

**GUIDELINES FOR THE USE OF INFORMATION GATHERING
AUTHORITIES UNDER SECTION 46 OF THE
*CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999***

**Environmental Protection Service
Environment Canada**

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Preface

These Guidelines address the requirement in subsection 47 (1) of the *Canadian Environmental Protection Act, 1999* (CEPA '99) to issue guidelines respecting the use of the information gathering powers provided for by subsection 46(1).

Part 3 of CEPA '99, which includes sections 43 to 55, requires the Minister of the Environment and the Minister of Health to conduct certain types of research. Part 3 also requires the Minister of the Environment to monitor environmental quality, and to establish and maintain a national inventory of releases of pollutants, and provides authority for information gathering and for issuing objectives, guidelines and codes of practice. More specifically, subsection 46(1) authorizes the Minister of the Environment to issue notices requiring information for the purposes of conducting research, creating an inventory of data, formulating objectives and codes of practice, issuing guidelines or, assessing or reporting on the state of the environment.

These Guidelines outline the factors and options that will be considered by the Minister before using the information gathering powers under section 46.

1. Purpose of the Guidelines

These Guidelines are intended to improve the consistency and effectiveness of the information gathering process conducted under section 46 of the *Canadian Environmental Protection Act* (CEPA '99). They fulfill the legislative requirement in subsection 47(1) and apply only to notices requiring information issued under subsection 46(1). In order to articulate the complete process for issuing a notice, these Guidelines re-iterate the requirements as outlined in the Act and describe procedures to address the objectives outlined below.

The objectives of the Guidelines are to:

- outline the procedure for determining whether a notice is necessary;
- outline a procedure whereby notices issued include all mandatory information, provide a clear explanation of what information is required, the reason for the request, and the manner in which the information will be used;
- allow potentially affected persons to comment on the contents of the notice prior to it being issued, thereby giving them the opportunity to provide the Minister with their views on the costs and benefits of gathering the information, so that these views can be taken into consideration before the final notice is published and;
- improve the efficiency of acquiring information and the coordination of information gathering within Environment Canada, throughout the federal government and with provincial, territorial and Aboriginal governments.

2. Summary of the Information Gathering Provision under Section 46

Information gathering powers are required to collect the data necessary to administer CEPA '99. Section 46 provides the Minister with the authority to gather the best information available for meeting various obligations under the Act and for enabling decision making that contributes to the protection of the environment and human health.

Under subsection 46(1), the Minister of the Environment may issue notices requiring information for the purposes of:

- conducting research;
- creating an inventory of data;
- formulating objectives and codes of practice;
- issuing guidelines; or

- assessing or reporting on the state of the environment.

The Minister may require information that is not specified in paragraphs (a) to (m) of subsection 46(1) (Appendix 1), provided that the information required meets the general purposes of the section and falls within the purposes of CEPA '99.

The authority applies to information that may be in the possession of the person to whom a request is directed, or information to which the person may reasonably be expected to have access.

3. Prior to Issuing a Notice

Prior to issuing a notice requiring information under subsection 46(1), in the majority of cases, one of the two processes described in sections 3.1 and 3.2 will generally be followed. These processes will be used to: clearly identify the required information and the manner in which it will be used; coordinate information requests within the federal government and with other governments; and consider the costs and benefits to the Minister and the person to whom a notice would be directed.

Under the first process, Environment Canada will undertake an assessment of the need to issue a notice and the notice will be pre-published. The second process involves a multistakeholder consultative approach to engage potentially affected stakeholders prior to issuing a notice. Both processes can deal with either “one-time” requests for information or requests for the ongoing provision of information, for example, requests for information for the purpose of creating inventories that track trends in releases of pollutants.

3.1 Assessment and Pre-publication of Notice

Prior to the Minister issuing a notice requiring information under subsection 46(1), Environment Canada will undertake an assessment of the need to issue a notice. Based on that assessment, the Minister will determine whether or not to proceed with the pre-publication of a notice to allow stakeholders the opportunity to provide comments. If a notice is pre-published, comments received will be considered in determining whether to publish a notice in the *Canada Gazette*.

