

April 27, 2000

Our File: 33

Anik Génier
Environmental Protection Service
Environment Canada
16th Floor PVM
351 St. Joseph Blvd.
Hull, Quebec
K1A 0H3

Fax: (819) 994-8921
Email: anik.genier@ec.gc.ca

Dear Ms. Génier

RE: Environment Canada's Guidelines respecting the Use of the Minister of the Environment's Information Gathering Powers under Section 46 of the Canadian Environmental Protection Act, 1999 ("CEPA").

On behalf of the Environmental Law Centre, I thank Environment Canada for giving us the opportunity to provide written comments regarding the above document (the "Guidelines").

The Guidelines regarding notices requesting information other than for the National Pollutant Inventory ("NPRI") do not explicitly incorporate public participation. There is no formal mechanism by which a member of the public can request the Minister to use his power to gather information.

The importance of public participation is acknowledged in *CEPA*. In administering *CEPA*, the Government of Canada is required to encourage the participation of the public in making decisions that effect the environment (s.2(1)(e)). As noted by the House of Commons Standing Committee on Environment and Sustainable Development, one way to encourage members of the public to participate in decisions is to provide improved access to information.¹ Access to information is an important component of the community right to know.

¹ Canada, Standing Committee on Environment and Sustainable Development, *It's About our Health! Towards Pollution Prevention* (Ottawa: Public Works and Government Services Canada, 1995) at 203.

Recycled Paper

In addition, *CEPA* explicitly acknowledges the importance of access to information by members of the public. In administering *CEPA*, the Government of Canada is required to provide information to the public regarding the state of the Canadian environment (s.2(1)(h)).

The *CEPA* goals of increasing public participation in making decisions that effect the environment and of providing information to the people of Canada can be better achieved by incorporating public participation into the Guidelines.

There should be a formal mechanism by which members of the public can request that the Minister use his power to gather information. In this way, information gaps can be identified by members of the public and brought to the attention of the Minister. As with NPRI Information, members of the public should be allowed some opportunity to participate in assessing the need to issue a notice, the uses to which information will be put and the costs of collecting information.

Further, it is our recommendation that collected information be made available on the CEPA Registry website. At the very least, notice that the information has been acquired should be posted on the CEPA Registry website. Procedures can be developed to address any concerns regarding confidential information.

Although not directly relevant to these Guidelines, I wish to stress a recommendation that the Environmental Law Centre has made throughout the CEPA review. We want to see mandatory reporting regarding pollution prevention activities incorporated into the NPRI.

On behalf of the Environmental Law Centre, I again thank Environment Canada for giving us the opportunity to provide written comments on the Guidelines. If you have any questions regarding our comments, please do not hesitate to contact me at (780) 424-5099.

Sincerely,

Brenda Heelan Powell
Staff Counsel