



24 January 2017

Ms. Deborah Schulte, M.P.  
Chair  
Standing Committee on Environment and  
Sustainable Development  
House of Commons  
Ottawa, Ontario K1A 0A6

Dear Ms. Schulte:

Thank you for your letter of 25 October 2016 regarding the review of the *Canadian Environmental Protection Act, 1999* (CEPA) by the Standing Committee on Environment and Sustainable Development.

You invited us to provide information on the main points from our reports that may be most relevant to the Committee's current work. We have been auditing the Government of Canada's management of toxic substances since the position of Commissioner of Environment and Sustainable Development was established in 1995. Having said that, we believe that the 10 recent performance audits listed in the following table provide information that may be most helpful to the Committee.

Though some of these 10 reports do not pertain to CEPA, we have included them, as we noted that the Committee's work may result in recommendations to reform other federal legislation pertaining to the protection of human health and the environment from toxic substances.

**Ten reports of the Commissioner of the Environment and Sustainable Development (2008–2016)**

Year	Performance audit report	Key issues
2016	Chemicals in Consumer Products and Cosmetics	Detecting and assessing risks Incidents and regulatory violations Results monitoring
2015	Pesticide Safety	Chemicals assessment and reassessment Chemicals registration Public communication
2011	Enforcing the <i>Canadian Environmental Protection Act, 1999</i>	Enforcement planning Enforcement actions Capacity, training and information needs Enforceability of regulations

Year	Performance audit report	Key issues
2010	Monitoring Water Resources	Water quality and quantity monitoring responsibilities Sufficiency of pollution monitoring Quality of data
2009	Risks of Toxic Substances	Chemicals management plans Risk control measures Labelling of chemicals Chemicals biomonitoring
2009	National Pollutant Release Inventory	National Pollutant Release Inventory data relevance, quality, and accessibility
2009	Protecting Fish Habitat	Addressing risks of non-compliance with the <i>Canadian Environmental Protection Act, 1999</i>
2009	Air Quality Health Index—Health Canada and Environment Canada	Air quality monitoring of chemicals
2008	Managing Air Emissions	Pollution prevention plans Chemicals management plans Regulations enforcement Results monitoring for voluntary agreements
2008	Chemicals Management—Substances Assessed under the <i>Canadian Environmental Protection Act, 1999</i>	Chemicals risk assessments (initial and priority) Chemicals management plans

The key findings raised in these audits are summarized in Appendix A, which is enclosed. Although some of these audits were conducted many years ago, it may be worthwhile for the Committee to request updates from the audited departments on their progress in addressing our recommendations.

Based on our audit observations and recommendations, we believe that the following areas need attention:

- **Risk assessments and re-assessments of chemicals.** It is important that sound processes be developed and implemented to assess chemicals in order to manage the risks to environment, health, and safety.
- **Registration of chemicals.** The process for registering or deregistering chemicals, such as pesticides, needs to be thorough and timely.
- **Management of chemicals.** It is important that a rigorous approach, supported by sufficient analysis and monitoring, exists for managing and mitigating the impacts of chemicals in Canada.
- **Enforcement of CEPA and its regulations.** A sound enforcement program is required to ensure that compliance with CEPA and its regulations is enforced. This program should ensure that enforcement activities target the highest-risk areas in human health and the environment, and that follow-up actions address non-compliance issues.

- **National Pollutant Release Inventory.** It is important for the inventory to be fit for its intended uses and that users have access to quality data.
- **Transparency.** The public should have access to sufficient information on the chemicals being assessed through the registration processes.

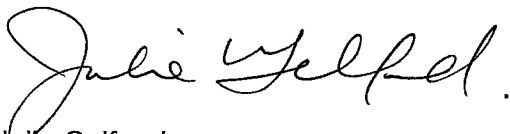
As the Committee is aware, the Commissioner also oversees the petitions process established under the *Auditor General Act*. Petitions provide a mechanism through which Canadians can get answers from federal ministers on specific environmental and sustainable development issues that involve federal jurisdiction. Between October 1996 and June 2016, we processed 457 petitions. Of these, about 25 percent addressed toxic substances.