3.1.1 Assessment

The assessment, an internal decision making tool, will provide the Minister with the appropriate information to determine whether or not a notice should be issued. The assessment will generally outline the purpose of the request, describe the information required, identify the target population, state the benefits of the information for decision-making, demonstrate that, where possible, efforts were made to coordinate with other government departments and other governments, and specify the applicable timelines.

As part of the assessment, reasonable efforts will be made to communicate with the person, or a representative group of the persons, to whom a notice would be directed in advance of issuing a notice to obtain their views on the costs of providing the information and to determine whether the information being sought has already been recently submitted to the federal government or a provincial, territorial or Aboriginal government.

The following considerations will assist the Minister in determining the merit of gathering the information described in the assessment.

A) Purpose of the Information Required

An assessment will address the purpose of the information required based on those identified in subsection 46(1) of CEPA '99 and indicate for which duty or function under the Act it will contribute to.

B) Required Information and the manner in which it will be used

The assessment will include a clear description of the required information and will indicate the manner in which the information will be used (e.g. to produce a general report that does not link data to specific people, to compare data results, etc.).

C) Target population

The proposal will describe who would have to comply with a section 46 notice which could include, for example, a specific industry sector, municipal or provincial governments, or persons who use a certain amount of a specified chemical.

D) Evaluation Criteria

The costs and benefits to the persons who will be affected by a notice should be identified by them during the comment period following the pre-publication of the notice. These costs and benefits will be taken into consideration before the final notice is published. In order to assess the cost and benefits to the Minister of obtaining the required information, the following questions will be addressed in the assessment:

What is the value or benefit of the information in the decision-making process?

The criteria will identify the benefits of obtaining the information for the protection of the environment and human health, its role in decision-making and how it relates to Environment Canada's mandate.

Is a section 46 notice the most efficient way of obtaining the required information?

Based on this criterion, the assessment will include a summary outlining the available options for obtaining the information and a reason for choosing to issue a notice under section 46. The summary should demonstrate that a notice is the most efficient way of obtaining the information.

What is the estimated number of people, if known, who will be required to respond to the notice once issued?

Such an estimation will provide an indication of how many people will be required to respond and the quantity of information that will be received and require processing.

What is required to comply with the notice?

The assessment will identify the manner in which a person to whom a notice is directed must provide the information. It will clearly explain what a person will have to do to comply with the notice.

What are the estimated potential costs to the Minister, including costs associated with handling and storing the information, compliance monitoring and verification, and enforcement activities related to the proposed notice?

The potential costs to the Minister for the handling and storing of the information, compliance monitoring and verification, and enforcement activities which may arise as a result of the notice should be addressed. As such, the assessment will include an estimate of these potential costs based on the estimated number of people required to comply with the notice.

Will the information be made available to the parties providing it and/or other members of the public? If so, in what form?

The assessment will specify whether or not the information collected will be made available to the parties that provided it and/or to other members of the public and in what form (e.g. report).

E) Coordination of Information Requests

In addition, in order to proceed in an effective, efficient and coordinated manner, prior to issuing a notice under subsection 46(1), reasonable efforts will be made to determine if the information required is available through another source within Environment Canada, other government departments/agencies or other levels of government (provincial, territorial or Aboriginal).

This will serve to minimize the duplication of notices requiring similar or identical information and consequently should reduce the costs associated with information gathering. A summary of these efforts will be included in the assessment.

i) Published Sources of Information

Reasonable efforts will be made to ascertain whether the information being sought is already available through published sources of information such as scientific journals, technical reports or Internet Web sites.

ii) Information available within Environment Canada

Reasonable efforts will also be made to determine whether the information required is already in the possession of Environment Canada. This includes reviewing published sources of information such as departmental scientific and technical reports, annual reports, and documents on the CEPA Environmental Registry (<http://www.ec.gc.ca/ceparegistry>). Internal consultations with the appropriate directorates and services will also be necessary to determine whether or not Environment Canada possesses, has recently requested or intends to request the information being sought.

