

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.