Selected Industry Arguments on CEPA

1) "Toxic"

- *Greenhouse gasses should not be listed as "toxic" under Part 5 of CEPA. Either other parts of CEPA outside Part 5 such as the International Air Pollution Provisions could be used, or climate change could be managed under the clean air initiative that the new government has announced. Greenhouse gases are a staple of life. They should not be on a list of toxics or managed under Part 5. (CCPA House submission, May 17 2006)*
- *The term "toxic" creates stigma for many substances that are subject to a wide range of risk management options under CEPA. One solution in the review would be to remove the "toxic" term from the Act. (CCPA House submission, May 17 2006) The use of the term "toxic" in CEPA is not the same as the commonly understood definition of toxic. The commonly understood meaning of the word "toxic" is poisonous, even in small amounts. To the general public, substances designated as "toxic" under CEPA and listed on Schedule 1 are "poisonous" and should not to be used. This designation of "toxic" is misleading because many of the substances on Schedule 1 are being managed and can be used safely and effectively. Labeling substances requiring care and management as "toxic" does not fairly or adequately inform Canadians of their nature or the level of risk they represent. We believe there is misunderstanding of the legislation and the use of the term "toxic" among Canadians and it undermines the credibility of CEPA and Schedule 1. (Canadian Consumer Specialty Products Association House submission, May 9, 2006; examples cited include CO2 and ammonia in windex)*
- *Other industry submissions (e.g. MAC, CME) have also focused on this issue.*

Especially in light of CEPA's failure to adequately limit pollution in our environment, a watering down or removal of the term "toxic" could only be seen as a further retreat in the Government's pollution abatement approach.

But beyond this bigger-picture concern, the above concerns would appear to assume that "toxic" relates only to human health, whereas a substance can also be toxic to the environment. Toxicity may also relate to human health *via* the environment, as would be the case for a substance that is persistent and bio-accumulative.

Toxicity relates to dose. The term "toxic" in CEPA refers to a range of substances that are indeed toxic (i.e. harmful or poisonous) in particular contexts. Even the example of CO2, above, is toxic at a global scale, especially when one considers the volumes being emitted by human sources. At the other end of the scale, even substances commonly considered poisonous are *not* toxic below a certain level. While there is wide variation in the levels at which substances become truly toxic, it is not unreasonable to describe substances that pose a serious risk to human health or the environment with this label. The Act itself addresses the dose issue in various ways, for example by prescribing a concentration level for releases of each substance on the Virtual Elimination List (s. 65(3)).

Finally, there are sound regulatory policy reasons for maintaining the "toxic" designation. There are substances currently managed by CEPA that have been regulated for more than three decades (e.g. PCBs). These substances, as well as the more recent regulated chemicals such as PERC,

TCE and vinyl chloride, are included on the *List of Toxic Substances*, as well as being bound up in the Government of Canada's *Toxic Substances Management Policy*, which remains the core policy for regulating dangerous substances. Similarly, internationally, other jurisdictions refer to "toxic" in their pollution management regimes.

Reference to the *List of Toxic Substances* and the *Toxic Substances Management Policy* and all of the substances captured by them is necessary because 30 years of regulation of these substances hinges on this language. From an administrative point of view, the fact that the substance is "toxic" is the common thread for the regulations and other measures. From the public's perspective, there is a shared understanding, even if subconscious, that a "toxic" substance is among the worst. There is a shared expectation that government will, and is obliged to, deal appropriately with those "toxic" substances that emerge in the future. Removing or weakening the term may thereby reduce the impetus for proper regulation of harmful substances.

2) "In-Commerce" List

- *During the 1998-99 review of CEPA, parliamentarians suggested that CEPA should be the safety net for environmental assessments if other Acts did not meet the requirements under CEPA (specifically the new substance notification regulations). They amended Section 81 of CEPA, so that if other Acts (the Pest Control Products Act, the Fertilizer Act, the Seeds Act and the Food & Drugs Act) and their regulations provide environmental assessments equivalent to CEPA, they would be exempt from the new substances provisions in CEPA. The Food and Drug Act (F&DA) did not meet this requirement and as a consequence all F&DA substances (both existing and new) became **subject** to CEPA and, therefore, also subject to the New Substances Notification Regulations (NSNr). As of September 13, 2001 the NSNr's have been applied to all new substances in F&DA products. However, as a consequence of the F&DA not being scheduled under CEPA, the status of approximately 9000 substances contained in F&DA products introduced into commerce in Canada between January 1, 1987 to September 13, 2001 (the ICL) became uncertain regarding their status as "existing" or "new" substances within the meaning of those terms under CEPA. While industry has been allowed to continue to market these substances in our products, we need legislative clarity so that they are dealt with in a fair, consistent, and balanced manner. CCSPA is requesting that an amendment be made to CEPA which recognizes the ICL as "existing" substances and treat them accordingly. (Canadian Consumer Specialty Products Association House submission, May 9, 2006)*

3) LOQs

- *CEPA requires establishing so called "limits of quantification" (LOQs) for all substances that are subject to virtual elimination, even when this should be unnecessary for irrelevant trace contaminants. This is impractical and should be limited to when these LOQs are needed. A similar problem was resolved in the Stockholm Convention for persistent organic pollutants. CEPA should be amended to adopt the same solution. (CCPA House submission, May 17 2006)*

4) User Fees

- *User fees for new substance notification regulations are inconsistent with the User Fee Act (CCPA House submission, May 17 2006).*
- *Fees may result in a cost of hundreds of thousands of dollars for an applicant. (June 6, 2006 Senate testimony of Nancy Coulas, Canadian Manufacturers and Exporters).*

5) Timeframe for CEPA Reviews

- *The timeframe for CEPA reviews should be 10 years, not 5, so reviews can be based on an adequate amount of experience. (CCPA House submission, May 17 2006)*

A five-year review clause is common in many laws, but it is especially important to revisit CEPA on a shorter time frame because of rapid developments in our understanding of pollution in our environment. For example, since the last review in 1999, scientific understanding of the impact of endocrine disrupters on human development has shown that we are facing serious human developmental threats from these chemicals. ONE MORE EG?

It is also clear that a five-year review is somewhat of a misnomer. For example, it was 11 years between the original passage of CEPA in 1988 and the "five-year review" which resulted in changes in 1999 [ACCURATE?]. Similarly, it has been seven years since the last review, and it is unlikely that new legislative provisions stemming from this review will be in force before 2009. Because of the length of time it takes to prepare and administer a review, the practical reality is that we are currently operating under a 10-year review framework. Extending the statute's provision will mean that this timeline is extended to 15 years.