



Legislative Governance Division  
Department of the Environment,  
Gatineau, Quebec K1A 0H3  
[healthyenv-envsain@ec.gc.ca](mailto:healthyenv-envsain@ec.gc.ca)

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**Re: Consultation on CEPA Right to a Healthy Environment Draft Implementation Framework” and in the Canadian Environmental Protection Act, 1999**

Please consider the following comments.

The *Draft Implementation Framework on the Right to a Healthy Environment* is chiefly a non-exhaustive list of considerations and scenarios that might be considered in realizing that right and doing so by using a great deal of permissive language. It seems like voluntary interpretive guidance for public servants, to making usual decisions under the *Canadian Environmental Protection Act*.

Preventing and limiting the risk of toxic chemicals to human health and the natural environment is a vitally important function of government; this was expressly acknowledged in the recent [Federal Budget Plan](#). While the government of Canada does not expressly report the number of deaths or lost disability-adjusted life years lost to toxic chemicals in Canada, according to the [World Health Organization, toxic chemicals \(including pesticides and other chemicals\) cause 2 million deaths annually worldwide](#), which is on the same order of magnitude as deaths due to poor diet (8 million), [tobacco \(8 million\)](#), and [alcohol \(2.6 million\)](#). We are not aware of Canadian official estimates of the harms caused by chemicals, but it is doubtless higher than the [sum of 6,388 deaths attributed to occupational exposure to carcinogens and 2,215 deaths attributed to lead exposure](#) in the general population, estimated for Canada by the Seattle-based Institute for Health Metrics and Evaluation in 2021. While mortality is a crucial metric, morbidity is extremely costly to society and to nature.

However, true human rights are realized by justiciable claims being made by rights holders to independent quasi-judicial officers authorized to order compensation or make legally binding corrective orders. The most important element of the right to a healthy environment is starting with a healthy environment, which is not the case today as we are exceeding the carrying capacity of the Earth. An important procedural aspect would be to specify a human rights body to adjudicate claims. The most obvious choice is the Canadian Human Rights Commission and Tribunal. Ensuring that those bodies have adequate financial resources and expertise to investigate and

adjudicate disputes, including, especially in the early stages of considering this novel right, resources to commission *amicus curiae* opinions is conspicuously absent from the draft.

The Draft Framework acknowledges that “access to effective remedies...is critical to accountability” however it is silent on remedies or procedures for realizing remedies to help fulfil the new right. (p. 29)

Relegating environmental rights claims to informal administrative decisions and judicial review will subordinate them. Human rights that are not justiciable through the human rights system (i.e., only through the less accessible court process).

Robust realization of the right to a healthy environment would also include a system of intervenor funding to ensure that protection of the environment—an inherently public interest objective—is effectively secured to realize a human right fundamentally protects collective interests.

The recognition of the importance of distributional justice as an element of environmental justice is encouraging; however, for decades, the federal government has failed to implement the recommendations of the Canadian Human Rights Commission though the federal government has refrained, for decades.<sup>1</sup> Although some provinces have shown a narrow form of protection of this right, there is ample room for the federal government to meaningfully create sustainable rights of both the right to be free from discrimination on the basis of social condition and the closely analogous distributional rights within the right to a healthy environment.

Parliament has already delimited the right to a healthy environment to matters addressed by the *Canadian Environmental Protection Act*. We urge the federal government to activate a robust right to a healthy environment, even within that constraint, and resist the impulse to protect the crown. Doing so seems to require proposing regulations articulating the role of the Human Rights Commission and Tribunal and establishing mechanisms for *amicus curiae* and public interest intervenor funding for instance, establishing a Rights Holders Advocacy Fund replenished with a percentage of fines imposed for breaches of the *Canadian Environmental Protection Act* and voluntary court-ordered class action settlements based on breaches of the Act. This approach extends the polluter-pays principle.

