



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

**HEALTHY ENVIRONMENT, HEALTHY CANADIANS,  
HEALTHY ECONOMY: STRENGTHENING THE  
*CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999***

**Report of the Standing Committee on  
Environment and Sustainable Development**

**Deborah Schulte  
Chair**

**JUNE 2017**

**42<sup>nd</sup> PARLIAMENT, 1<sup>st</sup> SESSION**

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# **THE STANDING COMMITTEE ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

has the honour to present its

## **EIGHTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the *Canadian Environmental Protection Act, 1999* and has agreed to report the following:





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# HEALTHY ENVIRONMENT, HEALTHY CANADIANS, HEALTHY ECONOMY: STRENGTHENING THE *CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999*

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## INTRODUCTION

The *Canadian Environmental Protection Act, 1999* (CEPA) is one of the principal federal laws aimed at environmental protection in Canada. CEPA declares “that the protection of the environment is essential to the well-being of Canadians and that the primary purpose of this Act is to contribute to sustainable development through pollution prevention.”<sup>1</sup> Significantly, the focus of the Act is on pollution prevention from both a human and an environmental perspective with the Act implicating both the Minister of Environment and Climate Change and the Minister of Health.<sup>2</sup>

In Canada, exposure to toxic substances leads to thousands of premature deaths each year and millions of preventable illnesses.<sup>3</sup> For example, certain toxins in the air cause cardiovascular and respiratory illnesses and other toxins – such as asbestos and radon – cause cancers.<sup>4</sup>

However, chemicals are useful to modern society and have become an integral part of everyday life. The key is to manage chemicals properly to prevent pollution and harm to the environment and human health.<sup>5</sup> Canadians look to their governments to do that, as well as to protect them from other environmental hazards.<sup>6</sup>

This study of CEPA was undertaken initially as a result of a motion the House of Commons Standing Committee on Environment and Sustainable Development (hereafter called “the Committee”) passed on February 25, 2016, reflecting its interest in protecting human and environmental health from toxic chemicals. The motion states that the Committee would undertake:

A review of the *Canadian Environmental Protection Act, 1999*, in particular as regards chemicals management, air and water quality, pollution prevention planning, precautionary thresholds for persistence and bioaccumulation in toxicity assessments, risk management strategies and re-assessment of substances. This study may incorporate recommendations for reform in relation to other federal legislation and/or regulations pertaining to the protection of human health and the environment from toxic substances.<sup>7</sup>

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1 [Canadian Environmental Protection Act, 1999](#) [CEPA], S.C. 1999, c. 33, Declaration.

2 House of Commons, Standing Committee on Environment and Sustainable Development [ENVI], [Evidence](#), 8 March 2016 (John Moffet, Director General, Legislative and Regulatory Affairs, Department of the Environment).

3 ENVI, [Evidence](#), 27 October 2016 (David Boyd, Adjunct Professor, Resource and Environmental Management, Simon Fraser University, As an Individual).

4 Ibid.

5 See ENVI, [Evidence](#), 24 November 2016 (Jason McLinton, Senior Director, Retail Council of Canada).

6 David Boyd, [Written brief](#), 7 November 2016, p. 7.

7 ENVI, [Minutes of Proceedings](#), 25 February 2016.

Subsequently, on March 22, 2016, the House of Commons passed a motion referring the statutory five-year review of the Act to the Committee.

### **A. Context: Previous Reviews and Audits of the Act**

CEPA was first enacted in 1988. The Committee reviewed the administration of the original CEPA in 1995 and made 141 recommendations,<sup>8</sup> which led to the enactment of the current version of CEPA in 1999. One of the Committee's recommendations that was implemented in the current CEPA was for a recurring five-year review of the Act.

Since the current CEPA was enacted in 1999, it has been reviewed twice – once by the Committee in 2007<sup>9</sup> and once by a Senate committee in 2008. Notably, the five-year schedule for reviews has not been strictly followed. There was some discussion during the current review as to whether a 10-year timeframe might be preferable. Environment and Climate Change Canada expressed support for a 10-year review period because “a 5 year review period is not long enough to allow amendments based on a prior review to be enacted and assessed.”<sup>10</sup> The Canadian Fuels Association and the Canadian Vehicle Manufacturers' Association were supportive of this timeframe,<sup>11</sup> while the Canadian Consumer Specialty Products Association and Global Automakers of Canada felt that 10 years would be too long.<sup>12</sup>

#### **Recommendation 1**

**The Committee recommends that subsection 343(1) of CEPA be amended to require a Parliamentary review every 10 years rather than every 5 years.**

Reviewing CEPA is not a simple task. When it was first enacted in 1988, it consolidated a number of statutes and parts of statutes. CEPA has 12 parts that govern, among other things, toxic substances, animate products of technology, disposal at sea, fuels, vehicle and engine emissions, nutrients, and government operations and federal and Aboriginal land. CEPA has been variously described as bulky, extensive and complicated.<sup>13</sup> Professor Mark Winfield of York University implied that CEPA's character is reminiscent of “Frankenstein's monster.”<sup>14</sup>

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8 ENVI, *It's About Our Health! Towards Pollution Prevention, CEPA Revisited*, Fifth Report, 1<sup>st</sup> Session, 35<sup>th</sup> Parliament, 13 June 1995.

9 ENVI, [The Canadian Environmental Protection Act, 1999 – Five-Year Review: Closing The Gaps](#), Fifth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, April 2007.

10 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 38.

11 Canadian Fuels Association, [Written brief](#), 1 December 2016, p. 7; Canadian Vehicle Manufacturers' Association, [Written brief](#), 9 December 2016, p. 6.

12 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 10; Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 7.

13 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

14 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield, Professor, Faculty of Environmental Studies, York University, As an Individual).

The 2007 and 2008 reviews tackled CEPA in different ways. The House of Commons study focussed on Part 5 of the Act, Controlling Toxic Substances, while the Senate study examined how CEPA had been used to manage two specific substances – mercury and perfluorinated compounds.<sup>15</sup> In addition, in order to help focus the two prior reviews, the departments of Health and the Environment undertook public and web-based consultations and produced an issues paper prior to the reviews.<sup>16</sup>

Both parliamentary reports concluded that CEPA did not require major amendments. The Committee's report stated that "it does not seem to be CEPA 1999 itself that is the problem" but the fact that it had not been fully implemented.<sup>17</sup> The Senate committee report stated that CEPA "is fundamentally sound but it requires better implementation and enforcement."<sup>18</sup> Nevertheless, the reports collectively made 55 recommendations, many of which were for amendments to CEPA. Despite this, only a "handful" of "minor modifications" have been made to the Act since 1999.<sup>19</sup>

Many witnesses pointed to this lack of amendments to CEPA as evidence that few of the parliamentary committees' recommendations have been implemented.<sup>20</sup> However, the departments maintained that they have relied on changing the implementation of the Act in order to respond to recommendations.<sup>21</sup> Shannon Coombs of the Canadian Consumer Specialty Products Association supported this position, noting that "there are a lot of things that we talk about today that have been implemented but they're just not in the act."<sup>22</sup>

In addition to the two parliamentary reviews, the Commissioner of the Environment and Sustainable Development has audited various aspects of CEPA implementation over the past decade, including chemicals management (2008),<sup>23</sup> the risks of toxic substances

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15 ENVI, [The Canadian Environmental Protection Act, 1999 – Five-Year Review: Closing The Gaps](#), Fifth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, April 2007; Standing Senate Committee on Energy, the Environment and Natural Resources, [The Canadian Environmental Protection Act \(1999, c. 33\) Rx: Strengthen and Apply Diligently](#), Sixth Report, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, 4 March 2008.

16 Environment and Climate Change Canada, [CEPA Review](#).

17 ENVI, [The Canadian Environmental Protection Act, 1999 – Five-Year Review: Closing The Gaps](#), Fifth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, April 2007.

18 Standing Senate Committee on Energy, the Environment and Natural Resources, [The Canadian Environmental Protection Act \(1999, c. 33\) Rx: Strengthen and Apply Diligently](#), Sixth Report, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, 4 March 2008.

19 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

20 See Ecojustice, Environmental Defence, Équiterre, [Written brief](#), November 15, 2016, p. 3; ENVI, [Evidence](#), 24 November 2016 (Bill Erasmus, Regional Chief, Northwest Territories, Assembly of First Nations); ENVI, [Evidence](#), 19 May 2016 (Joseph Castrilli, Counsel, Canadian Environmental Law Association), Forum for Leadership on Water, [Written brief](#), September 6, 2016, p. 7; David Schindler, [Written brief](#), December, n.d., p. 1.

21 Environment and Climate Change Canada, [Follow-up information requested by ENVI Committee March 8th](#), n.d.

22 ENVI, [Evidence](#), 19 May 2016 (Shannon Coombs, President, Canadian Consumer Specialty Products Association).

23 Office of the Auditor General, "[Chapter 1—Chemicals Management—Substances Assessed under the Canadian Environmental Protection Act, 1999](#)," *2008 March Status Report of the Commissioner of the Environment and Sustainable Development*.

(2009)<sup>24</sup> and enforcement of CEPA (2011).<sup>25</sup> Overall, the Commissioner noted progress in managing risk assessments of chemical substances that may be toxic and made recommendations to improve risk management. The Commissioner was critical of the management of the enforcement program. In general, Environment and Climate Change Canada agreed with the Commissioner's recommendations but disagreed with some of the Commissioner's conclusions in the enforcement audit.

## **B. The Current Review**

### **1. An Opportunity to Improve**

There is a large pool of information from which the current review has drawn. After the Committee held several introductory meetings in March 2016, it was clear that the focus of witnesses' attention was once again on Part 5 of CEPA and related parts dealing with chemicals management. In fact, according to Professor Winfield, who was involved in the 1994 review, the themes brought up during this review "ring bells going back all the way to 1995."<sup>26</sup>

Despite recurring themes – and perhaps because of them – a parliamentary review of CEPA is a valuable exercise. Public concerns, scientific knowledge and legal concepts are constantly evolving. Regarding scientific knowledge, Professor Dayna Scott of York University stated that CEPA "had been overtaken by scientific developments,"<sup>27</sup> including in relation to the health risks posed by household chemicals and the effects of very low doses of endocrine disruptors during developmentally vulnerable times. Professor Daniel Krewski of the University of Ottawa noted that "the science of toxicity testing and assessment of environmental agents is undergoing a transformation."<sup>28</sup>

Expressing support for regular parliamentary reviews, the 1994 report concluded that "CEPA must not languish on the statute books while new concepts and technologies are being applied to environmental protection."<sup>29</sup> That is still true today. As Professor Krewski stated, "[the CEPA review is] a wonderful opportunity to rethink a major piece of legislation which has huge impact. A lot has changed since the 1999 version of the act ... It's just a wonderful opportunity to ... get it as right as we can."<sup>30</sup>

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24 Office of the Auditor General, "[Chapter 2—Risks of Toxic Substances](#)," *2009 Fall Report of the Commissioner of the Environment and Sustainable Development*.

25 Office of the Auditor General, "[Chapter 3—Enforcing the Canadian Environmental Protection Act, 1999](#)," *2011 December Report of the Commissioner of the Environment and Sustainable Development*.

26 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

27 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 2.

28 ENVI, [Evidence](#), 22 November 2016 (Daniel Krewski, Professor and Director, Faculty of Medicine, University of Ottawa, As an individual).

29 ENVI, *It's About Our Health! Towards Pollution Prevention, CEPA Revisited*, Fifth Report, 1<sup>st</sup> Session, 35<sup>th</sup> Parliament, 13 June 1995, p. 273.

30 ENVI, [Evidence](#), 22 November 2016 (Daniel Krewski).



Recognizing that environmental protection goes hand-in-hand with the economy, whatever changes are proposed to CEPA must be mindful of the reality of the Canadian economy and not create unnecessary trade barriers with our trading partners. We must maintain Canada's competitive advantage in the global marketplace while ensuring that the highest standards of environmental and health protection are achieved.

## **2. Considering CEPA from a Perspective of Environmental Rights**

The Committee heard considerable testimony about the need to incorporate environmental rights into CEPA.

The current lack of an environmental rights statement in CEPA does not mean that the Act does not support environmental rights. In fact, numerous aspects of the current version of CEPA exemplify substantive and procedural dimensions of environmental rights. However, as discussed in more detail in this report, some interveners, including Professor David Boyd of Simon Fraser University, Professor Lynda Collins of the University of Ottawa, Professor Scott, the Canadian Environmental Law Association, the joint submission from Ecojustice, Environmental Defence and Équiterre, Professor Winfield and Linda Duncan, M.P. (prior to becoming a member of the Committee) suggested various ways by which environmental rights in CEPA could be strengthened and expanded.

Professor Collins outlined how environmental rights are given meaning in legislation when she outlined the three dimensions of environmental rights recognized by the UN special rapporteur on human rights and the environment: "one, the substantive right to environmental quality; two, the obligation of non-discrimination in environmental protection; and three, procedural environmental rights."<sup>31</sup>

### **a. The Substantive Right to Environmental Quality**

The substantive right to environmental quality is a right to clean air and water and a healthy and ecologically balanced environment. Suggestions for improving CEPA to better support a substantive right to environmental quality included improving the chemicals management plan to systematically consider safer alternatives to toxic substances, to better take into account the effects of mixtures of substances and to consider foreign decisions to regulate toxic substances. Stakeholder opinions regarding these suggestions as well as other suggestions related to a right to environmental quality are discussed in more detail throughout this report. Recommendations were also made to specifically recognize the environmental rights included in the United Nations Declaration on the Rights of Indigenous Peoples.

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31 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins, Associate Professor, Centre for Environmental Law & Global Sustainability, Faculty of Law, Common Law Section, University of Ottawa, As an Individual).

## **b. The Obligation of Non-Discrimination in Environmental Protection**

The obligation of non-discrimination in environmental protection, known more commonly as “environmental justice,” is a means of addressing the inequitable distribution of the environmental burden of toxic exposure in Canada. Discussion on the strengths and weaknesses of implementing various aspects of environmental justice were largely initiated by interveners calling on the Committee to recommend that the government better take into account vulnerable populations and windows of vulnerability in the assessment and management of toxic substances. Calls for binding, national standards for drinking water and air quality, as discussed in more detail in this report, could also be described as submissions related to environmental justice,<sup>32</sup> as could calls for enhanced analysis of cumulative effects in assessment and management of toxic substances.

## **c. Procedural Environmental Rights**

The third dimension of environmental rights, procedural environmental rights, “are understood to include the rights to access to information, public participation in environmental decision-making, and access to justice in environmental matters.”<sup>33</sup> Procedural environmental rights are discussed in this report in response to stakeholder calls such as those to amend provisions allowing for environmental protection actions; to recognize a “right to know the hazardous substances in consumer products;”<sup>34</sup> to provide for greater transparency in the chemical assessment, listing and risk management processes and in the granting of waivers; to provide access to database information on enforcement actions; and to improve the National Pollutant Release Inventory. Calls for strengthened environmental rights for Indigenous peoples relating to consultation and participation in decision making and implementing the United Nations Declaration on the Rights of Indigenous Peoples also largely fall under the rubric of procedural environmental rights.<sup>35</sup>

In the 1995 CEPA report, the Committee dedicated a chapter to the issue of improving public participation and citizens’ rights, and in the 2007 report, the Committee made recommendations in this area. Improving procedural environmental rights under CEPA continues to be a priority for this Committee.

### **Recommendation 2**

**The Committee recommends that CEPA be amended to expand and strengthen duties and rights for transparency, public participation, accountability mechanisms and consultation.**

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32 ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald, Toxic Program Manager, Environmental Defence Canada).

33 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins).

34 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

35 See ENVI, [Evidence](#), 17 November 2016 (Lynne Groulx, Executive Director, Native Women's Association of Canada); Kebaowek First Nation, [Written brief](#), December 1, 2016, pp. 6–7; and Wolf Lake First Nation, [Written brief](#), December 1, 2016, p. 8.

#### **d. A General Statement of Environmental Rights**

In addition to the possible expansion and strengthening of specific environmental rights in CEPA, the question of whether the Act should also contain a statement of environmental rights was discussed. The Canadian Paint and Coatings Association specifically argued against giving such an environmental rights lens to CEPA stating that “it is not practical or advisable to give the concept of environmental justice a legal scope or lens with a prescribed penalty under CEPA.”<sup>36</sup>

However, numerous other stakeholders advocated in favour of a general statement of environmental rights. They suggested various ways by which such a statement could be added.

The possibility of amending the preamble as a means to stress the importance of aspects of environmental rights was introduced. Environment and Climate Change Canada suggested mentioning in CEPA’s preamble the importance of considering vulnerable populations in risk assessments.<sup>37</sup> In fact, the Committee made the same recommendation to the government in 2007.

Professors Boyd and Collins along with Ecojustice, Environmental Defence and Équiterre called for a legislated right to a healthy environment in CEPA. Professor Boyd testified that a right to a healthy environment is now included in the laws of more than 100 countries around the world as well as in five Canadian jurisdictions.<sup>38</sup> He submitted that “there is a substantial body of evidence demonstrating that acknowledging environmental rights and responsibilities leads to improved environmental performance while catalyzing innovation and bolstering economic resilience.”<sup>39</sup>

#### **Recommendation 3**

**The Committee recommends that the preamble of CEPA be amended:**

- **to recognize a right to a healthy environment;**
- **to mention the importance of considering vulnerable populations in risk assessments; and**
- **to recognize the principles put forward in the United Nations Declaration on the Rights of Indigenous Peoples.**

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36 Canadian Paint and Coatings Association, [Written brief](#), December 1, 2016, p. 2.

37 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 11.

38 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

39 David Boyd, [Written brief](#), 7 November 2016, p. 20.

## Recommendation 4

The Committee recommends that the government consider amending CEPA to include the right to a healthy environment in the administrative duties of the Government of Canada (section 2), in the development of objectives, guidelines, and codes of practice (sections 54 and 55), in the assessment of the risks of toxic substances (section 76.1), and the development of risk management tools (section 91).

## Recommendation 5

The Committee recommends that a series of substantive and procedural improvements be incorporated into the various sections of CEPA to give greater force and effect to environmental rights, including as set out in recommendations 2, 4, 15–34, 36, 37, 39–50, 52, 54, 56–60, 62, 75, 76 and 80.

## ADMINISTRATION AND APPLICATION OF THE ACT

### A. Advisory Committees

Part 1 of CEPA provides for the National Advisory Committee to enable national, cooperative, non-duplicative action to be carried out under the Act, as well as for ministerial advisory committees. Currently, the Chemicals Management Plan has both a Stakeholder Advisory Council as well as a Science Committee,<sup>40</sup> and the Air Quality Management System discussed later in this report also has a Stakeholder Advisory Council.<sup>41</sup>

Bob Masterson of the Chemistry Industry Association of Canada spoke highly of the functioning of the committees under Chemicals Management Plan suggesting that “their advice and recommendations are being considered and responded to by the Government of Canada.”<sup>42</sup>

One issue of concern discussed during the study related to Indigenous representation on the National Advisory Committee. John Moffet of Environment and Climate Change Canada commented that the six aboriginal governments represented on the Committee “are defined in a very specific way.”<sup>43</sup> Three Indigenous stakeholders suggested that the definition of “aboriginal government” could be improved.

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40 ENVI, [Evidence](#), 6 October 2016 (David Morin, Director General, Safe Environments Directorate, Healthy Environments and Consumer Safety Branch, Department of Health).

41 [Written Response from the Department of the Environment and the Department of Health to Questions Asked During the Committee Meeting on Thursday, October 6, 2016](#), November 24, 2016, p. 19.

42 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson, President and Chief Executive Officer, Chemistry Industry Association of Canada).

43 ENVI, [Evidence](#), 6 October 2016 (John Moffet).

The written brief of the Council of the Crees (Eeyou Istchee) described eligibility for participation in the National Advisory Committee as “constrained and somewhat arbitrary – a product of recent legislative and historical developments associated with land claim settlements, and with legislation generally applicable to Canadian First Nations.”<sup>44</sup> That group suggested that the “formula set out in [section 6 of CEPA] for the composition of the [National Advisory Committee], and perhaps the definitions of aboriginal government and aboriginal lands” should be revisited.<sup>45</sup> It also noted the absence of formal representation of the Métis on the committee.<sup>46</sup>

Nalaine Morin of ArrowBlade Consulting Services held a similar view. She suggested changing the definition of ‘aboriginal government’ “to increase the participation of indigenous peoples represented on the national advisory council.”<sup>47</sup> Ms. Morin referred to the CEPA toolkit published by the Assembly of First Nations, which suggests that the current definition of “aboriginal government” in CEPA has resulted in a lack of representation on the National Advisory Committee of First Nations in Alberta, Saskatchewan, Manitoba, Northwest Territories, Ontario and the Atlantic provinces.<sup>48</sup>

Finally, the Inuvialuit Regional Corporation and Inuvialuit Game Council submitted a brief stating that the definition of ‘aboriginal government’ “does not reflect the current governance structures in most Inuit regions in Inuit Nunangat.”<sup>49</sup> Further, it appears that the minister has not made regulations under subsection 6(4) specifying the manner of selecting a representative when there is no “aboriginal government” for a region.<sup>50</sup> For those reasons, the groups recommended that the definition of “aboriginal government” in CEPA be amended to ensure representatives are not unnecessarily excluded from the National Advisory Committee or from consultation provisions that also rely on the definition.<sup>51</sup>

## Recommendation 6

**The Committee recommends that – in consultation with Indigenous peoples – the government revisit and potentially amend the definition of “aboriginal government” in CEPA to better reflect current Indigenous governance structures.**

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44 Council of the Crees (Eeyou Istchee), [Written brief](#), November 16, 2016, p. 4.

45 Ibid., p. 7.

46 Ibid., p. 4.

47 ENVI, [Evidence](#), 9 June 2016 (Nalaine Morin, Principal, ArrowBlade Consulting Services).

48 Assembly of First Nations, [Canadian Environmental Protection Act, 1999 \(CEPA, 1999\) Toolkit](#), n.d., p. 5.

49 Inuvialuit Regional Corporation and Inuvialuit Game Council, [Written brief](#), January 6, 2017, p. 2.

50 Ibid.

51 Ibid.

## B. Administrative Agreements

Also in Part 1 of CEPA, section 9 allows the minister to negotiate an agreement with a province or an Aboriginal people with respect to the administration of CEPA.

Environment and Climate Change Canada described administrative agreements as “work-sharing arrangements” that cover matters such as inspections, investigations, information gathering, monitoring, etc.<sup>52</sup> An administrative agreement does not relieve the federal government from its responsibilities under CEPA, nor does it delegate to another jurisdiction federal authority to legislate.<sup>53</sup>

The government’s Discussion Paper noted that section 9 of CEPA does not allow the minister to enter into administrative agreements with entities such as the two federal–provincial offshore petroleum boards. According to the government, “the boards are the primary regulators of [offshore oil and gas activities] and, in certain circumstances, might be in the best position to administer a federal regulation that relates to them.”<sup>54</sup> The Discussion Paper suggested expanding the list of parties with whom the minister may formally enter into an administrative agreement under section 9 to include “bodies or entities responsible for the administration of another Act of Parliament or an Act of the Legislature of a province.”<sup>55</sup>

The Chemistry Industry Association of Canada supported the government’s suggested amendment to section 9. It suggested that the minister could also be allowed to enter into administrative agreements with “other bodies which administer sustainability initiatives like Responsible Care.”<sup>56</sup> The association also suggested that the automatic five-year termination date for administrative agreements under section 9 is inefficient and should be replaced with an authority to negotiate a longer term agreement.<sup>57</sup>

Professor Winfield was not comfortable with the government’s suggestion to amend section 9. He suggested that it could allow for the federal government to enter into administrative agreements with non-governmental entities. Such entities are subject neither to access to information legislation nor to oversight by auditors general, environmental commissioners, Parliament or provincial legislatures. For these reasons, Professor Winfield suggested that allowing for administrative agreements with such entities would reinforce problems with accountability and reporting.<sup>58</sup> Instead of expanding the list of entities able to enter into administrative agreements, Professor Winfield recommended strengthening the criteria for the establishment of administrative

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52 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 36.

53 Ibid.

54 Ibid.

55 Ibid.

56 Chemistry Industry Association of Canada, [Written brief](#), November 25, 2016, p. 13.

57 Ibid., p. 14.

58 Mark Winfield, [Written brief](#), November 2016, p. 11.

agreements under section 9 and enhancing monitoring and reporting of the performance of entities that enter into such agreements with the minister.<sup>59</sup> The Committee agrees with Professor Winfield.

### **Recommendation 7**

**The Committee recommends that section 9 of CEPA be amended to strengthen the criteria for the establishment of administrative agreements and enhance monitoring and reporting of the performance of entities that enter into such agreements with the Minister.**

### **C. Equivalency Agreements**

Part 1 of CEPA also provides for equivalency agreements – agreements providing that a regulation made under CEPA does not apply in a province, territory or area under the jurisdiction of an Indigenous government that has an equivalent provision. Such an agreement is “followed by a Governor in Council order that essentially stands down the application of CEPA for that particular issue in that particular jurisdiction.”<sup>60</sup> Ahmed Idriss of the Canadian Electricity Association described how equivalency agreements allow for regulatory requirements to be tailored to the circumstances of a specific province.<sup>61</sup>

In a Discussion Paper provided to the Committee, Environment and Climate Change Canada suggested that section 10 of CEPA could be amended to:

- mirror language in the *Fisheries Act*, and replace the requirement that provisions be equivalent with a requirement that they be “equivalent in effect”; and
- “remove the precondition of a written agreement between the federal government and the other jurisdiction, before the Governor in Council can stand down the federal regulation.”<sup>62</sup>

Regarding the first suggestion, above, Mr. Moffet of Environment and Climate Change Canada testified that the department has been implementing the “equivalent in effect” test for the past 15 years; however, the related wording in CEPA is ambiguous and could be clarified through an amendment.<sup>63</sup>

Industrial stakeholders, such as the Canadian Fuels Association, were generally supportive both of the use of equivalency agreements and of the government’s suggested

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59 Ibid.

60 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

61 ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss, Senior Advisor, Environmental Policy, Capital Power Corporation, Canadian Electricity Association).

62 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, pp. 33–34.

63 ENVI, [Evidence](#), 6 October 2016 (John Moffet).

amendments to section 10 of CEPA.<sup>64</sup> Robert Larocque of the Forest Products Association of Canada stated that equivalency agreements are “key to minimizing regulatory duplication and administrative burdens.”<sup>65</sup> He suggested that they are not used often enough and that CEPA should be amended “to ensure easier implementation of equivalency agreements between the federal and provincial governments.”<sup>66</sup>

The Chemistry Industry Association of Canada wrote that it was “encouraged by removing the precondition of a written agreement between the federal government and the other jurisdiction.”<sup>67</sup> That organization also submitted that using a test of ‘equivalent in effect’ rather than ‘equivalent provisions’ would “reduce duplication and additional paper burden.”<sup>68</sup> The Canadian Association of Petroleum Producers wrote that that approach “leaves ample room for industry innovation for ongoing improvement to environmental performance.”<sup>69</sup>

The Canadian Consumer Specialty Products Association accepted the government’s first proposed amendment – to mirror language in the *Fisheries Act* – but disagreed with the second proposed amendment. That organization supported retaining the precondition of an agreement between the federal government and the other jurisdiction. The organization’s brief states that “there must be a written record and transparency of what the law is and what decisions were taken.”<sup>70</sup>

Professor Winfield urged more caution in the use of equivalency agreements. He submitted that “the record of provincial performance and federal monitoring of provincial performance under equivalency agreement is extremely weak. Indeed the agreements have been regarded as a kind of ‘get out of jail free’ card for provinces.”<sup>71</sup> Professor Winfield suggested that section 10 be amended to articulate in greater detail both the criteria for equivalency agreements and the associated reporting requirements.<sup>72</sup> He discussed equivalency in the United States where that country’s Environmental Protection Agency (EPA) applies what he described as “stringent” tests before allowing states to administer EPA standards under the *Clean Air Act*. According to Professor Winfield, the EPA may take equivalency back from states that do not perform adequately.<sup>73</sup>

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64 Canadian Fuels Association, [Written brief](#), December 1, 2016, p. 6.

65 ENVI, [Evidence](#), 1 December 2016 (Robert Larocque, Vice-President, Climate Change, Environment and Labour, Forest Products Association of Canada).

66 Ibid.

67 Chemistry Industry Association of Canada, [Written brief](#), November 25, 2016, p. 13.

68 Ibid.

69 Canadian Association of Petroleum Producers, [Written brief](#), December 1, 2016, p.3.

70 Canadian Consumer Specialty Products Association, [Written brief](#), December 1, 2016, p. 10.

71 Mark Winfield, [Written brief](#), November 2016, p. 10.

72 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

73 Ibid.



Consistent with Recommendation 29 from the 2007 CEPA review, the Committee supports strengthening the criteria for entering into equivalency agreements.

### **Recommendation 8**

**The Committee recommends that the provisions of CEPA regarding the criteria required to establish equivalency agreements be strengthened, and that the requirement for monitoring and reporting of performance under any agreements by the affected province and by Environment and Climate Change Canada be strengthened.**

### **Recommendation 9**

**The Committee recommends that subsection 10(3) of CEPA be amended to add the following third precondition to a declaration of equivalent provisions: that the government of the jurisdiction has in place an enforcement and compliance policy similar to that issued by the Minister providing for effective enforcement and compliance of the provisions described in the two current preconditions.**

## **D. Application of the Act and Other Federal Statutes and Ministers**

A topic of debate that arose during the study was the appropriate application for CEPA alongside a number of other federal statutes that address risks for specific products – such as the *Food and Drugs Act*, the *Pest Control Products Act*, the *Fertilizers Act*, the *Feeds Act*, the *Seeds Act*, the *Canada Consumer Product Safety Act*, etc. These acts are administered by departments that have specific expertise in the product or substance being regulated. Mr. Moffet of Environment and Climate Change Canada explained that, in general, if another, product-specific act provides for equivalent environmental and health protection, then CEPA “stands down.”<sup>74</sup>

### **1. The Best-Placed Act**

Despite the evidence heard that CEPA “stands down” when a product-specific act applies, the Committee heard that if a substance is added to the list of toxic substances in Schedule 1 of CEPA, then the substance must be managed under CEPA, “even if another statute might be the better one to use to manage the substance.”<sup>75</sup> Mr. Moffet testified that the government has “effectively managed all of those substances,” but has “run into some legal challenges in taking the most appropriate action.”<sup>76</sup>

To address this issue, the government Discussion Paper suggested an amendment to CEPA “formally allow[ing] a regulation or instrument made under another Act to fulfill the

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74 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

75 Ibid.

76 Ibid.

risk management obligations under CEPA.”<sup>77</sup> The government shorthand for this concept is the “best-placed act.”

Some industry representatives expressed support for the concept of the “best-placed act.” Channa Perera of the Canadian Electricity Association noted that the electricity sector is regulated under many environmental statutes in addition to CEPA. He asked “the committee to consider the overall burden on our sector and ensure other statutes will not lead to duplication of effort.”<sup>78</sup>

Similarly, Gordon Bacon of Pulse Canada testified in favour of a clear process and a streamlined approach to regulation that avoids overlap. He testified that “having dedicated departments, adequately resourced, avoids the duplication of efforts and aligns well with the need to ensure that regulatory approaches are structured to deal with the rapid pace of innovation.”<sup>79</sup>

Mr. Masterson of the Chemistry Industry Association of Canada described the “best-placed act” policy as “something we celebrate. It shows that safeguarding the health of Canadians and the environment is not necessarily something that has to be accomplished solely through CEPA.”<sup>80</sup>

However, a number of other stakeholders had reservations about the “best-placed act” approach or outright opposed it. To a large extent, concerns arose from the fact that some other federal laws require consideration only of the risks to human health and safety posed by toxic substances and not also of the environmental risks.<sup>81</sup> Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health pointed out that CEPA also has “broader legal authority” than other federal acts – such as the *Food and Drugs Act* and the *Canada Consumer Product Safety Act* – in that it has the “mandate to control the use, disposal and complete life cycle considerations for consumer products containing toxic substances” and not just the sale, import and manufacture of the substances.<sup>82</sup>

Professor Winfield testified that CEPA “is supposed to be the benchmark” against which other statutes are measured.<sup>83</sup> He suggested that if a toxic substance is to be

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77 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 17.

78 ENVI, [Evidence](#), 24 November 2016 (Channa Perera, Director, Generation and Environment, Canadian Electricity Association).

79 ENVI, [Evidence](#), 27 October 2016 (Gordon Bacon, Chief Executive Officer, Pulse Canada).

80 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson).

81 For example, see ENVI, [Evidence](#), 7 June 2016 (Andrea Peart, National Representative, Health, Safety and Environment, Canadian Labour Congress); ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).

82 Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, pp. 26–27.

83 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

regulated under another act, then CEPA should not “stand down” unless the other regime meets specific criteria.<sup>84</sup>

Professor Scott was unequivocal in her support for the “central role of CEPA ... as Canada’s primary legislative mechanism for regulating toxic substances.”<sup>85</sup> She submitted that CEPA offers broader and more flexible regulation-making powers to the government than other federal acts as well as augmented public consultation requirements. This results “in heightened transparency and accountability in regulation-making under CEPA ... as compared to most other statutes.”<sup>86</sup>

Further, Professor Scott submitted that “regulating toxic substances principally under CEPA ... guards against a piecemeal or patchwork approach, where the same substance’s human health effects are managed under one statute by one regulator while its environmental effects [are] managed under a different statute by a different regulator.”<sup>87</sup> In Professor Scott’s view, the government should be able to take additional regulatory action to regulate toxic substances under other federal statutes, but “such other legislation should not be permitted to supplant CEPA ... as the core legal mechanism for regulating toxic substances.”<sup>88</sup> Professor Scott submitted that the Committee’s recommendation in its 2007 CEPA report – that CEPA be the principal statute for regulating products containing toxic substances – was based on a longstanding “strong public consensus” on the issue.<sup>89</sup>

In 2007, the Committee recommended that CEPA be the principal statute for regulating products containing toxic substances. The Committee remains of this view. A whole-of-government approach is needed to manage toxins with Environment and Climate Change Canada’s oversight and accountability.

## **Recommendation 10**

**The Committee recommends that CEPA be the principal statute for regulating products containing toxic substances.**

### **2. Pre-Market Notification and Assessment under the Act of New Substances to be Used in Products Regulated under the *Food and Drugs Act***

The new substance requirements in section 81 of CEPA apply to new substances that are used or are intended to be used in products regulated under the *Food and Drugs Act*. This is the case because, unlike some other federal statutes – such as the *Feeds Act* and the *Pest Control Products Act* – the *Food and Drugs Act* does not prescribe a

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84 Ibid.

85 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 9.

86 Ibid., p. 10.

87 Ibid.

88 Ibid., p. 9.

89 Ibid.

pre-market notification, assessment and management regime equivalent to that included in CEPA.

