



Bill S-5: is there time to improve federal control of toxic substances and genetically modified organisms?

Parliament has been considering its review of the Canadian Environmental Protection Act for a long time, and there is still time to incorporate real change into a statute that has not been meaningfully amended in over twenty years.



Minister of Environment and Climate Change Steven Guilbeault speaks with reporters in the House of Commons foyer on April 26, 2023. Earlier this year, the federal government prematurely declared victory in the war on toxic substances and genetically modified organisms, write Heather M. Fast, Mark Butler, Sylvia Plain, and Joseph Castrilli. *The Hill Times* photograph by Andrew Meade

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Parliament has one last chance to bring control of toxic substances and genetically modified organisms into the 21st Century.

Earlier this year, the federal government prematurely declared victory in the war on toxic substances and genetically modified organisms (GMOs). In February 2023, the government issued a [media release](#) extolling the virtues of Bill S-5, which introduced amendments to the *Canadian Environmental Protection Act, 1999* (CEPA) in early 2022. A single version of the bill has not yet been approved by both houses of Parliament, but without more than limited recognition of “the right to a healthy environment” to show for seven years of review of the Act, the final bill may produce little improvement in environmental protection, public participation, or access to environmental justice in relation to human and environmental exposures to toxics and GMOs.

Parliament has been considering its review of CEPA for a long time. The House Environment Committee began its review of the Act in 2016. Despite arguments from industry that little change was required, in 2017, the committee responded to the testimony of environmental groups, scientists, Indigenous Peoples and others, and issued a [report](#) containing 87 recommendations for strengthening the Act. Unfortunately, when introduced in the Senate in 2022, key recommendations from the committee were missing from Bill S-5.

After the Senate committee heard from expert witnesses, a majority of Senators supported amendments that breathed life into some of 2017's recommendations. But when Bill S-5 went to the House Environment Committee, many of those limited gains were reversed.

Taken as a whole, the amendments to CEPA in Bill S-5 do not constitute progress in controlling toxic substances in Canada. The problems with Bill S-5's approach to toxic substances are myriad, but fall into two broad categories: 1) failing to fix what is broken in CEPA; and 2) proposing to fix what isn't broken in CEPA, and in the process making things worse.

The first category includes: 1) failing to make pollution prevention plans mandatory for toxic substances listed in the Act; and 2) failing to improve the flawed authority for virtual elimination of the worst substances, and compounding the problem by eliminating the authority altogether from CEPA. The second category includes eliminating the authority to prohibit the use of, or seek safe alternatives to, almost 90 per cent of the toxic substances listed in the Act.



Although the recognition of the right to a healthy environment is an important step, by failing to fix what is currently broken in the Act, such as providing a remedy to make the right enforceable, Bill S-5 maintains the status quo of keeping citizens largely excluded from environmental decision-making on toxic substances in Canada. It seems Parliament will be placing a lot of expectation on the limited right to a healthy environment provision providing a fix for all that is not well with CEPA on the toxics front.

Similarly, the handling of public participation in the assessment of GMOs is, unfortunately, a prime example of the triumph of the status quo over strengthening the law. Senators, when informed of the negligible level of transparency and public participation in the review of GMOs, amended Bill S-5 to require “meaningful public participation” consistent with the 2017 recommendations. However, when the bill moved to the House of Commons, industry representatives strongly opposed these amendments, and the House ended up replacing “meaningful public participation” with the much more restrictive “the Minister may consult with any interested persons,” and removing the requirement that a proponent show “demonstrable need” for a GMO prior to manufacture or importation.

Another important issue, only marginally addressed in Bill S-5, is the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act. This requires the government to ensure the consistency of federal laws, including CEPA, with international legal commitments related to Indigenous rights. Although Bill S-5 will add some references to the UN Declaration and Indigenous knowledge, it remains unclear how the bill will better support the meaningful involvement of Indigenous communities in CEPA-related processes.

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When the bill goes to report stage in the House, the government will have to send a message to the Senate justifying the changes it has made. Because a single version of Bill S-5 has not yet been approved by both houses of Parliament, there is still time to incorporate real change into a statute that has not been meaningfully amended in over 20 years, and may not be before Parliament again for another 20 more.

Canadians deserve better.

Heather M. Fast is the policy advocacy director for Manitoba Eco-Network; Mark Butler is a senior adviser for Nature Canada; Sylvia Plain is a research and policy analyst; and Joseph Castrilli is counsel for the Canadian Environmental Law Association.

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