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Notice of Defect Handbook

A reference guide for the notification of an emission-related defect

In relation to the
On-Road Vehicle and Engine Emission Regulations;
Off-Road Small Spark-Ignition Engine Emission Regulations;
Off-Road Compression-Ignition Engine Emission Regulations;
Marine Spark-Ignition Engine, Vessel, and Off-Road Recreational Vehicle Emission Regulations;
Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations; and the
Heavy-Duty Vehicle and Engine Greenhouse Gas Emission Regulations.

under the
Canadian Environmental Protection Act, 1999

Transportation Division
Environment Canada

NOVEMBER 2015

Disclaimer

This document is intended to provide guidance only. It does not in any way supersede or modify the requirements of the *Canadian Environmental Protection Act, 1999* or the *On-Road Vehicle and Engine Emission Regulations*, the *Off-Road Compression-Ignition Engine Emission Regulations*, the *Off-Road Small Spark-Ignition Engine Emission Regulations*, the *Marine Spark-Ignition Engine, Vessel and Off-Road Recreational Vehicle Emission Regulations*, the *Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations*, or the *Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations* made under that Act. In the event of an inconsistency between this document and the Act or the aforementioned Regulations, the Act and the Regulations shall prevail.

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Aussi disponible en français

1. PURPOSE

This document provides information about the notice of defect requirements under Part 7, Division 5 of the *Canadian Environmental Protection Act, 1999*¹ (hereafter referred to as the CEPA 1999), and the *On-Road Vehicle and Engine Emission Regulations*, the *Off-Road Compression-Ignition Engine Emission Regulations*, the *Off-Road Small Spark-Ignition Engine Emission Regulations*, the *Marine Spark-Ignition Engine, Vessel and Off-Road Recreational Vehicle Emission Regulations*, the *Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations*, and the *Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations* (hereafter referred to as the Regulations).

The guide is designed to assist manufacturers, importers, or distributors of vehicles, vessels and engines subject to the Regulations. It serves to inform those companies not familiar with notice of defect requirements, and to reiterate Environment Canada's position for those companies already familiar with the process.

The information in this document supersedes information provided in the following guidance documents applicable to the *Off-Road Small Spark-Ignition Engine Emission Regulations* dated November 2003 (section 9.2), *Marine Spark-Ignition Engine, Vessel and Off-Road Recreational Vehicle Emission Regulations* dated October 2011 (section 11.3), *Off-Road Compression-Ignition Engine Emission Regulations* dated August 2012 (section I.3) and the *Heavy-Duty Vehicle and Engine Greenhouse Gas Emission Regulations* dated February 2015 (section J.3).

2. APPLICABILITY

The notice of defect requirements apply to companies that manufacture, sell, or import vehicles, engines or equipment of a class for which standards are prescribed under the CEPA 1999.

Section 149 of the CEPA 1999 defines "company" to mean a person who

- (a) is engaged in the business of manufacturing vehicles, engines or equipment in Canada;
- (b) is engaged in the business of selling to other persons, for the purpose of resale by those persons, vehicles, engines or equipment obtained directly from a person described in paragraph (a) or the agent of such a person; or
- (c) imports any vehicle, engine or equipment into Canada for the purpose of sale.

¹ <http://laws-lois.justice.gc.ca/eng/acts/c-15.31/>

3. NOTICE OF DEFECT

3.1 What is an emission-related defect?

The term “defect” is not defined in the CEPA 1999 or associated Regulations, but is generally understood as the following: Does the vehicle, engine or equipment do what it was intended to do or is there a fault or failure that affects or is likely to affect its compliance with a prescribed standard?

The following guiding principles may help to determine the existence of a defect. The issue:

- originated at the design, manufacturing or assembly stage, or interferes with the functioning of the vehicle, vessel or engine;
- is present in a group of similar units;
- could pose an undue pollution risk; and
- is not caused by everyday wear and tear, a lack of proper maintenance, or negligence on the part of the owner/user.

A defective product may be one which reasonable persons would not put on the market if they had knowledge of its harmful character.

Another key consideration is that there is no prescribed threshold (number of occurrences) for reporting of a defect. The number need be only significant enough to raise the real possibility of a failure occurring.

3.2 What is a notice of defect?

A notice of defect is a process that must be used by companies in order to provide the necessary information relating to an emission-related defect, its consequences and proposed remedial action.

