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A Guide to the
Canadian Environmental Protection Act, 1999

March 2000

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INTRODUCTION

This synopsis is an explanation of key parts of the *Canadian Environmental Protection Act, 1999* (CEPA 1999). The Act aims to make pollution prevention the priority approach to environmental protection.

Both the Minister of the Environment and the Minister of Health have responsibilities under this legislation.[1]

PREAMBLE

The Preamble sets out the guiding principles of the CEPA 1999, including:

- sustainable development;
- pollution prevention;
- the precautionary principle;
- the polluter pays principle; and
- removing threats to biological diversity.

The Preamble also reinforces the importance of intergovernmental cooperation in protecting the environment and the need to consider the following in decision-making:

- traditional aboriginal knowledge;
- environmental or health risks; and
- social, economic and technical factors.

ADMINISTRATIVE DUTIES (SECTION 2)

The Administrative Duties are binding on the Government of Canada and include general requirements to:

- protect the environment, including its biological diversity;
- apply the precautionary principle that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"[2];

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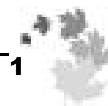
[1] In this document and in the Act, "Minister" means the Minister of the Environment and "Ministers" means the Ministers of the Environment and Health.

[2] This version of the precautionary principle is taken from Principle 15 of the Rio Declaration that was agreed to by Canada and 178 other nations during the 1992 United Nations Conference on Environment and Development.



- promote pollution prevention;
- implement an ecosystem approach;
- encourage public participation;
- cooperate with other governments;
- avoid duplicating other federal regulations; and
- apply and enforce the Act fairly.

The Administrative Duties also include a commitment to "endeavour to act with regard to the intent of intergovernmental agreements and arrangements entered into for the purpose of achieving the highest level of environmental quality throughout Canada" (Section 2(1)(l)). This duty signals the Government of Canada's commitment to the 1998 *Canada Wide Accord on Environmental Harmonization* signed by the federal government and all provinces and territories, except Quebec.

There are also 12 sections in CEPA 1999 that require the Minister to "offer to consult" on proposed measures with provinces, territories and members of the National Advisory Committee that represent aboriginal governments. As well, section 2(1.1) requires consideration of the positive ecological and economic effects of proposed measures.

DEFINITIONS (SECTION 3)

CEPA 1999 defines 31 words or terms that have a particular meaning in the Act. This includes environmental terms such as:

- sustainable development;
- biological diversity;
- pollution prevention; and
- ecosystem.

The definitions of "environment" and "substance" are key to the operation of the Act. Both definitions are very broad in scope to avoid limiting the government's authority to prevent pollution from substances that could harm any component of the environment, including human health.

PART 1: ADMINISTRATION (SECTIONS 6 - 10)

Advisory Committees (Sections 6 - 8)

CEPA 1999 requires the Minister to establish a National Advisory Committee (NAC) composed of representatives from each province, and territory, and six representatives of aboriginal governments drawn from across Canada. By including aboriginal representation, CEPA 1999 explicitly recognizes the increasing role of aboriginal peoples in environmental protection as a result of self-government. It is the responsibility of other governments, and not the federal Minister, to appoint NAC members.

The duties of the NAC include advising the federal Minister(s) on:

- proposed regulations for toxic substances;
- proposed regulations on environmental emergencies;
- a cooperative, coordinated approach to the management of toxic substances; and
- any other matter of mutual interest.

The NAC can provide both policy and technical advice. It is a consultative mechanism to ensure provincial, territorial and aboriginal governments are made aware of proposed measures under CEPA 1999 and that their advice and concerns are considered.

Under section 7, either Minister can establish other advisory committees to examine specific topics.

Administrative and Equivalency Agreements (Sections 9 - 10)

Administrative agreements with provinces and territories have been used extensively by the federal government in areas ranging from taxation to immigration. Under CEPA 1999 these agreements are work-sharing arrangements that can cover any matter related to the administration of the Act. Such matters include inspections, investigations, information gathering, monitoring, and reporting of collected data. These agreements do not release the federal government from any of its responsibilities under the law, nor do they delegate legislative power from one government to another.

CEPA 1999 also allows the federal government to enter into administrative agreements with aboriginal governments as well as an aboriginal people (e.g., Band Councils under the *Indian Act* that do not meet the criteria in the definition of aboriginal government).

CEPA 1999 also includes provisions for equivalency agreements. These are arrangements where a CEPA regulation no longer applies in a province, a territory or an area under the jurisdiction of an aboriginal government that has equivalent requirements. The provincial, territorial or aboriginal government requirement does not have to have the same wording as the CEPA regulation, but it must be agreed that the effect is the same. The provincial, territorial or aboriginal government must also have a mechanism that allows individuals to request an investigation of alleged offences. Equivalency agreements are possible for CEPA regulations dealing with toxic substances, international air or international water pollution, environmental emergencies and, for aboriginal governments only, regulations relating to aboriginal land or environmental protection generally and made under Part 9.

This legislation requires that all proposed equivalency and administrative agreements undergo a 60-day public comment period, and that they terminate five years after coming into force.

