



September 8<sup>th</sup>, 2009

Catherine Grant, Engineering Specialist – Air Pollution Control  
Standards Development Branch  
Ontario Ministry of the Environment  
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Dear Ms. Grant,

I am writing on behalf of Pollution Probe in response to the three proposed amendments and changes to Ontario Regulation 419/05, specifically: 1. Sector-based approach for improving air pollution (EBR Registry number: 010-6587); 2. Foundry-sector technical standard (EBR Registry number: 010-6588); and 3. Forest products sector technical standard (EBR Registry number: 010-6589). As you are aware, Pollution probe participated in the risk-based pilot project upon which the regulatory framework is based, and was instrumental in ensuring that transparency and public engagement was an integral part of any requests seeking an alternative standard. We have continued to participate in public consultations any changes to the regulation, and monitor the regulatory process closely on an ongoing basis. This submission builds follows our previously submitted comments on proposed changes to Ontario Regulation 419/05 in October 2004 and June 2005.

Pollution Probe believes that Ontario Regulation 419/05 goes a long way towards protecting human health and the environment in Ontario communities from the local impacts associated with air emissions from point sources. In general, we have supported updating air standards, the use of new air dispersion models, and the adoption of a risk-based health effects process for alternative standards. We appreciate that new or updated standards can present common or similar implementation challenges for more than one facility within a sector, especially if the sector has numerous small- to medium-sized facilities. It is apparent that both the Forest Products Sector and the Foundry-Sector fall into this category and we agree that there is merit for considering a sector-based technical standard, and allowing the Minister of the Environment to have authority to establish such standards where needed. We also note that the documentation supporting these three postings are substantive and persuasive, and make a strong case for the proposed changes.

While we support the proposed changes in principle, we do so on the condition that the adoption of sector-based technical standards demonstrates a clear commitment to continuous

environmental improvement and sustainability. The focus for regulating air emissions must not move away from human and environmental health, and digress back to technological or economic considerations alone. While we accept the notion that meeting new technical standards which promote better environmental management could be more cost-effective, clarify rules for industry, and lead to improved local air quality, our primary concern is to ensure the latter and minimize the health risks from emissions of Lead and Acrolein from the Foundry- and Forest Products Sector, respectively. Pollution Probe has some concerns that a sector-based approach may reduce the need for facility specific reporting, including not requiring an Emission Summary and Dispersion Modelling report for the contaminants addressed by the sector-based technical standard. The registration requirements for the sector-based approach includes production information and a list of contaminants emitted, but it needs to be demonstrated that this is sufficient information vis-à-vis actual real time monitoring and dispersion modelling. We note, for example, that the location of nearest sensitive receptors (i.e. dwellings, schools, daycares, hospitals, etc.) must be identified, but select monitoring and modelling may be required to determine the level of environmental and health benefit that actually occurs by adopting a sector-based approach vis-à-vis health based air standards.

Similarly, we have reservations regarding the notion that the adoption of Maximum Achievable Control Technologies (MACTs) will in fact ensure that best practices are adopted. In the U.S. the application of MACTs or Best Available Control Technologies (BACT) are fraught with controversy, and where they are set needs to be the product of a collaborative effort that is both transparent and inclusive. The fact that technology-based requirements, which have been adopted by the U.S. Environmental Protection Agency, may be important in terms of establishing a level-playing field across North America, the adoption of similar standards in Ontario does not in itself guarantee that emission reductions will be sufficient to protect human health. As in the case of EPA fuel economy standards, Pollution Probe supports a “made in Ontario” approach to air standards setting that best meets the needs of the province, which may or may not be the same as those adopted in the U.S. For example, it may be that the scan of technological options should be conducted on a “facility-type” basis, rather than on a “sector-wide” basis. Spot checks could be done at individual facilities, to ensure that performance is being achieved and is comparable with health-based standards. This approach is being adopted through the REACH program where companies develop part of their registration through a Substance Information Exchange Forum.

