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OVERVIEW OF FEDERAL LAW, REGULATION AND POLICY

A paper presented to the Canadian Institute's two day course on Environmental Law and Regulation in Ontario

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OVERVIEW OF FEDERAL LAW, REGULATION AND POLICY

I. INTRODUCTION

There can be no doubt that environmental protection continues to be at the top of the public's agenda. The federal government has been under continuous pressure to take a leadership role in tackling environmental problems, many of which do not respect provincial or international boundaries. Global warming, toxic chemical contamination, ozone depletion, acid rain and hazardous waste management are just some of the urgent issues requiring comprehensive and coordinated governmental action.

This paper will focus on a discussion of the Canadian Environmental Protection Act[1] as it is now considered the primary piece of federal environmental legislation.

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[1] S.C. 1988, c.22 as amended. It should be noted that a comprehensive review of CEPA has recently been undertaken pursuant to s.139 of the Act. Multi-stakeholder workshops on CEPA were held in November 1993, and the Standing Committee on Environment and Sustainable Development held public hearings in mid-1994. The Committee's final report was published in June 1995, and the government's response was released in December, 1995. The CEPA review is described in more detail in Part III of this paper.

II. CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)

A. Background

The Canadian Environmental Protection Act was proclaimed in force on June 30, 1988.[2] Although it was introduced with much fanfare by former Minister of Environment, Tom McMillan, as "the most comprehensive piece of legislation in the western world", this is not the case. In reality, CEPA was largely a consolidation or replacement of several existing statutes into one piece of legislation. These included the Clean Air Act,[3] Part III of the Canada Water Act,[4] the Environmental Contaminants Act and the Ocean Dumping Control Act.[5]

Prior to CEPA's enactment, it had long been recognized

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[2] Except for sections 26-30 and 147(2) dealing with new substances; section 146 repealing section 6(2) of the Department of Environment Act and section 147(2) repealing section 9 of the Environmental Contaminants Act. Sections 26 - 30 and subsection 147(2) came into force on July 1, 1994: see Canada Gazette, Part II (April 20, 1994), at p.1724.

[3] R.S.C. 1985, c. C-32.

[4] R.S.C. 1985, c. C-11.

[5] R.S.C. 1985, c. O-2.

that Canada's environmental legislation at the federal level was in need of an overhaul. For example, the Environmental Contaminants Act, passed in 1975, had been identified as having serious gaps. Most notable was the fact that the only notification of new chemicals entering the market in Canada took place after 500 kilograms of a substance had already entered the market (ie. a post-market notification scheme). In addition, the government lacked the tools in many instances to require testing or information about both new and existing chemicals.[6]

In 1985, the federal government issued a series of discussion papers outlining proposed changes to the ECA and announced the formation of a multi-stakeholder ECA Consultative Committee, of which CELA was a member. This Committee included representatives of the federal and provincial governments, industry, labour and environmental organizations who met over the period of a year to consider reforms to the ECA.[7] During the course

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[6] J.F. Castrilli, "Control of Toxic Chemicals in Canada: An Analysis of Law and Policy" (1982), 20 O.H.L.J. 322.

[7] Final Report of the Environmental Contaminants Act Amendments Consultative Committee (Ottawa: Environment Canada and Health and Welfare Canada, October 1986).

of the Committee's deliberations, the participants were advised that Environment Canada was working on a new and comprehensive environmental protection statute. While the Committee was assured that its work on amendments to the ECA would become part of the new Act, Committee members were not consulted on the preparation of the new bill.

On December 18, 1986, the Minister of the Environment released the proposed Environmental Protection Act as a draft discussion bill. Mr. McMillan stated that the new Act would deal with all aspects of a toxic chemical's lifecycle (i.e. from "cradle to grave"), and that the bill constituted "the country's first environmental bill of rights".

After a public consultation period, the government went back to the drawing board, revised the bill and re-introduced it as Bill C-74. Hearings were held before a House of Commons Standing Committee early in 1988 and a number of additional amendments were introduced. CEPA was finally proclaimed on June 30, 1988. In CELA's view, there are three important and fundamental flaws in the

legislation:

1. The indirect but clear signal in the Act that the federal government does not intend to aggressively regulate existing toxics;
2. The failure of the federal government to use its clear authority to regulate the environmental impacts of federal works, undertakings and activities; and
3. The Act's failure to include the essential elements of an Environmental Bill of Rights.

This paper will primarily focus on the CEPA provisions dealing with the regulation of both new and existing chemicals. It should be noted that CEPA is administered by both the Ministers of the Department of Health and Welfare and the Department of the Environment, although the Minister of Environment has a primary role.[8]

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[8] CEPA, s.3 defines "Minister" as the Minister of the Environment and "Ministers" as both the Minister of Environment and the Minister of National Health and Welfare.

B. New Substances

New substances are dealt with under ss. 25-32 of the Act. Substance is broadly defined in section 3 as follows:

> "substance" means any distinguishable kind of organic or inorganic matter, whether animate or inanimate, and includes:
> (a) any matter that is capable of being dispersed in the environment or of being transformed in the environment into matter that is capable of being so dispersed matter or that is capable of causing such transformations in the environment,
> (b) any element or free radical,
> (c) any combination of elements of a particular molecular identify that occurs in nature or as a result of a chemical reaction, and
> (d) complex combinations of different molecules that originate in nature or are the result of chemical reactions but that could not practicably be formed by simply combining individual constituents.

CEPA requires the Minister to compile a list of substances: (a) manufactured in or imported into Canada in a quantity of at least 100 kilograms in any one year; or (b) in Canadian commerce. The relevant dates are January 1, 1984 to December 31, 1986. This list is known as the Domestic Substances List (DSL), and the DSL currently includes approximately 23,000 substances. The DSL defines existing substances for the purposes of CEPA and is the basis for determining whether a substance is

"existing" or "new" to Canada. There is also the Non-Domestic Substances List (NDSL) which comprises the 1985 inventory developed under the U.S. Toxic Substances Control Act.[9]

Section 26 provides that no one can import or manufacture a substance not on the Domestic Substances List unless the person has provided the Minister of the Environment with a package of information in accordance with the testing regulations. The reporting requirements do not apply to:

- substances regulated under other federal laws that provide for pre-manufacture notice and assessment (eg. pesticides);
- transient reaction intermediates that are not isolated and are not likely to be released to the environment;
- impurities and contaminants related to the preparation of a substance; or
- substances under a specified quantity.

Substances on the NDSL will have less onerous testing

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[9] CEPA, s.25.

requirements than other new substances.

The Domestic Substances and the Non-Domestic Substances Lists were finally published in the Canada Gazette on January 26, 1991.[10] The DSL list was recently revised by Environment Canada on April 20, 1994,[11] and was further amended during 1995 to 1998.[12] Further additions to the NDSL were made in 1996 to 1998.[13] Environment Canada has also developed a biotechnology component of the DSL, and issued a "Provisional List" of biotechnology products for the DSL.[14] In 1997, the DSL

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[10] Domestic Substances List and Non-Domestic Substances List. Supplement Canada Gazette, Part I (January 26, 1991), as amended.

[11] See Canada Gazette, Part II (May 4, 1994), at p.1854.

[12] See Canada Gazette, Part II (November 29, 1995), at p.3034; Canada Gazette, Part II (March 18, 1996), at p.1137 and p.1141; Canada Gazette, Part II (July 10, 1996), at p.2557; Canada Gazette, Part II (August 9, 1996), at p.2672 and p.2679; Canada Gazette (January 8, 1997) at p.265; Canada Gazette (April 30, 1997), at p.1235; Canada Gazette (December 24, 1997), at p.3530 and p.3634; and Canada Gazette (March 18, 1998), at p.902.

[13] See Supplement to Canada Gazette (January 6, 1996), at p.91; (August 24, 1996), at p.34; (April 12, 1997), at p.1; Canada Gazette (March 28, 1998) at p.678

[14] See Canada Gazette, Part I (November 20, 1993), at p.3498.

was amended by including a list of biotechnology products in Part III: see Canada Gazette, Part II (April 30, 1997), at p.1240.

The "New Substances Notification Regulations," which outline the information requirements associated with the manufacture or importation of new substances, including chemicals, polymers and certain biotechnology products, came into force on July 1, 1994.[15]

Pursuant to section 29, where the Ministers have assessed the information and suspect that a substance is toxic,

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[15] See Canada Gazette, Part II (March 24, 1994), at p.1443, amended by Canada Gazette, Part II (December 28, 1994), at p.4176. This followed the publication of a proposed notification regulation for chemicals and polymers in mid-1993. See Canada Gazette, Part I (May 1, 1993), at p.1425. The government had also issued a general notice to Canadian manufacturers and importers of biotechnology products: see "Advisory Note to Canadian Manufacturers and Importers Regarding Reporting of Biotechnology Products for the Domestic Substances List", Canada Gazette, Part I (April 24, 1993), at p.1186. Approximately 60 responses were received by Environment Canada in relation to this notice. See also J.R. Rudolph, "Regulation of Biotechnology under the Canadian Environmental Protection Act: Any Impetus for Innovation?" (1993), 10 Can. Intell. Prop. Rev. 317. See also "Federal Regulatory Framework for Biotechnology" (Canada Gazette, Part I (August 17, 1996), at p.2393. The "New Substances" regulation was amended in 1997: see Canada Gazette, Part II (March 5, 1997), at p.675.

the Minister can prohibit the manufacture or import of the substance, or can require other tests. If the manufacture or import of a substance is prohibited, the order expires two years after it is imposed, unless a notice of a proposed regulation under section 34 is published.

