



**COMPLIANCE AND ENFORCEMENT POLICY FOR THE
*CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 (CEPA, 1999)***

MARCH 2001

Table of Contents

| | |
|---|-----------|
| Introduction | 3 |
| What are Compliance and Enforcement | 4 |
| Guiding Principles | 5 |
| Key Elements of the <i>Canadian Environmental Protection Act, 1999</i> | 6 |
| Key Elements | 6 |
| Relationship between the Minister of Environment and the Minister of Health | 7 |
| Relationship with other government under CEPA, 1999 | 8 |
| Authorities Responsible for the Implementation of the <i>Canadian Environmental Protection Act, 1999</i> | 10 |
| Minister of Environment | 10 |
| Minister of Health | 10 |
| Enforcement Officers | 10 |
| Analysts | 11 |
| Review officers | 11 |
| Attorney General and Officials of the Department of the Attorney General | 12 |
| Courts | 12 |
| Measures to Promote Compliance | 13 |
| Education and Information | 13 |
| Technical Information | 14 |
| Consultation on Regulation Development and Review | 15 |
| Environmental Codes of Practice and Guidelines | 16 |
| Promotion of Environmental Audits | 17 |
| Inspection and Investigation | 18 |
| Inspection | 18 |
| Inspection Program | 19 |
| Investigation | 19 |
| Responses to Alleged Violations | 21 |
| Criteria for Responses to Alleged Violations..... | 21 |
| Responses to Alleged Violations..... | 21 |
| Warnings | 22 |
| Directions in the Event of Releases..... | 23 |
| Tickets | 24 |
| Ministerial Orders | 25 |
| Detention Orders for Ships..... | 27 |
| Environmental Protection Compliance Orders | 27 |
| Injunctions | 28 |
| Prosecution | 29 |
| Environmental Protection Alternative Measures | 30 |
| Penalties and Court Orders Upon Conviction | 32 |
| Use of Court Orders Upon Conviction..... | 33 |
| Civil Suit by the Crown to Recover Costs | 35 |
| For More Information | 37 |

Introduction

Canadians expect their government to provide laws and regulations, in order to protect them and their society. However, it is not enough to adopt laws; legislation must be effectively enforced.

In the *Canadian Environmental Protection Act, 1999* (CEPA, 1999), Parliament has made it matter of law that enforcement of the Act must be fair, predictable and consistent.

In keeping with the duty to enforce imposed in the Act, this Compliance and Enforcement Policy establishes the principles for enforcement of CEPA, 1999 and tells everyone who shares a responsibility for protection of the environment — governments, industry, organized labour and individuals — what is expected of them. It also lets everyone know what to expect from Environment Canada and the officers who enforce the *Canadian Environmental Protection Act, 1999* and its regulations. The policy has been developed in co-operation with the Department of Justice.

This document is intended to provide guidance only. It is not a substitute for the *Canadian Environmental Protection Act, 1999*. In the event of an inconsistency between this document and the Act, the statute prevails.

What are Compliance and Enforcement?

The terms “compliance” and “enforcement” are used many times throughout the Compliance and Enforcement Policy for the Act. It is therefore useful to make their meanings clear.

Compliance means the state of conformity with the law. Environment Canada will secure compliance with the *Canadian Environmental Protection Act, 1999* through two types of activity: promotion and enforcement.

Measures to promote compliance include communication and publication of information, consultation with parties affected by the Act.

Enforcement activities include:

- inspection to verify compliance;
- investigations of violations;
- measures to compel compliance without resorting to formal court action, such as directions by the Minister or enforcement officers, ticketing, and environmental protection compliance orders by enforcement officers; and
- measures to compel compliance through court action, such as injunctions, prosecution, court orders upon conviction, and civil suit for recovery of costs.

Guiding Principles

The following general principles govern the application of the Act:

- Compliance with the Act and its regulations is mandatory.
- Enforcement officers throughout Canada will apply the Act in a manner that is fair, predictable and consistent. They will use rules, sanctions and processes securely founded in law.
- Enforcement officers will administer the Act with an emphasis on prevention of damage to the environment.
- Enforcement officers will examine every suspected violation of which they have knowledge, and will take action consistent with this Compliance and Enforcement Policy.
- Enforcement officers will encourage the reporting of suspected violations of the Act.

Key Elements of the *Canadian Environmental Protection Act, 1999*

The full title of the legislation is “An Act respecting the protection of the environment and of human health in order to contribute to sustainable development”, which clearly defines the purpose of the statute. Also, the Declaration of the *Canadian Environmental Protection Act, 1999* states that “the protection of the environment is essential to the well-being of Canadians and the primary purpose of this Act is to contribute to sustainable development through pollution prevention”. The Declaration underscores the importance placed by the Government of Canada on prevention of harm to the environment and its commitment to sustainable development.

Key Elements

The *Canadian Environmental Protection Act, 1999* has the following elements:

- authority for the Minister to require submission of information on any subject covered by the Act;
- authority to control the introduction into Canadian commerce of substances that are new to Canada;
- authority to obtain information on and to require testing of both new substances and substances already existing in Canadian commerce;
- provisions to control all aspects of the life cycle of toxic substances from their development, manufacture or importation, transport, distribution, storage and use, their release into the environment as emissions at various phases of their life cycle, and their ultimate disposal as waste;
- provisions to create guidelines and codes for environmentally sound practices as well as objectives that set desirable levels of environmental quality;
- provisions to control nutrients, such as phosphates, in water conditioners or cleaning products, including detergents, which can interfere with the use of waters by humans, animals, fish or plants;
- provisions to issue permits to control disposal at sea from ships, barges, aircraft and structures (excluding normal discharges from off-shore facilities involved in exploration for, exploitation and processing of seabed mineral resources);
- authority to regulate fuels and components of fuels;

- authority to control emissions from motors that power automobiles, trucks and other equipment such as lawnmowers, outboard motors and all-terrain vehicles;
- authority to control the export, import and transit through Canada, as well as shipments within Canada which cross internal provincial or territorial borders, of hazardous waste and hazardous recyclable material;
- authority to identify, by regulation, specific non-hazardous waste which may be exported, imported or travel through Canada in transit to another destination, where that non-hazardous waste is destined for final disposal, and authority to impose controls on those shipments;
- provisions to control sources of air or water pollution in Canada where a violation of an international agreement would otherwise result, or where the air or water pollution caused in Canada affects another country;
- authority to deal with environmental emergencies, where no other federal Act does so in a manner that protects the environment and human health;
- authority to regulate activities of federal departments, boards, agencies and Crown corporations to ensure that those activities have as little as possible negative impact on the environment;
- provisions to regulate federal works, undertakings and to regulate activities on federal land and aboriginal land, where no other federal legislation and/or regulations are in force and, in the opinion of the Governor in Council, provide sufficient protection to the environment and human health;
- authority to sign agreements with a provincial, territorial or aboriginal government or aboriginal people regarding administration of the Act;
- authority to sign agreements that recognize that legislation or regulations adopted by a provincial, territorial or aboriginal government are equivalent to CEPA regulations and will apply instead of the CEPA requirements; and
- provisions setting out the powers that may be exercised by the Minister, enforcement officers and CEPA analysts in enforcing the legislation.

