



Assembly of First Nations (AFN) Environment Sector Webinar Series

Bill S-5: Right to a Healthy Environment Backgrounder Introduction and Overview

October 28, 2024

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This document has been prepared for information purposes to set the stage for the Assembly of First Nations' Right to a Healthy Environment webinar series. First Nations' participation in the webinars does not constitute consultation nor fulfilment of the Crown's duty to consult and accommodate with First Nations and should not be construed as such.

Background

The Government of Canada amended the *Canadian Environmental Protection Act, 1999* (CEPA) as part of Bill S-5, *An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act*; it came into force on June 13, 2023. With the Government of Canada recognizing in federal law, that every individual in Canada has a right to a healthy environment. Bill S-5 amendments are to strengthen and modernize CEPA since the Act came into force in 1999. First Nations participation was seen throughout the parliamentary process. The Assembly of First Nations (AFN) made a submission with recommendations to the relevant House of Commons and Senate Standing Committees.¹

Bill S-5 recognized for the first time in federal law, that every individual in Canada has a right to a healthy environment. CEPA, 1999 defines a healthy environment as *one that is clean, healthy, and sustainable*.² From the day of enactment of Bill S-5 the Government of Canada has two years to develop and table an Implementation Framework that outlines how Environment and Climate Change Canada (ECCC) and Health Canada (HC) will fulfill the right.

February 2024, ECCC and HC released a [Discussion Document](#) to inform the development of the Implementation Framework. The AFN provided a Technical Submission to ECCC and HC outlining areas of concerns and priorities. The Technical Submission highlighted the gaps and concerns of the conceptualization of the Right to a Healthy Environment, and where it diverges from First Nations teachings, principles, rights, knowledge systems, and worldviews.

1 The Assembly of First Nations "Submission to the House of Commons Committee on Environment and Sustainable Development, Study on Bill S-5 An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act" (December 1, 2022) online, and Assembly of First Nations, "Submission to the Senate Standing Committee on Energy, the Environment and Natural Resources (ENEV) Study on An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act (Bill S-5)" (May 9, 2022) [online](#)

2 Strengthening Environmental Protection for a Healthier Canada Act



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On October 5, 2024, the [Draft Framework](#) was published, and is open for a 60-day comment period ending on December 4, 2024; an extended comment period for Indigenous organizations to end beginning of January. A [What We Heard](#) report was also published summarizing the engagement activities from the Discussion Document. The Implementation Framework proposed as is a guide for individuals to understand how the Government of Canada will consider the right in administering CEPA, 1999. The draft Implementation Framework includes sections on *accountability and reporting on the implementation of the framework*³ to promote transparency and build public confidence. The draft Implementation Framework will consider additional principles such as environmental justice, non-regression, and intergenerational equity.

A recognition of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) was included in the amended CEPA, 1999. The draft Implementation Framework will outline how UNDRIP can be integrated into CEPA decision-making.

Bill S-5: Strengthening Environmental Protection for a Healthier Canada Act

CEPA, 1999 is the legislation that protects human health and the environment by regulating pollution and managing harmful substances. Administered by ECCC and HC, CEPA, 1999 plays a central role in preventing pollution, addressing toxic substances, and promoting sustainable development. Since the enactment of CEPA, 1999, there have been no amendments until Bill S-5.

Bill S-5, *An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drug and to repeal the Perfluorooctance Sulfonate Virtual Elimination Act*, was introduced in the Senate of Canada in March 2022. The goal of Bill S-5 was to enhance and modernize CEPA, 1999 to address current and future environmental challenges. Key objectives of Bill S-5 included,

- Strengthening environmental protection and public health;
- Recognizing the Right to a Healthy Environment;
- Improving the management of toxic substances and chemicals; and
- Promoting environmental justice and the protection of vulnerable populations.⁴

Bill S-5 received Royal Assent on June 13, 2023. As part of the implementation of Bill S-5, the Government of Canada has committed to developing an Implementation Framework within the next few years. This Implementation Framework will outline how the right to a healthy environment will be considered in the

³ Draft Implementation Framework for the Right to a Healthy Environment under CEPA

⁴ Bill S-5: Strengthening Environmental Protection for a healthier Canada Act from Environment and Climate Change Canada



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administration of CEPA, 1999 and will establish the right in the daily lives of Canadians.