C. Existing Substances

1. Overview

In order for a chemical to be regulated as a toxic substance, there are a number of steps which must be taken under CEPA. First of all, the Minister must compile a list known as the "Priority Substances List" (PSL). This is the list of substances that are to receive priority in assessing whether they are toxic or capable of becoming toxic.[16]

Generally, a substance is considered to be toxic under CEPA if:

- it has an immediate or long term harmful

[16] CEPA, s.12.

effect on the environment;

- it constitutes or may constitute a danger to the environment on which human life depends; or
- it constitutes or may constitute a danger in Canada to human life or health.[17]

In 1988, Dr. Ross H. Hall, from McMaster University, was appointed to head a multistakeholder committee that was to determine the top 50 substances which were to be placed on the Priority Substances List. The report of this Priority Substances Committee was submitted to the Ministry on August 29, 1988, and a final Priority Substance List of 44 substances was published in the Canada Gazette on February 11, 1989.[18] A number of well-known "bad actor" chemicals such as arsenic, benzene, pulp mill effluent, dioxins, furans and

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[17] CEPA, s.11.

[18] Priority Substances List, Canada Gazette, Part I (February 11, 1989), at p.543. Three substances (i.e. polychlorinated dibenzodioxins, polychlorinated dibenzofurans, and effluents from pulp mills using bleaching) have recently been deleted from the PSL since they are being regulated under CEPA: Canada Gazette, Part I (February 8, 1992), at p.284. See also B.N. Spiegel and J.R. Willms, "Toxic Targets", Hazardous Materials Management (June 1992), pp.33-36.

polyaromatic hydrocarbons all found their way onto the list. Of course, being put on the Priority Substances List did not mean that a substance would be regulated, but it at least provided for the possibility of regulation. It took approximately five years just to assess the first PSL list of 44 substances, and the real test will ultimately be whether effective regulations will be promulgated for the substances deemed to be "toxic".[19]

Interestingly, the federal government's Green Plan required the publication of a second Priority Substances List by 1994 and the assessment of 100 priority substances by 2000. In December 1994, a review panel was established to consider candidates for the second PSL, and multi-stakeholder consultation commenced in February 1995. The panel's report was released in November 1995, and it recommended 25 substances -- including road salts, textile mill effluents, and releases from zinc and copper smelters and refineries -- for the second PSL. In December 1995, the federal government accepted these

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[19] See Burkhard Mausberg, "What Priority? Environment Canada Completes Assessment of 44 Priority Substances" (1994), Intervenor (March/April), p.5.

recommendations and published the second PSL.[20]

Pursuant to the Green Plan, the federal government also established a multi-stakeholder consultation process in 1991 to develop a "National Pollutants Release Inventory" (NPRI), which provides a national database of the estimated release of numerous designated substances into air, land and water. Under section 16 of CEPA, the Minister of Environment has requested facilities with 10 or more full-time employees to submit a report for each substance on the NPRI List used or produced in excess of 10 tonnes per year.[21] Certain facilities (i.e. service stations, educational facilities, mining facilities, and oil and gas wells) are exempted from this reporting requirement. The data collected by the NPRI is kept in a computer base and published in an annual report. In addition, the public is able to obtain information on the releases of individual facilities, individual substances,

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[20] See Canada Gazette, Part I (December 16, 1995), at p.4238.

[21] See "Notice with Respect to Substances in the National Pollutant Release Inventory", Canada Gazette, Part I (March 27, 1993), at p.839, and Canada Gazette Part II (February 26, 1994), at p.1378. See also Canada Gazette (February 18, 1995) at p.348, and Canada Gazette, Part I (February 17, 1996), at p.512.

or for a region, unless such information is determined to be confidential. The final report of the NPRI multi-stakeholder committee was accepted by the Minister of the Environment in March 1993.[22] Some changes have been proposed with respect to the NPRI List of Substances, reporting criteria, filing procedures, and related matters.[23] The 1997 NPRI notice requires the submission of the required information by June 1, 1998.[24]

In June 1995, the federal government released its "Toxic Substances Management Policy", which commits the government to:

- achieving "virtual elimination" of predominantly manmade substances that meet criteria for bioaccumulation and persistence (Track 1 substances); and

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[22] See A National Pollutant Release Inventory for Canada: Final Report of the Multi-Stakeholder Advisory Committee (December 1992). An information package was distributed by the government to over 2000 facilities to help them determine if they are caught by NPRI reporting obligations. Over 1,400 reports were filed for 1993 emissions, and over 1,700 facilities filed reports for 1994 and 1995 emissions.

[23] See also Canada Gazette, Part I (February 14, 1998), at p.288.

[24] Canada Gazette, Part I (April 5, 1997) at p.1064.

- providing for the life-cycle management of other substances of concern, including substances deemed "toxic" under CEPA (Track 2 substances).

In 1997, the federal government issued a notice indicating its intention to "virtually eliminate" certain substances (i.e. DDT, mirex, PCB's, etc.) in accordance with Track 1.[25]

As described below, the government recently proposed to amend CEPA to incorporate the elements of the Toxic Substances Management Policy.

2. Assessment Reports under CEPA

In November 1990, the first Assessment Report was issued under CEPA in relation to Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans. The report concluded that these substances are "toxic substances" under CEPA.[26]

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[25] Canada Gazette, Part I (March 22, 1997), at p.925.

[26] Environment Canada and Health and Welfare Canada. Priority Substances List Assessment Report No. 1, Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans (Supply and Services: Ottawa, 1990).

The second Assessment Report was released in October 1991 and concluded that effluent from pulp mills using bleaching is "toxic". A summary of this report was published in the Canada Gazette, Part I (December 14, 1991), at page 4053.[27] A series of draft pulp and paper regulations under CEPA and the Fisheries Act were published in the Canada Gazette, Part I on December 14, 1991.[28] These regulations were finalized and published in the Canada Gazette Part II on May 20, 1992.[29] More stringent site-specific effluent regulations under the Fisheries Act have been developed in relation to Alberni

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[27] Environment Canada and Health and Welfare Canada, Priority Substances List Report No. 2 - Effluents from Pulp Mills using Bleaching (Supply and Services: Ottawa, 1991).

[28] Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations, Canada Gazette, Part I (December 14, 1991), at p.4122; Pulp and Paper Mill Defoamer and Wood Chips Regulations, Canada Gazette, Part I (December 14, 1991), at p.4136; Pulp and Paper Effluent Regulations, Canada Gazette, Part I (December 14, 1991), at p.4147.

[29] Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations (SOR/92-267), Canada Gazette, Part II (May 20, 1992), at p.1940; Pulp and Paper Mill Defoamer and Wood Chip Regulations (SOR/92-268), Canada Gazette, Part II (May 20, 1992), at p.1955; and Pulp and Paper Regulations (Fisheries Act), Canada Gazette, Part II (May 20, 1992), at p.1967.

Inlet, British Columbia.[30] It has been argued that CEPA regulations in relation to pulp mill effluent are flawed and that they should require "zero discharge" of these contaminants.[31]

The third Assessment Report was released in November 1992, and it concluded that chlorobenzene is not "toxic" as defined by section 11 of CEPA.[32] Accordingly, the government announced that this substance would not be regulated under CEPA, and it has been deleted from the Priority Substances List.[33]

The fourth and fifth Assessment Reports were released in

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[30] Port Alberni Pulp and Paper Effluent Regulations, Canada Gazette, Part I (July 25, 1992), at p.2405; see also Canada Gazette, Part II (December 2, 1992), at p.4630.

[31] P.G. Sly, "Ecosystem Health: An Example of Implications arising from Regulations under CEPA, and the Importance of Setting Precedent", Journal of Aquatic Ecosystem Health 1:39-48 (1992).

[32] Environment Canada and Health and Welfare Canada, Priority Substances List Assessment Report No. 3 - Chlorobenzene (Supply and Services, 1992).

[33] See "Assessment of the Priority Substance Chlorobenzene and Amendment of the Priority Substances List", Canada Gazette, Part I (November 21, 1992), at pp.3477-79.

January 1993, and they concluded that toluene and methyl tertiary-butyl ether were not "toxic" as defined by section 11 of CEPA.[34] Accordingly, the government announced that these substances would not be regulated under CEPA, and both substances have been deleted from the Priority Substances List.[35]

In May 1993, three more Assessment Reports were released. The first concluded that bis(chloromethyl) ether (BCME) and chloromethyl methyl ether (CMME) were "toxic", and the government announced that regulations will be developed for these substances.[36] The other two reports concluded that bis(2-chloroethyl) ether (BCEE) and methyl

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[34] Environment Canada and Health and Welfare Canada, Priority Substances List Assessment Report No. 4 - Toluene (Supply and Services, 1993); and Priority Substances List Assessment Report No.5 - Methyl tertiary-butyl Ether (Supply and Services, 1993).

[35] See "Assessment of the Priority Substance Methyl tertiary-butyl Ether and Amendment of the Priority Substances List", Canada Gazette, Part I (January 30, 1993), at pp.262-64; and see "Assessment of the Priority Substance Toluene and Amendment of the Priority Substances List", Canada Gazette, Part I (January 30, 1993), at pp.264-67.

[36] See "Assessment of Priority Substances Bis (chloromethyl) Ether and Chloromethyl methyl ether", Canada Gazette, Part I (May 29, 1993), at pp.1848-50.

methacrylate were not "toxic" and would not be regulated.[37] All four substances have since been deleted from the Priority Substances List.[38]

In January and February 1994, numerous Assessment Reports were released, and consequent amendments were made to the Priority Substances List,[39] with respect to the following substances:

Substances	Finding
Benzene	toxic[40]
Chlorinated paraffin waxes	toxic[41]

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[37] See "Assessment of the Priority Substance Bis (2-chloroethyl) Ether", Canada Gazette, Part I (May 29, 1993), at pp.1850-52; and "Assessment of the Priority Substance Methyl Methacrylate", Canada Gazette, Part I (May 29, 1993), at pp.1852-54.

[38] See "Amendment of Priority Substances List", Canada Gazette, Part I (May 29, 1993), at p.1854.

[39] See Canada Gazette, Part I (January 22, 1994), at p.488 - 89; Canada Gazette, Part I (January 29, 1994), at p.574; Canada Gazette, Part I (February 5, 1994), at p.780 and p.805.

