

**Submission to the Parliamentary Committee for the  
Five-year Review of the Canadian Environmental Protection Act 1999**

**Submitted by:**

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*The Canadian Lung Association (CLA)) and co-signators to this submission, the Canadian Cancer Society and the Registered Nurses Association of Ontario are pleased to provide this submission to the Standing Senate Committee's five-year review of the Canadian Environmental Protection Act (CEPA) 1999. This submission recognizes CEPA as Canada's primary legislation for promoting and protecting both public health and the health of the environment.*

*This submission outlines the changes to CEPA that we believe are necessary to improve the effectiveness of the Act to protect public health and the environment in Canada, and also to position Canada as a world leader in these efforts. We recognize that many of the health impacts Canadians face result from exposure to toxic substances released by Canada and our international neighbours. Canada is particularly vulnerable because of its atmospheric deposition patterns and bio-accumulation of toxic chemicals.*

*We also recognize that toxic releases from Canada are impacting our neighbours. The changes recommended by this submission reflect the importance of protecting the health of Canadians and of people outside our borders who are affected by our emissions. Reciprocally, through CEPA, Canada can contribute to the development of similar legislation in other countries to protect our shared environment.*

## **Overarching Issues**

### **Increase emphasis on health**

Given that CEPA is jointly governed by the federal Ministers of Health and Environment, the precautionary principle needs to reflect both human health and the environment. Currently, the precautionary principle only specifically references environmental degradation. Thus, the precautionary principle defined in CEPA needs to be changed to specifically address human health and environmental degradation, and better reflect the unique joint administration by the Ministers of Health and Environment.

The *Canadian Environmental Protection Act 1999* is “an Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development.” It is further declared 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.” The primary focus of the Act is thus on sustainable development, not human or environmental health. This needs to be changed to reflect the importance of CEPA as the primary legislation mandating the Ministers of Health and Environment to protect and promote the health of the public and environment. As well, the Act must explicitly consider vulnerable populations including children, the elderly, pregnant and nursing mothers, workers, and First Nations communities. There are major gaps in our knowledge of the relationships between fetal and childhood exposure to carcinogens in the environment, and limited ability to

effectively monitor exposure to these substances in Canada. As such, additional support and funding for research in this area and biomonitoring studies in all age groups are recommended actions associated with the Act.

Greater rigor must be incorporated into the Act in relation to the timely listing of substances on the CEPA Toxic List and in taking timely action to reduce exposure particularly in relation to substances that are persistent/ bioaccumulative and inherently toxic. There is a need for increased awareness of toxic substances that have the potential to cause endocrine disruption. Exposure to these can result in many health problems, including reproductive and neurological abnormalities that have a significant impact on health, society and the economy.

#### Protecting health and the environment translates into cost benefits

There is a strong link between human health and environmental degradation. It is critical that CEPA recognizes not only the importance of clean air, water, soil, products, and the built environment, but also the impact of climate change on health. The Government of Canada (2005) Treasury Board Report acknowledges the relationship between a healthy environment and public health, and notes that the costs of not recognizing this are significant:

*Human health is dependent on the natural functions of a healthy environment, such as providing clean air to breathe and clean water to drink, filtering dangerous radiation, maintaining a relatively stable temperature regime, and absorbing wastes. In turn, the health of Canadians is key to maintaining a healthy workforce—an essential component of productivity and competitiveness. Environmental degradation has an effect on the economy through lost worker productivity and health care costs. Smog caused by air pollution, for example, is associated with thousands of preventable deaths, illnesses, and emergency room admissions in Canada each year. (Report of the Treasury Board, 2005, p. 23-24)*

Protection of public health and the environment significantly reduces health care and societal costs. Many Canadian studies have shown the costs of health impacts from exposure to pollution. Thus, the precautionary measures developed and applied through CEPA are not harmful to the economy, but in fact benefit the economy in many diverse ways.

