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Final Report of the Environmental Contaminants Act Amendments Consultative Committee

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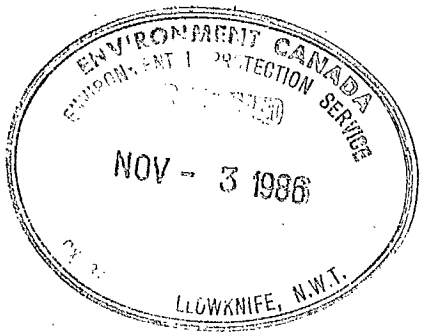

FINAL REPORT
OF THE
ENVIRONMENTAL CONTAMINANTS ACT AMENDMENTS
CONSULTATIVE COMMITTEE

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EXECUTIVE SUMMARY

This report sets out a series of proposed amendments to the Environmental Contaminants Act that have been developed by the multi-partite Environmental Contaminants Act Amendments Consultative Committee. This group, comprising representatives of federal and provincial governments, industry, labour and environmental non-governmental organizations, undertook to determine where consensus could be reached on recommendations for changes to the Act. It had been established in September 1985 as part of the intensive consultative process being employed by the Ministers of the Environment and of National Health and Welfare in their efforts to update the legislation.

In its deliberations the Committee remained cognizant of its responsibility to balance complex social and technical issues and to find common ground between legitimate but, in many respects, conflicting viewpoints on the control of chemicals. The proposals that follow result from a careful balancing of these various interests, responsibilities, priorities and concerns; they constitute a coherent package and should be viewed as such. Consensus was achieved on most of the items under discussion and, where this was not possible, differing views are noted. Additional comments and topics requiring further discussion are also identified.

The Committee's recommendations are important components of a national framework for chemical management and address the need for Canada's adherence to its international commitments. These components include:

- a notification scheme for new chemicals;
- additional provisions to deal with existing substances;
- a new notification requirement for the export of banned or severely restricted chemicals.

Highlights of the proposals follow.

The notification system would provide the federal government with information on new chemicals before they enter Canadian commerce. New substances could not be manufactured or imported into Canada without the submission of a data package that would

permit meaningful first assessment of their environmental and health hazards and need for control. The package would have to contain details of the substance's physical and chemical properties, toxicity, ecotoxicity, and use. The Committee feels that this proposal would significantly improve the current system and that it represents a major advancement in the control of chemicals used in Canada.

In order to implement the new chemical notification system, the government would first establish an inventory of substances that would distinguish between substances that were in Canadian commerce as of a specified date, and those that were not. Those established not to be in Canadian commerce would require notification prior to their importation or manufacture.

The data collected during the inventory's compilation phase on substances currently in Canadian commerce would also help the federal and provincial governments to establish priorities for a program to systematically evaluate the hazards of existing substances. The Committee agreed on the need for such an enhanced program and recommended that Ministers consult with concerned parties in setting priorities and in developing a systematic approach for the evaluation of these substances.

Several recommendations are aimed at strengthening and streamlining the administration of the Act. The Committee believes, for example, that it is necessary to expand the matters that can fall under the purview of a Board of Review. The Act's appeal mechanism should be more open and streamlined, and should cover all regulatory initiatives as well as a decision not to regulate a chemical.

Non-government Committee members proposed the creation of an Advisory Council to be headed by an independent chairman and whose membership would include persons equally representative of business, labour and environmental non-governmental groups. The Council would provide advice to Ministers on a variety of policy and administrative matters, and provide a forum for stakeholders to interact with each other.

Other significant recommendations deal with improvements to the compliance and enforcement provisions of the Act and enhancement of the ministerial authority to obtain information necessary for proper evaluations.

In recognition of Canada's international commitments, the Committee proposed that the export of substances banned or severely restricted in Canada be subject to a new export notification system. This would ensure that importing countries knew of Canadian concerns about the hazards posed by the chemicals being considered for importation.

The need to protect confidential business information (CBI) and the need for public access to information are the subject of some discussion in the report. Consensus was reached on specific information that should always be in the public domain. In addition, the Committee set criteria to be used in determining what constitutes CBI, outlined safeguards for protecting CBI, and proposed a mechanism for resolving disputes on the subject. It also identified a process whereby CBI could be shared with provincial governments and other nations.

In order to promote a truly national approach towards the management of chemicals, the Committee recommended that the Act provide for agreements between federal Ministers and provincial governments with regard to any section of the Act.

A Socio-Economic Evaluation Working Group reviewed the private- and public-sector costs and benefits of the Committee's proposals. Its findings are summarized in the report and will shortly be published in full as a separate document. It has been estimated that the proposed amendments could impose over the first ten-year period a total cost on Canadian society ranging from 35 to 83 million expressed in 1986 dollars. Approximately 70 to 82% of these costs would be borne by the private sector. These broad ranges reflect significant uncertainty on the details of implementation of the various proposed changes. On balance, however, the Committee believes that the health and environmental benefits outweigh the costs and that its recommendations, if implemented, would avoid unnecessary adverse economic consequences.

Committee members believe that this package of amendments will better enable the Act to further the aims of environmental and health protection for Canadians. It will also allow Canada to actively participate in world-wide efforts to ensure that all new chemicals are adequately reviewed before their introduction into commerce.

Changes in scientific knowledge and the public expectations of government in the ten years since the promulgation of the Act have created the need to update this legislation. The continuing development of new chemicals and the detection of more and more chemicals in our environment have increased society's concern over their potential risks. Ministers are respectfully requested to give careful consideration to the Consultative Committee's proposals, bearing in mind the urgent need for legislative change and the possible effects on relations between government and the various stakeholders if the Committee's consensus were to be ignored.

INTRODUCTION

This report summarizes the consensus achieved by the Environmental Contaminants Act Amendments Consultative Committee on essential changes required to update the Environmental Contaminants Act. The proposals that follow are submitted to the Ministers of the Environment and of National Health and Welfare for their consideration. The Committee hopes that the intent and underlying principles of each recommendation will be reflected in the wording of any legislative changes that are eventually adopted.

The goal of these recommendations is to enable the amended Act to better address those issues associated with the notification and assessment of new chemicals; to improve the control of new and existing substances; and to institute a notification process for exports from Canada of banned or severely restricted chemicals. The proposals are also expected to strengthen and streamline the application of various provisions in the Act.

This report reflects a balance of the viewpoints and interests expressed by all members of this multi-partite Committee. Consequently, the recommendations should be considered as a complete package that the Committee as a whole believes represents a significant improvement over the present situation.

The Need for Change

The Act provides the federal government with the power to obtain a systematic overview of contamination of the environment regardless of source, use, product or type of discharge, and to apply appropriate controls, if necessary, in those cases where other legislation does not exist or is not used. Since the Act was promulgated in 1976, the government has gained considerable experience in implementing its provisions and has identified a number of difficulties with its application. These problems must be resolved if the Act is to continue to achieve effective national control of environmental hazards.

The impetus for amending the Act is twofold: first, it was a prototype piece of legislation in 1976 that has become technically outdated and no longer responds adequately to public needs and concerns. Secondly, Canada's international commitments and trading patterns demand that our laws be in harmony with the requirements of other nations.

Many industrialized countries share Canada's concern for the effective and equitable management of chemicals. As a member of both the United Nations and the OECD, Canada is party to a number of agreements involving the management of chemicals.

The Consultative Process

In 1982, the two federal departments responsible for the administration of the Act, Environment and Health and Welfare, sponsored a workshop on new chemicals. From this came an interdepartmental review of the Act and the development of preliminary proposals for a number of improvements. These proposals were circulated in February 1985 to interested groups and individuals who were invited to submit written comments. Public information workshops were also held in Montreal, Toronto and Vancouver to facilitate informed commentary.

In September 1985, the Environmental Contaminants Act Amendments Consultative Committee was established by the Ministers of Environment and Health and Welfare to determine where consensus could be reached on amendment proposals. This initiative was designed to broaden both the focus of discussion and the basis of participation. It included in the consultative process the following sectors of Canadian society, each of which has a vital interest in the management of chemicals: business, labour, environmental non-government organizations, and the federal and provincial governments. The Committee considers the establishment of such a body to be a significant breakthrough in federal government consultative procedures and has welcomed this opportunity for undertaking cooperative efforts to achieve realistic consensus on subjects of vital concern to Canadian society.

The Committee's terms of reference and list of members appear in Appendices 1 and 2.

The Committee has held eight formal two-day meetings since its formation, and individual members have met on many other occasions to obtain a consensus on specific points of contention. Three Working Groups (on Polymers, Mutagenicity and Socio-Economic Evaluation) were established to investigate particular areas of concern. The Polymer Working Group's report appears in Appendix 4; the findings of the Mutagenicity Working Group have been incorporated into this report, and the full socio-economic evaluation will be issued shortly as a separate document.

The integration of technical and social considerations into the political decision-making context has been a vital aspect of the multi-partite consultative process. Its objective has been to ensure that the concerns of all interested parties are addressed and that the final recommendations are broadly acceptable to both the Committee members and their constituencies. The Committee concentrated on seeking out the common ground among its members' various positions, so as to meet Canada's societal needs for chemical management while minimizing the negative impacts on the various groups affected.

The participants expressed their continuing interest in ensuring that the intent of their recommendations is accurately translated into legislation and practice, while recognizing that Ministers are not bound by the Committee's report.

Policy Considerations

All stakeholders recognize that the environmental and health effects of chemicals require more stringent preventative measures and more effective remedial action. It is also recognized, however, that Canada is a trading nation and that consequently the competitive position of the Canadian manufacturing industry and the actions being taken by other nations must be considered when environmental protection policies are developed. During its discussions on a proposed notification system for new chemicals, the Committee contacted relevant agencies in the U.S., Germany, England and Australia to obtain information about their experience in establishing or implementing their respective notification systems.

Other factors include the respective federal and provincial mandates in environmental protection and the need to balance government's role with basic societal interests. It is important for governments to develop a harmonized national scheme that is consistent yet appropriate to all regions of the country and is compatible with the policies of Canada's major trading partners. The Committee recognizes also that the public's need to know about potential threats to health and the environment must be balanced with industry's need to protect genuinely confidential business information.

All participants agreed that the management of chemicals in Canada must be more open to public scrutiny if confidence in both industry and government is to be restored.

The Committee recognizes the resource implications of its recommendations. It urges that resources sufficient to ensure the better administration of the Act be allocated in order to ensure that human health and the Canadian environment are adequately protected.

In preparing its recommendations, the Committee remained ever mindful of the need for a practical, balanced approach to regulatory change, an approach that would reconcile the various priorities and concerns mentioned above. After almost a year of rigorous and intense discussion, it has achieved a high level of consensus on many troubling issues, considering the naturally disparate perspectives and priorities of its members. The Committee sincerely hopes that the care and attention that have been accorded to its task will be borne in mind when the proposals are reviewed.

NEW SUBSTANCES

The recommendations appearing in this section address the need for establishing a notification system for new substances that provides a data package to permit a meaningful first assessment of the need for control of these substances prior to their entry into Canadian commerce.

Development of Inventory

This section outlines the development of a reference list of substances by which substances new to Canadian commerce can be unequivocally distinguished from existing ones.

A practical approach to the creation of the inventory is to adopt, as a starting point, an existing list of substances (the inventory developed under the U.S. Toxic Substances Control Act) and to allow a write-in system for the addition of substances found in Canadian commerce and not covered in the initial list. Because the resulting inventory would contain substances that may or may not be in Canadian commerce as of a given date, it is necessary to re-group the former within an "In-Canada" List compiled on the basis of a national survey. Additional information on quantities and use would be gathered as part of this survey of Canadian substances, on a province-by-province basis. This information would be particularly useful for the setting of priorities within existing substances programs as well as for the evaluation of the environmental impact of these substances.

RECOMMENDATION

Canadian Consolidated List of Substances

The federal government will compile and circulate an initial core list comprising substances listed on the non-confidential portion of the U.S. TSCA inventory as updated in 1985, with microorganisms, bacteria, fungi, and yeasts deleted.(1)

Footnotes for this section are re-grouped on page 14.

Canadian companies will be invited to request the addition of substances which were not on the initial core list, excluding microorganisms, bacteria, fungi and yeast, but:

(i) were, during any of the three years prior to a date announced by the Minister,(2) imported into or manufactured in Canada in quantities greater than 100 kg per calendar year or can be demonstrated by the submitter, to the satisfaction of the federal government, to have been in Canadian commerce or manufactured for commercial purposes in Canada;(3)

(ii) were food additives or drugs permitted for use in Canada under the Food and Drugs Act or active ingredients of pesticides registered for use in Canada under the Pest Control Products Act, if these substances were used for other than their registered uses and were, during any of the three years prior to a date announced by the Minister,(2) imported into or manufactured in Canada in quantities greater than 100 kg per calendar year or can be demonstrated by the submitter, to the satisfaction of the federal government, to have been in Canadian commerce or manufactured for commercial purposes in Canada;(3)

(iii) for which bona fide evidence(4) is submitted that they existed on the confidential portion of the TSCA inventory as updated in 1985.

Claims for addition to the initial core list of substances should include for each substance the chemical identity and a Chemical Abstracts Service (CAS) number, if available, and would be signed by the Chief Executive Officer of individual companies making the claims. Principles of public access to this information would apply, subject to appropriate confidentiality safeguards. Claims would be made either directly or through recognized trade associations within a 9-month period after the publication of the initial list.(5)

The federal government will officially publish and circulate the supplemental draft list containing the additional substances claimed and accepted for addition. Canadian companies will be given another opportunity to identify and request the addition of substances satisfying the criteria outlined above and still missing from the initial core list or supplemental draft list. Claims for addition would be made within 3 months after the publication of the supplemental draft list.

The federal government will then publish within six months a final complete version of the non-confidential list; this list together with the confidential list shall be known as the Canadian Consolidated List of Substances.

The "In-Canada" List

The federal government will require Canadian importers and manufacturers to identify among the substances enumerated on the Canadian Consolidated List of Substances those substances which were, during any of the three years prior to a date announced by the Minister,(2) imported into or manufactured in Canada in quantities greater than 100 kg per calendar year or can be demonstrated by the submitter, to the satisfaction of the federal government, to have been in Canadian commerce or manufactured for commercial purposes in Canada.(3) The substances so identified will constitute the "In-Canada" List. In addition, information on end use, quantities, etc. will be requested as indicated on the attached form (see Table I).

The federal government will officially publish and circulate a composite "In-Canada" List resulting from the procedure outlined above, requesting the submission of proposed corrections within 3 months of the publication of the composite list. The federal government will then publish a final version of the non-confidential Canadian Consolidated List of Substances with the "In-Canada" substances appropriately noted.

Table I: Proposed Format for "In-Canada" List Compilation

Note: Separate submissions should be prepared for confidential and non-confidential information. Government may request justification for confidentiality claims.

Manufacturer or Importer: Y

Date: _____

Chemical Identity	(1) Substance (CAS no. if known)	General Use	Total Quantity	Other Comments	Alta.	B.C.	Man.	N.B.	Nfld.	N.S.	Ont.	P.E.I.	Que.	Sask.	Yukon and N.W.T.
Identity		Plasti-cizer	C		P(1)						M(1) P(2)		M(1)		
Identity		Adhesive	D								P(1)		P(1)		
Identity		Solvent	B												

Legend: M = Manufactured
P = Processed (2)
() = Number of Sites under the Control of Submitter
Y = Company Name

Quantity Levels:
(Kg per calendar year)
A = up to 1,000
B = 1,000 - 10,000
C = 10,000 - 100,000
D = 100,000 - 1,000,000
E = greater than 1,000,000

Example: The above form indicates that Company Y manufactures a plasticizer at one site in Ontario and one site in Quebec and processes the substance at one site in Alberta and two sites in Ontario for a total Canadian quantity of 10,000 - 100,000 kg per calendar year. The company also processes an adhesive at one site in Ontario and one site in Quebec for a total Canadian quantity of 100,000 - 1,000,000 kg per calendar year; because no manufacturing is identified, it can be assumed that the product was imported. A solvent is imported but not manufactured or processed by the submitter.

Chief Executive Officer's Signature: _____

1. The nomenclature indicated on the Consolidated List of Substances.
2. The term "processed" means the preparation of a chemical substance or mixture after its manufacture for distribution in commerce either in the same or different form or physical state as it was received from the manufacturer or importer.

Appropriate confidentiality safeguards would apply throughout.

Exclusions from the Canadian Consolidated List of Substances

The following substances are not eligible for inclusion in the Canadian Consolidated List of Substances:

(i) impurities;

(ii) by-products;

(iii) non-isolated, site limited reaction intermediates;

(iv) microorganisms, bacteria, fungi, and yeasts; and

(v) food additives or drugs permitted for use in Canada under the Food and Drugs Act or active ingredients of pesticides registered for use in Canada under the Pest Control Products Act which have no commercial uses other than those for which they were registered.

Summary

New Substances	- substances not on the Canadian Consolidated List of Substances.
Existing Substances	- substances on the Canadian Consolidated List of substances.
Notifiable Existing Substances	- substances on the Canadian Consolidated List of substances but but not on the "In-Canada" List.

Additional Comments

The industry representatives offer the following comments:

-to reduce the economic burden of creating the inventory, the announced date (referred to in footnote (2) below) should be year-end, i.e. December 31, 1986, since this is more compatible with current record-keeping practices;

-to encourage a harmonized approach within Canada, industry would offer to assist the government in obtaining the information outlined in Table I in the expectation that all provinces agreed in principle to accept the Canadian Consolidated List of Substances as the common basis for defining new industrial substances for purposes of notification.

Representatives of the Ontario government (Ministry of the Environment), environmental non-governmental organizations and organized labour offer the following comment:

-site-specific information would be desirable when Table I is completed.

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1. Although proposals dealing with biotechnology, microorganisms or related issues have not been formally addressed by this Committee, members recommend that the Act should be used to address such issues.

2. The majority of the Committee recommends that the date be as soon as possible, but not retroactive. In any event the date shall not be later than December 31, 1986.

3. The expression "in Canadian commerce or manufacture for commercial purposes" covers all end-purposes other than research, development or analytical purposes. Commercial purposes include the use of a substance by a manufacturer or importer as a raw material for the production of an article or as a constituent of a chemical mixture or formulation.

4. Acceptable to the federal government.

5. Special consideration may be needed to assist importers of trade name products if difficulties arise in obtaining proper chemical identification of constituents from foreign suppliers.

Notification Requirements

A preventative approach to the protection of the environment and human health will be best served if the notification system operates at the premanufacturing or preimportation stage rather than at the premarketing stage.

The establishment of quantity triggers within the notification system to determine the level and timing of notification applicable to a substance has direct repercussions on the level of activity and associated expenses within the two sectors most affected - government and industry. The following factors must be considered in establishing these triggers: the need for protection of the environment and health; practicality; and compatibility and comparability of the system with those in other industrialized countries. The data submission requirement for a notified substance should vary as a function of the quantities involved and whether or not the notified substance is new in Canada but not in other countries.

In the context of the establishment of a Canadian inventory of substances, three types of substances will be subject to the recommended notification system: those not enumerated in the inventory; those enumerated in the inventory but not yet in Canada; and particular substances such as pesticides, foods and drugs not enumerated in the inventory or, if enumerated, not yet in Canada, when uses other than their registered uses are contemplated.

Appropriate exemptions will be needed to avoid the unnecessary notification of substances subject to parallel federal legislative notification requirements, or of substances which (because of particular factors) can be considered not to pose significant threats to the environment or to human health.

Substances generally recognized on account of their properties, their conditions of use or the quantities usually involved as unlikely to constitute environmental and health threats to the same degree as other industrial chemicals, will be subject to special notification requirements. Such substances could include: particular polymers, substances used for research and development, substances manufactured solely for export, and

isolated, site-limited intermediates.

RECOMMENDATION

Substances Subject to Notification (1)

(i) "New substance" - any substance not enumerated in the Canadian Consolidated List of Substances.

(ii) "Notifiable existing substance" - any substance that is enumerated in the Canadian Consolidated List of Substances but not in the "In-Canada" List.

(iii) "New" and "notifiable existing" pesticides, foods, and drugs used for other than their registered uses.

Substances Not Subject to Notification

The following substances are fully exempt from notification requirements:

(i) substances subject to environmental and/or health hazard assessment as part of premarketing requirements under other federal legislation such as the Pest Control Products Act and the Food and Drugs Act, except where such substances are used for purposes other than those for which

1. The Committee recommends that a compatible notification scheme under federal legislation be put in place for substances that are contained in an article and which are released to fulfill the functions of the article under normal conditions of use. The Committee also recommends that a multi-stakeholder committee be established to make recommendations on a preventative regulatory scheme for articles.

they were registered (e.g. pesticides, pharmaceuticals, veterinary drugs, food additives);

(ii) substances that are non-isolated transient reaction intermediates(formed during a chemical reaction but consumed during the process) which are unlikely to enter the environment;

(iii) impurities, contaminants and partially unreacted materials that are known or reasonably expected to be present in a substance (although not subject to notification per se, they must be declared at the time the substance in which they may be present is notified);

(iv) substances that are existing polymers (where only the molecular weight is changed) and existing co-polymers (where only the ratio of contributing monomers is varied); and

(v) substances that result from a chemical reaction occurring incidentally to storage (e.g. drying oils), environmental factors. (e.g. UV light, moisture) or end use (e.g. dried paints, photographic films, adhesives, or reaction products between antioxidant and polymer).

Substances Subject to Special Notification Requirements

The following substances are subject to special notification requirements as detailed in the following pages:

(i) polymers other than those included in the above Recommendation (see page 18);

(ii) substances used for research and development purposes (see page 20);

(iii) new or existing notifiable substances manufactured solely for export (see page 22); and

(iv) isolated site-limited intermediates
(see page 22).

Application of Proposed Notification Levels

Notifiable Existing Substances

Level 1 (Basic) - for quantities greater than 300 kg per calendar year and less than 1,000 kg per calendar year or 1500 kg accumulated total

Level 2 (Mini) - for quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total

New Substances

Level 1 (Basic) - for quantities greater than 5 kg per calendar year and less than 300 kg per calendar year

Level 2 (Mini) - for quantities greater than 300 kg per calendar year and less than 1,000 kg per calendar year or 1500 kg accumulated total

Level 3 (Full) - for quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total

Special Notification Requirements for Polymers

Definition

A polymer, for the purpose of notification requirements, is defined as a chemical substance which is comprised of a simple weight majority of molecules containing two or more monomer units which are covalently bound to at least two other monomer units, and for which the number-average molecular weight is greater than 500.

Approach

The Committee agreed in principle with the Polymer Working Group Report (see Appendix 4 and item "Polymers" on page 71) which is based on the following concepts:

(i) polymers are a special group of substances, some of which may pose a relatively low risk of injury to humans;

(ii) relatively low-hazard polymers, as described in Appendix 4, should be subjected to special notification requirements; and

(iii) other notifiable existing and new polymers will be subject to regular notification requirements. However, in addition to normal flexibility provisions, consideration should be given to such factors as very high molecular weights, low absorption potential, exposure, toxicity, or structure-activity relationships.

Notification Requirements

Polymers not exempted from notification requirements will be subject to the notification requirements summarized in Table II after a determination has been made, in light of their composition, whether they are new or notifiable existing polymers and whether they are identifiable according to specified criteria as candidates for special notification requirements.

Table II: Summary of Special Notification Requirements for Polymers

Quantity Triggers	New Polymer		Notifiable Existing Polymer	
	Regular Notific.	Special Notific.	Regular Notific.	Special Notific.
-greater than 300 kg per calendar year or 1500 kg accumulated total	Level 2 (Mini)	Level 1 (Basic)	Level 1 (Basic)	Level 1 (Basic)
-greater than 1000 kg per calendar year or 5000 kg accumulated total	Level 3 (Full)	Level 2 (Mini)	Level 2 (Mini)	Level 1 (Basic)

Inventory

Polymers would be added to the appropriate inventory lists upon completion of the review of the most onerous applicable data package for notification of these substances and upon government receipt of evidence of manufacture or importation in Canada of quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

These substances would also be eligible for inclusion in the Canadian Consolidated List of Substances and in the "In-Canada" List at the time of their original compilation, on the same basis as other substances.

Special Notification Requirements for Research and Development Substances

Definitions

Research and development (R&D) is defined as the systematic investigation or search, by means of experimentation and/or analysis, having as its primary objective the creation or improvement of a product or process including the determination of technical viability and/or performance characteristics. This definition excludes test

marketing, which is the exploration of market capability in a competitive situation where the creation or improvement of the product is no longer the prime purpose of the activity. R&D substances include any substance having exclusively R&D purposes.

Notification Requirements

No notification would be required for R&D substances manufactured or imported in Canada at less than 300 kg per calendar year or 1500 kg accumulated total. Above these levels, the normal notification requirements would apply.

The application of the normal notification requirements to R&D substances is not intended to deter R&D activities in Canada. To this end the following additional flexibility vis-à-vis test data requirements would apply, if the notifier presents a case acceptable to the federal government. Such cases would take into account:

(i) the limited exposure to a R&D substance; and

(ii) situations where the submission of a complete notification may have a deterrent effect on Canadian R&D activities.

Inventory

R&D substances would be added to the appropriate inventory lists upon completion of the review of the most onerous applicable data package for notification of these substances and upon government receipt of evidence of manufacture or importation in Canada of quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

These substances would also be eligible for inclusion in the Canadian Consolidated List of Substances and in the "In-Canada" List at the time of their original compilation, on the same basis as other substances.