[40] See Canada Gazette, Part I (January 22, 1994), at p.472.

[41] See Canada Gazette, Part I (January 22, 1994), at p.475.

Hexachlorobenzene	toxic[42]
3,3-Dichlorobenzidine	toxic[43]
Chlorinated wastewater effluent	toxic[44]
Benzidine	toxic[45]
1,2-Dichlorobenzene	insufficient data[46]
1,1,2,2-Tetrachloroethane	insufficient data[47]
Waste crankcase oils	insufficient data[48]
Di-n-octyl phthalate	insufficient data[49]
Aniline	insufficient data[50]

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[42] See Canada Gazette, Part I (January 22, 1994), at p.477.

[43] See Canada Gazette, Part I (January 22, 1994), at p.479.

[44] See Canada Gazette, Part I (January 22, 1994), at p.481.

[45] See Canada Gazette, Part I (January 22, 1994), at p.484.

[46] See Canada Gazette, Part I (January 22, 1994), at p.486.

[47] See Canada Gazette, Part I (January 29, 1994), at p.554.

[48] See Canada Gazette, Part I (January 29, 1994), at p.556.

[49] See Canada Gazette, Part I (January 29, 1994), at p.559.

[50] See Canada Gazette, Part I (January 29, 1994), at p.561.

3,5-Dimethylaniline	insufficient data[51]
1,4-Dichlorobenzene	insufficient data[52]
Trichlorobenzene	insufficient data[53]
Pentachlorobenzene	insufficient data[54]
Xylenes	non-toxic[55]
Arsenic and its compounds	toxic[56]
Cadmium and its compounds	toxic[57]
Chromium and its compounds	toxic[58]
Nickel and it compounds	toxic[59]

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[51] See Canada Gazette, Part I (January 29, 1994), at p.563.

[52] See Canada Gazette, Part I (January 29, 1994), at p.565.

[53] See Canada Gazette, Part I (January 29, 1994), at p.567.

[54] See Canada Gazette, Part I (January 29, 1994), at p.570.

[55] See Canada Gazette, Part I (January 29, 1994), at p.572.

[56] See Canada Gazette, Part I (February 5, 1994), at p.760.

[57] See Canada Gazette, Part I (February 5, 1994), at p.762.

[58] See Canada Gazette, Part I (February 5, 1994), at p.766.

[59] See Canada Gazette, Part I (February 5, 1994), at p.769.

Inorganic Fluorides	toxic[60]
Polycyclic aromatic hydrocarbons	toxic[61]
Bis(2-ethylhexyl)phthalate	toxic[62]
Dibutyl phthalate	non-toxic[63]
Non-pesticidal organotin compounds	insufficient data[64]
1,2 Dichloroethane	toxic[65]
Dichloromethane	toxic[66]
Trichloroethylene	toxic[67]

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[60] See Canada Gazette, Part I (February 5, 1994), at p.772

[61] See Canada Gazette, Part I (February 5, 1994), at p.774 and See Canada Gazette, Part I (February 19, 1994), at p.1121.

[62] See Canada Gazette, Part I (February 5, 1994), at p.777.

[63] See Canada Gazette, Part I (February 5, 1994), at p.781

[64] See Canada Gazette, Part I (February 5, 1994), at p.783.

[65] See Canada Gazette, Part I (February 5, 1994), at p.785.

[66] See Canada Gazette, Part I (February 5, 1994), at p.787.

[67] See Canada Gazette, Part I (February 5, 1994), at p.790.

Tetrachloroethylene	toxic[68]
Tetrachlorobenzenes	insufficient data[69]
Mineral fibres	toxic[70]
Styrene	insufficient data[71]
Creosote-impregnated waste materials	toxic[72]

Under CEPA, a substance can only be determined to be "toxic" or "not toxic"; in other words, there is no provision in CEPA entitling the government to conclude that toxicity is "unproven" due to insufficient data. Accordingly, several environmental groups filed a Notice of Objection with respect to the numerous substances with incomplete assessments due to insufficient data.[73] When the government declined to establish a Board of Review to

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[68] See Canada Gazette, Part I (February 5, 1994), at p.792.

[69] See Canada Gazette, Part I (February 5, 1994), at p.794.

[70] See Canada Gazette, Part I (February 5, 1994), at p.797.

[71] See Canada Gazette, Part I (February 5, 1994), at p.800.

[72] See Canada Gazette, Part I (February 5, 1994), at p.802.

[73] See P. Muldoon, "CELA and GLU File Notice of Objection under CEPA", (1994) Intervenor (March/April), p.6.

consider this objection, the environmental groups filed a judicial review application, which is still pending in the Federal Court.

No new assessment reports have been completed or released for substances on the second PSL.

It should be noted that section 12 allows any person to file in writing a request that a substance be added to the Priority Substances List. The Minister must consider and respond to any request within 90 days.

To date, there have been two requests from the general public. The first was a request to nominate pentachlorophenol, which is a wood preservative; and the second was a request to nominate N-Nitrosodimethylamine (NDMA), a byproduct formed in reactions involving amines which may be released by industrial operations. The pentachlorophenol request was apparently denied on the grounds that it is a pesticidal chemical which falls under the Pest Control Products Act. The N-nitrosodimethylamine request was considered by the Expert Advisory Panel that developed recommendations on the

second PSL, and in December 1995, NDMA was included in the second PSL: see Canada Gazette, Part I (December 16, 1995), at p.4238.

Once the Ministers assess whether a substance on the Priority Substance List is toxic or is capable of becoming toxic, they must: prepare a report of the assessment and make it public; publish a summary in the Canada Gazette; and notify the public whether a substance will be added to a List of Toxic Substances in Schedule I, and whether it will be regulated. If the Ministers decide against adding a substance to Schedule I, any person may file a notice of objection requesting that a Board of Review be established to review the matter.[74] It should be noted that there is no public right of appeal to a Board of Review if a request that a substance be placed on the Priority Substances List is denied. CELA and others had criticized these sections in their earlier form because they served to create a bureaucratic system of lists and delay with no real opportunity for the public to request that a substance actually be

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[74] CEPA, s.13.

regulated.[75] Moreover, there was no requirement that once a substance is placed on the Priority Substance List that it will be assessed. In the final version of the bill, s.14 provides that where a substance has been sitting on the Priority Substances List for a period of five years and the Ministers have not assessed it, any person may file a Notice of Objection requesting that a Board of Review be established to review the matter.

Once a substance is determined to be toxic, Cabinet may add it to the Schedule I list. An order adding a substance to the Schedule I list of toxic substances is only effective once regulations are passed.[76]

In order for a regulation to be passed, a number of hoops

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[75] Toby Vigod and Marcia Valiante, Submissions by the Canadian Environmental Law Association (CELA) and the Canadian Environmental Research Foundation to Environment Canada on the proposed Federal Environmental Protection Act, March 1987; and Toby Vigod, Submissions by CELA to the Legislative Committee on Bill C-74, January 1988.

[76] CEPA, s.33. See, for example, See Canada Gazette, Part I (March 19, 1994), at p.1785, where the government proposed to add certain ozone-depleting substances to the Schedule I List of Toxic Substances. These substances were subsequently added to Schedule I: see Canada Gazette, Part II (June 15, 1994), at p.2323.

and hurdles must be overcome. It is here that many environmentalists and others have criticized the federal government for abdicating its responsibility for the regulation of toxic chemicals to the provinces.

The first hoop is that a federal-provincial advisory committee must be established under s.6 of the Act, and the committee must be given an opportunity to comment on new regulations. The second hoop is found under ss. 34(5) and (6). These sections essentially provide that the regulation can be made inapplicable to a province where the Minister and the province agree in writing that the province has an "equivalent" regulation, and that the province's investigation provisions are "similar" to s.108-110 of CEPA.[77] These latter sections allow any two Canadian residents to apply to the Minister for an

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[77] Section 34(6) provides:
"Where the Minister and the government of a province agree in writing that there are in force by or under the laws of the province
(a) provisions that are equivalent to the provisions of a regulation made under subsection (1), and
(b) provisions that are similar to sections 108 - 110 for the investigation of alleged offences under provincial environmental legislation, the Governor-in-Council may, on the recommendation of the Minister, make an order declaring that the provisions of the regulation do not apply on the province."

investigation of any offence committed under the Act. The Minister must report on the progress of the investigation of the offence within 90 days. Presently, only a few Canadian jurisdictions, such as the Northwest Territories and the Yukon, appear to have similar clauses;[78] however, individuals may, of course, ask provincial agencies to investigate offences under their legislation. The only different aspect in CEPA is that the Minister must report to the complainant in writing on the progress of the investigation. In December 1994, a number of Alberta's legislative provisions were declared to be "equivalent".[79] The provinces of British Columbia, New Brunswick, and Nova Scotia have reportedly expressed interest in negotiating equivalency agreements.

Aside from the vagueness of the terms "equivalent" and

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[78] See s.4 Bill 17 Environmental Rights Act, Northwest Territories. Royal Assent November 6, 1990; and see ss.14-18 of the Yukon Environment Act (Bill 20; Royal Assent May 29, 1991). Ontario's proposed Environmental Bill of Rights (Bill 26; proclaimed in force on February 15, 1994), contains similar investigation provisions.

[79] See Canada Gazette, Part II (December 28, 1994), at p.4056.

"similar",[80] sections 34(5) and (6) give the indirect, but nonetheless apparent message that the federal government does not intend to aggressively regulate existing chemicals in Canada. These sections undermine the federal government's ability to implement a comprehensive nationwide toxics program. Clearly, extensive use of the equivalency provisions may result in a patchwork of inconsistent regulations and enforcement practices across Canada. Different penalties and enforcement capabilities presently exist across the country, which may result in the development of so-called "pollution havens." This stands in stark contrast to the Brundtland Report which calls for strong national regulatory standards.