In its Discussion Paper, Environment and Climate Change Canada suggested that the CEPA new substance regime could be better tailored in its application to substances in products subject to the *Food and Drugs Act*. As an example, the department suggested that CEPA could be amended to exempt from the pre-market notification and assessment regime certain foods and substances that originate in nature and do not pose a risk to the environment.<sup>90</sup>

In a written brief, the Formulated Products Industry Coalition supported the government's proposal to exempt food and substances that originate in nature, but suggested that "this can and should be done as an exemption to the [*New Substances Notification Regulations*]."<sup>91</sup>

BioVectra suggested more extensive amendments to the new substances regime. That organization suggested that the current new substance notification approval process for microorganisms is "excessive and unnecessary for manufacturing in contained facilities."<sup>92</sup> It suggested that because other authorities already cover proper handling and containment practices, employee health and environmental risks, the new substance notification approval process in CEPA should be "streamlined."<sup>93</sup> BioVectra suggested that such streamlining "may include allowing for exemptions or licensing provisions for substances that are subject to effective regulatory oversight by Health Canada and provincial governments."<sup>94</sup> It further suggested that "streamlining and alignment across ministries and governments will achieve environmental and human health objectives while promoting the ease of doing business in Canada."<sup>95</sup>

The Committee disagrees with the government's proposal to amend CEPA to exempt certain foods and substances from the pre-market notification and assessment regime. The risks posed by substances that are not in use must be assessed based on the proposed use, and they must be managed. The Committee notes the government's ability to waive certain tests.

### **3. Administration by the Minister of Health**

A related question the government raised asks which federal minister(s) should be responsible for managing the risks associated with a toxic substance. In its Discussion Paper, the government pointed out that section 91 of CEPA makes the Minister of

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90 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 13.

91 Formulated Products Industry Coalition, [Written brief](#), n.d., p. 2.

92 BioVectra, [Written brief](#), January 6, 2017, p. 2.

93 *Ibid.*, p. 1.

94 *Ibid.*

95 *Ibid.*

Environment and Climate Change solely responsible for proposing a regulation or instrument to manage a toxic substance. However, in some instances, risk management of a substance is led entirely by the Minister of Health. Also, section 93 of CEPA empowers the Governor in Council to make regulations recommended by both ministers. The government suggested that “in certain cases, this adds unnecessary administrative process.”<sup>96</sup> The government Discussion Paper suggested amending CEPA to formally allow the Minister of Health to be solely responsible for developing [and recommending] instruments and regulations for a toxic substance in two circumstances:

- when the risk management will be entirely led by the Minister of Health using a CEPA instrument that the Minister of Health has authority to develop unilaterally (i.e., section 55 guidelines or code of practice); and
- when the development of the preventive or control instrument or regulation will be entirely led by the Minister of Health under a Health Canada act such as the *Canada Consumer Product Safety Act* or the *Food and Drugs Act* [referring to the best-placed act proposal].<sup>97</sup>

In response to the department’s discussion regarding the use of the singular term “Minister” in section 91 of CEPA, which refers to the Minister of Environment and Climate Change only, both the Canadian Consumer Specialty Products Association and the Formulated Products Industry Coalition suggested that CEPA may contain a “typo in drafting given the plural ‘Ministers’ is otherwise used throughout this part of the Legislation.”<sup>98</sup>

The Chemistry Industry Association of Canada expressed support for allowing the Minister of Health to be responsible for managing substances that are found to be toxic under CEPA by that department. The association stated its belief that “this will significantly reduce confusion and duplication.”<sup>99</sup>

Professor Scott also agreed “that it makes good sense to impose duties on the Minister of Health under [sections 91 and 92] where those do not presently exist.” However, she cautioned that “this amendment should simply impose those duties on that Minister where her delegates will ‘lead the development of preventative or control instruments or regulations’ – without reference to the ‘best placed act’.”<sup>100</sup>

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96 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 17.

97 Ibid., p. 18.

98 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 6; Formulated Products Industry Coalition, [Written brief](#), n.d., pp. 2–3.

99 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 11.

100 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), August 2, 2016, p. 9.

## Recommendation 11

**The Committee recommends that CEPA be amended to formally allow the Minister of Health to be the lead in developing and recommending instruments and regulations under CEPA for a toxic substance in circumstances where the risks posed by the toxic substance are health related.**

On a related point, note that section 83 of CEPA requires both the Minister of Environment and Climate Change and the Minister of Health to assess whether a new substance is toxic or capable of becoming toxic. Environment and Climate Change Canada suggested that “for substances in certain products regulated under the [*Food and Drugs Act*], the assessment process could be streamlined if the Minister of Health was solely responsible.”<sup>101</sup>

In a written brief, the Formulated Products Industry Coalition informed the Committee that at recent meetings, Environment and Climate Change Canada and Health Canada had been clear that the issue raised by section 83 is “simply an administrative internal challenge.”<sup>102</sup> The coalition wrote that it would support the proposed amendment to section 83 if it is an administrative change that “assists both Departments but does not compromise the science review or the efficiency of the review for both environmental and human health considerations.”<sup>103</sup>

The Committee disagrees with the government’s proposal on the basis that the Minister of Environment and Climate Change’s continuing involvement in the assessment of new substances is essential to ensure that environmental considerations are fully taken into account.

## PUBLIC PARTICIPATION AND INFORMATION GATHERING

Information about toxic chemicals – their chemical properties, uses, releases and environmental fates – is key to reducing the risks that the chemicals pose. Such information allows the government to assess the toxicity of substances and the related management options. It also helps the public make informed decisions in their daily lives, both to help reduce pollution and to reduce their exposure to toxic chemicals. The public also has various roles to play within CEPA that require it to be informed. The gathering of information and its dissemination to the public was the subject of various interventions during this study.

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101 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 13.

102 Formulated Products Industry Coalition, [Written brief](#), n.d., p. 2.

103 Ibid.

## A. Information Gathering

Information is gathered under both Part 3 and Part 5 of CEPA. Part 3 provides for gathering environmental data and conducting government research, while Part 5 is about controlling toxic substances.

Parts 3 and 5 each provide for the minister to require information from any person. Under Part 3, for example, section 46 provides for gathering information for the National Pollutant Release Inventory. Under Part 5, section 71 provides for gathering information to assess whether a substance is toxic or capable of becoming toxic or whether to control a substance. Further, section 81 prohibits the manufacture or import of a new substance unless prescribed information is provided and assessed by the ministers.

In its Discussion Paper, Environment and Climate Change Canada submitted that section 71 does not give the minister authority to require information on methodology or to require samples. This apparently limits the department's capacity to compare, interpret and verify information.<sup>104</sup> In addition, the department noted that neither section 46 nor section 71 requires a person to update information, and they do not define clearly a period of time during which a person is to maintain records.<sup>105</sup>

The Global Automakers of Canada and the Canadian Vehicle Manufacturers' Association did not agree with the department's suggestion that persons be required to update information. They called section 71 information a "snapshot" of a chemical substance's status.<sup>106</sup> Requiring that a person update this information would be burdensome and impractical since information is held throughout the global supply chain.

Canadian Manufacturers and Exporters questioned whether the value obtained by requiring a person to update information would justify the cost to industry. The group suggested that CEPA's information gathering requirements be harmonized with U.S. requirements and limited to only cover information that is needed to evaluate risk – that is, only in relation to substances that have been prioritized for risk evaluation. In addition, the group called for more consultation on this issue.<sup>107</sup>

Professor Scott supported the need to update information on a frequent basis. In addition she supported the idea that the minister should be able to ask for "any information" relevant to an assessment, including methods and samples.<sup>108</sup> The Global Automakers of Canada did "not object to the premise," and noted that "any such power to request this information should be considerate of the fact that obtaining this information

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104 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 31.

105 Ibid., pp. 33–34.

106 Global Automakers of Canada, [Written brief](#), December 8, 2016, p. 7; Canadian Vehicle Manufacturers' Association, [Written brief](#), 9 December 2016, p. 6.

107 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p. 3.

108 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 15.

can often take many weeks, depending on where the information is housed – in the company’s offices where similar data for other jurisdictions is also maintained, or elsewhere in the supply chain.”<sup>109</sup>

Professor Boyd suggested that CEPA assessments should require industry to provide test results for a comprehensive set of health endpoints.<sup>110</sup>

The Canadian Paint and Coatings Association noted that that the government has an “insatiable demand” for section 71 surveys, creating a heavy burden. That organization suggested that section 71 surveys be better targeted.<sup>111</sup>

The Retail Council of Canada also was critical of surveys required under section 71. That group described a 2012 survey that required reporting on over 2,000 substances in finished consumer goods. Trying to comply with this survey cost retailers a great deal of time and expense for “very little return” of information.<sup>112</sup> The Retail Council suggested that legal reporting on substances as they appear in finished consumer goods should be voluntary rather than mandatory, and it should target chemicals of greatest concern.<sup>113</sup> However, The Forest Products Association of Canada noted that section 71 notices are flexible and allow companies to volunteer information in a way that has saved the sector about \$1 million.<sup>114</sup>

The Committee believes that the government needs to be able to request information on substances in finished goods and require a response. Exposures through finished goods is a public concern for many substances such as flame retardants, phthalates, bisphenol A and triclosan,<sup>115</sup> and without information on the levels in finished goods, the government cannot assess and manage the risks.

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109 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 7.

110 David Boyd, [Written brief](#), 7 November 2016, p. 13. Professor Boyd’s recommendation is set out in context in this report under the heading “Alternatives Assessment and Substitution.”

111 Canadian Paint and Coatings Association, [Written brief](#), 21 March 2016, p. 6.

112 Retail Council of Canada, [Written Comments on The Standing Committee on Environment and Sustainable Development ‘A review of the Canadian Environmental Protection Act, 1999’](#), 13 December 2016, p. 1.

113 *Ibid.*, p. 2.

114 ENVI, [Evidence](#), 1 December 2016 (Robert Larocque).

115 See ENVI, [Evidence](#), 9 June 2016 (Dayna Scott, Associate Professor, Osgoode Hall Law School and the Faculty of Environmental Studies, York University, As an Individual); ENVI, [Evidence](#), 27 October 2016 (David Boyd); ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).



## Recommendation 12

The Committee recommends that CEPA be amended to provide the Ministers with the express authority to request the following information under section 71 for the purpose of assessing whether a substance is toxic or capable of becoming toxic:

- other information, such as methodology, data, models used, etc.;
- samples of the toxicological tests and/or the other tests; and
- any other information relevant to the assessment of a substance.

## Recommendation 13

The Committee recommends that CEPA be amended to allow sections 46 and 71 notices to require that information be updated if it changes and to ensure that there are clear, consistent time frames (e.g., 7 years) for the maintenance and retention of records related to regulations, instruments and information gathering, but also allow these timeframes to be tailored if needed, in specific circumstances.

## Recommendation 14

The Committee recommends that the Ministers seek out relevant and reliable data from other jurisdictions, including data from REACH, so that Canadian assessors may benefit from other efforts deployed to conduct those assessments.

## B. Information Dissemination

### 1. Mandatory Labelling

As previously discussed, consumer products are generally regulated under federal laws other than CEPA. However, in order to improve Canadians' awareness of toxic chemicals, Professor Boyd suggested that there should be mandatory labelling of products containing toxic substances.<sup>116</sup> The Society of Obstetricians and Gynaecologists of Canada similarly supported mandatory labelling of products containing known endocrine disruptors, stating that a failure to label would be paternalistic and inappropriate in 2017.<sup>117</sup> Also regarding labelling, the Canadian Vehicle Manufacturers' Association expressed its support for "appropriate consumer information." It submitted that it is not opposed to fuel dispenser labelling as long as the labelling was subject to stakeholder consultation.<sup>118</sup>

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116 David Boyd, [Written brief](#), 7 November 2016, p. 3.

117 The Society of Obstetricians and Gynaecologists of Canada, [Written brief](#), 21 December 2016, pp. 1 and 3.

118 Canadian Vehicle Manufacturers' Association, [Written brief](#), 9 December 2016, p. 4.

## Recommendation 15

**The Committee recommends that, following stakeholder consultations on the implementation of hazard labelling, CEPA be amended to require mandatory hazard labelling of all products containing toxic substances.**

### 2. Confidential Business Information

To protect their interests, businesses can request that information they submit to the government remain confidential. Under section 88 or 113, the name of a new substance or living organism may be kept confidential by requesting that a “masked name” be used rather than the explicit name of the substance or living organism. Under section 313, a person who provides information may request that it remain confidential. Professor Miriam Diamond of the University of Toronto stated that these provisions “protect the confidentiality of business interests but potentially do so at the expense of the public.”<sup>119</sup> She suggested that lack transparency in product labelling may allow products and materials containing CEPA-toxic chemicals to enter the Canadian market.<sup>120</sup>

Regarding masked names, Environment and Climate Change Canada suggested that there may be cases where disclosure of the explicit name is desirable when “compliance by the broader regulated community depends on knowledge of the substance or living organism being regulated.”<sup>121</sup> The department suggested amending CEPA to require the disclosure of names:

- when risk management instruments are in place for the substance or living organism (e.g., when it is added to the Domestic Substances List with the requirement that the government must be notified of new uses); and
- after five years, after proponents have had the opportunity to demonstrate that it should remain confidential.<sup>122</sup>

Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health agreed with the department’s proposals.<sup>123</sup>

The Canadian Steel Producers Association submitted that compliance by the broader regulated community “can be achieved through existing mechanisms and information sources, such as Material Safety Data Sheets.”<sup>124</sup>

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119 Miriam Diamond, [Written brief](#), June 16, 2016, p. 2.

120 Ibid.

121 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 12.

122 Ibid.

123 Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, p. 23.

124 Canadian Steel Producers Association, [Written brief](#), 1 December 2016, p. 1.

Canadian Manufacturers and Exporters did not support the department's proposal. The group submitted that confidential business information "is developed at great expense and needs to be protected. If [confidentiality] is breached, it should be compensable."<sup>125</sup> It cautioned against "further discourag[ing] commerce in Canada" by "going too far with what is required to be disclosed."<sup>126</sup> Canadian Manufacturers and Exporters suggested an alternative to disclosing the chemical identity of substances: "require manufacturers and importers ... to notify those in their distribution chain of the use restrictions and the requirement to notify the Minister of any new uses. This would allow the regulated community to make inquiries of and/or notice to the Minister regarding new uses without the need to disclose confidential business information."<sup>127</sup>

In addition, Canadian Manufacturers and Exporters suggested that the government's proposed five-year period for confidentiality is too short. It suggested that the timeframe should be a minimum of 10 years.<sup>128</sup>

### **Recommendation 16**

**The Committee recommends that sections 88 and 113 of CEPA be amended to require the disclosure of the explicit chemical or biological names of substances or living organisms when risk management instruments are in place for the substance or living organism.**

### **Recommendation 17**

**The Committee recommends that sections 88 and 113 of CEPA be amended so that a masked name may be used for five years, and after that time the government may release the explicit chemical or biological name of a substance or living organism, subject to providing the proponent with an opportunity to demonstrate that the chemical or biological name should remain confidential for a longer period of time.**

Regarding the protection of confidential business information under section 313, the department brought to the Committee's attention its authority to disclose information if the public interest in disclosure outweighs the interests in maintaining confidentiality.<sup>129</sup> However, the department noted that there is no obligation on the persons requesting confidentiality to outline their reasons for the request, making it difficult for the minister to weigh the public and business interests. The department suggested that CEPA could be

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125 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p. 5.

126 Ibid.

127 Ibid.

128 Ibid.

129 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 32.

amended to allow the minister to require persons who submit a request for confidentiality to provide reasons for the request.<sup>130</sup>

The Canadian Steel Producers felt that it would be appropriate for the regulated entity to provide a brief explanation of the reasons certain information should be kept confidential. However, that group also suggested that how the minister weighs the interests should be “concisely outlined.”<sup>131</sup> Global Automakers of Canada submitted that, whether or not reasons for a confidentiality request are given, any breach in confidentiality should be through an access to information request and that the company be notified.<sup>132</sup>

Canadian Manufacturers and Exporters expressed its concern with the government’s proposal and suggested that “should the Minister decide to deny a claim of confidentiality, the claimant should have the ability to seek review of the denial and present evidence to support the claim.”<sup>133</sup>

The Forest Products Association of Canada suggested simply that section 313 is used too often and that it makes it “very difficult ... to address potential toxins at our mills if we don’t even know which potential toxins our facilities are using.”<sup>134</sup>

In its 1995 CEPA report, the Committee recommended that requests for confidentiality be accompanied by supporting evidence. In 2007, the Committee called for mandatory disclosure of confidential test data where the Minister thinks it appropriate. The Committee continues to be of the view that public access to information is essential and therefore that information provided under CEPA should be presumed to be public unless there are compelling reasons for keeping it confidential.

### **Recommendation 18**

**The Committee recommends that section 313 of CEPA be amended to specify that information provided to the Minister under the Act is presumed to be public and to require persons who submit a request for confidentiality under section 313 to provide the Minister with justification to support the request.**

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130 Ibid.

131 Canadian Steel Producers Association, [Written brief](#), 1 December 2016, p. 2.

132 Global Automakers of Canada, [Written brief](#), December 8, 2016, p. 7.

133 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p. 5.

134 ENVI, [Evidence](#), 1 December 2016 (Robert Larocque).

### 3. National Pollutant Release Inventory

The National Pollutant Release Inventory (NPRI), established under section 48 of CEPA, is an inventory of the releases of pollutants by facilities that meet the specific reporting requirements. Currently the inventory includes the releases of 343 substances from 7,720 industrial, commercial and institutional facilities.<sup>135</sup>

Three types of releases are reported to the NPRI:

- direct releases into the environment (air, water, land);
- disposal (on-site or off-site); and
- transfer to other facilities for recycling or treatment.<sup>136</sup>

The NPRI has a number of purposes. As Environment and Climate Change Canada stated:

The NPRI is a key resource for identifying and monitoring sources of pollution in Canada. [Environment and Climate Change Canada] uses NPRI data to support priority setting and monitoring of environmental performance measures, to contribute to the compilation of pollution patterns and trends, to provide environmental information in the public interest, and to fulfill international reporting obligations. NPRI data is also used by other governments, academia, industry, non-governmental organizations, international organizations, financial institutions, the media, and the public.<sup>137</sup>

In 2009, the Commissioner of the Environment and Sustainable Development audited the NPRI and made two key findings:

- Environment and Climate Change Canada “does not have a consistent approach to determining the information needs of users”; and
- Environment and Climate Change Canada “does not have adequate systems and practices overall to ensure that data in the NPRI is fit for its intended uses. The Department is unable to assess the accuracy and completeness of the data, nor does it adequately state the limitations of the data so that users understand its nature and are aware of what the data can be used for and where caution needs to be applied.”<sup>138</sup>

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135 [Written Response from the Department of the Environment and the Department of Health to Questions Asked During the Committee Meeting on Thursday, October 6, 2016](#), November 24, 2016, p. 2.

136 Ibid.

137 Ibid, p. 3.

138 Commissioner of the Environment and Sustainable Development, [Letter to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development \(Re: Review of the Canadian Environmental Protection Act, 1999\)](#), 24 January 2017, Appendix A. See Office of the Auditor General of Canada, [“Chapter 3—National Pollutant Release Inventory,” 2009 Fall Report of the Commissioner of the Environment and Sustainable Development.](#)

In connection with the Committee's current review of CEPA, the Commissioner's 2017 brief pointed to the results of the 2009 audit stating that "it is important for the inventory to be fit for its intended users and that users have access to quality data."<sup>139</sup>

A process for proposing changes to update the NPRI system as new information becomes available has been put in place.<sup>140</sup> As Amardeep Khosla of the Industry Coordinating Group for CEPA noted, "things should be reviewed. ... If that means some substances need to be added, some need to be dropped, thresholds need to be changed, we should have that conversation. I think CEPA already enables that."<sup>141</sup>

Justyna Laurie-Lean of the Mining Association of Canada noted that "the NPRI works through a published notice based on consultation rather than legislated rules, which has enabled the program to evolve in response to experience and users' needs."<sup>142</sup> She therefore recommended caution in making any changes to the NPRI-enabling sections of CEPA.

Canadian Manufacturers and Exporters urged similar caution in making changes to the NPRI. The group submitted that the "NPRI is a pollutant release inventory and needs to remain as such and should not be expanded beyond its original intent."<sup>143</sup> It wrote that proposals to change the NPRI "should not be considered without a full evaluation of any specific concerns."<sup>144</sup> The Canadian Electricity Association also recommended not amending these sections.<sup>145</sup>

However, Elaine MacDonald of Ecojustice Canada suggested that at least part of the process for updating the NPRI – a mechanism for requesting the department to make changes – is not working. She noted one request made in 2010 for change had not received a response.<sup>146</sup>

A number of other interveners pointed to aspects of the NPRI that they thought could be improved. These include that:

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139 Commissioner of the Environment and Sustainable Development, [Letter to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development \(Re: Review of the Canadian Environmental Protection Act, 1999\)](#), 24 January 2017, p. 3.

140 See Environment and Climate Change Canada, [Process for Proposing and Considering Changes to the National Pollutant Release Inventory](#).

141 ENVI, [Evidence](#), 16 June 2016 (Amardeep Khosla, Executive Director, Industry Coordinating Group for CEPA).

142 ENVI, [Evidence](#), 7 June 2016 (Justyna Laurie-Lean, Vice-President, Environment and Regulatory Affairs, Mining Association of Canada).

143 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p. 4.

144 Ibid.

145 ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss).

146 ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald, Senior Scientist, Ecojustice Canada).

- Various activities are exempt from reporting to the NPRI, including fracking<sup>147</sup> and oil and gas exploration.<sup>148</sup>
- The NPRI does not require reporting on the creation or use of substances, only on their releases. This misses an opportunity to increase incentives to reduce the creation and use of toxic substances in the first place.<sup>149</sup>
- Various substances that are being phased out, such as PCBs, are excluded from reporting.<sup>150</sup>
- Various substances are excluded because they are subject to reporting requirements under other laws such as the *Pest Control Products Act*.<sup>151</sup>
- Substances that are generated at less than 10 tonnes per year are excluded.<sup>152</sup>
- It is not easy to identify the parent company responsible for the releases, only individual facilities.<sup>153</sup>

According to the joint submission by Ecojustice, Environmental Defence and Équiterre, the NPRI is “riddled with loopholes,” which “leaves Canadians with incomplete information and a potentially false sense of the pollution releases in their communities.”<sup>154</sup> For instance, the joint submission stated that the use of average annual releases as reporting thresholds means that the data are “not broken down to environmentally relevant timeframes [and] tell us little about the environmental impacts of the facilities in situations of short-term acute increases in pollution, and tell us little about the environmental performance of the particular facility.”<sup>155</sup> The joint submission noted that Toronto has implemented the ChemTRAC database to provide more comprehensive reporting than the NPRI.<sup>156</sup> The joint submission included 15 recommendations to improve these weaknesses. Professor Collins also supported these suggested changes,<sup>157</sup> which are listed below:

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147 ENVI, [Evidence](#), 19 May 2016 (Joseph Castrilli).

148 ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald).

149 Canadian Environmental Law Association, [Speaking Notes on the Regulation of Toxic Substances](#), 19 May 2016, p. 4.

150 Ibid.

151 Ibid.

152 Ibid.

153 NEI Investments, [Written brief](#), n.d., p. 2.

154 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 2.

155 Ibid., pp. 34–35.

156 Ibid.

157 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins).

- Remove the exemption for oil and gas exploration and drilling.
- Include separate NPRI spills reporting requirements in CEPA (amend sections 46 and 201).
- Add sections that require Environment Canada to develop environmentally relevant objectives, thresholds, and identify pollution hot-spots.
- Legislative requirement for annual state of the environment and specific environmental justice reports on exposure levels in polluted communities.
- Include as a legislated purpose the use of NPRI reporting and data to report back to the public on whether the identified objectives and thresholds are exceeded or met.
- Add a legislative objective for NPRI reporting of assessing facility operational performance in pollution prevention and reduction.
- Require daily, weekly and monthly pollution data to be included in NPRI reporting.
- Amend section 46 to require the Minister to ask for reporting of any environmental information that is relevant to the objectives and thresholds identified, including new monitoring data.
- Require the Minister to validate NPRI reporting data by engaging in facility inspections, end of stack/pipe monitoring and by using ambient environmental quality monitoring and using third party validation, particularly in hot-spots.
- Lists of facilities and emitters that are below reporting thresholds must be maintained by [Environment and Climate Change Canada or Statistics Canada] in order to permit transparent evaluation of the coverage of the data by data users.
- Require reporting thresholds and criteria to be set out in a regulation that is developed and amended through public consultations and using advisory committees.
- Include clear, comprehensive reporting and publishing requirements with lower thresholds in those regulations.
- Adoption of a transparent and accountable public tool for requesting changes to the NPRI with fixed timelines.



- Include a statutory requirement for consideration of amendment proposals to the NPRI requirements with enforceable response timelines and reasons requirements.
- [Canadian Environmental Law Association] and Environmental Defence once operated a NPRI based web site called Pollution Watch which provides a model for improving the accessibility and use-ability of the NPRI web site.<sup>158</sup>

Others also supported changes to the NPRI. Professor Diamond testified that the NPRI “badly needs to be updated in terms of substances and reporting thresholds.”<sup>159</sup> Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health suggested in particular that all “chemicals that are persistent and/or bioaccumulative should be included for mandatory NPRI reporting as well as chemicals that have the potential to harm human health.”<sup>160</sup>

Ms. Laurie-Lean testified that the NPRI “would greatly benefit from increased informatics support ... [to] increase their effectiveness and their service to the public [and] reduce the administrative burden on reporting facilities, while at the same time reducing data entry errors.”<sup>161</sup>

A final issue concerning the NPRI that became apparent during testimony is that NPRI reporting rules are different than those of other countries, particularly the United States. This led to considerable disagreement among witnesses as to whether releases reported in Canada and in the United States should be compared.<sup>162</sup> The differences in reporting rules among countries make it difficult to use the NPRI as a benchmarking tool to establish Canada’s performance relative to other countries.

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158 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), November 15, 2016, pp. 34–35.

159 ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond, Professor, Department of Earth Sciences, University of Toronto, As an Individual).

160 Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, p. 22.

161 ENVI, [Evidence](#), 7 June 2016 (Justyna Laurie-Lean).

162 See [Written Response from the Department of the Environment and the Department of Health to Questions Asked During the Committee Meeting on Thursday, October 6, 2016](#), November 24, 2016, p. 8; Canadian Fuels Association, [Written brief](#), 1 December 2016, p. 4; Canadian Environmental Law Association, [Written brief](#), 16 November 2016, p. 4; ENVI, [Evidence](#), 14 June 2016 (Michael Burt, Corporate Director, Regulatory and Government Affairs, Dow Chemical Canada Inc.); Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 10.

## **Recommendation 19**

**The Committee recommends that the National Pollutant Release Inventory be improved by:**

- **Removing the exemption for oil and gas exploration and drilling;**
- **Including separate NPRI spills reporting requirements in CEPA (amending sections 46 and 201);**
- **Requiring reports on facility operational performance on pollution prevention and reduction;**
- **Including daily, weekly and monthly pollution data;**
- **Considering lowering thresholds for NPRI reporting; and**
- **Amending CEPA to enable public input to NPRI reports and requiring timely government response.**

In the 1995 report, the Committee recommended requirements for reporting key pollutants, among them persistent and bioaccumulative toxic substances. The Committee continues to be of the view that access to information regarding releases of certain higher-risk substances is in the public interest, in particular persistent and bioaccumulative substances.

## **Recommendation 20**

**The Committee recommends that CEPA be amended to require that all substances known to be persistent and/or bioaccumulative be included in the National Pollutant Release Inventory.**

### **4. Monitoring and Reporting**

Government-led monitoring is provided for in sections 44 and 45 of CEPA.

As Professor John Smol of Queen's University stated:

The only way we can know what our baseline conditions are, how our ecosystems are changing, and whether our environmental policies, laws, and regulations are in fact working, is to know what is happening in the environment, and that requires effective, evidence-based monitoring.<sup>163</sup>

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163 ENVI, [Evidence](#), 1 December 2016 (John Smol, Professor and Canada Research Chair in Environmental Change, Queen's University, As an Individual).

Professor Smol testified that universities are not in a position to perform monitoring. Self-monitoring by proponents – often required in connection with a permit – can fall short because the data is not subject to peer review. Also, such data may be produced “without independent and scientific checks, or most importantly, follow-ups to ascertain whether the proponent-based monitoring is effective.”<sup>164</sup>

Though proponents may not be best placed to perform monitoring, it was noted that the “polluter pays principle” would require the proponent to pay for monitoring carried out by the government. Alternatively, as the Wolf Lake First Nation suggested, Indigenous communities could be paid to act as environmental stewards of their lands.<sup>165</sup> The Wolf Lake First Nation,<sup>166</sup> the Mikisew<sup>167</sup> of the Athabasca Region of Alberta and Mohawk Council of Akwesasne<sup>168</sup> all noted the importance of monitoring and the need to help Indigenous communities in their efforts.

Professor Boyd testified that other countries are putting into place national environmental health surveillance systems “for monitoring the emissions and releases of toxic substances into our environment and our communities, the exposure of humans to those toxic substances, the adverse health impacts of those exposures, and finally, the policies that are in place to reduce the emissions, releases, and exposures.”<sup>169</sup> He noted that Canada has pieces of such surveillance in place – such as Health Canada’s national biomonitoring study – but it is not sufficiently comprehensive.<sup>170</sup>

Professor Scott remarked that there is no duty on the government to undertake such monitoring. She recommended that CEPA be amended to require “mandatory monitoring of listed toxic substances in environmental media and in human bodies.”<sup>171</sup>

In 2007, the Committee recommended that CEPA be amended to oblige the ministers to put in place a permanent biomonitoring study that is representative of the Canadian population, including vulnerable populations. The Committee continues to be of the view that the Act should mandate monitoring.

## **Recommendation 21**

### **The Committee recommends that CEPA be amended to require mandatory monitoring of listed toxic substances.**

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164 Ibid.

165 Wolf Lake First Nation, [Written brief](#), 1 December 2016, p. 7.

166 Ibid.

167 ENVI, [Evidence](#), 17 November 2016 (Melody Lepine, Director, Government and Industry Relations, Mikisew Cree First Nation).

168 ENVI, [Evidence](#), 16 June 2016 (Henry Lickers, Environmental Science Officer, Environment Program, Mohawk Council of Akwesasne).

169 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

170 Ibid.

171 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, pp. 16–17.

The Committee heard from Alberta's Industrial Heartland Association, which noted the efforts of the Fort Air Partnership in collecting air quality data to help inform people in the region and to allow for comparisons with provincial and national air quality standards.<sup>172</sup> Professor Smol spoke of the role that "citizen scientists" are playing at the provincial level in assisting in providing monitoring systems while becoming engaged in understanding the environment.<sup>173</sup>

The Committee also heard about data compatibility problems that arise when data are not standardized. Professor Smol suggested that the format and usability of data could be greatly improved. He testified that making the data public in a meaningful and accessible manner is "critical."<sup>174</sup> Sherry Sian of the Canadian Association of Petroleum Producers also noted that "modernization should improve data standardization [and] make data collection more efficient, automate data integration among federal, provincial, and territorial platforms."<sup>175</sup>

The Committee heard that monitoring is also important for industry. Ms. Sian remarked that the Canadian Association of Petroleum Producers uses publicly available data to inform its understanding and perception of its own performance. She testified that the association is "increasingly using this information and third party research on management gaps and risks to set priorities for research and innovation."<sup>176</sup> Ms. Laurie-Lean noted that not all monitoring data is published. She testified that "data generated using public funding should be publicly available unless there is a compelling reason for secrecy."<sup>177</sup>

#### **a. State of the Environment Reporting**

Under subsection 44(1) of CEPA, the minister is obliged to publish a periodic report on the state of the Canadian environment. The department noted that the report that has been developed over the last number of years is published under the auspices of the *Federal Sustainable Development Act* (FSDA).<sup>178</sup> Canadian Environmental and Sustainability Indicators are used to measure progress on implementing the FSDA.<sup>179</sup>

Nevertheless, Mr. Boyd recommended that CEPA be amended to require publication of a comprehensive state of the environment report every five years.<sup>180</sup> The

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172 ENVI, [Evidence](#), 1 December 2016 (Pam Cholak, Director, Stakeholder Relations, Alberta's Industrial Heartland Association).

173 ENVI, [Evidence](#), 1 December 2016 (John Smol).

174 Ibid.

175 ENVI, [Evidence](#), 7 June 2016 (Sherry Sian, Manager, Environment, Canadian Association of Petroleum Producers).

176 Ibid.

177 ENVI, [Evidence](#), 7 June 2016 (Justyna Laurie-Lean).

178 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

179 Environment and Climate Change Canada, [Environmental Indicators](#).

180 David Boyd, [Written brief](#), 7 November 2016, p. 3.

Committee agreed that these reports should include reporting on identified hot spots, which is further recommended later in the report under “Vulnerable Populations.”

### **Recommendation 22**

**The Committee recommends that CEPA be amended to define “hot spots.”**

### **Recommendation 23**

**The Committee recommends that CEPA be amended to require publication every five years of a comprehensive state of the environment report and that such a report incorporate specific environmental justice reporting on exposure levels in hot spots and assessments of health inequality.**

## **C. Consultation**

CEPA provides for numerous consultation processes, particularly for stakeholders involved in the Chemicals Management Plan.<sup>181</sup> Ms. Coombs of the Canadian Consumer Specialty Products Association listed opportunities for public participation through “data collection surveys, the consultation processes via the Canada Gazette, participating in the [Chemicals Management Plan] stakeholder advisory committee, or for scientists to engage in a science advisory committee.”<sup>182</sup> However, she suggested that the results of the Chemicals Management Plan are not being communicated in an understandable manner to the Canadian public. She testified that there “should be a system [on the Chemicals Management Plan website] where we, as stakeholders, and Canadian environmental law protection organizations, and whoever else, should be easily able to submit our data, evidence, and arguments for consideration. Anything that improves the ability to make that debate robust, and open for reconsiderations where warranted, is important.”<sup>183</sup>

### **Recommendation 24**

**The Committee recommends that the Chemicals Management Plan website be modified to include a system where anyone can submit data, evidence, and arguments for consideration.**

Ecojustice, Environmental Defense and Équiterre noted that for substances not on the Domestic Substances List, CEPA’s objectives of promoting transparency and public participation are not being met.<sup>184</sup> They noted that the public has no way of knowing that an assessment of a new substance or living organisms is taking place until a decision is

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181 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 8.

182 ENVI, [Evidence](#), 19 May 2016 (Shannon Coombs).

183 ENVI, [Evidence](#), 19 May 2016 (Darren Praznik, President and Chief Executive Officer, Canadian Cosmetic, Toiletry and Fragrance Association).