Special Notification Requirements for Substances Manufactured Solely for Export

Notification Requirements

The normal notification requirements would apply to substances manufactured solely for export, with the following exception.

For new substances manufactured in quantities greater than 5 kg and less than 1,000 kg per calendar year, Level 1 notification would be required on or before the date of manufacture.

Flexibility with respect to exceptions from the data requirements would take into account the practical environmental consequences of manufacturing solely for export, when acceptable to the federal government.

Inventory

Substances manufactured solely for export would be added to the appropriate inventory lists upon completion of the review of the most onerous applicable data package for notification of these substances and upon government receipt of evidence of manufacture in Canada of quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

These substances would also be eligible for inclusion in the Canadian Consolidated List of Substances and in the "In-Canada" List at the time of their original compilation, on the same basis as other substances.

Special Notification Requirements for Site-limited Intermediates

Definitions

"Intermediates" are defined as substances that are consumed in whole or in part in chemical reactions used for the intentional manufacture of other substances or mixtures or that are intentionally present for the purpose of altering the rate of such reactions.

"Site-limited intermediates" are defined as intermediates that are restricted to a manufacturing operation at one geographical location.

Notification Requirements

Notification triggers would be the same as for new and notifiable existing substances.

A reduced data package would be permitted on a case-by-case basis with consideration being given to the manufacturer's ability to control exposure. The onus would be on the submitter to justify any such reduction to the satisfaction of the federal government.

Inventory

Site-limited intermediates would be added to the appropriate inventory lists upon completion of the review of the most onerous applicable data package for notification of these substances and upon government receipt of evidence of manufacture in Canada of quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

These substances would also be eligible for inclusion in the Canadian Consolidated List of Substances and in the "In-Canada" List at the time of their original compilation, on the same basis as other substances.

Additional Comments

The Ontario government (Ministry of the Environment) representative offers the following comment:

- notwithstanding notification to the federal government, further notification and subsequent approval for environmental evaluation purposes may be required by the Ontario Ministry of the Environment pursuant to Ontario's Environmental Protection Act and the Ontario Water Resources Act before a substance can be released into the Ontario environment.

The industry representatives offer the following comment:

-notwithstanding the intent of and the flexibility provisions for notifications of R&D substances, there is a concern that innovative development in Canada may be inhibited in comparison with the situation in the U.S. and European countries due to less stringent notification requirements for R&D substances in those jurisdictions.

The representatives of environmental non-governmental interest groups offer the following dissenting views and comments:

-dissenting view: there are insufficient grounds to extend the flexibile application of notification requirements for notifiable existing and new polymers beyond the normal provisions (i.e. very high molecular weight). Polymers are environmentally persistent, level of exposure is an overly speculative and unethical factor, and toxicity cannot be assessed without reviewing the packages that meet the regular notification requirement;

-dissenting view: it is not believed that reduced notification requirements can be justified for research and development substances and substances manufactured solely for export. Inadequate evidence was presented to support industry's contention that the notification requirements would be a deterrent to industry and that notification is unnecessary because exposure would be limited. These concerns of industry are adequately dealt with through the reduced information requirements based on quantity triggers;

-representatives support the Committee consensus regarding substances in articles but are concerned that the potential for adverse human health and environmental impacts by a substance exists whether or not the substance is contained in an article, as such substances may enter the environment during use or through accident, leak, destruction or disposal. All substances contained in articles should be notifiable under the Act;

-representatives expressed concern that substances that result from a chemical reaction occurring incidentally to storage, environmental factors or end use are potentially harmful to human health or the environment and should be subject to some

form of scrutiny

Data Requirements

Establishing data submission requirements for substances notified under the recommended notification system must take into account several important considerations. Sufficient information should be made available for an adequate environmental and health hazard evaluation of the substances notified; thus the notifier should be required to submit all available relevant information. Without thorough assessment of a chemical prior to its introduction, the potentially enormous costs associated with possible adverse human and environmental effects remain unknown. Recognition must be given to international efforts through the OECD to harmonize data requirements for new chemicals in a global context. A minimum premarketing set of data (MPD) considered to be needed for a meaningful first assessment of new chemicals has been identified and OECD member countries have agreed to a flexible implementation of the MPD principle.

Concern was expressed that Canada's relatively small share of the world trade in chemicals imposes limits on the ability of the Canadian economy to support the development of uniquely Canadian test data on chemical substances. Because many of the substances introduced into Canadian commerce are likely to be substances existing and in use elsewhere, demanding that data be generated solely to satisfy a Canadian requirement would probably have a negative impact on plans to manufacture or import such substances. Consequently, a realistic approach for Canada requires that the MPD principle be fully applied to substances that are new not only in the Canadian context, i.e. new substances as defined previously. In the case of substances new only to Canada, i.e. notifiable existing substances, these would be subject to reduced data requirements and additional data needed for their evaluation would be requested upon the identification of environmental or health concerns.

It is envisaged that in special cases the data requirements should be enforced with flexibility as long as this does not compromise the protection of health and the environment. As part of this flexible approach, the federal government would be allowed to request the submission of specific additional data

on particular substances when identified concerns justify such action.

RECOMMENDATION

Data Packages

Data packages would be required for each notification level as outlined below.

Level 1 — Basic Notification

Information required:

i) identity (e.g. CAS or IUPAC nomenclature);

ii) CAS number or evidence that it is on the TSCA list;

iii) a Material Safety Data Sheet (MSDS) and a label, if available;

iv) all other available information relevant to health and environmental considerations that is in the notifier's possession;

v) an indication of other jurisdictions that have been notified; and

vi) intended use.

Basic notification would occur on or before the date of intended import or manufacture. Any follow-up action would be the responsibility of the federal government.

Level 2 — Mini Notification

Information required:

i) identity (e.g. CAS or IUPAC nomenclature);

ii) CAS number if available;

iii) (a) for "new substances" - physical/chemical data elements as specified in Level 3, excluding adsorption/desorption and hydrolysis data;
(b) for "notifiable existing substances" - physical/chemical data elements as specified in Level 3;

iv) one acute mammalian toxicity test of oral, dermal, or inhalation representing the most probable route of exposure;

v) all information and testing data relevant to health and environmental hazard assessment that is in the notifier's possession or of which the notifier ought reasonably to be aware. The intent is to include information within the corporation, e.g. a foreign parent company;

vi) intended use;

vii) anticipated yearly quantities;

viii) label and Material Safety Data Sheets (MSDS);

ix) estimated number of people potentially exposed if known;

x) anticipated emissions and discharges to the environment;

xi) recommended disposal methods; and

xii) an indication of other jurisdictions that have been notified.

Mini notification would occur at least 45 days before the date of intended import or manufacture. Any follow-up action would be the responsibility of the federal government.

Level 3 Full Notification

The data package outlined below would apply to "new substances" in quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

Information required:

Notifiers would be required to provide the following data, based on the OECD Council Decision of 1982 concerning the minimum premarketing set of data (MPD) in the assessment of chemicals (reproduced in Appendix 5), with modifications as indicated:

i) Chemical identification - as recommended per OECD MPD decision.

ii) Production/use/disposal data - as recommended per OECD MPD decision.

iii) Recommended precautions and emergency measures - as recommended in Workplace Hazardous Materials Information System (WHMIS) Steering Committee Report.

iv) Analytical methods - as recommended per OECD MPD

decision; equivalent tests to be permitted.

v) Physical/chemical data - as recommended per OECD MPD decision; with flexibility.

vi) Mammalian acute toxicity data - two out of three tests of oral, dermal, or inhalation depending on most probable route of exposure. Other acute toxicity tests: - skin irritation - skin sensitisation - eye irritation

vii) Mutagenicity data - as per the testing strategy outlined on page 30.

viii) Ecological data
- fish LC_{50}
- Daphnia LC_{50}
- partition coefficient, water solubility, hydrolysis (included in physical/chemical data)
- biodegradation, one of OECD test 301 A-E
- bioaccumulation, one of OECD test 305 A-E

ix) Repeated dose toxicity - one test (28-day study preferred). This test may not be required based on consideration on a case-by-case basis of factors such as exposure, toxicity, or structure-activity relationship. The notifier to justify in each case.

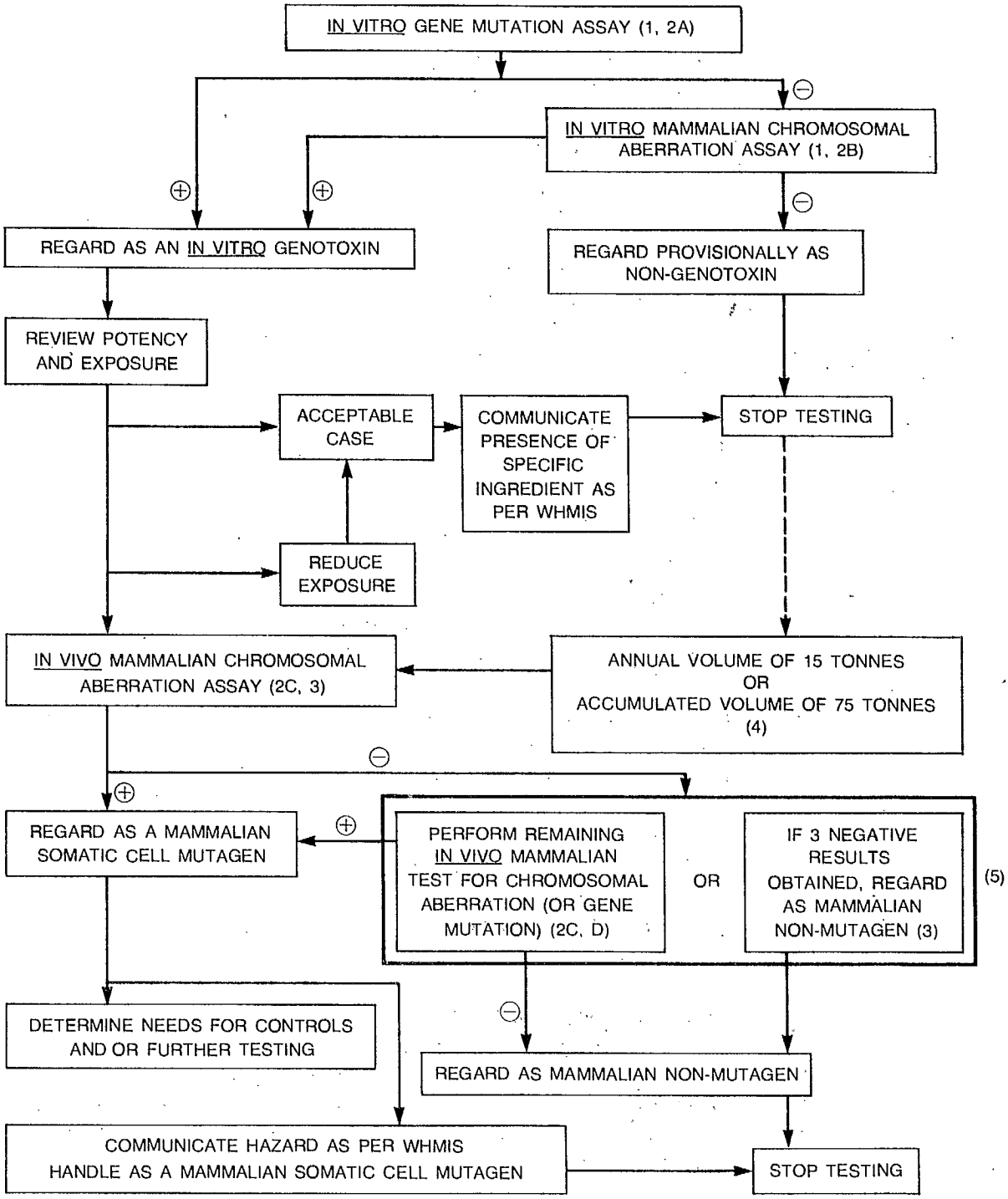
(x) Any additional information that is contained in a Level 2 notification.

Full notification would occur at least 90 days before date of intended import or manufacture. A government decision would be required within 90-days. One 90-day extension permissible, if justified. Any follow-up action would be the responsibility of the federal government.

Mutagenicity testing strategy:

The Mutagenicity Working Group has assessed the data submission requirements with regard to mutagenicity data, and its recommended approach is outlined in the flow chart and accompanying notes in the following pages. The approach permits the assessment of a substance's mutagenic potential on the basis of results from basic tests and, when warranted, on those of further tests built in for confirmation purposes.

FLOW CHART


IN VITRO GENE MUTATION ASSAY (1, 2A)
⊖
IN VITRO MAMMALIAN CHROMOSOMAL ABERRATION ASSAY (1, 2B)
⊕
⊕
⊖
REGARD AS AN IN VITRO GENOTOXIN
REGARD PROVISIONALLY AS NON-GENOTOXIN
REVIEW POTENCY AND EXPOSURE
ACCEPTABLE CASE
COMMUNICATE PRESENCE OF SPECIFIC INGREDIENT AS PER WHMIS
STOP TESTING
REDUCE EXPOSURE
IN VIVO MAMMALIAN CHROMOSOMAL ABERRATION ASSAY (2C, 3)
ANNUAL VOLUME OF 15 TONNES OR ACCUMULATED VOLUME OF 75 TONNES (4)
⊖
⊕
⊕
REGARD AS A MAMMALIAN SOMATIC CELL MUTAGEN
PERFORM REMAINING IN VIVO MAMMALIAN TEST FOR CHROMOSOMAL ABERRATION (OR GENE MUTATION) (2C, D)
OR
IF 3 NEGATIVE RESULTS OBTAINED, REGARD AS MAMMALIAN NON-MUTAGEN (3)
(5)
⊖
DETERMINE NEEDS FOR CONTROLS AND OR FURTHER TESTING
REGARD AS MAMMALIAN NON-MUTAGEN
COMMUNICATE HAZARD AS PER WHMIS HANDLE AS A MAMMALIAN SOMATIC CELL MUTAGEN
STOP TESTING

Notes to Flow Chart:

1. With and without metabolic activation.

2. Acceptable tests include, but are not necessarily limited to, the following:

   a) *in vitro* gene mutation

      -*Salmonella*/mammalian microsome assay
      -CHO/HGPRT - assay
      -L5178Y TK - assay
      -Haploid *Saccharomyces* assay

   b) *in vitro* mammalian chromosomal aberrations

      -metaphase analysis in mammalian cells
      -(not including sister chromatid exchange and micronuclei)

   c) *in vivo* mammalian chromosomal aberrations

      -rodent bone marrow micronucleus assay
      -rodent bone marrow metaphase analysis
      -(not including sister chromatid exchange)

   d) *in vivo* mammalian gene mutation or other indicator tests in a second somatic tissue or species

      -rodent liver unscheduled DNA synthesis
      -rodent sister chromatid exchange

   Other tests may be used with appropriate justification.

3. For certain compounds (e.g. nitro aromatic or azo-dyes) it may be justified to go straight to the *in vivo* mammalian gene mutation or indicator test instead of the *in vivo* mammalian chromosomal aberrations test. The submitter should provide such justification on a case-by-case basis.

4. Further testing may not be justified in all cases. The submitter should provide justification for omission of further testing on a case-by-case basis.

5. Consensus has been achieved except for the requirement for a fourth, in vivo test when negative results have already been obtained in three assays. The divergent positions are:

a) Government and environmental non-governmental organizations	-a fourth, in vivo test is required to detect accurately the mutagenic potential of the test agent.
b) Industry	-three negative test results are sufficient for a meaningful first assessment. Additional testing should be based on concerns specifically related to the chemical in question and not on an automatic basis.

Other Aspects

Flexibility

Provided there is sufficient information to allow the meaningful assessment of a substance, a degree of flexibility vis-à-vis the data requirement would be allowed for all notification levels. Notifiers would be allowed this flexibility, if satisfactory to the federal government, when:

(i) scientific tests equivalent to or better than OECD test methods are used; or

(ii) a test is not technically feasible (e.g. vapour pressure of some solids); or

(iii) as agreed by the majority of the Committee members, acceptable conclusions regarding health and environmental effects of the notified substances can be derived from existing scientific knowledge or equivalent data (e.g. biodegradability of a dye).

The federal government should have the flexibility to require on a case-by-case basis information in addition to that specified in the data package, when there is scientific justification for so doing.

Information Disclosure About Notifiable Existing Substances

Regarding any substance on the Canadian Consolidated List of Substances but not appearing in the "In-Canada" List as published at the effective date of the notification system, any Canadian manufacturers or importers introducing such a substance into Canadian commerce would be responsible to communicate to the federal government any information in their possession that is relevant to health and environmental effects of the substance. This responsibility would be limited to the data requirements set out for Level 3 notifications where these exceed the requirements for Level 2 notifications.

Development of Testing Data

All testing shall be done either on the commercial product that is intended to be marketed and that contains the substance notified, or on the technical grade of the substance (e.g. with impurities).

Additional Comments

The representatives of environmental non-governmental organizations offer the following dissenting views and comments:

-dissenting view: representatives are opposed to the criteria of estimated number of people exposed for Level 2 data packages. It is their position that the criteria should be

struck out because of the high degree of uncertainty involved in calculating such a number and more importantly question its appropriateness on ethical grounds;

-dissenting view: the repeated dose toxicity test should be required in all cases as it is the only long-term toxicity test in the data requirements. Factors such as exposure, toxicity, and structure activity are unacceptable criteria upon which to exempt substances from toxicity testing;

-representatives do not agree that existing information on other substances should be substituted for tests on a particular substance. The scientific validity of such an approach is too controversial to warrant its entrenchment in legislation;

-representatives feel that the data package requirements for Level 2 and Level 3 notification should include information about exposure pathways and critical sub-populations (i.e. if a substance concentrates in human milk, nursing infants are a critical sub-population). In addition, Level 1 notification of all other information in the notifier's possession should also include such information which the notifier ought reasonably to be aware of, as is required in Levels 2 and 3.

Assessment Process - Maintaining and Updating of Inventory Lists

RECOMMENDATION

Possible Outcome of the Assessment Process

Each substance notified will be assessed by the federal government on a case-by-case basis to determine the potential of the substance to cause adverse environmental or health effects. Based on this assessment, the federal government will determine the need to impose restrictions on the use of the substance or to request additional information judged to be necessary for its assessment. Appropriate follow-up action will be taken, where warranted.

The Committee recommends that an overall framework for the environmental and health hazard assessment of substances be developed by the federal government in consultation with stakeholders.

Maintaining and Updating of Inventory Lists

The course of action taken by the federal government on a notified substance as a result of its assessment will determine on which list or lists the substance would be added as well as when this would occur.

The Lists

The following three lists of substances will be needed in order to implement the proposed new chemical substance notification scheme:

(i) the Canadian Consolidated List of Substances (described on page 9);

(ii) the "In-Canada" List (described on page 11); and

(iii) a Conditional Inventory List.(1)

A notified substance may be entered on the Conditional Inventory List if:

- a change in use, method of manufacture, volume of production, or other factors may significantly change the degree or nature of human and environmental exposure;

- an exemption to a data requirement on the basis of exposure controls has been granted; or

1. It is not intended that the Conditional Inventory List be used to extend the normal assessment period. It is envisaged that only a small number of notifiable substances would be entered on this list.

- the federal government has identified a health or environmental concern for which there is insufficient data available for its resolution.

For any substance placed on the Conditional Inventory List, a notification would be required from:

(i) any manufacturer or importer other than the original notifier; and

(ii) the original submitter and any subsequent manufacturer or importer when:

-the substance is to be manufactured or imported for a use other than the use described in the original notification; or

-changes are intended in the method of manufacture, volume of production, the physical form or other factors that may significantly change the degree or nature of the potential exposure to humans or the environment.

When sufficient information has been submitted to the satisfaction of the government to permit estimation of the hazard of the substance, or when any control measures applicable to the substance have been removed, the government would transfer the substance from the Conditional Inventory List to the Canadian Consolidated List of Substances and/or the "In-Canada" List, as appropriate.

Routine Administration of the Lists

Once the lists have been created and notifications have been processed by Environment Canada, the following procedure is recommended to ensure the fair and efficient administration of the lists:

Eligibility criteria:

(i) a notifiable existing substance would automatically be added to the "In-Canada" List upon completion of the review of the most

onerous (Level 2) applicable data package for notification of that substance and upon government receipt of evidence of importation or manufacture in Canada in quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

A notifiable existing substance for which conditional use is permitted would be added to the Conditional Inventory List.

(ii) a new substance would automatically be added to the Canadian Consolidated List of Substances and to the "In-Canada" List upon completion of the review of the most onerous (Level 3) applicable data package for notification of that substance and upon receipt by government of evidence of importation or manufacture in Canada in quantities greater than 1,000 kg per calendar year or 5,000 kg accumulated total.

A new substance for which conditional use is permitted would be added to the Conditional Inventory List.

Access to the non-confidential portion of the lists:

To permit government to accurately and efficiently respond to oral and written requests from prospective manufacturers and importers of chemical substances or from the public, it must maintain a master record of all three lists that is continually updated for rapid access.

Access to the confidential portion of the lists:

The federal government will undertake to carry out searches of its master lists and provide requestors with a simple "yes" or "no" answer if it is provided with sufficient proof that the requestors can:

(i) identify the generic name of the substance on the confidential portion of the list(s);

(ii) accurately characterize the substance in question (e.g. spectral data); and

(iii) can demonstrate that they genuinely intend to manufacture or import the substance into Canada.

Periodic publishing:

At appropriate intervals Environment Canada will arrange to publish the three lists. Confidentiality safeguards (i.e. generic names) will be used for the confidential portion of the lists.

Transition period:

To cover the period between the date announced by the Minister for establishing the Canadian Consolidated List of Substances and the date that the new notification scheme and requirements come into effect, it is recommended that:

(i) the present notification requirements under subsection 4(6) continue to operate for the interim period; such notifications would be collected and retained on a Transitional List of substances;

(ii) the federal government determine, on or before the date that the new notification scheme comes into effect, which substances on the Transitional List have been entered on the Canadian Consolidated List of Substances and/or the "In-Canada" List;

(iii) each person who has submitted a notification for a substance retained on the Transitional List be informed, in writing, by the federal government of (a) the status of the substance vis-à-vis the inventory (the Canadian Consolidated List of Substances and the "In-Canada" List), and (b) the data requirements to be satisfied before the

substance is entered on the inventory, as outlined below:

-substances not on the Canadian Consolidated notification List of Substances or on the "In-Canada" List	- Level 3 (Full) notification
-substances on the Canadian Consolidated List of Substances but not on the "In-Canada" List	- Level 2 (Mini) notification
-substances on both the Canadian Consolidated List Substances and the "In-Canada" List	- no additional data required

Any additional data required for the transfer of a substance from the Transitional List to the inventory would be subject to the flexibility provisions described in the Data Packages section, page 26; and

(iv) the submitter supply the additional data to the federal government within a reasonable time or terminate its activities with the substance in Canada.

UPGRADING FEATURES

Considerable experience has been gained in implementing the various provisions of the Environmental Contaminants Act since its promulgation in 1976, and detailed examinations of the text have revealed that a number of inconsistencies exist within its provisions. Alternative wording would, in other instances, better serve to meet the objectives of environmental and health protection.

Definition of Substance

A definition of "substance" that is applicable to all sections of the Act is required.

RECOMMENDATION

"Substance" means any distinguishable kind of organic or inorganic matter that is:

(i) capable of becoming dispersed in the environment; or

(ii) capable of becoming transformed in the environment into matter described in part (i);

and includes:

(a) any element or uncombined radical; or

(b) any combination of elements of a particular molecular identity occurring as a result of a chemical reaction or occurring in nature; or

(c) complex combinations of different molecules that originate in nature or which are the result of chemical reactions but which could not practically be formed by simply combining individual constituents;

but does not include:

(d) any mixture defined as a combination of substances that does not itself produce a new substance; or

(e) any article defined as a manufactured item that (i) is formed to a specific physical shape or design during manufacture; and (ii) has an end use function(s) dependent in whole or in part upon its shape or design.

Board of Review

Recommended changes to the current appeal mechanism provisions of the Environmental Contaminants Act are intended to address present needs and concerns and cover all regulatory initiatives. Any decision not to regulate an existing substance under the Act should be subject to appeal. A more open and streamlined appeal process is required.

RECOMMENDATION

Committee members agreed that the Act be reviewed and amended in order to explicitly state accepted appeal mechanism principles.

The mandate of the Board of Review should be clearly stated in one section of the Act and should reflect the following:

(i) The ability to appeal should be extended to any decision made by the Governor in Council (i.e. adding or deleting from the schedule, and establishing, amending or rescinding regulations), and to any decision not to regulate under the Act with respect to an existing substance(s) that has(have) been subject to a formal environmental and health hazard evaluation.

(ii) Any person, and not just "any person having an interest," should be able to file an appeal, provided the reason(s) is(are) stated in written form.

(iii) The Minister may evaluate the relevancy and validity of an appeal and may reject any appeal considered to be frivolous or vexatious. It may be desirable to develop impartial criteria for the Minister by some acceptable mechanism. Any such decision should be appealable to the courts.

The logistics of the appeal mechanism (such as procedures, guidelines and departmental policies) should be grouped together and clearly stated in regulations.

The Minister should be provided with a list for the selection of members to the Board of Review. The list should be established through a procedure that would allow the nomination of competent persons by business, labour, environmental groups and government (both federal and provincial). The Minister's choice may not be limited to those persons on the list.

Committee members recognize the need for intervenor funding in certain cases and recommend that the government develop a policy for intervenor funding under the Act that is consistent with overall government intervenor funding policy and practice.

