November 14, 2022

Standing Committee on Environment and Sustainable Development
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, Ontario
Canada K1A 0A

VIA EMAIL: ENVI@parl.gc.ca

Honourable Members of the Standing Committee on Environment and Sustainable Development

Re: Bill S-5, Strengthening Environmental Protection for a Healthier Canada Act

On behalf of Ecojustice, Environmental Defence, Breast Cancer Action Quebec, the David Suzuki Foundation and the Canadian Association of Physicians for the Environment, we present to the Standing Committee on Environment and Sustainable Development our submission on Bill S-5, Strengthening Environmental Protection for a Healthier Canada Act.

As organizations concerned with environmental health, we have long advocated for the modernization of the *Canadian Environmental Protection Act* and recognition in law of the right to a healthy environment. We therefore welcome the committee's consideration of Bill S-5, the Strengthening Environmental Protection for a Healthier Canada Act. This brief outlines our comments on key features of Bill S-5 and provides recommendations for improvements.

We have focused on areas we consider to be the most significant aspects of Bill S-5 as approved by the Senate:

- New provisions recognizing the right of all people in Canada to a healthy environment; and,
- Changes to CEPA Part 5 — Controlling Toxic Substances.

The priority amendments we recommend to strengthen these aspects of Bill S-5 are summarized in Annex 1 and explained below.

CEPA provides the legislative framework for protecting human health and the environment from pollution and toxic substances. It provides the government with primary regulatory authority for a range of federal environmental and health protection programs, including activities related to air and water quality, climate action, plastic pollution, hazardous waste, and toxic substances.

Climate and chemical pollution have crossed a "planetary health boundary" — the limits within which nature can support human activity.[1] Governments must apply integrated policy measures to address climate change and other threats to environmental health, and advance environmental justice. Updating CEPA to provide a stronger legislative framework for assessing and managing toxic substances (including GHGs) and to protect the right to a healthy environment is therefore an urgent priority.

This law has not been significantly amended for more than two decades, yet sources of pollution and our scientific understanding of risks and impacts on communities have changed dramatically over this time.

Although Bill S-5 is not a comprehensive update to CEPA — some important issues remain to be addressed — we believe the bill offers a workable starting point for many much-needed updates to the act, with respect to recognition of the right to a healthy environment and controlling toxic substances. The Senate made some improvements to these aspects of the bill in June, and we would oppose any efforts to roll these back. With the strengthening amendments outlined below, Bill S-5 will begin to close gaps in protection by strengthening legal protections from pollution and toxic substances.

1. **Set the stage for robust implementation of the right to a healthy environment.**

Bill S-5 would recognize the human right to a healthy environment for the first time in Canadian federal law. This is a welcome development and consistent with the unanimous vote at the 2022 UN General Assembly declaring a healthy environment to be a human right. Integrating a human rights lens in decision-making under CEPA will complement the broader national environmental racism and environmental justice strategy required by Bill C-226.

A crucial Senate amendment fixed problematic language in the original bill that could have limited application to the right to a healthy environment to such an extent as to render it largely meaningless. The formulation in clause 3(2) of the bill now better aligns with provincial laws recognizing the right to a healthy environment (such as Quebec's *Charter of Human Rights and Freedoms* and *Environmental Quality Act*[2]), as well as the recent UN Resolution.

[1] https://pubs.acs.org/doi/10.1021/acs.est.1c04158
[2] https://www.legisquebec.gouv.qc.ca/en/document/cs/C-12

Relatedly, Bill S-5 specifies the duty of the government to **protect the health of vulnerable populations** in the administration of CEPA, and adds an explicit requirement to consider vulnerable populations when assessing substances that may be toxic. Importantly, the definition in the bill of vulnerable populations recognizes that vulnerability may pertain to greater biological susceptibility or greater exposure.[3]

Current data on breast cancer reinforces the need to consider socio-ecologically vulnerable populations when assessing substances that may be toxic. Exposure to endocrine-disrupting chemicals (EDCs), even in extremely small doses, during biological windows of vulnerability for girls and women including prenatal development, puberty, pregnancy, and the menopausal transition puts women at greater risk for breast cancer.[4] Intersectional discrimination can lead Black and other racialized women to use beauty products such as chemical hair straighteners and relaxers containing harmful EDCs that cause negative health impacts, to comply with white beauty norms.[5] The heightened risk to people with asthma from exposure to air pollution is another example of biological susceptibility. Yet in the absence of legislative requirements, the heightened risks to vulnerable populations are not routinely taken into account in substance assessments.

