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VIA EMAIL: enev@sen.parl.gc.ca

Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

RE: **Speaking notes of Chief Christopher Plain, Aamjiwnaang First Nation, regarding Bill C-226: An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice.**

Good morning, Mr. Chair, and members of the committee.

My name is Chief Christopher Plain, and I am the elected Chief of the Aamjiwnaang First Nation. I'm here today to share our community's experiences living in an environmental sacrifice zone.

The United Nations describes "environmental sacrifice zones" as extremely contaminated areas where residents, often comprised of vulnerable and marginalized groups, suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.¹

Unfortunately, Aamjiwnaang has been identified as an "environmental sacrifice zone" by the United Nations² and others. For over a century, the people of Aamjiwnaang have been forced to endure disproportionate environmental and health impacts from toxic industrial pollution in our territory. The constant pollution has caused disturbing health effects for our people and has affected our cultural relationship with the land and waters by impacting our ability to engage in traditional practices that are constitutionally protected Aboriginal and Treaty rights under section 35 of the *Constitution Act, 1982*.

¹ *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UNHRC, 49th Sess, UN Doc A/HRC/49/53 (2022), online at: <https://www.ohchr.org/en/press-releases/2022/03/polluted-planet-un-expert-urges-ambitious-urgent-action-tackle-human-rights>> at p. 1, 7 [UN Rapporteur on Human Rights and Sustainable Environment].

² *Ibid* at p. 10.

a) OVERVIEW OF AAMJIWNAANG FIRST NATION

Aamjiwnaang is an Anishinaabe nation located near the City of Sarnia in what is now southwestern Ontario, at the south end of Lake Huron on the east side of the St. Clair River – just across the Canada/U.S. border from Port Huron, Michigan.

Currently there are approximately 2500 members of Aamjiwnaang, of which 900 live on the reserve – about one quarter of whom are children.

In our Ojibwa language, the name Aamjiwnaang means “the place at the spawning stream – where the water flows spiritually like a braid.” Aamjiwnaang’s oral history traces the lineage of our people back to our water origins. Our ancestors have witnessed the ice age, two great floods, changes in the lake levels, and the arrival of the first Europeans to our territory. Together with all living things, we have grown and prospered through the ages, nourished by the wealth and generosity of the lakes and rivers around us.

Aamjiwnaang is a sovereign nation with an inherent right of self-government. The leaders of Aamjiwnaang negotiated a series of treaties with the British Crown beginning in the 17th century. In 1827, Aamjiwnaang entered into Treaty 29 with the Crown, which promised our people the continued use of the land and water. We have never surrendered our Aboriginal rights but have agreed to share our territory with the Crown and its subjects.

b) ENVIRONMENTAL DEGRADATION AT AAMJIWNAANG

The development of heavy industry in Sarnia in the early-to-mid 20th century was directed and supported by Canadian governments. During the Second World War, Canada and its allies needed rubber and, when cut off from global supply, the federal government decided to produce it in Sarnia. The construction of the federally owned polymer plant occurred rapidly. Academia has described this development as follows:

The pace was terrific and unrelenting, despite shortages of labour and key construction materials, and the cruel working conditions imposed by an unusually long and harsh winter. Thirteen months later (and two months ahead of schedule), on the backs of nearly 5500 labourers, the Polymer industrial complex in Sarnia was essentially completed.

[...]

The cost was equally enormous: in total, the construction of Polymer cost about \$51 million, then the largest single public expenditure on any single wartime project in Canadian history.

[...]

The story, then, of the making of Canada's Chemical Valley in the second half of the twentieth century is mostly a federal one: a large public investment, followed by timely and appropriate public policies and actions to accommodate the requirements of a growing industry sector, which nudged together a dense nucleus of private sector companies that stimulated further investment.³ [...] Were it not for the actions taken by the federal government to stimulate growth, the industry's development in Sarnia may well have stalled.⁴

After the war, Canada continued federally owned production and set its sights on making Sarnia an industrial powerhouse. Over time, other chemical plants moved in, taking up our lands, contaminating them, and thus began the multi-generation poisoning of our people. The legacy of these unlawful and dishonourable decisions has exposed our community to relentless environmental harm.