PART 2: PUBLIC PARTICIPATION (SECTIONS 12 - 42)

Environmental Registry (Sections 12 - 14)

CEPA 1999 requires the establishment of an Environmental Registry of information published under, or related to, the Act. The goal of the Registry is to make it easier to access public documents such as:

- proposed administrative and equivalency agreements;
- regulations;
- Ministerial notices; and
- inventories such as the National Pollutants Release Inventory.

The Environmental Registry will be electronic and accessible through the Internet at: **www.ec.gc.ca/CEPARegistry**

Voluntary Reports (Section 16)

This section provides "whistleblower protection" by prohibiting the disclosure of the identity of individuals who voluntarily report CEPA offences. In addition, it is an offence to dismiss, harass or discipline any employee who voluntarily reports a CEPA violation.

Investigation of Offences and Environmental Protection Actions (Sections 17- 38)

An individual who is at least 18 years of age and a resident of Canada may request an investigation of an alleged offence.

Should the Minister fail to conduct an investigation or responds unreasonably, and if there has been significant harm to the environment, then the individual may proceed with an "Environmental Protection Action." In such cases, the civil suit is against the person that allegedly committed the offence, and not the government. The Attorney General, however, has the option of participating in the action.

An individual who launches an Environmental Protection Action may ask the court to:

- declare how the law governs the matter;
- require the defendant to stop the action that caused the alleged offence or to take steps to prevent a continuation of an offence;
- order the parties to negotiate a plan to correct or mitigate the harm to the environment; and
- grant appropriate relief such as costs of the action, but not damages.

If the court is not satisfied with the first attempt at a mitigation plan, it may order the parties to negotiate another plan, or may appoint a person to draft a plan.

This right-to-sue is modeled on similar provisions in the *Ontario Environmental Bill of Rights*.

Additional Right to Seek Damages (Sections 39 - 40)

Section 40 reiterates the right in common law and the Quebec Civil Code that allows anyone who has suffered personal loss or damage as a result of a violation of the Act to seek compensation.

PART 3: INFORMATION GATHERING, OBJECTIVES, GUIDELINES AND CODES OF PRACTICE (SECTIONS 43 - 55)

Environmental Data and Research (Section 44 - 45)

The Minister must establish, operate and maintain an environmental monitoring system, conduct research and studies and publish information, including a periodic report on the state of the Canadian environment. The Minister of Health is obliged to research the effects of substances on human health. Both Ministers must conduct research on hormone disrupting substances.

Information Gathering (Sections 46 - 53)

The authority to gather information is necessary for the purposes of environmental monitoring, research, state of the environment reporting, creating inventories and for the development of objectives, guidelines and codes of practice. Publishing this material promotes public participation and gives Canadians access to environmental information that relates to their own communities. Information that can be requested from a company is limited to what is in their possession, or is reasonably accessible.

A company, government body or individual may request that information remain confidential if:

- it is a trade secret;
- it could damage the requestor's competitive position; or
- it might harm contractual negotiations.

The Minister must issue guidelines respecting the use of the information gathering powers in section 46.

The Minister is also required to establish and publish the National Pollutants Release Inventory.

Objectives, Guidelines and Codes of Practice (Sections 54 - 55)

Both Ministers are required to issue objectives, guidelines and codes of practice. These are non-regulatory science-based targets or recommended practices.

PART 4: POLLUTION PREVENTION (SECTIONS 56 - 63)

Pollution Prevention Plans (Sections 56 - 60)

Pollution prevention planning is a systematic, comprehensive method of identifying options to minimize or avoid the creation of pollutants or waste. The goal of pollution prevention planning is to have a company or facility select the measures that are most appropriate to its specific circumstances.

The Minister can require a company or facility to prepare and implement a pollution prevention plan to deal with a substance that has been added to the List of Toxic Substances (Schedule 1) by the Governor in Council (the federal cabinet). The Minister may also, subject to the approval of the Governor in Council, require pollution prevention plans from Canadian sources of international air and water pollution for substances not on the List of Toxic Substances. This authority is available only if the government responsible for the area in which the pollution source is located, cannot or will not take action to address the problem.

Pollution prevention plans prepared or implemented on a voluntary basis or for another government or under another Act of Parliament that meet all of the requirements of CEPA 1999 may be used to fulfill requirements of the Act.

While pollution prevention plans will not normally have to be submitted, companies and facilities will have to file written declarations that a plan has been prepared and implemented. Section 60 provides the Minister with the authority to require the submission of plans for the purpose of determining and assessing various options for control or preventive actions. In other words, the content of pollution prevention plans may be employed to help develop further control measures (such as regulations) if these are necessary to achieve the desired environmental results.

Model Plans and Guidelines (Sections 61 - 62)

Section 61 provides the authority to develop and publish model pollution prevention plans. Section 62 requires the development of guidelines setting out the conditions under which pollution prevention planning is appropriate.

Other Initiatives (Section 63)

CEPA 1999 enables establishment of a national pollution prevention information clearinghouse to facilitate the collection, exchange and distribution of information about pollution prevention. Authority is also provided to create an awards program to recognize significant achievements in the area of pollution prevention.

