



Bill S-5 and the Modernization of the Canadian Environmental Protection Act, 1999 (CEPA)

Issue summary

It has been more than two decades since Parliament passed the Canadian Environmental Protection Act (CEPA). CEPA is a primary regulatory authority for Canada's actions on the climate emergency, the plastic pollution crisis, and air and water quality issues. This legislation must be modernized to adequately protect the environment and the health of people in Canada, particularly marginalized populations and those in vulnerable situations.

Bill S-5, introduced in February 2022 in the Senate, was an important step toward improving CEPA, and the Senate passed amendments to strengthen the bill in June. As important as these improvements were, some key issues remain to be addressed. Leading environmental and health groups are calling on MPs to further strengthen Bill S-5 in the following ways to ensure CEPA is fully equipped to protect the health of people in Canada and the environment. They also call on all federal parties to prioritize passing a strengthened bill by early 2023.

1. The Right to a Healthy Environment

Bill S-5 introduces the right to a healthy environment for the first time in federal legislation, which includes the principles of non-regression and intergenerational equity. This important advance should be reinforced with stronger requirements for the implementation framework including air quality standards and the assessment of toxic substances.

Recommendations:

Require that the implementation framework set out the actions that the Ministers will take when ambient air quality standards are exceeded;

Require that the framework outline the process for considering the right to a healthy environment in the assessment of toxic substances;

Clarify that the "relevant factors" are broadly relevant to interpreting and applying the right to a healthy environment, not only determining its reasonable limits.

Ensure consideration of principles such as environmental justice and intergenerational equity apply to the entire Act.

2. Amendments to modernize Canada's chemical management regulations

2.1 Right to know the chemical ingredients in products

People in Canada currently have almost no access to information regarding the chemicals used in many products, some of which lead to harmful exposures with potentially serious health and environmental effects. This issue can be a particular burden for women who are often responsible for choosing products for the family and avoiding toxic substances when pregnant.

Recommendation:

Through product labeling, ensure the public's right to know of the presence of substances that have been determined to be toxic or are suspected of being capable of becoming toxic by requiring public disclosure of these substances when used in products.

2.2 Updating chemical assessments and risk management plans

Recommendation:

Expand and strengthen priority planning of chemical assessments under CEPA to include timely reassessment of substances where new research has shown greater risk than previously demonstrated. This will help to ensure that assessments and risk management measures are kept up to date as scientific understanding of risks evolves or exposure increases.

2.3 Public requests for assessment or reassessment of a chemical or class of chemicals

CEPA allows members of the public to ask the minister to assess or reassess specific chemicals or groups of chemicals in light of new data. However, there are no obligations for the minister to respond to these requests clearly and in a timely fashion.

Recommendation:

Specify that the minister's response to a public request for assessment must include a clear decision to grant or deny the request. Also prescribe the timeline for initiating and completing assessments in response to a public request, if granted.

2.4 Timeline accountability for chemical assessments

Currently, there are no timelines prescribed for the assessment of chemical substances. In some cases, the assessments for very toxic substances have dragged on for years. During this time, people and the environment continue to be exposed to these substances.

Recommendation:

Establish clear timelines for finalizing chemical assessments in order to prevent multi-year delays between proposed and final risk assessments. CEPA should set a one-year timeline and allow for an extension only if additional data collection or studies are needed to finalize the assessment.

Timelines are also needed for toxic substance risk management plans to improve accountability and prevent lengthy delays in implementing the full suite of risk management measures.

2.5 Safer substitution of toxic chemicals

Currently, we are on a toxic treadmill where one toxic substance can be replaced by a new substance in the same class of chemicals that is subsequently discovered to be equally harmful. Regulations should encourage the use of safer or more sustainable alternatives.

Recommendation:

In developing proposed regulations or instruments to control or prevent the use of a chemical substance, measures that lead to the use of safer or more sustainable alternatives should be prioritized.

Also, priority should be given to pollution prevention measures, particularly for substances determined to be toxic. There should be a total, partial or conditional prohibition of activities in relation to that substance or of releases of the substance into the environment.

2.6 Expanding public access to data by addressing overuse of the Confidential Business Information exception (CBI)

Currently, businesses can claim that specific chemical ingredients and information such as scientific studies on chemicals constitute confidential business information (CBI) and thereby prevent public access to information on the chemicals used in consumer products. This places business interests over the health of people in Canada and their right to know the health and environmental risks of what they are exposed to. Information pertaining to the health or environmental risks of a chemical should be made public and never granted confidentiality.

Recommendation:

CEPA should reverse the onus of proof regarding CBI where the requesting party must demonstrate the essential business need for chemicals names, data, or other information provided to the government on chemicals to remain confidential in order for confidentiality to be granted. Chemical names should only be kept confidential in exceptional situations.

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