



Government
of Canada

Gouvernement
du Canada

CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 REVIEW

THE INTERIM GOVERNMENT RESPONSE

Response to the Recommendations of the
Standing Committee on Environment and
Sustainable Development in Its Report
*The Canadian Environmental Protection Act,
1999—Five-Year Review: Closing the Gaps*

Canada

Further information on the *Canadian Environmental Protection Act, 1999* (CEPA 1999) and related activities can be found online at:

- CEPA Environmental Registry Website (www.ec.gc.ca/CEPARRegistry);
- Environment Canada's Green Lane™ (www.ec.gc.ca); and
- Health Canada's Website (www.hc-sc.gc.ca).

Departmental publications are available from the departmental library or the nearest regional library. Many departmental publications are also available online at www.ec.gc.ca/publications or through Environment Canada's Inquiry Centre:

Inquiry Centre
70 Crémazie St.
Gatineau, Quebec
K1A 0H3
Telephone: 819-997-2800 or 1-800-668-6767
Fax: 819-994-1412
TTY: 819-994-0736 (Teletype for the hearing impaired)
E-mail: enviroinfo@ec.gc.ca

Library and Archives Canada Cataloguing in Publication

Canada

Canadian Environmental Protection Act, 1999 Review: the interim government response : response to the recommendations of the Standing Committee on Environment and Sustainable Development in its report The Canadian Environmental Protection Act, 1999 - five-year review: closing the gaps

Text in English and French on inverted pages.

Title on added t.p.: L'examen de la Loi canadienne sur la protection de l'environnement (1999) : réponse provisoire du gouvernement.

Available also on the Internet.

ISBN 978-0-662-05072-8

Cat. no.: En21-187/2007

1. Canada. Canadian Environmental Protection Act. 2. Canada. Canadian Environmental Protection Act, 1999. 3. Environmental law--Canada. 4. Pollution--Law and legislation--Canada. 5. Environmental policy--Canada. 6. Environmental health--Government policy--Canada.

I. Canada. Environment Canada II. Canada. Parliament. House of Commons. Standing Committee on Environment and Sustainable Development III. Title. IV. Title: L'examen de la Loi canadienne sur la protection de l'environnement (1999) : réponse provisoire du gouvernement.

KE3614.54.C36 2007

344.7104'6

C2007-980204-4E



CONTENTS

MESSAGE FROM THE MINISTERS.....	V
1. INTRODUCTION.....	1
2. POLICY CONTEXT	3
2.1 The Chemicals Management Plan	3
2.1.1 <i>Overview of the Chemicals Management Plan</i>	3
2.1.2 <i>Actions under the Chemicals Management Plan</i>	4
2.1.3 <i>The Role of CEPA in Implementing the Chemicals Management Plan</i>	6
2.2 Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution.....	7
2.2.1 <i>Overview of the Action Plan to Reduce Greenhouse Gases and Air Pollution</i>	7
2.2.2 <i>Actions under the Regulatory Framework for Air Emissions</i>	7
3. INTERIM RESPONSE TO THE COMMITTEE RECOMMENDATIONS	9
3.1 Knowledge.....	9
3.1.1 <i>State of the Environment Reporting</i>	9
3.1.2 <i>Risk Assessment, Safety and Burden of Proof</i>	9
3.1.3 <i>Information Regarding the Domestic Substances List</i>	10
3.1.4 <i>Updating Data</i>	10
3.1.5 <i>Information Gathering Notices</i>	11
3.1.6 <i>Sharing Data</i>	11
3.1.7 <i>Quality of Information</i>	12
3.1.8 <i>Assessments and Confidential Business Information</i>	12
3.1.9 <i>Improving the National Pollution Release Inventory</i>	13
3.1.10 <i>Biomonitoring</i>	13
3.1.11 <i>Complex Mixtures of Chemicals</i>	14
3.1.12 <i>Subclinical Outcomes and Chronic Toxicity</i>	14
3.1.13 <i>Improving Timelines</i>	15
3.1.14 <i>Taking into Account Vulnerable Populations</i>	15
3.1.15 <i>Taking into Account Vulnerable Ecosystems</i>	16
3.2 Commercial and Consumer Products	16
3.2.1 <i>The “In Commerce List”</i>	16
3.2.2 <i>CEPA 1999 and the Hazardous Products Act</i>	17
3.3 Implementation.....	17
3.3.1 <i>Virtual Elimination</i>	17
3.3.2 <i>Action Not Process</i>	18
3.3.3 <i>Pollution Prevention Plans</i>	18
3.3.4 <i>The Substitution Principle</i>	18
3.3.5 <i>Increasing Resources</i>	19
3.3.6 <i>Public Participation</i>	19
3.3.7 <i>Equivalency Agreements</i>	19
3.4 Compliance and Enforcement.....	20
3.5 The Use of the Word “Toxic”	20
4. CONCLUSION.....	21

MESSAGE FROM THE MINISTERS

The Government of Canada is committed to protecting human health and the environment for the well-being of all Canadians. In the last Speech from the Throne, the Government committed to “take measures to achieve tangible improvements in our environment, including reduction in pollution and greenhouse gas emissions.”

The *Canadian Environmental Protection Act, 1999* (CEPA 1999) is the Government’s cornerstone legislation for preventing pollution in order to protect Canada’s environment and the health of Canadians.

This legislation is strengthened by the requirement that it be reviewed by a committee of Parliament on a regular basis. During the past year, the House of Commons Standing Committee on Environment and Sustainable Development conducted its review and issued its report in May 2007, *The Canadian Environmental Protection Act, 1999—Five-Year Review: Closing the Gaps*. During the same period, the Senate Standing Committee on Energy, the Environment and Natural Resources also reviewed certain aspects of CEPA 1999, and plans to issue its report by the end of October 2007.

