

# The Draft Implementation Framework for the Right to a Healthy Environment under CEPA

AFN Webinar

November 21<sup>st</sup>, 2024



Government  
of Canada

Gouvernement  
du Canada

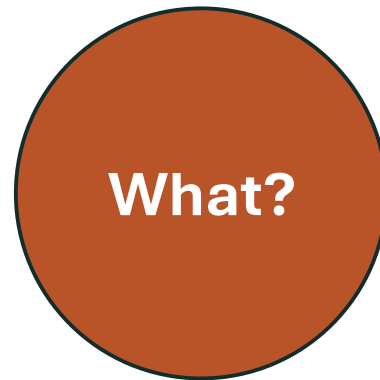
# Introducing the CEPA Right to a Healthy Environment Implementation Framework



CEPA was significantly updated by Parliament for the first time since 1999



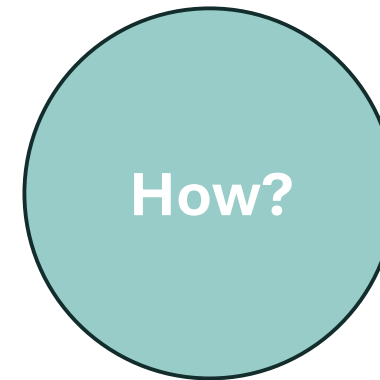
Every person in Canada has the right to a healthy environment under CEPA and the federal Government has a duty to protect this right



An implementation framework to set out how government decision-making under CEPA can protect the right



Work started in June 2023, with the final framework to be published in June 2025



Through engagement with stakeholders, the public, and Indigenous partners

# The *Canadian Environmental Protection Act, 1999* (CEPA)

- CEPA provides the Government both enforceable and voluntary tools (Regulations, Codes of Practice, Guidelines) to address a wide range of pollution sources:



Transboundary movement of hazardous waste



Chemicals



Animate products of biotechnology



Vehicle and engine emissions



Environmental emergencies



Nutrients, disposal at sea

- The environment falls under shared jurisdiction among federal, provincial, and territorial governments. Indigenous governments also play a role.
- Other significant federal environmental protection Acts include: the *Fisheries Act*, the *Impact Assessment Act*, the *Species at Risk Act*, etc.

**Affirms commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent.**

# What is the right to a healthy environment under CEPA?

## PROPOSED MEANING OF THE RIGHT TO A HEALTHY ENVIRONMENT UNDER CEPA:

### SUBSTANTIVE ELEMENTS

Living in an environment that is protected from harmful substances, pollutants and waste, and where actions taken under CEPA contribute to:

- Clean and healthy air and water
- A sustainable climate
- Healthy ecosystems and biodiversity

### PROCEDURAL ELEMENTS



Access to Information



Participation in Decision-Making



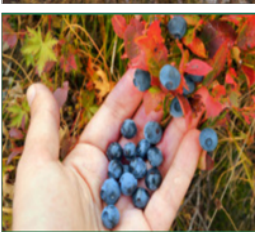
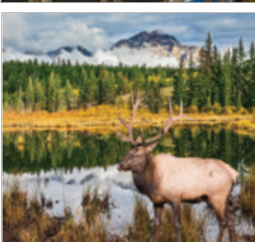
Access to Effective Remedies in the Event of Environmental Harm

RESPECT FOR RIGHTS  
OF INDIGENOUS  
PEOPLES



# Indigenous Rights

- Respect for section 35 rights which are recognized and affirmed in the *Constitution Act, 1982* and the Government's legislative and policy commitments to First Nations, Inuit, and Métis, are essential to protecting the right to a healthy environment under CEPA.
- Activities under CEPA can also contribute to the Government's commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples.
- The framework highlights some of the articles of the UN Declaration that relate to human health and environmental rights and are relevant to the framework.
- Ensuring Indigenous voices are reflected in the framework is key, and priorities identified to-date have been woven throughout the framework and will be expanded upon in the coming years as the framework is improved.



# Other elements of the framework - Principles

## Environmental Justice



Avoiding disproportionate adverse environmental and health impacts and burdens falling on different populations, considering populations who may be disproportionately impacted by pollution, and their meaningful involvement in decision-making under the Act.

## Intergenerational Equity



Emphasizes that it is important to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.

## Non-regression



Preventing reduced levels of environmental and health protection and continuous improvement of these protections when feasible.

## Other CEPA Principles

- Sustainable development;
- Ecosystem approach;
- Polluter pays;
- Precautionary principle;
- Science-based decision making;
- National standards;
- Pollution prevention;
- Intergovernmental cooperation

# Other elements of the framework - Factors



**Scientific:** Using the best data, evidence, methods, and practices available, weight of evidence, interdisciplinary approach, etc.



**Environmental:** Considering improvement of ecosystems and their biological diversity, climate change, air and water; vulnerable environment, cumulative effects, etc.



**Health:** Analyzing the potential adverse human health impacts, mental health impact, holistic approaches to health, etc.




**Social:** Considering populations who may be disproportionately impacted by pollution, community well-being, cultural practices, traditions and heritage, cultural diversity, etc.



