

**PROPOSED CHANGES TO THE
CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)**

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SUMMARY

The author describes the main changes to the Canadian Environmental Protection Act (CEPA) contained in Bill C-74, which was tabled in the House of Commons on December 10, 1996. The original CEPA, which was promulgated in 1988, contained provisions for a mandatory review of the Act after five years of the effective date of the Act. The Review was conducted by a Parliamentary Committee and included consultations with key stakeholders across Canada. The earlier CEPA had led to many improvements in environmental protection in Canada, such as eliminating the use of lead in gasoline for on-road vehicles, control of import and export of hazardous wastes, reduction of dioxins and furans from the pulp and paper industry, and substantially reducing the levels of ozone depleting substances. The new Bill advances concepts of sustainable development, improved enforcement, and pollution prevention as cornerstones for protection of the environment and health of Canadians from toxic substances. The new legislation also strengthens the provisions of partnership among federal, provincial, municipal and aboriginal levels of government. The author also describes the main elements of the new CEPA and highlights the changes from the 1988 version with emphasis on the many opportunities in the new legislation for improved partnerships and harmonization with the various levels of government in Canada.

Key Words

Canadian Environmental Protection Act; Pollution Prevention; Management of Toxic Chemicals; Biotechnology; Enforcement.

INTRODUCTION AND BACKGROUND

The existing Canadian Environmental Protection Act (CEPA) was passed in 1988. It is the cornerstone of the federal Government's environmental protection program. CEPA replaced previous media-specific legislation such as the Clean Air Act, parts of the Canada Water Act, the Environmental Contaminants Act and the Ocean Dumping Control Act (ODCA). The 1988 CEPA updated, streamlined and strengthened many of the provisions of the legislation it replaced.

Under the 1988 CEPA, the toxic chemicals management provisions contained in the former Environmental Contaminants Act were greatly enhanced. CEPA provided for: new substances assessment, assessment of existing substances, hazardous waste management, export notification, and expanded regulatory powers. Several new provisions were added, for example the establishment of the Federal-Provincial Advisory Committee (FPAC), and new parts dealing specifically with Government Operations and International Air Pollution. The enforcement and penalties provisions were also strengthened significantly. All of these changes helped to make the CEPA passed in 1988, in the words of the then Minister of the Environment, "... one of the strongest (Acts) in the Western hemisphere".

The Act was good legislation at the time and led to elimination of lead from gasoline for on-road motor vehicles, reduction of dioxins and furans from pulp mill effluents and reduction of ozone-depleting substances such as CFC's. However, advances in science have shown the need to consider the entire ecosystem in managing toxic substances and protecting the environment. Furthermore, environmental law has advanced since that time with the introduction of concepts of sustainable development and pollution prevention.

To ensure that CEPA did not become outdated, Parliament included mandatory provisions for annual reports to Parliament and a Parliamentary Review of CEPA in five years. Bill C-74 (the "renewed CEPA") is the end result of the Parliamentary Review. The Review was instituted in June 1994 by the House of Commons Standing Committee on Environment and Sustainable Development. The Committee held public hearings across Canada and received input from industry, NGOs, ENGOs, private citizens and First Nations Representatives. In June 1996, the Committee tabled its report, entitled "It's About our Health! Towards Pollution Prevention - CEPA Revisited" and set the stage for extensive consultations by the federal Government with Canadians. The Government responded to the Committee's report with Environmental Protection Legislation Designed for the Future - A Renewed CEPA.

The new CEPA was developed from that report and reflects views of Canadians as expressed during the consultation phase. The new CEPA has pollution prevention and protection of the environment and the health of Canadians from toxic substances as its main goal. It recognizes the need for shared responsibility between different levels of government and it is consistent with the Canada-Wide Accord on Environmental Harmonization agreed to in principle by federal, provincial and territorial Ministers of the Environment on November 20, 1996. The new CEPA will be a key legislative tool in working with the provinces, territories and Aboriginal Peoples to ensure the highest level of environmental quality in Canada.

The following sections, which are available on Environment Canada's Greenlane*, describe the main features of the proposed new CEPA, such as Pollution Prevention; Controlling Toxics, Pollutants and Wastes; Biotechnology; Environmental matters relating to emergencies; New Enforcement Tools; Public Information/Participation; Federal House in Order; and Working in Partnership.