#### Include the duty to remediate existing polluted sites

One significant limitation of CEPA 1999 is the exclusive focus on future releases of CEPA toxics. CEPA needs to be changed to reflect past releases of CEPA toxics which continue to harm human health and the environment. For example, the residential communities surrounding the Sydney Tar Ponds are contaminated with CEPA toxic chemicals. Clearly, CEPA needs to be changed to correct these fundamental and basic public health issues in promoting sustainable development in Canada.

## **Specific recommendations of the Canadian Lung Association:**

### **1. The first duty of CEPA must be to protect human health and the environment**

CEPA needs to maintain its respect of sustainable development but the emphasis of CEPA needs to shift from “primarily about promoting sustainable development” to primarily focused on protecting and promoting the health of the public and the environment. Promotion of sustainable development requires that Canada act globally.

**CEPA should be changed to read:** *The primary purpose of CEPA is protection of the health of Canadians and the environment from past, present and future activities that may cause harm, and ensure that Canada moves toward sustainable development and promotes sustainable development through its internal and international relationships.*

### **2. The Act must include the duty to remediate contaminated sites**

Currently, the primary purpose of CEPA is to contribute to sustainable development through ‘pollution prevention’. Pollution prevention, as a strategy for protecting the environment and public health, needs to be maintained. However, its limitation to potential future releases does not adequately address all of the issues associated with CEPA toxics and sustainable development. Other measures will be needed to address existing pollution and contamination of Canada’s environment and to contribute to a sustainable future.

Pollution prevention does not mean that pollution and contamination of the environment will be eliminated, that all potential releases are known and thus can be prevented, or that there exists technology to prevent the release of all toxins.

There is a need to have remedial action as part of sustainable development.

CEPA needs to be grounded in protecting Canadians and the environment from substances present in the environment from past practices, i.e., substances released into air, soil, water, consumer products, and the built environment.

In situations where timely action has not been taken, the Minister of Health should take the remedial actions that are necessary (consistent with section 76.2.1 and section 95.5), and apply the costs to the polluter consistent with the polluter pay principle in CEPA (section 98.1).

Thus, CEPA needs to reflect that all of these measures together will contribute to a comprehensive approach to sustainable development.

**The introduction to CEPA needs to be changed to read:** *The Government of Canada will take preventative and remedial measures to protect, enhance and restore Canada's environment and apply pollution prevention strategies to mitigate future releases of toxins in order to promote and protect the health of the environment and the public. All of these measures will be used as a means to sustainable development.*

**CEPA (section 55) should have the following added:** *In cases of present or past contamination where public health is potentially affected, the Minister of Health and the Public Health Agency of Canada must act to ensure that remedial and restorative actions are taken to protect and promote public health. Costs of remediation should be obtained from the parties responsible for the contamination.*

**Accordingly, CEPA section 90.1.1 needs to be revised:** *In developing proposed regulations or instruments with respect to preventative or control actions for substances specified on the List of Toxic Substances in schedule 1, the Ministers shall give priority to pollution prevention actions **but also specify remedial and restorative actions**. Pollution prevention strategies should include elimination of substances that are found to be persistent/ bioaccumulative and toxic.*

**Accordingly CEPA 95.1.b needs to be revised:** *...take all reasonable measures consistent with the protection of the environment and public safety to prevent the release or, if it cannot be prevented, to remedy any dangerous condition or reduce or mitigate any danger to the environment or human life or health that results from the release of the substance or may reasonably be expected to result if the substance is released, **and take remedial and restorative actions for past releases of substances**.*

### **3. The use of the precautionary principle in CEPA needs to be updated and include the duty to take action**

CEPA needs to maintain its positive grounding in the precautionary principle to maintain regulatory coherence with other Canadian legislation. The definition and meaning of the precautionary principle needs to be updated and reflect a "duty" approach to public health and environmental protection. The principle needs to be clearly grounded in the oldest principle of public health to "do no harm". The meaning of the precautionary principle needs to specifically reflect the meaning of "harm" to the health of the environment and people, rather than "damage".

The meaning of the precautionary principle needs to specifically reflect that it is a duty of the Government of Canada to take precautionary actions and that cost-benefit considerations apply to which specific actions are to be taken rather than whether or not action is taken.

