

**Follow-up from the March 19 Appearance before the Senate Committee on Energy, the Environment and Natural Resources**

**Question 1:**

**Senator Galvez:** *Thank you so much for being with us tonight to answer our questions.*

*First, it's impactful that you're recognizing that you knew about environmental racism for decades. So it took decades to put this bill there, and to support it, because now it's supported by the government, which is very good. But the devil is in the details, and when we studied here CEPA modernization, there were two important changes. One is that we took out "prevention" and replaced it with "control and management" of pollution, but if we don't prevent pollution, we will always end up in the situation of having to clean up whatever is contaminated. I would like you to put in context these changes.*

*The other thing, again, is that another important change in CEPA was that Schedule 1, lethal toxic substances, got its name changed, and now it's only called "Schedule 1." Now in the courts, they are — people are debating what is toxic, what is not toxic; plastic is toxic or it's not toxic. So all of this creates a lot of confusion, and it doesn't make the court case clear, or we put too much pressure on courts to take a position.*

**Ms. McCready:** *(...) Thank you for the question. We may want to follow up with you in writing, because there might be important contributions from our colleagues at Health Canada on your question relating to toxic substances.*

**Answer to Question 1:**

**Pollution Prevention**

- Pollution prevention remains a foundational principle of the *Canadian Environmental Protection Act, 1999* (CEPA or Act). This is reflected in the long title of the Act, which remains *An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development* and, as stated in the Act's declaration, "the primary purpose of this Act is to contribute to sustainable development through pollution prevention." The principle of pollution prevention is found in various provisions throughout the Act, and Part 4 of the Act is specifically dedicated to "Pollution Prevention". In fact, no references to "pollution prevention" were removed by Bill S-5.

**Control and Management**

- The phrase "control and management" appears alongside the concept of "pollution prevention" in the preamble of the Act. This was not changed by Bill S-5 (see comparison table below).

- The only modification to this paragraph was to remove reference to the virtual elimination regime. The provisions for virtual elimination of toxic substances that are persistent and bioaccumulative were repealed and replaced with a new regime that remains risk-based but provides that toxic substances of highest risk should be managed by giving priority to prohibition.

Before Bill S-5	After Bill S-5
Whereas the Government of Canada will endeavour to remove threats to biological diversity through pollution prevention, the control and management of the risk of any adverse effects of the use and release of toxic substances, pollutants and wastes, and the virtual elimination of persistent and bioaccumulative toxic substances;	Whereas the Government of Canada will endeavour to remove threats to biological diversity through pollution prevention as well as the control and management of the risk of any adverse effects of the use and release of toxic substances, pollutants and wastes;

- The following link provides a side-by-side comparison of CEPA before and after amendments included in Bill S-5:  
<https://www.canlii.org/webdiff/diff.do?lang=en&path=%2Fen%2Fca%2Fflaws%2Fstat%2Fsc-1999-c-33%2Flatest%2Fsc-1999-c-33.html&path=%2Fen%2Fca%2Fflaws%2Fstat%2Fsc-1999-c-33%2F187686%2Fsc-1999-c-33.html#h=97844.734375>

Schedule 1 of CEPA

- Bill S-5 renamed “the List of Toxic Substances in Schedule 1” as simply “Schedule 1”. However, Schedule 1 is still referred to as the “list of toxic substances in Schedule 1” throughout the Act. The change from upper case to lower case reflects that the language is now descriptive of the list in Schedule 1, rather than its title.
- The test to trigger risk management under CEPA remains the same, and that is the conclusion by a risk assessment that a substance meets the criteria in section 64 of the Act to be considered “toxic” – harmful to environment, danger to life or health, or danger to the environment on which life depends. That test has not changed as a result of Bill S-5.
- In short, all substances on Schedule 1 (Part 1 and Part 2) have been found to be “toxic” based on the criteria in section 64, and this test has not changed as a result of Bill S-5.

**Question 2:**

*Senator Sorensen: I’m going to take an opportunity to get a bit of a status update. I think most people in the room are aware of this, some may not be.*

April 28, 2023

*Last year, Imperial Oil and the Alberta Energy Regulator hid from Athabasca Chipewyan First Nation the fact that a massive spill had occurred in their community. If it's okay, I thought I'd take an opportunity to ask for an update on what's happening with that scenario.*

*To tie it to the bill, do you believe that the strategy that will come out of this bill will assist the federal government with better tools and proper tools to ensure the protection of communities like Athabasca Chipewyan First Nation and more accountability for, in this instance, the regulator?*

**Ms. McCreedy:** *For the update, we will have to get back to you in writing. It's good that you got it on the record, but we'll get you a better answer from the appropriate officials.*

**Senator Sorensen:** *Yes, I'd be curious to know where it's at. I was reading an article from several months ago.*

#### **Answer to Question 2:**

- Since becoming aware of the seepage incidents at the Imperial Oil Ltd. Kearl Oil Sands Site in February 2023, Environment and Climate Change Canada (ECCC), Indigenous Services Canada (ISC) and Health Canada (HC) have worked with the Government of Alberta and Imperial Oil Ltd. to respond to the Athabasca Chipewyan First Nation's immediate concerns, including to ensure access to safe drinking water and to advise on the safety of traditional food sources.
- Provincial, territorial, Indigenous and local community officials are currently engaged through various working groups with the Government of Canada, such as the Notification Monitoring Working Group (NMWG). This working group is comprised of ECCC as the federal partner, several Indigenous Nations including the Fort Chipewyan communities, Indigenous representatives from the Northwest Territories, with Alberta Environment and Protected Areas as observers. The NMWG may develop improved notification and communication protocols to communities for environmental incidents, and may examine approaches to support a more open and transparent approach to monitoring, depending on its scope and mandate, which are still under development. Additionally, in recognition of the importance of the Athabasca River to Indigenous Peoples, ECCC and nine Indigenous communities also established a Crown-Indigenous Working Group (CIWG) in 2021. This group is exploring a range of options to manage the accumulation of oil sands process-affected water in existing tailings ponds. One of the options under consideration includes regulations that, if developed, would place strict conditions on the treatment of effluent for its release. Any such regulations would only be developed with strict protective standards reflecting the best available scientific information and Indigenous knowledge. The federal government is continuing to work on what other options may exist, in coordination with the provincial government.

