



BATCH 1

Guidance document for responding to the paragraph 71(1)(b) Notice with Respect to Certain Substances Identified in the Challenge published on February 3, 2007

This document provides guidance for responding to the *Notice with respect to certain substances identified in the Challenge, published in the December 9, 2006 Notice of intent to develop and implement measures to assess and manage the risks posed by certain substances to the health of Canadians and their environment*. This notice was published in the *Canada Gazette*, Part I, on February 3, 2007, pursuant to paragraph 71(1)(b) of the *Canadian Environmental Protection Act, 1999* (CEPA 1999). It is made available for information only and in case of discrepancy between this document and the notice or the Act, the notice and the Act take precedence.

The Minister of the Environment and the Minister of Health (the Ministers) published on December 9, 2006, in the *Canada Gazette*, Part I, the *Notice of intent to develop and implement measures to assess and manage the risks posed by certain substances to the health of Canadians and their environment*, which identified a list of 193 substances as priority for action. The Ministers will require information regarding the presence of these substances on a quarterly basis within the next three years. This February 3, 2007 notice requires information for the first batch of substances. With respect to the 15 substances of the first batch, the submission of specific information for 13 is required. The two other substances (91-20-3 and 54079-53-7) were included in a previous notice requiring information that provided sufficient information not to warrant their inclusion in the current notice.

In addition, part of the December 9, 2006 notice of intent, invites the submission of additional information that is deemed beneficial by interested stakeholders, relating to the extent and nature of the management/stewardship of the 15 substances listed in the batch 1. A questionnaire is available which provides a detailed template as an example for the submission of this information. Guidance on how to respond to the challenge questionnaire is also offered.

The February 3, 2007 notice and all documents related to the collection of information are available through the Government of Canada Chemicals Substances Portal at www.chemicalsubstances.gc.ca. An advisory letter, concerning this notice and the collection of information, was sent to a target community of approximately 4000 Canadian companies and industry associations.

Information for Completion of the February 3, 2007 notice

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1 - What is the purpose of the notice?

Section 71 notices may be used for the purpose of assessing whether a substance is toxic or capable of becoming toxic, or for the purpose of assessing whether to control, or the manner in which to control, a substance.

The purpose of the notice is to identify:

- whether the substances covered under the notice are manufactured or imported in Canada;
- the identification of the mixture, product or manufactured item containing the substances;
- the relative quantities of these substances manufactured, imported, released, used and sold in Canada;
- the companies and industrial sectors involved in the manufacture or import of the substances;
- the uses of the substances in Canadian commerce; and
- the sales of the substances and the persons in Canada to whom the substances or a mixture, product or manufactured item containing the substances were sold.

The second major goal is to identify persons, including companies, having current activity with respect to any of these substances, to allow for follow-up, where necessary, to gather more detailed information. The more detailed information could include use-pattern information, which will allow for the prioritization of future assessment and/or risk management activities. Requirement for future detailed data collection regarding these substances will be designed, taking into consideration the level of activity and sectors identified in the responses to the notice.

2 - Do I need to respond?

As outlined in Schedule 2 to the notice, the notice applies to any persons satisfying either of the following criteria:

- A) to any person who, during the 2006 calendar year, manufactured or imported more than 100 kg of a substance listed in section 1 of Schedule 1 to this notice; or
- B) any person, for substances listed in section 2 of Schedule 1 to this notice, reported pursuant to the *Canadian Environmental Protection Act, 1999 section 71 notice with Respect to Selected Substances Identified as Priority for Action*, published in the *Canada Gazette*, Part I, on March 4, 2006.

Persons satisfying one or both criteria are required to provide the information specified in the notice for the 2006 calendar year. Subsection 71(3) of CEPA 1999 states that every person to whom a notice issued under section 71(1)(b) of the Act is directed, must comply with the notice within the time specified in the notice.

If the person subject to the notice is a company, response to the notice must be submitted on a company-wide basis. The responder will include information with respect to each facility in their single response on behalf of the entire company.

3 - What is the Declaration of Non-Engagement or Stakeholder Interest?

Persons, including companies, that do not meet the requirements to respond, as outlined in Schedule 2 to the notice, may complete the Declaration of Non-Engagement or Stakeholder Interest for the notice. Receipt of this form will allow the Government of Canada to remove the name of these persons from further mailings pertaining to the notice.

