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Environment Canada's Environmental Enforcement Directorate

Compliance Promotion Information Session

December 10, 2014



WHO WE ARE



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The Environmental Enforcement Directorate

- Part of Environment Canada's Enforcement Branch, which also includes the Wildlife Enforcement Directorate, the Policy Planning and Coordination Directorate and the Enforcement Services Directorate.
- Enforces the *Canadian Environmental Protection Act, 1999* and the pollution prevention provisions of the *Fisheries Act* and their associated regulations.



Main Roles and Activities

Headquarters

- General Program Administration
- Direction and guidance on all enforcement matters
- Creation of National:
 - Policies
 - Inspection and priority planning
 - Strategic intelligence

Regional Offices

- Operational program implementation:
 - Conduct inspections based on planning process
 - Investigate
 - Prepare for court actions
 - Cooperate and coordinate enforcement activities with Federal, Provincial and Territorial counterparts
 - Provide operational and tactical intelligence



HOW WE WORK



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Principal Activities

- **Inspections**
 - Monitoring or verifying compliance with the Acts and their regulations
- **Investigations**
 - Gathering information for the purpose of substantiating or refuting an allegation of non-compliance
 - Investigations may be triggered by inspection results, intelligence or public complaints/requests
- **Intelligence**
 - Gathering information in support of inspection and investigation plans and activities
 - Analysing compliance activities and emerging non-compliance issues within regulated sectors



Enforcement Priorities

- Key enforcement priorities are established each year. To maximize the effectiveness of these activities, priority is given to specific regulations or instruments.
- Factors that influence the identification of the priority regulations include:
 - The risk to the environment and human health represented by the regulated substance or activity;
 - Known or suspected compliance issues;
 - New and amended regulations;
 - The nature of regulatory provisions, operational complexity and capacity; and
 - Domestic and international commitments and obligations.



Compliance and Enforcement Policies for CEPA and the Pollution Provisions of the *Fisheries Act*

- Available publicly, these policies guide the enforcement of the Acts.
- Both policies stress that compliance with the Acts and their regulations is mandatory.
- Each policy sets out the tools that are available to enforcement personnel for the purposes of enforcing that Act, and provides guidance on how various types of suspected violations will be responded to.



Guiding Principles

- **Enforcement officers will:**
 - Apply the Acts in a manner that is fair, predictable and consistent
 - Administer the Acts with an emphasis on prevention of damage to the environment (CEPA) and pollution of waters frequented by fish (*Fisheries Act*)
 - Examine every suspected violation of which they have knowledge, and take action consistent with the applicable Compliance and Enforcement Policy
 - Encourage the reporting of suspected violations of the Acts



Considerations when determining appropriate enforcement action

In keeping with the Compliance and Enforcement Policies for both Acts, officers consider the following policy criteria when choosing the appropriate response:

- ✓ The nature of the alleged violation (seriousness of harm, intent of the violator, compliance history, attempts to conceal information or obstruct)
- ✓ The effectiveness of the measure in achieving the desired result (general result sought is compliance within the shortest time with no further occurrence)
- ✓ Consistency in enforcement (consistency in responses to violations so similar situations are addressed in a similar fashion across regulated communities and across the country)

Tools available to enforcement officers to bring regulatees into compliance

- Warnings (CEPA & FA)
 - Tickets (CEPA)
 - Directions (CEPA & FA)
 - Detention/Seizure of goods (CEPA & FA)
 - Ministerial Orders (CEPA & FA)
 - Detention orders for ships (CEPA)
 - Environmental Protection Compliance Orders (CEPA)
 - Injunctions (CEPA & FA)
 - Prosecution (CEPA & FA)
- Not yet in force:***
- *Administrative Monetary Penalties (for Part 7 & 9 of CEPA 1999) (CEPA)*
- Enforcement officers will give first consideration to non-court actions, such as a warning, direction or EPCO. Where these tools are determined to be insufficient or inappropriate to bring the regulatees back into compliance, prosecution will be considered.



Warnings

- Warnings are always given in writing.
- A warning is meant to inform the individual or the person of the alleged violation and to promote a return to compliance.
- Warnings are normally used where there is minimal threat to the environment or human life/health.
- The warning itself does not impose any penalties, but if the alleged offender does not respond by taking remedial measures to comply with legislation, additional enforcement measures may be taken to force return to compliance.
- Warnings also become part of a regulatee's compliance history, which is taken into consideration for subsequent offences and enforcement actions.