184 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, pp. 25–26.

made. In their opinion this “does little to promote transparency, public participation, or perceptions of legitimacy amongst members of the public.”<sup>185</sup> The groups suggested that CEPA be amended to require a notice in the Canada Gazette for a 30-day comment period when a person submits a new substance or living organism notification under subsection 81(1) or 106(1) of CEPA, which initiates an assessment.<sup>186</sup>

## **Recommendation 25**

**The Committee recommends that CEPA be amended to require notice in the Canada Gazette for a 30-day comment period when a person submits a new substance or living organism notification under subsection 81(1) or subsection 106(1).**

The Ecology Action Centre noted a lack of transparency and a “minimal opportunity for public input” in assessing genetically modified salmon.<sup>187</sup> That group as well as Professor Meinhard Doelle of Dalhousie University suggested that the public would be better engaged “to consider alternatives and to consider whether allowing the new substance into Canada is ... appropriate” if the new substances (and living organisms) regimes were linked to environmental assessments, and where there are broader implications, to utilize a strategic environmental assessment process.<sup>188</sup> As both the environmental assessment and CEPA processes are currently under review, the Ecology Action Centre suggested “connecting or integrating the new substances process with federal environmental assessment under a modernized *Canadian Environmental Assessment Act*.”<sup>189</sup>

## **Recommendation 26**

**The Committee recommends that CEPA be amended to establish a more open, inclusive and transparent risk assessment process that better enables public participation in the evaluation of new living modified organisms.**

Under subsection 54(3) of CEPA, decisions regarding the issue of objectives, guidelines and codes of practice require the minister to “offer to consult with the government of a province and the members of the [National Advisory] Committee who are representatives of aboriginal governments,” while “broader public consultation remains discretionary.”<sup>190</sup> The Mining Association of Canada recommended that subsection 54(3) and similar sections of the Act be amended to require public consultation and the publication of peer-review comments.<sup>191</sup>

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185 Ibid.

186 Ibid.

187 Ecology Action Centre, [Written brief](#), 1 December 2016, p. 2.

188 Ibid., pp. 3–4; ENVI, [Evidence](#), 22 November 2016 (Meinhard Doelle, Professor, Schulich School of Law, Dalhousie University, As an Individual).

189 Ecology Action Centre, [Written brief](#), 1 December 2016, p. 3.

190 ENVI, [Evidence](#), 7 June 2016 (Justyna Laurie-Lean).

191 Ibid.

## Recommendation 27

**The Committee recommends that CEPA be amended such that subsection 54(3) and similar sections of the Act require public consultation and the publication of peer-review comments.**

### 1. Indigenous Rights

Henry Lickers of the Mohawk Council of Akwesasne testified that “it is the duty to consult and to reasonably accommodate aboriginal people in Canada that is most important.”<sup>192</sup>

Consultation with Indigenous peoples is a recurring theme in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which some Indigenous stakeholders referenced to the Committee.<sup>193</sup> In particular, they suggested that CEPA should be consistent with Article 18 of UNDRIP, which states that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, as well as with Article 32(2), which mandates good-faith consultation and cooperation with Indigenous peoples to obtain their free and informed prior consent for projects affecting their lands or resources.<sup>194</sup>

However, according to consultant Nalaine Morin, “there are a number of restrictions on things like how you consult, the full scope of what constitutes aboriginal traditional knowledge or traditional knowledge, as well as definitions around aboriginal government that really restrict involvement of aboriginal people of Canada in CEPA.”<sup>195</sup> The Mikisew Cree First Nation suggested that there had been “failures within consultation,”<sup>196</sup> noting that despite voicing their concerns, “approval after approval neglected to include our traditional knowledge or really incorporate our concerns.”<sup>197</sup> Mr. Perera of the Canadian Electricity Association suggested any concerns with either consultation with aboriginal peoples or aboriginal traditional knowledge would be best addressed in the preamble to the Act.<sup>198</sup>

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192 ENVI, [Evidence](#), 16 June 2016 (Henry Lickers).

193 ENVI, [Evidence](#), 17 November 2016 (Lynne Groulx); Kebaowek First Nation, [Written brief](#), 1 December 2016, pp. 6–7; Wolf Lake First Nation, [Written brief](#), December 1, 2016, p. 8.

194 See Kebaowek First Nation, [Written brief](#), December 1, 2016, pp. 6–7; ENVI, [Evidence](#), 17 November 2016 (Lynne Groulx).

195 ENVI, [Evidence](#), 9 June 2016 (Nalaine Morin).

196 ENVI, [Evidence](#), 17 November 2016 (Melody Lepine).

197 Ibid.

198 ENVI, [Evidence](#), 24 November 2016 (Channa Perera).

## Recommendation 28

**The Committee recommends that CEPA be amended to ensure that provisions that set out a requirement for consultation with the provinces and territories also require consultation with Indigenous peoples.**

### 2. The CEPA Environmental Registry

Sections 12 and 13 of CEPA require the establishment of the Environmental Registry to facilitate access to documents relating to matters under CEPA. Section 13 states that the Environmental Registry “shall contain notices and other documents published or made publicly available by the Minister.”

Witnesses noted that the scope of the registry is limited. Professor Boyd suggested that there should be a single website where environmental information on chemicals management, environmental assessment and species at risk could be obtained. He pointed to Ontario’s environmental registry as an example.<sup>199</sup>

Professor Winfield concurred with Professor Boyd, recommending that the scope of the CEPA Environmental Registry “should be expanded to provide notice and comment opportunities for all proposed regulations, policies, guidelines, approvals and permits under federal environmental legislation, including CEPA, [the *Canadian Environmental Assessment Act, 2012*], the *Fisheries Act*, the [*Canada*] *National Parks Act*, the *Species at Risk Act*, and the *Navigation Protection Act*.”<sup>200</sup>

## Recommendation 29

**The Committee recommends that CEPA be amended to expand the scope of the Environmental Registry to consolidate all postings and provide notice and comment opportunities for all applications and proposed regulations, policies, guidelines, approvals and permits under federal environmental legislation.**

### D. Environmental Protection Actions

Section 17 of CEPA provides for an individual who believes that an offence has occurred under CEPA to apply to have the alleged offence investigated. The minister must acknowledge the receipt of the application within 20 days “and shall investigate all matters that the Minister considers necessary to determine the facts relating to the alleged offence.” Under section 22, if the minister failed to conduct an investigation and report within a reasonable time or if the minister’s response to the investigation was unreasonable, a person may initiate a lawsuit, known as an environmental protection action, to enforce CEPA.

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199 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

200 Mark Winfield, [Written brief](#), November 2016, pp. 2–3.



Professor Boyd testified that citizens' ability to spur the government to increase enforcement – such as through environmental protection actions – “results in higher levels of deterrence and higher levels of compliance.”<sup>201</sup> However, the environmental protection action provision in section 22 of CEPA has never been used.<sup>202</sup>

One reason that may account for why section 22 has not been used is the “strict test” for bringing an environmental protection action. It requires that the alleged offence “caused significant harm to the environment”<sup>203</sup> as opposed to any harm. The government Discussion Paper raised the possibility of amending CEPA “to lower the threshold for bringing an environmental protection action from an allegation that the offence caused ‘significant harm’ to simply that it caused ‘harm’ to the environment.”<sup>204</sup> Such a change would be consistent with Recommendation 14 of the 2008 Senate review of CEPA, which recommended that the need to show significant harm be removed.

Several industry associations signalled their concerns with lowering the threshold to bring an environmental protection action. The Canadian Vehicle Manufacturers' Association recommended retaining the “significant harm” test “to help minimize the risk of unnecessary and/or frivolous litigation.”<sup>205</sup> Canadian Manufacturers and Exporters wrote that “without the ‘significant’ qualifier, any perceived level of ‘harm’ by a member of the public could be the basis for investigation and litigation, absent any real evidence of harm.”<sup>206</sup> Similarly, the Canadian Fuels Association suggested that removing the word “significant” could result in “a substantial increase in unsubstantiated environmental protection actions.”<sup>207</sup> That group suggested that the test for initiating an environmental protection action “must remain robust enough to allow for an appropriate and balanced judgement of the alleged harm to the environment and guard against unsubstantiated proposals.”<sup>208</sup>

The Canadian Consumer Specialty Products Association stated its disagreement with the proposal to lower the threshold and requested “more clarity on how lowering the bar engages the public in a more meaningful way.”<sup>209</sup> The Canadian Steel Producers Association encouraged the Committee “to consult with Canadian stakeholders for further dialogue on the potential impacts of this proposal prior to making any decisions.”<sup>210</sup>

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201 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

202 Ibid.

203 CEPA, paragraph 22(2)(b).

204 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 37.

205 Canadian Vehicle Manufacturers' Association, [Written brief](#), 9 December 2016, p. 6.

206 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p. 3.

207 Canadian Fuels Association, [Written brief](#), December 1, 2016, p. 7.

208 Ibid.

209 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 10.

210 Canadian Steel Producers Association, [Written brief](#), 1 December 2016, p. 3.

In favour of amending the environmental protection action provision, Professor Boyd described the current section 22 “obstacles” as “insurmountable”; the result has been that no environmental protection action has ever been “commenced or concluded in the history of CEPA.”<sup>211</sup> He pointed to more effective public enforcement provisions in the United States and Australia, which promote compliance with environmental laws and catalyze “more rigorous government enforcement efforts.” According to Professor Boyd:

These countries have recognized the reality that limited government enforcement resources can be complemented by concerned citizens, and that governments sometimes have conflicting objectives that render enforcement unlikely.<sup>212</sup>

Professor Boyd testified that in the United States, a citizen must provide the government and the alleged violating party with 60 days’ notice before proceeding to enforce the *Clean Air Act* or the *Clean Water Act*. That 60-day notice period gives the government time to take enforcement action or the violator to come into compliance. In addition “citizen suits are subject to early dismissal and adverse cost awards if they are frivolous, vexatious, or harassing.”<sup>213</sup> According to Professor Boyd, the U.S. enforcement provision results in between 100 and 200 environmental citizen suits a year. Since Canada has about one tenth of the population of the U.S., Professor Boyd estimated that a similar provision in Canada could result in between 10 and 20 environmental protection actions a year.<sup>214</sup> In a written brief, Professor Boyd submitted potential wording for a “new and improved public environmental enforcement action under CEPA,”<sup>215</sup> which would include a 60-day notice period.

On a related point, Professor Winfield suggested expanding the investigation mechanism in section 17 of CEPA “to encompass all major federal environmental legislation.”<sup>216</sup>

The Committee notes that precedents for civil public enforcement actions include Canada’s *Trademark Act* (see section 53.2), *Competition Act* (see section 36, upheld as constitutionally valid by the Supreme Court in *General Motors v. City National Leasing*, [1985] 1 S.C.R. 641), and environmental laws with similar provisions in Australia and the United States.

### **Recommendation 30**

**The Committee recommends that section 22 of CEPA be amended to lower the threshold for bringing an environmental protection action from an allegation that the offence caused ‘significant harm’ to that it caused ‘harm’ to the environment.**

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211 David Boyd, [Written brief](#), 7 November 2016, pp. 37–38.

212 Ibid.

213 Ibid.

214 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

215 David Boyd, [Written brief](#), 7 November 2016, pp. 38–39.

216 Mark Winfield, [Written brief](#), November 2016, p. 3.

### **Recommendation 31**

**The Committee recommends that section 22 of CEPA be amended to better enable public participation and accountability in the implementation and enforcement of CEPA by authorizing environmental protection actions, adjudicated as civil proceedings based on the balance of probabilities, in the following circumstances:**

- The Minister(s) have not undertaken a specific mandatory act or duty under CEPA; or**
- Any person or government body has violated, is violating or is reasonably likely to violate CEPA, including regulations, orders and other instruments thereunder.**

### **Recommendation 32**

**The Committee recommends that the government consider authorizing mediation, interim orders, and specialized cost rules (whereby costs shall not be assessed against anyone bringing such an action, unless it is determined that the action is frivolous, vexatious or otherwise brought in bad faith) in order to ensure that environmental protection actions will be accessible to the public and so that Canadians may, in limited and appropriate circumstances, play a role in ensuring the application of CEPA without personally suffering damages.**

### **Recommendation 33**

**The Committee recommends that CEPA be amended to include safeguards to ensure environmental protection actions are brought responsibly, including a mandatory 60-day notice of intent to bring a section 22 action, non-duplication of government enforcement actions, and provision for early dismissal of actions that are frivolous, vexatious or otherwise brought in bad faith.**

### **Recommendation 34**

**The Committee recommends that the request for investigation provision in section 17 of CEPA be maintained, but that CEPA be amended to remove that as a prerequisite to bringing an environmental protection action.**

## **AIR AND DRINKING WATER QUALITY**

Under Part 3 of CEPA, the government is involved in providing national air quality standards and drinking water guidelines. Some stakeholders suggested that CEPA be amended to require binding and enforceable standards for air and drinking water quality in Canada.

## A. Air Quality

In 2013, the World Health Organization reported that approximately 9,000 people die prematurely each year in Canada as a result of exposure to fine particulate matter.<sup>217</sup> The Committee heard that, while overall Canadian air quality is generally good,<sup>218</sup> there are significant air quality problems in specific areas of Canada, such as in Sarnia, in northern Alberta and in some major cities.<sup>219</sup>

Witnesses noted the often transboundary nature of air pollution in Canada. Professor Krewski remarked that air pollution is “a problem we cannot solve totally in Canada because a lot of our pollution migrates across national borders.”<sup>220</sup> Professor Winfield noted that provisions exist under CEPA for dealing with international air and water pollution, but the Act contains “no provisions regarding sources of air pollution within one province or territory of Canada that may affect other provinces or territories, or that violate intergovernmental agreements regarding the prevention or control of such pollution.”<sup>221</sup>

### Recommendation 35

**The Committee recommends that CEPA be amended to set out the legal framework for the federal government to work with provinces, territories and Indigenous peoples to address instances of inter-provincial air and water pollution.**

A more general means of addressing air quality issues is through air quality guidelines or standards. Section 55 of CEPA empowers the Minister of Health to issue objectives, guidelines and codes of practice with respect to elements of the environment related to health outcomes. Under this provision, Health Canada and Environment and Climate Change Canada are working collaboratively with provinces and territories towards a national approach to air quality management, known as the Air Quality Management System (AQMS).<sup>222</sup>

As described by the government, the AQMS includes “developing new, more stringent air quality standards called CAAQS, or Canadian ambient air quality standards, based on protecting both health and the environment. Each standard will have defined management levels beneath the standard that indicate levels at which action is required to

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217 ENVI, [Evidence](#), 8 March 2016 (John Cooper, Acting Director General, Safe Environments Directorate, Department of Health).

218 Ibid.

219 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

220 ENVI, [Evidence](#), 22 November 2016 (Daniel Krewski).

221 Mark Winfield, [Written brief](#), November 2016, p. 8.

222 ENVI, [Evidence](#), 8 March 2016 (John Cooper). Also see Department of Environment and Department of Health, [Follow-up Information Requested by the House of Commons Standing Committee on Environment and Sustainable Development During Meeting 28 on October 6, 2016 Concerning the Review of the Canadian Environmental Protection Act, 1999 \(CEPA\)](#), 24 November 2016, p. 21.

prevent the air quality of a region from deteriorating, or with the intention of keeping clean areas clean.”<sup>223</sup>

A number of stakeholders submitted that the CAAQS, which are not legally binding, do not go far enough to protect Canadians from air pollution. Ms. MacDonald of Ecojustice Canada lamented the slow pace at which standards – she stated that they are better characterized as “objectives” – for various pollutants are being set. She compared Canada to the United States, which has had enforceable national ambient air quality standards for more than 25 years.<sup>224</sup> Further, Ms. MacDonald testified that binding national air quality standards could also, in part, address environmental inequalities.<sup>225</sup>

Professor Winfield pointed to the United States’ concept of a “non-attainment area” as a model for Canada. He suggested that Canada should adopt national ambient air quality standards, which, if not met in a location, would trigger further interventions.<sup>226</sup> National standards could be made mandatory under the federal power to regulate toxic substances or under a new power to regulate interprovincial air pollution, which could be added to CEPA.<sup>227</sup>

Professor Collins also favoured the U.S. *Clean Air Act* approach under which states that fail to attain the national ambient air quality standards lose federal funding. She testified that this model works. Data show that air quality has improved in non-attainment areas after consequences were imposed.<sup>228</sup> Accordingly, she suggested that CEPA should be amended “to require ministers to establish binding and enforceable standards for ambient air quality.”<sup>229</sup>

Professor Boyd also testified in support of amending CEPA to require legally binding national standards for air quality.<sup>230</sup> He was critical of the CAAQS, not just because they are non-binding, but also because they are “much weaker” than those in other countries. As an example, he testified that Canada’s guideline for sulphur dioxide is more than four times weaker than the corresponding American standard.<sup>231</sup> In his view, national air quality standards would “provide a level playing field for all Canadians” because a mandatory, remedial process would apply in regions or cities in which air quality did not meet standards.<sup>232</sup>

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223 ENVI, [Evidence](#), 8 March 2016 (John Cooper).

224 ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald).

225 Ibid.

226 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

227 Mark Winfield, [Written brief](#), November 2016, p. 8; ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

228 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins).

229 Ibid.

230 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

231 Ibid.

232 Ibid.

Not all stakeholders were in favour of mandating binding national standards for air quality. Cameco Corporation was concerned that expanding CEPA to further regulate in areas such as air quality and drinking water standards would risk duplicating provincial regulation.<sup>233</sup> Similarly, the Chemistry Industry Association of Canada expressed a concern that “adding additional scope to CEPA 99 in the area of air quality runs a very significant risk of duplicating, or worse, undermining the AQMS.”<sup>234</sup> Finally, the Canadian Association of Petroleum Producers suggested that making the CAAQS binding would make them “inherently impractical, if not impossible, and be inconsistent with the application considered when the CAAQS were developed and agreed to.”<sup>235</sup>

### **Recommendation 36**

**The Committee recommends that CEPA be amended to require the federal government to develop legally binding and enforceable national standards for air quality in consultation with the provinces, territories, Indigenous peoples, stakeholders and the public.**

### **B. Drinking Water Quality**

Under Part 3 of CEPA, the federal government collaborates with provinces and territories to establish the Guidelines for Canadian Drinking Water Quality – voluntary national guidelines that provinces and territories may incorporate into law.

Similar to the case for air quality standards, some stakeholders suggested to the Committee that Canadian drinking water guidelines should be strengthened and made legally binding.

In support of the proposal to strengthen the guidelines, Professor Boyd submitted that the maximum allowable concentrations for chemical and radiological contaminants included in the Canadian guidelines “are substantially weaker” than comparable standards or guidelines set in the United States, the European Union, Australia and by the World Health Organization. According to Professor Boyd, “out of sixty-five chemical contaminants, Canada has weaker drinking water quality guidelines than at least one other jurisdiction or the [World Health Organization] recommendation for more than 80% of these substances (53 out of 65).”<sup>236</sup> Professor Boyd recommended to the Committee that CEPA be amended to require the government to put in place standards that “are as strong as or better than any other OECD nation.”<sup>237</sup>

Professor Boyd and others, including Ms. MacDonald of Ecojustice Canada, Professor Collins and the Forum for Leadership on Water also recommended that Canada

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233 Cameco Corporation, [Written brief](#), 30 November 2016, pp. 1–2.

234 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 10.

235 Canadian Association of Petroleum Producers, [Written brief](#), 1 December 2016, p.2.

236 David Boyd, [Written brief](#), 7 November 2016, p. 27.

237 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

be required to adopt national drinking water standards that are legally binding.<sup>238</sup> Ms. MacDonald testified that binding standards would ensure uniformity across the country, filling the gaps for communities without access to safe drinking water and addressing environmental inequities.<sup>239</sup>

Similarly, Professor Collins testified that evidence from other jurisdictions suggests that binding national standards “can be effective at improving environmental quality and public health.” On that basis, she suggested that establishing binding and enforceable national standards would respect a substantive right to environmental quality.<sup>240</sup>

However, not all stakeholders supported the notion of national binding drinking water standards. The Alberta Urban Municipalities Association supports the current approach to drinking water safety, whereby the provinces regulate drinking water standards based on the national guidelines.<sup>241</sup> That association expressed a concern that establishing national, binding drinking water standards could lead to a situation similar to the current situation relating to wastewater treatment standards. It submitted that Alberta municipalities have suffered unnecessary administrative burden due to a lack of harmonization between federal wastewater treatment regulations developed under the *Fisheries Act* and existing provincial regulations. However, recognizing that not all Canadians have access to high quality drinking water, the association suggested that “the federal government should support municipalities in implementing source control measures such as improved stormwater management.”<sup>242</sup>

### **Recommendation 37**

**The Committee recommends that CEPA be amended to require the federal government to develop legally binding and enforceable national standards for drinking water in consultation with the provinces, territories, Indigenous peoples, stakeholders and the public.**

## **POLLUTION PREVENTION PLANS**

Part 4 of CEPA authorizes the Minister of Environment and Climate Change to require companies and institutions to prepare pollution prevention plans with respect to certain substances, including greenhouse gases.<sup>243</sup> Mr. Moffet of Environment and Climate Change Canada explained that entities required to develop a plan do not then have to implement it – as long as they have developed a plan they have complied with the

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238 ENVI, [Evidence](#), 27 October 2016 (David Boyd); ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald); ENVI, [Evidence](#), 22 November 2016 (Lynda Collins); Forum for Leadership on Water, [Written brief](#), 6 September 2016, p. 7.

239 ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald).

240 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins).

241 Alberta Urban Municipalities Association, [Written brief](#), 16 January 2017, pp. 1–2.

242 Ibid.

243 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

law.<sup>244</sup> He testified that the government has required entities to develop pollution prevention plans “on numerous occasions,” and despite the fact that entities need not implement the plans they develop, “companies have consistently stepped up to the plate and said they would do what was needed to address the environmental issue.”<sup>245</sup>

Further, Mr. Moffet testified that pollution prevention plans have been required from a range of sectors and for a range of environmental issues, but only when they are likely to be effective. For that reason, Mr. Moffet described pollution prevention planning as “a very effective tool.”<sup>246</sup> James Riordan, a former public servant, submitted that this tool “is proven to be less expensive and less time consuming than using traditional regulation.”<sup>247</sup>

In its 1995 report following the first CEPA review, the Committee recommended that CEPA be amended to require producers and users of toxic substances to produce pollution prevention plans. Mr. Riordan submitted that this recommendation was addressed in the first bill prepared for Parliament, but ultimately the bill that was enacted to become the current version of CEPA includes a provision allowing, but not requiring, the minister to require an entity to prepare a pollution prevention plan.<sup>248</sup>

Two stakeholders who commented on pollution prevention planning during the review both suggested that the tool is not used frequently enough.<sup>249</sup> Joseph Castrilli of the Canadian Environmental Law Association also testified that it is used “in relation to far too narrow a number of industrial sectors or companies to constitute a systematic response to the problem of increasing releases of toxic substances.”<sup>250</sup> He also noted that pollution prevention planning focused on abatement of releases rather than true pollution prevention, which would involve redesigning products or changing manufacturing processes to substitute safer chemicals.<sup>251</sup>

Mr. Riordan submitted that pollution prevention planning is not being used more often due to a lack of understanding and persistent misinformation that pollution prevention planning does not work because it is not a regulation, that it is not used for the worst toxic chemicals and that pollution prevention planning notices are not enforceable.<sup>252</sup> To address these problems, Mr. Riordan made a number of recommendations,<sup>253</sup> with which the Committee largely agrees.

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244 Ibid.

245 Ibid.

246 Ibid.

247 James Riordan, [Written brief](#), 1 December 2016, p. 2.

248 Ibid., pp. 4-5.

249 James Riordan, [Written brief](#), 1 December 2016; ENVI, [Evidence](#), 19 May 2016 (Joseph Castrilli).

250 ENVI, [Evidence](#), 19 May 2016 (Joseph Castrilli).

251 Ibid.

252 James Riordan, [Written brief](#), 1 December 2016, pp. 8–10.

253 Ibid.



## Recommendation 38

The Committee recommends that:

- Environment and Climate Change Canada and Health Canada address the lack of understanding and persistent misinformation – that pollution prevention planning does not work because it is not a regulation, is not used against the most toxic substances and is not enforceable – which are affecting the use of the Part 4 provisions of CEPA;
- Environment and Climate Change Canada and Health Canada encourage promotion of the use of Part 4 authorities, including by designating a leader for pollution prevention planning in both departments;
- CEPA be amended to provide authority for the Minister of Health to use the Part 4 provisions for those substances that are exclusively toxic to human health;
- Environment and Climate Change Canada and Health Canada make results of pollution prevention planning notices publicly available more quickly than has been the case with some; and
- Environment and Climate Change Canada and Health Canada be required to periodically publish a report illustrating the effectiveness of all pollution prevention plans.

## CONTROLLING TOXIC SUBSTANCES

Part 5 of CEPA, which is headed “Controlling Toxic Substances,” was the focus of much discussion during the study. Key to the operation of this part of the Act is the assessment of substances for their toxicity, as defined in the Act. If found to be toxic, the ministers are obliged under paragraph 77(6)(c) to publish in the Canada Gazette how they intend to control the substance. In addition to, or as an alternative to making regulations, the ministers may set guidelines or codes of practice, and they may mandate pollution prevention plans, as discussed previously.

### A. The Chemicals Management Plan

When CEPA was first enacted in 1988, it established a mandatory process for assessing new substances known as a “pre-market notification process.”<sup>254</sup> However, at that time there were already approximately 23,000 substances in commerce in Canada above certain thresholds that had not been assessed. These substances were placed on a list called the Domestic Substances List. Subsection 73(1) of the current CEPA required

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254 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

the ministers to categorize the substances on the Domestic Substances List to identify substances for priority assessment. The categorization was to be completed seven years after CEPA received Royal Assent in 1999. Coinciding with the completion of the categorization of substances, in 2006 the Chemicals Management Plan was launched. “That plan subsumes two broad sets of activities, one to address new substances and one to address existing substances.”<sup>255</sup>

The Committee heard considerable testimony regarding the process of managing the legacy of existing substances.

### 1. Categorizing Existing Substances

The purpose of categorizing existing substances was to identify “the substances on the [Domestic Substances] List that, in [the ministers’] opinion and on the basis of available information:

- a) may present, to individuals in Canada, the greatest potential for exposure; or
- b) are persistent or bioaccumulative in accordance with the regulations, and inherently toxic to human beings or to non-human organisms, as determined by laboratory or other studies.”<sup>256</sup>

This categorization identified 4,300 of the 23,000 existing substances that might need management. The government’s goal is “to ensure that by 2020, all of these 4,300 substances will have been assessed for potential risks, both to the environment and to health, and subsequently managed as appropriate.”<sup>257</sup>

Between 2006 and 2016, the government assessed approximately 2,700 substances and are proposing or implementing risk management actions for approximately 300 of them. The government plans to assess another 1,550 substances over the next five years.<sup>258</sup>

Many witnesses praised the government’s approach and progress in managing existing substances. The Chemistry Industry Association of Canada called the Chemicals Management Plan a “stunning public policy success.”<sup>259</sup> The Canadian Cosmetic, Toiletry and Fragrance Association stated that the Chemicals Management Plan is efficient and effective.<sup>260</sup> The Canadian Environmental Law Association felt that “the government has done a fantastic job of trying to move through risk assessments.”<sup>261</sup> The Canadian Labour

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255 Ibid.

256 CEPA, subsection 73(1).

257 ENVI, [Evidence](#), 8 March 2016 (John Cooper).

258 Ibid.

259 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 2.

260 Canadian Cosmetic, Toiletry and Fragrance Association, [Written brief](#), n.d., p.1.

261 ENVI, [Evidence](#), 19 May 2016 (Fe de Leon, Researcher, Canadian Environmental Law Association).

Congress stated that the completion of the last phase would be a “tremendous development.”<sup>262</sup> Many witnesses characterized Canada’s process as world-leading.<sup>263</sup> The Committee agrees with the stakeholders who expressed support for the government completing its assessment and management of these substances under the Chemicals Management Plan over the next few years.

The European approach to chemical management was brought up as a comparison. The European system, called REACH – Registration, Evaluation, Authorization and Restriction of Chemicals – is distinct from Canada’s Chemicals Management Plan. Under REACH, every chemical must be registered to gain market access. In order to be registered, companies must document information on a substance’s properties and uses and assess how people and the environment are exposed to the substance. Authorities then use this information in the registrations to decide whether further risk management measures are needed.<sup>264</sup>

To manage the backlog of existing substances, chemicals managed under REACH are being registered in phases depending on how hazardous they are and the quantities in which they are imported or manufactured. The final deadline for registering existing chemicals is May 31, 2018.<sup>265</sup>

Under Canada’s Chemicals Management Plan, the government gathers information on substances through mandatory surveys under section 71 of CEPA as well as through voluntary efforts. In comparison, under REACH, companies that import or manufacture chemical substances bear the burden of proving how the substances can be used safely.<sup>266</sup>

During the current study, some industry representatives suggested that REACH would be too expensive a process for Canada to adopt, since consortia of companies in the much larger European market can share costs.<sup>267</sup> The Chemistry Industry Association of Canada noted that there are examples of consortia spending tens of millions of dollars for little result. “It created data for the sake of creating data [while] Canada’s approach shares costs between government, industry and civil society, and has been exemplary in focusing resources on the uses which are of greatest concern.”<sup>268</sup>

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262 ENVI, [Evidence](#), 7 June 2016 (Andrea Peart).

263 ENVI, [Evidence](#), 19 May 2016 (Shannon Coombs); Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 2; Canadian Cosmetic, Toiletry and Fragrance Association, [Written brief](#), n.d., p.1; ENVI, [Evidence](#), 1 December 2016 (Robert Larocque); ENVI, [Evidence](#), 14 June 2016 (Michael Burt).

264 European Chemicals Agency, “[ECHA’s REACH 2018 Roadmap](#),” 14 January 2015, p. 4.

265 Ibid.

266 Ibid.

267 ENVI, [Evidence](#), 7 June 2016 (Justyna Laurie-Lean); Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 63.

268 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 63.

However, as stated by the Canadian Consumer Specialty Products Association “every program has shortcomings.”<sup>269</sup> Many interventions were made regarding how the Chemicals Management Plan might be improved – both in terms of the assessment of substances and subsequent management actions.

## **B. Assessment of Substances**

### **1. The Definition of Toxic**

The process for controlling of toxic substances begins with an assessment of a substance’s toxicity as defined in section 64 of CEPA. A substance is toxic:

if it is entering or may enter the environment in a quantity or concentration or under conditions that

- a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
- b) constitute or may constitute a danger to the environment on which life depends; or
- c) constitute or may constitute a danger in Canada to human life or health.

Mr. Moffet of Environment and Climate Change Canada noted that this definition of toxic is a “broader term than the meaning of ‘toxic’ in normal parlance. It essentially means harmful to health, harmful to the environment, or harmful to the environment on which human life depends.”<sup>270</sup>

Essentially the definition is risk-based. A substance may be hazardous, but if it is not entering the environment in quantities that cause a danger, or risk, then it will not qualify as “toxic.” Conversely, a substance that is not generally considered hazardous – such as carbon dioxide – could be designated as toxic if it is entering the environment in such large quantities as to pose a danger.

The Canadian Environmental Law Association felt that this definition creates “extremely onerous” hurdles to listing a substance as toxic, suggesting that “we have to become more realistic about what we will define as ‘toxic’ for the purposes of regulation under federal law.”<sup>271</sup> It cited these hurdles as one reason explaining why “there are only 132 substances on the list of toxic substances after a quarter century.”<sup>272</sup>

Some witnesses felt that this broad definition of toxic creates confusion with the Canadian public. Dow Chemical Canada Inc. suggested that there is a stigma attached to substances defined as “toxic” because the public views “the list of toxic substances

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269 ENVI, [Evidence](#), 19 May 2016 (Darren Praznik).

270 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

271 ENVI, [Evidence](#), 19 May 2016 (Joseph Castrilli).

272 Ibid.

through a hazard lens: all substances listed are dangerous in all applications at all levels.”<sup>273</sup> The Chemistry Industry Association of Canada remarked that carbon dioxide was a good example as it is a significant greenhouse gas, making it toxic under the Act, but it “is also a necessity for life.”<sup>274</sup> The association suggested that more specificity in toxic designations would add clarity. For example, “carbon dioxide from combustion emissions” could be designated toxic, as distinct from carbon dioxide in the air we breathe, which is used by plants in photosynthesis.<sup>275</sup>

The greatest debate regarding the definition, however, was centred on the extent to which exposure is factored into the definition, which results in a calculation of risk, as opposed to the hazard posed by a substance.

### **Recommendation 39**

**The Committee recommends that the government revise the definition of “toxic” to ensure that it addresses endocrine disruptors.**

## **2. Risk Versus Hazard**

As an extension of supporting Canada’s approach to chemicals management, some stakeholders supported the risk-based definition of “toxic” upon which the Chemicals Management Plan is based.<sup>276</sup> The Canadian risk-based approach was described as balanced and reasonable,<sup>277</sup> effective,<sup>278</sup> a cost efficient use of resources,<sup>279</sup> flexible,<sup>280</sup> and a way of avoiding unintended consequences.<sup>281</sup> In support of the risk-based approach, Professor Krewski remarked that Canada has “very well-thought-through frameworks for evidence integration, pooling together evidence from multiple sources to come up with the best scientific statement of levels of risk.”<sup>282</sup>

However, other stakeholders felt that the risk approach taken in Canada is based on underestimates of exposure,<sup>283</sup> is not sufficiently precautionary,<sup>284</sup> does not take into

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273 ENVI, [Evidence](#), 14 June 2016 (Michael Burt).

274 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 11.

275 Ibid.

276 ENVI, [Evidence](#), 14 June 2016 (Michael Burt); ENVI, [Evidence](#), 10 March 2016 (Bob Masterson); ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss).

277 ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss).

278 American Chemistry Council, [Written brief](#), 27 December 2016, p. 3.

279 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson); ENVI, [Evidence](#), 16 June 2016 (Amardeep Khosla).

280 ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss).

281 American Chemistry Council, [Written brief](#), 27 December 2016, p. 3.

282 ENVI, [Evidence](#), 22 November 2016 (Daniel Krewski).

283 [Canadian Environmental Law Association Response to Questions Posed by Committee Members](#), 16 June 2016, p. 8; Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 7; ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).

