CELA-CANADIAN ENVIRONMENTAL LAW ASSOCIATION

PROPOSED AMENDMENTS SUBMITTED TO THE MINISTERS OF ENVIRONMENT AND CLIMATE CHANGE AND HEALTH ON BILL S-5, AN ACT TO AMEND THE CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999, etc.

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INTRODUCTION

These are the proposed amendments of the Canadian Environmental Law Association ("CELA") to Bill S-5, *An Act to Amend the Canadian Environmental Protection Act, 1999*. Bill S-5 was tabled in the Senate of Canada in February 2022.

The CELA amendments to Bill S-5 address eight areas:

- Definitions;
- Right to a Healthy Environment and Remedy;
- Mandatory Pollution Prevention Planning;
- Retaining and Revising Virtual Elimination Authority;
- Mandatory Testing;
- Retaining Existing Schedule 1 Name and Eliminating Bifurcation of Schedule;
- Establishing Authority for Ambient Air Quality Standards; and
- Retaining Geographically Targeted Regulatory Authority.

The CELA amendments are set out in eight tabs that are each organized as three-column charts. The left-hand column of each chart sets out the pertinent part of the text of Bill S-5. The center-column of each chart sets out the CELA-proposed amendments to Bill S-5. In this column, CELA removal of text from Bill S-5 appears as a strike out (e.g. ~~the~~), while CELA addition of text to Bill S-5 appears as an underline (e.g. <u>the</u>). The right-hand column of each chart sets out the rationale for the CELA changes proposed to Bill S-5.

The CELA amendments are based in substantial part on submissions provided to the Ministers of Environment and Health in early February 2022. Although the February 2022 submissions refer to Bill C-28, tabled in the House of Commons in April 2021, the submissions are entirely applicable to the content of Bill S-5, which is substantially identical to Bill C-28. The right-hand column of each chart refers the reader to where in the CELA submissions the rationale for the proposed CELA amendments may be found.

TAB 1 – BILL S-5 AMENDMENTS TO CEPA,1999 - DEFINITIONS - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
4(2) Subsection 3(1) of the Act is amended by adding the following in alphabetical order:	**4(2) Subsection 3(1) of the Act is amended by adding the following in alphabetical order:** **aggregate exposures** mean the sum total of all exposures by a receptor to a single substance from all exposure routes, pathways, sources, or settings; **analysis of alternatives** means an assessment of whether safer, suitable alternative substances or technologies are available including: (a) whether the transfer to an alternative would result in reduced overall risks to human health and the environment, taking into account the appropriateness and effectiveness of risk management measures; and (b) the technical and economic feasibility of the alternatives; **consumer product** has the same meaning as in the *Canada Consumer Product Safety Act*, S.C. 2010, c. 21; **cumulative effects** mean the sum total of biological effects arising from the aggregate exposures to all substances that have a common mechanism or mode of action, target tissue, or effect, to which a human or environmental receptor is exposed; **economically feasible** means that a safer alternative does not significantly reduce the operating margin of the industrial facility, or the person who manufactures, imports, processes, or uses a substance for commercial purposes, or uses a substance in a commercial manufacturing or processing activity, as the case may be, and the phrase "economically viable" has the same meaning; **endocrine disrupting substance** means a substance having the ability to disrupt the synthesis, secretion, transport, binding, action or	There are a number of terms used in Bill S-5 that are not defined but should be, including analysis of alternatives, cumulative effects, economically feasible, endocrine disrupting substance, environmental justice principle, non-regression principle, safer alternative, substitution principle, and technically feasible. There are also a number of terms not referred to in Bill S-5 but, as a consequence of the use of another term that is in the Bill (e.g., environmental justice principle), should be defined, including fair treatment, and meaningful involvement. There are other terms referred to, and defined in, Bill S-5 that require clarification as to the scope of their meaning or application, including vulnerable population. There are still other terms that are not referred to in Bill S-5 but should be both referred to and defined, including aggregate exposures, consumer product, improved operation and maintenance of production unit equipment and methods, input substitution, intergenerational equity principle, polluter pays principle, product reformulation, production unit modernization, and production unit redesign or modification. CELA's proposed amendments based in part on our February 2022 submissions on Bill C-28 correct these omissions. See pages 20, 54-57 of the CELA submissions.

	elimination of natural hormones or their receptors in an organism, or its progeny, that affects cellular signaling, and gene expression responsible for the maintenance of homeostasis, reproduction, development, immune function, tissue health, or behaviour of the organism and the phrase “ability of a substance to disrupt the endocrine system” has the same meaning; **environmental justice principle** means fair treatment and meaningful involvement of all people, including a vulnerable population, in respect of environmental and human health hazards associated with toxic substances, and the phrase “principle of environmental justice” has the same meaning; **fair treatment** means no group of people, including a vulnerable population, shall bear a disproportionate risk of experiencing adverse environmental or human health effects from exposure to a toxic substance manufactured, processed, imported, used, or released in Canada, nor shall they be discriminated against in this regard on the basis of any ground prohibited by the *Canadian Charter of Rights and Freedoms*; **improved operation and maintenance of production unit equipment and methods** means modifying or adding to existing equipment or methods including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, or production unit control equipment or methods; **input substitution** means replacing a toxic or hazardous substance or raw material used in a production unit with a non-toxic or less toxic substance; **intergenerational equity principle** means decisions taken in meeting the needs of the present concerning	

	the manufacture, import, processing, use, or release of toxic substances should not compromise the ability of future generations to meet their own needs including protection of human health or the environment; **meaningful involvement** means: (a) people, including a vulnerable population, shall have a full opportunity to participate in the decision-making process of the Government of Canada under this Act regarding a substance that may adversely affect human health or the environment; (b) people, including a vulnerable population, shall be entitled to an opportunity to influence a decision of the Government of Canada on a substance and whether it is determined to be toxic, or capable of becoming toxic, and how it will be managed under this Act; (c) the concerns of people, including a vulnerable population, shall be considered by the Government of Canada in the decision-making process regarding whether a substance is determined to be toxic, or capable of becoming toxic, and how it will be managed under this Act; (d) the Government of Canada shall seek out and facilitate the involvement of people, including a vulnerable population, who may be potentially affected by a substance regarding whether it is determined to be toxic, or capable of becoming toxic, and how it will be managed under this Act; **non-regression principle** means decisions under this Act regarding the manufacture, import, processing, use, or release of toxic substances, or determinations as to whether a substance is toxic, or capable of becoming toxic, should not result in weakening the Act's ability to prevent or mitigate harm to human health or the environment; **polluter pays principle** means, but is not limited to, those who	