If the information is available within Environment Canada, it will be shared internally unless an agreement exists with the person who supplied the information which limits the use that can be made of the information.

iii) Other Government Departments

Prior to issuing a notice requesting information, reasonable efforts will be made to assess whether the information required is available from another federal government department/agency. This will be achieved by consulting with interdepartmental networks and the department(s) with the mandated responsibilities for dealing with the subject matter.

If another federal government department/agency has the information, the Minister may request access to the information subject to any applicable legislation and any confidentiality provisions. However, it should be noted that although a federal department/agency may possess the required information, the Minister of the Environment may not be able to have access to that information if, among other things, an agreement exists between the supplier of the information and the federal department/agency which prohibits the disclosure of the information. In such cases, a notice may be issued even though another department/agency possesses the information being sought.

If the Minister obtains access to information from another federal department, the supplier of the information will be notified and asked to verify if the

information is accurate and current, and provided with an opportunity to request, in writing, that the information be treated as confidential under section 51.

Should another government department/agency be contemplating the collection of the same information as the Minister, it would be possible to coordinate or to jointly issue a notice requesting information, under their respective statutes. Such coordination will minimize cases where two ministers issue separate notices under their own authority for similar or identical information.

iv) Other Governments

To determine whether the information being sought is already in the possession of a provincial, territorial or Aboriginal government, the members of the CEPA National Advisory Council, which include one representative for the Minister of the Environment, the Minister of Health, each of the provinces and territories, and a maximum of six representatives of aboriginal governments, will be consulted to determine if their governments:

- have access to the information being sought, or
- intend to request the same information in the near future.

The appropriate provincial/territorial ministries may also be consulted.

It should be noted that although another government may possess the required information, the Minister of the Environment may not be granted access to that information. In some cases, a notice may have to be issued even though another government possesses the information being sought.

Should another government want to collect the same information as the Minister, to avoid duplicate information gathering efforts, the Minister may, under subsection 46(2), sign an agreement with that government and require that a person to whom a notice is directed submit the information to the Minister or to that government. The government accepting the information could become the “single-window” through which a person would meet the requirements.

Such agreements would establish the conditions respecting access to all or part of the information, by both the Minister and the other government(s), and any other conditions agreed to by the governments involved.

F) Timelines

The proposal will include a rationale for the choice of the date for submission of the required information and the period during which the notice would be in effect, to a maximum of three years. This will contribute to the setting of realistic timelines and avoid the burden of simultaneous requests.

3.1.2 Pre-Publication of Notice

For information requests that are not subject to multistakeholder consultations, prior to issuing a notice, the Minister will publish in the *Canada Gazette* a copy of the **proposed** subsection 46(1) notice for a 60-day public comment period. The proposed notice will also be accessible through the *CEPA Environmental Registry* (<http://www.ec.gc.ca/ceparegistry>). This will provide stakeholders and potentially affected persons with the opportunity to voice their views regarding the type of information that will be collected and the costs of gathering the information.

3.2 Multistakeholder Consultations

In some cases, prior to issuing a notice under subsection 46(1), instead of proceeding with an assessment and pre-publication of a notice as previously described, a multistakeholder consultation process can be undertaken to allow potentially affected stakeholders to comment on the need for the information, the uses to which it will be put, any associated costs of collecting the information, and the availability of the information elsewhere. Any costs or benefits to the person to be affected by the notice, should be identified by them through the multistakeholder process, so that they can be taken into consideration before the notice is published.

The multistakeholder consultative approach allows full discussion of the issues, including those identified in Section 3.1 of the Guidelines.

If a multistakeholder approach is used, the objectives of the initiative will be clearly defined at the outset of the consultations and include a decision-making process.

Such a process is followed for information gathering for the purposes of the National Pollutant Release Inventory (NPRI)¹ that is required to be established under section 48 of the Act.