The question to be asked is: why has the federal

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[80] The CEPA Federal-Provincial Advisory Committee (FPAC) has suggested that "equivalent" means "having the same effect" even if the wording of the provincial regulations is different from CEPA regulations. It must therefore be determined if provincial permit/licensing systems, regulatory standards, measurement/testing protocols, and sanctions and enforcement programs "have the same effect" as CEPA provisions and practices: FPAC, Final Report of the Federal - Provincial Working Group on CEPA Partnerships (revised October 1, 1992). See also Kristen Douglas, Toxic Substances: Federal-Provincial Control (Library of Parliament Research Branch, 1992).

government deliberately set up these hurdles to the regulation of toxic chemicals? In some respects, these hurdles are a major step backwards from the legislation that preceded CEPA. For example, under the Clean Air Act, the federal government could unilaterally enact national air emission standards, as well as national air quality objectives with no "equivalency" roadblock. One suspects that there are a number of explanations. One is that the federal government, driven largely by an agenda of de-regulation, privatization, free trade and devolution of responsibility to the provinces, would rather appear to be protecting the environment than be actually regulating. The other explanation is that the federal government continues to be plagued by conservative constitutional advice in relation to environmental matters.

It is CELA's position that a number of heads of federal power can be used to support and justify a strong national toxics program. These heads of power include the criminal law power, trade and commerce power, and the "peace, order and good government" power that the Supreme

Court of Canada used in Crown Zellerbach[81] to uphold federal legislation in relation to marine pollution. Other Supreme Court of Canada decisions have confirmed that the federal government also enjoys concurrent jurisdiction with respect to "health."

A number of commentators have written that the Crown Zellerbach decision provides a basis for upholding the CEPA's "toxic substances" regulatory provisions. These substances are persistent and cross provincial boundaries. The definition of "toxic substances" as outlined above may sufficiently distinguish them from the class of less damaging, less persistent substances that may be regulated effectively at the local level. For example, reports of international agencies and international agreements regarding marine pollution, to which Canada is a signatory, have long recognized that control of toxic substances is a distinct subject matter with its own characteristics and scientific

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[81] R. v. Crown Zellerbach (1988), 3 C.E.L.R. (N.S.) 1, 84 N.R. 1 (S.C.C.). See also Friends of the Oldman Dam Society v. Canada (Minister of Transport), 7 C.E.L.R. (N.S.) 1 (S.C.C.).

considerations.[82]

However, in a recent proceeding under CEPA, the Quebec Superior Court (Criminal Division) held that s.6(a) of the "Interim Order respecting Chlorobiphenyls" was ultra vires of Parliament since it did not distinguish between "localized" releases to the environment and those which have extra-provincial consequences.[83] The Court also held the federal government could not rely upon the "national concern" doctrine nor the criminal law power to justify the impugned provision. In February 1995, this ruling was upheld on appeal to the Quebec Court of Appeal.[84] In late 1995, the federal government obtained leave to appeal the Court of Appeal decision to the Supreme Court of Canada, and numerous parties, including

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[82] See for example, Alastair R. Lucas, "Jurisdictional Disputes: Is Equivalency a Workable Solution?" in Into the Future: Environmental Law and Policy for the 1990s (Edmonton: Environmental Law Centre, 1990).

[83] A.G. (Canada) v. Hydro-Quebec (File No. 410-36-000024-914), August 6, 1992 (Que. S.C. (Crim. Div.)). See also Patrick Curley, "Case Comment: CEPA under Attack: Canada (Attorney General) v. Hydro-Quebec", 5 J.E.L.P. 90; E.A. Fitzgerald, "The Constitutionality of Toxic Substances Regulation under the Canadian Environmental Protection Act" (1996), 30 U.B.C.L. Rev. 55.

[84] A.G. (Canada) v. Hydro-Quebec (1995), 17 C.E.L.R. (N.S.) 34 (Que. C.A.).

CELA, intervened in the appeal, which was heard in February 1997.

In an important 5:4 decision,[85] the Supreme Court of Canada upheld the PCB regulation under the federal government's criminal law power. Writing for the majority, Mr. Justice LaForest held that the federal government could rely upon its criminal law power to enact anti-pollution prohibitions in order to protect the environment and public health and safety against the dangers posed by toxic substances such as PCB's. In dissent, Chief Justice Lamer and Mr. Justice Iacobucci opined that the PCB regulation was not justifiable under the criminal law power, the trade and commerce power, or the "peace, order and good government" residual power. In any event, when read together, the majority decisions in the Hydro-Quebec and Crown Zellarbach cases appear to provide a solid constitutional basis for a strong federal presence in the regulation of toxic substances.

As the preamble of CEPA correctly notes, the presence of

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[85] Canada v. Hydro-Quebec (1997), 24 C.E.L.R. (N.S.) 167 (SCC).

toxics in the environment is a matter of national concern, with inter-provincial aspects to the problem. These statements clearly indicate the need for strong federal leadership in the area of toxics, but such a role has not been taken to date. Indeed, under recent initiatives such as the 1998 Harmonization Accord, the federal role regarding toxics is likely to decrease, not increase, in the near future.

3. Interim Orders

The emergency powers under CEPA offer another example of the hoops that the Ministers must go through before action can be taken. Under section 35, the Ministers may make interim orders where immediate action is necessary to deal with significant danger to the environment or human health. Interim orders must be approved by Cabinet within fourteen days of issue and may last up to two years. Nevertheless, the Act provides that Cabinet shall not approve the interim order unless the Minister has offered to consult with the governments of all the affected provinces within twenty-four hours to see if the provinces are prepared to deal with the danger. At the

same time, Cabinet cannot approve an interim order unless the Minister has consulted with other federal Ministers to determine if action could be taken under other statutes to deal with the significant danger. These requirements in an emergency appear to be a recipe for inaction.

An interesting case study on the use of the interim order power is found in the passage of PCB storage regulations after the St. Basile-le-Grand fire. In August 1988, a fire at a PCB storage site forced the evacuation of more that 3000 residents at St. Basile-le-Grand, Quebec. Approximately 20,000 gallons of PCBs had been stored at the site, of which 25% was consumed in the fire. At the time of the fire, the site was not in compliance with unenforceable federal guidelines. Subsequent to the fire, the then Minister of the Environment, Tom McMillan, promised to "swoop down" and take control of the situation. On September 16, 1988 the Minister issued an Interim order pursuant to section 35(1) to deal with the storage of PCB wastes.

The purpose of the order was to ensure safe storage and

proper labelling of PCB wastes and to require maintenance of books and records in relation to the storage site. The Interim order was approved by the Cabinet on September 29, 1988. On February 20, 1989 amendments were made to the order, which were approved by Cabinet on March 2, 1989. Then on May 1, 1989 a further amendment was made to Schedule A of the Order exempting certain provinces from its application, by virtue of those provinces having put in place "legally enforceable requirements with comparable effect" to the "Storage of PCB Wastes Interim Order". The exemption applied to all provinces except Prince Edward Island and the Territories.[86] The result was that the Order only applied to storage sites owned or operated by (a) a federal department, board or agency, (b) a federal Crown corporation; or (c) a federal work or undertaking (d) storage sites in Prince Edward Island and the Territories. What is questionable here was the exemption of certain provinces from the application of an interim emergency order. Section 35, unlike section 34, makes no reference to exempting provinces from regulation if they

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[86] See Storage of PCB Wastes Interim Order - Amendment, Canada Gazette, Part I (May 13, 1989), at p.2355.

have equivalent regulations. Further there is no language of "comparable effect" in section 35.

It should be noted that pursuant to section 35(5), the Ministers must, within 90 days after an interim order has been approved by Cabinet, recommend that a regulation having the same effect as the order be made under section 34 (the general regulation-making power). Further, an interim order expires when a regulation is made under section 34 or two years after the order is made, whichever is the earlier. However, it is interesting to note that the Storage of PCB Wastes Interim Order was reissued on September 17, 1990. The Explanatory Note comments that the Interim Order which was issued on September 16, 1988 expired on September 17, 1990 and that it was being reissued because "it has not been possible to have in place regulations aimed at replacing the Interim Order by this date."[87]

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[87] Interim Order Respecting the Storage of Wastes Containing Chlorobiphenyls (PCBs), Canada Gazette Part I, (September 18, 1990), at p.1. Also published in Canada Gazette, Part I (September 22, 1990), at p.3470. On September 27, 1990 Cabinet approved the order made on September 17, 1990. See Canada Gazette, Part I (October 13, 1990), at p.3640.

The reissuing of this Interim Order by the Department of the Environment appears questionable given the legislative intent found in section 35 to ensure that interim orders are placed in regulations before the expiry of a two year period. However, PCB storage regulations were published prior to the expiration of the second Interim Order in September 1992.[88]

Apparently, federal - provincial discussions have been held on the issue of equivalency, particularly since the interim order has now been replaced by a regulation. One unanswered question relates to the way in which the provinces intend to meet the requirements of section 34(6)(b), viz. that they have similar provisions to sections 108-110 of CEPA regarding investigations of alleged offences, as discussed above.

D. Disclosure of Information

Sections 19-24 of CEPA focus on the issue of disclosure of information under Part II, which deals with Toxic

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[88] Storage of PCB Material Regulations (SOR/92-507), Canada Gazette, Part II (September 9, 1992), at p.3566.

Substances. Section 19 provides that a person who provides information to the Minister under this Part or to a Board of Review may submit a request that the information be kept confidential.[89] Section 20 prohibits disclosure of any information which a person has requested to be confidential; however, there are certain specified types of information that may be disclosed notwithstanding the confidentiality request. These include such items as summaries of health and safety data, recommended methods for disposal of a substance, and general data on uses.

Section 20(3) provides for application of the federal Access to Information Act. Section 20(6) also allows the Minister to release information if the disclosure is in the interest of public health, public safety or the protection of the environment; and if the public interest in the disclosure outweighs any material financial loss or prejudice to the competitive position of the person who provided the information. This section does not apply to information exempted under the Hazardous Materials

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[89] See also "Masked Name Regulations", Canada Gazette, Part II (March 24, 1994), at p.1496.