284 ENVI, [Evidence](#), 19 May 2016 (Joseph Castrilli).

account chemicals with complex dose-response curves, such as endocrine disruptors,<sup>285</sup> and causes delays in managing substances.<sup>286</sup>

In support of the current risk-based approach, some industrial stakeholders provided several examples of why they thought a more hazard-based approach would be problematic. Mr. Idriss of the Canadian Electricity Association pointed out that “hazards can never be 100% eliminated, nor would attempting to do so be a wise use of effort and resources.”<sup>287</sup> Mr. Khosla of the Industry Coordinating Group for CEPA noted that copper is toxic, but it is also necessary for functions such as electricity transmission. According to him, the main sources or releases of copper are from animals and humans, which makes it necessary to manage releases of copper as opposed to banning the substance based on its hazard. Mr. Khosla testified that “a risk-based approach helps you to look at the areas where you're actually experiencing the problems, and then you can tailor your interventions to suit those problems.”<sup>288</sup>

Michael Burt of Dow Chemical gave the example of acrylamide, which poses a risk of exposure through food. Measures were taken to reduce exposure under the *Food and Drugs Act* while acrylamide’s continuing industrial uses – including as an alternative to more environmentally harmful materials – were not affected. Mr. Burt noted that “assessment decisions based solely on hazard and management measures limited to chemical bans would make a substance such as acrylamide unavailable to Canadian enterprise, negatively and needlessly impacting innovation and the availability of innovative products.”<sup>289</sup>

Mr. Masterson of the Chemistry Industry Association of Canada noted the House of Commons’ decision to list plastic microbeads in consumer products as toxic. He suggested that a more hazard-based approach might have labelled all plastic microbeads as toxic, and since all plastics are made out of plastic beads, this might have had the effect of banning all plastics. He concluded that the risk-based approach allows attention and society's resources to be focussed on those activities that present harm to human health and the environment.<sup>290</sup>

The Global Silicones Council submitted that “the broader scientific community has fully embraced risk-based approaches for chemicals assessment and management as a preferable alternative to hazard-based approaches being pursued by other regions, notably Europe.”<sup>291</sup>

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285 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 1; ENVI, [Evidence](#), 9 June 2016 (Dayna Scott); and Prevent Cancer Now, Chemical Sensitivities Manitoba, and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, p. 13.

286 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins); ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald); ENVI, [Evidence](#), 27 October 2016 (David Boyd).

287 ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss).

288 ENVI, [Evidence](#), 16 June 2016 (Amardeep Khosla).

289 ENVI, [Evidence](#), 14 June 2016 (Michael Burt).

290 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson).

291 Global Silicones Council, [Written brief](#), 20 January 2017, p.2.

However, others pointed to examples of weaknesses in the risk approach. Professor Boyd noted that asbestos was listed as toxic 25 years ago, but it was still in use because of the risk approach. In his view, under a more hazard-based approach, such as that taken in Europe, it would have been banned. He suggested that delayed actions on polybrominated diphenyl ethers (PBDEs), phthalates, and triclosan are also due to the risk-based approach; a more hazard-based approach would have resulted in faster action.<sup>292</sup>

Another criticism of the risk-approach is that exposure assessments are not sufficiently robust. Reasons given included that some substances are toxic at extremely low doses,<sup>293</sup> there are “complex windows of vulnerability”,<sup>294</sup> and there are populations that are exposed more than others,<sup>295</sup> including lower income communities,<sup>296</sup> Indigenous peoples,<sup>297</sup> and workers.<sup>298</sup> The Canadian Environmental Law Association submitted that:

The reality of the situation in Canada is that many hazardous substances that are available in Canadian industry or commerce and thought to have little or no exposure associated with them have proven to be very available in the Canadian environment. Using a hazard-based assessment approach that assumes there will be exposure, is more precautionary (and consistent with various sections of the Act respecting the application of the precautionary principle) than is a risk-based approach.<sup>299</sup>

By way of example of underestimation of exposure, Mr. Lickers of the Mohawk Council of Akwesasne noted that he eats four times more fish than the quantity assumed in risk assessments.<sup>300</sup> In cases where exposure to a substance can be shown to be higher than that assumed in an assessment, Ms. Coombs suggested that “there might be an opportunity for a mechanism under CEPA that you could use to provide information ... for [the substance] to be reassessed.”<sup>301</sup>

Because of the complexity in assessing exposure, some interveners submitted that there should be less emphasis on exposure in an assessment and more on the hazard posed by the substance. Professor Scott noted that the difference between a risk-based approach and a hazard-based approach is not marked by a “stark bright line,” but that

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292 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

293 Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 7; ENVI, [Evidence](#), 9 June 2016 (Dayna Scott).

294 Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 7; Jennifer G. Anyaeji et al., [Recommendations to Amend Part 6 of the Canadian Environmental Protection Act, 1999, c. 33](#), Written brief, 30 November 2016, pp. 3–6.

295 Breast Cancer Action Quebec, [Written brief](#), November 30, 2016, p. 7.

296 Ibid.

297 ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).

298 Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 7; Prevent Cancer Now, Chemical Sensitivities Manitoba, and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, p. 13.

299 [Canadian Environmental Law Association Response to Questions Posed by Committee Members](#), 16 June 2016, p. 8.

300 ENVI, [Evidence](#), 16 June 2016 (Henry Lickers).

301 ENVI, [Evidence](#), 19 May 2016 (Shannon Coombs).

CEPA could move toward a more hazard-based approach particularly for substances which are toxic at very low doses, such as endocrine disruptors.<sup>302</sup>

The Canadian Cosmetic, Toiletry and Fragrance Association noted that the “precautionary approach does not call for the prohibition of a substance simply because it has an inherent hazard.”<sup>303</sup> This assertion is consistent with testimony the Committee heard about REACH, which uses a hazard-based approach to evaluating substances. Mr. Moffet of Environment and Climate Change Canada explained that, under REACH, even when a substance meets certain hazard criteria, “it doesn't mean it's prohibited, but the test becomes, basically, that you can't use [the substance] unless you can show that there is no good alternative.”<sup>304</sup>

Professors Scott and Collins specifically recommended deleting the words “is entering or may enter the environment in a quantity or concentration or under conditions that” from the definition of toxic in section 64. Jennifer G. Anyaeji and coauthors supported deleting the element of exposure from the definition of toxic. However, they proposed substituting the words “has been manufactured or imported into Canada.” The effect of this proposed amendment would be that substances would be defined as toxic based on whether they are present in Canada in sufficient quantities to pose a threat to life as opposed to being defined as toxic based on “their chances of release to the environment.”<sup>305</sup>

## **Recommendation 40**

**The Committee recommends that sections 64 and 68 of CEPA be amended to expressly address substances that are dangerous at low-level quantity thresholds.**

### **a. Reverse Burden of Proof for Substances of Very High Concern**

Professor Boyd suggested an alternative means of making CEPA more hazard-based. He noted that in the European REACH program, substances of very high concern are prohibited unless industry can convince the regulator that the substances can be used safely in specific applications and that there are no feasible alternatives. REACH defines such substances as:

- carcinogenic, mutagenic, and toxic to reproduction;
- very persistent and very bioaccumulative;
- persistent, bioaccumulative and toxic; or

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302 ENVI, [Evidence](#), 9 June 2016 (Dayna Scott).

303 Canadian Cosmetic, Toiletry and Fragrance Association, [Written brief](#), n.d., p. 4.

304 ENVI, [Evidence](#), 6 October 2016 (John Moffet).

305 Jennifer G. Anyaeji et al., [Recommendations to Amend Part 6 of the Canadian Environmental Protection Act, 1999, c. 33](#), Written brief, 30 November 2016, p. 10.



- other substances of equivalent concern such as endocrine disruptors.<sup>306</sup>

As Professor Boyd noted, “in effect, the burden of proof is reversed for substances of very high concern.”<sup>307</sup> He recommended that part 5 of CEPA be amended to require a hazard-based approach for such substances.<sup>308</sup> According to Mr. Moffet, the Canadian Chemicals Management Plan does already “get into an approach that is very much like REACH” in some cases.<sup>309</sup> He noted that for existing substances, the department “explicitly set up a regime whereby we identified certain substances, basically adopted almost a presumption of risk, and then worked with the users and producers to demonstrate that the substance was safe.”<sup>310</sup>

In 1995, the Committee recommended a reverse-burden for substances of very high concern.

### Recommendation 41

**The Committee recommends that Part 5 of CEPA be amended to require a reverse-burden approach for a subset of substances that are of very high concern, including carcinogenic, mutagenic, and toxic to reproduction; very persistent and very bioaccumulative; and persistent, bioaccumulative and toxic. Substances in any of these categories should be prohibited unless industry can provide the government with adequate certainty that the substances can be used or emitted safely in specific applications and that there are no feasible substitutes.**

### 3. Scientific Basis of Assessments

Many witnesses suggested that some of the perceived weaknesses that a more hazard-based approach to substances might address could also be addressed by strengthening the assessment process. Mr. Castrilli stated that “the scientific assessment process for determining that a substance is toxic has been viewed by some as the true Achilles heel of CEPA, as it has led to just 132 substances, or groups of substances, being listed in schedule 1 over the last quarter century.”<sup>311</sup>

Suggestions to improve the assessment process included: better accounting for vulnerable populations; accounting for cumulative exposure to multiple substances; using

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306 David Boyd, *Written brief*, 7 November 2016, pp. 16–17. Also see European Chemicals Agency, “[Substances of very high concern](#),” *Which chemicals are of concern*.

307 David Boyd, *Written brief*, 7 November 2016, p. 17.

308 Ibid., pp. 16–17. Also see European Chemicals Agency, “[Substances of very high concern](#),” *Which chemicals are of concern*.

309 ENVI, *Evidence*, 6 October 2016 (John Moffet).

310 ENVI, *Evidence*, 8 March 2016 (John Moffet).

311 ENVI, *Evidence*, 19 May 2016 (Joseph Castrilli).

a life-cycle approach to substances; and improving the definition of persistence and bioaccumulation.

### a. Vulnerable Populations

During the study, various stakeholders described “vulnerable populations” as populations either that are more exposed to substances or that are more susceptible to the effects of exposure. Different levels of exposure can occur as a result of geographic location, economic status or cultural practices. Susceptibility can vary with developmental stage of life or with sensitivity to substances caused by factors such as immune suppression.<sup>312</sup> As Professor Boyd summarized, “the environmental burden of disease is not equitably distributed.”<sup>313</sup> Numerous witnesses described this as an issue of environmental justice,<sup>314</sup> one of the three dimensions of environmental rights discussed earlier in this report.

Witnesses gave numerous examples of vulnerable populations. Ms. MacDonald of Ecojustice suggested that the First Nation of Aamjiwnaang on the south side of Sarnia in an area known as Chemical Valley is an example of how “lower-income communities and first nations often suffer a disproportionate environmental burden in Canada.”<sup>315</sup> Professor Boyd noted a study that “revealed that one out of every four low-income Canadians lives within one kilometre of a major source of industrial air pollution.”<sup>316</sup> The Inuvialuit Regional Corporation and Inuvialuit Game Council submitted that the cultural practice of consuming country foods makes people, particularly in the Arctic, vulnerable to toxic substances.<sup>317</sup> Professor Scott listed a number of vulnerable groups:

They include women working long hours as cashiers handling receipts containing BPA; single parents shopping at the discount store for kids’ lunch containers; infants in neo-natal ICUs where toxic plasticizers have been found in medical equipment; people living in communities on bus routes or near cement plants; indigenous teenagers growing up on-reserve in Aamjiwnaang, downstream of Sarnia’s petrochemical cluster, or in Akwesasne; auto workers in plastics manufacturing plants; recent immigrant women working at nail salons.<sup>318</sup>

While these groups might be considered vulnerable because they experience disproportionately high exposure to chemicals, anyone could be described as vulnerable if exposed to substances during a “window of vulnerability.”<sup>319</sup> As explained by Maggie MacDonald of Environmental Defence Canada:

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312 Pollution Probe, [Written brief](#), 1 December 2016, p. 1; Miriam Diamond, [Written brief](#), 16 June 2016, p. 2; ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

313 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

314 Miriam Diamond, [Written brief](#), June 16, 2016, p. 2; Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 8; ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald); ENVI, [Evidence](#), 9 June 2016 (Dayna Scott); ENVI, [Evidence](#), 27 October 2016 (David Boyd).

315 ENVI, [Evidence](#), 10 March 2016 (Elaine MacDonald).

316 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

317 Inuvialuit Regional Corporation and Inuvialuit Game Council, [Written brief](#), 6 January 2017, pp. 2–3.

318 ENVI, [Evidence](#), 9 June 2016 (Dayna Scott).

319 Ibid.

People are more vulnerable to effects from exposure at different stages of life. If you compare an average person of good health at age 40, with a child who is going through so many changes physically and growing so quickly, or with a pregnant woman, the impacts of some of these chemicals can be very different, and possibly greater during these windows of vulnerability.<sup>320</sup>

Environment and Climate Change Canada noted that “certain substances may pose greater health risks for certain more vulnerable members of society, such as children, expectant mothers and elderly persons, than for the general population, owing to physiological differences such as body size, weight, metabolism and growth rate.”<sup>321</sup>

In particular, endocrine disruptors were mentioned numerous times as substances that pose a particular hazard, including to people during windows of vulnerability. According to Ms. Anyaeji and coauthors, “endocrine disruptors have been implicated by many researchers in an apparent epidemic of increasing feminisation across many environments and species, including human beings.”<sup>322</sup>

On the environmental side, Professor Diamond and the Mikisew Cree First Nation also noted that there may be vulnerable ecosystems.<sup>323</sup>

In order to formally address the issue in CEPA, the government Discussion Paper proposed that the Act’s preamble could be amended to mention the importance of considering vulnerable populations in risk assessments.<sup>324</sup> Stakeholders, including the Canadian Fuels Association and Ms. Morin of ArrowBlade Consulting, supported the proposal.<sup>325</sup>

Environment and Climate Change Canada submitted that, currently, risk assessments already “consider the specific vulnerabilities of these groups, including appropriate safety factors, according to available hazard, use and exposure data.”<sup>326</sup> Numerous stakeholders confirmed this fact.<sup>327</sup> The Canadian Paint and Coatings Association wrote that “risk assessment routinely involves consideration of developmental

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320 ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).

321 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 11.

322 Jennifer G. Anyaeji et al., [Recommendations to Amend Part 6 of the Canadian Environmental Protection Act, 1999, c. 33](#), Written brief, 30 November 2016, pp. 7–8.

323 ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond); Mikisew Cree First Nation, [Written brief](#), 15 November 2016.

324 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 11.

325 Canadian Fuels Association, [Written brief](#), 1 December 2016, p. 5; ENVI, [Evidence](#), 9 June 2016 (Nalaine Morin).

326 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 11.

327 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 3; Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 11; ENVI, [Evidence](#), 19 May 2016 (Beta Montemayor, Director, Environmental Science and Regulation, Canadian Cosmetic, Toiletry and Fragrance Association); ENVI, [Evidence](#), 16 June 2016 (Amardeep Khosla); Canadian Paint and Coatings Association, [Written brief](#), 1 December 2016, p. 14; ENVI, [Evidence](#), 1 December 2016 (Robert Larocque).

effects on the fetus.”<sup>328</sup> Mr. Masterson testified that “everybody understands that ... given the way the global atmosphere works, we know that [emissions of persistent, bioaccumulative, and inherently toxic substance] concentrate in the north ... they end up in people on indigenous diets and it's a problem. That's why the fullest suite of powers in CEPA can be applied to [those] substances.”<sup>329</sup>

Professor Scott acknowledged that the “government has tried to build in these safety factors to take into account vulnerable populations and people within these windows of vulnerability.”<sup>330</sup> However, she was of the opinion that the structure of the Act is not conducive to their use for endocrine disruptors,<sup>331</sup> for which there is no safe threshold.<sup>332</sup> She felt that the “proposed solution of adding preambular language is disingenuous”<sup>333</sup> as it would “not require anything to be done, but simply help to shed light on the purpose of an enactment.”<sup>334</sup>

Various suggestions were made to amend CEPA to make it mandatory to take into consideration vulnerable populations. Professor Scott suggested that CEPA could be amended to add a new section 64.1, which would “require the Ministers or their delegates, when determining if a substance is toxic, to assess exposures of vulnerable populations and marginalized communities, including exposures during critical windows of vulnerability; with appropriate use of safety factors.”<sup>335</sup> In addition this new section would “clarify that, for some substances, there may be no safe exposure thresholds.”<sup>336</sup>

Mr. Moffet noted a potential problem with such a suggestion in that, while Parliament might want to provide more certainty that assessments consider vulnerable populations, a mandatory requirement to do so in all cases, even if it is not necessary, might delay action to control a substance.<sup>337</sup>

In 2007, the Committee recommended that CEPA require that vulnerable populations be taken into account during risk assessments. The Committee remains of this view.

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328 Canadian Paint and Coatings Association, [Written brief](#), 1 December 2016, p. 14.

329 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson).

330 ENVI, [Evidence](#), 9 June 2016 (Dayna Scott).

331 Ibid.

332 Ibid.

333 Dayna N Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 3.

334 Ibid., p. 4.

335 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 10.

336 Ibid., pp. 9–10.

337 ENVI, [Evidence](#), 6 October 2016 (John Moffet).

#### **Recommendation 42**

**The Committee recommends that section 3 of CEPA be amended to include a broad definition of the term “vulnerable populations.”**

#### **Recommendation 43**

**The Committee recommends that CEPA be amended to require that the Ministers or their delegates, when determining if a substance is toxic, assess exposures of vulnerable populations and marginalized communities, including exposures during critical windows of vulnerability, with appropriate use of safety factors and that this section clarify that, for some substances, there may be no safe exposure thresholds.**

#### **Recommendation 44**

**The Committee recommends that Environment and Climate Change Canada and Health Canada implement measures, thresholds, techniques and reporting requirements specifically addressing endocrine disruptors.**

Ecojustice, Environmental Defence and Équiterre wrote that the World Health Organization “recommends that governments complete a national environmental health inequality assessment to comprehensively identify current environmental injustices.”<sup>338</sup> Professor Boyd suggested that the Canadian government should be required to complete such an assessment.<sup>339</sup>

#### **Recommendation 45**

**Further to Recommendations 22 and 23, the Committee recommends that Environment and Climate Change Canada undertake, in consultation with the provinces, territories, Indigenous communities and the public, an assessment of potential hot spots or areas of potential intensified or cumulative emissions of toxins to ensure protection for vulnerable persons.**

##### **b. Cumulative Assessments**

Witnesses noted that people are exposed to a mix of chemicals in the environment. Ecojustice, Environmental Defence and Équiterre cited a study that estimated that women are exposed to 169 chemicals per day through the use of personal care products and cosmetics alone.<sup>340</sup> Professor David Schindler of the University of Alberta in Edmonton

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338 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 5.

339 David Boyd, [Written brief](#), 7 November 2016, p. 24.

340 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 13.

suggested that a “witches’ brew” can occur “where no single chemical is present at concentrations above ... guidelines, but ... several chemicals are present at concentrations that would not be regarded as toxic when administered singly, or have toxicologies that are virtually unknown and unassessed.”<sup>341</sup> Such brews include those around population centres “where traces of antibiotics, personal care products, medications and endocrine disrupters are present, the result of human use and incomplete removal at sewage treatment facilities, or of runoff from non-point sources.”<sup>342</sup> Mr. Lickers testified that the Akwasasne First Nation has “been able to find something like a hundred different compounds in the fish we eat, and we’re still being told they’re okay to consume. Each of them might be just a little below the safe level, but what happens when you put them together?”<sup>343</sup>

Witnesses also noted that chemical exposures take place in an environment that is not like a laboratory experiment. Professor Smol remarked:

Very often some of our assessments are based on overly optimistic scenarios. Very often it’s from laboratories when they do ecotoxicological studies, and very often in the real world out there, the situation is far worse and there are other stresses that we haven’t even thought of.<sup>344</sup>

Professor Smol noted that “assessing individual chemicals in isolation from other compounds and natural stressors, as well as anthropogenic stressors such as climate change and habitat degradation, is overly simplistic and may create unacceptable environmental risks.”<sup>345</sup> He pointed out that in Europe’s evolving regulatory framework, attempts are being made to consider the mixture of chemicals.<sup>346</sup>

David Morin from Health Canada testified that some element of cumulative exposures to chemicals with similar structures has been included in assessments.<sup>347</sup> Beta Montemayor of the Canadian Cosmetic, Toiletry and Fragrance Association stated that there are “many examples where cumulative exposure does get integrated into the decision-making matrix.”<sup>348</sup> Ms. Coombs and Professor Diamond noted the cumulative assessment of phthalates to be released this summer as an example.<sup>349</sup>

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341 David Schindler, [Written brief](#), December, n.d., p. 2.

342 Ibid.

343 ENVI, [Evidence](#), 16 June 2016 (Henry Lickers).

344 ENVI, [Evidence](#), 1 December 2016 (John Smol).

345 Ibid.

346 Ibid.

347 ENVI, [Evidence](#), 6 October 2016 (David Morin).

348 ENVI, [Evidence](#), 19 May 2016 (Beta Montemayor).

349 ENVI, [Evidence](#), 19 May 2016 (Shannon Coombs); ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).

However, as Professor Diamond noted, while looking at chemicals with similar structures is a “great first step,” science is struggling with assessing the “totality of chemicals to which we are all exposed.”<sup>350</sup>

Mr. Khosla remarked that “we’re at an inflection point in terms of our ability to use new approaches that are enabled by high throughput screening, by computational toxicology, and by a better understanding of mode of action and how chemicals can trigger the same sequence of events within a body to result in a particular toxic effect.”<sup>351</sup> Professor Krewski also noted these techniques, stating that they “offer the potential to greatly accelerate the rate at which we can test the tens of thousands of agents that are present in the environment at reduced cost.”<sup>352</sup>

Professor Diamond suggested that placing a requirement into CEPA that would mandate the examination of “the totality of chemical emissions and effects” would “provide an impetus to work toward getting methods and answers.”<sup>353</sup> Professor Scott and others<sup>354</sup> also recommended that cumulative effects be mandated. Specifically, Professor Scott suggested that a new section 64.1 (already mentioned in reference to vulnerable populations) could require “the Ministers or their delegates, when determining if a substance is toxic, to assess aggregate exposure to and cumulative and synergistic effects of the substance, and to the class of substances with similar modes of action from all relevant sources.”<sup>355</sup>

Following its 2007 review of CEPA, the Committee recommended that the Ministers be required to perform research into the effects of complex mixtures of chemicals on human and environmental health, that industry be required to submit information on the effects of complex mixtures, and that the *New Substances Notification Regulations* require information on the cumulative effects of substances with a common mechanism of toxicity. The Committee continues to be concerned that the cumulative effects of exposure to substances are not being adequately accounted for in assessments.

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350 ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).

351 ENVI, [Evidence](#), 16 June 2016 (Amardeep Khosla).

352 ENVI, [Evidence](#), 22 November 2016 (Daniel Krewski).

353 ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).

354 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, pp. 13–14; Prevent Cancer Now, Chemical Sensitivities Manitoba, and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, p. 12.

355 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, pp. 9–10.

## Recommendation 46

**The Committee recommends that CEPA be amended in Part 5 by adding a new requirement that the Ministers or their delegates, when determining if a substance is toxic, assess aggregate exposure to and cumulative and synergistic effects of the substance, and that the Ministers use an assessment process that looks at multiple points of exposure of a chemical substance.**

### c. Life-Cycle Analysis

Professor Diamond pointed to the waste management of products containing flame retardants (PBDEs) and PCBs as two cases that show the “enormous difficulties of controlling chemical emissions and hence reducing concentrations, even decades after chemical production stopped.”<sup>356</sup> She noted that, to her knowledge, “jurisdictions do not have provisions for dealing with PBDE-containing waste with the goal of minimizing the release of PBDEs to the environment.”<sup>357</sup> This results from the promotion of material re-use, but re-use is problematic when the products and materials contain toxic substances. Professor Diamond submitted that “taking a life cycle approach is a step towards anticipating future issues with managing waste containing CEPA-toxic substances.”<sup>358</sup> Mr. Burt suggested that CEPA could be strengthened “by looking at the holistic circular economy of products that are developed and seeing what happens at the end of the day to these products.”<sup>359</sup>

Other witnesses stressed the importance of taking a life-cycle approach to managing substances. Professor Parisa Ariya of McGill University drew on the precautionary tale of CFCs to “strongly recommend... that for any new material or emerging contaminant, the law require that before the material is released in the environment, a comprehensive life-cycle analysis be undertaken.”<sup>360</sup> Part of the story of CFCs’ effects on the tropospheric ozone layer formed the basis of the prologue to the 2007 House Committee report.<sup>361</sup>

Phil Thomas of the Mikisew Cree First Nation noted that CEPA examines polyaromatic hydrocarbons in a manner that does not take into account changes to their structure that occur in the environment. Accordingly, polyaromatic hydrocarbons have not been found to be bioaccumulative. However, if the alkylated forms that are created in the environment were taken into account, they would be considered bioaccumulative.<sup>362</sup>

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356 Miriam Diamond, [Written brief](#), 16 June 2016, p. 3.

357 Ibid.

358 Ibid., pp. 3–4.

359 ENVI, [Evidence](#), 14 June 2016 (Michael Burt).

360 Parisa A. Ariya, [Written brief](#), n.d., p. 2.

361 ENVI, [The Canadian Environmental Protection Act, 1999 – Five-Year Review: Closing The Gaps](#), Fifth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, April 2007.

362 ENVI, [Evidence](#), 17 November 2016, (Phil Thomas, Scientist, Mikisew Cree First Nation).



Professor Jessop provided a different perspective. He submitted that when comparing two substances, one should not look simply at their relative toxicities but one should also consider how much of each substance is used in their formulations. He testified that a life-cycle analysis is needed to look at the formulations and evaluate the relative environmental impacts of substances.<sup>363</sup>

Mr. Khosla suggested that the group does not have a position on taking a life-cycle approach, but in many conversations that he has had on the topic, people have “generally been very supportive of the approach.”<sup>364</sup>

Professor Ariya recommended that CEPA be amended “to recommend physical, chemical and biological life cycle analysis for any new material or emerging contaminant in various environmental conditions.”<sup>365</sup>

## **Recommendation 47**

**The Committee recommends that Environment and Climate Change Canada and Health Canada adopt a life-cycle approach to assessing and managing substances under CEPA.**

### **d. Persistence and Bioaccumulation**

Finding that a substance is persistent in the environment and that it accumulates in organisms triggers more stringent actions under CEPA. These terms are defined in regulation based on thresholds related to a substance’s stability and its affinity to organic solvents rather than water because substances that bioaccumulate tend to do so in fatty tissue. During the study, stakeholders commented on these thresholds as well as the management of substances that are found to be persistent and bioaccumulative under CEPA.

Regarding the thresholds, Mr. Morin stated:

The persistence and bioaccumulation regulations that we do have are ultimately based on science of the nineties. Science has evolved since then. This could be an area for consideration. Does this have to be updated? We have now noted that there’s accumulation not just in lipids, but also in proteins, and different jurisdictions around the world have adopted different levels. This is stuff for consideration as we move forward.<sup>366</sup>

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363 ENVI, [Evidence](#), 14 June 2016 (Philip Jessop, Professor, Department of Chemistry, Queen’s University, As an Individual).

364 ENVI, [Evidence](#), 16 June 2016 (Amardeep Khosla).

365 Parisa A. Ariya, [Written brief](#), n.d., p. 2.

366 ENVI, [Evidence](#), 6 October 2016 (David Morin).

Other witnesses also remarked that other jurisdictions define bioaccumulative in a more cautious manner than Canada.<sup>367</sup> Breast Cancer Quebec noted that “the threshold to determine whether a substance is bioaccumulative is much too high. It is three times higher than that of the U.S. and Europe, which has the effect of preventing many substances from being controlled under CEPA.”<sup>368</sup> The Chemistry Industry Association of Canada also noted that, while the Canadian test for inherently toxic was “orders of magnitude more ‘conservative’ than the European standard,” the “Canadian test for persistence and bioaccumulation is less ‘conservative’ than the test in Europe is.”<sup>369</sup>

The Learning Disabilities Association of Canada concluded that these “CEPA regulatory criteria can seriously underestimate the hazard, and are less protective to human health and the environment [than those in other jurisdictions].”<sup>370</sup> Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health submitted that if Canada were to “amend its persistence and bioaccumulation criteria to be consistent with the European Union, ... a larger number of substances would come under consideration for elimination; and results would be more appropriately aligned with the one of the main purposes of CEPA – pollution prevention.”<sup>371</sup>

Professor Scott recommended that the *Persistence and Bioaccumulation Regulations* should be amended “to be consistent with criteria under the EU REACH Regulation.”<sup>372</sup> The Chemistry Industry Association of Canada agreed with the idea of creating new regulatory tests under CEPA.<sup>373</sup>

#### **Recommendation 48**

**The Committee recommends that the government update the outdated *Persistence and Bioaccumulation Regulations* to be consistent with the best available science and standards, including those of other OECD jurisdictions.**

Professor Scott also argued that:

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- 367 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins); Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, June 3, 2016, pp. 11–12; ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald); ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).
- 368 Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 5. Also see Learning Disabilities Association of Canada, [Written brief](#), n.d., p. 3.
- 369 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 8.
- 370 Learning Disabilities Association of Canada, [Written brief](#), n.d., p. 3.
- 371 Prevent Cancer Now, Chemical Sensitivities Manitoba, and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, p. 9.
- 372 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 12.
- 373 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 8.

government officials routinely use these [Persistence and Bioaccumulation] Regulations for the unintended purpose of assessing whether a substance is toxic under CEPA. That is, government officials have treated the criteria in s. 77(3), including whether a substance is “persistent and bioaccumulative in accordance with the regulations”, as preconditions that must be met before a substance will be found to be toxic under s. 64.... Section 64 does not, and should not, require a harmful chemical to be persistent or bioaccumulative in order for it to be “CEPA-toxic”.<sup>374</sup>

Accordingly, Professor Scott recommended that a new section 64.2 be added to CEPA to clarify that “a substance need not be persistent or bioaccumulative to be determined to be toxic under CEPA.”<sup>375</sup>

#### **Recommendation 49**

**The Committee recommends that CEPA be amended to confirm, for greater clarity, that a substance need not be persistent or bioaccumulative to be determined to be toxic under CEPA.**

#### **4. Triggering an Assessment**

While witnesses focussed a large amount of their testimony on the assessment of substances under CEPA, what initiates or triggers an assessment in the first place was also discussed.

Mr. Morin summarized what the department refers to as a “triggers document” that outlines the different pathways to identify substances for assessment or reassessment.<sup>376</sup> They include:

- “New science that could trigger a need to reassess existing substances”;
- Submissions under section 70 of the Act from people who have information that reasonably supports the conclusion that a substance is toxic;
- Information shared by domestic or international organizations and review of decisions in other jurisdictions under section 75;
- Significant new activity notifications (SNACs) notifying the government that a person intends to put a substance on the Domestic Substances List to a new use; and

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374 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 12.

375 Ibid.

376 ENVI, [Evidence](#), 6 October 2016 (David Morin).

- The identification under REACH of a substance of very high concern, which triggers mandatory surveys in Canada “to see if we need to look at that substance in Canada also.”<sup>377</sup>

Mr. Morin noted that these triggers often occur concomitantly.<sup>378</sup>

Various witnesses suggested that the existing triggers could be strengthened. In particular, some witnesses submitted that assessments should be automatically triggered based on international decisions or in the face of new scientific evidence. However, the Canadian Consumer Specialty Products Association suggested that no amendment to CEPA is required in this regard in light of sections 70 and 75, which already provide for re-evaluation of substances.<sup>379</sup>

Under subsection 75(3) of CEPA, the ministers are obliged to review a decision to specifically prohibit or substantially restrict any substance made under the legislation of another jurisdiction if they have been notified according to developed procedures. Ecojustice, Environmental Defence and Équiterre noted that Environment and Climate Change Canada has no final procedure for reviewing decisions.<sup>380</sup> In addition, these groups suggested that “section 75 lacks transparency, reporting requirements and is far too discretionary.”<sup>381</sup> They compared section 75 of CEPA to subsection 17(2) of the *Pest Control Products Act*, which requires a special review of any active ingredient banned by another Organisation for Economic Co-operation and Development [(OECD)] country.<sup>382</sup>

Ecojustice, Environmental Defence, Équiterre as well as Breast Cancer Quebec and Andrea Peart of the Canadian Labour Congress recommended that an assessment be automatically triggered “when another jurisdiction prohibits or significantly restricts a substance’s use.”<sup>383</sup>

Likewise, though Health Canada stated that it reviews emerging scientific evidence, various witnesses suggested that a mandatory assessment or reassessment of a substance if the use of the substance has expanded or in the face of new scientific findings.<sup>384</sup>

Both Professor Boyd and a brief submitted by Ecojustice, Environmental Defence and Équiterre also suggested that there is a potential for the public to play a greater role in triggering an assessment. Ecojustice, Environmental Defence and Équiterre noted that the

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377 Ibid.

378 Ibid.

379 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 1.

380 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 15.

381 Ibid.

382 Ibid.

383 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 15; Breast Cancer Action Quebec, [Written brief](#), 30 November 2016, p. 7; ENVI, [Evidence](#), 7 June 2016 (Andrea Peart).

384 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, pp. 15–16; Breast Cancer Action Quebec, [Written brief](#), November 30, 2016, p. 7.

public can use subsection 76(3) to request that a substance be added to the priority substance list for assessment. However no such list has been published under the current CEPA.<sup>385</sup> They recommended that CEPA be amended to “provide a mechanism for a person to ask for a review of an existing substance including how it is managed based on new information.”<sup>386</sup>

In parallel, Professor Boyd suggested that the public be able to trigger an assessment based on the decision of an OECD country to severely restrict or prohibit a substance.<sup>387</sup>

## **Recommendation 50**

**The Committee recommends that Part 5 of CEPA be amended to include a mandatory assessment or reassessment of a substance, within a prescribed timeline, when another OECD country has placed new restrictions on it, or when the use of the substance in Canada has significantly expanded since the original assessment was completed, or when new scientific findings respecting the substance’s toxicity come to the attention of the Minister.**

### **a. Downstream Notification of Significant New Activities**

The government’s Discussion Paper touches on an aspect of the notification and assessment process of CEPA referred to as the Significant New Activity (SNAc) provisions. Under these provisions, new activities associated with a substance are prohibited unless the minister is provided with information in order to assess the new activity for potential health and environmental risks.<sup>388</sup>

The Discussion Paper stated that:

When the Minister publishes a SNAc notice for substances or living organisms not on the Domestic Substance List, CEPA requires every person who transfers the substance or living organism to notify all persons to whom the substance or living organism is transferred of the obligation to comply with the SNAc notice. However, a similar downstream notification requirement is not explicitly provided for SNAc notices issued for substances that are on the Domestic Substance List.

Environment and Climate Change Canada proposed that CEPA be amended such that the downstream notification requirement applies to substances that are on the Domestic Substances List.

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385 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 16.

386 Ibid.

387 David Boyd, [Written brief](#), 7 November 2016, p. 3.

388 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 14.

