

Feds shy away from endorsing regulatory overhaul for 'high-concern' chemicals in CEPA reform

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By Jolson Lim

A bill reforming Canada's foremost environment law won't be tabled until a 'later Parliament,' McKenna said.

The federal government is not moving away from its current approach toward regulating high-risk chemicals, despite strong calls from environmentalists to change the formula to require industry to prove to federal regulators that some substances are safe before they're used.

Environment Minister Catherine McKenna (Ottawa Centre, Ont.) responded to the 87 recommendations on June 29 that were put forward by the House Environment Committee in its 2017 review of the Canadian Environmental Protection Act (CEPA), a cornerstone environmental law that hasn't been updated since 1999.

In a lengthy report released on June 29, the minister didn't endorse moving toward a hazard-based approach for regulating a series of chemicals categorized in the European Union as "of very high concern." Such an approach would mean some substances are prohibited until companies can prove they're safe or that there are not feasible substitutes.

These substances include ones that are carcinogenic, mutagenic, and harmful for reproduction, as well as persistent and bioaccumulative substances, and others of similar concern such as endocrine disruptors. The category includes some lead-based products.

Instead, the report notes that CEPA currently provides "broad authority, including an extensive suite of risk management tools, to manage the risks posed by substances with these characteristics." However, it said it would "further consider" the committee's recommendation for changing the regime.

The issue divided environmentalists and industry, who, despite their differences, lobbied together on a set of other reforms around CEPA.

Currently, Canada generally takes a "risk-based" approach towards regulating chemicals, where the regulator assumes a risk to safety but doesn't prohibit the sub-



Environment Minister Catherine McKenna, pictured at a press conference following a meeting with provincial and territorial environment ministers on June 28. She has promised to table a CEPA reform bill, but not until a 'later Parliament.' The Hill Times photograph by Andrew Meade

stance, and then works with producers to find out if the chemical is safe. Those who want to restrict certain substances must prove their harm to humans or the environment to federal regulators.

But environmentalists have strongly called for the burden to be reversed, and to get federal regulators to first err on the side of caution on whether to permit those chemicals to be used.

Such a change would fundamentally shift the regulation of a small but significant subset of chemicals, and advocates believe such a move would better protect humans and the ecosystem. The system is used in the European Union, which has some of the world's toughest environmental protection laws.

Elaine MacDonald, a scientist with Ecojustice, said "we felt it was something the department was willing to move on, but industry wasn't really in agreement." She said Environment Canada provided a reverse onus proposal at stakeholder meetings but industry members had opposed it.

Bob Masterson, president and CEO of the Chemistry Industry Association of Canada, said he was "most happy" to see the risk-based regulatory approach maintained, which he described as the foundation for CEPA and the Chemicals Management

Plan (CMP), the central regulatory framework born out of the 1999 act.

The industry association opposes a change because it would assume too many chemicals are unsafe without first conducting scientific studies.

Mr. Masterson said there were a "number of opportunities for continued improvement but the foundation remains one of 'We're going to assess and manage our substances on the basis of where they pose risks to society and the environment.'"

"We need some kind of similar approach to the introduction of novel chemicals into human bodies and the environment as we have with pharmaceuticals," said Tim Gray, executive director of Environmental Defence. "You need to prove it's safe, not introduce it, and then after people get sick, you decide to look at it."

Since 1994, federal regulators have taken a preventative approach with new chemical substances, not allowing them to enter into the marketplace without their approval. There are 23,000 chemical substances used in Canada, with about 4,300 watched by regulators through the CMP, and a smaller number actually managed.

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Feds shy away from endorsing regulatory overhaul for 'high-concern' chemicals in CEPA reform (cont.)

A reverse burden currently applies for chemicals under the “virtual elimination” regime, according to Ms. MacDonald, although an online list shows only two substances.

Often overlooked, CEPA is a sprawling, complex, yet critical piece of environmental legislation that establishes federal regulatory powers for restricting and managing the use of chemical substances, as well as setting strategies for fighting air pollution.

Other issues in McKenna's report

Vulnerable populations: The feds strongly signalled it would do more to protect “vulnerable populations”—such as children, pregnant women, the poor, and Indigenous communities—from harm caused by chemicals. The report stated support for the committee's recommendations, which include considering such groups in risk assessments. Ms. MacDonald cited vulnerable populations is a top issue that must be addressed in CEPA reforms.

Environmental rights: Ms. McKenna didn't endorse recognizing a right to a healthy environment, instead committing to further consultation. It was a proposal supported by both environmental advocates and industry, and a recommendation by the committee. At the party's April convention, the Liberals endorsed an environmental bill of rights as an official policy.

Increased transparency: The feds signalled it would generally improve public access to information and promote efforts to be more transparent with its regulatory effort. However, such a move raises a “yellow flag” for industry, Mr Masterson said. He wants the government to balance a public right to know with protecting trade secrets in a capital-intensive sector.

Endocrine disruptors: The government also stated its support for considering endocrine disruption in its risk assessments and improve its ability to consider emerging science around it. Such substances, such as BPA and lead, play with human hormone behaviour and can harm a body's immune system.

Regulatory capacity: Mr. Gray said a “gaping hole” is any comment on how the feds would increase enforcement. He said Canada has a “terrible record” on enforcing existing laws, citing the fact Canada did not prosecute Volkswagen officials for its emissions cheating scandal. He had hoped there would be mention of hiring more staff for its regulatory regime and “take on a culture of enforcement instead of advise-ment.”

Data and registries: The government rejected a proposal for daily, weekly, and monthly pollution data, stating that its national pollutant release inventory is intended for assessing trends. However, it supports lowering the threshold for pollutant reporting and for generally more thorough reporting requirements. The feds are also improving its environmental offenders registry.

The feds indicated it would look further into substance's cumulative effects on the environment in its regulatory process. It would support reviewing its product labelling requirements.

No legislative update until after election

A pledge to update Canada's environmental protection law came with a caveat: it

would have to occur in a “later Parliament.” While the federal Liberals can move on a number of regulatory fronts without legislation, it effectively means CEPA won't be updated until after the 2019 federal election, making it uncertain whether it'll even occur.

Ms. McKenna's press secretary, Caroline Thériault, affirmed that the Liberals are committed to introducing a bill “as soon as possible” in the next mandate, if elected. She cited CEPA as the legal tool the government used to ban asbestos and microbeads.

Mr. Gray said he was “disappointed but not surprised” that the Liberals decided it wouldn't update the act at this moment. He noted it wasn't a 2015 election promise, and that in his opinion, the only reasons why there is any political momentum is due to the substantiveness of the committee report, public concern, and collective efforts by environmentalists and industry to push Ottawa to act.

“We knew it was going to be tough one because of the heavy legislative agenda,” added Ms. MacDonald, who said she hopes that the government's movement won't be a “false start.”

First enacted in 1988 and updated legislatively in 1999, stakeholders and all political parties say the bill is badly outdated. However, successive government have sat on updating the law since 1999.

While disappointed that Ms. McKenna didn't endorse several core recommendations, Mr. Gray was just happy to see a signal that a bill is promised.

“The environment's always been important to people,” he said, “but it isn't the main thing politicians campaign on and differentiating themselves on.”

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