



Government  
of Canada

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du Canada

# THE CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999 An Overview

Health Canada – PAHO Workshop  
Lima, Peru  
November 8-10, 2016



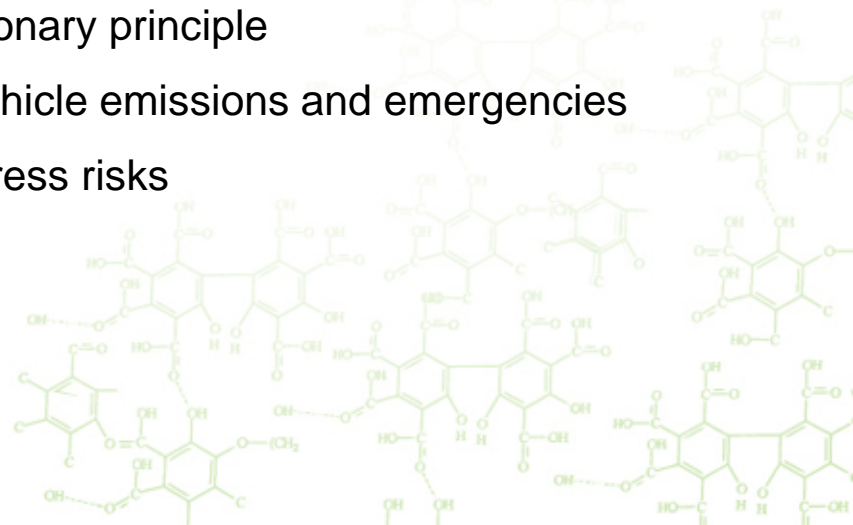
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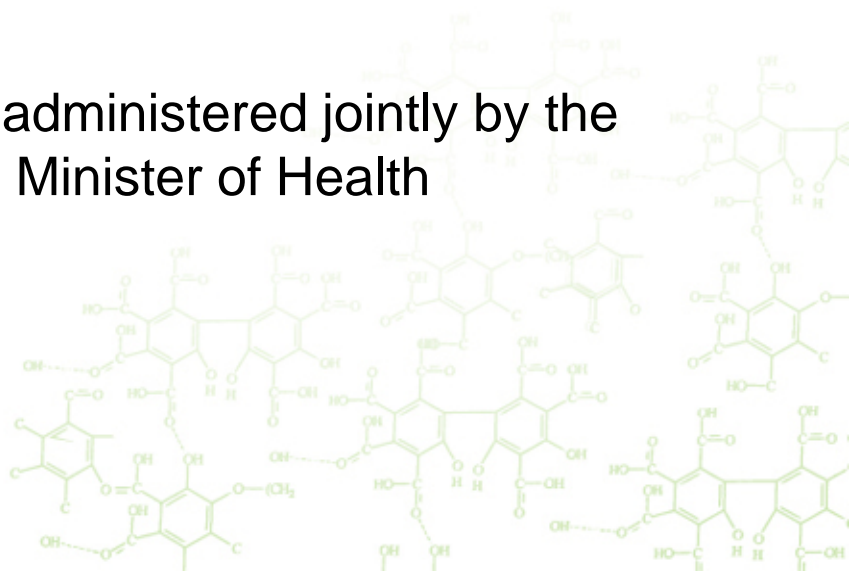
# The Original CEPA

- *Canadian Environmental Protection Act (CEPA 1988)*
  - Consolidated several environmental acts
  - Created a framework for the management of toxic substances
  - Provided authority to regulate various pollution sources
- *Canadian Environmental Protection Act, 1999 (CEPA) came into force on March 31, 2000, following an extensive Parliamentary review of CEPA 1988*
  - Shift in approach from managing pollution to preventing pollution
  - Adopted sustainable development as overarching goal supported by principles such as polluter pays and the precautionary principle
  - Added authority over areas such as vehicle emissions and emergencies
  - More tools to identify, assess and address risks



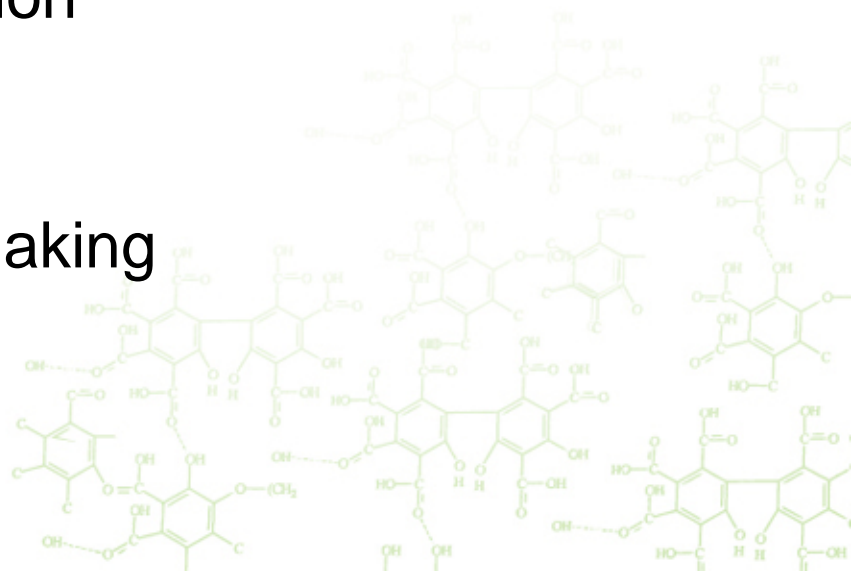
# CEPA 1999

- Original CEPA was a compilation of other environmental acts
  - Covered various sources of pollution – and included framework for lifecycle management and control of toxic substances
  - Updated in 1999 to expand scope and tools – included deadline for taking action on toxic substances
- For the most part, CEPA 1999 is enabling legislation
  - Even where CEPA compels action, it generally provides wide range of options/tools
- Many provisions in CEPA 1999 are administered jointly by the Minister of the Environment and the Minister of Health



# Guiding Principles

- Sustainable development
- Pollution prevention
- Virtual elimination
- Ecosystem approach
- Precautionary principle
- Intergovernmental collaboration
- Polluter pays principle
- Science-informed decision making



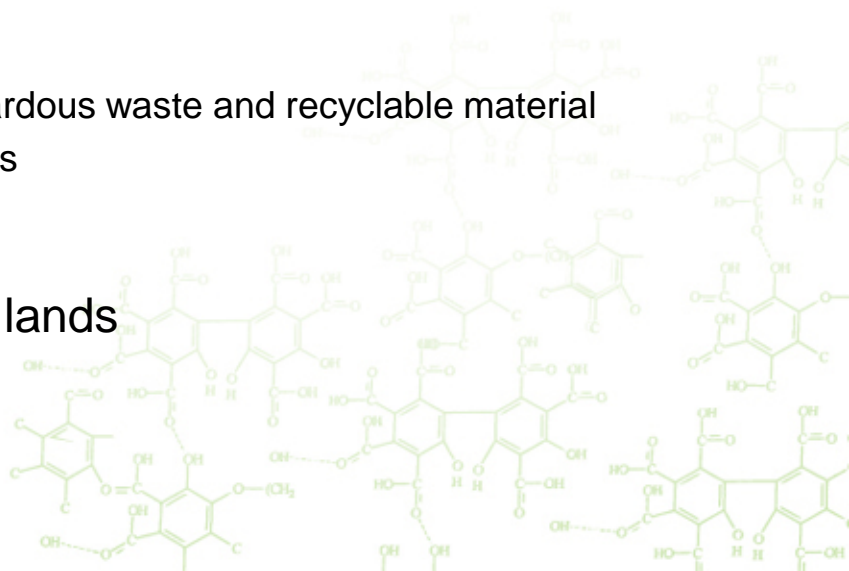
# Part of a Bigger Federal Environmental Legislative Picture

Products	Emissions and Effluents	Conservation and Natural Resource Management
<b>Canadian Environmental Protection Act, 1999</b>		
Pest Control Products Act Food and Drugs Act Feeds Act Seeds Act Fertilizers Act Health of Animals Act Hazardous Products Act Canada Consumer Product Safety Act Transportation of Dangerous Goods Act, 1992	Canadian Environmental Assessment Act, 2012 Fisheries Act (s.36) Canada Water Act Lake of the Woods Control Board Act / Lac Seul Conservation Act Indian Act Territorial Lands Act Mackenzie Valley Resource Management Act Nunavut Waters and Surface Rights Tribunal Act Canada Shipping Act, 2001 Nuclear Safety and Control Act Marine Liability Act Arctic Waters Pollution Prevention Act Canada Oil and Gas Operations Act	Species at Risk Act Parks Canada Agency Act WAPPRIITA Migratory Birds Convention Act, 1994 Canada Wildlife Act International River Improvements Act Antarctic Environmental Protection Act Department of Transport Act International Boundary Waters Treaty Act Oceans Act
Federal Sustainable Development Act Department of the Environment Act Environmental Violations Administrative Monetary Penalties Acts Weather Modification Information Act		

# CEPA 1999 – Environmental Protection Activities

CEPA 1999 supports most of EC and HC's environmental protection activities

- Air Pollution and Greenhouse Gases
  - Sector by Sector approach for GHGs
  - Air and GHG emission regulations for vehicles and engines
  - Air Quality Management System
- Fuel Composition
  - lead, phosphorous, sulphur, renewable content
- **Chemicals Management Plan**
  - **New and existing substances and living organisms**
- Other pollutants
  - Disposals at sea
  - Export, import and interprovincial movement of hazardous waste and recyclable material
  - Nutrients in cleaning products and water conditioners
- Environmental emergencies
- Federal activities and federal and Aboriginal lands



# Overview of CEPA 1999 Text

- CEPA is divided into twelve parts
  - To address a broad range of ***pollution sources***
  - Contains a wide mix of ***tools, authorities & duties***
- Parts 1-3: general tools, authorities and duties related to intergovernmental cooperation, transparency, public participation, information-gathering and non-prescriptive risk management
- Part 4: authority to require pollution prevention plans
- Parts 5-9: specific tools, authorities and duties to assess and manage pollution sources such as toxic substances, fuels, and vehicles and engines
- Part 10: enforcement regime
- Part 11: tools, authorities and duties related to transparency, public participation, trading regimes and risk management
- Part 12: coming into force of the Act



