October 15, 2018

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The Hon. Ginette C. Petitpas Taylor
Minister
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House of Commons
Ottawa, Ontario
K1A OA6

Transmission:
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Dear Ministers McKenna and Petitpas Taylor:

Re: Amending the Canadian Environmental Protection Act, 1999

The undersigned organizations attach to this letter selected amendments to the *Canadian Environmental Protection Act, 1999* (*CEPA*). We have undertaken this work because of the need for sound federal environmental law reform that addresses control of toxic substances, including carcinogens and endocrine disrupting substances, which pose serious risks to the health and well-being of present and future generations of Canadians and the natural world. We also have undertaken this work for the following additional reasons:

1. *CEPA* is long overdue for reform and further delay that could last years before a Bill is introduced is not in the public interest;

2. The proposed amendments focus on several key areas in major need of reform that were identified by the Standing Committee on Environment and Sustainable Development, including areas the Government appears to have rejected, or remains uncertain about;

3. The proposed amendments can be of assistance in the Government's on-going work in addressing matters such as the future structure of the Chemicals Management Plan (CMP) and protecting vulnerable populations; and

4. The proposed reforms are supported by diverse groups across the country.

Many of the undersigned organizations participated in the hearings on review of *CEPA* that took place throughout 2016 before the Standing Committee. We hoped for timely adoption by the Government of the 2017 recommendations made by the Standing Committee for reforming *CEPA* that resulted from that process.

Unfortunately, while the Government's June 2018 response to the Standing Committee made some positive statements about future reform of the law in certain areas, it rejected other key reform proposals. Furthermore, the timeline for bringing amendments forward

as expressed in the Government response appeared very uncertain due to statements contained in the response which suggested: (1) "the Government will work towards legislative amendments as soon as possible in future Parliamentary sessions"; (2) that reforms to the Act on toxic substances, if needed, will be shaped by the outcome of the CMP post 2020 review process, which will continue into at least 2019; and (3) reform proposals may be preceded by a further multi-stakeholder consultation process.

While we strongly support maximizing consultation opportunities, we also support timely action to address long understood but neglected problems with *CEPA*, a law that has not been significantly amended in two decades.

In this spirit, the undersigned are attaching proposed amendments to *CEPA* that we trust will expedite getting a robust Government Bill before Parliament much sooner than might otherwise have been the case on issues such as: (1) control over endocrine disrupting substances; (2) protection of vulnerable populations from toxic substances; (3) substitution of safer alternatives for toxic substances; (4) establishment of enforceable national ambient air quality standards; and (5) civil enforcement of *CEPA* by the public. Each issue noted above was raised by various witnesses appearing before the Standing Committee and supported in the Committee's 2017 report. The attached amendments simply put into statutory language principles supported by the Committee.

We trust the attached will be of assistance to the Government in moving rapidly to introduce in this session of Parliament a reformed *CEPA* meeting the environmental health needs of all Canadians.

We would be pleased to meet with you to discuss the proposed amendments if that would also be of assistance.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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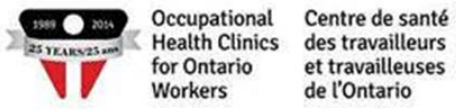

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BILL C –

C –

First Session, Forty-second Parliament,
67 Elizabeth II, 2018

HOUSE OF COMMONS OF CANADA

BILL C-

An Act to amend the Canadian Environmental Protection Act, 1999

FIRST READING, _____2018

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SUMMARY

This enactment amends certain provisions of the *Canadian Environmental Protection Act, 1999*.

The preamble is amended to recognize the right of every Canadian to a healthy environment; commit the Government of Canada to applying environmental justice principles in decisions regarding exposure of vulnerable populations to toxic substances; and recognize and commit the Government of Canada to implementing the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

Administrative duties of the Government of Canada are expanded to include application of the polluter pays, substitution, and environmental justice principles and protection of the right of every resident of Canada to a healthy environment.

New interpretive provisions are added defining such terms as acceptable risk, aggregate exposures, cumulative effects, economically feasible, environmental justice, hot spots, public trust, resident of Canada, safer alternative, significant environmental harm, substances of very high concern, substitution principle, technically feasible, vulnerable population, and weight of evidence approach.

Part 2 of the Act is amended by repealing and replacing the current provision on environmental protection actions with a new right of every resident of Canada to a healthy environment, imposing duties on the Government to protect that right, and expanding the procedures that will allow any person to vindicate that right in Federal Court. Part 2 is also amended to authorize any person, whether or not directly affected, to bring an application for judicial review of any government decision made under the Act that would otherwise be subject to judicial review under section 18.1 of the *Federal Courts Act*.

Part 3 is amended to grant any person the right to petition the Minister to add substances to the National Pollutant Release Inventory where the substances, if released to the environment, may harm a vulnerable population, or are substances of very high concern, and require the Minister to respond within a specified time.

Part 4 is amended to require a person preparing a pollution prevention plan to specify how the precautionary, substitution, polluter pays, and environmental justice principles have been incorporated into the plan, and imposes obligations on the Minister to issue a notice to a person who has prepared a plan to submit it to the Minister for review where more than five years have elapsed since the preparation of the plan.

Part 5 is amended by repealing and replacing the definitions for: (1) toxic substance, to make it more hazard-based as opposed to risk-based; and (2) virtual elimination, to make it accord with the concept of zero discharge. Part 5 is also amended to expand the information gathering authority of the Minister with respect to substances, to apply the categorization and screening level assessment regimes to endocrine disrupting substances in their own right, to clarify that where a substance is found to be toxic or capable of becoming toxic the option of taking no further action is not available to the Minister, and to expand the considerations that must be addressed in respect of preventive or control actions for substances determined to be toxic, including effects on vulnerable populations, aggregate exposures and cumulative effects, and substitution of safer alternatives. Part 5 is further amended to add re-evaluation and special review measures for substances that have been previously subjected to categorization and screening, to clarify that the burden of persuading the Ministers that health and environmental risks of a substance are acceptable rests with the manufacturer, importer, or user, as the case may be, during categorization, screening level assessment, re-evaluation, special review, or assessment of substances or activities new to Canada, and to expand public consultation opportunities with respect thereto. Part 5 is also amended to specify that where a finding that a substance is toxic or capable of becoming toxic is made following a screening assessment, re-evaluation, or special review and the substance is not added to the List of Toxic Substances, after two years any person may apply to the Federal Court to require that this be done. A proposed regulation or instrument respecting preventive or control actions in relation to the substance must be placed in the

Canada Gazette by the Minister within two years following the order of the court, and the regulation or instrument in relation to that substance must be promulgated within 18 months thereafter.

Schedule 1 toxic substances are identified as priority toxic substances for the purposes of a new Part 5.1 to the Act. The Minister, following the production of assessment reports on safer alternatives for these substances produced over a period of several years, will prepare national safer alternatives action plans for these substances. These plans will act as a model for individual substitution implementation plans and reporting prepared by industrial facilities (defined as manufacturers, importers, processers, or users of priority toxic substances). Opportunities for industrial facilities to apply for a variance from having to prepare a plan by the deadline set out in Part 5.1 also are authorized, subject to compliance with certain criteria and an opportunity for public comment on the variance request. To assist firms in meeting the requirements of the Act, the law would authorize: (1) certification of safer alternatives planners; (2) imposition of fees; (3) establishment of technical assistance programs for small businesses and employees; and (4) establishment of an Institute on Pollution Prevention and Safer Alternatives.

Part 7 is amended by adding a new Division 6.1 regarding air pollution in Canada. Division 6.1 provides authority for promulgating regulations regarding national primary and secondary ambient air quality standards for lead, sulphur dioxide, fine particulate matter, carbon monoxide, ozone, and nitrogen dioxide, and imposes obligations on the Minister to develop, adopt, and implement a national plan for ensuring that the standards for these substances are attained to protect public health and welfare. In undertaking both development of regulations and the implementation plan, the Minister is required to offer to consult provinces and members of the National Advisory Committee who are representatives of aboriginal governments, and may consult others, before proceeding. Division 6.1 also authorizes the Minister to use existing provisions of the Act to enter into administrative or equivalency agreements with provinces or with an aboriginal people, as the case may be, to achieve Division 6.1 objectives.

Part 11 is amended by adding a requirement for the Minister to table a state of the environment report every five years in each House of Parliament that also examines exposure levels to toxic substances and substances of very high concern in hot spots and assesses the health of vulnerable populations at these locations in light of environmental justice principles, with such report to be subject to review by a Parliamentary committee.

