

February 2024

**Discussion Document on the  
Implementation Framework  
for a Right to a Healthy Environment  
under the *Canadian Environmental  
Protection Act, 1999***

Environment and Climate Change Canada  
Health Canada

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Environment and Climate Change Canada (ECCC) is seeking your comments on its discussion document on the Implementation Framework for a Right to a Health Environment under the *Canadian Environmental Protection Act, 1999* (CEPA). The objective is to produce a report entitled “What We Heard Report” and have it published on the Canada.ca website. Your participation and decision to answer consultation questions is voluntary.

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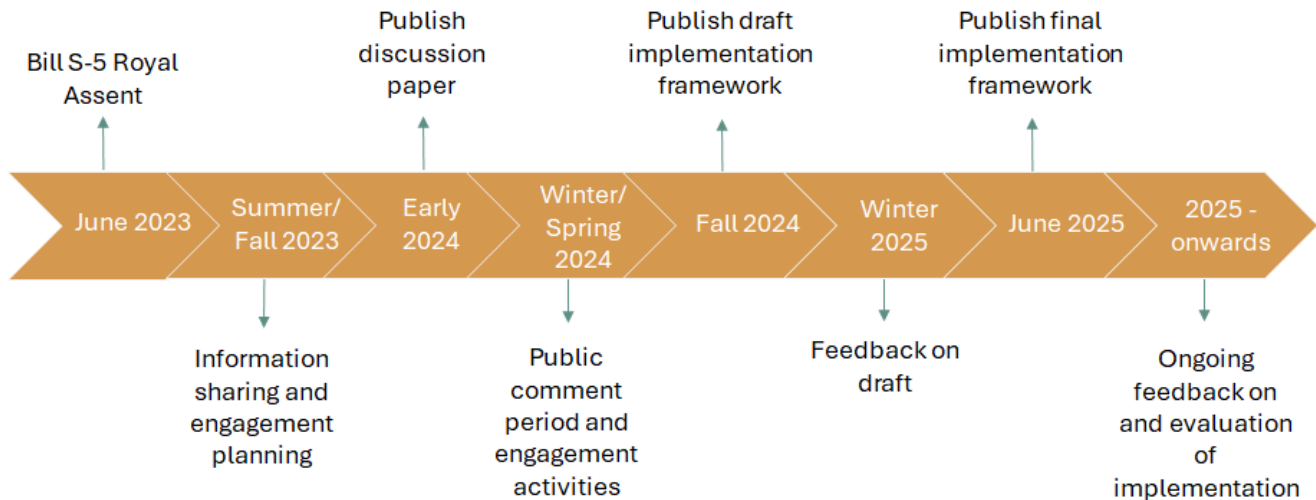
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## 1. Purpose of this document

The purpose of this discussion document is to inform the development of an implementation framework (“the framework”) which will set out how a right to a healthy environment in the context of the [Canadian Environmental Protection Act, 1999](#) (CEPA) will be considered by the Minister of Environment and Climate Change and the Minister of Health in the administration of the Act. The framework will give meaning to a right to a healthy environment in the CEPA context for individuals in Canada. In addition, the implementation framework will elaborate on principles to be considered in the administration of CEPA, such as the principles of environmental justice, the principle of non-regression and the principle of inter-generational equity. The discussion document aims to stimulate dialogue and help focus discussions on key concepts and elements of the framework and to seek views on its design and potential application.

Input and perspectives provided on this document from the public comment period, Indigenous-led engagement activities and through various other discussions will guide Environment and Climate Change Canada (ECCC) and Health Canada (HC) through the development of the draft implementation framework. The draft framework will be made available for public comment in Fall 2024. This will provide an opportunity for additional input before the framework is finalized by the Ministers of Environment and Health in June 2025 (see Figure 1).

**Figure 1. Timelines and engagement opportunities**



## 2. Background

### 2.1 Legislative requirements

Bill S-5, *Strengthening Environmental Protection for a Healthier Canada Act*, received Royal Assent on June 13, 2023. Through Bill S-5, the Government of Canada has modernized CEPA with the first set of comprehensive amendments since the Act was enacted over 20 years ago. One of the key amendments is the recognition, for the first time in federal law, that every individual in Canada has a right to a healthy environment as provided under CEPA. The Government of Canada has a duty to protect this right in the administration of CEPA, subject to any reasonable limits. Under CEPA, the framework will set out how the right will be considered in administering the Act and will elaborate on a number of principles. It is required to be developed by June 2025, in consultation with any interested persons.

**Textbox 1: Under sub-section 5.1(2) of CEPA, the implementation framework must elaborate on:**

- Principles to be considered in the administration of CEPA, such as environmental justice (including the avoidance of adverse effects that disproportionately affect vulnerable populations), non-regression and intergenerational equity;
- Research, studies, and monitoring activities in support of the right;
- Relevant factors to be considered when interpreting and applying the right and in determining the reasonable limits to which it is subject; and
- Mechanisms to support protection of the right.

The Minister of Environment and Climate Change will report on the implementation framework annually within the CEPA Annual Report. The framework will also enable continuous improvement as experience is gained with considering this right and the principles included therein when making decisions under CEPA.

Bill S-5 has made other important changes to CEPA that could help contribute to the protection of this right in CEPA, including:

- Introducing the concept of vulnerable populations and defining the term in the Act;
- Introducing the concept of vulnerable environments;
- Stating that research and studies relating to the role of substances in illness or in health problems must also include biomonitoring surveys, and that these activities may relate to vulnerable populations;
- Requiring consideration of vulnerable populations, vulnerable environments and cumulative effects when conducting and analyzing certain assessments and reviews where information is available; and
- Facilitating geographically targeted regulations.

### **Textbox 2: Notes on terminology**

Bill S-5 added the term “**vulnerable population**” to CEPA, and defined it as a group of individuals within the population living in Canada who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances. [Online consultations with Canadians](#) on the definition of the term in the context of federal chemicals management activities were held in 2018.