# Part 1 – Administration

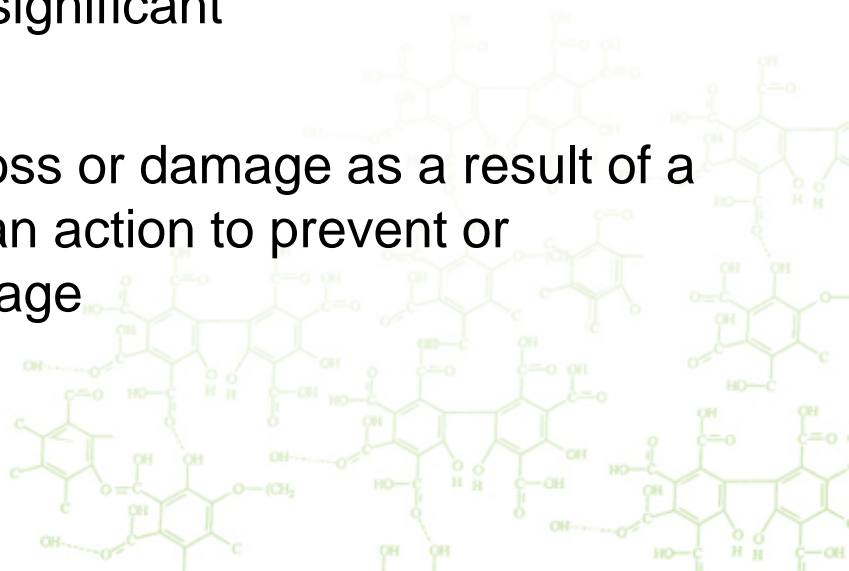
- Facilitates intergovernmental cooperation by providing authorities & duties for the following:
  - Advisory Committees
    - Requires CEPA National Advisory Committee (NAC)
    - Enable national action and avoid duplication
  - Administrative Agreements
    - May be entered into with other governments or Aboriginal peoples
    - To administer CEPA, or an aspect of it, or a regulation
  - Equivalency Agreements
    - May be entered into with other governments
    - Allows non-application of CEPA regulation (or part of one) where that government has established equivalent provisions





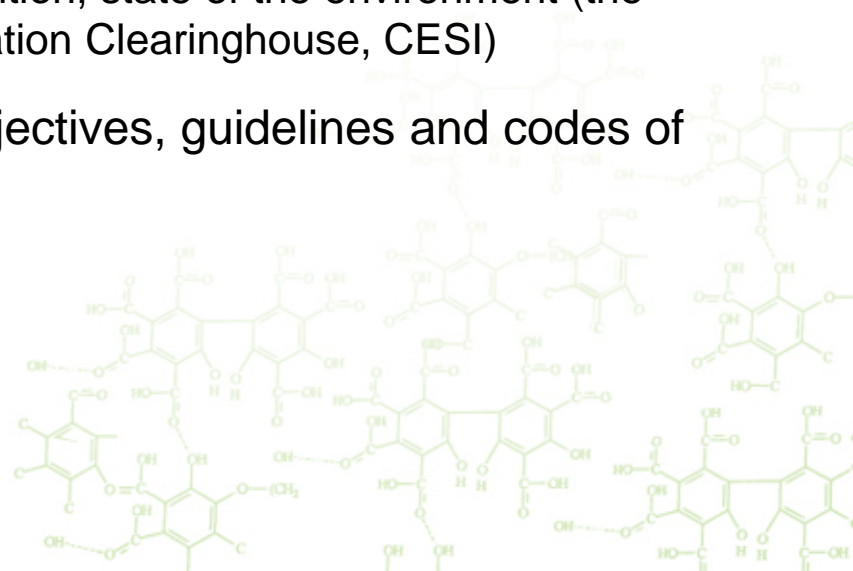
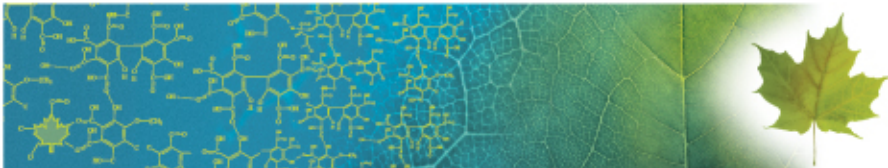
## Part 2 – Public Participation

- Provides the public certain rights:
  - Establishes the Environmental Registry for access to information
  - Provides whistleblower protection for employees
  - Allows individuals to apply for an investigation of an alleged offence
  - Allows individuals to bring an environmental protection action in certain situations where the alleged offence has caused significant harm to the environment
  - Allows any person who suffers loss or damage as a result of a contravention of CEPA to bring an action to prevent or compensate for that loss or damage



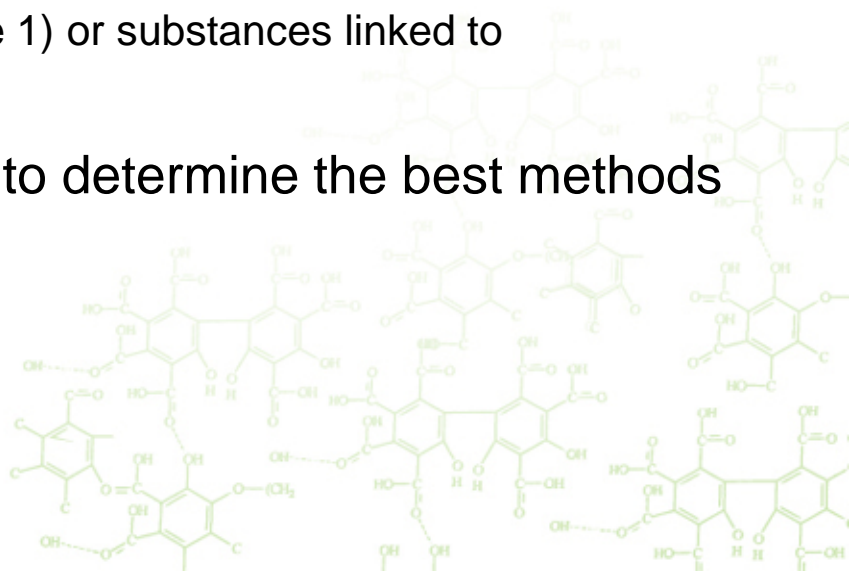
## Part 3 – Information Gathering, Objectives, Guidelines and Codes of Practice

- Provides general tools, authorities and duties:
  - Mandate to conduct environmental research and monitoring
    - e.g., on environmental quality, pollution and pollution prevention, hormone disrupting substances
  - Broad information-gathering authorities
    - e.g. for conducting research, developing guidelines or codes of practice, creating inventories (NPRI, GHG Inventory, APEI)
  - Obligation to establish and to publish:
    - a national inventory of releases of pollutants
    - information respecting pollution prevention, state of the environment (the Canadian Pollution Prevention Information Clearinghouse, CESI)
  - Duty for both Ministers to establish objectives, guidelines and codes of practice



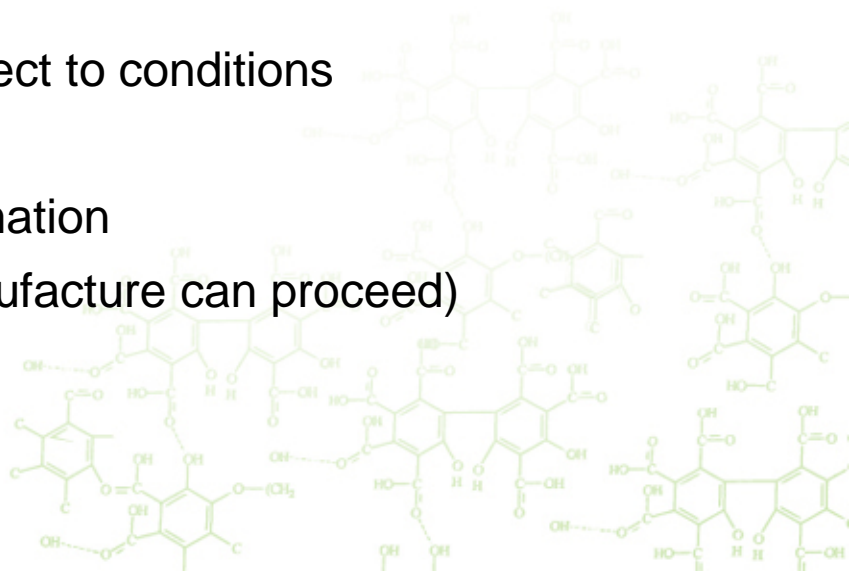
# Part 4 – Pollution Prevention

- Framework for the preparation and implementation of a specific non-prescriptive risk management tool – pollution prevention (P2) plans
  - *Canada Gazette* Notice to require preparation and implementation of plan
  - Notice may specify:
    - the substance or group of substances targeted
    - the targeted activities
    - when the plan must be prepared and implemented
    - factors to consider
  - Persons must submit to the Minister a declaration of preparation and implementation within the prescribed times
  - Available for toxic substances (on Schedule 1) or substances linked to international air or water pollution
- P2 plans provide flexibility for industry to determine the best methods to meet risk management objectives



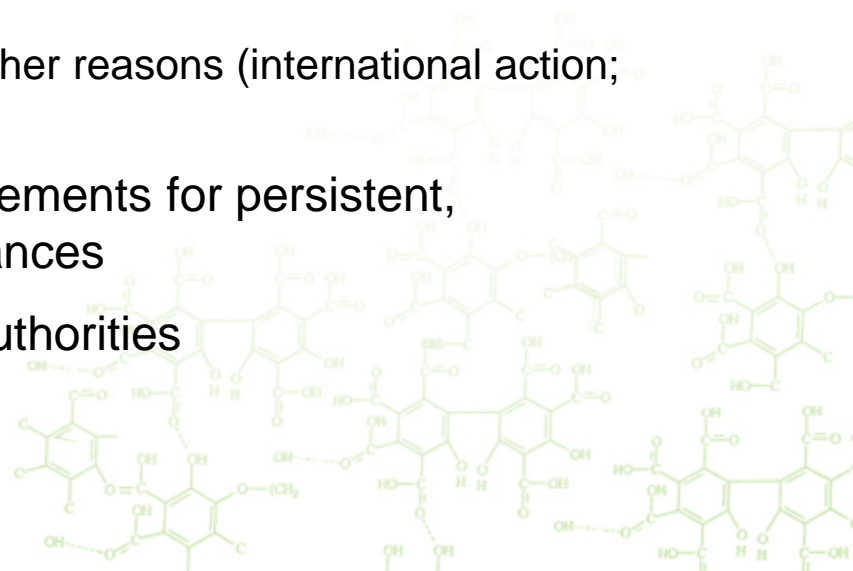
# Parts 5-6 – New Substances and Living Organisms

- Framework to assess new substances and living organisms (not on the Domestic Substances List)
- Before importing or manufacturing a substance or living organism that is new to Canada
  - Must notify and provide prescribed information
  - Unless subject to equivalent regime in another Act
- ECCC and HC conduct an assessment to determine whether the substance or living organism poses a risk (is or may be “toxic”)
- Minister of ECCC can then
  - Allow importation or manufacture, subject to conditions
  - prohibit importation or manufacture
  - Require test results or additional information
  - Take no action (i.e. importation or manufacture can proceed)