3.2.1 NPRI Multistakeholder Consultations

The NPRI uses a multistakeholder consultative process to make modifications to the program, including adding and deleting substances from the NPRI substances list.

Stakeholders are involved very early in the process and can thus address issues of concern such as the costs and benefits of obtaining the required data prior to the issuance of a notice.

¹ The National Pollutant Release Inventory (NPRI) contains information on pollutants released to the environment and transferred for disposal, as well as data on recycling and pollution prevention activities. It is the only legislated, nation-wide, publicly-accessible inventory of its type in Canada (<http://www.ec.gc.ca/pdb/npri>).

The NPRI substances list is the basic building block for the program. The list, along with the reporting requirements, is included in the Notice that is published in the *Canada Gazette* for each reporting year. Subsection 46(1) provides the authority to issue the notice which obliges owners or operators of facilities that manufacture, process or otherwise use one or more of the NPRI-listed substances under prescribed conditions to report the amount of these substances released into the environment.

The Process

Environment Canada (EC), from time to time, proposes changes to the substances on the NPRI substances list, the reporting requirements or the NPRI program itself. Proposed changes include those proposals received from stakeholders that EC determines should proceed to consultation.

EC notifies stakeholders of the proposed changes and recommends the type of consultation process (as per step 1 below) to be used in reviewing these changes.

The following outlines the various steps in the NPRI multistakeholder process² for making changes to the substances list:

1. Consultation Options

a) For multiple, complex or controversial candidate substances or changes, a multi-stakeholder working group (MSWG) is struck to develop recommendations.

MSWG members are expected to have technical and policy expertise. They may include representatives of industry, environmental organizations, Aboriginal organizations, other government departments, other EC programs, provincial/territorial/Aboriginal governments and municipal governments.

b) Where only one or two additions or deletions, or minor changes, are proposed, using a paper-based consultation with stakeholders, versus the establishment of a MSWG, is the norm.

c) Other consultation mechanisms, such as workshops, may be warranted in addition to a MSWG or paper-based consultation. Workshops may also be used to address broad directional issues and help set priorities for program development.

² This process does not limit Environment Canada's authority and responsibility to make timely and appropriate decisions regarding the administration of the NPRI program.

2. *Review of Preliminary Recommendations*

Preliminary recommendations arising from the consultations undertaken in Step 1 are published for review and comment, and are circulated to stakeholders.

The list of stakeholders generally covers all relevant sectors including those that currently report to the NPRI, as well as any that would become reporting sectors should the recommendations be adopted. Any party can request to be added to the circulation list.

3. *Feedback on Preliminary Recommendations*

Stakeholder feedback on the preliminary recommendations is considered prior to finalizing the recommendations. Where a MSWG has been established, it will have the opportunity to review the broader stakeholder input and consider revisions to its preliminary recommendations in light of this input.

4. *EC Response*

The Minister reviews the recommendations arising from the consultation process, and publishes a formal response.

The Minister publishes revised requirements, where applicable, in the *Canada Gazette*, Part I. A reasonable period of time is allotted for organizations to fulfill reporting requirements following a Gazette notice.

3.2.2 Stakeholder Proposed Changes

Any party is entitled to make proposals to EC with respect to additions or deletions to the NPRI substances list or changes to the NPRI program.

The following is a list of conditions that apply to such proposals:

- Nominations for addition or deletion must be accompanied by a brief rationale in relation to the decision factors outlined in Section 3.2.3;
- NPRI will acknowledge receipt of the proposal within reasonable time; and,
- EC will publish, early in the year, a list of all proposals received in the preceding year, with an indication of how it intends to proceed, i.e.:
 - Rejection of the nomination or recommendation;
 - Referral of the nomination or recommendation to a consultation process (outlined above); or
 - Deferral of a decision on how to proceed, pending additional information or resources.

3.2.3. Evaluation of Proposed Changes

The following factors were developed to guide decisions within the NPRI program for making changes to the list of substances. These decision factors allow for the evaluation of proposed changes and equate to the development of an assessment under Section 3.1.

