



Environment and
Climate Change Canada

Environnement et
Changement climatique Canada

Canada



Environmental Regulations

ESAM Lunch and Learn

**Dartmouth, NS
October 12, 2016**



Environmental Regulations

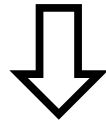
1. Need for Environmental Protection
2. Legal Context of Environmental Regulations
3. Risk Management Instruments
4. Governance



1. Need for Environmental Protection

- Problem

- Human activities impact the Environment & People
- Some impacts can be negative!
- **Mitigation** is preferable to Remediation or Adaptation



- Solution

- Avoid problems up front!
- **Risk Management** approach to mitigate impacts
- Keep your friends close...



2. Legal Context

- Governments can require mitigation!
 - Federal
 - Provincial/Territorial
 - Municipal
 - First Nations

- Federal jurisdiction arises from:
 - Federal House
 - Precedence
 - Transboundary
 - by Agreement



Legal Context (cont.)

- Environment Canada:
 - Established in 1971 (post Arrow oil spill)
 - Evolving Science Based Mandate:
 - Weather, Climatology and Climate Change
 - Air and Water quality (toxic chemicals)
 - Nature (plants and animals)
 - Administers many Environmental Risk Management Instruments



2015: Environment and Climate Change Canada
ECCC



Legal Context (cont.)

- ECCC administers:
 - [Antarctic Environmental Protection Act](#)
 - [Canadian Environmental Protection Act](#)
 - s. 46 & s. 71 Information Gathering
 - ~55 regulations + 9 proposed, all administered by ECCC
 - [Migratory Birds Convention Act, 1994](#)
 - [Species At Risk Act](#)
 - [Fisheries Act](#)
 - s. 36(3) Deposit of a deleterious substance
 - ~35 regulations, 7 administered by ECCC
 - ...



Legal Context (cont.)

Canadian Environmental Protection Act (CEPA 1999)



Federal Halocarbon Regulations (FHR 2003)



2014 Environmental *Code of Practice* for Elimination of Fluorocarbon Emissions from Refrigeration and Air Conditioning Systems (April 2015)



Reasonable Care



Legal Context (cont.)

Canadian Environmental Protection Act (CEPA 1999)



Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations (SOR/2008-197)



CCME Environmental *Code of Practice* for Aboveground and Underground Storage Tank Systems Containing Petroleum and Allied Petroleum Products (2003)



Reasonable Care



3. Risk Management

- Risk Management may be done by:
 - Provision within an Act
 - Instrument under an Act
 - Regulations - legislative power conferred on the Executive Branch
 - Orders - instructions, decisions or directions given by the Minister
 - Permits - written authorization from the Minister
 - Plans:
 - Pollution Prevention (P2) plans;
 - Environmental Emergency (E2) plans;
 - Virtual Elimination (VE) plans;
 - plans for reducing or phasing out hazardous waste



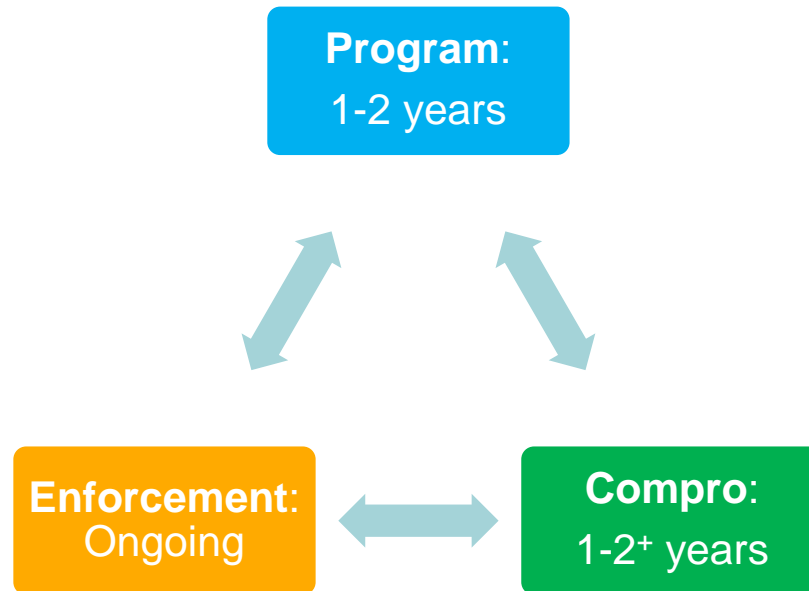
Risk Management Instruments

- Fisheries Act
 - ECCC only:
 - s. 36(3) Deposit of a deleterious substance
- Canadian Environmental Protection Act, 1999
 - ECCC all regulations:
 - Storage Tanks, Halocarbons, Disposal at Sea, ...
- Canadian Environmental Assessment Act, 2012
 - Responsible Authority:
 - National Energy Board
 - Canadian Nuclear Safety Commission
 - CEAA



4. Governance

- Implementing Risk Management
 - **Program:** Consult with public re **Instrument**
 - **Compro:** Market the Instrument to the **Subjectee**
 - **Enforcement:** Verify Subjectee **Compliance**



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Program: 1-2 years

- ECCCC Expertise:
 - Chemicals, Energy and Transportation
 - Environmental Assessment
 - Environmental Effects Monitoring
 - Contaminated Sites
 - Environmental Emergencies
- Consult with:
 - Rights Holders
 - Stakeholders
 - Public



Compro: 1-2+ years

- Compliance means conformity with the law
 - Objective is to secure compliance
 - via Compliance Promotion and Enforcement
- Compliance Promotion measures include:
 - Publication and communication of information
 - Engagement with affected parties
- Compro done on an Instrument basis
 - Materials and marketing are instrument specific!