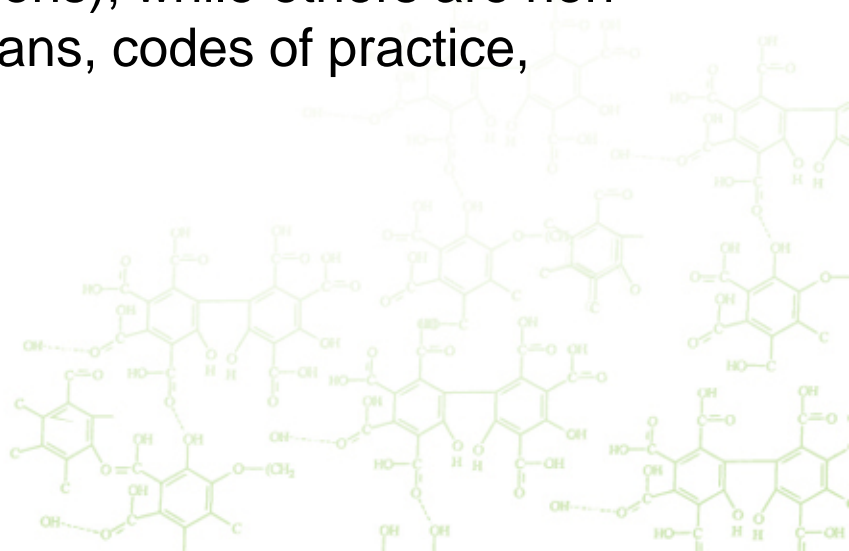
# Parts 5-6 – Existing Substances and Living Organisms (1)

- Framework to identify, assess, and manage existing substances and living organisms (on the Domestic Substances List) that pose a risk to the environment and human health
  - Establishment of Priority Substances List
  - Requirement to identify and categorize existing substances
    - 23 000 on the Domestic Substances List (DSL)
    - Substances and living organisms categorized to determine priorities for assessment
  - Risk Assessment: categorized-in substances/living organisms on the DSL are being assessed to determine if they are “toxic” as part of the Chemicals Management Plan
    - Substances can also be assessed for other reasons (international action; emerging science etc.)
  - Specific, prescriptive regime with requirements for persistent, bioaccumulative and toxic (PBT) substances
  - Robust suite of information-gathering authorities



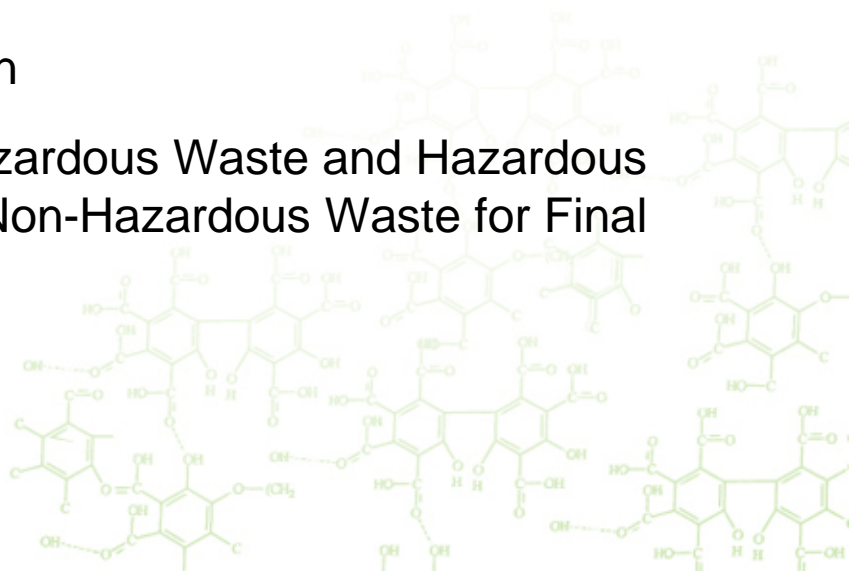
## Parts 5-6 – Existing Substances and Living Organisms (2)

- Risk management: existing substances/ living organisms found to be “toxic” must be risk managed within specified timeframes
  - 24 months to publish a proposed risk management measure (e.g. P2 plan, regulation, code of conduct, guidelines, E2 plan, etc.)
  - 18 months to finalize and make the proposed instrument
- Suite of tools are available to risk manage “toxics” in Parts 5-6 as well as other parts of CEPA.
- Some are prescriptive (e.g. regulations), while others are non-prescriptive (pollution prevention plans, codes of practice, guidelines)



# Part 7 – Pollution and Wastes

- Each division addresses a different source of pollution or waste
  - Division 1 – Nutrients
  - Division 2 – Protection of the Marine Environment from Land-Based Sources of Pollution
  - Division 3 – Disposal at Sea
  - Division 4 – Fuels
  - Division 5 – Vehicle, Engine and Equipment Emissions
  - Division 6 – International Air Pollution
  - Division 7 – International Water Pollution
  - Division 8 – Control of Movement of Hazardous Waste and Hazardous Recyclable Material and of Prescribed Non-Hazardous Waste for Final Disposal



## Part 7 Div 1-3: Nutrients, Land-based sources of Marine Pollution, Disposal at Sea

- **Nutrients**

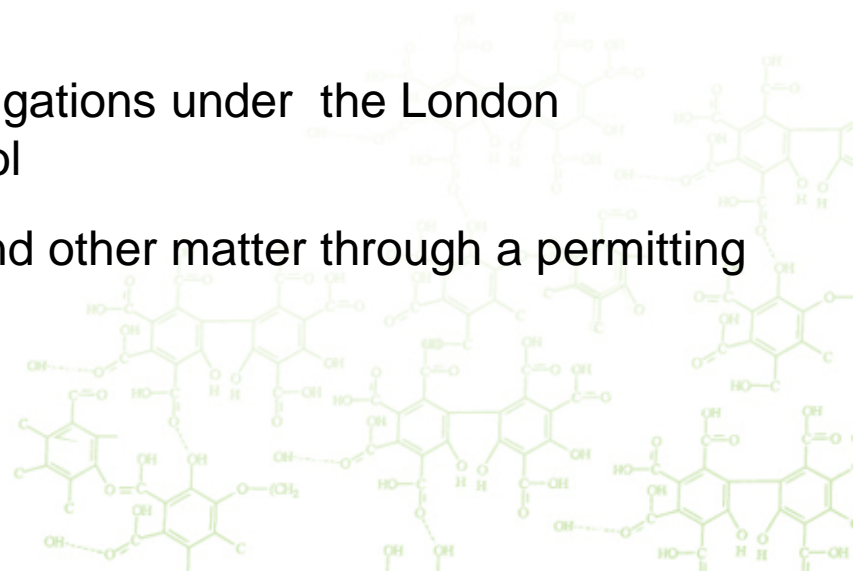
- Substances that promote the growth of aquatic vegetation
- Prohibits the manufacture, import or sale of cleaning products or water conditioners that contain a prescribed nutrient in a concentration that exceeds the regulated limits

- **Land-based sources of marine pollution**

- Authorizes the Minister to establish objectives, guidelines and codes of practice to prevent and reduce marine pollution from land-based sources

- **Disposal at Sea**

- Implements Canada's international obligations under the London Convention 1972 and the 1996 Protocol
- Regulates disposal at sea of wastes and other matter through a permitting regime





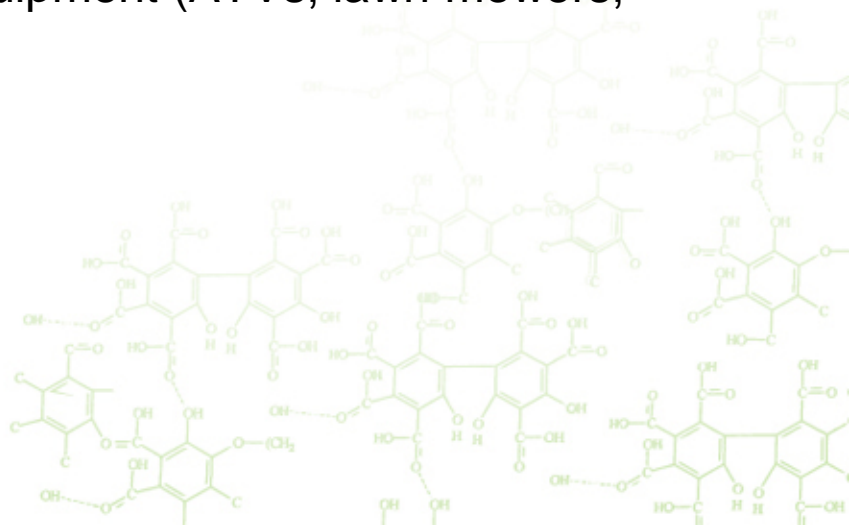
# Part 7 Div 4&5 – Fuels, and Vehicles, Engines, and Equipment

- **Fuels**

- Authority to regulate fuels if the regulations could make a significant contribution to the prevention or reduction air pollution

- **Vehicles, Engines, and Equipment**

- Authority to regulate emissions from:
  - On-road vehicles and engines
  - Off-road vehicles, engines and equipment (ATVs, lawn mowers, construction equipment, etc.)
  - Certain marine vessels

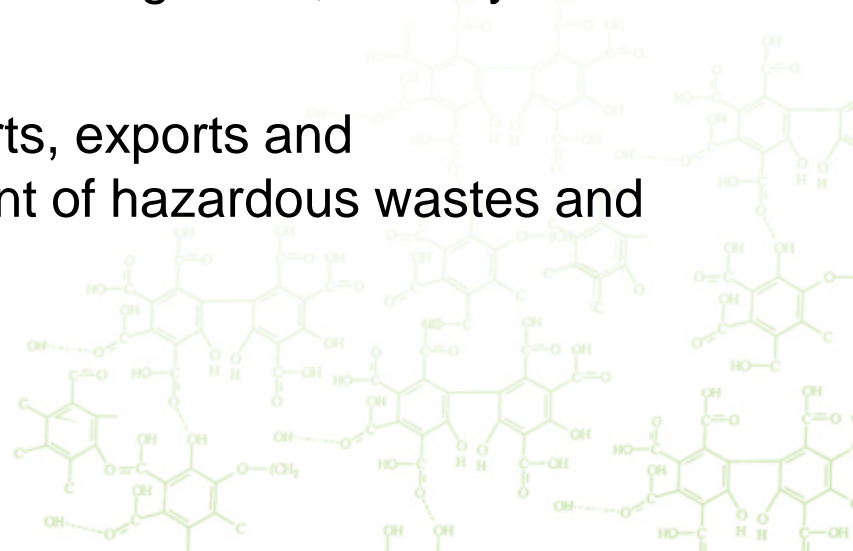


- **International Air and Water Pollution**

- Authority to regulate air and water pollution in Canada that:
  - results in air or water pollution in another country; or
  - violates an international agreement binding Canada respecting pollution control