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Preamble

The preamble is amended by adding the following after the fourteenth whereas:

Whereas the Government of Canada recognizes the right of every Canadian to a healthy environment;

Whereas the Government of Canada recognizes that exposure to toxic substances can adversely affect the environment and health of people, including that of vulnerable populations and, therefore, is committed to applying environmental justice principles in its decision-making;

Whereas the Government of Canada recognizes and is committed to implementing the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;

Short Title

1. This Act may be cited as the *Canadian Environmental Protection Act, 2018.*

Administrative Duties

2. Section 2(1) is amended by repealing and replacing subparagraph (a) with the following

> (a) exercise its powers in a manner that protects the environment and human health, applies the precautionary principle, and promotes and reinforces enforceable pollution prevention approaches;

and by adding the following:

> (a.2) apply the polluter pays principle;
>
> (a.3) apply the substitution principle;
>
> (a.4) apply the environmental justice principle;
>
> (p) protect the right of every resident of Canada to a healthy environment;

Interpretation

3. Section 3(1) is amended by adding the following:

“acceptable risk” means that there is reasonable certainty that no harm to human health, future generations, vulnerable populations, or the environment will result from exposure to or the manufacture, processing, import, use, or release of a substance;

“aggregate exposures” means the sum total of all exposures by a receptor to a single substance from all exposure routes, pathways, sources, or settings;

“consumer product” has the same meaning as in the *Canada Consumer Product Safety Act*, S.C. 2010, c. 21;

“cumulative effects” means the sum total of biological effects arising from the aggregate exposures to all substances that have a common mechanism or mode of action, target tissue, or effect, to which a human or environmental receptor is exposed;

“economically feasible” means that a safer alternative does not significantly reduce the operating margin of the industrial facility, or the person who imports, manufactures, transports, processes, or distributes a substance for commercial purposes, or uses a substance in a commercial manufacturing or processing activity, as the case may be;

“endocrine disrupting substance” means a substance having the ability to disrupt the synthesis, secretion, transport, binding, action or elimination of natural hormones or their receptors in an organism, or its progeny, that affects cellular signalling, and gene expression responsible for the maintenance of homeostasis, reproduction, development, immune function, tissue health, or behaviour of the organism and, for the purposes of this Act, such a substance is deemed to be inherently toxic;

“environmental justice principle” means fair treatment and meaningful involvement of all people, including a vulnerable population, in respect of environmental and human health hazards associated with toxic substances, or substances of very high concern, in Canada;

“exposure pathways” means air, soil, water, or food;

“exposure routes” means dermal, oral, by inhalation, transplacental, or ocular;

“exposure settings” means home, community, school, childcare, workplace, or place of commerce;

“exposure sources” means industrial emissions, or consumer products;

“fair treatment” means no group of people, including a vulnerable population, shall bear a disproportionate risk of experiencing adverse environmental or human health effects from exposure to a toxic substance manufactured, processed, imported, or used in Canada;

“hot spots” means geographic locations where emissions of substances to air, discharges to water, or deposits to land, from specific sources, may expose local populations to

elevated health risks, when considered individually or cumulatively from other nearby sources;

"meaningful involvement" means:

(a) people, including a vulnerable population, shall have a full opportunity to participate in the decision-making process of the Government of Canada under this Act regarding a substance that may adversely affect human health or the environment;

(b) people, including a vulnerable population, shall be entitled to an opportunity to influence a decision of the Government of Canada on a substance and whether it is determined to be toxic and how it will be managed under this Act;

(c) the concerns of people, including a vulnerable population, shall be considered by the Government of Canada in the decision-making process regarding whether a substance is determined to be toxic and how it will be managed under this Act;

(d) the Government of Canada shall seek out and facilitate the involvement of people, including a vulnerable population, who may be potentially affected by a substance regarding whether it is determined to be toxic and how it will be managed under this Act;

"person" means a resident of Canada, any other individual, or a corporation;

"polluter pays principle" means users and producers of pollutants and wastes should bear the responsibility for remedying their actions that cause or contribute to pollution of the environment, and pay the direct and indirect costs they impose on society and reduce pollution based on either the extent of the damage done to society, or the extent to which an acceptable level or standard of pollution is exceeded;

"precautionary principle" means the principle that where there are threats of serious or irreversible damage to the environment or human health, lack of full scientific certainty shall not be used as a reason for postponing measures to protect the environment or human health;

"public trust" means the responsibility of the Government of Canada to preserve and protect the collective interest of residents of Canada in the quality of the environment for the benefit of present and future generations;

"resident of Canada" means a Canadian citizen or a permanent resident within the meaning of section 2(1) of the *Immigration and Refugee Protection Act*;

"safer alternative" means an option that includes input substitution as well as including a change in chemical, material, product, process, function, system or other action, whose adoption to replace a toxic substance, a priority toxic substance, or substance of very high

concern currently in use, or proposed for use, as the case may be, would be the most effective in comparison with another chemical, material, product, process, function, system, or other action, in reducing overall potential harm to public and workplace health, safety, or the environment;

“significant environmental harm” includes, but is not limited to, harm where the effects on the environment are long lasting, difficult to reverse or irreversible, widespread, cumulative, or serious;

“substance” means….

(h) environmental or metabolic breakdown products;

“substances of very high concern” means, in addition to those substances listed as toxic substances in Schedule 1, substances not in listed in Schedule 1 having any of the following characteristics:

(a) substances known to cause or reasonably anticipated to cause significant adverse human health or environmental effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently occurring, releases;

(b) substances known to cause or reasonably anticipated to cause in humans or wildlife:

(i) carcinogenic, mutagenic, or teratogenic effects;

(ii) reproductive dysfunctions;

(iii) neurological or developmental disorders;

(iv) heritable genetic alterations;

(v) endocrine disrupting effects; or

(vi) other chronic health effects;

(c) substances known to cause or reasonably anticipated to cause, because of:

(i) their toxicity;

(ii) their persistence in the environment; or

(iii) their tendency to bioaccumulate in the environment

a potentially significant adverse effect on human health or the environment.

“substitution principle” means toxic substances listed in Schedule 1, or other substances of very high concern, are progressively replaced by non-hazardous or less hazardous, including non-chemical, alternatives or technologies where these are technically and economically feasible;

“technically feasible” means that the technical knowledge, equipment, materials, and other resources available in the marketplace are expected to be sufficient to develop and implement a safer alternative;

“vulnerable population” means people who are:

(a) infants, children, or adolescents;

(b) women, including pregnant women;

(c) seniors;

(d) Indigenous peoples;

(e) individuals with a pre-existing medical condition;

(f) workers that work with a toxic substance; or

(g) by reason of their;

i. income;

ii. race;

iii. colour;

iv. gender;

v. national origin; or

vi. geographic location,

are subject to a disproportionate potential for exposure to, or potential for disproportionate adverse effects from exposure to, a substance, including a toxic substance, a priority toxic substance, or a substance of very high concern;

“weight of evidence approach” means a method of assessment that involves systematic assembly of all data regarding hazard, exposure, and risk from multiple sources of

information and lines of evidence, transparent weighing of the totality of evidence, and subsequent synthesis of the totality of the evidence in coming to a decision;

Part 2
Public Participation

4. Section 22 is repealed and replaced with the following:

Environmental Protection Action

Right
22.(1) Every resident of Canada has a right to a healthy environment.

Government duty
(2) In addition to the duties set out in subsection 2(1), the Government of Canada shall, within its jurisdiction and in its administration of this Act:

(a) protect the right of every resident of Canada to a healthy environment; and
(b) act as trustee of the environment for the benefit of present and future generations.

Circumstances when a resident of Canada may bring an environmental protection action
22.1(1) Any person may commence an environmental protection action in the Federal Court:

(a) against the Government of Canada for:

(i) violating the right to a healthy environment;
(ii) failing to enforce this Act;
(iii) failing to fulfill its duties as trustee of the environment; or
(iv) authorizing or failing to prevent activity that may result in significant environmental harm;

(b) against any person, organization, or government body violating or threatening to violate this Act, a regulation, or statutory instrument under this Act, or where significant environmental harm has resulted or may result.

Notice
(2) A person intending to commence an environmental protection action referred to in subsection (1), shall provide the Minister and any potential defendants with 60 days notice prior to filing the action.

When environmental protection action shall not be commenced
(3) An environmental protection action referred to in subsection (1)(b) shall not be commenced if the Government of Canada has completed or commenced enforcement proceedings against the potential defendants.

Exception
(4) Notwithstanding subsection (3), an environmental protection action may be commenced or continued where the Government of Canada has, or has exercised, the power to authorize an activity that may result in significant environmental harm.

Burden of proof
(5) In an environmental protection action brought under subsection (1), once the plaintiff has demonstrated a *prima facie* case of significant environmental harm, the onus is on the defendant to prove that the acts or omissions alleged by the plaintiff will not result in significant environmental harm.

Defence
(6) It is not a defence to an environmental protection action under subsection (1) that the activity was authorized under this Act, a regulation, or other statutory instrument under this Act, or any other act, unless the defendant proves that

(a) the significant environmental harm is or was the inevitable result of carrying out the activity permitted by the Act, regulation, or other statutory instrument; and
(b) there is no reasonable or prudent alternative that can prevent the significant environmental harm.

Standard of proof
(7) The standard of proof in respect of any affirmative defence raised pursuant to subsections (5) or (6) shall be adjudicated on a balance of probabilities.