We have identified 17 CEPA-related petitions, and the associated responses from ministers, in Appendix B, which is enclosed. Key issues and concerns raised by Canadians within these petitions relate to the Government of Canada's

- CEPA policies, principles, and approaches (for example, toxic substances management policy, the precautionary principle, and pollution prevention);
- CEPA regulations and regulatory requirements (for example, persistence and bioaccumulation regulations);
- general assessment of substances for health and environmental impacts;
- assessment and management of specific substances (for example, asbestos, environmental carcinogens, genetically modified organisms, and hormone disrupting substances);
- National Pollutant Release Inventory;
- treatment of vulnerable populations (for example, Indigenous peoples); and
- chemical management plans.

We would be happy to provide any additional information should it be of assistance to the Committee.

Yours sincerely,



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Commissioner of the Environment and Sustainable Development  
240 Sparks Street  
Ottawa, Ontario K1A 0G6

Enclosure

c.c.: Mr. Michael MacPherson, Clerk



## **Appendix A—Key Audist Findings (2008–2016) Relevant to the Review of the *Canadian Environmental Protection Act, 1999***

The full text of the following reports of the Commissioner of the Environment and Sustainable Development are available on the Office of the Auditor General of Canada's website at [www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca).

### **2016 Spring Reports, Report 3—Chemicals in Consumer Products and Cosmetics**

#### **Key findings**

- **Health Canada improved its oversight approach.**
- **Information gaps limit Health Canada's ability to detect and assess risks to human health and safety.**
  - The Department had not assessed the scope and magnitude of risks associated with international e-commerce, and its oversight of the growing e-commerce market was very limited.
  - The Department had not assessed the scope and magnitude of the health and safety risks posed by counterfeit consumer products and cosmetics, despite concerns raised in Canada and internationally.
  - The Department does not regularly test cosmetic products to verify the accuracy of product labels or to check for the presence of prohibited substances, microbial contaminants, and heavy metals.
  - The chemical components of cosmetic ingredients characterized as "parfum," "aroma," "fragrance," or "flavour," which might contain chemicals of concern, are not required to be disclosed to Health Canada or consumers.
  - In contrast to consumer products, where industry is required to report health and safety incidents to Health Canada, there is no legal requirement to report such incidents related to cosmetic products.
- **Response to incidents and regulatory violations.** We found that Health Canada could not demonstrate rapid response in some critical areas. While we found that prioritization and assessment of incident reports were well managed and generally timely, the Department did not know whether industry was respecting the legislated timelines to ensure rapid reporting of potential health and safety incidents, and for submitting cosmetic notifications. It was also slow to respond to cosmetic notifications that included prohibited substances, and slow to follow up on product recalls to confirm that non-compliant products were no longer available to Canadians.

- **Verifying effectiveness by measuring results.** We found that the mechanisms Health Canada had in place to measure results were not sufficient to verify the effectiveness of the Consumer Product Safety Program. Specifically, the Program could not demonstrate that it was achieving expected results in
  - addressing or preventing dangers to human health and safety,
  - reducing adverse health incidents, and
  - ensuring industry compliance with regulatory reporting and product safety requirements.

## 2015 Fall Reports, Report 1—Pesticide Safety

### Key findings

- **Conditional registrations of pesticides.** We found that the Pest Management Regulatory Agency allowed conditionally registered pesticides to be in use for lengthy periods—in many cases, for more than the five-year period it normally allowed—without having received and assessed the required studies and data. As a result, the Agency could not confirm its risk or value assessments. In addition, the Agency had never exercised its authority to cancel a conditional registration when the registrant failed to satisfy the conditions.
- **Re-evaluations of pesticides.** We found that the Pest Management Regulatory Agency did not manage an important aspect of its re-evaluations of pesticides according to the *Pest Control Products Act*. Although the Agency considered the value of pesticides and their health and environmental risks, it did not assess their cumulative effects on human health when required by the Act. In addition, the Agency had made insufficient progress in completing the re-evaluations of older pesticides.
- **Special reviews of pesticides.** We found that the Pest Management Regulatory Agency was in the process of deciding whether special reviews of pesticides banned for all uses between June 2013 and December 2014 in other Organisation for Economic Co-operation and Development (OECD) countries were warranted.
- **Cancellation of pesticide registrations.** We found that the Pest Management Regulatory Agency did not promptly cancel the registrations of some pesticides when it determined that they posed unacceptable risks. In all but one case, the Agency took between 4 and 11 years to cancel the registrations. In several cases, the Agency cited the lack of alternatives as the reason for delaying cancellations. In other cases, the cancellations were delayed to allow suppliers and users to exhaust their inventories.
- **Communication with the public.** We found that the Pest Management Regulatory Agency failed to maintain a complete public registry of conditionally registered products and their associated conditions. The Agency’s public registry did not make clear whether a pesticide was conditionally registered, and information on conditions of registration was sometimes missing or out of date. Other information that was not always readily available included which products the Agency had decided to remove from the market, which uses it had decided to prohibit, what mitigation measures it had decided to put in place, and when changes would take effect.