- **Hazardous Waste**

- Implements Canada's international obligations, notably under the *Basel Convention*
- Provides a legal regime for imports, exports and interprovincial/territorial movement of hazardous wastes and hazardous recyclable materials



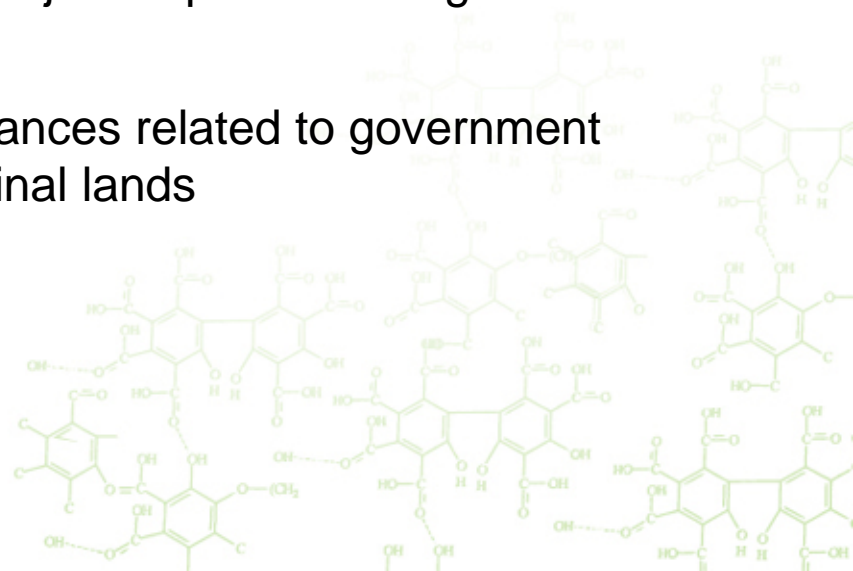
# Parts 8-9 – Environmental Emergencies & Government Operations and Federal and Aboriginal Land

- **Environmental Emergencies**

- Authorizes the Minister to conduct research, and to develop regulations, guidelines and codes of practice relating to environmental emergencies
- Contains broad authorities to prevent and respond to environmental emergencies

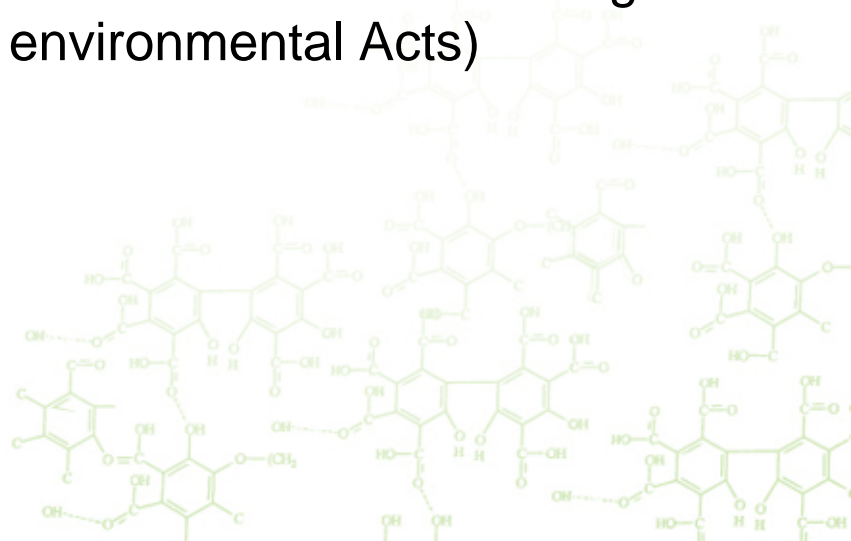
- **Government Operations and Federal and Aboriginal Land**

- Federal operations and activities on federal lands, including activities on certain Aboriginal lands, may not be subject to provincial regulations or permit systems
- Authority to address releases of substances related to government operations, and on federal and Aboriginal lands



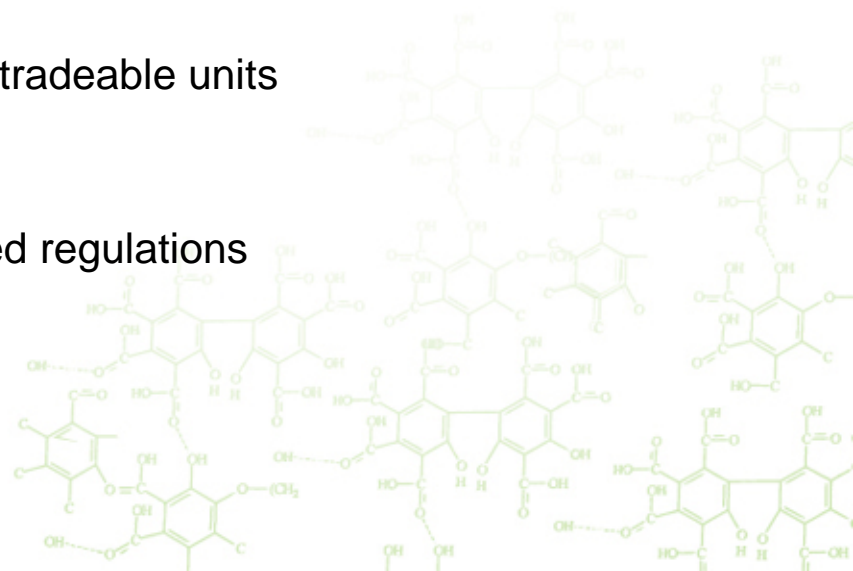
# Part 10 – Enforcement

- Powers to enforcement officers and/or analysts
  - Such as powers to inspect, search, detain and direct
- Range of tools to tailor enforcement to the circumstances
  - e.g. Environmental Protection Compliance Order allows an enforcement officer to require a person contravening the Act to come back into compliance (rather than prosecution)
- Recent amendments increased fines and added new sentencing and enforcement tools (aligned with other environmental Acts)

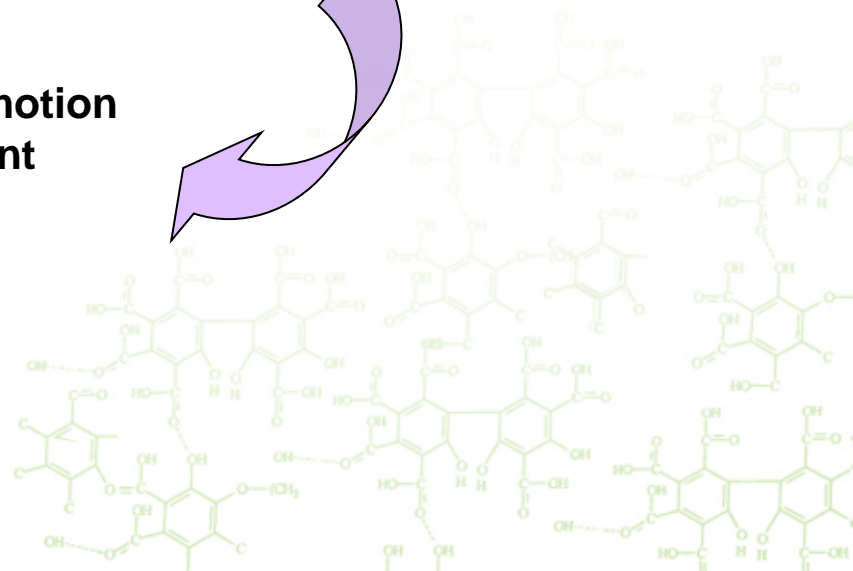
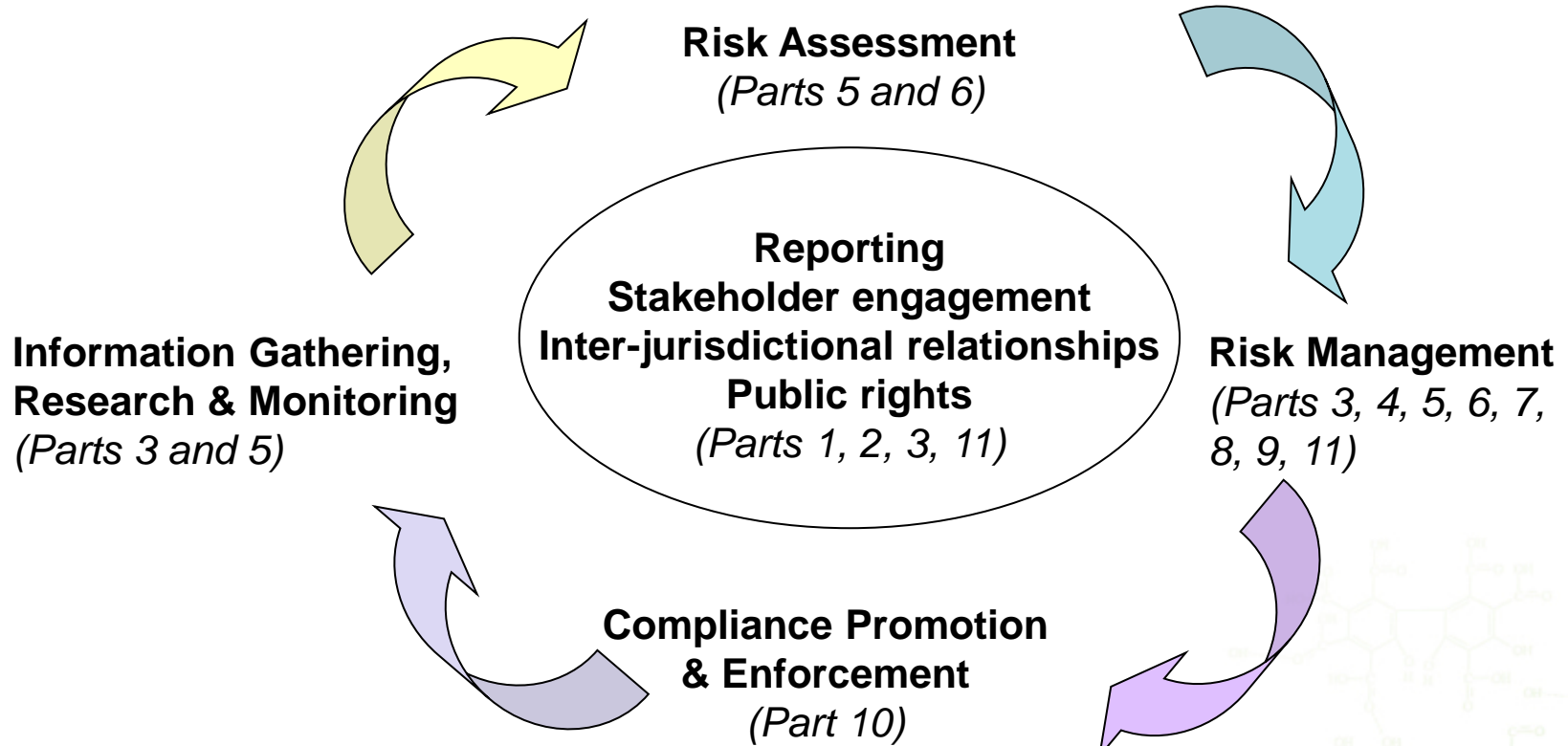