Additional Comments

The federal government representatives offer the following comments:

- while supporting an open appeal process, federal government representatives are concerned about the high costs of the Board of Review process;
- Ministerial discretion in the formation of such boards may therefore be necessary.

The representatives of environmental non-governmental organizations offer the following comment:

- the right to appeal should also be extended to a decision not to evaluate a toxic substance as well as any decision not to regulate, regardless of the reasons.

Advisory Council

In implementing the Environmental Contaminants Act, the Ministers may wish to receive advice from persons outside of government. Many mechanisms to accomplish this objective exist under the Act. Ministers may appoint advisory committees, and two such committees have been formed, both of which have completed their work and been disbanded. Federal Committee members felt that how the Ministers would wish to receive such advice is a policy question. They therefore chose to abstain from supporting the possible approach outlined in the following recommendation.

RECOMMENDATION

Labour, industry and environmental groups believe that an Advisory Council should be formed to provide advice to Ministers on the administration of the Act. It is hoped that such advice will be based on a consensus among involved stakeholders. The Advisory Council should provide a forum for the discussion of issues and concerns relating to the administration of the Act between stakeholders and government officials. Labour, industry and environmental groups recommend that this could and should be accomplished as set out below:

An Advisory Council on Environmental Contaminants should be created as a standing body under subsection 3(4) of the Act, composed of not more than ten members appointed by the Minister of the Environment and the Minister of National Health and Welfare.

The membership of the Advisory Council shall consist of persons equally representative of business, labour, and the environmental movement. Officials of federal and provincial government departments may sit as observers and may be invited to participate as appropriate.

The Ministers shall designate an independent person to be chairperson.

Each member of the Advisory Council shall be paid such remuneration as is required to cover reasonable travel and living expenses incurred in the course of

functioning as a Council member. It may also include remuneration for expenses incurred in representing each constituency.

The Advisory Council:

(i) shall provide advice to the Minister(s) on matters that have been brought to its attention or referred to it concerning notification assessment and procedure and policy issues;

(ii) may make recommendations to the Minister(s) concerning the administration of the Act;

(iii) may make recommendations on the testing of existing chemicals on a priority basis;

(iv) may make recommendations with respect to biotechnology;

(v) may make recommendations regarding the listing of "banned or severely restricted" substances for purposes of export notification;

(vi) shall review the new chemicals program every three years with a view to providing advice on incorporating scientific advances and dealing with practical problems of implementation; and

(vii) shall annually report to the Minister on its activities.

Additional Comments

The Ontario government (Ministry of the Environment) representative offers the following comments:

-participation by representatives of the Canadian Council of Resource and Environment Ministers (CCREM) in the proposed Advisory Council is a possibility;

-CCREM could provide an alternative mechanism for a multi-stakeholder advisory council.

The representatives of environmental non-governmental organizations offer the following comments:

-representatives recommend that the role of the proposed Advisory Council be expanded to include the responsibility of facilitating and co-ordinating public consultation on regulatory and policy matters relating to toxic substances;

-consideration should be given to adopting the role of similar advisory bodies which have been mandated to manage public consultation programs including public hearings, information programs and consultation processes (e.g. Environmental Council of Alberta, Pest Management Advisory Board);

-in addition, given the extensive responsibilities intended for the Advisory Council, it is suggested that full time salaried positions may be necessary;

-it is important that the Advisory Council not usurp the public consultation process and become a public consultation process itself. While it is proposed that all interests be represented on the Council, no one member can be seen to speak for all environmental groups. Members of the Council should be drawn from all sectors but not be seen to replace consultation with those sectors.

Scope of the Legislation

The scope of the Environmental Contaminants Act should be broadened to address all potential significant threats to the environment from chemicals. Three recommendations are suggested to achieve this purpose.

RECOMMENDATION

Expanding Scope Beyond Commercial Activities

Committee members agreed that the activities described in Sections 4 ("disclosure"), 8 ("offences") and 18 ("regulations") of the Act should not be restricted to activities related to commerce. The Act should have the power to control activities of individuals, corporations, institutions, and governments.

Control of Contaminants

Committee members agreed that the Act should provide the power to control the release or potential release into the environment of contaminants arising from adventitious production and the presence of trace contaminants in products, equipment, etc.

Class of Substances

The current definition of "class of substance" should be amended in order not to restrict it to similarities based on chemical structure alone.

The following changes are recommended:

(i) repeal subsection 4(5) of the Act that currently defines "class of substances";

(ii) in subsection 2(1) ("definitions") of the Act, replace the definition of "class of substances" with:

"class of substances" means any two or more substances that:

a) contain the same chemical moiety; or

b) have similar physico-chemical properties or toxicological properties; or

c) for the purpose of Sections 3 ("information") and 4 ("disclosure") of the Act only, have similar categories of uses (e.g. aerosol propellants, catalysts, plasticizers or surfactants).

Consultation

The goal of the first recommendation outlined below is to broaden and strengthen consultation and collaboration between federal and provincial governments on matters within the purview of the Environmental Contaminants Act. The second recommendation is made for reasons of practicality.

RECOMMENDATION

Agreements with Provinces (1)

Subsection 3(8) ("agreements with provinces") should be extended and provision made for the possibility of agreements between federal Ministers and one or more provincial governments with regard to any section(s) of the Act.

Offer to Consult

Subsection 5(1) ("consultation with provinces and departments or agencies") should be amended by deleting the words "but no later than 15 days."

Consultation

Section 5 ("consultation") should be amended to ensure that the provinces are consulted when deletion from the schedule and the rescinding of a regulation are being considered.

Consistency of Powers

The Governor in Council is currently empowered, under the Environmental Contaminants Act, to schedule substances and promulgate regulations. The powers to amend and rescind regulations and to delete from the schedule should also be made available within the Act.

RECOMMENDATION

Committee members agreed that Sections 5 ("consultation"), 7 ("schedule"), and 18

1. See Appendix 6.

("regulations") should be amended to ensure that the powers given to the Governor in Council include:

(i) adding to the schedule;

(ii) making regulations;

(iii) amending existing regulations;

(iv) deleting from the schedule; and

(v) rescinding regulations.

These powers should be made subject to appeal through the Board of Review and should apply to:

(i) any individual substance;

(ii) any individual class of substances; and

(iii) any one or more of a class of substances, taken individually or collectively.

Regulatory Actions

The following recommendations are proposed to allow for a flexible, timely and appropriate use of the regulatory provisions of the Environmental Contaminants Act.

RECOMMENDATION

Regulation of use

Subsection 8(2) ("offences - import, manufacture, etc.") should be amended in order to allow for the specification of a concentration or quantity for any prescribed use.

Release/Abandonment

The Act should ensure the broadest concept of "release" that is consistent with the purposes of the Act.

Two possible approaches are:

(i) amend the current definition by incorporating words such as "but is not limited to", and adding "seeping, discharging, exhausting, depositing, etc."; or

(ii) replace the definition with "release means a transfer of a substance into or within any receiving medium of the environment".

There should be incorporated into the Act the concept of abandonment and a practical means of dealing with it. The time period for prosecution purposes is covered by subsection 8(6) ("time limit"; see page 52).

Environmental Force Majeure

The Act should be upgraded to include the principle of "emergency" and consequent remedial action.[1] More specifically, either the Minister of the Environment or the Minister of National Health and Welfare should be authorized by statute to react in situations requiring urgent actions.

The emergency powers would:

(i) be at the discretion of the designated Minister;

(ii) be applicable only in emergency situations;

(iii) allow the Minister to act on short notice;

(iv) comprise all of the current powers listed in Section 8 of the Act;

(v) add to the listed powers the power to authorize recalls;

1. "Remedial action" means the action needed to alleviate the immediate public health or environmental threat (for incidents totally within a province, such action would be undertaken by the federal government only if the province was unable or unwilling to do so).

(vi) ensure, when possible, that a 24-hour period is provided for the prior notification of the affected party(ies) including provincial Ministers of the Environment;

and would:

(i) be subject to existing legal sanctions (i.e. injunctions) rather than to the appeal mechanism already described in the Act;

(ii) apply to substances listed in the Schedule to the Act; and

(iii) permit the rapid scheduling of a substance in cases of emergency.

Exemptions within Regulations

In many instances, it is necessary or desirable to provide specific exemptions to regulations. Examples would include: a need for scientific research studies carried out by technically qualified personnel; allowing the sale of a plant or building that may contain a regulated product (e.g. PCB transformers) if these products are necessary and integral parts of the building or plant; and allowing the importation and sale of waste substances for the purpose of destruction or disposal in facilities approved by appropriate authorities. Provision should be made for consultation with provincial governments.

RECOMMENDATION

The power to specify exemptions to regulations made pursuant to Section 8 of the Environmental Contaminants Act on a regulation-by-regulation basis should be incorporated into the Act.

Enforcement and Compliance

Powers of Inspectors

There is a need to improve the administration of the Environmental Contaminants Act (e.g. auditing compliance practices) and to ensure that the powers given to inspectors

are consistent with the Canadian Charter of Rights and Freedoms.

RECOMMENDATION

Separate the powers of inspectors relative to administrative compliance from those related to actual enforcement (leading to prosecution). Delete Section 10 ("inspection") and replace with an expanded power of inspectors to audit compliance practices, applicable to both plant and corporate offices. Retain subsection 10(1) ("search") for enforcement purposes and include the power to:

(i) examine any product or substance found therein;

(ii) open and examine any receptacle or package found therein;

(iii) examine any document relevant to the enforcement of the Act and regulations;

(iv) take away for further examination any substance or product referred to in (i), or any receptacle or package referred to in (ii); and

(v) make copies of or extracts from any document referred to in (iii).

Particular attention should be given to the use and protection of confidential business information that is taken in the course of an inspection.

Time Period/Continuing Offence

The following recommendations are designed to ensure that adequate time is provided for the prosecution of offences and that a regime of penalties commensurate with the gravity of a particular offence is instituted.

RECOMMENDATION

Where it contributes to the clarity of the Environmental Contaminants Act, all information

relating to offences should be grouped within one section.

The Act should contain a two-year time limit for proceedings in respect of summary conviction other than those delineated in subsection 8(6) ("time limit") of the Act.

The one-year time limitation in subsection 8(6) should begin running from time of the discovery of the offence.

The continuing offence clause should be made operative for all offences under Section 8 ("offences").

For offences other than Section 8 a review of the penalties provided should be made to ensure that they are commensurate with the severity of the offence.

Information Gathering

In order for the federal government to obtain information needed in the identification and documentation of possible threats to the environment and health, the information and disclosure provisions of the Environmental Contaminants Act should be strengthened and expanded.

The current wording essentially obliges Ministers to prove harm before exercising the powers granted under subsection 4(1) ("notice to disclose"), which tends to deter from taking action. This wording should be made less onerous to facilitate the provision of information deemed to be necessary for carrying out environmental and health hazard evaluations of substances about which concerns can be substantiated.

RECOMMENDATION

Committee members agreed that subsection 3(1) ("information, notice") of the Act should be reviewed and amended in order to allow the gathering of additional information about substances (e.g. use pattern, impurities).

Committee members agreed that, to enhance the protection of the environment through preventative

measures (such as gathering information) and early action, the wording currently used in subsection 4(1) of the Act should be reviewed and amended so as to be less restrictive on Ministers.

The Committee agreed that the redrafted subsection 4(1) or the administrative procedures used to request additional information under this subsection should be developed in a manner that avoids capricious or frivolous use of this authority.

ENHANCED PROGRAM FOR EXISTING SUBSTANCES

There is a need in Canada and in other industrialized countries to increase the rate at which existing substances are investigated for their environmental and health hazards. International programs for cooperation and collaboration in this area are being articulated. An effective existing substances program in Canada will require a priority setting mechanism to identify those substances that should be subjected to a systematic investigation and to ensure adequate planning and allocation of resources within government and industry.

RECOMMENDATION

The Committee agreed that:

(i) there is a need for a federal enhanced program on existing substances which would provide for a systematic evaluation of their environmental and health effects and exposure potential in the Canadian context;

(ii) the Ministers should have authority to deal with existing substances in a systematic fashion with respect to setting priorities, obtaining additional information, and evaluating test results; and

(iii) in consultation with concerned parties, the federal government should identify the existing substances urgently requiring detailed evaluation of their possible adverse environmental and health effects and exposure potential in the Canadian context.

A Proposal for an Existing Substances Program(1)

Time did not permit a detailed evaluation of options for an existing substances program. The federal and provincial governments recognize the need for a systematic evaluation, and feel that further consultation and discussion is necessary. However, labour, industry and environmental groups recommend that the following process elements could and should be accomplished as set out below:

An expert committee acceptable to all stakeholders should be established.

The expert committee would develop and recommend to the Ministers a priority list of not more than 30 substances which are believed to be of concern to human health or the environment in the Canadian context. In establishing this list, all available information should be considered, including:

(i) the quantities in which the substance is or will be manufactured or imported;

(ii) the quantities in which the substance enters or will enter the environment;

(iii) the extent to which human beings or other biota are or will be exposed to the substance;

(iv) the extent to which the substance is closely related to a chemical substance which is known to present an unreasonable risk to health or the environment;

(v) the existence or absence of data concerning the level of the substance in the environment as well as its environmental or health effects;

1. This proposal is not intended to limit the Ministers' powers under the proposed subsection 4(1).

(vi) the extent to which testing of the substance may result in the development of data upon which its effects on health or the environment can reasonably be determined or predicted; and

(vii) the reasonably foreseeable availability of resources for performing testing on the substance.

The federal government would review the expert committee's recommendation and would establish and publish the final list, including a designation of those substances requiring action by the Ministers within a specified period (such as 24 months). The number of substances designated at any one time shall not exceed 30.

In consultation with stakeholders, the federal government would develop relevant test protocols for substances on the priority list, taking into consideration those factors detailed above as well as any ongoing or planned testing programs outside Canada to which the federal government would have access. Costs for these tests would be borne by the industry involved in a manner to be developed following appropriate consultation.

The federal government would be responsible for ensuring that the list was routinely reviewed and revised as necessary. The period between reviews would not exceed 12 months.

The expert committee would meet annually at an appropriate time to review the priority list and recommend revisions to Ministers.

EXPORT NOTIFICATION OF BANNED AND SEVERELY RESTRICTED CHEMICALS

Canada is committed to participation in international programs (e.g. OECD, UNEP) that focus on the exchange of information among countries whenever banned or severely restricted substances are traded internationally. These programs are designed to ensure that importing governments are able to make timely and informed decisions regarding the regulation of such substances. The details of a recommended notification system are provided below.

RECOMMENDATION

Definitions

"Banned substance" should be defined to mean a substance for which all uses have been prohibited by final federal government regulatory action or a substance for which all requests for registrations or equivalent action for all uses have not been granted because of health or environmental reasons.

"Severely restricted substance" should be defined to mean a substance for which significant uses have been prohibited by final federal government regulatory action because of health or environmental reasons but for which certain specific use(s) remain authorized.

When applying these definitions to mixtures containing "banned" or "severely restricted substances", the requirement for export notification shall parallel the restrictions for Canadian use (e.g. if mixtures containing less than "x" ppm of the substance are not banned or severely restricted in Canada they are not subject to export notification).

Identification of Banned and Severely Restricted Substances

Export notification should be required for substances that have been banned or severely restricted in Canada

by final federal government regulatory action in order to protect human health or the environment.

The scope of the Environmental Contaminants Act in this regard should be residual. The provisions for export notification contained in the Act should only be applied in cases where similar requirements are not met under other federal legislation.

Banned and severely restricted substances for which export notification is required under the Act should be listed on a schedule to the Act, following the existing procedures for scheduling substances for control purposes (proposal of substances in the Canada Gazette, followed by a suitable appeal period, with mechanisms for appeals being specified).

Notifications of Control Action

The federal government will notify governments of importing countries directly, through designated national authorities where identified, of action taken by Canada to ban or severely restrict substances when the control action has been finalized.

Notifications of control action will specify:

(i) the chemical name and trade name(s) of the banned or severely restricted substance;

(ii) a summary of the control action and the reasons for it; and

(iii) a contact point for additional information about the control action.

Notifications of Export

The federal government will publish in the Canada Gazette the names and addresses of designated national authorities of importing countries to whom export notifications are to be sent. If no such authority has been designated by the importing government, the exporting company will notify the country's Canadian

embassy or a contact point identified by the federal government.

As soon as the first order for an export to the importing country following a Canadian control action has been confirmed, the exporting company will notify the identified contact point of the importing country that an export of a banned or severely restricted substance is expected or is about to occur. A copy of the export notification is to be sent to the federal government at the same time.

The export notification will include:

(i) the name of the banned or severely restricted substance, material identifier, and use;

(ii) the estimated quantity of the substance to be shipped to the importing country in the next three years, including the quantity of the first shipment;

(iii) a summary of the control actions taken in Canada, and the reasons for them (prepared by government); and

(iv) contact points for additional information (a government contact for regulatory information and an industry contact for technical information).

The following information items are to accompany the shipment:

(i) hazardous ingredients of a mixture;

(ii) physical data;

(iii) fire and explosion data;

(iv) reactivity data;

(v) toxicological properties;

(vi) preventive measures; and

(vii) first aid measures.

Material Safety Data Sheets (MSDS), as recommended for the Workplace Hazardous Materials Information System (WHMIS), will (when formally adopted) be regarded as satisfactory for this purpose.

Export notification will be sent by either telex (first choice) or registered air mail (second choice), so that receipt of the notification can be confirmed.

The federal government will publish listings of export notifications that have been sent.

These Committee recommendations are in no way intended to restrict the federal government's ability to meet its international obligations.

Additional Comments

The representatives of environmental non-governmental organizations offer the following comments:

-the proposed export notification scheme is inadequate to deal with the serious problems posed by the export of substances banned or severely restricted in Canada;
-the export of these chemicals should be more strictly controlled because of their impact on the global environment, their presence as residues or contaminants in imported foods, and the dubious morality of profiting from the sale of chemicals whose use Canada does not condone;
-the export of chemicals banned in Canada should not be allowed;
-the export of severely restricted chemicals should be controlled by a system of Prior Informed Consent; export should only be allowed if the importing country has explicitly given permission for the export to take place.

Representatives of the Public Service Alliance of Canada and the Canadian Labour Congress offer the following comment:

-while recognizing that the export notification provisions are not an export control scheme, there is concern that the range of chemicals covered by the export notification scheme is limited only to those banned or severely restricted under federal jurisdiction.

DISCLOSURE OF INFORMATION AND CONFIDENTIALITY SAFEGUARDS

It is accepted that the federal government agencies responsible for chemical control legislation must be empowered to obtain all the information needed to evaluate the environmental and health hazard of chemicals in use or planned for use in Canada. In some cases, part of the information obtained from industry can legitimately be claimed as being confidential information. The procedure recommended for the handling of confidential business information takes into account and balances a number of considerations.

Society needs to have access to information on chemicals to which there may be exposure as a result of their entry into the environment. Protection against the uncontrolled disclosure of confidential business information is also needed to avoid causing serious economic damage to the owner or submitter of such information. The challenge is to balance these competing needs.

Mechanisms must be found to allow the sharing of confidential information between the federal and provincial governments; mechanisms that will avoid duplication and facilitate collaboration between agencies. Similar mechanisms are also required to allow the sharing of confidential information between national governments so as to meet Canada's obligations in this regard. It is believed that the recommended procedure will enhance the credibility of the information exchange between industry and government by creating an open system and ensuring that only genuinely confidential information is so classified.

RECOMMENDATION

Guiding Principles

All information or data not accorded confidential status should be publicly available upon request.

The onus is on the submitter to demonstrate, based upon the agreed criteria for assessing confidentiality, the need for according certain data or information confidential status.

Information or data accorded confidential status will receive the appropriate security safeguards.

Definition

Confidential business information (CBI) means all information or data submitted pursuant to the Environmental Contaminants Act that pertains to legitimate business interests and would cause an economic loss to the owner of the information if released, is claimed by the submitter as confidential, and is judged to be confidential in accordance with the following criteria:

(i) the extent to which the information for which the CBI claim is made is known outside the submitter's business, excluding knowledge gained as a result of submission of CBI to government;

(ii) the extent to which the information is known by persons or firms involved in the same business as that conducted by the submitter;

(iii) the extent of measures taken by the submitter to guard the secrecy of the information;

(iv) the present and/or future value of the information to the submitter or its competitor; or

(v) the amount of effort or money expended by the submitter in developing the information.

Data to be Considered Non-confidential

The following types of information shall not be considered to be confidential for the purposes of the Act:

(i) general data on uses (broad descriptions only are needed; e.g. closed or open system, agriculture, domestic use);

(ii) safe handling precautions to be observed in the manufacture, storage, transport and use of the chemical;

(iii) recommended methods for disposal and elimination;

(iv) safety measures in case of an accident;

(v) physical and chemical data with the exception of data revealing the chemical identity (e.g. spectra); if the physical and chemical data make it possible to deduce the chemical identity then only ranges of values need be given; and

(vi) summaries of health and safety data including precise figures and interpretations (the submitter of the health and safety data should participate in the preparation of the summaries).

A majority of Committee members agreed that this list is not all inclusive and other information will be public unless the submitter demonstrates that it is genuinely confidential. For example:

(i) trade name(s) or name(s) commonly used;

(ii) health and safety studies;(1) and

(iii) volumes and location of hazardous waste.

All non-confidential business information can be circulated and exchanged without restriction and will be made available to the Canadian Centre for Occupational Health and Safety (CCOHS) and others upon request.

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1. If the supplier claims health and safety studies to be confidential, the federal government shall automatically submit the studies directly to the arbitration process for a ruling.

Submission Process - Settlement of Disputes - Access to Information

The recommended procedure should incorporate the following steps.

The submitter or owner of the information would identify any information believed to be confidential. The federal government would assess the validity of the confidentiality claim on the basis of the above criteria and agree or disagree with the claim.

If the federal government agreed that certain information was genuinely confidential it shall be held as such with appropriate safeguards:

- -enabling legislation, to the degree practicable, would stipulate that there should be no unauthorized disclosures of CBI;
- -government employees' negligence with respect to the unauthorized disclosure of CBI would not be exempt from sanctions available under Canadian civil law;
- -requests for release of information would be handled in a manner consistent with the federal government's Access to Information Act (AIA); and
- -government agencies handling CBI would maintain secure files with limited access (in a manner comparable to the system presently used by the Commercial Chemicals Branch of Environment Canada).

If the federal government did not believe that the information in question was genuinely confidential, it could request from the submitter further justification of his claim.

If the federal government believed on the basis of the justification that the information in question was genuinely confidential it would be held as such with appropriate safeguards as outlined above.

If the federal government continued to believe that the information was not genuinely confidential and if the submitter maintained that it was, the federal government would submit the claim to an arbitration process such as that described on pages 26 and 27 of the Workplace Hazardous Materials Information System (WHMIS) Steering Committee Report. Subject to the provisions of and decisions made pursuant to the AIA, the arbitration panel's ruling would be final.

Should a non-government agency request access to information that federal government administrators hold as CBI, and contend that the CBI label is inappropriate, the information in question would be referred to the dispute settlement regime outlined in the WHMIS Steering Committee Report.

Where CBI was to be released in order to address concerns raised in an emergency situation, federal and/or provincial government administrators would notify the supplier of the CBI at least 24 hours before the release, if possible, in accordance with OECD principles on data exchange.

Sharing of CBI with Provinces

Confidential business information received by the federal government in the course of administering the Act may be shared with provincial government agencies according to the following principles.

The Deputy Ministers of Environment Canada and Health and Welfare Canada should formally advise their provincial counterparts of their willingness to share CBI obtained from industry in the course of administering the Act and should attach guidelines describing the conditions under which this could take place, viz:

-each provincial agency requesting CBI will designate a single contact point through which all requests for CBI will be channeled;

-confidential business information will be shared with another agency if:

(i) statutory authority does not explicitly prohibit the sharing of the information with other agencies;

(ii) the agency has a need to know because of a similar mandate;

(iii) the agency identifies the information or type of information requested and provides a rationale why the information is necessary to fulfill the mandate of the agency, including specific programs where applicable;

(iv) the designated contact signs a firm commitment on behalf of the agency not to disclose or further share the information without the prior written consent of industry, Health and Welfare Canada and Environment Canada. This commitment shall contain an assurance that the requesting agency will protect the information from unauthorized release, and that in the event of improper disclosure or sharing of the data, the agency responsible shall assume sole liability for such action; and

(v) the receiving agency has confidentiality safeguards and procedures consistent with those outlined on page 65;

-the authority to enter into such commitments on behalf of the agency shall be exercised at the Director General level or higher; and

-when criteria (i) to (v) outlined immediately above have been satisfied, the submitter and/or the owner of the information in question shall be informed prior to the actual sharing of the information.

International Sharing of CBI

A model agreement is presently being developed by the OECD for the bilateral sharing of confidential business information between national governments. It is recommended that this model agreement be the basis for

negotiating any binding agreement for the sharing of confidential business information between Canada and other national governments.

Additional Comments

The representatives of environmental non-governmental organizations offer the following comments:

-representatives believe that public access to all health and safety information is a fundamental principle that cannot be compromised;

-industry's claim that their commercial position would be harmed by the release of such data is unsubstantiated;

-the International Bio-Test Laboratories Inc. affair and countless other examples point out the need for public availability of raw and background data.

BIOTECHNOLOGY

RECOMMENDATION

Although proposals dealing with biotechnology, microorganisms or related issues have not been formally addressed by this Committee, members recommend that the Ministers should ensure that the Environmental Contaminants Act in its amended version covers such issues.