	manufacturer, import, process, use, or release Schedule 1 toxic substances should bear the responsibility for remedying their actions that cause or contribute to harm to human health or the environment, and pay the direct and indirect costs they impose and reduce that harm based on either the extent of the damage done, or the extent to which an acceptable level or standard of environmental protection is exceeded; **product reformulation** means substituting for an existing end-product an end-product which is non-toxic or less toxic upon use, release, or disposal; **production unit modernization** means upgrading or replacing existing production unit equipment and methods with other equipment and methods based on the same production unit; **production unit redesign or modification** means developing and using production units of a different design than those currently used; **safer alternative** means an option that includes input substitution as well as including a change in chemical, material, product, process, function, system or other action, whose adoption to replace a toxic substance would be the most effective in comparison with another chemical, material, product, process, function, system, or other action, in reducing overall potential harm to human health or the environment, and the phrase “alternatives that are safer” has the same meaning; **substitution principle** means toxic substances listed in Schedule 1 are progressively replaced by non-hazardous or less hazardous, including non-chemical, alternatives or technologies where these are technically and economically feasible;	

	technically feasible means that the technical knowledge, equipment, materials, and other resources available in the marketplace are expected to be sufficient to develop and implement a safer alternative, and the phrase "technically viable" has the same meaning;	
vulnerable population means a group of individuals within the Canadian population who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances.	**vulnerable population** means a group of individuals within the Canadian population who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances~~.~~ including, without limiting the generality of the foregoing, (a) infants, children, or adolescents; (b) women, including pregnant women; (c) seniors; (d) Indigenous peoples; (e) individuals with a pre-existing medical condition; (f) workers who work with a substance, or toxic substance; or (g) those who by reason of their; i. income; ii. race; iii. colour; iv. gender; v. age; vi. national origin; or vii. geographic location, are subject to a disproportionate potential for exposure to, or potential for disproportionate adverse effects from exposure to, a substance, or toxic substance.	

TAB 2 – BILL S-5 AMENDMENTS TO CEPA,1999 - RIGHT TO HEALTHY ENVIRONMENT - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
2 (1) The preamble to the *Canadian Environmental Protection Act, 1999* is amended by adding the following after the first paragraph: Whereas the Government of Canada recognizes that every individual in Canada has a right to a healthy environment as provided under this Act;		Bill S-5 proposes a right to a healthy environment but with caveats (e.g., subject to balancing with economic or other factors). The right to a healthy environment should be clarified as well as strengthened by removing the language regarding balancing with economic factors or other factors. The right to a healthy environment proposed by the Government of Canada cannot be protected unless it is made enforceable by removing barriers to the existing remedy authority of the Act (s. 22). The Government of Canada in 2016 and the House Standing Committee in 2017 agreed that the existing environmental protection action provision in CEPA (s. 22) has never been used. The remedy has not been used for over 20 years because too many procedural barriers to its use are in the Act (e.g., need to first ask minister to investigate, minister must fail to investigate/report within reasonable time period, minister's response to investigation must be unreasonable, offence must be committed, and offence must cause significant environmental harm). Bill S-5 does not propose removal of these barriers, so it is unlikely that the right to a healthy environment would be enforceable. CELA's proposed amendments would make the right enforceable. For further discussion see CELA February 2022 Submissions on Bill C-28, pages 31-35.
(2) Subsection 2(1) of the Act is amended by adding the following after paragraph (a.1): **(a.2)** protect the right of every individual in Canada to a healthy environment as provided under this Act, which right may be balanced with relevant factors, including social, economic, health and scientific factors;	**(2) Subsection 2(1) of the Act is amended by adding the following after paragraph (a.1):** **(a.2)** protect the right of every individual in Canada <u>and future generations</u> to a healthy environment as provided under this Act, ~~which right may be balanced with relevant factors, including social, economic, health and scientific factors~~; <u>**(a.3)** in undertaking the protections set out in subparagraph (a.2), apply the intergenerational equity, precautionary, polluter pays, sustainable development, substitution, environmental justice, and non-regression principles</u>;	
5 The Act is amended by adding the following after the heading of Part 1: Implementation of Right to a Healthy Environment **Implementation framework** **5.1 (1)** For the purposes of paragraph 2(1)(a.2), the Ministers shall, within two years after the day on which this section comes into force, develop an implementation framework to set out how the right to a healthy environment will be	**5 The Act is amended by adding the following after the heading of Part 1:** Implementation of Right to a Healthy Environment **Implementation framework** **5.1 (1)** For the purposes of paragraph 2(1)(a.2), the Ministers shall, within two years after the day on which this section comes into force, develop an implementation framework to set out how the right to a healthy environment will be ~~considered~~ <u>protected and the</u>	

considered in the administration of this Act. **Content** **(2)** The implementation framework shall, among other things, elaborate on **(a)** the principles to be considered in the administration of this Act, such as principles of environmental justice — including the avoidance of adverse effects that disproportionately affect vulnerable populations — and the principle of non-regression; **(b)** research, studies or monitoring activities to support the protection of the right to a healthy environment referred to in paragraph 2(1)(a.2); and **(c)** the balancing of that right with relevant factors, including social, economic, health and scientific factors. **Consultation** **(3)** In developing the implementation framework, the Ministers shall consult any interested persons. **Publication** **(4)** The Minister shall publish the implementation framework in the manner that the Minister considers appropriate. **Report** **(5)** The Minister shall include in the annual report required by section 342 a report on the implementation of the framework. **7 Section 44 of the Act is amended by adding the following after subsection (3):** **Protection of right to healthy environment**	principles set out in paragraph 2(1)(a.3) applied in the administration of this Act. **Content** **(2)** The implementation framework shall, among other things, elaborate on **(a)** the principles to be considered in the administration of this Act, such as principles of environmental justice — including the avoidance of adverse effects that disproportionately affect vulnerable populations — and the principle of non-regression; and **(b)** research, studies or monitoring activities to support the protection of the right to a healthy environment referred to in paragraph 2(1)(a.2) and application of the principles set out in paragraph 2(1)(a.3)~~; and~~ ~~**(c)** the balancing of that right with relevant factors, including social, economic, health and scientific factors~~. **Consultation** **(3)** In developing the implementation framework, the Ministers shall consult any interested persons. **Publication** **(4)** The Minister shall publish the implementation framework in the manner that the Minister considers appropriate. **Report** **(5)** The Minister shall include in the annual report required by section 342 a report on the implementation of the framework. **7 Section 44 of the Act is amended by adding the following after subsection (3):** **Protection of right to healthy environment**	