# Part 11 – Miscellaneous Matters

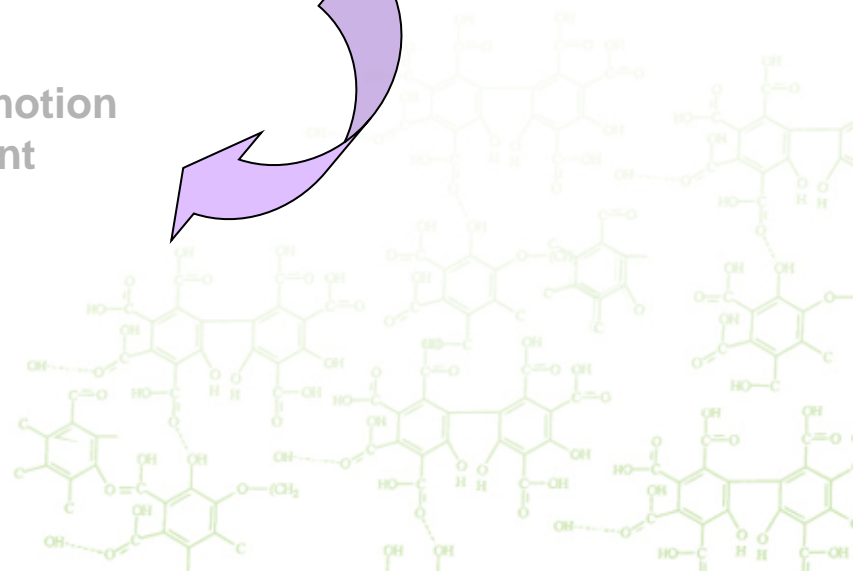
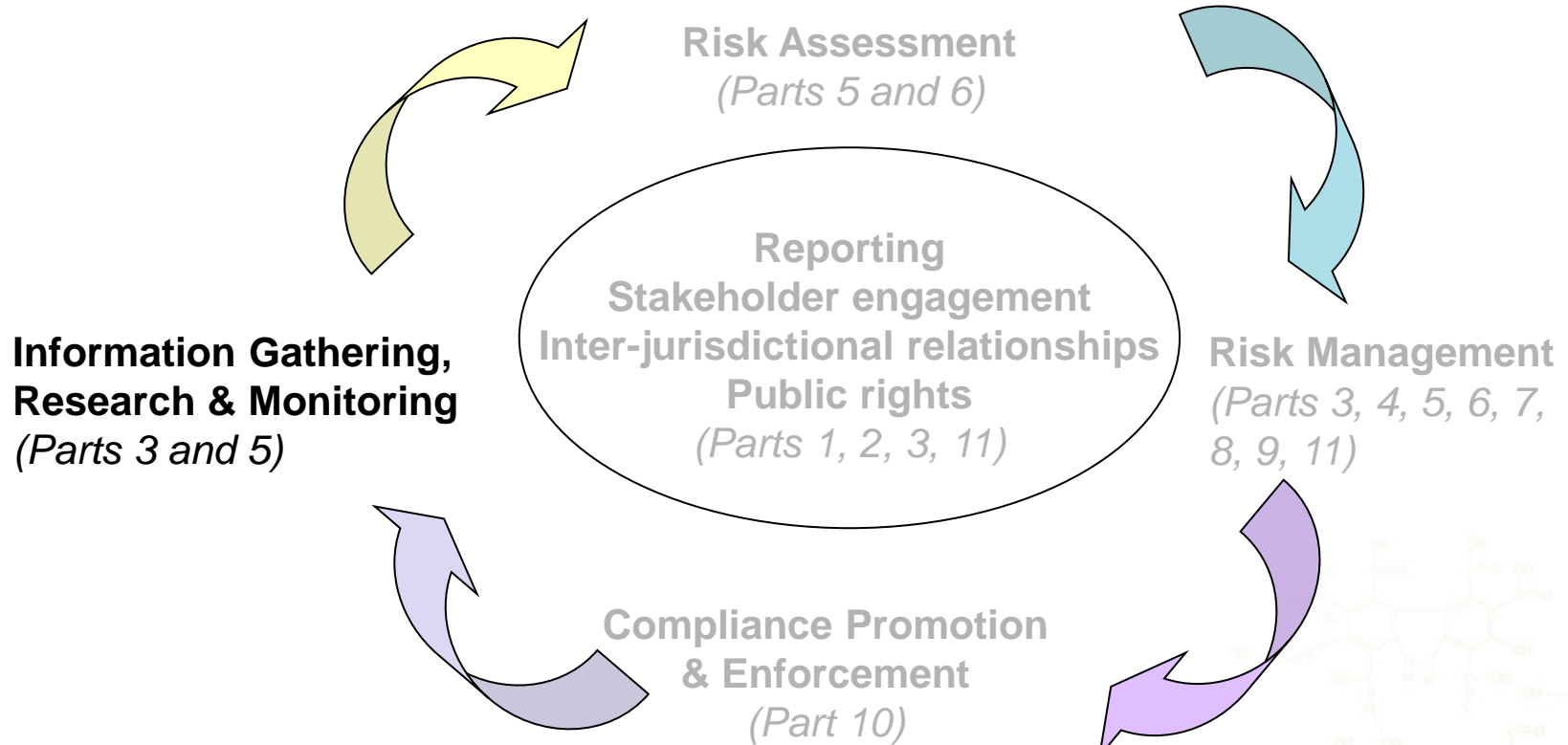
- Transparency
  - Circumstances in which the Minister may disclose confidential information
  - Obligation to table an annual report with Parliament
- Public Participation
  - Public consultation timelines for proposed orders, regulations or instruments
  - Circumstances in which a person may file a notice of objection requesting a board of review
  - Administrative procedures respecting a board of review
  - Standing referral of the Act to Parliament for review every 5 years
- Trading Regimes
  - Authority to make regulations respecting tradeable units
- Risk Management
  - General authorities to make more targeted regulations



