



MANITOBA ECO-NETWORK

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Standing Committee on Energy, the Environment and Natural Resources

The Senate of Canada

Ottawa, Ontario

Canada, K1A 0A4

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The Honourable Steven Guilbeault

Minister of Environment and Climate Change

Steven.Guilbeault@parl.gc.ca

Re: Proposed Amendments to Bill S-5, Strengthening Environmental Protection for a Healthier Canada Act

In this submission, the Manitoba Eco-Network (MbEN), with the support of the local organizations indicated below, recommends that the Senate Standing Committee on Energy, the Environment and Natural Resources amend the current text of Bill S-5, the *Strengthening Environmental Protection for a Healthier Canada Act* before its third reading. In particular, MbEN recommends the Committee adopt the reforms to Bill S-5 proposed by the Canadian Environmental Law Association (CELA).¹ Bill S-5 is an important opportunity to improve Manitobans' access to environmental justice and help fill legal gaps in our provincial regime regulating the use and clean-up of toxic substances. However, in its current form, it appears that Bill S-5 will do little to improve meaningful public involvement in the regulation of toxic substances and better protect the health of Manitobans.

¹ CELA, *Proposed Amendments Submitted to the Ministers of Environment and Climate Change and Health on Bill S-5, An Act to Amend the Canadian Environmental Protection Act, 1999, etc.* (March 2022), online: https://cela.ca/wp-content/uploads/2022/03/CELA-Proposed-Amendments-to-Bill-S-5-CEPA_03Mar22.pdf; CELA, *Submissions to the Minister of Environment and Climate Change and Health on Bill C-28, An Act to Amend the Canadian Environmental Protection Act, 1999, etc.* (February 2022), online: https://cela.ca/wp-content/uploads/2022/02/Submission_CEPA.pdf

Seeking Environmental Justice in Manitoba

Since 1988, Manitoba Eco-Network (MbEN) has promoted positive environmental action by supporting people and groups in our community. MbEN's programming focuses on policy advocacy, engagement in consultation processes and developing capacity building tools that benefit the environmental non-profit sector and our member groups. We are a public interest environmental organization seeking to promote and facilitate good environmental governance and the protection of Manitoba's environment for the benefit of current and future generations.

In the past few years, MbEN has engaged with a range of individuals and organizations in Manitoba who have serious concerns about toxic substance contamination in the areas they live and work in. This led to the development of our [Healthy Environment, Healthy Neighbourhood](#) project (HEHN), which is aimed at increasing access to environmental justice for citizens in the City of Winnipeg, with a focus on the inner-city and low-income and marginalized individuals. This project was created after community groups from areas affected by industrial pollution reached out to MbEN for help. Their efforts to secure meaningful remedies for the harms to their communities have been unsuccessful. In response, MbEN designed this project to document community members' experiences, explore legal remedies, and identify gaps in the legal framework.

One of the main problems we have identified so far is the very limited role of the public in the identification, investigation, monitoring, and clean-up of toxic contamination in the areas where they live and work. This has created a situation where Manitobans have little to no legal power to trigger the investigation and clean-up of toxic contamination in their neighbourhoods, participate in monitoring, follow-up or enforcement activities and initiate legal proceedings in situations where industry or government has not taken appropriate action. Manitobans also lack access to information about contaminated sites, ongoing investigations, monitoring and follow-up data (air, water, soil), and related public health data, among other things.

There are many examples of the struggles endured by residents in our study areas of St. Boniface, Point Douglas, and the Weston School area as they have attempted to protect themselves and their families from toxic contamination. For example, soil, air, water, and snow sampling for lead has been conducted multiple times in Winnipeg since the 1970s, and more recently since 2016.² Tests repeatedly show that the levels of lead and other toxic substances

