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ANNOTATED GUIDE TO THE CANADIAN ENVIRONMENTAL PROTECTION ACT
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This work unravels the complications of the Canadian Environmental Protection Act, offering a practical explanation of how each of the Act’s more than 356 sections operate and relate to one another. This information is crucial for those charged with implementing the Act and for those who need to know how it can affect one’s clients or business. The only annotated resource on the subject, it includes:

- A section-by-section explanation of the entire *Act*
- An analysis of key reported case law
- A consolidation of the *Act*’s six schedules
- Annotations to the List of Toxic Substances
- The text of key regulations, with commentary

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What's New in this Update:

- Commentary has been updated in the Introduction and annotations to the *Canadian Environmental Protection Act, 1999*. Appendix D36: Selected Sections of *CEPA, 1999* Repealed by Bill S-5 (S.C. 2023, C. 12), Associated Cross-Referencing, and Commentary has been added.

Highlights:

- Overview of Key Aspects of CEPA, 1999 and the Regulation of Substances in the Environment—Regulated Toxic Substances—Greenhouse Gases—§ CEPA:17—The International Situation—In June 2023, the Supreme Court of the United States by a vote of 6-3 limited the ability of the Environmental Protection Agency to regulate carbon emissions from power plants. The majority held that the case turned on the scope of the language of the *Clean Air Act* and that under this federal statute Congress had not clearly given the agency sweeping authority to regulate the energy industry. The ruling curtailed but did not eliminate the agency's ability to regulate the energy sector, and the agency may still use measures like emission controls at individual power plants. But the Court ruled out more ambitious approaches, like a cap-and-trade system. Applying what the majority called the “major questions doctrine” held that Congress must speak with particular clarity when it authorizes executive agencies to address major political and economic questions. In asserting its authority to act, the agency must point to clear congressional authorization for the power it claims. The dissent argued that the text of the *Clean Air Act* already empowered the agency to devise “the best system of emission reduction” (See Adam Liptak, “Supreme Court Limits E.P.A.’s Ability to Restrict Power Plant Emissions”, *The New York Times* (30 June 2023); and Charlie Savage, “E.P.A. Ruling Is Milestone in Long Pushback to Regulation of Business”, (30 June 2023)).
Canadian Environmental Protection Act, 1999—Part 5 Controlling Toxic Substances—General—66.1. Domestic Substances List—*Food and Drugs Act*—§ CEPA-66.1:1 Commentary—Section 66.1(1) provides that for the purposes of s. 81, the Minister may add a substance to the Domestic Substances List if three criteria are met: (1) the substance was included on the version of the Revised In Commerce List that was prepared by the Minister of Health after the end, on November 3, 2019, of acceptance of substance nominations to that List and that is referred to in the *Canada Gazette*, Part I, Volume

152, Number 44, as the static list; (2) the substance is not referred to in Annex I to the notice entitled “Removal of substances with no commercial activity from the Revised in Commerce List” published in the *Canada Gazette*, Part I, Volume 156, Number 8; and (3) no conditions specified under s. 84(1)(a) in respect of the substance are in effect. Section 66.1(1) further provides that if the substance appears on the Non-domestic Substances List, the Minister must delete it from that List. The effect of these provisions is that the substance ceases to be treated as one that is new to Canada unless there are material changes to its use in which case it would be subject to other provisions of the Act that address significant new activities in respect of existing substances. Section 66.1(2) provides that the Minister may, by order, designate any person or class of persons to exercise the powers set out in s. 66.1(1).

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