



The Impact of the First 25 Years of *CEPA* “Toxic Substances”
on Procurement and Management (1988-2013)

Me Jean Rhéaume, LL.D.

OUTLINE

- 1. The birth and growth of the *Canadian Environmental Protection Act (CEPA)***
- 2. The scope of *CEPA*, 1999 regulations on toxic substances and their impact on procurement and management**

1. The birth and growth of the
Canadian Environmental Protection Act (CEPA)

The “Birth” of *CEPA*: June 1988

- The original *CEPA*
 - 7 Parts, 3 Schedules; 139 sections
- It amalgamated (and repealed)
 - the *Clean Air Act*
 - the *Ocean Dumping Control Act*
 - the *Environmental Contaminants Act*
- Toxic substances: cradle to grave approach

Cradle to grave approach

- To look at –and regulate if necessary– every step of the lifecycle of toxic substances
 - Production (manufacture)
 - Export/import
 - Offer for sale/sell
 - Process
 - Use (and storage)
 - Disposal

The “Growth” of *CEPA*: June 1999

- *CEPA, 1999*, adopted by Parliament in June 1999
 - 12 Parts, 6 Schedules; 356 sections
- Toxic substances: cradle to grave approach + virtual elimination

What is a “toxic substance”?

CEPA, 1999, s.64:

- “a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that
 - (a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
 - (b) constitute or may constitute a danger to the environment on which life depends; or
 - (c) constitute or may constitute a danger in Canada to human life or health”

“toxic” is not a synonym of...

- “hazardous” : see section 2 of the *Hazardous Products Act*: “any product, material or substance specified by the regulations made pursuant to paragraph 15(1)(a) to be included in any of the classes listed in Schedule II”
- “dangerous”: see section 2 of the *Transportation of Dangerous Goods Act, 1992* : “a product, substance or organism included by its nature or by the regulations in any of the classes listed in the schedule”
- “deleterious”: see section 34 of the *Fisheries Act*

The Growth of *CEPA*...

- 1988: 9 substances declared toxic
- 1999: 26 substances declared toxic
- Dec.2013: at least 132 substances declared toxic
 - 132 paragraphs, but many of these describe groups or compounds
 - Par.65 on “Volatile organic compounds that participate in atmospheric photochemical reactions” does not give their exact number but excludes compounds listed in 44 sub-paragraphs

**2. The scope of *CEPA, 1999* regulations on toxic substances
and their impact on procurement and management**

More and more regulations made pursuant to *CEPA, 1999*...

- December 2013: 63 regulations; very few of them do not deal with toxic substances
- Most toxic substances are not yet regulated
- At least some aspects of the life-cycle of every toxic substance will eventually be regulated

Chlorobiphenyls (PCB)

- First substance listed as toxic substance
- *PCB Waste Export Regulations, 1996*
 - “No person shall export PCB waste
 - (a) to a country other than the United States; and
 - (b) for any purpose other than for disposal”
- *Federal Mobile PCB Treatment and Destruction Regulations*
 - “3. These Regulations apply in respect of mobile PCB destruction systems and mobile PCB treatment systems that are operated
 - (a) on federal land or on aboriginal land; or
 - (b) anywhere in Canada by or under contract with a federal institution”

Definition of “Federal Lands” for *CEPA* Purposes

CEPA, 1999, subsection 3(1):

“ "federal land" means

- (a) land, including any water, that belongs to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the right to dispose of, and the air and all layers of the atmosphere above and the subsurface below that land; and
- (b) the following land and areas, namely,
 - (i) the internal waters of Canada as determined under the *Oceans Act*, including the seabed and subsoil below and the airspace above those waters, and
 - (ii) the territorial sea of Canada as determined under the *Oceans Act*, including the seabed and subsoil below and the air and all layers of the atmosphere above that sea”

PCB Regulations

- “2(1)These Regulations apply to PCBs and to any products containing PCBs”
- Part 2 determines prohibited and permitted activities (ss.5-17)
- Part 3 specifies prohibitions and duties regarding storage (ss.18-28)
- Part 4 specifies requirements regarding labelling, reports and records (ss.29-45)

How activities related to a toxic substance can be prohibited/restricted

Section 6 of the *PCB Regulations* provides an excellent example:

“6. Except as provided in these Regulations, no person shall

- (a) manufacture, export or import PCBs or a product containing PCBs in a concentration of 2 mg/kg or more;
- (b) offer for sale or sell PCBs or a product containing PCBs in a concentration of 50 mg/kg or more; or
- (c) process or use PCBs or a product containing PCBs”

Examples of exceptions

- “9. A person may offer for sale, sell and use an electrical capacitor containing PCBs if the electrical capacitor
 - (a) is an integral part of a consumer product;
 - (b) is fusion sealed; and
 - (c) would be rendered inoperable and irreparable if the PCBs were removed from it”
- “10. A person may export, import, offer for sale, sell and use for transportation purposes aircraft, ships, trains and other vehicles that contain PCBs only in their communication, navigation or electronic control equipment or cables”

Duties imposed on owners or users (1)