TOPICS REQUIRING FURTHER DISCUSSION

Several topics considered by Committee members involve detailed discussions, and time constraints did not permit their satisfactory final resolution. Although notable consensus was reached on some aspects, further examination and study by stakeholders was recommended and noted. These topics are re-grouped below for convenient reference.

RECOMMENDATION

Articles

The Committee has recommended that a compatible notification scheme for substances that are contained in an article and that are released to fulfill the functions of the article under normal conditions of use be put in place. The Committee also recommended that a multi-stakeholder committee be established to make recommendations on a preventative regulatory scheme for articles.

Existing Substances

The selection of an approach to establish an enhanced federal program on existing substances requires further discussion among concerned parties. Particular attention should be given to the following aspects:

- identification of priority substances to undergo a systematic evaluation of their environmental and health effects and exposure potential in the Canadian context;
- identification of data gaps with regard to priority substances; and
- mechanisms for the generation of missing data on priority substances.

Polymers

The approach recommended for the identification of polymers subjected to special notification requirements could need further discussion by stakeholders after comments from expert review have been received.

Framework for Assessing Substances

The federal government's approach to the health and environmental hazard assessment of chemical substances needs to be articulated and discussed with stakeholders.

SOCIO-ECONOMIC EVALUATION

This summary of the estimated socio-economic consequences of proposed amendments to the Environmental Contaminants Act was prepared by members of the Socio-Economic Evaluation Working Group. The Working Group was established by Committee members to provide information on the private and public sector costs and benefits of proposals and various options identified by the Committee. However, last minute changes to some amendment proposals have required changes to the Working Group report. The final report will be completed and made available[1] as a companion document to this report in the near future.

Inventory

The objectives of the inventory are to provide a reference listing of chemicals, including those used in Canada. A survey of the chemicals in use in Canada will need to be carried out and information on quantity and use patterns collected. This survey will cover about 250 domestic producers who manufacture approximately 1,300 chemicals, and about 10,000 importers. Importers account for approximately 95% of the 60,000 chemicals estimated to be used in Canada, but for only about 30% of the value.

The cost estimate to the private sector is based on submissions from several chemical companies and a Statistics Canada analysis of chemical imports. It is recommended that the structure of Canadian chemical imports be studied in more detail, and that an optimum survey approach be devised prior to conducting the survey in order to minimize the cost.

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1. The full socio-economic evaluation report will be available upon request from the Commercial Chemicals Branch, Conservation and Protection, Environment Canada, Ottawa, Ontario, K1A 0E7, tel. (819) 997-1499.

Costs

Approximately 91 person-years (P.Y.) of effort by industry are estimated for inventory compilation. Industry estimates a cost of $7.4 million (1986), assuming an annual salary of $50,000 and overheads of 60% (this covers items such as rent, utilities and administration).

Government may have to allocate approximately 10 person-years to develop the inventory. This is equivalent to $550,000, assuming an average salary of $40,000 per annum, 14% for fringe benefits and 25% for departmental overhead. In addition, service costs of $750,000 (1986) are estimated; this consists of $600,000 for computer charges and $150,000 for published material that will be purchased and produced.

Maintenance, updating and operation of the inventory by government may require approximately 2 person-years and $20,000 for computer services. An annual cost of $130,000 (1986) is estimated.

Benefits

Chemicals not listed as used in Canada will be subject to notification requirements. The number of new chemical notifications and evaluations should be lower than in the absence of the inventory since only chemicals which are new to Canadian commerce, rather than to an individual company, will be submitted. Cost savings would accrue to government and industry. The establishment of an inventory will also facilitate harmonization of regulatory requirements within Canada.

The additional information collected as part of the establishment of the inventory will provide data on the current quantities and use of chemicals across the nation. This information will be useful for performing risk analyses and developing environmental control programs. It will enable priorities to be set and will lead to improved environmental and health protection throughout the country. This information may be used in support of the improved information gathering and enhanced program for existing substances discussed under the upgrading provisions.

Notification of New Substances

Chemical substances not included on the "In-Canada" inventory will be subject to notification. Manufacturers and importers will have to submit to government specified data on environmental and health properties of these substances, prior to manufacture or importation. The data required depends on the quantity involved, the type of chemical and whether the chemical is a notifiable existing substance or a new substance. A notifiable existing substance is defined as a substance that is on the Canadian Consolidated List of Substances but not yet in Canada; a new substance is defined as a substance that is not on the Canadian Consolidated List of Substances.

Costs

The proposed notification system will impose additional costs on chemicals new to Canadian commerce prior to their manufacture or importation, over and above those encountered under the present system. These costs are mainly associated with the development and submission of specified test data on the substances notified; their estimation is based on information developed by the Socio-Economic Evaluation Working Group and reproduced in Table I. These additional costs have been estimated to be approximately:

(i) $1,000 per substance for notifiable existing substances manufactured or imported in quantities between 300 and 1,000 kg (Level 1 notification);

(ii) $5,000 per substance for notifiable existing substances manufactured or imported in quantities over 1,000 kg (Level 2 notification);

(iii) $4,000 per substance for new substances manufactured or imported in quantities under 300 kg (Level 1 notification) [under the present notification system new chemicals manufactured or imported in quantities under 500 kg are not subject to reporting; the proposed amendment alters this and the full cost of Level 1 notification would be borne by such chemicals];

Table I: Cost Estimates of Tests Required under the Proposed Notification System

Component	Cost ($ 1986)
Chemical identification	-
Production, use, disposal	2,000
Physical/Chemical	
- Melting point	250
- Boiling point	250
- Density	100
- Vapour pressure	1,400
- Water solubility	500
- Partition coefficient	1,000
- Hydrolysis	1,000
- Spectra	250
- Adsorption-desorption	1,000
- Dissociation coefficient	200
- Particle size	200
Acute toxicity	10,000
- oral, dermal or inhalation; 2 out of 3	
Skin irritation and sensitisation, and eye irritation	8,000
Sub-acute toxicity	45,000
Mutagenicity	
- *In vitro* mammalian chromosomal aberrations	3,000
- *In vitro* mammalian gene mutation	3,000
- *In vivo* mammalian chromosomal aberrations	11,000
- *In vivo* mammalian gene mutation	19,000
Ecotoxicity	
- Fish LC 50	3,000
- Daphnia LC 50	3,000
- Biodegradation	3,000
- Bioaccumulation	3,000

(iv) $4,000 per substance for new substances manufactured or imported in quantities between 300 and 1,000 kg (Level 2 notification); and

(v) up to approximately $90,000 per substance for new substances manufactured or imported in quantities over 1,000 kg (Level 3 notification). However, this cost will be highly variable depending on the existence of data already available in other countries or provided under occupational hygiene programs.

The imposition of testing requirements that are more stringent than those of our principal trading partners will place a direct additional burden on the Canadian manufacturing industry. The effects will be felt on products for the market place. Faced with increased testing costs for market products, manufacturers or importers will examine the market and make one of the following decisions:

(i) pass on the additional costs to the consumer; or

(ii) absorb the additional costs as decreased profits; or

(iii) decide not to introduce the product.

The decision taken will depend on the following:

(i) the competitive market situation;

(ii) the profitability of the product; and

(iii) the projected product life.

The decision will depend on the personal judgement of the management group concerned. However, products with a short projected product life and limited profitability may not be introduced to the Canadian market. In the case of more profitable items with a longer product life, the seller will decide how much of the additional cost can be absorbed and how much can be passed on to the consumer.

In the case of materials that would require additional testing unique to Canada and that are used in the manufacture of products, there may be a tendency to do the manufacturing in

countries where the testing requirements are less onerous and to import the final product into Canada. This could result in a loss of Canadian jobs and affect the Canadian balance of trade.

The annual cost of the proposed notification system to industry and to government will be a function of the rates of reporting of the various types of "new chemicals", as well as the per unit overall data submission costs. Estimation of this annual cost requires precise data on the rate of introduction of new chemical into Canada. The limited data presently available on this, from reportings under the present notification system, suggest an incremental cost to industry of about $2.3 million (1986) annually, as detailed in Table II.

Table II: Proposed Notification System - Summary of Annual Incremental Costs to Industry Based on Notifications under the Present System

Category of notified substances	Level of notification	Number of notifications per year (est.)	incremental cost per year $(000)
new substances	3	14	1,260
	2	21	84
	1	100*	400
notifiable existing substances	2	99	495
	1	66	66
	Total	300	2,305

* This number relates to new substances in quantities below 300 kg and is a best estimate since these are not subject to notification under the present notification system.

Approximately $0.5 million of the $2.3 million total relates to notifiable existing substances. The number of these substances will be fixed once the inventory is compiled as no additions will occur thereafter. The number of notifiable existing substances potentially subject to notification in Canada should decline over the years as these are introduced into Canadian commerce. Hence the cost for notification of this category of substances should decline gradually over the long term.

Based on anticipated reporting levels, an assessment work load of 3,800 person-days is estimated for government. This corresponds to approximately 17 person-years, an increment of 13 person-years over the current resource level, with an estimated annual cost of $720,000 (1986).

The estimates given above are qualified by the fact that the rate of new chemical reportings in Canada is observed to be much lower than that observed in the U.S. According to information obtained from U.S. Environmental Protection Agency officials, new chemical notifications in the U.S. typically approximate 1,200 new substances per year. Approximately 350 chemicals per year are believed to be commercialized as non-polymers and non-site-limited chemicals.

In contrast, only about 30 of the chemicals notified each year in Canada under the present system would be classed as new chemicals in the U.S. This situation raises the possibility that there may be some under-reporting of new chemicals in Canada due to importers being unaware of either the presence of new chemicals in formulations imported or the need to report. This under-reporting may be due to valid reasons since the missing chemicals, two hundred or so, could be present in formulations imported in quantities below 500 kg and hence not covered under the current system. Alternatively, many of these chemicals may enter Canada as components of manufactured products that are not subject to notification, or the field of industrial activity where they are used in the U.S. may be absent in Canada.

In order to accomodate the situation of possible significant under-reporting, a worst case scenario is considered where 300 new chemicals per year are assumed, distributed evenly among the three notification levels. Under this scenario an annual cost to industry of $9.5 million (1986) is estimated.

Government assessment needs of about 30 person-years are estimated, an increment of 26 person-years over the current resource level.

Benefits

Benefits will be derived in the following areas (no monetary values are assigned):

(i) reduction in the future risk of adverse human health effects;

(ii) avoidance of future biophysical damages and adverse effects on plants, wildlife and the human reproduction system;

(iii) reduction in public anxiety;

(iv) avoidance of wasted investment costs if a chemical's use is curtailed after introduction;

(v) increased harmonization of notification systems within Canada (federal and provincial environmental systems as well as worker protection systems);

(vi) enhancement and harmonization of Canada's international commitment to better health and environmental protection; and

(vii) reduced remedial costs for clean-ups as a result of accidental spills or release into the environment.

These benefits are discussed in the Socio-Economic Working Group Report.

Export Notification

It is proposed that, before a banned or severely restricted substance can be exported from Canada for the first time, designated authorities in the importing country be informed of the shipment and of information supporting the ban or restriction imposed in Canada on the substance.

Costs

Approximately 50 substances may be subject to the proposed export notification system. It is estimated that about 330 person-days (1.5 person-years) of effort may be required by government to establish the system at an estimated cost of $85,000 (1986).

Annual requirements of about 0.5 person-year are estimated for government to operate the system once established, with an anticipated cost of about $30,000 (1986).

The cost to industry is anticipated to be about $50 per substance exported for the first time. The extent to which such substances are exported now is uncertain and it is difficult to project the likely annual costs. Annual costs to industry may be about $5,000 - $10,000 (1986).

Benefits

Information on environmental and health effects will be made available to the importing countries. Benefits similar to those described under notification of new substances will be derived, except for items (iv) and (vii).

Upgrading Provisions

Costs

The Socio-Economic Evaluation Working Group has considered the proposals for upgrading the Act and it is believed that only the following five items have a serious cost impact: the expanded powers of the Board of Review; the establishment of a new Advisory Council; the increased powers of inspectors; additional information gathering provisions; and the enhanced program for existing substances.

Only a limited amount of information is available on how the upgrading provisions will be applied. Consequently it is difficult to predict the costs to both government and industry. The following discussion provides a best estimate of these costs.

With respect to the Board of Review and the Advisory Council, preliminary operational costs to government of about $75,000 and $100,000 (1986), respectively, are estimated. However, these costs will depend on factors such as the extent of the mandate given, the number of individuals directly or indirectly involved, and the duration and frequency of meetings.

Discussions with Commercial Chemicals Branch (CCB) staff suggest that an additional seven inspectors may be necessary to deliver an enhanced inspection program. This corresponds to an annual cost to government of about $390,000 (1986). Industry estimates that similar cost increases may be incurred in liaison and data provision activities. CCB also anticipates the need for an extra 1 person-year to accomodate the proposed improvement of the information gathering provisions ($55,000 (1986) annually). Industry estimates similar costs.

Insufficient details are available on how the enhanced program for a systematic investigation of existing substances will be implemented. Without these, a meaningful cost estimate cannot be made. However, these are expected to be very significant for both industry and government.

Summary

Costs

Table III summarizes the one-time and on-going costs to the government and private sectors as a result of the proposed amendments; the net present value (NPV) of the costs over a 10-year period, (discounted at 10% per year), is also presented, expressed in 1986 dollars.

The salient points of the cost estimates for the proposed amendments are as follows:

(i) one-time costs to government could amount to $1.3 million, mainly for inventory preparation;

(ii) annual costs to government could increase by about $2 million per year as a result of notifications of new substances and their evaluation, the formation of an Advisory Council and Boards of Review, and increased

inspection and information gathering provisions; the enhanced program for existing substances would add to this cost;

(iii) one time costs to industry could be in the order of $7.4 million for inventory preparation;

(iv) annual costs to industry could amount to $2.8 - 10 million as a result of notifications of new substances, increased inspection, and the enhanced existing substances program. The wide range is due to uncertainties surrounding the anticipated rates of new chemical notifications.

Since monetary values associated with the beneficial consequences of these proposed amendments could not be estimated, direct benefit-cost comparisons are not made. Nevertheless, the relative importance and significance of the incremental costs of the proposals for government and for industry deserve the following comments:

(i) the one-time costs of the inventory to both government and industry are likely to engender the most concern. The importer sector needs to be studied to determine the most cost effective means to develop the inventory.

(ii) extra expenses due to notification of new substances will apparently fall most heavily on industry, ranging between $2.3 and 9.5 million annually. While these amounts are almost insignificant in relation to the major cost components of the chemical industry, extra costs could reduce the expected profitability of a new chemical so much that it might not be introduced into Canada.

(iii) an extra $720,000 per year for administration of the new chemical notification system by government does not appear to be excessive although the extra resources required will have to be considered in the larger context of the budgets of the departments involved.

(iv) the upgrading provisions would appear to impose fairly similar costs on both industry and government. The estimates provided are rather uncertain and could be

Table III: Summary of Incremental Costs of Proposed Amendments

ITEM	Costs to Government Sector				Costs to Private Sector			
		$(000)[1]				$(000)[1]		
	P.Y.	One-time	Annual	10-year period NPV [2]	P.Y.	One-time	Annual	10-year period NPV [2]
Inventory				2,100				7,400
establishment	10.0	1,300	-		91.0	7,400	-	
operation	2.0	-	130		-	-	-	
New Chemical Notification								
assuming current rates of reporting	13.0	-	720	4,400	-	-	2,300	14,100
assuming similar rates as prevail in U.S.	26.0	-	1,400	8,700	-	-	9,500	58,300
Export Notification				270				60
establishment	1.5	85	-		-	-	-	
operation	0.5	-	30		-	-	10	
Upgrading Features				3,800[3]				2,700[3]
Board of Review	-	-	75		-	-	-	
Advisory Council	-	-	100		-	-	-	
Powers of inspectors	7.0	-	390		-	-	390	
Information gathering	1.0	-	55		-	-	55	
Enhanced program for existing substances	-	-	-		-	-	-	

1. expressed in 1986 dollars;
2. net present value discounted at 10% per year;
3. excludes costs for enhanced program for existing substances since insufficient details are available.

higher or lower, depending on the operating practices that are put in place. Further consideration may have to be directed to the inspection and enhancement provisions as these appear to be the most expensive for both industry and government.

Benefits

Environmental and health benefits will be derived as a result of the improved assessment of new chemicals, knowledge on the use of existing chemicals and measures taken to ensure their optimum use.

APPENDIX 1

Terms of Reference
for the
Environmental Contaminants Act Amendments
Consultative Committee

Preamble

The Environmental Contaminants Act was enacted by Parliament in 1976 to give the federal government powers to protect human health and the environment from environment contaminants. Responsibility for the Act is shared by Environment Canada and Health and Welfare Canada. Experience gained in implementing the various provisions of the Act has resulted in a number of difficulties and inadequacies being encountered. A recent review of the Act and its provisions has led to the development of proposals for a number of improvements to the Act.

The proposals for amendments to the Act were developed in 1984 by three federal interdepartmental working groups. Each working group focussed its attention on one of the three main categories of amendments that were identified, namely

(i) new chemicals assessment and control;
(ii) export notification; and
(iii) upgrading features

The first two categories represent new features proposed to be added to the Act, while the third category represents proposed improvements to the existing features.

The reports of the three working groups and a summary discussion paper were published by Environment Canada to serve as a basis for initiating consultation and to solicit views and reaction to the proposals. These documents were distributed to some 600 government industry, environmental interest and general interest organizations and individuals. Recipients were invited to submit written comments on the amendment proposals information workshops to help explain the proposals and answer questions that may have arisen were presented by Environment Canada and Health and Welfare Canada in Montreal, Toronto and Vancouver.

The next step in the consultation process will be guided by the principles and protocol of meaningful consultation developed as part of a Niagara Institute's project on the environment and the economy (excerpts of Final Report attached). It will focus on, but not necessarily be limited to, the proposals and the comments that have been submitted to the government. It will be undertaken by a multipartite consultation committee representing groups which have an interest in the issue and will be directly affected by the outcome, and which can contribute to improvements in the proposals put forth by the interdepartmental working group. Groups fitting this description include the federal and provincial governments, industry, environmental interest groups and organized labour. The committee will be chaired by an independent and neutral chairperson. Agreement on all pertinent issues will be by consensus.

Objective and Roles and Responsibilities of the Committee

The primary objective of this committee is to identify to Environment Canada and Health and Welfare Canada proposals for amendments where consensus agreement exists.

Each member of the committee will be the representative for his or her particular constituency of interest (eg. organized labour, industry, provincial governments). Members will be expected to provide the communication and coordination with others in their constituency necessary to ensure that the views expressed at the committee reflect those of the constituency, not just their own personal views or views of their own organization.

The responsibilities of the committee through its members will include:

- identifying issues and options for amendments where consensus agreement clearly exists;
- clearly identifying issues where consensus agreement was not reached and reporting on the differing views held by each stakeholder;
- recommending changes to other proposals;
- building on the proposals developed by the working groups either by modification of the proposals or by recommendation of additional amendments to further improve the effectiveness and value of the Environmental Contaminants Act; and
- producing a report on the committee's findings and recommendations for submission to the Minister of the Environment and the Minister of National Health and Welfare.

Membership

Membership on the committee will include the following representation:

- representatives of the federal government (environment, health)
- 4 representatives of provincial governments (environment, occupational health, health)
- 2 representatives of industry (chemical manufacturers and importers, users)
- 2 representatives of environmental interest groups (environment, environmental law)
- 2 representatives of organized labour.

The chairman of the committee will be Mr. O.A. Greiner, associated until recently with the University of Western Ontario. The committee secretariat services will be provided by the Federal Government.

Observers or staff specialists may, by the agreement of the committee, be invited to participate at meetings in accordance with the agenda.

Frequency of Meetings

Meeting frequencies and other aspects of the committee's approach to its work will be decided at the first meeting of the committee.

"THE ENVIRONMENT, JOBS, AND THE ECONOMY- BUILDING A PARTNERSHIP"

A Consultation Process Developed
by the Niagara Institute
in Cooperation with
Environment Canda

FINAL PROJECT REPORT

AUGUST 1985

Questions About This Project May Be Addressed To:

Terry Mactaggart, President, or
Ken Shepard, Program Director
The Niagara Institute, Box 1041
Niagara-on-the-Lake,
Ontario, L0S 1J0
Tel. 416-468-4271

INTRODUCTION

The project was initiated in Spring 1984, when representatives of Environment Canada and the Niagara Institute began developing strategies to meet particular problems and to achieve departmental goals through more effective consultation. A Steering Committee was formed comprising federal and provincial government officials, business, labour, and environmental group representatives, scientists as well as other members of the Institute's Board, staff, and resource network. The Committee studied how environmental and economic imperatives may relate to each other in the next decade. Further, the Committee identified groups critical to effecting future approaches and processes and events which can serve to build both awareness of the issues and commitment to find new methods for dealing with them.

The Steering Committee met monthly for the past year, held three major workshops, and sponsored four task forces which had an average of four meetings each, and produced a set of task force recommendations approved in the final plenary meeting. The process produced consensus on measures for improving consultation processes and for application of those processes to a number of high priority issues in a manner likely to achieve both environmental and economic objectives. While the project contract was officially terminated with the final plenary meeting, that same plenary meeting did spin-off two new task forces which will be carried on as separate projects, and various stakeholder groups have initiated other formal and informal activities consistent with the project's recommendations.

Final

Task Force 2

21.6.85

PRINCIPLES AND PROTOCOL OF MEANINGFUL CONSULTATION ON ENVIRONMENT - ECONOMY ISSUES

The purpose of this document is to set forth the principles and protocol which should be adhered to by all participants in consultation if it is to be meaningful and effective with respect to environmental issues, especially where there are important linkages with the economy. They are proposed as a guide for all stakeholders - governments, business, labour, non-governmental organizations and others.

While they have been developed specifically in the context of environmental policies, we believe they recommend themselves for wider application. They should be recognized as a model to be adapted; all principles are not equally applicable to all consultation processes.

The principles deal with how the process of consultation should be structured; the manner in which stakeholder interests should participate; questions of resources, access to data and timing; consensus-building; and implementation.

These principles are intended primarily for problem-solving and policy development applications rather than environmental aspects of project siting for which other processes may be more appropriate. They are intended to complement - not replace - public consultation processes such as public hearings.

DEFINITIONS

Meaningful consultation is an ongoing dialogue among affected stakeholders, including government, aimed at obtaining all the relevant information, evaluating the available options and their related consequences, and providing an objectively balanced perspective to each stakeholder's decision making. A prime objective is to obtain consensus at each stage of the process.

Stakeholders are those groups who have a vital interest in the issue, will be directly affected by the outcome, and/or make an important contribution to its resolution.

Meaningful consultation is not a simple matter of bringing a diverse group of interested parties together and expecting them to immediately and automatically develop solutions to complex issues. There has to be time for the participants to get to know each other, to listen and understand respective positions, and to develop respect which can grow into trust in that particular environment. Finding the common ground of consensus and building on that commonality to reach a solution requires time.

It can be demonstrated that programs for which appropriate time was not allowed for in the developmental stage to seek consensus and test solutions, have suffered inordinately in the implementation stage. It is our contention that the time spent on a project in the developmental stage will materially reduce the time, costs, hassles, delays and disagreements at the implementation stages.

Good consultation relationships built up over time also support more rapid and effective co-operative responses to urgent situations such as environmental accidents.

Consultation may arise from or be an alternative to confrontation among stakeholders. In either case, the right kind of consultation can help ensure that the issues are appropriately defined, that constructive conflict-resolution techniques are adopted, and that solutions are developed which are relevant to the interests of all stakeholders.

PRINCIPLES OF CONSULTATION

Based on these considerations, the following 25 principles are recommended for the process, participants, etiquette, resources, data, timing and consensus-building dimensions.

a. Process and Participants

1. Consultation may be initiated by any stakeholder or group of stakeholders, and need not necessarily be initiated by governments.

2. The decision to consult must be motivated by a genuine desire to obtain input and a sincere commitment to objectively consider the views received. Forthrightness and clarity in stating the purpose of the consultation is imperative to avoid time wasting debate. The absence of predetermined non-negotiable solutions is essential.

3. Policy development/problem solving consultation should only take place on things where there is room to move. There must at the outset be a clear statement of the issue to be addressed; of the objective(s) of the consultation; and of the constraints, if any. If it is necessary for prior constraints to be identified or policy guidance to be given, this should be clearly set forth and recognized by all participants in advance.

4. Consultation should, as a general rule, take place under the auspices of, and at all stages be chaired by, an independent facilitator who does not represent major stakeholder interests and is perceived by all as a neutral third party. In some circumstances, it may be appropriate for a government agency to play the facilitator role. The purpose of the independent facilitator is to build trust and ensure focus on the specific problem. This would include meeting with possible participants to understand positions and shape an agenda; making contacts and enquiries to assure appropriate stakeholder representation; promoting the building of consensus; and ensuring appropriate monitoring and feedback.

5. Consultative groups should be kept as small as possible while at the same time involving those who have a contribution to make.

b. Etiquette

6. Stakeholders should be consulted early in the process while all options are still open.

7. There should be prior consultation on the process itself, the venue, the framing of appropriate questions, and on the first agenda.

8. The consultation must be focussed at a meaningful level - industry (or issue) specific - dealing with real things the stakeholders understand. Consultation should justify itself by concrete results and real value to each stakeholder from their participants.

9. The stakeholders must be convinced that the consultation process recognizes and accommodates their interests, and so improves decisions affecting them.