Mediation
(8) An environmental protection action shall be referred to mediation for a period of thirty days following its commencement, extendible upon agreement of all parties.

Powers of Federal Court
(9) Notwithstanding remedial provisions in other laws, if the Federal Court finds that the plaintiff is entitled to judgment under subsection (1), the Federal Court may

(a) grant declaratory relief;
(b) grant an injunction;
(c) suspend or cancel a federal permit or other authorization issued to a defendant;
(d) order the defendant to clean up, restore, or rehabilitate any part of the environment;
(e) order a defendant to take specified preventive measures;

(f) order a defendant to pay a fine to be used for the cleanup, restoration, or rehabilitation of the environment harmed by the defendant;
(g) order a defendant to pay a fine to be used for the enhancement or protection of the environment generally;
(h) order the Minister to comply with, or to monitor compliance with, the terms of any order; and
(i) make any other order that the court considers just.

Court to retain jurisdiction
(10) In making an order under subsection (9), the Federal Court may retain jurisdiction over the matter so as to ensure compliance with its order.

Dismissal
(11) A defendant may apply to the Federal Court to have an environmental protection action dismissed if

(a) the action duplicates another legal proceeding that involves the same acts, omissions, or environmental harm;
(b) the action is frivolous, vexatious, or harassing; or
(c) the action has no reasonable prospect of success.

Interim orders
(12) Where an environmental protection action is brought under subsection (1), the plaintiff:

(a) may make a motion to the Federal Court for an interim order to protect the subject matter of the action when, in the court's opinion, significant environmental harm may occur;
(b) may be entitled to an award of advanced costs, upon application to the court if, in the opinion of the court, it is in the public interest;
(c) in bringing a motion under subsection (12)(a) or (b) shall not be denied an interim order on the grounds that the plaintiff is unable to provide an undertaking to pay costs or damages should the action eventually be dismissed;
(d) if required to provide an undertaking to pay costs or damages in support of continuing the action, shall not be required to pay more than $1,000.

Costs where unsuccessful
(13) Where an environmental protection action under subsection (1) is dismissed, an order for the plaintiff to pay costs shall only be made if the action:

(a) is found by the court to not represent a test case, or raise a novel point of law; or
(b) is found to be frivolous, vexatious, or harassing.

Judicial Review

Application for review of government decision
22.2(1) Any person, whether or not directly affected by the matter in respect of which relief is sought, may bring an application for review in the Federal Court of a government decision made under this Act that would otherwise be open to judicial review under section 18.1 of the *Federal Courts Act*.

Application to be brought under provisions of Federal Courts Act and Rules
(2) An application for judicial review commenced under this section shall be brought in accordance with the provisions of the *Federal Courts Act* and the *Federal Courts Rules*.

Part 3
Information Gathering, Objectives, Guidelines, and Codes of Practice

Interpretation

5. Section 43 is amended by deleting the definition for “hormone disrupting substance”.

Environmental Data and Research

6. Section 44(4) is amended by substituting the word “endocrine” for “hormone” where it appears in the subsection.

Information Gathering

7. Section 46(1) is amended by adding the following:

(e.1) substances that, if released to the environment, may harm a vulnerable population;

(e.2) substances of very high concern;

8. Section 46 is further amended by adding the following:

Mandatory information
(1.1) Notwithstanding subsection (1), a notice issued by the Minister under that subsection shall require information on a substance where the substance is listed in Schedule 1 of the Act, is persistent, bioaccumulative, or has endocrine disrupting effects.

Petition
(9) Any person may petition the Minister to add a substance or substances to the National Pollutant Release Inventory established under subsection (1) on the basis of the criteria established under subsection (1)(e.1) and (e.2).

Actions by Minister
(10) Within 180 days after receipt of a petition under subsection (9), the Minister shall take one of the following actions:

(a) add the substance or substances to the Inventory; or

(b) publish in the *Canada Gazette*, the Environmental Registry established under section 12, and in any other manner the Minister considers appropriate, a detailed explanation setting out the reasons why the petition is denied.

Threshold for Reporting
(10) The threshold amounts for purposes of reporting under this section a substance manufactured, processed, imported, or used at a facility are 1,000 kilograms of the substance per year.

Lower threshold at discretion of Minister
(11) The Minister may establish a threshold amount for a substance lower than the amount specified in subsection (10).

Part 4
Pollution Prevention

9. Section 56 is amended by adding the following:

Notice to specify how precautionary and other principles incorporated into plan
(2.1) Notwithstanding subsection (2)(c), the notice shall specify how the precautionary, substitution, polluter pays, and environmental justice principles have been incorporated into the plan.

10. Section 60 is amended by adding the following:

Where Minister shall issue notice
(1.1) Where five years have elapsed since a plan has been prepared under section 56 and the Minister has not issued the notice referred to in subsection (1), the Minister shall issue such notice.

Where Minister shall publish review
(1.2) Where the Minister has published a notice under subsection (1) or (1.1), the Minister shall, within one year of issuing such notice, publish in the *Canada Gazette*, and in any other manner the Minister considers appropriate, the results of the Minister's review of the adequacy of the plan.

Part 5
Controlling Toxic Substances

11. Section 64 is repealed and replaced with the following:

Interpretation

Toxic substances
64.(1) For the purposes of this Part and Part 6, except where the expression "inherently toxic" appears, a substance is toxic if it

(a) has or may have an immediate or long-term harmful effect on the environment or its biological diversity;
(b) constitutes or may constitute a danger to the environment on which life depends; or
(c) constitutes or may constitute a danger in Canada to human life or health.

Persistence or bioaccumulation not necessary for determination of toxicity
(2) A substance that is neither persistent nor bioaccumulative shall still be deemed to be toxic if it meets the requirements of subsection (1).

12. Section 65 is repealed and replaced with the following:

Definition of "virtual elimination"
65.(1) In this Part, "virtual elimination" means, in respect of a toxic substance released into the environment as a result of human activity, zero discharge.

Virtual Elimination List
65.(2) The Ministers shall compile a list known as the Virtual Elimination List.

Implementing virtual elimination
65.(3) The Ministers shall, in respect of substances on the Virtual Elimination List, employ a policy of, and develop programs that achieve, zero discharge.

13. Section 65.1 is repealed.

General

14. Section 66 is amended by removing in subsections (1), (3), and (4) the reference to December 31, 1986 and replacing it with December 31, 2018.

15. Section 68 is repealed and replaced with the following:

Research, investigation and evaluation
68. For the purpose of assessing whether a substance is toxic or is capable of becoming toxic, or for the purpose of assessing whether to control, or the manner in which to

control, a substance, including a substance specified on the List of Toxic Substances in Schedule 1, the Ministers shall

(a) collect or generate data and conduct investigations respecting any matter in relation to a substance, including, without limiting the generality of the foregoing,

(i) whether short-term exposure to the substance, or its interaction with other substances, causes significant effects,

(ii) the potential of organisms in the environment to be widely exposed to the substance,

(iii) whether organisms are exposed to the substance via multiple pathways,

(iv) the ability of the substance to cause a reduction in metabolic functions of an organism,

(v) the ability of the substance to cause delayed or latent effects over the lifetime of an organism,

(vi) the ability of the substance to cause reproductive or survival impairment of an organism,

(vii) whether exposure to the substance has the potential to contribute to population failure of a species,

(viii) the ability of the substance to cause transgenerational effects,

(ix) quantities, uses and disposal of the substance,

(x) the manner in which the substance is released into the environment,

(xi) the extent to which the substance can be dispersed, including its potential for long range transboundary transport, and will persist in the environment,

(xii) the development and use of alternatives to the substance,

(xiii) methods of controlling the presence of the substance in the environment, and

(xiv) methods of reducing the quantity of the substance used or produced or the quantities or concentration of the substance released into the environment;

(b) correlate and evaluate any data collected or generated under paragraph (a) and publish results of any investigations carried out under that paragraph; and

(c) provide information and make recommendations respecting any matter in relation to a substance, including, without limiting the generality of the foregoing, measures to control the presence of the substance in the environment.

16. Section 72 is repealed and replaced with the following:

Information Gathering

When information on a substance required to be submitted
72.(1) Notwithstanding sections 70 and 71, a person who

(a) imports, manufactures, transports, processes or distributes more than one tonne of a substance in a year for commercial purposes, or
(b) uses more than one tonne of a substance in a year in a commercial manufacturing or processing activity

shall submit to the Ministers the information set out in subsection (2) within the time specified in the notice required by section 71.

Nature of information to be submitted
(2) The information required to be submitted by a person to the Ministers pursuant to subsection (1) shall include

(a) name and address of company and name, position, and authority of person submitting the information on behalf of the company;
(b) properties of the substance;
(c) manufacture and use of the substance;
(d) environmental fate and pathways of the substance;
(e) toxicological information on the substance;
(f) guidance on safe use of the substance;
(g) summaries of all research on the substance;
(h) information set out in section 68(a)(i)-(xiv).