Information Review Act.

These sections underwent considerable revision from the draft Bill. However, they are still rather cumbersome and complex. CELA and many other environmental organizations recommended that there be specific provisions providing for access to "health and safety" studies.[90] This suggestion did not find its way into the final version of CEPA. It appears, therefore, that Canadians will continue to obtain health and safety information about chemicals used in Canada through the U.S. Freedom of Information Act.

The federal government has recently granted a series of "information waivers" regarding the manufacture or import of certain substances new to Canada: see Canada Gazette, Part I (January 18, 1997), at p.153; (September 13, 1997), at p.2708.

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[90] Supra, note 16. CELA recommended that health and safety study be defined as: "any study of any effect of a substance on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a substance, toxicological, clinical and ecological studies of a substance, and any test performed pursuant to this Act." This is similar to s.3(6) of the U.S. Toxic Substances Control Act (15 U.S.C. 2601).

E. Export and Import of Toxic Substances and Waste Materials

CEPA also deals with the import and export of toxic substances and waste materials. Sections 41-45 provide for the establishment of a Schedule II which has three parts. Part I lists all toxic substances prohibited for use in Canada. Generally, no person shall export any of these substances. This is the only portion of CEPA that deals with pesticides, as the List of Prohibited Substances contains substances prohibited by any federal legislation. Part II of Schedule II lists chemicals substantially restricted in Canada. This list is entitled the "List of Toxic Substances Requiring Export Notification", and pursuant to section 42, notification must be given to those countries placed on a list of Toxic Substances Authorities. Section 43 provides for Part III of Schedule II, which is the "List of Hazardous Wastes Requiring Export or Import Notification."[91]

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[91] See Canada Gazette, Part I (June 20, 1992), at p.1840: see also Canada Gazette, Part II (December 1992), at p.4541, which lists 111 substances, such as biomedical waste, asbestos dust, and other substances caught by the Transportation of Dangerous Goods Act. See also Canada Gazette, Part I (May 4, 1996), at p.1344; Canada Gazette, Part I (June 1, 1996), at p.1579.

Again, notification will be required to be given to a specified authority indicated on the List of Hazardous Waste Authorities in respect of the country to or from which the export or import of a listed substance will be taking place.[92]

The List of Prohibited Substances (Part I) was amended and contains substances such as mirex, alachlor and polybrominated biphenyls.[93] The List of Toxic Substances Requiring Export Notification (Part II) was amended in December 1992 and contains substances such as chlorobiphenyls, chlorofluorocarbons, and tetraethyl lead.[94] The proposed List of Toxic Substances Authorities was published in the Canada Gazette, Part I (December 14, 1991), at page 4086.[95] The proposed Export and Import of Hazardous Wastes Regulations were

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[92] See Canada Gazette, Part I (June 20, 1992), at p.1849.

[93] See Canada Gazette, Part II December 2, 1992), at p.4530.

[94] See Canada Gazette, Part II (December 2, 1992), at p.4533.

[95] This regulation was recently finalized: see Canada Gazette, Part II (February 3, 1994), at p.1071. See also Canada Gazette, Part II (November 12, 1992), at p.4550.

published in the Canada Gazette, Part I (June 20, 1992), at page 1853.[96] The federal government recently amended the PCB Waste Export Regulations to permit export of PCB waste to the United States under certain conditions: see Canada Gazette, Part II (February 7, 1997) at p.1 and p.5.

Various restrictions were recently announced by the federal government in relation to the manufacture or import of certain substances suspected of being toxic: see Canada Gazette, Part I (May 31, 1997), at p.1611; (July 5, 1997), at p.1923; (October 25, 1997), at p.3398; and (January 31, 1998), at p.154.

F. Regulations

1. Substance-specific Regulations

To date, there is a small number of substances on the

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[96] This regulation was finalized in November 1992: see Export and Import of Hazardous Wastes Regulations, Canada Gazette, Part II (November 12, 1992), at p.4553. See also Canada Gazette, Part I (July 31, 1993), at p.2404. This regulation was recently amended: see Canada Gazette, Part II (July 13, 1994), at p.26450.

Schedule I "List of Toxic Substances". These include asbestos, lead, mercury and vinyl chloride, which were previously regulated under the Clean Air Act. The specific regulations deal with limited atmospheric releases from asbestos mines and mills, secondary lead smelters, chlor-alkali mercury plants and vinyl chloride and polyvinyl chloride plants. Guidelines have also been recently promulgated with respect to thermal power generation emissions from new stationary sources.[97] Other regulated substances include mirex, chlorofluorocarbons, chlorobiphenyls (PCBs), polybrominated biphenyls (PBBs), polychlorinated terphenyls (PCTs) which were previously regulated under the Environmental Contaminants Act. Due to a perceived uncertainty in the law, interim orders were passed in relation to these substances.[98] Regulations for vinyl chloride, chlor-alkali mercury releases, PBB, PCT, mirex, and chlorofluorocarbon were passed in final form on

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[97] See Canada Gazette, Part I (May 15, 1993), at p.1633.

[98] See explanation in Chlorobiphenyls Interim Order, Canada Gazette, Part I (March 1, 1989).

February 15, 1990.[99] The Asbestos Mines and Mills Release Regulations were finalized on June 14, 1990.[100] The Secondary Lead Smelter Release Regulations and the Chlorobiphenyls (PCB) regulation were published in final form in the Canada Gazette Part II on February 21,

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[99] See Vinyl Chloride Release Regulations SOR/90-125; Mirex Regulations, 1989 SOR/90-126; Chlorofluorocarbon Regulations, 1989 SOR/90-127; Polychlorinated Terphenyls Regulations, 1989 SOR/90-128; Polybrominated Biphenyls Regulations, 1989 SOR/90-129; and Chlor-Alkali Mercury Release Regulations SOR/90-130, Canada Gazette, Part II, Vol. 124, No.5, February 15, 1990. See also the Code of Good Operating Practice for Vinyl Chloride and Polyvinyl Chloride Manufacturing Operations, Canada Gazette, Part I (December 21, 1991), at p.4224. See also Vinyl Chloride Release Regulations, Canada Gazette Part II (December 2, 1992), at p.4512, which repeals the 1990 Vinyl Chloride Release Regulation. See also Canada Gazette, Part I (May 13, 1993), proposed to amend the Gasoline Regulations made on April 26, 1990; however, several notices of objection were filed in relation to this objection: see Canada Gazette, Part I (March 12, 1994), at p.1670. In May 1994, these amendments were finalized: see Canada Gazette, Part II (June 1, 1994), at p.2183. Further amendments have been made to the "Gasoline Regulations": see Canada Gazette, Part II (April 15, 1998) at p.1305. See also the "Storage Tank Regulations", Canada Gazette (January 8, 1997) at p.58, and the "Diesel Fuel Regulations", Canada Gazette, Part II (February 19, 1997), at p.614.

[100] Asbestos Mines and Mills Release Regulations, SOR/90-341, Canada Gazette, Part II, Vol. 124, No. 14, (June 14, 1990).

1991.[101] Contaminated fuel was recently added to Schedule I, and the Contaminated Fuel Regulations were published in the Canada Gazette Part II on August 14, 1991 (see vol. 125, No.18: SOR/91-485 and SOR/91-486).

In late 1992, the government announced its intention to add carbon tetrachloride and methyl chloroform to Schedule I.[102] Since no notices of objection were received, the government has since added these substances to Schedule I.[103] In addition, amendments to the Ocean Dumping Regulations have been published in the Canada Gazette, Part I (March 20, 1993), at page 759 and were finalized in mid-1993.[104] Methyl bromide was recently

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[101] Secondary Lead Smelter Release Regulations, Canada Gazette, Part II, Vol. 125, No. 6, (February 21, 1991), at p.1043 and Chlorobiphenyls Regulations, Canada Gazette, Part II, Vol. 125, No. 6, (February 21, 1991), at p.1030.

[102] See Canada Gazette, Part I (November 28, 1992), at p.3608.

[103] See Canada Gazette, Part II (May 19, 1993), at p.2242.

[104] See Canada Gazette, Part II (September 8, 1993), at pp.3621-55. See also Canada Gazette, Part I (March 19, 1994), at p.1778, and Canada Gazette, Part II (September 21, 1994) at p.3194 and p.3199, amending Schedule III of CEPA with respect to the disposal of radioactive wastes and incineration or disposal of industrial wastes at sea.

added to Schedule I,[105] and certain hydrochloro-fluorocarbons were added to Schedule I in late 1995.[106]

It should be noted that several of the substance-specific regulations were recently amended by an "omnibus order" published in the Canada Gazette, Part II (June 2, 1993), at pp.2420-23.[107] In September 1995, the government proposed further amendments to Schedule I and the regulations for mirex, polychlorinated terphenyls, and the polybrominated biphenyls: see Canada Gazette, Part I (September 30, 1995), at p.3468. Further amendments were undertaken in 1996: see Canada Gazette, Part II (May 15,

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[105] See Canada Gazette, Part II (December 14, 1994), at p.4027.

[106] See Canada Gazette, Part II (December 27, 1995), at p.3402.

[107] See SOR/93-231, Canada Gazette, Part II (June 2, 1993), at pp.2420-23, which amends the Asbestos Mines and Mills Regulations; Chlor-Alkali Mercury Release Regulations; PCB Waste Export Regulations; Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations; and Federal Mobile PCB Treatment and Destruction Regulations. See also Canada Gazette Part I (June 5, 1993), at pp.1929-32, where technical amendments to the following regulations have been proposed: Asbestos Mines and Mills Release Regulations; Chlor-Alkali Mercury Release Regulations; PCB Waste Export Regulations; Pulp and Paper Mill Defoamer and Wood Chip Regulations; and Secondary Lead Smelter Release Regulations.

1996), at p.1571, and pp.1575-76.

