

What Does Toxic Mean under CEPA 1999?

The Canadian Environmental Protection Act, 1999 (CEPA 1999) is an Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development. Proclaimed on March 31, 2000, the CEPA is Canada's primary piece of environmental legislation with pollution prevention as its cornerstone.

The CEPA shifts the focus away from managing pollution after it has been created to preventing pollution. The Act provides the federal government with tools to protect the environment and human health, establishes strict deadlines for controlling certain toxic substances, and requires the virtual elimination of toxic substances which are bioaccumulative, persistent and result primarily from human activity.

Section 64 of CEPA defines a substance as "toxic" if it is entering or may enter the environment in a quantity or concentration or under conditions that:

1. have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
2. constitute or may constitute a danger to the environment on which life depends; or
3. constitute or may constitute a danger in Canada to human life or health.

Determining what is Toxic

Under CEPA, both the Minister of the Environment and the Minister of Health are responsible for developing a list of substances which must be assessed in a timely manner to determine if they are "toxic" or capable of becoming "toxic". This list is known as the Priority Substances List (PSL).

CEPA requires that substances on the PSL be assessed within 5 years of their addition to the List. Environment Canada and Health Canada have a legal obligation to determine if these PSL substances are "toxic" as defined in Section 64 of the Act. "Toxic" is defined in terms of risks that substances pose to the environment or to human health.

Managing Toxic Substances

For substances that are declared "toxic" under CEPA and are added to the List of Toxic Substances in Schedule 1 of the Act, Environment Canada and Health Canada will propose at least one instrument to establish preventive or control actions for managing the substance and thereby reduce or eliminate its release into the environment. These instruments and tools may be used to control any aspect of the substance's life cycle - from the design and development stage to its manufacture, use, storage, transport and ultimate disposal. For those substances deemed persistent and bioaccumulative and which result primarily from human activity, virtual elimination of their release to the environment is the objective.

Preventive and control instruments are developed in consultation with industry, provincial/territorial and municipal governments, environmental groups and other interested parties.

Examples of preventive or control tools include:

- **regulations** - impose restrictions on an activity related to a substance, or set limits on the concentrations of a substance that can be used, released to the environment or be present in a product;
- **pollution prevention plans** - require the preparation and implementation of a pollution prevention plan outlining actions to prevent or minimize the creation or release of pollutants and waste;
- **environmental emergency plans** - require facilities to document information regarding the prevention of, preparedness for, response to or recovery from an environmental emergency;
- **environmental codes of practice** - recommend procedures, practices or release limits for environmental control relating to works, undertakings and activities during any phase of their development and operation, and any subsequent monitoring activities; and
- **environmental release guidelines** - include limits expressed as concentrations or quantities, for the release of substances into the environment from works, undertakings or activities.

The instrument or tool that meets the test of reducing or eliminating the environmental and/or health risks of a substance is developed in consultation with interested and affected parties, including other levels of government, industrial associations and environmental and health organizations. Under the CEPA, Environment Canada must publish a proposed instrument respecting a PSL substance in the **Canada Gazette** (<http://canadagazette.gc.ca>) within two years of the Ministerial recommendation that the substance be added to the List of Toxic Substances.

Once published, interested parties have 60 days to provide comments on the proposed instrument or may file a notice of objection requesting that a Board of Review be established. Depending on the nature of the comments received on the proposed instrument, Environment Canada then determines if further discussions are warranted.

Within 18 months of the publication of the proposed instrument, Environment Canada must finalize and publish the instrument in **Canada Gazette**. Affected parties will have a set period of time (as stated in the instrument) to implement measures to meet the requirements of the instrument.

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Additional information on the Canadian Environmental Protection Act, 1999 is available on Environment Canada's Green Lane on the Internet at: www.ec.gc.ca/CEPARRegistry

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