

ASSEMBLY OF FIRST NATIONS

CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 (CEPA, 1999) TOOLKIT

What is the *Canadian Environmental Protection Act, 1999*?

<i>What is the purpose of CEPA, 1999?</i>	The primary purpose of the <i>Canadian Environmental Protection Act, 1999</i> as stated in the legislation is “to contribute to sustainable development through pollution prevention”. The full title of the Act, “An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development”, also helps to explain the purpose of the legislation.
<i>What does the legislation deal with?</i>	This Act covers a large variety of topics, including: <ul style="list-style-type: none"> • pollution prevention; • control of toxic substances; • genetically modified living organisms; • pollution and waste; • environmental emergencies; • government operations and environmental management on Federal and Aboriginal lands. However, the Act is limited in that most matters are dealt with by permits or the establishment of guidelines or codes of practice.
<i>How does the Act help prevent pollution?</i>	The Act requires that no new substance such as chemicals or genetically modified living organisms may be introduced for sale in Canada before the government has determined if the product is toxic. If it is toxic, the government can impose conditions on the handling or use of the substance or even prohibit its importation or manufacture in Canada.
<i>How does the Act help control pollution and waste?</i>	The Act has many provisions dealing with controlling pollution and managing waste, including: <ul style="list-style-type: none"> • protection of the marine environment from land-based sources of pollution; • disposal at sea; • fuels; • vehicle, engine and equipment emissions; • international air and water pollution; and • the control of movement of hazardous waste
<i>What are the enforcement provisions of CEPA, 1999?</i>	The government has wide powers of enforcement under CEPA, 1999. They may inspect and search buildings, detain ships, and impose fines and imprisonment. The courts may impose fines of up to one million dollars and imprisonment for a term of up to three years.
<i>How can I find out more about CEPA, 1999?</i>	You can contact Environment Canada at: CEPA Registry Office 351 St. Joseph Boulevard, Gatineau, Quebec K1A 0H3 or by E-mail at: CEPARegistry@ec.gc.ca or you can find out more on-line at: http://www.ec.gc.ca/CEPARegistry/default.cfm

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First Nations and the Canadian Environmental Protection Act, 1999

<i>Does CEPA, 1999 apply to First Nations?</i>	Yes, the provisions of CEPA, 1999 apply to First Nations. As well, there are some provisions that apply only to First Nations or Aboriginal people. These include sections dealing with traditional knowledge, sentencing criteria, consultation, and environmental management on Aboriginal lands. Note that some provisions apply to Aboriginal people and others to Aboriginal Governments as defined under the Act.
<i>What are the provisions on traditional knowledge?</i>	Under CEPA, 1999 the government has recognized the integral role of traditional aboriginal knowledge in the process of making decisions relating to the protection of the environment and human health. In the administration of the Act the government shall “apply knowledge, including traditional aboriginal knowledge, science and technology to identify and resolve environmental problems”. Review officers and members of boards of review must be knowledgeable about the Canadian environment, environmental and human health or traditional aboriginal ecological knowledge.
<i>How does the Act apply to Aboriginal lands?</i>	The federal government has the authority to manage “Aboriginal lands” under the Act. “Aboriginal lands” includes any lands subject to the <i>Indian Act</i> as well as lands subject to land claims or self-government agreements where title in the land is held by the federal Crown. More information on the application of the Act to Aboriginal lands is included below.
<i>What are the Aboriginal sentencing criteria?</i>	In imposing a sentence under the Act, the court shall take into account the circumstances of Aboriginal offenders.
<i>What provisions are made for consultation with First Nations under CEPA, 1999?</i>	There are a number of places in the legislation where the Act specifically requires the federal government to give “Aboriginal governments”, and occasionally Aboriginal people, the opportunity to comment on particular issues. This includes for example, consultation on the development of guidelines and codes of practice with respect to pollution prevention, human health, or controlling toxic substances or making regulations with respect to fuels and environmental emergencies, among other things. More information on First Nations participation in the implementation of the Act is supplied below.

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Environmental Protection on Aboriginal Lands

