

Submission
by the
Canadian Labour Congress
to the
Chemical Management Division
Environment and Climate Change Canada

Consultation on the Proposed Regulatory Approach
for Asbestos

Canadian Environmental Protection Act, 1999

June 1, 2017

1. Introduction

On behalf of the 3.3 million members of the Canadian Labour Congress (CLC), we applaud the federal government for taking the important step to ban asbestos and asbestos-containing materials in Canada. We are pleased to have the opportunity to present the views of Canadian workers on the proposed regulatory approach under the *Canadian Environmental Protection Act, 1999* (CEPA 1999) to prohibit all future activities respecting asbestos and asbestos-containing products, including the manufacture, use, sale, offer for sale, import and export.

The CLC brings together Canada's national and international unions along with the provincial and territorial Federations of Labour and 107 district Labour Councils whose members work in virtually all sectors of the Canadian economy, in all occupations, in all parts of Canada. On behalf of these members, we would like to thank the Ministry of Environment and Climate Change for providing us with the opportunity to comment.

2. Background

The labour movement has long fought for a ban on asbestos and we are pleased to see government taking this step which will have a measurable positive impact on the health and safety of Canadian workers and all people living in Canada. Asbestos is the leading cause of work-related deaths in Canada. The Canadian Cancer Society estimates that asbestos exposure kills more than 2000 people in Canada a year. Experts estimate that 150,000 Canadians are exposed to asbestos at work, particularly in industries such as construction, automobile maintenance, shipbuilding, trade contractors, and waste management (Carex Canada). Internationally, the World Health Organization reports more than 100,000 asbestos-related deaths per year. We have seen a rise in imports of asbestos-containing products in recent years, putting more Canadians at risk. Canada's commitment to implementing new regulations under CEPA 1999 to ban asbestos is timely and necessary.

2.1 Application of Regulations

The government consultation document on regulations to ban asbestos is silent on the definition of an asbestos-containing material with respect to its concentration of asbestos. The CLC supports a complete ban on asbestos. Even minute concentrations of asbestos can lead to dire health effects. Asbestos is a known human carcinogen, and experts, including the World Health Organization, have indicated that no safe level for asbestos can be proposed because a safe threshold is not known to exist.

Recommendation 1: Canada should ban all substances containing asbestos at any measurable concentration and should support the development of alternatives to asbestos.

a. Historical and Current Uses

While the intent of these regulations is to prohibit all future activities respecting asbestos and asbestos-containing products, it does not address the legacy of asbestos and its widespread historical use in homes and workplaces across the country.

In addition to those products listed in this section, asbestos was widely used historically in wall plaster and drywall and joint compound, which is still widely present in Canadian homes and workplaces, and can be easily and unknowingly disturbed. Asbestos is also currently used in high-heat gaskets and diaphragms in some industrial and manufacturing settings.

A plan for addressing the legacy of asbestos in Canada must be part of a broader asbestos strategy going forward. This broader strategy must consider the following:

i) First Nations Housing

Canada must commit to addressing the widespread use of asbestos in First Nations communities. We have long known that the friable asbestos-containing vermiculite insulation, popular in Canada from the 1950s until the 1980s, presents a serious health risk. Zonolite, the commercial name for this asbestos containing vermiculite insulation, was widely used in housing on military bases and First Nations reserves. Homeowners were eligible for federal grants under the Canadian Home Insulation Program to install the insulation from 1977 until 1984. Still today, thousands of First Nations families live in homes filled with friable asbestos-laced vermiculite insulation. Raven Thundersky, a tireless health advocate, died of asbestos-related cancer after losing several other family members to asbestos diseases. Her home on Poplar River First Nation, like thousands of others on reserve, was filled with asbestos-containing vermiculite insulation. With clear jurisdiction for housing on First Nations reserves, Canada's federal government must take steps to protect First Nations families from the dangers of asbestos.

Recommendation 2: Canada's federal government must work with First Nations communities to develop a plan for auditing and identifying with a goal of remediating the critical risk of asbestos-containing materials in First Nations housing.

ii) **Extend the Federal Registry to All Contaminated Public Buildings and Vessels and Crown Corporations**

While federal regulations must prohibit the use of asbestos in new materials, including any new building materials used in renovations of existing buildings, Canada must also work to identify all federal government owned and leased buildings that contain asbestos. Banning future uses of asbestos will improve the health and safety of Canadians. However, if the proposed regulations do not also address the contamination of existing buildings and develop a plan to audit and identify all government owned and leased buildings containing asbestos with a goal of abatement, workers and the broader public will continue to be at risk for exposure.