ECCC and HC are exploring using the term “populations who may be disproportionately impacted” interchangeably with “vulnerable populations” to recognize that many of these populations are not inherently vulnerable but rather that their susceptibility is associated with the circumstances of their lives.

Bill S-5 added the term **vulnerable environment** to CEPA, but this has not yet been defined.

The consideration of **cumulative effects** under CEPA may involve an analysis, characterization and possible quantification of the combined risks to health or the environment from exposure to multiple substances. It is important to note that there are different approaches to understanding and analyzing cumulative effects used by different agencies within the Government of Canada, as well as different approaches internationally.

CEPA provides, in its preamble, that the Government is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples including free, prior and informed consent. In addition, the preamble of CEPA states that the Government recognizes the role of science and Indigenous knowledge in the process of making decisions relating to the protection of the environment and human health and various substantive provisions in the Act expressly require consideration of Indigenous knowledge.

### **2.2 The Canadian Environmental Protection Act, 1999 (CEPA)**

CEPA is the cornerstone of Canada’s environmental legislation and an important part of Canada’s legislative framework aimed at preventing pollution and protecting the environment and human health. CEPA provides tools to address a wide range of pollution sources, including substances (such as chemicals and products of biotechnology), hazardous wastes, hazardous recyclable material, marine pollution, fuels, emissions from vehicles, engines and equipment, and environmental emergencies. CEPA also provides the Government with broad powers to use a range of regulatory and non-regulatory tools specifically for activities carried out on federal and aboriginal lands as well as for federal works and undertakings. Further information on the scope of these activities and their results can be found at [CEPA: focus on issues](#) and the [CEPA, 1999: Annual Report to Parliament for April 2021 to March 2022](#).

The CEPA management cycle is a process set up to identify, assess and manage pollution and protect the environment and people in Canada from pollution that could impact their health. It consists of the stages shown in Figure 2, which are supported and integrated through public participation and intergovernmental co-operation.

**Figure 2. CEPA management cycle** (Source: [Canadian Environmental Protection Act, 1999: Annual report to Parliament for April 2021 to March 2022](#))



Most activities conducted under CEPA fall under one or more of the following stages:

- **Research and monitoring** activities support risk assessment and risk management by providing essential data and information about the state of the environment and exposure to substances, including their presence and fate in the environment, their effects on human health and the environment, their mechanism of action, and their sources, levels and trends.
- **Risk assessment** helps to identify the sources of exposure that pose risk to the environment and human health, and involves information gathering and the assessment of risk from exposure to substances, air pollution and greenhouse gases, water pollution, and waste.
- **Risk management** protects the environment and people living in Canada from harmful substances, air pollution, greenhouse gases, poor water quality, and waste, by selecting and designing risk management activities and instruments (e.g., regulations, codes of practice, agreements).
- **Compliance promotion** activities (e.g., webinars, workshops, email/mail campaigns) are undertaken to increase awareness, understanding, and compliance with the Act and with risk management instruments.
- **Enforcement** includes activities such as risk-based inspections to verify compliance with the Act and regulatory instruments, measures to compel compliance, and investigations that may lead to prosecutions.
- **Performance measurement, evaluation and reporting** includes measuring and evaluating the effectiveness of risk management activities, as well as providing information on substances and pollutants through tools such as inventories, the CEPA Registry, and periodic reports.
- **Public participation and inter-governmental cooperation** may include stakeholder, partner, and Indigenous engagement, and developing and maintaining inter-jurisdictional



relationships. These are essential to the other stages of the management cycle. The CEPA National Advisory Committee (NAC) is a forum for provincial, territorial and Indigenous governments (as defined in sections 3(1) and 6(2)(c) of CEPA) to advise on actions being proposed under CEPA, to enable national cooperative action, and to avoid duplication in regulatory activity among governments.

Within each of these stages, there are decision points under CEPA where the right or the principles can be considered.

This discussion document will highlight examples where considerations that may be relevant to the right and principles to be elaborated upon in the framework are already considered in the CEPA management cycle stages and where there may be opportunities to do more (as discussed in section 3.2). It will also explore how procedural duties may be relevant to the implementation framework, by considering existing examples and potential opportunities within CEPA activities (as discussed in section 3.3).

### 2.3 Other approaches to a right to a healthy environment

In recent years, a right to a healthy environment has been recognized in various jurisdictions both domestically and internationally and there is also growing recognition of the negative impacts that environmental degradation can have on human rights. However, currently there is no internationally agreed upon understanding of the content and scope of this right. At the UN level Canada has noted, along with several countries, that there is no common or internationally agreed upon understanding of the content and scope of a right to a clean, healthy and sustainable environment.

Appendix 1 provides additional information on the concept of a right to a healthy environment at the United Nations and in some provinces and territories in Canada. The right under CEPA will be given meaning through the CEPA implementation framework and that meaning will be specific to the CEPA context.

### 3. The right to a healthy environment in CEPA

#### 3.1 Definition and scope of the right to a healthy environment in CEPA

In CEPA, the term “healthy environment” is defined as an environment that is clean, healthy and sustainable. The substantive meaning of the right in the context of CEPA will be elaborated on in the implementation framework.