<p><i>What are "Aboriginal Lands"?</i></p>	<p>"Aboriginal lands" are defined under CEPA, 1999 as any lands subject to the <i>Indian Act</i> as well as lands and waters subject to land claims or self-government agreements where title in the land is held by the federal Crown, and air and all layers of the atmosphere above and the subsurface below these lands and waters.</p>
<p><i>Why are Aboriginal Lands covered by CEPA, 1999?</i></p>	<p>The Federal Government continues to assume primary jurisdiction over environmental matters on Aboriginal lands, as it has not recognized the inherent rights of First Nations to be self-governing in this matter. The federal government took this authority to address what has been called a "regulatory gap".</p>
<p><i>What is the "regulatory gap"?</i></p>	<p>The federal, provincial and territorial governments have authority to manage various elements of the environment including water quality, air pollution, land use planning, commercial activities, etc. The provincial and territorial governments manage provincial and territorial lands and federal government manages federal lands, including Aboriginal lands. The provincial and territorial governments, through their responsibility for local matters, have developed a host of environment related legislation and regulation to manage many environmental issues. As Aboriginal lands fall under the authority of the federal government, this provincial and territorial legislation and regulation does not apply on Aboriginal lands. The federal government has not adopted a similar body of legislation, however. For example, there is no federal legislation dealing with the control of emissions from industrial establishments that may be established on reserve. This lack of federal legislation with respect to environmental protection on Aboriginal lands is called the "regulatory gap".</p>
<p><i>What authority does the federal government have to address environmental matters on Aboriginal lands?</i></p>	<p>Under Part 9 of CEPA, 1999 Environment Canada is required to establish objectives, guidelines, and codes of practice for the purpose of carrying out the Minister's duties and functions related to the quality of the environment with respect to "Aboriginal lands". In addition, the Minister may recommend that regulations be established to address a host of environmental and human health issues including, for example, establishment of environmental management systems, environmental emergencies, information about works and activities on "Aboriginal lands", and the use, manufacture, release, or sale of substances on "Aboriginal lands". Currently, there are no objectives, guidelines or codes of practice that have been established under this Part and there are only three regulations under Part 9. These are regulations on halocarbons, mobile PCB treatment and destruction, and registration of storage tank systems for petroleum products and allied petroleum products.</p>

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First Nations Participation in CEPA, 1999

<p><i>How can First Nations participate in the implementation of CEPA, 1999?</i></p>	<p>There are a number of ways that First Nations can participate including:</p> <ul style="list-style-type: none"> • participation of “Aboriginal governments” on the National Advisory Council (NAC); • through consultation; and • administration, equivalency or environmental monitoring agreements.
<p><i>How are “Aboriginal governments” defined under the Act?</i></p>	<p>The Act defines “Aboriginal governments” as including only those that have self-government agreements with the Government of Canada that address environmental protection, (s.3(1)). Currently this includes only the James Bay Cree, the Yukon First Nations, Nisga’a, and the Inuit. To be clear, this does not include Band Councils. Bands that are party to the <i>First Nations Land Management Act</i>, however are considered “Aboriginal governments” for the purpose of this Act once they have signed environmental agreements. It may also include Métis governments at some point in time. The reason the definition is important for First Nations is that only “Aboriginal governments” are invited to participate on NAC and in some of the other decision making opportunities.</p>
<p><i>What are the consultation provisions?</i></p>	<p>The federal government is required to give “Aboriginal governments”, and occasionally Aboriginal people, the opportunity to comment on certain issues. Please see above for more information.</p>
<p><i>What are administration agreements?</i></p>	<p>Administration Agreements would allow an “Aboriginal government” or Aboriginal people to administer parts of the Act. Note that both “Aboriginal governments” as defined under the Act, and Band Councils may enter into agreements with the Minister to take over administration of the Act. No such administration agreements have been entered into with First Nations at this time.</p>
<p><i>What are equivalency agreements?</i></p>	<p>Equivalency agreements establish that certain parts of the Act would not apply in a particular territory, province or on Aboriginal lands administered by an “Aboriginal government”. Agreement would be reached with the federal government that laws passed by these other jurisdictions are equal to the provisions under the Act. To date there are no such agreements entered into with “Aboriginal governments”.</p>
<p><i>What are monitoring agreements?</i></p>	<p>Part 3 of the Act allows the Minister to enter into agreements with Aboriginal people to operate or maintain environmental monitoring systems. Currently, there are no such agreements with First Nations. Note that this is not restricted to “Aboriginal governments” and therefore could be an opportunity for Tribal Councils, Band Councils or even First Nation individuals.</p>

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First Nations participation on the National Advisory Council

<i>What is the National Advisory Council (NAC)?</i>	The National Advisory Council (NAC) is a consultative body that established under CEPA, 1999 to provide advice to the Ministers of Environment and Health on the implementation of the Act.
<i>What is the purpose of NAC?</i>	The purpose of NAC is to provide a means for carrying out national cooperative action and avoiding duplication among governments. NAC may advise the Ministers on: <ul style="list-style-type: none">• regulations dealing with the toxic substances;• cooperative, coordinated intergovernmental approaches to the management of toxic substances; and• other environmental matters that are of mutual interest to the Government of Canada and other governments and to which the Act relates.
<i>Who participates on the NAC?</i>	The National Advisory Council consists of representatives of the provinces and territories as well as the federal departments of health and the environment. It also includes one individual to represent all the Inuit as well as one representative of "Aboriginal governments" for each of the five Environment Canada regions. First Nations and Métis "Aboriginal governments" will have to decide who to appoint to represent them. Currently, there are only "Aboriginal governments" in BC, Yukon and Quebec. As such, only two of the five EC regions are represented.
<i>What happens if there is no "Aboriginal government" in a region?</i>	The Act provides that the Minister may pass regulations to determine how to select someone to represent Aboriginal people in regions where there are no "Aboriginal governments". Currently no regulation has been passed, therefore First Nations in Alberta, Saskatchewan, Manitoba, North West Territories, Ontario, and the Atlantic provinces have not been represented on NAC for the last five years.
<i>Are there other ways in which First Nations could provide advice to the Ministers?</i>	Yes. The Minister of Environment may pass regulations establishing other advisory committees to report to the Ministers of Environment and/or Health. However, no such regulations have been passed at this time.

