



Guidance document for responding to the paragraph 71(1)(a) and (b) Notice of March 4, 2006 with respect to Selected Substances identified as Priority for Action

This document provides guidance with respect to the Notice issued on March 4, 2006 under paragraphs 71(1)(a) and (b) of the Canadian Environmental Protection Act, 1999, with respect to Selected Substances identified as Priority for Action. It is made available for information only and in case of discrepancy between this document and the Notice or the Act, the Notice and the Act take precedence.

You have received a package containing a copy of a notice, issued under paragraphs 71(1)(a) and (b) of the *Canadian Environmental Protection Act, 1999 (CEPA 1999)*. This Notice requires submission of data regarding approximately 500 substances. In addition to publication in Part I of the *Canada Gazette* and on the CEPA Environmental Registry this Notice was sent to a target community of about 6000 Canadian companies and industry associations.

Substances covered by this Notice have been identified, through categorization of the Domestic Substances List (DSL), to have potential for hazard to the environment or human health or as representing greatest potential for human exposure; or as substances of emerging concern and international interest. The hazard potential was determined based upon criteria for “inherently toxic” to humans, or properties of persistence, bioaccumulation and aquatic toxicity (PBiT). A need for action was identified as a result of the properties exhibited by these substances.

The *Notice with respect to Selected Substances identified as Priority for Action* requires submission of data regarding the presence of the listed substances in the Canadian market and the associated industry sectors.

Information for Completion of the Notice with respect to Selected Substances identified as Priority for Action

- 1 - What is the purpose of the Notice?**
- 2 - Do I need to respond?**
- 3 - What is the Declaration of Non-Engagement?**
- 4 - Do I manufacture?**
- 5 - Do I import?**
- 6 - What substances are included?**
- 7 - How do I report manufactured or imported quantity ranges?**
- 8 - What are the North American Industry Classification System (NAICS) codes?**
- 9 - Confidentiality requests**
- 10- Information you may reasonably be expected to have access to**
- 11- Manufactured items**
- 12 - Where can I get a copy of the Notice?**
- 13 - Identification and Declaration Form**
- 14 - How and where do I respond?**
- 15 - What is the deadline for response?**
- 16 - Inquiries?**
- 17 - Extension of time**

1 - What is the purpose of the Notice?

Section 71 Notices may be used for the purpose of assessing whether a substance is toxic or capable of becoming toxic, or for the purpose of assessing whether to control or the manner in which to control a substance.

The purpose of the Notice is to identify:

- whether the substances covered under the Notice are manufactured or imported in Canada;
- the relative quantities of these substances; and
- the companies and industrial sectors involved in the manufacture or import of the substances.

This Notice has been designed to provide the following information:

- Preliminary research has indicated that a high percentage of these substances may no longer be manufactured or imported in Canada. One of the goals of the survey is to identify substances which were not in commerce during the 2005 calendar year. Confirmation of substances not currently in commerce in Canada will allow government to ensure that post-categorization efforts are focused on substances with potential for release into the Canadian environment.
- The second major goal is to identify companies having current activity with any of these substances, to allow for follow-up, where necessary, to gather more detailed information including use-pattern information which will allow for the prioritization of future assessment and/or risk management activities. Future detailed data collection regarding these substances will be designed taking into consideration the level of activity and sectors identified in the responses to the Notice.

2 - Do I need to respond?

As outlined in Schedule 2(1) of the Notice, the Notice applies to any person who, during the calendar year 2005, manufactured or imported more than 100 kg of a substance described in Schedule 1 of the Notice. That person is required to provide the information specified in the Notice. Subsection 71(3) of CEPA 1999 states that every person to whom a notice issued under s.71 of CEPA 1999 is directed, must comply with the notice within the time specified in the notice.

Response to the Notice should be submitted on a company-wide basis. Individual facilities should consolidate their reporting to provide a single response on behalf of the entire company.