A notice of defect may also be used, on a voluntary basis, to address issues that do not necessarily interfere with the functioning of the product such as an error on the emissions label or in the maintenance instructions.

3.3 When should a company submit a notice of defect?

A company must submit a notice of defect immediately upon determining/confirming the existence of a defect. The expression “on becoming aware”, in subsection 157(1) of the CEPA 1999, can be interpreted as meaning the moment at which the analysis is complete, the issue is defined and the defect is identified in a group of similar units.

The notice must be sent to the Minister, to dealers/retailers (having purchased the product from the company) and to each current owner. Suggested templates for such notifications are included in this guide.

3.4 Overview of the notice of defect process

The reporting process begins by filing a notice of defect with the Minister (see address in section 3.6). Whenever possible, the notice should be sent to the Minister prior to owner notification or release to news media agencies.

A typical sequence of events would be:

1. Company submits notice of defect to the Minister.
2. Environment Canada processes the information and issues a reference number.
3. Company submits a draft owner letter to the Minister.
4. Environment Canada reviews the information and, if required, suggests changes.
5. Company notifies owners and dealers.
6. Company submits the initial report to the Minister (which includes a copy of the final version of the owner letter and dealer bulletin).
7. Company submits subsequent follow-up reports as outlined in Table 1.

The notice of defect is to include:

1. The name of the company giving the notice.
2. The make, model, model year and the period during which the item was manufactured. The Vehicle Identification Number (VIN) or VIN range (if available, otherwise this information may be submitted in the initial report).
3. The number of units affected by the defect (if available, otherwise an estimate would be acceptable).
4. The estimated percentage of the potentially affected units that contain the defect.
5. A clear and brief description including the nature (contributing factors and known causes) and physical location of the defect.
6. A clear and brief description of possible consequences and pollution risks arising from the defect.
7. A clear and brief description of the measure(s) to be taken to correct the defect, and how they will be implemented. The description should indicate any precautions an owner can take in the interim (until the remedy is applied) to minimize risks and implications.
8. A chronological summary (including dates) of all principal events that led to the determination of the existence of the defect (if this information is available at time of notification, if not it must be submitted in the following report).
9. The estimated date of owner notification.
10. A description of the means available to the company to contact the current owner of each affected unit.
11. Contact person information (agent for the company).

The initial report is to follow the notice of defect (within 60 days) and contain:

1. The reference number assigned by Environment Canada.
2. Any revision to the information contained in the notice of defect, such as the total number of affected units, the chronology of events, and the Vehicle Identification Number (VIN) or VIN range.

3. Copies of the owner notification letter, circulars, dealer communications, service bulletins, and anything else that pertains to the defect.

Quarterly follow-up reports are required unless otherwise directed by the Minister. Each report is to include:

1. The name of the company giving the report
2. The Environment Canada reference number.
3. The company file number (if one was given).
4. The revised number of affected units.
5. The date of owner notification.
6. The date that subsequent reminder notices were sent to owners, if applicable.
7. The total number of units repaired, including those requiring inspection only.

Table 1 (on the following page) summarizes the reporting steps, frequency of follow-up reports and details of the required information to be submitted at each-step.

Refer to the specific regulations for complete details.

3.5 Owner notification

The name and current address of owners may be determined by using the company's warranty records or, in the case of vehicles, by searching provincial and territorial motor vehicle registration records. A company which cannot demonstrate, upon request by the department, that they possess the name and correct address information of every current owner, may be required to publish notice by newsprint, as prescribed by Section 157(4) of the CEPA 1999.

Unlike communications with the Minister or with dealers, the owner notification letter should only contain commonly used language. Technical jargon not ordinarily understood by the general public may confuse the reader and cause them to dismiss the issue.

Owner notification shall be given in writing, and should be in both official languages or in the person's official language of choice (if it is known).

Finally, the owner letter should contain specific opening statements and conform to the template supplied in Appendix D (page 11 of this document).