The following questions will be considered by the multistakeholder working group and the Minister in determining whether a proposed addition or deletion has merit. The explanatory text accompanying each italicized decision factor is critical to a full understanding of the decision factor. Thus, it is important that the decision factors not be reproduced in isolation from this text.

1. *Does the substance meet the NPRI criteria, that is:*

- a) *Is the substance manufactured, processed or otherwise used (M,P,O)³ in Canada?*
- b) *Is the substance of health and/or environmental concern?*
- c) *Is the substance released to the Canadian environment?*
- d) *Is the substance present in the Canadian environment?*

The first two criteria are intended to be absolute, in the sense that a substance must be M,P,O in Canada, and of health and/or environmental concern, to be added to the NPRI. Similarly, if these criteria are not satisfied for a substance currently on the NPRI, it should be deleted.

The third and fourth criteria indicate that there must be reasonable expectation that a substance is being or may be released into the Canadian environment in order that it be added to or retained on the NPRI. In general, however, unless there is evidence or analysis to the contrary, it can reasonably be assumed that a substance that is M,P,O in Canada is likely to be released, and therefore present, in the Canadian environment.

2. *Do facilities contribute significant releases of the substance?*

There are various ways in which 'significant' can be characterized. The concept relates not only to the proportionate quantity of a substance released by NPRI reporting facilities, but also to the potential for health or environmental impacts. In other words, even if facilities do not account for a major proportion of total releases, facility releases may nonetheless be significant depending on such

³The manufacturing, processing or other use of a substance have specific definitions within the context of the NPRI. M,P,O, of the substance includes the M,P,O of the substance as a by-product. A by-product is an NPRI substance that is incidentally manufactured, processed or otherwise used at a facility at a concentration of less than one percent by weight, and is released on site to the environment or transferred off site for disposal.

factors as location, timing, concentration, and the hazard associated with the substance.

3. *Does inclusion of the substance support one or more of the objectives of NPRI?*

The following are the objectives of the NPRI:

- To identify priorities for action
- To encourage voluntary action to reduce releases
- To allow tracking of progress in reducing releases
- To improve public understanding
- To support targeted regulatory initiatives.

4. *Is the substance reported elsewhere? If it is reported elsewhere, is there nonetheless additional value in reporting the information again?*

If a substance is reported or regulated elsewhere, the value of adding or deleting it from the NPRI would be considered, taking into account whether:

- The information on the substance is as readily available to the public as it would be through the NPRI;
- The information is available at the facility level;
- The information is comparable in terms of quality and comprehensiveness as that required by the NPRI; and
- The type of data is comparable (e.g., absolute quantities versus concentration).

If a substance reported elsewhere is to be included or retained in the NPRI, to the greatest extent possible, efforts will be made to consolidate the reporting requirements under the two programs (assuming compatibility of data requirements).

5. *Is the substance already on the NPRI in some form? If it is already on the NPRI in some form, is there nonetheless additional value in including it in another form?*

When considering adding a substance in another form (e.g., tetraethyl lead as a separate listing from lead and its compounds), the potential for double-counting will be avoided. In other words, where possible, the listing of a compound as both an individual substance and included as part of an aggregate category will be avoided. To the extent possible, substances will be listed with their Chemical Abstracts Service (CAS) Registry Number.

3.2.4 Results of the Evaluation of Proposed Changes

i) Addition to the NPRI

If application of the preceding decision factors indicates that a candidate substance should be *added* to the NPRI, the value of the information versus the costs of obtaining it and making it available through the NPRI will be taken into account. Efforts will be made to implement reasonable measures to reduce burdens, hence costs, without compromising the NPRI. This same consideration will apply to any modifications proposed to the NPRI program, for example, changes to the reporting requirements or format.

ii) Deletion from the NPRI

If application of the preceding decision factors indicates that a substance currently on the NPRI should be *deleted*, the following additional factors will be taken into account prior to finalizing a recommendation:

- Industrial uses of the substance;
- Potential that the substance, even if not currently used, will be used in the future;
- Possibility that the substance, if consistently unreported, warrants an alternate threshold or revisions to current exemptions;
- The benefits to be gained by deleting the substance (e.g., availability of additional resources to more effectively track substances of greater concern); and
- Other means available to track releases of the substance.