It should be noted that actions taken under CEPA (through the CEPA management cycle described in section 2.2) contribute to the protection of both human health and the environment. The key areas where ECCC and HC can and have taken action are listed in the [CEPA Registry](#) and summarized annually in the CEPA Annual Report. For example:

- i) **Air pollution** – CEPA provides authorities to monitor and assess air pollutants, develop and administer regulatory and non-regulatory risk management instruments to reduce releases of air pollutants, and establish objectives for outdoor levels of air pollutants. Regulatory measures include the [Multi-Sector Air Pollutants Regulations](#), which establish nationally consistent industrial emissions performance standards to limit emissions of air pollutants such as nitrogen oxides and sulphur dioxide. Many other regulatory and non-regulatory instruments have been put in place to limit air pollution from sources such as industrial sources, products, vehicles, and engines. In addition, ECCC and HC work collaboratively with provinces and territories as part of the process under the Canadian Council of Ministers of the Environment (CCME) to develop, review and amend Canadian Ambient Air Quality Standards (CAAQS). CAAQS have been developed for fine particulate matter, ground-level ozone, sulphur dioxide, and nitrogen dioxide.
- ii) **Water pollution** – work on water quality under CEPA involves leadership on the development of Guidelines for Canadian Drinking Water Quality, in collaboration with the Federal-Provincial-Territorial Committee on Drinking Water and other federal government departments. Health-based guidelines are developed for drinking water contaminants that are found, or expected to be found, in drinking water supplies across Canada at levels that could lead to adverse health effects.
- iii) **Risks posed by harmful substances** – Within CEPA there are specific requirements and authorities for the assessment and management of [existing substances](#) that have been or are being used in Canada and [new substances](#) that are proposed to be introduced to Canada. ECCC and HC assess and manage risks to human health and the environment posed by substances that may be found in food, consumer products, cosmetics, drugs, drinking water, and industrial releases. As well, CEPA’s environmental emergencies provisions help to prevent hazardous substances from being released into the environment.
- iv) **Greenhouse gas (GHG) releases** – CEPA provides authorities to develop and administer regulatory and non-regulatory risk management instruments to reduce the releases of GHGs from stationary and mobile sources (e.g., electricity generation, methane emissions from oil and gas activities and from landfills, and vehicle and engine emissions), contributing to Canada’s action on climate change. Established under section 46 of CEPA, the [Greenhouse Gas Reporting Program](#) is a mandatory program

that collects information from facilities that emit 10 000 tonnes or more of GHGs across Canada.

- v) **Waste** – managing and reducing waste and pollution from waste is a role shared by federal, provincial, territorial and municipal governments. CEPA provides ECCC the authority to manage the movement of hazardous waste and recyclable materials through the [Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations](#). As well, Part 7 of CEPA imposes a prohibition on disposal at sea and establishes a permit system to control the disposal of non-hazardous substances into the sea.

It is important to note that other federal acts have a role in protecting the environment, and that the right to a healthy environment in CEPA is limited to the CEPA context and is not applicable to those Acts (e.g., *Fisheries Act*, *Species at Risk Act*, *Impact Assessment Act*, *Pest Control Products Act*, *Canadian Net-Zero Emissions Accountability Act*, *Canadian Consumer Products and Safety Act*, *Food and Drugs Act*). There are many areas of shared jurisdiction with the provinces and territories, as well as Indigenous governments.

The framework may include indicators of a healthy environment that would support annual reporting and help measure progress in implementation. To the extent possible, efforts will be made to use, link to or build on existing data and indicators developed for related purposes. For example, the [Canadian Environmental Sustainability Indicators](#) (CESI) program currently collects and provides data to track Canada’s performance on environmental sustainability issues and indicators supporting the [Federal Sustainable Development Strategy](#), many of which are related to actions taken under CEPA to promote a healthy environment, including air and water quality and human exposures to harmful substances. Another tool that could be used to measure progress on implementation is the [CCME’s Water Quality Index](#), which summarizes complex water quality data and derives qualitative indices (i.e., poor to excellent water quality) in a specific region.

**Questions for discussion:**

- What does a healthy environment mean to you in the context of the CEPA cycle described in section 2.2 or the issues described in section 3.1?
- How would you know if your environment is healthy?

### 3.1.1 Reasonable limits

In the above section, many of the environmental and health issues managed under CEPA were discussed, including air pollution, waste, and risks posed by harmful substances. As the right under CEPA will be considered in the administration of the Act, it is important to note that this right is not absolute and is subject to reasonable limits. CEPA requires that the framework elaborate on relevant factors to be considered in determining reasonable limits, including social, health, scientific, and economic factors that apply in the context of the different types of decisions made under CEPA. These factors are not new considerations for CEPA decision-making. Science is the foundation of decision-making under CEPA. CEPA also recognizes the role of Indigenous knowledge in decisions related to protecting the environment and human health. Social, economic, and technical issues are also considered in the risk management process. These factors might not be

relevant in all cases, but decision-making under CEPA typically involves situations where many considerations need to be evaluated on a case-by-case basis.

Important public interests need to be considered when protecting the right to a healthy environment, as provided under CEPA, and it is equally important to apply a consistent approach to the consideration of relevant factors.

**Question for discussion:**

- How would you see these factors to limit the consideration of the right being taken into account when making decisions under CEPA?

### 3.2 Principles

As noted earlier, the framework will describe how integrating certain principles into CEPA processes can be relevant in fulfilling the Government's duty to protect the right under CEPA. Such principles can help guide decision makers to interpret and administer the law in different circumstances.

CEPA specifies that the framework must, at a minimum, elaborate on three principles:

- environmental justice (including the avoidance of adverse effects that disproportionately affect vulnerable populations),
- non-regression, and
- intergenerational equity.

These are added to other principles mentioned in the Act's preamble that have been used to guide CEPA decision-making since 1999, and which are described further in Appendix 2 and the [Guide to understanding the Canadian Environmental Protection Act](#). These principles include:

- sustainable development,
- ecosystem approach,
- intergovernmental cooperation,
- national standards,
- science-based decision-making,
- precautionary principle,
- pollution prevention, and
- polluter pays.

As specified in section 5.1(1.1)(a) of CEPA, the implementation framework will set out the processes to apply the weight of evidence approach and precautionary principle when conducting and interpreting the results of a risk assessment<sup>1</sup> or a review of a decision in another jurisdiction. The precautionary principle is defined in CEPA to mean "...that lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation if there are threats of serious or irreversible damage." The process to apply the weight

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<sup>1</sup> Applies to assessments under Part 5 in CEPA, other than the assessment of substances and activities that are new to Canada.

of evidence and precaution in a risk assessment under CEPA has already been described in the [Application of weight of evidence and precaution in risk assessment factsheet](#).

