



Canadian
Manufacturers &
Exporters

Manufacturiers et
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Canada

June 3, 2005

Ms. Cathy Grant
Engineering Specialist – Air Pollution Control
Standards Development Branch
Ontario Ministry of the Environment
40 St. Clair Avenue West, 7th floor
Toronto, Ontario M4V 1M2

Subject: EBR #RA05E0008 – Regulation to Revoke and Replace Ontario Regulation 346 – General Air Pollution and Amendment to Ontario Regulation 681/94

Dear Ms. Grant:

Canadian Manufacturers & Exporters would like to thank you for the opportunity to comment on the proposed Regulation to revoke and Replace Ontario Regulation 346 – General Air Pollution and Amendment to Ontario Regulation 681/94.

CME supports the development of a general air pollution regulation for Ontario. We acknowledge the consultation you had with industry throughout the development and discussion of issues leading up to the development of the draft regulations.

It has been decades since the last air regulation was developed and we agree that it is time for a new, consolidated approach to air issues. Since this regulation will likely be used for decades to come, we also believe that we must “get it right” before the draft regulation becomes law. During the short time we had to review and consider impacts of the proposals (we do appreciate the posting of the regulations on the EBR, however, 30 days was not enough time to do a thorough analysis) on our members. As such, we are providing in this letter, some preliminary comments on the current draft of Regulation 346.

CME's main concern is that the draft regulation is that it is complex and difficult to interpret. This is of great concern to CME's small and medium sized companies (SMEs). As noted earlier, we do not know the full extent of the impacts on SMEs or large companies for that matter and need time to digest and understand the implication of this regulation on their business. In addition to being difficult to understand “what “ is asked for, we believe it is important to understand the environmental value of the initiatives. CME would support an impact assessment of the proposed changes on small and medium sized companies in Ontario. In addition to the costs incurred to comply with this Regulations, Ontario has several other new environmental initiatives underway will also add to the cost of doing business (i.e. LDR Regulations or the new noise assessment requirement as part of the approvals process).

CME would also like to offer the following specific comments on the proposed new Regulation 346.

The definition of “point of emission” indicates that it has the same meaning as in Regulation 346 which will be revoked on November 30, 2005. It would be more useful to include the actual definition in the proposed new regulation.

- S. 4 and 4 - Multiple discharges – the proposed scope is very broad. Adjacent properties provisions are a concern because it appears the Director would have the discretion to deem adjacent properties under separate ownership to be a single property with combined discharges in assessing compliance to the proposed regulation. CME is unclear as to how this will impact its member companies at this time, however, we know that the use or provision of raw materials, products or services from adjacent properties does not necessarily mean that that company would

be in a position to share information, which may be confidential, or have an influence over the emissions or emission controls at the adjacent facility. This becomes especially problematic there are issues of non-compliance. We are also unclear as to whether the ESDM and C of A would be required to be done jointly.

- In a number of instances, the proposed regulation would give the recipient of a draft notice an opportunity to make written submissions to the Director within 15 days of receiving the draft (i.e. sections 4 (3), 7 (2), 10 (3), 11 (3), etc.). Fifteen days is not a sufficient amount of time to evaluate the implications of a notice and a minimum 30 working day comment period should be allowed for.
- Throughout the regulation, the MOE defines prohibitions where the Director has reasonable grounds to believe that a contravention may occur (i.e. Section 4 (2)(b) and (c), 10 (2), 10 (3), 11 (2) (a) and (b), etc.). We believe that “may” is an unclear threshold which allows too much discretion in evaluating a potential contravention. This has been an issue in other current proposed legislation and was subsequently changed (i.e. Bill 133) and for fairness, consistency and clarity, should be changed to “likely” throughout the proposed regulation.
- Section 7 of the proposed regulation allows the Director to require a facility to use an alternate model or combination of models if deemed as accurate or more accurate than an approved model or to disallow the use of an approved model. CME believes that this section as written is not clear as to what the requirements are.
- Section 13 (2) of the proposed regulation gives the Director the power to specify the type of meteorological information to be used with an approved dispersion model. We recommend that section 13 (2) be amended so that the Director must have reasonable grounds to force a facility to use other meteorological information.
- Section 14 (4) empowers the Director to specify points of impingement at which the concentration of the relevant contaminant must be predicted. We recommend that section 14 (4) be amended so that the Director must have reasonable grounds to force a facility to predict concentrations at specified points of impingement. Also, the plan for the ESDM should include a specification of the grid which will be used as part of the plan.
- Section 15 dealing with Stack height is difficult to interpret. Clear language is needed for this section. Unlike other sections dealing with the models, this does not indicate that the stack height determinations only relate to the new models. This revised assessment of stack height is contrary to the existing Regulation 346 models.
- Section 26. – contents of ESDM report. CME is concerned that the proposed requirements for ESDM reports in section 26 are too prescriptive and too onerous, and in fact, in some cases may be impossible to comply with . In addition, more is needed for the following areas:
 - Negligible sources
 - Fugitive sources as it is unreasonable to require all sources be included.
 - Extent of measurement and analysis needed for accounting for all contaminants
 - Requirement to specify material use and production for a day where maximum production scenario occurs
 - 26 (1) 7 iii C: Clause should be removed. In many cases this will be unknown and either difficult to develop. (For example, US EPA emission factors quality provide ratings but not an estimate of how significant the factor could be over or under predicting).

- 26 (1) 14 vii These are contaminants without standards. This clause would require an assessment that goes well beyond an MCL type assessment required for a Basic Comprehensive Certificate of Approval. . MCL assessments don't assess "likelihood and nature" only whether or not the modeled level is acceptable. To determine "likelihood and nature" requires a much more extensive toxicological assessment. This could be extremely costly.
- The description of operational/production information that is relevant to determining the contaminant emission scenario and for determining the half hour or one hour emission scenario
- (actually not relevant – quite trivial—sorry took it out of mine as well)
- Section 31 - It is not clear how this links to normal "spills" act reporting? It is normal practice (or should be) that air emissions that are potentially in excess of standards are reported as a spill. We are concerned that this is another level of reporting. Also in S. 31 the word "immediately" is a very difficult term to interpret or enforce.
- Section 34 - the change dealing with "opacity" is a major change and is not clear. This broader interpretation could be used for all sources, including roadways and fugitive sources and we hope this is not the intent.
- Section 35 – same comments apply as S. 31 In addition, here, any opacity exceedance, even a small one, could also be treated as immediately reportable.
- 36 and 37. The word "etc" in a regulation is a concern and may lead to a much broader interpretation than expected or may be reasonable. .
- 39 This section should be removed in the proposed new regulation. All facilities, including every gas station, would be in violation. In fact, indicating you have storage tanks on site and calculating emissions for an ESDM would be admission of non-compliance.

Please contact me should you have any questions regarding this letter.

Yours truly,

Nancy Coulas

Director, Environmental Policy

cc. Michael Williams, ADM, Carl Griffith, ADM, CME Ontario EQ Committee