Further information on the NPRI such as non-confidential information and data, background information and stakeholder consultation activities can be found on the NPRI Web site (http://www.ec.gc.ca/CEPARRegistry/subs_list/NPRI.cfm).

4. Notice Requesting Information

4.1 Procedure for Issuing a Notice

The Act requires the Minister, under subsection 46(1), to publish all notices requesting information in the *Canada Gazette*. In accordance with subsection 13(1), the Minister will also make notices accessible through the *CEPA Environmental Registry* (<http://www.ec.gc.ca/ceparegistry>). If deemed appropriate, notices may also be issued through other appropriate means such as local or national newspapers.

As stated in subsection 46(5), once a notice is issued, every person to whom the notice is directed must comply with the notice.

4.2 Contents of a Notice

In addition to identifying the information required, its purpose, the person to whom a notice is directed and where responses and inquiries concerning the notice are to be addressed, notices requesting information issued under subsection 46(1) must also specify, in accordance with subsections 46(1), 46(4), 46(7) and section 49, the following information:

- the period during which the notice is in force which may not exceed 3 years;
- the date or dates within which the person to whom the notice is directed must comply with the notice;
- whether or not the Minister intends to publish the information and, if so, whether in whole or in part; and,
- the manner in which the information is to be provided.

In accordance with subsection 46(8), notices may also indicate the period during which, and the location where, the person to whom a notice is directed shall keep copies of the required information, together with any calculations, measurements and other data on which the information is based. The period may not exceed three years from the date the information is required to be submitted to the Minister.

4.3 Extension of Time

Subsection 46(6) allows the Minister to extend the time frames set in notices regarding information requested under subsection 46(1), in order to accommodate situations where a person needs additional time to submit the required data.

4.4 Intent to Publish

As required under section 49, a notice published under subsection 46(1) will indicate whether or not the Minister intends to publish the information requested and, if so, whether in whole or in part.

4.5 Request for Confidentiality

Upon receipt of a notice requesting information which indicates that the Minister intends to publish the information, a person may submit, pursuant to section 51, along with the required information, a written request that the information be treated as confidential based on any of the reasons identified in section 52 as follows:

- the information constitutes a trade secret;

- the disclosure of the information would likely cause material financial loss to, or prejudice to the competitive position of, the person providing the information or on whose behalf it is provided; or,
- the disclosure of the information would likely interfere with contractual or other negotiations being conducted by the person providing the information or on whose behalf it is provided.

Upon reviewing the request for confidentiality, the Minister may, pursuant to subsection 53(1), require additional justification for the request from the person in question who must respond, in writing, within 20 days. Subsection 53(2) allows the Minister to extend the response period up to an additional 10 days if necessary.

In determining whether to accept or reject the request for confidentiality, the Minister will consider whether the reasons given are well-founded. Despite being well-founded, the Minister has authority, under subsection 53(3), to reject the request if:

- a) the disclosure is in the interest of the protection of the environment, public health or public safety; and
- b) the public interest in the disclosure outweighs in importance
 - i) any material financial loss or harm to the competitive position of the person, and
 - ii) any damage to the privacy, reputation or human dignity of any individual that may result from the disclosure.

As stipulated in subsection 53(4), if the Minister accepts the request for confidentiality, the information will not be published.

In accordance with subsection 53(5), if the Minister rejects the request, the Minister will advise the person in question of the intent to publish the information and of the person's right to ask the Federal Court to review the matter.

