
CCME

Canadian Council of Ministers
of the Environment Le Conseil canadien
des ministres de l'environnement

REVIEW OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)

In March 2005, provincial and territorial ministers conveyed the following key issues and related recommendations to the federal ministers of Health and Environment:

- CEPA can produce results more quickly and efficiently by recognizing the important provincial-territorial roles, responsibilities and instruments in environmental management in Canada. Avoiding overlap and duplication and having regulated parties deal with a single jurisdiction will create certainty and reduce costs. We recommend:
 - More substantive formal recognition within CEPA of the provincial-territorial roles and responsibilities to provide a more comprehensive picture of environmental management in Canada; and
 - Increased recognition of provincial-territorial instruments, based on which jurisdiction is best situated to deliver agreed upon outcomes (e.g. understanding of regions and regulated activities, physical proximity and capacity to deliver).
- CEPA needs greater flexibility to enable responses to correspond to the level of risk involved and to make non-CEPA tools more available. We recommend changes to enable:
 - Appropriate proportional CEPA responses to the level of risk;
 - Greater flexibility in the choice of non-CEPA instruments available to Ministers, including CCME Canada-wide strategies;
 - Revised terminology to remove the stigma of the “CEPA toxics” label (e.g. road salts);
 - More flexibility in the termination and renewal requirements for equivalency and administrative agreements; and
 - More flexibility in timelines when a non-CEPA instrument is in development.
- More collaborative federal-provincial-territorial processes are needed to enable improved intergovernmental cooperation and collaboration and joint priority setting. We recommend:
 - A more effective and influential CEPA National Advisory Committee (NAC) with an expanded role to advise the CCME as well as federal Ministers.
- Many federal activities and activities on federal lands and Aboriginal lands are unregulated under CEPA and could pose a risk to adjacent provincial lands. We recommend:
 - In the absence of appropriate federal legislation, making federal activities and activities on federal and Aboriginal lands subject to the same standards as activities on adjacent provincial lands.

CCME CEPA 5 YEAR REVIEW SCOPING GROUP

LIST OF ISSUES IDENTIFIED AND CHANGES PROPOSED

ISSUE NUMBER	OBJECTIVE/BENEFIT	PROPOSED CHANGE	METHOD OF CHANGE
1 Recognition of Provincial/Territorial Roles and Instruments			
1a	<p>CEPA provides expanded/more substantive formal recognition of provincial and territorial roles and responsibilities for environmental management in Canada.</p> <ul style="list-style-type: none"> - would build commitment through a true partnership approach. - would help to reduce duplication and conflict. 	<ul style="list-style-type: none"> - amend legislation in 5-6 key sections 	Legislation Preamble Administrative CEPA-NAC
1b	<p>CEPA provides greater recognition of the use of provincial/territorial instruments.</p> <ul style="list-style-type: none"> - would avoid overlap and duplication, reduce costs while protecting environment and health of Canadians and enable quicker action. - would enable provinces/territories to maintain their traditional role in regulating industrial and municipal effluents. 	<ul style="list-style-type: none"> - provide clearer approach in Part 5 (S77) of CEPA for recognition of provincial/territorial instruments. - provide stronger recognition of ‘best situated’ jurisdiction to act to address substances found by the federal Ministers to meet criteria of “CEPA toxic”. ‘Best situated’ criteria identified in the Canada Wide Accord on Environmental Harmonization could be used as a guide. - increase use of Section 9 and 10 on agreements by making them more flexible 	Legislation S. 77 S. 9, 10 Operational
1c	<p>CEPA provides for greater flexibility in the use non-CEPA instruments.</p> <ul style="list-style-type: none"> - would avoid overlap and duplication and recognize national approaches. 	<ul style="list-style-type: none"> - provide clearer approach in Part 5 (S77) of CEPA for recognition of non-CEPA risk management approaches such as Canada-wide strategies under CCME 	Legislation S. 77 Operational
1d	<p>CEPA is appropriately applied to publicly administered lands in NWT and Nunavut.</p> <ul style="list-style-type: none"> - would avoid duplication of territorial regulation. 	<ul style="list-style-type: none"> - consider amendment to Part 9 - undertake a concerted effort to visit opportunities for equivalency agreements 	Legislation or Operational

