



COURT ACTIONS

The Compliance and Enforcement Policy for the *Canadian Environmental Protection Act, 1999* (CEPA 1999) sets out the principles for enforcement of the Act and advises everyone who shares a responsibility for protection of the environment — governments, industry, organized labour, and individuals — as to what is expected of them. It also provides information on what to expect from the officers who enforce CEPA 1999 and its regulations. The policy was developed in co-operation with the Department of Justice.

This fact sheet is part of a series of six that presents various aspects of the Compliance and Enforcement Policy: its principles, the personnel, enforcement activities, officers' responses to violations, court actions, and information for Environment Canada's enforcement offices.

Depending on the severity of the environmental harm or risk, the factual circumstances or the compliance history of the alleged violator, prosecution or other court actions may provide the most effective deterrent.

COURT ACTIONS

The following court actions are available to deal with alleged violations of CEPA 1999 and its regulations: injunctions, prosecution, environmental protection alternative measures (EPAMs) agreements, court orders that follow conviction, and civil suits by the Crown to recover costs.

While each situation will be different, the most important factor in determining an enforcement response is the effectiveness of the response in securing compliance as quickly as possible with no recurrence of violation. Therefore, except in circumstances where prosecution will always be pursued, as described in the Compliance and Enforcement Policy for CEPA 1999, the enforcement officer will give first consideration to an enforcement response among warnings, tickets, environmental protection compliance orders (EPCOs), directions, detention orders for ships, and Ministerial orders. As these do not require a court proceeding, compliance may be restored in a shorter time frame than would be possible through a court prosecution.

Nevertheless, it is important to remember that where the severity of the environmental harm or risk of harm, the factual circumstances of the alleged offence, or the compliance history of the alleged violator is such that prosecution or other court action would provide the most effective deterrent, the enforcement officer will choose court action.

INJUNCTIONS: Under CEPA 1999, the Minister has the authority to seek an injunction in order to stop or prevent a violation of the legislation. Where a violation has already occurred, in addition to seeking an injunction, and where appropriate under the Compliance and Enforcement Policy for the Act, the Minister will pursue prosecution or civil action for recovery of the costs of preventive or corrective measures taken by the Minister.



Enforcement officers will carry out inspections to ensure that the individual, company, or government entity cited in the injunction is complying with the terms of the injunction. If the subject does not comply with the injunction, the Minister will return to the court to seek a contempt of court ruling, instruction by the court, or any additional penalty, such as a fine or imprisonment, that the court may see fit to impose in its contempt of court ruling.

PROSECUTION: Enforcement officers will lay a charge for every alleged violation of CEPA 1999 except where, in accordance with this policy, they determine that one of the following responses is sufficient and appropriate: a warning, a ticket, an EPCO, a direction in the event of releases, an order by the Minister of Environment prohibiting activities involving a new substance, or a recall order by the Minister.

Prosecution will **ALWAYS** be pursued for CEPA 1999 offences when there is death of a person; where there is serious harm or risk to the environment or to human life or health; for knowingly providing false or misleading information; for obstructing an enforcement officer or an analyst; or for not complying with a direction by an enforcement officer, an order by the Minister, an EPCO, an EPAM agreement, etc.

ENVIRONMENTAL PROTECTION ALTERNATIVE MEASURES (EPAMs): EPAMs allow for a negotiated return to compliance without a court trial. The choice to use EPAMs in a particular case is made by the Attorney General of Canada or an agent of the Attorney General. Alternative measures can be used for most offences under CEPA 1999, except in certain circumstances such as: when there is serious harm or risk to the environment or to human life or health; where there is an attempt to conceal information or subvert the Act, such as knowingly providing false information; knowingly violating the act; failing to give all reasonable assistance to an officer; etc.

The Crown prosecutor, after consulting with the enforcement officer responsible for the case, must be confident that the protection of the environment and of human life and health will be satisfied by the use of alternative measures; and that the accused will abide by the negotiated alternative measures and return to compliance with CEPA 1999.

As the first step, a charge for the alleged offence must be laid. The accused is not required to plead guilty to the violation, but must, nevertheless, accept responsibility for the offence. If an EPAM agreement is successfully negotiated within 180 days, it is filed with the court and is a public document. CEPA 1999 also requires that the EPAM agreement be published on the Environmental Registry created under s.12 of the Act.

Upon fulfilment of the conditions of the negotiated alternative measures, the court will dismiss the charges against the accused. However, if the accused fails to comply with the negotiated EPAM, this is an offence under CEPA 1999, and prosecution for the failure to comply will be undertaken.



PENALTIES AND COURT ORDERS UPON CONVICTION: Penalties provided under the Act include fines or imprisonment or both, court orders to accompany a fine or imprisonment, and court orders governing conditional discharge of the offender. Upon conviction of an offender for a violation of CEPA 1999, enforcement officers will, on behalf of the Minister, recommend that Crown prosecutors request penalties that are proportionate to the nature and gravity of the offence. They may also recommend resorting to one or more of the court orders provided under the statute.

When making recommendations to Crown prosecutors with respect to sentencing, enforcement officers will apply the criteria found in CEPA 1999. Examples of those criteria include the harm or risk of harm, corrective actions already taken, negligence, deterring effect of the proposed sentencing, etc.

In most instances, where the court order is not complied with, the enforcement officer will lay charges. In addition, the option of civil suit or contempt of court proceedings may be appropriate.

CIVIL SUIT BY THE CROWN TO RECOVER COSTS: CEPA 1999 empowers the Crown to recover costs by civil suit when an enforcement officer was required to carry out clean up, to take measures to prevent the unauthorized release of a regulated substance, or to take measures where any person fails to comply with an EPCO, or when the Minister must take measures because a person failed to comply with a recall order, etc.

An attempt will first be made to obtain recovery through negotiation. Failing an out of court settlement, the Crown will initiate or proceed with civil action under CEPA 1999.



To deal with alleged violations, the following court actions are available: injunctions, prosecutions, environmental protection alternative measures agreements, court orders that follow conviction and civil suits by the Crown to recover costs.

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/ele-ale/index.asp

ENVIRONMENT CANADA INQUIRY CENTRE:

351 St. Joseph Boulevard, Hull, Quebec K1A 0H3

Telephone: (819) 997-2800 Toll-free: 1 800 668-6767
Fax: (819) 953-2225 E-mail: enviroinfo@ec.gc.ca