As we await the Senate Committee report this fall, we are pleased to provide this interim response to the House of Commons Standing Committee. We acknowledge the thoughtful work of the members of the Committee in conducting its review. The Committee’s recommendations will provide valuable guidance to ensure that CEPA remains modern and effective legislation for protecting the environment and health of Canadians. We also value the reasoned and helpful contributions of the Canadian Council of Ministers of the Environment and of the many witnesses who contributed to the reviews from civil society, business, academia, and international institutions.

The Honourable John Baird, P.C., M.P.
Minister of the Environment

The Honourable Tony Clement, P.C., M.P.
Minister of Health

CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 REVIEW: THE INTERIM GOVERNMENT RESPONSE

1. INTRODUCTION

The *Canadian Environmental Protection Act, 1999* (CEPA 1999) is an important piece of federal environmental protection legislation. It is a legislative tool for preventing pollution in order to protect the environment and human health, and thereby contributes to the country's long-term economic competitiveness.

CEPA 1999 requires a committee of one or both houses of Parliament to review the Act every five years. The House of Commons Standing Committee on Environment and Sustainable Development conducted its review and released its report in May 2007. The Senate Standing Committee on Energy, the Environment and Natural Resources is also reviewing the Act and plans to issue its report by the end of October 2007.

These reviews provide the opportunity to build on the solid foundation of CEPA 1999. Accountability remains essential: transparency, access to information, and timely public participation are well established as core values in CEPA 1999 and in this review process.

CEPA 1999 came into force on March 31, 2000, following an extensive parliamentary review of the first CEPA. CEPA 1999 contains significant improvements to protect the environment over the 1988 version of the Act. Seven years after it was brought into force, CEPA 1999 remains a modern statute, which provides the Government with an extensive array of authorities. During these seven years, the departments of the Environment and Health, which jointly administer the statute, have been using the Act in ways that are efficient, effective, and coordinated with the efforts under other legislation and jurisdictions. As a result, and as stated in the House of Commons Standing Committee's report, "another drastic overhaul of CEPA is not only unnecessary, but could well be counterproductive."

As the House of Commons Standing Committee's recommendations also identify, however, the ongoing experience with the Act shows that there are various instances where fairly modest changes to the Act could improve implementation of programs and increase the Government's ability to meet its environmental and human health protection objectives.

This report is an interim response to the report of the Standing Committee on Environment and Sustainable Development. It describes the Government's main environmental protection initiatives, namely the Chemicals Management Plan and Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution. These two initiatives provide the policy context and overall objectives for how the Government will use CEPA 1999 over the next few years.

This report also provides a preliminary response to each of the Standing Committee's recommendations. It also highlights examples of how the policies and practices being developed to implement the Chemicals Management Plan and Turning the Corner are supportive of several of the Committee's recommendations.

The Government is committed to considering the recommendations of both the House and the Senate committees. The Government will table a final consolidated response to both committee reports after reviewing the recommendations of the Senate Standing Committee on Energy, the Environment and Natural Resources. The final consolidated response will address the recommendations made in the two committee reports, and may propose various improvements to the Act.

2. POLICY CONTEXT

This chapter describes the Government's main environmental protection priorities—the Chemicals Management Plan and Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution—and the role CEPA 1999 will play in supporting these initiatives.

At the same time as the Government uses CEPA 1999 to address toxic chemicals, air pollution, and greenhouse gas emissions, it will continue to implement and seek ways to improve its use of the numerous other provisions and requirements under the Act.

2.1 The Chemicals Management Plan

2.1.1 Overview of the Chemicals Management Plan

A key aspect of CEPA 1999 is the prevention and management of risks posed by toxic and other harmful substances. Until recently, there was a major distinction between the way in which the government was able to address substances being proposed for use in Canada (“new substances”) and the tens of thousands of substances that were already in commercial use in Canada prior to the introduction of the first CEPA in 1988 (“existing substances”).

Since 1994, the federal government has used CEPA to ensure that no “new substances” are introduced into the Canadian marketplace before they have been assessed to determine whether or not they are toxic or capable of becoming toxic to the environment or human health.

By contrast, approaches to “existing substances” were not as comprehensive because regulators were faced with thousands of substances. Some substances were developed and introduced before detailed toxicological research was routine, and some have been in widespread commercial use for decades. As a result, the approach in Canada, as in other jurisdictions, focused on the risks from large-scale pollutants, such as combustion products like dioxins and furans, or releases to water like effluents from mills or other facilities. The government used panels of scientific experts to identify pollutants suspected to be harmful and then assessed the ecological and health risks of those substances. In most cases, if the assessment process determined that the substance posed an unacceptable risk to the environment or human health, the government added the substance to the List of Toxic Substances under CEPA and implemented measures to prevent or manage the risks from the substance.

Despite these efforts, prior to the overhaul of CEPA in 1999, there were still thousands of chemicals and substances in commercial use that had not been assessed for the risks they may pose to the environment or human health. CEPA 1999 introduced a new regime for identifying priorities for assessment and management on a more systematic and comprehensive basis. New provisions in the Act required government to “categorize” the approximately 23,000 substances that were in commercial use in the mid 1980s. The categorization exercise identified substances of potential concern for further assessment, including substances with certain toxicological characteristics as well as those with the greatest potential for human exposure.

The result is that Canada is the only country in the world to have an information base on the thousands of “existing substances” that have been in commercial use since the 1980s but which

have not been assessed for the risks they may pose to humans or the environment. Using this information base to set priorities for further analysis, the Chemicals Management Plan describes the Government's overall approach to dealing with these priorities by 2020.

At the core of the Chemicals Management Plan is the simple idea that chemicals to which Canadians or the environment may be exposed should not create unacceptable risks to their health or to the environment. While the Plan still addresses large-scale industrial emissions and releases of toxic pollutants, it also reflects the increasing worldwide focus on the chemicals we use every day—substances that are intentionally manufactured, imported, and used in products and treatments to improve the quality of life.

