

***The Canadian Environmental Protection Act, 1999* and Environmental Protection Compliance Orders**

What is an environmental protection compliance order?

An environmental protection compliance order (EPCO) is one of the tools under the *Canadian Environmental Protection Act, 1999* (CEPA 1999) that allows enforcement officers to handle offences without using the court system. Its purpose is to restore an offender to compliance with the CEPA 1999 as quickly as possible.

EPCOs may be issued to:

- prevent a violation from occurring;
- stop or correct a violation that is occurring or continues to occur; and
- correct an omission where conduct is required by CEPA 1999 or one of its regulations, but is not occurring.

How do EPCOs compare to other environmental laws in Canada ?

EPCOs are similar to "stop" or "cease and desist" orders found in other Canadian legislation, including provincial and territorial legislation.

For what offences under CEPA 1999 can an enforcement officer issue an EPCO?

An enforcement officer can issue an EPCO for most offences under CEPA 1999, except those where prosecution is always pursued, as cited in the Compliance and Enforcement Policy. The offence can involve a substance (such as a substance in Schedule 1, fuel, hazardous waste, emissions, or effluents) or a product containing the substance. It can also involve activities such as the manufacture, import, export, use, offer for sale, sale, or disposal of a substance or product that is in violation of regulations. The offence can also involve failure to take required action.

Under what circumstances will an enforcement officer choose an EPCO over another procedure?

If a violator has a good compliance history, such as a previously demonstrated willingness to take all reasonable measures to comply with the law or a willingness to cooperate with enforcement officers to return to compliance, the enforcement officer will consider an EPCO rather than a prosecution. If the violation requires immediate correction or immediate steps to prevent a violation, the officer may also consider an EPCO to bring about a return to compliance.

What steps are involved in issuing an EPCO?

Except in an emergency situation, an enforcement officer shall provide, wherever practicable, notice of intent to issue an EPCO and shall give the alleged offender an opportunity to make oral representations to the officer. Representations could include presenting an opinion on why a violation has not actually occurred, why an EPCO should not be issued if there has been a violation, or what kind of conditions should be set out in an EPCO. After such representations, the enforcement officer decides whether to issue the original EPCO or, perhaps, a modified version of the original.

In an emergency situation, where the delay necessary to provide notice of the intent to issue an EPCO would result in danger to human life or the environment, the enforcement officer may issue the EPCO without notice or without allowing oral representations.

What happens if there is disagreement with the EPCO or its contents?

Any person subject to an EPCO has the right to request that the Chief Review Officer (CRO) review the order at a hearing. The CRO is appointed by the Minister of the Environment under CEPA 1999.

What does the CRO do?

The CRO has the authority to establish hearing procedures, conduct hearings related to EPCOs, and assign other review officers to conduct such hearings.

The officer reviewing the EPCO has the authority to require that it either be suspended during the review or remain in force during that time. The review officer will hear evidence from the party subject to the EPCO and from the issuing enforcement officer. The review officer must then decide whether to uphold the order or set it aside. The decision of the review officer can, itself, be appealed to the Federal Court of Canada.

When does an EPCO come into effect and how long does it remain in force?

Compliance with an EPCO must begin as soon as it is received, unless the accused offender has asked the CRO to review the EPCO and it has been suspended during the review period. The maximum period of time an EPCO can remain in effect is 180 days.

What happens if a person doesn't comply with an EPCO?

Failure to comply with an EPCO is an offence under CEPA 1999. Possible penalties are:

- a fine of up to \$1 million per day, imprisonment for up to three years or both — if the person is prosecuted by indictment; or
- a fine of up to \$300 000 per day, imprisonment for up to six months or both — if the person is prosecuted by summary conviction.

Further information

Internet:

www.ec.gc.ca/ceparegistry.

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