



December 4, 2024

Jacqueline Gonçalves
 Director General
 Science and Reporting Assessment
 Environment and Climate Change Canada
 Email: Jacqueline.Goncalves@ec.gc.ca

Greg Carreau
 Director General
 Safe Environments Directorate
 Health Canada
 Email: greg.carreau@hc-sc.gc.ca

Plan of Priorities Team, Chemicals Management Division
 Environment and Climate Change Canada
 Place Vincent Massey, 351 St. Joseph Blvd
 Gatineau, QC K1A 0H3
 Email: substances@ec.gc.ca

Re: CELA Response to Proposed Plans of Priorities

The following comments and recommendations are submitted by the Canadian Environmental Law Association (“CELA”) to the *Proposed Plan of Priorities* (“Proposed Plan”) ¹ published in the *Canada Gazette*, Part I, Vol. 158, No. 40 on October 5 2024 for public comments.²

CELA, established in 1970, is incorporated under federal law and is also a provincial legal aid clinic under Ontario law providing legal assistance to low-income and disadvantaged individuals and groups experiencing environmental problems, who are otherwise unable to afford legal representation. Potential clients come to CELA seeking legal assistance with respect to problems caused by the creation, use, or release of toxic substances in their communities. Our assistance to them may come in the form of summary advice, legal representation, law reform advocacy, or community outreach. CELA has a long history of participating in the review of the *Canadian Environmental Protection Act* and responding to implementation activities related to CEPA Part 5 pertaining to Toxic Substances.

CELA welcomes the release of Canada’s Proposed Plan of Priorities on Substances covered under Part 5 of CEPA. We will focus our comments and recommendations on the issues:

- Substances Prioritized for Assessment

¹ Health Canada and Environment and Climate Change Canada. Undated. *Proposed Plan of Priorities*. URL: <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/implementing-modernized-cepa/plan-of-priorities-landing-page/proposed-plan-of-priorities.html>

² Government of Canada. *Canada Gazette*, Part I, Vol. 158, No. 40. URL: <https://canadagazette.gc.ca/rp-pr/p1/2024/2024-10-05/html/notice-avis-eng.html#ne2>

Canadian Environmental Law Association

T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • cela.ca

- Timelines for Assessment
- Limited Priority on vulnerable populations
- Process and Responsibility under other legislation

Substances Prioritized for Assessment

Under Section 2.1 of the Proposed Plan, it is stated that:

Assessments will also take into account, where information is available, populations who may be disproportionately impacted by exposures or more susceptible to substances and effects on human health and the environment from cumulative exposures to a range of substances. The approach for identification of chemicals and polymers as assessment priorities under Part 5 of CEPA was developed to systematically compile and review information on existing substances. This approach has been applied periodically to identify emerging priorities for assessment. Building on experience gained from these activities, key drivers for the selection of substances as priorities for assessment were identified, including:

- *substances that are hazardous to human health or the environment, including carcinogens, mutagens, reproductive toxicants as well as endocrine disrupting substances;*
- *substances that are impacting populations or environments that may be at increased risk due to either greater exposure or greater susceptibility;*
- *substances with the potential to contribute to cumulative risks;*
- *very hazardous substances that are capable of long-range transport (VH-LRT);*
- *substances with known hazardous properties that are used in products available to consumers; and*
- *potential substitutes for substances with known toxicity.*

Substances that are identified through multiple drivers are given higher priority for assessment³

The list of substances identified as priorities includes a number of substances that have never before been identified as priorities for assessment under CEPA. They include:

- pharmaceuticals,
- nano forms for several substances: silver, zinc oxide, nickel oxide and titanium oxide,
- Inclusion of Very Hazardous substances capable of long-range transport (VH-LRT)

We are pleased to see the addition of these substances for priority work under CEPA. However, in the additional information provided on the government website “Proposed Plan of Priorities:

³ HC and ECCC. Proposed Plan. Section 2, p 2.

substances prioritized for assessment under CEPA” (refer to Substances identified as priorities for assessment and rationales for priorities, see: <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/implementing-modernized-cepa/plan-of-priorities-landing-page/priority-substances.htm>) it is difficult to distinguish the specific drivers that have been used to identify these substances as priorities. The page should be explicit as to the driver(s) that were met to prioritize the substance for assessment.

Recommendation: We recommend that an additional subheading for each priority substance list the specific driver(s) used to prioritize the substance or group of substances.

The accompanying rationale does not provide a substantial list of substances that will be covered under the group of “pharmaceuticals” or “Very hazardous substances capable of long-range transport (VH-LRT). Without providing specificity for these categories will create challenges for anyone wishing to follow or respond to data collection or draft assessments on these groups of substances. For Pharmaceuticals, there is a reference to the Revised In Commerce List and for VH-LRP substances there is reference to the June 2023 information gathering initiative. Each of these references refers to many substances. Should we assume the assessments will cover all the substances listed in these references?

Recommendation: Support the inclusion of pharmaceuticals and VH-LRT to the list of priorities with the full list of substances and their CAS RNs covered in the following references: Revised In Commerce List and the June 2023 information gathering initiatives that meet the VH-LTP criteria.

Up to the present, assessments conducted on nanoscale materials have been conducted under the New Substances Program, which does not include an opportunity for the public to comment on the outcome of the assessment. The focus on specific substances at the nanoscale level: nanoscale sliver, nanoscale forms of zinc oxide, nanoscale forms of nickel oxide and nanoscale forms of titanium oxide, may require an assessment regime that is different than the approach taken. The Proposed Plan does not offer any additional information on how the assessments for these nanoscale form substances will be undertaken.

