

ENVI Brief: CEPA Enforcement

Cassie Barker and Anna Yang, Women's Healthy Environments Network (WHEN)

Jennifer Beeman, Action Cancer de Sein Du Quebec / Breast Cancer Action Quebec (ACSQ / BCAQ)

Summary:

This brief highlights the impacts of weak enforcement of CEPA on Canada's vulnerable populations. Inadequate CEPA enforcement and accountability disproportionately impacts the racialized and low-income communities in proximity to industrial facilities, and creates hazardous occupational conditions for workers.

There is an opportunity to prioritize enforcement activities to protect vulnerable populations, such as Indigenous, racialized and low-income communities who face inequitable exposures to toxicants.

Recommendations:

1. CEPA enforcement prioritization and focus must be targeted to 'hotspot' communities of Indigenous, racialized and low-income communities, in collaboration with Canada's environmental health sector.
 2. CEPA enforcement must take a more proactive approach to product testing, particularly for products with reproductive hazards, racially-targeted skin and hair products, and gendered occupational exposures, to address the unequal exposures and health outcomes found in vulnerable populations.
 3. CEPA must be modernized immediately to protect vulnerable populations; substitute harmful substances with safer alternatives; increase accountability for risk management; address aggregate, cumulative and synergistic effects of chemicals; re-assess substances when there is new science or regulatory action in other jurisdictions; and recognize that all people in Canada have the right to a healthy environment.
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The costs of weak enforcement

Poor air quality is one indicator of our failures on enforcement, and in Canada it results in roughly 7700 people dying prematurely per year, and has been estimated to incur \$39 billion in costs (IISD, 2017). Poor air quality is concentrated in urban environments that are predominantly Indigenous, racialized and low-income (Ging et al, 2020).

Environmental Commissioner Report (2018)

The Environmental Commissioner's [report](#) on CEPA enforcement found significant deficiencies in enforcement, prioritization and impact:

- **“Environment and Climate Change Canada did not base most of its enforcement priorities on risks to human health and the environment”**
- “Health Canada and Environment and Climate Change Canada did not always establish performance targets or indicators to determine whether risks to the environment and human health had been reduced or eliminated.”
- “The departments did not set timelines to evaluate progress toward objectives.”

In terms of inspections and fines, the report found several gaps:

- **“[M]ost toxic substance regulations received few inspections and enforcement measures”**
- “Environment and Climate Change Canada did not evaluate whether the majority of regulations and codes of practice were effective”
- “...a regulation prohibiting 26 toxic substances from being manufactured, used, sold, or imported in Canada (the Prohibition of Certain Toxic Substances Regulations, 2012) had no inspections.”

The report offers two important recommendations:

1. **“Environment and Climate Change Canada should ensure that risks to human health and the environment are taken into account when prioritizing its enforcement activities.”**
2. “Environment and Climate Change Canada and Health Canada should establish a long-term, systematic approach to evaluate how effective their actions are in controlling toxic substances, including setting measurable objectives, monitoring the achievement of these objectives, and setting timelines for completion.”

Enforcement is not nearly adequate among regulated entities, as “[i]n 2017-18, less than 2% of the regulated community was inspected” (ECCC, 2018). In addition, enforcement activities have substantially decreased in recent years. CBC News reports that, in response to a February 2020 House of Commons question on CEPA enforcement, ECCC notes that it had investigated 43 companies for violations of the Canadian Environmental Protection Act in 2015-16, but that these investigations had dropped to 12 companies in 2018-19 (Rabson, 2020).

UN Special Rapporteur Report (2020)

These gaps in enforcement are translating into significant health inequities for Canada's vulnerable populations, whose demographics are largely racialized, low-income, and Indigenous. In his 2020 [report](#) to the UN Human Rights Council regarding Canada, the Special Rapporteur on toxics, Baskut Tuncak shared his findings and recommendations from his 2019 official country visit:

1) Environmental Racism

“The Canadian Human Rights Commission recently raised concerns of “environmental racism” to the UN Human Rights Council citing “landfills, waste dumps and other environmentally hazardous activities [that] are disproportionately situated near neighbourhoods of people of African descent, creating serious health risks.”

This can be understood in the context of landfills, industrial pollution and the The African Nova Scotian communities of Shelburne and Lincolntonville, with their exposure burden visualized by the ENRICH Project.

The UN report also noted:

“Over 1 million low-income Canadians live within 1 km of a major source of industrialized pollution, resulting in elevated risks of hospitalization for respiratory and cardiovascular illnesses. Considering the fact that, in Canada, approximately 20.8% of racialized people are low-income compared to 12.2% of non-racialized people, and about 81% of reserves had median incomes below the low-income measure in 2016, this inequity is inherently racial in addition to economic in nature.”

