



PHOSPHORUS ALTERNATIVES NOTICE

**Guidance document for responding to the CEPA 1999 paragraph 71(1)(b)
*Notice with respect to alternative substances to phosphorus compounds in
household laundry detergents, household dish-washing compounds and
household cleaners*
published on April 25, 2009**

This document provides guidance for responding to the *Notice with respect to alternative substances to phosphorus compounds in household laundry detergents, household dish-washing compounds and household cleaners*. This notice was published in the *Canada Gazette*, Part I, on April 25, 2009, pursuant to paragraph 71(1)(b) of the *Canadian Environmental Protection Act, 1999* (CEPA 1999). The document is available for guidance only and, in case of discrepancy between this document and the notice or the Act, the notice and the Act take precedence.

The Minister invites the submission of additional information that is deemed beneficial by interested stakeholders, relating to the extent and nature of the management/stewardship of the alternative substances to phosphorus compounds.

The April 25, 2009 notice and all documents related to the collection of information are available through the Chemicals Substances web site at:

<http://www.chemicalsubstanceschimiques.gc.ca/en/index.html>

Information for Completion of the April 25, 2009 section 71 notice

1. WHAT IS THE PURPOSE OF THE NOTICE?	3
2. WHERE CAN I GET A COPY OF THE NOTICE?	3
3. WHAT SUBSTANCES ARE INCLUDED?.....	4
4. WHO IS REQUIRED TO RESPOND AND WHAT SECTIONS NEED TO BE COMPLETED?.....	4
4.1- DO I MANUFACTURE?	5
4.2- DO I IMPORT?	5
5. HOW TO SUBMIT A BLIND SUBMISSION	6
6. SCHEDULE 3 OF THE NOTICE.....	7
7. HOW TO COMPLETE THE SECTIONS OF SCHEDULE 3.....	7
7.1- PART 4	8
7.2- PART 5	8
8. INFORMATION TO WHICH YOU MAY REASONABLY BE EXPECTED TO HAVE ACCESS	9
9. HOW AND TO WHOM DO I RESPOND AND TO WHAT ADDRESS?	9
10. WHAT IS THE DEADLINE FOR RESPONSE?	9
11. WHAT IF I NEED AN EXTENSION?	10
12. INQUIRIES- WHO TO CONTACT.....	10

1. What is the purpose of the notice?

Section 71 notices may be used for the purpose of assessing whether a substance is toxic or capable of becoming toxic, or for the purpose of assessing whether to control, or the manner in which to control, a substance.

This notice has been issued to identify substances that are currently used or being considered for use as alternatives to phosphorus compounds in household laundry detergents, dish-washing compounds and cleaners other than laundry detergents, dish-washing compounds, metal cleaners or de-greasing compounds. This information will be used to determine whether there are hazards associated with these alternatives based on likely levels of exposure to the environment.

The purpose of the current section 71 notice is to identify:

- product types that exceeded a phosphorus compound concentration of 0.5 % by weight, expressed as elemental phosphorus, in a quantity of greater than 10 000 kg for any given year, since January 1, 2004 (1-household laundry detergent, 2-household dish-washing compound or 3-household cleaner other than laundry detergents, dish-washing compounds, metal cleaners or de-greasing compounds);
- the total quantity in kilograms (rounded to the nearest 100 kg) of the product type based on 2007 calendar year sales;
- whether the product type reported in column “a” was manufactured or imported into Canada;
- the CAS RN¹ of the alternative substance or substances to phosphorus which may currently be in use or may be considered for use in the product type;
- the actual or estimated concentration, or range of concentration, of the alternative substance to phosphorus as a weight % within the product type; and
- whether the alternative substance to phosphorus is currently being used or considered for use or not considered for use.

¹ CAS RN: Chemical Abstracts Service Registry Number. The Chemical Abstracts Service information is the property of the American Chemical Society and any use or redistribution, except as required in supporting regulatory requirements and/or for reports to the Government of Canada when the information and the reports are required by law or administrative policy, is not permitted without the prior, written permission of the American Chemical Society.