10. The process should be tailored to the specific policy objective and the stakeholders directly concerned. Each stakeholder's participation should be commensurate with the nature of the issue, its direct impact on the stakeholder and/or their ability to contribute to its resolution.

11. The process must be consistent with the mandate and roles of the various stakeholders. Sometimes adjustments will be required to ensure that stakeholders can participate on a basis which is compatible with their institutional status.

12. Each participant must be committed to seeking constructive integration of the "whole", not simply the advocacy of narrow interests. Governments, and different government departments and agencies, should recognize that they are stakeholders as well as decision makers; and that other stakeholders are decision makers too. It is recognized that government has special status as a decision-maker. This need not conflict with governments working co-operatively with other stakeholders, which is a fundamental tenet of consultation.

13. Participants must clearly understand the positions of stakeholder interests they are drawn from and make sure those views are effectively presented in the course of the consultation process. In turn, there must be mutual respect for the legitimacy and point of view of all participants.

14. The consultation process should be viewed as ongoing, as tangible evidence of the mutuality and interdependence of stakeholder interests.

c. <u>Resources, Data and Timing</u>

15. A genuine consultation effort demands a commitment of resources from all sides. Adequate resources must be found to support a meaningful consultation effort. Appropriate arrangements must be put in place from the beginning of the consultation process.

16. All parties must have reasonable access to all relevant information. A decision by any party to withhold relevant information would have a negative impact on the outcome of the consultation process. Where confidential information is at issue, mechanisms must be found which both protect confidentiality and ensure the consultation process is not prejudiced by missing critical information. The use of an independent third party in the Workplace Hazardous Materials Information System (WHMIS) illustrates one such mechanism.

17. A consultation process must be given an adequate period of time to work, without arbitrary and unrealistic deadlines. There should be time for the stakeholders to get to know each other, listen to and understand respective positions, to develop respect which can grow into trust, and to test that trust.

18. The time frame for consultation must seek a balance between the time constraints on all parties. Everyone's need for an early answer must take into account each stakeholder's need for time to consult constituents and/or the public, and to respond. There should be enough time for the stakeholders to secure and maintain their respective constituent group's support; to verify either facts or statements; to test potential solutions against a broader audience; and to report out, as the process evolves.

19. Emergency situations lack the luxury of time, but it should be recognized that a strong consultation process will ensure a co-operative base for multiple stakeholder responses when emergency situations do arise.

d. Consensus-building

20. Solutions should be developed through consensus and not through the democratic voting process. All stakeholders should have an equal opportunity to present their views and to be heard in the context of the consensus building process.

21. The approach should be to seek common ground and build on it. The process should start by identifying those items everyone can agree on, and setting aside for the time being those on which agreement may be more difficult.

22. The process must encourage the building of trust among stakeholders, including clarifying values, building a common data base that various stakeholders agree is accurate, developing norms for co-operation, and applying these to specific problems.

23. It must be recognized that any consensus reached by this process involves compromise and flexibility from all participants and thereby interlinks the issues to form an overall consensus. The overall consensus, therefore, must be regarded as an entity. Any unilateral change to the implementation of the consensus would require a re-evaluation by all the affected stakeholders.

24. When the results of consultation require legislative implementation, the stakeholders should clearly understand how their decisions will fit into any existing legislative framework.

25. In all cases, stakeholders expect feedback from other stakeholders, particularly government, clearly explaining the basis for decisions which are taken.

APPENDIX 2

ENVIRONMENTAL CONTAMINANTS ACT AMENDMENTS
CONSULTATIVE COMMITTEE AND WORKING GROUPS
MEMBERS AND ALTERNATE MEMBERS

CONSULTATIVE COMMITTEE

FACILITATOR

Otto A. Greiner
Independent Consultant

ALTERNATE FACILITATOR

Christopher G. Currie
Independent Consultant

SECRETARIAT

Christopher G. Currie
Independent Consultant

MEMBERS

Glenn Allard
(June-August, 1986)
Commercial Chemicals Branch
Environment Canada

David Bennett
Canadian Labour Congress

John A. Buccini
(up to May, 1986)
Commercial Chemicals Branch
Environment Canada

John R. Dillon
Canadian Manufacturers' Association

Silver Lupul
Industrial Wastes Branch
Alberta Environment

Duncan MacKay
Nova Scotia Department of Environment

ALTERNATE MEMBERS

Robert Bisson
Commercial Chemicals Branch
Environment Canada

Guy Adam
Canadian Labour Congress

John Ottery
Occupational Hygiene Branch
Occupational Health and Safety Division
Alberta Department of Workers' Health, Safety and Compensation

MEMBERS	ALTERNATE MEMBERS
William A. Neff Canadian Chemical Producers' Association	
Jean A. Roy Direction générale du milieu atmosphérique Evironnement Québec	Claude St-Pierre Commission de la Santé et de la Sécurité du Travail du Québec
Stewart Skinner Public Service Alliance of Canada	
Jim J. Smith Hazardous Contaminants Co-ordination Branch Ontario Ministry of the Environment	Sandra Glasbeek* Strategic Policy Unit Occupational Health and Safety Division Ontario Ministry of Labour
Peter Toft Bureau of Chemical Hazards Health and Welfare Canada	Stan O. Winthrop Environmental Health Directorate Health and Welfare Canada
Toby Vigod Canadian Environmental Law Association	William Andrews West Coast Environmental Law Association
Ray Vles Friends of the Earth	John Jackson Friends of the Earth

*The Ontario Ministry of Labour participated in order to share the information relating to its existing legislation concerning the notification and assessment of new biological and chemical agents introduced into Ontario workplaces (i.e. Section 21 of the Occupational Health and Safety Act) and to gain an understanding of the proposed federal legislation.

SOCIO-ECONOMIC EVALUATION WORKING GROUP

MEMBERS	ALTERNATE MEMBERS
David Bennett Canadian Labour Congress	Stewart Skinner Public Service Alliance of Canada
Terry Burrell Victor and Burrell	
Monique Charron Health and Social Services Policy Analysis Division Policy Planning and Information Branch Health and Welfare Canada	
J.A. Donnan Policy and Planning Branch Ontario Ministry of the Environment	
David Halliburton (Chairperson) External Strategies Branch Environment Canada	
D. MacDougall Science Enterprises Ltd.	

POLYMERS WORKING GROUP

MEMBERS

Valerie Douglas (Chairperson)
Commercial Chemicals Branch
Environment Canada

Julio A. Fernandez
Lepage's Ltd.

Ken Mancuso
Bureau of Chemical Hazards
Health and Welfare Canada

Wendell Ward
Corporate Management Branch
Revenue Canada, Customs and Excise

MUTAGENICITY WORKING GROUP

MEMBERS

John Buccini (up to May, 1986)
Commercial Chemicals Branch
Environment Canada

George Douglas (Chairperson)
Environmental Health Directorate
Health and Welfare Canada

Valerie Douglas
Commercial Chemicals Branch
Environment Canada

William Neff
Canadian Chemical Producers' Association

APPENDIX 3

ACKNOWLEDGEMENTS

Environmental Contaminants Act Amendments Consultative Committee members thank the following individuals and organizations for their contributions and input to the consultative process:

-employees of the Office of Toxic Substances, United States Environmental Protection Agency (Washington, D.C.);

-employees of the Chemical Industry Institute of Toxicology (Research Triangle, North Carolina);

-Prof. Ross Hall (McMaster University);

-Prof. D. Mackay (University of Toronto); and

-the secretarial and administrative staff of the Commercial Chemicals Branch, Conservation and Protection, Environment Canada.

APPENDIX 4

POLYMER WORKING GROUP REPORT

1. Introduction

It is generally accepted that a polymer is a chemical substance that comprises a simple weight majority of molecules containing two or more monomer units which are covalently bound to at least two other monomer units, and for which the number-average molecular weight is greater than 500. It has been noted that, as the number of repeating units in a polymer molecule increases, the macromolecules formed do not retain the physical or chemical properties of the starting materials from which they are formed. Very large molecules cannot be easily absorbed by the gastrointestinal tract or the skin. Thus there may be polymers which pose a relatively low risk of injury to man or the environment.

The Committee has attempted to identify those polymers which could be fully exempt from notification because they do not pose a significant risk of injury to man or the environment. High molecular weight polymers and certain classes of polymers were proposed for exemption from notification. It was noted however that even high molecular weight polymers may contain a significant portion of low molecular weight species. Also, no specific class of polymers could be identified which would be relatively innocuous for all its possible combination of monomers, residual monomers, cross linking agents, modifiers and so on.

Another possible group of polymers for full exemption would be those formed from monomers which are existing substances on the inventory. Two problems may be noted with these: many existing substances listed on the Canadian Consolidated List of Substances are not well characterized as to their potential environmental and health effects; furthermore the polymerization/polycondensation process often leads to irreversible changes so the polymer formed may not have toxicological characteristics similar to the monomer. Thus, this group could not be considered for full exemption from notification and review.

2. Special review for certain polymers

It was agreed in principle that if relatively low-hazard polymers could be described, they should undergo a "special review", which means that the notification requirements would be reduced to a lower level. All other notifiable polymers will be subject to regular notification requirements.

However, in addition to normal flexibility requirements further consideration should be given to exposure, toxicity, SAR and so on, as appropriate for polymeric substances.

"Notifiable existing polymers" would undergo at most a Level 2 notification requirement. If sufficient information is submitted on these polymers, the review could be expedited even further, with notification requirements reduced to Level 1.

Furthermore, "New Polymers" would generally undergo Level 3 notification requirements. However, if sufficient information is submitted on these, the review could be expedited further with requirements reduced to Level 2.

Additional information requirements to characterize a polymer are shown in Attachment 1.

3. Information requirements for special review

It was noted by the Polymer Working Group that certain types of polymers and certain functional groups have been associated with potential toxicity. If such concerns could be eliminated, prior to review, the polymers could undergo a special review. Since these concerns were addressed by the U.S. EPA under its "PMN Exemptions: Exemption for Polymers" rule (Fed. Reg. 49(226):46066-46091 (1984)) it was decided to review this rule to see if some of the considerations would be applicable in Canada. Based on this document the following are recommended:

I. All polymers will undergo a special review if they have molecular weights of 1000 or greater and are none of the following:

1) Cationic polymers
   - these may be soluble in water and often are used in water treatment (i.e. quaternary ammonium polyelectrolytes)
   - this includes those that may become cationic in an aquatic environment (i.e. containing aliphatic amines)

2) Polymers containing less than 32% carbon;
   - these include certain unusual newer polymers

3) Polymers containing elements other than H, C, N, O, Si, S, and containing ions other than Na^{+}, Mg^{+2}, Al^{+3}, Ca^{+2}; or polymers containing concentrations greater than 0.2% by weight of any combination of: Li, B, P, Ti, Mn, Fe, Ni, Cu, Zr, Sn, Zn

4) Polymers made from reactants containing cyano groups, or polymers actually containing cyano groups, or halogen atoms.

5) Polymers containing certain reactive functional groups that are intended or anticipated to undergo further reactions;
   - These may include: isocyanates, pendant acrylates and methacrylates, epoxides, acid anhydrides, aldehydes, amines, phenols, thiophenols, etc.
   - however, polymers containing as reactive groups carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups, butenedioic groups and those containing conjugated olefinic groups in naturally occurring fats, oils and carboxylic acids generally lack significant biological activity and thus will undergo an expedited review.

6) Polymers that are designed or anticipated to substantially degrade or depolymerize or decompose;
   - i.e. temporary protective coatings, polymers designed to degrade in the environment.

7) Biopolymers or their synthetic equivalents, or their derivatives or modifications;
   - a biopolymer is directly produced by living or from once-living cells or cellular components.

II. All new polymers of a specified list of reactants will undergo a special review regardless of their molecular weights. (Attachment 6)

III. All other polymers undergo a regular review. A decision tree for a special review based on such structural and other information on the polymers is shown in Attachment 2.

4. What is a new polymer and a notifiable existing polymer

Four types of polymers were considered to be 'new':

1) Polymers produced entirely from new monomers
2) " " from combinations of new and existing monomers
3) " " from new combinations of existing monomers
4) " " by changing monomer ratios or processing conditions

A complicating factor for these four classes is the consideration of 'existing', 'notifiable existing' and 'truly new' constituent substances. For the sake of simplifying this notification of polymers 'existing' constituents will include all those on the CCLS.

In addition, the weight percent of new monomers were reviewed to decide at what weight % a new monomer may be considered to render the final polymer 'new', since very small amounts of new ingredients may be tied up in the molecule, and thus may not be available to cause any potential harm.

It was decided that categories 1 and 2 above will be considered as New Polymers if the polymer contains 2% or more of a new substance as an integral constitutent. When a new substance is deliberately incorporated as an integral constituent in a polymer in a concentration less than 2% it must be identified in writing to the federal government. Discussions are still underway to establish the course of action to be required in such a case; an appropriate mechanism must be found to deal with these polymers.

Although the potential problems posed by new combinations of existing materials are recognized, it was decided that all category 3 polymers could undergo a special review. It was noted that the constituents don't undergo a full review then it does not appear reasonable to submit the polymer to a full review. However such polymers do form essentially new structures thus they cannot be considered truly existing. They will be called Notifiable Existing Polymers (Type A). This term will apply to polymers composed of new combination of any monomeric substance listed in the CCLS, whether or not present on the 'In Canada' portion. The application of the notification requirements to those substances on the 'In Canada' portion of the list was considered necessary because such substances also form structurally and chemically new polymers where the relevant environmental and health effects are not possible to relate to the monomeric substance. Overall, this measure will reduce the burden of full notification from industry but still offer a review by the regulatory agency.

Finally, category 4 polymers will not be considered new for the purposes of these regulations. Such changes would be nearly impossible to monitor since the CCLS will not contain such information.

Notifiable Existing Polymers (Type B) are analogous to notifiable existing substances, and as such are defined as those polymers which exist on the CCLS but are not yet available in Canada.

The decision tree outlining New and Notifiable Existing Polymers can be found in Attachment 3.

5. Proposed notification levels

1) For quantities greater than 1000 kg

Before a firm submits a notification it will have to decide whether the polymer is a New or a Notifiable Existing Polymer. The normal notification level for New polymers will be Level 3. However, it may undergo a special review, with reduced requirements for data provision if the absence of certain structures or other potentially hazardous characteristics could be demonstrated. As such it will be subject to a Level 2 notification.

Notifiable Existing Polymers will be subject to at most a Level 2 notification. They can be further expedited in a manner similar to the new polymers, i.e. if the absence of certain structures or other potentially hazardous characteristics can be demonstrated. As such, they will be subject to Level 1 notification.

2) For quantities in the 300-1000 kg range

Level 3 and Level 2 notifications, as outlined above, will be reduced to Level 2 and Level 1 respectively. Level 1 notifications, as outlined above, will be maintained as a pre-alert to the entry of new-to-Canada polymers.

The proposed notification levels are outlined in Attachment 4. Attachment 5 outlines the nomination of polymers for the Canadian Consolidated List of Chemicals.

Attachment 1

Additional information for polymers will include:

a) Number-average molecular weight of the polymer.

b) The total weight percent of all materials below 500 absolute molecular weight and below 1000 absolute molecular weight.

c) Composition of the polymer: identity and CAS # (if available) and typical weight percent of all monomers and all essential additives such as catalysts, initiators, cross linking agents etc. which chemically become part of the polymer structure.

d) Other additives such as coloring agents, plasticizers or optical brighteners which are not essential additives must be separately identified (where these are new or notifiable existing substances, they are subject to regular notification requirements).

e) Residual materials: identify maximum weight percent of anticipated residual monomers and other unreacted materials.

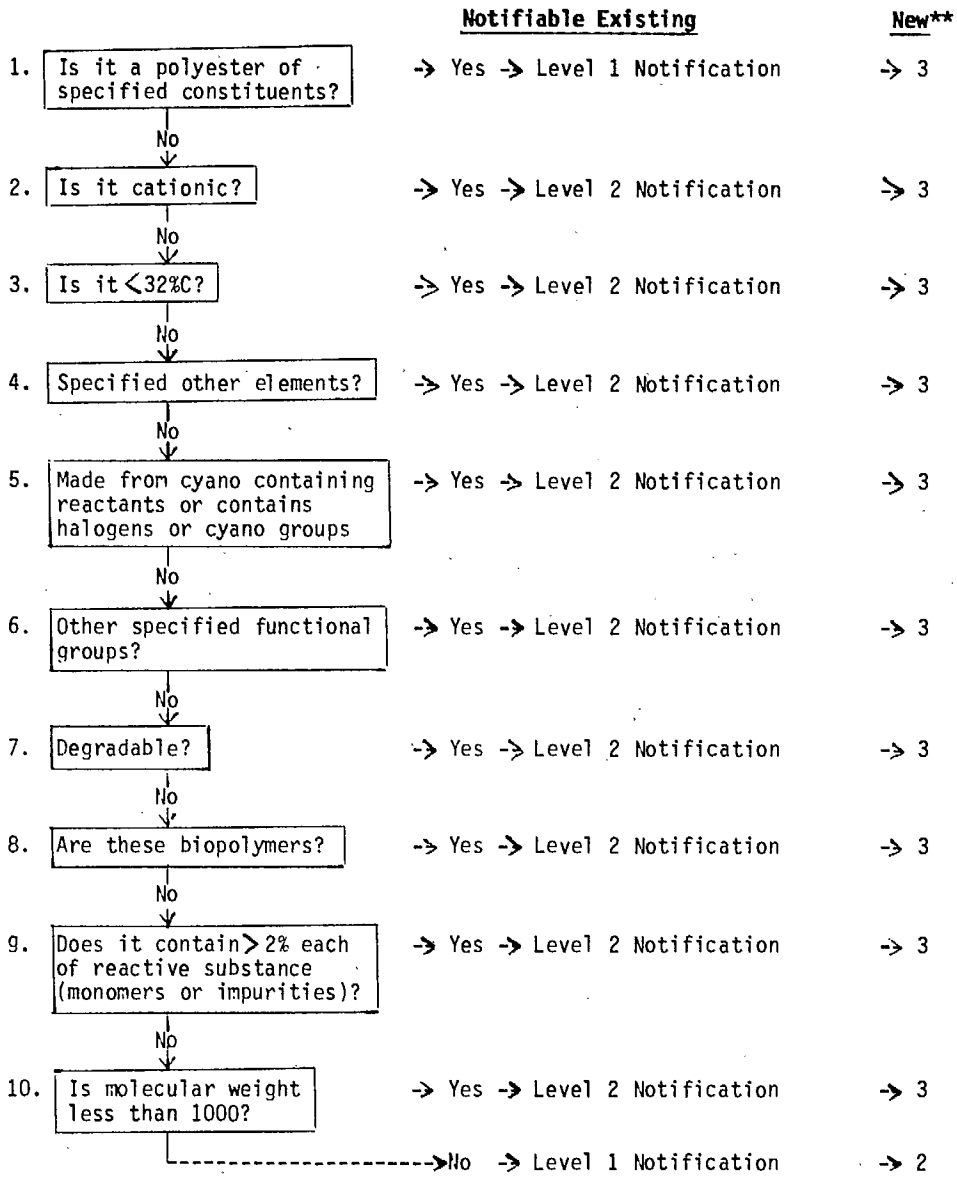
f) Impurities; as degradation products identify all impurities and degradation products reasonably anticipated in the final product and the maximum weight % for each.

g) A simple structural diagram describing the key features of the polymer.

Attachment 2

DECISION TREE FOR SPECIAL REVIEW OF POLYMERS

(for quantities greater than 1000 kg)*

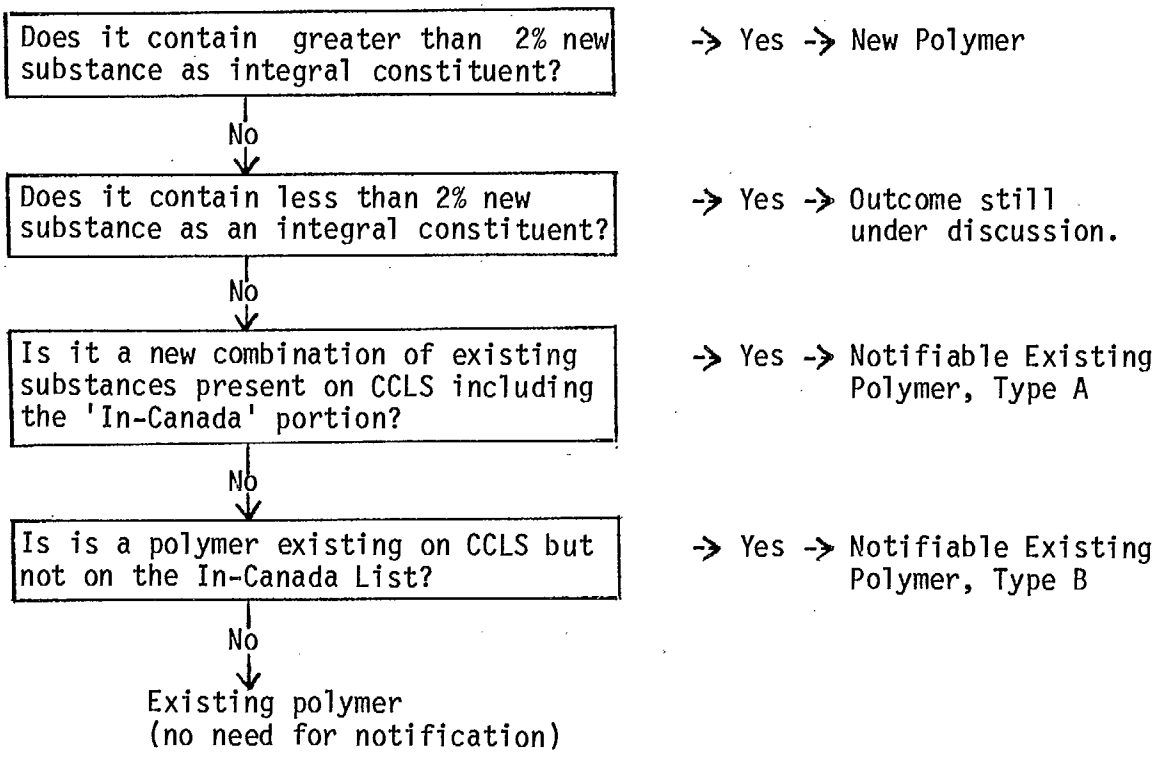


*For quantities in the 300-1000 kg range the notification level is reduced by one level, but not less than level 1.

**To decide whether a polymer is new or notifiable existing, see Attachment 3.

Attachment 3

DECISION TREE TO DECIDE 'NEW' POLYMER



Attachment 4

PROPOSED NOTIFICATION LEVELS AND INFORMATION REQUIREMENTS FOR POLYMERS

NOTIFIABLE EXISTING POLYMER, TYPE A OR B (SPECIAL REVIEW)

Level 1 (Basic) - for quantities greater than 300 kg/year or 1500 kg accumulated total.

NOTIFIABLE EXISTING POLYMER, TYPE A OR B (REGULAR REVIEW)

Level 1 (Basic) - for quantities greater than 300 kg/year or 1500 kg accumulated total

Level 2 (Mini) - for quantities greater than 1000 kg/year or 5000 kg accumulated total.

NEW POLYMERS (SPECIAL REVIEW)

Level 1 (Basic) - for quantities greater than 300 kg/year or 1500 kg less than 1000 kg/year

Level 2 (Mini) - for quantities greater than 1000 kg/year or 5000 kg accumulated

NEW POLYMERS (REGULAR REVIEW)

Level 2 (Mini) - for quantities greater than 300 kg/year or 1500 kg accumulated total

Level 3 (Full) - for quantities greater than 1000 kg/year or 5000 kg accumulated.

Attachment 5

NOMINATION OF POLYMERS - FOR CCLS

- Naming will follow US Guidelines since system will adopt 20-30,000 US polymers following US nomenclature

- List all substances which are monomer components in excess of 2%, (this will include cross linking agents, modifiers etc. that become chemically bonded to the polymer, but not including additives such as plasticizers, antioxidants, absorbants etc.)

- May also identify substances which are monomers 2% but this must be identified separately since it will not be identified on the inventory.