# The CEPA Cycle

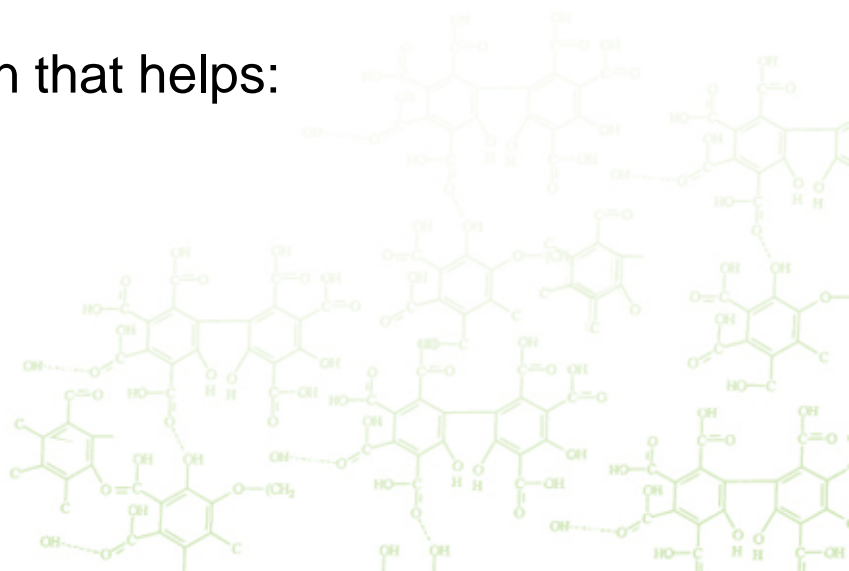


# The CEPA Cycle



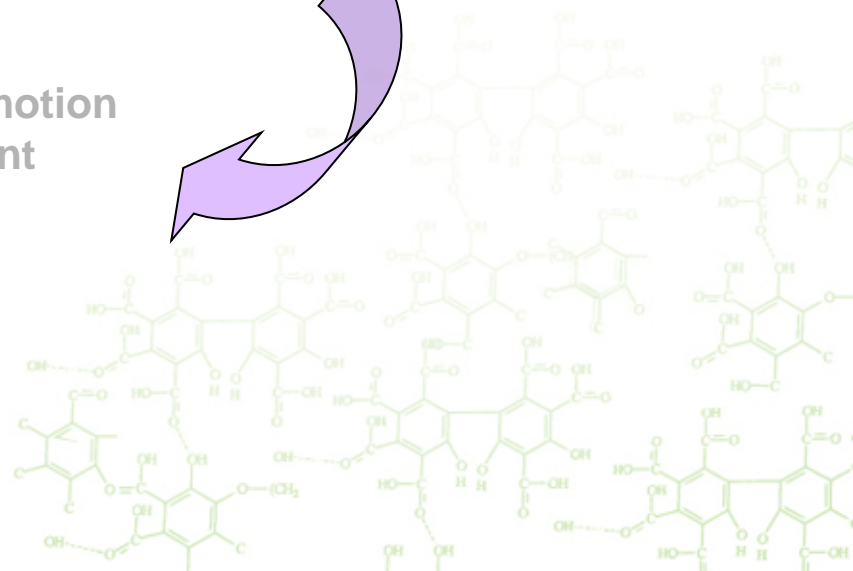
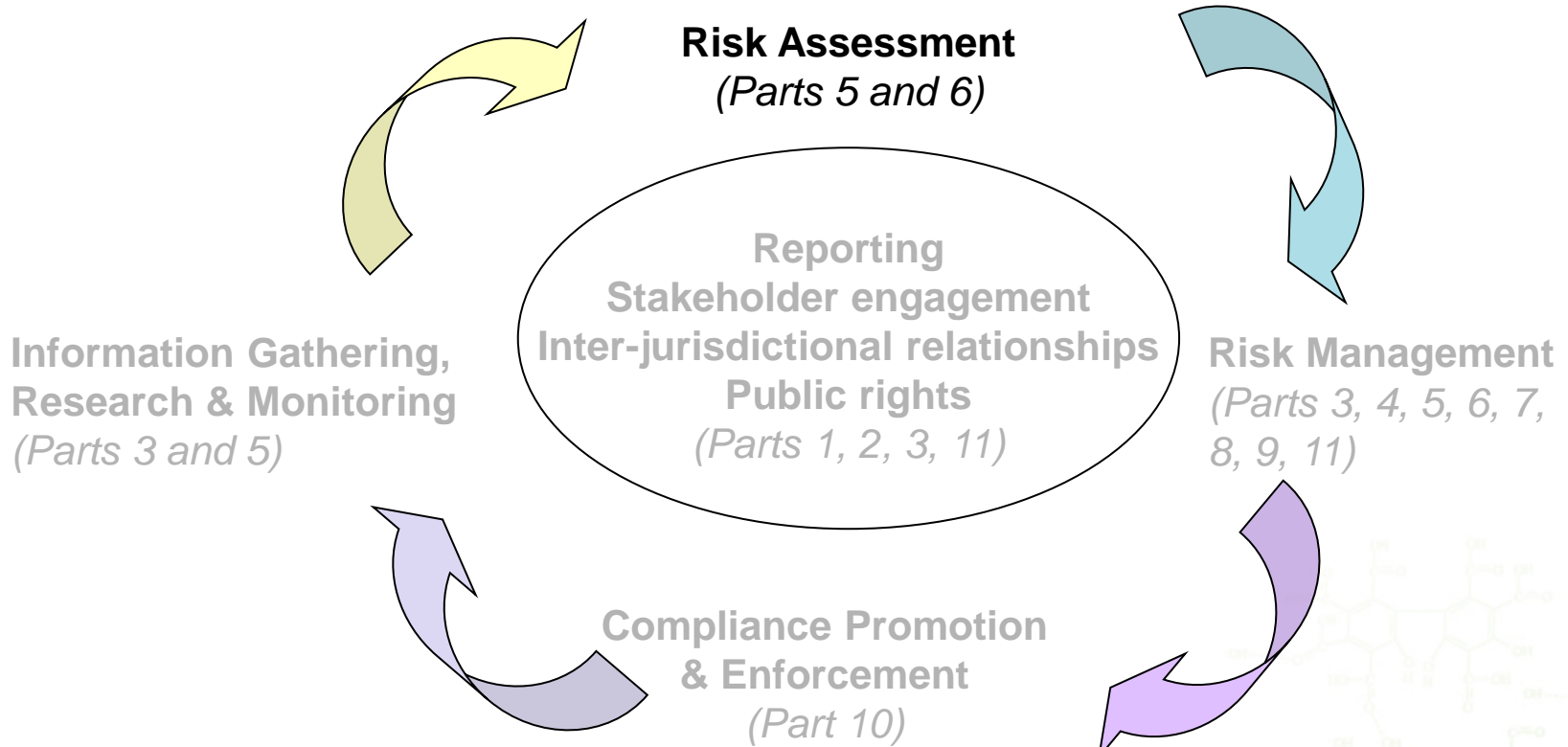
# Information Gathering, Research and Monitoring

- Science is the foundation of decision-making under CEPA 1999
- CEPA 1999 requires a wide range of research and monitoring
- Also allows Ministers to require 3rd parties to submit relevant information
  - Through regulations
  - Specific information gathering authorities
- Inventories created:
  - Greenhouse Gas Inventory
  - National Pollutant Release Inventory
- These activities generate information that helps:
  - Identify emerging priorities
  - ensure decisions are sound, and
  - provide information to the public



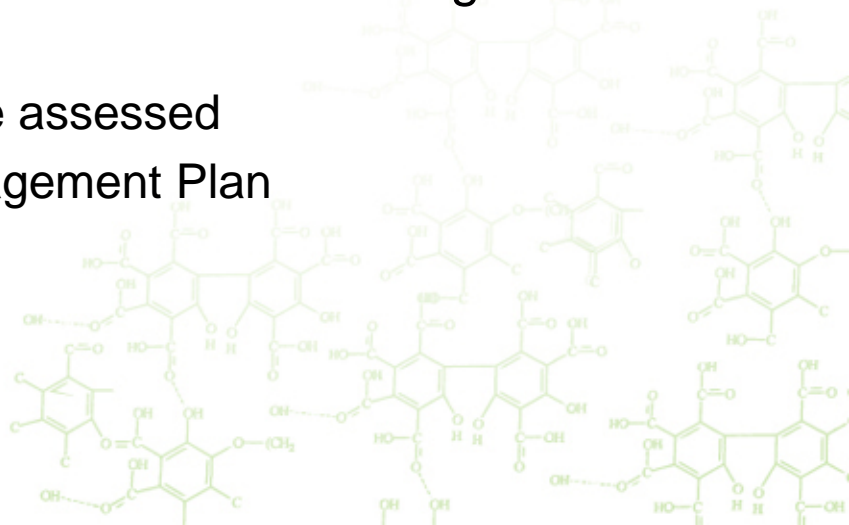


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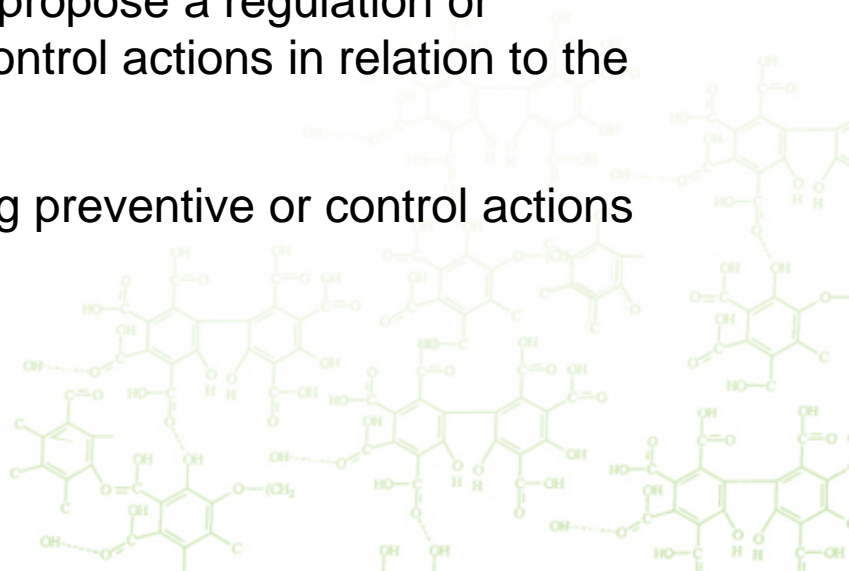
# Risk Assessment

- Risk assessments determine whether a substance is/may be “toxic”  
Section 64(a,b or c):
  - harmful to the environment
  - harmful to the environment upon which life depends, or
  - harmful to human health
- New substances and products of biotechnology must be notified and assessed
- CEPA 1999 required that all “existing substances” be categorized for priority by 2006
  - All substances “categorized in” must be assessed
  - This was basis for the Chemicals Management Plan

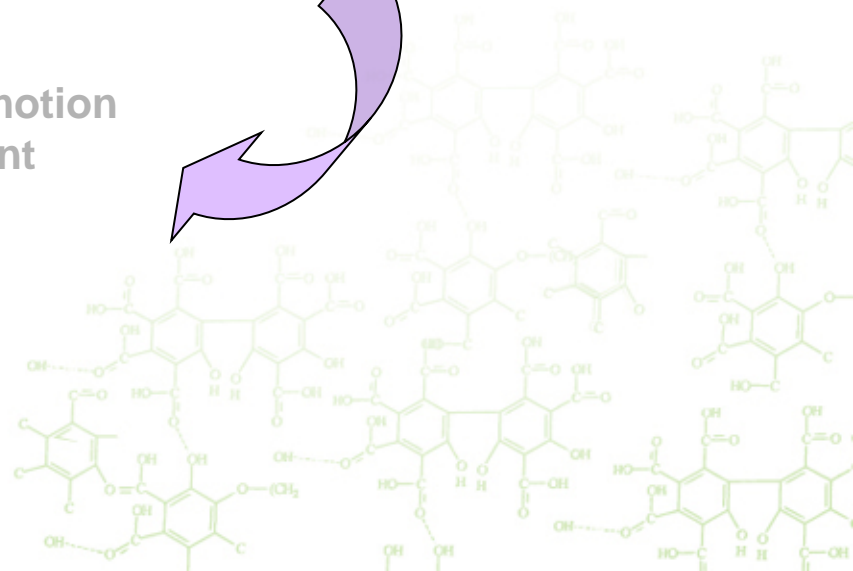
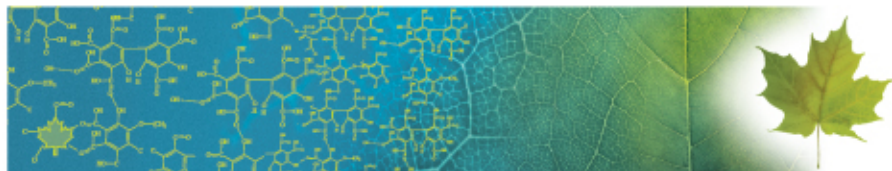
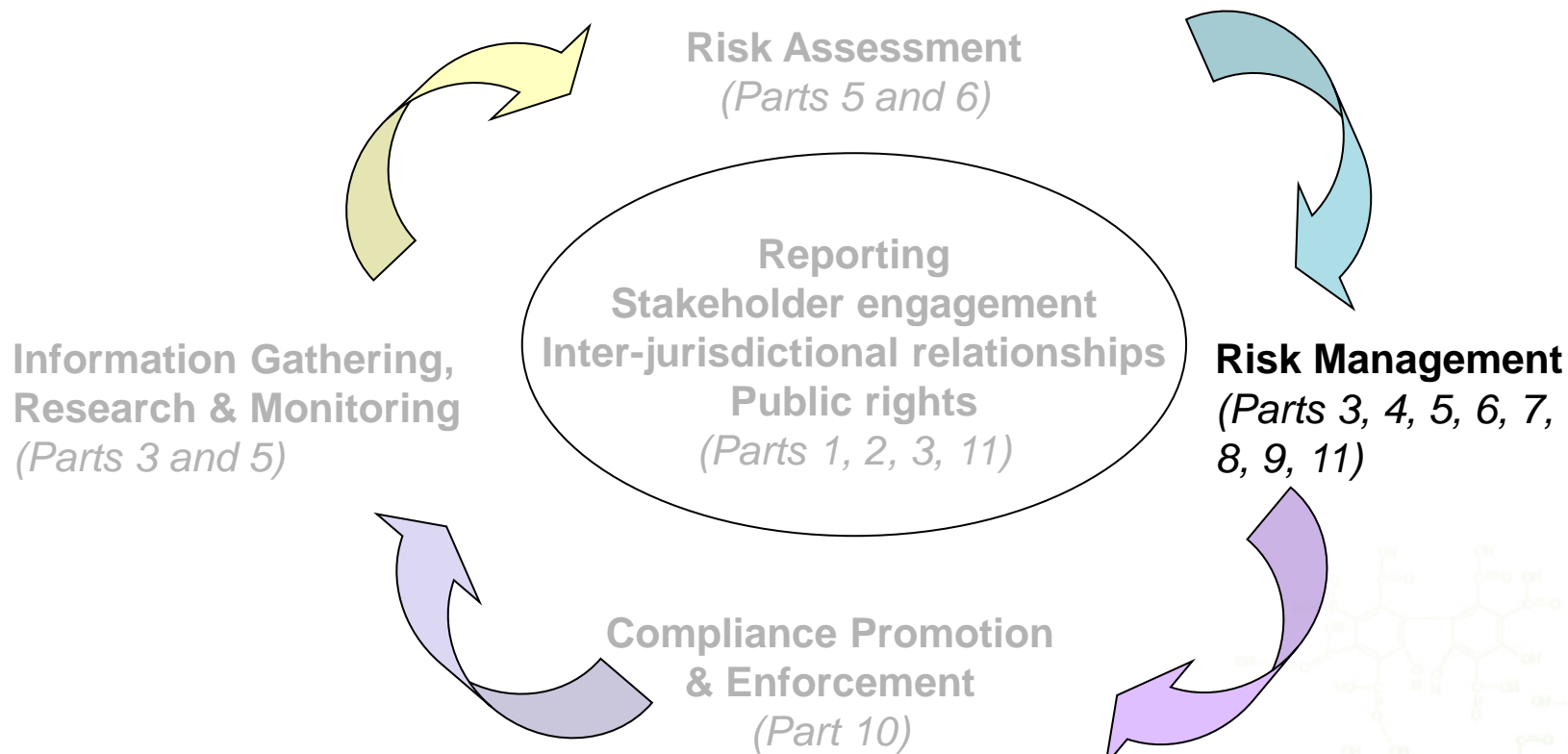