2. Where can I get a copy of the notice?

The notice was published in Part 1 of the *Canada Gazette*, pursuant to paragraph 71(1)(b) of CEPA 1999 on April 25, 2009. Electronic copies of the notice can be found on the Web site at the following address:

<http://www.chemicalsubstanceschimiques.gc.ca/en/index.html>

3. What substances are included?

As given in Schedule 1 to the notice, this notice includes the following substances:

1. Alternative substances to phosphorus compounds used or considered for use in household laundry detergents; or
2. Alternative substances to phosphorus compounds used or considered for use in household dish-washing compounds; or
3. Alternative substances to phosphorus compounds used or considered for use in household cleaners (other than laundry detergents, dish-washing compounds, metal cleaners or de-greasing compounds).

This notice does not apply to Glycine, N,N-bis(carboxymethyl)- (NTA), which has a CAS RN¹ of 139-13-9.

4. Who is required to respond and what sections need to be completed?

As outlined in Schedule 2 to the notice, the notice applies to any persons who satisfy the following criteria:

This notice applies to any person who manufactured and/or imported a total combined quantity of greater than 10,000 kg, for any given calendar year since January 1, 2004, of a household laundry detergent and/or of a household dish-washing compound and/or of a household cleaner (other than laundry detergents, dish-washing compounds, metal cleaners or degreasing compounds) that exceeded a phosphorus compound concentration of 0.5% by weight, expressed as elemental phosphorus.

Examples:

1) Company meets the reporting threshold:

In 2005, if your company manufactured 12 000 kg of Product-Z which contained a phosphorus concentration of 2% by weight.

In 2006, you re-formulated Product-Z so that the phosphorus concentration is now less than 0.5% by weight.

The reporting threshold is met, as more than 10 000 kg of a product containing elemental phosphorus was manufactured in a calendar year since January 1, 2004.

2) Company does not meet the reporting threshold:

In 2004, if your company imported a product with a phosphorus concentration of less than 0.5% by weight, the reporting threshold is not met, regardless of the quantities imported.

Persons satisfying the criteria are required to provide the information specified in the notice. Subsection 71(3) of CEPA 1999 states that every person to whom a notice issued under paragraph 71(1)(b) of the Act is directed, must comply with the notice within the time specified in the notice.

If the person subject to the notice is a company, response to the notice must be submitted on a company-wide basis.

4.1- Do I manufacture?

The term “manufacture” in the notice reads as follows:

“manufacture” excludes incidental production.

4.2- Do I import?

The term “import” in the notice reads as follows:

“import” includes movement into Canada, as well as internal company transfers across the Canadian border, but does not include the portion of an international movement through Canada when Canada is neither the country of origin nor the country of destination.

Import then relates specifically to the movement into Canada from another country of any household laundry detergent, household dish-washing compound or household cleaner (other than laundry detergents, dish-washing compounds, metal cleaners or degreasing compounds) that exceeded a phosphorus compound concentration of 0.5% by weight, expressed as elemental phosphorus.

You are required to provide information that your company possesses or to which your company may reasonably be expected to have access.

For the purpose of the notice, possible situations where you are considered to “import” include, but are not limited to, the following examples:

1. You are an individual, company or other body (in Canada) that ordered or purchased from a foreign supplier, a household laundry detergent, household dish-washing compound or household cleaner (other than laundry detergents, dish-washing compounds, metal cleaners or degreasing compounds) that exceeded a phosphorus compound concentration of 0.5% by weight, expressed as elemental phosphorus, that was shipped directly from a foreign source (such as a person or company situated outside of Canada) to your location in Canada.
2. You are an individual, company or other body (in Canada) that ordered or purchased from a foreign supplier, a household laundry detergent, household dish-washing compound or household cleaner (other than laundry detergents, dish-washing compounds, metal cleaners or degreasing compounds) that exceeded a phosphorus compound concentration of 0.5% by weight, expressed as elemental phosphorus that was shipped directly from a foreign source to an address in Canada (including a distribution warehouse) on your request.
3. You are an individual, company or other body (in Canada) that received a household laundry detergent, household dish-washing compound or household cleaner (other than laundry detergents, dish-washing compounds, metal cleaners or degreasing compounds) that exceeded a phosphorus compound concentration of 0.5% by weight, expressed as elemental phosphorus, as an internal company transfer from a foreign source.

Individuals, companies or other bodies in Canada that are required to respond can also meet their obligation when a third party is responding on their behalf.

Your activities do not meet the definition of “import” under the notice if you, your company or other body purchased or received a reportable substance or a mixture, product or manufactured item containing a reportable substance that was already located in Canada.

5. How to submit a blind submission

Customers may ask their suppliers if the products they purchase contain substances listed in this section 71 notice. Suppliers looking to protect their formulations as confidential business information may be reluctant to provide the information to their customers so that those customers can respond to the notice. In this case, suppliers and customers can collaborate on a "blind submission".