Both the Canadian Vehicle Manufacturers' Association and the Chemistry Industry Association of Canada supported the government's proposal.<sup>389</sup>

### **Recommendation 51**

**The Committee recommends that CEPA be amended to require every person who transfers a substance or living organism that is subject to a significant new activity notice and that is on the Domestic Substances List to notify all persons to whom the substance or living organism is transferred of an obligation to comply with the significant new activity notice.**

## **C. Management of Substances**

### **1. The Listing Process**

Following an assessment of a substance, the minister must decide whether to make a recommendation to the Governor in Council to add the substance to the List of Toxic Substances in Schedule 1 of CEPA. Under subsection 77(1), the ministers must publish their intentions in the Canada Gazette for public consultation, and a final decision is published under subsection 77(6). Under subsection 77(3), it is mandatory for the minister to recommend listing a substance if it may have a long-term harmful effect on the environment, is persistent and bioaccumulative, is inherently toxic to human beings or non-human organisms, and if its presence in the environment results primarily from human activity. The Governor in Council makes the final decision of whether to list a substance, under subsection 90(1).

The decision to list is political. Professor Winfield noted two cases – for road salt and for waste crankcase oil – where the Governor in Council did not list despite the assessments that concluded that the substances were toxic or capable of becoming toxic. He recommended that a substance should be listed automatically if the ministers of Health and Environment and Climate Change find it to be toxic.<sup>390</sup> He noted that Cabinet approval would still be required for any regulatory action, and that other considerations could be taken into account at that time.<sup>391</sup>

### **Recommendation 52**

**The Committee recommends that substances be added to the List of Toxic Substances automatically upon a finding of toxicity by the Ministers of Health and Environment and Climate Change.**

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389 Canadian Vehicle Manufacturers' Association, [Written brief](#), 9 December 2016, p. 5; Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 8.

390 Mark Winfield, [Written brief](#), November 2016, pp. 4–5.

391 Ibid.

An additional point that was raised stems from the fact that there is no timeline for either the recommendation or the decision to list a substance. Ms. Anyaeji and co-authors suggested that this lack of a timeline is partly responsible for a lengthy process. They suggested that a substance should be added to the List of Toxic Substances no more than 2 years after the substance is found to be toxic.<sup>392</sup> The Canadian Manufacturers and Exporters also “supports a time clock on when Ministers recommend that a substance or living organism be added to the Toxic Substances List.”<sup>393</sup>

#### **a. Amending the Domestic Substances List**

The Domestic Substances List was originally created essentially as a list of substances in commerce before CEPA came into force. As new substances enter into commerce after going through the notification and assessment process of CEPA, they are added to the Domestic Substances List under section 87 or, for new substances that are animate products of biotechnology, under section 105 in Part 6 of CEPA.

However, as the government’s Discussion Paper makes clear, should a substance no longer be in commerce, the minister does not have the express authority to remove it from the Domestic Substances List. The government implied that removing a substance from the Domestic Substances List is desirable in such cases because it would necessitate that a person who wishes to start manufacturing or importing the substance go through the new substance notification and assessment process.<sup>394</sup>

The Canadian Manufacturers and Exporters did not support giving the minister this power. It wrote that “if the substance is no longer in commerce, it does not have the potential to result in health or environmental exposures... Removing substances from [the Domestic Substances List] and creating this additional barrier for reintroducing a substance into commerce that had already been previously approved for placement onto the market puts Canadian manufacturers at a disadvantage when compared to other countries that do not have this same hurdle.”<sup>395</sup>

#### **Recommendation 53**

**The Committee recommends that CEPA be amended to add an explicit authority to remove a substance from the Domestic Substances List when it is not in commerce. Removal should involve a transparent process, with opportunity for public comment.**

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392 Jennifer G. Anyaeji et al., [Recommendations to Amend Part 6 of the Canadian Environmental Protection Act, 1999, c. 33](#), Written brief, 30 November 2016, p. 14.

393 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p.4.

394 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 12.

395 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p.4.

## 2. The Response to Listing

If the ministers' decision under subsection 77(6) is to recommend listing a substance as toxic, then under subsection 91(1), the Minister of Environment and Climate Change has two years from the publication of that decision to publish a proposed regulation or instrument respecting preventive or control actions regarding the substance. Under subsection 92(1), the proposed regulation or other instrument must be finalized within another 18 months. Mr. Moffet stated that for every substance that has been added to the List of Toxic Substances, "action has been taken."<sup>396</sup>

Several witnesses suggested that the government's responses to additions to the List of Toxic Substances are inadequate for a number of reasons, including that the timelines are too long; they do not include mandatory regulatory action; they are insufficiently precautionary, particularly because they do not sufficiently take into account vulnerable populations; and that they do not include mandatory assessment and substitution of safer alternatives.

### a. Timelines for Action

Environment and Climate Change Canada noted that, though the minister must propose a regulation or other control instrument based on the recommendation that a substance be listed as toxic, the final decision of whether the substance will be added to the list lies with the Governor in Council. Since the minister may only take certain actions, such as make regulations, after the substance has been listed as toxic, a possible problem arises if the Governor in Council decides not to list a substance. The Discussion Paper proposes that this problem be addressed through an amendment to CEPA that would see the two-year time period to publish a management action under subsection 91(1) triggered by the Governor in Council's listing decision under subsection 90(1) rather than the ministers' recommendation to list a substance under subsection 77(6).<sup>397</sup>

Professor Scott suggested that the government's proposal would weaken CEPA by allowing for further delay in the management of toxic substances. She concluded that "the appropriate response to the history of systematic and often egregious delays in regulating toxic substances cannot be, as [Environment and Climate Change Canada] has proposed, to *further weaken* and *further politicize* the CEPA-clock provisions. Rather, those provisions should be strengthened to ensure timely regulatory action that meaningfully reduces toxic exposures."<sup>398</sup>

Professor Boyd also submitted that more timely action to manage toxic substances is needed, noting the examples of asbestos, PBDEs and triclosan.<sup>399</sup> However, in its

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396 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

397 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 18.

398 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 13.

399 David Boyd, [Written brief](#), 7 November 2016, p. 41.



written brief, the Chemistry Industry Association of Canada rejected the conclusion that risk management options were not advanced in a timely fashion. It stated that “nothing could be further from the truth. There are no jurisdictions that have proposed and implemented as many risk management activities as Canada has.”<sup>400</sup>

Professor Boyd noted that, for the most hazardous substances, the hazard-based approach – mentioned earlier in the report – would “be of great assistance” in ensuring timely risk management actions.<sup>401</sup> Professor Scott suggested the concept of mandatory precautionary action following a finding of toxicity with the onus on industry to demonstrate either that a substance is safe or that socio-economic considerations should outweigh pollution prevention.<sup>402</sup> Professors Collins and Boyd supported presumptive bans of substances of very high concern, with the onus on industry to demonstrate that “they can be used safely in specific applications and that there are no feasible substitutes or alternatives.”<sup>403</sup>

In addition, Professor Boyd recommended that CEPA establish a one-year timeline “from the conclusion of a screening assessment to listing a substance on Schedule 1; a maximum of eighteen months for draft measures to address all risks from newly listed substances; and a maximum of 18 months to finalize those measures.”<sup>404</sup>

In its two prior statutory reviews of CEPA, the Committee has recommended that timelines be enacted under CEPA.

#### **Recommendation 54**

**The Committee recommends that CEPA be amended to update, improve and prescribe timelines for all actions under CEPA, such as for listing a substance on Schedule 1 after the conclusion of a screening assessment; for producing draft measures to address all risks from newly listed substances; and for finalizing those measures.**

#### **b. Regulations**

Mr. Moffet noted that the government responds to a substance being listed as toxic in diverse ways. He stated:

In some cases, ministers and governments have decided the appropriate response is to restrict emissions of the substance by a certain per cent, or to restrict the composition of products in a certain way. The other extreme is to prohibit. In other words the response... has been tailored to the perceived gravity of the risk.<sup>405</sup>

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400 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 5.

401 David Boyd, [Written brief](#), 7 November 2016, p. 41.

402 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 15.

403 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins); David Boyd, [Written brief](#), 7 November 2016, p. 41.

404 David Boyd, [Written brief](#), 7 November 2016, p. 40.

405 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

In other words, not all toxic substances are managed through regulation. Professor Scott suggested that the current approach is not effective. In support of this conclusion, she pointed out that a number of the most dangerous substances of the 200 identified from a list of 4,300 high priority substances “aren’t even subject to regulatory actions to decrease their presence in our environment and our bodies.”<sup>406</sup>

Ms. MacDonald of Environmental Defence Canada advocated for “a little more enthusiasm” to regulate at the federal level under CEPA.<sup>407</sup> She cited the regulation of mercury-containing lightbulbs as an example of what happens in the absence of federal regulation: “you get a patchwork of regulations and a patchwork of actions that change from municipality to municipality or province to province, and then you have the mass of Canadians who don’t understand how to safely use these things.”<sup>408</sup>

Several witnesses noted that if regulations are to be made, they need to be designed carefully, in particular they need to be harmonized with the United States,<sup>409</sup> they need to provide certainty, and they need to be made following due process.<sup>410</sup> Professor Boyd recommended that standards in other OECD countries should be used as minimum benchmarks for Canadian standards.<sup>411</sup> The Chemistry Industry Association of Canada supported “the use of policy mechanisms and regulations to align Canada’s regulations with other leading OECD nations [if] the threshold used for categorizing substances for assessment in Canada is now higher than it is in other OECD countries.”<sup>412</sup>

### **i. Regulation by Design**

The government identified a specific regulatory gap. The Discussion Paper noted that the regulatory powers of CEPA do not allow regulations to be made governing the design of products that may not contain toxic substances but might release them during their use. They used the example of portable fuel containers and woodstoves as products that might release toxic substances during their use. They noted that CEPA would authorize regulations aimed at users of these products but that it would be much more efficient to regulate product design.<sup>413</sup> Environment and Climate Change Canada suggested that “parts 3 and 5 of CEPA could be amended to expressly allow information gathering and regulation making to target the design and functioning of products, and to

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406 ENVI, [Evidence](#), 9 June 2016 (Dayna Scott).

407 ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).

408 Ibid.

409 American Chemistry Council, [Written brief](#), 27 December 2016, p. 1; Canadian Vehicle Manufacturers’ Association, [Written brief](#), 9 December 2016, p. 3; ENVI, [Evidence](#), 14 June 2016 (Philip Jessop).

410 ENVI, [Evidence](#), 1 December 2016 (Pam Cholak).

411 David Boyd, [Written brief](#), 7 November 2016, p. 4.

412 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 5.

413 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 10.

apply to manufacturers, importers or distributors of the products, rather than only to the users of the products.”<sup>414</sup>

The Canadian Consumer Specialty Products Association and Global Automakers of Canada were somewhat supportive of this proposal with the caveat that the examples given were very specific and any regulations would have to be “unambiguous.”<sup>415</sup> Global Automakers submitted that “the government should seek to align with global standards, including with the US, and avoid Canadian-specific regulatory standards.”<sup>416</sup>

## Recommendation 55

**The Committee recommends that parts 3 and 5 of CEPA be amended to expressly allow information gathering and regulation making to target the design and functioning of products, and to apply to manufacturers, importers or distributors of the products, rather than only to the users of the products.**

### c. Vulnerable Populations and Aggregate Exposure

Professor Scott noted that, apart from criteria for virtual elimination (discussed later in this report) “[section] 77 is ... silent on the critical question of what preventative or control actions should be taken for substances found to be toxic.”<sup>417</sup>

As noted earlier in this report, various interveners suggested vulnerable populations should be better taken into account during the assessments of substances for their toxicity. Similar arguments were made regarding the consideration of vulnerable populations when deciding upon risk management actions.

The government submitted that, following an examination of specific vulnerabilities of certain populations in health risks assessments of substances, that Health Canada “takes appropriate risk management action” where “data suggests these populations are implicated.”<sup>418</sup> Professor Scott suggested that the government’s consideration of the vulnerabilities of certain populations in determining appropriate risk management action is “*ad hoc* and unsystematic ... [and] not legally required.”<sup>419</sup> She stated that “the Act should be amended to require investigation of the effects of any proposed or final regulation or instrument on vulnerable populations and marginalized communities. Similarly, the Act

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414 Ibid.

415 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 3.

416 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 5.

417 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 15.

418 Environment and Climate Change Canada, [Follow-up information requested by ENVI Committee March 8<sup>th</sup>](#), n.d., p. 5.

419 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 16.

should also be amended to require investigation of aggregate exposures, and cumulative and synergistic effects, in determining how to regulate a toxic substance.”<sup>420</sup>

### Recommendation 56

**The Committee recommends that CEPA be amended to require investigation of the effects of any proposed or final regulation or instrument on vulnerable populations and marginalized communities. Similarly, the Act should also be amended to require investigation of aggregate exposures, and cumulative and synergistic effects, in determining how to regulate a toxic substance.**

#### d. Alternatives Assessment and Substitution

Professor Boyd noted that “for almost every application or use of toxic substances in today’s society, there are less hazardous and yet economically viable alternatives, particularly when hidden health and environmental costs are considered.”<sup>421</sup> He gave examples of alternatives to the widely used brominated flame retardant (decaBDE); of a Massachusetts study that identified substitutes for lead, formaldehyde, perchloroethylene, DEHP, and hexavalent chromium; and of using synthetic aramids (strong, heat-resistant fibers) for making brake pads and brake liners instead of asbestos.<sup>422</sup>

Mr. Idriss stated that “under the current system, an assessment of possible alternatives occurs whenever a chemical is assessed and determined to be toxic.”<sup>423</sup> Mr. Burt noted that “most large chemical companies, Dow being one of them, continually look for substitutions of products.... [They ask:] can we make it better, safer, faster, and less expensive?”<sup>424</sup> Ms. Peart noted that “substitution does happen in some industries and some sectors.”<sup>425</sup>

Substitution does not always lead to a better outcome, however. Several witnesses brought the Committee’s attention to cases where a substance that had been determined to be toxic was replaced by an equally if not more toxic substance – a situation termed “regrettable substitution.”<sup>426</sup> Professor Diamond testified that a regrettable substitution occurred when bisphenol A was replaced with what is believed to be more toxic, bisphenol S, and some of the other bisphenols.<sup>427</sup> Professor Scott suggested that

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420 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 16.

421 David Boyd, [Written brief](#), November 7, 2016, p. 13.

422 Ibid.

423 ENVI, [Evidence](#), 24 November 2016 (Ahmed Idriss).

424 ENVI, [Evidence](#), 14 June 2016 (Michael Burt).

425 ENVI, [Evidence](#), 7 June 2016 (Andrea Peart).

426 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 7; ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).

427 ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).

regrettable substitution has characterized flame retardant management.<sup>428</sup> She described this situation as a “game of regulatory whack-a-mole. The government is forced to continually react, as industry changes its formulations, by replacing listed substances with other similar but under-examined chemicals.”<sup>429</sup>

Professor Smol cautioned that while substitution may be helpful, it must be done right:

If we can find less toxic solutions, that would certainly be a step in the right direction, but I think it's very hard to find out.... We have had examples in the past of things being replaced without sufficient study into what they were being replaced with. We need the sufficient study before we do anything, to find out the real consequences. Often we only find out about the consequences 10, 50, and sometimes 100 years later. I think, as much as possible, we need that research base on the substances before they are released. We'll never have it perfect, but we can do a lot better job than we're doing now.<sup>430</sup>

The first step towards substitution is identification and assessment of alternatives. Section 68 of CEPA enables either minister to collect data on the development and use of alternatives to a substance. Professor Scott noted that this allows but does not require screening assessments of toxicity to include an assessment of alternatives.<sup>431</sup>

Ms. MacDonald of Environmental Defence Canada testified that it is “fantastic” that alternative assessments are carried out voluntarily, but she suggested that a mandatory process would ensure that it is “not just left up to the good actors and those who are showing leadership in this area, but it's consistent across the board.”<sup>432</sup> Ms. Peart supported the notion of amending CEPA to require an alternatives assessment for all toxic substances, which would have the additional benefit of boosting a green economy.<sup>433</sup>

The Canadian Environmental Law Association submitted “that the rationale for a mandatory assessment of alternatives arises in part from the failure to stem increases in the release of substances already determined by the government to be ‘CEPA-toxic’.”<sup>434</sup> Professor Boyd testified that the substitution principle is “now the bedrock of the European Union's REACH chemicals legislation.”<sup>435</sup>

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428 Dayna N Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 7.

429 ENVI, [Evidence](#), 9 June 2016 (Dayna Scott).

430 ENVI, [Evidence](#), 1 December 2016 (John Smol).

431 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 11.

432 ENVI, [Evidence](#), 10 March 2016 (Maggie MacDonald).

433 ENVI, [Evidence](#), 7 June 2016 (Andrea Peart).

434 Canadian Environmental Law Association, [CELA Supplementary Submissions to Standing Committee Arising from May 19, 2016 Appearance – Alternatives Assessment](#), 7 July 2016, p. 1.

435 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

For all these reasons, a number of witnesses called for CEPA to require assessments of alternatives with a goal of replacing toxic substances with safer alternatives.<sup>436</sup> Professor Boyd made four recommendations to implement substitution:

Amend s. 2(1) of *CEPA 1999* by adding the substitution principle so that its implementation becomes a duty of the Government of Canada.

Amend the risk management provisions of *CEPA 1999* (Part 5: Controlling Toxic Substances) to require alternatives assessment and place the burden on industry to show that safer substitutes are not available.

Requiring safer substitutes for substances already on *CEPA 1999*'s Schedule 1 that are carcinogenic, mutagenic, and toxic to reproduction; very persistent and very bioaccumulative; persistent, bioaccumulative and toxic; and endocrine disrupting should be a top priority. Specific examples where Canada lags behind include asbestos, formaldehyde, benzene, air pollution, diesel exhaust, PBDEs, PFCs, and some phthalates.

Assessment conducted under CEPA should require industry to provide test results for a comprehensive range of health endpoints including carcinogenicity, mutagenicity, endocrine disruption, neurotoxicity, and reproductive or developmental effects.<sup>437</sup>

The stage of the Chemicals Management Plan when assessment of alternatives could occur was also discussed. Professor Scott noted that “alternatives assessment at the screening assessment stage is critical to timely, efficient and fair application of the substitution principle at the later regulatory action stage.”<sup>438</sup> She recommended that there be both a mandatory duty to assess alternatives as part of all screening assessments as well as a mandatory substitution test to the regulation of existing substances under Part 5.<sup>439</sup>

Mr. Masterson testified that alternatives are considered fully at the risk management stage.<sup>440</sup> Several industrial stakeholders concurred that alternatives assessment was best done at the risk management stage.<sup>441</sup> Professor Winfield thought it would be very interesting to embed the notion of substitution in the risk management process.<sup>442</sup>

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436 ENVI, [Evidence](#), 7 June 2016 (Andrea Peart); Canadian Environmental Law Association, [CELA Supplementary Submissions to Standing Committee Arising from May 19, 2016 Appearance – Alternatives Assessment](#), 7 July 2016, p. 1; David Boyd, [Written brief](#), 7 November 2016, p. 13; Dayna N Scott, [Written brief](#), 2 August 2016, p. 7; ENVI, [Evidence](#), 22 November 2016 (Lynda Collins).

437 David Boyd, [Written brief](#), 7 November 2016, p. 13.

438 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, p. 11.

439 Ibid.

440 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson).

441 Canadian Fuels Association, [Written brief](#), 1 December 2016, p. 4; Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 4.

442 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield, Professor, Faculty of Environmental Studies, York University, As an Individual).

Professor Boyd suggested that the risk management provisions should require in general that industry show that safer substitutes are not available.<sup>443</sup>

### **Recommendation 57**

**The Committee recommends that CEPA be amended to add a mandatory duty to assess alternatives as part of all screening assessments of existing substances.**

### **Recommendation 58**

**The Committee recommends that CEPA be amended to add a mandatory substitution test to the regulation of substances under Part 5, to ensure that decisions about how to regulate toxic substances are based in part on information about substitutes, with a goal of replacing toxic substances with safer alternatives.**

Stakeholders suggested that substitution of safer alternatives takes time and that this should be taken into account in any substitution process. Electronics Product Stewardship Canada noted that “where substitution of a substance is mandated while alternatives have not been identified, the actual transition may require many years to complete. Alternatives need to be tested for performance and reliability at every level of integration in the supply chain. The timelines need to reflect this process.”<sup>444</sup> Professor Doelle suggested providing incentives to find alternatives, including clear timelines for the phase-out of toxics and costs associated with using toxics.<sup>445</sup>

Professor Collins also testified about financial incentives to spur substitution of safer alternatives. She stated:

One way to get to the substitution principle is pollution taxes. You make it more costly to use the more dangerous substance. You harness the power of the market. There is an exciting field called green chemistry. ... It does spur innovation. It does feed the economy. ... This has been well established in Massachusetts, which has actually done the data gathering on what happened with their toxics reduction. They found it saved business millions of dollars and saved the environment many tonnes of toxic substances.<sup>446</sup>

Some witnesses suggested what an alternatives assessment should include. Professor Diamond suggested that “the whole scope of alternatives assessment needs to be cast very broadly” to examine “whether we need that function [provided by the toxic substance] at all.”<sup>447</sup> Pollution Probe recommended that:

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443 David Boyd, [Written brief](#), 7 November 2016, p. 3.

444 Electronics Product Stewardship Canada, [Written brief](#), 16 December 2016, pp. 1–2.

445 ENVI, [Evidence](#), 22 November 2016 (Meinhard Doelle).

446 ENVI, [Evidence](#), 22 November 2016 (Lynda Collins).

447 ENVI, [Evidence](#), 16 June 2016 (Miriam Diamond).

In conducting alternatives assessment under CEPA, the opportunities, costs and feasibility of adopting and implementing safer alternatives should be taken into consideration and clear recommendations for the elimination, or limited use of a toxic substance should be provided. Where possible, efforts should be made to ensure transparency across the supply chain regarding key information and the process that would be used in the development of alternatives assessments and data should continue to be reviewed on a consistent basis to ensure up-to-date and accurate information.<sup>448</sup>

Finally, the Canadian Environmental Law Association recommended that the government prepare national safer alternatives action plans for substances for which reports on safer alternatives have been prepared.<sup>449</sup>

### **Recommendation 59**

**The Committee recommends that CEPA be amended to ensure that alternative assessments include the following aspects:**

- **consideration of the opportunities, costs and feasibility of adopting and implementing safer alternatives;**
- **clear recommendations for the elimination, or limited use of a toxic substance;**
- **efforts to ensure transparency across the supply chain regarding key information and the process to be used in the development of alternatives assessments; and**
- **review of data on a consistent basis to ensure up-to-date and accurate information.**

### **Recommendation 60**

**The Committee recommends that CEPA be amended to mandate that the Minister prepare national safer alternatives action plans for substances for which reports on safer alternatives have been prepared.**

## **3. Virtual Elimination**

Under subsection 77(4) of CEPA, where the ministers have decided to recommend listing of a substance as toxic and they are satisfied that the substance is persistent, bioaccumulative, present in the environment because of human activity and not “a naturally occurring radionuclide or a naturally occurring inorganic substance,” they are required to propose that the substance be virtually eliminated following subsection 65(3).

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448 Pollution Probe, [Written brief](#), 1 December 2016, p. 3.

449 Canadian Environmental Law Association, [CELA Supplementary Submissions to Standing Committee Arising from May 19, 2016 Appearance – Alternatives Assessment](#), 7 July 2016, p. 1.



Section 65 defines virtual elimination and how it is to be implemented. Under subsection 65(1), virtual elimination means:

in respect of a toxic substance released into the environment as a result of human activity, the ultimate reduction of the quantity or concentration of the substance in the release below the level of quantification specified by the Ministers ...

Under subsection 65(3), virtual elimination is implemented by having the ministers “prescribe the quantity or concentration of the substance that may be released into the environment either alone or in combination with any other substance from any source or type of source.” The prescribed quantity or concentration is to be established after taking into account various factors including “environmental or health risks and any other relevant social, economic or technical matters.”<sup>450</sup> If progressively lower release limits are set, the quantity of the substances released to the environment may be reduced over time to the point of virtual elimination.

However, the virtual elimination provisions of CEPA are dysfunctional. While 20 substances have so far met the criteria for virtual elimination, only 2 substances have been placed on the virtual elimination list.<sup>451</sup> As the Committee’s previous report noted regarding hexabutadiene – which, at that time was the only substance on the list – slating this substance for virtual elimination had little if any effect since the substance was not manufactured or imported into Canada, and release limits from some processes that might produce small quantities of it were technically impossible to set.<sup>452</sup>

The other compound subject to virtual elimination is perfluorooctane sulfonate and its salts.<sup>453</sup> The government added this compound to the list in 2009 because it was required to do so under a law that originated as a private member’s bill.<sup>454</sup> Because the bill did not also require the government to set a level of quantification to implement virtual elimination, the government did not set such a level.<sup>455</sup>

According to the government’s Discussion Paper, a reason for the failure of the virtual elimination regime is that the implementation of virtual elimination “largely duplicates the risk management requirements that already exist by virtue of adding the substance to Schedule 1.”<sup>456</sup> As an example, Mr. Moffet stated:

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450 CEPA, subsection 65(3).

451 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 16.

452 ENVI, [The Canadian Environmental Protection Act, 1999 – Five-Year Review: Closing The Gaps](#), Fifth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, April 2007, p. 33.

453 [Virtual Elimination List](#), S.O.R./2006-298.

454 [Bill C-298, An Act to add perfluorooctane sulfonate \(PFOS\) and its salts to the Virtual Elimination List under the Canadian Environmental Protection Act, 1999](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament (Royal Assent version, 17 April 2008).

455 “Regulatory Impact Analysis Statement,” [Regulations Adding Perfluorooctane Sulfonate and its Salts to the Virtual Elimination List](#), S.O.R./2009-15, *Canada Gazette*, Part II, Vol. 143, No. 3, p. 77.

456 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 15.

when a substance meets these criteria, typically what we do is add it to the Governor in Council regulation known as the “prohibition of various substances”. Well, if the Governor in Council has prohibited the use of this substance, there is not much point in also developing a requirement to do a virtual elimination plan and also have the minister promulgate a regulation.<sup>457</sup>

As the previous Committee report noted, hexabutadiene was subject to prohibition regulations almost two years prior to it being added to the virtual elimination list.

In addition to the problem of duplication, Environment and Climate Change noted that the requirement to set a level of quantification for a substance to be virtually eliminated limits the use of virtual elimination to substances “that can be measured while they are being released into the environment (e.g., point source releases.”<sup>458</sup> Virtual elimination does not work for substances that are released diffusely.

Environment and Climate Change Canada made a number of suggestions to rectify this issue based on dividing the List of Toxic Substances in Schedule 1 into two lists: the virtual elimination list and a list of other toxic substances. Substances on the virtual elimination list would require regulatory action or restrictions on use.<sup>459</sup> This would involve removal of: “the definition of virtual elimination, the level of quantification, virtual elimination plans, Ministerial release limit regulations, and the Ministerial virtual elimination list.”<sup>460</sup>

Domtar and the Canadian Vehicle Manufacturers’ Association essentially agreed with this approach with the caveat that “careful consultation and consideration must be given as to how these substances will be managed going forward.”<sup>461</sup>

Professor Scott did not agree with this solution. She suggested that the two-list system “could reinforce a perception of a ‘two-tier’ system of toxic substance regulation under CEPA ... [and thus] aggravate the existing trend of limited, non-precautionary, ineffective and delayed regulatory actions that have so strongly characterized the Ministers’ regulation of endocrine disrupting chemicals, such as BPA and flame retardants.”<sup>462</sup> Professor Scott suggested that CEPA already provides “with one exception a coherent and well-designed statutory scheme on virtual elimination”<sup>463</sup> and that the “more principled response would simply be for the Minister to begin complying with the law.”<sup>464</sup>

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457 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

458 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 16.

459 Ibid.

460 Ibid.

461 Domtar, [Written brief](#), 1 December 2016, p. 3; Canadian Vehicle Manufacturers’ Association, [Written brief](#), 9 December 2016, p. 5.

462 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), August 2, 2016, p. 8.

463 Ibid.

464 Ibid.

In addition, Professor Scott noted that “the facts do not support a claim that the government uses the *Prohibition of Certain Toxic Substances Regulations, 2012* to achieve virtual elimination. These regulations do not always prohibit substances and the products that contain substances.<sup>465</sup> As an example, Professor Scott submitted that a proposal to prohibit PBDEs under the regulations would not have the effect of prohibiting “the import of consumer products containing PBDEs. Yet these consumer products are the largest source of Canadians’ exposure to PBDEs.”<sup>466</sup>

Ecojustice, Environmental Defence and Équiterre also suggested that the proposed changes would create a two-tier system; those groups provided that a better approach would be to modify the obligation to create a level of quantification.<sup>467</sup>

Professor Winfield was concerned that splitting the list of toxic substances in two might have the potential to affect the “construction of the constitutional basis for federal regulatory authority around toxic substances as a result of the Hydro-Québec case in 1997.”<sup>468</sup>

Professor Scott recommended that the government implement the virtual elimination scheme “by listing on the Virtual Elimination List, prescribing the quantity or concentration of the substance that may be released into the environment, and ensuring action planning.”<sup>469</sup>

The Committee pointed out weaknesses with the virtual elimination regime in the 2007 report along with recommendations to improve the regime. However, it continues to be non-functional.

## **Recommendation 61**

**The Committee recommends that Environment and Climate Change Canada revisit the virtual elimination regime and implement a more effective regime.**

### **4. Electromagnetic Radiation**

The Committee received submissions from stakeholders regarding the biological effects of electromagnetic radiation, which may enhance the toxicity of chemicals.<sup>470</sup> Professor Magda Havas of Trent University submitted that the various forms of

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465 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, pp. 20–21.

466 Ibid, p. 20.

467 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), 15 November 2016, p. 14.

468 ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).

469 Dayna N. Scott, [Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based](#), Written brief, 3 June 2016, pp. 20–21.

470 For example, see Prevent Cancer Now, Chemical Sensitivities Manitoba and National Network on Environments and Women’s Health, [Written brief](#), 1 December 2016, pp. 11–12.

electromagnetic frequencies adversely affect both plants and animals. Further, she submitted that “adverse biological effects occur well below existing guidelines provided by Health Canada (Safety Code 6).”<sup>471</sup> Margaret Friesen provided evidence that electromagnetic fields can be an environmental pollutant that should be regulated under CEPA.<sup>472</sup>

## Recommendation 62

**The Committee recommends that Health Canada and Environment and Climate Change Canada conduct studies on the effects of electromagnetic radiation on biota, review the adequacy of the current guidelines provided in Safety Code 6 and report their findings back to the Committee.**

## ANIMATE PRODUCTS OF BIOTECHNOLOGY

While Part 5 of CEPA addresses controlling toxic substances in inanimate products, Part 6 addresses toxic substances in living organisms. The two regimes are “basically the same.”<sup>473</sup>

### A. Background

In the original CEPA, new substances – whether animate or inanimate – were regulated under a single regime set out in Part II. In 1993, federal government departments agreed on principles for a new regulatory framework for biotechnology. The Committee supported the regulatory framework in the 1995 CEPA report, which recommended creating a new part in CEPA to deal specifically with animate products of biotechnology. The new part was to be a “safety net,” in that another federal statute would prevail over CEPA as long as it contains notification, assessment and regulatory standards that are at least equivalent to those prescribed under CEPA.<sup>474</sup>

When the current CEPA was enacted in 1999, it contained a separate Part 6 to regulate animate products of biotechnology. Other federal regimes that prevail over Part 6 are set out in Schedule 4 of CEPA. They include regimes for feeds, fertilizers and pest control products.

In a written brief provided to the Committee, Ecojustice, Environmental Defence and Équiterre submitted that “in practice, Part 6 has proven to be excessively opaque and complex, leaving numerous loopholes and areas of regulatory uncertainty.”<sup>475</sup>

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471 Magda Havas, [Written brief](#), 6 December 2016, p. 1.

472 Margaret Friesen, [Written brief](#), 1 December 2016.

473 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

474 ENVI, *It's About Our Health! Towards Pollution Prevention, CEPA Revisited*, Fifth Report, 1<sup>st</sup> Session, 35<sup>th</sup> Parliament, 13 June 1995, recommendations 68 and 69. Also see [Written Response from the Department of the Environment and the Department of Health to Questions Asked During the Committee Meeting on Thursday, October 6, 2016](#), 24 November 2016, pp. 16–18.

475 Ecojustice, Environmental Defence, Équiterre, [Written brief](#), November 15, 2016, p. 2.

These groups suggested that “the self-reproducing nature of bioengineered organisms, including animals in particular, also creates challenges with respect to distinguishing between permitted activities in relation to the organism, in that ‘use’ at times cannot be easily distinguished from ‘manufacture’ despite the Act’s treatment of use and manufacture as two generally distinct categories.”<sup>476</sup>

Between 2005 and 2008, government departments and agencies discussed options for improving the regulation of biotechnology, including the option of creating a new stand-alone regime, which would consolidate all statutory authorities necessary to regulate animate products of biotechnology.<sup>477</sup> However, this option was never implemented. With the sunseting of funding for the Canadian Biotechnology Strategy in 2008, the options were not considered further.<sup>478</sup>

## **B. Case Study: Approval of Genetically Modified Salmon**

Part 6 was used in 2013 when the government was required to assess whether the eggs of a genetically modified salmon that were to be commercially produced in a closed containment facility in Prince Edward Island are toxic or capable of becoming toxic. The eggs were intended for export to Panama for commercial grow-out. Fisheries and Oceans Canada conducted the scientific assessment and concluded that the product was not toxic or capable of becoming toxic, in large part based on the low risk of exposure of the eggs to the Canadian environment.<sup>479</sup>

The Ecology Action Centre, which challenged the government’s decision in Federal Court, raised three issues identified through the genetically modified salmon experience. First, the group submitted that there was a “complete absence of any public consultation with stakeholders, indigenous communities or the general public on the approval of [genetically engineered] salmon.”<sup>480</sup> Second, the Ecology Action Centre submitted that, through its experience of challenging the government’s approval in federal court, it “discovered that there is a lack of clarity on if and how [genetically engineered] organisms can be transferred between companies or other parties.”<sup>481</sup> Third, the group took issue with the decision to grant an approval to begin commercial production “based solely on an environmental assessment of the export of eggs to Panama (as requested by the company) and no assessment whatsoever of commercial production.”<sup>482</sup>

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476 Ibid.

477 [Written Response from the Department of the Environment and the Department of Health to Questions Asked During the Committee Meeting on Thursday, October 6, 2016](#), 24 November 2016, p. 16.

478 [Written Response from the Department of the Environment to Questions Asked During the Committee Meeting on Thursday, October 6, 2016](#).

479 See [Ecology Action Centre v. Canada \(Minister of the Environment\)](#), 2015 FC 1412, para. 22; ENVI, [Evidence](#), 27 October 2016 (Mark Butler, Policy Director, Ecology Action Centre).

480 Ecology Action Centre, [Written brief](#), 1 December 2016, pp. 2–3.

481 Ibid.

482 Ibid.

Considering that gene editing technologies have made it “relatively cheap and easy” to alter a species’ genome,” the Ecology Action Centre predicted “a growing threat to global biodiversity from genetically engineered organisms with wild counterparts.”<sup>483</sup>

The Ecology Action Centre’s recommendation to improve public participation is discussed in this report under the section on public participation. The Centre made two recommendations – with which the Committee agrees – to address the lack of clarity regarding transfers of organisms between companies or other parties. It also suggested that Part 6 of CEPA be renamed to reflect more commonly used terminology.

