health or the environment – either through the handling of the raw materials or the handling and use of the finished product.

To the extent that any of these substances of concern do pose risks to human health and the environment, they do so as a result of their co-incident release to the atmosphere as a result of the manufacturing process. These releases, however, are already aggressively managed by Ontario cement manufacturing companies as part of their response to the Stockholm Convention and as required by the Province’s comprehensive air approvals and local air quality regulations under the Ontario Environmental Protection Act (EPA).² Requirements for further reporting and toxic reduction planning in the cement sector are unlikely to contribute to any further and meaningful environmental or human health benefits.

At the same time, tracking, monitoring and reporting represent very real costs to our industry. A broad-based, ‘blanket’ approach as was identified in the discussion document would be administratively burdensome. Furthermore, broad-based reporting such as is undertaken for the National Pollutant

² Pre-consultation sessions concerning air standards for eight substances, seven of which fall within the proposed purview of the Toxics Reduction Strategy, are currently underway (October 2008).

Release Inventory (NPRI) leads to data with a low level of accuracy and reliability – data which is frankly unsuitable as a basis for policy analysis and regulation.

Taking a sector-based approach, and designating priority substances based on risk, would shift the focus from quantity of effort to quality, and would be both more efficient and more effective in reducing risks associated with toxic substances.

We therefore recommend that specific provision for a sector-specific approach, including the risk-based prioritization of substances, be explicitly included in the Act to ensure that subsequent interpretation is open to finding this approach consistent with the spirit and intent of the Act.

Risk-based Regulation

Subsection 64 of the proposed Act includes broad regulatory authorities including the authority to:

1. Prohibit or regulate the manufacturing, sale or distribution of a substance or product containing a substance;
2. Prescribe circumstances in which a person who manufactures, sells or distributes a substance or related product is required to give notice to the public or specified persons; and
3. Specify the contents of such a notice to the public or specified persons.

These are extremely broad and powerful regulatory powers and must be carefully applied to avoid unintended, perverse outcomes. If there is to be any distinguishing between products based on their contents, it must be done on the basis of the environmental and human health exposure pathways and corresponding risk.

Having said that, the risk must still be communicated clearly and accurately, and so there is a very real need for upfront consultation with affected parties. The cement sector has had to confront poor risk communication in the past.

The “Green Guide to Health Care” is a prime example of poor risk communication which ultimately contributes to an increased risk from toxic substances. Under the Guide, and without any supporting risk assessment evidence, hospitals that use concrete containing fly-ash cement are penalized due to concerns that such fly ash cement may contain mercury residues from the combustion of coal in electric power plants. Rather than posing a risk, however, as the mercury is chemically bound in the cement matrix, the use of fly ash cement actually reduces the overall risk of mercury exposure as compared with the conventional alternative of land filling the fly-ash.

To minimize the potential for perverse outcomes resulting from directing consumer preferences to alternatives that may actually pose a higher risk to themselves and the environment, we recommend that the Final Act include language directing the Ministry to take a risk-based approach to product regulation including consideration of both inherent toxicity and exposure pathways, and to undertake consultation with affected parties prior to making their intent to regulate known publicly.

Closing

In closing, the proposed Toxics Reduction Act leaves a number of significant decisions to regulatory development. The Act is unclear in terms of the specifics of how it will be applied and there is a need for

the inclusion of language in the Act to provide more explicit direction with respect to avoiding overlap and duplication with federal programs, including the option to take a sector-based approach with targeted, risk-based selection of substances, and ensuring that product-focused regulatory powers are applied based on total risk and only after consultation with affected parties.

Thank you again for your time, and for the opportunity to tell the cement industry's story.

I welcome any questions you may have.