(3.1) The Ministers shall conduct research, studies or monitoring activities to support the Government of Canada in protecting the right to a healthy environment referred to in paragraph 2(1)(a.2).	**(3.1)** The Ministers shall conduct research, studies or monitoring activities to support the Government of Canada in protecting the right to a healthy environment referred to in paragraph 2(1)(a.2) <u>and applying the principles set out in paragraph 2(1)(a.3).</u> **<u>6.1 Sections 22, 29, 30, 31, 32, 33 and 38 of the Act are repealed and replaced with the following:</u>** **<u>Circumstances when an individual in Canada may bring an environmental protection action</u>** <u>22.(1) Notwithstanding section 5.1, any individual may commence an environmental protection action in the Federal Court:</u> <u>(a) against the Government of Canada for:</u> <u>(i) violating the right to a healthy environment in respect of matters within the legislative authority of this Act;</u> <u>(ii) failing to perform any act or duty that is not discretionary in the administration of this Act;</u> <u>(iii) failing to fulfill its duties as trustee of the environment; or</u> <u>(iv) authorizing, or failing to prevent, activity that may result in environmental harm;</u> <u>(b) against any person, organization, or government body violating or threatening to violate this Act, a regulation, or statutory instrument under this Act, or where environmental harm has resulted or may result in respect of matters within the legislative authority of this Act;</u> **<u>Notice</u>** <u>(2) An individual intending to commence an environmental protection action referred to in subsection (1), shall provide the</u>	

	Minister and any potential defendants with 60 days notice prior to filing the action. **When environmental protection action shall not be commenced** (3) An environmental protection action referred to in subsection (1)(b) shall not be commenced if the Government of Canada has completed or commenced enforcement proceedings against the potential defendants. **Exception** (4) Notwithstanding subsection (3), an environmental protection action may be commenced or continued where the Government of Canada has, or has exercised, the power to authorize an activity that may result in environmental harm. **Burden of proof** (5) In an environmental protection action brought under subsection (1), once the plaintiff has demonstrated a *prima facie* case of environmental harm, the onus is on the defendant to prove that the acts or omissions alleged by the plaintiff will not result in environmental harm. **Defence** (6) It is not a defence to an environmental protection action under subsection (1) that the activity was authorized under this Act, a regulation, or other statutory instrument under this Act, or any other act, unless the defendant proves that (a) the environmental harm is or was the inevitable result of carrying out the activity permitted by the Act, regulation, or other statutory instrument; and (b) there is no reasonable or prudent alternative that can prevent the environmental harm.	

	Standard of proof (7) The standard of proof in respect of any affirmative defence raised pursuant to subsections (5) or (6) shall be adjudicated on a balance of probabilities. **Mediation** (8) An environmental protection action shall be referred to mediation for a period of thirty days following its commencement, extendible upon agreement of all parties. **Powers of Federal Court** (9) Notwithstanding remedial provisions in other laws, if the Federal Court finds that the plaintiff is entitled to judgment under subsection (1), the Federal Court may (a) grant declaratory relief; (b) issue an order, including an interlocutory order, requiring the defendant to refrain from doing anything that, in the opinion of the court, may constitute an offence under this Act; (c) issue an order, including an interlocutory order, requiring the defendant to do anything that, in the opinion of the court, may prevent the continuation of an offence under this Act; (d) suspend or cancel a federal permit or other authorization issued to a defendant; (e) order the defendant to clean up, restore, or rehabilitate any part of the environment; (f) order a defendant to take specified preventive measures; (g) order a defendant to pay a fine to be used for the cleanup, restoration, or rehabilitation of the environment harmed by the defendant; (h) order a defendant to pay a fine to be used for the enhancement or protection of the environment generally;	

	(i) order the parties to negotiate a plan to correct or mitigate the harm to the environment or to human, animal or plant life or health, and to report to the court on the negotiations within a time set by the court; (j) order the Minister to comply with, or to monitor compliance with, the terms of any order; and (k) make any other order that the court considers just. **Court to retain jurisdiction** (10) In making an order under subsection (9), the Federal Court may retain jurisdiction over the matter so as to ensure compliance with its order. **Dismissal** (11) A defendant may apply to the Federal Court to have an environmental protection action dismissed if (a) the action duplicates another legal proceeding that involves the same acts, omissions, or environmental harm; (b) the action is frivolous, vexatious, or harassing; or (c) the action has no reasonable prospect of success. **Interim orders** (12) Where an environmental protection action is brought under subsection (1), the plaintiff: (a) may make a motion to the Federal Court for an interim order to protect the subject matter of the action when, in the court's opinion, environmental harm may occur; (b) may be entitled to an award of advanced costs, upon application to the court if, in the opinion of the court, it is in the public interest; (c) in bringing a motion under subsection (12)(a) or (b) shall not be denied an interim order on the	

	grounds that the plaintiff is unable to provide an undertaking to pay costs or damages should the action eventually be dismissed; (d) if required to provide an undertaking to pay costs or damages in support of continuing the action, shall not be required to pay more than $1,000. **Costs where unsuccessful** (13) Where an environmental protection action under subsection (1) is dismissed, there shall be a presumption that no order for the plaintiff to pay costs shall be made unless the action: (a) is found by the court to not represent a test case, involve an issue of public importance, or raise a novel point of law; or (b) is found to be frivolous, vexatious, or harassing. **Judicial Review** **Application for review of government decision** 22.1(1) Any person, whether or not directly affected by the matter in respect of which relief is sought, may bring an application for review in the Federal Court of a government decision made under this Act that would otherwise be open to judicial review under section 18.1 of the *Federal Courts Act*. **Application to be brought under provisions of Federal Courts Act and Rules** (2) An application for judicial review commenced under this section shall be brought in accordance with the provisions of the *Federal Courts Act* and the *Federal Courts Rules*.	