* http://www.ec.gc.ca/cepa/index_e.html

POLLUTION PREVENTION

When the federal government passed CEPA in 1988, the focus of the legislation was to control toxic substances at each stage of their life cycle, from development and manufacture through transport, distribution, use, and storage, to their safe, ultimate disposal as wastes.

In the eight years since, the challenge of environmental protection has become more complex. Science has given us more information. We now know that some toxic substances have the capacity to persist and accumulate in the environment to the point where they pose a danger to human health and the environment. Pollution prevention, which focuses on avoiding the creation of pollutants rather than trying to manage them after they have been created, has become a key component in environmental protection. Pollution prevention is the priority approach within life cycle management of the new CEPA.

Pollution prevention means reducing risks to the environment and to human health by using processes, practices, materials, products, or energy that avoid or minimize the creation of pollutants and waste. It takes an anticipate-and-prevent approach that is incorporated at the very beginning of a process. The simple truth is, pollution prevention is more cost-effective, more socially responsible, and better able to reduce risks to human health and the environment than pollution control.

The new CEPA enshrines pollution prevention as a national goal. It:

- ensures a shift in focus from reactive to proactive, preventive thinking;
- provides authority to require pollution prevention plans for substances declared toxic under CEPA;
- recognizes voluntary pollution prevention planning with an awards program for industry;
- establishes a national pollution prevention information clearinghouse through which industry can share knowledge and technology on pollution prevention activities.

CONTROLLING TOXICS, POLLUTANTS AND WASTES

Getting toxic substances out of the environment

One of the most common criticisms of the current CEPA, voiced both to the Standing Committee on Environment and Sustainable Development and by those participating in the federal government's consultations, was that it did not move fast enough to identify, assess, and control toxic substances.

The new CEPA will provide more efficient identification, screening, and assessment of a larger number of substances for toxicity. It provides for:

- a more efficient process for categorizing substances in use in Canada and speeding up assessment for those of most concern;
- virtual elimination of the most toxic substances, with the onus on industry to develop plans for their elimination;
- developing and implementing controls to manage toxic substances, within three-and-a-half years of their being found to be toxic;
- and incorporating existing international scientific knowledge and decision-making.

Setting priorities and accelerating the assessment of substances of greatest concern will be carried out in light of the latest scientific knowledge, not only in Canada, but throughout member countries of the Organization for Economic Cooperation and Development (OECD).

IMPROVED CONTROL OF POLLUTANTS AND WASTE

Clean Air

To respond to Canadians' concerns about the quality of the air they breathe, the new legislation includes measures to more effectively curb air pollution, including urban smog.

Authority to control motor vehicle emissions, now part of the Motor Vehicle Safety Act administered by Transport Canada, will become part of the new CEPA. Through this new authority, emissions from new internal combustion engines in motor vehicles will be regulated. In addition, CEPA can control emissions from new engines in off-road vehicles, such as farm and construction equipment, pleasure craft, and equipment such as lawn mowers and snow blowers. Only those engines which meet the emission requirements of CEPA will be given a new national emissions mark.

The new legislation will also expand CEPA's authority to regulate fuels and fuel additives. Imported fuels and those crossing provincial and territorial boundaries within Canada will have to meet regulatory requirements. A national fuels mark will be developed to identify those fuels meeting the requirements.

As for international air pollution, Canada will treat others the way we would like to be treated. The new CEPA will continue to allow the federal government to work with the provincial/territorial governments and Aboriginal Peoples to allow Canada to meet its international obligations. Canada's leadership in this area may encourage other countries to similarly meet their obligations, reducing the amount of air pollution entering Canada from other countries.

Clean water

Canadians want cleaner water - one quarter of Canadians place water quality as a priority item on the government's environmental agenda.

The greatest threats to clean water come from airborne or land-based pollution. The new CEPA includes provisions to protect the marine environment from these sources of pollution.

The new CEPA also specifies what can be disposed of at sea. Only those items on the list can be disposed of in this manner. No other marine disposal is permitted. This more restrictive approach will ensure, among other things, that no hazardous wastes are dumped at sea.

In addition, people who want to dispose of wastes at sea must first show that it is the environmentally preferred and practical option, and that options for reuse or recycling are not available.

The new CEPA also enables Canada to work with the United States to prevent or control transboundary water pollution.

Management of transboundary movement of waste

Waste for import and export falls into different categories, according to whether it is hazardous or non-hazardous, and whether it is destined for disposal or for recycling. The new CEPA has provisions for managing the movement of all of these kinds of waste, including non-hazardous wastes, such as garbage.

