

International Health & Safety Affairs

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Editor's Note: The International Affairs Newsletter is published to inform CMA member companies about international activities on health, safety and environmental issues. The newsletter is published by the International Affairs Committee (IAC), a CMA committee of member company executives who work together on environmental issues. For further information about IAC activities, contact Garrity Baker, CMA's Director of International Affairs at 202/867-1338.

Canada Preparing Inventory of Existing Chemicals Under New Law

Under the new Canadian Environmental Protection Act (CEPA), Environment Canada must compile an inventory of existing chemicals. Like regulations under the U.S. Toxic Substances Control Act (TSCA), the Canadian inventory will be used in a program for the review of new chemicals in Canada. U.S. companies that export chemicals to Canada should begin now to prepare submissions for the inventory.

Enclosed with this newsletter is an announcement from the Industry Coordinating Group for the Canadian Environmental Protection Act. The announcement includes a model letter (Attachment I) from Canadian companies to foreign suppliers and a list of steps for reporting (Attachment II) titled, "Planning and Resources for Phase II."

As explained in greater detail in the enclosed materials, Environment Canada will soon start Phase II of the reporting program for the Canadian inventory. Key milestones in Phase II reporting are:

1. August, 1989 -- publication of the Core List
2. September, 1989 -- begin reporting of chemicals in commerce in Canada between January 1, 1984, and December 31, 1986

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3. December, 1989 -- close reporting period
4. April, 1990 -- publish the Domestic Substances List
(Canadian Inventory)

Companies should begin now to prepare for reporting. Definitions and exemptions are not fully consistent with TSCA, and companies that export to Canada will have to carefully review their products for reporting.

Please call Garrity Baker, CMA's Director of International Affairs, if you have questions after reading this newsletter (202/887-1338).

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ATTENTION: INDUSTRY ASSOCIATIONS CONCERNED WITH CANADA'S
DOMESTIC SUBSTANCES LIST

FROM: The Industry Coordinating Group for the Canadian
Environmental Protection Act (CEPA)

INTRODUCTION

In June, 1988, CEPA was proclaimed law. The Act provides the legal basis to require that all new substances be notified to and assessed by the federal government prior to import or manufacture in a manner similar to the US Toxic Substances Control Act (TSCA). This requirement is expected to come into force around the end of 1990 when the list of existing substances in Canada has been published. The list of existing substances will be known as the Domestic Substances List (DSL) and is similar in concept to the US TSCA list.

This communication is addressed through industry associations to any corporation or person outside Canada who is concerned with the implications of Canada's Domestic Substances List (DSL). We believe this applies to any supplier of chemical substances to a Canadian importer. It will be essential for such suppliers to cooperate with their Canadian importers in the creation of the DSL to ensure that their products will not be prevented from moving freely to Canadian customers after 1990.

Substances not on the DSL will be defined as "new" and subject to prior notification and assessment before they can be imported into Canada. Such notification can be very expensive, typically in excess of \$100,000, if no health and environmental testing data is available. These notification requirements will be outlined in regulations to be filed under the CEPA.

DEFINITION OF THE DSL

The definition of a substance for these purposes is similar to the TSCA definition.

The eligibility of substances for the list, as quoted in the Act, is as follows:

...all substances that the Minister is satisfied were,
between Jan.1/84 and Dec. 31/86,

- (a) manufactured in or imported into Canada by any person in a quantity of not less than 100 kg in any one calendar year; or
- (b) in Canadian commerce or used for commercial manufacturing purposes in Canada.

Exemptions from the list are similar to TSCA with some exceptions; for example, research and development substances are not exempt.

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THE PROCESS FOR CREATING THE DSL

The DSL will be created in three phases on a very tight time schedule as follows:

Phase I - preparation of the Core List by soliciting nominations from about 180 selected corporations. The reporting for Phase I was completed on March 31 and the core list will be published in late August '89.

Phase II - preparation of the Provisional DSL by accepting nominations from any corporation or person who qualifies as an importer or manufacturer of the substance. The reporting for Phase II will close around Dec. 1/89 and the Provisional DSL will be published on April 1/90. In most cases, companies will not wait for the Core list to prepare for nominations under Phase II.

Corrections and Review Phase - preparation of the final DSL by accepting corrections to the Provisional list as well as nominations of substances from anyone, other than an importer or manufacturer, who can certify its eligibility as a substance "in Canadian commerce". The deadline for reporting under this phase has not yet been set, but the final DSL is expected to be in force around the end of 1990.

AUXILIARY INFORMATION GATHERING

The Industry Coordinating Group (in Canada) has agreed that auxiliary information will be provided voluntarily during the preparation of the DSL. This includes categories of use, provinces of destination and approximate volume of import during 1986. Canadian importers may need the assistance of their suppliers to prepare this information. Note that in Phase II, companies are requested to report any substance that is already on the Core DSL if the quantity of import or manufacture in 1986 was greater than 1000 kg. This feature of the program will require considerable duplication of reporting of substances already on the Core list. In many cases, companies will not wait for the Core list to commence reporting under Phase II.

RESPONSIBILITY OF SUPPLIERS TO CANADIAN IMPORTERS

Only the Canadian importer is eligible to nominate imported substances to the DSL; however, the foreign supplier (or the supplier's supplier) may nominate on behalf of the importer on forms obtained through the importer. This is allowed so the supplier can maintain the confidentiality of formulations or substance identities. A model letter is shown in Attachment I which suppliers can expect to receive

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from their Canadian importers. In spite of the above, it is always preferable to supply the information to the Canadian importer and avoid the complication of reporting on his behalf if this is acceptable to you.

