




CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2012-840
June 19, 2012

Whereas, pursuant to subsection 332(1) of the *Canadian Environmental Protection Act, 1999*, the Minister of the Environment published in the *Canada Gazette, Part I*, on July 2, 2011, a copy of the proposed *Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999)*, substantially in the annexed form, and persons were given an opportunity to file comments with respect to the proposed Regulations or to file a notice of objection requesting that a board of review be established and stating the reasons for the objection;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to section 286.1 of the *Canadian Environmental Protection Act, 1999*, hereby makes the annexed *Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999)*.

REGISTRATION - ENREGISTREMENT	
NO. <u>SOR/2012-134</u>	DATE <u>June 20, 2012</u>
	
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CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ

REGULATIONS DESIGNATING REGULATORY PROVISIONS FOR PURPOSES OF
ENFORCEMENT (CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999)

1. The provisions set out in the schedule are designated for the purposes of paragraph 272(1)(h) of the *Canadian Environmental Protection Act, 1999*.
2. These Regulations come into force on the day on which section 80 of the *Environmental Enforcement Act*, chapter 14 of the Statutes of Canada, 2009, comes into force, but if they are registered after that day, they come into force on the day on which they are registered.

SCHEDULE
(Section 1)

DESIGNATED PROVISIONS

Item	Column 1 Regulations	Column 2 Provisions
1.	<i>Federal Mobile PCB Treatment and Destruction Regulations</i>	(a) section 5 (b) section 6 (c) subsection 7(1) (d) section 8 (e) section 9
2.	<i>Chlor-Alkali Mercury Release Regulations</i>	(a) subsections 3(1) and (3)
3.	<i>Asbestos Mines and Mills Release Regulations</i>	(a) subsection 3(1)
4.	<i>Secondary Lead Smelter Release Regulations</i>	(a) section 3 (b) section 4
5.	<i>Contaminated Fuel Regulations</i>	(a) section 3
6.	<i>Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations</i>	(a) subsection 4(1)
7.	<i>Pulp and Paper Mill Defoamer and Wood Chip Regulations</i>	(a) section 4
8.	<i>Vinyl Chloride Release Regulations, 1992</i>	(a) subsections 4(1) to (4)
9.	<i>PCB Waste Export Regulations, 1996</i>	(a) section 3 (b) section 11

Item	Column 1 Regulations	Column 2 Provisions
10.	<i>Benzene in Gasoline Regulations</i>	(a) section 3 (b) section 4 (c) subsection 13(5) (d) subsections 16(1) and (7) (e) subsection 17(1)
11.	<i>Ozone-depleting Substances Regulations, 1998</i>	(a) section 4 (b) section 5 (c) subsection 6(1) (d) subsection 7(1) (e) subsections 8(1), (2) and (3.1) (f) section 9 (g) section 18 (h) section 19 (i) subsection 21(1) (j) section 22 (k) subsections 23(1) and (2) (l) subsection 24(1) (m) section 25 (n) section 26 (o) subsection 27(1) (p) section 28 (q) subsection 29(1) (r) section 30
12.	<i>Gasoline and Gasoline Blend Dispensing Flow Rate Regulations</i>	(a) section 3
13.	<i>Tributyltetradecylphosphonium Chloride Regulations</i>	(a) section 3 (b) section 4

Item	Column 1 Regulations	Column 2 Provisions
14.	<i>Tetrachloroethylene (Use in Dry Cleaning and Reporting Requirements) Regulations</i>	(a) section 3 (b) section 4 (c) section 5 (d) section 7 (e) section 10
15.	<i>Solvent Degreasing Regulations</i>	(a) subsection 3(1)
16.	<i>Federal Halocarbon Regulations, 2003</i>	(a) section 3
17.	<i>Prohibition of Certain Toxic Substances Regulations, 2005</i>	(a) section 4 (b) section 5
18.	<i>2-Butoxyethanol Regulations</i>	(a) subsection 2(1) (b) section 3 (c) subsection 4(1)
19.	<i>Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations</i>	(a) section 4

Item	Column 1 Regulations	Column 2 Provisions
20.	<i>Storage Tank Systems For Petroleum Products And Allied Petroleum Products Regulations</i>	(a) section 3 (b) section 5 (c) section 6 (d) section 7 (e) section 8 (f) subsection 9(1) (g) subsection 10(1) (h) section 11 (i) section 12 (j) subsection 14(7) (k) subsection 15(1) (l) subsection 36(2) (m) subsection 37(2) (n) section 38 (o) subsection 40(1) (p) paragraph 44(3)(c)
21.	<i>Polybrominated Diphenyl Ethers Regulations</i>	(a) section 6 (b) subsection 7(1)
22.	<i>PCB Regulations</i>	(a) section 5 (b) section 6
23.	<i>Chromium Electroplating, Chromium Anodizing and Reverse Etching Regulations</i>	(a) subsection 3(1)
24.	<i>Volatile Organic Compound (VOC) Concentration Limits for Automotive Refinishing Products Regulations</i>	(a) subsections 3(1) and (2) (b) subsection 4(1)

Item	Column 1 Regulations	Column 2 Provisions
25.	<i>Volatile Organic Compound (VOC) Concentration Limits for Architectural Coatings Regulations</i>	(a) subsection 3(1) (b) subsection 4(1) (c) subsection 5(1) (d) subsection 9(1)

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations)

1. Background

The *Environmental Enforcement Act* received Royal Assent on June 18, 2009, and introduces a new fine scheme to be applied by courts following a successful prosecution pursuant to any of the nine environmental statutes that it amends.^{1,2} Under the new scheme, designated offences involving direct harm or risk of harm to the environment, or obstruction of authority, are subject to a new, increased fine range.