PART 5: CONTROLLING TOXIC SUBSTANCES (SECTIONS 64 - 103)

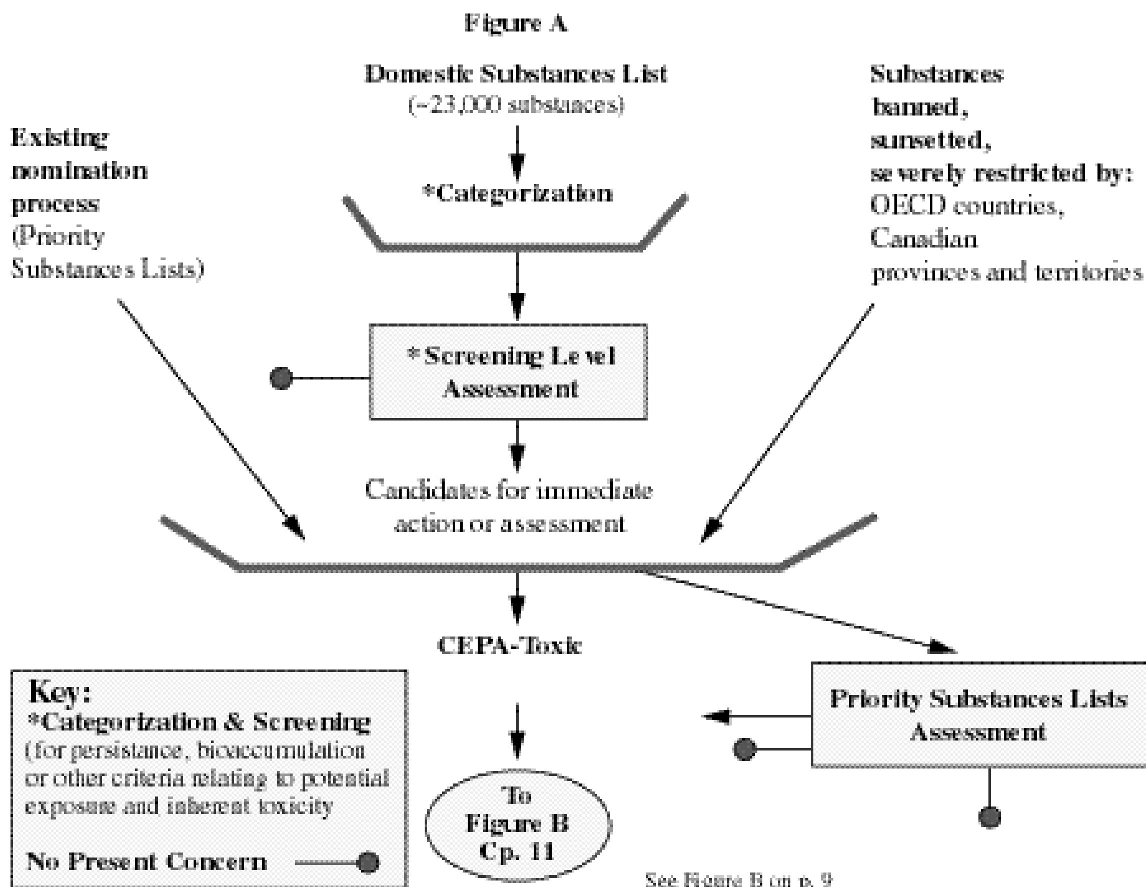
These sections provide authority to assess substances to determine if they are toxic, and to manage them to prevent pollution that could harm the environment or human health.

Definition of "Toxic" (Section 64)

To be determined toxic under CEPA 1999, substances must enter the environment in amounts that have or may have an immediate or long-term harmful effect on the environment or human health. The Act takes a risk-based approach to decision-making that takes into account the entry of substances into the environment, exposure conditions and inherent toxicity.

Substance Assessment – Existing Substances (Sections 66 - 79)

The Minister is required to maintain the Domestic Substances List, a list of the approximately 23,000 substances currently in use in Canada. This List allows for a distinction to be made between existing substances and those that are new to Canada. Substances on the Domestic Substances List will be assessed under one of the three following tracks (see Figure A):



1. Priority Substances (Section 76)
   - under CEPA 1988, 44 substances were assessed under the first Priority Substances List (PSL) and 25 are being assessed under the second PSL.
   - Ministers have five years to complete PSL assessments.

2. Categorization of the Domestic Substances List (Section 73)
   - Within seven years of Royal Assent[3], all 23,000 substances must be categorized for their potential for exposure to Canadians, or for their inherent toxicity and persistence or bioaccumulation. "Persistence" means that a substance takes a long time to break down. "Bioaccumulation" means that a substance collects in the tissue of living organisms.
   - Substances of concern will undergo a further "screening" assessment to determine toxicity and, if required, a more comprehensive PSL assessment.

3. Review Decisions of other OECD countries, Canadian Provinces and Territories (Section 75)
   - The Ministers are obliged to review these decisions to ban or substantially restrict substances for environmental or health reasons to determine if they are toxic within the Canadian context.
   - If the substance is of concern, but there is insufficient evidence to declare it toxic, it can be placed on the PSL for further assessment.