Bill S-5 also requires the Ministers to develop an implementation framework for the right to a healthy environment. The framework is to elaborate on how the principles of environmental justice — including the avoidance of adverse effects that disproportionately affect vulnerable populations — intergenerational equity and non-regression will be considered in the administration of CEPA.

These are key principles of the right to a healthy environment and will be central to its implementation in CEPA decision-making. The U.S. EPA Office of Environmental Justice explains the well-established principle of environmental justice as follows:

> Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:
>
> - The same degree of protection from environmental and health hazards, and
> - Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.[6]

Within the scope of CEPA, this is particularly relevant when marginalized communities have disproportionately higher exposures to toxic chemicals or pollution - a situation of environmental injustice.

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[3] Our Chemical Selves. Gender, Toxics and Environmental Health. Ed. Dayna Nadine Scott. Vancouver: UBC Press, 2015, pp 78-104.
[4] https://doi.org/10.1186/s13058-019-1168-2; https://pubmed.ncbi.nlm.nih.gov/28987728/
[5] **https://doi.org/10.1016/j.ajog.2017.07.020**
[6] https://www.epa.gov/environmentaljustice

The principle of non-regression, borrowed from international human rights law, prohibits backsliding, or weakening existing levels of environmental protection. The principle of intergenerational equity requires fairness among generations in the use and conservation of the environment and its natural resources. We recommend reinforcing these key principles related to the right to a healthy environment by incorporating them into Section 2 of the Act (Administrative Duties). Incorporating them as duties in Section 2, as well as the implementation framework, would give them greater force and create consistency and continuity of purpose throughout the Act.

We further recommend including an explicit requirement for the implementation framework to specify how the right to a healthy environment will be upheld in relation to (1) substance assessments and (2) enforcing ambient air quality standards. While the right applies appropriately to all aspects of the act, this amendment would ensure the framework includes specific guidance for these two critical issues, among others, where real, measurable progress can be made.

With respect to ambient air pollution and its negative effects on human rights, research suggests causal associations between air pollution exposure and reduced lung function, asthma, respiratory disease, cardiovascular diseases and myocardial infarction, neurological impacts, pregnancy-related outcomes, including congenital abnormalities, infertility, and eclampsia, cancers, diabetes and elevated mortality rates. Air pollution and environmental inequality are also related.[7] The health risks associated with air pollution are disproportionately experienced in communities with higher levels of air pollution, often where racialized, Indigenous, and poor people live.[8] In 2020 the UNHCR Visit to Canada Report stated, "there is increasingly a need to formulate binding caps on ambient pollution."[9] Canadian Ambient Air Quality Standards have been established under CEPA. The implementation framework must set out the actions the ministers will take, in consultation with provinces, when CAAQS are exceeded in a geographic area.

Finally, in the implementation framework required under clause 5 of Bill S-5, the final paragraph of 5.1(2) should be rephrased to allow that “relevant factors” (e.g., social, health, scientific and economic factors) will not always or necessarily justify limiting the right. These factors are relevant more broadly to inform application of the right.

Recommendation 1:
Establish a duty for the Government of Canada to uphold the principles of environmental justice, including the avoidance of adverse effects that disproportionately affect vulnerable populations, the principle of non-regression and

[7] More than 15,300 premature deaths each year are linked to air pollution: https://www.canada.ca/en/health-canada/services/publications/healthy-living/2021-health-effects-indoor-air-pollution.html.
[8] https://cape.ca/wp-content/uploads/2022/05/CAPE-TRAP-2022-2.pdf
[9] https://www.ohchr.org/en/documents/country-reports/ahrc4512add1-visit-canada-report-special-rapporteur-implications-human

the principle of intergenerational equity **[subclause 3(2)]**, AND

Strengthen the legislative requirements for the implementation framework **[clause 5]**:

- Require that the framework specify the actions that the Ministers will take when ambient air quality standards are exceeded, and the process for considering the right to a healthy environment in the assessment of toxic substances and decisions to prohibit or substantially restrict any substance by another jurisdiction.
- Clarify that factors referenced in sec. 5.1(2)(c) are broadly relevant to interpreting and applying the right to a healthy environment, not only determining its reasonable limit.