# Risk Assessment → Risk Management

- Following most assessments (including those for substances that were “categorized in”), the Ministers must propose:
  - taking no further action in respect of the substance;
  - adding the substance to the Priority Substances List; or
  - recommending that it be added to the List of Toxic Substances
- When the recommendation is “adding the substance to the List of Toxic substances”:
  - the Minister of the Environment must propose a regulation or instrument respecting preventive or control actions in relation to the substance **within two years**
  - the regulation or instrument respecting preventive or control actions must be finalized **18 months later**

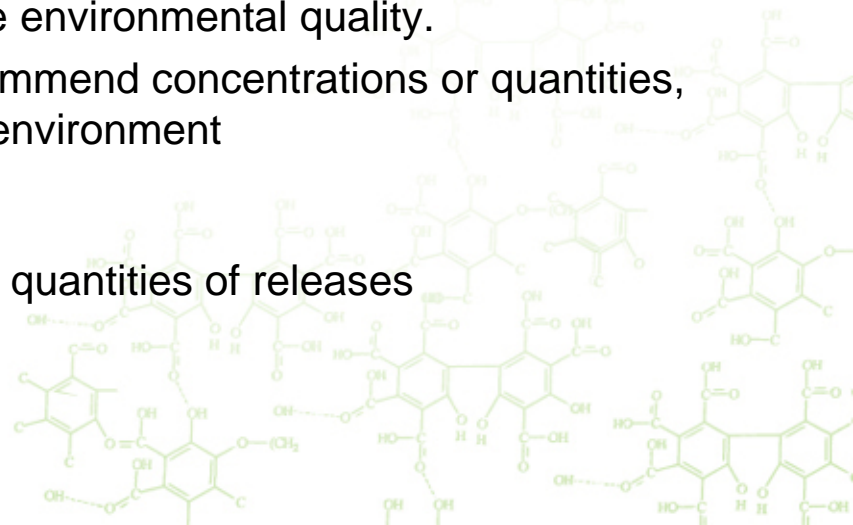


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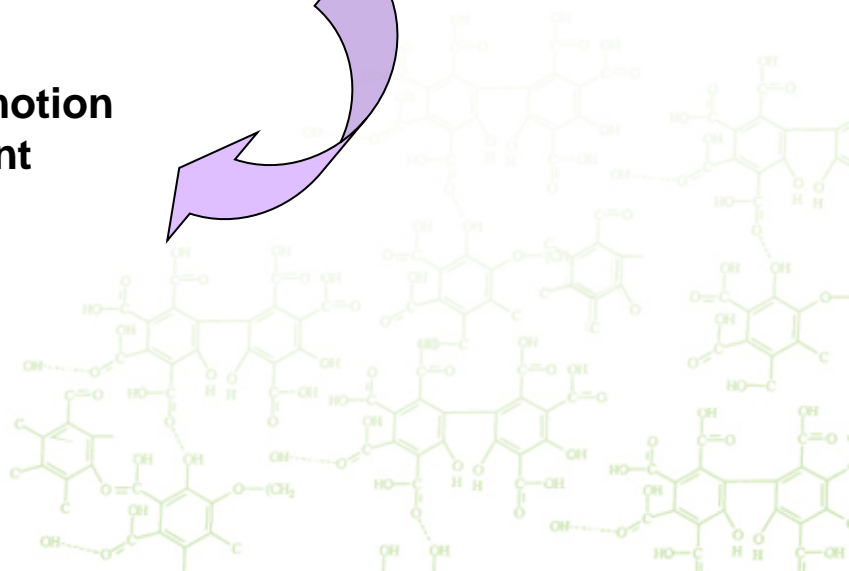
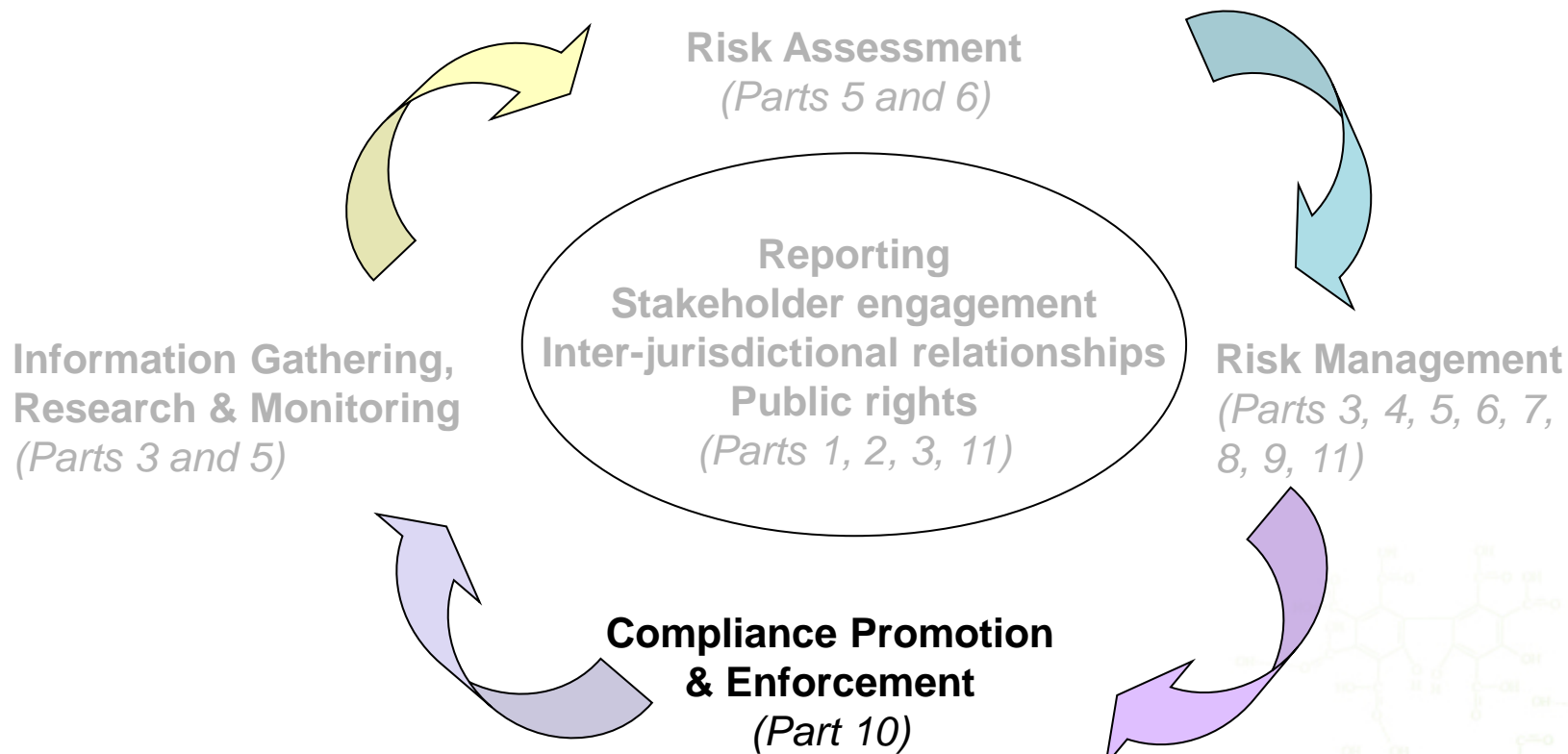


# Risk Management

- CEPA 1999 authorizes use of a wide range of tools so Minister can tailor risk management activities to each problem, for example:
  - Regulations
    - Various authorities to deal with specific issues: toxic substances; fuels; vehicle emissions; nutrients in products; environmental emergencies; etc.
  - Pollution prevention planning requirements
    - preparation and implementation of a plan outlining actions to prevent or minimize the creation or release of pollutants and waste;
  - Environmental Guidelines
    - Environmental quality guidelines recommend a concentration for toxic substances in various media, or to prevent, prepare for, or respond to an environmental emergency or to restore environmental quality.
    - Environmental release guidelines recommend concentrations or quantities, for the release of substances into the environment
  - Environmental codes of practice
    - Recommend procedures, practices, or quantities of releases