Toxicological tests
(2.1) Notwithstanding subsection (2)(e), the Minister shall require the person to conduct toxicological and other tests on a substance where they are lacking or not adequate to allow a determination of whether a substance is toxic or capable of becoming toxic, and to submit the results of the tests to the Minister.

Report required where more than one tonne produced per year
(3) Where a person produces more than one tonne of a substance per year, the person shall, in addition to the information required in subsection (2), submit to the Ministers a report containing information on the hazards posed by the substance and an assessment of whether the substance is persistent, bioaccumulative, toxic, or results in endocrine disrupting effects.

Where substance persistent, bioaccumulative, toxic, or results in endocrine disrupting effects
(4) Where a report produced pursuant to subsection (3) indicates that a substance is persistent, bioaccumulative, toxic, or results in endocrine disrupting effects, the person submitting the information to the Ministers shall also provide to the Ministers a further report addressing the exposure and risk associated with the substance.

Priority Substances and Other Substances

17. Section 73(1) is repealed and replaced with the following:

Categorization of endocrine disrupting substances on Domestic Substances List
73.(1) The Ministers shall, within seven years from the giving of Royal Assent to this Act, categorize substances that are on the Domestic Substances List by virtue of section 66, for the purpose of identifying the substances on the List that, in their opinion determined objectively and on the basis of available information, including information produced by international agencies, are endocrine disrupting substances.

18. Section 74 is repealed and replaced with the following:

Screening level assessment
74. The Ministers shall conduct a screening level assessment of a substance in order to determine whether the substance is a endocrine disrupting substance and shall propose one of the measures described in subsection 77(2) if

> (a) the Ministers identify a substance on the Domestic Substances List to be a substance described in subsection 73(1); or
> (b) the substance has been added to the Domestic Substances List under section 105.

19. Section 76.1 is repealed and replaced with the following:

Weight of evidence and the precautionary, substitution, and environmental justice principles
76.1 When the Ministers are conducting and interpreting the results of

> (a) a screening assessment under section 74,
> (b) a review of a decision of another jurisdiction under subsection 75(3) that, in their opinion, is based on scientific considerations and is relevant to Canada,
> (c) an assessment of whether a substance specified on the Priority Substances List is toxic or capable of becoming toxic,

the Ministers shall apply a weight of evidence approach and the precautionary, substitution, and environmental justice principles.

20. Section 77 is amended by adding the following:

Where substance is not toxic or capable of becoming toxic
(1.1) Where any of the measures identified under subsection (1) indicate that a substance is not toxic or capable of becoming toxic, the Ministers shall publish in the *Canada Gazette* a statement indicating that they propose no further action in respect of the

substance and a summary of the scientific considerations on the basis of which the conclusion is reached.

Where substance is toxic or capable of becoming toxic
(1.2) Where any of the measures identified under subsection (1) indicate that a substance is toxic or capable of becoming toxic, the Ministers shall publish in the *Canada Gazette* a statement indicating one of the measures referred to in subsection (2) that the Ministers propose to take and a summary of the scientific considerations on the basis of which the measure is proposed.

21. Section 77.(2) is amended by changing subparagraph (b) to (a), and subparagraph (c) to (b).

22. Section 77.(3) is amended by changing subparagraph (2)(c) to (2)(b).

23. Section 77. (4) is repealed and replaced with the following:

Proposal for virtual elimination
(4) When the Ministers propose to take the measures referred to in paragraph (2)(b) in respect of a substance and the Ministers are satisfied that

> (a) the substance is persistent and bioaccumulative in accordance with the regulations,
> (b) the presence of the substance in the environment results primarily from human activity, and
> (c) the substance is not a naturally occurring radionuclide,

the Ministers shall propose the implementation of virtual elimination under subsection 65(3) of the substance.

24. Section 77.(6)(c) is amended by changing subparagraph (2)(c) to (2)(b).

25. Section 77 is further amended by adding the following:

Considerations in respect of preventive or control actions where substance is toxic or capable of becoming toxic
(6.1) Where a substance is toxic or capable of becoming toxic, or a substance of very high concern, the considerations the Minister shall take into account in respect of developing preventive or control actions by regulation or instrument in relation to the substance shall include:

> (a) the effects of regulatory options on protection of vulnerable populations;
> (b) effects of regulatory options when aggregate exposures, cumulative and synergistic effects are taken into account;
> (c) pollution prevention actions;

(d) application of the substitution principle, where substitution of another substance or technology for the toxic substance appears warranted, because analysis shows there are suitable, safer alternative substances or technologies that exist for the toxic substance that are technically and economically feasible;

26. Sections 79.1-79.4 are added to the Act as follows:

Re-evaluation

Ministers' discretion to initiate re-evaluation
79.1(1) The Ministers may initiate the re-evaluation of a substance if the Ministers consider that, since the substance was subjected to categorization under section 73, or screening under section 74, new information of a material nature has come to light regarding the health or environmental risks of the substance, or a substance of the same class or kind.

Ministers required to initiate re-evaluation
(2) Without limiting the generality of subsection (1), the Ministers shall initiate a re-evaluation of a substance no later than one year after 15 years have elapsed since the substance was subjected to categorization under section 73, or screening under section 74, whichever is later.

Notice requiring information
(3) Re-evaluation of a substance is initiated by the Ministers publishing a notice in the *Canada Gazette*, and in any other manner the Ministers consider appropriate, requiring any person who

(a) imports, manufactures, transports, processes or distributes a substance for commercial purposes, or
(b) uses a substance in a commercial manufacturing or processing activity,

to provide information in the form and within the period specified in the notice.

Request for information from departments and provinces
(4) After the re-evaluation is initiated, the Ministers shall deliver a notice to federal and provincial government departments and agencies whose interests and concerns are affected by the federal regulatory system requesting them to provide, in the form and within the period specified in the notice, information in respect of the health and environmental risks of the substance that is under re-evaluation.

Provision of information if more than person
(5) Where the Ministers are satisfied that the information required under subsection (3) has been provided by more than one person, the Ministers shall, subject to and in accordance with the regulations, permit another person to use or rely on that information to meet the requirements under that subsection.

Evaluation of substance
(6) After the re-evaluation is initiated, the Ministers shall, in accordance with the regulations, if any, conduct any evaluations that the Ministers consider necessary with respect to health or environmental risks and shall carry out the consultations required by section 79.4.

Special Review

Initiation of special review by Ministers
79.2(1) The Ministers shall initiate a special review of a substance if the Ministers:

(a) have reasonable grounds to believe that the health or environmental risks of the substance are not acceptable;
(b) the use of the substance in Canada has expanded significantly since the original assessment was completed; or
(c) have received new scientific findings respecting the substance's toxicity that determined objectively are cause for concern.

Special review where OECD ban
(2) Without limiting the generality of subsection (1), and notwithstanding section 75(3), when a member country of the Organization for Economic Cooperation and Development prohibits, or substantially restricts, a substance for health or environmental reasons, the Ministers shall initiate a special review of the substance.

Special review where information from department, province, or aboriginal government
(3) Without limiting the generality of subsection (1), the Ministers shall initiate a special review of a substance if a federal or provincial government department or agency, or an aboriginal government has provided information to the Ministers that relates to the health or environmental risks of a substance and if, after considering the information provided, the Minister has reasonable grounds to believe that the health or environmental risks of the substance are unacceptable.

Request for special review
(5) Any person may request a special review of a substance by making a request to the Minister in the form and manner directed by the Minister.

Decision
(6) Not more than 180 days after receiving a request under subsection (5), the Minister shall decide whether to initiate a special review and shall respond to the request with written reasons for the decision.

Notice requesting information
(7) A special review of a substance is initiated by the Ministers publishing a notice in the *Canada Gazette*, and in any other manner the Ministers consider appropriate, requiring any person who

(a) imports, manufactures, transports, processes or distributes a substance for commercial purposes, or
(b) uses a substance in a commercial manufacturing or processing activity,

to provide information in the form and within the period specified in the notice.

Request for information from departments and provinces
(8) After the special review is initiated, the Ministers shall deliver a notice to federal and provincial government departments and agencies whose interests and concerns are affected by the federal regulatory system requesting them to provide, in the form and within the period specified in the notice, information in respect of the health and environmental risks of the substance that is under special review.

Provision of information if more than one person
(9) Where the Ministers are satisfied that the information required under subsection (7) has been provided by more than one person, the Ministers shall, subject to and in accordance with the regulations, permit another person to use or rely on that information to meet the requirements under that subsection.

Evaluation of substance
(10) After the special review is initiated, the Ministers shall, in accordance with the regulations, if any, evaluate the aspects of the substance that prompted the special review and shall carry out the consultations required by section 79.4.