Enforcement: Ongoing

- Inspections
 - Planned program to verify compliance
 - Based on environmental risk and probability of non-compliance
- Investigations
 - Conducted when an Enforcement Officer has reasonable grounds to believe a violation has occurred
 - Inspection
 - Intelligence
 - a complaint is received by ECCC



Responses to Alleged Violations

No Formal Court Action

- Warnings
- Directions by Enforcement Officers
- Ministerial Orders
- Tickets
- Environmental Protection Compliance Orders (cease & desist)

Court Action

- Injunctions
- Prosecution
- Court orders upon conviction
- Civil suit for recovery of costs



Fines (and Penalties)

New Fine Scheme under the Environmental Enforcement Act					
Offender	Type of Offence	Summary		Indictment	
		Minimum	Maximum	Minimum	Maximum
Individuals	Most serious offences	\$5 000	\$300 000	\$15 000	\$1 M
	Other offences	N/A	\$25 000	N/A	\$100 000
Small Corporations & Ships under 7500 tonnes	Most serious offences	\$25 000	\$2 M	\$75 000	\$4 M
	Other offences	N/A	\$50 000	N/A	\$250 000
Corporations & Ships over 7500 tonnes	Most serious offences	\$100 000	\$4 M	\$500 000	\$6 M
	Other offences	N/A	\$250 000	N/A	\$500 000

All fines doubled for second and subsequent offences.



Due Diligence & Reasonable Care

- In determining enforcement and/or court action against those liable for an offence...
 - **Reasonable Care** taken to prevent the commission of the offence will be considered
- How is reasonable care exercised?
 - Policy and procedures in place
 - Proper equipment
 - Personnel are trained (certified)
 - Communication



Canada Gazette

- Official newspaper of the Government of Canada



- Part III : Acts of Parliament
- Part II : Official Regulations
- Part I : Notices and Proposed Regulations



Canada Gazette: Part III

Vol. 35, No. 2

Canada Gazette

Part III

OTTAWA, THURSDAY, AUGUST 30, 2012

Statutes of Canada, 2012

Chapters 7 to 20

Acts assented to from 6 April, 2012
to 29 June, 2012



Vol. 35, n° 2

Gazette du Canada

Partie III

OTTAWA, LE JEUDI 30 AOÛT 2012

Lois du Canada (2012)

Chapitres 7 à 20

Lois sanctionnées du 6 avril 2012
au 29 juin 2012

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CG III – Acts and Amendments

- New Acts, plus amendments to existing Acts
 - Dated Acts retain same date after consolidation!
 - Fisheries Act, R.S.C., 1985, c. F-14
 - Consolidated subject to Bill C-38, Division 5 (2012)
- ↓
- Fisheries Act, R.S.C., 1985, c. F-14
- Department of Justice updates on regular basis!



Act Consolidation



CANADA

CONSOLIDATION

Fisheries Act

R.S.C., 1985, c. F-14

Current to December 22, 2015

Last amended on February 26, 2015

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

CODIFICATION

Loi sur les pêches

L.R.C. (1985), ch. F-14

À jour au 22 décembre 2015

Dernière modification le 26 février 2015

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>



CG II – Regulations and Amendments

- New Regulations, plus amendments to existing regs.
 - Dated Regulations retain same date after consolidation!
 - Federal Halocarbon Regulations, 2003, SOR/2003-289
 - Consolidated subject to SOR/2009-221 (2009)
- ↓
- Federal Halocarbon Regulations, 2003, SOR/2003-289
- Department of Justice updates on regular basis!



Regulation Consolidation



CANADA

CONSOLIDATION

Federal Halocarbon Regulations, 2003

SOR/2003-289

Current to December 22, 2015

Last amended on July 30, 2009

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

CODIFICATION

Règlement fédéral sur les halocarbures (2003)

DORS/2003-289

À jour au 22 décembre 2015

Dernière modification le 30 juillet 2009

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>

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Resources

- Department of Justice
<http://laws-lois.justice.gc.ca/eng/regulations/>
- Environment and Climate Change Canada
– Compro materials on CEPA Registry
<http://ec.gc.ca/lcpe-cepa/eng/regulations/default.cfm?n=9E7794D4-1>
- Canada Gazette
<http://www.gazette.gc.ca/gazette/home-accueil-eng.php>



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