2. Expand priority planning to include timelines and require five-year updates.

Once passed, Bill S-5 will require ECCC to develop a plan specifying priority substances for assessment which, based on our understanding from speaking to officials at ECCC, also includes reassessment. Though a welcome improvement to CEPA in the current iteration of the Bill, there remains no requirement for the plan to specify timelines for assessments and control measures identified as priorities, and no legislated timeline for updating the plan. A requirement for the plan to include timelines and be updated at least every five years should be added to S.73(1) of CEPA.

Updating plans and including timelines will ensure plans remain current, improve accountability, and help prevent lengthy delays that result in years of unnecessary risk to human health and the environment.

Recommendation 2: Require the priority plan to include timelines and updates to the plan at least every five years **[clause 19].**

3. Mandatory labelling of hazardous substances in consumer products.

People in Canada currently have limited access to information regarding the chemicals found in many products, some of which lead to harmful exposures with potentially serious health and environmental effects. This issue can be a particular burden for women, who are often responsible for choosing products for the family, and who are attempting to avoid hazardous substances when pregnant.

Greater transparency and accountability by producers and industry is necessary. Government has a duty to uphold health protection, illness prevention and environmental justice and ensure the consumers' right to know is upheld. Providing information on the hazardous substances in products ensures greater transparency and facilitates the consumers' right to know. Without complete ingredient labels,[10] information about exposures is unknown and the required information about how to choose differently is lacking.[11] The lack of transparency is very much an environmental

[10] https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306606
[11] https://doi.org/10.1038/s41370-021-00404-7; https://doi.org/10.3390/ijerph19095645

justice issue as well,[12] and ingredient disclosure can drive product reformulation, safer substitution and market reform.

By legislating mandatory product labelling, the right to know the chemical ingredients in products is facilitated, thereby removing a key barrier to choosing healthier alternatives. Mandatory labelling must include the presence of substances that have been determined to be toxic or are suspected of being capable of becoming toxic in order to be effective.

Recommendation 3: Establish a new requirement for the minister to ensure harmful substances are disclosed on the labels of consumer products. **[clause 20]**.

4. Fix the public requests for assessment mechanism.

CEPA allows members of the public to ask the Minister to assess or reassess specific chemicals or groups of chemicals in light of new data. However, the language in the Act is vague, resulting in non-committal responses to public requests. Furthermore, if the Minister decides to assess a substance pursuant to a request from the public, there is no requirement to complete the assessment in a timely fashion.

For public participation to be meaningful, clause 20 should be amended to specify that the minister's response to a public request for assessment must include a clear decision to grant or deny the request. The clause should be amended to require that when a request is granted, the substance be added to the priority plan and the assessment be completed within a two-year time limit. In practice, the current wording has been used to issue a vague and overly general response without making a decision on the request, thereby rendering the mechanism of public participation essentially meaningless.[13]

Recommendation 4: Specify that the minister's response to a public request for assessment must include a clear decision to grant or deny the request. Also, ensure integration with priority planning — including a two-year prescribed timeline for completing assessments in response to a public request, if granted **[clause 20]**.

5. Establish clear time limits for finalizing substance assessments.

To address the multi-year delays between proposed and final substance assessments, we recommend subclause 21(2) of the bill be amended to set a one-year time limit to finalize an assessment after the publication of the proposed assessment. The one-year limit should only be extended if additional data collection or studies are required to finalize the assessment, and the

[12] https://doi.org/10.1016/j.ajog.2017.07.020

[13] A request made in 2018 by Ecojustice on behalf of 10 organizations under CEPA section 76(3) was not properly answered by the minister. The minister missed the deadline to respond and responded in a manner that did not answer the question as to whether the substance was to be added to the PSL. <https://ecojustice.ca/pressrelease/statement-feds-miss-opportunity-to-use-law-to-tackle-plastic-pollution-ecojustice-says/ >.

public is notified of reasons for the extension.

Recommendation 5: Establish a clear timeline for finalizing substance assessments, in order to prevent multi-year delays between proposed and final risk assessments; allow for an extension only if additional data collection or studies are needed to finalize the assessment **[clause 21(2)]**.