Information gathering carried out by Environment Canada using public data sources has indicated that substances listed in this Notice may be associated with over 30 industry sectors. Any grouping of chemicals is not intended to be indicative of all possible areas of use. You should review the entire list of substances included in the Notice to verify whether you meet the requirements of Schedule 2 of the Notice. An electronic list of the substances and their publicly

identified uses is available from the DSL Surveys Coordinator at the following numbers or e-mail address:

- telephone: 1-888-228-0530 / (819) 956-9313;
- fax: (819) 953-4936; or
- electronic mail: DSL.surveyco@ec.gc.ca

3 - What is the Declaration of Non-Engagement?

Persons, including companies, that do not meet the requirements to respond, as outlined in Schedule 2 of the Notice, may complete the Declaration of Non-Engagement for the Notice. Receipt of this form will allow Environment Canada to remove the name of these persons from further mailings pertaining to the Notice.

A Stakeholder Identification section has been added as a new element of the Declaration of Non-Engagement. Companies that do not meet the requirements to respond to the Notice, but have an interest in future activity regarding specific substances, may identify themselves as a stakeholder. Please identify the substances of interest to your company. You may be contacted for further information on your activity/interest in these substances.

4 - Do I manufacture?

The definition of “manufacture” under the Notice relates to the creation/production of a substance, specifically identified within Schedule 1 of the Notice. The term “manufacture”, as used in the Notice, applies only to the production of the substance itself, and not to that of a product or mixture using a reportable substance.

In general, using one or more of the reportable substances to blend or formulate products or mixtures does not meet the definition of “manufacture” under the present Notice. However, incidental manufacture of a reportable substance may occur if, during the process of blending or formulating, a chemical reaction occurs that results in the production of a substance (or byproduct) that is reportable under the Notice. If so, the incidental production of the reportable substance would meet the definition of “manufacture” under the Notice.

5 - Do I import?

The term “import”, under the Notice, relates specifically to the movement into Canada of any substance identified in Schedule 1 of the Notice or any product, or mixture that contains such a reportable substance.

Manufactured items are considered as products under this Notice. If you are aware that an imported item contains a substance included in this notice, you are required to report on this substance if you meet the threshold for reporting. You are required to provide information that your company possesses or to which your company may reasonably be expected to have access.

For the purpose of the Notice, situations where you are considered to “import” include the following:

- 1) You are an individual, company or other body (in Canada) that purchased or received a reportable substance or a mixture or product containing a reportable substance directly from a foreign source (such as a person or company situated outside of Canada, including internal company transfers across national boundaries) AND you are identified as the Importer of Record on customs documentation for this substance or a mixture or product containing this substance.
- 2) You are an individual, company or other body (in Canada) that purchased or received a reportable substance or a mixture or product containing a reportable substance directly from a foreign source (such as a person or company situated outside Canada, including internal company transfers across national boundaries) AND the foreign source or its agent was identified as the Importer of Record on customs documentation.
- 3) You are an individual, company or other body (in Canada) that purchased as a third party a reportable substance or a mixture or product containing a reportable substance that was shipped directly from a foreign supplier to an address in Canada (including a distribution warehouse) on your request.

Your activities do not meet the definition of “import” under the Notice if you, your company or other body purchased or received a reportable substance or a mixture or product containing a reportable substance that was already located in Canada.

6 - What substances are included?

This Notice includes a list of substances that have been identified as priority for action as a result of the Categorization of the Domestic Substances List. This list includes:

- Approximately 380 substances which meet or may meet the categorization criteria for Persistence, Bioaccumulation and Inherent Toxicity in the aquatic environment (PBiT). These substances have been presented in groupings based on chemical structure and/or expected use:
 1. *Substances identified as persistent, bioaccumulative and inherently toxic*
 - 1.1 *Discrete Organic Substances (61)*
 - 1.2 *UVCB's (Unknown or Variable Composition, Complex Reaction Products and Biological Materials) (72)*
 - 1.3 *Organometallics and Organic Metal Salts (17)*
 - 1.4 *Pigments and/or Dye-Type Substances (231)*
- Some siloxane substances have been identified as substances of emerging concern and international interest. In addition to the siloxanes identified as PBiT, substances of similar chemical structure and characteristics have been added to establish a profile of the use of this family of compounds in Canada.