CEPA should emphasize that both precautionary and preventative measures are cost effective such that the benefits from actions of the Government of Canada to protect and

promote the health of the environment and the public are maximized. As there will be a number of competing actions stemming from the duty of the Government of Canada, consideration of cost effectiveness will ensure that the maximum benefits are realized from the multiple actions that are necessary. Cost effectiveness should not be used as a reason to suppress the duty to protect the health of the environment and the public.

**CEPA should be changed to read:** *Whereas the Government of Canada is committed to implementing the precautionary principle, where there are threats of serious or irreversible harm to the health of the environment and the public, lack of full scientific certainty shall not be used as a reason to postpone **the duty** to take precautionary actions to protect and promote the health of the environment and the public. In application of the precautionary principle and principle of prevention, measures should be cost-effective.*

#### **4. Burden of proof/ reverse onus**

The revision of CEPA must include a paradigm shift towards requiring agencies using and emitting potentially toxic substances to undertake studies to demonstrate proof of safety to the environment and human health.

#### **5. Timely action to prevent exposure to toxic substances**

Greater rigor must be incorporated into the Act in relation to the timely listing of substances on the CEPA Toxic List and in taking timely action to reduce exposure particularly in relation to substances that are persistent/ bioaccumulative and inherently toxic. Increased awareness is needed for substances that have the potential for endocrine disruption.

**CEPA should** incorporate the concept of timely action into listing and acting on toxic substances.

Chemicals that are persistent/ bioaccumulative toxic substances, and/or are carcinogenic or endocrine disruptors must be eliminated.

Under CEPA, the Ministers of Environment and Health /Public Health should play a lead role in ensuring that Canadian and provincial legislation is enforced in a timely fashion, and that the provinces and territories take action

Under CEPA, Environment Canada, Health Canada, and the Public Health Agency of Canada need to play lead roles in ensuring provinces and territories act to promote and protect the health of the environment and the public. CEPA (section 6.1) specifies that the Minister shall establish the national advisory committee (NAC). The NAC is to advise the Ministers (6.1.a). There needs to be a similar process, perhaps through the NAC, where the

Ministers should advise provincial governments on appropriate action with respect to matters relating to CEPA. This will help to ensure that all Canadians receive similar treatment with respect to protection of the environment and health, that all national standards, guidelines, and codes of practice are appropriately adopted and enforced in each area of Canada.

**CEPA section 6.1 should include the following:** *The Ministers shall advise jurisdictional governments, through the NAC, regarding the appropriate standards, guidelines, and codes of practice, and request appropriate and timely preventative and remedial action, to promote and protect the health of the environment and the public.*

## **6. The precautionary principle must be applied to the assessment of safety for products of biotechnology**

CEPA contains a specific reference to the introduction of animate products of biotechnology (Part 6). This section of CEPA contains no reference to the precautionary principle in the assessment of products of biotechnology. Use of the precautionary principle in this instance should specify the need to affirm proof of safety to permit use/marketing. While definitive proof cannot be provided with certainty, safety should be defined as 'reasonable certainty of no harm'. The concern with products of biotechnology is the introduction into the environment of new organisms, which may drastically harm the environment. In addition, products of biotechnology are also introduced into foods, and these may cause harm.

Part 6 needs to be modified with clear language regarding the application of the precautionary principle and affirmation of proof of safety.

**CEPA part 6 needs to include the following:** *The Ministers shall follow the precautionary principle and affirmation of proof of safety prior to the introduction of any animate products of biotechnology to the environment or food.*

## **7. CEPA must include explicit instructions for the Minister of Health and the Public Health Agency of Canada to act to prevent pollution and remediate and restore environmental quality when there is risk to public health**

CEPA (section 55) says the Minister of Health “shall issue objectives, guidelines, and codes of practice with respect to elements of the environment that may affect the life and health of the people of Canada”. Section 55 needs to also ensure that these guidelines are adhered to in order to protect public health and therefore there is a need for explicit instructions from the Minister of Health and the Public Health Agency of Canada to act to prevent, remediate and restore environmental quality, in particular, where there is a potential for harm to people, i.e., contaminated sites in communities.