Chemical Valley, one of Canada's most polluted communities, and its refinery and other industries surround the Aamjiwnaang First Nation. A 2017 [report](#) by the Environmental Commissioner of Ontario found that people in Aamjiwnaang are particularly affected by the pollution in the area, stating that “there is strong evidence that the pollution is causing adverse health effects, which neither the federal nor provincial government have properly investigated.”

Air quality monitors show Sarnia has the highest benzene levels in Ontario — double the Ontario standard, with monitoring around the refinery's property lines showing levels as much as 55 times above the air-quality standard. Exposure to benzene is associated with acute myeloid leukemia, and studies have suggested that Sarnia is a hot spot for this type of cancer. (source 1) (source 2)

Sarnia-area facilities released about 45,357 tons of air pollution in 2016. To put this in context, all Ontario facilities reporting to the NPRI emitted a total of approximately 455,439

tons of air pollutant in 2016, meaning that emissions from Sarnia alone account for approximately 10% of the total emissions in Ontario. (source)

The UN Rapporteur found a **"pervasive trend of inaction of the Canadian Government in the face of existing health threats from decades of historical and current environmental injustices and the cumulative impacts of toxic exposures by indigenous peoples,"** and described Chemical Valley in particular as "deeply unsettling," calling what the Aamjiwnaang First Nation faces an "environmental injustice [that] is an ongoing tragedy."

ENVI Recommendation 1: CEPA enforcement prioritization and focus must be targeted to 'hotspot' communities of Indigenous, racialized and low-income communities, in collaboration with Canada's environmental health sector.

2) Occupational Hazards:

Finally, the UN Rapporteur found that, "[w]hen assessing the safety of chemicals, workers' exposures are not taken into consideration. Therefore, many chemicals are given the green light because they do not pose a "high risk" to the general population." **These occupational hazards**, which appear to have been neglected as a result of jurisdictional confusion, can result in **significant health impacts for vulnerable workers**. These impacts can be seen in manufacturing contexts, such as plastics manufacturing workers and elevated breast cancer levels (deMatteo et al, 2012), and fire fighters and non-Hodgkins lymphoma and prostate cancer (Brantom et al, 2018).

For occupations that fall outside of traditional manufacturing contexts, that lack formal structures such as unionization, or the safety data of MSDS and WHMIS, we see **product-based exposures** where poor labelling and little to no product testing can put workers at risk. This translates into gendered and racialized health inequities, such as cleaners and lung damage (Svanes et al, 2018), or nail salons and miscarriages (Ma et al, 2019).

ENVI Recommendation 2: CEPA enforcement must take a more proactive approach to product testing, particularly for products with reproductive hazards, racially-targeted skin and hair products, and gendered occupational exposures, to address the unequal exposures and health outcomes found in vulnerable populations.

CEPA Report (2016)

The ENVI report on CEPA reform produced 87 recommendations on CEPA reform, the majority of which have implications for enforcement, prosecutions, permits, inspections, testing and monitoring. Stakeholders, including the chemicals industry, agree that we must prioritize:

1. Protecting vulnerable populations
2. Substituting harmful substances with safer alternatives
3. Strengthening the timelines in the Act and accountability for risk management
4. Taking into account aggregate, cumulative and synergistic effects of chemicals
5. Ensuring we re-assess substances when there is new science or regulatory action in other jurisdictions
6. Recognizing that all people in Canada have the right to a healthy environment

In addition, the report pushes for national legally binding air quality standards, full disclosure of consumer product chemical ingredients, and prosecuting polluters - **these recommendations should be the floor, not the ceiling, of our ambitions on CEPA.**

ENVI Recommendation 3: CEPA must be modernized immediately to protect vulnerable populations; substitute harmful substances with safer alternatives; increase accountability for risk management; address aggregate, cumulative and synergistic effects of chemicals; re-assess substances when there is new science or regulatory action in other jurisdictions; and recognize that all people in Canada have the right to a healthy environment.

About WHEN:

Since 1994, WHEN has been educating the general public, media and policy makers that environmental health is a key determinant of public health, and has promoted public action for the prevention of environmental health harms. WHEN uses the influence and knowledge of women to become champions for change, and is a trusted source of credible tools and information on today's relevant and emerging environmental health topics.

About ACSQ / BCAQ:

Breast Cancer Action Québec advocates for breast cancer prevention and the elimination of environmental toxins linked to the disease. We work to empower people to make the societal changes needed to stop the disease before it starts. BCAQ works to raise women's awareness of how to reduce breast cancer risk, and to inform women and the general public about scientific research on breast cancer and treatments, as well as other medical and social issues related to this disease. We work with women to bring about the necessary social changes to stop the disease before it manifests, i.e. work for primary prevention.

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