Sections 68, 70 and 71 provide authority to gather information to assess whether a substance is toxic. This includes the authority to require sampling, testing and the generation of new data.

Following an assessment, Ministers must propose one of the three following measures:

1. take no further action;
2. add the substance to the Priority Substances List unless it is already on the List; or
3. recommend that the substance be added to the List of Toxic Substances and, where applicable, propose it for virtual elimination.

All proposals will undergo a 60-day public comment period where interested parties may bring forward additional scientific evidence to support or refute the Ministers' decision. After taking into account any information provided during this 60-day period, Ministers are required to publish their final decision. If option 3 (above) is chosen the Ministers may, at the same time, make a recommendation to the Governor in Council that the substance be added to the List of Toxic Substances. If a substance has been declared toxic and the Ministers have declared their intention to recommend adding the substance to the List of Toxic Substances, the Ministers must, at the same time, recommend that the Governor in Council add it to the List.

Substance Assessment – New Substances (Sections 80 - 89)

Substances that are not on the Domestic Substances List are considered to be *new* substances. These cannot be manufactured or imported until:

- the Minister has been notified;
- relevant information needed for an assessment has been provided by the applicant;
- the prescribed fee has been paid; and
- the period for assessing the information (as set out in regulations) has expired.

In certain circumstances, manufacturers and importers must also report "significant new activities" involving already approved substances so that they can be re-evaluated.

The Minister has the ability to waive some or all of the information requirements for new substances or significant new activities involving a substance if:

- such information is not needed to assess a substance;

[3] CEPA 1999 received Royal Assent on September 14, 1999

- the substance can be contained in a way that protects the environment and human health; or
- it is not practical or feasible to obtain the test data.

This is intended to prevent the unnecessary gathering of information. These waivers do not remove the Ministers' responsibility to determine that a new substance is safe. All waivers must be published in the *Canada Gazette* and the Environmental Registry.

The requirements for notification and assessment in CEPA 1999 do not apply if the new substance is manufactured or imported for a use that is regulated under another Act of Parliament that requires notice and assessment. The Governor in Council is responsible for determining that another Act meets these requirements and for placing it on Schedule 2 of CEPA 1999. Proposals to schedule an Act must undergo a 60-day public comment period.

Management of Toxic Substances

The 1995 federal *Toxic Substances Management Policy* sets out two tracks for the management of toxic substances: virtual elimination and life-cycle management (see Figure B).

Virtual Elimination

Experience has shown that even extremely small releases of certain substances (such as PCBs and DDT) to the environment can create problems that are extremely costly or impossible to correct. This is particularly true of substances that are:

- toxic as defined under CEPA;
- primarily the result of human activity;
- persistent – take a long time to break down; and
- bioaccumulative – collect in living organisms and end up in the food chain.