These commercial chemicals make a fundamental contribution to the economic and social well-being of Canadians. However, exposure to some of them can lead to unintended effects in humans and the environment: effects such as cancer, neurobehavioural disorders, birth defects, and respiratory diseases as well as water contamination, air pollution, and reproductive effects in wildlife.

The Chemicals Management Plan protects Canadians and the environment from these sorts of effects while supporting and promoting a strong Canadian economy, by ensuring that the Government:

- gives Canadians the information they need to make decisions about what risks are acceptable to them;
- moves quickly to reduce risks from chemicals when they are identified, using measures ranging from distributing information to requiring labelling of products, and regulating or prohibiting the use of certain substances;
- encourages industrial users and producers of chemicals to take proactive measures ranging from sharing information to changing product formulations in order to protect Canadians and the environment; and
- uses all of its legal powers to manage risks from chemicals in ways that are clear and predictable to producers, users, and consumers of chemicals and products.

The Plan's objective is to address all priority chemical substances in Canada by 2020. The Government will accomplish this by accelerating existing activities, reinvesting in science, and developing new and innovative partnerships with industry and other countries to work collectively towards common goals. An online Chemicals Portal will keep Canadians and stakeholders informed of progress towards meeting this objective.

2.1.2 Actions under the Chemicals Management Plan

The following are some of the many actions that will be taken under CEPA 1999:

- **Immediate regulation of five groups of chemicals**—In 2006, the Government introduced regulations placing restrictions on five groups of chemicals because there is strong evidence that they pose a risk to the environment or human health. These include draft regulations on Polybrominated diphenyl ethers (flame retardants) and Perfluorooctane sulfonate (used in the manufacturing of some non-stick coatings and stain repellents). The Pentachlorobenzene and Tetrachlorobenzenes (impurities or resulting from waste incineration), and 2-Methoxyethanol (anti-icing agent in jet fuels and

chemical/industrial processes) amendment to the Prohibition of Certain Toxic Substances Regulations, 2005 is now in force.

- **Challenge to stakeholders on high-priority chemical substances**—In early 2007, the Government began a three-year process focused on the 200 substances identified as a result of categorization as being the highest priority for further action. Under this process, the Government has challenged manufacturers and importers to provide information on the uses of these chemical substances and the best ways to control risks from these substances. Requests will be made every three months on groups of 15 to 30 substances. The Government will use the responses to determine how to manage these substances.
- **Restrictions on new uses of various substances**—Based on the results of the categorization process, the Government identified a further 150 priority chemical substances that are not currently used in Canada. In late 2006, the Government published a proposal to use CEPA 1999 to place Significant New Activity notices on these 150 substances. As a result of this action, these chemical substances will not be allowed for use in Canada unless proponents provide the data needed to support a risk assessment demonstrating that the substance would not pose an unacceptable health or environmental risk. Later in 2007, the Government will also place similar requirements on some of the other priority substances that continue to be used in Canada.
- **Ongoing assessment and management of medium-priority substances**—By 2020, the Government will identify the health and environmental effects of 2,600 medium-priority substances through successive rounds of assessment. As more information is obtained on these substances, the Government will make decisions on how best to manage them.
- **Rapid screening of low-concern substances**—Following the categorization process, approximately 4,300 substances were identified as meeting the categorization criteria. However, about 1,200 of these substances were believed not to pose a risk to the environment or to human health and were screened using a worst-case approach to decide whether further assessment was necessary. The result, which was published in the *Canada Gazette* in June 2007, identified 754 substances as “not toxic” under CEPA 1999; the Government committed to validating the assumptions made under this rapid-screening approach through the Government’s new inventory update program, under future research and monitoring programs, or as part of future assessments of groups of substances.

The other 400 or so substances have been identified as requiring further assessment in order to evaluate their potential to cause harm. A priority-setting framework will be developed and used to establish the next round of priorities under the Chemicals Management Plan. Further information and details will follow in the coming months.

- **Research and health monitoring**—Working with other agencies and levels of government, the Government will build a monitoring program to track Canadians’ exposure to toxic substances. The program will allow the Government and others to measure progress in managing risks from chemical substances.
- **Promoting good stewardship of chemical substances**—The Government will work with industry to develop sound management practices that protect Canadians and the environment and strengthen industry’s role in proactively identifying and safely managing risks associated with the chemicals they produce and use. These practices may include

expanded product labelling and controls on imported products that contain substances restricted in Canada.

- **Regulations on pharmaceuticals and personal-care products**—The Government will work with stakeholders to review the potential health and environmental risks associated with substances used in products regulated under the *Food and Drugs Act*.

In addition to addressing the priorities identified during the categorization process, the Chemicals Management Plan establishes a comprehensive agenda to ensure that actions to manage chemical substances under all federal statutes are as integrated and current as possible. Chemicals Management Plan actions being taken under other statutes include:

- **Re-evaluation of older pesticides**—The Government will re-evaluate 200 older pesticides and, by 2009, decide if they meet today's standards. The Government will also review and register replacement pesticides more quickly.
- **Cosmetics labelling**—The Government will implement compliance and enforcement measures for the amended *Cosmetic Regulations* that require ingredient labelling on all cosmetic products.
- **Enhanced management of environmental contaminants in food**—Actions will be taken to identify and reduce contaminants in food supplies and minimize potential health impacts on Canadians. The Government will provide consumers with up-to-date food safety information to help them make healthy food choices for themselves and their families.

These actions do not preclude other legislation from being used, such as the *Hazardous Products Act*, depending on the appropriate tool for controlling and managing risk.

