

# About the Manitoba Eco-Network

Since 1988, the Manitoba Eco-Network (MbEN) has promoted positive environmental action by supporting people and groups in our community. 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.

Our Mission is to promote good environmental governance, support and build capacity, advocate for environmental justice, and act as a bridge between environmental organizations, the public, and all levels of government.

[www.mbeconetwork.org](http://www.mbeconetwork.org)



# The Right to a Healthy Environment under CEPA

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*The Canadian Environmental Protection Act and the Right to a Healthy Environment*



Government  
of Canada

Gouvernement  
du Canada

Canada

# The Canadian Environmental Protection Act, 1999 (CEPA)

- CEPA provides both enforceable and voluntary risk management tools (regulations, Codes of Practice, Guidelines) to address various pollution risks including:



Transboundary movement  
of hazardous waste



Animate products of  
biotechnology



Environmental emergencies



Chemicals



Vehicle and engine  
emissions



Nutrients, disposal at sea

- There are other important federal environmental protection Acts (e.g., *Fisheries Act*, *Food and Drugs Act*, *Impact Assessment Act*, *Canada Wildlife Act*, *Greenhouse Gas Pollution Pricing Act*), and many areas of shared jurisdiction with the provinces and territories, as well as Indigenous governments.

# Notable amendments to CEPA

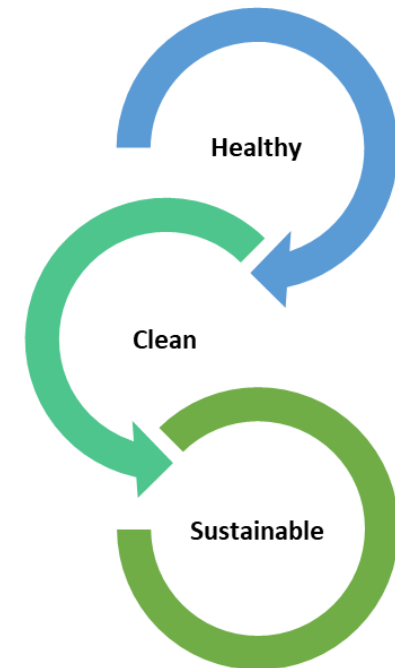


Bill S-5 received Royal Assent in June 2023, updating the *Canadian Environmental Protection Act* (CEPA) for the first time since 1999.

- Now recognizes that every individual in Canada has a **right to a healthy environment** as provided under CEPA
- Requires the development of an implementation framework on the right to a healthy environment
- Affirms commitment to implementing the ***United Nations Declaration on the rights of Indigenous Peoples***, including free, prior and informed consent

A summary of the amendments introduced to CEPA through Bill S-5 can be found [here](#).

A **Healthy Environment under CEPA** is defined as one that is clean, healthy and sustainable.



# A Closer Look: Implementation Framework



Set out how the right will be considered in the administration of CEPA.



Elaborate on mechanisms to support protection of the right.



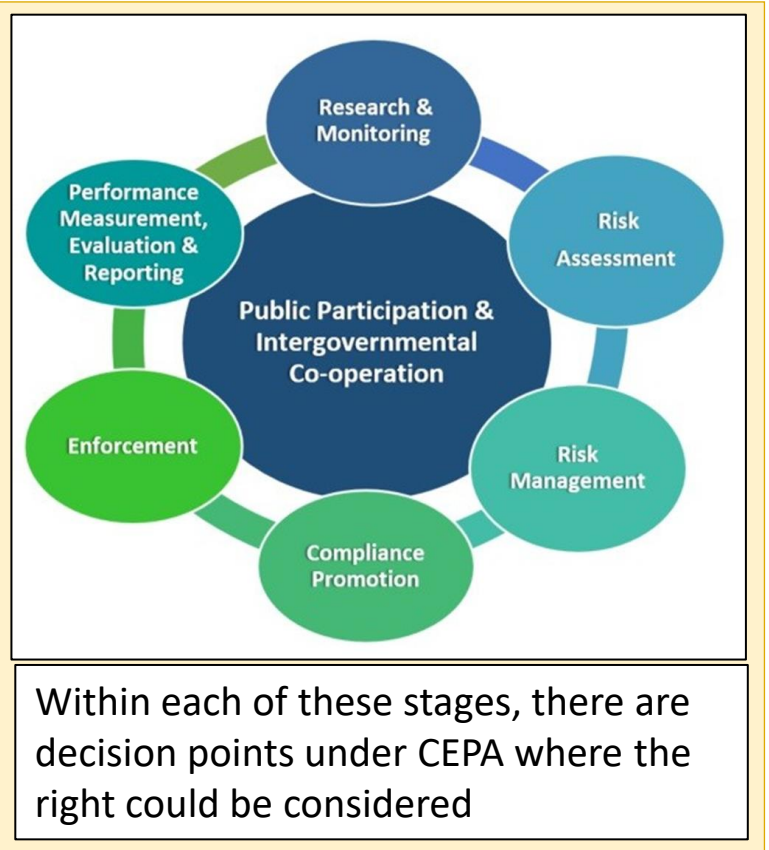
Elaborate on principles such as environmental justice, intergenerational equity and non-regression



