



JPAC Review: The first 20 years

Case Study of Pollution Prevention: Article 13 Investigation of the Lead Battery Recycling Industry

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CEC involvement in the lead battery recycling industry

In February 2012, the Secretariat of the Commission for Environmental Cooperation (CEC) initiated an independent examination into the environmental hazards and public health issues associated with the transboundary movement and recycling of used lead batteries in North America. This investigation, which concluded with the release of the final report “Hazardous Trade?” in May 2013, demonstrates the important role that the CEC can play in highlighting an important but little understood environmental issue impacting public health in communities across North America. Moreover, to the extent that this issue also encompasses environmental consequences of trade and commerce in the NAFTA region, as well as the impact of asymmetric environmental standards among Canada, Mexico and the United States, it is all the more pertinent to consider as we approach the 20th anniversary of both the North American Free Trade agreement and its environmental co-agreement, the North American Agreement on Environmental Cooperation (NAAEC).

This investigation of the handling of used lead batteries was undertaken not as a result of any external petition, but instead under Article 13 of the NAAEC. This clause empowers CEC staff to use their own expertise and judgment to bring important issues to the fore that may not be a focus of powerful interest groups or environmental advocates. The purpose of this mechanism is to ensure that efforts are taken to remove any comparative advantage based on lower environmental standards in any jurisdiction. This provision was purposely designed to avoid a “race to the bottom” in environmental and public health protections.

The significance of lead poisoning prevention has been greatly heightened over the 20 years since the inception of the Commission as a result of ongoing research linking lower levels of exposure with adverse health outcomes. This growing concern has been highlighted by public health authorities including the World Health Organization (WHO) and the U.S. Centers for Disease Control and Prevention (CDC) who have updated their guidance on childhood lead poisoning in recent years. Despite the increase in the weight of the scientific evidence linking low-level exposures to negative health outcomes, regulations in North America have failed to keep up.

Although the U.S. updated its ambient air lead standard for lead under the Clean Air Act in 2007 for the first time in 30 years, these changes do not fully take effect until 2014. Related regulations updating standards for secondary lead smelters were introduced only in 2012 (*National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting* (“Secondary Lead Rule”), 77 Fed. Reg. 556, 559, 564 Jan. 5, 2012) and require that emissions from these plants be reduced by 90%. However, no similar regulatory initiatives have been introduced in Canada or Mexico.

By itself, the lack of action on the part of governments in North America to seek continual improvement in pollution prevention laws governing this industry as mandated under the NAAEC has the potential to create inequities that can be exploited if left unchecked. Therefore the actions on the part of the CEC in this case demonstrate the desired role of this body as envisioned in the NAAEC agreement two decades earlier.

Therefore the CEC Secretariat deserves praise for initiating this independent investigation and for conducting a thorough and timely investigation of the transboundary movement of used lead batteries. In addition, the final report should be commended for its recommendation that the Parties to the NAAEC work to improve standards to provide “equivalent levels of environmental and health protection.” Clearly this is the underlying goal in all of the Commission’s efforts but it is an especially crucial role in the context of setting standards for a hazardous, pollution-intensive industry with direct implications for public health.

Although the NAAEC also calls for cooperation on pollution prevention and continual improvement, it is difficult to prioritize areas and industrial sectors where such cooperation is most needed. In taking on this Article 13 investigation, the CEC has elevated the significance of this issue to public health and highlighted priority actions needed. The challenge now for the CEC is to follow through on the issues raised regarding the disparities in the regulatory structures identified during the Article 13 investigation.

Before the CEC initiated this investigation, the Joint Public Advisory Committee (JPAC) issued a statement in December 2011 noting the increase in transboundary shipments in used lead batteries from the U.S. to Mexico and urged the Commission to follow up on its 2007 report “Practices and Options for Environmentally Sound Management of Spent Lead-acid Batteries within North America” and to “recommend actions to promote compliance with the environmentally sound management criteria” (JPAC statement December 7, 2011). Article 16(4) of the NAAEC, states that the Joint Public Advisory Committee (JPAC) “may provide advice to Council on any matter within the scope of this agreement.” Clearly this case demonstrates the importance of the work of the JPAC in providing direction to the Commission in highlighting significant issues of environmental concern and calling for a response.