2.1.3 The Role of CEPA in Implementing the Chemicals Management Plan

CEPA 1999 will be the primary statute the Government will use to implement the Chemicals Management Plan. The information developed through CEPA's categorization process provided the basis for establishing the priorities for action under the Plan. CEPA 1999 also provides the authorities needed to continue to assess and manage most of the priority chemical substances.

In addition to CEPA 1999, because there are many different chemicals and numerous ways of using them, the federal government addresses potential threats to human health and the environment from chemicals through various laws. For instance, the *Food and Drugs Act* and the *Pest Control Products Act* establish approval requirements for specific uses of substances. The *Hazardous Products Act* prohibits or regulates consumer products that may pose an unacceptable risk to users.

Within this array of federal legislation, CEPA 1999 is the backstop law that ensures that all substances not assessed under another law are assessed for possible human health or environmental risks, and that action is taken to address any unacceptable risk.

2.2 Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution

2.2.1 Overview of the Action Plan to Reduce Greenhouse Gases and Air Pollution

Climate change is a global issue of major concern for Canadians. While Canada accounts for just 2 percent of global greenhouse gas emissions, its per capita emissions are among the highest in the world and continue to increase. Air pollution is also a significant threat to human health and the Canadian environment. To address these issues, it is crucial that Canada do its part to address its own contribution to global climate change and reduce emissions of air pollutants.

The Government announced it is taking immediate steps through Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution. A central element of the plan is the Regulatory Framework for Air Emissions, which includes reduction requirements for emissions of greenhouse gases and selected air pollutants from industrial and transportation sources, performance standards for consumer and commercial products, and action to improve indoor air quality. The Regulatory Framework will provide a nationally consistent level of protection for the health of Canadians and their environment, while ensuring the continued competitiveness of the Canadian economy.

The regulations will set mandatory and enforceable reduction targets for emissions of greenhouse gases and air pollutants from the following major industrial sectors: electricity generation produced by combustion; oil and gas (including upstream oil and gas, downstream petroleum, oil sands, and natural gas pipelines); forest products; smelting and refining (including aluminum, alumina, and base metal smelting); iron and steel; iron ore pelletizing; potash, cement, lime, and chemicals production, including fertilizers. This regulatory regime will be among the most rigorous in the world.

Implementation of the Regulatory Framework will result in significant improvements in air quality, including decreases in smog levels and acid deposition. In turn, these air quality improvements will lead to substantial health benefits from the reduced risk of death and illness. This strong regulatory system will lead to technological investment and innovation in Canada, yielding long-term economic benefits.

2.2.2 Actions under the Regulatory Framework for Air Emissions

Greenhouse Gases

For greenhouse gases, the Government will introduce short-term reduction targets that will come into force in 2010. These targets will result in absolute reductions relative to 2006 levels in the total emissions of greenhouse gases from industry as early as 2010 and no later than 2012, even if the economy grows as expected. These actions will help the Government achieve its commitment to reduce national greenhouse gas emissions by 20 percent from 2006 levels by 2020.

To provide flexibility and help minimize any negative economic impact of the regulations, the regulations will give industry several options to meet their legal obligations. Regulatees will be able to comply by reducing their own emissions through abatement actions such as energy

efficiency measures, improved energy management systems, deployment of carbon capture and storage, and other emission-reducing technologies. In addition, regulated firms will have access to emissions trading and could qualify for a one-time recognition of early action. The Government will also pursue linkages with North American greenhouse gas emissions trading systems.

Furthermore, new regulations will require fuel producers and importers to have an average annual renewable fuel content of at least 5 percent of the volume of gasoline that they produce or import, beginning in 2010. Upon successful demonstration of renewable diesel fuel use under the range of Canadian conditions, the Government also intends to require an average 2 percent renewable fuel content in diesel fuel and heating oil by no later than 2012. These new regulations will require enough renewable fuel to reduce greenhouse gas emissions by about 4 megatonnes per year, the equivalent of taking almost one million vehicles off the road.

In conjunction with the planned regulations, the Government also announced funding of \$365 million to encourage the development of biofuels and other bioproducts.

Air Pollutants

The emission reduction targets for air pollutants will specify a maximum level of certain air contaminants (nitrogen oxides, sulphur oxides, volatile organic compounds, and particulate matter) that can be emitted from a given sector in a given year. The Government is consulting with affected parties on the targets and other features of the regulatory regime. As more information becomes available and regulatory development is undertaken, the Government will consider whether regulations for specific sectors should include targets for other air pollutants. The targets for air pollutants will come into force as early as possible, between 2012 and 2015.

To provide flexibility in meeting the emission limits, the regulations will give firms the options of reducing their own emissions or purchasing emissions credits through a national emissions trading system that will be established for sulphur oxides and nitrogen oxides. If a firm is in an area where air quality does not meet national objectives, the Government will restrict the use of emissions credits from outside that area. The Government will also continue discussions with the United States on a cross-border emissions trading system for these pollutants.

Air Quality Objectives

Some of the most significant health risks to Canadians from air pollution are associated with direct exposure to ambient levels of particulate matter and ozone, the main components of smog. The Government will set air quality objectives under CEPA 1999 for particulate matter and ozone. These objectives will specify targets for the maximum concentrations of these substances in ambient air.

3. INTERIM RESPONSE TO THE COMMITTEE RECOMMENDATIONS

This chapter provides an interim response to each of the House of Commons Standing Committee's recommendations. It also describes the current and emerging policies and practices for the implementation of the Act that are relevant to the Committee's recommendations. The Government is committed to considering and responding to the recommendations of both committees, and will do so through a final consolidated response to both committee reports after reviewing the recommendations of the Senate Standing Committee on Energy, the Environment and Natural Resources.

3.1 Knowledge

3.1.1 *State of the Environment Reporting*

Recommendation 1

That the government publish biennially, in electronic and hard copy formats, a comprehensive state of the environment report to provide timely, accurate and accessible environmental information, integrated with socioeconomic factors, to improve decision-making and support progress towards sustainability.

