

# ***The Canadian Environmental Protection Act, 1999* and Environmental Protection Alternative Measures**

## **What are environmental protection alternative measures?**

An alternative to court prosecution, environmental protection alternative measures (EPAMs) are agreements that are negotiated in order to return a violator to compliance with the *Canadian Environmental Protection Act, 1999* (CEPA 1999). They are used after a charge has been laid, and before a court trial. Alternative measures such as EPAMs are also provided in the *Criminal Code* for adult offenders and under the *Youth Criminal Justice Act* for juveniles.

## **What CEPA 1999 offences can EPAMs be used for?**

EPAMs can be used for most violations of CEPA 1999, except for offences such as those involving:

- reckless or intentional behaviour that causes an environmental disaster;
- wanton or reckless disregard for human life or safety leading to a risk of injury or death;
- conduct leading to the injury or death of a person;
- the import or manufacture of a substance or living product of biotechnology that is new to Canada without its first having been reported to the Minister of the Environment or assessed for its environmental and health effects.

## **How is eligibility for an EPAM determined?**

In practical terms, the Crown Prosecutor and the Environment Canada enforcement officer involved with the case determine if an alleged offender is eligible for an EPAM. Eligibility requires the following conditions:

- a charge must have been laid;
- the offender must accept responsibility for the actions that forms the basis of the offence, but is not required to plead guilty;
- the Attorney General of Canada or Crown Prosecutor must be satisfied that there is enough evidence to proceed with a court prosecution and that the negotiation of an EPAM would be consistent with the protection of the environment; and

- the offender must have a good compliance history with no repeated violations of the Act (this is one of the most important criteria considered in determining if an EPAM is to be negotiated).

## **Who decides whether an EPAM will be negotiated?**

Under CEPA 1999, the decision as to whether an EPAM will be negotiated is made by the Attorney General or his/her agent (namely, the Crown Prosecutor) after consultation with the Minister of the Environment. The negotiations themselves are normally conducted by a Crown Prosecutor, who consults with the enforcement officer.

Negotiations for an EPAM must be completed within 180 days of the Crown Prosecutor's initial disclosure of the Crown's evidence to the alleged offender, in order to ensure that the issue is resolved in a timely manner.

CEPA 1999 stipulates that no information provided by the alleged offender during the negotiation of an EPAM, nor any admission of responsibility for the alleged offence, can be used against that person in any criminal or civil court action.

## **What measures can EPAMs contain?**

EPAMs can contain a variety of measures aimed at bringing offenders into compliance with regulatory requirements. These can include:

- the development and implementation of pollution-prevention measures to reduce releases of a substance listed in Schedule 1 of the Act;
- the installation of monitoring systems or pollution-control technologies;
- changes to production processes; and
- the clean-up of environmental damages.

## **What happens to the EPAM?**

The EPAM is registered with the court as a public document. Recognizing, however, that trade secrets or similar information may be part of an EPAM, CEPA 1999 allows such confidential material to be placed in a technical annex filed with the court and not released to the public. It also requires that the EPAM be published on the CEPA Environmental Registry, created under section 12 of the Act.

## **What happens to the original charges?**

The Attorney General suspends prosecution during the period that the EPAM is in force. If the alleged offender complies with the EPAM, the court dismisses the charges completely; however, if discussions do not lead to a negotiated EPAM, the Attorney General has the right to proceed with the prosecution.

Failure to comply with an EPAM is an offence under CEPA 1999 and can carry such penalties as:

- a fine of up to \$1 million a day, imprisonment for up to three years, or both — if the person is prosecuted by indictment; or
- a fine of up to \$300 000 a 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](http://www.ec.gc.ca/ceparegistry)

### **Inquiry Centre:**

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