## **2011 December Report, Chapter 3—Enforcing the *Canadian Environmental Protection Act, 1999***

### **Key findings**

- The enforcement program has not been well managed to adequately enforce compliance with the *Canadian Environmental Protection Act, 1999* and ensure that threats to Canadians and their environment from pollution are minimized. The Environmental Enforcement Directorate lacks key information on regulated individuals, companies, and government agencies to know whether it is targeting its enforcement activities toward the highest-risk violators or the highest risks to human health and the environment, as called for by Environment Canada's own environmental enforcement policy.
- The Department's enforcement actions are limited by gaps in its capacity to enforce CEPA regulations. Many of the factors it considers in setting priorities for enforcement have nothing to do with risks to human health or the environment or with the past record of compliance of those regulated. Instead, some regulations are excluded from being priorities due to lack of adequate training for enforcement officers or lack of adequate laboratory testing to verify compliance.
- The Environmental Enforcement Directorate failed to follow up on half of its enforcement actions during the audit period to verify that violators returned to compliance with CEPA regulations. In addition, often it did not apply key management controls to ensure that enforcement officers applied the Act in a fair, predictable, and consistent manner across the country, as called for by the Act.
- The Department has been slow to act on significant shortcomings that impede successful enforcement, such as inadequate gathering and analysis of information to inform enforcement planning and targeting, and inadequate training of enforcement officers. Furthermore, Environment Canada is not measuring the results of its enforcement activities and actions and does not know whether they have achieved the program objectives of encouraging compliance and minimizing damages and threats to the environment.

## **2010 Fall Report, Chapter 2—Monitoring Water Resources**

### **Key findings**

- Environment Canada is not adequately monitoring the quality and quantity of Canada's surface water resources. Although it has run the Fresh Water Quality Monitoring program and the National Hydrometric Program since the 1970s, the Department has not fully defined the extent of its water monitoring responsibilities, particularly on federal lands such as First Nations reserves, Canadian Forces bases, national parks, and national wildlife areas. The Department is not monitoring water quality on the majority of federal lands and does not know whether other federal departments are doing so. As a result, there may be vast areas under federal jurisdiction where fresh water quality and quantity conditions are not being monitored.

- Environment Canada has not located its monitoring stations based on an assessment of risks to water quality and quantity. As a result, it may not be focussing its monitoring efforts on the activities and substances that pose the greatest risks.
- Both of the water monitoring programs we audited developed quality control procedures intended to ensure that the data they disseminate is fit for their intended uses. The National Hydrometric Program has consistently applied its quality control procedures to validate the data from the stations we examined. The Fresh Water Quality Monitoring program has not. As a result, Environment Canada cannot assure users that its water quality data is fit for their intended uses.
- The Department has not established many of the essential management practices needed to plan, implement, assess, and improve its long-term monitoring programs. It has not taken the initial steps to clearly establish the extent of each program's monitoring responsibilities, risk-based priorities, and client needs. As a consequence, the Department has no objective basis on which to identify opportunities for improvement or take corrective actions to improve these programs.