The Government recognizes that state of the environment reporting is useful for informing Canadians and supporting effective decision making. CEPA 1999 currently requires the Government to report on the state of the environment. While the Government acknowledges that Canadians must be well informed, some environmental conditions may require biennial reporting while others may not change sufficiently over a two-year time span to justify comprehensive reporting in such short intervals. The Government will explore options to inform Canadians in a cost-effective manner using a range of timely and targeted reporting strategies and products. For example, under the Chemicals Management Plan, Health Canada has committed to prepare a State of Environmental Health Report every five years.

3.1.2 *Risk Assessment, Safety and Burden of Proof*

Recommendation 2

That the government amend Part 5 of CEPA 1999 to state that a guiding principle in controlling toxic substances is that industry has the responsibility of demonstrating, to the satisfaction of the Minister, that the risks of new and existing substances of concern are acceptable.

The Government acknowledges the important role that manufacturers and importers play in contributing data to the assessment of substances of concern. Many of the current provisions in the Act reflect this emphasis. Under the Act, and the *New Substances Notification Regulations (Chemicals and Polymers)* and the *New Substances Notification Regulations (Organisms)*, for example, proponents of new substances must provide the information needed to complete an assessment of a substance's potential environmental or human health impacts. The Government can also require importers, producers, and users to submit a range of information

on any substance suspected of being toxic or capable of becoming toxic. The current Act requires manufacturers and importers to submit, without delay, any information it obtains on a substance's toxicity or capability to become toxic.

The Government is also undertaking new initiatives under the Chemicals Management Plan that relate to the intent of this recommendation. An important part of the Chemicals Management Plan is the Challenge Initiative, where the Government is challenging industry and other stakeholders to provide information on the uses of 200 priority chemical substances and on the best ways to control any risks. The Government is predisposed to conclude that each of these substances is toxic and has stated that it will implement a control measure to safeguard human health and the environment unless stakeholders provide new information as to why such action would not be needed for a particular substance.

Additionally, late in 2006, the Government also published a proposal to use CEPA 1999 to place Significant New Activity notices on 150 priority chemical substances not currently used in Canada. These substances will not be allowed for use in Canada unless proponents provide the data needed to demonstrate that the substance will not pose an unacceptable health or environmental risk.

3.1.3 Information Regarding the Domestic Substances List

Recommendation 3

That Environment Canada, in assessing chemicals on the DSL as well as any others yet to undergo an environmental assessment, recognize that chemicals may be persistently present because of their continuous release into the environment.

The Government recognizes the need for risk assessments to consider ongoing or continuous exposure to humans and chronic exposure to the environment. These factors are already considered, where relevant, under CEPA risk assessments. The Government will continue to incorporate best scientific practices to consider chronic effects of low-dose exposure rates in assessments.

3.1.4 Updating Data

Recommendation 4

That the government amend CEPA 1999 to ensure that information regarding manufacture, import and use of substances is updated on a yearly basis.

The Government recognizes the importance of an up-to-date inventory of the chemical substances in commercial use in Canada and has committed to creating an inventory under the Chemicals Management Plan.

3.1.5 Information Gathering Notices

Recommendation 5

That the government amend s. 72 and s. 46 of CEPA 1999 in order that it may obtain information on any substances of concern so that decisions regarding substances are made on the most comprehensive data set possible.

The Government will continue to explore opportunities to improve the already extensive information-gathering authorities in CEPA 1999. Sections 46 to 53 and 70 to 72 of CEPA 1999 provide the authorities for the National Pollutant Release Inventory and for various information-gathering authorities that support other programs, such as risk assessment and regulatory development. Both the Chemicals Management Plan and the Regulatory Framework for Air Emissions are using the authorities in section 71 to collect information needed to conduct risk assessments and identify appropriate controls.

3.1.6 Sharing Data

Recommendation 6

That, should REACH come into effect, the government immediately initiate negotiations toward an agreement to gain access to test data submitted under REACH that has been deemed confidential business information. In addition CEPA 1999 should be amended to require that information submitted to REACH on substances imported into Canada be submitted to Canadian authorities.

Recommendation 7

That the government enter into negotiations with other OECD countries to exchange information respecting any substance of concern, and that CEPA 1999 be amended to this end if necessary.

Many international programs deal with the risk assessment or risk management of industrial chemicals and identify substances for which some action should be considered. These programs also promote the mutual acceptance and shared use of data, and encourage strengthened cooperation in the development of policies for assessing and managing risks to health and the environment. Canada actively participates in many of these programs. For example, it is an active participant in the Organisation for Economic Co-operation and Development's Chemicals Programme and intends to establish a strong relationship with the U.S. Environmental Protection Agency's Existing Chemicals Program to exchange information on substances of concern.

The Government supports the need to continue to work with international partners to eliminate duplication and help improve decision making on new and existing substances in Canada. Priorities for international information sharing on chemicals will be guided by the priorities under Canada's Chemicals Management Plan.

The European Union's Registration, Evaluation, Authorisation and Restriction of Chemicals program (REACH) came into effect in June 2007 and is still at an early stage of implementation. The Government has initiated negotiations on agreements to obtain test data submitted under

REACH. This will provide an opportunity for Canada to share its experience gained through CEPA, in particular through the categorization exercise. For new substances, CEPA provides adequate authority for the Government to require manufacturers and importers to include data submitted to REACH as part of the notification process, should the Government decide that such information would be needed.

CEPA 1999 provides several mechanisms for international collaboration, including the development of procedures for exchanging information with other jurisdictions regarding substances that are prohibited or substantially restricted in that jurisdiction. The Government will explore whether amendments to CEPA 1999 would be useful to improve international collaboration. For example, the acceptance of foreign assessments (in whole or in part) would be a continuation of the Government's ongoing work under the Mutual Acceptance of Notifications pilot project of the Organisation for Economic Co-operation and Development.