Elaborate on research, studies, and monitoring in support of the right under CEPA



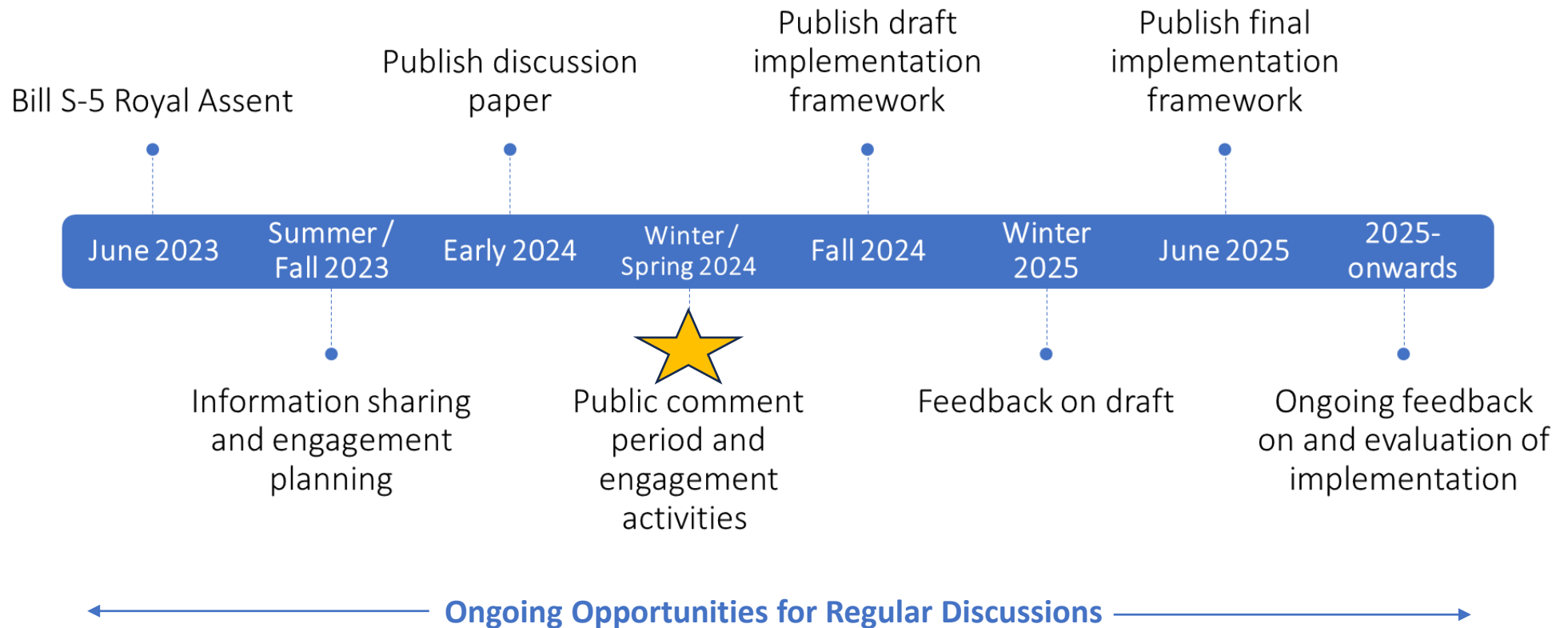
Elaborate on relevant factors to be considered in determining the reasonable limits to which the right is subject