TAB 3 – BILL S-5 AMENDMENTS TO CEPA,1999 – POLLUTION PREVENTION PLANNING - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
10 (1) Subsection 56(1) of the Act is replaced by the following: **Requirement for pollution prevention plans** **56 (1)** The Minister may, at any time, publish in the *Canada Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice to prepare and implement a pollution prevention plan in respect of **(a)** a substance or group of substances specified on the list of toxic substances in Schedule 1; **(b)** a substance or group of substances with respect to which subsection 166(1) or 176(1) applies; or **(c)** a product that contains a substance specified on the list of toxic substances in Schedule 1 or that may release such a substance into the environment. **(2) Paragraph 56(2)(a) of the Act is replaced by the following:** **(a)** the substance, group of substances or product in relation to which the plan is to be prepared; **11 Subsection 60(1) of the Act is replaced by the following:** **Requirement to submit certain plans** **60 (1)** The Minister may publish in the *Canada Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice who are required to prepare and implement a pollution prevention plan under section 56 to submit, within the period specified by the Minister, the plan or any part of the plan for the purpose of determining and assessing preventive or control actions in respect of a substance, group of substances or product.	~~**10 (1) Subsection 56(1) of the Act is replaced by the following:**~~ ~~**Requirement for pollution prevention plans**~~ ~~**56 (1)** The Minister may, at any time, publish in the *Canada Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice to prepare and implement a pollution prevention plan in respect of~~ ~~**(a)** a substance or group of substances specified on the list of toxic substances in Schedule 1;~~ ~~**(b)** a substance or group of substances with respect to which subsection 166(1) or 176(1) applies; or~~ ~~**(c)** a product that contains a substance specified on the list of toxic substances in Schedule 1 or that may release such a substance into the environment.~~ ~~**(2) Paragraph 56(2)(a) of the Act is replaced by the following:**~~ ~~**(a)** the substance, group of substances or product in relation to which the plan is to be prepared;~~ ~~**11 Subsection 60(1) of the Act is replaced by the following:**~~ ~~**Requirement to submit certain plans**~~ ~~**60 (1)** The Minister may publish in the *Canada Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice who are required to prepare and implement a pollution prevention plan under section 56 to submit, within the period specified by the Minister, the plan or any part of the plan for the purpose of determining and assessing preventive or control actions in respect of a substance, group of substances or product.~~	Bill S-5 continues CEPA's discretionary approach to the production of pollution prevention plans for Schedule 1 toxic substances. The Bill does not require the Minister to compel persons to create pollution prevention plans (PPP) for every substance in Sch. 1. Since 2000, only one-sixth of Sch. 1 toxic substances have a PPP (25 out of 150). At the rate of 25 substances every 20 years it will take Canada to the 22nd century to impose PPP on existing Sch. 1 chemicals. PPP should be made mandatory for all Sch. 1 toxic substances. PPP is about eliminating the creation and use of toxic substances. Pollution abatement is about controlling releases, emissions, discharges. Canada has allowed industry to use pollution abatement as a substitute for PPP a majority of the time a PPP has been prepared under CEPA. Some substances subject to PPP have still seen their emissions increase. Bill S-5 should strictly limit use of pollution abatement measures as substitutes for PPP. There are few references to alternatives in Bill S-5. Only 19 substances (in Bill S-5 proposed Sch. 1, Part 1) are eligible for substitution = 13% of all toxic substances in Sch. 1. 87% of toxic substances in Sch. 1 (i.e., those in Bill S-5 proposed Part 2) are not – these are only subject to

	10 Section 56 of the Act is replaced with the following: **Minister to publish notice** **56 (1)** The Minister, within three months after the coming into force of this section, shall publish, in the *Canada Gazette* and in any other manner that the Minister considers appropriate, a notice requiring any person or class of persons described in the notice to notify the Minister forthwith if the person manufactures, imports, processes, uses, or releases, **(a)** a substance or group of substances specified on the list of toxic substances in Schedule 1; **(b)** a substance or group of substances with respect to which subsection 166(1) or 176(1) applies; or **(c)** a product that contains a substance specified on the list of toxic substances in Schedule 1 or that may release such a substance into the environment. **Contents of notice** **(2)** The notice may (a) request the person to indicate the commercial, manufacturing, processing, or other activity the person engages in regarding a substance or product covered by subsection (1)(a)-(c); and (b) specify any administrative matter necessary for the purposes of this section. **Prohibition in relation to subsection (3) substances** **(3)** Subject to subsections (4)-(6), no person manufacturing, importing, processing, using, or releasing the following Schedule 1 toxic substances, or products containing these substances shall, more than two years after the coming into force of this section, continue to do so unless the person has applied to the Minister for a pollution prevention plan permit:	PPP (and as PPP regime has been applied by Canada, they are generally only subject to pollution abatement). Bill S-5 should make PPP mandatory, and alternatives analysis and substitution a central focus of CEPA. The CELA proposed amendments contained here do so by relying on such statutory precedents as the *Species at Risk Act* (Canada), *REACH* authorization (European Union), and *Toxics Use Reduction Act* (Massachusetts, U.S.). For further discussion see CELA February 2022 Submissions on Bill C-28, pages 17-25, 36-39.

	(a) Chlorobiphenyls that have the molecular formula $C_{12}H_{(10-n)}Cl_n$ in which “n” is greater than 2; (b) Dodecachloropentacyclo $[5.3.0.0_{2,6}.0_{3,9}.0_{4,8}]$ decane (Mirex); (c) Polychlorinated dibenzo-para-dioxins that have the molecular formula $C_{12}H_{(8-n)}Cl_nO_2$ in which “n” is greater than 2; (d) Polychlorinated dibenzofurans that have the molecular formula $C_{12}H_{(8-n)}Cl_nO$ in which “n” is greater than 2; (e) Hexachlorobenzene; (f) Hexachlorobutadiene, which has the molecular formula C_4Cl_6; (g) Dichlorodiphenyltrichloroethane (DDT), which has the molecular formula $C_{14}H_9Cl_5$; (h)Tetrachlorobenzenes, which have the molecular formula $C_6H_2Cl_4$; (i) Pentachlorobenzene, which has the molecular formula C_6HCl_5; (j) Polybrominated diphenyl ethers that have the molecular formula $C_{12}H_{(10-n)}Br_nO$ in which $4 \leq n \leq 6$; (k) Perfluorooctane sulfonate and its salts; (l) Phenol, 2,4,6-tris(1,1-dimethylethyl)-, which has the molecular formula $C_{18}H_{30}O$; (m) Tributyltins, which contain the grouping $(C_4H_9)_3Sn$; (n) Phenol, 2,6-bis(1,1-dimethylethyl)-4-(1-methylpropyl)-, which has the molecular formula $C_{18}H_{30}O$; (o) Chlorinated alkanes that have the molecular formula $C_nH_xCl_{(2n+2-x)}$ in which $10 \leq n \leq 20$;	

	(p) Polychlorinated naphthalenes, which have the molecular formula $C_{10}H_{8-n}Cl_n$ in which "n" is greater than 1; (q) Hexabromocyclododecane, which has the molecular formula $C_{12}H_{18}Br_6$; (r) Reaction products of 2-propanone with diphenylamine; (s) Benzene, 1-chloro-2-[2,2-dichloro-1-(4- chlorophenyl)ethyl]-, which has the molecular formula $C_{14}H_{10}Cl_4$. **Permit pre-conditions** **(4) A** permit application in relation to a substance or product referred to in subsection (3) is not complete unless the person applying provides the Minister with a pollution prevention plan that includes an analysis of alternatives prepared in accordance with this Act and the regulations. **Where Minister not to issue permit; exceptions** **(5)** The Minister shall not issue a permit to a person to continue manufacturing, importing, processing, using, or releasing a substance or product containing a substance referred to in subsection (3), if the substance or product is, (a) carcinogenic, mutagenic, neurotoxic, or toxic to reproduction as determined under this Act; (b) persistent, bioaccumulative, and toxic in accordance with criteria established by the regulations, or as otherwise determined under this Act; (c) very persistent and very bioaccumulative in accordance with criteria established by the regulations, or as otherwise determined under this Act; or (d) capable of disrupting the endocrine system of an organism, or is otherwise identified from scientific evidence as causing probable serious effects to human	