In 1997, benzene was added to the Schedule I list: see Canada Gazette, Part II (November 26, 1997), at p.3146. "Benzene in Gasoline Regulations" have also been enacted: see Canada Gazette, Part II (November 26, 1997), at p.3148.

2. Federal Mobile PCB Treatment and Destruction Regulations

On August 5, 1989, again in response to the PCB situation, Environment Canada published proposed regulations to govern the operation of mobile PCB incinerators and PCB treatment systems on federal lands by or under contract with any federal institution. These regulations became finalized on December 14, 1989 covering performance standards for incinerators and treatment systems as well as standards for air emissions and the release of liquids and solids from these systems. There are approximately 7500 tonnes of PCB wastes at federal facilities that will either be incinerated or chemically treated. CFB Goose Bay is the largest single federal storage site with approximately 3000 tonnes of

PCB-contaminated material.[108]

3. PCB Waste Export Regulations

In response to the 1989 "Death Ship" incident where PCB wastes from the St. Basile fire were shipped to England for destruction and then returned to Canada, the Minister made a commitment to ban the overseas export of PCBs in November 1989. Since that time, the federal government stopped shipments of its own PCB wastes overseas; however, private sector wastes were still being sent to France. In 1989, 1085 tonnes of PCBs were shipped overseas compared to 183 tonnes exported to the end of February 1990. On February 24, 1990, proposed PCB waste export regulations were published in the Canada Gazette followed by a 60 day comment period. A notice of objection was filed requesting that a Board of Review be established to review this matter; however, the Minister of the Environment decided against establishing a PCB Board of Review. The final regulations were published in

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[108] Federal Mobile PCB Treatment and Destruction Regulations SOR/90-5, Canada Gazette Part II, Vol. 124, No. 1 (December 14, 1989).

the Canada Gazette Part II on August 15, 1990,[109] and were recently amended to permit the export of PCB waste to the United States under certain conditions, as described above.

If subject to the general export ban, Canadian companies will have to store their PCBs in accordance with the PCB storage regulations. It is anticipated that these PCBs will ultimately be destroyed over the next few years.[110]

The Regulatory Impact Analysis Statement accompanying the Regulation looked at costs to the private sector over a 10 year period. It is estimated that the storage costs for PCB wastes previously exported will be $1,400,000 per year while the one-time loss to private export firms caused by the prohibition of PCB waste exports would be $8,000,000 for the first year. It is estimated that the sum of the above-mentioned costs plus the expenses that would eventually be incurred to incinerate these PCB

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[109] SOR/90-453, PCB Waste Export Regulations, Canada Gazette Part II, Vol. 124, No. 17 (August 15, 1990), at p.3397.

[110] PCB Waste Export Regulations, Canada Gazette Part I (February 24, 1990).

wastes is less than the cost of exporting these wastes. While the benefits listed above were not quantified, the regulation was said to have met the Canadian environmental objective that wastes should be, to the maximum extent possible, treated or disposed of in the country where they are generated.

4. Ozone-Depleting Substances Regulations

Considerable attention has been recently paid to the adverse impacts of chlorofluorocarbons (CFCs), with respect to both the depletion of the ozone layer and global climate change. On September 16, 1987, Canada joined 24 other nations in signing the Montreal Protocol on Substances that Deplete the Ozone Layer, an international treaty designed to prevent a global environmental health problem before it reaches the crisis stage. The Montreal Protocol, which came into force on January 1, 1989, set out a schedule for reducing consumption of CFCs. Proposed "Ozone-Depleting Substances (ODS) Regulations No. 1 (Chlorofluorocarbon)," which restricts Canadian consumption of CFCs, were issued

on April 22, 1989 and became final on June 29, 1989.[111] "ODS Regulations No. 2 (certain bromofluorocarbons)," and "No. 3 (Products)" were published in Part I of the Canada Gazette on November 18, 1989. They were finalized and published in Part II of the Canada Gazette on September 12, 1990.[112] The former restricts the use of halons in accordance with the Montreal Protocol, while the latter bans the use of CFCs in certain products such as aerosol cans, foam packaging and small extinguishers. An amendment to "ODS No. 3 (Products)" to regulate halon portable extinguishers was published in the Canada Gazette, Part I (November 16, 1991), at page 3743. Four notices of objection were filed in relation to this proposed amendment. "ODS Regulations No.4 (Carbon Tetrachloride and Methyl Chloroform)" were published in

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[111] Ozone-depleting Substances Regulations No. 1 (Chlorofluorocarbon) SOR/89-351, Canada Gazette Part II, Vol. 123, No.15 (June 29, 1989).

[112] Ozone-depleting Substances Regulations No. 2 (Certain Bromofluorocarbons) SOR/90 - 583, Canada Gazette, Part II, Vol. 124, No. 19 (September 12, 1990), at p.3735; Ozone-depleting Substances Regulations No. 3 (Products) SOR/90-584, Canada Gazette, Part II, Vol. 124, No.19 (September 12, 1990), at p.3750; see also Canada Gazette, Part I (March 5, 1994), at p.1600; Canada Gazette, Part II (June 15, 1994), at p.2315 and p.2324; and Canada Gazette, Part II (December 14, 1994), at p.4004.

the Canada Gazette, Part I on November 28, 1992 and were finalized in early 1993.[113] In addition, the government published a notice to persons engaged in the production, import or use of ODS's.[114]

More recently, the federal government has amended the ODS Regulations to include HCFC's: see Canada Gazette, Part II (December 27, 1995), at p.3403.[115] The federal government has further invited comments on "essential use" exemptions for ODS's: see Canada Gazette, Part I (June 22, 1996), at p.1742.

5. Contaminated Fuel Regulations

On March 16, 1991 the Contaminated Fuel Regulations were issued in the Canada Gazette Part I for public comment.

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[113] See SOR/93-214, Canada Gazette, Part II (May 19, 1993), at pp.2243-96.

[114] See "Notice to Anyone Engaged in the Production, Import or Use of Ozone-Depleting Substances", Canada Gazette, Part I (March 13, 1993), at p.659. See also Canada Gazette, Part I (June 11, 1994), at p.2914, which provides a notice to persons engaged in the production, import or use of halons.

[115] See also the Regulatory Impact Analysis Statement in the Canada Gazette, Part I (September 2, 1995), at p.3069.

These regulations would prohibit the import and export of fuels containing toxic substances except for the purpose of destruction, recycling or disposal of the fuel at an approved facility. "Contaminated fuel" has been added to the Schedule I List of Toxic Substances and defined as follows:

> Fuel containing toxic substances that are dangerous goods within the meaning of s. 2 of the Transportation of Dangerous Goods Act and that:
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> (a) are neither normal components of the fuel nor additives designed to improve the characteristics or the performance of the fuel; or
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> (b) are normal components of the fuel or additives designed to improve the characteristics or performance of the fuel, but are present in quantities or concentration greater than those generally accepted by industry standards.[116]

As noted above, the Contaminated Fuel Regulations have

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[116] Contaminated Fuel Regulations. Canada Gazette, Part I, Vol. 125, No. 11 (March 16, 1991), at p.882.

now been published in the Canada Gazette Part II (see vol. 125, No. 18: SOR/91-486).

G. Information-Gathering Activities

Section 18 provides that the Ministers may require information or testing by any person for the purpose of assessing whether to control a substance they have reason to suspect is toxic or may be capable of becoming toxic. To date, this section has been used to conduct a survey on the production, import, export, distribution and use of certain chlorofluorocarbons and bromofluorocarbons;[117] to gather information from persons who in 1989 produced, imported or exported more than one kilogram of carbon tetrachloride, methylchloroform or chlorofluorocarbons, bromofluorocarbons and hydrochlorofluorocarbons;[118] and to obtain information

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[117] Survey of Producers, Importers and Exporters, Distributors, and Users of Chlorofluorocarbons (CFCs) and Bromofluorocarbons (Halons), Canada Gazette, Part I (May 19, 1990), at 1746.

[118] Notice to Anyone Engaged in the Production, Import or Export of Carbon Tetrachloride or Methyl Chloroform Canada Gazette, Part I (October 6, 1990), at p.1746 and Notice to Anyone Engaged in the Production, Import or Export of Chlorofluorocarbons, Bromofluorocarbons and Hydrochlorofluorocarbons Canada Gazette, Part I

from those persons engaged on the production or importation of chloranil or ortho-chloranil, or dye or pigment products containing these substances.[119]

More recently, s.18 has been used to request information from persons who in 1990 were engaged in any commercial activity involving more than 10 kilograms of certain aromatic amine substances and their salts (see Canada Gazette Part I (August 10, 1991), at page 2580), or who in 1990 or 1991 produced or imported more than 10 kilograms of 2-ethyl-1,2-hexanediol (see Canada Gazette Part I (August 24, 1991), at page 2745). A similar notice has been issued to persons engaged in the

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(October 6, 1990), at p.3561. See also Notice to Anyone Engaged in the Production, Import or Export of Hydrochlorofluorocarbons, Canada Gazette, Part I (June 1, 1991), at p.1819; and Notice to Any Persons Importing or Exporting Methylchloroform Whether Alone or in Mixtures, Canada Gazette, Part I (June 1, 1991), at p.1819; and Notice to Any Person Importing or Exporting Methylchloroform Whether Alone or in Mixtures, Canada Gazette, Part I (August 3, 1991), at p.2519. See also Notice to Anyone Engaged in the Production, Import or Export of Hydrochlorofluorocarbons, Canada Gazette, Part I (April 18, 1992), at p.1019, and see Canada Gazette, Part I (March 25, 1995), at p.758.

[119] Notice with respect to Chloranil and Ortho-chloranil and Substances Derived from Chloranil and Ortho-chloranil, Canada Gazette, Part I (November 24, 1990), at p.4012.

production, import or export of hydrobromofluorocarbons and/or hydrochlorofluorocarbons (see Canada Gazette, Part I (March 13, 1993), at p.654),[120] and methyl bromide (bromonethane) (see Canada Gazette, Part I (July 10, 1993), at p.2194, and Canada Gazette, Part I (June 4, 1994) at p.2844). A similar order was issued in relation to tributyl tetradecyl phosphonium chloride: see Canada Gazette, Part I (June 21, 1997), at p.1806.