Relationship between the Minister of Environment and the Minister of Health

The Minister of Health has responsibility under the Act to provide advice in relation to human health aspects to the Minister of Environment. Among the subjects on which the Minister of Health may give advice are the toxicity of substances, the ability of the substance to become incorporated into and to accumulate in human tissue, and the ability of the substance to cause biological change, as well as the human health effects of

emissions and discharges from Canadian sources of international air or international water pollution. In addition, jointly with the Minister of Environment, the Minister of Health recommends regulatory actions for toxic substances to the Governor in Council.

Relationships with other governments under CEPA, 1999

(a) Administrative Agreements

Protection of the environment is a responsibility shared by all levels of government as well as by industry, organized labour and individuals. For this reason, the *Canadian Environmental Protection Act, 1999* gives the Minister of Environment the authority to conclude, with the approval of the Governor in Council, agreements with a provincial, territorial or aboriginal government or aboriginal people concerning the administration of the Act.

(b) Equivalency Agreements

In addition, the legislation allows the Governor in Council, upon recommendation of the Minister of Environment, to make an order recognizing that requirements imposed by a provincial, territorial or aboriginal government are equivalent to regulations under the *Canadian Environmental Protection Act, 1999*. This means that the province, territory or aboriginal government will apply its equivalent requirements, rather than the regulation made under the federal Act.

The areas of CEPA, 1999 which are open to an order by the Governor in Council declaring the requirements of another government to be equivalent to those developed under CEPA, 1999 are:

- regulations dealing with toxic substances;
- regulations dealing with Canadian sources of international air or international water pollution;
- regulations dealing with environmental emergencies; and
- regulations respecting the practices of federal departments, boards, agencies, commissions, federal Crown corporations, federal works or undertakings, or respecting federal land or aboriginal land and persons on that land or whose activities involve that land.

For the recommendation to the Governor in Council, specific criteria will be used to determine equivalency. The factors to establish equivalency will include:

- equal level of control as sanctioned by law;
- comparable compliance measurement techniques;
- comparable penalties; and

- comparable rights for an individual, resident in Canada, to require investigation of a suspected offence and to receive a report of the findings.

In the annual report to Parliament on administration of the *Canadian Environmental Protection Act, 1999*, the Minister is required to include a specific accounting of activities conducted under equivalency agreements with provincial, territorial and aboriginal governments. The same requirement is imposed on the Minister for activities that take place under administrative agreements with provincial, territorial and aboriginal governments and those concluded with aboriginal people for implementation of the Act. Agreements will ensure that provinces, territories, aboriginal governments or aboriginal people enforcing all or any part of the statute, do so in a manner consistent with this policy. In addition, the agreements will spell out procedures for measuring performance.

Authorities Responsible for the Implementation of the *Canadian Environmental Protection Act, 1999*

The following authorities are responsible for implementation of the *Canadian Environmental Protection Act, 1999*.

Minister of Environment

The Minister of Environment has responsibility for the administration of the Act. The Minister must act in accordance with the legislation and is accountable to Parliament for his or her actions.

Minister of Health

Under the Act, the Minister of Health provides advice in relation to human health aspects and, jointly with the Minister of Environment, recommends regulatory actions for toxic substances. The Minister of Health also advises on the human health effects of emissions and discharges from Canadian sources of international air or international water pollution. However, the Minister of Health has no direct enforcement responsibility.

Enforcement Officers

Enforcement officers are individuals with that designation under the *Canadian Environmental Protection Act, 1999*.

They can:

- carry out inspections to verify compliance with the law;
- direct that corrective measures be taken, where there is danger to the environment, human life or health, caused when the illegal release of a regulated substance has occurred or is about to occur;
- direct that conveyances, such as cars, trucks, trains and other means of transport be stopped and moved to a location suitable for inspection; and
- conduct investigations of suspected violations.

The powers of enforcement officers including entry, search, seizure and detention of items related to the enforcement of the *Canadian Environmental Protection Act, 1999* and the power to require the production of documents and electronically stored data as well as the power to issue tickets, directions and orders are detailed in the statute. In addition to these powers, a CEPA enforcement officer has the powers of a peace officer. At the time that the Minister designates a qualified individual to be an enforcement officer, the Minister has the authority, under CEPA, 1999, to specify limits on the peace officer powers that the enforcement officer may exercise.

Analysts

CEPA, 1999 provides authority for the Minister to designate individuals to act as analysts for the purpose of any part or all of the Act. An analyst may be any qualified person, such as a laboratory technician, a toxicologist, a computer systems analyst, an engineer with expertise in a particular area such as metal finishing or the use of organic substances in industrial processes, or a forensic accountant.

CEPA analysts have the following powers:

- to enter any place or premises to which the Act or its regulations apply;
- to open receptacles;
- to take samples;
- to conduct tests and/or measurements;
- to require documents and/or data to be provided to them and take copies as necessary.

Analysts can only exercise those powers when they accompany an enforcement officer to a site.

CEPA analysts who carry out laboratory testing or analysis may have their evidence presented in court in the form of a certificate rather than in person.

Review Officers

Review officers are appointed by the Minister of Environment. Their function is to review an environmental protection compliance order (EPCO), if the person subject to the order applies for a review. EPCOs are orders that enforcement officers are able to issue to prevent a violation from occurring, to stop a violation that is ongoing, or to order that a person carry out required conduct that they have omitted or refused to do. EPCOs are discussed in detail later in this policy, in the chapter entitled “Responses to Alleged Violations”.

While review officers are appointed by the Minister of Environment, their salary is set by Governor in Council, in order to ensure an arm’s length relationship from the Minister. The Minister chooses one of the review officers as Chief Review Officer. It is the Chief

who puts in place the procedures for reviews of EPCOs, and who assigns the various cases to his or her fellow review officers.

Decisions by review officers may be appealed to the Federal Court by the person subject to the EPCO or the Minister of Environment as described under the heading “Courts”.

Attorney General and Officials of the Department of the Attorney General

The Minister of Justice is the Attorney General for Canada. The Attorney General has responsibility for all litigation relating to the *Canadian Environmental Protection Act, 1999*. The Attorney General, the officials of the Department of the Attorney General and Crown prosecutors may also provide advice to CEPA enforcement officers respecting the preparation of :

- warnings, directions or environmental protection compliance orders, which are enforcement measures that are discussed in the chapter of this policy entitled “Responses to alleged Violations”; or
- documents to lay charges, or to secure inspection warrants or search warrants.