	<u>health or the environment which give rise to an equivalent level of concern as those factors set out in subparagraphs (a)-(c) herein, and which are identified on a case-by-case basis as determined under this Act,</u> <u>unless</u> <u>(e) the person shows, to the satisfaction of the Minister, determined objectively, that socio-economic benefits outweigh the risk to human health or the environment arising from use of the substance or product; and</u> <u>(f) the analysis of alternatives prepared by or on behalf of the person as part of a pollution prevention plan pursuant to subsection (4) demonstrates to the satisfaction of the Minister, determined objectively, a lack of economically and technically feasible alternatives to the substance or product containing the substance.</u> <u>**Substitution Plan**</u> <u>**(6)** Where the analysis of alternatives performed by or on behalf of a person pursuant to subsection (4) demonstrates to the satisfaction of the Minister, determined objectively, that there are safer suitable alternative substances or technologies to a substance, or product containing a substance, listed under subsection (3), the Minister shall require the person to prepare a substitution plan for the substance, or product containing the substance, if the person has not already done so as part of the pollution prevention plan.</u> <u>**Minister's approval of substitution plan**</u> <u>**(6.1)** Upon receipt of the substitution plan, the Minister shall accept, reject, or modify the plan before final approval.</u> <u>**Virtual Elimination**</u> <u>**(7)** In circumstances where the Minister makes the determination in</u>	

	subsection (6) that a substitution plan is necessary, the substance, or product containing the substance, shall be made subject to the virtual elimination requirements of section 77 of this Act. **Prohibition in relation to all substances or products referred to in subsection (1) except those listed in subsection (3)** **(8)** Subject to subsections (9)-(11), no person manufacturing, importing, processing, using, or releasing a substance or product meeting the requirements of subsection (1)(a)-(c), except those listed in subsection (3) shall, more than five years after the coming into force of this section, continue to manufacture, import, process, use, or release the substance or product without a pollution prevention plan permit issued by the Minister. **Permit pre-conditions** **(9) A** permit application in relation to a substance or product referred to in subsection (8) is not complete unless the person applying provides the Minister with a pollution prevention plan that includes an analysis of alternatives prepared in accordance with this Act and the regulations. **Where Minister not to issue permit; exceptions** **(10)** The Minister shall not issue a permit to a person to continue manufacturing, importing, processing, using, or releasing a substance or product containing a substance referred to in subsection (8), if the substance or product is, (a) carcinogenic, mutagenic, neurotoxic, or toxic to reproduction as determined under this Act; (b) persistent, bioaccumulative, and toxic in accordance with criteria established by the regulations, or as otherwise determined under this Act; (c) very persistent and very bioaccumulative in accordance with	

	criteria established by the regulations, or as otherwise determined under this Act; or (d) capable of disrupting the endocrine system of an organism, or is otherwise identified from scientific evidence as causing probable serious effects to human health or the environment which give rise to an equivalent level of concern as those factors set out in subparagraphs (a)-(c) herein, and which are identified on a case-by-case basis as determined under this Act, unless (e) the person shows, to the satisfaction of the Minister, determined objectively, that socio-economic benefits outweigh the risk to human health or the environment arising from use of the substance or product; and (f) the analysis of alternatives prepared by or on behalf of the person as part of a pollution prevention plan pursuant to subsection (9) demonstrates to the satisfaction of the Minister, determined objectively, a lack of economically and technically feasible alternatives to the substance or product containing the substance. **Substitution Plan** **(11)** Where the analysis of alternatives performed by or on behalf of a person pursuant to subsection (9) demonstrates to the satisfaction of the Minister, determined objectively, that there are safer suitable alternative substances or technologies to a substance, or product containing a substance meeting the requirements of subsection (1)(a)-(c), except those listed in subsection (3), the Minister shall require the person to prepare a substitution plan for the substance, or product containing the substance, if the person has not already done so as part of the pollution prevention plan.	

	Minister's approval of substitution plan **(11.1)** Upon receipt of the substitution plan, the Minister shall accept, reject, or modify the plan before final approval. **Virtual Elimination** **(12)** In circumstances where the Minister makes the determination in subsection (11) that a substitution plan is necessary, the substance, or product containing the substance, shall be made subject to the virtual elimination requirements of section 77 of this Act. **Future substances** **(13)** Where a substance, or product containing a substance, is added to the Schedule 1 list of toxic substances subsequent to the coming into force of this section, the requirements and timetable set out in subsections (3)-(7) apply. **11 Section 60 of the Act is replaced with the following:** **Content of pollution prevention plan** **60 (1)** For the purposes of subsection 56(4) or (9), the content of a pollution prevention plan for a substance, or product containing the substance, referred to in subsection 56(1) or (3) shall include consideration of: (a) uses and functions of the substance, or product containing the substance; (b) uses that result in the greatest volume of dispersion of, or highest exposure to, the substance, or product containing the substance in the indoor, workplace, and natural environment; (c) the potential impacts to human health and the environment, including a vulnerable population, of the continued use of a substance, or product containing the substance; (d) whether any of the existing uses of the substance, or product	

	containing the substance, are unnecessary; (e) corporate and/or public policy implications of a reduction in the use of the substance where its current use is necessary; (f) in-plant changes in production processes or raw materials that reduce, avoid, or eliminate the use or generation of a substance, or product containing the substance, so as to reduce risks to human health or the environment without shifting risks to other environmental or human health pathways, through such techniques as: (i) input substitution; (ii) product reformulation; (iii) production unit redesign or modification; (iv) production unit modernization; (v) improved operation and maintenance of production unit equipment and methods; and (vi) recycling, reuse, or extended use of the substance, or product containing the substance; (g) whether alternatives, including non-chemical alternatives, are available for the uses and functions of the substance, or product containing the substance; (h) whether the alternatives identified in subparagraph (f) are unacceptable, require further study, or are safer than the substance, or product containing the substance; (i) economic and technical feasibility, opportunities, or costs associated with adopting and implementing any safer alternatives to the substance, or product containing the substance; (j) proposed course of action that should be employed with respect to the substance, or product containing the substance including, but not limited to, whether all, some, or none, of the uses should be retained or prohibited, and why; (k) a declaration signed by the highest-ranking representative with direct operating responsibility at the facility where the substance, or product containing the substance, is manufactured, imported, processed,	

	used, or released, possessing the authority to bind the owner certifying that (i) he or she has read and is familiar with the pollution prevention plan; (ii) the plan is true, accurate, and complete to the best of his or her knowledge; and (iii) it is the corporate policy of the facility to achieve the objectives, timelines, schedules, and deadlines of the plan; (l) a certification signed by a qualified scientific or engineering professional that the plan meets the requirements of this Act, is complete in every respect, and is capable of meeting the objectives, timetables, schedules, and deadlines in the plan for the substance, or product containing the substance, including with respect to consumer products containing the substance; and (m) such further or other matters as set out in the regulations. **What content of pollution prevention plan not to include** **(1.1)** The content of a pollution prevention plan referred to in subsection (1) shall not include or infer promotion of (a) incineration; (b) transfer from one medium of release or discharge to other media; (c) off-site or out-of-production unit waste recycling; (d) methods of end-of-pipe treatment of a substance, or product containing the substance, as waste; or (e) pollution abatement of toxic substances. **Content of substitution plan** **(2)** For the purposes of subsection 56(6) or (11), the content of a substitution plan for a substance, or product containing the substance, referred to in subsection 56(1) or (3) shall include, where not otherwise addressed in a pollution prevention plan:	