CEPA Sections 45 and 55, relating to the role of the Minister of Health in preserving and improving public health, need to be updated to reflect role of the Ministry of Public Health. **CEPA sections 45 and 55 needs to be changed:** *to include reference to the Public Health Agency of Canada in all appropriate places.*

## **8. CEPA must include the development of legally enforceable standards**

CEPA section 2(1)(g) aims to "establish nationally consistent standards of environmental quality". The language in other parts of CEPA does not reflect similar goals; using instead: 'guidelines' (46.1), 'environmental quality objectives' (54.1.a), 'environmental quality guidelines' (54.1.b), 'guidelines' (54.1.c), minister of health shall issue 'objectives', guidelines', and 'codes of practice' (55.1, 55.3), formulation of guidelines (69.1, 69.3) and the term "standard" is absent from 54.2 and 54.4.

CEPA needs to clearly articulate that standards, grounded in legislation, should be developed for all CEPA toxics. These should be published in the Canadian Gazette, and be legally enforceable. Standards need to be included in section 93.1, and consider all environmental media, not just refer to the quantity released, or its presence in products. There needs to be explicit mention that standards and guidelines do not mean "pollute up to limits".

Example: The current Canada Wide Standards for particulate matter and ozone are not actually enforceable standards but are guidelines. Therefore, the meaning of "standard" needs to be articulated as "legally enforceable".

**The administrative duties of the Government of Canada within CEPA, needs to be changed to state:** *Ministers shall develop and publish standards for substances, which specify the maximum levels of a substance which can be released. Remedial and restorative standards shall be used to specify targets where remedial and restorative actions are necessary, and represent levels of minimum harm to the environment and health. Standards and guidelines shall not mean "pollute up to levels", and actions should strive to minimize the presence of the contaminants in the environment in order to promote and protect the health of the environment and the public.*

**Accordingly, section 55.1 the formulation of the Minister of Health should be changed:** *For the purpose of carrying out the mandate of the Minister of Health (and Public Health) related to preserving and improving public health under this Act, the Minister of Health (and Public Health) shall issue **legally enforceable standards, guidelines, and codes of practice** with respect to the elements of the environment that may affect the life and health of the people of Canada.*

## **9. Consumer products need to be regulated under CEPA**

CEPA is supposed to act as a safety net and is meant to compliment other laws such as the Food and Drugs Act and the Pest Control Act. However, consumer products do not appear to be regulated by CEPA, and this needs to be changed.

For example, costume jewelry can contain significant amounts of lead. On March 6, 2001, CBC's "Marketplace" reported the availability in Canada of jewelry containing significant amounts of lead. According to the Director General of Health Canada's Product Safety Program "there is nothing preventing the sale of those particular items at the retail level." CEPA must be changed to protect children from harmful CEPA toxics in consumer products. Health Canada announces many recalls and advisories which are reported on its website. But – except in very rare circumstances – the recall process is voluntary. The federal government lacks the power to demand that an industry recall consumer products. It can recall some products including medical devices. With respect to consumer products, a warning or an advisory is issued rather than a recall.

CEPA has a responsibility to provide a means to ensure that substances not specifically covered under other legislation meet Canadian standards in the areas of human health and safety, and environmental protection. CEPA needs to be changed to provide legislative power to address limitations in other acts that impact on consumer products.

**CEPA needs to be modified to provide the Ministers of Health and the Environment the power to remove any product that contains CEPA toxics.**

**The preamble to CEPA needs to contain clear language that its legislative powers are applicable to other legislation in Canada:** *Whereas the Government of Canada recognizes the need to recall, withdraw, or prohibit the importation, or production in Canada of any products which contain toxic substances which may harm Canadians, or disposal of such products which may harm the environment, and that these discretionary powers extend to other legislation,*

**CEPA part 3, information gathering, needs to be modified accordingly to include:** *Where the Ministers have reason to believe that any product contains toxic substances, they are required to collect information to affirm the suspicion, and if present, submit costs for testing to the manufacturers or importers of such products. The information gathered shall be posted in the Canada Gazette such that Canadians can remove such products from their homes and provide them to the Ministers for proper disposal.*