3.1.7 Quality of Information

Recommendation 8

That the government amend CEPA 1999 to enable it to require third party verification of data provided by persons under s. 46 or s. 71 of the Act.

The Government recognizes that it may be useful to have the authority to require third party verification of information on a case-by-case basis and will explore options to amend CEPA 1999.

3.1.8 Assessments and Confidential Business Information

Recommendation 9

That the government release complete draft assessments of new substances to notifiers and publish electronically complete draft assessments of existing substances, so that all stakeholders have a better opportunity to respond.

Recommendation 10

That the government facilitate public access to appropriate information by amending CEPA 1999 to make disclosure of confidential test data mandatory in a manner similar to the *Pest Control Products Act*.

The Government appreciates the importance of facilitating public access to appropriate information so that the basis for Government decision making is as transparent as possible and that the public can also make informed decisions. At the same time, the Government respects the importance of protecting confidential business information.

Under CEPA 1999, the Government publishes draft risk assessments of existing substances for public comment. Summaries of the draft risk assessments are published in the *Canada Gazette* while the full screening assessments are available in the CEPA Registry. In the future, they will also be available through the Chemicals Management Plan web portal at www.chemicalsubstances.gc.ca. The Government also publishes the final versions of each assessment in the CEPA Registry. These publications include test data that are critical to the assessment's conclusion.

For new substances, the Government currently releases draft assessment reports to notifiers upon request, publishes decision documents for new living modified organisms, and has initiated an external periodic review process. The Government will consider whether the *Pest Control Products Act* provides a possible model for improving the approach to disclosing information under the CEPA new substances regime.

3.1.9 Improving the National Pollution Release Inventory

Recommendation 11

That the government of Canada provide sufficient funding to enable cooperation between Environment Canada and Statistics Canada to:

- **Produce and publish an annual report critically analysing the results of the NPRI data including trends where possible; and,**
- **To ensure that the quality of NPRI data collected are continually improved to better inform Canadians and help strengthen policies to prevent pollution.**

The Government supports continued improvement of the quality of National Pollutant Release Inventory (NPRI) data and its analysis. Over the past few years, Environment Canada has developed and implemented a new methodology to derive trends from NPRI data. Environment Canada published the results of its NPRI trends analyses in fact sheets for the 2004 and 2005 reporting years. Discussions have also been initiated between Environment Canada and Statistics Canada to further improve estimates of the amount of pollutants being released in Canada and to provide a greater understanding of the interaction between the economy and the environment, as well as pollution trends.

Environment Canada has also begun an intensive data quality improvement program. This involves collaborating with other governments, key industrial sectors, and other stakeholders to simplify reporting requirements, incorporate additional guidance and quality-control checks in the reporting software, and improve quality-control activities after data are submitted.

3.1.10 Biomonitoring

Recommendation 12

That CEPA 1999 be amended to oblige the Ministers to put in place a permanent biomonitoring study that is representative of the Canadian population, including vulnerable populations.

The Government recognizes that human biomonitoring is an essential tool in the assessment and management of toxic chemicals. It provides direct information on exposure by measuring levels of the substances in the human body and would improve the Government's ability to decide how to protect the health of Canadians. Under the Chemicals Management Plan, the Government is working with other agencies and levels of government to build a monitoring program to track Canadians' exposure to toxic substances.

3.1.11 Complex Mixtures of Chemicals

Recommendation 13

That the government:

- **Amend CEPA 1999 to oblige the Ministers to perform research into the effects of complex mixtures of chemicals on human and environmental health;**
- **Use s. 46 and s. 71 to require industry to submit information on the effects of complex mixtures; and,**
- **Require information on the cumulative effects of substances with a common mechanism of toxicity in the *New Substances Notification Regulations* where there is reason to believe that such environmental or human exposures may occur.**

The Government acknowledges the importance of improving scientific understanding of complex mixtures and of cumulative effects. The definition of “substance” in CEPA 1999 is sufficiently broad to include complex mixtures. The Government has conducted and will continue to conduct assessments of complex mixtures and request information from manufacturers and importers in these areas. Examples of complex mixtures already assessed under CEPA include effluents from municipal waste water, pulp mills, and textile mills.

Complex mixtures have also been identified as a research priority under the Chemicals Management Plan. The Government is working to address complex mixtures under the petroleum sector and will further refine approaches as the Chemicals Management Plan progresses.

The science to support the understanding of cumulative effects is in its infancy, and Environment Canada has identified research on cumulative effects as an important strategic direction for its science activities. Research is also underway at Health Canada to investigate complex mixtures and to develop new chemical, toxicological and epidemiological methodologies to better understand the health effects of exposure to chemical mixtures on human populations.

3.1.12 Subclinical Outcomes and Chronic Toxicity

Recommendation 14

That the government add developmental neurotoxicity tests to those required in the *New Substances Notification Regulations* and that such tests also be applied to existing substances of concern.

Recommendation 15

That the government make it a requirement for producers of new and existing substances deemed to be persistent or high production volume to perform chronic toxicity studies on these substances according to OECD Guideline 452, and submit the results to the Ministers as part of the risk assessment.

The Government acknowledges the need to consider neurotoxicity and chronic toxicity tests when relevant. The Government currently identifies when such tests are necessary on a case-by-case basis during the risk assessment process. Rather than requiring manufacturers and importers to submit such tests in all cases, CEPA 1999 provides a flexible framework to obtain and analyze whatever type of data is relevant to a given risk assessment. For new substances, CEPA 1999 provides the authority to request additional information or test data if the Minister suspects that a substance is toxic. Similarly, for existing substances, CEPA 1999 provides the authority to require submission of a wide range of information or of toxicological test data for the purpose of assessing whether a substance is toxic or capable of becoming toxic.