ATTACHMENT 6

Table—List of Reactants From Which Polyesters May be Made

Monobasic Acids and Natural Oils

Benzoic acid (65-85-0)
Coconut oil (8001-31-8*)
Corn oil (8001-30-7*)
Cottonseed oil (8001-29-4*)
Dodecanoic acid (143-07-7)
Fatty acids, coco (61788-47-4*)
Fatty acids, linseed oil (68424-45-3*)
Fatty acids, safflower oil**
Fatty acids, soya (68308-53-2*)
Fatty acids, sunflower oil** (84625-38-7*)
Fatty acids, tall-oil (61790-12-3*)
Fatty acids, tall-oil conjugated**
Fatty acids, vegetable oil (61788-66-7*)
Heptanoic acid (111-14-8)
Hexanoic acid (142-62-1)
Hexanoic acid, 3,3,5-trimethyl- (3302-10-1)
Linseed oil (8001-26-1*)
Nonanoic acid (112-05-0)
Oils, *Cannabis* –
Oils, anchovy
Oils, babassu palm
Oils, herring (68153-06-0*)
Oils, menhaden (8002-50-4*)
Oils, oiticica (8016-35-1*)
Oils, palm kernel (8023-79-8*)

Oils, perilla (68132-21-8*)
Oils, walnut (8024-09-7*)
Oils, sardine
Safflower oil (8001-23-8*)
Soybean oil (8001-22-7*)
Sunflower oil (8001-21-6*)
Tung oil (8001-20-5*)

Di and Tri Basic Acids and Anhydrides

1,2-Benzenedicarboxylic acid (88-99-3)
1,3-Benzenedicarboxylic acid (121-91-5)
1,4-Benzenedicarboxylic acid (100-21-0)
1,2,4-Benzenetricarboxylic acid (528-44-9)
Butanedioic acid (110-15-6)
2-Butenedioic acid (*E*) (110-17-8)
Decanedioic acid (111-20-6)
Hexanedioic acid (124-04-9)
Nonanedioic acid (123-99-9)

Polyols

1,3-Butanediol (107-88-0)
1,4-Butanediol (110-63-4)
1,4-Cyclohexanedimethanol (105-08-8)
1,2-Ethanediol (107-21-1)
1,6-Hexanediol (629-11-8)
1,3-Pentanediol, 2,2,4-trimethyl- (144-19-4)
1,2-Propanediol, (57-55-6)
1,3-Propanediol, 2,2-bis(hydroxymethyl)- (115-77-5)
1,3-Propanediol, 2,2-dimethyl- (126-30-7)
1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)- (77-99-6)
1,3-Propanediol, 2-(hydroxymethyl)-2-methyl- (77-85-0)
1,2,3-Propanetriol (56-81-5)
1,2,3-Propanetriol, homopolymer (25618-55-7)
2-Propen-1-ol, polymer with ethenylbenzene (25119-82-4)

Modifiers

Acetic acid, 2,2'-oxybis- (110-99-6)
1-Butanol (71-36-3)***
Cyclohexanol (108-93-0)
Cyclohexanol, 4,4,-(1-methylethylidene)bis- (80-04-6)
Ethanol, 2-(2-butoxyethoxy)- (112-34-5)
1-Hexanol (111-27-3)
Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane (72318-84-4*)
1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7-(1-methylethyl)- (13393-93-6)
Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane] (25036-25-3)
Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated (68440-65-3*)
Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated (68957-04-0*)
Siloxanes and Silicones, Me Ph, methoxy Pb, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated (68957-06-2*)
Silsesquioxanes, Ph Pr (68037-90-1*)

* The * is used to designate chemical substances of unknown or variable composition, complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.

*** These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

APPENDIX 5

DATA COMPONENTS FOR THE OECD MINIMUM PRE-MARKETING SET OF DATA (1)

Chemical identification data

Name according to agreed international nomenclature, e.g. IUPAC
Other names
Structural formula
CAS-number
Sepctra ("finger-print spectra" from purified and technical grade product)
Degree of purity of technical grade product
Known impurities, and their percentage by weight
Essential (for the purposes of marketing) additives and stabilisers and their percentage by weight.

Production/Use/Disposal data

Estimated production, tons/year
Intended uses
Suggested disposal methods
Expected mode of transportation

Recommended precautions and emergency measures

Analytical methods

Physical/Chemical data

Melting point
Boiling point
Density
Vapour pressure
Water solubility
Partition coefficient
Hydrolysis*
Spectra
Adsorption - Desorption*
Dissociation constant
Particle size*

* only the screening part to be done for base set.

Acute toxicity data

Acute oral toxicity
Acute dermal toxicity
Acute inhalation toxicity
Skin irritation
Skin sensitisation
Eye irritation

Repeated dose toxicity data

14-28 days repeated dose

Mutagenicity data

Ecotoxicity data

Fish LC50 - at least 96 hours exposure

Daphnia - reproduction 14 days

Alga - growth inhibition 4 days

Degradation/Accumultion data

Biodegradation: screening phase biodegradability data (readily biodegradable).

Bioaccumulation: screening-phase bioaccumulation data (partitioning coefficient, n-octanol/water, fat solubility, water solubility, biodegradability).

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(1) Organisation for Economic Co-operation and Development, Decision of the Council (8th December, 1982) Concerning the Minimum Pre-Marketing Set of Data in the Assessment of Chemicals, C(32)196(Final).

APPENDIX 6

FEDERAL-PROVINCIAL CONSIDERATIONS

The provinces in principal:

- understand that a systematic overview of the contamination of the environment by a chemical is required to ascertain the hazards to human health and the environment and to determine what control measures, if any, need to be taken. This is in line with the life-cycle approach for assessing and controlling environmental contaminants;

- recognize that mechanisms for assessment which includes information gathering, and the control of environmental contaminants are in place in legislation at both the federal and provincial levels[1].

As such, the ECACC has recommended that the Act allow for agreements to be made between the federal Minsters and one or more provincial governments with regard to any sections of the Act. Such agreements would ensure that the assessment and control of environmental contaminants would be undertaken in a shared and responsible manner that respects jurisdictional mandates and achieves a high level of environmental protection in a cost effective manner[2].

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1. Table 1 provides an overview of Federal-Provincial authorities for environmental protection.
2. Table 2 identifies areas that could be addressed by a Federal-Provincial Agreement.

TABLE 1

PROVINCIAL AND FEDERAL AUTHORITIES

FOR ENVIRONMENTAL PROTECTION *

ACTIVITY Pertaining To:	INFORMATION GATHERING	ASSESSMENT	CONTROL
Manufacturing	F,P	F,P	F,P[2]
Processing	F,P	F,P	F,P[2]
Use	F,P	F,P	F,P[2]
Import	F,P	F,P	F
Release From Commercial, Industrial and Governmental Activities 1,			
- spills	F,P	F,P	F,P
- abandonment	F,P	F,P	F,P
- releases to air, water, land	F,P	F,P	F,P
- disposal	F,P	F,P	F,P
Environmental Fate and Toxicology	F,P	F,P	

* F = Federal authority under Federal Environmental Contaminants Act including proposed amendments.

* P = Provincial authority.

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1. Provincial Legislation in general does not apply to federal facilities.

2. Potentially an indirect control, provincial authority in this area involves the assessment of manufacturing, processing and use activities for the purpose of potentially controlling the release, not the activity.

TABLE 2

AREAS THAT COULD BE ADDRESSED BY A
FEDERAL-PROVINCIAL AGREEMENT

INFORMATION GATHERING

Existing Chemicals

- Establish mechanisms to ensure that discussions take place before surveys, questionnaires, and testing are undertaken pursuant to Sections 3 and 4 of the ECA. This will ensure that provincial needs are met, minimize duplication and allow for sharing of information.

- Under Section 10 of the ECA, inspection for non-scheduled substances could overlap with provincial activities. Mechanism needs to be established to harmonize federal-provincial inspection activities.

- Provide for mechanisms to ensure existing chemicals are addressed in a systematic manner.

New Chemicals

- To establish mechanisms to ensure that information on new chemicals is shared with the provincial jurisdiction(s) in which the substance would be used.

ASSESSMENT

- To ensure discussions on assessments take place. Allows for shared undertakings for chemicals of mutual concern and harmonization of assessment methodologies.

CONTROLS

- To identify areas in which there are overlapping authorities and agree in advance how such authorities would be exercised. Particularly important in the control of releases and the handling of spills.

CONFIDENTIALITY

- Ensure appropriate mechanisms are developed for the exchange and safeguarding of CBI.

APPENDIX 7

CANADIAN LABOUR CONGRESS
STATEMENT

While the report of the ECAA Consultative Committee does not go as far as the CLC's submission of August, 1985 it represents major advances in environmental protection, particularly over new chemicals notification, and the CLC representatives on the project strongly recommend its acceptance by the officers of the Canadian Labour Congress.

APPENDIX 8

APPENDIX STATEMENT OF THE ENVIRONMENTAL CAUCUS

INTRODUCTION

The environmental caucus strongly supports the consensus reached by the ECA consultative committee, except as noted in the report, as the best that is achievable under the present circumstances. The caucus, however, has some outstanding concerns which it would like to register, while not detracting from the consensus.

The environmental caucus comprised of eleven representatives of environmental groups from across the country. The names of the environmental caucus members are listed in this Appendix . The caucus was established in September 1985 to confer with the environmental members of the ECA amendments consultative committee. The caucus met three times and held numerous conference calls where the members put forth their views and comments on the deliberations of the committee to the environmental representatives.

QUANTITY TRIGGERS

The amount of information required to be submitted respecting a particular substance is, in the scheme recommended by the

committee, dependent on various quantity triggers. While the scheme will result in more information on new substances than is currently available to government or the public, the environmental caucus is concerned that quantity in itself is not an appropriate measure of the potential adverse human health or environmental consequences of a substance. Scientific evidence is overwhelming that even minute quantities of certain substances are capable of causing significant damage to human health or the environment. For example, only a few pounds of 2, 3, 7, 8 - tetrachorodibenzino-p-dioxin (TCDD) released in a 1976 explosion in Seveso, Italy was sufficient to contaminate an area 5 km long and 700 m wide . In order to fully control the introduction of a new substance full toxicological and eco-toxicological information is required regardless of the anticipated quantity of the substance.

An additional concern of the environmental caucus is that the actual quantity triggers recommended may be too high. Little information was available to the committee on the types and numbers of substances which would require less than full notification. The environmental caucus suggests that this information be collected and assessed with a view to lowering the quantity triggers if necessary.

Finally, the environmental caucus is concerned that the quantity triggers for information requirements may be interpreted to allow numerous companies to import or manufacture a

a notifiable substance each in a quantity less than a quantity trigger but which together would add up to a much larger quantity of the substance than had been anticipated when the quantity trigger was sent. Moreover, if quantities are to be interpreted on a per company basis rather than a total quantity basis then a loophole is provided through which a purchaser could avoid full notification by buying small amounts of a substance through separate importers. Or an importer could establish numerous separate companies to each import a quantity smaller than the relevant trigger.

DATA REQUIREMENTS

The nature of environmental contaminants is that they occur at relatively low levels, parts per million and less; are widely dispersed and interact simultaneously and synergistically; and their effects are manifested over the long-term often irreversibly.

While we support bringing the data requirements for new substances in line with those required by the OECD, they do not go far enough. Testing proposed is inadequate to determine how a substance will behave in the natural environment, its fate, and its chronic toxicity.

There is little relationship between the acute and chronic toxicity of a substance, yet the data requirements

largely focus on establishing acute short-term effects. The ability of a substance to induce or promote cancer cannot be adequately assessed from the recommended data requirements, and the substances' potential for causing or promoting birth defects cannot be assessed at all.

Apart from immediate poisoning episodes, the most serious problems facing the environment are the long-term chronic effects, it is therefore particularly disconcerting that two of the toxicity tests recommended by the OECD (i.e., agal growth inhibition and daphnia 14 day reproduction) are excluded from the data requirements of the Environmental Contaminants Act; and acute toxicity tests adopted in their stead.

DATA PACKAGE

It is imperative that the data presented in the data package be valid. Recent scandals show that data are sometimes falsified, withheld and even tampered with.

The environmental caucus recommends that the tests carried out to produce the data package be undertaken according to OECD good laboratory practice guidelines, subject to quality control and quality assurance, and that testing laboratories be identified in the notification.

ADDITIONAL CONCERNS

Enforcement of the amended ECA should be a priority.

The ECA currently deals with substances on the basis of single chemical - single effect relationships. Synergistic effects are an important concern and the ECA should be reviewed to deal with this problem.

DOE should expand its expertise and legislation base to deal with ecotoxicity.

The environmental group members of the consultative committee communicated with many other environmental groups during the course of the committee's proceedings. The positions taken by the environmental group members were arrived at after close consultation with the following groups:

Susan Holtz	Ecology Action Centre
David Coon	Conservation Council of New Brunswick
Daniel Green	Société pour vaincre la pollution (S.V.P.)
Janine Ferretti	Pollution Probe
Kate Davies	Great Lakes United
John Jackson	Citizens' Network on Waste Management
Linda Duncan	Environmental Law Centre
Bill Andrews	West Coast Environmental Law Centre

APPENDIX 9

CHAPTER 72

[S.C., 1974-75-76, c. 72]

An Act to protect human health and the environment from substances that contaminate the environment

[*Assented to 2nd December, 1975*]

SHORT TITLE

Short title

1. This Act may be cited as the *Environmental Contaminants Act*.

INTERPRETATION

Definitions

2. (1) In this Act,

"analyst" «*analyste*»

"analyst" means a person designated as an analyst pursuant to subsection 9(1);

"class of substances" «*catégorie...*»

"class of substances" means any two or more substances that

(*a*) contain the same chemical moiety, or

(*b*) have similar chemical properties and the same type of chemical structure;

"inspector" «*inspecteur*»

"inspector" means a person designated as an inspector pursuant to subsection 9(1);

"Minister" «*Ministre*»

"Minister" means the Minister of the Environment;

"prescribed" «*prescrit*»

"prescribed" means prescribed by regulation;

"release" «*rejet*»

"release" includes spilling, leaking, pumping, spraying, pouring, emitting, emptying, throwing or dumping;

"schedule" «*annexe*»

"schedule" means the schedule to this Act to which the Governor in Council may

(*a*) add substances or classes of substances pursuant to subsection 7(1), and

(*b*) delete substances or classes of substances pursuant to subsection 7(7);

"substance" «*substance*»

"substance" means any distinguishable kind of inanimate matter

CHAPITRE 72

[S.C. de 1974-75-76, c. 72]

Loi ayant pour objet de protéger la santé et l'environnement contre les contaminants

[*Sanctionnée le 2 décembre 1975*]

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi sur les contaminants de l'environnement*.

INTERPRÉTATION

Définitions

2. (1) Dans la présente loi,

«analyste» "analyst"

«analyste» signifie une personne désignée comme analyste en application du paragraphe 9(1);

«annexe» "schedule"

«annexe» désigne l'annexe à la présente loi que le gouverneur en conseil peut modifier

a) soit en y ajoutant des substances ou catégories de substances, conformément au paragraphe 7(1),

b) soit en en retranchant des substances ou catégories de substances, conformément au paragraphe 7(7);

«catégorie de substances» "class of..."

«catégorie de substances» désigne tout groupe de deux substances ou plus

a) qui comportent la même portion chimique, ou

b) qui ont des propriétés chimiques semblables et le même genre de structure chimique;

«inspecteur» "inspector"

«inspecteur» signifie une personne désignée comme inspecteur en application du paragraphe 9(1);

«Ministre» "Minister"

«Ministre» désigne le ministre de l'Environnement;

«prescrit» "prescribed"

«prescrit» signifie prescrit par règlement;

(*a*) capable of becoming dispersed in the environment, or

(*b*) capable of becoming transformed in the environment into matter described in paragraph (*a*).

«rejet» comprend le versement, le déversement, l'écoulement, le pompage, l'arrosage, l'épandage, la vaporisation, l'évacuation, l'émission, le vidage, le jet ou le basculage; «rejet» *"release"*

«substance» désigne toute sorte de matière inanimée susceptible «substance» *"substance"*

a) de se répandre dans l'environnement, ou

b) de se transformer dans l'environnement en une matière visée à l'alinéa *a*).

Application of Act

(2) This Act is binding on Her Majesty in right of Canada or a province and any agent thereof.

(2) La présente loi lie Sa Majesté du chef du Canada ou d'une province, et tout mandataire de celle-ci. Application de la loi

INFORMATION

RENSEIGNEMENTS

Notice

3. (1) For the purpose of ascertaining whether any substances are entering or are likely to enter the environment in quantities that may constitute a danger to human health or the environment, the Minister may cause to be published in the *Canada Gazette* and in any other manner that he deems appropriate a notice requiring persons who import, manufacture or process or who intend to import, manufacture or process any substance specified therein or any substance that is a member of a class of substances specified therein to furnish the Minister with such information respecting quantities of such substances as is specified therein.

3. (1) Le Ministre peut, afin de savoir si des substances pénètrent dans l'environnement, ou sont susceptibles de le faire, en quantités éventuellement dangereuses pour celui-ci ou la santé, faire publier dans la *Gazette du Canada*, et de toute autre manière qu'il estime indiquée, un avis obligeant toute personne qui les importe, les fabrique ou les traite, ou a l'intention de le faire, au-delà d'une limite donnée pour chaque substance ou catégorie de substances, à lui donner, en ce qui concerne les quantités de ces substances, les renseignements qui y sont précisés. Avis

Notice to be complied with

(2) On publication of the notice described in subsection (1), every person shall comply therewith within such reasonable time or times as are specified therein if such person

(*a*) has, in the twelve-month period preceding publication thereof, imported, manufactured or processed, or

(*b*) intends, in the twelve-month period following publication thereof, to import, manufacture or process,

a substance specified in the notice or any substance that is a member of a class of substances specified in the notice in excess of a quantity specified therein in respect of that substance or class of substances as the case may be.

(2) Est tenue de se conformer à l'avis mentionné au paragraphe (1), dès sa publication et dans les délais raisonnables qu'il précise, toute personne qui a, Observation de l'avis

a) au cours des douze mois précédents, importé, fabriqué ou traité, ou

b) au cours des douze mois suivants, l'intention d'importer, de fabriquer ou de traiter

une quantité, soit de l'une des substances, soit de l'une de celles appartenant à une catégorie, visées dans l'avis, supérieure à la quantité qu'indique celui-ci.

Minister may gather information

(3) Where the Minister or the Minister of National Health and Welfare suspects that a substance is entering or is likely to enter the environment in a quantity or concentration or under conditions that may constitute a danger to human health or the environment, the

(3) Lorsque le Ministre ou le ministre de la Santé nationale et du Bien-être social soupçonne qu'une substance pénètre ou est susceptible de pénétrer dans l'environnement en une quantité ou concentration ou dans des Le Ministre peut recueillir des renseignements

Minister or the Minister of National Health and Welfare may

(*a*) collect data and conduct investigations respecting

(i) the nature of the substance or of any class of substances of which it is a member,

(ii) the presence in the environment of the substance or of any class of substances of which it is a member and the effect of such presence on human health or the environment,

(iii) the extent to which the substance or any class of substances of which it is a member can become dispersed and will persist in the environment,

(iv) the ability of the substance or of any class of substances of which it is a member to become incorporated and to accumulate in biological tissues and to cause biological change,

(v) methods of controlling the presence in the environment of the substance or of any class of substances of which it is a member, and

(vi) methods for testing the effects of the presence in the environment of the substance or of any class of substances of which it is a member;

(*b*) correlate and evaluate any data collected pursuant to paragraph (*a*) and publish results of any investigations carried out pursuant to that paragraph; and

(*c*) provide information and consultative services and make recommendations respecting measures to control the presence in the environment of the substance or of any class of substances of which it is a member.

conditions qui peuvent mettre en danger la santé ou l'environnement, il peut

a) recueillir des données et faire des enquêtes

(i) sur la nature de cette substance ou de toute catégorie de substances dont elle fait partie,

(ii) sur la présence, dans l'environnement, de cette substance ou de toute catégorie de substances dont elle fait partie et sur l'effet de cette présence sur la santé et l'environnement,

(iii) sur la mesure dans laquelle cette substance ou toute catégorie de substances dont elle fait partie peut se répandre et restera dans l'environnement,

(iv) sur la capacité de cette substance ou de toute catégorie de substances dont elle fait partie de s'introduire dans les tissus biologiques et de causer des changements d'ordre biologique,

(v) sur les méthodes de contrôle de la présence, dans l'environnement, de cette substance ou de toute catégorie de substances dont elle fait partie, et

(vi) sur les méthodes de vérification des effets de la présence, dans l'environnement, de cette substance ou de toute catégorie de substances dont elle fait partie;

b) mettre en corrélation et analyser les données recueillies en application de l'alinéa *a*) et publier les résultats des enquêtes effectuées en application de cet alinéa; et

c) fournir des renseignements et des services de consultation et faire des recommandations au sujet de mesures visant à limiter la présence, dans l'environnement, de cette substance ou de toute catégorie de substances dont elle fait partie.

Advisory committees

(4) The Minister and the Minister of National Health and Welfare may jointly appoint advisory committees to review any data collected pursuant to subsection (1) and paragraph (3)(*a*), to receive representations from interested parties or concerned members of the public and to advise the Minister and the Minister of National Health and Welfare respecting measures to control the presence in the environment of any substance or class of substances.

Comités consultatifs

(4) Le Ministre et le ministre de la Santé nationale et du Bien-être social peuvent constituer conjointement des comités consultatifs chargés d'examiner des données recueillies en application du paragraphe (1) et de l'alinéa (3)*a*), de recevoir les observations de tous les intéressés et de conseiller le Ministre et le ministre de la Santé nationale et du Bien-être social au sujet de mesures visant à limiter la présence, dans l'environnement, de quelque substance ou catégorie de substances.

Reports

(5) A committee appointed pursuant to subsection (4) shall make public its reports and recommendations with the reasons therefor.

Rapports

(5) Un comité constitué en vertu du paragraphe (4) doit rendre publics ses rapports et recommandations et les raisons qui les motivent.

Minister to make use of services of other departments

(6) The Minister and the Minister of National Health and Welfare shall, in carrying out any activity described in paragraph (3)(*a*), wherever reasonably possible, act jointly and make use of the services and facilities of other departments of the Government of Canada or of any agencies thereof.

Le Ministre utilise les services d'autres ministères

(6) Le Ministre et le ministre de la Santé nationale et du Bien-être social doivent toutes les fois qu'il est raisonnablement possible de le faire, dans l'exercice de toute activité visée à l'alinéa (3)*a*), agir conjointement et utiliser les services et installations des autres ministères du gouvernement du Canada ou de tout organisme de celui-ci.

Minister to act in cooperation with government, etc.

(7) The Minister and the Minister of National Health and Welfare may carry out any of the activities described in paragraph (3)(*a*) in cooperation with any government or agency thereof or any body, organization or person.

Collaboration du Ministre avec un gouvernement, etc.

(7) Le Ministre et le ministre de la Santé nationale et du Bien-être social peuvent exercer toute activité visée à l'alinéa (3)*a*) en collaboration avec tout gouvernement, organisme gouvernemental ou groupe ou toute organisation ou personne.

Agreements with provinces

(8) The Minister and the Minister of National Health and Welfare may, with the approval of the Governor in Council, enter into agreements with one or more provincial governments for the purpose of facilitating the collection of data and the conduct of investigations pursuant to paragraph (3)(*a*).

Accords avec les provinces

(8) Le Ministre et le ministre de la Santé nationale et du Bien-être social peuvent, avec l'approbation du gouverneur en conseil, conclure des accords avec un ou plusieurs gouvernements provinciaux en vue de faciliter la collecte de données et l'exécution d'enquêtes en application de l'alinéa (3)*a*).

DISCLOSURE

COMMUNICATION DE RENSEIGNEMENTS

Notice to disclose

4. (1) Where the Minister and the Minister of National Health and Welfare have reason to believe that a substance is entering or will enter the environment in a quantity or concentration or under conditions that they have reason to believe constitute or will constitute a significant danger to human health or the environment, the Minister may take any or all of the following steps:

(*a*) cause to be published in the *Canada Gazette* and in any other manner that the Minister deems appropriate a notice requiring any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a class of substances of which the substance is a member to notify the Minister thereof;

(*b*) send a written notice to any person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a class of substances of which the substance is a member requiring him to furnish to the Minister such information specified in the notice relating to the substance or to any member of the class of

Avis enjoignant de communiquer des renseignements

4. (1) Lorsque le Ministre et le ministre de la Santé nationale et du Bien-être social ont des motifs de croire qu'une substance pénètre ou pénétrera dans l'environnement en une quantité ou concentration ou dans des conditions qui mettent ou mettront sensiblement en danger la santé ou l'environnement, le Ministre peut prendre les mesures suivantes ou l'une ou plusieurs d'entre elles:

a) faire publier dans la *Gazette du Canada* et de toute autre manière qu'il juge appropriée un avis exigeant que toute personne pratiquant des opérations commerciales, de fabrication ou de traitement qui mettent en cause cette substance ou toute substance appartenant à une catégorie de substances dont elle fait partie, en avise le Ministre;

b) envoyer à toute personne pratiquant des opérations commerciales, de fabrication ou de traitement qui mettent en cause cette substance ou toute substance appartenant à la catégorie de substances dont elle fait partie, un avis écrit exigeant qu'elle fournisse au Ministre, relativement à cette substance ou à toute substance appartenant à la

substances specified in the notice as is in his possession or to which he may reasonably be expected to have access; and

(*c*) send a written notice to any person engaged in the importation or manufacturing of the substance or any product containing the substance requiring him to conduct such tests as are specified in the notice and as the Minister and the Minister of National Health and Welfare may reasonably require.

catégorie de substances spécifiée dans l'avis, les renseignements y spécifiés qu'elle possède ou qu'il lui serait normalement possible d'obtenir; et

c) envoyer à toute personne qui se livre à l'importation ou à la fabrication de cette substance ou de tout produit contenant cette substance, un avis écrit exigeant qu'elle fasse les expériences y spécifiées que le Ministre et le ministre de la Santé nationale et du Bien-être social peuvent raisonnablement exiger.

Notice to be complied with

(2) Every person

(*a*) who, on publication of a notice referred to in paragraph (1)(*a*), is a person engaged in any commercial, manufacturing or processing activity involving the substance or any member of a class of substances specified in the notice, or

(*b*) to whom a notice referred to in paragraph (1)(*b*) or (*c*) has been sent

shall comply with the notice within such reasonable time or times as are specified therein.

Obligation de se conformer à l'avis

(2) Toute personne

a) qui, au moment de la publication de l'avis prévu à l'alinéa (1)*a*), pratique des opérations commerciales, de fabrication ou de traitement mettant en cause la substance spécifiée dans cet avis ou toute substance appartenant à une catégorie de substances y spécifiée, ou

b) à qui a été envoyé un avis prévu aux alinéas (1)*b*) ou *c*)

doit se conformer à l'avis ou aux avis en question dans le délai ou les délais raisonnables qui y sont indiqués.