Table 1: Summary of Notice of Defect Reporting Steps

Notice of Defect Reporting Steps	Applicable Regulations			
	<i>On-Road Vehicle and Engine Emission Regulations</i>	<i>Off-Road Compression-Ignition Engine Emission Regulations</i>	<i>Off-Road Small Spark-Ignition Engine Emission Regulations</i>	<i>Marine Spark-Ignition Engine, Vessel and Off-Road Recreational Vehicle Emission Regulations</i>
Step 1: Notice of Defect “on becoming aware” Please refer to section 3.3 of this document.	Notice of defect containing the information described in subsection 45(1).	Notice of defect containing the information described in subsection 25(1).	Notice of defect containing the information described in subsection 26(1).	Notice of defect containing the information described in subsection 43(1).
Step 2: Initial Report Within 60 days after a notice of defect has been given	An initial report containing the information described in subsection 45(2).	An initial report containing the information described in subsection 25(2).	An initial report containing the information described in subsection 26(2).	An initial report containing the information described in subsection 43(2).
Step 3: Follow-up Reports	Quarterly reports containing the information specified in subsection 45(3) within 45 days after the end of each calendar quarter* for a period of two years.	Quarterly reports containing the information specified in subsection 25(3) within 45 days after the end of each calendar quarter* for a period of two years.	A report containing the information specified in subsection 26(3) not later than 24 months after giving notice of defect.	<div>Marine engines</div> <div>Regular reports containing the information specified in subsection 43(3) not later than 12 months after giving notice of defect.</div> <div>Vessels and off-road vehicles</div> <div>Regular reports containing the information specified in subsection 43(3) not later than 6 months after giving notice of defect.</div>

*Quarter is generally understood to refer to the periods ending on each of March 31, June 30, Sep 30, and Dec 31.

** The *Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations* and the *Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations* refer to information set out in subsection 45(1) of the *On-Road Vehicle and Engine Emission Regulations*.

3.6 Contact Information

Whenever possible, all documentation should be submitted electronically to vehicleandengineinfo@ec.gc.ca

Alternatively, documents may be sent by fax to (819) 953-7815 or by mail to:

Chief, Regulatory Administration Section
Transportation Division
Environment Canada
351 St-Joseph Blvd.
Gatineau, Quebec K1A 0H3

3.7 Dissemination of information by the Minister

Pursuant to subsection 157(6) of the CEPA 1999, Environment Canada will forward pertinent information of each notice of defect to the person responsible for vehicle or engine administration in each provincial and territorial government. Select basic information will also be made available for public scrutiny. This may include details such as make, model and model year of the affected products, as well as a short description of the defect, its consequences and proposed corrective measures.

3.8 Other considerations

Even though, in some instances, a notice of defect is not required under CEPA 1999, Environment Canada would appreciate receiving:

- a copy of all notices of defect filed with Transport Canada under Section 10 of the *Motor Vehicle Safety Act* for issues which may also affect compliance with a prescribed emissions standard.
- the details and remedial plan of any issues where all affected units are still under the company's possession or control.

As well, the company is encouraged to:

- share with Environment Canada the details of issues that may affect the emission performance of products originally sold in Canada (even if still operating within the prescribed standards), as well as the outcome of any investigation. This information can be shared using whatever means the company prefers, including reports submitted to the U.S. EPA.
- undertake voluntary actions in Canada to remedy the aforementioned issues, and inform Environment Canada of such actions (Environment Canada expects that voluntary actions undertaken in the U.S., such as warranty extensions, would also be offered in Canada if similar conditions exist).
- provide Environment Canada with the reasons why an action would only apply to units originally sold in the U.S., as well as the assurance that no units originally sold in Canada are affected.

Appendix A

NOTICE OF DEFECT

Template/guide

1. The name of the company giving the notice:
2. For a vehicle or vessel
 - The vehicle class (e.g., light-duty vehicle, light-duty truck, medium-duty passenger vehicle, complete heavy-duty vehicle, heavy-duty vehicle, and motorcycle):
 - The make:
 - The model:
 - The model year:
 - The period during which it was manufactured:
 - The Vehicle Identification Number (VIN) or VIN range (if available, otherwise this information may be submitted in the initial report):

For an engine

 - The name of the manufacturer:
 - The make:
 - The model:
 - The model year:
 - The period during which the engine was manufactured:
 - The EPA engine family identification (if applicable):
 - The engine serial number:
 - A description of the vehicle/machine in which the engine is installed or likely to be installed:
3. The number of units affected by the defect (if available, otherwise an estimate would be acceptable):
4. The estimated percentage of the potentially affected units that contain the defect:
5. A clear and brief description including the nature (contributing factors and known causes) and physical location of the defect:
6. A clear and brief description of possible consequences and pollution risks arising from the defect:
7. A clear and brief description of the measure(s) to be taken to correct the defect, and how they will be implemented. The description should indicate any precautions an owner can take in the interim (until the remedy is applied) to minimize risks and implications:

cont.