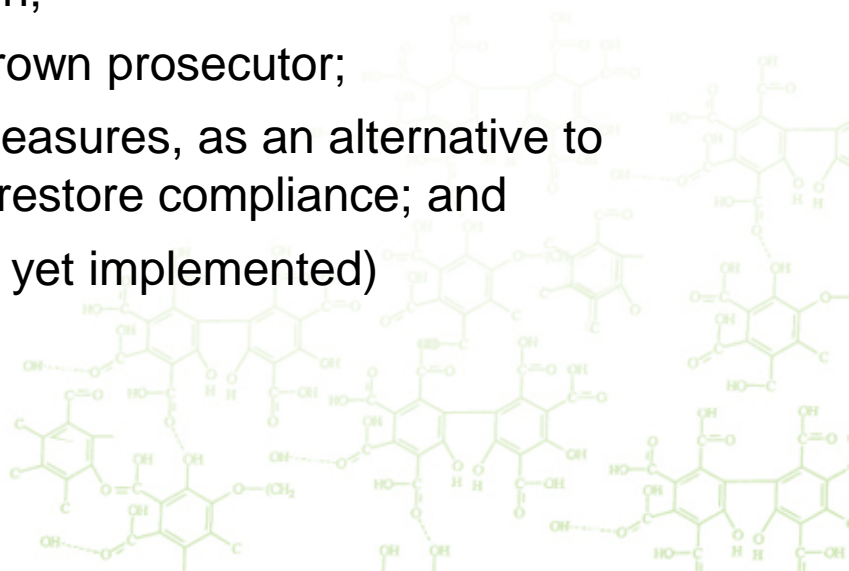


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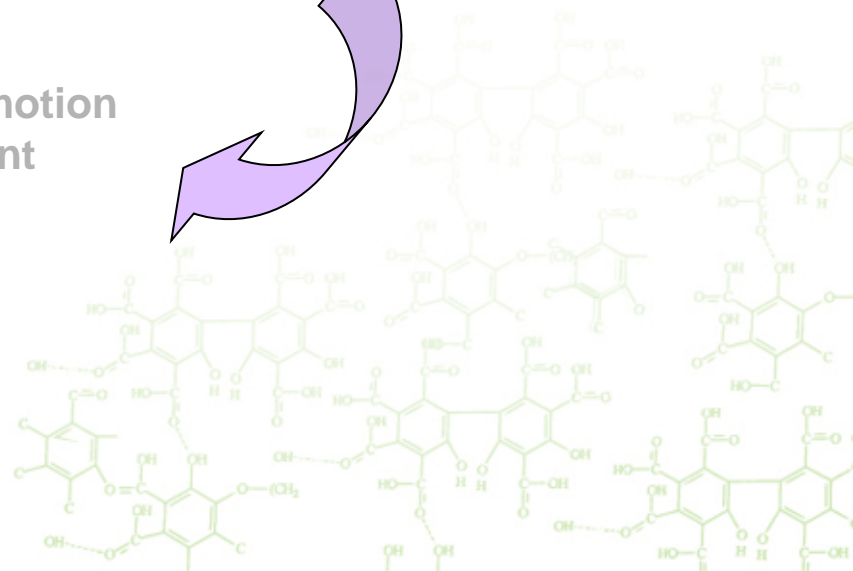
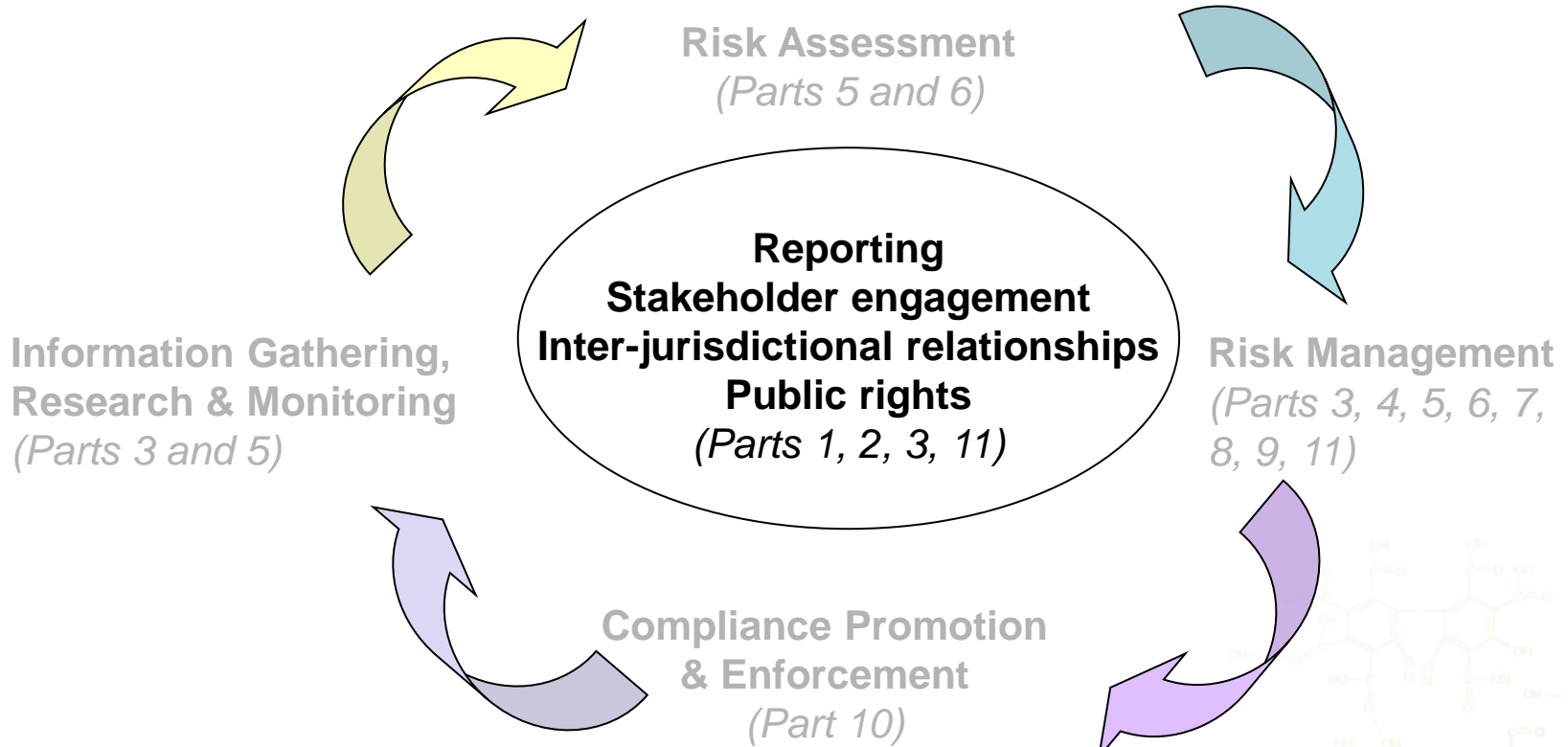


# Enforcement

- Wide-range of enforcement tools available for violations of the Act to restore compliance and prevent a recurrence
  - warnings
  - directions to deal with or prevent illegal releases of regulated substances;
  - tickets for offences under the Act where there is minimal or no threat to the environment or human life or health (e.g. failure to submit a report);
  - Ministerial orders requiring remedial measures;
  - detention orders for ships;
  - environmental protection compliance orders to prevent or stop a violation;
  - injunctions to stop or prevent a violation;
  - prosecution under the authority of a Crown prosecutor;
  - environmental protection alternative measures, as an alternative to prosecution, to agree on measures to restore compliance; and
  - administrative monetary penalties (not yet implemented)



# The CEPA Cycle





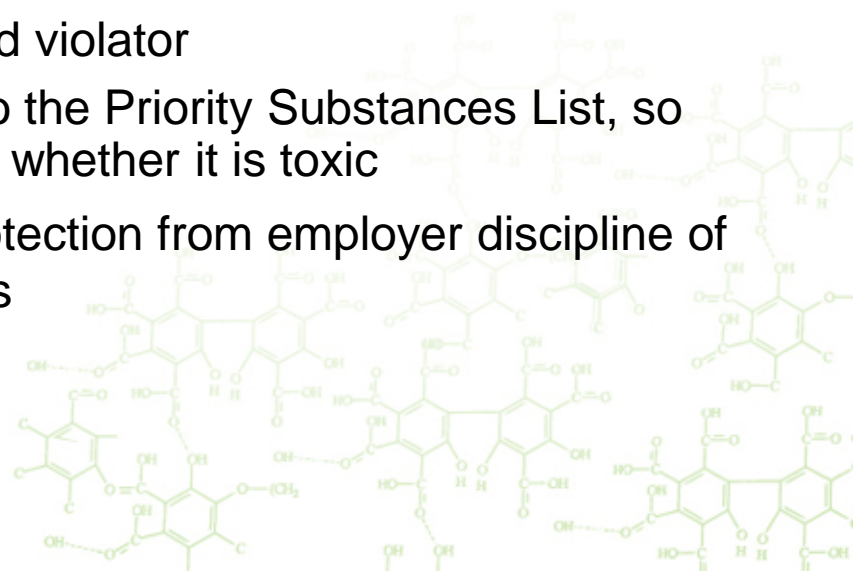
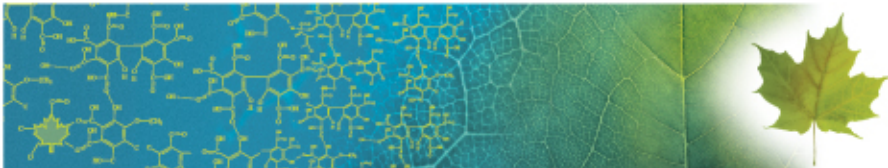
# Intergovernmental Cooperation

- In Canada, environmental protection is a shared jurisdiction
- CEPA 1999 emphasizes the importance of close cooperation among the federal, provincial, territorial and Aboriginal governments
  - Administrative agreements are work-sharing arrangements to streamline efforts in administering the Act or regulations
  - Equivalency agreements allow Cabinet to declare that a regulation under CEPA 1999 no longer applies in a jurisdiction that has provisions in force that:
    - are equivalent to the CEPA regulation
    - allow for citizens to request investigation of alleged offences.
  - HC and EC co-chair CEPA National Advisory Committee with representatives from provincial, territorial and Aboriginal governments
    - main intergovernmental forum for the purpose of enabling national action and avoiding duplication.



# Public Consultation and Public Rights

- Public consultation requirements
  - Mandatory 60 day public comment period for risk assessments, proposed orders and regulations
  - Must publish all ocean disposal permits for 7 day public comment period before final approval
  - Obligation to create the Environmental Registry
- Other public rights
  - To file a notice of objection to various actions (proposed orders, regulations, agreements, etc.) and request a Board of Review
  - To request that Minister investigate alleged violation of the Act
  - To bring a civil suit against an alleged violator
  - To request addition of a substance to the Priority Substances List, so that it can be evaluated to determine whether it is toxic
  - The protection of the identity and protection from employer discipline of persons who report alleged violations



# The Future of CEPA

- Section 343 of CEPA requires that the Act be reviewed by either or both Houses of Parliament every 5 years.
- The Act was last reviewed by both Houses of Parliament with the Commons concluding their review in April 2007 and the Senate conclude their review in 2008.
- The current study of the Act has focussed on such aspects as: The Chemical Management Plan; Monitoring; The National Pollutant Release Inventory; Air Quality and Drinking Water Standards; and Enforcement.
- The Committee has heard from dozens of witnesses from different sectors including industry, academia, environmental NGO's, Indigenous groups, etc.
- The Committee has also invited any interested group or individual to submit a written brief to the Committee no later than December 1, 2016.