This discussion document examines how the principles of environmental justice, non-regression, and intergenerational equity may be considered when making decisions under the Act.

### **3.2.1 Environmental justice**

Environmental justice is a principle that has evolved since its inception in the 1980s. While there is no universally established definition, it is broadly proposed by ECCC and HC to refer to considering (within environmental contexts) the procedural and geographic discrimination of specific communities, which could include Indigenous, Black and other racialized people, 2SLGBTQI+ people, women, persons with disabilities, and other marginalized people such as the very young, older adults, or people who experience structural inequity, poverty, or isolation. Conceptually, environmental justice concerns can arise from communities that are located within close proximity to environmental hazards, often resulting in direct health impacts, as well as particular communities' systemic under-representation in environmental decision-making processes.

Seen from these perspectives, environmental justice includes improved procedural, recognitional, and distributive justice with respect to environmental processes and outcomes. Procedural and recognitional justice seek to improve the ways in which decisions are made so that those who are affected by environmental injustice are reflected and represented in decision-making spaces. In relation to Indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples similarly reflects the importance of participation in decision-making affecting Indigenous peoples (including in Articles 18, 19, and 29). Distributive justice involves identifying the ways in which certain populations face disproportionate environmental burdens, such as pollution, and seeks to improve environmental benefits and reduce the environmental burden for those communities.

### **Textbox 3: Actions on Environmental Racism and Environmental Justice in Canada**

Private Member's Bill C-226, [An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice](#), was introduced in February 2022 and, if passed, would require the development of a National Strategy to promote efforts across Canada to advance environmental justice and to assess, prevent and address environmental racism. One of the key components of the proposed strategy is a study that examines the link between race, socio-economic status and environmental risk, and identifies information and statistics relating to the location of environmental hazards. Although the bill is still before Parliament, if passed, the strategy would reflect environmental justice priorities across Government – it is separate from a right to a healthy environment, which applies specifically to CEPA. Input received during engagement on the development of the implementation framework may also be used to inform the development of the national strategy on environmental justice.

Canada's [National Adaptation Strategy](#) is another example of a recent federal policy framework that considers concepts of environmental justice – where “advancing equity, climate and environmental justice” is one of the Strategy’s four guiding principles. This includes addressing and minimizing social, gender, racial, and intergenerational inequities. It also means prioritizing those populations and communities at greater risk of climate change impacts, including those at risk due to historical and ongoing practices and policies that shape lived experiences, capacity, and access to resources. It aims to ensure that efforts to build systems and solutions that are more climate resilient simultaneously address the systemic inequities that make people susceptible.

### **Populations who may be disproportionately impacted by pollution or chemical exposure**

The principle of environmental justice in CEPA includes consideration of the avoidance of adverse effects that disproportionately affect vulnerable populations, which in this document are referred to as populations who may be disproportionately impacted by pollution or chemical exposure (see [Textbox 2](#)).

The [Consideration of vulnerable populations in risk assessment factsheet](#) describes how some segments of the population may be more susceptible to the harmful effect of substances. This can occur, for example, when biological systems are developing in early life stages, or when there is potential for increased exposure to substances due to differences in:

- Physical characteristics (e.g., body weight, breathing rate);
- Life stage (e.g., infancy, pregnancy);
- Behaviours (e.g., mouthing and ingestion of non-food items, crawling);
- Culture (e.g., particular diets or product use);
- Geography (e.g., communities located near industrial facilities, waste disposal sites, transportation corridors, wastewater outlets);
- Occupation (e.g., firefighters); and
- Socio-economic status (e.g., living in substandard housing, having limited consumer choice or access to information).

The intersection of these factors may further increase the disproportionate impacts experienced, or likely to be experienced, by these populations. Disproportionate impacts on certain populations may also be linked to environmental racism and the ongoing impacts of colonialism.

#### *Examples of mechanisms within CEPA and potential opportunities*

Currently under CEPA, populations who may be disproportionately impacted by pollution or chemical exposures are considered where information is available, as described in the [factsheet](#) mentioned above. This process includes collecting information on susceptibility and exposure through research and monitoring, using this in the risk assessment, and then considering the findings at the risk management stage.

Potential research activities to support the protection of the right to be provided in CEPA could include leveraging pre-existing monitoring data (e.g., from the Canadian Health Measures Survey) to identify populations who may be disproportionately impacted; considering [Sex and Gender-Based Analysis Plus](#) (SGBA Plus); identifying inequity factors; and undertaking regional disaggregation of data. Research activities could also include building upon existing longitudinal data (e.g., [Maternal-Infant Research on Environmental Chemicals](#) (MIREC) platform, provincial biomonitoring cohorts) to further understand disproportionate health effects associated with exposure to environmental chemicals. Furthermore, lessons learned from past and ongoing work, such as MIREC and a feasibility study of recruiting marginalized populations into biomonitoring cohort studies, could be leveraged when developing future longitudinal cohorts.

There are also opportunities to consider environmental justice in compliance promotion activities under CEPA, recognizing the unique challenges some regulated communities may have in maintaining compliance. This could involve ensuring there is tailored messaging to promote awareness, understanding, and compliance; and varying the timing and methods of communicating.

Further work to pursue environmental justice could also be informed by site-specific data collected under CEPA such as the [National Pollutant Release Inventory](#), which collects data at a facility level and makes it publicly available, and the [National Air Pollution Surveillance Program](#), which provides long-term air quality monitoring data.

#### **3.2.2 Non-regression**

Non-regression is not defined in CEPA. While there is no universally established definition, it generally refers to the notion that current levels of protection must be maintained. It may also include the continuous improvement in environmental and health protection. This may apply to all stages of the CEPA cycle, but may be more salient when designing both enforceable risk management instruments (i.e., regulations, pollution prevention planning notices) and non-enforceable risk management instruments (e.g., guidelines, codes of practice, agreements).