1e	In the absence of appropriate federal legislation, federal activities and activities on federal and Aboriginal lands are subject to the same standards as activities on provincial land. - would avoid the creation of pollution havens and the potential for pollution to migrate to provincial/territorial lands.	- consider amendment to incorporate provincial/territorial legislation by reference	Legislation
1f	CEPA supports the clear definition of federal and provincial roles and responsibilities. - would enable provinces/territories to maintain their traditional role in regulating industrial and municipal effluents.	- use an outcome based approach with identified accountability and backstop - mutually agree on outcomes - provide flexibility to use non-CEPA instruments	Legislation S. 77
2 Increased Flexibility Within CEPA			
2a	Toxics/Instruments		
2a(i)	CEPA provides for proportional response capability according to priority. - would make the choice of non-CEPA instruments appropriate to the circumstances.	- make a distinction as to whether a substance is listed or dealt with by non-CEPA instruments	Legislation
2a (ii)	There is greater reliance on non-regulatory tools and incentives to implement CEPA. - would allow for more flexible approaches and a broader range of instruments to improve environmental performance. - educating stakeholders would prevent pollution and thereby avoid need for enforcement.	- Environment Canada should coordinate with provinces and territories in promoting the use of non regulatory approaches to promote compliance and beyond compliance, improve environmental outcomes and change behaviour	Operational
2b	Equivalency/Administrative Agreements		
2b	CEPA provides for flexibility on termination and renewal requirements for equivalency/administrative agreements. - would make equivalency/administrative agreements a more practical potential tool.	- Require a termination clause in such agreements without dictating the term, so that each agreement would contain a termination clause appropriate to its circumstances. This should apply to other agreements under CEPA. - provide for renewal of equivalency/administration agreements that are substantially the same without having to get Governor in Council approval - provide for periodic review but no requirement for formal renewal if substantially the same	Legislation

2c	Time Clock Issues		
2c	CEPA provides for a more flexibility time clock. - would enable ministers to make greater use of non-CEPA responses with differing time frames.	- enable ministers to agree to a flexible time clock where non-CEPA instruments are applied e.g. use a Canada wide strategy with a specified achievement date - no time clock change where a CEPA instrument is applied	Legislation S. 77
3 Greater Federal/Provincial Partnership			
3a	Jurisdictions mutually agree on environmental outcomes, the overall approach and who will implement. - would enhance environmental protection and intergovernmental cooperation and collaboration.	- use an outcome based approach with identified accountability and backstop - only use CEPA when a nationally consistent standard is wanted - have CEPA NAC advise on whether to apply CEPA or non CEPA instrument	Operational
3b	CEPA-NAC is a more effective and influential mechanism. - would enable more federal/provincial/territorial cooperation and collaboration and support joint priority setting.	- expand the CEPA-NAC role to advise both federal ministers and the CCME - use CEPA-NAC to advise on priorities in a more comprehensive and inclusive manner as requested by CCME. - give CEPA-NAC an active role in decision making on the use of non-CEPA instruments - (Note: Environment Canada and Health Canada will undertake a diagnostic study to look at making NAC more productive and effective.)	Legislation Operational
3c	Information and consultation and review processes related to CEPA toxic assessments enable more substantive engagement of provinces/territories. - would provide provinces/territories with the necessary information and time to provide meaningful input to the CEPA process.	- provide more information and analysis and greater clarity on the determination of a toxic and what the implications are, particularly for provinces/territories (e.g. where a substance is used and by whom). - provide earlier notice on when a toxic declaration is expected and more time for informed, meaningful consultation and review - (Note: Environment Canada and Health Canada will undertake a diagnostic study to look at making NAC more productive and effective.)	Operational
3d	Review processes respond to provincial/territorial input. - would improve the transparency of the review process.	- provide for a considered federal response to provincial/territorial input and concerns	Operational