**Economic:** considering financial and economic returns alongside health, social, environmental, and other relevant costs and/or benefits and how these are distributed.



# How will the Government protect the right?



Examples of CEPA Mechanisms to Support Protection of the Right (Annex 1)

Guiding Considerations for Mechanisms that Support Protection of the Right under CEPA (Annex 2)



# CEPA mechanisms to support protection of the right

Mechanisms are tools or policy approaches that CEPA programs at ECCC and HC already use or plan to undertake that support protection of the right to a healthy environment

## Examples from Annex 1

- Identification of right to a healthy environment research priorities for researchers in HC and ECCC (NEW)
- Ability to submit a request to assess a substance
- Integrating consideration of the right into the Instrument Choice Framework for risk management
- Approaches to enhancing access to remedies (NEW)
- Develop an Indigenous Knowledge Policy Framework for CEPA (NEW)



# A closer look: CEPA mechanism examples in the draft framework (1)



CEPA Cycle	Proposed Mechanism	Upholds the principles:	Contributes to the procedural elements:
Risk assessment	<p><b>Ability to submit a request to assess a substance</b>                      CEPA allows for the public to submit requests for the assessment of a substance. The Ministers may either grant the request and add the substance to the Plan of Priorities or deny the request. A request form provides guidance on what type of information to include in such requests, including sections for considerations about populations who may be disproportionately impacted by substances; cumulative effects; and hot spots. A record of requests for assessments received and the Government’s decision and rationale are published online.</p>	Environmental justice, Intergenerational equity	Access to information, Participation in decision-making

# A closer look: CEPA mechanism examples in the draft framework (2)

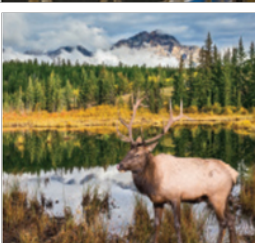


CEPA Cycle	Proposed Mechanism	Upholds the principles:	Contributes to the procedural elements:
Enforcement	<p><b>Approaches to enhancing access to remedies (NEW)</b>                      Develop guidance for the public request for an investigation under CEPA (section 17), with the intention of making this more accessible to the public, while avoiding requests that do not meet applicable requirements.</p>	Environmental justice, Non-regression	Access to remedies, Access to information

# A closer look: Indigenous knowledge in the draft framework

The draft framework proposes a new mechanism to develop an Indigenous Knowledge Policy Framework for CEPA decision-making, in collaboration with Indigenous partners.

- CEPA recognizes the role of Indigenous knowledge in informing decisions about protection of the environment and human health.
- Bridging, braiding and weaving Indigenous knowledge with western science will provide robust information for CEPA decision-making, which supports the protection of the right.
- The framework highlights some important concepts that have been shared by First Nation and Métis partners in the development of the framework so far and could inform CEPA decision-making and protection of the right:
  - Etuaptmumk (Two-Eyed Seeing);
  - Gaswéñdah (Two-Row Wampum);
  - Manito Aki Inakonigaawin (Great Earth Law);
  - Seven Generations Principle; and
- Must also consider CARE Principles for Indigenous Data Governance (collective benefit, authority to control, responsibility and ethics) and the First Nations principles of OCAP (ownership, control, access and possession).