# What are we contributing to?

CEPA requires that the Government of Canada shall, **within two years** of Bill S-5 receiving Royal Assent, develop an implementation framework for the right to a healthy environment



Once developed, there will be **annual reporting** on the framework and it will be continuously improved as more experience is gained

# Who provided us with feedback?

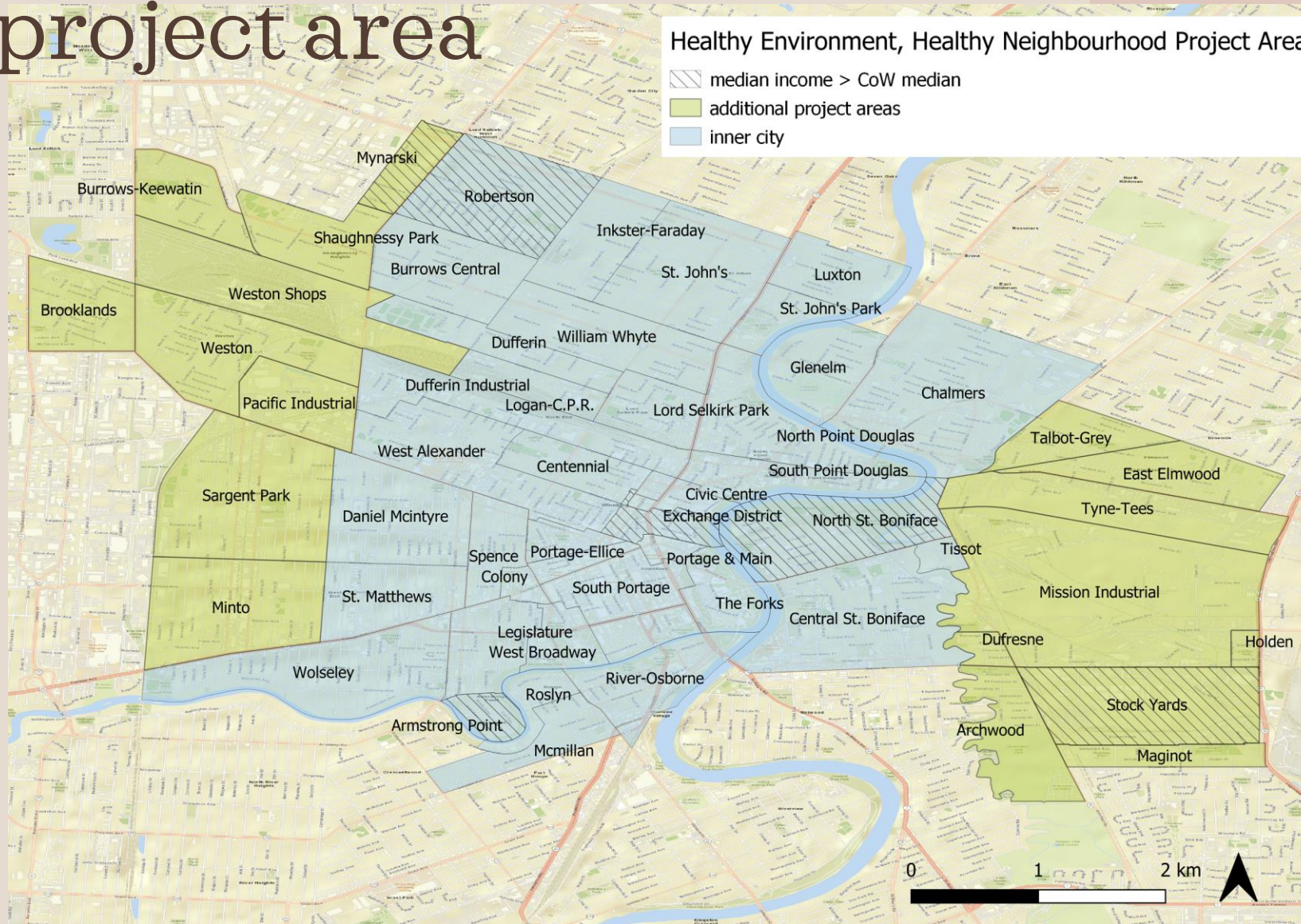
MbEN's comments today are based on the input we received from community members and experts through the following activities:

- The *Healthy Environment, Healthy Neighbourhood* Project
- Participation in the Bill S-5 Parliamentary Process
- The *Navigating the Law to Protect the Environment* Project
- Surveys

We also invited community members and representatives of local NGOs to provide their feedback directly today.