For instance, the new CEPA will extend current controls over the export and import of hazardous waste for recycling or final disposal, in keeping with our commitments under the Basel Convention on the transboundary movement of hazardous wastes. As well, as part of the shift to pollution prevention, the new CEPA will require Canadian exporters to develop plans for reducing or phasing out the quantities of hazardous wastes being exported for the sole purpose of final disposal.

As well as controlling the transboundary movement of hazardous wastes, the new CEPA will control such movements across provincial/territorial lines. It will ensure that all such shipments are tracked and go only to environmentally sound facilities, through a joint effort by the provinces/territories and Environment Canada. The safety aspect of these shipments will continue to be controlled under the Transportation of Dangerous Goods Act.

BIOTECHNOLOGY

"Biotechnology" is the term used to describe both the modern and traditional ways that we use living organisms, or parts of living organisms, for products and services.

Traditional biotechnology includes activities like brewing and plant breeding. More recent advances in the biological sciences have led to new ways of using living organisms, which include changing their characteristics by modifying their genes. Genetic engineering is one of the technologies included in modern biotechnology.

Canadians want to be assured that all products of biotechnology are safe. The new CEPA will operate in concert with other federal Acts to ensure that all new biotechnology products, either living or non-living, will be assessed for both health and environmental risk before entering into the Canadian marketplace. In addition, CEPA will provide authority to develop regulations to address safe and effective use of biotechnology in environmental applications.

Environmental matters relating to emergencies

Canadians are concerned about how governments and industry respond to environmental emergencies, such as a situation involving the sudden release of hazardous substances requiring prompt action to prevent or mitigate damage to the environment and human health. Under the new CEPA, the federal government will work with others involved in emergency planning and response to ensure that environmental emergencies are dealt with promptly and safely. The legislation covers prevention, preparedness, response, and recovery, as well as providing authority to adopt appropriate regulations, standards, guidelines, and codes of practice.

NEW ENFORCEMENT TOOLS

The new CEPA responds to public concern about effective enforcement tools, and, in doing so, incorporates measures found in other Canadian environmental laws.

Under the existing CEPA, formal court processes, such as prosecution, can be used to compel compliance with CEPA regulations. This method of enforcement is expensive and involves lengthy court proceedings.

In order to resolve environmental infractions more quickly and economically, the new CEPA provides for additional enforcement tools. The new Environmental Protection Alternative Measures Program (EPAM), permits some violators to negotiate with the federal government to correct the violation, thus avoiding a lengthy court process. Those who have caused serious or irreversible harm to the environment or who are repeat offenders are not eligible for the EPAM Program. As well, CEPA will continue to provide the authority to make certain offences ticketable and to establish fines for these offences.

The Act also permits Environmental Protection Compliance Orders. These Compliance Orders are legal orders used to stop illegal activity or to require action to correct a

violation. They may be issued on the spot and are valid for 180 days. The person subject to the order can seek a review, with final recourse to the courts if desired.

In addition, inspectors' powers of entry have been enhanced, so that they can enter more places, including ships and aircraft, to reach an inspection site in urgent circumstances without the risk of being charged for trespassing. A new category of officers, "CEPA investigators," has been created.

The maximum penalties under the proposed legislation remain the same as the existing law: a fine of up to \$1 million a day or up to five years in prison. The new CEPA also continues to make sure that violators can't benefit from the proceeds of their crime, by allowing the court to impose additional fines equal to the amount of economic benefits or profits resulting from the violation.

In addition to fines or imprisonment, the court may also require the polluter to undertake mandatory pollution prevention planning or environmental emergency planning; implement environmental management systems; pay for costs of restoring damage done to the environment; or pay for research into ecological use and disposal of the substances which were the basis of the offence.

PUBLIC INFORMATION/PARTICIPATION

When the government introduced CEPA in 1988, the Act's provisions for public participation and citizen rights were at the forefront in Canada. After a year-long review involving Canadians across the country, the federal government has concluded that public participation and citizen rights in the existing CEPA do not go far enough. Canadians want more opportunity and power to bring about change.

Under the proposed legislation, Canadians will have improved access to information, more opportunities to participate in decision-making, better protection if they report CEPA violations, and more rights to take action against violators.

Improved access to information

Active and effective public participation means that Canadians must have better access to information and better legislative means to take action against polluters. The National Pollutant Release Inventory (NPRI) was created in 1993 to address this issue. The new CEPA contains expanded provisions to make information available to Canadians, including the creation of a new, comprehensive, and publicly available registry of environmental information published under CEPA.