While enforcement officers may lay charges for offences under the Act, the ultimate decision on whether to proceed with prosecution of the charges rests with the Attorney General. With respect to an application for an injunction or a civil suit for recovery of costs in the various circumstances in which such recovery is allowed under the Act, enforcement officers will recommend these civil actions to officials of the Attorney General. The legal counsel of the office of the Attorney General will then have the ultimate decision on proceeding with the injunction or suit for cost recovery.

When considering litigative action under the Act, the Attorney General or Crown prosecutors acting on his or her behalf will have regard to this policy.

Courts

The courts make the final decisions regarding prosecutions, injunction applications and civil suits under the *Canadian Environmental Protection Act, 1999*, including what penalty to impose or what remedy to order.

The Federal Court of Canada has a role regarding appeals which that Court may receive when a person subject to an environmental protection compliance order or the Minister of Environment is dissatisfied with the outcome of a review of the order conducted by a review officer under CEPA, 1999. The Federal Court of Canada would receive the appeal and decide whether to hear the case. If the Federal Court hears the case, it would render a decision, which would itself be appealable to the Federal Court of Appeal and to the Supreme Court of Canada.

Measures to Promote Compliance

Environment Canada believes that promotion of compliance through information, education and other means is an effective tool in securing conformity with the law. Accordingly, Environment Canada will undertake public education and information transfer measures, as described in this chapter.

In addition, the department will meet as required with other federal departments and agencies, provinces, territories, aboriginal governments and aboriginal people, industry, environmental groups and other interested parties, so that information and concerns can be exchanged about the *Canadian Environmental Protection Act, 1999*, enforcement practices and compliance.

One of the roles of Environment Canada engineers, biologists, chemists, geologists and experts in environmental sciences is to promote compliance through various means that are described below. However, due to the nature of their responsibilities to verify compliance with CEPA, 1999 and to investigate suspected violations, enforcement officers and CEPA analysts will limit their compliance promotion activities to providing copies of CEPA, 1999, its regulations and this policy. For further information, scientific personnel and enforcement officers and analysts may also refer the public to Environment Canada's website at <http://www.ec.gc.ca>, called the "Green Lane".

Among the icons they will find at that site are the following: one with the title "CEPA Environmental Registry" and one with the title "Environmental Law Enforcement". The Registry, which CEPA, 1999 requires the Minister of Environment to create, contains the text of the Act itself, plus information about all aspects of the legislation, including environmental quality guidelines and objectives, release guidelines and codes of practice, existing and proposed regulations, assessments of substances indicating whether or not they are toxic under CEPA, 1999 and many other matters. The "Environmental Law Enforcement" icon provides access to information on enforcement under the Act, including any charges laid for CEPA violations..

Education and Information

As stated above, under CEPA, 1999, the Minister of Environment is required to create an Environmental Registry. The registry is not a listing of document titles; it is rather a collection of all documents that are required to be published under the Act and its regulations, as well as those that the Minister, in his or her discretion, decides to publish even in the absence of an obligation to do so.

CEPA, 1999 also allows the Minister to give notice of the availability of a document. In cases where a document is very lengthy or has complicated drawings, industrial plans or specifications, it is possible that the registry will contain only notice of the availability of

the document, as well as a contact name or address from which the document may be obtained.

Through the Registry, Environment Canada will either provide or give notice of the availability of the following materials:

- copies of the *Canadian Environmental Protection Act, 1999* and its regulations;
- environmental quality guidelines and objectives, release guidelines, and environmental codes of practice, developed under the Act;
- the Compliance and Enforcement Policy for the Act;
- a list of court actions arising from enforcement of the *Canadian Environmental Protection Act, 1999*, such as:
 - injunctions, indicating the name of the individual, company or government agency, who is the subject of the injunction, the action required under the injunction, and the time schedule to complete the action,
 - convictions under the Act, indicating the identity of the offender, the nature of the offence, and the sentence imposed by the court,
 - court orders following conviction for an offence under the Act, indicating the identity of the offender and a summary of the contents of the order,
 - civil suits instituted by the Crown, such as those to recover reasonable costs of clean-up or those incurred to remedy damage to the environment, and
 - forfeitures of items seized under the Act;
- information on precedent-setting cases under the Act.

In addition, the department may use media releases distributed to newspapers, radio and television stations, to publicize situations where charges have been laid and/or prosecutions have been successful. Law enforcement agencies in Canada and throughout the world recognize that publicizing the laying of charges and the results of prosecutions is an effective means of deterring potential offenders.

Technical Information

As explained above, enforcement officers and CEPA analysts will not be involved in providing technical information to other federal departments, agencies and federal Crown corporations, the private sector, provinces, territories, aboriginal governments and municipalities. This will be an area of endeavour reserved for Environment Canada

personnel who may be engineers, biologists, chemists, geologists or experts in environmental sciences. They may provide technical information on:

- pollution prevention, as well as pollution control;
- measures to prevent releases of substances into the environment; and
- methods for analysis and monitoring.

The department will also use other means to communicate technical information, including:

- publications, such as technical reports and newsletters intended to promote exchange of information between governments and industry nation-wide;
- seminars and conferences;
- training materials; and
- licensing of research developments by Environment Canada to the private sector.

Consultation on Regulation Development and Review

Environment Canada believes that consultation on regulation development and amendment with both the parties to be regulated as well as the beneficiaries of regulation, results in better and more effective regulations for protection of the environment. Environment Canada also recognizes that compliance with regulations is more likely when there has been involvement by those parties in their development or amendment.

Environment Canada scientists and engineers who are responsible for the development of regulations will consult with affected parties at the stage of determining whether a problem exists that requires resolution, as well as during the development of any eventual regulation. In addition, CEPA, 1999 requires the Minister to seek advice or offer to consult on specific regulations. Under CEPA, 1999, the Minister must set up a National Advisory Committee, composed of one representative for each of the federal Ministers of Environment and Health, one representative from each province and territory, and one representative of aboriginal governments for each of the following regions: Atlantic (Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick); Quebec; Ontario; Prairie and Northern (Manitoba, Saskatchewan, Alberta, Northwest Territories and Nunavut); Pacific and Yukon (British Columbia and the Yukon Territory).

Proposed regulations will also be published in the *Canada Gazette* as well as in the CEPA Environmental Registry, at which time affected parties and members of the public have a minimum time of 60 days to comment on the text.

Environmental Codes of Practice and Guidelines

While codes of practice and guidelines are not regulations and do not have the force of law, they can help achieve the objective of the *Canadian Environmental Protection Act, 1999*, namely the protection of the environment. The statute requires the Minister of the Environment to create environmental codes of practice, environmental quality guidelines and release guidelines. Environment Canada will develop these in consultation with interested parties, including provinces, territories, aboriginal governments and aboriginal people, industry and environmental groups. The personnel involved in the development of these guidance documents may be engineers, biologists, chemists, geologists or experts in environmental sciences.

Codes of practice as well as environmental quality and release guidelines can assist the putting in place of management practices that will result in better protection for the environment. Codes focus on substances and the processes and techniques related to their production and use, including activities such as handling, packaging, distribution, transport, and disposal. Environment Canada will base codes of practice on available and practicable technology.