A Stakeholder Identification section has been added as a new element of the Declaration of Non-Engagement or Stakeholder Interest. Persons, including companies that do not meet the requirements of the notice, but have an interest in future activity regarding specific substances, may identify themselves as a stakeholder. Please identify the substances of interest to your company. You may be contacted for further information regarding your activity/interest in these substances.

4 - Do I manufacture?

The term “manufacture” in the notice reads as follows:

“manufacture” includes to produce or prepare a substance; and includes the incidental production of a substance at any level of concentration as a result of the manufacturing, processing or other uses of other substances, mixtures, or products.

This definition relates to the creation/production of a substance, listed in Schedule 1 to the notice. The term “manufacture”, as used in the notice, applies only to the production of the substance itself, and not to that of a product or mixture using a reportable substance.

In general, using one or more of the reportable substances to blend or formulate products or mixtures does not meet the definition of “manufacture” under the present notice. However, incidental manufacture of a reportable substance may occur if, during the process of blending or formulating, a chemical reaction occurs that results in the production of a substance (or by-product) that is reportable under the notice. If so, the incidental production of the reportable substance would meet the definition of “manufacture” under the notice.

5 - Do I import?

The term “import” in the notice reads as follows:

“import” includes movement into Canada, including internal company transfers across the Canadian border, but does not include transit through Canada.

Import then relates specifically to the movement into Canada of any substance identified in Schedule 1 to the notice or any mixture, product or manufactured item that contains such a reportable substance.

If you are aware that an imported manufactured item contains a substance included in this notice, you are required to report on this substance if you meet the threshold for reporting. You are required to provide information that your company possesses or to which your company may reasonably be expected to have access.

For the purpose of the notice, situations where you are considered to “import” include the following:

- 1) You are an individual, company or other body (in Canada) that purchased or received a reportable substance or mixture, product or manufactured item containing a reportable substance directly from a foreign source (such as a person or company situated outside of Canada, including internal company transfers across national boundaries) AND you are identified as the Importer of Record on customs documentation for this substance or a mixture or product containing this substance.
- 2) You are an individual, company or other body (in Canada) that purchased or received a reportable substance or mixture, product or manufactured item containing a reportable substance directly from a foreign source (such as a person or company situated outside Canada, including internal company transfers across national boundaries) AND the foreign source or its agent was identified as the Importer of Record on customs documentation.
- 3) You are an individual, company or other body (in Canada) that purchased as a third party a reportable substance or mixture, product or manufactured item containing a reportable substance that was shipped directly from a foreign source to an address in Canada (including a distribution warehouse) on your request.

Your activities do not meet the definition of “import” under the notice if you, your company or other body purchased or received a reportable substance or a mixture, product or manufactured item containing a reportable substance that was already located in Canada.

6 - What is a release?

The term “release” in the notice reads as follows:

"release" means the emission or discharge of a substance from the facility to air, land or surface water, including discharges to municipal wastewater treatment plants.

Release includes emission or discharge of a substance from all intentional or non-intentional sources. The following description of the different sources in each media applies:

- emissions to air - discharges through a stack, vent or other point release, losses from storage and handling of materials, fugitive emissions, spills and accidental releases and other non-point releases;
- releases to surface waters - discharges, spills and leaks, including discharges to municipal wastewater treatment plants; and
- releases to land - discharges resulting from spills, leaks and other.

7 - Manufactured items

If you are aware that an imported item contains a substance included in this notice, you are required to report on this substance, if you meet the threshold for reporting. Following are examples of types of manufactured items: clothing, empty storage containers, electrical gear and appliances or parts thereof, office and consumer electronics or parts thereof, tapes, tiles, electrical wire, fabric, foam slabs or shapes and plastic film, pipes, tubes or profiles, plywood,

brake linings, fibres, leather, paper, yarns, dyed fabric, matches, flares, photographic films, and batteries.

You are required to provide only the information that your company possesses or to which your company may reasonably be expected to have access. We recognize that some Canadian importers may not have information available to identify the presence, in a manufactured item, of substances listed in Schedule 1 to the notice. However, a goal of this notice is to ensure that when regulations or other instruments are developed, all activity with these substances has been identified and considered. Reporting by those who have this information will help reduce the possibility of individuals, corporations or other bodies finding to their surprise that they fall under risk assessment and risk management activities for the substances listed in schedule 1 to the notice.

8 - What substances are included?