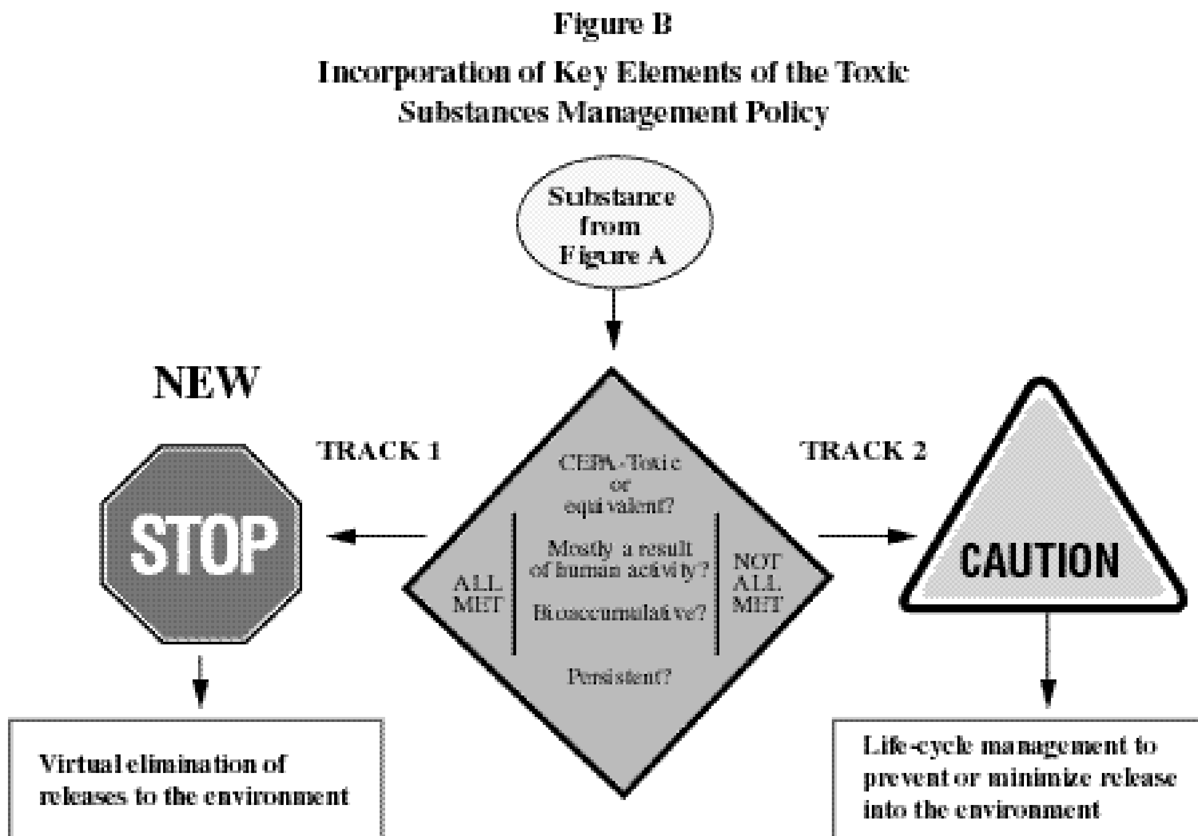


Figure B
Incorporation of Key Elements of the Toxic Substances Management Policy

Under CEPA 1999 the Ministers must propose virtual elimination for substances that meet these criteria. Regulations under Section 73 set out the criteria for persistence and bioaccumulation.

Virtual Elimination Definition (Section 65)

- Section 65(1) defines virtual elimination as the release of a substance to the environment below the level of quantification (LOQ);
- the LOQ is defined in Section 65.1 as the lowest concentration of a substance that can be accurately measured using sensitive but routinely available measurement technology;
- Section 65(2) requires the Ministers of the Environment and Health to specify the LOQ for each substance on the Virtual Elimination List (this is not a regulatory release limit);
- Section 65(3) requires consideration of environmental or health risks and relevant social, economic and technical matters before the Ministers of the Environment and Health set enforceable release limits.

In other words, the ultimate objective of virtual elimination is to reduce releases to the point where they can no longer be measured. At the same time, there may be relevant social, economic or technical factors that make it impossible to reach virtual elimination immediately. In these instances, the Ministers can set a release limit above the level of quantification, or set out a phased approach with ever-decreasing limits until the LOQ is reached.

CEPA 1999 provides the regulatory authority to achieve both the virtual elimination of a substance and life-cycle management to minimize releases to the environment. In the case of virtual elimination, companies will be required to prepare "virtual elimination plans" to achieve the regulatory release limit set under subsection 65(3).

Preventive or Control Measures (Sections 90 - 93)

Manufacture and import of new substances found to be toxic can be prohibited or subjected to conditions specified by the Ministers. After two years, the Governor in Council must publish a notice of proposed regulations for these substances.

For existing substances (such as those on the Domestic Substances List) found to be toxic, the Minister of the Environment has two years to develop preventive or control measures. These measures can include voluntary arrangements, economic instruments, and requirements for pollution prevention planning or regulations. Once proposed, the Minister has a further 18 months to finalize the measures. Regulations are made by the Governor in Council on the recommendation of both Ministers.

The National Advisory Committee must be provided with an opportunity to provide advice on any proposed regulations made under section 93. Proposed regulations also undergo a 60-day public comment period.

CEPA 1999 cannot be used to regulate an aspect of a substance that is regulated under another Act in a manner that provides, in the opinion of the Governor-in-Council, sufficient protection to the environment and human health.

Interim Orders (Section 94)

CEPA 1999 authorizes the Minister to issue "interim orders" on a substance when immediate action is needed to deal with a significant danger to the environment or human health. An interim order has the same legal force as a regulation made under section 93.

When making an interim order, the Minister must consult all affected provincial, territorial and aboriginal governments within 24 hours to determine if they are prepared to take sufficient action to deal with the significant danger. The Minister must also consult with other federal ministers to determine if any action can be taken under any other Act of Parliament. An interim order ceases to be in force unless it is approved by the Governor in Council within 14 days. Interim orders can remain in force for two years, but within 90 days the Ministers must publish in the *Canada Gazette* their intention to recommend regulations to deal with the substance.

Release of Toxic Substances (Sections 95 - 99)

Individuals are obliged to report any releases of toxic substances that contravene a regulation. Whistleblower protection is available to any employee who makes a voluntary report of a release.

Export of Substances (Sections 100 - 103)

These sections provide authority to control the export of substances regulated under CEPA 1999 or another Act of Parliament. Substances fall into three categories:

1. Prohibited substances;
2. Substances whose export is subject to an international agreement that requires the notification or consent of the receiving country; and
3. Restricted substances.

Prohibited substances can be exported only if they are to be destroyed. The Governor in Council may make regulations for all three categories of substances, including:

- prohibitions on export;
- the type of information to be provided to the Minister;
- the type of information to accompany an export; and
- conditions under which an export may be made.