Tickets

- Tickets are available for offences under Schedule I.3 of Justice Canada's *Contraventions Regulations* and can be issued for the purpose of enforcing certain sections of regulations under CEPA 1999.
- The *Contraventions Regulations* do not currently include any Regulations under the Fisheries Act enforced by Environment Canada.
- Tickets can be issued where there is minimal threat to the environment or human life/health.
- A ticket is meant to encourage compliance with legislation: where an offence continues for more than one day, a ticket may be issued per violation per day.
- The amount of a ticket is fixed at \$500 by the *Contraventions Regulations* and is not influenced by the type of offender or the presence of aggravating factors.



Tickets (continued)

- Schedule I.3 of the *Contraventions Regulations* are being amended to enable the use of tickets for a larger number of CEPA 1999 regulations. Consultations were held at the end of 2012 on the proposed additions. The amendments are expected to be finalized sometime in late 2014 or early 2015.



Directions (CEPA)

- Where there is a release of a substance in contravention of regulations under CEPA 1999 or the likelihood of such a release, an enforcement officer may give directions 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.
- 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 can lead to prosecution.

Directions (*Fisheries Act*)

- Where there is an unauthorized release of a deleterious substance, or a serious and imminent danger of such a release, an enforcement officer may issue a direction requiring that all reasonable measures be taken to:
 - Prevent the occurrence; or
 - Counteract, mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.
- Like directions under CEPA, *Fisheries Act* directions can be issued verbally, if necessary, but will always be followed up in writing.
- Failure to comply with a direction may result in prosecution.



Ministerial Orders (CEPA)

There are three types of Orders under CEPA 1999:

1. Orders that prohibit activities involving substances new to Canadian commerce;
2. Orders that 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; and
3. Orders that 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.



Ministerial Orders (*Fisheries Act*)

- The Minister of the Environment may request information on any work, undertaking, or activity that may result in the deposit of a deleterious substance to water frequented by fish.
- Upon reviewing this information, the Minister, or person designated by the Minister, may
 - (a) require any modifications or additions to the work, undertaking or activity or any modifications to any plans, specifications, procedures or schedules relating to it that the Minister or the designated person considers necessary in the circumstances, or
 - (b) restrict the carrying on of the work, undertaking or activity.
 - (c) direct the closing of the work or undertaking or the ending of the activity for any period that the Minister or the designated person considers necessary in the circumstances.



Environmental Protection Compliance Orders (EPCOs)

- EPCOs are available for certain contraventions of CEPA 1999 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.
- An EPCO can direct the alleged violator to take specific measures required to return to compliance.
- The order imposes no financial or other penalty.
- Failure to comply with an EPCO is an offence and can be followed-up with a prosecution.



Prosecutions Under CEPA

For offences under CEPA, 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;



Prosecutions Under CEPA (continued)

- 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.



Prosecutions Under the *Fisheries Act*

- For offences under the *Fisheries Act*, prosecution will always be pursued when:
 - there is evidence that the alleged violation was deliberate;
 - the alleged violator knowingly provided false or misleading information to enforcement personnel;
 - the alleged violator obstructed enforcement personnel in the carrying out of their duties or interfered with anything seized under the *Act*;
 - the alleged violator concealed or attempted to conceal or destroy information or evidence after the alleged offence occurred; or
 - the alleged violator failed to take all reasonable measures to comply with a direction or an order issued pursuant to the *Act*.



Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999) (CDR)

- The *Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999) (CDR)* came into force on June 20th 2012.
- The CDR designate the various regulatory provisions from CEPA 1999 regulations that are subject to a mandatory minimum fine, and a higher maximum fine following a successful prosecution of an offense involving harm or risk of harm to the environment, or obstruction of authority.



Administrative Monetary Penalties (AMPs)

- The *Environmental Violations Administrative Monetary Penalties Act* (EVAMPA) was introduced with the *Environmental Enforcement Act* in 2009.
- EC is in the process of developing the AMPs regulations.
- AMPs will be available for the purposes of enforcing Part 7 and Part 9 of CEPA 1999 and its associated regulations.
- AMPs will be available for a wide range of violations, from those which have minimal impact on the environment or human life/health to those which cause inherent harm to the environment.
- An AMP is meant to remove any financial incentive to violate legislation, by imposing a penalty that is strictly monetary.
- The recipient of an AMP will not face any convictions and will not have a criminal record.



Useful links

Compliance and Enforcement Policy for CEPA 1999:

<http://ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=5082BFBE-1>

Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*:

<https://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=D6B74D58-1>

CEPA Environmental Registry:

<http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=D44ED61E-1>

Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999):

<http://www.ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=206>

Thank you!



Questions????