# HEHN project area





# who lives here?

It depends on the neighbourhood!

- Long-term residents
- Community advocates
- Low income
- Indigenous Peoples and People of Colour
- New Canadians

“**vulnerable population**” - means a group of individuals within the Canadian population who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances. [Bill S-5]



# HEHN Project Findings

## ENVIRONMENTAL AND HEALTH IMPACTS

- Toxic contamination
  - e.g. lead, arsenic, cadmium, nickel, mercury
- Noise pollution
- Explosions, shrapnel, fires
- Health impacts
  - e.g. respiratory problems (coughing, burning throat/nose)
- Mental health impacts
  - e.g. sense of futility, depression

## ACCESS TO ENVIRONMENTAL JUSTICE

- Limited access to environmental justice.
  - E.g., lack of recognized environmental rights.
- Feeling ignored by government at all levels.
- Citizens want more input and control over the way land use decisions impact their health and the environment.
- Lack of political will.

## CONFLICTS BETWEEN LAND USE

- Other than basic zoning requirements, no clear policy/requirements addressing conflicts between industrial and other land uses.
- Minimal commitments towards redevelopment of brownfield sites in OurWinnipeg and Complete Communities 2.0.

# Access to environmental justice

## THE RIGHT TO A HEALTHY ENVIRONMENT

What we need in MB:

- A recognized and meaningful role for the public in legal and policy processes.
- 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.

## VULNERABLE POPULATIONS

What we need in MB:

- To meaningfully address the disproportionate level of negative impacts experienced by certain communities.
- Acknowledgement of systemic racism.
- Financial and legal support for community-based actions.
- Legal solutions for Pollution Hot Spots

# Meaningful public engagement

## MONITORING, TESTING AND INVESTIGATION

What we need in MB:

- Access to financial and legal support for independent air, soil, water testing.
- Research into the relationship between area incomes, levels of pollution, and ability to effectively ask for environmental intervention.
- Development of stronger legal standards – e.g. air quality.
- Better data collection re:
  - Cumulative effects,
  - Contamination of precipitation and groundwater,
  - Urban wildlife and ecosystem impacts,
  - Health data (e.g., Blood lead levels).



# MbEN's Bill S-5 Recommendations

## The Right to a Healthy Environment:

- Adopt terminology that aligns with the United Nations – e.g., “clean, healthy, and sustainable environment”.
- Include a broad definition of “healthy environment”.
- Remove the sections placing limits on the right to a healthy environment.
- Add language to support provision of financial support for citizens seeking to protect their environmental rights.
- Reform Bill S-5 to address existing problems with Section 22 of CEPA.

“The provisions recognizing the right to a healthy environment in Bill S-5 are a positive step forward, but there is a need for significant amendment to Bill S-5 to ensure recognition of the right to a healthy environment in CEPA is effective and enforceable.”



# Indigenous Rights

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*Indigenous Rights and Indigenous Knowledge in the context of  
CEPA administration and decision making*

# Indigenous Rights

- The Government of Canada's commitment to renewed nation-to-nation, Inuit-Crown and government-to-government relationships with First Nations, Inuit, Métis, and Indigenous Modern Treaty Partners is rooted and informed by:
  - Section 35 of the *Constitution Act*, 1982 (e.g., Duty to Consult)
  - *United Nations Declaration on the Rights of Indigenous Peoples Act* (UN Declaration Act) and the UN Declaration
    - Including Articles 21, 24, 29
  - Report of the Royal Commission on Aboriginal Peoples
  - Truth and Reconciliation Commission's (TRC) calls to action
  - Final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls



# Indigenous Knowledge and CEPA

- CEPA recognizes the role of **Indigenous knowledge systems and Indigenous science** in the process of making decision about the protection of the environment and human health
- There are opportunities to include Indigenous knowledge and Indigenous science more often and more consistently, at all stages of the CEPA management cycle
- Activities under CEPA could also be informed by existing Indigenous knowledge policy frameworks and approaches under other Acts

## Two-Eyed Seeing

Learning to see from one eye with the strengths of Indigenous ways of knowing and from the other eye with the strengths of Western ways of knowing and to using both of these eyes together

– Elder Albert Marshall (2012)





# Amplifying Indigenous Voices

The Manitoba Eco-Network feels that Indigenous voices should take priority when determining the meaning and impact of the right to a healthy environment and other changes to CEPA on Indigenous rights and the engagement of Indigenous peoples in CEPA processes.