Since customers may use or import several different mixtures, products or manufactured items that contain the substance, or may use or import the same item from several suppliers, it may be difficult to determine if the total quantity meets the threshold. If a supplier knows/suspects that a customer should report based on quantities purchase, the supplier should inform the customer of the need to report and if a customer suspects that they may meet the threshold for reporting, then they need to work with their supplier to submit a completed section 71 notice.

To submit a "blind submission":

The customer sends a completed section 71 notice form, completing as much information as necessary:

- the applicable CAS RN and substance name (if known). If not known, please label as "Substance A", "Substance B", etc. for all applicable products
- the product name for the product purchased from the supplier(s)
- the quantity (in kg) of mixture, product or manufactured items purchased in the timeframe of the notice
- the supplier(s)'s name and address
- other questions in the notice to which the customer can respond.

The supplier then sends:

- the list of customers (names and addresses) to which this supplemental information applies for their section 71 notice submissions
- the applicable CAS RN and substance name
- the product name for the product sold to the customer(s)
- the concentration of the substance in the product sold
- other questions in the notice to which the supplier can respond.

Any person who provides information in response to the notice may submit, with the information, a written request that it be treated as confidential. See section 7.1 of this guidance document.

6. Schedule 3 of the notice

5. For any person who manufactured and/or imported a total combined quantity of greater than 10,000 kg, for any given calendar year since January 1, 2004, of a household laundry detergent and/or a household dish-washing compound and/or a household cleaner (other than laundry detergents, dish-washing compounds, metal cleaners or degreasing compounds) that exceeded a phosphorus compound concentration of 0.5 % by weight, expressed as elemental phosphorus, the person shall provide the following information:

- Indicate the product type (1-household laundry detergent, 2-household dish-washing compound or 3-household cleaner other than laundry detergents, dish-washing compounds, metal cleaners or de-greasing compounds);
- The total quantity of the product type listed in column (a), rounded to the nearest 100 kilograms, based on 2007 calendar year sales;
- Indicate whether the product type reported in column (a) was manufactured or imported by checking the appropriate box; if both manufacture and import are applicable, report as separate entries in the table;
- Indicate whether an alternative substance to phosphorus compound is currently being used or being considered for use in the product type reported in column (a) by checking the appropriate box;
- If reported "Yes" in column (d), provide CAS RN¹ of the alternative substance to phosphorus compound which is currently being used or being considered for use in the product type reported in column (a). If the alternative to phosphorus compound which is currently being used or being considered for use is made up of multiple substances, report each alternative substance as a separate entry in the table.
- Provide actual or estimated concentration, or range of concentration, of the alternative substance to phosphorus compound listed in column (e) as a weight % within the product type; and
- Indicate whether the alternative substance to phosphorus compound listed in column (e) is currently being used or being considered for use by checking the appropriate box (i.e. select either *Currently being used* or *Being considered for use*).

Indicate the product type (1-household laundry detergent, 2-household dish-washing compound or 3-household cleaner other than laundry detergents, dish-washing compounds, metal cleaners or de-greasing compounds) (a)	Total quantity of the product type listed in column (a) based on 2007 calendar year sales (Rounded to the nearest 100 kg) (b)	Indicate whether the product type reported in column (a) was manufactured or imported (c)		Indicate whether an alternative substance to phosphorus compound is currently being used or being considered for use in the product type reported in column (a) (d)		If reported "Yes" in column (d), provide CAS RN ¹ of the alternative substance(s) to phosphorus compound which is(are) currently being used or being considered for use in the product type reported in column (a) (e)	Provide actual or estimated concentration, or range of concentration, of the alternative substance to phosphorus compound listed in column (e) within the product type (% by weight) (f)	Indicate whether the alternative substance to phosphorus compound listed in column (e) is currently being used or being considered for use (g)	
		Manuf- acture	Import	Yes	No			Currently being used	Being considered for use
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>

Attach supplementary sheets, if necessary

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7. How to complete the sections of Schedule 3

7.1- Part 4

Identification and Declaration Form

The “Identification and Declaration Form” is provided for three reasons:

- to update the identification and contact information of each person who responds to the notice;
- to require certification of the accuracy of the response; and
- to request confidentiality.

Each response must be signed. You must submit an original signed version of the “Identification and Declaration Form” to the Minister of the Environment.