Aamjiwnaang is now situated in the epicenter of what is often referred to as Canada's "Chemical Valley" – so named because the area contains 40 per cent of Canada's chemical industry. 'Chemical Valley', has been described as "the most disconcerting example of environmental injustice" in Canada.⁵

Over the past one-hundred years, the lands and waters at Aamjiwnaang have been impoverished by over-exploitation. All facets of Aamjiwnaang's environment are polluted, including the air, land and water. Experts refer to Aamjiwnaang's traditional lands as "overburdened" or "saturated" – meaning the area has reached a state that cannot accommodate any further pollution. It is likely that Aamjiwnaang's traditional lands reached this state many years ago.

Community members who grew up swimming in the waters and harvesting fish and traditional medicines now report negative health effects from engaging in these traditional activities; activities that are constitutionally protected Aboriginal and Treaty rights under section 35 of the *Constitution Act, 1982*.

³ Timothy William Cobban, *The Role of Municipalities in Stimulating Economic Growth: Evidence from the Petroleum Manufacturing Industry in Southern Ontario, 1860-1960* (PhD. Dissertation: University of Western Ontario, 2008) at page 189-90 [Cobban].

⁴ Cobban, *supra* note 3 at page 195.

⁵ Christina Dhillon, Michael Young, *Environmental Racism and First Nations: A Call for Socially Just Public Policy Development*, Canadian Journal of Humanities and Social Sciences, 2010, Vol. 1, No. 1, online at: <https://www.researchgate.net/publication/228226535_Environmental_Racism_and_First_Nations_A_Call_for_Socially_Just_Public_Policy_Development> at pp. 23-27 [Dhillon & Young].

As it stands, there is practically no where in the vicinity of Aamjiwnaang where our members can practice their constitutionally protected Aboriginal and treaty rights without worrying about the bioaccumulation of chemicals in traditional plants, animal, fish, and birds.

Pollution can cause the air to smell like rotten eggs and can induce dizziness and nausea. Residents face constant flaring, noise, sirens, and the occasional shelter in place alert. Physical and psychological health problems are common, including high rates of miscarriages, childhood asthma, and cancer.⁶

In her 2017 report, the Environmental Commissioner of Ontario, Dianne Saxe, said:

Aamjiwnaang is among the most polluted places in Ontario because of the large number of heavy industries located so close to the residential community. This situation is a legacy of land use planning decisions that would never be allowed today.⁷

c) ENVIRONMENTAL RACISM

Environmental racism can be defined as the deliberate or intentional siting of hazardous waste sites, landfills, incinerators, and polluting industries in communities inhabited by minorities and/or the poor. The concept of environmental racism is rights-based and observes that communities subject to this kind of racism are frequently impoverished, excluded from dominant cultures and are denied full citizenship. This marginalized status leaves communities politically powerless and without representation in the policy-making process.⁸

Aamjiwnaang is surrounded on three (3) sides by over 60 industrial refineries, the closest of which are literally across the street from important community meeting centres such as the band office, church, cemetery, community resource centre and residences. These facilities represent 40% of all of Canada's refineries. It has been this way for many generations and while settler communities were relocated at no cost to them, we remain here on our land. To us, it has been an experience of profound environmental racism.

⁶ UN Rapporteur on Human Rights and Sustainable Environment, *supra* note 1 at p. 10

⁷ Dianne Saxe, *Good Choices, Bad Choices. Environmental Rights and Environmental Protection in Ontario* (Toronto, Environmental Commissioner of Ontario, 2017) online at: < <https://saxefacts.com/environmental-policies-in-canada/>> at p. 121.

⁸ Dhillon & Young, *supra* note 5 at p. 24.

d) UNITED NATIONS SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND TOXICS

In 2019, the *United Nations Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes* made an official visit to Canada, which included a visit to Aamjiwnaang and the City of Sarnia.

