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RE: EBR POSTING RA01E0023 AND RAO1E0027 – STRENGTHENING ONTARIO’S HAZARDOUS WASTE MANAGEMENT FRAMEWORK (NEXT STEPS)

We are writing to respond to the Ministry of Environment’s proposals posted on the EBR Registry on December 18, 2001 and decisions regarding the implementation of hazardous charges and annual generator registration on the same day.

In the proposal to amend regulations 347 and 362, the Ministry is proposing to 1) Phase out existing hospital incinerators, 2) Mandating the destruction of PCBs in storage, 3) implement a new biomedical waste definition and harmonize the PCB definition with the federal definition and 4) release a number of guidelines regarding biomedical waste.

All of these initiatives came four years after the Canadian Institute for Environmental Law and Policy recommended them to the government in the 1998 report *Hazardous Waste Management in Ontario: A Report and Recommendations*.¹ In particular we congratulate the Ministry on the pre-treatment requirements for land disposal and the new electronic hazardous waste information system as well as real time monitoring.

In this submission we do not intent to comment, at this time, on the new biomedical waste proposals or on the hazardous charges. At this point, we support the comments made by the Pembina Institute in its submissions to you regarding these subjects, dated March 18th. Rather we concentrate on the plan to mandate the destruction of PCBs in storage within three years and annual generation registration decision.

Mandating the Destruction of PCBs in Storage (Reg 362)

The Ministry is proposing to require that all PCBs currently in storage be “destroyed at appropriately approved facilities” within three years, with earlier dates fixed for sensitive sites such as schools and hospitals. It is true that the Ontario government alone harbours close to 100,000 tonnes of PCBs. But nowhere in the proposal is “appropriately approved facilities” defined. Without clear health based expectations of what would likely be an approved facility, the public and hazardous waste industry will have no benchmarks of what the appropriate technical design, operational and liability requirements might be in the end. Without clear signals otherwise, the proposal may inadvertently encourage the establishment of out dated technologies scheduled for phase out, such as PCB waste

¹ Please visit www.cielap.org for a copy of the paper.

incinerators, contrary to Canadian commitments under the Stockholm Convention on POPs as well as encourage scam recycling schemes.

In summary, the Ministry's proposal fails to provide any assessment of the adequacy of existing let alone new PCB disposal capacity in Ontario to destroy these wastes safely. Surely ensuring the capacity to safely dispose PCB waste would be the first step. The long distance shipping of Ontario's PCBs to Swan Hills for incineration in Alberta is obviously not an adequate solution.

Equally important, Ontario does not currently have any general limits on air emissions from hazardous waste incinerators, instead it relies on an old 1992 Canada Wide Standard for dioxins and furans from biomedical waste incinerators. As well, the Ministry does not yet have in place performance requirements for Environmentally Sound Management of hazardous waste, expected in the future through a CCME process. Given these significant gaps and prior to mandating the destruction of PCBs presently held in protected storage, the Ontario government at the very least should enact new air emissions law for incinerators based on the most recent US EPA MACT requirements (plus the CWS).

Consequently, any proposal to mandate the destruction of PCBs in storage without a firm legislative framework describing expectations, performance requirements and appropriate facilities, with specific environmental assessment of proposed facilities that consider need and alternative technologies, would be premature.

Link to Bennett Environmental Services

Our emphasis on the adequacy of site-specific environmental assessment of new PCB treatment facilities is appropriately linked to the government's announcement to require the destruction of PCBs within three years. It has not gone unobserved that the government's announcement coincides with the pending application by Bennett Environmental Services to build and operate a PCB incinerator at Kirkland Lake.²

According to the company's own filing with the Security Exchange Commission, the Kirkland Lake facility will rely on used equipment from the U.S. The Bennett facility proposes to treat PCBs from as far away as Mexico, up to 50,000 kg/hour of hazardous soils that would be land filled in near by locations for the next 25 years. The burning would not get rid of the heavy metals in the soil yet would produce hundreds of unknown compounds, including dioxins and furans. The import of such large quantities of hazardous waste from so far away is unheard of and unprecedented in Ontario's history.

The Minister's specific narrowing of Bennett's terms of reference for conducting an environmental impact assessment to not include the requirement to prove the facilities' need and describe alternative technologies to incineration to treat PCB waste, together with the absence of an appropriate legislative framework, speaks to a lack of transparency both with respect to the proposed amendment as well as the Bennett application.

² Trafficking In Toxins, NOW Magazine Toronto, March 7-13, 2002, p. 21.

According to the International POPs Elimination Network, approving the Bennett incinerator after the government of Canada was the first to sign the December 2000 Stockholm POPs Convention, would offend the spirit of the treaty to eliminate POPs, including the release of dioxins and furans to the global environment.³ The negative impacts POPs pose to Canada, especially respecting its northern populations and ecosystems are well known. Approval of the Bennett incinerator facility would be a step backwards, contrary to the Stockholm commitment to move towards a transition to alternative technologies.

The growing alternative to incineration waste treatment industry should properly object to this regulatory continuation of a non-level playing field. Without the necessary legislative and impact assessment framework in place first, this proposal cannot be supported.

While we welcome the government's long-term commitment to improve the regulation of hazardous waste in Ontario, we conclude our comments on mandating the elimination of PCBs in storage with a precautionary note. Not only is this proposal premature and not sufficiently transparent, moving PCBs from over 1,000 storage sites in Ontario that are currently monitored under federal and provincial requirements could prove more of a risk than storage. We recommend that the proposal to destroy PCB stocks be deferred until a complete regulatory framework is in place, based on wide public consultations.

Annual Waste Generator Registration

This decision is strongly supported. However, the decision fails to specify the contents of the Annual Generator Registration Reports. Each waste generation facility should report

on the following matters in a standardized format:

- Location and District Name
- Industrial sector (the three digit SIC code)
- Total hazardous and liquid waste generation
- Total hazardous waste and liquid waste generation by class, code and type
- The fates all wastes generated, both on and off site.

This information should be posted on the Ministry's website so that the public has access to it. Specific policies, similar to those employed by Environment Canada for the purposes of the National Pollutant Release Inventory should be adopted regarding information which may be subject to business confidentially claims.

³ Please visit IPEN's web site at www.ipen.org