### **Recommendation 63**

**The Committee recommends that the CEPA regime for animate products of biotechnology be amended:**

- **to provide clear rules on how and under what circumstances the right to introduce a new substance or organism is transferable;**
- **to provide clear rules on the approval process for new uses by the party introducing the substance or organism and by others they may sell the substance to; and**
- **to change the name of Part 6 from Animate Products of Biotechnology to a term more widely used such as Genetically Engineered or Modified Organisms.**

Regarding the scope of risk assessments for living organisms, the Committee is of the view that the current review of the federal environmental assessment regime offers an opportunity not just to examine the potential role of the regime in improving public participation in the assessment of a genetically modified organism, but also to consider whether linking the CEPA assessment with a new environmental assessment regime might be an effective means of expanding the scope of the assessment of a new genetically modified organism to take into account its complete life cycle.

### **C. Responsible Minister**

The government’s Discussion Paper explained that Environment and Climate Change Canada and Health Canada are responsible under Part 6 of CEPA for performing the risk assessment of new products of biotechnology. However, in some situations, another department may be better placed to assess a new product but unable to do so because that department lacks a product-specific statute with a pre-market notification and assessment regime equivalent to CEPA’s. The Discussion Paper proposed amending CEPA to allow another federal minister whose department or agency possesses the

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483    *Ibid.*, p. 2.

appropriate expertise to exercise authorities under Part 6 for a specific product of biotechnology.<sup>484</sup>

Professor Winfield commented on the government's proposal. He submitted that "any delegation of responsibility for assessment and management should be subject to specific criteria establishing the necessary capacity and expertise to carry out these roles."<sup>485</sup>

The Committee agrees with the sentiment of this comment. Delegation to another department must not compromise the assessment of the full range of environmental and health implications of a living organism for which such a department is unlikely to possess all the necessary capacity and expertise.

There are clearly issues surrounding the current regulatory regime for genetically modified organisms that renders it inadequate to face the challenges posed by the rapidly advancing area of biotechnology. A previous initiative to examine options for improving the regulation of biotechnology was left unfinished. The Committee believes it is time to re-examine the options and to establish an effective regulatory regime for genetically modified organisms.

#### **Recommendation 64**

**The Committee recommends that the Minister of Environment and Climate Change lead a process involving other relevant federal departments and including meaningful public consultation to put in place an effective and transparent regulatory regime for genetically modified organisms.**

### **CONTROLLING POLLUTION AND MANAGING WASTES**

Part 7 of CEPA, entitled "Controlling Pollution and Managing Wastes," covers diverse matters related to pollution or waste. Three such matters raised during the CEPA review were fuels; vehicle, engine and equipment emissions; and transboundary movement of hazardous waste.

#### **A. Fuels**

Under Part 7 of CEPA, Division 4 provides for regulating the composition and quality of fuels in order to decrease the amount of pollution being emitted from engines and vehicles that use gasoline and diesel.

In its Discussion Paper, Environment and Climate Change Canada noted that regulations made under Division 4 do not cover all types of fuel components that may be polluting. Since some companies voluntarily limit potential pollutants in their fuels, or add

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484 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 19.

485 Mark Winfield, [Written brief](#), November 2016, p. 12.

additives that reduce emissions, consumers have a choice in the fuels they buy. However, the Department suggested that consumers currently do not have enough information about the differences in fuel qualities to make environmentally informed decisions about fuels. It proposed that CEPA be amended “to authorize expressly the making of regulations respecting labelling of fuel dispensers. Examples could include mandatory labelling to identify whether the fuels have particular additives that make them less harmful to the environment than others.”<sup>486</sup>

In a written brief, Global Automakers of Canada signalled its support for the government’s proposal. However, it noted that while education is important, the group would “very much like to see increased regulation of the fuels industry to ensure that the higher octane and higher quality of fuels are available to advance the policy goals of the government to reduce [greenhouse gas emissions] from Transportation.”<sup>487</sup>

### **Recommendation 65**

**The Committee recommends that CEPA be amended to authorize expressly the making of regulations respecting labelling of fuel dispensers.**

A second point regarding the regulation of fuels that Environment and Climate Change Canada raised in its Discussion Paper relates specifically to subsection 140(2) of CEPA. This section limits the ability of the Governor in Council to make certain regulations relating to fuels by stipulating that the regulations may only be made if they could “make a significant contribution to the prevention of, or reduction in, air pollution.” The department proposed that this section be amended to require only that regulations “contribute to” the prevention of, or reduction in, air pollution.<sup>488</sup>

Global Automakers of Canada was also supportive of this government proposal, noting that “many advanced engine technologies are sensitive to fuel quality” and that they “need appropriate fuels to ensure compliance throughout the expected life of the vehicle.”<sup>489</sup>

### **Recommendation 66**

**The Committee recommends that subsection 140(2) of CEPA be amended to provide that regulations may be made if they “contribute to” the prevention of, or reduction in, air pollution.**

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486 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 9.

487 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 5.

488 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 9.

489 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 5.



Apart from commenting on the government proposals, Global Automakers of Canada encouraged the Committee to consider the role that the petroleum fuel industry may play in advancing the deployment of refuelling infrastructure for zero emission vehicles. The group noted that, “as the primary supplier of energy to the light duty vehicle sector, the fuels industry is well-capitalized [and] well-placed in terms of their geographic presence to help grow, rapidly, the network of alternative fuels stations (particularly hydrogen stations) that will be needed to grow the battery and fuel cell powered vehicle market.”<sup>490</sup>

## **B. Vehicle, Engine and Equipment Standards**

Division 5 of Part 7 of CEPA authorizes the government to regulate the emission performance of vehicles, engines and equipment.

### **1. Regulation of Greenhouse Gas Emissions**

Several witnesses discussed regulations made under CEPA to limit the emissions of six greenhouse gases listed as toxic, as well as the unintended consequences of those regulations.

Global Automakers of Canada described greenhouse gas emission regulations that have already been made under CEPA as “aggressive, effective and ... accelerating the deployment of advanced technology into the Canadian fleet.”<sup>491</sup> Further, the group submitted that the costs associated with reaching the standards is “enormous,” and that “the industry cannot afford further measures at this time.”<sup>492</sup>

In that regard, Stephen Laskowski of the Canadian Trucking Alliance brought to the Committee’s attention an issue arising from new emission regulations applicable to the trucking industry. Mr. Laskowski described a situation where technology to implement new, lower emissions standards is not yet ready, resulting in a need for fleets to be expanded by about 20% “to deal with downtime related to emissions controls.”<sup>493</sup>

According to Mr. Laskowski, some of the greenhouse gas emission reduction technology and supporting wiring systems brought up from the United States is not suitable for use in the Canadian climate. Failing technology is frustrating the industry. Mr. Laskowski urged that Environment and Climate Change Canada work with “Transport Canada to establish testing protocols for greenhouse gas reduction qualifying technology and supporting wiring systems” to ensure that such technology and systems are suitable for use in Canada.<sup>494</sup>

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490 Ibid.

491 Ibid., p. 3.

492 Ibid.

493 ENVI, [Evidence](#), 29 November 2016 (Stephen Laskowski, Senior Vice-President, Canadian Trucking Alliance).

494 Ibid.

### **Recommendation 67**

**The Committee recommends that Environment and Climate Change Canada work with the Canadian Trucking Alliance to establish testing protocols for greenhouse gas reduction qualifying technology to ensure that such technology and systems are suitable for use in Canada.**

Further, Mr. Laskowski described the issue when there is a problem arising from the environmental control device on a truck. The truck enters “limp mode,” which means that the truck will shut down if the problem is not addressed. Drivers may be stranded with time-sensitive loads, such as perishable food shipments, in various parts of the country. This possibility has led a minority of people in the industry to resort to defeat devices to circumvent the environmental controls on trucks. In order to reduce the incentive to install such devices and thereby “level the playing field,” Mr. Laskowski suggested that the distance of the limp mode be extended to allow a truck driver to deliver their load and get home so that their truck can be fixed.<sup>495</sup>

### **Recommendation 68**

**The Committee recommends that Environment and Climate Change Canada consult with the Canadian Trucking Alliance on the degree to which the distance of limp mode should be extended.**

Finally, Mr. Laskowski explained that while it is not legal to use devices that defeat environmental controls in trucks, it is difficult to detect when such a device has been installed in a vehicle. He suggested that the government consider how this issue is approached in the United States, where “the *Clean Air Act* allows the U.S. federal government to go after manufacturers, resellers, and installers of these defeat devices.”<sup>496</sup> Currently, CEPA does not contain a similar authority. As a result, people who manufacture, sell and install defeat devices in Canada are “brazen. They take out full-page ads now.”<sup>497</sup>

### **Recommendation 69**

**The Committee recommends that CEPA be amended to empower Environment and Climate Change Canada to take action against anyone who manufactures, sells or installs equipment that interferes with vehicle emissions controls.**

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495 Ibid.

496 Ibid.

497 Ibid.

## 2. Regulating the Full Suite of Marine Diesel Engines

In its Discussion Paper, the government noted the absence in CEPA of any “explicit authority to regulate the full suite of small marine diesel engines found in Canada.”<sup>498</sup> The government proposed amending CEPA to allow regulations that set standards for machines that are powered by engines as well as small marine diesel engines, such as those found in tugboats, small ferries, emergency rescue vehicles, etc.<sup>499</sup> The Discussion Paper states that such an amendment “would better enable the development of regulations to reduce the impact that machines powered by engines or small marine vessels have on emission levels. They would also further the government’s goal of harmonizing ECCC regulations and standards with those of the U.S. EPA.”<sup>500</sup>

In response to the government’s proposed amendment, the Inuvialuit Regional Corporation and Inuvialuit Game Council cautioned that “any legislative proposal should ensure the standards set for machines or engines will not bar Aboriginal people from conducting traditional harvest activities.”<sup>501</sup>

### Recommendation 70

**The Committee recommends that CEPA be amended to provide authority to regulate the full suite of small marine diesel engines found in Canada.**

### Recommendation 71

**The Committee recommends that future regulations relating to small marine diesel engines contain a grandfather clause to ensure that Indigenous peoples will not be barred from conducting traditional harvest activities.**

## 3. Extending the Temporary Importation Period of Non-Compliant Products

A second amendment to Division 5 of Part 7 of CEPA that the government proposed would allow for the extension of temporary importation periods of non-compliant vehicles, engines or equipment under section 155. Environment and Climate Change Canada suggested that it might be appropriate to allow a non-compliant vehicle to remain in Canada when the product is to be brought into compliance within a given period, or when it is going to be donated to a museum or research body. In addition, additional time is needed in some cases for testing or evaluating a non-compliant product before returning it to the country of origin.<sup>502</sup>

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498 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 7.

499 Ibid.

500 Ibid.

501 Inuvialuit Regional Corporation and Inuvialuit Game Council, [Written brief](#), 6 January 2017, p. 2.

502 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, pp. 6–7.

Global Automakers of Canada welcomed the government’s proposal, stating that it would “provide much needed flexibility, as well as additional impetus for manufacturers of advanced technology to import and assess said technologies for possible deployment into the Canadian Market.”<sup>503</sup> In addition, the group suggested that zero emission vehicles should also be given broad exemptions from the temporary importation requirements to help build awareness of these vehicles and accelerate their deployment in Canada.<sup>504</sup>

## **Recommendation 72**

**The Committee recommends that CEPA section 155 be amended to clarify options in addition to removing a vehicle, engine, or equipment from Canada, including:**

- **bringing the vehicle, engine or equipment into compliance with the regulations prior to the expiry of the temporary importation period, such that it meets the emissions standards of its prescribed class and the importer has complied with all prescribed reporting and testing requirements;**
- **donating the vehicle, engine or equipment prior to the expiry of the temporary importation period, subject to rules that would be set out in the regulations; and**
- **requesting an extension of the temporary importation period by submitting a request to the Minister justifying the extension (e.g., additional tests needed, close to bringing vehicle, engine, or equipment into compliance with regulations).**

## **4. Expanding Authorities Related to Product Defects**

Environment and Climate Change Canada’s third proposal for amending Division 5 relates to section 157 of CEPA, which addresses vehicle, engine and equipment defects. The Department proposed that the provision be expanded to:

- require a company that sells, manufactures or imports a regulated vehicle, engine or piece of equipment to notify the minister and others of defects in the labelling or marking of the product;
- require such a company to undertake corrections at its expense; and
- provide “express authority for the Minister to order a company that was issued a notice of non-compliance to submit a notice of defect when it is in the best interest of protecting the environment and human health.”<sup>505</sup>

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503 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 4.

504 Ibid.

505 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 7.

Responding to the Department's proposal, Global Automakers of Canada submitted that even without mandatory requirements, Canadian companies often follow U.S. actions and report defects and provide remedies. The group further submitted that, in the event that the government's proposals are accepted, the amendments to CEPA should also empower the minister to determine that certain instances of non-compliance may be 'inconsequential.' Such a power exists in U.S. requirements as well as in the *Motor Vehicle Safety Act*.<sup>506</sup>

Further, Global Automakers of Canada suggested that the word "remedy" should be used rather than "correction," since in some instances the appropriate response to product performance issues may be closing the investigation with no further action.<sup>507</sup>

Finally, regarding the proposal for an authority for the minister to order a company to submit a notice of defect, Global Automakers indicated that "additional language providing clarity as to what conditions that may precipitate enacting such authority would be appreciated to ensure sufficient checks and balances are in place for consistent application."<sup>508</sup>

### **Recommendation 73**

**The Committee recommends that CEPA's Notice of Defect provisions be amended to expressly include:**

- **defects in compliance with emissions standards;**
- **label deficiencies;**
- **a requirement for companies to cover the cost of corrections;**  
**and**
- **an authority for the Minister to order a company to submit a notice of defect.**

### **5. Ensuring Consistency with the *Motor Vehicle Safety Act***

The government Discussion Paper described amendments that were made to the *Motor Vehicle Safety Act* through a budget implementation act in 2014, which resulted in inconsistencies between that act and CEPA. Environment and Climate Change Canada proposes that CEPA be amended to resolve these inconsistencies as well as to provide tools in CEPA that are now available under the *Motor Vehicle Safety Act*.<sup>509</sup>

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506 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 4.

507 Ibid.

508 Ibid.

509 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, pp. 8–9.

Global Automakers of Canada submitted that it is not clear what changes the government is envisioning, particularly in light of the fact that Bill S-2, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act, is before Parliament.<sup>510</sup> The group cautioned “that changes to the administration of CEPA that seek to provide the same regulatory oversight as the [*Motor Vehicle Safety Act*] must also include similar allowances for the flexibility and discretion provided in the [*Motor Vehicle Safety Act*] concerning the enforcement of regulation.”<sup>511</sup> Furthermore, Global Automakers suggested that new CEPA authorities should not exceed existing U.S. authorities and mechanisms for notification and remedy because “it is already the common practice of our industry to do the same for Canadian market vehicles affected by the same defect.”<sup>512</sup>

### C. Transboundary Movement of Hazardous Waste

Division 8 of Part 7 of CEPA provides a permitting regime for the import, export or transit of hazardous waste, hazardous recyclable material, and prescribed non-hazardous waste for final disposal.

The government Discussion Paper states that CEPA currently does not provide authority to suspend or revoke a permit. Environment and Climate Change Canada suggested that such action may be appropriate if the minister has reason to believe that the permit holder is in contravention of the terms and conditions of the permit or that a person provided false or misleading information to obtain the permit. It may also be appropriate to suspend or revoke a permit “if the authorities of the country of destination or transit or of the jurisdiction of destination in Canada suspended or revoked their authorization.”<sup>513</sup>

The Canadian Steel Producers Association encouraged the Committee “to maintain a level of assurance that there are only certain scenarios in which the Government could suspend or revoke a permit. Such scenarios need to be clearly identified to help ensure clarity for businesses to comply with environmental regulations.”<sup>514</sup>

#### Recommendation 74

**The Committee recommends that CEPA be amended to expressly provide the authorities to suspend or revoke permits issued under subsection 185(1), in specified circumstances.**

Professor Winfield also commented on Division 8 of Part 7 of CEPA. He noted that relevant regulations made under this Division do not require that notices and manifests

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510 Global Automakers of Canada, [Written brief](#), 8 December 2016, pp. 4–5.

511 Ibid.

512 Ibid.

513 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, pp. 27–28.

514 Canadian Steel Producers Association, [Written brief](#), 1 December 2016, p. 2.

provide information about the presence of CEPA-toxic substances in waste streams or the quantities or concentrations of such substances. He suggested that such “information could be extremely useful from the perspective of toxic substances management or the fulfilment of international obligations.”<sup>515</sup>

### **Recommendation 75**

**The Committee recommends that notices and manifests required under the *Export and Import of Hazardous Waste and Hazardous Recyclable Materials Regulations* should require the provision of information on the presence of CEPA-toxic substances in waste streams, or the quantities or concentrations in which such substances might be present.**

## **EMERGENCY PLANNING AND RESPONSE**

Part 8 of CEPA is used to require a wide range of facilities to prepare environmental emergency plans for an extensive list of substances that could be problematic if released to the environment. In addition, various authorities throughout the Act empower the minister to intervene in the case of an emergency.<sup>516</sup>

Both in its Discussion Paper and in testimony, Environment and Climate Change Canada raised an issue with section 195 of CEPA, which “authorizes the Minister to release substances in order to conduct field research on causes, effects and response to environmental emergencies.”<sup>517</sup> Specifically, section 195 “does not explicitly exempt the Minister from all potentially applicable prohibitions that would otherwise prevent the research.”<sup>518</sup> The Department suggested amending section 195 to expand the list of legal prohibitions from which the minister is exempt when carrying out research on environmental emergencies.<sup>519</sup> It also suggested expanding the scope of section 195 to provide for authorizing third-party field research, and to allow such research to be on any substance.<sup>520</sup>

The Chemistry Industry Association of Canada supported the government’s proposals for amending section 195. However, the group specifically noted that “such amendments need to be cognizant of Transport Canada’s reporting requirements as well as any requirements placed on companies by the provincial governments. Changes to CEPA need to be harmonized in those areas to avoid duplication.”<sup>521</sup>

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515 Mark Winfield, [Written brief](#), November 2016, p. 6.

516 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

517 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 28. Also see ENVI, [Evidence](#), 8 March 2016 (John Moffet).

518 Ibid.

519 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 28.

520 Ibid.

521 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 13.

Domtar Inc. raised concerns with new environmental emergency regulations that were proposed in 2016. Compared to the existing regulations, the new regulations would require reporting on 49 more hazardous substances, among other changes. In a written brief, Domtar described the increased cost and administrative burden that the new regulations will impose upon the company. It wrote that “limited staff resources will be diverted from improving facility operations and environmental performance to managing administrative paperwork resulting in no environmental benefit.”<sup>522</sup>

## GOVERNMENT OPERATIONS, FEDERAL UNDERTAKINGS AND FEDERAL LAND

Part 9 of CEPA provides for environmental regulation of “the federal house,” which includes federal government operations, federal works and undertakings and federal lands, including aboriginal lands. Federal environmental legislation for the federal house is important because, in general, most provincial environmental laws do not apply to the federal house.<sup>523</sup> However, the Committee heard that powers under Part 9 have been used “quite sparingly. ... We have two regulations and one code of practice.”<sup>524</sup> Ms. Laurie-Lean of the Mining Association of Canada urged the Committee to consider “whether the federal government is demonstrating leadership in its own jurisdiction.”<sup>525</sup>

In relation to federally regulated railways, the Railway Association of Canada noted that, in the absence of federal environmental requirements, its members are being forced to obtain provincial approvals or risk regulatory action. The association recommended that the minister create “a task force to review the application of provincial regulations to federally regulated entities such as railways.”<sup>526</sup>

The government recognizes the gaps in environmental regulation under Part 9. In its Discussion Paper, it suggested addressing some of the gaps by amending Part 9 of CEPA to facilitate the incorporation by reference of provincial environmental regimes, on a jurisdiction-by-jurisdiction basis and also on the basis of classes of entities or areas, or specific entities or areas.<sup>527</sup>

Professor Winfield made two suggestions for filling the gaps in environmental regulation. He suggested that, “in the absence of specific federal regulations, CEPA should require federal agencies to comply with the relevant provincial/territorial environmental statutes and regulations affecting their operations.”<sup>528</sup> Alternatively, or in addition to the application of provincial legislation, he suggested establishing a general offence provision in Part 9 for activities that cause harm to the environment.<sup>529</sup>

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522 Domtar Inc., [Written brief](#), 1 December 2016, p. 3.

523 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

524 Ibid.

525 ENVI, [Evidence](#), 7 June 2016 (Justyna Laurie-Lean).

526 Railway Association of Canada, [Written brief](#), 9 December 2016, pp.8–9.

527 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 30.

528 Mark Winfield, [Written brief](#), November 2016, pp. 8–9.

529 Mark Winfield, [Written brief](#), November 2016, pp. 8–9; ENVI, [Evidence](#), 22 November 2016 (Mark Winfield).



With regard to the environmental regulation of federal works and undertakings in particular, the Railway Association of Canada submitted a written brief suggesting that the definition of “federal work or undertaking” in paragraph 3(1)(b) of CEPA could be clarified. Specifically, the association called for paragraph 3(1)(b) to be amended such that the word “railway” is modified with the words “as that term is defined in the *Canada Transportation Act*, S.C. 1996, c. 10,” to make it more consistent with other federal legislation.<sup>530</sup>

## A. Aboriginal Lands

In a written brief, Grand Council Treaty #3 suggested consideration of addressing the gaps with respect environmental protection on aboriginal lands by incorporating by reference provincial and territorial legislation.<sup>531</sup> In contrast, Ms. Morin of ArrowBlade Consulting suggested that the government should develop specific objectives, guidelines and codes of practice on aboriginal lands, as recommended in the CEPA toolkit published by the Assembly of First Nations.<sup>532</sup> Chief Bill Erasmus of the Assembly of First Nations reminded the Committee that, for dealing with environmental concerns on reserves and in treaty areas, “you have to bring our people into the fold so we’re making decisions now that we don’t have to go back to later.”<sup>533</sup>

The Committee notes that in a 2009 report entitled *Land Management and Environmental Protection on Reserves*, the Auditor General concluded that Indigenous and Northern Affairs Canada and Environment and Climate Change Canada “have not addressed significant gaps in the regulatory framework that protects reserve lands from environmental threats.”<sup>534</sup>

### Recommendation 76

#### The Committee recommends:

- that CEPA be amended to provide for a legislated framework and a promulgated regulatory regime on federal lands;
- that the government develop specific objectives, guidelines and codes of practice on federal lands excepting aboriginal lands; and
- that the federal government initiate consultations with Indigenous peoples on the development of specific objectives, guidelines and codes of practice on aboriginal lands and promulgate a regulatory regime.

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530 Railway Association of Canada, [Written brief](#), 9 December 2016, p. 5.

531 Grand Council Treaty #3, [Written brief](#), 1 December 2016, p. 1.

532 ENVI, [Evidence](#), 9 June 2016 (Nalaine Morin, Principal, ArrowBlade Consulting Services). See Assembly of First Nations, [Canadian Environmental Protection Act, 1999 \(CEPA, 1999\) Toolkit](#), n.d., p. 5.

533 ENVI, [Evidence](#), 24 November 2016 (Bill Erasmus).

534 Office of the Auditor General of Canada, [“Chapter 6–Land Management and Environmental Protection on Reserves,” 2009 Fall Report of the Auditor General of Canada](#). para. 6.93.

## ENFORCEMENT

Part 10 of CEPA addresses enforcement. The Commissioner of the Environment and Sustainable Development audited the enforcement of CEPA in 2011 and found that the enforcement program was “not very well managed to adequately enforce compliance with [CEPA] and ensure that threats to Canadians and their environment from pollution are minimized.”<sup>535</sup> Specifically, the audit found that:

- The Environmental Enforcement Directorate lacks key information ... to know whether it is targeting its enforcement activities toward the highest-risk violators or the highest risks to human health and the environment....
- The Department’s enforcement actions are limited by gaps in its capacity to enforce CEPA regulations. ... [S]ome regulations are excluded from being priorities due to lack of adequate training for enforcement officers or lack of adequate laboratory testing to verify compliance.
- The Environmental Enforcement Directorate failed to follow up on half of its enforcement actions during the audit period ... In addition, often it did not apply key management controls to ensure that enforcement officers applied the Act in a fair, predictable, and consistent manner across the country, as called for by the Act.
- The Department has been slow to act on significant shortcomings that impede successful enforcement...<sup>536</sup>

In its response to the audit, Environment and Climate Change Canada agreed with the Commissioner’s recommendations, but disagreed with the audit findings and conclusions. The Commissioner reported that “information contained in the Department’s responses to our audit recommendations contradicts our audit evidence. The Department was not able to provide evidence to support the representations made in its responses.”<sup>537</sup>

In a letter to the Chair of the Committee sent in January 2017, the Commissioner identified enforcement of CEPA and its regulations as one of the six areas of the Act that she believed were in need of attention.<sup>538</sup>

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535 Commissioner of the Environment and Sustainable Development, [Letter to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development \(Re: Review of the Canadian Environmental Protection Act, 1999\)](#), 24 January 2017, Appendix A. See Office of the Auditor General of Canada, “[Chapter 3—Enforcing the Canadian Environmental Protection Act, 1999](#),” *2011 December Report of the Commissioner of the Environment and Sustainable Development*.

536 Commissioner of the Environment and Sustainable Development, [Letter to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development \(Re: Review of the Canadian Environmental Protection Act, 1999\)](#), 24 January 2017, Appendix A.

537 Office of the Auditor General of Canada, “[Chapter 3—Enforcing the Canadian Environmental Protection Act, 1999](#),” *2011 December Report of the Commissioner of the Environment and Sustainable Development*.

538 Commissioner of the Environment and Sustainable Development, [Letter to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development \(Re: Review of the Canadian Environmental Protection Act, 1999\)](#), 24 January 2017, p. 2.

## A. Prosecutions and Fines

During this study, government testimony did not suggest that any significant amendments to the Act are needed on the topic of enforcement of CEPA. Indeed, Mr. Moffet described CEPA's enforcement regime as "fairly new and modern" and as providing "a wide range of tools that allow us to respond both in a measured way and also in a very significant way, if warranted."<sup>539</sup> Witness testimony did not suggest otherwise.<sup>540</sup> However, witnesses raised some concerns with the government's perceived hesitancy to enforce CEPA through prosecutions and fines.

Professor Boyd implied that the government is focussing too heavily on alternative measures such as warnings to deal with noncompliance with CEPA and should be less hesitant to lay charges. He stated: "failing to use that stick that's in the toolbox is one of the reasons Canada continues to have problems with pollution and toxic substances and why we have such a significant environmental burden of disease."<sup>541</sup>

Professor Boyd was also critical of the extent to which fines have been imposed under CEPA for non-compliance. He testified that "the first 23 years of enforcement under CEPA resulted in a smaller number of fines than one year of enforcement of an overdue book in the Toronto Public Library."<sup>542</sup>

Regarding the lack of tickets issued and fines imposed, the government asserted that, prior to December 17, 2014, only nine CEPA regulations contained offences for which a ticket could be issued as determined by the *Contraventions Regulations* under the *Contraventions Act*. Also, these offences were applicable to a relatively small regulated community.<sup>543</sup> However, since that time, more offences have become ticketable. There are currently 18 regulations under CEPA and one section of CEPA for which certain designated offences are ticketable, as set out in the *Contraventions Regulations*. This has resulted in an increase in the number of tickets issued in the past two years.<sup>544</sup> The government also explained that the use of tickets is only available in seven provinces, which have entered into agreements with Justice Canada.<sup>545</sup>

Further, the government anticipated the coming into force in 2017 of the new administrative monetary penalties regime, which will allow the government to address noncompliance with "an administrative monetary penalty instead of pursuing prosecution, depending on the circumstances of each offence."<sup>546</sup> Cameco Corporation suggested that

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539 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

540 For example, see Cameco Corporation, [Written brief](#), 30 November 2016, p. 4.

541 ENVI, [Evidence](#), 27 October 2016 (David Boyd).

542 Ibid.

543 [Written Response from the Department of the Environment to Questions Asked During the Committee Meeting on Tuesday, March 8, 2016](#), p. 4.

544 Ibid.

545 Ibid.

546 ENVI, [Evidence](#), 29 November 2016 (Margaret Meroni, Chief Enforcement Officer, Enforcement Branch, Department of the Environment).

the government focus resources on educating the regulated community on how the new regime will be administered.<sup>547</sup>

In its Discussion Paper, Environment and Climate Change Canada proposed three minor amendments to the enforcement provisions of CEPA. One such proposal, which attracted comments from a stakeholder, would see the *Environmental Violations and Administrative Monetary Penalties Act* amended to authorize the refusal or revocation of a permit for unpaid administrative monetary penalties.<sup>548</sup>

The Chemistry Industry Association of Canada supported the government's proposal, but made it clear that any revocation of a permit should be directly associated to an offence. The association expressed concern that the power to revoke or deny a permit not be used as leverage against a company for an unrelated activity.<sup>549</sup>

### **Recommendation 77**

**The Committee recommends that the *Environmental Violations and Administrative Monetary Penalties Act* be amended to authorize the refusal or revocation of a permit for unpaid administrative monetary penalties.**

### **Recommendation 78**

**The Committee recommends that the *Environmental Violations and Administrative Monetary Penalties Regulations* be brought into force immediately.**

### **Recommendation 79**

**The Committee recommends that Environment and Climate Change Canada hold an open and transparent review of the Compliance and Enforcement Policy for CEPA.**

## **B. Disclosure of Enforcement Information**

A second issue relating to enforcement that was discussed during the review relates to the extent to which the government makes environmental enforcement information accessible to the public.

A 2011 article published in the *McGill International Journal of Sustainable Development Law and Policy* discussed during a Committee meeting suggested that the NEMISIS database should be used to make non-confidential environmental enforcement data accessible to the public. Such data would include “the name of the offenders, specific

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547 Cameco Corporation, [Written brief](#), 30 November 2016, p. 4.

548 Environment and Climate Change Canada, [Discussion Paper. Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 35.

549 Chemistry Industry Association of Canada, [Written brief](#), 25 November 2016, p. 14.

location of the offenders, type of offences, total number violations, and how many investigations resulted in a trial, were stayed by the Attorney General or were transformed into public prosecutions.<sup>550</sup>

On behalf of the Environmental Enforcement Directorate at Environment and Climate Change Canada, Heather McCready informed the Committee that the NEMISIS database is being replaced with a “new database system that will be much more modern and far easier ... to pull information from.”<sup>551</sup> The new database is not designed to enable public access and it will not be accessible to the public due to privacy concern. Rather, the department extrapolates statistics for the public.<sup>552</sup> However, Ms. McCready suggested that it would “not be impossible at all” to enable public access to the database in the future.<sup>553</sup>

### **Recommendation 80**

**The Committee recommends that Environment and Climate Change Canada design a new, online, searchable, public environmental enforcement database while respecting privacy concerns as required under the law.**

### **C. Commentary from Regulated Entities**

During the study, various regulated entities submitted commentary related to the enforcement of CEPA, along with several recommendations.

The Railway Association of Canada provided three substantial comments. The first relates to a need for improved guidance materials for enforcement officers. The association wrote that the railway industry has “experienced numerous instances where aspects of CEPA and its regulations have been subject to interpretation by different enforcement officers. Interpretations have differed with the original understanding as communicated during compliance promotion sessions.”<sup>554</sup>

Second, the Railway Association wrote that it was concerned that environmental enforcement staff have conducted unannounced inspections of railway yards. The association submitted that, before entering a railway yard, inspectors need to be briefed on health and safety matters and railway staff need to be made aware of inspectors’ presence on site in case of an emergency or a need to evacuate. Also, with advance knowledge of an inspection, railways can ensure that appropriate staff are

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550 Meredith Cairns, Ceyda Turan and William Amos, “Disclosure of Environmental Law Enforcement in Canada: Lessons from America,” *McGill International Journal of Sustainable Development Law and Policy*, Vol. 7, Issue 2, 2011, p. 223.

551 ENVI, [Evidence](#), 29 November 2016 (Heather McCready, Director General, Environmental Enforcement Directorate, Enforcement Branch, Department of the Environment).

552 Ibid.

553 Ibid.

554 Railway Association of Canada, [Written brief](#), 9 December 2016, pp. 10–11.

available on site to answer questions and that inspectors are not questioning employees on site who may have no knowledge of a particular matter being reviewed.<sup>555</sup>

Finally, the Railway Association suggested that “documentation and record keeping requirements under CEPA need to be modernized so that they recognize the use of centralized electronic data management systems.”<sup>556</sup> The association submitted that, in the railway sector, “environmental compliance data is maintained at a primary business location rather than in hardcopy form at regional rail facilities.”<sup>557</sup>

Robert Larocque of the Forest Products Association of Canada raised a concern that federal and provincial environmental testing requirements are not harmonized. He described situations where sampling or testing accepted under provincial legislation is not recognized under federal legislation. This leads to duplication of testing and enforcement when a single entity is visited by both a provincial and federal enforcement officer “just because there was a testing requirements difference between the two pieces of legislation.”<sup>558</sup>

### **Recommendation 81**

**The Committee recommends that Environment and Climate Change Canada work with provincial enforcement officials to harmonize environmental testing and sampling requirements.**

## **MISCELLANEOUS**

### **A. Trading Systems**

In testimony, Mr. Moffet of Environment and Climate Change Canada highlighted sections 322 and 326 of CEPA, which authorize the government to establish guidelines and programs and to make regulations relating to trading systems.<sup>559</sup> He testified that while trading systems are often thought of in relation to air emissions – such as cap and trade systems – the government has used trading systems in regulations relating to other matters, such as renewable fuels and sulphur in gasoline.<sup>560</sup>

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555 Ibid., p.11.