Some suppliers will already have been involved in this process during Phase I for preparation of the core list.

It is clear from our experience in Phase I that the expeditious cooperation of foreign suppliers is essential to the preparation of a high quality, comprehensive DSL. In this regard, we request that suppliers provide the necessary resources for the exercise and start now to anticipate the information needs for the DSL. Canadian importers should be contacted to initiate the process.

Although there is no legal duty on the part of foreign suppliers, we believe they will recognize their self-interest in this program to ensure the uninterrupted continuity of the business.

NOTIFICATION AND ASSESSMENT OF NEW SUBSTANCES UNDER CEPA

As described earlier, the notification of new substances under CEPA is expected to commence around the end of 1990. The regulations covering the detailed requirements of a notification package for new substances has not yet been released, but they will not be the same as the US TSCA requirements. Thus, a successful TSCA notification for a substance does not automatically guarantee its addition to the Canadian DSL. On the other hand, some recognition of prior status as an existing substance in foreign commerce has been granted. This will be accomplished by the Non-Domestic Substances List (NDSL) which will include all substances on the 1985 TSCA List minus the substances on the DSL. A substance new to Canada (i.e. not on the DSL) which is on the NDSL will be subject to a much reduced data package for notification and assessment purposes.

PREPARATION OF THE NDSL

The preparation of the non-confidential portion of the NDSL is a simple matter of deleting all DSL substances from the published 1985 TSCA list. However, the confidential portion of the NDSL can only be created by requesting the US submitters to report their substances that are on the confidential 1985 TSCA to Canadian authorities. There is no mechanism for direct transfer of the list to Canada from EPA. The details of this exercise have not yet been determined and will be the subject of a subsequent communication.

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OTHER INFORMATION

Attachment II titled Planning and Resources for Phase II is an (revised) excerpt from a communication to Canadian companies to assist in their preparations for Phase II reporting. Note the government telephone number for information on the program.

Copies of the Canadian Environmental Protection Act can be obtained from:

The Canadian Government Publishing Centre
Printing and Publishing
Supply and Services Canada
Ottawa, Canada K1A 0S9

Price: \$22 (confirm)

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ATTACHMENT II

PLANNING AND RESOURCES FOR PHASE II

The following steps must be carried out for reporting under phase II (unless already done under phase I):

1. Obtain copies of
 - the Canadian Environmental Protection Act
 - Environment Canada's Reporting for the Domestic Substances List and subsequent information notes and reporting forms by calling 1-819-953-7156
 - the 1985 US TSCA list (allow several weeks)
2. Organize data on all of your 1984-6 manufactures and imports by substance, identifying each with a CAS number.
3. Identify all imported blends or mixtures for which ingredient names or approximate quantities are unknown and request your supplier for such information. If the supplier will not reveal this information, request that he report on your behalf. We have attached a sample letter that can be used for this purpose.
4. If you choose to wait for the Core List, delete any substances already on the Core List if imported/manufactured at <1000 kg in 1986.
5. Assemble data for each eligible substance including quantity, use and province(s) of destination as outlined in the above reporting guideline.
6. Complete the forms and submit.
7. Follow up on submissions to be made on your behalf by a foreign supplier.

One should not underestimate the time required to obtain submissions by your foreign suppliers. In many cases, the supplier may have to contact his supplier in order to report. We plan to communicate with US industry associations to enlist their cooperation.

Training, information and support is or will be available through the following channels:

- Environment Canada, telephone [REDACTED]
- " " reporting guidelines (see above)
- video tapes of a training seminar
- trouble-shooting seminars to be arranged as necessary
- other information sessions as arranged by your industry association.

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ATTACHMENT I

MODEL LETTER

LETTERHEAD

Date

To: Foreign Supplier
Address

Subject: Canadian Environmental Protection Act (CEPA)
Reporting for the Domestic Substances List

Substance: _____

Our records from 1984 to 1986 show that we imported the above substance, or a formulation containing it, into Canada. We believe that the substance is manufactured by your firm.

Environment Canada is now compiling a domestic list of substances (the "DSL") used in Canada during this period. This will become the basis for determining whether substances currently imported are "existing" or "new" to Canada, and consequently whether pre-notification and testing will be required, prior to future importation. In many ways, the list and the testing procedures will be similar to the TSCA regulations now in effect in the U.S.A.

We have been unable to determine the chemical names and Chemical Abstract Service (CAS) numbers for the ingredients in the above substance, in order to report these to Environment Canada (for inclusion in the DSL). Failure to have these ingredients included on this list could result in a requirement for expensive toxicological tests, which could make our continued importation into Canada prohibitively expensive. The purpose of this letter is to request your cooperation and assistance in either providing us with this information, or if the information is proprietary, in agreeing to submit the information, in confidence, directly to Environment Canada.

Enclosed is a copy of the Environment Canada publication "Reporting for the Domestic Substances List". The procedure for proprietary information from foreign suppliers is on pages 28 and 29. If you would prefer that we initiate this procedure by sending you a form "B", then please confirm. Otherwise, we would appreciate receiving a list of all of the ingredients in the above substance, along with appropriate CAS numbers.

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Once the inventory provisions of CEPA are in effect in 1990, we will no longer be able to import this substance without a declaration from your firm that all of its ingredients are on the Domestic Substances List. The most cost-effective way to ensure compliance is to arrange now to provide this information.

Thank you for your help.

Yours truly,

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