Confidentiality requests

Pursuant to section 313 of CEPA 1999, any person who provides information in response to the notice may submit, with the information, a written request that it be treated as confidential. A request for confidentiality may be submitted for any information item provided on a particular substance in response to the notice. When requesting confidential treatment by the Minister of Environment of information provided under the notice, you should provide a reason for your request. The reason may be based upon considerations such as those that appear as examples below:

- the information is confidential to your company and has consistently been treated as such by your company;
- your company has taken, and intends to continue to take, measures that are reasonable in the circumstances to maintain the confidentiality of the information;
- the information is not, and has not been, reasonably obtainable by third persons by use of legitimate means, except with the consent of your company;
- the information is not available to the public;
- disclosure of the information may reasonably be expected to cause substantial harm to the competitive position of your company;
- disclosure of the information may reasonably be expected to result in a material financial loss to your company or a material financial gain to your company’s competitors.

Upon receipt of a request for confidentiality under section 313 of CEPA 1999, in relation to information submitted pursuant to the section 71 notice of CEPA 1999, the Minister of the Environment shall not disclose that information, except in accordance with section 315, 316 or 317 of CEPA 1999.

7.2- Part 5

What if the alternative to phosphorus is made up of more than 1 substance?

If the alternative to phosphorus compound which is currently being used or being considered for use in the product is made up of more than one substance, report each substance as a separate entry (i.e. on separate lines) in the table given in Section 5 of Schedule 3 of the notice.

What if the alternative to phosphorus is considered to be Confidential Business Information (CBI) to my company?

Indicate clearly in writing the parts of your submission that are considered to be CBI by your company and provide justification for your CBI claims. If multiple substances are reported, indicate which pieces of information are CBI.

8. Information to which you may reasonably be expected to have access

You are required to provide information that your company possesses or to which you may reasonably be expected to have access. For example, when importing a substance, mixture, product or manufactured item you may reasonably be expected to have access to the relevant Material Safety Data Sheet (MSDS). An MSDS is an important source of information on the composition of a purchased product. Note that the goal of the MSDS is to protect the health of the workers, not the environment. Therefore, an MSDS may not list all product ingredients on which the Minister of the Environment is requiring information under the notice. You may wish to contact your supplier for more detailed information on product composition.

You are not required to conduct tests to comply with this notice.

Companies that do not fall under the requirements to respond to the notice, but have an interest in future activity regarding specific substances, may identify themselves as a stakeholder using the Stakeholder Interest form.

9. How and to whom do I respond and to what address?

Response to the notice must be submitted to the Minister of the Environment, to the attention of the:

By mail:

DSL Surveys Coordinator
Chemicals Management Plan
200 Sacré Coeur, 8th Floor
Gatineau QC K1A 0H3

By courier:

DSL Surveys Coordinator
Chemicals Management Plan
200 Sacré Coeur, 8th Floor
Gatineau QC J8Y 3Z5

You can provide the requested information in an electronic format, using our online eSubmissions system. However, as indicated above, you must sign and return an original paper copy of the *Identification and Declaration Form* (Section 4 of Schedule 3) for the submission to be complete.

10. What is the deadline for response?

Every person to whom the notice applies is required to comply with the notice no later than **August 25, 2009, 3 p.m. Eastern Daylight Time.**

11. What if I need an extension?

As provided in subsection 71(4) of CEPA 1999, you may submit a written request for an extension of time to comply with the notice. The request for an extension should include the reason for the request. Address your request to the Minister of the Environment, to the attention of the DSL Surveys Coordinator, Existing Substances Program, 200 Sacré Coeur, 8th Floor, Gatineau QC K1A 0H3. You may send your request by mail, by fax at 1-800-410-4314/819-953-4936 or by email at DSL.SurveyCo@ec.gc.ca. Please note that you must request an extension of time before expiry of the **August 25, 2009, 3 p.m. Eastern Daylight Time** deadline. No extensions will be granted after the deadline has expired. It is recommended that any request for an extension be submitted at least five business days before **August 25, 2009** so that a request can be processed by the Minister of the Environment before expiry of the deadline.

12. Inquiries- who to contact

If you have an inquiry, please contact the DSL Surveys Coordinator at the following numbers or email address:

- telephone: 1-888-228-0530/819-956-9313; or
- fax: 1-800-410-4314/819-953-4936; or
- email: DSL.SurveyCo@ec.gc.ca