We support changes that will ensure CEPA aligns with the *United Nations Declaration on the Rights of Indigenous Peoples* and empower Indigenous peoples to be more meaningfully involved in CEPA processes. This includes better inclusion of Indigenous traditional knowledge in CEPA decision-making processes.



# Principles Under CEPA

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*Guides that help decision makers interpret and apply the law to different circumstances*

# Three Key Principles



## Environmental Justice

Avoidance of adverse effects that disproportionately affect specific populations in environmental contexts



## Non-regression

Preventing reduced levels of environmental and health protection. May include continuous improvement of such protections.



## Intergenerational Equity

Meeting the needs of the present generation without compromising the ability of future generations to meet their own needs

These are added to other principles that have been used to guide CEPA decision-making since 1999. For example:

- Science-based decision making
- Polluter pays
- Pollution prevention
- Precautionary principle



# Environmental Justice - Mechanisms under CEPA

*The avoidance of adverse effects that disproportionately affect specific populations in environmental contexts*



## Environmental Justice is Sought Through...

### Procedural and Recognitional Justice

Those who are affected by environmental injustice are reflected and represented in decision-making spaces

### Distributive Justice

The ways some populations face disproportionate environmental burdens are identified, and improved benefits/reduced burden is sought

- Decision making under CEPA recognizes that some populations may be disproportionately affected by the harmful effects of chemicals and pollutants (e.g., seniors, pregnant women, babies, communities near industrial activity)

**DID  
YOU  
KNOW** ?

Private member's bill, Bill C-226, if passed, would require the development of a National Strategy to assess, prevent and address environmental racism and to advance environmental justice.



# Intergenerational Equity - Mechanisms under CEPA

*Meeting the needs of the present generation without compromising the ability of future generations to meet their own needs*

- Closely related to the concept of sustainable development



**In the context of CEPA, considerations related to intergenerational equity may include:**

**A substance's potential to persist in and impact the environment**

**A substance's potential to impact reproduction, or genetic material and the cumulative effects from exposure to multiple substances causing these effects**

# Environmental Justice

## What does it mean?

- Protecting citizens from harm.
- Polluters are made directly responsible for the impact or harms that they have caused.
- Making environmental protection a priority.
- Addressing environmental racism and impacts on marginalized communities.
- To live in a healthy environment regardless of race or economic status and to have meaningful input into decisions about your land and water.
- Emphasis on “restorative justice”, need to amplify the voices of those with lived experience, those who live in vulnerable environments.
- Free, Prior, and Informed Consent from Indigenous communities.
- Access to legal tools and supports to protect rights and interests.



# environmental justice

- means different things to different people but at its core, is focused on equity, empowerment, and meaningful policy and legal change.

## Procedural Justice

Meaningful opportunity to participate in legal and political processes.

## Restorative Justice

Remedy of negative environmental and social impacts.

## Distributive Justice

Equity in the distribution of environmental risk.

## Recognitional Justice

Recognition of the diversity of participants and experiences in affected communities.

“a just distribution of environmental benefits and burdens among residents of the Northwest Territories”

[*Environmental Rights Act*, SNWT 2019, c 19, s 17(1.1)(e)]

# Environmental Justice

## How should this new principle influence CEPA processes?

- Ensure people have the right to cultural justice by recognizing relationships to the land and sovereignty over those lands as determined by Indigenous peoples.
- Create a wider public forum to discuss the implications of toxic chemicals and the decisions made under CEPA, and how they can engage in CEPA processes.
- More public education to make sure young people are aware of what's happening.
- Increased supports for the public and vulnerable communities.
- Publicly accessible research to better understand the impacts of toxic chemicals (including cumulative effects).
- Move towards independent oversight, not rely on self regulation of industry.
- Require greater transparency and accountability from government and industry.
- Harsher punishments for polluters.





# Environmental Justice

“Ensuring all people, (all cultures, genders, races, abilities, etc.) from the present and future have access to clean air, clean water, good food, and natural spaces/green-spaces, including protection for cultural or religiously important areas.”

