

Operationalizing the Precautionary Principle in CEPA
ENGO Delegation to the Parliamentary Review of CEPA 1999
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Summary

- The Precautionary Principle is compared to such common notions as “better safe than sorry”, “an ounce of prevention is worth a pound of cure”, the need to “look both ways before you cross the street” and the Hippocratic imperative: “First, do no harm”.
- The 1998 “Wingspread Statement on the Precautionary Principle” articulates the Precautionary Approach and includes: “When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof... It must also involve an examination of the full range of alternatives, including no action.”
- The Government of Canada has committed to the application of the Precautionary Principle in various international agreements and treaties (Stockholm Convention on Persistent Organic Pollutants) and domestic statutes, including the CEPA.
- Contrary to the Government of Canada’s promise to operationalize the principle and identifiable progress to date; recent Ministerial decisions and an overall timidity for concrete action(s) in relation to identified risks to human health are cause for alarm.
- Specific measures are needed in the CEPA to better operationalize the principle of precaution throughout the decision-making process for the categorization, assessment and management of toxic substances. Direction on assessment criteria for vulnerable populations such as children, women of childbearing age and the elderly is necessary.

Background

- The Preamble and Section 2 of the CEPA requires the Government of Canada, in the administration of the Act, to apply the precautionary principle: “...where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”
- In addition, the Act requires the Ministers to apply the precautionary principle when “conducting and interpreting the results” of a screening assessment, a review of a decision of another jurisdiction, or a Priority Substances List (PSL) assessment of whether a substance is “toxic or capable of becoming toxic”.

Considerations

- Recent Canadian examples of inaction and late action that may have been either prevented or better managed by a consistent application of the precautionary principle include contaminated blood, contaminated water, fuel additives, various consumer and medical products, and addressing climate change.
- Public concerns are growing on the increasing rates of learning deficiencies, asthma, birth defects, cancer, difficulties with reproduction, boil water orders, smog days, species extinctions, and pollution in general.
- The CEPA is described as an Act with the precautionary principle as stated guidance, yet this promise to Canadians remains unfulfilled. Canadians expect that when there are “reasonable grounds for concern”, their government will act through proactive measures that are truly precautionary.

- Canadians are being placed at increasing risk due to costly inefficiencies in substance assessment and management that results in increased health care costs across generations.
- Canada's economy and trade are being placed at increasing risk due to CEPA deficiencies and inconsistencies in the timely review of and action on toxic substance decisions made by other jurisdictions and trading partners such as the European Union and the United States (PBDEs, Phthalates, Biotechnology products).
- Evidence indicates that exposure to toxic substances on vulnerable communities such as children, women of childbearing age, workers and aboriginal communities are not adequately considered in the assessment and management strategies for toxic substances.

Recommendations

Under CEPA, the precautionary principle should be applied consistently throughout the decision-making aspects of categorization, assessment and management **ENGO Delegation to the Parliamentary Review of CEPA 1999** of toxic substances to ensure that all substances of concern are managed effectively. This is especially true for Part 5 of the Act and the Domestic Substance List (DSL) processes.

- CEPA should shift its approach to assess and manage groups or families of substances of concern rather than take a substance-by-substance approach.
- CEPA should include unique criteria in health and environmental assessments and management processes that would effectively address exposure to substances on vulnerable populations such as children, women, workers and aboriginal communities.
- The CEPA review should include an exercise to review the programs of other countries for assessing and controlling toxic substances, including the European Registration, Evaluation and Authorization of Chemicals (REACH) program.
- Under Section 75, CEPA should ban and severely restrict substances already facing bans, restrictions or prohibitions in other jurisdictions rather than further studies and delays.
- Inherent toxicity to human health must be a consideration for all DSL substances.
- Screening level risk assessment requirements should be explicit and timelines for completion should be clearly stated.
- CEPA Section 71 should be strengthened to ensure that toxicity data for all substances is generated and submitted by affected industry in a timely manner. Failure to provide toxicity data should be a basis for restricting the use of the substances.
- A regular review and reporting of the effectiveness of management plans for toxic substances is required.
- A limit of quantification for substances targeted for virtual elimination under CEPA should be eliminated. Such requirements lead to inaction on toxic substances.

A House of Commons Standing Committee recommendation to remove the “cost-effective” constraint on the application of the precautionary principle in the CEPA was defeated by the Government in May 1999; this recommendation should be revisited.

Environment Canada has prepared a guidance document regarding the operationalization of the precautionary principle under CEPA 1999; if appropriate this could be incorporated into the Act.

Comprehensive information on the precautionary principle is found at: *IMPLEMENTING PRECAUTION: An NGO Response to the Government of Canada's Discussion Document*
<http://cela.ca/uploads/f8e04c51a8e04041f6f7faa046b03a7c/419precautionary.pdf>