Continuous improvement of risk management actions developed under CEPA may include updating or replacing these actions when additional knowledge or information is obtained that demonstrates the initial risk management action is not effective at protecting the environment or human health. Any such change should be made in a fair and transparent manner.



### *Examples of mechanisms within CEPA and potential opportunities*

While the principle of non-regression has not been expressly applied under CEPA in the past, the process for making regulations includes a cost-benefit analysis, as well as the analysis of environmental and SGBA Plus impacts, and summaries are published as part of the Regulatory Impact Analysis Statement (RIAS). Cost-benefit analysis, for example, is undertaken from a societal standpoint and aims to quantitatively (and/or qualitatively, where data are unavailable) demonstrate the incremental net societal benefit (or loss) of a proposed regulation, consistent with the principle of non-regression.

Conducting performance measurement and evaluation of risk management instruments under CEPA also helps to identify situations of regression and provides transparency as outcomes are established, performance indicators are measured, results are reported, and corrective actions are taken when objectives are not being met.

### **3.2.3 Intergenerational equity**

The principle of intergenerational equity in the context of CEPA emphasizes that it is “important to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.” This principle is fundamental to the concept of sustainable development. In CEPA, sustainable development is defined to mean development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Both of these concepts (intergenerational equity and sustainable development) can be applied to decision-making throughout the CEPA management cycle. This understanding of sustainable development is also consistent with the teachings originating with the [Haudenosaunee Confederacy](#), and adopted by many First Nations, about respecting and protecting the needs of and impacts on people seven generations in the future ([AFN 2022](#)).

In the context of CEPA, there could be a number of considerations related to intergenerational equity. This could include a substance’s potential to persist in the environment; certain substances are able to remain in the environment for long periods of time, which could have long term environmental impacts affecting enjoyment of land, water, or food sources. The effect of a substance in the environment could also lead to endocrine-related effects that impact fertility and reproductive success or mutagenic effects, which can cause irreversible and heritable changes in genetic material. Cumulative effects from exposure to multiple chemicals causing these same effects could also be a relevant consideration where information is available.

### *Examples of mechanisms within CEPA and potential opportunities*

Persistence and bioaccumulation criteria have been long recognized through the [Toxic Substances Management Policy](#) (TSMP) and implemented in CEPA through the [Persistence and Bioaccumulation Regulations](#). These two criteria are key considerations in the prioritization, assessment, and risk management of substances.

CEPA amendments brought in through Bill S-5 build on the TSMP with a new category, “toxic substances of highest risk,” to be set through regulations. Going forward, those regulations will be amended or new regulations made to prescribe additional thresholds for carcinogenicity, mutagenicity and reproductive toxicity, and any other relevant circumstances or conditions. The definition of the criteria for this category of substances will build on existing policies developed by



ECCC and HC and interested persons will be engaged in the development of the new regulatory criteria to define toxic substances that pose the highest risk.

As described in the [Consideration of endocrine-related effects in risk assessment factsheet](#), consideration of endocrine-disrupting properties and endocrine-related effects is already an important aspect of prioritizing substances for risk assessments and for characterizing the hazard of those substances in risk assessment under CEPA, where information is available. In human health risk assessments, uncertainty factors, which take into account the particular sensitivity of the endocrine system and the potential for irreversible adverse effects, are part of the risk calculation.

The [MIREC](#) platform looks at the effects of chemicals throughout generations. Data generated by this platform supports chemicals management, including risk assessments and prioritization of future candidate substances. One of the overarching goals of the MIREC platform is to understand the potential impacts of environmental chemical exposures during pregnancy on the health of the next generation. Numerous persistent chemicals (e.g., PFAS, organochlorine pesticides, flame retardants) were measured in MIREC and there are many ongoing research projects investigating the associations between these chemicals and child health, including neurodevelopment, obesity, and markers of cardiometabolic health. Longitudinal studies like MIREC that follow particular individuals over long periods of time will continue to be important under CEPA to understand health effects over time through critical windows of exposure (e.g., pregnancy, childhood, adolescence).

Analytical tools such as the [Strategic Environmental Assessment \(SEA\)](#) are one way that the principle of intergenerational equity is considered in federal policymaking. SEAs are required under the [Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals](#) whenever a policy proposal (including a regulatory proposal under CEPA) is being brought forward to a Minister or Cabinet for approval, or when implementation of a proposal may result in important positive or negative environmental effects. SEAs involve an analysis of the potential impacts of a proposal and how negative impacts could be reduced. Specific to intergenerational equity, an SEA requires analysis of the potential impacts on the goals of the [Federal Sustainable Development Strategy](#).

Finally, in an effort to have risk management instruments developed in a timely manner and avoid delays to protecting the environment and people living in Canada from toxic substances, CEPA has time requirements for publishing proposed and final instruments (sections 91 and 92 of CEPA, respectively). These instruments must also be designed so that they establish preventive or control actions that result in a reduction or elimination of the risks to the environment or human health.

**Questions for discussion:**

- Are any of these principles and the way in which they can contribute to the protection of the right to a healthy environment under CEPA unclear?
- Are there other opportunities within the CEPA management cycle to consider these principles and strengthen the protection of the right?
- Are there other principles within CEPA that could be considered as part of the framework (see Appendix 2 for list of CEPA principles and their definitions)?

### 3.3 Procedural duties

In addition to principles, literature on the concept of a right to a healthy environment and human rights and the environment states that procedural duties could be important to protecting such rights (Aguila 2021, Boyd 2012, UN Special Rapporteur 2018, United Nations 2014, United Nations 2023), which ECCC and HC view as being mechanisms of potential relevance to protection of the right under CEPA. Procedural duties relate to the process of making decisions, and typically include:

- access to information,
- participation in decision-making, and
- access to effective remedies in the event of harm to the environment and human health.