Burden of Persuasion and Consideration of Information

Burden of Persuasion
79.3(1) During an evaluation that is done in the course of categorization, screening level assessment, re-evaluation, special review, or assessment of substances or activities new to Canada,

(a) the burden of persuading the Ministers that the health and environmental risks of a substance are acceptable and that there are no safer alternatives for a substance that are technically and economically feasible, rests with persons who

(i) import, manufacture, transport, process or distribute a substance for commercial purposes, or
(ii) use a substance in a commercial manufacturing or processing activity, and

(b) the Ministers shall consider information provided by such persons in support of the substance and such other information provided as a result of consultations required by section 79.4.

Scientific approach
(2) In evaluating the health and environmental risks of a substance and in determining whether those risks are acceptable, the Ministers shall

(a) apply a scientifically based approach; and
(b) in relation to health risks,

(i) among other relevant factors, consider available information on aggregate exposure to the substance, including information acquired under section 72(2) and (2.1), as well as dietary and other non-occupational sources, such as drinking water and exposure to the substance in and around homes and schools, or in consumer products, as well as cumulative effects of the substance and other substances that have a common mechanism of toxicity,

(ii) apply appropriate margins of uncertainty to take into account, among other relevant factors, the use of animal experimentation data and the different sensitivities to the substance of vulnerable populations, and

(iii) in the case of a threshold effect, if the substance is used in or around homes or schools, or is contained in consumer products, apply a margin of uncertainty that is ten times greater than the margin of uncertainty that would otherwise be applicable under subparagraph (ii) in respect of that threshold effect, to take into account potential pre- and post-natal toxicity and completeness of the data with respect to the exposure of, and toxicity to, vulnerable populations, unless, on the basis of reliable scientific data, the Ministers have determined that an even greater margin of uncertainty would be appropriate,

(iv) in the case of a non-threshold effect, the substance shall be deemed to have no level below which exposure is safe.

Public Consultation

Minister to consult
79.4(1) The Ministers shall consult the public, and federal and provincial government departments and agencies, whose interests and concerns are affected by the federal regulatory system before making a decision about a substance as a result of a categorization, screening level assessment, re-evaluation, special review, or assessment of substances or activities new to Canada.

Public notice
(2) To initiate a consultation under subsection (1), the Ministers shall make public a consultation statement and shall invite any person to send written comments on the proposed decision within the period specified in the statement.

Consultation statement
(3) The consultation statement shall include

(a) a summary of any reports of the evaluation of the health and environmental risks of the substance prepared or considered by the Ministers;
(b) the proposed decision and the reasons for it; and
(c) any other information that the Ministers consider necessary in the public interest.

Consideration of comments
(4) The Ministers shall consider any comments received pursuant to subsection (2) before making a decision.

Decision statement
(5) After making a decision, the Ministers shall make public a decision statement that shall include the decision, the reasons for it and a summary of any comments that the Ministers received on the proposed decision.

Confidential test data
(6) A consultation statement referred to in subsection (3) and a decision statement referred to in subsection (5) shall contain any confidential test data that the Ministers consider to be in the public interest.

Access to information
(7) Notwithstanding subsections (3), (6), and section 53, the Ministers shall allow the public to have access to, and copies of, any information on a substance in the possession of the Ministers or their departments that

(a) is not confidential test data or confidential business information; or

(b) is confidential test data or confidential business information, if the information evaluates health or environmental hazards or risks of a substance.

27. Section 83 is amended by adding the following:

Substances and Activities New to Canada

Weight of evidence and precautionary, substitution, and environmental justice principles
(2.1) In assessing information pursuant to subsections (1) and (2) the Ministers shall apply a weight of evidence approach and the precautionary, substitution, and environmental justice principles.

28. Section 90 is amended by adding the following:

Regulation of Toxic Substances

Where application to court to add to List of Toxic Substances
(1.2) Notwithstanding subsection (1), where the finding of a:

(a) screening assessment under section 74;
(b) re-evaluation under section 79.1; or
(c) special review under section 79.2

indicates that a substance is toxic or capable of becoming toxic, and the Governor in Council has not made an order under subsection (1) two years after the date of the finding, any person may apply to the Federal Court for an order adding the substance to the List of Toxic Substances in Schedule 1.

29. Section 91 is amended by adding the following:

Publication of proposed regulation or instrument where substance added to List of Toxic Substances by court
(1.1) Where a substance has been added to the List of Toxic Substances in Schedule 1 as a result of an order of the Federal Court pursuant to section 90(1.2), a proposed regulation or instrument respecting preventive or control actions in relation to the substance shall be published by the Minister in the *Canada Gazette* within two years after the date of the order.

30. Section 92.(1) is amended by adding a reference to subsection (1.1) between the reference to subsections (1) and (6) of section 91.

31. Section 93.(1) is amended by adding the following:

(b.1) protection of a vulnerable population from substances specified on the List of Toxic Substances in Schedule 1;

32. Part 5.1, consisting of sections 103.1-103.10, is added to the Act as follows:

Part 5.1
Safer Alternatives to Priority Toxic Substances

Definition
103.1 The definitions in this section apply in this Part.

"industrial facility" means
(a) a place where a priority toxic substance is manufactured, imported, processed, or used; or

(b) a place where a product is manufactured, imported, sold, or offered for sale and the product, including a consumer product, contains a priority toxic substance;

"priority toxic substance" means a substance identified pursuant to section 103.2;

Identification of Priority Toxic Substances
103.2 (1) Not more than one year following the coming into force of this Part, and at two year intervals thereafter the Minister, utilizing the assistance of any advisory committees the Minister considers appropriate, shall identify and publish a list pursuant to subsections (4) and (5) of not less than fifteen, and not more than twenty, priority toxic substances contained in the List of Toxic Substances in Schedule 1.

Same
(2) The first list to be so published shall be known as List 1, with the second and subsequent lists to be numbered sequentially thereafter, with each such subsequent list to contain, subject to subsection (6), not more than ten such substances at a time.

Criteria for identification
(3) The criteria for identification of priority toxic substances under subsection (1) shall include, but not be limited to, whether the substances are recognized by the International Agency for Research on Cancer, the National Toxicology Program of the United States Department of Health and Human Services, the European Chemicals Agency, or the National Research Council of Canada, as:

(a) carcinogens, mutagens, reproductive or developmental toxins;
(b) persistent or bioaccumulative;
(c) endocrine disruptors; or
(d) possessing other characteristics of equivalent concern including but not limited to,

(i) inherent toxicity;
(ii) level of use in Canadian industry or in products sold in Canada;
(iii) level of exposure to a vulnerable population; or
(iv) such other characteristics as set out by regulation.

Consultation on priority toxic substances
(4) The Minister shall ensure that notice of the first and subsequent lists referred to in subsection (1) is published in the Environmental Registry and shall seek comment from the public regarding prioritization of assessment of substances on, that should be added to, or that should be deleted from, the lists.

Final version of list to be published in Environmental Registry
(5) Following the consultation referred to in subsection (4), the Minister shall publish in the Environmental Registry the final version of the first and subsequent lists containing the order in which priority toxic substances on the lists shall be the subject of safer alternative assessment reports under section 103.3.

Ministerial authority to add to list
(6) Notwithstanding subsection (1), the Minister may at any time add a substance to the first or subsequent lists if it meets one or more of the criteria set out in subsection (3), in which case subsections (4) and (5) shall apply and each such list may contain more than ten priority toxic substances at any one time.

Safer Alternatives Assessment Reports
103.3(1) Within 180 days after the publication of a list referred to in subsection (5) of section 103.2, and annually thereafter, the Minister shall select priority toxic substances from the list in the order in which they appear on the list and conduct and publish, utilizing the assistance of any advisory committees the Minister considers appropriate, a safer alternatives assessment report that evaluates the availability of safer alternatives to these substances.

Content of report
(2) The content of a safer alternatives assessment report shall include:

(a) uses and functions of the priority toxic substance;
(b) uses that result in the greatest volume of dispersion of, or highest exposure to, the priority toxic substance in the indoor, workplace, and natural environment;
(c) consideration of the potential impacts to human health and the environment, including a vulnerable population, of the continued use of a priority toxic substance;
(d) whether any of the existing uses of the priority toxic substance are unnecessary;
(e) public policy implications of a reduction in the use of the priority toxic substance where its current use is necessary;
(f) whether alternatives, including non-chemical alternatives, are available for the uses and functions of the priority toxic substance;
(g) whether the alternatives identified in subsection (f) are unacceptable, require further study, or are safer than the priority toxic substance;
(h) a qualitative discussion of the economic feasibility, opportunities, or costs associated with adopting and implementing any safer alternatives to the priority toxic substance including a qualitative characterization of,

(i) the economic impacts of adopting and implementing a safer alternative on the economy of Canada;
(ii) any impacts on the workforce or quality of work life;
(iii) potential costs or benefits to existing business;
(iv) potential impacts on the cost of providing health care if a product containing the priority toxic substance is a medical product; and
(v) the extent of human exposure to the priority toxic substance that could be eliminated and health care costs saved by adopting and implementing a safer alternative;

(i) recommendations on a course of action that should be employed with respect to the priority toxic substance including, but not limited to, whether all uses of the priority toxic substance should be prohibited; and
(j) such further or other matters as set out by regulation.