Extension of time

(3) Notwithstanding subsection (2), the Minister may, upon request in writing from any person to whom a notice referred to in paragraph (1)(*b*) or (*c*) has been sent, extend the time or times within which the person shall comply with the notice.

Prorogation du délai

(3) Nonobstant le paragraphe (2), le Ministre peut, à la demande, formulée par écrit, de toute personne qui a reçu un avis prévu aux alinéas (1)*b*) ou *c*), proroger le délai ou les délais qui lui sont donnés pour se conformer à cet avis.

Non-disclosure of certain information

(4) Any information received pursuant to subsection (1) or (6), subsection 3(2) or paragraph 3(3)(*a*) that relates to

(*a*) a formula or process by which any thing is manufactured or processed, whether patented or not,

(*b*) any trade secret, or

(*c*) any sales or production information

and that has been specified, in writing, as information that is given in confidence shall not be disclosed except as may be necessary for the purposes of this Act.

Non-divulgation de certains renseignements

(4) Nul renseignement reçu en application des paragraphes (1) ou (6), du paragraphe 3(2) ou de l'alinéa 3(3)*a*) qui se rapporte

a) soit à une formule ou à un procédé, brevetés ou non, utilisés pour la fabrication ou le traitement d'une chose quelconque,

b) soit à un secret industriel,

c) soit qui constitue un renseignement relatif aux ventes ou à la production et

au sujet duquel il a été spécifié par écrit qu'il était donné à titre confidentiel, ne doit être divulgué, si ce n'est dans la mesure où cela peut être nécessaire aux fins de la présente loi.

"Class of substances" defined

(5) For the purposes of this section only, a "class of substances" means a class of substances whose members have similar physico-chemical or toxicological properties.

Définition de «catégorie de substances»

(5) Aux seules fins du présent article, une «catégorie de substances» est une catégorie constituée de substances ayant des propriétés physico-chimiques ou toxicologiques semblables.

Mandatory reporting

(6) Where, during a calendar year, a person manufactures or imports a chemical compound in excess of five hundred kilograms and he

Communication obligatoire

(6) La personne qui, pour la première fois, fabrique ou importe, au cours d'une année civile, plus de cinq cents kilogrammes d'un

manufactures or imports that compound in excess of that quantity for the first time, he shall, within three months of manufacturing or importing the said quantity, notify the Minister of

(*a*) the date of the manufacturing or importing;

(*b*) the name of the compound;

(*c*) the quantity manufactured or imported during that year; and

(*d*) any information in his possession respecting any danger to human health or the environment posed by the compound. 1974-75-76, c. 72, s. 4; 1984, c. 40, s. 25.

composé chimique doit, dans les trois mois suivant la date de fabrication ou d'importation de ladite quantité, communiquer au Ministre

a) la date de fabrication ou d'importation;

b) le nom du composé;

c) la quantité fabriquée ou importée pendant l'année; et

d) tout renseignement qu'il possède concernant le danger que constitue le composé pour la santé ou l'environnement. 1974-75-76, c. 72, art. 4; 1984, c. 40, art. 25.

CONSULTATION

CONSULTATION

Consultation with provinces and departments or agencies

5. (1) Where the Minister and the Minister of National Health and Welfare are satisfied that a substance or class or substances is entering or will enter the environment in a quantity or concentration or under conditions that they are satisfied constitute or will constitute a significant danger in Canada or any geographical area thereof to human health or the environment, they shall, before making any recommendation to the Governor in Council under subsection 7(1), offer, as soon as reasonably practicable but no later than fifteen days after the said Ministers are so satisfied, to consult with

(*a*) the governments of any provinces that indicate that their provinces are likely to be materially affected by any such recommendation, and

(*b*) any departments or agencies of the Government of Canada as may be appropriate

in order to determine whether the significant danger perceived by them will be eliminated by any action taken or proposed to be taken pursuant to any other law.

Consultation avec les provinces, ministères ou organismes

5. (1) Lorsque le Ministre et le ministre de la Santé nationale et du Bien-être social sont convaincus qu'une substance ou une catégorie de substances pénètre ou pénétrera dans l'environnement en une quantité ou concentration ou dans des conditions qui mettent ou mettront sensiblement en danger la santé ou l'environnement au Canada ou dans quelque région du Canada, ils doivent, avant de faire une recommandation au gouverneur en conseil en vertu du paragraphe 7(1), offrir dans les meilleurs délais raisonnables mais au plus tard quinze jours après en avoir été convaincus, de consulter

a) tous les gouvernements provinciaux qui font état des répercussions importantes que cette recommandation entraîne vraisemblablement dans leur territoire, et

b) tous les ministères ou organismes du gouvernement du Canada dont il peut être à propos de prendre l'avis,

afin de déterminer si le danger qu'ils appréhendent sera éliminé par des mesures prises ou projetées en application de quelque autre loi.

Publication of proposed order and regulations

(2) Where, after consultation pursuant to subsection (1) or after an offer to consult has not been accepted within thirty days, the Minister and the Minister of National Health and Welfare are satisfied that the significant danger referred to in that subsection will not be eliminated by any action taken or proposed to be taken pursuant to any other law and they propose to recommend to the Governor in Council that

(*a*) an order amending the schedule by adding the substance or class of substances

Publication des projets de décrets et de règlements

(2) Lorsque, après avoir procédé aux consultations prévues au paragraphe (1), ou lorsqu'une offre de consultation n'est pas acceptée dans un délai de trente jours, le Ministre et le ministre de la Santé nationale et du Bien-être social sont convaincus que le danger visé par ce paragraphe ne sera pas éliminé par des mesures prises ou projetées en application de quelque autre loi, et se proposent de recommander au gouverneur en conseil

a) qu'un décret modifiant l'annexe en y ajoutant la substance ou catégorie de sub-

be made under subsection 7(1) and regulations relating to such substance or class of substances be made under any of paragraphs 18(*a*) to (*e*), or

(*b*) regulations that would modify or supplement in a material respect regulations relating to the substance or class of substances already made under any of paragraphs 18(*a*) to (*e*) be made,

the Minister shall cause to be published in the *Canada Gazette*,

(*c*) if paragraph (*a*) applies, a copy of the proposed order and regulations referred to in that paragraph; or

(*d*) if paragraph (*b*) applies, a copy of the proposed regulations referred to in that paragraph.

Notice of objection

(3) Any person having an interest therein may, within sixty days of publication in the *Canada Gazette* of a copy of any proposed order and regulations pursuant to paragraph (2)(*c*) or any proposed regulations pursuant to paragraph (2)(*d*), file a notice of objection with the Minister.

ENVIRONMENTAL CONTAMINANTS BOARD OF REVIEW

Establishment of Environmental Contaminants Board of Review

6. (1) Upon receipt of a notice of objection referred to in subsection 5(3) within the time specified in that subsection, the Minister and the Minister of National Health and Welfare shall establish an Environmental Contaminants Board of Review (in this section referred to as a "Board") consisting of not less than three persons and shall refer the proposed order and regulations or the proposed regulations in respect of which the notice of objection was filed to the Board.

Withdrawal of notice of objection

(1.1) Where a notice of objection referred to in subsection 5(3) is withdrawn by the person filing the objection and no other notice of objection is filed, the Minister need not establish a Board and may dissolve any Board established under subsection (1).

Duties

(2) A Board shall inquire into the nature and extent of the danger posed by the substance or class of substances to which any proposed order and regulations or proposed regulations referred to it under subsection (1) apply and in particular shall inquire into the matters described in subparagraphs 3(3)(*a*)(i) to (v),

stances visée soit pris en vertu du paragraphe 7(1) et que des règlements relatifs à cette substance ou catégorie de substances soient établis en vertu d'un ou plusieurs des alinéas 18*a*) à *e*), ou

b) que des règlements modifiant ou complétant sur un point essentiel les règlements relatifs à la substance ou catégorie de substances visée déjà établis en vertu d'un ou plusieurs des alinéas 18*a*) à *e*) soient établis,

le Ministre doit faire publier dans la *Gazette du Canada*,

c) si l'alinéa *a*) s'applique, une copie du projet de décret et de règlements visé à cet alinéa; ou,

d) si l'alinéa *b*) s'applique, une copie du projet de règlements visé à cet alinéa.

Avis d'opposition

(3) Tout intéressé peut, dans les soixante jours de la publication, dans la *Gazette du Canada*, d'une copie de quelque projet de décret et de règlements publiée en application de l'alinéa (2)*c*), ou d'une copie de quelque projet de règlements publiée en application de l'alinéa (2)*d*), déposer un avis d'opposition entre les mains du Ministre.

COMMISSION D'ÉTUDE SUR LES CONTAMINANTS DE L'ENVIRONNEMENT

Établissement d'une Commission d'étude sur les contaminants de l'environnement

6. (1) Sur réception de l'avis d'opposition visé au paragraphe 5(3) dans le délai prévu par ce paragraphe, le Ministre et le ministre de la Santé nationale et du Bien-être social doivent établir une Commission d'étude sur les contaminants de l'environnement (appelée, au présent article, «Commission») composée d'au moins trois personnes et saisir cette Commission du projet de règlements ou du projet de décret et de règlements auquel se rapporte l'avis d'opposition.

Retrait d'un avis d'opposition

(1.1) Si la personne qui a déposé un avis d'opposition le retire et qu'aucun autre avis d'opposition n'est déposé, le Ministre n'est pas tenu d'établir une Commission et peut démanteler toute Commission établie en vertu du paragraphe (1).

Fonctions

(2) La Commission doit faire enquête sur la nature et l'étendue du danger que représente la substance ou catégorie de substances à laquelle s'applique le projet de règlements ou le projet de décret et de règlements dont elle est saisie en vertu du paragraphe (1) et notamment sur les points visés aux sous-alinéas 3(3)*a*)(i) à (v), et

and shall give the person filing the notice of objection and any other interested or knowledgeable person a reasonable opportunity of appearing before the Board, presenting evidence and making representations to it.

elle doit donner à la personne qui a déposé l'avis d'opposition et à toute personne intéressée ou bien informée la possibilité raisonnable de comparaître devant elle et de lui présenter une preuve et des observations.

Powers

(3) For the purposes of an inquiry under subsection (2), a Board has and may exercise all the powers of a person appointed as a commissioner under Part I of the *Inquiries Act*.

Pouvoirs

(3) Aux fins d'une enquête effectuée en vertu du paragraphe (2), la Commission possède et peut exercer tous les pouvoirs d'une personne nommée pour exercer les fonctions de commissaire sous le régime de la Partie I de la *Loi sur les enquêtes*.

Absent member

(3.1) Where for any reason a member of a Board is unable or unwilling to proceed with or complete an inquiry, the remaining members of the Board may, if there is still a quorum, proceed with or complete the inquiry.

Absence

(3.1) Si, pour quelque motif, un membre de la Commission ne peut ou ne veut faire ou terminer l'enquête, les autres membres, s'ils forment le quorum, peuvent la faire ou la terminer.

Report

(4) A Board, as soon as possible after the conclusion of an inquiry, shall submit a report to the Minister and the Minister of National Health and Welfare, together with its recommendations and all evidence that was before the Board.

Rapport

(4) Toute Commission doit, aussitôt que possible après la fin de son enquête, présenter un rapport au Ministre et au ministre de la Santé nationale et du Bien-être social, ainsi que ses recommandations et l'ensemble de la preuve dont elle a pris connaissance.

Publication of report

(5) The report of a Board shall, within sixty days after its receipt by the Minister and the Minister of National Health and Welfare, be made public unless the Board states in writing that it believes the public interest would be better served by withholding publication of the whole or specific parts of the report, in which case the Minister and the Minister of National Health and Welfare may decide whether the report, either in whole or in part, should be made public.

Publication du rapport

(5) Le rapport d'une Commission doit être rendu public dans les soixante jours de sa réception par le Ministre et le ministre de la Santé nationale et du Bien-être social, à moins que la Commission ne déclare par écrit qu'elle croit que l'intérêt public serait mieux servi si le rapport ou des passages de celui-ci n'étaient pas publiés, auquel cas le Ministre et le ministre de la Santé nationale et du Bien-être social peuvent décider s'il y a lieu ou non de le rendre public, en totalité ou en partie.

Re-publication not necessary

(6) A copy of the proposed order and regulations referred to in paragraph 5(2)(*a*) or a copy of the proposed regulations referred to in paragraph 5(2)(*b*) need not be published more than once under subsection 5(2) if no material substantive change is made to the proposed order and regulations or to the proposed regulations as a result of representations made at or matters arising in the course of public hearings during an inquiry of a Board. 1974-75-76, c. 72, s. 6; 1984, c. 40, s. 25.

Une seule publication

(6) Un projet de décret et de règlement visé à l'alinéa 5(2)*a*) ou un projet de règlement visé à l'alinéa 5(2)*b*) déjà publiés conformément au paragraphe 5(2) n'ont pas à l'être de nouveau si aucune modification importante au fond ne leur est apportée à la suite des observations présentées ou des questions soulevées au cours des auditions publiques tenues dans le cadre d'une enquête de la Commission. 1974-75-76, c. 72, art. 6; 1984, c. 40, art. 25.

SCHEDULE

ANNEXE

Addition to schedule, etc.

7. (1) Subject to subsection (2), where the Governor in Council, on the recommendation of the Minister and the Minister of National Health and Welfare, is satisfied that a substance or class of substances is entering or will enter the environment in a quantity or

Ajouts à la liste, etc.

7. (1) Sous réserve du paragraphe (2), lorsque le gouverneur en conseil, à la suite d'une recommandation du Ministre et du ministre de la Santé nationale et du Bien-être social, est convaincu qu'une substance ou une catégorie de substances pénètre ou pénétrera

concentration or under conditions that he is satisfied constitute or will constitute a significant danger in Canada or any geographical area thereof to human health or the environment, he may, by order, add to the schedule the substance or class of substances.

dans l'environnement en une quantité ou concentration ou dans des conditions qui mettent ou mettront sensiblement en danger la santé ou l'environnement au Canada ou dans quelque région du Canada, il peut, par décret, ajouter à l'annexe cette substance ou catégorie de substances.

Order subject to conditions

(2) The Governor in Council may only make the order referred to in subsection (1) if any report of an Environmental Contaminants Board of Review established as a result of publication required under paragraph 5(2)(*c*) or (*d*) has been received by the Minister and the Minister of National Health and Welfare pursuant to subsection 6(4).

Conditions préalables à l'établissement du décret

(2) Le gouverneur en conseil ne peut établir le décret visé au paragraphe (1) que si un rapport d'une Commission d'étude sur les contaminants de l'environnement établie par suite de la publication, exigée en vertu des alinéas 5(2)*c*) ou *d*), a été reçu par le Ministre et le ministre de la Santé nationale et du Bien-être social en application du paragraphe 6(4).

Emergency

(3) Where the Governor in Council is satisfied that a substance or class of substances is entering or will enter the environment in a quantity or concentration or under conditions that he is satisfied require immediate action to prevent a significant danger in Canada or any geographical area thereof to human health or the environment, he may, notwithstanding that no consultations have taken place pursuant to subsection 5(1) with respect to the substance or class of substances and that no copy of any proposed order and regulations or proposed regulations have been published in the *Canada Gazette* pursuant to subsection 5(2), make such order and regulations or regulations.

Urgence

(3) Lorsque le gouverneur en conseil est convaincu qu'une substance ou une catégorie de substances pénètre ou pénétrera dans l'environnement en une quantité ou concentration ou dans des conditions qui exigent que des mesures soient prises immédiatement pour empêcher que la santé ou l'environnement soit sensiblement mis en danger au Canada ou dans quelque région du Canada, il peut, même s'il n'a pas été procédé à des consultations en application du paragraphe 5(1) relativement à cette substance ou catégorie de substances et même si nulle copie de projet de règlements ou de projet de décret et de règlements n'a été publiée dans la *Gazette du Canada* en application du paragraphe 5(2), établir ce décret et ces règlements ou ce règlement.

Notice of objection

(4) Where the Governor in Council has made any order and regulations or regulations pursuant to subsection (3), any person having an interest therein may, within sixty days of publication thereof in the *Canada Gazette*, file a notice of objection with the Minister.

Avis d'opposition

(4) Lorsque le gouverneur en conseil a établi des règlements ou un décret et des règlements en application du paragraphe (3), tout intéressé peut, dans les soixante jours de leur publication dans la *Gazette du Canada*, déposer un avis d'opposition entre les mains du Ministre.

Establishment of Board

(5) Upon receipt of a notice of objection referred to in subsection (4) within the time specified in that subsection, the Minister and the Minister of National Health and Welfare shall establish an Environmental Contaminants Board of Review consisting of not less than three persons and shall refer any order and regulations or regulations in respect of which the notice of objection was filed to the Board.

Établissement d'une Commission

(5) Sur réception de l'avis d'opposition visé au paragraphe (4) dans le délai prévu par ce paragraphe, le Ministre et le ministre de la Santé nationale et du Bien-être social doivent établir une Commission d'étude sur les contaminants de l'environnement composée d'au moins trois personnes et saisir cette Commission des règlements ou du décret et des règlements auxquels se rapporte l'avis d'opposition.

Provisions made applicable

(6) Subsections 6(2) to (5) apply to an inquiry held by an Environmental Contaminants Board of Review established pursuant to subsection (5) of this section with such modifications as the circumstances require.

Dispositions applicables

(6) Les paragraphes 6(2) à (5) s'appliquent, avec les modifications qu'exigent les circonstances, à une enquête tenue par une Commission d'étude sur les contaminants de l'environnement établie en application du paragraphe (5) du présent article.

Deletion from schedule

(7) Where the Governor in Council is satisfied that the inclusion of a substance or class of substances in the schedule is no longer necessary, he may, by order, delete from the schedule such substance or class of substances.

Radiation de l'annexe

(7) Lorsque le gouverneur en conseil est convaincu qu'il n'est plus nécessaire qu'une substance ou une catégorie de substances figure sur la liste, il peut, par décret, retrancher de l'annexe cette substance ou catégorie de substances.

OFFENCES

INFRACTIONS

Release

8. (1) No person shall, in the course of a commercial, manufacturing or processing activity, wilfully release, or permit the release of, a substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule into the environment in any geographical area prescribed in respect of that substance or class of substances or, if no geographical area is so prescribed, in Canada,

(*a*) in a quantity or concentration that exceeds the maximum quantity or concentration prescribed in respect of that substance or class of substances for the purpose of this paragraph; or

(*b*) under conditions prescribed in respect of such substance or class of substances for the purpose of this paragraph.

Rejet

8. (1) Nul ne doit, délibérément, dans le cadre d'opérations commerciales, de fabrication ou de traitement, rejeter ou permettre que soit rejetée dans l'environnement une substance figurant à l'annexe ou quelque substance appartenant à une catégorie de substances qui y figure, dans une région prescrite relativement à cette substance ou catégorie de substances ou, si aucune région n'est ainsi prescrite, au Canada,

a) en une quantité ou concentration qui dépasse la quantité ou concentration maximale fixée par règlement relativement à cette substance ou catégorie de substances aux fins du présent alinéa; ou

b) dans des conditions déterminées par règlement relativement à cette substance ou catégorie de substances aux fins du présent alinéa.

Import, manufacture, etc.

(2) Subject to subsection (3), no person shall, for a commercial, manufacturing, or processing use prescribed for the purpose of this subsection, import, manufacture, process, offer for sale or knowingly use a substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule in any geographical area prescribed in respect of such substance or class of substances or, if no geographical area is so prescribed, in Canada.

Importation, fabrication, etc.

(2) Sous réserve du paragraphe (3), nul ne doit importer, fabriquer, traiter, mettre en vente ou utiliser sciemment une substance figurant à l'annexe, ou quelque substance appartenant à une catégorie qui y figure, destinée aux opérations commerciales, de fabrication ou de traitement, déterminées par règlement pour l'application du présent paragraphe, dans les régions déterminées par règlement pour chaque substance ou catégorie de substances ou, à défaut, au Canada.

Exception

(3) Subsection (2) does not apply to any commercial, manufacturing or processing use prescribed for the purpose of that subsection involving a material that includes a substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule if such substance is adventitiously present in the material and does not exceed a quantity or concentration consistent with good manufacturing practice.

Exception

(3) Le paragraphe (2) ne s'applique pas aux opérations commerciales, de fabrication ou de traitement déterminées par règlement qui portent sur une matière qui contient fortuitement une substance figurant à l'annexe ou quelque substance appartenant à une catégorie qui y figure, pourvu que la quantité contenue ou le degré de concentration soient conformes aux usages normaux de l'industrie.

Products

(4) No person shall import, manufacture or knowingly offer for sale a product that contains a substance specified in the schedule or any substance that is a member of a class of

Produits

(4) Nul ne doit importer, fabriquer ni sciemment mettre en vente un produit qui contient une substance figurant sur l'annexe ou quelque substance appartenant à une catégorie de

substances specified in the schedule in a quantity or concentration that exceeds the maximum quantity or concentration prescribed in respect of that substance or class of substances in relation to such product for the purpose of this subsection.

substances qui y figure, en une quantité ou concentration qui dépasse la quantité ou concentration maximale fixée par règlement relativement à cette substance ou catégorie de substances, pour ce produit, aux fins du présent paragraphe.

Offences

(5) Every person who contravenes this section is guilty of an offence and is liable

(*a*) on summary conviction, to a fine not exceeding one hundred thousand dollars; or

(*b*) on conviction upon indictment, to imprisonment for two years.

(5) Quiconque contrevient au présent article est coupable d'une infraction et passible,

a) sur déclaration sommaire de culpabilité, d'une amende maximale de cent mille dollars; ou

b) sur déclaration de culpabilité à la suite d'une mise en accusation, d'un emprisonnement de deux ans.

Infractions

Time limit

(6) No proceedings in respect of an offence punishable on summary conviction under this section may be instituted after one year from the time when the subject-matter of the proceedings arose.

(6) Il ne peut être engagé de procédure relativement à une infraction punissable sur déclaration sommaire de culpabilité en vertu du présent article plus d'un an après la date à laquelle s'est produit le fait pouvant y donner lieu.

Prescription

Continuing offences

(7) Where an offence under subsection (1) is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

(7) L'infraction visée au paragraphe (1) est censée constituer une infraction distincte chaque jour où elle est commise ou se perpétue.

Infractions prolongées

INSPECTORS AND ANALYSTS

INSPECTEURS ET ANALYSTES

Inspectors and analysts

9. (1) The Minister may designate as an inspector or analyst for the purposes of this Act any person who, in his opinion, is qualified to be so designated.

9. (1) Le Ministre peut désigner pour occuper la fonction d'inspecteur ou d'analyste, aux fins de la présente loi, toute personne qu'il estime compétente pour occuper cette fonction.

Inspecteurs et analystes

Inspector to show certificate of designation

(2) An inspector shall be furnished with a certificate of his designation as an inspector and on entering any place pursuant to subsection 10(1) shall, if so required, produce the certificate to the person in charge thereof.

(2) Un inspecteur doit être pourvu d'un certificat de nomination à cette fonction, et lorsqu'il entre dans un lieu en application du paragraphe 10(1), il doit, s'il en est requis, produire le certificat à la personne qui a la charge de ce lieu.

L'inspecteur doit produire le certificat de nomination

INSPECTION AND SEARCH

INSPECTION ET PERQUISITION

Inspection

10. An inspector may at any reasonable time enter any place, other than a private dwelling place or any part of such place that is designed to be used and is being used as a permanent or temporary private dwelling place, in which he believes on reasonable grounds there is any substance or class of substances that has been added to the schedule pursuant to section 7 and may, for any purpose relating to the enforcement of this Act,

10. (1) L'inspecteur peut, à tout moment raisonnable, entrer dans un lieu, à l'exception d'une résidence particulière ou d'une partie d'un lieu qui est conçue pour être utilisée et est utilisée à titre de résidence particulière permanente ou temporaire lorsqu'il a des motifs raisonnables de croire qu'il s'y trouve un produit ou une substance ou une catégorie de substances ajoutée à l'annexe en vertu de l'article 7 au moyen ou au sujet duquel ou de laquelle il a

Perquisition

(*a*) examine any substance or product found therein;

(*b*) open and examine any receptacle or package found therein that he has reason to believe contains any substance or any substance of a class of substances specified in the schedule or any product containing any such substance; and

(*c*) examine any books, reports, records, shipping bills and bills of lading or other documents or papers that on reasonable grounds he believes contain any information relevant to the enforcement of this Act and make copies thereof or extracts therefrom. 1974-75-76, c. 72, s. 10; 1985, c. 26, s. 40.

été contrevenu à une disposition de la présente loi, et il peut, à quelque égard, pour l'application de la présente loi,

a) examiner toute substance ou tout produit qui s'y trouve;

b) ouvrir et examiner tout récipient ou paquet qui s'y trouve et dans lequel il a des raisons de croire qu'il y a une substance figurant à l'annexe ou une substance appartenant à une catégorie de substances qui y figure ou un produit contenant une telle substance; et

c) examiner les livres, rapport, registres, connaissement et feuilles d'expédition ou autres documents ou pièces qu'il croit, en se fondant sur des motifs raisonnables, contenir des renseignements pertinents pour l'application de la présente loi, et en prendre des copies ou des extraits. 1974-75-76, c. 72, art. 10; 1985, c. 26, art. 40.