While these mechanisms already exist within CEPA processes, ECCC and HC have included them in this document to encourage discussion on whether these activities could be expanded and further considered in the framework.

#### 3.3.1 Access to information

Access to information supports the public in being able to hold governments accountable, to participate and engage in health and environmental decision-making, and to make informed decisions about their own health and environment. It also contributes to the Government's commitments, as reflected in the preamble to CEPA, to implementing the UN Declaration on the Rights of Indigenous Peoples (UN Declaration) that includes participation in decision-making in matters that affect their rights.

#### *Examples of mechanisms within CEPA and potential opportunities*

There are many examples where the information collected, and decisions made under CEPA, are accessible online:

- The [CEPA Registry](#) provides the public with access to current information related to CEPA such as regulations, *Canada Gazette* notices, permits, plans, policies, and copies of documents submitted to a court by the Minister of the Environment relating to any environmental protection action. The goal of the Registry is to help people living in Canada understand the administration of CEPA so that they can participate in consultations and decision-making.
- An [annual report on CEPA](#) is submitted to Parliament and is also posted online, providing an overview of the activities conducted and results achieved under CEPA each year. The CEPA Annual Report must include information on the implementation of the framework as well as measures taken to advance reconciliation with Indigenous peoples.
- Under CEPA, owners or operators of facilities who meet specific reporting requirements are required to provide information on the releases, disposals, and transfers of over 320 pollutants. This information is collected and published in the [National Pollutant Release Inventory \(NPRI\)](#). Reporting includes over 7 000 facilities including manufacturing factories, mines, oil and gas operations, power plants, and wastewater treatment plants. The information submitted is available to the public through the NPRI [online data search tool](#). Information can be searched by location, industry sector, and substance. As noted above, data on GHG emissions is collected through the [Greenhouse Gas Reporting Program](#). Data

from this and the NPRI are used to compile and maintain the [Air Pollutant Emissions Inventory](#), the [Black Carbon Emissions Inventory](#), the Facility-level Greenhouse Gas Emissions Inventory, and the [National Greenhouse Gas Inventory](#).

Other webpages where information from CEPA activities is shared with the public include, but are not limited to:

- [Chemical substances](#), which includes information on the [Chemicals Management Plan](#);
- [Canadian Environmental Sustainability Indicators](#);
- [Air Quality](#), which includes the [Air Quality Health Index](#);
- [Open Data Portal](#);
- [Healthy Home](#);
- [Pollutants Affecting Whales and their Prey Inventory Tool \(PAWPIT\)](#); and
- [Enforcement Notifications](#).

While there is a significant amount of information available, people living in Canada may not be aware that these resources exist and may not know where to find the information they need. Information may be technical or hard to understand in terms of its practical implications for human health or the environment. There are opportunities to do more to improve access to transparent, clear, and understandable information throughout the CEPA management cycle. Existing data sources could be expanded to make even more information available or updated to increase integration and interoperability. Greater access to disaggregated data and information within CEPA tools for different communities, including by providing information in languages other than English and French (including Indigenous languages) could further support the principle of environmental justice.

Another possible dimension of this procedural duty is the increased accessibility of consumer product information to help individuals make better informed decisions that could improve their health or environment. CEPA enables the regulation of the packaging and labelling of various products containing substances listed on Schedule 1 of the Act. These authorities have been used for a variety of purposes, such as requiring the labelling of allowable product concentrations or instructions for product disposal. Examples of such requirements can be found in the [Volatile Organic Compound Concentration Limits for Certain Products Regulations](#), the [Products Containing Mercury Regulations](#), the [2-Butoxyethanol Regulations](#), and the [Formaldehyde Emissions from Composite Wood Products Regulations](#). There are also voluntary instruments that have labelling recommendations for household consumer products, such as the [Code of Practice for 2-Butanone, oxime \(Butanone oxime\) Associated with the Interior Application of Consumer Alkyd Paint and Coating Products](#). In 2022, ECCC and HC undertook [consultations](#) on how to enhance the availability of information on chemicals of concern in products. The Government of Canada will develop and publish a strategy that will outline voluntary and policy actions and mandatory measures to be proposed under CEPA to require the labelling of chemicals of concern in products using digital mechanisms.

While promoting transparency and access to information, ECCC and HC also have an obligation to protect confidential business information received under CEPA, when its release could negatively impact commercial interests. ECCC and HC have developed an [approach to promote transparency](#)

[in risk assessment activities](#) under the Chemicals Management Plan to achieve an appropriate balance between transparency and protection of confidential information. The aim of this approach is to minimize the scope, frequency, and duration of claims of confidentiality for information related to substances.

Bill S-5 introduced new provisions to CEPA to increase transparency in assessment and management of risks, including broadening the applicability of section 77, which requires the publication of information about measures to be taken, if any, in response to a risk assessment, and amendments to section 313 relating to confidentiality requests.

### ***3.3.2 Participation in decision-making***

To be effective, participation in decision-making should occur early and allow sufficient time for members of the public to review material and provide responses. It is important to consider the views of populations who are most affected by decisions made under CEPA. When considering the input received from the public, it is important to provide explanations of how input was considered when decisions are made and, where appropriate and not otherwise precluded, these explanations should be made publicly available. Participation in decision-making is also expressly reflected in Article 18 of the UN Declaration on the Rights of Indigenous Peoples.

#### *Examples of mechanisms within CEPA and potential opportunities*

Currently under CEPA, there are many processes in place for the public to participate in decision-making, from consultations on risk assessments of substances, to commenting on the design of draft risk management instruments. Public consultation notices are available on the CEPA Registry, the Chemicals Management Plan website, and the Government of Canada's Consulting with Canadians webpage. ECCC and HC also proactively reach out to stakeholders and the public to inform them of and seek input on CEPA regulatory development and amendments. As another example, interested or concerned communities have [opportunities to comment on Disposal at Sea permit applications](#) and are made aware of this opportunity through "Notices of Application" that must be published in a local newspaper. Applicants may also contact implicated groups directly and a copy of the permit is posted on the CEPA Registry for comment.