Details concerning these exports must be published in the Environmental Registry. These provisions allow Canada to meet its commitments under the *Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.*

Part 6: Animate Products of Biotechnology (Sections 104 - 115)

These sections establish an assessment process for new animate products of biotechnology (such as living organisms) that mirrors provisions in Part 5 respecting new substances that are chemicals. Inanimate products of biotechnology will continue to be dealt with as "substances" under Part 5.

Living organisms that are not on the Domestic Substances List are considered to be new. These cannot be used, manufactured or imported until:

- the Minister has been notified;
- relevant information needed for an assessment has been provided by the applicant;
- the prescribed fee has been paid; and
- the period for assessing the information has expired.

In certain circumstances, manufacturers and importers must also report "significant new activities" involving living organisms already approved, so that they can be re-evaluated.

The Minister has the ability to waive some or all of the information requirements if:

- such information is not needed to assess the living organism;
- the living organism can be contained in a way that protects the environment and human health; or
- it is not practical or feasible to obtain the test data.

This is intended to prevent unnecessary information gathering. These waivers do not remove the Ministers' responsibility to determine that a new living organism is safe. All waivers must be published in the *Canada Gazette* and the Environmental Registry.

The requirements for notification and assessment in CEPA 1999 do not apply if the new living organism is manufactured or imported for a use that is regulated under another Act of Parliament that requires notice and assessment. The Governor in Council is responsible for determining if another Act meets these requirements, and for placing it on Schedule 4 of the CEPA 1999. Proposals to schedule an Act must undergo a 60-day public comment period.

The Governor in Council may make regulations to implement international agreements and regarding the safe use of living organisms in pollution prevention.

CEPA 1999 cannot be used to regulate an aspect of a living organism that is regulated under another Act in a manner that provides, in the opinion of the Governor in Council, sufficient protection to the environment and human health.

PART 7: CONTROLLING POLLUTION AND MANAGING WASTES (SECTIONS 116 - 192)

Division 1 – Nutrients (Sections 116 - 119)

Nutrients are defined as substances that promote the growth of aquatic vegetation. CEPA 1999 provides authority to regulate nutrients in cleaning products and water conditioners that degrade or have a negative impact on an aquatic ecosystem. For example, the level of phosphates in laundry detergent is currently regulated. CEPA 1999 cannot be used to regulate sources of nutrients already regulated under other Acts that, in the opinion of the Governor in Council, provide sufficient protection of the environment (an example is the *Fertilizers Act*).

Division 2 – Protection of the Marine Environment from Land-based Sources of Pollution (Sections 120 - 121)

This Division provides the authority to issue non-regulatory objectives, guidelines and codes of practice to help implement the National Programme of Action for the Protection of Marine Environment from Land-based Activities. These provisions are intended to supplement authority that exists in other federal, provincial, territorial and aboriginal government laws.

Division 3 – Disposal at Sea (Sections 122 - 137)

This Division implements the 1972 *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (the London Convention) and the 1996 Protocol to that Convention. These provisions prohibit the disposal (and incineration) of wastes in oceans within Canadian jurisdiction, and by Canadian ships in international waters, unless the disposal is done under a permit issued by the Minister.

This Division does not apply to disposal resulting from normal ship operations, regulated under the *Canada Shipping Act*, or to a discharge from offshore exploration and processing of seabed mineral resources, regulated under the *Canada Oil and Gas Act*.

Consistent with the 1996 Protocol to the London Convention, CEPA 1999 takes a precautionary approach by listing, in Schedule 5, the wastes and other matter for which a permit for disposal at sea can be sought. In other words, only a few types of waste are eligible for disposal under CEPA 1999. Everything else is prohibited. The following can be considered for disposal at sea under a permit:

1. Dredged material;
2. Fish waste;
3. Ships, aircraft, platforms and other structures;
4. Inert, inorganic geological matter;
5. Uncontaminated organic matter of natural origin;
6. Bulky substances that are primarily composed of iron, steel or concrete.

Other materials are not eligible for disposal at sea. The Governor in Council may make regulations limiting the quantity or concentration of a substance (such as mercury) contained in waste that is eligible for disposal.

To receive an ocean disposal permit, an applicant must comply with the Waste Assessment Framework in Schedule 6 of the Act that requires consideration of other disposal options (such as recycling) and means to prevent or reduce the generation of waste, such as cleaner production technologies. A permit for ocean disposal will be approved only if it is the environmentally preferable and practical option.

An applicant must publish notice of the application in a newspaper that is circulated in the vicinity of the disposal area, and also pay a fee to process the permit request. In addition, when approved permits are published in the *Canada Gazette*, there is a 30-day period before any disposal under the permit can begin. During this time, any person may file a notice of objection requesting a board of review.

CEPA 1999 allows for emergency disposal to avert danger to human life or to a ship, aircraft or platform. One example is an aircraft in distress that dumps fuel to allow for a safe landing.

The Act requires the Minister to monitor sites that are used for disposal.

Division 4 – Fuels (Sections 138 - 148)

The Governor in Council may pass fuel regulations that could make a significant contribution to the prevention or reduction of air pollution. This authority over fuels is broad and applies to:

- concentrations or quantities of an element, component or additive;
- physical or chemical properties;
- characteristics of a fuel;
- transfer and handling; and
- adverse effects of fuel on combustion or other engine technology or emission control equipment.