2. Issue

While the *Environmental Enforcement Act* explicitly identifies the statutory provisions that, if contravened, impose the new fine scheme, it does not identify which provisions of regulations made under those statutes, if contravened, impose the new scheme. Instead, the *Environmental Enforcement Act* amends the nine environmental statutes referenced herein to provide the necessary authority to identify such provisions by regulation.

3. Objectives

The *Regulations Concerning the Designation of Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999)* [the Regulations] will complete the new fine scheme established by the *Environmental Enforcement Act*, designating the regulatory provisions in the *Canadian Environmental Protection Act, 1999* (CEPA 1999) that impose this scheme. The Regulations will thus secure the imposition of the new fine scheme following the successful prosecution of an offence involving harm or risk of harm to the environment, or obstruction of authority.

4. Description

The *Environmental Enforcement Act* introduces the fine scheme described in Table 1. This scheme includes, for the first time, minimum fines for offences that

¹ The long title of the *Environmental Enforcement Act* is "An Act to amend certain Acts that relate to the environment and to enact provisions respecting the enforcement of certain Acts that relate to the environment".

² The *Environmental Enforcement Act* amends the following nine statutes: the *Canadian Environmental Protection Act, 1999*; the *Antarctic Environmental Protection Act*; the *Canada Wildlife Act*; the *International River Improvements Act*; the *Migratory Birds Convention Act, 1994*; the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*; the *Canada National Parks Act*; the *Canada National Marine Conservation Areas Act*; and the *Saguenay-St. Lawrence Marine Park Act*.

involve direct harm or risk of harm to the environment, or obstruction of authority. The scheme also introduces an increased fine range for such offences.

Table 1: Fines for designated offences

Offender	Summary conviction		Conviction on indictment	
	Minimum fine	Maximum fine	Minimum fine	Maximum fine
<i>Individuals</i>	\$5 000	\$300 000	\$15 000	\$1 000 000
<i>Small revenue corporations or ships under 7 500 tonnes of deadweight^a</i>	\$25 000	\$2 000 000	\$75 000	\$4 000 000
<i>Corporations or ships of 7 500 tonnes deadweight or over</i>	\$100 000	\$4 000 000	\$500 000	\$6 000 000

^a Small revenue corporations are considered to be corporations with revenues under \$5 000 000 in the 12 months preceding the offence in question.

The contravention of a regulatory provision designated under the Regulations will not necessarily lead to a prosecution in all situations. Rather, the enforcement tools to be applied to a given contravention will continue to be determined by the enforcement officer – and the prosecutor in some cases – based on due consideration of what is most appropriate in the circumstances of the contravention. In cases involving minor situations of non-compliance, a warning, compliance order, ticket or administrative monetary penalty may be appropriate; and, in those cases, the fine scheme described in Table 1 will not apply.³ In cases involving a serious level of non-compliance, however, prosecution may be the proper avenue for enforcement purposes. In such cases, the fine scheme described in Table 1 will apply in the event of a conviction.

5. Consultation

The Regulations will implement legislative authorities in CEPA 1999, as amended by the *Environmental Enforcement Act*. Prior to publication in the *Canada Gazette*, Part I, no formal consultations were held since the Regulations will not impose any incremental administrative or compliance costs on the public, the federal government or other stakeholders (i.e., consumers or industries).

³ It is planned that regulations pursuant to the *Environmental Violations Administrative Monetary Penalties Act* will be developed and proposed at a later date in order to implement an administrative monetary penalty scheme.

Consultation following pre-publication of the Regulations in the *Canada Gazette*, Part I, on July 2, 2011

The proposed Regulations were published in the *Canada Gazette*, Part I, on July 2, 2011, for a 60-day public comment period. A notification was sent by Environment Canada to key stakeholders in order to inform them of this pre-publication as well as of the 60-day period during which they were invited to submit their comments on the proposed Regulations. Also, Environment Canada informed the governments of the provinces and territories through the National Advisory Committee of CEPA 1999 (CEPA NAC) of the pre-publication of the proposed Regulations and of the associated public comment period. No comments were received from CEPA NAC.

During the 60-day public comment period, Environment Canada received one submission from a key stakeholder from the vehicle manufacturing industry. This industry stakeholder indicated that more opportunities to discuss the Regulations with the Government of Canada would provide stakeholders with an increased level of awareness regarding their potential impacts. To this end, Environment Canada met with the submitter in Fall 2011 to discuss their comments. Officials answered all of the submitter's concerns at that time, and there were no requests for further information or consultation following that meeting.

6. Rationale

There are no incremental impacts (benefits or costs) associated with the Regulations as they neither amend existing obligations or requirements, nor impose new obligations or requirements, on the public or other stakeholders, with no additional administrative or compliance burden to be incurred by any industry or small business. The Regulations will simply designate the regulatory provisions under the *Canadian Environmental Protection Act, 1999* to which the new fine scheme introduced by the *Environmental Enforcement Act* applies.

7. Implementation, enforcement and service standards

The Regulations will complete the application of the new fine scheme under the *Canadian Environmental Protection Act, 1999* introduced by the *Environmental Enforcement Act*. Given that the Regulations will not impose any new or additional obligation or requirement on the public or other stakeholders, they will not result in the development of any new program or service. Therefore, developing an implementation plan or establishing service standards is not considered necessary.

8. Contacts

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