There are other opportunities to explore throughout the CEPA management cycle, including for example, the manner in which participation opportunities are coordinated and the selection and design of risk management instruments. Opportunities to provide support for Indigenous peoples could also be examined by ECCC and HC (i.e., offer longer term contribution agreements to help build capacity) to enable more sustained participation and enhance consideration of Indigenous knowledge. Support for groups representing disproportionately impacted populations could also be examined by the implicated departments. Citizen science is an additional way to consider input from the public, which could ultimately influence decision-making and policy development.

### ***3.3.3 Access to effective remedies in the event of harm to the environment or human health***

Effective remedies refer to tools that are available for the public to use if they believe that environmental damages have occurred as a result of a contravention to CEPA. It is important for the public to be provided guidance about how to access these remedies. Consideration could also be given to providing assistance to overcome obstacles to accessing remedies.

### *Examples of mechanisms within CEPA and potential opportunities*

Currently, CEPA has several tools that provide the public with opportunities to request an investigation of an alleged offence; to pursue a civil suit, injunction, and/or civil action to recover damages; or to file a notice of objection requesting that a board of review be established. These are tools available for the public to use to request the Government to act, or to act themselves, when they believe environmental damages or contraventions to CEPA have occurred. However, in practice, these tools have been used infrequently. There may be opportunities to improve knowledge of these tools and provide better guidance on how to use the existing remedies within CEPA. Finally, consideration of populations who may be disproportionately impacted, vulnerable environments, and cumulative effects within the [Environmental Damages Fund](#) could be explored, as it directs funds received from fines, court orders, and voluntary payments to priority projects that will benefit Canada's natural environment, including projects focused on restoration, environmental quality improvement, research and development, education, and awareness.

#### **Questions for discussion:**

- Are any of these procedural duties unclear?
- Are there other opportunities within the CEPA management cycle to consider these procedural duties and strengthen the protection of the right?
- Are there other procedural duties that could be considered as part of the framework?

### **3.4 Indigenous Rights**

The Government of Canada is committed to renewed nation-to-nation, Inuit–Crown and government-to-government relationships with First Nations, Inuit, Métis, Modern Treaty Partners, and Self-Governments based on the recognition of rights, respect, cooperation and partnership. This commitment is rooted in section 35 of the [Constitution Act, 1982](#), guided by the [United Nations Declaration on the Rights of Indigenous Peoples Act](#) (UN Declaration Act) and the UN Declaration, and informed by the Report of the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission's calls to action, and the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

The UN Declaration contains 24 preambular provisions and 46 Articles, and, while it must be read and understood in its entirety, the following Articles are particularly relevant to developing the framework:

**Article 29.1.** Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources...

**Article 21.1.** Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of... sanitation, health and social security.

**Article 24.2.** Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

The rights and principles in the UN Declaration, including those noted above, can inform the consideration of a right to a healthy environment under CEPA and the development of the associated framework.

While ECCC and HC are increasingly working with Indigenous peoples and taking steps to reflect their priorities in CEPA activities, it is expected that, through discussions with Indigenous peoples on the development of the framework, additional opportunities and guidance will be identified.

The UN Declaration recognizes the “distinctive spiritual relationship” Indigenous peoples have to their territories and lands (Article 25). First Nations, Inuit, Métis, Modern Treaty Partners, and Self-Governments each have distinct relationships and land-based practices that are an important, ongoing part of their cultures. A holistic approach to health including cultural, spiritual, and community health and wellbeing alongside physical and mental health is common in many Indigenous communities and the link between protection of the environment and the maintenance and restoration of health is recognized in Article 29 of the UN Declaration. While some priorities for the framework may be shared among Indigenous peoples, ECCC and HC recognize the importance of adopting a distinctions-based approach that is inclusive and welcoming of the different experiences and priorities of First Nations, Inuit, and Métis, and acknowledges the importance of historic and modern treaties and self-government agreements.

CEPA recognizes the role of Indigenous knowledge systems in the process of making decisions about the protection of the environment and human health. This is relevant in the context of the right, as it means more robust information for decision-making, which supports the right. Activities taking place under CEPA could be informed by existing Indigenous knowledge policy frameworks and approaches under other Acts, such as the [Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions](#) which helps guide the implementation of Indigenous Knowledge provisions of the *Impact Assessment Act*, the *Canadian Navigable Waters Act*, the *Canadian Energy Regulator Act*, and the fish and fish habitat protection provisions of the *Fisheries Act*. There are opportunities to consider Indigenous knowledge and Indigenous data more often and more consistently at all stages of the CEPA management cycle, while respecting Article 31 of the UN Declaration.

**Questions for discussion:**

- How can the right to a healthy environment under CEPA support the priorities of First Nations, Inuit, Métis, Modern Treaty Partners, and Self-Governments?
- How can the framework meaningfully consider Indigenous knowledge systems and bring them together with western knowledge systems to inform science, policy, and program decision-making?
- Are there specific distinctions-based elements you would like to see incorporated into the implementation framework?

#### 4. Proposed approach for the framework

It is proposed that the framework would elaborate on the various [elements required under the Act](#) to set out how the right will be considered in the administration of the Act. The framework would specify mechanisms throughout the CEPA management cycle to help protect the right, considering related principles and recognizing that implementation and continuous improvement will take place over time.

The framework is also expected to elaborate on research, studies, and monitoring activities in support of the right. Some monitoring activities have been highlighted in this discussion document (e.g., MIREC, the Canadian Health Measures Survey) and information on many more CEPA research and monitoring activities can be found in the CEPA Annual Report. The framework may also describe approaches to measure progress on how the right is being considered within the administration of CEPA.

Submissions received on this discussion document will be reviewed and used to inform the development of the draft implementation framework. The draft implementation framework will be published in Fall 2024 and open for a comment period.