- **A duty to store** PCBs in a specific manner
 - “19 (1) A person who owns, controls or possesses PCBs or products containing PCBs [in a concentration of 50 mg/kg or more: 18(1)] shall, within 30 days after the day on which those PCBs or products cease to be processed daily or used or after September 5, 2008, whichever is later, either
 - (a) send them for destruction to an authorized facility that is authorized for that purpose; or
 - (b) store them at a PCB storage site for the period during which they are not processed daily or used.
 - 20 (1) Effective September 5, 2009, no person shall store PCBs or products containing PCBs at the following plants or facilities or on the land on which those plants or facilities are located and within 100 m of them:
 - (a) a drinking water treatment plant or a food or feed processing plant; or
 - (b) a child care facility, preschool, primary school, secondary school, hospital, or senior citizens’ care facility”
- Maximum storage periods in sections 21-23
- Characteristics of a storage site in section 24
- Different requirements, in section 25, on how to store PCB and products containing PCB, for example the use of containers or drums and “a floor or surface that is made of steel, concrete or any other similar durable material and that is constructed with curbing or sides”

Duties imposed on owners or users (2)

- **A duty to inspect and maintain** the storage site containing the PCBs

“27. The owner or operator of a PCB storage site shall

(a) inspect all floors, curbing, sides, drains, drainage systems, weatherproof roofs and barriers, fences and walls of the PCB storage site, any fire alarm system, fire extinguishers and fire suppression system and all equipment containing PCBs, containers used for the storage of PCBs or products containing PCBs and materials for clean-up at the PCB storage site

(i) each month,

(ii) at intervals of more than one month, if the Minister, on the written request of the owner or operator, determines that it is not reasonably practicable to inspect the site each month, due to its remote location, or

(iii) at intervals of less than one month, if more frequent inspections are necessary for the safe operation of the site; and

(b) keep in good condition and, if damaged, immediately repair or replace the floors, curbing, sides, drains, drainage systems, weatherproof roofs or barriers, fences, walls, fire alarm system, fire extinguishers, fire suppression system, equipment containing PCBs and containers and immediately clean up any contaminated area”

Duties imposed on owners or users (3)

- **A duty to keep records and to report**

“33 (1) The owner of the equipment [...], or the liquids referred to in subsection 15(2) shall prepare a report that is current to December 31 of each calendar year in which the person owns the equipment or the liquids and that contains the following information:

- (a) the name, civic and mailing addresses, telephone number, fax number, if any, and e-mail address, if any, of the owner and any person authorized to act on the owner's behalf;
- (b) the civic addresses of the facilities where the equipment and liquids are located or, if there is no civic address, their location using the owner's site identification system;
- (c) the quantity of liquids containing PCBs in the equipment and of liquids, expressed in litres, the quantity of solids containing PCBs in the equipment, expressed in kilograms, and the concentration of PCBs in the liquids and solids, expressed in mg/kg,
 - (i) that are in use on December 31,
 - (ii) that are stored on December 31 at the person's PCB storage site,
 - (iii) that are sent, in that calendar year, to an authorized facility that is a transfer site,
 - (iv) that are sent, in that calendar year, to an authorized facility that is authorized to destroy them, or
 - (v) that are destroyed in that calendar year; and
- (d) a certification that the information is accurate and complete and that is dated and signed by the owner or by a person authorized to act on the owner's behalf.

41. Any person who is required to submit a report under these Regulations shall keep a copy of the report at their principal place of business in Canada for at least five years after the day on which the report is submitted”

Examples of other *CEPA* Regulations

- Dealing simultaneously with PCB and other toxic substances: *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*
- If you plan on buying or leasing refrigeration systems, air-conditioning systems, fire-extinguishing systems or solvent systems containing halocarbons, then examine the *Federal Halocarbon Regulations, 2003* and the *Ozone-Depleting Substances Regulations, 1998*

Checklist (1)

- Does the product, equipment or vehicle I want to buy/sell, import/export, contain toxic substances?
 - In the affirmative, is there any alternative? If so, consider the alternative!
 - Do the regulations allow the sale of a product, equipment or vehicle containing these substances?
 - Do the regulations allow the use of a product, equipment or vehicle containing these toxic substances?
- In the affirmative, do the federal regulations apply to those substances
 - Everywhere or only on federal lands?
 - For everyone or only for the federal government?
 - For every product, equipment or vehicle that contain those toxic substances or only for some?

Checklist (2)

- As owner of the product, equipment or vehicle that contains toxic substances, what will be
 - My obligations to install, service, leak test or charge the product, equipment or vehicle?
 - Will I need to hire specifically certified people to install, service, leak test or charge the equipment or vehicle?
 - My obligations to inspect and maintain the product, equipment or vehicle?
 - Will I need to hire specifically certified people to inspect and maintain the product, equipment or vehicle?
 - My obligations to repair the product, equipment or vehicle?
 - Will I need to hire specifically certified people to do the repairs?
 - My obligations to store the product, equipment or vehicle?
 - My obligations to dispose of the product, equipment or vehicle?
 - My obligations to keep records?
 - My obligations to report?

Checklist (3)

- As user or person in control of the product, equipment or vehicle that contains toxic substances,
 - What obligations do I share with the owner?
 - What additional obligations do I have?