## 2009 Fall Report, Chapter 2—Risks of Toxic Substances

### Key findings

- Environment Canada and Health Canada have implemented a number of control measures to manage the risks posed by lead and mercury and have also developed strategies for managing risks related to consumer products that may contain these substances. However, there is no consolidated risk management strategy for either substance that indicates the federal government's objectives and priorities for managing the risks. Clearly outlining its objectives and priorities for these substances would help strengthen transparency and accountability.
- Environment Canada and Health Canada are assessing the performance of a number of the control measures that have been implemented for the toxic substances we examined, and they are taking steps to keep their knowledge of risks up-to-date. However, the departments lack a systematic process for periodically assessing progress made in managing the risks. Periodic assessments would allow department officials and other stakeholders to know how well the risks are being managed, whether actions are sufficient or need to be modified, and whether progress is reasonable and timely.
- While labelling of chemical products in the workplace is required to indicate the hazards of chronic use (such as cancer risks and reproductive toxicity), no similar requirement exists for certain consumer products where multiple or long-term use may pose chronic hazards. Product labels warn consumers of acute hazards such as poisoning and contain instructions on how to safely use the product. However, there is no requirement that labels inform consumers of chronic hazards that may result from multiple or long-term use of the product.
- New biomonitoring initiatives are under way that address a significant gap we identified in our 2002 audit covering toxic substances. These initiatives are part of a broader, more comprehensive approach by Environment Canada and Health Canada to monitoring toxic substances in both humans and the environment. Sustained support for these types of initiatives is important in order to identify progress being made over time in reducing levels of toxic substances.



## **2009 Fall Report, Chapter 3—National Pollutant Release Inventory**

### **Key findings**

- While Environment Canada has carried out some activities to ensure that the data in the National Pollutant Release Inventory (NPRI) is relevant to the information's intended purposes and users, it does not have a consistent approach to determining the information needs of users, which is important for identifying trends in user needs and progress in meeting them.
- Environment Canada is working to improve NPRI data quality and makes the data accessible to users in a variety of ways on a timely basis. However, it does not have adequate systems and practices overall to ensure that data in the NPRI is fit for its intended uses. The Department is unable to assess the accuracy and completeness of the data, nor does it adequately state the limitations of the data so that users understand its nature and are aware of what the data can be used for and where caution needs to be applied. This has a critical impact on the reliability of comparisons and trend analysis.

## **2009 Spring Report, Chapter 1—Protecting Fish Habitat**

### **Key findings**

- Environment Canada does not have a systematic approach to addressing risks of non-compliance with the *Fisheries Act* that allows it to focus its resources where significant harm to fish habitat is most likely to occur. Further, it has not determined whether the stringent pollution prohibition of the *Fisheries Act* is being satisfied by the combination of the results achieved from its own activities under both the *Fisheries Act* and the *Canadian Environmental Protection Act, 1999*, and those achieved by other levels of government.

## **2009 March Status Report, Chapter 2—Air Quality Health Index— Health Canada and Environment Canada**

### **Key findings**

- Environment Canada and Health Canada have made satisfactory progress in developing an air quality health index, which is currently being pilot-tested in selected locations. In the development stage of the Index, the departments carried out scientific research leading to the selection of three key pollutants affecting human health that are included in the Air Quality Health Index (ground-level ozone, fine particulate matter, and nitrogen dioxide).
- From the beginning of the Air Quality Health Index development process, Environment Canada and Health Canada consulted with a wide variety of provincial governments and stakeholders, such as municipalities and non-government organizations, and have incorporated their ideas as appropriate. Most participants said that they were satisfied with the consultation process.

- Elements of the new index that working groups identified as remaining challenges include working with the provinces on issues related to the total or partial phase-out of their existing air quality indices. Further, the monitoring data apply to large population centres but not to smaller, rural areas, where the capacity to monitor pollutants is limited. In addition, there is an increased risk that a common index may not be put in place across the country, since not all jurisdictions participated in the index development process. Finally, the Index covers three pollutants monitored nationwide; it does not cover local and regional concentrations of other pollutants that also are assumed to have harmful health effects.