Many of Canada's government owned and operated marine vessels still contain significant amounts of asbestos. Abatement can be difficult as asbestos is literally woven into the fibres of the vessels and this puts marine workers and those responsible for repairing these vessels at risk for asbestos exposure. New CEPA regulations must address this risk.

Recommendation 3: Canada must establish a regulatory framework requiring existing government and Crown Corporation owned and leased buildings with asbestos-containing materials be audited, identified and labelled as such in addition to prohibiting the use of asbestos-containing materials in new buildings or renovations.

Recommendation 4: Proposed regulations should ensure that the federal government consider asbestos contamination as it schedules the retirement of marine vessels and must require any procurement of additional vessels, whether newly built or recommissioned, be covered by the ban.

iii) **Provincial, Territorial, Municipal and First Nations Building Registries**

When the Ministers of Science, Environment, Health, and Public Services and Procurement announced that the Government of Canada would impose a ban on asbestos, Public Services and Procurement Minister Foote also announced that government would expand on its registry to include all federal government owned and leased properties that contain asbestos. The CLC strongly supports this commitment and hopes to see it replicated by governments at every level. The Minister also acknowledged that ongoing work will be needed in partnership with provincial and territorial, municipal and First Nations governments to

ensure that the health and safety of Canadians would be protected on publicly owned and leased properties outside of federal jurisdiction. It is important that this work begin immediately.

Recommendation 5: Canada's federal government must demonstrate leadership working with provincial and territorial, municipal and First Nations governments to assist other levels of government in developing registries of asbestos-containing properties.

iv) Safe Disposal of Asbestos-Containing Materials

Although the disposal of asbestos-containing materials is regulated under provincial/territorial jurisdiction, training requirements safe disposal standards vary across the country where they exist at all. The Government of Canada website <http://healthycanadians.gc.ca> encourages homeowners to hire a qualified asbestos removal specialist to identify and remove asbestos before starting renovations, but national certification standards for asbestos removal contractors do not exist.

Recommendation 6: The federal government must demonstrate leadership with provincial and territorial governments to develop minimum national certification standards for asbestos removal contractors.

v) National Registry to Track Asbestos-Related Diseases

While the Princess Margaret Hospital in Toronto tracks cases of mesothelioma and provincial workers compensation systems track successful claims of occupational asbestos diseases, there is no comprehensive registry of people living with and dying from asbestos diseases. Asbestos-related diseases have been on the rise in recent years, and some speculate that this will continue to be true for years to come. A national registry to track incidences of asbestos-related diseases would help evaluate where efforts to curb the suffering from asbestos are making the most difference and where governments should focus their resources. Such a registry would be an important component of monitoring and evaluating the impact of the proposed new regulations under CEPA 1999.

Recommendation 7: A national registry to track occurrences of asbestos diseases should be created and maintained in collaboration with provincial, territorial and First Nations governments.

vi) Comprehensive Health Response to Asbestos Diseases

The federal government must provide leadership with provincial and territorial governments to support early detection and effective treatment of asbestos diseases, particularly mesothelioma and asbestos related lung cancers. In addition, workers who are currently exposed to asbestos, including those working in remediation and disposal, maintenance, renovation and construction in buildings containing asbestos should be monitored for potential development of asbestos-related diseases. The federal government should play a lead role with other levels of government in updating and developing fair compensation policies for workers suffering from asbestos caused disease. Compensation in Canada for these workers is well below what is commonly awarded in other jurisdictions, including parts of the European Union and Australia. France has a public system to also compensate family members stricken with the disease, from contamination of worker clothing and environmental exposures in asbestos contaminated communities.

Recommendation 8: Canada must develop a comprehensive health response to asbestos diseases, including working with other levels of government on early detection and treatment and monitoring the health of workers who are exposed to asbestos.