Consultation on report
(3) The Minister shall ensure that notice of a draft of a safer alternative assessment report referred to in subsection (1) is published on the Environmental Registry and shall seek comment from the public on the contents of the draft report before the report is finalized.

Final version of report to be published on Environmental Registry
(4) Following the consultation referred to in subsection (3), the Minister shall publish on the Environmental Registry the final version of a safer assessment report.

Timing for completion of reports
(5) Not more than two years after the publication of a list pursuant to section 103.2 shall elapse before all priority toxic substances on a list shall have an assessment report drafted and finalized.

National Priority Toxic Substance Alternatives Action Plans
103.4(1) Not more than one year after the publication of a safer alternative assessment report for a priority toxic substance pursuant to section 103.3, the Minister shall utilize the report to establish a national safer alternatives action plan for that substance.

Goal of plans
(2) The goal of a national priority toxic substance alternatives action plan shall be to coordinate the activities of the government of Canada and to require manufacturers, importers, processers, and users of priority toxic substances to

(a) act as expeditiously as possible to ensure substitution of a priority toxic substance with a safer alternative while

(i) minimizing job loss; and
(ii) mitigating any other potential unintended negative impacts; and

(b) achieve such other goals as may be specified by regulation.

Content of plans
(3) Each national priority toxic substance alternatives action plan shall contain:

(a) timetables, schedules, and deadlines for achieving substitution of a priority toxic substance with safer alternatives for specified uses;

(b) requirements for all industrial facilities that manufacture, import, process, or otherwise use a priority toxic substance to create substitution implementation plans that demonstrate how such facilities will substitute all specified uses of

the substance with a safer alternative, including with respect to consumer products containing the priority toxic substance;

(c) where the safer alternatives assessment report indicated that safer alternatives are feasible, and that all uses of the substance should be prohibited, a requirement that the Minister promulgate regulations requiring the substitution of a priority toxic substance with a safer alternative;

(d) where the Minister determines that implementation of the national priority toxic substance alternatives action plan for the substitution of a substance, or specified uses of a substance, will take longer than five years, a requirement for plain language labeling of products containing the substance identifying that the substance is present in the product, and the impact of the substance on human health and the environment, including vulnerable populations;

(e) where the safer alternatives assessment report finds that safer alternatives are feasible, but require extensive capital expenditure or training, the Minister shall implement technical assistance programs for small businesses and employees pursuant to this Act;

(f) where the safer alternatives assessment report finds that safer alternatives are not feasible, the national priority toxic substance alternatives action plan shall designate research and development activities to be undertaken by the Minister, including review of actions taken by other jurisdictions that have identified or adopted safer alternatives, with a view to examining the future feasibility of finding safer alternatives for the substance and report progress in achieving this goal every two years; and

(g) such other measures as established by regulation.

Consultation on plan
(4) The Minister shall ensure that notice of a draft of a national priority toxic substance alternatives action plan referred to in subsection (1) is published in the Environmental Registry and shall seek comment from the public on the contents of the draft plan before the plan is finalized.

Final version of plan to be published on Environmental Registry
(5) Following the consultation referred to in subsection (4), the Minister shall publish on the Environmental Registry the final version of a national priority toxic substance alternatives action plan for a substance.

Timing for completion of plans
(6) Not more than three years shall elapse after the publication of a list under section 103.2, before all priority substances on any such list shall have a plan drafted and finalized.

Action by federal sources
(7) Following the publication in the Environmental Registry of the plan referred to in subsection (5), all federal sources shall take any required implementing actions as set out in the plan and this Act.

Industrial Facility Substitution Implementation Plan
103.5(1) Where a final version of a national priority toxic substances alternatives action plan has been published in the Environmental Registry pursuant to subsection 103.4 (5), an owner and operator of an industrial facility that manufactures, imports, processes, or otherwise uses the priority toxic substance identified therein shall, within one year of the Environmental Registry publication, develop and complete a substitution implementation plan that implements the national priority toxic substances alternative action plan for the applicable substance at that facility.

Content of plan
(2) The content of a substitution implementation plan referred to in subsection (1) shall include:

(a) identification of all uses of a priority toxic substance by the industrial facility;

(b) identification of all alternatives considered, including cost and feasibility considerations;

(c) selection of preferred alternatives that will achieve the objectives, timetables, schedules, deadlines, and any prohibitions set out in the applicable national priority toxic substances alternatives action plan, including with respect to consumer products containing the priority toxic substance;

(d) a declaration signed by the highest ranking representative with direct operating responsibility at the industrial facility and with authority to bind the owner certifying that:

(i) he or she has read and is familiar with the substitution implementation plan;

(ii) the plan is true, accurate, and complete to the best of his or her knowledge; and

(iii) it is the corporate policy of that industrial facility to achieve the objectives, timetables, schedules, and deadlines of the plan;

(e) a certification signed by a safer alternatives planner that the plan meets the requirements of this Act, is complete and reasonable in every respect, and is capable of meeting the objectives, timetables, schedules, and deadlines of the applicable national alternatives plan for the priority toxic substance, including with respect to consumer products containing the priority toxic substance; and

(f) such other content as established by regulation.

Same
(2.1) Two or more industrial facilities may collaborate on the preparation of a plan referred to in subsection (1) so long as the other requirements of section 103.5 are met.

Variance application
(3) Notwithstanding subsection (1), the owner and operator of an industrial facility may file an application for a variance of the deadline set out in subsection (1), declaring and certifying that there is no safer alternative that is technically or economically feasible for the facility's particular use of the substance.

Burden of persuasion
(3.1) For the purposes of subsection (3), the burden of persuasion rests with the industrial facility that there is no safer alternative that is technically or economically feasible for the facility's particular use of the substance.

Content of variance application
(4) The content of the variance application referred to in subsection (3) shall include:

(a) identification of all uses by the industrial facility of the priority toxic substance;

(b) identification of all alternatives considered and their cost and feasibility considerations;

(c) the basis for the certification that there is no feasible safer alternative;

(d) documentation of efforts to be taken by the industrial facility to minimize use of the priority toxic substance and human and environmental exposures, including that of vulnerable populations, to the substance until safer alternatives are found and implemented;

(e) steps the industrial facility will take to identify safer alternatives in the one year period subsequent to the date of the variance application;

(f) a declaration signed by the highest ranking representative with direct operating responsibility at the industrial facility and with authority to bind the owner certifying that:

(i) he or she has read and is familiar with the variance application and supporting materials; and

(ii) the variance application is true, accurate, and complete to the best of his or her knowledge;

(g) a certification signed by a safer alternatives planner that the variance application meets the requirements of this Act, and is complete and reasonable in every respect; and

(h) such other content as established by regulation.

Public access to information in variance application
(5) All information submitted to the Minister as part of a variance application shall be accessible to any member of the public unless the owner and operator of the industrial facility submitting the material

(a) claims that some of the material consists of trade secrets or is confidential business information;

(b) seeks protection from the Minister from its disclosure; and

(c) provides justification for this request;

in the variance application.

Minister to decide claims of confidentiality
(6) After considering the claims, disclosure protection request, and justification with respect thereto under subsection (5), the Minister shall determine which portions of the variance application are non-confidential for the purposes of subsection (7).

Non-confidential portions of variance application on Environmental Registry
(7) Where the owner and operator of an industrial facility files a variance application pursuant to subsection (3), and following the Minister's consideration of any claims of confidentiality under subsection (5), the Minister shall forthwith place the non-confidential portions of the application on the Environmental Registry, as determined under subsection (6), and invite public comment on the variance application at least 45 days prior to making a decision on the variance application under subsection (8).

Consideration and decision by Minister of variance application
(8) The Minister, following review of the variance application referred to in subsections (3), shall accept or reject such application within 60 days of receipt of the application after applying the criteria set out in subsection (9).

Criteria
(9) The criteria to be considered by the Minister before granting or rejecting a variance application shall include whether:

(a) there is a need for the use of the substance;

(b) the substance is necessary to meet a required performance standard or specification;

(c) there is no safer alternative;

(d) use of the product containing the priority toxic substance would cause human exposure or environmental contamination, including to a vulnerable population; and

(e) such other criteria as established by regulation.

Duration of variance
(10) A variance granted under this section shall expire three years after its issuance unless, pursuant to subsection (10.1), a new application for variance has been granted by the Minister before the expiry date.

Renewal of variance
(10.1) A variance issued pursuant to subsection (10) may be renewed once for up to three additional years by the Minister upon application and subject to the criteria set out in subsection (9) and any additional criteria specified by regulation.

Notice of objection to variance decision
(11) Any person may file a notice of objection within 30 days of the Minister granting, renewing, or refusing to grant or renew a variance application.

