

Tom Foote
Director, Environmental Emergency Branch
Department of the Environment,
Ottawa, Ontario
K1A 0H3

Dear Mr. Foote:

Canada Gazette, Part 1, August 10, 2002

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Publication of the Proposed Environmental Emergency Regulations

I refer to the notice provided in the Canada Gazette, Part 1, August 10, 2002 on page 2437, which sets out the proposed Environmental Emergency Regulations. On behalf of the Canadian Water and Wastewater Association (CWWA) and its members, I am submitting our comments, in accordance with the requirement to do so within 60 days after publication.

Summary

CWWA believes that the Environmental Emergency Regulations duplicate reporting and planning requirements already required by legislation of the provincial and territorial governments, and would not result in more effective environmental emergency response, or preparedness. In particular, it is not clear how notifying the Minister of the location of named substances above the named quantities will help local response forces be aware of their presence, nor how the need to notify the Minister of changes to the quantities or of changes to the information in Sections 1 and 2 of Schedule 2 will be communicated to local response forces. Environment Canada should work with and reinforce provincial and territorial legislation, not establish duplicate requirements.

In particular, CWWA believes that municipal water and wastewater facilities should be exempted from the application of these regulations, as a) these facilities are part of municipal emergency response planning groups (to provide water for emergency response or to be alerted that contaminated effluents are entering the storm and sanitary sewers), and the presence of chemical disinfectants such as chlorine and ammonia solutions are widely known to be part of these services.

General Comments on the proposed Regulations

It is not clear what an "environmental" emergency plan is when compared to the "non-environmental" emergency plan more commonly understood to be required under conventional emergency measures legislation of the provinces or territories. The majority of the substances on the list would present public health or public safety emergencies if released from their containment facilities whether in manufacturing, use, storage or in transport. CWWA believes that by citing these as "environmental" emergency plans, Environment Canada is diluting and confusing the concept of emergency planning and preparedness and establishing a conflict with existing requirements generally extant under provincial and territorial legislation dealing with emergency preparedness.

The institutional structure of emergency response in Canada is a requirement to develop and implement plans at the local level (with communication of this information to the local emergency forces), with the

focus being on a capacity at the municipal level to respond. Requests for assistance can then be made first to the province or territory, and then if necessary by the province or territory to the federal level. Since the federal government is the third party to respond to any kind of environmental emergency, it does not seem appropriate for emergency response plans to be filed with Environment Canada. If the intention is for these plans to be filed with municipal or emergency response agencies, this intention is not clearly stated in the proposed regulations. Environment Canada should be reinforcing the existing structure, and if it believes it necessary, should require that organizations submit notifications to the local or provincial/territorial levels of government.

Municipalities are required by due diligence, if not specific provincial and territorial legislation to develop municipal emergency response plans not only for general emergencies but for chemical emergencies that may occur within their jurisdictions. Municipal facilities having hazardous chemicals on site are therefore bound to develop and exercise plans and participate in municipal planning and response exercises.

Municipal water supply and wastewater treatment services are also part of any communities emergency preparedness and response capability. The water supply is used for fire protection and wastewater treatment plants are the recipients of spilled chemicals and wasted fire protection water through the storm sewers. There are therefore regular contacts between these service providers and the local response forces and in fact both services are part of the local emergency response plan.

It is not clear how providing these notifications and reports to the federal government will result in local police and fire services having this information (a major stated benefit), or that reporting them to Ottawa will be more effective than requiring that a report be made to the local authorities directly, or that either of these approaches is going to compensate for local emergency response forces who are failing to perform their own regulated and due diligence duties to be aware of hazardous substances in their communities and to incorporate this knowledge in their own plans.

As a general conclusion, CWWA sees this regulation as directly duplicating existing institutional practices and requirements at the provincial and territorial and municipal levels and reducing not increasing legal certainty. If Environment Canada is concerned over an apparent shortfall in knowledge and planning and response capability, adding an additional regulatory requirement is not going to resolve the problem, but will add to the complication of achieving the goal.

CWWA believes that the proposed regulation is not the most appropriate manner in achieving the stated objectives.

In addition, the potential release and publication of the data requested in an environmental emergency response plan under these Regulations could constitute a serious breach of the management of security on the part of the reporting organization if the information were to become public knowledge. Although this is not a significantly held concern by CWWA, it may be to other organizations. If these regulations are promulgated, assurances must be made that the information filed with Environment Canada will only be available to appropriate agencies and not released to the general public.