In the UN Rapporteur's final report dated November 27, 2020⁹ he made the following observations:

39. The situation of the Aamjiwnaang First Nation in Sarnia is profoundly unsettling. Deeply connected with their land, the residents on the reserve have been invaded by industry as far back as the 1940s. They are now almost entirely surrounded by over 60 industrial facilities whose presence creates physiological and mental stress among community members because of the risk of impending explosions or other disasters and because of chronic exposure to unquestionably poisonous substances. Sarnia, one of the most polluted places in Canada, has been dubbed "chemical valley".

40. Various interlocutors acknowledged that existing regulations do not protect the health of the Aamjiwnaang. Improvements can be made in terms of investigating the health impacts, conducting proper monitoring and enforcing existing standards. Risk assessments do not fully take into account the cumulative health impacts. The environmental injustice to which the Aamjiwnaang are subjected is an ongoing tragedy, the legacy of land use planning that would not be allowed today. Encouragingly, the community and companies have increased cooperation and engagement in recent years, including through financing for the communities to hire their own environmental scientists to facilitate meaningful participation.

48. [...] Furthermore, as they live on the fringes of protection from toxics, indigenous and racialized communities are more likely to be exposed because they lack enforceable environmental rights, typically do not have the political or financial means to challenge powerful polluting industries and often face societal pressures to accept such industries because of the need for employment, among other factors. Adding insult to injury, "lifestyle choices" associated with poverty are cited to dismiss, discredit and even blame victims of discriminatory toxic exposure who develop diseases and disabilities, instead of placing the burden on polluting actors to demonstrate that they did not contribute to adverse health impacts.

⁹ *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, UNHRC, 45th Sess, Annex, Agenda Item 3, UN Doc A/HRC/45/12/Add.1 (2020), online at: < <https://www.ohchr.org/en/documents/country-reports/ahrc4512add1-visit-canada-report-special-rapporteur-implications-human>> at pp. 8-9, 11.

The UN Rapporteur made several recommendations¹⁰ to the Government of Canada, including:

1. Recognize the right to a healthy environment in its legislation, eventually, through a constitutional amendment, and ensure that that right includes the duty to prevent exposure to hazardous substances;
2. Bring federal, provincial and territorial legislation fully into line with the *United Nations Declaration on the Rights of Indigenous Peoples*;
3. Ensure that environmental standards on reserves are as strong as or stronger than the standards on neighbouring provincial, territorial and federal lands, to ensure equal protection for indigenous persons;
4. Amend the federal *Impact Assessment Act* to require consideration of the impacts of proposed projects and policies on human rights, particularly the rights of vulnerable populations;
5. Improve the capacity of the Canadian Human Rights Commission to initiate investigations and pursue environmental and human rights-based initiatives, including on toxic exposure, including through budgetary allocations and research promotion;
6. Require the protection of vulnerable populations at all stages of the review of the Canadian *Environmental Protection Act* and categorize chemicals as toxic based on their hazard, not their risk
7. Implement legal requirements for robust mandatory human rights due diligence and provide redress where activities of business enterprises both at home and abroad are associated with impacts of toxic exposure, with a cause of action for victims both in the host country and in Canada
8. Revise the avenues available to access justice, to give full effect to the justiciability of economic, social and cultural rights through the court system in Canada, engaging civil society and indigenous peoples in that revision;
9. Establish a sound environmental justice framework based on the principles of procedural justice, geographic justice and social justice;
10. Involve indigenous peoples and other population subgroups in self assessments to complement assessments by members of other population subgroups.

e) UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

The *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”)¹¹ is an international human rights instrument that Canada endorsed in 2016 and adopted into federal

¹⁰ *Ibid* at pp. 22-23.