556 Ibid.

557 Ibid.

558 ENVI, [Evidence](#), 1 December 2016 (Robert Larocque).

559 ENVI, [Evidence](#), 8 March 2016 (John Moffet).

560 Ibid.

Mr. Moffet noted that in other jurisdictions, in some cases effective trading systems provide for auctioning of permits. Auctioning “allows the market to demonstrate the value of the permit.”<sup>561</sup> However, CEPA does not provide authority to auction permits.<sup>562</sup> The government Discussion Paper suggests amending CEPA to provide such an authority.<sup>563</sup>

Global Automakers of Canada commented that, in principle, it supports a mechanism to make tradeable units available to industry. However, the group suggested that such a mechanism should ensure that participants have access to the “broadest possible pool of credits from a variety of sources in an open market.”<sup>564</sup> Specifically, the group submitted that “if there is a policy objective in place to enhance deployment of a certain type of technology, manufacturers should have the option to buy credits in a market that:

- Does not tighten with regulation specific to the automobile sector;
- Provides a mechanism for those that have not yet developed the technology or are not yet able to deploy it in volume, generate credits in other ways (such as contributions to expanding [zero emission vehicle] infrastructure, etc.);
- Provides access to an adequate pool of credits purchasable from the Receiver General.”<sup>565</sup>

## **Recommendation 82**

**The Committee recommends that CEPA be amended to expressly provide for the tools necessary to establish and operate a properly functioning auctioning system, such as the authority to sell tradeable units either at a fixed price or by competitive bidding.**

## **B. Interim Regulations**

The government Discussion Paper states that, “unless warranted by different environmental or health protection objectives, regulatory differences among jurisdictions can impose unnecessary costs on citizens and businesses, particularly in relation to integrated markets such as those for vehicles, engines, and fuels, as well as other products.”<sup>566</sup> The Discussion Paper goes on to explain that the length of the Canadian regulatory process makes it difficult for the government to respond promptly to maintain

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561 Ibid.

562 Ibid.

563 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 10.

564 Global Automakers of Canada, [Written brief](#), 8 December 2016, pp. 5–6.

565 Ibid.

566 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 30.

regulatory requirements that are harmonized with other jurisdictions. It proposes that CEPA be amended to authorize the minister to issue an interim order to maintain alignment with a foreign regulation while Canadian regulations are developed and finalized.

Two stakeholders that commented on the government's proposal – Domtar Inc. and the Canadian Steel Producers Association – raised a concern that an interim order imposed without adequate process and consultation could impose requirements that are not appropriate in the Canadian context.<sup>567</sup> The Canadian Steel Producers Association wrote that “if there are programs in other foreign jurisdictions that are not appropriate for the Canadian context, it may not be in the best interest for Canada to align and it should be reviewed on a case-by-case basis.”<sup>568</sup>

### **Recommendation 83**

**The Committee recommends that CEPA be amended to expressly allow the Minister to issue an interim order (similar to that in section 163), to be used for any regulation under CEPA, to the extent necessary to maintain alignment with a foreign regulation and subject to notice provisions.**

### **C. Performance Agreements**

In its Discussion Paper, Environment and Climate Change Canada described performance agreements as “flexible instruments with core design criteria negotiated among parties to achieve specified environmental results. They stipulate clear and measurable performance standards and include effective accountability mechanisms.”<sup>569</sup>

However, the text of CEPA does not mention performance agreements. Rather, performance agreements are entered into under a government policy document.<sup>570</sup> As a consequence, the minister cannot point to a performance agreement as fulfilling the minister's obligations under sections 91 and 92 to make a regulation or other instrument respecting preventive or control actions in relation to a substance. Accordingly, Environment and Climate Change Canada proposed that CEPA be amended to “expressly allow performance agreements between either the Minister of Health or the Minister of [Environment and Climate Change] and another party, to fulfill the risk management obligation.”<sup>571</sup>

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567 Domtar Inc., [Written brief](#), 1 December 2016, pp. 2–3; Canadian Steel Producers Association, [Written brief](#), 1 December 2016, p. 2.

568 Canadian Steel Producers Association, [Written brief](#), 1 December 2016, p. 2.

569 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, pp. 16–17.

570 Ibid.

571 Ibid.



Domtar Inc. was generally supportive of performance agreements under CEPA. The company wrote that such agreements promote flexibility in managing substances and their uses and that they allow for provincial programs to continue without additional regulatory burden. However, the company urged caution in formalizing performance agreements “to ensure that the voluntary essence and inherent benefits of these initiatives is not lost in the process.”<sup>572</sup>

Professor Scott also commented on the use of performance agreements. In her view, performance agreements are not “appropriate or effective substitutes for the mandatory precautionary action that should be required in managing toxic substances under [CEPA].”<sup>573</sup>

#### **Recommendation 84**

**The Committee recommends that CEPA be amended to expressly allow performance agreements between either the Minister of Health or the Minister of Environment and Climate Change and another party, to fulfill the risk management obligation, subject to specific criteria, third party oversight and public notice.**

#### **D. Incorporation by Reference**

Incorporation by reference is a means of including a document in legislation by referencing it rather than reproducing it in the legislation. Documents may be incorporated by reference into legislation either as they exist at a particular time or as they are amended from time to time.

Environment and Climate Change Canada described incorporation by reference as “a timely and effective means of responding to advances in areas such as science, technology, and any associated technical standards; it can help ensure that legislation remains current without requiring the full legislative amendment process.”<sup>574</sup>

The *Statutory Instruments Act* already provides the federal government with various authorities related to incorporation by reference. However, in its Discussion Paper, the department suggested expanding those authorities to allow the following types of materials, as amended from time to time, to be incorporated by reference into CEPA:

- Formal instruments made under the Act, such as guidelines and codes of practice.

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572 Domtar Inc., [Written brief](#), 1 December 2016, p. 2.

573 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), 2 August 2016, p. 8.

574 Environment and Climate Change Canada, [Discussion Paper: Canadian Environmental Protection Act, 1999 – Issues & Possible Approaches](#), May 2016, p. 31.

- Internally generated technical documents that specify: 1) how to quantify prescribed data to be reported, including factors to be used for quantification; and 2) how to conduct prescribed tests, measurements, sampling, monitoring, and analyses.
- Documents produced jointly by the Minister of [Environment and Climate Change] and/or the Minister of Health, with another Minister or body in the federal public administration.

When dealing with internally or jointly produced documents, CEPA could be amended to ensure that an appropriate framework is in place to provide accountability for these documents.<sup>575</sup>

Stakeholders were not supportive of the government’s proposal. The Global Automakers of Canada were generally supportive of the mechanism of incorporation by reference but cautioned “strongly against increasing the scope of allowable documents that may be enshrined via such a process, without ensuring that there is a robust and fair process for generating and vetting these documents with stakeholders.”<sup>576</sup>

Similarly, the Canadian Consumer Specialty Products Association was unsupportive of the government incorporating documents by reference without the government having undertaken a full consultation with stakeholders on the documents. The association suggested that such a consultation would “definitely be required for any documents ‘internally generated’ by Government.”<sup>577</sup>

Canadian Manufacturers and Exporters were not supportive of incorporation by reference. The group submitted that “anything that is given the force of law should be required to go through the formal rulemaking process to provide regulated entities the opportunity for notice and comment especially where revisions of such documents may impact the manner in which regulated entities comply.”<sup>578</sup>

Professor Scott also did not support the government’s proposal, which she suggested lacks “a clearly stated or compelling justification” and “would undermine transparency and accountability in law-making” under CEPA.<sup>579</sup> She described the 2015 bill that amended the *Statutory Instruments Act* to provide for incorporation by reference as having been opposed by “all opposition parties ... because it went too far in creating anti-democratic powers to incorporate by reference.”<sup>580</sup> Accordingly, she suggested that the government’s proposal to further expand its incorporation by reference powers creates

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575 Ibid., p. 32.

576 Global Automakers of Canada, [Written brief](#), 8 December 2016, p. 7.

577 Canadian Consumer Specialty Products Association, [Written brief](#), 1 December 2016, p. 9.

578 Canadian Manufacturers and Exporters, [Written brief](#), n.d., p. 5.

579 Dayna N. Scott, [Written comments on two documents provided to the Standing Committee on Environment and Sustainable Development, in review of CEPA 1999](#), August 2, 2016, p. 13.

580 Ibid., p. 14.

“concern that bureaucratic interests, which here are in clear tension with the public interest, are unduly directing the Government’s approach to the statutory review of [CEPA].”<sup>581</sup> She urged the Committee to reject the government’s proposal that its authority to incorporate documents by reference be expanded under CEPA.<sup>582</sup>

### **Recommendation 85**

**The Committee recommends that CEPA be amended to expand the government’s authority to incorporate by reference, subject to public notice and consultation, the following types of materials:**

- **formal instruments made under CEPA, such as guidelines and codes of practice;**
- **internally generated government technical documents that specify: 1) how to quantify prescribed data to be reported, including factors to be used for quantification; and 2) how to conduct prescribed tests, measurements, sampling, monitoring, and analyses; and**
- **documents produced jointly by the Minister of Environment and Climate Change and/or the Minister of Health, with another minister or body in the federal public administration.**

### **E. Funding**

During the review, members of the Committee were interested to hear stakeholders’ views on whether the government has allocated appropriate funding for implementing CEPA, including the Chemicals Management Plan.

Mr. Masterson responded in the affirmative.<sup>583</sup> In his view, “there has been robust financial support to allow the [chemicals management] program to do what it was intended to do and to remain credible in the eyes of the public.”<sup>584</sup> He testified that he was pleased that, in the 2015 budget, funding for the Chemicals Management Plan was renewed for another five years.<sup>585</sup>

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581 Ibid.

582 Ibid.

583 ENVI, [Evidence](#), 10 March 2016 (Bob Masterson).

584 Ibid.

585 Ibid.

Professor Scott also implied that it appears that the Chemicals Management Plan has not suffered from a lack of resources. In her words, “in many cases the shortcomings are with the act” rather than with a lack of funding.<sup>586</sup>

While no stakeholder suggested that the Chemicals Management Plan has lacked funding, some stakeholders submitted that additional funding to implement other aspects of CEPA would be beneficial.

Professor Boyd suggested that “a lack of human and financial resources” is “one of the likely reasons for Canada’s dismal record of environmental enforcement.”<sup>587</sup> He testified that since 1983, federal spending on environmental protection has failed to keep pace with inflation.<sup>588</sup>

Likewise, Professor Smol testified about a “dramatic” decline in research and science from Environment and Climate Change Canada, Fisheries and Oceans Canada, and Parks Canada. He suggested that the federal government “has some of the most outstanding, dedicated, skilled scientists,” and that federal science programs need “reinvigorating.”<sup>589</sup>

Melody Lepine of the Mikisew Cree First Nation called for federal funding for the monitoring program within her community. She said that “there’s a lot of talk and there seems to be a lot of will ... [that the community wants to see] backed up with some action.”<sup>590</sup>

Professor Smol emphasized the value of investing in monitoring programs. He testified that research carried out in 2005 in the United States “calculated that the cost of monitoring was about one-half a percentage point of compliance costs and less than one-tenth of a percentage point of the estimated health and ecosystem costs. Similarly, the U.S. EPA concluded that the estimated costs of cleaning up industrial groundwater contamination is often 30 to 40 times, and sometimes up to 200 times, greater than the costs associated with simply preventing the contamination from happening in the first place.” In his view, investing in monitoring programs “is a bargain.”<sup>591</sup>

## **Recommendation 86**

**The Committee recommends that the government increase funding to ensure effective monitoring and enforcement of CEPA.**

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586 ENVI, [Evidence](#), 9 June 2016 (Dayna Scott, Associate Professor, Osgoode Hall Law School and the Faculty of Environmental Studies, York University, As an Individual).

587 David Boyd, [Written brief](#), 7 November 2016, p. 36.

588 Ibid.

589 ENVI, [Evidence](#), 1 December 2016 (John Smol).

590 ENVI, [Evidence](#), 17 November 2016, (Melody Lepine).

591 ENVI, [Evidence](#), 1 December 2016 (John Smol).

## **F. Discrepancies between English and French Versions of the Act**

In a letter sent to the Chair of the Committee on June 2, 2016, the Standing Joint Committee for the Scrutiny of Regulations drew to the Committee's attention discrepancies between the English and French versions of the Act in paragraphs 153(1)(a), 212(1)(b) and 191(b).<sup>592</sup> In addition, the Committee notes a discrepancy between the two versions of CEPA in subsection 343(1), which sets out the requirement for a statutory review of CEPA.

### **Recommendation 87**

**The Committee recommends that discrepancies between the English and French versions of CEPA be reconciled.**

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592 Standing Joint Committee for the Scrutiny of Regulations, [Letter to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development](#) (Re: Discrepancies between the French and English versions of the Act), 2 June 2016.



# LIST OF RECOMMENDATIONS

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## Recommendation 1

The Committee recommends that subsection 343(1) of CEPA be amended to require a Parliamentary review every 10 years rather than every 5 years. .... 2

## Recommendation 2

The Committee recommends that CEPA be amended to expand and strengthen duties and rights for transparency, public participation, accountability mechanisms and consultation. .... 6

## Recommendation 3

The Committee recommends that the preamble of CEPA be amended:

- to recognize a right to a healthy environment;
- to mention the importance of considering vulnerable populations in risk assessments; and
- to recognize the principles put forward in the United Nations Declaration on the Rights of Indigenous Peoples. .... 7

## Recommendation 4

The Committee recommends that the government consider amending CEPA to include the right to a healthy environment in the administrative duties of the Government of Canada (section 2), in the development of objectives, guidelines, and codes of practice (sections 54 and 55), in the assessment of the risks of toxic substances (section 76.1), and the development of risk management tools (section 91). .... 8

## Recommendation 5

The Committee recommends that a series of substantive and procedural improvements be incorporated into the various sections of CEPA to give greater force and effect to environmental rights, including as set out in recommendations 2, 4, 15–34, 36, 37, 39–50, 52, 54, 56–60, 62, 75, 76 and 80. .... 8

**Recommendation 6**

**The Committee recommends that – in consultation with Indigenous peoples – the government revisit and potentially amend the definition of “aboriginal government” in CEPA to better reflect current Indigenous governance structures..... 9**

**Recommendation 7**

**The Committee recommends that section 9 of CEPA be amended to strengthen the criteria for the establishment of administrative agreements and enhance monitoring and reporting of the performance of entities that enter into such agreements with the Minister..... 11**

**Recommendation 8**

**The Committee recommends that the provisions of CEPA regarding the criteria required to establish equivalency agreements be strengthened, and that the requirement for monitoring and reporting of performance under any agreements by the affected province and by Environment and Climate Change Canada be strengthened. .... 13**

**Recommendation 9**

**The Committee recommends that subsection 10(3) of CEPA be amended to add the following third precondition to a declaration of equivalent provisions: that the government of the jurisdiction has in place an enforcement and compliance policy similar to that issued by the Minister providing for effective enforcement and compliance of the provisions described in the two current preconditions. .... 13**

**Recommendation 10**

**The Committee recommends that CEPA be the principal statute for regulating products containing toxic substances..... 15**

**Recommendation 11**

**The Committee recommends that CEPA be amended to formally allow the Minister of Health to be the lead in developing and recommending instruments and regulations under CEPA for a toxic substance in circumstances where the risks posed by the toxic substance are health related. .... 18**



**Recommendation 12**

The Committee recommends that CEPA be amended to provide the Ministers with the express authority to request the following information under section 71 for the purpose of assessing whether a substance is toxic or capable of becoming toxic:

- other information, such as methodology, data, models used, etc.;
- samples of the toxicological tests and/or the other tests; and
- any other information relevant to the assessment of a substance..... 21

**Recommendation 13**

The Committee recommends that CEPA be amended to allow sections 46 and 71 notices to require that information be updated if it changes and to ensure that there are clear, consistent time frames (e.g., 7 years) for the maintenance and retention of records related to regulations, instruments and information gathering, but also allow these timeframes to be tailored if needed, in specific circumstances. .... 21

**Recommendation 14**

The Committee recommends that the Ministers seek out relevant and reliable data from other jurisdictions, including data from REACH, so that Canadian assessors may benefit from other efforts deployed to conduct those assessments..... 21

**Recommendation 15**

The Committee recommends that, following stakeholder consultations on the implementation of hazard labelling, CEPA be amended to require mandatory hazard labelling of all products containing toxic substances. .... 22

**Recommendation 16**

The Committee recommends that sections 88 and 113 of CEPA be amended to require the disclosure of the explicit chemical or biological names of substances or living organisms when risk management instruments are in place for the substance or living organism. .... 23

**Recommendation 17**

**The Committee recommends that sections 88 and 113 of CEPA be amended so that a masked name may be used for five years, and after that time the government may release the explicit chemical or biological name of a substance or living organism, subject to providing the proponent with an opportunity to demonstrate that the chemical or biological name should remain confidential for a longer period of time..... 23**

**Recommendation 18**

**The Committee recommends that section 313 of CEPA be amended to specify that information provided to the Minister under the Act is presumed to be public and to require persons who submit a request for confidentiality under section 313 to provide the Minister with justification to support the request. .... 24**

**Recommendation 19**

**The Committee recommends that the National Pollutant Release Inventory be improved by:**

- **Removing the exemption for oil and gas exploration and drilling;**
- **Including separate NPRI spills reporting requirements in CEPA (amending sections 46 and 201);**
- **Requiring reports on facility operational performance on pollution prevention and reduction;**
- **Including daily, weekly and monthly pollution data;**
- **Considering lowering thresholds for NPRI reporting; and**
- **Amending CEPA to enable public input to NPRI reports and requiring timely government response..... 30**

**Recommendation 20**

**The Committee recommends that CEPA be amended to require that all substances known to be persistent and/or bioaccumulative be included in the National Pollutant Release Inventory. .... 30**

**Recommendation 21**

**The Committee recommends that CEPA be amended to require mandatory monitoring of listed toxic substances..... 31**

**Recommendation 22**

**The Committee recommends that CEPA be amended to define “hot spots.” ..... 33**

**Recommendation 23**

**The Committee recommends that CEPA be amended to require publication every five years of a comprehensive state of the environment report and that such a report incorporate specific environmental justice reporting on exposure levels in hot spots and assessments of health inequality. .... 33**

**Recommendation 24**

**The Committee recommends that the Chemicals Management Plan website be modified to include a system where anyone can submit data, evidence, and arguments for consideration. .... 33**

**Recommendation 25**

**The Committee recommends that CEPA be amended to require notice in the Canada Gazette for a 30-day comment period when a person submits a new substance or living organism notification under subsection 81(1) or subsection 106(1)..... 34**

**Recommendation 26**

**The Committee recommends that CEPA be amended to establish a more open, inclusive and transparent risk assessment process that better enables public participation in the evaluation of new living modified organisms. .... 34**

**Recommendation 27**

**The Committee recommends that CEPA be amended such that subsection 54(3) and similar sections of the Act require public consultation and the publication of peer-review comments. .... 35**

**Recommendation 28**

The Committee recommends that CEPA be amended to ensure that provisions that set out a requirement for consultation with the provinces and territories also require consultation with Indigenous peoples..... 36

**Recommendation 29**

The Committee recommends that CEPA be amended to expand the scope of the Environmental Registry to consolidate all postings and provide notice and comment opportunities for all applications and proposed regulations, policies, guidelines, approvals and permits under federal environmental legislation..... 36

**Recommendation 30**

The Committee recommends that section 22 of CEPA be amended to lower the threshold for bringing an environmental protection action from an allegation that the offence caused ‘significant harm’ to that it caused ‘harm’ to the environment. .... 38

**Recommendation 31**

The Committee recommends that section 22 of CEPA be amended to better enable public participation and accountability in the implementation and enforcement of CEPA by authorizing environmental protection actions, adjudicated as civil proceedings based on the balance of probabilities, in the following circumstances:

- The Minister(s) have not undertaken a specific mandatory act or duty under CEPA; or
- Any person or government body has violated, is violating or is reasonably likely to violate CEPA, including regulations, orders and other instruments thereunder. .... 39

**Recommendation 32**

The Committee recommends that the government consider authorizing mediation, interim orders, and specialized cost rules (whereby costs shall not be assessed against anyone bringing such an action, unless it is determined that the action is frivolous, vexatious or otherwise brought in bad faith) in order to ensure that environmental protection actions will be accessible to the public and so that Canadians may, in limited and appropriate circumstances, play a role in ensuring the application of CEPA without personally suffering damages..... 39

**Recommendation 33**

The Committee recommends that CEPA be amended to include safeguards to ensure environmental protection actions are brought responsibly, including a mandatory 60-day notice of intent to bring a section 22 action, non-duplication of government enforcement actions, and provision for early dismissal of actions that are frivolous, vexatious or otherwise brought in bad faith. .... 39

**Recommendation 34**

The Committee recommends that the request for investigation provision in section 17 of CEPA be maintained, but that CEPA be amended to remove that as a prerequisite to bringing an environmental protection action. .... 39

**Recommendation 35**

The Committee recommends that CEPA be amended to set out the legal framework for the federal government to work with provinces, territories and Indigenous peoples to address instances of inter-provincial air and water pollution. .... 40

**Recommendation 36**

The Committee recommends that CEPA be amended to require the federal government to develop legally binding and enforceable national standards for air quality in consultation with the provinces, territories, Indigenous peoples, stakeholders and the public. .... 42

**Recommendation 37**

The Committee recommends that CEPA be amended to require the federal government to develop legally binding and enforceable national standards for drinking water in consultation with the provinces, territories, Indigenous peoples, stakeholders and the public. .... 43

**Recommendation 38**

The Committee recommends that:

- Environment and Climate Change Canada and Health Canada address the lack of understanding and persistent misinformation – that pollution prevention planning does not work because it is not a regulation, is not used against the most toxic substances and is not enforceable – which are affecting the use of the Part 4 provisions of CEPA;

- Environment and Climate Change Canada and Health Canada encourage promotion of the use of Part 4 authorities, including by designating a leader for pollution prevention planning in both departments;
- CEPA be amended to provide authority for the Minister of Health to use the Part 4 provisions for those substances that are exclusively toxic to human health;
- Environment and Climate Change Canada and Health Canada make results of pollution prevention planning notices publicly available more quickly than has been the case with some; and
- Environment and Climate Change Canada and Health Canada be required to periodically publish a report illustrating the effectiveness of all pollution prevention plans. .... 45

**Recommendation 39**

The Committee recommends that the government revise the definition of “toxic” to ensure that it addresses endocrine disruptors. .... 49

**Recommendation 40**

The Committee recommends that sections 64 and 68 of CEPA be amended to expressly address substances that are dangerous at low-level quantity thresholds. .... 52

**Recommendation 41**

The Committee recommends that Part 5 of CEPA be amended to require a reverse-burden approach for a subset of substances that are of very high concern, including carcinogenic, mutagenic, and toxic to reproduction; very persistent and very bioaccumulative; and persistent, bioaccumulative and toxic. Substances in any of these categories should be prohibited unless industry can provide the government with adequate certainty that the substances can be used or emitted safely in specific applications and that there are no feasible substitutes. .... 53

**Recommendation 42**

The Committee recommends that section 3 of CEPA be amended to include a broad definition of the term “vulnerable populations.” ..... 57

**Recommendation 43**

The Committee recommends that CEPA be amended to require that the Ministers or their delegates, when determining if a substance is toxic, assess exposures of vulnerable populations and marginalized communities, including exposures during critical windows of vulnerability, with appropriate use of safety factors and that this section clarify that, for some substances, there may be no safe exposure thresholds. .... 57

**Recommendation 44**

The Committee recommends that Environment and Climate Change Canada and Health Canada implement measures, thresholds, techniques and reporting requirements specifically addressing endocrine disruptors..... 57

**Recommendation 45**

Further to Recommendations 22 and 23, the Committee recommends that Environment and Climate Change Canada undertake, in consultation with the provinces, territories, Indigenous communities and the public, an assessment of potential hot spots or areas of potential intensified or cumulative emissions of toxins to ensure protection for vulnerable persons. .... 57

**Recommendation 46**

The Committee recommends that CEPA be amended in Part 5 by adding a new requirement that the Ministers or their delegates, when determining if a substance is toxic, assess aggregate exposure to and cumulative and synergistic effects of the substance, and that the Ministers use an assessment process that looks at multiple points of exposure of a chemical substance. .... 60

**Recommendation 47**

The Committee recommends that Environment and Climate Change Canada and Health Canada adopt a life-cycle approach to assessing and managing substances under CEPA..... 61

**Recommendation 48**

The Committee recommends that the government update the outdated *Persistence and Bioaccumulation Regulations* to be consistent with the best available science and standards, including those of other OECD jurisdictions. .... 62

**Recommendation 49**

**The Committee recommends that CEPA be amended to confirm, for greater clarity, that a substance need not be persistent or bioaccumulative to be determined to be toxic under CEPA..... 63**

**Recommendation 50**

**The Committee recommends that Part 5 of CEPA be amended to include a mandatory assessment or reassessment of a substance, within a prescribed timeline, when another OECD country has placed new restrictions on it, or when the use of the substance in Canada has significantly expanded since the original assessment was completed, or when new scientific findings respecting the substance’s toxicity come to the attention of the Minister..... 65**

**Recommendation 51**

**The Committee recommends that CEPA be amended to require every person who transfers a substance or living organism that is subject to a significant new activity notice and that is on the Domestic Substances List to notify all persons to whom the substance or living organism is transferred of an obligation to comply with the significant new activity notice..... 66**

**Recommendation 52**

**The Committee recommends that substances be added to the List of Toxic Substances automatically upon a finding of toxicity by the Ministers of Health and Environment and Climate Change..... 66**

**Recommendation 53**

**The Committee recommends that CEPA be amended to add an explicit authority to remove a substance from the Domestic Substances List when it is not in commerce. Removal should involve a transparent process, with opportunity for public comment..... 67**

**Recommendation 54**

**The Committee recommends that CEPA be amended to update, improve and prescribe timelines for all actions under CEPA, such as for listing a substance on Schedule 1 after the conclusion of a screening assessment; for producing draft measures to address all risks from newly listed substances; and for finalizing those measures..... 69**



**Recommendation 55**

**The Committee recommends that parts 3 and 5 of CEPA be amended to expressly allow information gathering and regulation making to target the design and functioning of products, and to apply to manufacturers, importers or distributors of the products, rather than only to the users of the products..... 71**

**Recommendation 56**

**The Committee recommends that CEPA be amended to require investigation of the effects of any proposed or final regulation or instrument on vulnerable populations and marginalized communities. Similarly, the Act should also be amended to require investigation of aggregate exposures, and cumulative and synergistic effects, in determining how to regulate a toxic substance. .... 72**

**Recommendation 57**

**The Committee recommends that CEPA be amended to add a mandatory duty to assess alternatives as part of all screening assessments of existing substances. .... 75**

**Recommendation 58**

**The Committee recommends that CEPA be amended to add a mandatory substitution test to the regulation of substances under Part 5, to ensure that decisions about how to regulate toxic substances are based in part on information about substitutes, with a goal of replacing toxic substances with safer alternatives. .... 75**

**Recommendation 59**

**The Committee recommends that CEPA be amended to ensure that alternative assessments include the following aspects:**

- consideration of the opportunities, costs and feasibility of adopting and implementing safer alternatives;**
- clear recommendations for the elimination, or limited use of a toxic substance;**
- efforts to ensure transparency across the supply chain regarding key information and the process to be used in the development of alternatives assessments; and**
- review of data on a consistent basis to ensure up-to-date and accurate information. .... 76**

**Recommendation 60**

**The Committee recommends that CEPA be amended to mandate that the Minister prepare national safer alternatives action plans for substances for which reports on safer alternatives have been prepared. .... 76**

**Recommendation 61**

**The Committee recommends that Environment and Climate Change Canada revisit the virtual elimination regime and implement a more effective regime. .... 79**

**Recommendation 62**

**The Committee recommends that Health Canada and Environment and Climate Change Canada conduct studies on the effects of electromagnetic radiation on biota, review the adequacy of the current guidelines provided in Safety Code 6 and report their findings back to the Committee. .... 80**

**Recommendation 63**

**The Committee recommends that the CEPA regime for animate products of biotechnology be amended:**

- **to provide clear rules on how and under what circumstances the right to introduce a new substance or organism is transferable;**
- **to provide clear rules on the approval process for new uses by the party introducing the substance or organism and by others they may sell the substance to; and**
- **to change the name of Part 6 from Animate Products of Biotechnology to a term more widely used such as Genetically Engineered or Modified Organisms. .... 82**

**Recommendation 64**

**The Committee recommends that the Minister of Environment and Climate Change lead a process involving other relevant federal departments and including meaningful public consultation to put in place an effective and transparent regulatory regime for genetically modified organisms. .... 83**

**Recommendation 65**

**The Committee recommends that CEPA be amended to authorize expressly the making of regulations respecting labelling of fuel dispensers..... 84**

**Recommendation 66**

**The Committee recommends that subsection 140(2) of CEPA be amended to provide that regulations may be made if they “contribute to” the prevention of, or reduction in, air pollution..... 84**

**Recommendation 67**

**The Committee recommends that Environment and Climate Change Canada work with the Canadian Trucking Alliance to establish testing protocols for greenhouse gas reduction qualifying technology to ensure that such technology and systems are suitable for use in Canada. .... 86**

**Recommendation 68**

**The Committee recommends that Environment and Climate Change Canada consult with the Canadian Trucking Alliance on the degree to which the distance of limp mode should be extended..... 86**

**Recommendation 69**

**The Committee recommends that CEPA be amended to empower Environment and Climate Change Canada to take action against anyone who manufactures, sells or installs equipment that interferes with vehicle emissions controls..... 86**

**Recommendation 70**

**The Committee recommends that CEPA be amended to provide authority to regulate the full suite of small marine diesel engines found in Canada. .... 87**

**Recommendation 71**

**The Committee recommends that future regulations relating to small marine diesel engines contain a grandfather clause to ensure that Indigenous peoples will not be barred from conducting traditional harvest activities. .... 87**

**Recommendation 72**

The Committee recommends that CEPA section 155 be amended to clarify options in addition to removing a vehicle, engine, or equipment from Canada, including:

- bringing the vehicle, engine or equipment into compliance with the regulations prior to the expiry of the temporary importation period, such that it meets the emissions standards of its prescribed class and the importer has complied with all prescribed reporting and testing requirements;
- donating the vehicle, engine or equipment prior to the expiry of the temporary importation period, subject to rules that would be set out in the regulations; and
- requesting an extension of the temporary importation period by submitting a request to the Minister justifying the extension (e.g., additional tests needed, close to bringing vehicle, engine, or equipment into compliance with regulations)..... 88

**Recommendation 73**

The Committee recommends that CEPA’s Notice of Defect provisions be amended to expressly include:

- defects in compliance with emissions standards;
- label deficiencies;
- a requirement for companies to cover the cost of corrections; and
- an authority for the Minister to order a company to submit a notice of defect. .... 89

**Recommendation 74**

The Committee recommends that CEPA be amended to expressly provide the authorities to suspend or revoke permits issued under subsection 185(1), in specified circumstances..... 90

**Recommendation 75**

The Committee recommends that notices and manifests required under the *Export and Import of Hazardous Waste and Hazardous Recyclable Materials Regulations* should require the provision of information on the presence of CEPA-toxic substances in waste streams, or the quantities or concentrations in which such substances might be present..... 91

**Recommendation 76**

The Committee recommends:

- that CEPA be amended to provide for a legislated framework and a promulgated regulatory regime on federal lands;
- that the government develop specific objectives, guidelines and codes of practice on federal lands excepting aboriginal lands; and
- that the federal government initiate consultations with Indigenous peoples on the development of specific objectives, guidelines and codes of practice on aboriginal lands and promulgate a regulatory regime. .... 93

**Recommendation 77**

The Committee recommends that the *Environmental Violations and Administrative Monetary Penalties Act* be amended to authorize the refusal or revocation of a permit for unpaid administrative monetary penalties..... 96

**Recommendation 78**

The Committee recommends that the *Environmental Violations and Administrative Monetary Penalties Regulations* be brought into force immediately..... 96

**Recommendation 79**

The Committee recommends that Environment and Climate Change Canada hold an open and transparent review of the Compliance and Enforcement Policy for CEPA. .... 96

**Recommendation 80**

**The Committee recommends that Environment and Climate Change Canada design a new, online, searchable, public environmental enforcement database while respecting privacy concerns as required under the law. .... 97**

**Recommendation 81**

**The Committee recommends that Environment and Climate Change Canada work with provincial enforcement officials to harmonize environmental testing and sampling requirements..... 98**

**Recommendation 82**

**The Committee recommends that CEPA be amended to expressly provide for the tools necessary to establish and operate a properly functioning auctioning system, such as the authority to sell tradeable units either at a fixed price or by competitive bidding..... 99**

**Recommendation 83**

**The Committee recommends that CEPA be amended to expressly allow the Minister to issue an interim order (similar to that in section 163), to be used for any regulation under CEPA, to the extent necessary to maintain alignment with a foreign regulation and subject to notice provisions. .... 100**

**Recommendation 84**

**The Committee recommends that CEPA be amended to expressly allow performance agreements between either the Minister of Health or the Minister of Environment and Climate Change and another party, to fulfill the risk management obligation, subject to specific criteria, third party oversight and public notice. .... 101**

**Recommendation 85**

**The Committee recommends that CEPA be amended to expand the government’s authority to incorporate by reference, subject to public notice and consultation, the following types of materials:**

- **formal instruments made under CEPA, such as guidelines and codes of practice;**
- **internally generated government technical documents that specify: 1) how to quantify prescribed data to be reported, including factors to be used for quantification; and 2) how to conduct prescribed tests, measurements, sampling, monitoring, and analyses; and**
- **documents produced jointly by the Minister of Environment and Climate Change and/or the Minister of Health, with another minister or body in the federal public administration. .... 103**

**Recommendation 86**

**The Committee recommends that the government increase funding to ensure effective monitoring and enforcement of CEPA. .... 104**

**Recommendation 87**

**The Committee recommends that discrepancies between the English and French versions of CEPA be reconciled. .... 105**





## APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p><b>Department of Health</b> John Cooper, Acting Director General Safe Environments Directorate</p>	2016/03/08	6
<p><b>Department of the Environment</b> John Moffet, Director General Legislative and Regulatory Affairs Directorate</p>		
<p><b>Chemistry Industry Association of Canada</b> Pierre Gauthier, Vice-President Public Affairs Bob Masterson, President and Chief Executive Officer</p>	2016/03/10	7
<p><b>Ecojustice Canada</b> Elaine MacDonald, Senior Scientist</p>		
<p><b>Environmental Defence Canada</b> Maggie MacDonald, Toxic Program Manager</p>		
<p><b>Canadian Cosmetic, Toiletry and Fragrance Association</b> Beta Montemayor, Director Environmental, Science and Regulation Darren Praznik, President and Chief Executive Officer</p>	2016/05/19	18
<p><b>Canadian Consumer Specialty Products Association</b> Shannon Coombs, President</p>		
<p><b>Canadian Environmental Law Association</b> Joseph F. Castrilli, Counsel Fe de Leon, Researcher</p>		
<p><b>Canadian Association of Petroleum Producers</b> Sherry Sian, Manager Environment</p>	2016/06/07	21
<p><b>Canadian Labour Congress</b> Andrea Peart, National Representative Health, Safety and Environment</p>		
<p><b>Mining Association of Canada</b> Justyna Laurie-Lean, Vice-President Environment and Regulatory Affairs</p>		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
Linda Duncan, M.P., Edmonton Strathcona	2016/06/09	22
<b>As an individual</b>		
Dayna Nadine Scott, Associate Professor Osgoode Hall Law School and the Faculty of Environmental Studies, York University		
<b>ArrowBlade Consulting Services</b>		
Nalaine Morin, Principal		
<b>As an individual</b>	2016/06/14	23
Philip Jessop, Professor Department of Chemistry, Queen's University		
<b>Canadian Chemical Reclaiming Technologies Ltd.</b>		
S. Todd Beasley, Founder, Technology Co-Inventor, Chief Operating Officer		
<b>Dow Chemical Canada Inc.</b>		
Michael Burt, Corporate Director Regulatory and Government Affairs		
<b>KPD Consulting Ltd.</b>		
Chris Bush, Operations Manager		
Kerry Doyle, President		
<b>As an individual</b>	2016/06/16	24
Miriam Diamond, Professor Department of Earth Sciences, University of Toronto		
<b>Industry Coordinating Group for CEPA</b>		
Amardeep Khosla, Executive Director		
<b>Mohawk Council of Akwesasne</b>		
Henry Lickers, Environmental Science Officer Environment Program		
<b>Department of Health</b>	2016/10/06	28
David Morin, Director General Safe Environments Directorate, Healthy Environments and Consumer Safety Branch		
<b>Department of the Environment</b>		
John Moffet, Director General Legislative and Regulatory Affairs Directorate		
<b>As an individual</b>	2016/10/27	32
David Boyd, Adjunct Professor Resource and Environmental Management, Simon Fraser University		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Ecology Action Centre</b> Mark Butler, Policy Director	2016/10/27	32
<b>Pulse Canada</b> Gordon Bacon, Chief Executive Officer		
<b>Canadian Cancer Society</b> Gabriel Miller, Vice President Public Issues, Policy and Cancer Information Sara Trotta, Senior Coordinator, Public Issues	2016/11/17	36
<b>Mikisew Cree First Nation</b> Melody Lepine, Director Government and Industry Relations Phil Thomas, Scientist		
<b>Native Women's Association of Canada</b> Lynne Groulx, Executive Director Verna McGregor, Environment and Climate Change Project Officer		
<b>As individuals</b> Lynda Collins, Associate Professor Centre for Environmental Law & Global Sustainability, Faculty of Law, Common Law Section, University of Ottawa Meinhard Doelle, Professor Schulich School of Law, Dalhousie University Daniel Krewski, Professor and Director Faculty of Medicine, University of Ottawa Mark Winfield, Professor Faculty of Environmental Studies, York University	2016/11/22	37
<b>As an individual</b> Parisa A. Ariya, James McGill Professor Departments of Chemistry and Atmospheric and Oceanic Sciences, McGill University	2016/11/24	38
<b>Assembly of First Nations</b> Chief Bill Erasmus, Regional Chief Northwest Territories		
<b>Canadian Electricity Association</b> Ahmed Idriss, Senior Advisor Environmental Policy, Capital Power Corporation Channa Perera, Director Generation and Environment		
<b>Retail Council of Canada</b> Jason McLinton, Senior Director		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>Canadian Trucking Alliance</b></p> <p>Stephen Laskowski, Senior Vice-President</p>	2016/11/29	39
<p><b>Department of the Environment</b></p> <p>Heather McCready, Director General Environmental Enforcement Directorate, Enforcement Branch</p> <p>Margaret Meroni, Chief Enforcement Officer Enforcement Branch</p> <p>Linda Tingley, Senior Counsel Environment Legal Services</p>		
<p><b>As an individual</b></p> <p>John Smol, Professor and Canada Research Chair in Environmental Change Queen's University</p>	2016/12/01	40
<p><b>Alberta's Industrial Heartland Association</b></p> <p>Nadine Blaney, Executive Director Fort Air Partnership</p> <p>Iain Bushell, Chair Northeast Region Community Awareness Emergency Response and Strathcona County Fire Chief</p> <p>Pam Cholak, Director Stakeholder Relations</p> <p>Brenda Gheran, Executive Director Northeast Region Community Awareness Emergency Response</p> <p>Ed Gibbons, Chair Councillor, City of Edmonton</p>		
<p><b>Forest Products Association of Canada</b></p> <p>Robert Larocque, Vice-President Climate Change, Environment and Labour</p>		

# APPENDIX B LIST OF BRIEFS

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## Organizations and Individuals

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Advanced Biofuels Canada

Alberta Airsheds Council

Alberta Urban Municipalities Association

American Chemistry Council

Anyaeji, Jennifer Ginika

Ariya, Parisa A.