Recommendation: Provide additional guidance and details on the assessments to be applied for nanoscale form substances: nanoscale sliver, nanoscale forms of zinc oxide, nanoscale forms of nickel oxide and nanoscale forms of titanium oxide.

We note the inclusion of fluoropolymers listed in the list of substances for prioritization for assessment. Fluoropolymers belongs in the larger class of per- and polyfluoroalkyl substances (PFAS). The draft State of PFAS Report released in Spring 2023 included fluoropolymers in the consideration of the class of PFAS and in its conclusion, indicated that the class of PFAS met the criteria as toxic under section 64 of CEPA. Subsequently, ECCC and HC released a draft Revised State of PFAS report in June 2024. In this draft Revised State of PFAS report, fluoropolymers were excluded. However, the conclusion for the class of PFAS remained the same. The exclusion of fluoropolymers from the Revised State of PFAS report was concerning for informing the measures that may be needed to address the full class of PFAS. The substantial work to reduce and eliminate the impacts from the class of PFAS to health and the environment

will be incomplete without the inclusion of fluoropolymers. Fluoropolymers can be manufactured with PFAS and can also degrade into other PFAS in different phases of its lifecycle. It is necessary to complete the work on fluoropolymers. The Work plan associated with the Proposed Plan of Priorities indicate that the work on fluoropolymers is scheduled for Fall 2026. We think this work should be initiated in 2025 and completed by 2026. The results from the survey 71 issued in mid-2024 and the draft state of PFAS report completed, offer a good basis for informing relevant for fluoropolymers.

Recommendation: The assessment of fluoropolymers should be initiated in 2025 rather than 2026 as outlined in the Work Plan.

Timelines for Assessment

The Proposed Plan and the accompanying Work plan (see in webpage, Proposed Plan of Priorities: Substances prioritized for assessment under CEPA, URL: <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/implementing-modernized-cepa/plan-of-priorities-landing-page/priority-substances.html>) provide an excel spreadsheet that outlines the expected start of the assessment for substances. However, the Proposed Plan does not offer the expected timelines for completion of the assessments. The lack of details on the expected completion of the assessment is a significant concern to the efficiency of the process. The work should take into account any initial effort to collect data as well as complete the assessment from draft to finalization. In the past, many concerns have been expressed that the lack of timelines to finalize the assessment has been a problem. Some reporting on the progress of these assessments will occur with the Annual Reports on CEPA. However, it would be more efficient to see assessments finalized in reasonable time and not drawn out without expected deadlines. For those chemicals determined to meet the criteria under section 64 of CEPA, this means delaying timelines to develop and implement measures to protect health and the environment.

Recommendation: Require expected deadlines for completion of assessment for the list of substances prioritized for assessment.

Limited Priority on vulnerable populations

CEPA includes provisions to consider vulnerable populations. In the selection of the substances prioritized for assessment, it is unclear which, if any, of the substances have been prioritized based on the impacts to vulnerable populations. The list of drivers on page 2 includes reference to “substances that are impacting populations or environments that may be at increased risk due to either greater exposure or greater susceptibility;”⁴ It is indeed important to state if information on vulnerable populations is available, and if that data has been used as a relevant driver for prioritizing substances. No doubt, there may be substances that could have been prioritized based on their impacts to vulnerable populations but lacks data. The priority setting efforts are substantially limited in this area. The departments should undertake substantial discussions

⁴ HC and ECCC. Proposed Plan. Section 2, p 2.

regarding the timing and approach needed to collect data on vulnerable populations throughout the Chemicals Management Program, specifically applying section 71(1)(c), which states:

- 71 (1) The Minister may, for the purpose of assessing whether a substance is toxic or is capable of becoming toxic — or for the purpose of assessing whether to control, or the manner in which to control, a substance, a product that contains a substance or a product that may release a substance into the environment — including a substance specified on the list of toxic substances in Schedule 1,...
- (c) subject to section 72, send a written notice to any person who is described in the notice and who is or was within the period specified in the notice engaged in any activity involving the importation or manufacturing of the substance or product, as the case may be, requiring the person to conduct toxicological or other tests that the Minister may specify in the notice and submit the results of the tests to the Minister.⁵

The departments will rely on a number of sources of information including the use of the Science Approach document, which outlines how the current scientific methods are applied to review data and evidence, to determine what data is available for each chemical. The existing science approach favours data rich chemicals. This approach will provide some ability for assessors to obtain information on the chemical properties. Similarly, relying on the use of analogues to support read across approaches or the use QSAR models will address the uncertainties or information gaps with other chemicals. However, these approaches do very little to provide reliable information relevant for those populations or groups of people that are disproportionately impacted by chemicals. Unless efforts are undertaken to stipulate that no data for these communities exist, addressing or even prioritizing chemicals for assessment is not fully effective. The absence of data in this area perpetuates the limitations that exist in CEPA for data poor chemicals. Every step taken in the approach to identify chemicals for prioritization is severely undermining the process for prioritizing chemicals for assessment and may be further weakened since the Minister has the discretion to seek information but it may only be applied during the assessment. The Minister should consider identifying the data gaps for vulnerable populations at the earliest phase in the efforts to inform the prioritization process.

Recommendation: Apply section 71(1)(c) to require data to be collected on vulnerable populations on substances to inform priority setting decisions.

Thank you for your consideration.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Fe de Leon, MPH
Senior Researcher and Paralegal

⁵ Canadian Environmental Protection Act, 1999 (S.C. 1999, c. 33)