	(a) objectives, timetables, schedules, and deadlines for achieving substitution of a substance, or product containing a substance; (b) demonstration of how the person responsible for the substance will substitute all specified uses of the substance, or product containing the substance with a safer alternative, including with respect to consumer products containing the substance; (c) where the Minister determines that implementation of the substitution plan may take longer than one-year, plain language labeling of products containing the substance identifying that the substance is present in the product, and the impact of the substance on human health and the environment, including vulnerable populations; (d) a declaration signed by the highest-ranking representative with direct operating responsibility at the facility where the substance, or product containing the substance, is manufactured, imported, processed, used, or released, possessing the authority to bind the owner certifying that (i) he or she has read and is familiar with the substitution plan; (ii) the plan is true, accurate, and complete to the best of his or her knowledge; and (iii) it is the corporate policy of the facility to achieve the objectives, timelines, schedules, and deadlines of the plan; (e) a certification signed by a qualified scientific or engineering professional that the plan meets the requirements of this Act, is complete in every respect, and is capable of meeting the objectives, timetables, schedules, and deadlines in the plan for the substance, or product containing the substance, including with respect to consumer products containing the substance; and (f) such further or other content as established by regulation.	

TAB 4 – BILL S-5 AMENDMENTS TO CEPA,1999 - VIRTUAL ELIMINATION - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
2(2) The third paragraph of the preamble to the Act is replaced by the following: Whereas the Government of Canada acknowledges the need to control and manage pollutants and wastes if their release into the environment cannot be prevented; …. **2(6) The 13th paragraph of the preamble to the Act is replaced by the following:** 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; Whereas the Government of Canada recognizes the importance of encouraging the progressive substitution of substances, processes and technologies with alternatives that are safer for the environment or human health, when they are economically and technically viable; Whereas the Government of Canada recognizes the importance of Canadians having information, including by means of the packaging and labelling of products, regarding the risks posed by toxic substances to the environment or to human health; ….	~~**2(2) The third paragraph of the preamble to the Act is replaced by the following:**~~ ~~Whereas the Government of Canada acknowledges the need to control and manage pollutants and wastes if their release into the environment cannot be prevented;~~ **2(6) The 13th paragraph of the preamble to the Act is replaced by the following:** 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~~;~~, and the virtual elimination of persistent and bioaccumulative toxic substances;	Bill S-5 proposes to repeal the authority for virtual elimination of toxic substances under CEPA. However, the failure" of virtual elimination authority over the last 20 years has been due to the federal government wanting to reduce releases of toxic substances instead of eliminating the generation and use of such substances. Unfortunately, the Government's substitute approach in Bill S-5 of using existing prohibition regulations, already has a track record of permitting uses of toxics to continue in commerce and industry. Virtual elimination authority should be retained in CEPA. Its focus should be on elimination of substances from commerce, not allowing releases below a level of quantification as has been permitted under s. 65.1 of CEPA. Virtual elimination should also apply to the use in commerce and industry of inorganic substances (e.g., lead, mercury, arsenic). For further discussion see CELA February 2022 Submissions on Bill C-28, pages 27-31.

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12 Sections 65 and 65.1 of the Act are repealed.
….

21 (1) Subsections 77(1) to (4) of the Act are replaced by the following:

Publication after assessment or review
77 (1) <u>If</u> the Ministers have conducted <u>an</u> assessment <u>under this Part, other than under section 83, to determine whether a substance is toxic or capable of becoming toxic</u> or a review of a decision of another jurisdiction under subsection 75(3) that, in their opinion, is based on scientific considerations and is relevant to Canada, the Ministers shall publish in the *Canada Gazette*, and either Minister may publish in any other manner that that Minister considers appropriate,

(a) a statement indicating one of the measures referred to in subsection

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12 Sections 65 and 65.1 of the Act are ~~repealed~~ <u>replaced by the following:</u>

<u>**Definition of “virtual elimination”**</u>
<u>65 (1) In this Part, “virtual elimination” means, in respect of a toxic substance in Schedule 1 to this Act,</u>

<u>(a) the cessation of the intentional production, use, release, export, distribution, or import of the substance or class of the substance if it appears in the List referred to in subsection (2); or</u>

<u>(b) where the substance is produced as a by-product of the production or use of another substance, “virtual elimination” means changes to processes or practices or substitution of material or products to avoid creation of the substance if it appears in the List referred to in subsection (2).</u>

<u>**Virtual Elimination List**</u>
<u>(2) The Ministers shall compile a list to be known as the Virtual Elimination List.</u>

21 (1) Subsections 77(1) to (4) of the Act are replaced by the following:

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(2) that the Ministers propose to take and a summary of the scientific considerations on the basis of which the measure is proposed; …. **Proposed measures** **(2)** Subject to subsection (3), for the purposes of subsection (1), the Ministers shall propose one of the following measures: **(a)** taking no further action in respect of the substance; **(b)** unless the substance is already on the List referred to in section 75.1, adding the substance to that List; **(c)** recommending that the substance be added to Part 1 of the list of toxic substances in Schedule 1; or **(d)** recommending that the substance be added to Part 2 of the list of toxic substances in Schedule 1. **Mandatory proposal** **(3)** The Ministers shall propose to take the measure referred to in paragraph (2)(c) if the substance is determined to be toxic and the Ministers are satisfied that **(a)** the substance may have a long-term harmful effect on the environment and **(i)** is persistent and bioaccumulative in accordance with the regulations, **(ii)** is present in the environment primarily as a result of human activity, and **(iii)** is not a naturally occurring radionuclide or a naturally occurring inorganic substance; or **(b)** the substance (i) is inherently toxic to human beings or non-human organisms, as determined by laboratory or other studies, and **(ii)** is, in accordance with the regulations, a substance that poses the highest risk.	**Proposed measures** **(2)** Subject to subsection (3), for the purposes of subsection (1), the Ministers shall propose one of the following measures: **(a)** taking no further action in respect of the substance; **(b)** unless the substance is already on the List referred to in section 75.1, adding the substance to that List; or **(c)** recommending that the substance be added to: (i) ~~Part 1 of~~ the list of toxic substances in Schedule 1~~; or~~ and, (ii) where applicable under subsection (4), the virtual elimination list under subsection 65 (2)~~; or~~ ~~**(d)** recommending that the substance be added to Part 2 of the list of toxic substances in Schedule 1~~. **Mandatory proposal** **(3)** The Ministers shall propose to take the measure referred to in paragraph (2)(c)(i) if the substance is determined to be toxic and the Ministers are satisfied that **(a)** the substance may have a long-term harmful effect on the environment and **(i)** is persistent and bioaccumulative in accordance with the regulations, and **(ii)** is inherently toxic to human beings or non-human organisms, as determined by laboratory or other studies, and ~~**(ii)**~~**(b)** is present in the environment primarily as a result of human activity. ~~, and~~ ~~**(iii)** is not a naturally occurring radionuclide or a naturally occurring inorganic substance; or~~ ~~**(b)** the substance~~ ~~(i) is inherently toxic to human beings or non-human organisms, as~~	