More specifically, we would like to comment on the following points raised in the three background reports:

- We recommend that MOE undertake selective monitoring and dispersion modeling for a representative sample of facilities in each sector, and communicate how the technological benchmarking compares to the health based standards.
- The adoption of a sector-based standard be subject to review after 5-10 years.
- As mentioned above, what constitutes adoption of best available technology is controversial in the U.S. There is the need to foster innovation and creativity, rather than adopting essentially standards to ensure a level economic playing field. Achieving higher standards can also enhance competitiveness, but not in all cases especially for small and medium sized companies where economies of scale may be more difficult to be realized.

- We agree that MOE should retain the authority for a Director to require specific facilities to comply with the air standards under O. Reg. 419/05 as opposed to complying with the sector-based standard. However, this process should also be transparent, and involve public consultation, which could be part of the normal public review process when companies request an alternative standard.
- Sector-based technology approach that addresses good engineering practices, material substitution and equipment/process optimization is a positive step forward towards incorporating an effective pollution prevention plan on a facility by facility or sectoral basis.
- Limited capacity for MOE to assess facility by facility compliance due to human resource issues is no justification for adopting sector-specific technical standards. This certainly should not apply for large point sources, but we recognize the challenge of regulating all of the small and medium sized facilities in the forest products and foundry sectors. The Government of Ontario should ensure that the Air Standards Branch is sufficiently resourced to enforce Ontario Reg. 419/05, including small- to medium-sized facilities.
- Registration requirements must include the location of nearest sensitive receptors, and some consideration needs to be made to apply dispersion modeling in areas of acute sensitivity.
- Adoption of EPA standards is a necessary target but insufficient to minimize health risks, which the air standards process ensures. We note that the timelines for adopting alternative standards are consistent with those in operation in California, illustrating that Ontario is capable of going beyond EPA standards and meeting what are essentially higher standards in California. It is not clear why Ontario should be selectively meeting California standards vis-à-vis EPA standards, rather than aiming to achieve the highest health based standards.
- We support updating the list of approved dispersion models.
- Fully support proposed amendments to section 10 of the regulation to require inclusion of start-up, shut down and process malfunctions (upsets). The repeated occurrence of exceedences, whatever the duration, is unacceptable and needs to be addressed through an effective pollution prevention plan that includes redundancy and backup in industrial processes. This may apply more to larger facilities, but should also be considered on a site by site basis.
- Appendix B in the document “Proposed Amendments to Ont. Reg. 419/05 Air Pollution: Local Air Quality including Sector-Based Approach for Improving Air Pollution presents a comprehensive summary of the major emission sources in the Foundry and Forest Products Sectors, the technical solutions to reduce emissions, operating and maintenance and monitoring requirements to ensure that technical solutions are working properly, reporting requirements and timelines to implement changes. The complexity of these facilities and the potential for emission reduction are substantial and challenging. Pollution Probe supports the adoption of a pollution prevention approach to reducing emissions of Lead and Acrolein, and would like to encourage additional consideration of other air toxic emissions.
- In the Foundry sector, meeting lead standards by addressing PM will also ensure that other metals in particulate form could be controlled; the notion that sector-based standards will ensure co-benefits needs to be proven or assessed in this broader comparative context.

Lastly, we note that the adoption of what is essentially a pollution prevention approach instead of a health-based air standard offers considerable promise for delivering environmental and health improvement. We see this approach as an opportunity for the Foundry and the Forest Products Sector to also include greenhouse gas emissions in their efforts to reduce emissions of Lead and Acrolein. Pollution Probe has produced a Primer titled “A Guide to Climate Change for Small- to Medium-sized Enterprises: How to Plan for Climate Change, Reduce Operating Costs and Develop New Business Opportunities”, which would be a useful document to the Ministry of the Environment in making the case for a more integrated pollution prevention approach in the Foundry and Forest Products Sector. The benefits for all sectors, specifically small- and medium-sized enterprises could be substantial, both from an environmental and economic perspective.

In conclusion Pollution Probe appreciates the opportunity to comment on the proposed changes to Ontario Regulation 419/05 and would be pleased to continue to work with the Ministry of the Environment on these issues, and in other ways to improve and promote the new regulations and guidelines.

Sincerely,

A handwritten signature in black ink that reads "Quentin Chiotti". The signature is written in a cursive, flowing style.

Dr. Quentin Chiotti  
Director of Atmospheric Issues and Senior Scientist

cc. Bob Oliver, Executive Director