2.4 & 2.5 Domestic and International Risk Management

It is important that Canada use both a hazard-based and risk-based regulatory approach to asbestos. In the EU, REACH is a world-leading regulatory example of a mixture of hazard-based and risk-based elements. Chemicals are identified as “Substances of Very High Concern”, based on their hazardous properties and safer substitutions are required. Only in limited instances where it is not yet possible to replace them and where the benefits of continuous use outweigh the risks, can authorization for specific use be granted. (ChemSec Hazard vs. Risk 2016) The time-limited exemption until July 1, 2025 for the use of diaphragms containing chrysotile asbestos in electrolysis installations for chlor-alkali and hydrogen production, listed in section 2.5.2 of the consultation document is an example of a combined hazard and risk-based regulatory approach. Experience in Australia demonstrates that enforcing a ban on international imports requires appropriate resourcing of the port inspectorate to address the issue of improperly-labelled imports which will require testing as part of an enforcement regime.

Recommendation 9: Canada must use both a hazard-based and risk-based regulatory approach to asbestos and regulations must include an adequately resourced enforcement regime.

2.5.4 Rotterdam Convention

The Rotterdam Convention protects the lives of people in developing countries and countries with economies in transition by controlling the import and export of dangerous chemicals. Under the Convention, after a rigorous scientific and legal process, hazardous chemicals and pesticides that have already been banned or restricted by various countries are put on a special list. Countries must then obtain prior informed consent before they can export these hazardous chemicals and pesticides to another country.

The expert scientific body of the Rotterdam Convention (the Chemical Review Committee) has repeatedly called for chrysotile asbestos to be placed on that list, pointing out that it meets every scientific and legal criterion in the Convention.

For too long, Canada has stood in the way of protecting the lives of people around the world from asbestos. Canada, through its federal government, must show leadership on the international stage and work to see chrysotile asbestos placed on the list of hazardous chemicals under the Rotterdam Convention.

Canada's unions applauded the federal government announcement that it would fully support including chrysotile asbestos to the list of hazardous substances requiring prior and informed consent, prior to trade with another country. For the sixth time, a small number of countries blocked adding chrysotile to Annex III, despite it meeting all the criteria for listing.

Recommendation 10: Canada must work with the labour movement, civil society organizations and the international community to protect workers and their families in developing countries by listing chrysotile asbestos on Annex III of the Rotterdam Convention. This may require reform of the voting system in order to remove the effective veto power of a small number of countries which is used to perpetually block the listing of chrysotile asbestos to Annex III.

3. Proposed Regulatory Approach

The CLC supports the broad substance scope described in section 3.1.1 to include all types of asbestos and products containing asbestos.

3.1.1 General Exemptions

The CLC is very concerned with the proposal to exempt all asbestos or products containing asbestos that were manufactured or imported before the day on which the regulations would come into force, with no time-limit to the exemption or linkage to the quantities of existing asbestos-containing products that were identified as part of the mandatory survey issued under Section 71 of CEPA 1999 with the deadline of January 18, 2017. This approach could be seen to be encouraging the stockpiling of asbestos-containing products in this period between the notice of intent to develop regulations and the regulations coming into force in 2018. As more jurisdictions look to prohibiting and severely restricting the use of asbestos-containing products, there is a danger of excess stock of these items being purchased at depressed prices if those items will not then be subject to the regulations.

The reference in this section of the consultation document to the Workplace Hazardous Materials Information System (WHMIS) continuing to regulate the ongoing uses of asbestos is misleading, as a number of widely used asbestos-containing products such as brake pads are exempt from the labelling and safety data sheet requirements of WHMIS. The proposal that these products will continue to be used and sold and potentially exported after the regulations to ban asbestos come into force, presents a serious health hazard, as workers and consumers will be more likely to assume that these products are asbestos-free once the ban takes effect.

Recommendation 11: The federal government should develop a strategy for addressing the issue of “stranded assets” once the regulations come into force, but must not be perceived to be encouraging the stockpiling of asbestos-containing products in advance of the regulations coming into force. Federal regulations must apply to stockpiled asbestos-containing materials in order to protect the health of Canadians.

3.1.4 Specific Exemptions and Transition to Safer Alternatives

The CLC supports the government’s commitment in this consultation document that specific exemptions will only be considered in exceptional circumstances, with fixed time limits, to be accompanied by reporting, record keeping, monitoring, labelling and/or other requirements to inform the public of the presence of asbestos as outlined in this section.

We know that safer alternatives to asbestos exist for many of its current uses, but the cost to transition to these safer alternatives can present a financial barrier in some workplaces. There will be employers that argue for exemptions based on the financial burden of transitioning to these safer alternatives.

Regulations that prohibit the use of asbestos represent one of the most significant and overdue public health initiatives in a generation. It is important that Canada assist those employers and workers who will be affected by this transition in the short-term, to enable them to switch to safer alternatives to asbestos.

