



environmental
defence

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Client Services and Permissions Branch
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Canada

Re: Amendments to O. Reg. 79/15 to Further Streamline the Use of Alternative Low-Carbon Fuels

Dear Ms. Han,

Thank you for the opportunity to comment on the proposed amendments to O. Reg. 79/15 related to alternative low-carbon fuels. Environmental Defence Canada is a leading Canadian environmental advocacy organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities.

While we support the phasing out of coal use in Ontario, we believe the Alternative Fuels regulation does not provide enough controls regarding toxic emissions or public oversight to ensure that we are not replacing one problematic fuel with others.

As we said in 2015, **“we are not supportive of a regulation that enables trade-offs that increase environmental loading of one or more hazardous materials in exchange for GHG reductions. For example, the regulation must not lead to reduced GHG emissions but increased mercury or dioxins.”**

The amendments proposed would further weaken both requirements for monitoring and reporting of toxic emissions and reduce public consultation prior to approval of new uses of alternative fuels. For these reasons we do not support the amendments.

Below, we reiterate our concerns with the regulation, as outlined in our submission from February 2015, and outline our concerns with the proposed amendments:

The definition of Alternative low-carbon fuels

What we said in 2015:

“The regulation needs to provide more certainty as to what fuels will be permitted for use. It is our understanding that the intent of the regulation is to only permit the combustion of waste materials that cannot be practicably recycled on Ontario. However, given the way that Schedule A is currently written, it is quite possible that materials that can be recycled would meet the criteria and be eligible for use under this regulation.

(...)

In addition to the requirement that alternative fuels be non-recyclable and non-hazardous, alternative fuels should also have a prescribed maximum allowable mercury content. We also support the development of other criteria for determining the suitability of alternative fuels such as the maximum concentrations of cadmium, sulphur, nitrogen and chlorine. These maximums should be determined based on the potential air quality and emissions impacts resulting from the use of fuels containing these elements under the circumstances contemplated in this posting.”

Our 2021 comments:

The regulation and proposed amendments undermine waste reduction and resource recovery in Ontario. Eligible alternative fuel sources include municipal waste such as “non-recyclable plastics” and “non-recyclable paper...plastic composites” that are subject to the new Blue Box regulation (O. Reg. 391/21). Based on our reading of the regulation, it appears that between now and 2026, virtually all flexible plastics, including films and bags, could be sent to cement kilns and steel smelters under O. Reg. 79/15 because only 1 per cent of all flexible plastics are effectively recycled.¹ Even after extended producer responsibility (EPR) is fully implemented for printed paper and packaging in 2029, the majority of the province’s flexible plastic packaging waste from households could be sent for burning under this regulation as only 40 per cent will need to be recovered under O. Reg. 391/21. Single-use coffee pods and other mixed materials, which should be phased out if they cannot be recycled, could instead find themselves in a pipeline to combustion in kilns and smelters, as a result of this regulation.

The categories for recovering plastics under O. Reg. 391/21 are broad -- defined only as rigid and flexible. As a result, difficult to recycle polymers such as polyvinyl chloride would be permitted to continue to be used and disposed of in significant amounts, including in cement kilns and steel smelters. There should be strict limits, as we noted in 2015, under O. Reg. 79/15 on waste materials that contain chlorine, such as PVC, as well as mercury, cadmium, sulphur and nitrogen. Instead, the regulation serves as a convenient way to get rid of problematic materials that shouldn’t be used in the first place.

Instead of expanding eligible fuels, we urge the government to eliminate plastics and mixed materials from the list of eligible materials in order to avoid a continued incentive to produce these problematic products and packaging that cannot be recycled.

Stringent air quality standards

What we said in 2015:

It is our position that facilities wishing to apply for permits to use alternative fuels under this regulation should meet the standard in O-Regulation 419 as written, and not through a technical or site-specific standard.

Furthermore, the regulation should stipulate that Environmental Compliance Approvals issued under this regulation will require all facilities to meet the A7 Guidelines. In addition, the regulation should clarify that

¹ Canada Plastics Pact, *Canadian Plastic Packaging Flows*, May 2021.

ECAs issued under the regulation will require facilities to have Continuous Emissions Monitoring Systems (CEMS) in place.