We urge the Ministers of Health and Environment to advocate and to promulgate those regulations using the relatively new mechanism in *Canada Gazette, Part I* that proactively publishes all submissions filed: <https://www.gazette.gc.ca/consult/consult-orcs-eng.html> and consider proactively disclosing meetings between the director-level or higher of the 1,623 federal chemical management staff with outside parties (especially chemical companies and their advocates) akin to the [proactive disclosure of notes, dates and participants related to Health Canada’s Healthy Eating Strategy](#).

For context, I have attached the 2024 Recommendations of the Canadian Environmental Network’s Toxics Caucus to the federal government’s Chemical Management Program, a key focus of the work of the Caucus, and repeat the observations set out in detail in our October 2024 letter to the Ministers of Health and Environment that the termination of NGO funding came at a time when the number of public servants assigned to address toxic substances rose by one-third to

1,623 Full-Time-Equivalents while the total size of the public service declined slightly.<sup>ii</sup> Likewise, the 2024 Federal Budget Plan dedicated \$95 million per year to Canada's Chemical Management Plan for the years 2024-2026,1F<sup>iii</sup> which (at an average payment of \$125,000 per public servant [based on 2023 assumptions used by the Parliamentary Budget Office](#)) indicates that approximately 760 FTEs are dedicated to the Chemical Management Plan, specifically, especially at the two departments. This appeared contrary to the Federal Government's acceptance of recommendations to sustain and improve engagement with civil society in Health Canada's 2023-2024 internal audit entitled, [Horizontal Evaluation of the Chemicals Management Plan.](#)<sup>iv</sup>

Respectfully submitted,



Bill Jeffery, BA, LLB, Chair  
Canadian Environmental Network Toxics Caucus  
[BillJeffery@HealthScienceAndLaw.ca](mailto:BillJeffery@HealthScienceAndLaw.ca)

cc. Jade Scognamillo, Executive Director, Canadian Environmental Network, [director@rcen.ca](mailto:director@rcen.ca)  
**AND:** Hon. Mark Holland, PC, MP, Minister of Health, [hcminister.ministresc@canada.ca](mailto:hcminister.ministresc@canada.ca)  
**AND:** The Honourable Steven Guilbeault, Minister of Environment and Climate Change, [ministre-minister@ec.gc.ca](mailto:ministre-minister@ec.gc.ca)

## Appendix

### **2024 Recommendations of the Canadian Environmental Network's Toxics Caucus to the federal government's Chemical Management Program, jointly administered by Health Canada and Environment and Climate Change Canada**

- 1. PROVIDE TIMELY NOTICES OF CONSULTATIONS.** Ensure that consultation dates are communicated well in advance, providing CSOs with sufficient time for planning and preparation.
- 2. ESTABLISH A MECHANISM TO ENSURE SUSTAINABLE, RELIABLE PUBLIC INTEREST INTERVENOR FUNDING MANDATED BY LEGISLATION INDEXED TO INFLATION AND THE NUMBER AND QUANTITIES OF CHEMICALS.** Discretionary funding allocated annually or bi-annually is ineffective for planning and creates a moral hazard, where the Toxics Caucus may avoid robust public interest advocacy to secure continued funding. A mechanism for sustainable funding allocation to CSOs should be established to ensure their effective and meaningful participation in consultations.
- 3. IMPROVE DATA TRANSPARENCY.** Create a dedicated platform for transparent data sharing among government agencies, CSOs, industry stakeholders, and the public. Establish forums for ongoing dialogue and information exchange between stakeholders and decision-makers to foster collaboration and trust.
- 4. PUBLISH CONFLICT-OF-INTEREST SAFEGUARDS.** Companies in Canada and abroad profit from the harmful use, release and spread of toxic chemicals. Interventions and roles of vested interests in assessments should be made fully transparent. Measures taken by Health Canada and Environment and Climate Change Canada to protect the public interest from undue commercial influence should also be made fully transparent.
- 5. FULFILL THE DUTY TO WARN.** Implement measures to enhance public access to information about hazardous chemicals and their impacts. This includes improving product labels and creating an online searchable catalog of chemicals, detailing their risks, exposure levels, and estimated environmental concentrations to ensure broader awareness and understanding.
- 6. CONSULT ON PLANS TO REDUCE RISKS OF HARM BY 50% BY 2030.** The government committed to reducing chemical risks by 50% by 2030 as part of its Biodiversity Strategy. However, the volume and diversity of chemicals are increasing, and the government has yet to indicate how it plans to collect data, calculate, let alone reduce, these risks. (We share the same urgent concern regarding pesticides.)
- 7. OPERATIONALIZE THE DEFINITION AND APPLICATION OF THE PRECAUTIONARY PRINCIPLE:** The precautionary principle is inconsistently applied when evidence of harm is assessed to be uncertain. Uncertainty often stems from deficiencies in data quality, availability, or comparability. Criteria should be established, consulted on, and the triggering rules should be clarified. These rules should include how essential/irreplaceable a substance is (is there an inherently safer option) and availability of inherently safer processes, products, and/or substances.