¹¹ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA, 61st Sess, UN Doc A/61/49 (2007) GA Res 61/295.

law in 2021. The following Articles of the *UNDRIP* have direct application to this Committee's mandate regarding Bill C-226:

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

In 2021, the government of Canada enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act*, the purpose of which is to (a) affirm the *UNDRIP* as a universal international human rights instrument with application in Canadian law; and (b) provide a framework for the Government of Canada's implementation of the *UNDRIP*.¹²

¹² *United Nations Declaration on the Rights of Indigenous Peoples Act* S.C. 2021, c. 14.. online at: < <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>> at section 4.

Section 5 of the *Act* provides “[t]he Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.”¹³

f) RECOMMENDATIONS

Bill C-226 currently provides that “[t]he Minister must develop a national strategy to promote efforts across Canada to advance environmental justice and to assess, prevent and address environmental racism.”¹⁴

The Bill goes on to provide that “the strategy must include a study that includes (i) an examination of the link between race, socio-economic status and environmental risk, and (ii) information and statistics relating to the location of environmental hazards.”¹⁵

While these are important factors to be included in any study of environmental racism, the list is incomplete as it does not include consideration of how colonialism has specifically impacted Indigenous peoples. In a 2022 article in the journal *Canadian Family Physician*, medical experts Maya Venkataraman *et. al.* made the following observations:

It is also crucial to recognize the intersection of colonialism and other determinants of health, specifically those related to the health of Indigenous peoples. Canada’s history has included broken treaty promises, discriminatory acts and policies aimed at assimilation, and the appropriation of land and resources to the exclusion of Indigenous peoples. Colonialism directly affects Indigenous peoples health and well-being. In the context of environmental racism, colonialism has led to structural and institutional racism that continues to shape environmental policies and practices today.¹⁶

We would therefore recommend that section 3(a)(i) of Bill C-226 be amended as follows:

(3) The strategy must include (a) a study that includes (i) an examination of the link between race, the impacts of colonialism, socio-economic status and environmental risk.

¹³ *Ibid* at section 5.

¹⁴ BILL C-226, *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*, online at: <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-226/third-reading> at section 3(1).

¹⁵ *Ibid* at section 3(3).

¹⁶ Maya Venkataraman *et al*, *Environmental Racism in Canada*, *Canadian Family Physician* (August 2022) Vol 68, no 8, online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9374073/> at p. 567.

g) CONCLUSION

The environmental injustice that the people of Aamjiwnaang have been subjected to is an ongoing tragedy and is a stark example of environmental racism. Today, it would be unfathomable to construct such a large number of industrial facilities next to homes, schools and workplaces. Ask yourself, would you want to raise your family here? Do you think this would happen in Oakville or Rockcliffe Park in Ottawa?

The UN Rapporteur's 2022 report states "[t]he continued existence of sacrifice zones is a stain upon the collective conscience of humanity. [...] The people who inhabit sacrifice zones are exploited, traumatized and stigmatized. They are treated as disposable, their voices ignored, their presence excluded from decision-making processes and their dignity and human rights trampled upon."¹⁷

Governments must take the necessary steps to ensure environmental standards are enforced, are protective of our members' health, and reduce pollution in our community. Government standards do not fully consider cumulative health impacts and despite countless letters, studies, petitions, protests, reports, and calls for legislative reform, the harm continues every single day. The situation in Aamjiwnaang is not a knowledge problem, but an inaction problem.

But in addition to that, we need to mend the Treaty relationship between Aamjiwnaang and the Crown where Aamjiwnaang has an equal voice in decision-making effecting our lands and waters and decisions that directly affect our members. We need a seat at the table and our concerns must inform the path forward. We want to be part of the solution, we want to feel confident that the air we are breathing isn't slowly killing us, we want to live with peace of mind that our children will not get sick and die before us. We hope that your work on environmental racism marks the beginning of a new honorable relationship where Aamjiwnaang can see measurable results from a government committed to doing better.

Miigwech,

Chief Christopher Plain
Aamjiwnaang First Nation

¹⁷ UN Rapporteur on Human Rights and Sustainable Environment, supra note 1 at p. 7.