The CEC Secretariat’s final report “Hazardous Trade?” demonstrates that there has been a significant increase in used lead battery exports to Mexico from the U.S. over the past decade and that this trend has accelerated in recent years. The report acknowledges that laws in the U.S, Mexico, and Canada do not provide equal levels of environmental and public health protection. It concludes that the U.S. does have the most stringent requirements and Mexico the most lax standards for emission controls within North America. Although the investigation did not attempt to document any direct evidence that these disparities were impacting public health,

the report left no doubts that vulnerable populations, including children and workers in these industries, were not provided equal levels of protection.

The recommendations in the report outline specific opportunities for improvement and cooperation among the governments. Among these are improving information on emissions and employee exposures, closing the performance gap among lead battery recycling plants, addressing the disparity in regulatory frameworks, and fostering regional cooperation. With the release of the final report, the perception is that the CEC is now leaving the governments to fend for themselves in implementing these broad recommendations without any timeline or even any specific roadmap to accomplish these objectives. Therefore, the Commission now needs to develop a specific plan to follow up on these recommendations and to provide substantive technical assistance to see that the necessary changes are implemented.

The recently approved “2013-14 Cooperative Work Plan for the Commission for Environmental Cooperation” calls for ongoing activities to enhance “the environmentally sound management of the secondary lead processing industry.” (http://www.cec.org/Storage/151/17726_OP_High_level_doc_July10rev2e2-clean.pdf) It is clear that the CEC is not intending to end all activities focused on this sector after outlining the major technical and legal differences among the three NAFTA countries. However, with the limited reach of the Cooperative Work Plan the focus of the CEC appears to be more on keeping this industry globally competitive and creating jobs, rather than in helping governments create an equal playing field throughout the three countries.

Future efforts are needed to help the governments take practical, and readily achievable steps to follow up on these disparities and develop a comprehensive program to help balance trade and industrial practices in the lead battery recycling industry. The CEC should establish a formal mechanism to provide technical assistance or to facilitate peer-exchange between relevant government agencies to address the report’s recommendations. Left on their own, such efforts may not get the ongoing attention that they deserve and governments may respond only with ad hoc efforts. Without a more comprehensive approach and external monitoring of the situation, such efforts may falter over time as agency priorities shift.

The Article 13 lead battery investigation also identified significant disparities among the three countries in other broader environmental programs that were previously prioritized by the CEC. For example in the past the CEC with the support of the U.S. and Canadian governments had provided significant assistance to Mexico in establishing its RETC requirements for the disclosure of site-specific emissions that were intended to mirror U.S. provisions of the Toxic Release Inventory (TRI) and the Canadian National Pollutant Release Inventory (NPRI). These laws have had a significant impact in reducing emissions from a wide range of industries that were forced to confront annual data on their waste streams and explain such practices to neighboring communities. But data in Mexico on emissions even from extremely

hazardous industries, including lead battery recycling, are often incomplete, inconsistently reported, and not available in a user-friendly database.

To help avoid the potential for incomplete follow up and inconsistent responses among the three governments, the Council and the Commission must provide strategic leadership, technical assistance, and a mechanism to track progress on implementing its recommendations over time. Given the comprehensive approach followed by the CEC Secretariat in outlining very specific areas for improvement needed to address lead battery industries across North America, it is especially important that a formal mechanism be established to assist in its implementation. This would allow the CEC to monitor progress, identify ongoing deficiencies, or highlight new concerns that emerge in the future. In addition, an ongoing commitment to this activity would contribute directly to the CEC's mission to strengthen healthy communities and ecosystems, as well as to ensure that trade and environmental progress might proceed in a mutually supportive manner within the NAFTA region as envisaged by the NAAEC nearly twenty years ago.