“To me [environmental justice] means the right to protect our environment from damage and abuse and to make amends to repair and restore the environment from damage that has already occurred. Just like we want justice for humans for protection and fair treatment, our environment needs to be protected in the same way.”



# Intergenerational Equity

## What does it mean?

- Acknowledging the impact toxic chemicals and environmental harm can have on multiple generations.
- Recognizing the importance of considering the rights of future generations.
- Protection for all generations of people, including those who will come after us.
- Ensuring that each generation has an equal quality of life in whichever environment they live.
- All ages have equal rights to environmental protection information.
- Feedback from people of all ages treated and considered equally.
- Making sure that environmental projects do not jeopardize the safety and health of the environment for future generations.



# Intergenerational Equity

## **How should this new principle influence CEPA processes?**

- Decision-making criteria should be developed to ensure the perspective of youth and potential impacts on future generations are considered. Criteria should be re-evaluated every five years.
- Directly involve youth in CEPA decision-making processes.
- Independent, community-based research on cumulative effects and intergenerational impacts.
- Long term studies to track environmental quality and health now and over time.
- Enact harsher punishments for polluters to discourage behaviour that will negatively impact future generations.
- Should result in improved environmental and human health in the future.



# Substantive Meaning

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*What does a right to a healthy environment mean?*





# What do you think?

- What does a healthy environment mean to you in the context of actions taken under CEPA or the pollution sources it addresses?



Transboundary movement of hazardous waste



Animate products of biotechnology



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Vehicle and engine emissions



Nutrients, disposal at sea

# Substantive Elements

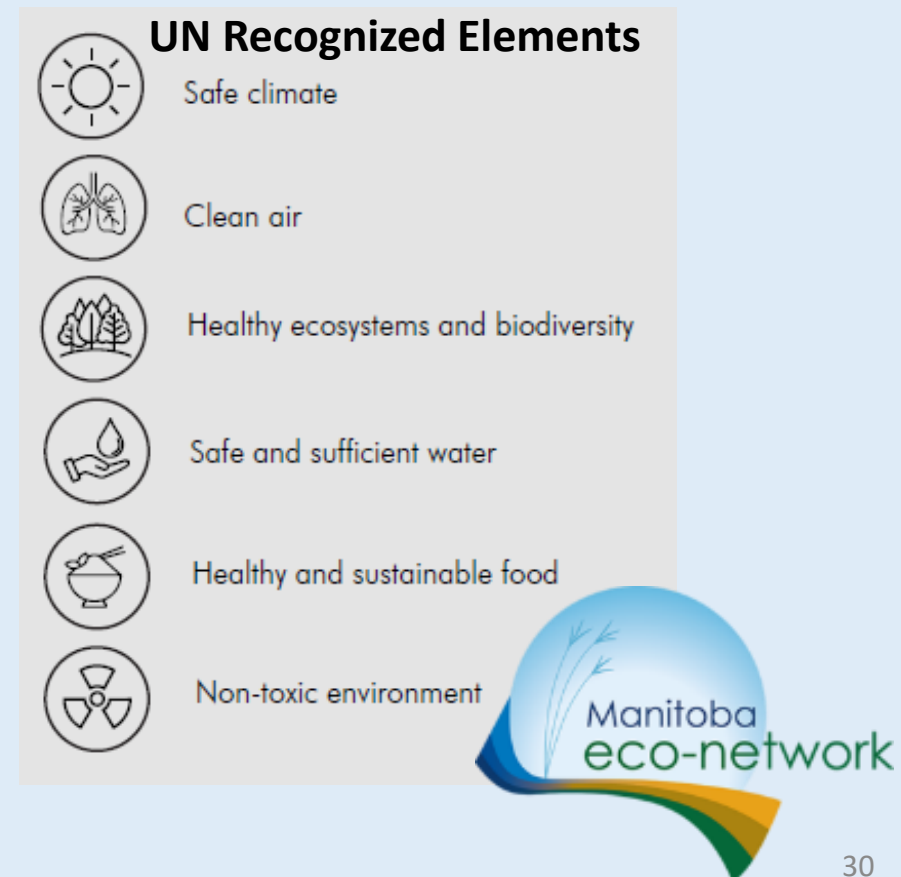
- Environmental human rights can help establish a basic standard of living and treatment by others (including government actors).
- Although the right to a healthy environment has been recognized in many countries, there is no consensus about what it means.
- Defined and described in different ways:

## *Canadian Environmental Protection Act*

s. 3 – “healthy environment” means an environment that is clean, healthy and sustainable.