Right to participate in decision-making

Under the existing CEPA, opportunities for the public to review or comment on action taken or proposed under CEPA were limited mainly to the Canada Gazette. In many cases, Canadians were not aware of a decision until after it was made. Through the environmental registry, the new CEPA provides more opportunities for the public to review and comment before decisions are made, helping them to protect the environment and contribute to environmental decision-making.

Protection of rights

Protection for members of the public who voluntarily report violations of CEPA has also been expanded in the new legislation to include reports of all violations or probable violations of CEPA, instead of just "releases to the environment" as is currently the case. People who report violations can request to have their confidentiality protected. In addition, the Act will now ensure that all federally regulated employees, wherever they work, can report violations without fear of dismissal, harassment, or disciplinary action.

Right to take action

In the new CEPA, Canadians will have the right to sue for damage to the environment when the government fails to enforce its laws. They will continue to have the right to request investigations of alleged CEPA offences, and the right to sue for personal damage caused by violations of the Act.

FEDERAL HOUSE IN ORDER

CEPA sets high environmental standards for industry in Canada. The federal government knows it can't expect others to cooperate if it can't achieve environmentally friendly operations within its own jurisdiction. The government intends that members of the federal family be held to the same standards of environmental protection and pollution prevention as the communities in which they live.

The new CEPA contains provisions to integrate environmental considerations into all government operations and programs and to ensure that these are carried out in conformity with the highest community standards. The new CEPA incorporates pollution prevention as a guiding principle for federal government operations and programs.

The legislation ensures that all federal entities are covered in the new CEPA. It expands the membership of the federal "house" beyond just federal departments, to include agencies, boards, Crown Corporations, and all operators on federal lands.

CEPA also changes the way that environmental regulations are made and applied within the federal government, so that members of the federal house meet the same environmental protection regulations and standards as are applied to industry. It does this in two ways:

First, it applies the same regulatory standards and processes to all members of the federal house.

Second, it expands the ability to make regulations under CEPA to include a broader range of areas and tools. The new CEPA will also provide the authority to develop codes of practice and environmental quality objectives. It will also have the authority, for instance, to require government departments to institute pollution prevention plans and environmental management systems.

WORKING IN PARTNERSHIP

All levels of government share the responsibility for protecting and preserving the environment in Canada. Governments must work as partners, nationally and internationally, to promote the environmental interests of all Canadians.

That partnership has been an important part of the existing CEPA. For instance, federal and provincial/territorial governments reached administrative work-sharing agreements to work together in certain areas, such as the pulp and paper industry in Quebec. As well, as part of this cooperative approach, a provincial regulation can be used where it has equivalent requirements.

The new CEPA goes beyond this. It is consistent with the Canada-Wide Accord on Environmental Harmonization (November 1996) and, as such, will be an important legislative tool in working with the provinces and territories to achieve the highest level of environmental quality across Canada.

The new CEPA builds on a record of partnership. For the first time, it formally includes Aboriginal Peoples as full partners in environmental protection. It ensures that Aboriginal Peoples, when they have formed governments under self-government agreements, will have the same rights and responsibilities as provincial/territorial governments, including the right to enter into administrative work-sharing agreements and equivalency agreements with the federal government, and to be consulted on all environmental matters related to territories under their jurisdiction.

Under the new CEPA, a National Advisory Committee, with representation from the federal and provincial/territorial governments and from Aboriginal Peoples, will provide a mechanism for coordination and cooperation across the country.

But it is not enough to meet environmental challenges within Canada. We have to play a role in meeting those challenges around the world. Air and water do not recognize boundaries; wildlife do not carry passports. What we do has an impact on our neighbours, and what they do has an impact on us. Canadians know this. That is why they want to be international leaders in environmental protection. The new CEPA builds on the progress of the previous Act to make this desire a reality.

For instance, the existing CEPA legislation commits Canada to working with international partners to reduce air pollution, smog and acid rain. Canada was also one of the first countries to sign the Montreal Protocol, an agreement to reduce levels of ozone-depleting substances.

The new CEPA builds on this work by, for instance, updating regulations on hazardous wastes to bring them in line with the Basel Convention on the transboundary movement of wastes.

Governments cannot work alone. The most important partnership any government enters into is with its citizens. The new CEPA calls upon all Canadians to participate in the process of protecting and preserving our environment for ourselves and for future generations.

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Environment Canada Greenlane - <http://www.ec.gc.ca/>