Our 2021 Comments

The regulation does not name any air pollution control guidelines to which proponents will be held.

The proposed amendments would further weaken reporting and monitoring requirements by allowing the use of secondary and tertiary sources to determine CO2 emission intensity and eliminating the so-called “outdated” requirement for quarterly reporting of NOx and SO2 emissions.

Actual testing of alternative fuels is important to determine whether the available mix will actually reduce greenhouse gas emissions. The lack of a requirement for proof, using laboratory analysis, that the fuel a proponent is proposing will emit fewer greenhouse gases than coal, calls into question the original rationale for the Alternative Fuels regulation and raises the very real possibility that this regulation simply provides a backdoor approach to burning Ontario’s garbage instead of reducing, reusing and recycling it.

Secondly, the elimination of the trading program for NOx and SO2 does not magically rid us of the problem that these pollutants are highly toxic and threaten public health. Facilities burning alternative fuels must be required not only to monitor emissions, including NOx and SO2, but also to report these emissions to the public.

Additional transparency

What we said in 2015:

We support the requirements for public consultation in the regulation, but they should go further in three ways:

- 1. There should be a requirement for demonstration projects to undertake public consultation just as there is for ongoing use.*
- 2. Data captured by CEMS as well as from stack tests should be made available to the public in real time, or close to it.*
- 3. In any instances where there are exceedances of the standards or where emissions of a given contaminant increase significantly as a result of the use of an alternative fuel, there should be a requirement for the permit holder to reach out to stakeholders proactively, through their community advisory panel or like, and inform them of the exceedance.*

Our 2021 Comments

The proposed amendment to remove the requirement for public consultation meetings to amend an existing approval is unacceptable.

Even under the current regulation, it is virtually impossible for communities living in the vicinity of a facility burning alternative fuels to find out, in real time, what is being emitted into the local airshed from the stacks. Because alternative fuels are waste products, the exact mix and composition of the fuel varies and therefore emissions vary accordingly. Strict requirements for pollution control and public reporting should be implemented to provide the public with information on exposures and to ensure these facilities are limiting emissions of toxic substances to the greatest extent possible.

Facility Scope

What we said in 2015:

“(T)his regulation permits alternative fuel use at cement, steel and lime facilities in Ontario. However, all the data we have been provided with to date pertains exclusively to the cement sector, and very little is known about how these fuels could be used and the impacts of their usage at steel or lime facilities.

We strongly recommend the regulation be amended to permit the use of alternative fuels at cement plants only, until more is known about whether these other types of facilities are actually interested in making use of this regulation and the impacts that could reasonably be expected under those circumstances.”

Our 2021 comments:

To our knowledge, no evaluation of the effectiveness of O. Reg. 79/15 has ever been undertaken. We understand from the public notice that two proponents have sought Environmental Compliance Approvals under the regulation but we don't know whether these are both cement kiln operators or whether proponents for any other type of facility are using alternative fuels. We don't know whether, in fact, the use of O. Reg. 79/15 succeeded in reducing GHG emissions at the approved facilities and the extent of other types of toxic emissions from those facilities as a result of burning alternative fuels.

Conclusion

As noted above, we are concerned that the regulation opens a back door to the burning of garbage, including materials that stand to create and release toxic emissions - such as persistent organic pollutants and metals such as cadmium and mercury - that threaten the environment and the health of the people living and working in the vicinity of these facilities. Further, this back door to burning garbage undermines the goals of the *Circular Economy and Resource Recovery Act* by providing an alternative to reduction, reuse and recycling.

Without transparent data and analysis, there is little reason to trust that the Alternative Fuels regulation is appropriate in its current form, let alone if amended as proposed.

We therefore urge the government to conduct a public evaluation of the Alternative Fuels program, to provide data on how many GHG emissions were avoided since 2015 and on any increases to emissions of other toxic substances. Such an evaluation should allow the government and the public to determine whether burning waste in cement kilns and other industrial facilities provides the promised environmental benefits, and the extent of emissions of toxic substances such as persistent organic pollutants, metals, nitrous oxides, sulphur dioxides, and particulates. In the meantime, we urge the government to hold off on the proposed amendments.

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