Specific CWWA Concerns - Impact on the Water and Wastewater Sector

The substances of concern for the members of CWWA and for municipal water and wastewater facilities

are chlorine and ammonia solutions used in disinfection processes, and possibly several of the flammable gases (i.e., natural gas, methane, propane and butane) which might be stored on site for seasonal use in some wastewater treatment operations.

CWWA points out that there are likely to be more than 1 500 municipal sites having more than the minimum quantity of chlorine in the municipal water and wastewater services sector alone taking into account the number of plants, facilities and locations where chlorine is required to be used to disinfect or re-disinfect (in the distribution system) potable water, and to disinfect wastewater being treated prior to discharge to the environment as effluents. Post-Walkerton responses of the provincial and territorial governments has resulted in an increase in requirement to disinfect drinking water supplies with chlorine, including groundwater sources which previously had been exempted from disinfection requirements, and Environment Canada's own figures in respect to the Pollution Prevention Planning proposals for municipal wastewater management show that there are more than 700 wastewater treatment plants across the country which are required to chlorinate wastewater effluents prior to discharge. CWWA believes that the presence of chemical disinfectants including chlorine and ammonia solutions at water and wastewater treatment plants is therefore common knowledge, and that in particular, this is already known to local emergency response forces.

CWWA is concerned that compliance with these regulations would be far more onerous than projected in the regulatory impact assessment statement. Many municipalities will have more than one water treatment plants (each well head constitutes such a location and now requires disinfection) and many larger systems have multiple re-chlorination points set out along the distribution system to maintain the chlorine residual required by drinking water regulations. The volume of chlorine stored at each of these points could meet or exceed the threshold set in the Regulations for an emergency response plan. Thus, a water utility would be obliged to report numerous sites, to develop and implement numerous emergency response plans for every location where chlorine cylinders are stored and used. Further the Regulations require a new report to be filed any time the quantity of a substance or a key staff member changes. This requires continuous monitoring, which will come at a significant on going cost for which no benefits would be obtained due to the already close and integrated nature of municipal water and wastewater systems with the local emergency responders - as mentioned, the systems are part of the response forces and plans.

CWWA Position

CWWA submits that municipal water and wastewater treatment facilities should be exempted from the requirements of these regulations on the following grounds:

- These presence of these substances at water and wastewater treatment and distribution facilities is common knowledge to both the general population and particularly to the local emergency response forces;
- These substances are stored and used at municipal facilities that are already linked professionally to the community's first responders (fire and police) for many reasons including fire protection, emergency response and security of the facility as an essential, municipal service;
- conditions of storage and use of these products are set out in provincial or territorial operating permits for each such facility that establish requirements for the design, construction and operation of the infrastructure where the products are stored and used;

- The personnel employed in these facilities are required to be trained as appropriate to their functions, in the operation of the chemical storage and transfer facilities and operations; and
- suppliers of these products supplement the safe handling of these chemicals by specific training and awareness materials delivered to the personnel of the water and wastewater treatment plants; and
- The suppliers of these products all have emergency response assistance plans that will support immediate local response by the personnel employed in the facilities as supported by the local community's first responders.

Thus, although there may be slight differences in the emergency planning requirements and practices already in place, CWWA believes that there are no benefits to be obtained by asking municipal water and wastewater treatment and distribution organizations to submit notifications and reports pursuant to these regulations. Exempting these places from the regulations would avoid the possibility of confusion, and certainly avoid the additional costs without benefits from this practice **and most importantly**, would provide legal certainty to the municipalities that their current planning is adequate and avoid the burden of having to notify the presence of these chemicals.

To support this contention, and should the exemption be accepted, CWWA will specifically undertake to develop, implement and maintain an awareness program for the entire sector in Canada with the provincial and regional member Associations on the importance of emergency planning and contact with local communities and response forces.

Conclusions

These Regulations seem unlikely to increase the safety of Canadians or improve environmental emergency response from hazards that may be attributable to the water and wastewater sectors. Creating a national database to track the location of chlorine cylinders and tonne containers and the names and telephone numbers of the staff who are involved in managing them is not going to facilitate emergency response. These locations and agencies are already known to and part of the local emergency response system. The federal government only responds when asked by the province or territory and only after the municipality has declared an emergency. CWWA requests, if these regulations proceed, that an exemption be specifically included for chemicals in the List that are part of municipal water and wastewater services.

The proposed Regulations by setting up requirements for an environmental emergency when most of the substances would constitute a public safety or a public health emergency if released confuse rather than reinforce the field of emergency planning, preparedness and response. If Environment Canada does choose to proceed with these regulations a clear definition of environmental emergency must be included in order to assess compliance, and to facilitate the development of environmental emergency response plans.

Yours sincerely,

T. D. Ellison
Executive Director
Canadian Water and Wastewater Association