

The new *Canadian Environmental Protection Act*

The new CEPA and Environmental Protection Compliance Orders (EPCOs)

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/cepa

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What are EPCOs?

EPCOs are orders that enforcement officers may issue to:

- put an immediate stop to a CEPA violation;
- prevent a violation from occurring in the first place; or
- require action to be taken to correct a violation.

These orders are one of the tools under CEPA 1999 that allow handling of offences without formal court prosecution.

What is the purpose of an EPCO?

An EPCO is designed to restore an alleged offender to compliance with the Act as quickly as possible.

Is this kind of order new to Canadian law?

EPCOs are similar to "stop" or "cease and desist" orders found in other Canadian legislation, including provincial legislation.

For what CEPA offences can an enforcement officer issue an EPCO?

An enforcement officer can issue an EPCO for any offence under CEPA 1999. The

offence can involve a substance (such as a toxic substance, fuel, hazardous waste, emission or effluent), or a product containing the substance. It can also involve activities such as the manufacture, import, export, use, offer for sale, sale or disposal of a substance or product that is in violation of CEPA regulations. The offence can also involve the failure to take required action.

Under what circumstances would an enforcement officer choose an EPCO over another procedure?

If a person had a good compliance history, such as showing a previous willingness to take all reasonable measures to comply with the law, or a willingness to cooperate with enforcement officers to return to compliance, the enforcement officer would consider an EPCO rather than a lengthy prosecution. If the violation required immediate correction or immediate steps to prevent a violation, the officer may also consider an EPCO as the best tool.

What steps are involved in issuing an EPCO?

Except in an emergency situation, an enforcement officer will provide notice of intent to issue an EPCO, and will give the alleged offender an opportunity to make oral representations. Representations could include presentation of opinion on why a

violation has not actually occurred, why an EPCO should not be issued even if there has been a violation, or what kind of conditions should be set down in an EPCO. After such representations, the enforcement officer decides whether or not to issue an EPCO. The recipient of an EPCO has the right to request a review by the Chief Review Officer, if the recipient wishes to protest the order.

In an emergency situation, where the delay necessary to provide notice of the intent to issue an EPCO would result in danger to human life or to the environment, the enforcement officer may issue the EPCO without notice or delay.

What happens if there is disagreement with the EPCO or its contents?

Under CEPA 1999, the Minister must establish a roster of review officers and will appoint one of them as Chief Review Officer. The Chief Review Officer has authority to establish hearing procedures and assign review officers to conduct the hearings. The recipient of an EPCO can request a hearing before a review officer. The review officer has authority to require that the EPCO be suspended during the review, or that the order remain in force during that time. The review officer will hear evidence from the party subject to the EPCO and the issuing enforcement officer. The review officer must then decide whether to uphold the order, or set it aside.

The decision of the review officer can itself be appealed to the Federal Court of Canada.

When does an EPCO come into effect and how long does it remain in force?

Compliance with an EPCO must begin as soon as it is received, unless a review officer has received an application to review the EPCO and has agreed to suspend the order during the review period. The maximum period of time that an EPCO can remain in effect is 180 days.

What happens if a person doesn't comply with an EPCO?

Failure to comply with an EPCO is an offence under CEPA 1999. Possible penalties are:

- a fine of up to \$1,000,000 per day or imprisonment for up to three years or both, if the person is prosecuted by indictment; or
- a fine of up to \$300,000 per day or imprisonment for up to six months or both, if the person is prosecuted by summary conviction.