1.5 Siloxanes (45)

- Ten (10) substances identified as having Greatest Potential for Exposure (GPE) to humans. Industry data are required to prioritize and determine further courses of action. The intent is to identify the stakeholders who need to be engaged in future information collection and assessment activities.

2. Polymers identified as representing greatest potential for exposure to humans (10)

- Sixty-one (61) substances meeting the Categorization criteria of inherently toxic to humans. These substances are expected to have single or restricted use patterns. Confirmation of the uses of these substances in Canada will allow the government to establish conditions regarding the reporting on future uses.

3. Substances identified as hazard to human health (61)

If you require an electronic list of the substances in the Notice, please contact the DSL Surveys Coordinator at the following numbers or e-mail address:

- telephone: 1-888-228-0530 / (819) 956-9313;
- fax: (819) 953-4936; or
- electronic mail: DSL.surveyco@ec.gc.ca

7 - How do I report total manufactured or imported quantity ranges?

At this time it is not necessary to report the exact quantities of the substances listed on Schedule 1 of the Notice, manufactured or imported into Canada. Environment Canada is requesting notification of quantity ranges in order to understand the extent of activity in Canada. For each substance identified in Schedule 1, with the exception of Section 3 “*Substances identified as hazard to human health*”, respondents are asked to check the box indicating the quantity range of the reportable substance manufactured or imported. For substances listed in Section 3 of Schedule 1, it is not necessary to report the quantity range manufactured or imported. It is possible that future follow-up data gathering will seek more specific information on these substances.

Quantities should be estimated for the pure substance, and not the product or mixture in which it may be contained. If you both manufacture and import a given substance, you are asked to report the quantity ranges for each activity as a separate entry.

8 - What are the North American Industry Classification System (NAICS) codes?

You are required to report the NAICS code(s) that applies to the activity involving each reportable substance. The code(s) will provide Environment Canada with general information on the number and types of sectors involved with the substances listed in the Notice.

The North American Industry Classification System (NAICS) was developed by Statistics Canada, the U.S. Office of Management and Budget, and Mexico's Instituto Nacional de Estadística Geografía e Informática, to enable the respective national agencies to collect comparable statistical data.

To know which NAICS code applies to the activities you are reporting on, a list of six-digit North American Industry Classification System (NAICS) codes is available at the following Statistics Canada Internet site:

<http://www.statcan.ca/english/Subjects/Standard/naics/2002/naics02-menu.htm>

9 - Confidentiality requests

Pursuant to section 313 of CEPA 1999, any person who provides information in response to the Notice may submit, with the information, a written request that it be treated as confidential.

A request for confidentiality may be submitted for any information item provided on a particular substance in response to the Notice. When requesting confidential treatment by Environment Canada of information provided under the Notice, you must provide some justification for your request. Justification may be provided, for example, based upon the following considerations:

- The information is confidential to your company;
- Your company has taken, and intends to continue to take, measures that are reasonable in the circumstances to maintain the confidentiality of the information;
- The information is not, and has not been, reasonably obtainable by third persons by use of legitimate means, except with the consent of your company;
- The information is not available to the public;
- Disclosure of the information may reasonably be expected to cause substantial harm to the competitive position of your company;
- Disclosure of the information may reasonably be expected to result in a material financial loss to your company or a material financial gain to your company's competitors.

Upon receipt of a request for confidentiality under section 313 of CEPA 1999, in relation to information submitted pursuant to the section 71 Notice of CEPA 1999, the Minister of the Environment will not disclose that information, except in accordance with section 315, 316 or 317 of CEPA 1999.

The comments that follow pertain to Section 3 of Schedule 3 of the Notice:

3(d) Activity Confidential? By marking “yes” in this box, you are requesting that the link between the your company and the activity with this substance be treated as confidential information.

3(f) Quantity Confidential? By marking “yes” in this box, you are requesting that the quantity range of the manufactured or imported substance be treated as confidential information.

3(h) NAICS Confidential? By marking “yes” in this box, you are requesting that the NAICS codes applying to manufacture or import of this substance be treated as confidential information.