Search

10.1 (1) An inspector with a warrant issued under subsection (2) may at any reasonable time enter and search any place in which he believes on reasonable grounds there is any substance or product by means of or in relation to which any provision of this Act has been contravened.

Perquisition

10.1 (1) L'inspecteur muni du mandat visé au paragraphe (2) peut, à toute heure raisonnable, pénétrer dans un lieu lorsqu'il a des motifs raisonnables de croire qu'il s'y trouve une substance ou un produit qui a servi où a donné lieu à la perpétration d'une infraction à la présente loi, et peut y perquisitionner.

Authority to issue warrant

(2) Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place referred to in subsection (1)

(*a*) any substance or product by means of or in relation to which any provision of this Act has been contravened, or

(*b*) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of any contravention under this Act,

he may issue a warrant under his hand authorizing the inspector named therein to enter and search that place subject to such conditions as may be specified.

Pouvoir de délivrer un mandat

(2) S'il est convaincu d'après une dénonciation sous serment qu'il y a des motifs raisonnables de croire à la présence dans un lieu visé au paragraphe (1)

a) soit d'une substance ou d'un produit qui a servi ou donné lieu à la perpétration d'une infraction à la présente loi,

b) soit d'un objet dont il y a des motifs raisonnables de croire qu'il servira à prouver une infraction à la présente loi,

le juge de paix peut, sur demande *ex parte*, délivrer sous son seing un mandat autorisant l'inspecteur qui y est nommé à pénétrer dans ce lieu et à y perquisitionner, sous réserve des auditions éventuellement fixées dans le mandat.

Use of force

(3) In executing a warrant issued under subsection (2), the inspector named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Usage de la force

(3) L'inspecteur nommé dans le mandat prévu au paragraphe (2) ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix.

Where warrant not necessary

(4) An inspector may exercise the powers of entry and search referred to in subsection (1) without a warrant issued under subsection (2)

Perquisition sans mandat

(4) L'inspecteur peut exercer sans mandat les pouvoirs d'entrée et de perquisition visés au paragraphe (1) lorsque l'urgence de la situation

if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

Exigent circumstances

(5) For the purposes of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (2) would result in danger to human life or safety or the loss or destruction of evidence. 1985, c. 26, s. 40.

Assistance to inspectors

10.2 The owner or the person in charge of a place entered by an inspector pursuant to section 10 or 10.1 and every person found therein shall give the inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act and shall furnish him with such information with respect to the administration of this Act and the regulations as he may reasonably require. 1985, c. 26, s. 40.

Obstruction of inspectors

10.3 No person shall obstruct or hinder an inspector in the carrying out of his duties and functions under this Act. 1985, c. 26, s. 40.

SEIZURE AND DETENTION

Seizure

11. (1) Whenever an inspector believes on reasonable grounds that any provision of this Act has been contravened, he may seize and detain any substance or product by means of or in relation to which he reasonably believes the contravention occurred.

Seizure limitation

(2) Except to the extent that the substance or product, or a sample thereof, is required as evidence or for purposes of analysis, an inspector shall not seize any substance or product pursuant to subsection (1) unless in his opinion such seizure is necessary in the public interest.

Notice of contravention

(3) Where an inspector has seized and detained any substance or product pursuant to subsection (1), he shall, as soon as practicable, advise the person in whose possession the substance or product was at the time of seizure of the provision of this Act that he believes has been contravened.

Detention and release

(4) Any substance or product seized pursuant to subsection (1) shall not be detained

(*a*) after an inspector or the Minister, upon application made to him by the owner of the substance or product or by the person in whose possession the substance or product was at the time of seizure, is satisfied that it

rend pratiquement contre-indiquée l'obtention du mandat, sous réserve que les conditions de délivrance de celui-ci soient réunies.

Situation d'urgence

(5) Pour l'application du paragraphe (4), il y a notamment urgence dans les cas où le délai d'obtention du mandat risquerait de mettre en danger des personnes ou d'entraîner la perte ou la destruction d'éléments de preuve. 1985, c. 26, art. 40.

Aide à donner aux inspecteurs

10.2 Le propriétaire ou la personne ayant la charge d'un lieu où un inspecteur entre en application des articles 10 ou 10.1 et toute personne qui s'y trouve doivent fournir toute l'aide raisonnable en leur pouvoir à l'inspecteur pour lui permettre d'exercer ses fonctions en vertu de la présente loi et lui fournir, en ce qui concerne l'application de la présente loi et des règlements, les renseignements qu'il peut raisonnablement exiger.

Obstruction faite aux inspecteurs

10.3 Nul ne doit gêner ou empêcher un inspecteur dans l'exercice des fonctions que lui confère la présente loi. 1985, c. 26, art. 40.

SAISIE ET RÉTENTION

Saisie

11. (1) Chaque fois qu'un inspecteur croit, en se fondant sur des motifs raisonnables, qu'il a été contrevenu à une disposition de la présente loi, il peut saisir et retenir tout produit ou toute substance au moyen ou au sujet duquel ou de laquelle la contravention a été commise.

Restriction à la saisie

(2) Sauf dans la mesure où la substance ou le produit, ou un échantillon de ceux-ci, est nécessaire à titre de preuve ou aux fins d'analyse, un inspecteur ne doit saisir une substance ou un produit en application du paragraphe (1) que s'il estime cette saisie nécessaire dans l'intérêt public.

Avis de violation

(3) Lorsqu'un inspecteur a saisi et retenu une substance ou un produit en application du paragraphe (1), il doit, dès que cela est matériellement possible, faire connaître, à la personne qui en avait la possession au moment de la saisie, la disposition de la présente loi qu'il croit avoir été enfreinte.

Rétention et remise

(4) Une substance ou un produit saisis en application du paragraphe (1) ne doivent plus être retenus

a) dès qu'un inspecteur ou le Ministre, à la suite d'une demande que lui présente le propriétaire de la substance ou du produit ou la personne qui en avait la possession au

is not necessary in the public interest to continue to detain such substance or product, except to the extent that the substance or product, or a sample thereof, is required as evidence or for purposes of analysis; or

(*b*) after the expiration of sixty days from the day of seizure, unless before that time

(i) the substance or product has been forfeited pursuant to section 13,

(ii) proceedings have been instituted in respect of the contravention in relation to which the substance or product was seized, in which event the substance or product may be detained until the proceedings are finally concluded, or

(iii) notice of an application for an order extending the time during which the substance or product may be detained has been served in accordance with section 12.

moment de la saisie, est convaincu qu'il n'est pas nécessaire, dans l'intérêt public, d'en poursuivre la rétention, sauf dans la mesure où cette substance ou ce produit, ou un échantillon de ceux-ci, est nécessaire à titre de preuve ou à des fins d'analyse; ou

b) dès l'expiration d'un délai de soixante jours à partir de la date de la saisie, sauf si, avant cela,

(i) la substance ou le produit ont été confisqués en application de l'article 13,

(ii) des procédures ont été intentées relativement à la contravention ayant donné lieu à la saisie de la substance ou du produit, auquel cas la substance ou le produit, peuvent être retenus jusqu'à la fin des procédures, ou

(iii) un avis de demande d'ordonnance prolongeant le délai de rétention de la substance ou du produit a été signifié conformément à l'article 12.

Storing of seized substance or product

(5) A substance or product seized by an inspector pursuant to subsection (1) shall be kept or stored in the building or place where it was seized except where, in the opinion of the inspector, it is not in the public interest to do so, because such substance or product or a sample thereof is required as evidence or because the person in whose possession the substance or product was at the time of seizure or the person entitled to possession of the place requests the inspector that it be removed to some other place, in which case such substance or product may be removed to and stored in any other place at the direction of or with the concurrence of an inspector and at the expense of the person who requested that it be so removed.

Emmagasinage de la substance ou du produit saisis

(5) Une substance ou un produit saisis par un inspecteur en application du paragraphe (1) doivent être gardés ou emmagasinés dans le bâtiment ou le lieu où ils ont été saisis, sauf lorsque, de l'avis de l'inspecteur, cela n'est pas d'intérêt public, parce que cette substance ou ce produit ou un échantillon de ceux-ci sont nécessaires à titre de preuve ou parce que la personne qui avait la possession de la substance ou du produit au moment de la saisie ou la personne ayant droit à la possession du lieu en question demande à l'inspecteur de les placer ailleurs; dans ce cas, cette substance ou ce produit peuvent être déplacés et emmagasinés en tout autre lieu sur l'ordre ou avec l'accord d'un inspecteur, aux frais de la personne qui en a demandé le déplacement.

Interference with seized substance or product

(6) Unless authorized by an inspector, no person shall remove, alter or interfere in any way with any substance or product seized and detained by an inspector pursuant to subsection (1) but an inspector shall, at the request of the person from whom the substance or product was seized, allow that person or any person authorized by that person to examine the substance or product so seized and, where practicable, furnish a sample thereof to such person.

Manipulation de la substance ou du produit saisis

(6) À moins d'y être autorisé par un inspecteur, nul ne doit enlever, modifier ni manipuler de quelque façon une substance ou un produit saisis et retenus par un inspecteur en application du paragraphe (1); mais un inspecteur doit, à la demande de la personne entre les mains de laquelle la substance ou le produit ont été saisis, permettre à cette personne ou à toute personne autorisée par elle d'examiner cette substance ou ce produit et, lorsque cela est matériellement possible, lui en fournir un échantillon.

Application to extend period of detention

12. (1) Where proceedings have not been instituted in respect of the contravention in

Demande de prolongation du délai de rétention

12. (1) Lorsqu'il n'a pas été intenté de procédure relativement à la contravention ayant

relation to which any substance or product was seized pursuant to subsection 11(1), the Minister may, before the expiration of sixty days from the day of seizure and upon the serving of prior notice in accordance with subsection (2) on the owner of the substance or product or on the person in whose possession the substance or product was at the time of seizure, apply to a magistrate within whose territorial jurisdiction the seizure was made for an order extending the time during which the substance or product may be detained.

donné lieu à la saisie d'une substance ou d'un produit en application du paragraphe 11(1), le Ministre peut, dans les soixante jours qui suivent la date de la saisie et sur signification d'un préavis, conformément au paragraphe (2), au propriétaire de la substance ou du produit ou à la personne qui en avait la possession au moment de la saisie, demander à un magistrat dans le ressort duquel la saisie a été effectuée une ordonnance prolongeant le délai de rétention de cette substance ou de ce produit.

Notice

(2) The notice referred to in subsection (1) shall be served by personal service at least five clear days prior to the day on which the application is to be made to the magistrate or by registered mail at least seven clear days prior to that day and shall specify

(*a*) the magistrate to whom the application is to be made;

(*b*) the place where and the time when the application is to be heard, which time shall be not later than ten days after service of the notice;

(*c*) the substance or product in respect of which the application is to be made; and

(*d*) the evidence upon which the Minister intends to rely to show why the time during which the substance or product may be detained should be extended.

Préavis

(2) Le préavis mentionné au paragraphe (1) doit être signifié à la personne, cinq jours francs au moins avant la date où la demande doit être présentée au magistrat, ou par courrier recommandé, sept jours francs au moins avant cette date, et doit spécifier

a) à quel magistrat la demande sera présentée;

b) où et quand la demande sera entendue, la date d'audition devant se situer dans les dix jours suivant la signification du préavis;

c) à quelle substance ou quel produit se rapporte la demande; et

d) quelle preuve le Ministre entend invoquer pour justifier la prolongation du délai de rétention de la substance ou du produit.

Order of extension granted

(3) Where, upon the hearing of an application made under subsection (1), the magistrate is satisfied that the substance or product seized should continue to be detained, he shall order that the substance or product be detained for such additional period of time and upon such conditions relating to the detention for that additional period of time as he deems proper and that upon the expiration of such period of time the substance or product be restored to the person from whom it was seized or to any other person entitled to possession thereof unless before the expiration of such period of time subparagraph 11(4)(*b*)(i) or (ii) applies.

Ordonnance de prolongation

(3) Lorsque, à la suite de l'audition d'une demande présentée en vertu du paragraphe (1), le magistrat est convaincu qu'il y a lieu de ne pas mettre fin à la rétention de la substance ou du produit saisis, il doit ordonner que la substance ou le produit soient retenus pendant tel délai supplémentaire et à telles conditions relatives à la rétention qu'il juge appropriés, et qu'à l'expiration de ce délai la substance ou le produit soient restitués à la personne entre les mains de laquelle ils ont été saisis ou à toute autre personne ayant le droit d'en avoir la possession, à moins que, avant l'expiration de ce délai, les sous-alinéas 11(4)*b*)(i) ou (ii) ne s'appliquent.

Order of extension refused

(4) Where, upon the hearing of an application made under subsection (1), the magistrate is not satisfied that the substance or product seized should continue to be detained, he shall order that the substance or product be restored to the person from whom it was seized or to any other person entitled to possession thereof upon

Refus de rendre une ordonnance de prolongation

(4) Lorsque, à la suite de l'audition d'une demande présentée en vertu du paragraphe (1), le magistrat n'est pas convaincu qu'il y ait lieu de ne pas mettre fin à la rétention de la substance ou du produit saisis, il doit ordonner que la substance ou le produit soient restitués à la personne entre les mains de laquelle ils ont été

the expiration of sixty days from the day of seizure unless,

(*a*) before the expiration of such period of time, subparagraph 11(4)(*b*)(i) or (ii) applies; or

(*b*) at the time of the hearing, such period of time has then expired in which event he shall order the restoration thereof forthwith to the person from whom it was seized or to any other person entitled to possession thereof.

saisis ou à toute autre personne ayant le droit d'en avoir la possession, à l'expiration d'un délai de soixante jours à partir de la date de la saisie, à moins que

a) les sous-alinéas 11(4)*b*)(i) ou (ii) ne s'appliquent avant l'expiration de ce délai; ou que

b) ce délai ne soit arrivé à son terme au moment de l'audition, auquel cas il doit en ordonner la restitution immédiate à la personne entre les mains de laquelle ils ont été saisis ou à toute autre personne ayant le droit d'en avoir la possession.

"Magistrate" defined

(5) In this section, "magistrate" means a magistrate as defined in the *Criminal Code*.

(5) Au présent article, «magistrat» désigne le magistrat défini par le *Code criminel*.

Définition de «magistrat»

FORFEITURE

CONFISCATION

Forfeiture on consent

13. (1) Where an inspector has seized any substance or product pursuant to subsection 11(1) and the owner thereof or the person in lawful possession thereof at the time of seizure consents in writing at the request of the inspector to the forfeiture of the substance or product, such substance or product is thereupon forfeited to Her Majesty.

13. (1) Lorsqu'un inspecteur a saisi une substance ou un produit en application du paragraphe 11(1) et que, à la demande de l'inspecteur, la personne qui en est propriétaire ou la personne qui en avait légalement la possession au moment de la saisie consent par écrit à sa confiscation, cette substance ou ce produit est immédiatement confisqué au profit de Sa Majesté.

Confiscation par consentement

Forfeiture by order of court

(2) Where a person is convicted of an offence under this Act and any substance or product seized pursuant to subsection 11(1) by means of or in relation to which the offence was committed is then being detained, such substance or product

(*a*) is, upon such conviction, in addition to any punishment imposed for the offence, forfeited to Her Majesty if such forfeiture is directed by the court; or

(*b*) shall, upon the expiration of the time for taking an appeal from the conviction or upon the final conclusion of the proceedings, as the case may be, be restored to the person from whom it was seized or to any other person entitled to possession thereof upon such conditions, if any, as may be imposed by order of the court and as, in the opinion of the court, are necessary to avoid the commission of any further offence under this Act.

(2) Lorsqu'une personne est déclarée coupable d'une infraction prévue par la présente loi et qu'une substance ou un produit saisis en application du paragraphe 11(1), au moyen ou au sujet desquels l'infraction a été commise, sont alors retenus, la substance ou le produit

a) sont, après cette déclaration de culpabilité, et en sus de toute peine imposée pour l'infraction, confisqués au profit de Sa Majesté si le tribunal l'ordonne; ou

b) doivent, à l'expiration du délai prévu pour porter la condamnation en appel, ou à la fin des procédures, selon le cas, être restitués à la personne entre les mains de laquelle ils ont été saisis ou à toute autre personne ayant le droit d'en avoir la possession, aux conditions, s'il en est, que le tribunal peut fixer par ordonnance et qui, de l'avis de ce dernier, sont nécessaires pour éviter que soit de nouveau commise une infraction prévue par la présente loi.

Confiscation par ordonnance du tribunal

Articles deemed not to have been seized

(3) For the purposes of subsection (2), any substance or product released from detention pursuant to paragraph 11(4)(*a*) or (*b*) shall be deemed not to have been seized pursuant to subsection 11(1).

(3) Aux fins du paragraphe (2), une substance ou un produit restitués en application des alinéas 11(4)*a*) ou *b*) sont réputés ne pas avoir été saisis en application du paragraphe 11(1).

Articles réputés ne pas avoir été saisis

GENERAL

Officers, etc. of corporations

14. Where a corporation commits an offence under section 8 or 17, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Proof of offence

15. In a prosecution of a person for an offence under section 8, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

Certificate of analyst

16. (1) Subject to this section, a certificate of an analyst stating that he has analyzed or examined a substance or product and stating the result of his analysis or examination is admissible in evidence in any prosecution for an offence under section 8 and in the absence of evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Attendance of analyst

(2) The party against whom a certificate of an analyst is produced pursuant to subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) No certificate shall be received in evidence pursuant to subsection (1) unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

OTHER OFFENCES

Other offences

17. Every person who contravenes any provision of this Act, other than section 8, or of the regulations is guilty of an offence punishable on summary conviction.

DISPOSITIONS GÉNÉRALES

Dirigeants, etc., de corporations

14. Lorsqu'une corporation commet une infraction prévue par les articles 8 ou 17, tout dirigeant, administrateur ou mandataire de la corporation qui a ordonné ou autorisé la commission de l'infraction ou y a consenti, acquiescé ou participé est complice et coupable de l'infraction et passible, sur déclaration de culpabilité, de la peine prévue pour l'infraction, que la corporation ait ou non été poursuivie ou condamnée.

Preuve de l'infraction

15. Dans une poursuite intentée contre une personne pour une infraction prévue à l'article 8, il suffit, pour prouver l'infraction, d'établir qu'elle a été commise par un employé ou un mandataire de l'accusé, que cet employé ou mandataire soit ou non identifié ou qu'il ait été poursuivi ou non pour cette infraction, à moins que cet accusé n'établisse d'une part que l'infraction a été commise sans qu'il le sache ou y consente et d'autre part qu'il s'est dûment appliqué à la prévenir.

Certificat d'analyste

16. (1) Sous réserve des dispositions du présent article, un certificat d'un analyste déclarant qu'il a analysé ou examiné une substance ou un produit et indiquant le résultat de son analyse ou examen est admissible en preuve pour toute poursuite relative à une infraction prévue par l'article 8 et, sauf preuve contraire, fait foi des déclarations contenues dans le certificat sans qu'il soit nécessaire de prouver la signature ni la qualité officielle de la personne par laquelle il paraît avoir été signé.

Présence de l'analyste

(2) La partie contre laquelle un certificat d'un analyste est produit en application du paragraphe (1) peut, avec l'autorisation du tribunal, exiger la présence de l'analyste pour contre-interrogatoire.

Avis

(3) Aucun certificat ne doit être admis en preuve en application du paragraphe (1) à moins que la partie qui entend le produire n'ait donné à la partie à laquelle elle entend l'opposer un avis suffisant de son intention de le faire, ainsi qu'une copie du certificat.

AUTRES INFRACTIONS

Autres infractions

17. Quiconque contrevient à quelque disposition de la présente loi, sauf l'article 8, ou à quelque disposition des règlements est coupable d'une infraction punissable sur déclaration sommaire de culpabilité.

REGULATIONS

Regulations

18. The Governor in Council may make regulations

(*a*) prescribing for the purpose of paragraph 8(1)(*a*) the maximum quantity or concentration of a substance specified in the schedule or of any substance that is a member of a class of substances specified in the schedule that may be released into the environment in the course of any commercial, manufacturing or processing activity;

(*b*) prescribing for the purpose of paragraph 8(1)(*b*) the conditions under which a substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule may not be released into the environment in the course of any commercial, manufacturing or processing activity;

(*c*) prescribing for the purpose of subsection 8(2) any commercial, manufacturing or processing uses in respect of which a substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule may not be imported, manufactured, processed, offered for sale or used;

(*d*) prescribing for the purpose of subsection 8(1) or (2) any geographical area in respect of a substance specified in the schedule or a class of substances specified in the schedule;

(*e*) prescribing for the purpose of subsection 8(4) in relation to any product the maximum quantity or concentration of any substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule;

(*f*) respecting methods of sampling and analysis for determining the presence, quantity or concentration of any substance for the purposes of this Act;

(*g*) respecting the form and manner in which any information required pursuant to a notice under paragraph 4(1)(*b*) is to be submitted;

(*h*) respecting any tests required under paragraph 4(1)(*c*);

(*i*) requiring any person engaged in the importation, manufacturing or processing of any substance specified in the schedule or any substance that is a member of a class of substances specified in the schedule to

RÈGLEMENTS

Règlements

18. Le gouverneur en conseil peut établir des règlements

a) fixant, aux fins de l'alinéa 8(1)*a*), la quantité ou concentration maximale d'une substance figurant sur la liste, ou de toute substance appartenant à une catégorie de substances figurant sur la liste, qui peut être rejetée dans l'environnement dans le cadre d'opérations commerciales, de fabrication ou de traitement;

b) déterminant, aux fins de l'alinéa 8(1)*b*), les conditions dans lesquelles une substance figurant sur la liste ou toute substance appartenant à une catégorie de substances qui y figure ne peut être rejetée dans l'environnement dans le cadre d'opérations commerciales, de fabrication ou de traitement;

c) déterminant, aux fins du paragraphe 8(2), les usages entrant dans le cadre d'opérations commerciales, de fabrication ou de traitement pour lesquels une substance figurant sur la liste ou toute substance appartenant à une catégorie de substances qui y figure ne peut être importée, fabriquée, traitée, mise en vente ou utilisée;

d) prescrivant, aux fins des paragraphes 8(1) ou (2), une région pour une substance figurant à l'annexe ou une catégorie de substances qui y figure;

e) fixant, aux fins du paragraphe 8(4), à l'égard de tout produit, la quantité ou concentration maximale de toute substance figurant à l'annexe ou de toute substance appartenant à une catégorie de substances qui y figure;

f) concernant les méthodes d'échantillonnage et d'analyse ayant pour objet de déterminer la présence, la quantité ou la concentration de toute substance aux fins de la présente loi;

g) concernant la forme et le mode de présentation de tout renseignement exigé dans un avis donné en vertu de l'alinéa 4(1)*b*);

h) concernant les expériences exigées en vertu de l'alinéa 4(1)*c*);

i) exigeant que toute personne qui se livre à l'importation, à la fabrication ou à la transformation d'une substance figurant à l'annexe ou d'une substance appartenant à une catégorie de substances qui y figure, tienne

maintain books and records and specifying for such purpose the form of such books and records;

(*j*) respecting the procedure to be followed by any committee appointed under subsection 3(4); and

(*k*) generally for carrying into effect the purposes and provisions of this Act.

des livres et des registres et spécifiant à cet effet la forme de ces livres et registres;

j) concernant la procédure à suivre par tout comité constitué en vertu du paragraphe 3(4); et,

k) en général, pour la réalisation des objets et l'application des dispositions de la présente loi.

COMMENCEMENT

Coming into force

19. This Act shall come into force on a day to be fixed by proclamation.

[NOTE: Proclaimed in force 1 April, 1976. *See* SI/76-36.]

ENTRÉE EN VIGUEUR

Entrée en vigueur

19. La présente loi entrera en vigueur à une date qui sera fixée par proclamation.

[NOTA: Proclamée en vigueur le 1er avril 1976. *Voir* TR/76-36.]

SCHEDULE

1. Chlorobiphenyls that have the molecular formula $C_{12}H_{10-n}Cl_n$ in which "n" is greater than 2.

2. Dodecachloropentacyclo (5.3.0.$0^{2,6}$.$0^{3,9}$.$0^{4,8}$) decane.

2. Polybrominated Biphenyls that have the molecular formula $C_{12}H_{10-n}Br_n$ in which "n" is greater than 2.

2. Chlorofluorocarbon: totally halogenated chlorofluorocarbons that have the molecular formula $C_nCl_xF_{(2n+2-x)}$.

3. Polychlorinated terphenyls that have a molecular formula $C_{18}H_{14-n}Cl_n$ in which "n" is greater than 2.

1974-75-76, c. 72, Sch.; SOR/77-733; SOR/78-892; SOR/79-350, 368; SOR/80-253.

ANNEXE

1. Les biphényles chlorés dont la formule moléculaire est $C_{12}H_{10-n}Cl_n$ où «n» est plus grand que 2.

2. Le dodécachloropentacyclo (5.3.0.$0^{2,6}$.$0^{3,9}$.$0^{4,8}$) décane.

2. Les biphényles polybromés dont la formule moléculaire est $C_{12}H_{10-n}Br_n$ où «n» est plus grand que 2.

2. Chlorofluoroalcanes complètement halogénés dont la formule moléculaire est $C_nCl_xF_{(2n+2+x)}$.

3. Les triphényles polychlorés dont la formule moléculaire est $C_{18}H_{14-n}Cl_n$ où «n» est plus grand que 2.

1974-75-76, c. 72, ann.; DORS/77-733; DORS/78-892; DORS/79-350, 368; DORS/80-253.

Canada. Environmental Contaminants Act Amendment Consultants Committee.
Final report