

SIGNIFICANT CHANGES TO CANADA'S FEDERAL ENVIRONMENTAL PROTECTION REGIME PROPOSED

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On April 13, 2021, the government of Canada proposed significant changes to the *Canadian Environmental Protection Act, 1999* ("CEPA")^[1] through the introduction of [Bill C-28, Strengthening Environmental Protection for a Healthier Canada Act](#) (the "**Amendments**").^[2]

With these Amendments, the government hopes to modernize Canada's environmental regime which has not undergone significant change in over 20 years. CEPA is the primary statute through which the federal government regulates and protects the environment. CEPA and its accompanying regulations regulate among other things the treatment and disposal of chemicals and hazardous waste, vehicle and engine emissions, equipment and other sources of pollution, and the prevention and impact of environmental emergencies such as oil and chemical spills.

This bulletin provides an overview of the major changes to CEPA that have been proposed.

The Right to a Healthy Environment and Certain Soft Rights

Significantly, the Preamble under the Amendments will officially recognize Canadians' right to a healthy environment. Section 2 of CEPA will require the government to protect that right when making decisions relating to the environment.^[3]

The Amendments set out specific obligations the government must undertake to safeguard this right, including developing an implementation framework to set out how this right will be considered in the administration of CEPA as well as conducting research, studies and monitoring activities to support this goal.

In addition, the Preamble will recognize some additional considerations, including confirming the government's commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as well as recognizing the importance of considering vulnerable persons, reducing or replacing the use of animal testing, and the right of Canadians to have access to information on product labels.

Project Impact Assessment

With respect to risk assessments under CEPA, under the new provisions the federal government must consider impacts on vulnerable populations and possible cumulative effects of the proposed conduct. Vulnerable populations will include groups of people with elevated biological susceptibility, such as children, and groups with elevated exposure risks, such as indigenous communities. Consideration of cumulative effects of proposed conduct takes a holistic approach to substance management by considering the compounding risks of exposure to various chemicals during daily life rather than looking at substances on their own.

Chemicals Management

The federal government has identified the management of chemicals as a key target area under the new CEPA.

The Amendments thus propose to overhaul this regime in order to better protect Canadians from the evolving risks of harmful chemicals and pollution. To accomplish this, the government has proposed wide ranging changes relating to risk assessment, public accountability, management of toxic substances and new substances, which are discussed in turn below.

Risk Assessment

The government must consult, develop and publish a Plan of Chemicals Management Priorities which will set out an integrated plan for the risk assessment of various chemical substances currently being used in Canada. The Plan will establish priorities for the management of substances, taking into account a number of factors including among others the views of stakeholders and partners, public comments, the effects on vulnerable populations, the toxicity of the substance, the ability to disrupt biological reproduction or endocrine systems, and whether there are safer and more sustainable alternatives.^[4] The government will also be empowered to make geographically targeted regulations to address pollution “hot spots”.

Additionally, the Amendments will establish a mechanism through which any person can submit a request to the Minister to assess a substance to determine its toxicity and risk to the environment. The Minister must provide a response within 90 days, indicating whether they intend to assess the substances and their reasons for their decision.

Public Accountability Framework

The Amendments intend to increase transparency and public participation in risk assessments by the government for the categorization and management of potentially toxic chemicals. Currently, CEPA contains a public accountability framework under section 77 and provides time limits for the government to assess substances under sections 91 and 92. However, these provisions only apply to certain risk assessments being conducted by the government such as substances placed on the Domestic Substances List that in the opinion

of the Minister present the greatest potential for exposure to Canadians or are persistent or bio-accumulative. The proposed Amendments plan to amend section 77 to expand these transparency and accountability measures to all substance risk assessments for toxic or capable of being toxic substances, with the exception of assessments for new substances.^[5]

Management of Toxic Substances

The Amendments also propose to make significant changes to the management of high-risk toxic substances. Currently, substances that are designated as toxic are added to a list of toxic substances in Schedule 1 of CEPA. However, under the Amendments this list will be split into two categories based on a risk-based approach:

- Part 1 will be for substances found to pose the highest risk, namely substances that are either persistent and bio-accumulative or inherently toxic, including thresholds for carcinogenicity, mutagenicity and reproductive toxicity. These substances will be subject to more stringent management, with the ultimate priority given to prohibition (whether total, partial or conditional); and
- Part 2 will be for other toxic substances that will continue to be subject to regular risk management, with priority given to pollution prevention.^[6]

The intent behind this division is to support the prioritization of prohibiting high-risk toxic substances with additional supports and measures.