CEPA 1999 also allows for the creation of a "national fuels mark" that would prohibit the import and interprovincial trade of fuels that do not meet the requirements of the mark.

Division 5 – Vehicle, Engine and Equipment Emissions (Sections 149 - 165)

CEPA 1999 includes authority, formerly in the *Motor Vehicle Safety Act*, to set emission standards for engines in new on-road vehicles. CEPA 1999 also includes authority to set emission standards for new off-road vehicles and other engines such as those found in lawn mowers, construction equipment, hand-held equipment, etc.

These sections establish a "national emissions mark" that could be used to require adherence to prescribed standards. Companies are not permitted to transport within Canada any prescribed vehicles, engines or equipment that do not have a national emissions mark.

Division 6 – International Air Pollution (Sections 166 - 174)

These sections contain authority to address Canadian sources of pollution that:

- contribute to air pollution in another country; or
- violate an international agreement binding on Canada.

These sections apply to the release of substances that may not have been determined to be toxic under Part 5, but nevertheless contribute to international air pollution.

Before using the powers in this Division, the Minister must first consult with the provincial, territorial or aboriginal government responsible for the area in which the pollution source is located. This consultation will determine if that government is willing or able to address the problem.

The Minister may take the following action to reduce or prevent the pollution:

1. Seek Governor in Council approval to require pollution prevention planning from the source(s);
2. Recommend regulations to the Governor in Council;
3. Issue an interim order (for emergency situations).

Division 7 – International Water Pollution (Sections 175 - 184)

This Division parallels provisions that deal with international air pollution. It provides authority to address Canadian sources of water pollution in another country using regulations, pollution prevention planning or an interim order. These powers are available only if the provincial, territorial or aboriginal government responsible for the area in which the source is located is unwilling or unable to take action.

Division 8 – Control of Movement of Hazardous Waste and Hazardous Recyclable Material and of Prescribed Non-Hazardous Waste for Final Disposal (Sections 185 - 192)

These sections allow Canada to meet its commitments under the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, the OECD Council Decision C(92)39 concerning the transfrontier movement of waste destined for recovery operations, and the Canada-US Agreement Concerning the Transboundary Movement of Hazardous Waste.

CEPA 1999 provides authority to establish a permit system for the import, export and transit of hazardous wastes, hazardous recyclable materials and prescribed non-hazardous wastes destined for final disposal. The Minister has the discretion to refuse the granting of a permit, in accordance with criteria set out in regulations, if the Minister believes the waste or material will not be managed so that the environment and human health are protected. Authority is also provided to recover costs for the processing of permits. As well, the Minister may, with the approval of the Governor in Council, prohibit or restrict the import, export and transit of waste for the purposes of implementing international environmental agreements.

CEPA 1999 addresses the environmental aspects of interprovincial shipments of hazardous wastes and recyclable materials that are currently under the Transportation of Dangerous Goods Regulations.

Details about proposed imports, exports and transits must be published in the *Canada Gazette*, on the Environmental Registry, or in any other manner that the Minister considers appropriate.

Section 188 provides authority to require exporters to prepare and implement reduction/phase-out plans for hazardous waste that is shipped abroad for final disposal. In accordance with Section 191, these reduction plans should take into account use of the nearest appropriate disposal facility, even if such a facility is located across a border. The Section also indicates that changes in the generation of goods should be considered that would consequently change the quantities of hazardous wastes that are to be disposed.

Part 8: Environmental Matters Related To Emergencies (Sections 193 - 205)

This Part provides a "safety net" to fill the gap where no federal, provincial, territorial or aboriginal government regulations exist. It provides authority to require emergency plans for substances once they have been declared toxic by the Ministers.

Environmental emergency plans for a toxic substance must cover:

- prevention
- preparedness
- response, and
- recovery.

If a company or facility has voluntarily prepared an emergency plan, or prepared plans to meet the requirements of another Act or another government, there is no need to prepare an additional plan as long as the toxic substance of concern is covered.

As with pollution prevention plans, companies and facilities are not normally required to submit emergency plans, but must file a declaration that they have been prepared and implemented. The Minister has the discretionary authority to require submission of these emergency plans.

The Minister may establish a national system for notification and reporting of environmental emergencies, in cooperation with other government departments and provincial, territorial and/or aboriginal governments.

Ministerial authority is provided to issue guidelines and codes of practice and the Governor in Council may make regulations respecting:

- establishment of a list of substances that may harm the environment or pose a danger to human health if they enter the environment as a result of an emergency;
- identification of places in Canada where these substances are located;
- prevention, preparedness, response and recovery from an environmental emergency related to a substance;
- notification and reporting of environmental emergencies; and
- implementation of international agreements.

Part 9: Government Operations and Federal and Aboriginal Land (Sections 206 - 215)

Under Canada's Constitution, provincial laws do not normally apply to the federal Crown. This means that provincial and territorial regulations covering emissions, effluents, environmental emergencies, waste handling, and any other environmental matter do not, for the most part, cover federal government operations and land, including aboriginal land. The entities covered by Part 9 are often referred to as the "federal house" and include federal departments, agencies, boards, commissions, federal Crown corporations, federal works and undertakings like banks, airlines and broadcasting systems, federal land, as well as aboriginal land.