3.1.13 Improving Timelines

Recommendation 16

That the government amend CEPA 1999 to ensure:

- **In the case of a screening that determines a substance to be toxic, a timeline of two years from the beginning of the screening assessment to the commencement of an implementation plan; and,**
- **In the case of a screening that determines the need for a full Priority Substance List assessment, a timeline of five years from the beginning of the screening assessment to the commencement of an implementation plan.**

The Government is committed to completing risk assessments quickly and within as predictable a timeframe as possible. The Chemicals Management Plan is the Government's response to dealing with the 4,300 substances of potential concern identified in the categorization process under CEPA 1999. The Plan has set an ambitious goal of completing all assessments by 2020—a ten-fold increase in the previous rate of assessments. Specific timelines include assessing 1,200 low-concern chemicals by spring 2007 (complete), assessing 500 high-priority chemicals still in commerce by 2010, and assessing the final 2,600 medium-priority substances by 2020. These objectives will be accomplished by adopting a phased approach employing sectoral agreements where warranted and working with international partners to share the workload.

3.1.14 Taking into Account Vulnerable Populations

Recommendation 17

That CEPA 1999 be amended in the preamble to include recognition of the need to protect the most vulnerable in our society, particularly children, and that Part 5 be amended to include language similar to the *Pest Control Products Act*, directing that consideration of vulnerable groups take place in the risk assessment process, including an extra ten-times safety factor for children where appropriate.

The Government recognizes the importance of considering vulnerable populations during risk assessments and currently does so. An objective of the Chemicals Management Plan is to promote consistency and coherence across federal legislation related to chemicals management. In keeping with this objective, the Government will consider whether there is a need to strengthen the recognition of vulnerable populations in the Act.

3.1.15 Taking into Account Vulnerable Ecosystems

Recommendation 18

That the government amend CEPA 1999 to add an additional paragraph to the preamble recognizing the need to protect vulnerable ecosystems and that it explore fully its options under s. 330 (3.1) to create regulations with limited geographical application in order to protect the Great Lakes and any other vulnerable ecosystems in Canada.

The Government recognizes the importance of considering vulnerable ecosystems during risk assessments. Ecological risk assessments under CEPA 1999 already look at vulnerable ecosystems.

The Government also appreciates the importance of protecting the Great Lakes, and will continue to work with other jurisdictions to protect the Great Lakes region. The Government will explore the full suite of risk management tools available under CEPA, including geographically based regulations, when implementing its commitments under the Chemicals Management Plan, Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution, and the Canada–Ontario Agreement Respecting the Great Lakes Basin Ecosystem. The Government will consider whether there is a need to strengthen the recognition of vulnerable ecosystems in the Act.

3.2 Commercial and Consumer Products

3.2.1 The “In Commerce List”

Recommendation 19

That the government consider amending CEPA 1999 so that substances on the “In Commerce List” are prioritised in a similar way as categorization was done on the Domestic Substance List, while also considering that some of these substances may be persistently present because of their continuous release into the environment.

The “In Commerce List” does not have any explicit legal status under the current Act. Essentially, it represents substances that were approved for use under the *Food and Drugs Act* and were in commerce between January 1, 1987, and September 13, 2001. The Government recognizes the importance of clarifying the legal status of these substances and will examine options to amend CEPA 1999 to do so.

The Government also recognizes the importance of better understanding the potential risks that may be associated with these substances, and has committed under the Chemicals Management Plan to work with stakeholders to review these substances. As with other CEPA risk assessments, ongoing or continuous human exposure and chronic exposure to the environment will be considered where relevant. The Government will explore options to ensure that it has the appropriate statutory authorities for the prioritization and assessment of these substances.

In addition, the Government will work with stakeholders to promote best practices for the proper disposal of pharmaceuticals and personal-care products to reduce their burden on the environment.

3.2.2 CEPA 1999 and the Hazardous Products Act

Recommendation 20

That the government immediately begin:

- **Regulating products containing toxic substances using CEPA 1999 as the principal statute to this end; and,**
- **A review of the *Hazardous Products Act* in order to better coordinate it with CEPA 1999.**

Under both the Chemicals Management Plan and the Regulatory Framework for Air Emissions, the Government is increasing its focus on the management of toxic substances that are associated with the creation, use, and disposal of commercial and consumer products. For example, under the Regulatory Framework for Air Emissions, the Government is taking action to reduce emissions of volatile organic compounds from cleaning products, personal-care products, and paints.

The Chemicals Management Plan also emphasizes a more horizontal and integrated approach to assessing and managing toxic chemicals than has been the case in the past. Under the Plan, the Government will coordinate actions among all relevant federal legislation to ensure consistent assessment approaches on the same or similar chemicals, and to ensure that actions are taken using whichever statute will most effectively address the risks. For example, in 2006 the Government brought into force amended *Cosmetic Regulations*, under the *Food and Drugs Act*, which require mandatory ingredient labelling on all cosmetic products. Similarly, the *Hazardous Products Act*, which has been in force since 1969, will continue to be used to prevent or minimize hazards inherent in various products. The *Hazardous Products Act* has well-established powers and authorities that enable the prohibition or regulation of consumer products where there “is or is likely to be a danger to the health or safety of the public.”

3.3 Implementation

3.3.1 Virtual Elimination

Recommendation 21

That CEPA 1999 be amended by removing the requirement to establish a level of quantification before addition of a substance to the Virtual Elimination List.

Recommendation 22

That the government amend CEPA 1999 to clarify that prohibition regulations are an option toward achieving the objective of virtual elimination.

The Government recognizes that the current CEPA 1999 provisions have caused implementation challenges with respect to the requirement for a level of quantification. The Government also recognizes that the instruments available to attain virtual elimination should not be limited to release-limit regulations and that other instruments could be useful. The Government will review options for amending CEPA 1999 to enable it to appropriately address

the virtual elimination of releases of persistent, bioaccumulative, anthropogenic, and non-naturally occurring (radionuclide or inorganic) toxic substances.