Codes will contain technological information on alternatives to achieve protection of the environment. They may detail procedures, practices or release limits relating to works and undertakings during any phase of development or operation, including siting, design, construction, start-up, closure, and dismantling.

Environmental quality guidelines and release guidelines focus on the ambient environment. Environmental quality guidelines recommend acceptable levels of a particular substance in air, water or soil, to protect a specific use of that component of the environment. These guidelines will serve as:

- “yardsticks” to determine whether the environment and human health are being sufficiently protected; and
- targets for pollution prevention or pollution control programs by industry and government agencies.

Release guidelines will recommend limits for the release of substances into the environment. These guidelines, like codes of practice, will be based on what is acceptable environmental practice, founded on available and practicable technology.

As is the case with proposed regulations, the Minister of Environment is required by CEPA, 1999 to offer to consult on proposed environmental quality guidelines and objectives, release guidelines, and codes of practice. Comments from provincial, territorial and aboriginal governments, those who may use the objectives, guidelines and codes of practice in their manufacturing, commercial or other operations, environmental and labour groups and the public at large help Environment Canada produce useful information. In addition, under the *Canadian Environmental Protection Act, 1999*, the

Minister of Environment is required to publish, in the *Canada Gazette* and in the Environmental Registry, either notice of the availability of codes and guidelines developed under the Act, or the texts themselves.

Promotion of Environmental Audits

Environmental audits are internal evaluations by companies and government agencies, to verify their compliance with legal requirements as well as their own internal policies and standards. They are conducted by companies, government agencies and others on a voluntary basis, and are carried out by either outside consultants or employees of the company or facility from outside the work unit being audited. Audits can identify compliance problems, weaknesses in management systems, or areas of risk. The findings are documented in a written report.

Environment Canada recognizes the power and effectiveness of environmental audits as a management tool for companies and government agencies, and intends to promote their use by industry and others.

To encourage the practice of environmental auditing, inspections and investigations under the *Canadian Environmental Protection Act, 1999* will be conducted in a manner which will not inhibit the practice or quality of auditing. Enforcement officers and CEPA analysts will not request environmental audit reports during routine inspections to verify compliance with the Act.

Access to environmental audit reports may be required when enforcement officers have reasonable grounds to believe that:

- an offence has been committed;
- the audit's findings will be relevant to the particular violation, necessary to its investigation and required as evidence;
- the information being sought through the audit cannot be obtained from other sources through the exercise of the enforcement officer's powers.

In particular reference to the latter criterion, environmental audit reports must not be used to shelter monitoring, compliance or other information that would otherwise be accessible to enforcement officers or analysts under the *Canadian Environmental Protection Act, 1999*.

Any demand for access to environmental audit reports during investigations will be made under the authority of a search warrant. The only exception to the use of a search warrant is exigent circumstances, that is, when the delay necessary to obtain a warrant would likely result in danger to the environment or human life, or the loss or destruction of evidence.

Inspection and Investigation

Enforcement officers appointed under the *Canadian Environmental Protection Act, 1999* carry out two categories of enforcement activity: inspection and investigation. A general discussion of these two types of activity follows.

Inspection

The purpose of an inspection is to verify compliance with the *Canadian Environmental Protection Act, 1999* and its regulations. To conduct an inspection of premises other than a private dwelling, an enforcement officer must have reasonable grounds to believe that, on the premises that he or she intends to enter and inspect, there are activities, materials, substances, records, books, electronic data or other documents that are subject to the Act or relevant to its administration.

Sometimes, an enforcement officer may be refused entry to premises where there are activities, materials, substances, records, etc. that are relevant to the Act. The officer may also find premises that are locked or abandoned. Those premises could be factories, distribution centres or the offices of private companies or federal institutions. For such cases, an enforcement officer may seek an inspection warrant from a justice of the peace. In the inspection warrant, the justice may name any person to accompany the enforcement officer or authorize, in the inspection warrant, the use of any power that the justice deems required, including the use of force to break locks or force open a locked door.

In the case of a private dwelling which the enforcement officer has reasonable and probable grounds to believe may be subject to inspection under CEPA, 1999 or any of its regulations, the officer is required to seek the consent of the occupant, in order to carry out the inspection. Where consent is refused, the officer must obtain an inspection warrant, and can seek, from a justice, authorization for persons to accompany him or her or to use force as described in the previous paragraph.

In the course of an inspection, an enforcement officer may examine substances or products, open and examine receptacles, containers or packages, and take samples. The officer may also examine books, records or electronic data and make copies of them.

If, during an inspection, an enforcement officer must shift to the investigative role, he or she will so indicate to the individual, company or government agency. The enforcement officer will act similarly if, in an emergency, he or she must direct or cause action to be taken following an unauthorized release or to prevent such a release.

If, as described above, an enforcement officer discovers a violation during an inspection, the officer may determine that circumstances are exigent and that he or she must take action on the spot. In exigent circumstances, namely, when the delay necessary to obtain a warrant would likely result in danger to the environment or human life or in the loss or

destruction of evidence, the enforcement officer will begin an investigation immediately and, where necessary, exercise the power to search without a warrant, and to seize and detain items. In all other circumstances, where the enforcement officer has determined that further investigation is required, this will be done under the authority of a search warrant. Investigation of violations is discussed below. The possible responses to violations discovered by enforcement officers are discussed in detail in the chapter of this policy entitled “Responses to Alleged Violations”.

Inspection Program

There will be a program of inspections, complemented by spot checks. The schedule of inspections will be determined by the risk that the substance or activity presents to the environment or to human health, and by the compliance record of the individual, company or government agency. In addition, it is generally the case that, when new regulations are brought into effect, they are identified as priorities within Environment Canada’s inspection program under CEPA, 1999. Inspection schedules will also be established to verify adherence to:

- warnings;
- directions by enforcement officers;
- Ministerial orders;
- environmental protection compliance orders;
- injunctions;
- environmental alternative measures; and
- court orders upon conviction of an offender.

Ministerial orders as well as directions by enforcement officers, environmental protection compliance orders and environmental protection alternative measures will be discussed in the chapter entitled “Responses to Alleged Violations”.

If information or complaints have been brought to the attention of enforcement officers, additional inspections will be carried out as required. In addition, enforcement officers may develop a special inspection schedule when companies or facilities undertake expansion or alteration of a process.

Investigation

An investigation involves gathering, from a variety of sources, evidence and information relevant to a suspected violation. A search is a component of an investigation, and the search power may be used by enforcement officers when fulfilling their duties under the *Canadian Environmental Protection Act, 1999*.

There are two instances in which an enforcement officer will conduct an investigation:

- when he or she has reasonable grounds to believe that an offence has been committed under the Act; or
- when an individual of at least 18 years of age, resident in Canada, petitions the Minister to investigate an alleged violation of the Act.