	~~determined by laboratory or other studies,~~ and ~~**(ii)** is, in accordance with the regulations, a substance that poses the highest risk.~~ **Proposal for virtual elimination** (4) The Ministers shall propose to take the measure referred to in paragraph (2)(c)(ii) if the substance is determined to be toxic and the Ministers are satisfied that the substance (a) is persistent and bioaccumulative in accordance with the regulations, (b) is present in the environment primarily as a result of human activity, (c) is not a naturally occurring radionuclide, and (d) in accordance with the regulations, or as result of a determination under section 56(5) or 56(10), poses the highest risk.	

TAB 5 – BILL S-5 AMENDMENTS TO CEPA,1999 - TESTING - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
18 (1) The portion of subsection 71(1) of the Act before paragraph (b) is replaced by the following: **Notice requiring information, samples or testing** **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, …. **(2) Paragraph 71(1)(c) of the Act is replaced by the following:** **(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. …. **19 Sections 72 to 74 of the Act are replaced by the following:** **Exercise of power under paragraph 71(1)(c)** **72** The Minister may not exercise the power under paragraph 71(1)(c) in relation to a substance, a product that contains a substance or a product that may release a substance into the environment unless the Ministers have reason to suspect that	**18 (1) The portion of subsection 71(1) of the Act before paragraph (b) is replaced by the following:** **Notice requiring information, samples or testing** **71 (1)** Subject to section 72, ~~T~~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, …. **(2) Paragraph 71(1)(c) of the Act is replaced by the following:** **(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. …. **19 Sections 72 to 74 of the Act are replaced by the following:** **Exercise of power under paragraph 71(1)(c)** **72** Notwithstanding subsection 71 (1), ~~T~~the Minister shall ~~may not~~ exercise the power under paragraph 71(1)(c) in relation to a substance, a product that contains a substance or a product that may release a substance into the	Bill S-5 authorizes collection of data on whether a substance is an endocrine disruptor. Bill S-5 also authorizes the Minister to consider available information on vulnerable populations and cumulative effects of a potential toxic substance. In none of these cases does Bill S-5 direct the Minister to require testing by industry when there are information gaps on whether a substance is toxic, or capable of becoming toxic. Bill S-5 should make testing mandatory where available information is inadequate to determine if a substance is toxic, or capable of becoming toxic. For further discussion see CELA February 2022 Submissions on Bill C-28, pages 39-42.

the substance is toxic or capable of becoming toxic or it has been determined under this Act that the substance is toxic or capable of becoming toxic.	environment, to require the person to conduct, and submit the results of, toxicological and other tests to the Ministers where available information is lacking or not adequate to allow a determination of whether ~~unless the Ministers have reason to suspect that~~ the substance is toxic or capable of becoming toxic ~~or it has been determined under this Act that the substance is toxic or capable of becoming toxic~~, including with respect to the matters addressed in subparagraphs 68(a)(iii.1), (iii.2), (v), (vi), (vi.1) and 76.1(2). ….	

TAB 6 – BILL S-5 AMENDMENTS TO CEPA,1999 - RENAMING AND BIFURCATING SCHEDULE 1 - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
29 Subsections 90(1) to (2) of the Act are replaced by the following: **Addition to list of toxic substances** **90 (1)** Subject to subsection (3), the Governor in Council may, if satisfied that a substance is toxic, on the recommendation of the Ministers, make an order adding the substance to Part 1 or 2 of the list of toxic substances in Schedule 1. **Priorities** **(1.1)** In developing a proposed regulation or instrument respecting preventive or control actions in relation to a substance specified on the list of toxic substances in Schedule 1, the Ministers shall give priority to, **(a)** in the case of a substance specified in Part 1 of the list of toxic substances in that schedule, the total, partial or conditional prohibition of activities in relation to the substance or of releases of the substance into the environment; or **(b)** in the case of a substance specified in Part 2 of the list of toxic substances in that Schedule, pollution prevention actions. **Consideration of factors** **(1.2)** For the purposes of paragraph (1.1)(a), the Ministers may consider any factor that they consider appropriate, including whether the activity or release can be undertaken in a manner that minimizes or eliminates any harmful effect on the environment or human health and whether there are feasible alternatives to the substance. **Deletion from the list of toxic substances**	**29 Subsections 90(1) to (2) of the Act are replaced by the following:** **Addition to list of toxic substances** **90 (1)** Subject to subsection (3), the Governor in Council may, if satisfied that a substance is toxic, on the recommendation of the Ministers, make an order adding the substance to ~~Part 1 or 2~~ of the list of toxic substances in Schedule 1. **Priorities** **(1.1)** In developing a proposed regulation or instrument respecting preventive or control actions in relation to a substance specified on the list of toxic substances in Schedule 1, the Ministers shall give priority to, **(a)** ~~in the case of a substance specified in Part 1 of the list of toxic substances in that schedule,~~ the total, partial or conditional prohibition of activities in relation to the substance or of releases of the substance into the environment; or **(b)** ~~in the case of a substance specified in Part 2 of the list of toxic substances in that Schedule,~~ pollution prevention actions. **Consideration of factors** **(1.2)** For the purposes of paragraphs (1.1)(a) and (b), the Ministers may consider any factor that they consider appropriate, including whether the activity or release can be undertaken in a manner that minimizes or eliminates any harmful effect on the environment or human health and whether there are feasible alternatives to the substance. **Deletion from the list of toxic substances**	Under S-5, Sch. 1 no longer identified as list of "toxic substances". S-5 divides Sch. 1 into two Parts; placing a small number of chemicals in new Part 1 (19) - only these may be prohibited from Canadian commerce. Under S-5, most Sch. 1 chemicals to be in new Part 2 (132) and not subject to prohibition. Changing Sch.1 title and using two-tiered approach creates legal uncertainty and risks constitutionality of Act. Any substance in Sch. 1 should be eligible for full risk management (e.g., bans, substitution, etc.). [Do not enact s. 58 – retain existing Schedule 1 to CEPA,1999] [Restore "List of Toxic Substances" title to Schedule 1 that would otherwise be removed by s. 58] [Do not create two Parts to Schedule 1 as Bill S-5 does; remove reference to Parts 1 and 2 in Schedule 1 from Bill S-5] [Remove all references to Parts 1 and 2 of Schedule 1 from all other sections throughout Bill S-5] For further discussion see CELA February 2022 Submissions on Bill C-28, pages 12-16.