The Minister has also issued an order pursuant to section 16(1) requiring information from those engaged in commercial activity involving methyl-tert-butyl ether to assess whether this substance is toxic or is capable of becoming toxic.[121] A similar order has been issued with respect to certain chloroalkyl ethers[122], certain chlorobenzenes,[123] inorganic fluorides,[124] dichloro-

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[120] See also Canada Gazette, Part I (March 12, 1994), at p.1620.

[121] Notice with Respect to methyl-tert-butyl ether, Canada Gazette, Part I (February 9, 1991), at p.403.

[122] Notice with respect to certain Chloroalkyl Ethers, Canada Gazette, Part I (November 9, 1991), at p.365.

[123] Notice with Respect to certain Chlorobenzenes, Canada Gazette, Part I (March 14, 1992), at p.556.

methane,[125] hexachlorobenzene,[126] 1-2-dichloroethane,[127] chloranil,[128] hydrofluorocarbons,[129] hexachlorobutadiene,[130] di(2-ethylhexyl),[131] drinking water treatment facilities and distribution systems,[132] road salts,[133] wastewater collection systems,[134] and leaded gasoline.[135]

A number of notices respecting guidelines under the government's "Environmental Choice Program" have recently

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[124] Notice with Respect to Inorganic Fluorides, Canada Gazette, Part I (August 29, 1992), at p.2688.

[125] See Canada Gazette, Part I (January 27, 1996), at p.342.

[126] See Canada Gazette, Part I (February 3, 1996), at p.399.

[127] See Canada Gazette, Part I (March 3, 1996), at p.617.

[128] See Canada Gazette, Part I (May 18, 1996), at p.1453.

[129] See Canada Gazette, Part I (June 15, 1996), at p.1684.

[130] Canada Gazette, Part I (February 8, 1997), at p.324.

[131] Canada Gazette, Part I (February 15, 1997), at p.366.

[132] Canada Gazette, Part I (March 8, 1997), at p.744.

[133] Ibid., p.746.

[134] Ibid., p.747.

[135] Canada Gazette, Part I (July 26, 1997), at p.2102.

been published.[136]

H. Appeals

Section 89 provides that a person can file a notice of objection in respect to any proposed regulation, and the Minister may establish a Board of Review to inquire into the nature and danger posed by the substance in respect to which the regulation is proposed. The Board is to be made up of at least three members, and any person is given the opportunity to appear before the Board. The Board has been given the power to award the costs of any proceeding on a final or interim basis. The Board's report will be made public and its recommendations and evidence placed before the Ministers.

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[136] Canada Gazette, Part I (August 6, 1994), at p.3572; Canada Gazette, Part I (September 24, 1994), at p.4061; Canada Gazette, Part I (January 7, 1995), at p.5; Canada Gazette, Part I (January 14, 1995), at p.62; Canada Gazette, Part I (January 21, 1995), at p.125; and Canada Gazette, Part I (January 28, 1995), at p.193. See also Canada Gazette, Part I (April 1, 1995) at p.976; Canada Gazette, Part I (July 8, 1995) at p.2218; Canada Gazette, Part I (June 15, 1996), at p.1682; Canada Gazette, Part I (March 1, 1997); Canada Gazette, Part I (April 19, 1997) at p.1206; and Canada Gazette, Part I (March 7, 1998) at p.470.

To date, a number of Notice of Objections have been filed in relation to various proposed regulations. None has resulted in the establishment of a Board of Review. For example, an objection was filed in relation to Ozone-Depleting Substances Regulation No. 3 regarding the proposed inclusion of "extinguishers." The regulation ultimately passed (SOR/90-584) was made without the "extinguisher" portion which will become the subject of a subsequent regulation (see Canada Gazette, Part I (November 16, 1991), at page 3743).

Six Objections were received from Quebec PCB brokers involved in the export of PCBs in relation to the PCB Waste Export Regulations. One company, Provirotect Inc., brought an application in the Federal Court of Canada for an order for mandamus and prohibition against the Minister of Environment for failure to provide it with reasons for its decision. The application was dismissed due to the fact that the Minister sent a letter to the applicant the day before the hearing stating that it would be inappropriate to establish a Board, thereby making the dispute moot. Mr. Justice Rouleau did find that there was a duty upon the Minister to respond to the

Notice of Objection. The Court noted that "the Minister exhibited an attitude that cannot normally be expected from a Minister" and that he "acted very impolitely and very disrespectfully towards a corporate citizen."[137]

A Notice of Objection was received regarding Gasoline Regulation SOR/90-247. The objector required clarification and was apparently satisfied with the information received from the department. A number of other objections were filed in relation to proposed amendments to the Gasoline Regulations; however, a Board of Review was not established to consider these objections. Finally, there were four objections to the draft Secondary Lead Smelter Release Regulations which were published in September 1990. The Minister decided that they would not be made subject to a Board of Review.

Draft regulations were issued in 1989 setting out general rules of practice and procedure for the Boards of Review. These have been subject to public comment, and were modified in early 1990. A draft set of Board rules was

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[137] Provirotect Inc. v. The Minister of the Environment of Canada. Unreported July 27, 1990 File No. T-2059-90 (F.C.T.D.).

published in the Canada Gazette, Part I (December 19, 1992), at p.3899.

I. Part IV - Federal Departments

This part of CEPA deals with federal departments, agencies, crown corporations, works, undertakings and lands. Sections 52 - 54 define federal lands, works and undertakings, allow guidelines to be established, and provide for the making of regulations to protect the environment with the concurrence of the federal minister who has the administration and control in relation to the works, undertakings or lands. The Governor-in-Council may also make regulations prescribing limits on the release of emissions and effluents, waste handling and disposal practices for departments, boards, agencies and corporations.[138] All regulations are subject to a 60 day comment period and any person has the right to file a notice of objection requesting a Board of Review. This Part also allows the Minister to ask for plans and specifications to determine the environmental impact of a federal work, undertaking or activity and deals with

[138] CEPA, s.54(2).

release of substances.[139]

In addition to the Federal Mobile PCB Treatment and Destruction Regulations discussed above, there are a number of regulations dealing with federal facilities that are currently being drafted.[140] Guidelines have also been developed in respect of federal storage tanks containing petroleum products: see Canada Gazette, Part I (March 11, 1995), at p.698, and Canada Gazette, Part I (August 17, 1996), at p.2351.

J. Compliance and Enforcement

Part VII of CEPA contains the offence sections of the Act. Inspection powers and search and seizure procedures are set out in this Part. Offences include: failure to give an inspector all reasonable assistance (s.111);

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[139] CEPA, ss.56-60.

[140] These include: "Non-Hazardous Solid Waste Incinerations at Federal Facilities" (these will deal with dioxins and furans); "Contingency Planning at Federal Facilities" to deal with spill preparedness; "Waste Water Regulations at Federal Facilities"; "Hazardous Waste Management at Federal Facilities"; and "Air Emission Regulations for Boilers at Federal Facilities".

obstruction of an inspector (s.103); failure to provide the Minister with information as required (s.112); conducting a false test, failure to comply with the regulations; failure to comply with ministerial orders, etc. (s.113); and knowingly providing false or misleading information (s.114). It is also an offence for any person who, in contravention of the Act, intentionally or recklessly causes a disaster that results in a loss of the use of the environment, or shows wanton or reckless disregard for the lives or safety of other persons and thereby causes a risk of death or harm to another person.[141] This section creates an indictable offence and punishable by a fine or imprisonment, or both. Corporate officers and directors may be held liable if they authorized, assented to or participated in the commission of an offence under CEPA.[142]

To date, the courts have imposed a wide range of penalties for convictions under CEPA, including:

- a probation order;

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[141] CEPA, s.115.

[142] CEPA, s.122. See also M.C. Hall and M. Donahue, "Directors and Officers at Risk: Liability under Environmental Statutes", 5 C.U.B.L.R. 161.

- clean up and habitat restoration orders;
- an order to inform employees of CEPA requirements;
- orders to pay money to non-profit or environmental organizations;
- a fine of $20,000 under the PCB Interim Order;
- a fine of $30,000 under the PCB Regulation; and
- a fine of $100,000 for importing and selling CFCs.

The level of fines provided by CEPA are significantly higher than the fines in the statutes that CEPA repealed. Maximum fines range to one million dollars and imprisonment up to five years depending on the offence. A due diligence defence has been provided for under s.125. A regime for the establishment of ticketing offences has also been provided for under s. 134.

There are also a number of innovative sentencing tools. Pursuant to s.129, the court may impose an additional fine in an amount equal to the court's estimate of the amount of monetary benefits acquired or accruing to the offender as the result of the commission of the offence. The court is also given wide-ranging powers to make a number of interesting orders including: directing the

offender to take action to remedy or avoid any harm to the environment; publication of the facts relating to the conviction;[143] directing the offender to compensate the Minister for the cost of remedial action taken by the Minister; directing the offender to perform community service; or directing the offender to pay an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed.[144]

Additional remedies include the granting of an injunction by the court on application by the Minister[145], and the right of any person who has suffered loss or damage as a result of conduct contrary to the Act, to sue for damages including the cost of any investigation made in connection with the offence. An injunction may also be

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[143] See discussion obiter of s.130 of CEPA in R. v. Northwest Territories Power Corp. (1990), 5 C.E.L.R. (N.S.) 67 (N.W.T.S.C.). This case found that an order for an apology from a corporation pleading guilty under the Fisheries Act was not authorized by the statute and may be contrary to s.7 of the Canadian Charter of Rights and Freedoms.

[144] CEPA, s.130.