The only occasion when an enforcement officer will not seek a search warrant is in exigent circumstances as stated above.

During the course of a search with or without a warrant, enforcement officers may seize and detain anything which they reasonably believe was used to commit an offence under the Act, is related to the commission of an offence or will provide evidence of an offence. Enforcement officers will use their powers of seizure and detention, when they believe that the seizure is necessary and in the public interest. Reasons for seizure and detention may include:

- the need to take possession of a substance, equipment or any other thing to prevent danger to the environment, human life or health;
- the need to prevent distribution of a prohibited substance, products containing a prohibited substance, or substances new to Canada, for which the required information has not been provided to the Minister under the Act;
- the need to prevent the export of a substance for which notice of export to the receiving country is required, when that notice has not been provided to the receiving country or to the Minister within the prescribed time;
- the need to prevent further violation of the Act; or
- the need to prevent loss or destruction of evidence.

The enforcement officer may also move the seized substance, product, equipment or thing to a secure location when he or she believes that it is necessary and in the public interest.

Responses to Alleged Violations

Enforcement officers will examine every suspected violation of which they have knowledge. If, after that examination, they determine that there is insufficient evidence to prove the alleged violation or that the alleged violation did not, in fact, occur, they will take no further enforcement action. If they are able to substantiate that a violation took place and there is sufficient evidence to proceed, they will take action consistent with the criteria in this chapter, and will choose the appropriate response among the different types reviewed here.

Criteria for Responses to Alleged Violations

Whenever an alleged violation of the *Canadian Environmental Protection Act, 1999* is discovered, enforcement officers will apply the following factors when deciding what enforcement action to take:

- **Nature of the alleged violation** - This includes consideration of the seriousness of the harm or potential harm, the intent of the alleged violator, whether this is a repeated occurrence and whether there are attempts to conceal information or otherwise subvert the objectives and requirements of the Act.
- **Effectiveness in achieving the desired result with the violator** - The desired result is compliance with the Act, within the shortest possible time and with no further occurrence of violation. Factors to be considered include the violator's history of compliance with the Act and, if applicable, with regulations by a provincial, territorial or aboriginal government that are deemed, by Order in Council, to be equivalent to those under CEPA, 1999, willingness to co-operate with enforcement officers, evidence of corrective action already taken, and the existence of enforcement actions under other statutes by other federal authorities or by provincial, territorial or aboriginal governments as a result of the same activity.
- **Consistency in enforcement** - Enforcement officers intend to achieve consistency in their responses to alleged violations. Accordingly, officers will consider how similar situations were handled when deciding what enforcement action to take.

Responses to Alleged Violations

The following responses are available to deal with alleged violations of the *Canadian Environmental Protection Act, 1999* and its regulations: warnings, directions by enforcement officers, tickets, Ministerial orders, environmental protection compliance orders, detention orders for ships, injunctions, prosecution, environmental protection alternative measures, court orders following conviction, and civil suits by the Crown to recover costs.

While each fact situation will be different in relation to alleged violations of CEPA, 1999, probably the most important factor in determining an enforcement response is the effectiveness of the response in securing compliance as quickly as possible with no recurrence of violation. Therefore, except in circumstances where prosecution will always be pursued as described later in this chapter, the enforcement officer will give first consideration to an enforcement response among warnings, directions, Ministerial orders, detention orders for ships and environmental protection compliance orders, as these do not require a court proceeding, and compliance may be restored in a shorter time frame that would be possible through a court prosecution. A ticket will also be among the measures given first consideration as an enforcement response in the circumstances described at the heading “Tickets”. However, a court hearing is always an option that can be elected by an accused who receives a ticket and who wishes to plead not guilty.

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

Warnings

Enforcement officers may use warnings:

- when they believe that a violation of the Act is continuing or has occurred; and
- when the degree of harm or potential harm to the environment, human life or health appears to be minimal.

When deciding whether to use warnings or more severe enforcement action, enforcement officers may also consider:

- whether the individual, company or government agency has a good history of compliance with the *Canadian Environmental Protection Act, 1999* and with provincial, territorial or aboriginal government regulations deemed, by Order in Council, to be equivalent to those under the federal Act; and
- whether the individual, company or government agency has made reasonable efforts to remedy or mitigate the consequences of the alleged offence or further offences.

Warnings will always be given in writing. When necessary, however, enforcement officers may initially give a warning orally. This is to be followed as soon as possible by a written warning.

The written warning will contain the following information:

- the section of the Act or regulations involved;
- a description of the alleged offence; and
- a statement that, if the alleged violator does not take necessary action, the enforcement officer will consider taking other steps.

When an enforcement officer uses a warning, it brings an alleged violation to the attention of an alleged violator, in order to promote any necessary action by that person. Warnings do not have the legal force of an order. Furthermore, they are not a finding of guilt or civil liability. Warnings and the circumstances to which they refer will form part of the records of Environment Canada. In addition, warnings will be taken into account in future responses to alleged violations, and may influence the frequency of inspection.

When an alleged violator receives a warning, the individual, company or government entity may wish to provide written comments to the enforcement officer who signed the warning. The enforcement officer will take the comments into consideration and, where appropriate, will respond to the alleged violator who received the warning. The comments and any response to them will be attached to the warning. Both the comments and response will then be placed in the compliance history file of the individual, company or government entity.

Directions in the Event of Releases

Where there is a release of a substance in contravention of regulations under the *Canadian Environmental Protection Act, 1999* or the likelihood of such a release, an enforcement officer may give directions to the person, company or government agency that owns the substance or that has or had charge, management, or control of the substance at the relevant time, or that caused or contributed to the release, to take all reasonable emergency measures:

- to prevent the release if it has not already occurred;
- to remedy any dangerous condition; or
- to reduce any danger to the environment or human life or health that results from the release of the substance or may reasonably be expected to result from the release of the substance.

As the Act already imposes on individuals, companies and government agencies the obligation to take such measures, an enforcement officer will not ordinarily issue such directions unless these obligations are not being met. The directions will be given in

writing, but, during the initial response to an emergency, directions may be given orally and later confirmed in writing.

Failure to comply with a direction by an enforcement officer will lead to prosecution of the individual, company or government agency for this failure. Also, in the event of failure or inability to comply with an enforcement officer's direction, the officer is empowered under the Act to take the action him or herself or to hire qualified experts to take the emergency measures.

Tickets

Tickets are available for offences under CEPA, 1999 where there is minimal or no threat to the environment or human life or health. Where an offence is designated as ticketable, enforcement officers will always issue a ticket, unless they have determined that, in accordance with the criteria of this policy, a warning is the appropriate response. In cases where an alleged ticketable offence continues for more than one day, enforcement officers are able to issue a ticket for every day that the alleged offence continues.

Ticketing regulations to identify which CEPA, 1999 offences are punishable by ticket, the associated fine and procedures for individuals, companies, and government agencies to respond to tickets have been developed under the federal *Contraventions Act*. Examples of ticketable CEPA offences are the failure to provide information or a report as required by regulations made under CEPA, 1999, or the failure to provide information or documents within the stipulated time limit.