**8. ASSESS DATA NEEDS.** Work with CSOs to identify areas where existing data falls short and develop mechanisms to enhance data collection and validation from diverse communities. Improve data accessibility and inclusivity by involving diverse communities in risk assessments and regulatory actions. Prioritize engagement with affected communities, including vulnerable populations, at all stages, including pre-assessment. Incorporate input from individuals with vulnerabilities such as Multiple Chemical Sensitivities (MCS) to enhance protective measures and promote safer product choices.

**9. MANDATE RIGOROUS, PEER-REVIEWED SYSTEMATIC REVIEWS OF PUBLISHED SCIENTIFIC LITERATURE BY DEDICATED GOVERNMENT OF CANADA STAFF.** Previous reviews conducted by Health Canada—such as those for lead—have been selective, overlooking major studies that indicated harm. In a systematic review, all relevant studies should be identified and considered, with clear explanations provided for downgrading their importance or giving them little weight. Additionally, the search terms used in these reviews should be transparent, especially for chemicals with ambiguous or widely used names, like mercury and lead, or for those with multiple names or class-specific effects, such as endocrine disruptors or chemicals harmful to pollinators.

**10. IMPOSE PREVENTATIVE SUN SETTING AND SUCCESSION PLANNING (INCLUDING WITH A FOCUS ON ESSENTIALITY AND INHERENTLY SAFER ALTERNATIVES) FOR HARMFUL CHEMICALS.** Collaborate with civil society organizations and stakeholders to implement strategies to prevent harm, and support the transition towards safer technologies for a healthier and more sustainable future.

**11. REPORT THE STAFF COMPLEMENTS OF THE CHEMICAL MANAGEMENT PLAN.** Estimates of full-time-equivalent staff dedicated to the Chemical Management Plan have varied widely, from 10 to 100, with no one at the February 29, 2024, meeting knowing the true figure. This number, along with the competencies of the staff, should be included in a report to Parliament. Recent indications suggest that the number could exceed half of the 1,200 full-time-equivalents of officials at Health Canada and Environment and Climate Change Canada mandated for the Chemical Management Plan or other chemical risk-related activities. **We know the answer to this now: 1,600 combined in both departments, 450 for the CMP at Health Canada.**

**12. CONSULT ON AND PUBLISH CONFLICT-OF-INTEREST SAFEGUARDS USED IN POLICYMAKING, PRIORITY-SETTING, AND THE EVALUATION OF RESEARCH RELATED TO HUMAN HEALTH AND ENVIRONMENTAL PROTECTION.** Participants expressed concern about the lack of procedures for considering input and research from companies, as well as from scientists and other individuals funded by commercial enterprises with conflicts of interest. Mandating and publishing interest declarations, as done by the World Health Organization, is an essential first step. It is also crucial to proactively publish direct or indirect communications with Chemical Management Plan staff. In certain circumstances, it may be appropriate for individuals or organizations with conflicts of interest to be excluded from positions of trust, such as government advisory committees, or to recuse themselves from discussions related to chemicals management. What is the role of Canada's Chief Scientist and her office?  
<https://science.gc.ca/site/science/en/office-chief-science-advisor>

**13. LINK THE CHEMICAL MONITORING PROGRAM TO FEDERAL HEALTH CARE FUNDING CONDITIONAL ON IMPROVEMENT OF ELECTRONIC MEDICAL RECORDS.** Anonymized electronic medical records (including chemical analyses of blood, hair, urine, feces, and other tissues), like waste-water testing, can be used to assess the impact of chemicals on human health.