BioVectra Inc.

Boyd, David

Breast Cancer Action Manitoba

Breast Cancer Action Quebec

Cameco Corporation

Canadian Association of Petroleum Producers

Canadian Centre for Veterinary Biologics

Canadian Consumer Specialty Products Association

Canadian Cosmetic, Toiletry and Fragrance Association

Canadian Environmental Law Association

Canadian Fuels Association

Canadian Manufacturers & Exporters

Canadian Paint and Coatings Association

Canadian Steel Producers Association

Canadian Vehicle Manufacturers' Association

Canadians For Safe Technology

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## Organizations and Individuals

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**Chemical Sensitivities Manitoba**

**Chemistry Industry Association of Canada**

**Conseil de la Première Nation Abitibiwinni**

**Cree Nation Government**

**David Suzuki Foundation**

**Diamond, Miriam**

**Domtar Inc.**

**Ecojustice Canada**

**Ecology Action Centre**

**Electronics Product Stewardship Canada**

**Environmental Defence**

**Environmental Health Association of Manitoba**

**Équiterre**

**Formulated Products Industry Coalition**

**Fort Air Partnership**

**Forth, Fred**

**Forum for Leadership on Water**

**Friesen, Margaret**

**Global Automakers of Canada**

**Global Silicones Council**

**Grand Council Treaty No. 3**

**Havas, Magda**

**Imperial Oil Limited**

**Inuvialuit Regional Corporation**

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## Organizations and Individuals

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**Johnston, Michael**

**Kebaowek First Nation**

**KPD Consulting Ltd.**

**L.S. McCarty Scientific Research and Consulting**

**Learning Disabilities Association of Canada**

**May, Elizabeth**

**Mikisew Cree First Nation**

**National Network on Environments and Women's Health**

**NEI Investments**

**North American Metals Council**

**Patouris, Joanna**

**Pollution Probe**

**Prevent Cancer Now**

**Railway Association of Canada**

**Riordan, James**

**Schindler, David W.**

**Scott, Dayna Nadine**

**Society of Obstetricians and Gynaecologists of Canada**

**Winfield, Mark**

**Wolf Lake First Nation**





## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 6, 7, 18, 21, 22, 23, 24, 28, 32, 36, 37, 38, 39, 40, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68](#)) is tabled.

Respectfully submitted,

Deborah Schulte  
Chair



## Opposition Report

### Study Overview:

On March 8, 2016 during a 'scoping exercise' on the design of the Canadian Environmental Protection Act 1999 (CEPA or "the Act"), the Standing Committee on Environment and Sustainable Development (the "Committee") commenced a review of CEPA. Over the course of 28 meetings in the last 15 months, Members of the Committee devoted approximately 28.3 hours hearing witness testimony and 21.8 hours on drafting and approving *Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening the Canadian Environmental Protection Act, 1999* ("the Report").

It is the overall view of the Official Opposition that the Report itself is neither comprehensive nor credible. It is our hope that the Government of Canada recognizes this review of CEPA as a failed process, one which was inconsistent with good governance practices or credible evidence-based policy development.

It is the opinion of the Official Opposition that if the Committee had devoted more of its time to hearing from witnesses, the final result would have been a more focused, complete and credible report. For example, despite multiple requests to extend the study and elicit additional critical evidence, the Liberal Members of the Committee declined such requests. It is likely that concerns over an early prorogation, a re-constitution of committee members before the fall session of Parliament, and the Liberals' self-imposed timeline (passed in March, 2016) to review the Act may have all contributed to a less than optimal conclusion to our deliberations.

As a result of the study being rushed and poorly managed, it failed to include critical testimony and evidence from provincial, territorial and municipal governments or from officials in enforcement, chemicals management and regulatory affairs. It also neglected to include sufficient evidence from important witnesses such as scientists and Indigenous representatives.

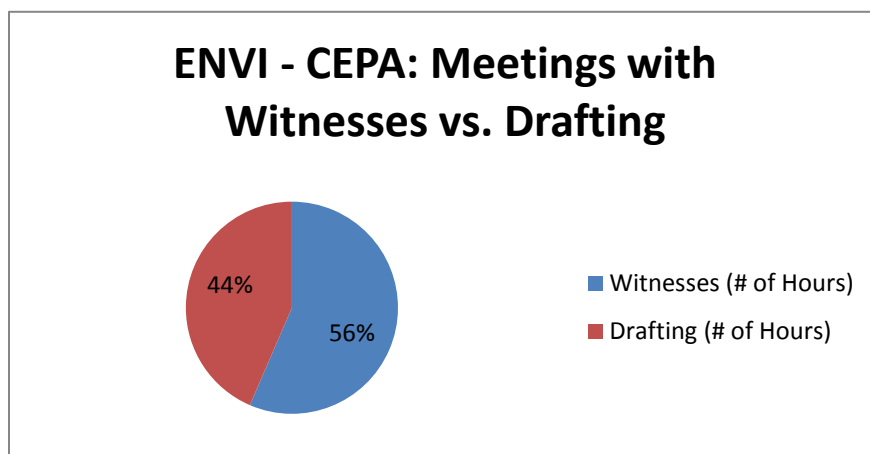
What is also notable in this Report is the dearth of evidence supporting many of the Liberal Members' far-reaching recommendations. This flaw in the Report is best illustrated by the broad-sweeping recommendations regarding the National Pollutant Release Inventory (NPRI) and binding national water and air standards, which include no comments or feedback from departmental officials or provincial and territorial representatives.

A key test of any comprehensive report would include multiple perspectives and opportunities for additional feedback to properly weigh the value of testimony. It is the viewpoint of the Official Opposition that the Committee failed to adhere to this basic principle.

The purpose of this Opposition Report is to outline areas of greatest concern for the Conservative Members of the Committee.

Below is a breakdown of the time spent drafting the Report and hearing from witnesses.

Witnesses (# of Meetings)	Witnesses (# of Hours)	Drafting (# of Meetings)	Drafting (# of Hours)	Total Meetings	Total Hours
14	28.3	14	21.8	28	50.1



#### **Committee Witnesses and Recommendations:**

Over the course of the study, the Committee heard from 56 different witnesses and received 68 separate briefs, yet the majority of recommendations are derived from four principle sources: 1) Environment and Climate Change Canada; 2) Professor Dayna Scott; 3) Professor David Boyd; and 4) Professor Mark Winfield. With the departmental recommendations removed, the recommendations from the three other principle sources represent more than half of all recommendations. The obvious question that arises from this information is: Why would such a small number of witnesses have such out-sized influence on an Act that is as far-reaching and consequential as CEPA? And why would so few of the recommendations made by the remaining 53 witnesses find favour with the Members of the Committee?

The Official Opposition found that the information and recommendations provided to the Committee by the departmental officials from Environment and Climate Change Canada were critical to understanding the complexity of the issues which require attention within the Act. It is for this reason that we support the following recommendations in the Report, which came from Environment and Climate Change Canada per their comprehensive Discussion Paper: 1, 11, 12, 13, 55, 65, 66, 70, 72, 73, 74, 77, 83, 84 (without third party oversight and public notice), 85, and 87.

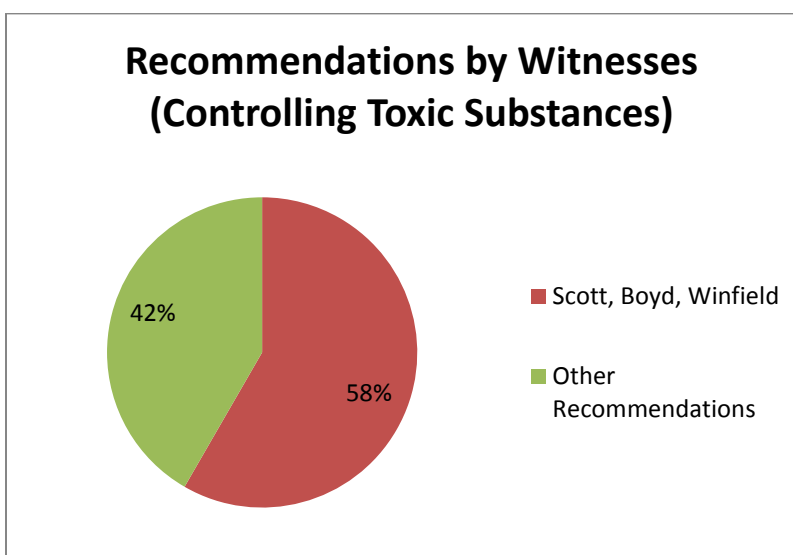
The Conservative Members also support the following Departmental advice that was rejected by the Liberal Members:

- Administrative Agreements under section 9;
- Formally allowing regulations or instruments under other Acts to fulfill risk management obligations;

- Consistency with the Motor Vehicle Safety Act;
- Reasonable exemptions for certain classes of new substances;
- Improvements to the role for the Minister of Health for section 83 assessments;
- Downstream notification provisions for substances on the Domestic Substance List;
- Section 91 (1) notifications to develop instruments or regulations related to substances on Schedule 1;
- Designating another Minister under CEPA to assess and manage biotechnology provisions such as living organisms;
- Third party field research provisions; and
- Incorporation by reference of provincial environmental regimes on a jurisdiction by jurisdiction basis.

### **Controlling Toxic Substances:**

The large majority of the 28.3 hrs of witness testimony focused on Canada’s chemicals management plan and controlling toxic substances. Many of the additional written briefings received by the Standing Committee also focused on this Part of the Act. Of the 24 recommendations on controlling toxic substances, the majority came from three witnesses with no evident scientific or practical experience in the field of toxicology.



As the Committee recommendations reveal, some of the key objectives of the Liberal Members of the Committee appear to have been:

- Moving towards a hazard based approach by amending sections 64 and 68 of CEPA (recommendation 40);
- Adopting a reverse burden approach to emulate the REACH model which is prevalent in the EU member states (recommendation 41);
- Dramatically expanding the duty of the Crown by including a definition of vulnerable populations within the Act (recommendation 42 and 56);
- Adopting specific regulations for certain substances such as endocrine disruptors and changing the definition of toxicity (recommendations 39, 43, 44, 45, and 49); and
- Mandating re-assessments and the substitution principle into the chemicals management system (recommendations 50, 57, 58, and 59).

Conservative Members believe that the recommendations concerning the above were too prescriptive, did not receive adequate testimony and were designed to mimic the Registration, Evaluation Authorization and Restriction of Chemicals (REACH) program of the European Union – a program on which the Committee surprisingly received no formal briefing.

The Conservative Members believe that the Liberal recommendations were designed to effectively replace Canada's well-established Chemicals Management Plan by shifting towards a hazard based and reverse burden approach to chemicals management. Such a shift would undermine the common approaches historically adopted by Canada and the United States when it comes to the management of chemicals. Effectively, the Liberal recommendations would turn Canada's current system of chemicals management on its head without appropriate consultations with industry, government and non-governmental stakeholders and risk undermining the common approaches adopted by our US neighbours and the economic competitiveness that such a common approach secures for Canadian businesses.

The Conservative Members, based on the limited evidence received, do not support moving towards a hazard based approach to chemicals management.

The Conservative Members believe that the Chemicals Management Plan (CMP) must be allowed to complete the assessment and management of the original 23,000 substances it set out to review. The Conservative Members also believe that sound science must continue to be the driver for risk assessments under the CMP, and that precaution should continue to be used only in the absence of scientific information where a hazard has been identified.

Professor Boyd, the inspiration behind many Liberal recommendations, explained why he supports the European model to chemicals management:

*"It's really reversing the burden of proof for those substances. What that has enabled the European Union to do is to move more expeditiously in getting these toxic substances out of our economy, out of our society, out of our environment, and out of our bodies".<sup>1</sup>*

His testimony, however, contradicts Environment and Climate Change Canada which explained that REACH is not an effective tool for protecting the environment and the health of Canadians:

*"REACH is an extremely time-consuming process that requires extensive work on the part of users and producers, but that actually has achieved a lot fewer decisions than we've achieved under the chemicals management plan".<sup>2</sup>*

With such contrasting viewpoints and a lack of adequate evidence, the Conservative Members recommend the government reject the Report's proposal to move to a reverse-burden approach and the related suite of recommendations that could undermine Canada's current risk assessment process through onerous and unnecessary regulations. Reversing the onus onto proponents of a certain chemical would represent a fundamental change to the underpinning philosophy of CEPA and its risk-based approach.

On the future of the CMP, the Conservative Members encourage further collaboration between the public and private sector to improve chemical assessments in Canada. The Conservative Members believe in the sentiment expressed by the Industry Coordinating Group for CEPA:

*"The public credibility of CMP actions is enhanced by placing the responsibility for risk-assessment and risk management where necessary with government and yet also imposing important responsibilities on industry".<sup>3</sup>*

Furthermore, the Conservative Members believe that maintaining a level of flexibility in Part 5 of CEPA is integral to the wellbeing of Canadians and the environment. Professor Diamond explained her perspective:

*"In the case of chemical assessment under Part 5, I believe that promoting a principle of using the best available science will allow government scientists and policy-makers to employ best-available and vetted methods. Not over-prescribing methods and allowing government personnel flexibility was a sentiment expressed in the June 2015 report of the Canadian Chemicals Management Plan Science Committee. It was evident that government scientists, as a matter of common practice, were using the latest science to conduct chemical assessments".*

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<sup>1</sup> ENVI, *Evidence*, 27 October 2016 (Dr. David Boyd, Adjunct Professor, Resource and Environmental Management, Simon Fraser University).

<sup>2</sup> ENVI, *Evidence*, 8 March 2016 (John Moffet, Director General, Legislative and Regulatory Affairs, Department of the Environment).

<sup>3</sup> ENVI, *Evidence*, 16 June 2016 (Amardeep Khosla, Executive Director, Industry Coordinating Group for CEPA).

As per Professor Diamond, the Conservative Members do not support recommendations that are overly prescriptive and that could compromise scientific assessments.

A global leader in toxicology, Professor Dan Krewski also indicated the need for the Minister to have flexibility when considering alternative indicators for toxicity:

*"The key cornerstones are the new toxicological approaches, advanced risk assessment methodologies, and some ideas from population health, looking at multiple determinants of health simultaneously, gene environment interactions and social environment interactions included".*

Mr. Krewski also alluded to the major advancements in the field of toxicology:

*"The science by which we conduct environmental health risk assessment is undergoing a revolution and there are plenty of opportunities to exploit these new techniques".*

Mr. Krewski appears to have premised his views on the assumption that Canada's current chemicals management plan is equipped to meet these new tests and challenges.

Despite fundamental disagreements on the utility of a hazard based system within the Committee, there was general agreement on a series of principles reflecting technological advancements and scientific practices that should be reflected in the chemicals management system.

Regarding recommendation 46, there was general agreement that the Minister should be using multiple points of exposure and measuring the cumulative effect of a toxin during risk assessments. Therefore, the Conservative Members support recommendation 46 so long as assessors maintain the required flexibility to conduct their work.

There was general consensus from Dr. Diamond, Jessop and Ariya that a life-cycle approach to assessing and managing substances under CEPA be adopted as a principle for risk assessments. Therefore, the Conservative Party supports recommendation 47.

Regarding persistence, bioaccumulation and inherently toxic (PBiT) criteria, there was general agreement from industry, the Department of Environment and Climate Change and academia that these regulations should be updated. Therefore, the Conservative Members support recommendation 48.

### **Controlling Toxic Substances: Vulnerable Populations**

Many recommendations suggest that vulnerable populations should be included in the text of the Act. The Conservative Members do not support this addition based on the testimony provided by Environment and Climate Change Canada:

*"I think it's important to note that we do consider vulnerable populations in this. We take a look at things from a human health perspective with children and pregnant women. We do*



*take a look at exposures and routes of exposures associated with those most vulnerable populations.*"<sup>4</sup>

The opposition recommends that the Minister follow the advice of her officials and include a reference to vulnerable populations in the preamble of the Act and that chemical assessments continue to account for vulnerable populations in risk-assessments and management protocols as indicated by departmental officials.

### **Controlling Toxic Substances: Changing the Definition of Toxicity**

On changing the definition of toxicity, Environment and Climate Change Canada explained that toxicity under section 64 is determined based upon whether it has a harmful effect on the environment, is a danger to the environment on which life depends, or is a danger to human life or health.<sup>5</sup>

Dr. Jessop from Queens University explained that there isn't "such a thing as a toxic chemical versus a non-toxic chemical. All chemicals are toxic, even water". He stressed the need to evaluate chemicals through life-cycle analyses to assess environmental impacts.<sup>6</sup> Therefore, without stronger evidence supporting such a change, the Conservative Members do not recommend changing the scientific meaning of 'toxic' contained within the Act.

### **Controlling Toxic Substances: Mandatory Assessments, Re-Assessments, Substitutions**

On mandatory assessment or re-assessments according to data from other OECD nations, the Conservative Members feel there is no need to change the current system based on the testimony provided by Environment and Climate Change Canada:

*"Internationally, we work very closely with the partners at the OECD and the U.S. EPA, so there's always a sharing of information there, so data from either domestic or international organizations and review of decisions in other jurisdictions. Sometimes we see trends through the new chemicals program. We see certain classes of substances being notified and we see if there are any linkages that could be made to substances already on the DSL. That helps them inform the science as we move forward with that".*<sup>7</sup>

The Conservative Members, therefore, recommend that Environment and Climate Change Canada and Health Canada continue collaborating with the US Environmental Protection Agency and other OECD nations to align chemical regulatory processes, specifically through the development of common approaches to address emerging risk issues.

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<sup>4</sup> ENVI, *Evidence*, 6 October 2016 (David Morin, Director General, Safe Environments Directorate, Healthy Environments and Consumer Safety Branch, Department of Health)

<sup>5</sup> ENVI, *Evidence*, 8 March 2016 (John Moffet, Director General, Legislative and Regulatory Affairs, Department of the Environment).

<sup>6</sup> ENVI, *Evidence*, 14 June 2016 (Dr. Philip Jessop, Professor, Department of Chemistry, Queen's University).

<sup>7</sup> ENVI, *Evidence*, 6 October 2016 (John Moffet, Director General, Legislative and Regulatory Affairs, Department of the Environment).

The Conservative Members also reject the recommendations on alternative assessments and mandatory substitutions for safer alternatives. The Chemistry Industry Association of Canada also strongly opposes this change:

*CIAC would discourage legislative changes to 'safe alternatives' or 'mandatory alternatives assessment.' The condition precedent to requiring the alternative assessment is the unproven assumption that the primary chemical in question is toxic before an assessment has been finalized. If nothing else, there are some substances which are on the toxic substances list which cannot be substituted – like carbon dioxide. An available alternative should NOT influence a risk assessment.*<sup>8</sup>

The Conservatives members believe that the current rules for triggering a re-assessment are adequate. They include additions to the Domestic Substance List inventory or other surveys, new science, research and monitoring findings, information submitted under section 70, data from domestic and international organizations, review of decisions in other jurisdictions (i.e.// OECD), issues flagged via the New Substances Program, results from previous assessments and information submitted on a substance subject to significant new activity provisions within the legislation.

Dr. Jessop warned against risk migration, a process under which one chemical is banned, only to have it replaced by a worse one. Professor Smol also cautioned against substitutions without conducting sufficient studies before substances are released into the environment. For these reasons, the Conservatives Members support life cycle analyses in chemical assessments.

### **Controlling Toxic Substances: Recognizing the need for tailored approaches**

Based on the evidence received from scientists, Environment and Climate Change Canada and industry groups, the chemicals management plan allows for tailored approaches to risk-assessments which account for multiple variables:

*"Importantly, CEPA also allows important discretion to tailor CMP program elements to suit the need of the task at hand. Some examples are the consideration of vulnerable populations when doing certain assessments, which has been built into some assessments".*<sup>9</sup>

Based on the limited testimony provided, the Conservative Members reiterate the position of industry and Environment and Climate Change Canada that a degree of regulatory flexibility be maintained to support risk-based chemical assessments. Based on the limited evidence provided, the Conservative Members have no assurance that the legalistic provisions put forward by the Liberal Members of the Committee will actually improve the health and wellbeing of Canadians.

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<sup>8</sup> Chemical Industry Association of Canada, Written brief, November 25, 2016, p. 4

<sup>9</sup> ENVI, *Evidence*, 16 June 2016 (Amardeep Khosla, Executive Director, Industry Coordinating Group for CEPA).

## **Controlling Toxic Substances: Trade Implications**

The Conservative Members recommend that the Government explicitly consider the impact which recommendations emanating from this Report may have on the ongoing work of the Regulatory Cooperation Council and on Canada's efforts to coordinate and/or align its regulatory processes with those of the United States in order to improve Canada's trade competitiveness. This would especially apply to recommendations 15, 16, 17, and 18.

We also encourage the Minister to consider amendments to CEPA to ensure consistency with the United States Lautenberg Chemical Safety Act for the 21st Century, as amended in June of 2016 and signed into law by former President Barrack Obama. Like CEPA, it applies a risk-based approach to the management of chemicals.

## **Confidential Business Information:**

Recommendations 25, 26, 27, and 29 touch upon disclosing information which could impact commercial interests and whether a corporation undertakes research and development in Canada. Confidential Business Information provisions exist to ensure Canada can develop new technologies, grow business and create employment. Adopting these recommendations would likely prevent the best science from coming to Canada and jeopardizes the development of new and green technologies within the private sector in Canada.

The Committee recommends that, before any changes to confidential business information provisions are made, industry be thoroughly consulted. Again, these recommendations were subject to little debate and attention by the Committee.

## **On Environmental Protection Actions:**

Conservative Members were not given an opportunity to elicit additional testimony from relevant officials at Environment and Climate Change Canada and Justice Canada over the possible impacts a change from "significant harm" to "harm" would have on the Crown's liabilities under CEPA (see recommendation 30).

Regarding changes to the environmental registry and circumstances when an individual may bring an action against the Government, the Conservative Members recommend that the Minister seek additional legal advice and undertake thorough stakeholder consultation before proceeding with any changes to the environmental protection action provisions within the Act. Again, the recommendations put forward, especially numbers 31-34, relied on the testimony of a very small number of witnesses and the biases of the Liberal members.

## **On a Right to a Healthy Environment:**

The Conservative Party believes that a right to a healthy environment should be included in the preamble to the Act. That said, proposed recommendations that enshrine within the Act as yet to be defined environmental rights will expose the Crown to a host of liabilities

that were not in any way adequately addressed by the testimony and evidence before the committee (see recommendations 4 and 5).

### **Animate Products of Biotechnology:**

With little information to work from apart from the submission from the Ecology Action Centre, the Conservative Members suggest the Committee undertake a thorough study on this subject at a later time when scientific and legal opinions can be properly reviewed and assessed to provide evidence-based recommendations on the role of animate products of biotechnology, such as genetically modified salmon, within Canada (see recommendation 63 and 64).

### **National Pollutant Release Inventory:**

There was little to no study on the National Pollutant Release Inventory. The Conservative Members, therefore, feel that it would be irresponsible to recommend the scope of changes put forward by the Liberal Members. Indeed, the unreasonably short timeframe of this study prevented a full and proper consideration of the NPRI, including a review of its financial costs, current management of the program, appropriate threshold levels, data management, relationship to the *Fisheries Act*, and its relationship to provincial and municipal programs.

The Conservatives recommend that the Minister disregard recommendations 19 and 20 and seek a proper review of the NPRI.

### **National Air and Water Standards:**

The Conservative Members believe that recommending binding national air and water standards based on the scant evidence before the Committee would undermine years of negotiations between the provinces, territories and federal government, especially with respect to the Air Quality Management System. Recommendations 36 and 37 disrespect the critical role which the provinces and territories play in implementing policies that improve the quality of the air that Canadians breathe and the quality of the water that we drink. We recommend that, prior to the federal government considering imposing binding national air and water standards, it embark on national consultations that include all relevant stakeholders, including the provinces and territories.

### **Official Languages:**

Over the course of the study, the use of both official languages was raised on multiple occasions. One pertinent example included Professor A. Ariya, a francophone scientist from Quebec. Professor Ariya was not permitted to submit her English-only presentation deck to Committee Members out of respect for the use of both official languages.

In response to a question on whether the Committee should allow the submission of written materials in only one or the official languages, the Liberal MP for Kingston-Thousand Islands stated the following:

*"A couple of weeks ago, when it happened, the member who was substituting was a francophone. It's with no disrespect to you that I'm not personally in favour of this. We're a country that supports and advocates the use of both official languages. When we have a presentation, it has to be in both official languages so that we don't put somebody on the spot if they happen to show up and want to participate and their first language is French".<sup>10</sup>*

Notwithstanding the intervention by the Member for Kingston-Thousand Islands, we were not pleased that in subsequent committee proceedings the Liberal Members authorized the distribution of Committee-related material that was solely in English, notwithstanding that at least one Member of the Committee was only proficient in the French language and was prevented from engaging on this English-only material.

### **Conclusion:**

The Conservative Members believe that, had this study been more focused and more time been allocated to receiving critical testimony, this Report could have represented another step forward in improving the rigour of Canada's environmental protection regime. Sadly, the majority's recommendations are in many cases not adequately borne out by supporting testimony and evidence before the Committee. They appear to reflect an ideological bias in favour of a wholesale re-make of Canada's environmental protection regime that could have a profoundly chilling effect on Canada's economic competitiveness.

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<sup>10</sup> ENVI, *Evidence*, 24 November 2016.



## Supplementary Report of the New Democratic Party of Canada

It is important to keep front of mind that Parliament has prescribed ongoing public reviews of this law with the specific intent of ensuring that timely measures are taken to address potential threats posed by toxic substances. This is necessary to ensure consideration to new scientific knowledge and adherence to the “Precautionary Principle”. Yet successive governments have failed to deliver the reforms called for by scientists, legal scholars and the very officials responsible for preventing any harm caused by toxins.

It is troubling that a considerable portion of this report echoes testimony and recommendations tabled before Parliament in the 2007 report by the Committee. The unfortunate conclusion is that despite significant concerns and recommendations have been made for more effective management and control of toxic substances, the government has failed to act. Doubly concerning is the fact that a number of the recommended reforms were brought to the attention of the Committee by the very officials responsible for delivering the goals of CEPA- preventing harm to human health and our environment from potential harmful substances. Many will be watching to see that action is finally taken by this government to deliver on these critical duties.

While we support the majority of the report and recommendations therein, we differ on some of the conclusions and recommendations for reform.

Firstly, we strongly oppose the recommendation to consider business and trade interests as a factor in any decisions to manage, control or prohibit toxins. This precondition contradicts the primary purpose of CEPA, "to contribute to sustainable development through pollution prevention" as the "priority approach to environmental protection". Further, the law requires the government, in administering CEPA, to do precisely the reverse, that is "take the necessity of protecting the environment into account in making social and economic decisions." The law specifies that the matters government must consider in deciding to control substances include "short and long term health and ecological benefits arising from the measure and any positive economic impacts arising from the measure". These include cost savings from health, environment and technological advances and innovations and any other benefits. This law, dedicated to preventing harm to human health and the environment caused by designated toxins, should not be muddied by repeated references to balancing environmental protection with economic development.

A considerable portion of testimony heard by the Committee called for the expanded enactment of environmental rights including greater consideration to vulnerable persons, improved access to information and the right to trigger or participate in reviews of harmful toxins. While CEPA does extend some limited rights and opportunities, significant gaps remain in extending a full bundle of rights and protections. We strongly endorse recommendations made to prescribe a substantive right to a healthy environment, and a mandatory duty of the government to administer and enforce *CEPA* according to environmental rights and principles of environmental justice.

Recommendations contained in this report do extend some limited expanded rights. However, we wish to express support for recommendations the Committee heard to take a step beyond and enact a stand-alone Canadian Environmental Bill of Rights. This would extend a full bundle of environmental rights and duties to decisions made under all federal laws related to the environment. This enactment would ensure greater consistency by the government in delivering on its commitments pursuant to the North American Agreement for Environmental Cooperation (NAAEC) for advance notice and consultation on any new environmental law or policy and in extending environmental rights. We also recommend that the NAAEC be referenced in the Preamble to the Act.

It is also recommended that the mandatory duty imposed on the Minister of Health to address identified health risks posed by toxins be moved forward to Part 2 of the Act. This critical duty should not be buried in the Act but instead stated upfront alongside provisions extending environmental rights. The public should also be extended the right to trigger the review of any substance.

Similarly, we support referencing Canada's commitment to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the preamble, but recommend that these principles also be translated into substantive rights within the body of the Act through a process of consultation with indigenous Canadians. This would respond to calls for measures to deliver on Articles 18 and 32(2) of the UNDRIP providing that Indigenous peoples have a right to participate in decision making in matters affecting their rights and that there be good faith consultation and cooperation with Indigenous peoples to obtain their free and informed prior consent for projects impacting their lands or resources. Many calls by Indigenous peoples for actions on toxins continue to go unaddressed. These include long requested studies on potential health impacts to their lands and peoples posed by toxic emissions or effluent.

Part 9 of CEPA, which deals with federal lands, operations and lands, as well as Aboriginal lands, received only scant attention during this study. Since its original enactment little action has been taken to fill the legislative and regulatory gaps that persist in the management of toxins emitted from or onto federal lands or operations. As provincial laws do not apply on for example national parks, federal protected areas or military reserves, the government should move expeditiously to fill this important legislative gap related to the production, emission, or disposal of or contamination by toxic substances.

We strongly endorse the recommendations to fill the void in management or control of toxic substances impacting Aboriginal lands and peoples. As action to address this gap has languished for decades, it is well past time the government made this a budget priority and kick-started a consultation with Aboriginal peoples on establishing and financing a protective regime.

We endorse calls for legally binding and enforceable federal standards for control of toxins. It is long past time to end reliance on Canada Wide Standards. These are merely non-binding guidelines that provide minimal protection against harmful substances.



Minimal time was allotted to reviewing the adequacy of current federal monitoring programs including for regional and cumulative impacts of toxins, regardless of the fact federal law provides for regional assessments. This merits greater attention and study, including addressing transboundary impacts of toxins.

Finally, as former Environment Minister Tom McMillan stated in tabling the original CEPA, "A good law, however, is not enough. It must be enforced ruthlessly if need be." An audit by the Commissioner for Environment and Sustainable Development recently raised a number of concerns with the effective enforcement of the law. The NAAEC commits this government to ensure effective enforcement of the law. Regrettably, the time allotted by Committee to review monitoring and enforcement did not allow adequate time to examine the current enforcement and compliance regime including consideration to issues identified by the Commissioner and strengthened measures arising from the 2009 Environmental Enforcement Act that amended nine environmental laws, including CEPA. It is recommended that the government initiate an open public review of its enforcement and compliance policies including testimony by regional enforcement officers, a process that has not been repeated since the early 1990s.

Finally, while we agree the statutory reviews could be extended to be delivered only each decade, that does not remove the duty of the respective Ministers to initiate more timely reforms and interventions where concerns are brought to their attention.