A *What We Learned* report will also be published to share what was heard and learned through the public comment period and additional engagement activities.

The Act requires the final implementation framework to be published no later than June 2025. There will then be ongoing work to implement, monitor, and report on the actions it proposes in partnership with stakeholders and Indigenous peoples.

##### **Questions for discussion:**

- Recognizing that implementation will be progressive and incremental, should the framework prioritize certain activities under CEPA or focus on more general improvement? What would you like to see prioritized?
- Given that the framework will need to elaborate on research, studies and monitoring to support protection of the right, are there any particular areas of importance related to these activities that should be considered?
- What information would you need to see to feel confident that the right set out in the framework is being protected in CEPA decision-making? Are there specific actions that should be taken to assess this?

#### 5. Submitting comments

Comments and responses to any of the questions outlined in this discussion document are welcome and can be submitted to [HealthyEnv-EnvSain@ec.gc.ca](mailto:HealthyEnv-EnvSain@ec.gc.ca) by April 8, 2024.

Further information can be found on the [A Right to a Healthy Environment under the Canadian Environmental Protection Act, 1999](#) webpage.



## 6. References

Aguila Y. 2021. [The Right to a Healthy Environment](#). IUCN.

[AFN] Assembly of First Nations. 2022. Submission to the House of Commons Committee on Environment and Sustainable Development [Study on Bill S-5 An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act](#).

Boyd, DR. 2012. The Right to a Healthy Environment: Revitalizing Canada's Constitution. UBC Press. 336pp.

UN Special Rapporteur. 2018. [Framework Principles on Human Rights and the Environment](#). The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

United Nations. 2014. [Quick Guide to the Aarhus Convention. Protecting your environment: the power is in your hands](#).

United Nations. 2022. General Assembly Official Records, 76<sup>th</sup> session. 97<sup>th</sup> Plenary Session. July 28 2022. p12-13

United Nations. 2023. [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#).



## Appendix 1: Approaches to a right to a healthy environment at the United Nations and in Canadian provincial and territorial legislation

### United Nations

According to the UN Special Rapporteur's 2019 [Report on the Right to a Healthy Environment: Good Practices](#) (A/HRC/43/53) (see Annex II), a right to a healthy environment is recognized by over 150 countries. However, there is wide variety in the scope and content of the right in different legal frameworks around the world.

At the global level, there is no binding treaty that defines a right to a healthy environment. While both the UN Human Rights Council and the UN General Assembly have recently adopted resolutions recognizing the human right to a “clean, healthy and sustainable environment,” the substance of this right is still under development. While Canada supported the 2022 [UN General Assembly resolution on the Human Right to a Clean, Healthy and Sustainable Environment](#) (A/Res/76/300), Canada noted, along with several countries, that there was no common or internationally agreed upon understanding of the content and scope of a right to a clean, healthy and sustainable environment, and that Canada was prepared to work with others towards a common understanding (United Nations 2022). The resolution recognizes that the impacts of climate change, the unsustainable management and use of natural resources, pollution, the unsound management of chemicals and waste, and the resulting loss of biodiversity interfere with the enjoyment of a healthy environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights.

Even though the content and scope of a right may be developed at the UN level in the future, the right for individuals in Canada provided for in CEPA will be given meaning in the CEPA context through the implementation framework.

### Provincial and territorial legislation

Some provinces and territories have included the concept of a right to a healthy environment in their own legislation.

Quebec's [Environmental Quality Act 1978](#) was the first law in Canada to recognize a right to a healthy environment. [Quebec's Charter of Human Rights and Freedoms](#) was later updated to state that all people have a right to live in a healthy environment where biodiversity is preserved, to the extent provided by law. Similar provisions on a right to a healthy environment can be found in Yukon's [Environment Act](#), which recognizes that the people of the Yukon have a right to a healthful natural environment.

Within Ontario's [Environmental Bill of Rights 1993](#), a right is recognized in the preamble, which states that the people of Ontario have a right to a healthful environment, with an additional provision reinforcing that the purpose of the Act includes protecting the right to a healthful environment by the means provided in the Act.

The preambles of the Northwest Territories' [Environmental Rights Act](#) and Nunavut's [Environmental Rights Act](#), both recognize a right to a healthy environment and a right to protect the integrity, biological diversity and productivity of the ecosystems.

## Appendix 2: CEPA 1999 guiding principles

From the [Guide to understanding the Canadian Environmental Protection Act](#)

**Sustainable development:** The Government of Canada's environmental protection strategies are driven by a vision of environmentally sustainable economic development. This vision depends on a clean, healthy environment and a strong, healthy economy that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

**Pollution prevention:** CEPA 1999 shifts the focus away from managing pollution after it has been created to preventing pollution. Pollution prevention is "the use of processes, practices, materials, products, substances or energy that avoid or minimize the creation of pollutants and waste and reduce the overall risk to the environment or human health."

**Ecosystem approach:** Based on natural geographic units rather than political boundaries, the ecosystem approach recognizes the interrelationships between land, air, water, wildlife, and human activities. It also considers environmental, social, and economic elements that affect the environment as a whole.

**Precautionary principle:** The government's actions to protect the environment and health are guided by the precautionary principle, which states that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

**Intergovernmental cooperation:** CEPA 1999 reflects that all governments have the authority to protect the environment and directs the federal government to endeavour to act in cooperation with governments in Canada to ensure that federal actions are complementary to and avoid duplication with other governments.

**National standards:** CEPA 1999 reinforces the role of national leadership to achieve ecosystem health and sustainable development by providing for the creation of science-based, national environmental standards.

**Polluter Pays Principle:** CEPA 1999 embodies the principle that users and producers of pollutants and wastes should bear the responsibility for their actions. Companies or people that pollute should pay the costs they impose on society.

**Science-based decision-making:** CEPA 1999 emphasizes the integral role of science and traditional Indigenous knowledge (where available) in decision-making and that social, economic, and technical issues are to be considered in the risk management process.