² See for example, Elisha Dacey, "Testing Reveals Toxic Heavy Metals in St. Boniface Soil," *CBC*, August 18, 2017; Kristin Annable, "Unsafe Lead Levels Remain at Weston School's Sports Field, Gov't Officials Say Winter Minimizes Risk," *CBC*, November 29, 2018; Cameron MacLean, "High Lead Levels in Soil a Lingering Reminder of Point Douglas's Industrial Past," *CBC*, December 1, 2018; Kristin Annable, "New Test Results Show Lead Contamination in St. Boniface Gardens up to 10 Times Recommended Level," *CBC*, May 31, 2019; Cameron MacLean, "Fences Going Back up around Weston School Field Pending More Tests for Lead in Soil," *CBC*, April 12, 2019; Government of

are elevated well beyond acceptable limits. In some cases, the levels of certain contaminants like lead have been found to be ten to fifteen times the recommended limit. Lead in drinking water and household paint are also serious problems in Winnipeg. Homes built before 1990 are likely to have lead water pipes or lead solder in water pipes.³ Vulnerable populations who reside in such older housing, especially children, are at serious risk from exposure to these toxic chemicals found in their homes and surrounding communities.⁴

Despite a range of evidence showing elevated levels of toxic substances in their communities, community organizations like the South St. Boniface Residents' Association and the Point Douglas Residents' Committee have struggled to find meaningful solutions that allow them to protect their health and surrounding environment. Inadequate access to government reports and test results, delayed or lack of notification of contamination, and ineffective government enforcement of legislative requirements have created numerous barriers preventing access to environmental justice.⁵ Residents in these areas are frustrated and have expressed grief that they can no longer undertake activities, like growing vegetables in their backyard, that improve their lives and help achieve food sovereignty and security in their neighbourhoods.

Our work in the community has made it clear that Manitobans need legal reforms at the federal and provincial levels that improve their access to environmental justice, which requires:

- a recognized and meaningful role for the public in legal and policy processes related to the regulation of toxic substances and contaminated, remediated and brownfield sites;
- public access to detailed information such as investigation reports, medical information about potential health impacts, follow-up and monitoring data (air, soil, water), and compliance and enforcement activities;
- effective government regulation of a broader range of industrial activities, including industrial metal shredders;
- stricter regulation of toxic, persistent and bio-accumulative substances (e.g. lead, arsenic, cadmium, nickel, mercury, aluminum)

Manitoba, "Sampling Report: Surface Soil Lead Levels in Winnipeg, Manitoba: 2007 & 2008" (Government of Manitoba, May 2011), <https://s3.documentcloud.org/documents/4873722/Y2011.pdf>; Intrinsic Corp, "Summary of Findings, Lead Concentrations in Winnipeg Soil" (2019), https://gov.mb.ca/asset_library/en/proactive/2019_2020/soil-report-summary-of-findings.pdf;

³ Nicholas Frew, "Testing Suggests 1 in 5 Winnipeg Homes with Lead Pipes Have Unsafe Levels of Lead in Drinking Water," CBC, December 17, 2019; Jim Maloway, "Replace Lead Water Pipes," Winnipeg Free Press, May 12, 2021.

⁴ Michael Gochfeld and Joanna Burger, "Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers," *American Journal of Public Health* 101, no. S1 (December 2011): S54–59, <https://doi.org/10.2105/AJPH.2011.300121>.

⁵ Kristin Annable, Katie Nicholson, and Am Ct, "'Absolutely Floored': Residents Never Told of Lead Contamination in Point Douglas Soil Because NDP Sat on Info," September 13, 2018.

- legal standing for citizens so they can better protect their legal rights and hold industry and government accountable for actions that threaten their health and surrounding environment;
- stronger environmental enforcement mechanisms.

Reform of CEPA and Bill S-5

MbEN was pleased to see the introduction of [Bill C-28](#), the *Strengthening Environmental Protection for a Healthier Canada Act* in Fall 2021 and its re-introduction as [Bill S-5](#) in February 2022. We were hopeful the proposed amendments to the *Canadian Environmental Protection Act, 1999* (CEPA) would strengthen environmental protections for all Canadians, including Manitobans. However, in its current form, it appears that Bill S-5 will do little to improve meaningful public involvement in the regulation of toxic substances and better protect the health of Manitobans. There is a need for significant reform of Bill S-5 to ensure CEPA remains an effective legislative mechanism that protects Canadians from the health and environmental consequences of toxic contamination. There is also a need to better empower Canadians to protect their environmental rights. MbEN fully endorses the amendments to Bill S-5 proposed by CELA and recommends the Committee adopt them all. Some examples are provided below.