When judicial review available
(11.1) Where the Minister fails to make a decision on whether to establish a board of review to hear the notice of objection referred to in subsection (11) within 180 days of the date of the notice, such failure shall be deemed to be a decision, and any person may apply to the Federal Court for review of the decision.

Employee consultation
(12) An owner and operator of an industrial facility evaluating the substitution of safer alternatives shall consult with facility employees prior to filing the plan referred to in subsection (1) or a variance referred to in subsection (3). Such consultation shall include:

(a) a minimum thirty day period for the provision of comments;

(b) maintenance of documentation of employees input and how it was utilized;

(c) opportunity for anonymous employee comments;

(d) analysis of the impact substitution may have on all aspects of the quality of working conditions and work life;

(e) such other matters as established by regulation.

Substitution implementation plan and pollution prevention plan
(13) An owner and operator of an industrial facility required to prepare a substitution implementation plan shall include the plan in the pollution prevention plan for the industrial facility, if any.

Conflict between substitution implementation plan and pollution prevention plan
(14) Where there is a conflict between a substitution implementation plan and a pollution prevention plan, the requirements of the plan that are more protective of human health and the environment, including a vulnerable population, shall prevail.

Plan to be provided to Minister on request
(15) The owner and operator of an industrial facility who are required under section 103.5 to ensure that a substitution implementation plan is prepared and implemented shall, if a copy is requested by the Minister, ensure that the copy is given to the Minister in accordance with the regulations.

Plan summary to be placed on Environmental Registry
(16) The owner and operator of an industrial facility referred to in subsection (1) shall provide to the Minister a summary of the plan referred to in subsection (11) for placement on the Environmental Registry in accordance with the regulations.

Update of plan
(17) Every two years after the development of the substitution implementation plan referred to in subsection (1), the owner and operator of the industrial facility shall update the plan showing progress made in substituting a safer alternative for the priority toxic substance and shall, if a copy is requested by the Minister, ensure that the copy is given to the Minister in accordance with the regulations.

Update of plan summary to be placed on Environmental Registry
(18) Every two years an update of the plan summary referred to in subsection (16) shall be provided to the Minister by the owner and operator of the industrial facility referred to in subsection (1) for placement on the Environmental Registry in accordance with the regulations.

Offence
(19) The owner and operator of an industrial facility referred to in subsection (1) that fails to give a copy of the substitution implementation plan to the Minister, provide a plan summary to the Minister, file a true, accurate, and complete declaration required by this Part, or make substantial progress in substituting a safer alternative for the priority toxic substance, is guilty of an offence.

Safer Alternatives Planners
103.6 (1) Where an individual wishes to be certified as a safer alternatives planner under this Act, the individual shall:

(a) satisfactorily complete a safer alternatives planning program developed by the Minister pursuant to the requirements of this Act and the regulations;

(b) pass a uniform certification examination which the Minister shall develop by the date established by regulation; or

(c) have at least two years of work experience in safer alternatives planning activities as approved by the Minister; and

(d) meet such further requirements as established by regulation.

Restriction where certification based only on work experience
(2) Where an individual satisfies the requirement of at least two years of work experience as set out in subsection (1)(c), but has not satisfactorily completed a safer alternatives planning program and passed the uniform certification examination as set out in subsection (1)(a) and (b), the individual shall only be certified to engage in safer alternatives planning activities in industrial facilities owned or operated by his or her employer.

Duration of certification
(3) The duration of the certification authorized under subsection (1) shall not exceed a period greater than two years after its issuance unless renewed before its expiry pursuant to subsection (4).

Renewal of certification
(4) An individual may renew a certification issued pursuant to subsection (1) for an additional two years and thereafter under this subsection at two year intervals before its expiry if he or she successfully completes a course of continuing education instruction in safer alternatives planning activities offered by the Minister.

Fees for certification or renewal
(5) The Minister shall establish by regulation a fee to be assessed any individual when such individual obtains his or her certificate as a safer alternatives planner for the first time under subsection (1) or upon renewal pursuant to subsection (4). Such fees shall be deposited in the Safer Alternatives Fund established under this Act.

Suspension or revocation of certification
(6) The Minister may suspend or revoke the certification of an individual upon:

(a) a finding of fraud, gross negligence in the certification of substitution implementation plans, or for other good cause; or

(b) a failure by the individual to re-apply for certification by the expiry date applicable to the individual’s existing certification; or

(c) a failure by the individual to pay the requisite fee established pursuant to subsection (5).

Reinstatement of certification
(7) The Minister may re-instate an individual's certification that has been suspended or revoked under subsection (5)(b) or (c) upon the filing by the individual of an application and the payment of the appropriate fee.

Agreement on certification equivalent provisions
(8) Where the Minister and a government agree in writing that there are in force by or under the laws applicable to the jurisdiction of the government

(a) provisions that are equivalent to a regulation made under a provision referred to in subsection (1) and (5), and

(b) provisions that are equivalent to subsections (2), (3), (4), (6), and (7),

the Governor in Council may, on the recommendation of the Minister, make an order declaring that the provisions of section 103.6 may be met by compliance with the provisions of the law in force in the jurisdiction of the government.

Safer Alternatives Fund
103.7 (1) Upon the coming into force of this Part, the Minister shall,

(a) establish a fund to be known as the Safer Alternatives Fund; and

(b) appoint an administrator who shall be responsible to the Minister for meeting the purpose of the Fund.

Fund purpose
(2) The purpose of the Fund is to provide monies, which shall be dedicated and used solely, to enable the Minister to implement the provisions of this Part.

Fund sources
(3) The Fund shall have credited and transferred to it on an annual basis monies from the following sources:

(a) all fees imposed on industrial facilities pursuant to section 103.8;

(b) all fees imposed on individuals pursuant to section 103.6;

(c) all penalties collected for violations of this Act;

(d) any grant, gift, or other contribution explicitly made to the Fund;

(e) any interest earned on monies in the Fund; and

(f) any other monies that may be available, or appropriated, to the Minister from consolidated revenue for the implementation of this Act.

Industrial facility fee

103.8 (1) Upon the coming into force of this Part, the Minister shall have established by regulation a schedule of initial and annual fees to be paid by an industrial facility to the Minister for the purposes of enabling the Minister to implement the provisions of this Part.

Criteria for establishing fee

(2) The criteria for establishing the schedule of fees referred to in subsection (1) shall include:

(a) the number of employees at an industrial facility;

(b) whether a chemical that appears on the List of Toxic Substances in Schedule 1, is manufactured, imported, processed, or otherwise used at such facility;

(c) the annual quantity of each such chemical referred to in subsection (b) that is manufactured, imported, processed, or otherwise used at such facility;

(d) the characteristics of each such chemical as set out in subsection (3) of section 103.2; and

(e) such other criteria as established by regulation.

Ministerial survey notice for obtaining information from industrial facility

(3) For the purposes of obtaining information from an industrial facility with respect to matters addressed in subsection (2), the Minister shall be authorized to publish a survey notice pursuant to sections 46 and 71, requiring regulated persons and other industrial facilities to provide information requested in the survey notice by the date specified in the notice.

Declaration

(4) The owner of, or the highest ranking representative with direct operating responsibility at, an industrial facility and with authority to bind the owner shall, at the time of filing the response to the survey notice, file a declaration certifying that:

(a) he or she has read and is familiar with the information provided in response to the survey notice; and

(b) the information provided is true, accurate, and complete to the best of his or her knowledge.

Report under Canadian Environmental Protection Act
(5) Information filed by an industrial facility required to file an annual report pursuant to the National Pollutant Release Inventory under sections 46 or 71 of this Act, shall also be used to the extent necessary by the Minister for the purposes of compliance with this Part.

Consequences of failure to pay fee, respond to survey notice, file declaration, or provide report
(6) An industrial facility that fails to pay the fee, respond to the survey notice, file a true, accurate, and complete declaration, or provide a report required by this Part is guilty of an offence.

Technical Assistance Programs for Small Businesses
103.9 (1) The Minister shall, in consultation with federal sources, other governments, colleges and universities, and private consortia, facilitate transition to safer alternatives measures by establishing a technical assistance program to small businesses.

Program content
(2) The technical assistance program for small businesses shall include:

(a) programs to evaluate technologies, encourage university research and industrial collaboration, attract funding, and additional support through federal and private sector grant and financial assistance;

(b) direct grants and loans to small businesses for costs required to implement and safer alternatives;

(c) technical support for individual companies or sectors;

(d) technical assistance in assessing safer alternatives and assistance in forming groups to assess and develop safer alternatives;

(e) research and development of safer alternatives, including demonstration projects;

(f) market development programs to create demand for safer alternatives;

(g) conferences, seminars, and workshops focused on solving problems and evaluating technology development opportunities for particular sectors;

(h) publications to assist particular sectors develop and implement safer alternatives; and

(i) such other measures as established by regulation.

Technical Assistance Programs for Employees

103.10 (1) The Minister shall, in consultation with federal sources, other governments, and colleges and universities, cooperate in facilitating employee transition to safer alternatives measures by establishing a technical assistance program for employees.

