

Canadian Environmental Protection Act

In that regard the Minister of the Environment (Mr. McMillan) has unequivocally stated his intention to get tough with those who by design or through carelessness allow dangerous substances to enter the environment. The Minister is aware that reviews of past enforcement practices have been critical; specific criticisms have focused on a lack of national consistency and concentrated effort devoted to enforcement. The Minister has indicated that in the future the Government will be more vigilant about pursuing violations than governments have been in the past, while at the same time continuing efforts to encourage voluntary compliance. Both the aspect of encouraging compliance through education and co-operative efforts, and the vigorous enforcement in the face of violations are important. Environment Canada intends to continue its approach of collaboration with provinces, territories, industries, and environmental groups. But the Department will respond to public concern that the flouting of environmental laws is a serious crime.

At the same time the Minister introduced Bill C-74 for first reading he also introduced a draft enforcement and compliance policy which is in harmony with both the public's concern and the Government's intention as far as enforcement is concerned. The general guiding principles that are the underpinning of that draft policy are quite clear and unambiguous.

First, compliance is mandatory with the Canadian Environmental Protection Act and its regulations. This means that Environment Canada will put in place a planned program of regular inspections complemented by spot checks. The frequency of the inspections will be determined by the risk to the environment or to human health, and by the compliance record of the individual or the company involved.

Second, as set out in this draft enforcement policy, enforcement officials will apply the legislation with an emphasis on prevention of damage to the environment. Serious violations will be subject to the full force of the law to ensure the protection of the environment and human health. Enforcement officials will examine every suspected violation and will take action consistent with the policy. They will use rules, sanctions, and processes securely founded in law and in keeping with the Canadian Charter of Rights and the citizens' code of regulatory fairness. They will respond to the violations in a manner proportionate to the nature and the gravity of the offence.

This will require the development of procedural manuals, expanded training and investigative techniques, and the proper gathering of evidence and legal matters such as rules of evidence and court procedures. In addition, inspection personnel will be augmented to handle the increased responsibilities that will result from the scope of requirements under the Canadian Environmental Protection Act. That is where the extra funding of \$37 million announced by the Minister will be used to beef up the inspection and prosecution portion of the Ministry.

Third, the federal Government will use education and information as preventive tools to achieve compliance with the Act. Environment Canada is already planning a more far-reaching information program in order to provide, upon request, copies of the new Act, its regulations and the enforcement and compliance policy. It will also provide bulletins on specific enforcement and compliance procedures, a registry of court actions under the Act, including injunctions, convictions, court orders, copies of case law as precedents are established, and state of the environment reports, fact sheets, et cetera.

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Finally, in order to ensure consistency of enforcement across Canada, which is essential under the Charter provisions, the enforcement and compliance policy will be a major feature of the administrative agreements to be negotiated with provincial and territorial Governments. The agreements will spell out procedures for audit and evaluation of enforcement and compliance activities.

Environment Canada and its partners in enforcement, namely, those provinces and territories which elected to sign agreements for administration of the Act, will iron out procedures for auditing of enforcement and compliance activities, because consistency and predictability are keys to fair enforcement practices and to making those enforcement practices stick.

While we want vigorous enforcement, the Government and the Canadian public also want fair enforcement. Under the enforcement compliance policy, when they encounter or are informed of a violation of the Canadian Environmental Protection Act, enforcement officials are required to consider four factors when deciding what enforcement action they should be taking.

The first of these is the nature of the violation, which includes consideration of the seriousness of the harm or potential harm to the environment; the intent of the alleged violator; whether it is a repeated occurrence; and whether there have been attempts to conceal information or otherwise subvert the objectives and requirements of the Act.

The second of these is the question of effectiveness in achieving the desired result with the violator. The "desired result" is compliance with the Act within the shortest possible time and with no further occurrence of violation.

The aspects to be considered here include the alleged violator's history of compliance—does the individual or company have a history of violation of the Act, or does the firm or person normally operate in compliance with the Act—the violator's willingness to co-operate, evidence of corrective action already taken, past experience in achieving compliance through the use of particular enforcement action, and whether other federal, provincial, or territorial authorities have taken administrative or court related action for the same offence.