

MEDIA BACKGROUNDER

January 27, 2023

This table identifies some of the major recommendations in a 2017 House of Commons Committee report on CEPA and their lack of inclusion in Bill S-5, a bill to amend CEPA. A description of the review process starting in 2016 including the government response can be found [here](#). A description of the contents of Bill S-5 introduced in February 2022 can be found [here](#).

Selected 2017 Committee Recommendations, 2018 Government Responses, and 2022 Bill S-5 Amendments to Canadian Environmental Protection Act and CELA/Nature Canada/Manitoba Eco-Network Commentary

Selected 2017 Recommendations of House of Commons Standing Committee on Environment and Sustainable Development	2018 Response of Government of Canada	2022 Bill S-5 Amendments to CEPA Responding to Standing Committee Recommendations and CELA/NC/MBEN Commentary
Rec. # 22 – “that CEPA be amended to define ‘hot spots’”	“The Government commits to further consider the Committee’s recommendation as part of its stakeholder engagement on this issue through the CMP Post-2020 process, which will inform how CEPA is reformed.”	There are no amendments defining “hot spots” in Bill S-5. But a Government Summary Document on Bill S-5 states that: “amendments will facilitate the making of geographically targeted regulations that could, for example, be used to help address pollution ‘hot spots’ ” [boldface in original] and refers to a clause in Bill S-5. However, the clause in Bill S-5 repeals the only geographically based regulatory authorities in CEPA [sections 330(3) and (3.1)] and does not replace them with anything.
Rec. # 30 – “that section 22 of CEPA be amended to lower the threshold for bringing an environmental protection action from an allegation that the offence caused ‘significant harm’ to that it caused ‘harm’ to the environment.”	[The approach that appears in response to Rec.# 31, below, is also intended by the Government to apply to Rec. # 30].	There are no amendments to section 22 in Bill S-5.
Rec. # 31 – “that section 22 of CEPA be amended to better enable public participation and accountability in the implementation of enforcement	“After close analysis of the Committee’s recommendations relating to these issues, the Government is of the opinion that the legislative changes recommended by the	There are no amendments to section 22 in Bill S-5.

<p>of CEPA by authorizing environmental protection actions, adjudicated as civil proceedings based on the balance of probabilities, in the following circumstances:</p> <p>-The Minister(s) have not undertaken a specific mandatory act or duty under CEPA; or</p> <p>-Any person or government body had violated, is violating or is reasonably likely to violate CEPA, including regulations, orders and other instruments thereunder.”</p>	<p>Committee could fundamentally alter the way CEPA is enforced, changing the balance between civil and governmental enforcement.</p> <p>For this reason, these recommendations are best addressed as part of a broader review of environmental enforcement.”</p>	<p>There has not been a “broader review of environmental enforcement” at the federal level under CEPA or any other federal environmental statute since 2018 addressing these matters.</p>
<p>Rec. # 36 – “that CEPA be amended to require the federal government to develop legally binding and enforceable national standards for air quality in consultation with the provinces, territories, Indigenous peoples and the public.”</p>	<p>“The Government shares the Committee’s desire to ensure that air quality continues to improve.</p> <p>The Government is committed to continuing to take action to improve Canada’s air quality. The Government is developing air pollutant emissions standards and corresponding regulations for the refineries industry. These will add to the existing <i>Multi-Sector Air Pollutants Regulations</i> that set mandatory national emissions standards to reduce air pollutant emissions from industrial boilers and heaters and stationary engines used by a number of Canadian industries, as well as standards for the cement sector.</p> <p>The Canadian Ambient Air Quality Standards (CAAQS), established under CEPA, drive air quality improvements across the country and are reviewed on a regular basis for their adequacy to protect the environment and human health. The CAAQS are underpinned by management levels, which require progressively more stringent action by provinces and territories as air quality approaches the level of the ambient standard.</p> <p>The AQMS is a comprehensive approach for reducing air pollution in Canada. It is the product of unprecedented collaboration among federal-provincial-territorial governments, industry, and civil society. Federal-provincial-territorial governments have clear roles and responsibilities in the implementation of the system, which enjoys significant support due to its collaborative nature. Mandating federal legally binding and enforceable air quality standards could undermine the effectiveness of this collaborative approach.”</p>	<p>There are no amendments establishing enforceable national ambient air quality standards in Bill S-5.</p> <p>The <i>Multi-Sector Air Pollutants Regulations</i>: (1) set standards for stack emissions (not fugitive emissions) for two substances (nitrogen oxides and sulphur dioxides) for certain industrial sectors, but not for other pollutants typically addressed by ambient air quality standards, such as lead, fine particulate matter, ground level ozone, and carbon monoxide (the latter are smog precursors); (2) do not address other industry sectors that may pose ambient air quality problems in relation to this broader range of pollutants; and (3) set standards for emissions of pollutants from a stack which are not the same thing as standards for ambient air quality (i.e., concentrations of pollutants in outdoor air).</p> <p>The CAAQS are not enforceable ambient air quality standards under federal law.</p> <p>The AQMS (Air Quality Management System) is not a regulation, but merely</p>

		a cooperative arrangement between federal and provincial governments.
<p>Recs. #25, #26, #51, #63 and #64 apply to Part 6, which purports to regulate genetically engineered (GE) organisms (or “animate products of biotechnology”). The Committee recommended improved transparency, better rules around transferring organisms, and a complete review of the regulation of GE organisms.</p>	<p>The government agreed with recommendations #63, sub-bullets 1 and 2 around addressing some procedural matters around transferability of organisms. The Government suggested it could address the other recommendations with voluntary or administrative measures.</p>	<p>We disagree with the 2018 government response that improvements in transparency and public engagement could be addressed through voluntary or administrative changes rather than changes to the Act.</p> <p>When introduced, Bill S-5 contained no amendments to Part 6. Instead, ECCC has launched a review of the existing regulations made under Part 6 and said that if changes to the regulations weren’t sufficient they would consider changes to the Act at a later date. CEPA hasn’t been subject to comprehensive public review followed by an amending bill since its enactment in 1999, and we don’t know when the next review will take place.</p> <p>Earlier this year the Senate approved two amendments to Part 6 that partly address the Committee’s 2017 recommendations on transparency.</p>

Source for Column 2: Follow-Up Report of the Government of Canada to the 2017 Recommendations of the Standing Committee on Environment and Sustainable Development Regarding CEPA, 1999 – June 29, 2018.