Upon being issued a ticket by a CEPA enforcement officer, the accused may, within the time limit stated on the ticket:

- plead guilty and pay the fine to the appropriate court as prescribed on the ticket without making a formal court appearance;
- plead guilty with an explanation and appear in court to request a lesser fine or additional time to pay the fine; or
- submit a plea of not guilty, resulting in formal court proceedings.

If the accused fails to choose an option within the stated time limit, he or she, the company or the government agency involved has waived the right to challenge the ticket. A conviction is then entered against the accused, and provincial or territorial authorities will take measures to collect the outstanding fine in accordance with the applicable provincial or territorial law.

Effectiveness in restoring a violator to compliance is an important criterion in determining the appropriate response to a violation. Consequently, if an enforcement officer has already issued a ticket for an alleged offence – whether it is a single ticket or

several tickets to cover the number of days that an alleged offence continues – and if the same offender commits the same violation under a different fact situation, this is an indication that issuance of a ticket by the enforcement officer was not effective in restoring compliance. Under those circumstances, the enforcement officer will issue an environmental protection compliance order, or consider prosecution for the alleged offence, both of which are described later in this chapter.

Ministerial Orders

The Minister of Environment may issue three types of order under the *Canadian Environmental Protection Act, 1999*. These are orders that:

- prohibit activities involving substances new to Canadian commerce;
- compel the recall, from the marketplace, of a substance, a product containing the substance, a nutrient, a fuel or a vehicle whose emissions are regulated under CEPA, 1999;
- require more information on, or testing of, substances suspected of being toxic, and to prohibit their manufacture or importation, or to limit these two activities, until expiry of the assessment period to determine the risk that they present to the environment.

Only the first two Ministerial orders are for use in response to alleged violations. They are measures for prompt and immediate action to prevent unlawful manufacture, importation, distribution or sale of a substance or a product containing that substance, or to recall the substance, product, nutrient, fuel or motor vehicle from the marketplace. They may be used as responses to alleged violations in themselves or in conjunction with prosecution.

Prohibition Orders involving Substances New to Canadian Commerce

The Minister is empowered to prohibit, in writing, any activity involving a substance new to Canadian commerce, when he or she has reasonable grounds to believe that the substance has been manufactured in or imported into Canada in violation of the Act.

The prohibition will remain in effect until expiry of the period prescribed for assessing the substance.

In addition to the prohibition issued by the Minister, if the offence giving rise to the prohibition meets the criteria for prosecution as listed below, charges will be laid by an enforcement officer for the offence of illegal manufacture or importation of the substance.

Recall Orders

The Minister of Environment is empowered:

- to issue orders to recall a substance or product from the marketplace, where there is a contravention of the provisions of the Act or its regulations governing substances or products, including toxic substances or products containing same; and
- to direct those orders to manufacturers, processors, importers, distributors or retailers.

The Minister has this same power where there is a contravention of the provisions of the Act or its regulations governing nutrients, cleaning products, water conditioners, or fuels. In the case of nutrients, the Minister may direct the order to importers and/or manufacturers; in the case of fuels, the order could be directed to any or all of the following: a producer, processor, importer, retailer or distributor.

The recall order may direct the person named in the document to do any or all of the following:

- give public notice of any danger to the environment, human life or health;
- mail this notice to:
 - manufacturers, distributors or retailers of the substance or product;
 - manufacturers, processors, distributors or retailers of the nutrient, cleaning product or water conditioner;
 - producers, processor, importer, retailer or distributor of the fuel; as well as
 - every individual, company or government agency to whom the substance, product, nutrient or fuel is known to have been delivered or sold.
- replace the item by one that does not pose a danger to the environment, human life or health;
- accept the return of the item and reimburse the purchase price to the purchaser;
- undertake any other measures appropriate for the protection of the environment or human life or health.

The Ministerial order will be issued to ensure removal of the substance or other item listed above from the marketplace. Further, if the alleged offence giving rise to the order meets the criteria for prosecution as listed below, charges for the alleged offence will be laid by an enforcement officer.

Detention Orders for Ships

Enforcement officers have authority under CEPA, 1999 to issue an order directing detention of a ship, where the officer has reasonable grounds to believe that:

- the owner or master of a ship has committed an offence under the Act, and
- the ship was used in connection with the commission of the violation.

An example of those reasonable grounds could be where a ship has been used to import into Canada a substance that is new to Canadian commerce, and the Minister of Environment has not received notification of the import of the substance. In this example, in view of the failure to notify, the Minister has not assessed the new substance to determine whether or not it is toxic within the meaning of CEPA, 1999 or whether the Minister should impose a condition related to its import, use or required reporting in the case of any significant new activity involving the substance. Another example could be an import of a hazardous waste that violates the Act or its regulations. Another example could be a ship that is seeking to dispose of waste at sea and is about to do so, either in the absence of an ocean disposal permit or in violation of the conditions of a permit which has been granted under CEPA, 1999.

Before issuing a detention order for a ship, the enforcement officer will consider whether or not:

- there is a risk of flight by the ship;
- there is a risk of loss or destruction of evidence; or
- off-loading of the cargo that is suspected to be in violation of the Act would require detention of the ship for a period of days.

Also, before issuing such a detention order, the enforcement officer will ensure that the action is in accordance with international and Canadian maritime law.

Environmental Protection Compliance Orders

An enforcement officer is empowered to issue an environmental protection compliance order to:

- prevent a violation from occurring;
- stop or correct one that is occurring or continuing over a period of time; or
- correct an omission where conduct is required by CEPA, 1999 or one of its regulations, and that conduct is not occurring.

It is possible to issue compliance orders to deal with any offence under CEPA, 1999. They are a means to secure an alleged violator's return to compliance, without use of the court system. Examples of instances where an enforcement officer may use an environmental protection compliance order are:

1. previously, the enforcement officer had issued the offender a warning or ticket for the particular offence, but the offender did not return to compliance;
2. in the case of a previous release of a substance in contravention of CEPA regulations, the officer had issued a direction, but the circumstances that resulted in the earlier release continue and a subsequent illegal release is likely;
3. required conduct is not being carried out; for instance, a system required, by regulation, for the continuous or automatic monitoring of emissions is turned off;
4. improper containers required for storage of a toxic substance are being used or proper containers are being used, but they are not labelled as required; or
5. an individual, company or government agency that was required to prepare and implement a pollution prevention plan or an environmental emergency plan failed to do so.

The environmental protection compliance order will direct the alleged violator to take the measures required to return to compliance. The order imposes no financial or other penalty. As noted under the heading "Prosecutions", failure to comply with the EPCO is an offence for which prosecution will be undertaken.