4.6 Failure to Comply

The obligation to comply with the requirements of the notice is found in subsection 46(5). Anyone who does not comply with a notice published under subsection 46(1) contravenes subsection 272(1) of the Act. On conviction, the offender shall be sentenced to imprisonment or a fine or both. In addition, anyone who provides false or misleading information, results or samples; or who files documents containing false or misleading information, contravenes subsection 273(1) of the Act. The possible sentences in both of these cases are also imprisonment, a fine or both. The Act sets out different maximum sentences based on whether the offence was committed knowingly or by negligence. Furthermore, section 276 specifies that where an offence is committed over

several days, it may be considered a separate offence for each day the offence is committed or continues.

Since the authority to issue notices is provided under CEPA '99, when verifying compliance with a notice issued under section 46, enforcement officers will abide by the *Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999* (<http://www.ec.gc.ca/CEPARRegistry/enforcement/>), implemented under the Act, which sets out the range of possible responses to violations.

5. Manner in which the Information Collected will be Used

Reasonable efforts will be made to process information collected in a timely manner and to store it in such a way as to be easily retrievable.

In instances where the Minister has collected information and has indicated that it will **not** be published, prior to using the information for an alternate purpose identified in subsection 46(1) which would result in the publishing of the information in part or in whole, the provider of the information will be contacted and provided with an opportunity to submit a written request that the information be treated as confidential in accordance with section 51.

**Canadian Environmental Protection Act, 1999
RELEVANT PROVISIONS**

The following provisions of the Canadian Environmental Protection Act, 1999 have been reproduced for convenience of reference only and have no official sanction. For all purposes of interpreting and applying the law, readers should consult: (a) the Acts as passed by Parliament, which are published in the "Assented to" Acts service, part III of the Canada Gazette and the annual Statutes of Canada and, (b) the regulations, as registered by the Clerk of the Privy Council and published in Part II of the Canada Gazette.

PART 3 - Information Gathering - Sections 46 to 53

Notice requiring information

46. (1) The Minister may, for the purpose of conducting research, creating an inventory of data, formulating objectives and codes of practice, issuing guidelines or assessing or reporting on the state of the environment, publish in the Canada Gazette and in any other manner that the Minister considers appropriate a notice requiring any person described in the notice to provide the Minister with any information that may be in the possession of that person or to which the person may reasonably be expected to have access, including information regarding the following:

- (a) substances on the Priority Substances List;
- (b) substances that have not been determined to be toxic under Part 5 because of the current extent of the environment's exposure to them, but whose presence in the environment must be monitored if the Minister considers that to be appropriate;
- (c) substances, including nutrients, that can be released into water or are present in products like water conditioners and cleaning products;
- (d) substances released, or disposed of, at or into the sea;
- (e) substances that are toxic under section 64 or that may become toxic;
- (f) substances that may cause or contribute to international or interprovincial pollution of fresh water, salt water or the atmosphere;
- (g) substances or fuels that may contribute significantly to air pollution;
- (h) substances that, if released into Canadian waters, cause or may cause damage to fish or to their habitat;
- (i) substances that, if released into areas of Canada where there are migratory birds, endangered species or other wildlife regulated under any other Act of Parliament, are harmful or capable of causing harm to those birds, species or wildlife;
- (j) substances that are on the list established under regulations made under subsection 200(1);
- (k) the release of substances into the environment at any stage of their life-cycle;
- (l) pollution prevention; and
- (m) use of federal land and of aboriginal land.

Other recipients

(2) The Minister may, in accordance with an agreement signed with a government, require that a person to whom a notice is directed submit the information to the Minister or to that government.

Conditions respecting access to information

(3) An agreement referred to in subsection (2) shall set out conditions respecting access by the Minister or other government to all or part of the information that the person is required to submit and may set out any other conditions respecting the

