



North American Metals Council
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February 1, 2017

Via E-Mail

Standing Committee on Environment and Sustainable Development
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

Re: Concerns with Reliance on CEC Report in CEPA Review

Dear Committee Members:

The North American Metals Council (NAMC)¹ submits this letter in response to the analysis presented to the House Committee by the Canadian Environmental Law Association (CELA) on National Pollutant Release Inventory data comparing certain U.S. states with Canadian regions. This analysis was included in the November 24, 2016, document, “Follow-up Information Requested by the House of Commons Standing Committee on Environment and Sustainable Development During Meeting 28 on October 6, 2016 Concerning the Review of the *Canadian Environmental Protection Act, 1999 (CEPA)*.” Of particular concern to NAMC is the reliance by CELA on the North American Commission on Environmental Cooperation’s (CEC) “Taking Stock” database and associated report. For the reasons outlined below, we urge House Committee members not to rely on the report or database findings on metals as part of the ongoing CEPA deliberations.

We believe strongly that the database and its report should not be used as a basis for regulatory or legislative decisions related to metals. As has been repeatedly noted by the Mining Association of Canada (MAC) and other metal groups, the “Taking Stock” database of substances considered persistent, bioaccumulative, and toxic (PBT) is based on a flawed search, relying solely on information culled from a non-governmental organization’s website. The approach under “Taking Stock” does not consider the most critically important scientific reality

¹ NAMC is an unincorporated, not-for-profit group formed to provide a collective voice for North American metals producers and users (*i.e.*, the North American “metals industry”) on science- and policy-based issues that affect metals in a generic way. NAMC members include trade associations as well as individual companies.



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that metals and metal compounds are fundamentally distinct from organic chemicals and that the PBT criteria developed for organic chemicals cannot be applied as a basis for evaluating metals.

For example, all metals and other elements on the periodic table are conserved and hence, persistent. Applying persistence criteria designed for organics to metals will result in misleading and grossly distorted assessments of potential hazard. A more discriminating approach is needed.

The same is true of bioaccumulation. The U.S. Environmental Protection Agency (EPA) recognizes this point explicitly in its *Framework for Metals Risk Assessment*, which states that “the latest scientific data on bioaccumulation do not currently support the use of bioconcentration factors and bioaccumulation factors when applied as generic threshold criteria for the hazard potential of metals.”² In recent comprehensive amendments to the Toxic Substances Control Act (Amended TSCA), the U.S. Congress specifically endorsed the EPA *Framework’s* discriminating approach to evaluating the potential hazard of metals. Thus, Section 6(b)(2)(E) of Amended TSCA contains the following directive to EPA:

In identifying priorities for risk evaluation and conducting risk evaluations of metals and metal compounds, the Administrator shall use the Framework for Metals Risk Assessment . . . or a successor document that addresses metals risk assessment and is peer reviewed by the Science Advisory Board.

Similarly, in directing EPA to propose risk management rules for certain toxic chemicals that are likely to involve population exposures and that score high for persistence or bioaccumulation and either high or moderate for the other, Section 6(h) of Amended TSCA explicitly excludes metals and metal compounds, thereby recognizing that persistence and bioaccumulation are not appropriate factors to apply in evaluating the potential hazard of metals.

Additionally, we note that there is specific acknowledgement in the European Union’s (EU) Registration, Evaluation and Authorization of Chemicals (REACH) regulations

² EPA, *Framework for Metal Risk Assessment* at xiv (Mar. 2007), available at <https://www.epa.gov/risk/framework-metals-risk-assessment>.



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that PBT criteria do not apply to metals.³ The text in Annex XIII, which outlines the criteria for identification of PBT substances, specifically notes that “this annex shall not apply to inorganic substances,” which includes metals, although it does apply to organo-metals. By contrast, the “Taking Stock” report ignores the relevant science on metals and uses inappropriate persistence and bioaccumulation criteria that were developed to evaluate the potential hazards of organic substances. As a result, “Taking Stock” incorrectly classifies nearly all metals as PBTs.

NAMC notes that the CELA submission categorizes zinc and copper as PBTs, based on its reliance on the data and methodology from “Taking Stock.” This categorization conflicts with Environment and Climate Change Canada’s (ECCC) conclusion that copper and zinc are not bioaccumulative. We are pleased that ECCC appropriately addressed the unique characterization of metals in its assessments, but are disappointed that ECCC did not correct the CELA misclassification in its response to the House Committee. We wish to point out that both of these metals are essential for life.

If the House Committee pursues potential amendments to CEPA, we urge the House Committee to use legislative language reflecting the fact that specialized risk assessment approaches are needed for metals and metal compounds. As noted above, such language was included in Amended TSCA and appears in the EU’s REACH regulations.

Thank you for the opportunity to provide these comments.

Sincerely,

Kathleen M. Roberts
Executive Director, NAMC

³ Commission of the European Communities. 2001. Amended Proposal for a Decision of the European Parliament and of the Council Establishing the List of Priority Substances in the Field of Water Policy, Paragraph 20 (Jan. 16, 2001); Official Journal of the European Union, ANNEX XIII -- Criteria For The Identification Of Persistent, Bioaccumulative And Toxic Substances, And Very Persistent And Very Bioaccumulative Substances.