Recommendations for improvement

In 2007 the CEC issued a report with specific recommendations for lead battery recycling in North America. However, there was no mechanism in place to follow up either by the CEC or on behalf of the three governments. Then five years later, evidence emerged that many of the problems identified in 2007 had not been resolved as the industry grew and as the transboundary shipments of used lead batteries increased exponentially. This experience demonstrates the need for formal processes to monitor developments and government initiatives, prompt specific actions, provide technical assistance where needed, and review progress over time.

To provide continuity and build on the excellent progress CEC has made in drawing attention to the environmental issues inherent in lead battery recycling throughout North America, a task force (e.g. working group or expert committee) should be established to monitor progress against the report's recommendations. Such a task force may best be approached as an advisory committee to the Joint Public Advisory Committee (JPAC) or a body that reports directly to the CEC Executive Director. In either case this body should include representatives of all three governments, experts in pollution controls, occupational health, and legal frameworks, along with representatives of NGOs with active programs in lead poisoning prevention.

This task force should meet in person at least annually and hold telephone conferences to conduct oversight, monitor progress, and report back to the CEC Secretariat. This body could also be charged with identifying obstacles that governments may be facing in implementing recommendations of the "Hazardous Trade?" report and to help design technical assistance that is appropriate for specific needs that arise. This group should be the central clearinghouse in response to the report's recommendation to "foster regional cooperation and

technical assistance” through the CEC or other venues. (“Hazardous Trade? p. 51)

Under Article 9(5)(a) of the North American Agreement on Environmental Cooperation (NAAEC) the Council has the ability to form working groups or expert committees for this purpose. This effort may also be linked to the CEC’s program on Healthy Communities and Ecosystems and the current initiative on “Improving the Economic and Environmental Performance of the North American Automotive Industry Supply Chain.” It may also be beneficial to hold joint meetings or consecutive meetings with the Auto Suppliers Partnership Ad hoc Advisory Group to facilitate dialogue and highlight possible areas of cooperation.

One of the key findings in the “Hazardous Trade?” report is that “there are gaps in the application of and compliance with the reporting requirements for lead emissions from secondary smelters under Mexico’s PRTR program, Registro de Emisiones y Transferencias de Contaminantes (RETC).” (“Hazardous Trade? p. 44) In fact over 50 percent of Mexico’s secondary lead smelters did not report lead emissions during the time period under the investigation. Ironically, one of the most successful initiatives that the CEC undertook is an integrated database of hazardous emissions for all three countries under the “Taking Stock” program. In the case of an especially hazardous industry like lead battery recycling, this type of reporting mechanism is even more important than for industrial sectors.

Based on CEC’s extensive investment in improving the data reporting, collection, and distribution under this program, efforts to close this gap in Mexico should be a priority. CEC has already highlighted this need in its recommendation to “ensure accurate and comparable information on lead emissions.” (“Hazardous Trade? p. 51) To begin, the CEC should commit to assisting Mexico to overcome this challenge. In addition, it should include a chapter in the next “Taking Stock” report and establish a web site link to specifically track and compare lead emissions from smelters in all three jurisdictions.

In addition, the CEC should support efforts to monitor community exposures and possible environmental contamination from lead emissions in populated areas near lead battery recycling facilities in Mexico. This research would fill an important gap identified by the CEC that “In Mexico, very little information is available on lead contamination near smelters.” (“Hazardous Trade? p. 40) This information would provide useful data to better understand the potential impacts and societal costs of inaction and help monitor progress over time. It would also facilitate programs to identify populations at greatest risk where interventions are needed.

As we approach this 20-year anniversary, we should remember that the core principle of the NAAEC is to foster economic growth while facilitating continuous improvement in environmental performance and effective enforcement of regulations through regional cooperation. This case study offers a clear example of hazards that are being concentrated in one jurisdiction with lower pollution and public health standards that stems from asymmetric environmental standards and

inadequate enforcement that is facilitated by free trade. With the excellent groundwork completed, the Council is now poised to take up this challenge to share experience and expertise in order to raise the bar across North America to provide equivalent levels of protection for this important, yet hazardous, industry. Herein lies a clear opportunity for the Council and Commission to demonstrate their full potential in facilitating cooperation to address the core mission and mandate of the NAAEC.