3.3.2 Action Not Process

Recommendation 23

That Environment Canada engage stakeholders in identifying and implementing best practice risk management actions as soon as a risk assessment has begun.

The Government appreciates the importance of engaging stakeholders as early as practical in the risk assessment phase to identify best management practices in support of risk management, especially where substances are strongly suspected of being toxic.

3.3.3 Pollution Prevention Plans

Recommendation 24

That Environment Canada create a formal performance measurement mechanism for pollution prevention plans that will enable their achievements to be measured.

Recommendation 25

That the Commissioner of the Environment and Sustainable Development, in his next performance audit of the management of toxic substances, examine whether or not pollution prevention plans are reducing the creation of pollution.

The Government acknowledges the importance of a performance measurement system for measuring the effectiveness of the pollution prevention planning requirements in CEPA 1999 and has already started to develop such a system. The Government is also exploring options for the development of common performance indicators and a protocol for reporting on these performance indicators to the public.

The Commissioner of the Environment and Sustainable Development sets his own agenda. If the Commissioner decides to audit the pollution prevention planning provisions of the Act, Environment Canada and Health Canada will provide support as needed.

3.3.4 The Substitution Principle

Recommendation 26

That the government amend CEPA 1999 to include specific instructions to strengthen current efforts by which replacement of toxic substances by suitable alternative substances or technologies are considered in pollution prevention, risk assessment and management, and virtual elimination, including their risks and the technical and economic feasibility of substitution.

Under the Chemicals Management Plan, the Government will establish a regulatory-based agenda to address all priority chemical substances in Canada. The Government sees its role as

establishing the regulatory incentives for industry to take the initiative and to consider or develop economically viable, safer alternatives to potentially harmful substances. Consumers can also influence industry to use safer alternatives. By improving public access to information, the Chemicals Management Plan will provide Canadians the information they need to make more informed decisions about which substances and products they will use.

3.3.5 Increasing Resources

Recommendation 27

That the government allot sufficient funds to increase A-Base funding to the Departments of Health and Environment so that CEPA 1999 can be implemented more effectively.

The Government has made substantial new investments in clean air and chemicals management in the last year (over half a billion dollars). The Government will continue to review the ongoing resource requirements for the effective implementation of CEPA 1999 and other environmental and health protection priorities.

3.3.6 Public Participation

Recommendation 28

That the government consider a provision for fine splitting, similar to that provided for in the *Fisheries Act*, and other intervener funding as means to address the identified financial barriers to public participation. In addition, that the government amend s. 22 (2) of CEPA 1999 so that an environmental protection action may be brought to court if the offence may result, in harm or serious risk of harm to the environment or human, animal, plant life or health.

The Government will conduct further analysis to ensure that CEPA 1999 continues to support effective public participation.

3.3.7 Equivalency Agreements

Recommendation 29

That the government amend s. 10 of CEPA 1999 to clarify that provincial permitting systems may qualify as equivalent, and add that equivalency agreements must contain provisions for monitoring to ensure that their effects are equivalent.

The Government recognizes that equivalency agreements are an important mechanism to eliminate duplication with provincial, territorial, and Aboriginal governments and enable the best-positioned jurisdiction to act. For example, under the Regulatory Framework for Air Emissions, the Government will work to reach equivalency agreements with those governments that set provincial emissions standards that are at least as stringent as the federal standards.

The authority for equivalency agreements in CEPA 1999 enables the Government to recognize provincial, territorial, and Aboriginal permitting schemes as equivalent to CEPA regulations. The Government will explore options to clarify this authority.

CEPA 1999 already requires the Government to report annually to Parliament on the administration of equivalency agreements.

3.4 Compliance and Enforcement

Recommendation 30

That the Department of the Environment create a system to measure and evaluate the role and implementation of the enforcement provisions of CEPA 1999.

The role of the enforcement provisions of CEPA 1999 is to provide the authority to enforce the Act and its regulations through activities beginning with inspections to verify compliance, progressing to investigations of alleged violations and to measures by enforcement officers to prevent, stop, or correct alleged violations.

CEPA 1999 requires the Government to enforce the Act in a fair, predictable, and consistent manner, thereby providing a level playing field for regulated parties. The Government recognizes the importance of measuring whether that enforcement is fair, predictable, consistent, and effective.

The Government will examine how other jurisdictions, both within and outside Canada, achieve such measurements.

3.5 The Use of the Word “Toxic”

Recommendation 31

That the government change Schedule 1 to include the following information pertinent to each substance on it:

- **The subsection of section 64 that was met that triggered listing;**
- **A brief synopsis of the reasons why it is toxic at the doses observed; and,**
- **When available, the risk management tool intended to apply to the substance.**

The Government recognizes the importance of effective risk communication under CEPA 1999 to support informed decision making by the public. Communicating the risks of toxic substances throughout the CEPA management cycle—from the risk assessment, the decision that a substance is toxic and its addition to the List of Toxic Substances, through to the development of preventive and control measures, compliance promotion, enforcement, and monitoring—will be important to enhance the capacity of the Canadian public to make informed decisions critical to their own lifestyle choices and health outcomes.

4. CONCLUSION

The Government is committed to strengthening CEPA 1999. It recognizes that although CEPA 1999 is fundamentally sound and not in need of significant changes, refinements to the Act would strengthen its implementation. The House of Commons Standing Committee report highlighted some areas for improvement, and the Senate Committee report will further inform CEPA reform and implementation.

While the Government awaits the Senate report, the departments of Health and of the Environment will continue to explore ways to clarify and amend CEPA 1999 to increase the Government's ability to provide effective environmental protection for all Canadians.