Program content

(2) The Minister in cooperation with federal sources, other governments, and colleges and universities, shall develop a plan to ensure just and fair transition to re-employment assistance, vocational re-training, or other support or arrangements such that any employee displaced as a result of the implementation of safer alternatives measures will be:

(a) eligible for an available job with at least equivalent wages, benefits, and working conditions;

(b) eligible for vocational re-training and job placement;

(c) entitled to receive re-employment assistance and health benefits; and

entitled to receive any additional benefits pursuant to the provisions of a collective bargaining agreement.

Institute on Pollution Prevention and Safer Alternatives

103.11.(1) The Ministers shall establish a body known as the Canadian Pollution Prevention and Safer Alternatives Institute, which may be affiliated as part of one or more universities or colleges in Canada.

Purposes of Institute

(2) The purposes of the Institute shall include:

(a) providing general information about, and publicizing advantages of and developments in, pollution prevention and safer alternatives;

(b) establishing courses, seminars, conferences, and other events, reports, updates, guides, publications, and other means of providing technical information for industrial facilities, and may as appropriate work in cooperation with the Ministers, other departments, other levels of government, or aboriginal governments, regarding promotion of pollution prevention and safer alternatives;

(c) developing and providing curriculum and training for higher education students and faculty on pollution prevention and safer alternatives;

(d) engaging in research, development, and demonstration of pollution prevention and safer alternatives methods including, but not limited to, assessments of the impact of adopting such methods on the

environment, public and workplace health, the economy and employment within affected industrial facilities;

(e) establishing, in cooperation with the Ministers, centralized environmental contaminant and exposure data for systematic review in support of development of pollution prevention and safer alternatives methods;

(f) developing by a date to be determined by regulation and in conjunction with the Ministers, and any other departments identified by regulation, a pollution prevention and safer alternatives planning program for individuals who wish to be certified as safer alternatives planners by the Institute, such program to include training safer alternatives planners to be qualified to:

(i) assist industrial facilities in the development and implementation of current pollution planning and safer alternatives techniques; and

(ii) prepare, review, and approve industrial facility substitution implementation plans required under sections 103.5 of this Act;

(g) sponsoring research or pilot projects to develop and demonstrate innovative technologies for pollution prevention and safer alternatives;

(h) assisting in the training of inspectors and others, if so requested by the Ministers;

(i) providing pollution prevention training and assistance to individuals, community groups, workers, and municipal government representatives so as to allow them to understand and review reporting requirements, pollution prevention and other plans, or other information under this Act;

(j) conducting studies on potential restrictions on the use of toxic substances in Canada including, but not limited to:

(i) existing national and international experiences with restrictions;

(ii) social, environmental, and economic costs and benefits of adopting restrictions;

(iii) specific toxic substances that should be considered for restrictions in Canada and how such restrictions could be implemented.

Part 7
Controlling Pollution and Managing Wastes

33. Division 6.1, consisting of sections 174.1- 174.3, is added to the Act as follows:

Division 6.1
Air Pollution in Canada

National Primary and Secondary Ambient Air Quality Standards

Proposal of regulations prescribing standards
174.1(1) The Minister, within one year after the coming into force of this division, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each of the following air pollutants:

(a) lead;
(b) sulphur dioxide;
(c) fine particulate matter;
(d) carbon monoxide;
(e) ozone;
(f) nitrogen dioxide.

Promulgation of regulations prescribing standards
(2) The Minister, after a reasonable time for interested persons to submit written comments thereon but no later than 90 days after the initial publication of such proposed standards, shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as the Minister deems appropriate.

Consultation
(2.1) In carrying out the duties under subsections (1) and (2), the Minister shall offer to consult with the government of a province and the members of the Committee who are representatives of aboriginal governments and may consult with a government department or agency, aboriginal people, representatives of industry and labour and municipal authorities or with persons interested in the quality of the environment.

Minister shall act
(2.2) At any time after the 60th day following the day on which the Minister offers to consult in accordance with subsection (2.1), the Minister shall act under subsections (1) and (2) if the offer to consult is not accepted by the government of a province or members of the Committee who are representatives of aboriginal governments.

Publication
(2.3) The Minister shall publish the regulations issued under the authority of this section in the *Canada Gazette* and in any other manner that the Minister considers appropriate.

Default adoption of standards
(3) Where the Minister does not meet for any air pollutant listed in subsection (1) the deadline established in subsection (2), the Minister shall adopt as national primary and national secondary ambient air quality standards, the standards promulgated by the United States under 40 C.F.R. Part 50 pursuant to 42 U.S. Code, §7409 of the *Clean Air Act Amendments of 1990*.

Procedure for subsequent air pollutants
(4) For any air pollutant for which air quality criteria are issued after the period described in subsection (1), the Minister shall publish, simultaneously with the issuance of such criteria and other information, proposed national primary and secondary ambient air quality standards for any such air pollutant. The procedure provided for in subsection (2) shall apply to the promulgation and revision of such standards.

National primary ambient air quality standards to protect public health
174.2(1) National primary ambient air quality standards, prescribed under section 174.1, shall be ambient air quality standards the attainment of which in the judgment of the Minister determined objectively, based on systematic scientific review of such criteria and allowing an adequate margin of uncertainty, are required to protect the public health.

National secondary ambient air quality standards to protect public welfare
(2) National secondary ambient air quality standards prescribed under section 174.1, shall specify a level of air quality the attainment and maintenance of which in the judgment of the Minister determined objectively, based on such criteria, is required to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

Implementation Plan for National Primary and Secondary Ambient Air Quality Standards

Development and adoption of implementation plan
174.3(1) The Minister shall, after reasonable notice and opportunity for public comment, develop and adopt within 3 years after the promulgation of a national primary and national secondary ambient air quality standard, or any revision thereof, for any air pollutant under section 174.1, a plan that provides for implementation, maintenance, and enforcement of such primary and secondary standard.

Contents of plan
(2) The plan referred to in subsection (1) shall:

(a) include enforceable emission limitations and other control measures, means, or techniques, including economic incentives such as marketable permits and auctions of emissions rights, as well as schedules and timetables for compliance, as may be necessary or appropriate to ensure attainment and maintenance of the primary and secondary standard;
(b) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, analyze, and make publicly available, data on ambient air quality;
(c) include a program to provide for the enforcement of the measures described in subparagraph (a), and regulation of the modification and construction of any stationary source covered by the plan as necessary to ensure that national ambient air quality standards are achieved;
(d) contain adequate provisions prohibiting any source or other type of emissions activity from emitting any air pollutant in amounts that will:
(i) contribute significantly to nonattainment of a national primary or secondary ambient air quality standard; or
(ii) interfere with measures in the plan required to prevent significant deterioration of air quality or to protect visibility;
(e) provide assurance that adequate personnel and funding are available to carry out the plan;
(f) require:
(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; and
(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources;
(g) provide for plan revision:
(i) from time to time as may be necessary to take account of revisions of a national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and
(ii) whenever the Minister finds on the basis of information available to the Minister that the plan is substantially inadequate to attain the national ambient air quality standard that it implements;
(h) at a minimum, meet the requirements for public consultation set out in section 79.4;
(i) contain such other measures as the Minister deems necessary to achieve attainment of national primary and secondary ambient air quality standards for the air pollutants identified in section 174.1(1).

Consultation
(2.1) In carrying out the duties under subsections (1) and (2), the Minister shall offer to consult with the government of a province and the members of the Committee who are representatives of aboriginal governments and may consult with a government department or agency, aboriginal people, representatives of industry and labour and municipal authorities or with persons interested in the quality of the environment.

Minister may act
(2.2) At any time after the 60th day following the day on which the Minister offers to consult in accordance with subsection (2.1), the Minister shall act under subsections (1) and (2) if the offer to consult is not accepted by the government of a province or members of the Committee who are representatives of aboriginal governments.

Publication
(2.3) The Minister shall publish the plan issued under the authority of this section, or give notice of the plan, in the *Canada Gazette* and in any other manner that the Minister considers appropriate.

Administration and Equivalency Agreements
(3) The Minister may enter into agreements pursuant to sections 9 and 10 to effectuate the purposes of the plan.

Part 11
MISCELLANEOUS MATTERS

Report to Parliament

34. Section 342 is amended to add the following:

State of the environment report
(3) The Minister shall, as soon as possible after the end of every fifth fiscal year, prepare and cause to be laid before each House of Parliament a report on the state of the environment, with such report to include an examination of the level of exposure to toxic substances, or substances of very high concern, in hot spots and an assessment of the health of vulnerable populations at those locations in light of environmental justice principles.

Parliamentary review of report
(4) The report referred to in subsection (3) shall be referred to such committee of the House of Commons, of the Senate, or of both Houses of Parliament as may be designated or established for that purpose and the committee so designated or established shall, as soon as practicable, undertake a comprehensive review of the report and submit its own report to Parliament thereon setting out a plan of action the committee would recommend.