Definitions: MbEN agrees with CELA that the addition of more defined terms, such as “cumulative effects”, “environmental justice principle”, and “meaningful involvement” would help clarify the scope of their meaning and application within the CEPA regulatory framework. We also support the expanded definition of “vulnerable population” proposed by CELA, which better acknowledges the systemic environmental racism associated with toxic substances and contaminated sites.

The Right to a Healthy Environment: There is a need for significant amendment to Bill S-5, as proposed by CELA, to ensure recognition of the right to a healthy environment in CEPA is effective and enforceable. This includes removing any language regarding the balancing of the right with economic or other factors and removing the barriers to the existing remedy available under s 22 of CEPA which have so far prevented its use. All Canadians, including Manitobans, need to be better empowered to protect their health and their environment from toxic contamination, which includes the ability to initiate legal proceedings against industry or government when their actions (or inaction) violate our environmental rights. It is also important that these sections enabling Canadians to protect their rights and engage in legal processes include corresponding funding opportunities to reduce financial barriers to participation.

Regulated Toxic Substances List: MbEN agrees with CELA that the proposed changes to Schedule 1 of CEPA in Bill S-5 should be repealed. Changing the title of Schedule 1 will create legal uncertainty and risks the constitutionality of the Act. Dividing the Schedule into two parts

will also result in toxic chemicals of concern to the community members we have been working with, such as lead, cadmium, arsenic, and nickel, no longer being subject to prohibition. All substances currently included in Schedule 1 should remain eligible for all risk management actions (e.g. bans, substitution, etc.).

Pollution Hot Spots Regulations: Bill S-5 repeals ss 330(3) and (3.1) of CEPA which is supposed to facilitate the development geographically targeted regulations to help with pollution “hot spots”. While it is very important that CEPA is strengthened to better address pollution hot spots, such as those identified by MbEN in downtown and mature neighborhoods in Winnipeg, MbEN feels the changes to Bill S-5 proposed by CELA that would instead retain ss 330(3) and (3.1) and extend the authority to make such regulations to other sections of the Act, would better allow regulators to address pollution hot spots across Canada.

Ambient Air Quality Standards: There is a need to better protect Canadians from ambient air quality problems. However, despite the recommendations of the 2017 Standing Committee on Environment and Sustainable Development in its review of CEPA, Bill S-5 does not contain any proposed reforms to address this problem. MbEN has engaged with many community members in Manitoba concerned with the impact of industrial activity on the air quality in their neighborhoods and feel that legally binding and enforceable ambient air quality standards would help Manitobans to better hold industry accountable. We therefore support CELA’s proposed additions to Bill S-5 which would require the creation of legally binding and enforceable ambient air quality standards.

Bill S-5 is an important opportunity to improve Manitobans’ access to environmental justice and help fill legal gaps in our provincial regime regulating the use and clean-up of toxic substances. Through the HEHN project, MbEN’s work with community groups has consistently shown that residents and community members have few effective tools to protect their physical, emotional, and community health from harmful and long-lasting pollution. Above all, the purpose of Bill S-5 and CEPA should be to protect the environment and people from harm. We ask that you reform Bill S-5 to improve environmental safety and access to environmental justice.

MbEN appreciates your consideration of our comments and recommendations for reform of Bill S-5. We welcome future opportunities to engage with members of the Senate to ensure the highest level of environmental protection measures are enacted and the right to a healthy environment is meaningfully recognized to help us protect Manitoba’s environment for the benefit of current and future generations.

Sincerely,

Glen Koroluk, Executive Director, MbEN

With the support of the Advisory Committee of the HEHN Project:

Alexandra Caporale	Resource Manager and Director of the HEHN Project, MbEN
Heather Fast	Policy Advocacy Director, MbEN
Catherine Flynn	Point Douglas Residents Committee
Greg Selinger	Former Premier of Manitoba, Community Facilitator
Guy Jourdain	Legal consultant
Jennifer Chen	Winnipeg School Division School Trustee Ward 6
Dr. Jon Gerrard	MLA River Heights
Lea Mutch	Manitoba Public Health Association
Malaya Marcelino	MLA for Notre Dame
Michelle Berger	Resident of St. Boniface
Sarah Cooper	Assistant Professor, University of Manitoba (City Planning)
Shirley Thompson	Associate Professor, University of Manitoba (Natural Resources Institute)