

Canada Gazette, Part 2, Volume 153, Number 8: Regulations Amending the Contaminated Fuel Regulations

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CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

P.C. 2019-268 April 5, 2019

Whereas, pursuant to subsection 332(1) of the *Canadian Environmental Protection Act, 1999*, the Minister of the Environment published in the *Canada Gazette*, Part I, on March 31, 2018, a copy of the proposed *Regulations Amending the Contaminated Fuel Regulations*, substantially in the annexed form, and persons were given an opportunity to file comments with respect to the proposed Regulations or to file a notice of objection requesting that a board of review be established and stating the reasons for the objection;

Whereas, pursuant to subsection 93(3) of that Act, the National Advisory Committee has been given an opportunity to provide its advice under section 6 of that Act;

And whereas, in the opinion of the Governor in Council, pursuant to subsection 93(4) of that Act, the proposed Regulations do not regulate an aspect of a substance that is regulated by or under any other Act of Parliament in a manner that provides, in the opinion of the Governor in Council, sufficient protection to the environment and human health;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment and the Minister of Health, pursuant to subsection 93(1) of the *Canadian Environmental Protection Act, 1999* [footnote b](#), makes the annexed *Regulations Amending the Contaminated Fuel Regulations*.

Regulations Amending the Contaminated Fuel Regulations

Amendments

1 Section 3 of the *Contaminated Fuel Regulations* is replaced by the following:

3 (1) Subject to subsections 4(1) and (2.1) and section 5, it is prohibited for any person to import contaminated fuel.

(2) Subject to subsections 4(2) and (2.1), it is prohibited for any person to export contaminated fuel.

2 Section 4 of the Regulations is amended by adding the following after subsection (2):

(2.1) A person does not contravene section 3 if the contaminated fuel is in transit through Canada, from a place outside Canada to another place outside Canada, and there is written evidence establishing that the fuel is in transit.

Coming into Force

3 These Regulations come into force on the day on which they are registered.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Issues

Canada is bound by the World Trade Organization (WTO) Trade Facilitation Agreement (TFA), which modernizes and simplifies customs and border procedures for all WTO members. Legislative amendments were made to the *Canadian Environmental Protection Act, 1999* (CEPA) under Bill C-13 in December 2016 to enable Canada to take the necessary measures to implement the TFA. The *Regulations Amending the Contaminated Fuel Regulations* (the Amendments) ensure that the *Contaminated Fuel Regulations* (the Regulations) are consistent with Canada's international obligations under the TFA.

Background

The TFA came into force on February 22, 2017. The TFA is the first multilateral treaty to emerge from the WTO since its creation, reinforcing the important role of the WTO as a negotiating forum for global trade rules. Among other things, the TFA limits the ability of a WTO member to apply technical regulations to goods moving through its territory from a point outside its territory to another foreign point (i.e. goods in transit).

The *Contaminated Fuel Regulations* prohibit the import and export of fuels mixed with toxic substances, with exemptions to imports for the purpose of destruction, disposal and recycling. The Regulations also exempt exports to countries that have authorized or permitted the importation of the fuel. These Regulations would likely constitute a "technical regulation" as defined under the WTO Technical Barriers to Trade Agreement, because they apply to an identifiable product and they clearly outline the product's characteristics. Unlike other fuel quality regulations under CEPA, the Regulations do not have an exemption for contaminated fuel in transit.

The import and export of contaminated fuels have been prohibited in Canada since 1991 under the Regulations. The initial action to prohibit the import and export of contaminated fuels was in response to a select few cases in the late 1990s where fuel containing hazardous waste, such as polychlorinated biphenyls, heavy metals, sulphur, and phosphate, was imported into Canada. These shipments were bought at relatively cheap prices and resold to Canadians at market price. The objective of the Regulations was to prevent the sale or illegal disposal of contaminated fuels in Canada. This activity ceased after the Regulations came into force.

Objectives

The objective of the Amendments is to ensure that Canada is consistent in its international obligations under the TFA.