6. Establish an accountability framework for implementation of toxic substance risk management plans.

In the absence of time-limit requirements under the current act, lengthy delays of years or even decades are not uncommon in implementing measures to control substances that have been found to be toxic. These delays result in years of unnecessary risk to human health and the environment, and uncertainty for industry.[14]

Bill S-5 introduces a new requirement for the ministers to publish a statement respecting the development of subsequent proposed regulations or instruments that specifies "to the extent possible" an estimated timeframe. This provision is inexplicably much less rigorous than the planning requirements under the new Net Zero Emissions Accountability Act. Bill S-5 will modernize CEPA for the first time in over 20 years, and the chance should not be missed to ensure that modernization includes catching up with 21st century standards of transparency and accountability. To provide greater certainty and prevent lengthy delays, Bill S-5 must be strengthened to require timelines for every planned risk management action, (to the extent possible, no longer than two years, corresponding with the existing CEPA-clock requirement) and require the minister to publish regulations and instruments according to the specified timelines.[15]

Recommendation 6: Require the Minister to set out timelines for all measures identified in the risk management plan ("statement"), and implement measures according to the established timelines to improve accountability and help prevent lengthy delays in implementing the full suite of risk management measures, and to the extent possible, require the time frames not exceed two years **[clause 22]**.

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[14] For example, the draft screening assessments for hydrogen sulfide was published in September 2017 and has yet to be finalized, although it was anticipated in September 2018. <https://www.canada.ca/en/health-canada/services/chemical-substances/other-chemical-substances-interest/hydrogen-sulfide.html >. The draft screen assessment for naphthenic acids was published in August 2018 and has yet to be finalized, although it was anticipated in August 2019. <https://www.canada.ca/en/health-canada/services/chemical-substances/chemicals-management-plan-3-substances/commercial-naphthenic-acids-group.html >. It took over eight years for the first regulation to be finalized from when triclosan was first assessed and found to be toxic. <https://www.canada.ca/en/health-canada/services/chemical-substances/other-chemical-substances-interest/triclosan.html >. What each of these substances has in common is that ENGOs submitted comments on the assessments.

[15] CEPA requires that a regulation or instrument to manage risk be proposed within two years after a substance is recommended to be added to Schedule 1, the Toxic Substance List, and finalized within 18 months. These timelines are often referred to as the "CEPA-clock". However, no timeline applies to proposing subsequent risk management measures after the first regulation or instrument.

7. Integrate "safer substitution" as a tool in chemicals management

Bill S-5 requires the ministers to maintain a non-statutory list of substances capable of becoming toxic or that have been determined to be capable of becoming toxic (the "Watch List"). The Watch List is a welcome addition to CEPA that begins to address the complex problem of regrettable substitution. Regrettable substitution occurs when manufacturers or producers replace a banned or restricted toxic substance with another hazardous substance that may also be found to be toxic. By flagging substances of potential concern, manufacturers and producers can voluntarily avoid substances on the Watch List and use safer alternatives.

To help further prompt a shift in the chemicals management regime from a reactive to a proactive model of protection that does not simply replace one harmful substance with another, we recommend that clause 29 of the bill be amended to recognize that risk-management actions can lead to the use of safer or more sustainable alternatives.

Recommendation 7: Specify that when developing risk management plans, actions that lead to the use of safer or more sustainable alternatives should be considered. This would help prompt a shift in the chemicals management regime from a reactive to a proactive model of protection that does not simply replace one harmful substance with another **[clause 29]**.

8. A higher bar for confidentiality claims to expand public access to data about environmental and health risks.

CEPA allows parties submitting information to request that it be treated as confidential. This prevents public access to information about health or environmental risks. While the government has an obligation to protect confidential business information, CBI claims are only loosely controlled. Bill S-5 requires CBI requests to be accompanied by reasons but still maintains a process of "approval by default." Instead, there should be a presumption of non-confidentiality except where the requestor demonstrates legitimate reasons for confidentiality. Information pertaining to the health or environmental risks of a chemical should be made public and never granted confidentiality. We recommend amendments to clause 50 of the bill to put the onus on the party requesting confidentiality to demonstrate the necessity for confidentiality as is done in other comparable jurisdictions such as the U.S. and European Union.[16]