**14. REGULAR QUARTERLY MEETINGS:** Negotiating meeting dates around many people's evolving schedules is both time-consuming and frustrating. Meetings should be scheduled well in advance so participants can plan accordingly or send substitute delegates. For occasional meetings to address urgent issues between quarterly sessions—such as the implications of the recent internal audit of the Chemical Management Plan, the significant changes resulting from the 2024 federal budget (including budget reductions and user fees), and the termination of funding for the Chemical Management Plan outreach program to the Toxics Caucus—and efficient coordination through scheduling tools like Calendly or Doodle is recommended.

These recommendations aim to strengthen CSO engagement in the CMP program by prioritizing capacity building, fostering collaboration, promoting education, encouraging engagement, and enhancing public participation. This approach seeks to create a more informed, inclusive, and collaborative framework for chemical management.

## ENDNOTES

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<sup>i</sup> Canadian Human Rights Commission. Submission to the Department of Canadian Heritage relating to Canada's response to the recommendations made during the 4th cycle of the Universal Periodic Review. December 2023. Ottawa.

<sup>ii</sup> Although actual spending for fiscal year 2023-2024 has not been updated yet, the combined number of Full-time Equivalent public servants dedicated to Health Canada's "Health Impacts of Chemicals Program" and Environment and Climate Change Canada's "Substance and Waste Management Program" rose from 1,216 in fiscal year 2022-2023 to 1,623 in 2024-2025, a 33% rise. See: Government of Canada. Actual and Planned Full-Time Equivalents (FTEs) by Program: Government of Canada. Updated August 19, 2024. Available at: [https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#rpb/-\(table.-'programFtes.-subject.-'gov\\_gov.-columns.-\(.-'\\*7b\\*7bpa\\_last\\_year\\_5\\*7d\\*7d.-'\\*7b\\*7bpa\\_last\\_year\\_4\\*7d\\*7d.-'\\*7b\\*7bpa\\_last\\_year\\_3\\*7d\\*7d.-'\\*7b\\*7bpa\\_last\\_year\\_2\\*7d\\*7d.-'\\*7b\\*7bpa\\_last\\_year\\*7d\\*7d.-'\\*7b\\*7bplanning\\_year\\_1\\*7d\\*7d.-'\\*7b\\*7bplanning\\_year\\_2\\*7d\\*7d.-'\\*7b\\*7bplanning\\_year\\_3\\*7d\\*7d\)\)](https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#rpb/-(table.-'programFtes.-subject.-'gov_gov.-columns.-(.-'*7b*7bpa_last_year_5*7d*7d.-'*7b*7bpa_last_year_4*7d*7d.-'*7b*7bpa_last_year_3*7d*7d.-'*7b*7bpa_last_year_2*7d*7d.-'*7b*7bpa_last_year*7d*7d.-'*7b*7bplanning_year_1*7d*7d.-'*7b*7bplanning_year_2*7d*7d.-'*7b*7bplanning_year_3*7d*7d)))

<sup>iii</sup> 2024 Federal Budget Plan. Available at: <https://budget.canada.ca/2024/home-accueil-en.html#pdf>

<sup>iv</sup> "Recommendation 4:

**Develop and maintain engagement across different external partner and stakeholder groups, including Indigenous partners. Meaningful engagement with partner and stakeholder groups is important for the program to achieve its goal of protecting human health and the environment by ensuring diverse voices are heard and considered in program policy and decision making.** While the evaluation found evidence of insufficient meaningful engagement with Indigenous partners, the recently launched contribution program provides an avenue to improve the program's engagement with numerous partners, including CSOs and Indigenous partners. During the implementation of the program, consideration should be given to the regular identification of lessons learned and the adoption of best practices to enhance engagement across thematic work areas." [emphasis added]