## *Quebec Human Rights Code*

s. 46.1 - Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law.



# What does “healthy environment” mean?

- The application of the right to a healthy environment should go beyond the protection of humans and include broader considerations of ecosystem health and the protection of natural entities.
  - Protection of animals.
  - Protection of natural entities.
  - Protection of sacred spaces.
- Should be a measure based on parameters of health (scientific indicators).
- May need a more objective approach to identify a “healthy environment”. Right now, "healthy" seems like it could be subjective, or that the marginalized and vulnerable could be subjected to a different standard of "healthy."



# What does “healthy environment” mean?

## Indicators of a healthy environment:

- The UN elements are good indicators of a healthy environment.
- Health of humans and animals.
- Citizens feel safe.
- Laws and policies that protect citizens from negative environmental and health impacts.
- Access to green space.
- Ecosystems with lots of biodiversity (including birds and insects), healthy and vibrant flora and fauna.
- Clean air and water.

“An environment with clean air, water, soil that can sustain life and have it thrive without adverse effects to human or wildlife.”



# Procedural Duties

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*Related to the process of making decisions*



# Focus on Three Procedural Duties



## **Access to Information**

*Supports the public in being able to hold governments accountable, to participate and engage in health and environmental decision-making, and to make informed decisions about their own health and environment.*



## **Participation in Decision Making**

*Focus on engaging early, using appropriate tools to engage, and demonstrating how knowledge, views, and input are considered. Inclusion of those most affected by decisions is a priority.*



## **Access to Effective Remedies in the Event of Environmental Harm**

*Tools available for the public to request government action or take actions themselves when there are environmental damages.*



# Access to Information - Mechanisms under CEPA

- In implementing CEPA, the Government of Canada collects information to support decision-making
- There are also webpages that CEPA programs use to share information
- However, information may be technical or hard to understand and people in Canada may not be aware that these resources exist or how to navigate it

## Examples of Online Resources for Information Collected and Decisions Made under CEPA

- [CEPA Environmental Registry](#)
- [Annual Report on CEPA](#)
- [Air Quality](#) (includes the [Air Quality Health Index](#))
- [Healthy Home](#)
- [National Pollutant Release Inventory \(NPRI\)](#)
- [National Greenhouse Gas Inventory](#)
- [Chemical Substances](#)

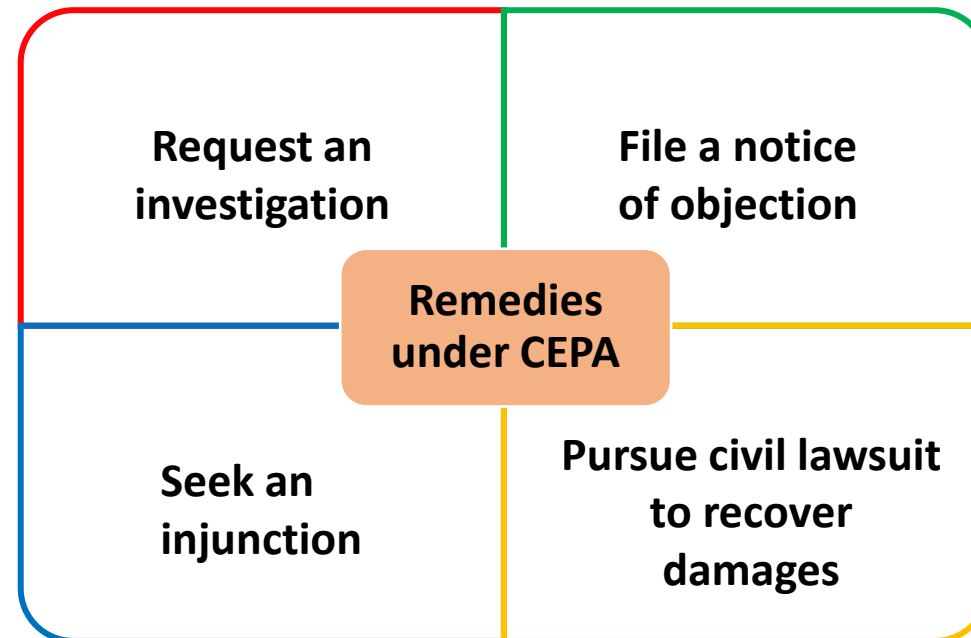
# Participation in Decision Making - Mechanisms under CEPA