- information.
- Period of notice and date for compliance
(4) A notice referred to in subsection (1) must indicate the period during which it is in force, which may not exceed three years, and the date or dates within which the person to whom the notice is directed shall comply with the notice.
- Compliance with notice
(5) Every person to whom a notice is directed shall comply with the notice.
- Extension of time
(6) The Minister may, on request in writing from any person to whom a notice is directed, extend the date or dates within which the person shall comply with the notice.
- Manner
(7) The notice must indicate the manner in which the information is to be provided.
- Preservation of information
(8) The notice may indicate the period during which, and the location where, the person to whom the notice is directed shall keep copies of the required information, together with any calculations, measurements and other data on which the information is based. The period may not exceed three years from the date the information is required to be submitted to the Minister.
- Guidelines
47. (1) The Minister shall issue guidelines respecting the use of the powers provided for by subsection 46(1) and, in issuing those guidelines, the Minister shall take into account any factor that the Minister considers relevant, including, but not limited to,
(a) the costs and benefits to the Minister and the person to whom the notice under subsection 46(1) is directed;
(b) the co-ordination of requests for information with other governments, to the extent practicable; and
(c) the manner in which the information collected under subsection 46(1) is to be used.
- Consultation
(2) In carrying out the duties under subsection (1), the Minister shall offer to consult with the government of a province and the members of the Committee who are representatives of aboriginal governments and may consult with a government department or agency, aboriginal people, representatives of industry and labour and municipal authorities or with persons interested in the quality of the environment.
- Minister may act
(3) At any time after the 60th day following the day on which the Minister offers to consult in accordance with subsection (2), the Minister may act under subsection (1) if the offer to consult is not accepted by the government of a province or members of the Committee who are representatives of aboriginal governments.
- National inventory
48. The Minister shall establish a national inventory of releases of pollutants using the information collected under section 46 and any other information to which the Minister has access, and may use any information to which the Minister has access to establish any other inventory of information.
- Publication in whole or in part
49. The notice published under subsection 46(1) must indicate whether or not the Minister intends to publish the information and, if so, whether in whole or in part.
- Publication of inventory
50. Subject to subsection 53(4), the Minister shall publish the national inventory of releases of pollutants in any manner that the Minister considers appropriate and may publish or give notice of the availability of any other inventory of information established under section 48, in any manner that the Minister considers appropriate.
- Request for confidentiality
51. A person who provides information to the Minister under subsection 46(1) may, if the Minister's intention to publish the information has been indicated under section 49,

submit with the information a written request, setting out a reason referred to in section 52, that the information be treated as confidential.

Reasons

52. Despite Part 11, a request under section 51 may only be based on any of the following reasons:

- (a) the information constitutes a trade secret;
- (b) the disclosure of the information would likely cause material financial loss to, or prejudice to the competitive position of, the person providing the information or on whose behalf it is provided; and
- (c) the disclosure of the information would likely interfere with contractual or other negotiations being conducted by the person providing the information or on whose behalf it is provided.

Additional justification

53. (1) The Minister may, after studying the reasons provided under section 52, require the person in question to provide, within 20 days and in writing, additional justification for the request for confidentiality.

Extension of time

(2) The Minister may extend the period mentioned in subsection (1) by up to 10 days if the extension is necessary to permit adequate preparation of the additional justification.

Minister's decision

(3) In determining whether to accept or reject the request, the Minister shall consider whether the reasons are well-founded and, if they are, the Minister may nevertheless reject the request if

- (a) the disclosure is in the interest of the protection of the environment, public health or public safety; and
- (b) the public interest in the disclosure outweighs in importance
 - (i) any material financial loss or prejudice to the competitive position of the person who provided the information or on whose behalf it was provided, and
 - (ii) any damage to the privacy, reputation or human dignity of any individual that may result from the disclosure.

Acceptance of request

(4) If the Minister accepts the request, the information shall not be published.

Publication

(5) If the Minister rejects the request,

- (a) the person has the right to ask the Federal Court to review the matter within 30 days after the person is notified that the request has been rejected or within any further time that the Court may, before the expiry of those 30 days, fix or allow; and
- (b) the Minister shall advise the person in question of the Minister's intention to publish the information and of the person's right to ask the Federal Court to review the matter.

Applicable provisions

(6) Where a person asks the Federal Court to review the matter under paragraph (5)(a), sections 45, 46 and 47 of the Access to Information Act apply, with any modifications that the circumstances require, in respect of a request for a review under that paragraph as if it were an application made under section 44 of that Act.