8. A chronology of all principal events that led to the determination of the existence of the defect (example below). If this information is not yet available, it may instead be submitted in the subsequent report – the initial report):

January 20, 20XX: Complaint received concerning a driveability issue caused by a potentially defective XYZ component.

January 22, 20XX: Suspect vehicle was evaluated by field service team. Component failure is confirmed.

February 1, 20XX: Field investigation initiated. Twenty-three similar vehicles were inspected.

February 9, 20XX: Cause of component failure is identified. Field evaluation results submitted to Team Review Committee.

February 9, 20XX: The defect was classified as an emissions defect under the *Canadian Environmental Protection Act, 1999* and a notice of defect was given to Environment Canada.

9. The estimated date of owner notification:

10. A description of the means available to the company to contact the current owner of each affected unit:

11. Contact person information (agent for the company):

Appendix B

INITIAL REPORT *Template/guide*

The initial report is to contain:

1. The reference number assigned by Environment Canada:
2. Any revised information referred to in the notice of defect, such as:
 - a. the total number of affected units;
 - b. the chronology of events; and
 - c. the Vehicle Identification Number (VIN) or VIN range.
3. Copies of the owner notification letter, circulars, dealer communications, service bulletins, and anything else that pertains to the defect:

Appendix C

FOLLOW-UP REPORT *Template/guide*

1. The name of the company giving the report:
2. The Environment Canada reference number:
3. The number, title or other identification assigned by the company to the notice of defect:
4. The revised number of affected units:
5. The date of owner notification:
6. The date that subsequent reminder notices were sent to owners, if applicable:
7. The total number of units repaired, including those requiring inspection only:

The following template may be used to report multiple defects at the same time.

Company name											
Environment Canada reference number	Recall number, title, or ID	Date of owner notification	Number of affected units	Total number of units repaired (including those requiring inspection only)							
				1 st *	2 nd *	3 rd *	4 th *	5 th *	6 th *	7 th *	8 th *

*Denotes reporting quarters which correspond to calendar quarters (i.e. January – March, April – June, etc.). It should be noted that companies have up to 45 days following these quarters to submit their reports.

Appendix D

OWNER NOTIFICATION *Template/guide*

1. Opening statement: - "This notice is sent to you in accordance with the requirements of the *Canadian Environmental Protection Act, 1999*".
2. Second statement: - whichever of the following is appropriate:
 - For a defect:
(Company name) has determined that a defect which relates to a prescribed emission standard exists in certain (complete identification of the vehicle, vessel or engine).
 - Other than a defect – not performance based (e.g., incorrect emissions label)
(Company name) has determined that certain (complete identification of the vehicle, vessel or engine) fails to conform to Federal emission control requirements.
3. Clear description of the issue, using commonly understood language. This includes:
 - a. identification of the component in question; and
 - b. description of any failure that may occur.
4. Evaluation of the pollution risk
5. Measures to be taken to correct the issue, including:
 - a. general description of the work to be done;
 - b. estimated date when parts and instructions will be available;
 - c. precautions an owner can take in the interim (until the remedy is applied) in order to minimize risks and implications associated with this issue;
 - d. estimated time required to correct the problem; and
 - e. whether the correction will be free of charge.
6. If there will be a charge for the correction, the notification should also include:
 - a. an estimate of the cost of the correction;
 - b. name and part numbers of parts required;
 - c. detailed description of the work to be done; and
 - d. manufacturer's suggestion as to who can carry out the correction.
7. A statement indicating that lessors must inform lessees.

cont.

Important notes:

- Owner notification shall be given in writing, and should be in both official languages or in the person's official language of choice (if it is known).
- If the name and current address of owners cannot be determined using company records, in the case of vehicles, companies may engage the Canadian Council of Motor Transport Administrators (CCMTA) to search provincial and territorial motor vehicle registration records.
- The owner notification letter should only contain commonly used language, unlike communications with the Minister or with dealers. Technical jargon not ordinarily understood by the general public may confuse the reader and cause them to dismiss the issue.
- The company may choose to employ additional means of contacting owners such as point-of-sale posters, press releases or other media approaches.