Products that are regulated under other specific federal legislation, such as pesticides under the *Pest Control Products Act*, are not affected by these Amendments. However, the Amendments do provide that a new regulation or instrument can be made under that federal statute to fulfil any obligations under CEPA to develop a risk management instrument, including with respect to health matters, which will fall under the Minister of Health's mandate.

New Substances

With regard to the approval of new chemical substances for use in Canada, the federal government will gain additional powers under the proposed Amendments to specify what information needs to be submitted during the approval process as well as the timeline for submitting it.^[7]

The Amendments also propose to amend the *Food and Drugs Act (FDA)*^[8] in order to enable the creation of an environmental risk assessment and management regime for drugs. This is intended to streamline the regulatory approach for industries with respect to the assessment and approval of drugs by empowering the Minister of Health to also consider the environmental implications of drugs. This would also avoid the duplication of requiring notification and review by both the Minister of Health and the Minister of Environment and Climate Change for certain drugs.

Significant New Activity

The Amendments propose changes to the significant new activity provisions. A significant new activity is an activity conducted with a substance in a different quantity, concentration or in different circumstances that could affect the environment or human health. Under the proposed Amendments, the Minister will have the authority to vary elements of a significant activity or notice beyond the significant new activity itself. This may include the data or information that needs to be submitted for evaluation prior to undertaking the activity or the timelines for submitting such information. Downstream communications will also be impacted, in that the transferor of a new substance must notify transferees of any obligations to comply, and the Minister will be able to tailor the scope of such obligations to particular classes of persons who must be notified.

Power to Compel Information

The Amendments will also strengthen the government's information-gathering ability under section 71 of CEPA by allowing it to specify the nature and kind of data that it requires from chemical producers and distributors.

Specifically, the government will be able to specify methods of quantifying requested data as well as specific test procedures and laboratory practices to be performed by the companies from whom the information is requested.^[9] The Amendments will also limit the use of confidentiality requests from companies who are instructed to provide information to the government. Companies wishing to protect confidential business information will have to submit requests accompanied by reasons as to why confidentiality is being asserted.^[10]

Impact

These changes to Canada's environmental regime have the potential to significantly impact a wide range of industries and businesses in such areas as chemical manufacturing, oil and gas, petrochemicals, pharmaceuticals and natural resources.

Companies carrying out activities or planning projects regulated under CEPA will need to keep in mind that the federal government will now have an explicit *duty* to protect the right to a clean environment when reviewing applications and conducting project assessments and significant new tools for regulating chemicals. Further, Aboriginal rights will have a role (that is yet to be fully defined) in how the content of this legislation will be interpreted and applied.

The Amendments were introduced in Parliament for first reading on April 13, 2021. If ultimately passed into law, they will come into effect on a date to be determined by order of the Governor in Council.

[1][ps2id id='1' target=''] [Canadian Environmental Protection Act, 1999](#), S.C. 1999, c. 33.

[2][ps2id id='2' target=''] [Bill C-28, Strengthening Environmental Protection for a Healthier Canada Act](#), Parliament of Canada [Bill C-28].

[3][ps2id id='3' target=''] Bill C-28, preamble and clause 2.

[4][ps2id id='4' target=''] Bill C-28, clause 16.

[5][ps2id id='5' target=''] Bill C-28, clause 21(1).

[6][ps2id id='6' target=''] Bill C-28, clauses 21(1) and 29.

[7][ps2id id='7' target=''] Bill C-28, clauses 24, 26, 41 and 43.

[8][ps2id id='8' target=''] [Food and Drugs Act](#), R.S.C. 1985, c. F-27.

[9][ps2id id='9' target=''] Bill C-28, clause 18.

[10][ps2id id='10' target=''] Bill C-28, clauses 49-50.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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