Right to a Healthy Environment under CEPA

The highly anticipated amendment to CEPA, 1999 was the first recognition of the right to a healthy environment in Canadian federal law. The preamble of CEPA, 1999 states *that the Government of Canada recognizes that every individual in Canada has a right to a healthy environment.*⁵ The Government of Canada now has a duty to protect the rights with decisions made under CEPA, 1999. ECCC and HC are tasked with developing an Implementation Framework within two years after the day Bill S-5 comes into force, which is to outline how the right to a healthy environment will be considered in the administration of CEPA. ECCC and HC are to be guided by the framework to fulfil the duty of considering the right to a healthy environment in decision-making. The Implementation Framework will outline the substantive and procedural elements of the right under CEPA, 1999 and elaborate on the following:

- Mechanisms to support the protection of the right;
- Foundational Principles to be considered in the administration;
- Relevant Factors to be considered when interpreting and applying the right and
- Research, studies, and monitoring activities to support the protection of the right.⁶

The Implementation Framework is a tool for Canadians to understand how the Government of Canada is considering the right to administer CEPA. It is meant to improve transparency and build confidence in the Government of Canada's commitment to fulfilling the duty. The Implementation Framework has a section on accountability and reporting on its implementation that will support this commitment.

What is the Right to a Healthy Environment under CEPA?

Under CEPA, 1999 a healthy environment is defined as *clean, healthy, and sustainable.*⁷ The Government of Canada conceptualizes the right as including substantive elements within the context of CEPA, 1999. The purpose of CEPA, 1999 is pollution prevention and protection of the environment and human health, including considering human health, the health of the environment, and biological diversity. Building onto the right to a healthy environment under CEPA, 1999 includes *the right to clean, healthy, and sustainable air, water, climate, ecosystems and biodiversity, and protection from harmful substances, pollutants and waste.*⁸ The right recognizes Indigenous

5 Canadian Environmental Protection Act, Preamble para two

6 Draft Implementation Framework for the Right to a Healthy Environment under CEPA, Introduction

7 Canadian Environmental Protection Act

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



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Peoples' relationship with their Lands and resources, and this is further outlined in the Indigenous Rights section of the framework.

Right to a Healthy Environment Internationally

The right to a healthy environment was adopted at the UN General Assembly with Resolution 76/300 (2022) recognizing the human right to a clean, healthy and sustainable environment. The following sections of Resolution 76/300 (2022) align with the modernized CEPA Bill S-5 amendments.

Reaffirming:	All human rights are universal, indivisible, interdependent and interrelated; All human rights are universal, indivisible, interdependent and interrelated.
Recognizing:	Sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations; Conversely, the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights; The exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment; The right to a clean, healthy and sustainable environment as a human right.
Recalling:	Guiding Principles on Business and Human Rights, ¹³ which underscore the responsibility of all business enterprises to respect human rights.
Affirming:	The importance of a clean, healthy and sustainable environment for the enjoyment of all human rights.
Noting:	The right to a clean, healthy and sustainable environment is related to other rights and existing international law.



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SDG 3	Good Health and Well-being, targets are related to reducing pollution and environmental hazards.
SDG 6:	Clean Water and Sanitation, targets are related to the importance of access to clean water.
SDG 13:	Climate Action, targets recognize the need for urgent measures to combat climate change and its impacts.
SDG 15	Life on Land, targets aim to protect biodiversity and ecosystems.

Before the landmark adoption of Resolution 76/300 (2022), the UN Human Rights Council adopted Resolution 48/13 (2021). From this resolution, the UN Human Rights Council appointed a Special Rapporteur on Human Rights and the Environment to promote the right globally.

Several international agreements, treaties, and declarations indirectly support the right to a healthy environment by addressing issues such as pollution, biodiversity loss, and climate change. The Stockholm Declaration (1972), Rio Declaration (1992), and the Paris Agreement (2015) are a few well-known examples.

The Sustainable Development Goals (SDGs) incorporate environmental sustainability as a core element of global development. The following SDGs directly or indirectly support the right to a healthy environment. The right to a healthy environment has grown in recognition in international, regional, and national legal systems. While the UN resolution is not universally binding under international law, the recognition of the right by the UN, regional courts, and national constitutions shows its growing importance as a fundamental human right. While there has been significant progress in implementing the right, considerable challenges have been recognized.

The right to a healthy environment internationally and nationally involves many factors that support the environment and human health, which makes it more complex. Enforcing and implementing this right has proven to be a legal challenge. The UN resolution is not legally binding, so countries must create their legislation. Legislation or constitutional change can be complicated for numerous reasons and is contingent on the country. Environmental justice proves to be another challenge. Environmental justice is integral to environmental rights, but there is no universal definition of environmental justice. There is an obligation to ensure that environmental justice is integrated into the right, so no one is left behind.

Discussion Questions:

1. What are some primary concerns with the draft Implementation Framework?
2. What changes should be made to the draft Implementation Framework?