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CEPA Review

<i>What is CEPA, 1999 review?</i>	Under the provisions of CEPA, 1999 the Act must be reviewed by a Parliamentary Committee every five years after the Act has come into force.
<i>When must the Act be reviewed?</i>	The Act came into force March 31, 2000. Therefore, the five year CEPA, 1999 review must commence March 31, 2005. The Committee has up to one year to complete the review from the time it was initiated, but may be granted an extension.
<i>What happens during the review?</i>	First the Minister of the Environment will table the Act for review in Parliament. At that time it will be assigned to a Parliamentary Committee for review. The Parliamentary Committee, composed of Members of Parliament from both the Government and Opposition Parties, will study the legislation. The Committee will invite the Minister or Ministers responsible for the administration of the Act to offer his or her views on the legislation. The Committee may also invite other interested departments, governments, organizations or individuals to offer their views on the Act.
<i>Will the Act be changed as a result of the review?</i>	During the review process the Parliamentary Committee can offer suggestions on improving the administration of the Act and can also recommend changes to the legislation. The government department responsible has up to 150 days to respond. If the Committee recommends changes to the legislation, the government can consider introducing a Bill in the House of Commons outlining the specific changes. This Bill will then be subject to the standard process for review of proposed legislation by the House of Commons and the Senate.
<i>What has the AFN done on the CEPA, 1999 review?</i>	The Assembly of First Nations (AFN) has provided to the Minister of the Environment preliminary comments on the legislation gathered through a series of meetings with First Nations in November 2004 and January 2005. A copy of these comments is available on the AFN website. The AFN will continue to follow the review as it moves through the Parliamentary Committee. The AFN will seek to make a presentation to the Committee on concerns First Nations may have about the legislation and make suggestions for improvements.
<i>How can First Nations participate in the review?</i>	First Nations can make written submissions to the Parliamentary Committee on the Act and can request an opportunity to meet with the Committee to present their views in person. If the Act is amended it is expected that the government will consult with First Nations on the amendments.

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Issues for consideration by First Nations during CEPA, 1999 review

<p><i>Are the provisions for First Nations participation in the operation of the Act sufficient?</i></p>	<ul style="list-style-type: none"> • Are the consultation provisions adequate and has the government done enough to ensure First Nations are appropriately consulted; • Are First Nations adequately involved in the NAC, and if not what can be done to ensure First Nations are included on advisory councils established under the Act; and • Are First Nations interested in pursuing administration, equivalency, and monitoring agreements and if so what would be needed to make these agreements a success?
<p><i>Are the research and traditional knowledge provisions of the Act adequate?</i></p>	<ul style="list-style-type: none"> • Is there adequate research being conducted addressing specific environmental issues that affect First Nations, how should First Nations be involved in the research, and what capacity is needed to allow First Nations to participate effectively; and • Should the use of traditional knowledge (TK) be included in particular parts of the Act and how can TK be protected to ensure it is used with respect?
<p><i>Does the Act do an acceptable job of protecting the environment and human health?</i></p>	<ul style="list-style-type: none"> • Are there environmental or human health issues of concern to First Nations that are not being addressed including for example: <ul style="list-style-type: none"> ○ management of waste, in particular hazardous waste, on reserve lands; ○ increased methyl mercury levels caused by the creation of hydro electric dams; ○ clean up of contaminated sites; ○ cumulative impacts of chemicals in the environment; ○ rates of cancer in First Nations people and animals, fish and birds?
<p><i>Is the environment adequately protected on "Aboriginal lands"?</i></p>	<ul style="list-style-type: none"> • Are the current regulations dealing with "Aboriginal lands" and the traditional territories adequate to address the concerns of First Nations; • How can reserve lands and the traditional territories be protected from toxic substances, air pollution, water pollution and ocean dumping; • What guidelines, codes of practice or regulations would you recommend be established to apply to "Aboriginal lands" and in the traditional territories?
<p><i>How can First Nations be effectively involved in CEPA, 1999 review?</i></p>	<ul style="list-style-type: none"> • What further information do First Nations require about the Act; • How can First Nations be better prepared for CEPA, 1999 review; and • How can First Nations be involved on an ongoing basis in CEPA, 1999 review and implementation?