Injunctions

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

Enforcement officers will carry out inspections to ensure that the individual, company or government agency cited in the injunction is complying with the terms of the injunction. If the individual, firm or government agency does not comply with the injunction, the Minister will return to the court to seek:

- a contempt of court ruling;

- instruction by the court for the individual, company or government agency to comply within the stated time limit with the injunction; and
- any additional penalty, such as a fine or imprisonment, that the court may see fit to impose in its contempt of court ruling.

Prosecution

Enforcement officers will lay a charge for every alleged violation of the *Canadian Environmental Protection Act, 1999*, except where, in accordance with this policy, they determine that one of the following responses is sufficient and appropriate;

- a warning;
- a ticket under the ticketing regulations of the federal *Contraventions Act*;
- a direction by an enforcement officer;
- an order by the Minister of Environment prohibiting activities involving a substance new to Canadian commerce or a recall order by the Minister; or
- an environmental protection compliance order.

Prosecution will **always** be pursued when:

- there is death of or bodily harm to a person;
- there is serious harm or risk to the environment, human life or health;
- the alleged violator knowingly provided false or misleading information, or made a false or misleading test of a substance in purported compliance with the Act;
- the alleged violator obstructed the enforcement officer or CEPA analyst in the carrying out of his or her duties and responsibilities under the Act;
- the alleged violator interfered with a substance seized by an enforcement officer under the Act;
- the alleged violator concealed or attempted to conceal information after the offence occurred;
- the alleged violator did not take all reasonable measures to comply with:

a direction by an enforcement officer;

an order by the Minister prohibiting activities involving substances new to Canadian commerce, manufactured in or imported into Canada in contravention of the Act;

a recall order imposed by the Minister;

an order by the Minister to the individual, company or government agency that provided information on a substance that the Minister of Environment and the Minister of Health suspect is toxic, and

- requiring additional information on or testing of the substance, or
- prohibiting manufacture or importation of the substance, until expiry of the assessment period;

an environmental protection compliance order; or

environmental protection alternative measures.

The Act stipulates that certain offences are to be prosecuted by summary conviction and others, by way of indictment. Other offences under the Act may be prosecuted by either means. In cases where prosecution may take place by either means, it is up to the Crown prosecutor to decide whether to prosecute by way of summary conviction or by way of indictment.

Environmental Protection Alternative Measures

Environmental protection alternative measures are similar to provisions in the *Criminal Code* and in the *Young Offenders Act*, which allow for a negotiated return to compliance without a court trial. Alternative measures under those other two federal Acts are available for individuals but not offenders which are corporations or government bodies. CEPA, 1999 provides for alternative measures that can be applied whether the violator is a corporation, government body or individual.

The choice to use environmental protection alternative measures in a particular case is made by the Attorney General of Canada or an agent of the Attorney General. In practical terms, that means a Crown prosecutor authorizes the use of alternative measures, after consultation with the Minister of Environment who will be represented in such cases by an enforcement officer.

Alternative measures can be used for most offences under CEPA, 1999, except for violations involving:

- injury or death or risk of injury or death;

- a disaster leading to loss of use of the environment;
- knowingly providing false or misleading information to the Minister of Environment, an enforcement officer or a CEPA analyst;
- manufacture, import or use of substances new to Canadian commerce, before the Minister has been notified of them and before they have been assessed to determine whether or not they are toxic or capable of becoming toxic ;
- harassment, discipline, demotion, suspension or dismissal by an employer of an employee who reported a CEPA violation or who refused to carry out an action that would violate CEPA, 1999;
- failure to comply with a recall imposed by the Minister;
- failure to give all reasonable assistance to an enforcement officer or CEPA analyst;
- obstruction of an enforcement officer or CEPA analyst in their conduct of their duties; and
- failure to comply with the conditions of a negotiated environmental protection alternative measures program.

There are pre-requisites to participation by an offender in an environmental protection alternative measures program. First, a charge for the alleged offence must be laid. Then, the Crown prosecutor, after consulting with the enforcement officer responsible for the case, must be satisfied that:

- protection of the environment and human life and health will be satisfied by the use of alternative measures; and
- the accused's compliance history makes it likely that the accused will abide by the negotiated alternative measures and return to compliance with CEPA, 1999.

In addition, the Crown prosecutor will examine whether or not the accused took any corrective action after the violation or preventive measures to ensure that the alleged offence does not occur again, and whether or not the accused was co-operative or attempted to conceal information. The prosecutor will rely upon the enforcement officer to recommend whether or not the two criteria related to protection of the environment and human life or health and the accused's compliance history are met, and to provide evidence of the degree of co-operation and the extent of corrective or preventive measures taken by the violator following commission of the alleged offence.

The accused is not required to plead guilty to the violation, but must, nevertheless, accept responsibility for the offence. The accused and the Crown prosecutor have only 180 days

from the date of the first disclosure of evidence by the Crown to the accused, in which to negotiate environmental protection alternative measures.

If an accused meets all the pre-requisites and agrees to negotiate, but the Crown prosecutor and the accused cannot successfully negotiate alternative measures within the 180 days, the court prosecution will proceed.

If an environmental protection alternative measures agreement is successfully negotiated, it is filed with the court and is a public document. The agreement must also appear in the CEPA Environmental Registry that the Minister of Environment is required to create under s.12 of the Act.

Upon fulfillment of the conditions of the negotiated alternative measures, the court will dismiss the charges against the accused. However, if the accused fails to comply with the negotiated environment protection alternative measures, this is an offence under CEPA, 1999, and, as noted under the heading “Prosecutions”, prosecution for the failure to comply will be undertaken.

Penalties and Court Orders Upon Conviction

Upon conviction of an offender for a violation of the *Canadian Environmental Protection Act, 1999*, enforcement officials will, on behalf of the Minister, recommend that Crown prosecutors request penalties that are proportionate to the nature and gravity of the offence. Penalties provided under the Act include fines or imprisonment or both, court orders to accompany a fine or imprisonment, and court orders governing conditional discharge of the offender.

Criteria to guide the courts when imposing penalties or court orders are included in CEPA, 1999. The decision to provide sentencing guidelines in the Act was based on the recommendations of the 1987 Report of the Canadian Sentencing Commission, and is consistent with case law, such as *R. v. United Keno Mines*. Nevertheless, this is guidance only. The courts are not compelled by the Act to follow the CEPA sentencing principles.

Following a conviction, it is a regular occurrence for Crown prosecutors, after consultation with enforcement officers, to recommend a sentence in each case. When making a recommendation to Crown prosecutors with respect to sentencing, enforcement officers will apply the criteria found in CEPA, 1999. Examples of those criteria are:

- the harm or risk of harm caused by the commission of the offence;
- an estimate of the total costs to remedy or reduce the negative effect of any damage caused by commission of the offence;
- whether or not any corrective or preventive action has been taken or proposed by the offender;

- whether the offence was committed intentionally, recklessly or inadvertently;
- whether there was negligence or a lack of concern on the part of the offender;
- what profits or benefits the offender earned as a result of the commission of the offence;
- the offender's compliance history; and
- in the case of an aboriginal offender, any particular circumstances of the aboriginal offender.