[16] The US Toxic Substance Control Act (TSCA) requires CBI claims be accompanied by a specific supporting statement. In addition, TSCA requires the U.S. EPA to review and make determinations of all CBI claims regarding chemical identity and 25 percent of claims not pertaining to non-chemical identity. Frequent Questions about TSCA CBI <https://www.epa.gov/tsca-cbi/frequent-questions-about-tsca-cbi#Q2>. In Europe under the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) the default is to publish information it holds on registered substances. If a registrant submits information it wishes to keep confidential it must justify why it is potentially harmful to their commercial interest. Such justifications are assessed by the European Chemical Agency (ECHA) and must be accepted as valid for the information not to be published. See Dissemination and Confidentiality under the REACH Regulation, October 2021 <https://echa.europa.eu/documents/10162/1804633/manual_dissemination_en.pdf/7e0b87c2-2681-4380-8389-cd655569d9f0>

Further, we recommend restricting use of masked names, which conceal the explicit chemical or biological name of a substance and hampers meaningful public involvement in decision-making about those substances. Over 3,000 substances on the Domestic Substances List (DSL) have masked names. While CEPA enables the minister to disclose the names of new chemicals and genetically modified organisms under certain circumstances, there is no obligation to do so - even when it is in the public interest. We recommend amending clause 53 of the Bill to mandate disclosure of the names of substances and organisms subject to permits, prohibitions, notices or that have been added to the DSL or toxic substance list (while ensuring consistency with Access to Information Act requirements). At a minimum, CEPA should mandate disclosure of substance names when it is in the interest of public health, public safety, or the protection of the environment.

Recommendation 8: Establish the presumption of non-confidentiality that not only requires reasons to accompany a request, but puts the onus on the requesting party to demonstrate the necessity for confidentiality **[clause 50(2)],** AND

Mandate disclosure of the names of substances and organisms on the DSL, when in the public interest, such as when permits, conditions, notices or prohibitions apply, consistent with ATIA **[clause 53]**.

Thank you for considering these recommendations to strengthen Bill S-5. It has been five years since the House Standing Committee on Environment and Sustainable Development reviewed CEPA and recommended strengthening the Act. At the time, all parties agreed CEPA should be modernized. We are encouraged that Bill S-5 is progressing through Parliament at last and urge the committee to not settle for half-measures. We encourage the committee to strengthen key provisions in Bill S-5, as set out in this brief, and not miss the opportunity to deliver on the promise of protecting the right to a healthy environment and effective action on toxics.

Jane E. McArthur, Toxics Campaign Director, Canadian Association of Physicians for the Environment (CAPE)

The Canadian Association of Physicians for the Environment is a physician-directed non-profit organization working to secure human health by protecting the planet.

Elaine MacDonald, Program Director - Healthy Communities, Ecojustice

Ecojustice uses the power of the law to defend nature, combat climate change and fight for a healthy environment.

Jennifer Beeman, Executive Director, Breast Cancer Action Québec, Breast Cancer Action Québec

Breast Cancer Action Quebec is a feminist, environmental health organization whose mission is the prevention of breast cancer, with a particular focus on environmental factors linked to the disease.

Cassie Barker, Senior Program Manager, Toxics, Environmental Defence

Environmental Defence is a leading Canadian environmental advocacy organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities.

Lisa Gue, National Policy Manager, David Suzuki Foundation

The David Suzuki Foundation is a leading Canadian environmental non-profit organization whose mission is to protect nature's diversity and the well-being of all life, now and for the future.

Annex 1: Summary of Amendments

S-5 Clause	Proposed amendments to S-5	Page
3(2)	Reinforce key principles by establishing them as administrative duties for the implementation of the right to a healthy environment	2-5
5	Strengthen the legislative requirements for the right to healthy environment implementation framework	3-5
19	Expand priority planning to include timelines; and require the minister to update the priority plan at least every five years	5
20	Require mandatory labelling of hazardous substances in consumer products	5-6
20	Ensure a clear response to public request for assessment and timely action prescribing a timeline when a request is granted	6
21(2)	Establish a time limit for finalizing a draft substance assessment to prevent delays	6-7
22	Strengthen the accountability framework for full implementation of toxic substance risk management plans to ensure timely implementation of regulations and instruments	7
29	Enable the minister to develop regulations or instruments to promote safer alternatives to toxic substances	8
50	Require requests for confidentiality to be assessed by the Minister or their delegate and only granted if justified	8-9
53	Limit the use of "masked names"; require disclosure of names of substances in certain situations when in the public interest such as when conditions, restrictions, permits and notices apply	8-9