[145] CEPA, s.135.

sought by an individual in these circumstances.[146]

When CEPA was tabled for First Reading on June 26, 1987, a draft "Enforcement and Compliance Policy" was also released for public consultation. A series of workshops were held and the Policy was finalized at the same time of CEPA was promulgated in June 1988.[147] Officials have said that ad hoc negotiations and moral suasion are not part of Environment Canada's enforcement policy; therefore, formal procedures, whether by written warnings or by prosecution, are to be the norm.[148]

From July 1, 1988 to March 31, 1998 (almost ten years), there were 88 prosecutions under CEPA, of which 68 resulted in convictions. This relatively small number of prosecutions is not surprising given the general paucity of regulations under CEPA. Over the same

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[146] CEPA, s.136.

[147] Minister of the Environment, CEPA-Enforcement and Compliance Policy (Ottawa: EC, May 1988).

[148] John MacLatchy, Roy Begin, Gisele Jacob, "Application of Federal Environmental Enforcement and Compliance Policies", in Canadian Bar Association Continuing Legal Education Program on Canada's Environmental Laws, (Toronto: CBA, January 19, 1990).

timeframe, however, Environment Canada has issued over 1,200 "warnings" to companies for infractions under CEPA. It therefore remains to be seen if Environment Canada's present enforcement practices will result in environmentally sound management of toxic substances.

Additional information regarding enforcement activities under CEPA (and the Fisheries Act) is found in Appendix A of this paper.

A draft regulation respecting the distribution of the proceeds from fines and the execution of orders was circulated for public comment in 1989. The draft provided that all the proceeds resulting from the payment of fines or the execution of orders would be payable to the informant in a private prosecution if he or she prosecuted the offence. Where the information was laid by a private person and the offence later prosecuted by a government agency, one-half of the proceeds would still be payable to the informant. These draft regulations have not been finalized. It should be noted that provisions for fine-sharing currently exist under the

Fisheries Act.[149]

III. THE CEPA REVIEW: OPTIONS FOR REFORM

Section 139 of CEPA requires a Parliamentary review of the legislation with five years of its enactment. Pursuant to an Order of Reference dated June 10, 1994, the Standing Committee on Environment and Sustainable Development was given the task of undertaking the review. Over the course of its deliberations, the Committee heard from hundreds of witnesses, conducted several site visits, and received numerous briefs from representatives of government, First Nations, industry, environmental groups, and members of the public.

In June 1995, the Committee released its comprehensive report, entitled It's About Our Health: Towards Pollution Prevention. The Report concluded that despite seven years of governmental activity under CEPA, Canada continued to experience growing environmental problems

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[149] Section 5 of the Penalties and Forfeitures Proceeds Regulations (CRC, Vol. III, c.827) provides that one-half of any fine imposed shall be paid to the private prosecutor.

caused by toxic substances, hazardous wastes, and air and water pollution. The Report also identified a need to incorporate new environmental principles -- such as pollution prevention, biodiversity conservation, precautionary principle, and ecosystem approach -- into CEPA's provisions. Accordingly, the Report provided 141 recommendations on a wide range of issues, but most recommendations focused on major amendments to CEPA, particularly in relation to the assessment and regulation of toxic substances.

In December 1995, the federal government released its formal response to the Committee's recommendations.[150] Entitled Environmental Protection Legislation Designed for the Future -- A Renewed CEPA, the response document includes the government's legislative proposals for reform of CEPA.

Following public comment on this document, the federal government introduced Bill C-74 on December 10, 1996. The Bill C-74 proposals covered a number of matters, such as:

- entrenchment of pollution prevention as a national

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[150] See Canada Gazette, Part I (December 23, 1995), at p.4304.

goal in CEPA;

- establishment of a new CEPA National Advisory Committee;
- enhanced access to information and public notice and comment opportunities with respect to decision-making under CEPA;
- creation of an electronic public registry of environmental information;
- establishment of "whistle-blower" protection for employees reporting violations of CEPA or its regulations;
- establishment of "citizen suit" provisions allowing citizens to take civil action against violators of CEPA or its regulations;
- authorization for the government to impose "stop orders"; and
- enhanced investigation and enforcement mechanisms.[151]

However, Bill C-74 died on the Order Paper when Parliament was dissolved on April 27, 1997 for the recent federal election.

On March 12, 1998, the federal government introduced a

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[151] See Strengthening Environmental Protection in Canada: A Guide to the New Legislation (Government of Canada, 1996).

Bill C-32 for First Reading. Bill C-32 is intended to repeal and replace CEPA, and it includes many of the above-noted reforms previously proposed in Bill C-74. Bill C-32 received Second Reading on April 27, 1998, and has been referred to committee for public hearings which are now underway. The full text of Bill C-32 is available on-line at Environment Canada's "Green Lane" on the Internet at: www.ec.gc.ca/cepa.

IV. CONCLUSIONS

CEPA was introduced with great fanfare as being "the most comprehensive piece of legislation in the western hemisphere." However, with the exception of the toxic substances provisions, CEPA is largely a consolidation of pre-existing legislation. In respect to toxic substances, CEPA does offer some potential control of new chemicals introduced to the Canadian market, together with the potential for further regulation of existing chemicals. However, given the federal government's tendency to leave environmental regulation to the provinces, as evidenced by the equivalency sections of CEPA (and the recent Harmonization Accord), it is doubtful that we will see more than a token role for federal regulation of existing "bad actor" chemicals.

This is despite the fact that the public has continually called for the federal government to play a greater role in environmental protection.

The recently proposed reforms of CEPA (i.e. Bill C-74 and Bill C-32) have also been introduced with great fanfare by the federal government. However, it is clear that the proposed amendments do not go as far as the recommendations provided by the Standing Committee on Environment and Sustainable Development. In addition, certain federal proposals (such as the government's refusal to amend the current definition of toxicity, or the decision to leave biotechnology largely in the hands of Agriculture Canada rather than Environment Canada) provide further evidence that the government is apparently unwilling to significantly expand the scope and efficacy of CEPA.

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APPENDIX A - CEPA ENFORCEMENT STATISTICS

Enforcement Activities/Activités de l'application de la loi
Environmental Protection de l'Environnement

Nat.
1 July/Juillet 1988 - 31 March/Mars 19.

CEPA/LCPE	Inspection	Investigation/ Enquête	Warning/ Avertissement	Direction/ Directive	Prosecution/ Poursuite	Conviction/ Condamnation
PCB Waste Storage/Entrepôt de BPC	3160	109	513	8	7	3
PCB Regs sur BPC	3220	212	400	11	7	5
PCB Waste Export/Exportation de BPC	62	2	7			
PCB Destruction des BPC	151	6	1			
Secondary Lead/Plomb seconde fusion	331	2	15	3		
Vinyl Chloride/Chlorure de Vinyle	51	6	2	2	1	1
Asbestos Mines & Mills/Mines & Usines d'Amiante	186		5	1		
Mercury, Chlor-Alkali/Mercure, Usines de Chlore	130	4	3			
Chlorofluorocarbon/Chlorofluorocarbures	226	2	1			
Domestic Substances List/Liste intérieure des substances	5					
Gasoline/Essence	3717	34	26		7	8
Contaminated Fuel/Combustible Contaminé	863	2	38			
Fuels Info Reg/Info Combustible #1	10	5	1			
Ozone Depleting/Couche d'Ozone #1,#2, #4	258	72	22		13	11
Ozone Depleting (Products) / Couche d'Ozone (Produits)	1096	123	98	2	21	17
Ocean Dumping/Immersion en Mer	853	92	64	4	19	14
Export-Import Hazardous Waste/Déchets dangereux	707	49	28		12	8
Phosphorous Concentration Phosphore	400	6	5		1	1
Dioxins and Furans/Dioxines et Furannes	167	4	19			
Defoamer & Wood Chips/Antimousse & Copeaux de bois	127		2			
Others / Autres	6	1				
New Substances Notifications / Substances nouvelles	15	1				
Toxic Substances Export Notification/Règlement sur le préavis d'exportation de substances toxiques	9					
CEPA/LCPE - Total	15,730	732	1,350	31	88	66

Fisheries Act/Loi sur les Pêches

General Prohibition/Interdiction Generale	4025	301	97	31	48	39
Pulp & Paper/Pâtes et Papier	959	37	30		5	1
Metal Mining/Mines de Métaux	320	7	12			
Mercury Chlor-Alkali/Mercure, Usines de Chlore	19	1				
Meat & Poultry/Viande et Volaille	24	1				
Petroleum Refinery/Raffineries de Pétrole	108	1	3			
Potato Processing/Transform. Pomme de Terre	43	1				
Fisheries Act/Loi sur les Pêches - Total	5,496	349	142	31	53	40

Combined Total/ Combinés	21,248	1,081	1,492	62	141	106

ENVIRONMENT CANADA — ENVIRONNEMENT CANADA

Enforcement Activities /Activités de l'application de la loi
Canadian Environmental Protection Act (CEPA) *and Fisheries Act* (FA) /
Loi canadienne de la protection sur l'environnement (LCPE) *et la Loi sur les pêches* (LP)

Fiscal Years/Années financières 90-91 to/à 96-97

Fiscal Years / Années financières	CEPA / LCPE						FA / LP					
	Inspections	Investigations/ Enquêtes	Warnings/ Avertissements	Directions/ Directives	Prosecutions/ Poursuites	Convictions/ Trouvés coupable	Inspections	Investigations/ Enquêtes	Warnings/ Avertissements	Directions/ Directives	Prosecutions/ Poursuites	Convictions/ Trouvés coupable
90 - 91	2784	51	79	5	6	6	1059	47	17	4	7	3
91-92	1574	120	82	6	15	9	682	66	15	2	5	3
92-93	1232	93	105	4	22	17	517	77	29	2	7	5
93-94	1571	55	132	1	3	9	420	55	11	0	5	8
94-95	1362	64	127	0	8	9	585	25	27	1	6	8
95-96	963	48	87	0	15	8	548	30	18	3	8	1
96-97	714	48	31	2	5	7	778	25	8	1	5	6

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