In addition to considering the criteria for sentencing found in CEPA, 1999, enforcement officers will recommend a penalty and/or court order that will, in their view, be effective in deterring others from the committing the same or other violations of the Act.

Use of Court Orders Upon Conviction

Upon conviction of an offender, the enforcement officer responsible for the case may request that, in their sentence, courts include one or more of the orders provided under the statute. The following list is not exhaustive but gives some examples. Orders may be requested to:

- a) prohibit the offender from doing any activity that may result in continuation or repetition of the offence;
- b) direct the offender to correct resulting harm to the environment or to take measures to avoid potential harm;
- c) require the offender to prepare and implement a pollution prevention plan or environmental emergency plan;
- d) direct the offender to carry out environmental effects monitoring or to pay the costs of such monitoring;
- e) require the offender to perform community service;
- f) direct that the offender pay money to environmental, health or other groups that work in the community where the offence was committed; or
- g) require the offender to pay funds to an educational institution for scholarships for students enrolled in environmental studies.

The type of order requested by the enforcement officer will depend on the violation.

Enforcement officers will request orders of type a), when there is likelihood of the offence being repeated by the offender. Type b) court orders will be requested when the damage to the environment is correctable or when the individual, company or government agency convicted of the offence needs to take measures to avoid future harm.

Type c) orders should lead to prevention of further pollution, or implementation of environmental emergency plans when there are sudden and controlled but illegal releases. Enforcement officers will request type d) orders in instances where the offence may have caused serious, negative environmental effects, and it is necessary to monitor what is happening in the receiving environment to determine whether or not it returns to health and, if it does, how long that process takes.

The type e) order directing the offender to perform community service will be requested by enforcement officials when the harm affected a community at large.

As far as type f) orders are concerned, enforcement officers may request payment of funds to further the work of community environmental, health or other groups, in order to increase awareness of the need to protect the environment or to increase knowledge of wildlife or of the need to protect its habitat. Type g) orders focus on the future contributions that students educated on environmental matters may make to the protection of the environment or the prevention of pollution.

Enforcement officials may request more than one order where appropriate. For instance, if a substance was new to Canadian commerce and manufactured in contravention of the Act, and if releases and wastes during the manufacturing process led to environmental damage, enforcement officials may, in addition to any fine or imprisonment imposed, request that the court issue a type a) order directing that the offender cease manufacturing activities that contravene the Act until after the substance has been assessed as required under the statute, as well as a type b) order directing the offender to correct the resulting environmental damage.

Failure to comply with a court order issued under the Act is a violation of the statute. Enforcement officials have three options when choosing a response to this violation: prosecution, civil suit for recovery of monies, and contempt of court proceedings.

In most instances, where a court order is not complied with, enforcement officials will lay charges. A separate offence is committed for each day that the failure to comply continues. In addition, the option of civil suit or contempt of court proceedings may be appropriate.

A civil suit can be used where the court order imposes a financial penalty which the offender fails to pay. Examples are where the offender is directed to compensate the Minister for the cost of preventive or corrective measures that the Minister was obliged to

take as a result of the offence, or where the offender is directed to pay monies to an educational institution for scholarships and fails to do so.

Contempt of court is a procedure by which the courts enforce compliance with their orders. Contempt of court proceedings may be appropriate where failure to comply with the order imposed on the offender would lead to continuing risk or harm to the environment, human life or health. Examples are where the court directs that the offender:

- refrain from any activity that may result in the continuation or repetition of the violation; or
- take specified action to correct harm to the environment, or to avoid future harm.

Civil Suit by the Crown to Recover Costs

The *Canadian Environmental Protection Act, 1999* empowers the Crown to recover costs by civil suit when:

- a) an enforcement officer was required to carry out clean-up or hire qualified experts to do so, because of the unauthorized release of a regulated substance into the environment that resulted in jeopardy to public safety or a danger to the environment, human life or health;
- b) an enforcement officer was obliged to take measures to prevent the unauthorized release of a regulated substance;
- c) an enforcement officer was obliged to take measures where any person fails to comply with an environmental protection compliance order;
- d) the Minister incurs publication costs when he or she publishes the facts related to an offence, because the offender was required by court order to publish these facts, and did not comply with the order;
- e) the Minister is owed compensation, because the offender was required by court order to pay part or all of the costs for preventive or corrective measures (including clean-up) taken by the Minister as a result of the offence, and did not comply with the order.

It is possible to recover costs in cases a), b) and c) when:

- there was no prosecution;
- there was a prosecution, but an order for recovery of such costs was not obtained; or

- prosecution did not result in a conviction.

The defendant would be the individual, company or government agency that owned or had charge of a substance immediately before its initial release into the environment, or that caused or contributed to that release.

In cases d) and e), the offender is clearly identifiable, and the matter of an offence has been proven. These costs arise from court orders upon conviction for a violation of the Act.

Enforcement officers will attempt to obtain recovery of the costs through negotiation. Failing an out of court settlement, the Crown will initiate or proceed with civil action under the legislation.

For More Information

Anyone who has questions about the Compliance and Enforcement Policy or who wishes further information about enforcement procedures should contact one of the following:

Environment Canada Headquarters

Director, Enforcement Branch
National Programs Directorate
Environmental Protection Service
Environment Canada
Ottawa, Ontario KIA 0H3

Regional Offices

For residents of Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick:

Director, Environmental Protection - Atlantic
Environment Canada
45 Alderney Drive
Dartmouth, Nova Scotia B2Y 2N6

For residents of Quebec:

Director, Environmental Protection - Quebec
Environment Canada
105 McGill, 4th Floor
Montreal, Quebec H2Y 2E7

For residents of Ontario:

Director, Environmental Protection - Ontario
Environment Canada
4905 Dufferin Street
Downsview, Ontario M3H 5T4

For residents of Manitoba, Alberta, Saskatchewan, the Northwest Territories and Nunavut:

Director, Environmental Protection - Prairie and Northern
Environment Canada
4999 - 98th Avenue
Edmonton, Alberta T6B 2X3

For residents of British Columbia and the Yukon:

Director, Environmental Protection - Pacific and Yukon
Environment Canada
224 West Esplanade
North Vancouver, British Columbia V7M 3H7

Notes

National Library of Canada cataloguing in publication data

Main entry under title :

Compliance and Enforcement Policy for the *Canadian Environmental Protection Act, 1999* (CEPA, 1999)

Issued also in French under title: *Politique d'observation et d'application de la Loi canadienne sur la protection de l'environnement, 1999* (LCPE, 1999).

ISBN 0-662-30144-7

Cat. No. En40-628/2001E

- 1. Environmental law -- Canada.**
- 2. Pollution -- Law and legislation -- Canada.**
- 3. Environmental protection -- Canada.**
- I. Canada. Environment Canada.**

KE3619.C65 2001

344.71'046

C2001-980130-0

