

The *Canadian Environmental Protection Act (CEPA 1999)* and Environmental Protection Alternative Measures (EPAMs)

What are EPAMs?

Environmental protection alternative measures, or EPAMs, are an alternative to court prosecution. Alternative measures are also provided in the Criminal Code for adult offenders and under the Young Offenders Act for juveniles. EPAMs under CEPA 1999 divert the alleged offender away from the court process after the person has been charged.

An EPAM is a negotiated agreement to return the alleged violator to compliance.

What is their purpose?

The purpose is to restore to compliance with CEPA 1999 a person who has been charged with a CEPA 1999 offence and who is willing to take steps to return to compliance without undergoing a trial.

What CEPA 1999 offences can EPAMs be used for?

EPAMs can be used for most violations of CEPA 1999, except for offences such as those involving:

- reckless or intentional behaviour that causes an environmental disaster;
- wanton or reckless disregard for human life or safety leading to a risk of injury or death;
- conduct leading to injury or death of a person;
- import or manufacture of a substance that is new to Canada, or of a living product of biotechnology that is new to Canada, without that substance or biotechnology product first being reported to the Minister or assessed for its environmental and health effects.

Who decides if an alleged offender is eligible for an EPAM?

CEPA 1999 provides for such a decision to be made by the Attorney General of Canada after consultation with the Minister of the Environment. The Act defines "Attorney General" as the Attorney General of Canada or his or her agent, namely a Crown prosecutor. In practical terms, the Crown prosecutor involved with the case and Environment Canada enforcement personnel will determine if a given offender meets the conditions for an EPAM. However, the decision rests with the Attorney General or Crown prosecutor as to whether or not an EPAM will be negotiated with an alleged offender.

What conditions have to be met in order for an alleged offender to be eligible for an EPAM?

- A charge must have been laid against the alleged offender.
- The alleged offender must accept responsibility for the action or actions that form the basis of the offence.
- The Attorney General or Crown prosecutor must be satisfied that there is enough evidence to proceed with a court prosecution. The Attorney General or Crown prosecutor must also be satisfied that negotiation of an EPAM would be consistent with the protection of the environment.
- The alleged offender must have a good compliance history and not have been involved in repeated violations of the Act. In fact, a good compliance history is one of the most important criteria that the Crown prosecutor and Environment Canada enforcement personnel will consider when determining if an EPAM is to be negotiated.
- To ensure that EPAMs encourage a return to compliance, a further condition is that negotiations for an EPAM must be completed within 180 days after the Crown prosecutor has given initial disclosure of the Crown's evidence. This condition is designed to ensure that negotiations for EPAMs are not openended, and will resolve the issue in a timely manner. The negotiations are normally conducted by a Crown prosecutor.

What measures can EPAMs contain?

EPAMs can contain measures such as:

- the development of effective pollution prevention measures to reduce releases of a toxic substance down to regulated limits,
- the installation of better pollution control technology or monitoring systems,
- changes to production processes to ensure compliance with regulatory requirements, or
- clean-up of environmental damage.

What happens to the EPAM?

The EPAM is registered with the court as a public document. Environment Canada recognizes that confidential information such as trade secrets or similar data may be part of an EPAM. CEPA 1999 allows such confidential information to be placed in a technical annex to the EPAM, and filed with the court but not released to the public.

What happens to the original charges?

The Attorney General agrees not to pursue the prosecution, and if the alleged offender complies with the EPAM, the court dismisses the charges completely. However, if the EPAM discussions do not lead to a negotiated EPAM, the Attorney General has the right to proceed with the prosecution. Failure to comply with an EPAM is an offence under CEPA 1999.

Further information:

Internet:

Additional information on the Canadian Environmental Protection Act, 1999 is available on Environment Canada's Green Lane on the Internet at: www.ec.gc.ca/CEPARRegistry

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