This notice includes a list of 13 substances of the 15 identified as the batch 1 in the notice of intent published in the *Canada Gazette*, Part I, on December 9, 2006. They have been identified as priorities for action. This list includes:

Batch 1 Substances

<u>CAS RN</u>	<u>Name of the substance</u>
75-56-9	Oxirane, methyl-
78-63-7	Peroxide, (1,1,4,4-tetramethyl-1,4-butanediyl)bis[(1,1-dimethylethyl)
91-08-7	Benzene, 1,3-diisocyanato-2-methyl-
106-88-7	Oxirane, ethyl-
120-80-9	1,2-Benzenediol
123-31-9	1,4-Benzenediol
584-84-9	Benzene, 2,4-diisocyanato-1-methyl-
1068-27-5	Peroxide, (1,1,4,4-tetramethyl-2-butyne-1,4-diyl)bis[(1,1-dimethylethyl)
6731-36-8	Peroxide, (3,3,5-trimethylcyclohexylidene)bis[(1,1-dimethylethyl)
12236-64-5	2-Naphthalenecarboxamide, N-[4-(acetylamino)phenyl]-4-[[5-(aminocarbonyl)-2-chlorophenyl]azo]-3-hydroxy-
26471-62-5	Benzene, 1,3-diisocyanatomethyl-
43035-18-3	Benzenesulfonic acid, 4-[[3-[[2-hydroxy-3-[[4-methoxyphenyl]amino]carbonyl]-1-naphthalenyl]azo]-4-methylbenzoyl]amino]-, calcium salt (2:1)
59487-23-9	2-Naphthalenecarboxamide, 4-[[5-[[4-(aminocarbonyl)phenyl]amino]carbonyl]-2-methoxyphenyl]azo]-N-(5-chloro-2,4-dimethoxyphenyl)-3-hydroxy-

9 - Identification and Declaration Form

The "Identification and Declaration Form" is provided for three reasons:

- to update the identification and contact information of each responder;
- to require certification of the accuracy of the response; and
- to request confidentiality.

Each response must be signed. You must submit an original signed version of the Identification and Declaration Form (Section 4 of Schedule 3) to the Minister of the Environment.

10 - Confidentiality requests

Pursuant to section 313 of CEPA 1999, any person who provides information in response to the notice may submit, with the information, a written request that it be treated as confidential.

A request for confidentiality may be submitted for any information item provided on a particular substance in response to the notice. When requesting confidential treatment by the Government of Canada of information provided under the notice, you must provide a reason for your request. The reason may be based upon considerations such as those that appear as examples below:

- The information is confidential to your company and has consistently been treated as such by your company;
- Your company has taken, and intends to continue to take, measures that are reasonable in the circumstances to maintain the confidentiality of the information;
- The information is not, and has not been, reasonably obtainable by third persons by use of legitimate means, except with the consent of your company;
- The information is not available to the public;
- Disclosure of the information may reasonably be expected to cause substantial harm to the competitive position of your company;
- Disclosure of the information may reasonably be expected to result in a material financial loss to your company or a material financial gain to your company's competitors.

Upon receipt of a request for confidentiality under section 313 of CEPA 1999, in relation to information submitted pursuant to the section 71 notice of CEPA 1999, the Minister of the Environment may not disclose that information, except in accordance with section 315, 316 or 317 of CEPA 1999.

11 - How do I report total manufactured, imported, released, used and sold quantities?

It is necessary to report the quantities manufactured, imported, released, used and sold in Canada for the substances listed on Schedule 1 to the notice.

All reported quantities must be rounded to the nearest hundred kilograms. Please use this guide to report a rounded quantity to the nearest hundred kilograms.

Range of quantity	Quantity to report
800-849 kg	800 kg
850-899 kg	900 kg

Quantities must be estimated for the substance itself, and not the mixture, product or manufactured item in which it may be contained. If you both manufacture and import a given substance, you are asked to report the quantity for each activity as a separate entry.

12 – How to respond to the information related to uses in section 6 of Schedule 3?

If, during the 2006 calendar year, you used the reportable manufactured or imported quantities, you have to report one or multiple use quantity(ies) related to the use pattern code(s) described in section 8 to the notice.

If, during the 2006 calendar year, you sold the reportable manufactured or imported quantities, you have to report one or multiple use quantity(ies) related to your customer use pattern code(s) described in section 8 to the notice. If you do not know the exact use to be made of the substance, the mixture, the product or the manufactured item, choose the use pattern code that is consistent with the most complete and accurate information available to you.