Part 9 of CEPA 1999 provides the authority to fill this regulatory gap so that the "federal house" is covered by the same type of environmental regulations as entities regulated by provinces.

This Part also allows the Minister to establish objectives, guidelines and codes of practice for the "federal house."

PART 10: ENFORCEMENT (SECTIONS 216 - 312)

The Minister designates enforcement officers and sets out their specific peace officer powers. These individuals are normally Environment Canada employees, but can also include employees of a provincial, territorial or aboriginal government involved in the administration of an environmental protection law.

CEPA 1999 provides authority to inspect any place where there might be a substance or activity regulated under the Act. Enforcement officers have the authority to seize evidence related to a contravention.

CEPA 1999 provides authority to issue Environmental Protection Compliance Orders (EPCOs) to stop illegal activity or to require action to correct a violation. These Orders are valid for up to 180 days.

A person subject to an EPCO may make representations to the enforcement officer before the order is issued, or seek review of the order by an independent Review Officer appointed under the Act (Sections 243 - 268). The Order remains in effect until the Review Officer rules otherwise. After a decision by the Review Officer, the person subject to the Order may also appeal to the Federal Court. The right of appeal is also available to the Minister.

In cases when a corporation commits an offence, liability applies to any officer, director or agent who directed, participated or assented to the violation. In addition, directors and officers of a corporation have a duty to "take all reasonable care" to ensure the corporation complies with the Act.

The maximum penalty under CEPA 1999 is a fine of up to $1 million a day or up to five years' imprisonment. The court can also levy a fine equal to any profits earned as a result of the offence. The Act includes sentencing criteria to promote consideration by the courts of matters such as the cost to remedy the damage done to the environment.

Environmental Protection Alternative Measures (EPAMs) allow for negotiated settlements that avoid the time and expense of lengthy court cases. These provisions are similar to those found in the *Criminal Code* and the *Young Offenders Act*. CEPA 1999 explicitly excludes certain serious offences from being eligible for EPAMs.

EPAMs are negotiated between an accused and the Attorney General of Canada after charges are laid. The accused must freely consent to negotiate and must also accept responsibility for the offence.

If the accused does not live up to the terms of the agreement, the original charges can be reactivated. On the other hand, if the terms of the EPAM are fulfilled and the accused is again in compliance with the law, charges can be suspended or withdrawn entirely with no recorded conviction or criminal record.

PART 11: MISCELLANEOUS MATTERS (SECTIONS 313 - 343)

Sections 313 to 321 cover the disclosure of information and allow any person who provides information to the Minister to request that it remain confidential. Such information can be released only in limited circumstances, such as when the public interest in disclosing the information outweighs private interests.

Sections 322 to 327 provide authority to the Governor in Council to use economic instruments including deposit/refund systems and tradeable unit systems.

The Minister also has the authority to make regulations concerning fees to allow for cost recovery (Sections 328 - 329).

This Part includes an authority that can be used generally for making regulations under CEPA 1999. For instance, it is possible for the Governor in Council to incorporate standards, test methods or other specifications into a regulation, and to specify that amended versions of those standards, methods and specifications remain valid for the CEPA regulation. Part 11 sets out publication requirements in the *Canada Gazette* for proposed orders and regulations (Sections 330-333). In addition, certain regulations (toxics, fuels, international air and water pollution) can be made to apply to certain parts of Canada (such as those specific to certain sites, provinces, territories or a specific area).

Sections 333-341 set out procedures for establishing and conducting boards of review in response to notices of objection filed by members of the public.

CEPA 1999 requires an annual report to Parliament on the enforcement, administration and research conducted under the Act. Finally, CEPA 1999 must be reviewed every five years by a Committee of the House, the Senate or of both Houses of Parliament.

PART 12: CONSEQUENTIAL AMENDMENTS, REPEAL AND COMING INTO FORCE (SECTIONS 344 - 356)

These are consequential amendments to other Acts of Parliament, such as the transfer of authority for engine emission standards from the *Motor Vehicle Safety Act*.

CEPA 1999 comes into force on a date fixed by order of the Governor in Council.

SCHEDULES

Schedule 1

List of Toxic Substances

Schedule 2

Acts and regulations determined by the Governor in Council to meet CEPA requirements for notification and assessment of new substances for toxicity.

Schedule 3

Export Control List

Part 1: Prohibited Substances
Part 2: Substances subject to notification or consent
Part 3: Restricted substances

Schedule 4

Acts and regulations determined by the Governor in Council to meet CEPA requirements for notification and assessment of new living organisms for toxicity.

Schedule 5

List of waste or other matter for which an ocean disposal permit can be sought.

Schedule 6

Waste assessment framework taken from the 1996 Protocol to the London Convention on Ocean Dumping.

Includes factors to be considered when deciding to approve an application for an ocean disposal permit.