

Hazardous Waste

The Ontario Ministry of the Environment's Response to EBR Application for Review
99EBR005.R: A Commentary

Canadian Institute for Environmental Law and Policy

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Introduction

On December 20, 1999, the Canadian Institute for Environmental Law and Policy filed an Application for Review under the Ontario Environmental Bill of Rights regarding the approval of hazardous waste disposal sites and standards for hazardous waste disposal in Ontario. Citing a number of recent incidents involving hazardous waste disposal sites in the province, the Application stated that the Ministry's current legal and policy framework in this area was not adequate to protect the health, safety and environment of Ontario residents. The Application sought specific new or amended laws, regulations and policies to address the situation.

The Ministry responded to the Institute's Application on February 21, 1999, stating that a review was "not in the public interest." This commentary responds to the Ministry's rationale for rejecting each of the changes to laws, regulations and policies sought through the Application, and outlines why the Ministry's response fails to address the concerns raised in the Application.

Laws: *Intervenor Funding Project Act*

The Ministry simply re-states its position regarding the expiry of the Intervenor Funding Project Act, 1989. This fails to address the issue raised in the Application for Review regarding the barriers to effective public participation in public hearings regarding the approval of hazardous waste disposal sites.

Regulation: *Designation of Hazardous Waste Disposal Sites under the Environmental Assessment Act*

The Ministry's response provides no commitment to the designation of sites under the Act, despite the consideration that this issue was raised by the Environmental Assessment Board in both the Steacy Dismantling and SRBP Decisions.

Policies: Review of Purpose, Rationale, Alternatives to, and Alternative Methods to hazardous waste disposal sites.

The Ministry's response provides no commitment to the inclusion of these matters in the environmental assessment of hazardous waste disposal sites, despite the consideration that the issue of the benefits of an examination of "alternatives to" was raised by the Environmental Assessment Board in both the Steacy Dismantling and SRBP Decisions.

Policies: Mandatory Public Hearings for Hazardous Waste Disposal Sites

We can identify no legal basis for the Ministry's claim that it would be "unlawful" to adopt a policy regarding public hearings for hazardous waste disposal sites under the Environmental Assessment Act and Environmental Protection Act. Quite the opposite, policies of the nature proposed are normally adopted to provide predictability, transparency and accountability in the exercise of statutory discretion by Ministers and Officials.

Policies: Air Emissions from Hazardous Waste Combustors

The Ministry's response references the development of Canada-Wide Standards for dioxin and mercury. This would only address two of the many substances addressed by the USEPA's standards. Furthermore, the substantive content for these Canada-Wide Standards, and timeline for their development and adoption is far from certain. Immediate steps are required to establish adequate standards for air emissions from hazardous waste combustion facilities, particularly in light of the concerns raised around the Steacy Dismantling and SRBP PCB incineration facilities by the Environmental Assessment Board and Intervenors.

Policies: Land Disposal of Hazardous Waste

The Ministry's response on this issue references the Ministry's September 1999 and January 2000 announcements regarding hazardous waste regulations. These are welcome steps. Unfortunately, with the exception of the "mixing" and "derived-from" rules, the announcements only dealt with the definitions of hazardous wastes, not the issue of the substantive requirements regarding their disposal. The Ministry states that the issue of land disposal restrictions are under consideration. However, this has been the situation for at least a decade, and the Ministry has yet to act on the question. The absence of land disposal restrictions in Ontario appears to be a significant factor with respect to the increase in hazardous wastes imports into the province. The situation is again one which requires immediate action by the province.