4 Federal Coordination			
4a	<p>There is greater coordination between the legislative provisions and in the implementation of CEPA and the Fisheries Act.</p> <ul style="list-style-type: none"> - would create more predictability, consistency and clarity in implementation of pollution prevention provisions. - would eliminate legal uncertainty due to differing legislative requirements. - would allow for more effective action and avoid narrowly focussed responses. 	<ul style="list-style-type: none"> - consider rolling Fisheries Act pollution prevention provisions into CEPA 	Legislation Operational
5 Definitions and Approaches			
5a	<p>CEPA uses a new term to replace “CEPA toxic”.</p> <ul style="list-style-type: none"> - would avoid the stigma attached to the term “toxic”. 	<ul style="list-style-type: none"> - use an alternative to the term “toxic” (e.g. substance to be ‘managed’ or ‘controlled’ or substance for ‘risk reduction’ or ‘exposure reduction’) THIS IS CRITICAL. 	Legislation
5b	<p>CEPA definitions are appropriately defined and listings are clear and meaningful.</p> <ul style="list-style-type: none"> - would provide greater clarity. - would be helpful in defining responsibilities and authorities. 	<ul style="list-style-type: none"> - narrow the definition of “substance” appropriately - ensure individual vs. group listings of substances is done as clearly and as meaningfully as possible - provide for a stronger federal role on substances that emanate from products 	Legislation Operational
6 International			
6a	<p>Provincial/territorial participation in international negotiations and implementation of international agreements impacting provincial/territorial responsibilities is strengthened.</p> <ul style="list-style-type: none"> - would provide for a value added reality check and recognize the provincial role in supporting international objectives. - would ensure better implementation of international obligations agreed to by the federal government in areas of provincial/territorial responsibility. 	<ul style="list-style-type: none"> - provide for more formalized, systematic provincial/territorial involvement as early as possible in the development of Canadian positions and international negotiations and meetings to ensure effective representation of the full spectrum of Canadian environmental legislative authority - provide for a more formal approach for provincial participation in Canadian delegations (including the possibility of CCME representatives) - provide for more formal consultation process at senior levels (including through the CCME) 	Operational

7 Other Issues			
7a	<p>CEPA provides comprehensive management for disposal of waste at sea.</p> <ul style="list-style-type: none"> - would ensure a holistic approach to management of disposal at sea and sea-sourced materials taken to land - streamlining assessment, publication and permit expiration would simplify process for stakeholders and reduce response time - coordination of federal actions with provincial/territorial programs and policies would reduce regulatory gaps and improve clarity for stakeholders 	<ul style="list-style-type: none"> - in s.122, include a definition of “dredged material” and exclude side-casting where there are no adverse environmental effects. - amend s.129(2) to allow multi-year approvals for dredged materials and delete s. 133 to eliminate requirement to provide Gazette notice - amend s.4 of Schedule 6 by replacing “should” with “shall offer to consult” to provide federal staff with the authority to coordinate management options with provinces/ territories. S.12 of this schedule should also be expanded to specify expected consequences of land-based disposal are developed and implemented. - review and amend Schedule 6 to reduce duplication/ conflict with environmental assessment under CEAA - provide increased cooperation with provincial/ territorial jurisdictions on developing dredged material disposal strategies 	Legislation Governor in Council Operational
7b	<p>CEPA is streamlined and less complex.</p> <ul style="list-style-type: none"> - would improve the understanding and application of CEPA 	<ul style="list-style-type: none"> - revise CEPA to simplify the legislation, reorder it in a logical flow and make it reader-friendly through plain language. 	Legislation
7c	<p>There is a free exchange of information between jurisdictions in a way that respects their authorities, programs and enforcement needs, especially at facilities under the licensed control of a jurisdiction</p> <ul style="list-style-type: none"> - would avoid triggering an unwanted enforcement response by either level of government. 	<ul style="list-style-type: none"> - find a balance between the legal need to act upon information once received, with some discretion for the discussion and agreement toward an acceptable approach before enforcement action is initiated 	Operational
7d	<p>Data on ambient environmental quality trends is strengthened.</p> <ul style="list-style-type: none"> - would benefit all jurisdictions 	<ul style="list-style-type: none"> - through shared leadership, EC and provinces/territories should jointly develop data on national trends in ambient environmental quality while avoiding infringement on provincial monitoring programs - the federal government should take on a larger role on national SOE reporting and trends data and analysis 	Operational