Description

The Amendments exempt contaminated fuels in transit from the prohibition on imports and exports of contaminated fuels. The Amendments add subsection (2.1) to section 4 of the Regulations, stating that "A person does not contravene section 3 if the contaminated fuel is in transit through Canada, from a place outside Canada to another place outside Canada, and there is written evidence establishing that the fuel is in transit."

"One-for-One" Rule

The "One-for-One" Rule does not apply to the Amendments, as they are not expected to impact any stakeholders.

Small business lens

The small business lens does not apply to the Amendments, as they are not expected to impact any stakeholders.

Consultation

On March 31, 2018, the proposed Amendments were published in the *Canada Gazette*, Part I, which was followed by a 75-day comment period. Prior to this publication (March 2017), the Department of the Environment surveyed potential stakeholders and, of these, eight from the hazardous waste handling sector in Canada reported handling contaminated fuels. Stakeholders did not note any uses for contaminated fuels outside of disposal, destruction or recycling. Seven of the eight stakeholders who reported handling contaminated fuels as hazardous waste in Canada stated that the proposed Amendments would not impact their businesses. The remaining stakeholder was unsure whether the proposed Amendments would increase the volume of contaminated fuels transported by the company.

During the 75-day public comment period following the publication of the proposed Amendments in the *Canada Gazette*, Part I, no submissions were received.

Rationale

The TFA, ratified by Canada in 2016, limits the ability of WTO members to apply technical regulations to goods in transit. The TFA is intended to benefit Canada and other signatories by lowering trade costs and increasing exports. The Amendments exempt contaminated fuels in transit through Canada from the prohibition under the Regulations, which ensures that Canada is consistent in its international obligations under the TFA.

By exempting contaminated fuels in transit from the prohibition on imports and exports of contaminated fuels, the Amendments increase Canada's regulatory compatibility with the United States and the European Union. Fuels contaminated with hazardous substances are subject to separate regulations made by the United States and the European Union regarding transboundary movements of hazardous waste. These regulations allow for the transit of fuels contaminated with hazardous substances across the United States and

European Union territories.

In Canada, while there is no general prohibition against the use of contaminated fuels, the Department of the Environment regulates the levels of certain contaminants such as sulphur, phosphorus, and lead that may be legally present in some fuels. The manufacture, export, import, sale, processing and use of fuels contaminated with polychlorinated biphenyls are prohibited under the *PCB Regulations*. Many other international jurisdictions actively regulate fuel quality standards as well; therefore, the likelihood of contaminated fuels being valuable, usable fuels is expected to be very low.

Although the Amendments could theoretically increase the traffic of contaminated fuels, which could increase the risk of spills, such an increase in traffic is not expected. Stakeholders have noted the high cost of transporting contaminated fuels in Canada and, under the Amendments, the transit of contaminated fuels would likely only occur if Canada were along the shortest route to the final destination for the contaminated fuels. Thus, the risk of increased traffic and any associated increased risk of spills are expected to be minimal. The Amendments are not expected to impact stakeholders, and additional costs to businesses or government are not expected.

Existing regulations address risks associated with the transport of flammable liquids, toxic substances, hazardous wastes and recyclable materials. These regulations apply to contaminated fuels in transit and serve to mitigate environmental risks associated with transport.

On a federal level, contaminated fuels being transported in Canada, including those in transit, are captured under the *Transportation of Dangerous Goods Act, 1992* (TDGA) under the classes of flammable liquids or toxic substances. Some requirements of the *Transportation of Dangerous Goods Regulations* under the TDGA for flammable liquids and toxic substances include that the materials in transit be properly labelled for their hazards and class, abide by containment standards, not exceed applicable limits of maximum quantity transported, and have an approved emergency response assistance plan. The TDGA classes for flammable liquids and toxic substances that are wastes or recyclable material are also regulated under the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations* under CEPA. These Regulations require that the carriers have, during the transit in Canada, a transit permit and liability insurance that includes the cost of environmental cleanups in case any materials are released. These Regulations also require carriers to have movement documents detailing the types and amounts of materials being shipped as well as the disposal or recycling plan for the waste materials.

The transportation, disposal, destruction and recycling of contaminated fuels are also managed under provincial regulations. Therefore, the negative environmental risks of the Amendments are expected to be low.

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