Please note that a “yes” in the confidentiality claims boxes refers only to the information reported on that line.

It is advisable to review your request for confidentiality respecting a particular substance or a mixture or product containing that substance, to ensure that confidentiality is justified. For example, if you are requesting confidentiality for information related to your activity involving the substance or a mixture or product containing the substance, you should examine whether or not it also is justifiable to request confidentiality of the quantity range respecting that substance. Quantity ranges have been used to protect confidentiality of market share, and are not generally accepted as confidential business information as they do not reflect precise company data.

10 - Information you may reasonably be expected to have access to

You are required to provide information that your company possesses or to which you may reasonably be expected to have access. For example, when importing a substance, mixture or product, you may reasonably be expected to have access to the relevant Material Safety Data Sheet (MSDS). Also, a company may reasonably be expected to have access to a parent company’s information regarding substances, mixtures or products. You are not required to conduct tests to comply with this notice.

This notice is seeking to identify all stakeholders with interest or activity in a particular substance to ensure regulatory decisions are made considering all business activity in Canada. Companies that do not meet the requirements to respond to the Notice, but have an interest in future activity regarding specific substances, may identify themselves as a stakeholder using the Declaration of Non-Engagement Stakeholder Identification.

11 - Manufactured items

Manufactured items are considered as products under this Notice. If you are aware that an imported item contains a substance included in this notice, you are required to report on this substance if you meet the threshold for reporting.

You are required to provide only the information that your company possesses or to which your company may reasonably be expected to have access. We recognize that some Canadian importers may not have information available to identify the presence of listed substances in manufactured items. However, a goal of this Notice is to ensure that when regulatory action is taken, all activity with these substances has been identified and considered. Reporting by those who have this information will help reduce the potential for “unpleasant surprises” during risk assessment and management.

12 - Where can I get a copy of the Notice?

The Notice was published in Part 1 of the *Canada Gazette*, pursuant to paragraph 71(1)(a) and (b) of CEPA 1999 on March 4, 2006. Electronic copies of the Notice can be found on the Environment Canada internet site at the following address:

<http://www.ec.gc.ca/CEPAREgistry/notices>

13 - Identification and Declaration Form

The “Identification and Declaration Form” is provided for two reasons:

- to update the identification and contact information for each company; and
- to require certification of the accuracy of the response.

Each response must be signed. You must submit an original signed version of the Identification and Declaration Form (Section 2 of Schedule 3) to Environment Canada.

14 - How and where do I respond?

Responses to the Notice must be submitted to the Minister of the Environment, to the attention of the:

DSL Surveys Coordinator
Environment Canada
351 Saint-Joseph Boulevard, 20th Floor
Gatineau, QC K1A 0H3

You can provide the information in an electronic format, by fax or return it by mail. However, as indicated above, you must sign and return an original paper copy of the “Identification and Declaration Form” (Section 2 of Schedule 3) for the submission to be complete.

15 - What is the deadline for response?

Every person to whom the Notice applies is required to comply with the Notice no later than June 22, 2006.

16 - Inquiries?

If you have an inquiry, please contact the DSL Surveys Coordinator at the following numbers or e-mail address:

- telephone: 1-888-228-0530 / (819) 956-9313;
- fax: (819) 953-4936; or
- electronic mail: DSL.surveyco@ec.gc.ca

17 - Extension of time

You may submit a written request for an extension of time to comply with the Notice. The request for extension must include the CAS numbers of the substances which will be reported. Please address your request to the Minister of the Environment, to the attention of the DSL Surveys Coordinator, Environment Canada, 351 Saint-Joseph Boulevard, 20th Floor, Gatineau, QC, K1A 0H3. You may send your request by mail, by fax at (819) 953-4936 or by e-mail at DSL.SurveyCo@ec.gc.ca. Please note that you must request an extension of time before expiry of the June 22, 2006 deadline. No extension will be granted after the deadline has expired. It is recommended to allow five business days so that a request can be processed by Environment Canada before expiry of the deadline.