Recommendation 12: Where employers demonstrate financial hardship associated with transitioning to safer alternatives to asbestos where they exist, the federal government must develop mechanisms to provide assistance and support to reduce the financial barriers to making the transition to safer alternatives.

3.1.7 Record Keeping

Given the long latency periods for asbestos-related diseases, the proposed five-year requirement for maintaining records at the principal place of business in Canada is inadequate. Asbestos-diseases, such as asbestosis and mesothelioma, are often not diagnosed until 20-50 years after exposure to asbestos.

Recommendation 13: Proposed regulations should impose at minimum, a 30 year record-keeping requirement more commensurate with average latency periods for asbestos-related diseases. If it is not possible to maintain those records on-site, a central, publicly accessible database for these records should be established, which could be maintained through the Canadian Center for Occupational Health and Safety (CCOHS).

a. Changes to Other Regulations

In addition to the regulations under the *Canada Consumer Product Safety Act* (CCPSA) specified in this section of the document, the proposed regulations to ban asbestos would impact a wide array of legislation and regulations, which should be updated in coordination with these regulations under CEPA 1999. For example, the current exemption for manufactured articles and consumer products under the *Hazardous Products Act* has led to ongoing exposure for Canadian workers, violating their “right to know” with respect to asbestos-containing products.

In addition to updating the *Hazardous Products Act* and the *Hazardous Materials Review Act*, the Canadian Occupational Health and Safety Regulations and the Pest Management Regulatory Agency (PMRA) under the *Pest Control Product Act* should be updated to reflect the intent of the commitment to ban asbestos in Canada.

Expert Advisory Panel for Monitoring and Evaluation

Federal leadership with other levels of government will be required to effectively implement a ban on asbestos in order to protect the health of Canadians. Successful implementation of a ban will require cooperation and knowledge-sharing from all levels of government, affected workers and employers and will require sustained monitoring and evaluation of these efforts. For these reasons, the federal government should establish an expert advisory panel or council to drive the change required across federal departments and all levels of government.

There are international models that Canada could look to for example. The Australian experience stands out as an example that Canada should consider. The Australian Asbestos Safety and Eradication Agency was established on July 1, 2013, to provide a national focus on asbestos issues which goes beyond workplace safety to encompass environmental and public health concerns. The agency aims to ensure asbestos issues receive the attention and focus needed to drive change across all levels of government. In addition, an Asbestos Safety and Eradication Council was established under the *Asbestos Safety and Eradication Agency Act, 2013*. The council's functions include monitoring the implementation of the National Strategic Plan (NSP) and guiding the Asbestos Safety and Eradication Agency on the performance of its functions. Ensuring that the implementation of Canada's asbestos ban is monitored and evaluated is at the core of science-based decision-making.

An expert advisory council with a tripartite membership from government, worker and employer representatives would serve as a forum for providing the Minister with advice on asbestos safety, in addition to reviewing and promoting research on asbestos safety, monitoring the implementation of the ban, and sharing best practices.

Canada should also review best practices in regulation worldwide with respect to asbestos prior to developing its own regulations. Jurisdictions within Canada and internationally have developed comprehensive workplace asbestos regulations. Canada should develop federal model regulation, including requirements for worker training, certification of remedial contractors, zero exposure limits, and regular inspection and removal of friable materials.

Recommendation 14: Proposed CEPA regulations should include an expert advisory panel with a tripartite membership from government (all levels), worker and employer representatives, for monitoring and evaluation of the implementation of the ban.

Recommendation 15: Canada's federal government should review best practice regulatory approaches worldwide prior to developing regulations to address asbestos.

Conclusion

The announcement that Canada will proceed with a ban on asbestos will, without question, save lives for generations to come and will make workplaces and public spaces safer for all Canadians.

The work ahead will be challenging but is essential.

Canada's unions have worked hard for this ban for decades. New regulations to ban asbestos come as a result of the struggle and hard work of people dedicated to safer, healthier workplaces. The CLC thanks the federal government for giving the next generation of Canadian workers a better future, free from the pain and suffering caused by asbestos. We look forward to working together to develop a comprehensive approach that integrates both environmental and workplace implementation of effective regulations to ban this deadly substance. We intend to participate in future consultations on this issue.

This document is respectfully submitted on behalf of the Canadian Labour Congress.

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