## 2008 December Report, Chapter 1—Managing Air Emissions

### Key findings

- The federal government cannot demonstrate that the results it has reported for the policy tools we examined have actually been achieved or that processes are in place to verify the results reported by the private sector.
- Environment Canada has indicated that the Pollution Prevention Plan Notice it published in 2003 for acrylonitrile (requiring a company that was using the substance to implement a plan for reducing emissions) has been successful, based on the results reported by the company. The Department did not validate the results. Furthermore, no other emitters of acrylonitrile were subject to the Notice. Total air emissions of acrylonitrile saw a rapid increase from 2003 to 2006. While activities by Environment Canada contributed to a reduction in emissions between 2006 and 2007, total national emissions are still almost three times higher than in 2000 when the substance was declared toxic.
- Environment Canada states that compliance with the regulations limiting the content of benzene in gasoline and of sulphur in diesel fuel is high. However, it has not assessed whether its enforcement approach is sufficient to support this assertion. In comparison, it has carried out almost no enforcement of a third regulation, the Gasoline and Gasoline Blend Dispensing Flow Rate Regulations, governing the release of carcinogenic benzene and other volatile substances into the air at gas pumps across Canada. As a consequence, it does not know whether this regulation is achieving results.
- Environment Canada lowered its initial estimate of annual reductions in greenhouse gas emissions from 220,000 tonnes to about 35,000 tonnes expected as a result of the Public Transit Tax Credit—a reduction that will have a negligible impact on Canada's greenhouse gas emissions, despite the \$635 million reported in the 2007 Budget as the cost of the Tax Credit.
- Environment Canada used flawed analyses to establish the 80-megatonne reduction in greenhouse gas emissions it expects from 2008 to 2012 as a result of the Clean Air and Climate Change Trust Fund (\$1.519 billion in federal funds transferred to the provinces and territories). Further, although the 80 megatonnes are included as part of the total reductions the federal Climate Change Plan will achieve, the Trust Fund has no conditions that allow the federal government to monitor the provinces' results by requiring the provinces to report to it on how they use the funds. Therefore, it is very unlikely that Environment Canada will be able to report real, measurable, and verifiable results.

- The three voluntary agreements we assessed meet many of the general expectations for what a voluntary agreement should include. However, the government has not completed the key step of verifying the results reported by the private sector.

## **2008 March Status Report, Chapter 1—Chemicals Management— Substances Assessed under the *Canadian Environmental Protection Act, 1999***

### **Key findings**

- The federal government has made satisfactory progress since 2002 in managing risk assessments of chemical substances that could be toxic.
- In September 2006, as a result of an initial review of the Domestic Substances List, Environment Canada and Health Canada identified 4,300 substances that needed further assessment. To complete the assessments by 2020, the departments have adjusted the risk assessment process based on lessons learned from previous evaluations, set clear objectives and timelines, and identified priorities, and they are taking steps to ensure that they will have enough resources to do the work.
- The risk assessments of priority substances that were underway in 2002 have been completed for the most part. However, the assessments of three of those substances have yet to be finalized—even though the departments have evidence that two of them are likely toxic and present risks to human health and the environment. Until the government concludes whether the outstanding chemical substances are toxic, no measures under CEPA, 1999 can be put in place to control the risks they may represent.



## Appendix B—Petitions (2008–2016) Related to the Review of the *Canadian Environmental Protection Act, 1999*

The petitions catalogue contains additional details on the following petitions and the responses of federal departments and agencies. The catalogue is available on the Office of the Auditor General of Canada's website at [www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca).

Petition	Title	Year
387	Concerns about Canada's continued use and import of asbestos	2015
372	Federal responsibilities toward cancer prevention from risks associated with environmental carcinogens	2015
368	Use of published emissions factors by facilities in National Pollutant Release Inventory	2014
363	Federal government review of European Union decisions to ban substances for health and environmental reasons, in accordance with section 75(3) of the <i>Canadian Environmental Protection Act, 1999</i>	2014
352	Risk assessment for the production of genetically engineered salmon eggs	2013
351	Review of the <i>Persistence and Bioaccumulation Regulations</i> under the <i>Canadian Environmental Protection Act, 1999</i>	2013
340	Federal research on hormone disrupting substances as required under the <i>Canadian Environmental Protection Act, 1999</i>	2012
322	Regulatory requirements for developmental toxicity testing of new and existing chemicals	2011
317	National Pollutant Release Inventory reporting of chemicals used for shale gas and in-situ mining	2011
297	Federal government's management of the impact of pesticides and toxic chemicals on the health of Canadians	2010
296	The potential health and environmental impact of using sewage sludge on agricultural land	2010
294	The health impact of chemicals and pollutants that are released into the environment	2010
289	Health Canada's adherence to the precautionary principle	2009

Petition	Title	Year
282	Concerns about harmonization and enforcement of <i>Canadian Environmental Protection Act, 1999</i> regulations governing transboundary movement of hazardous wastes	2009
274	Request for federal action to protect Canadians from vapour intrusion of CEPA Schedule 1 toxic substances into residences	2009
262	Bioaccumulation assessment criteria related to the regulation of fire-retardant chemicals	2008
256	Policies and regulations under the <i>Canadian Environmental Protection Act, 1999</i>	2008