April 28, 2023

- We anticipate that the strategy, as outlined in the Bill, will enable other initiatives, like the CIWG, to assess, prevent and address issues of environmental racism.

#### Ongoing formal investigation into Imperial Oil Ltd.'s Kearl Oil Sands Site

- ECCC is responsible for administering and enforcing the pollution prevention provisions of the *Fisheries Act*, which prohibit the deposit of deleterious substances into water frequented by fish. These provisions are enforced in accordance with the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*, which is available online at: <https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/publications/compliance-enforcement-policy-fisheries-act.html>.
- ECCC enforcement officers are continuing their ongoing investigation into a possible contravention of subsection 36(3) of the *Fisheries Act* at the Imperial Oil Kearl Oil Sands Site.
- ECCC enforcement officers and environmental emergencies officers have carried out inspections at the site since they became aware of the incident on February 7, 2023. In addition to the investigation, officers continue to monitor the mitigation measures taken by Imperial Oil Ltd. to prevent impacts to fish bearing water, as required by the *Fisheries Act* Direction issued by ECCC Enforcement on March 10, 2023.
- As the investigation is ongoing, it would be inappropriate to provide further information at this time. News releases in relation to the incidents at the Kearl Oil Sands Mine are available online at: <https://www.canada.ca/en/environment-climate-change/services/oil-sands-monitoring/federal-actions-kearl-oil-sands.html>.
- Imperial Oil Ltd. has also published a summary of its own investigation into the cause: <https://www.imperialoil.ca/-/media/imperial/files/operations/kearl/kearl-seepage-investigation-results-may-5-2023.pdf>

April 28, 2023

**Ms. Heather McCready:** “It’s not appropriate for us to opine on any amendments the government should or should not make because that’s a question for cabinet. But there are a number of initiatives under way in the department ... that are relevant to the issues here.”

**Ms. Susan Martin:** “Just to build on what Heather has already mentioned, I think there are a number of programs that operate in this space, so I think to look at individual amendments to different pieces would make it more complex than actually a single bill that goes at this issue directly.”

**Ms. Amanda Monforton:** “In preparation to meet the requirements of Bill C-226 and to inform a Canadian-specific approach to the development of an environmental justice strategy, the department has undertaken research on the concept, along with the policies, initiatives and models that exist in other jurisdictions.”

Environmental justice (EJ) is a new policy area for the federal government, as EJ has typically been pursued at a localized, grassroots level. In preparation to meet the requirements of the proposed Act, and to inform a Canadian-specific approach to EJ strategy development, ECCC officials have undertaken research on the concept and on policies, initiatives and models that exist in other jurisdictions.

The only jurisdiction that has institutionalized EJ is the United States, where there has been an intent to formally incorporate the concept into federal efforts since the early 1990s, led by the United States Environmental Protection Agency (USEPA). While the United States has over thirty years of experience applying EJ across their federal government, significant progress within the federal space has only taken place within the past decade, and with huge policy leaps over the last two years. Further, the US policy approach to key elements, such as measuring cumulative impacts and clearly defining EJ across federal departments, is still being developed and explored.

EJ as a principle and concept has grown and evolved since early inception in the 1980s. While there is no established definition, the principles and concepts of EJ are broadly understood to include improved procedural, recognitional and distributive justice. Procedural and recognitional justice seek to improve the ways in which decisions are made and ensure that those who are impacted by environmental injustice are reflected and included in decision-making spaces. Distributive justice involves identifying the ways in which certain populations face disproportionate environmental burdens, such as pollution, and seeking to improve environmental benefits for said communities.

Given EJ is a broad set of principles and/or concepts, there are already several direct references to EJ in some federal initiatives, including (but not limited to):

- **Bill S-5**, An Act to amend the Canadian Environmental Protection Act, also includes an EJ principle related to distributive justice, “the avoidance of adverse effects that disproportionately affect vulnerable populations”.
- **National Adaptation Strategy** includes “Advanc(ing) equity and climate and environmental justice” as a guiding principle.
  - Consequently, Climate Justice (CJ) is often used interchangeably with EJ, given both concepts are concerned with systemic issues (e.g., unequal outcomes, impacts on air, land and water, etc.).
  - Recognizing that EJ adopts a broader lens towards issues of representation and recognition in all types of environmental decision-making and policies, it will be important within the Canadian context to ensure policy coherence between CJ, particularly in the context of climate adaptation (e.g., the National Adaptation Strategy), and the EJ strategy.
- **Federal Sustainable Development Strategy** encompasses environmental justice concepts, particularly Goal 16: Promote a fair and accessible justice system, enforce environmental laws, and manage impacts.

Further, officials have identified federal legislation, policies, tools, and programs that may be considered in the development of the strategy, including (but not limited to):

- the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act (UN Declaration Act),
- Government of Canada’s Anti-Racism Strategy (2019-2022, and renewal),
- amendments to the Canadian Environmental Protection Act,
- Indigenous Justice Strategy,
- the prioritization of the Federal Contaminated Sites Action Plan, and
- the application of Gender-based Analysis Plus

Policy coherence among various initiatives will be important in the context of strategy development.