- There are many ways to participate in CEPA decision-making, including consultations on draft risk assessments of substances or commenting on the design of draft risk management instruments.
- Participation in CEPA decision making is supported in several ways
  - Public consultation notices (e.g., on the CEPA Registry or the Chemicals Management Plan website)
  - Proactive outreach by CEPA programs to interested groups
  - Committees, workshops, working groups, and meetings to discuss CEPA-related issues



# Access to Effective Remedies - Mechanisms under CEPA

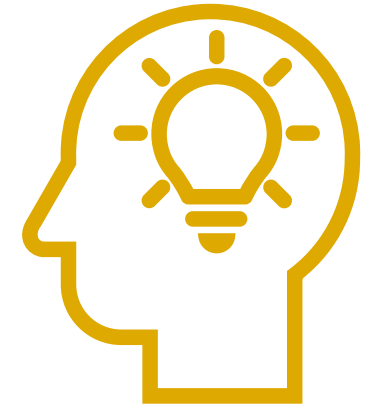
- CEPA has several tools (i.e. remedies) that the public can use when they believe environmental damages or contraventions to CEPA have occurred





# Connect with the Government of Canada

[HealthyEnv-EnvSain@ec.gc.ca](mailto:HealthyEnv-EnvSain@ec.gc.ca)



Visit our [webpage](#) to read our discussion document, submit comments, and learn more or check out the [Right to a Healthy Environment Engagement Site](#)



# Procedural Tools

## **Public Participation:**

- One of the most expected outcomes of the implementation framework is to improve opportunities for public participation in CEPA processes.
- Need funding and access to expert information to support public engagement.
- Provide a variety of opportunities to engage, including social media.
- Better advertising of opportunities to engage.
- Focus on engaging with youth and developing new approaches so they can be meaningfully involved in CEPA processes (e.g., when decisions are made).
- Requires access to a broad range of plain language information.

“Increase public knowledge of what CEPA is, where CEPA applies and how to participate in process. There should be examples of when and how to use CEPA.”



# Procedural Tools

## **Access to Information:**

- Need for more public access to information in a variety of formats.
- Includes collection of new data.
  - Fill existing data gaps.
  - New innovative studies.
- More plain language public education.
- More information in schools so youth are better informed.
- Support for citizen science that young people could engage in.
- More media coverage of on the ground examples.

“many regular people do not know how to find or navigate many of the current registries.”



# the need for more data

## IS MORE DATA GOING TO HELP?

- Depends on how it is collected and used:
  - Evidence
  - Enforcement
  - Independent testing
  - Community-led data collection

## ENVIRONMENTAL DATA

- Research into cleanup methods.
- Research into moving the railyards.
- Increased independent testing.
- Research into wildlife and ecosystem impacts.
- Research into local water safety.

## HEALTH DATA

- Blood-lead level testing and results.
- Research into the links between local public health and known pollutants in the area.
- Research into mental health impacts of living and working near these industries.

# Procedural Supports

## Access to Remedies:

- One of the most promising aspects of environmental rights is the potential for more legal tools – going to court, punishing those who have caused harm.
- Polluters need to be held accountable, punishment should include more than just a fine.
- Current remedies are not adequate and difficult to use.
- There is a need for legislative reform of s. 17-22 of CEPA.
- Need for an independent complaints process, independent commissioner.
- More funding is needed to allow vulnerable communities and grassroots groups access to legal representation and expert evidence.
- Require industry to pay into a clean-up fund.
- Need for legal protections for citizens (e.g., Anti-SLAPP provisions).



# Thanks for Attending!

To watch the recording for this event or get more information on MbEN activities, please see our website:

[www.mbeconetwork.org](http://www.mbeconetwork.org)

Policy advocacy questions or concerns? Contact our Policy Advocacy Director, Heather Fast at:

[policy@mbeconetwork.org](mailto:policy@mbeconetwork.org)