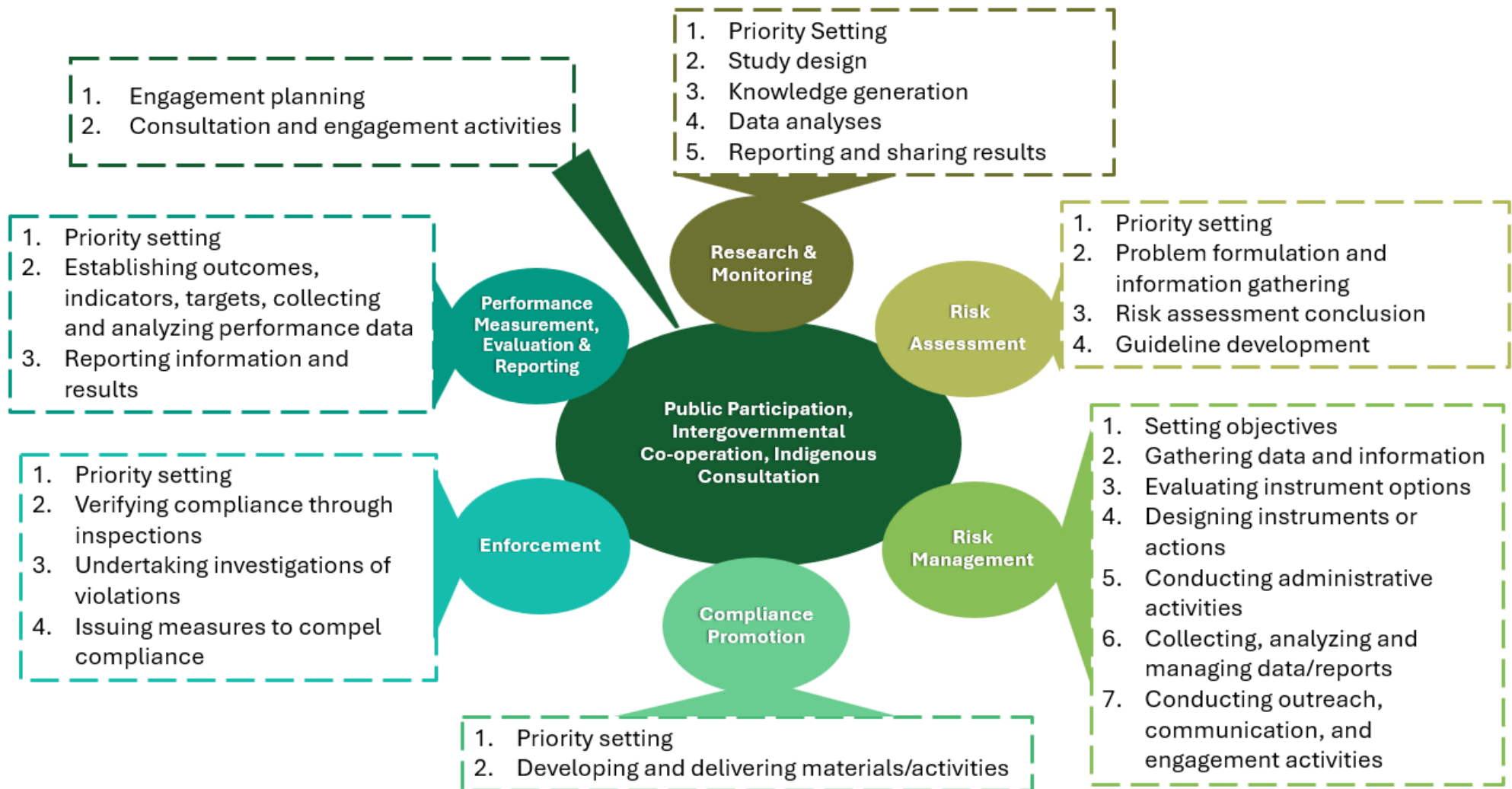


# Guiding considerations for mechanisms that support protection of the right (Annex 2)

- A series of guiding considerations are proposed in the draft framework for ECCC and HC decision-makers to incorporate, as appropriate, within the various mechanisms and decisions.
- They highlight the procedural elements, principles, factors, and Indigenous rights that may be considered on a case-by-case basis.



# Opportunities where guiding considerations can apply in CEPA decision-making (Annex 2)



# A closer look: Applying the guiding considerations (1)

## New Substances Notification Regulations (Organisms)

These regulations ensure that no new living organisms are introduced into the Canadian marketplace before undergoing ecological and human health assessments, and that appropriate control measures are imposed, when required

CEPA Cycle Step	Description
Risk Assessment	A risk assessment uses data received in a notification, including information on an organism's ability to persist/survive in the environment, its potential to cause adverse environmental impacts affecting biological diversity and potential effects to general and disproportionately impacted populations.
	Summaries of notifications submitted for higher organisms are posted online, supporting <b>access to information</b> . Stakeholders invited to share scientific information and test data related to potential risks to the environment or human health from the new living organisms, and responses to public comments received are posted online, supporting <b>participation in decision-making</b> . Finally, assessment summaries and conclusions are published, supporting transparency.
Risk Management	If a suspicion of toxicity is identified, additional information may be requested of the notifier, or control measures may be imposed to manage any risks to the environment or human health in Canada. Control measures are published in Canada Gazette and accessible with the assessment summary.

# A closer look: Applying the guiding considerations (2)

## New Substances Notification Regulations (Organisms)

The draft framework proposes considerations that decision-makers may consider to protect the right, as appropriate. For example:

- Making public information accessible, including translations and formats suitable for different audiences
- Identifying and considering populations who may be disproportionately impacted by pollution, including the distribution of risks, exposures or outcomes
- Using best available science and evidence, including Indigenous knowledge, acknowledging and accounting for any uncertainties and applying the precautionary principle, where appropriate
- Ensuring that any Indigenous knowledge that is shared is protected in accordance with applicable federal laws
- Providing distinctions-based, meaningful engagement with Indigenous partners and reporting back on how their input was considered
- Opportunities for the decision to promote reconciliation, mutual respect and understanding [...] and to help advance the objectives of the UN Declaration Act





# Next steps & looking forward



Bill S-5  
received  
Royal Assent

June 2023

1. Government-led Workshops
2. Indigenous-led Engagement Activities

February 2024

Publication of Discussion  
Document

Fall 2024



**Oct 5 – Dec 4\*: Draft implementation  
framework published for public  
comment**

\* Comment period for Indigenous  
Partners and First Nations is extended  
to **Jan 6, 2025**

Final implementation  
framework published

June 2025

To submit your comments, please email us at [healthyenv-envsain@ec.gc.ca](mailto:healthyenv-envsain@ec.gc.ca).

**More information:** <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/right-to-healthy-environment.html>