13 – What are the Use Pattern Codes?

You are required to report the use pattern code that applies to the activity involving each reportable substance. Use pattern codes are two digit codes which denote functional uses of substances for which information must be reported under the notice. Please refer to section 8 to the notice for the list of use pattern codes and their corresponding applications.

14 - What are the North American Industry Classification System (NAICS) codes?

You are required to report the NAICS code(s) that applies to the activity involving each reportable substance. The code(s) will provide the Ministers with general information on the number and types of sectors involved with the substances listed in the notice.

The North American Industry Classification System (NAICS) was developed by Statistics Canada, the U.S. Office of Management and Budget, and Mexico's Instituto Nacional de Estadística Geografía e Informática, to enable the respective national agencies to collect comparable statistical data.

To determine which NAICS code applies to the activities on which you are reporting, a list of six-digit North American Industry Classification System (NAICS) codes is available at the following Statistics Canada Internet site:

<http://www.statcan.ca/english/Subjects/Standard/naics/2002/naics02-menu.htm>

Please note that the NAICS code(s) web address is case sensitive.

15 - Information you may reasonably be expected to have access to

You are required to provide information that your company possesses or to which you may reasonably be expected to have access. For example, when importing a substance, mixture, product or manufactured item you may reasonably be expected to have access to the relevant Material Safety Data Sheet (MSDS). An MSDS is an important source of information on the composition of a purchased product. Note that the goal of the MSDS is to protect the health of the workers, not the environment. Therefore, an MSDS may not list all product ingredients on which the Minister of the Environment is requiring information under the notice. You can contact your supplier for more detailed information on product composition.

Also, a company may reasonably be expected to have access to a parent company's information regarding substances, mixtures, products or manufactured item. You are not required to conduct tests to comply with this notice.

This notice is seeking to identify all persons with interest in or activity involving the substances listed in Schedule 1 to the notice. The goal is to ensure regulatory decisions are made considering all business activity in Canada. Companies that do not fall under the requirements to respond to the notice, but have an interest in future activity regarding specific substances,

may identify themselves as a stakeholder using the “Declaration of Non-Engagement or Stakeholder Interest”.

16 - Where can I get a copy of the notice?

The notice was published in Part 1 of the *Canada Gazette*, pursuant to paragraph 71(1)(b) of CEPA 1999 on February 3, 2007. Electronic copies of the notice can be found on the Internet site at the following addresses:

www.ec.gc.ca/CEPARRegistry/notices or www.chemicalsubstances.gc.ca

17- How and where do I respond?

Responses to the notice must be submitted to the Minister of the Environment, to the attention of the:

By mail:

DSL Surveys Coordinator
351 Saint-Joseph Boulevard, 20th Floor
Gatineau QC K1A 0H3

By courier:

DSL Surveys Coordinator
351 Saint-Joseph Boulevard, 20th Floor
Gatineau QC J8Y 3Z5

You can provide the information in an electronic format, by fax or return it by mail. However, as indicated above, you must sign and return an original paper copy of the “Identification and Declaration Form” (Section 4 of Schedule 3) for the submission to be complete.

18 - What is the deadline for response?

Every person to whom the notice applies is required to comply with the notice no later than **June 5, 2007, 3 p.m. Eastern Daylight Savings Time**.

19- Extension of time

As provided in subsection 71(4) of CEPA 1999, you may submit a written request for an extension of time to comply with the notice. The request for an extension must include the CAS RN numbers of the substances on which information will be reported and provide a reason for the request. Address your request to the Minister of the Environment, to the attention of the DSL Surveys Coordinator 351 Saint-Joseph Boulevard, 20th Floor, Gatineau QC K1A 0H3. You may send your request by mail, by fax machine at 1-800-410-4314/819-953-4936 or by e-mail at DSL.SurveyCo@ec.gc.ca. Please note that you must request an extension of time before expiry of **the June 5, 2007, 3 p.m. Eastern Daylight Savings Time** deadline. No extensions will be granted after the deadline has expired. It is recommended to allow five business days so that a request can be processed by the Government of Canada before expiry of the deadline.

20 - Inquiries?

If you have an inquiry, please contact the DSL Surveys Coordinator at the following numbers or e-mail address:

- telephone: 1-888-228-0530/819-956-9313;
- fax machine: 1-800-410-4314/819-953-4936; or
- electronic mail: DSL.SurveyCo@ec.gc.ca