**CEPA part 5 section 68 needs to contain specific language to control toxic substances in consumer products.**

**CEPA part 10, enforcement, needs to contain specific language to address manufacturers and importers of products which contain CEPA toxics.**

## **10. Domestic Substances List: Alignment of CEPA subsections to allow Ministers to use scientific data from non governmental agencies and other countries to identify toxic substances for inclusion on the virtual elimination and domestic substances lists**

In section 73, CEPA reads: "Where available information is insufficient to identify substances as referred to in that subsection, the Ministers, to the extent possible, cooperate with other governments of Canada, governments of foreign states or any interested persons to acquire the information required for identification." In accordance, the Ministers should review for inclusion as CEPA toxics the substance identified by the International Agency for Research on Cancer (IARC) as Group 1, proven human carcinogens, and Group 2, probable human carcinogens, carcinogens, reproductive and developmental toxins, neurological toxins, identified in the United States National Toxicology program, and other governmental publications.

All substances that meet the criteria under section 73 should be targeted for screening assessments under Section 74. Section 73 should be changed to categorize substances based on the reproductive and developmental toxicants, carcinogens (including neurotoxicity and endocrine disruptors) using the California Proposition 65 list.

Substances severely restricted or prohibited in other jurisdictions should require data to be supplied by industry to demonstrate safety of substances.

This review will be a cost-effective way to identify toxins that may cause harm to the health of the environment and the public. This will allow the limited resources for testing to be spent on other toxins which are especially applicable to Canada, rather than evaluating toxins that have been thoroughly studied elsewhere.

**CEPA section 73 and 77(2)(c) needs to be changed:** *The Ministers shall screen IARC, the US national toxicology program data, and other regulatory bodies for scientific data relating to toxic substances to be put on the virtual elimination list and Schedule 1 (Toxic Substances List)*

*Substances that are found to be persistent, bio-accumulative and inherently toxic through categorization (section 73) should be added to Schedule 1 and eliminated in one year.*

The Canadian Strategy for Cancer Control's National Committee on Environmental and Occupational Exposures (NCEOE) report, *Prevention of Occupational and Environmental Cancers in Canada: A Best Practices Review and Recommendations* recommends:

- That substances assigned by the International Agency for Research on Cancer to Class 1 or Class 2A (definitely or probably carcinogenic to humans) be designated as CEPA toxic, scheduled and require the use of the precautionary principle;

- That CEPA thresholds be lowered or eliminated and that reporting, monitoring and reduction or elimination be required where workplace emissions contaminate the environment;
- That current community profiles be published and, where possible, emitters linked to community air pollution data; and
- That a transparent, multistakeholder review process for toxics be established.

## **11. CEPA must have take precedence in cases of conflict in actions arising from infractions of other Acts**

CEPA is the legislative underpinning of various Acts that protect the environment and health. However, the problem of enforcing CEPA in cases of infractions of the other Acts is a challenge between different Ministries within the Government of Canada.

CEPA needs to clearly indicate that the Ministers of Environment and Health have a duty to apply CEPA and enforce regulations of all associated Acts.

**The introduction to CEPA should be changed to clearly state:** *Whereas CEPA provides powers to the Ministers of Environment and Health to take action to protect and promote the health of the environment and the Canadian public, CEPA provides the legislative mandate to act in circumstances of legislative conflict pertaining to matters related to protection of health and environment.*

## **12. Clarify use of term “risk assessment”**

The assessment of risk of harm to the environment and public health must reflect a broad interpretation of health. Risk assessment needs to be defined as a tool toward less harmful activities and sustainable development (not as a means to rationalize release of toxic substances into the environment).

Risk assessments should include special consideration of exposure of children. When conducting assessments, an extra 10-fold child protective safety factor should be applied in all calculations.

## **13. CEPA needs to explicitly reference public consultation by the Ministers with affected communities**

In cases where communities are affected by environmental contamination needing significant remediation, the Minister of Health / Public Health and Environment should

include public meetings in the suite of tools they use to address the problem. This supports the concepts of open and transparent action and public participation referenced in CEPA.