(2) Subject to subsection (3), the Governor in Council may, if satisfied that the inclusion of a substance specified in <u>Part 1 or 2 of</u> the list of toxic substances in Schedule 1 is no longer necessary, on the recommendation of the Ministers, make an order deleting the substance from <u>that Part</u> and repealing the regulations made under section 93 with respect to the substance. …. **58 Schedule 1 to the Act is replaced by the Schedule 1 set out in the schedule to this Act.**	**(2)** Subject to subsection (3), the Governor in Council may, if satisfied that the inclusion of a substance specified in ~~Part 1 or 2 of~~ the list of toxic substances in Schedule 1 is no longer necessary, on the recommendation of the Ministers, make an order deleting the substance from ~~that Part~~ <u>the list</u> and repealing the regulations made under section 93 with respect to the substance. **~~58 Schedule 1 to the Act is replaced by the Schedule 1 set out in the schedule to this Act.~~**	

TAB 7 – BILL S-5 AMENDMENTS TO CEPA,1999 – AMBIENT AIR QUALITY STANDARDS - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
	44.1 Division 6.1, consisting of sections 174.1 – 174.3, is added to Part 7 of the Act – Controlling Pollution and Managing Wastes as follows: **Division 6.1** **Air Pollution in Canada** **National Primary and Secondary Ambient Air Quality Standards** **Proposal of regulations prescribing standards** 174.1(1) The Minister, within one year after the coming into force of this division, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each of the following Schedule 1 toxic substances: (a) lead; (b) sulphur dioxide; (c) fine particulate matter; (d) carbon monoxide; (e) ozone; (f) nitrogen dioxide. **Promulgation of regulations prescribing standards** (2) The Minister, after a reasonable time for interested persons to submit written comments thereon but no later than 90 days after the initial publication of such proposed standards, shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as the Minister deems appropriate. **Consultation** (2.1) In carrying out the duties under subsections (1) and (2), the Minister shall offer to consult with provincial, territorial, and aboriginal governments, and may consult with the Committee, a government	Certain CEPA Schedule 1 substances (particulate matter [PM2.5], ground-level ozone, nitrogen dioxide, sulphur dioxide, lead, and carbon monoxide, the last listed in Schedule 1 only as part of petroleum and refinery releases) pose ambient air quality problems for human health that are not adequately addressed by CEPA and for which Bill S-5 proposes no reforms. The 2017 report by the House Standing Committee on Environment and Sustainable Development on its review of CEPA identified thousands of premature deaths in Canada each year due to exposure to fine particulate matter alone. A 2021 Health Canada study estimated an even higher number of annual premature deaths due to air pollution in Canada from PM2.5, ground-level ozone, and nitrogen dioxide combined. A 2019 Environment and Climate Change Canada study reported that since 2013 air emissions of lead have been increasing again after decades of decreases. A 2021 Health Canada study describes the chronic health impacts of low-level exposure to lead as including nervous system effects, cardiovascular disease, decreased kidney function, reproductive problems, lowered intelligence in infants and children and greater risk of attention-related behaviours, with no safe level of exposure known to exist for these neurodevelopmental outcomes. The Health Canada study also notes that inorganic lead compounds have been classified as probably carcinogenic to humans by the International Agency for Research on Cancer (IARC). Although Bill S-5 proposed no reforms to CEPA for addressing

	department or agency, aboriginal people, representatives of industry and labour and municipal authorities or with persons interested in the quality of the environment or the preservation and improvement of public health. **Minister shall act** (2.2) At any time after the 60th day following the day on which the Minister offers to consult in accordance with subsection (2.1), the Minister shall act under subsections (1) and (2) if the offer to consult is not accepted by provincial, territorial, or aboriginal governments or members of the Committee who are representatives of aboriginal governments. **Same** (2.3) Where offers to consult are accepted under subsection (2.1), the consultations shall be completed within two years of the coming into force of this division. **Publication** (2.4) The Minister shall publish the regulations issued under the authority of this section in the *Canada Gazette* and in any other manner that the Minister considers appropriate. **Default adoption of standards** (3) Where the Minister does not meet for any Schedule 1 toxic substance listed in subsection (1) the deadline established in subsection (2), the Minister shall propose, as national primary and national secondary ambient air quality standards, the standards promulgated by the United States under 40 C.F.R. Part 50 pursuant to 42 U.S. Code, §7409 of the *Clean Air Act Amendments of 1990* and the consultations referred to in subsections (2.1) to (2.3), and the publication referred to in subsection (2.4), shall occur in relation to the standards identified in this subsection.	ambient air quality problems, evidence before the 2017 House Standing Committee reviewing CEPA identified certain problems and potential solutions including: (1) Canada's ambient air quality standards (produced pursuant to section 55 of *CEPA, 1999*) are not legally enforceable, being more in the nature of objectives or guidelines and, even if they were enforceable, some are as much as four times weaker than the corresponding American standards (which have been enforceable for decades); and (2) if Canada had legally enforceable ambient air quality standards they could go a long way toward addressing environmental inequality across the country, with designation of areas failing to meet such standards being deemed to be in "non-attainment", as is done under the United States *Clean Air Act*, and made subject to enforcement action, loss of federal funding, or other measures. The weight of evidence before the 2017 House Standing Committee caused it to recommend 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, stakeholders and the public". CELA's proposed amendments to Bill S-5 would establish such legally binding and enforceable national ambient air quality standards for the six Schedule 1 toxic substances noted above. For further discussion see CELA February 2022 Submissions on Bill C-28, pages 25-27.

	Procedure for subsequent air pollutants (4) For any Schedule 1 toxic substance for which air quality criteria are issued after the period described in subsection (1), the Minister shall publish, simultaneously with the issuance of such criteria and other information, proposed national primary and secondary ambient air quality standards for any such air pollutant. The procedure provided for in subsections (2)-(4) shall apply to the promulgation and revision of such standards. **National primary ambient air quality standards to protect public health** 174.2(1) National primary ambient air quality standards, prescribed under section 174.1, shall be ambient air quality standards the attainment of which in the judgment of the Minister determined objectively, based on systematic scientific review of such criteria and allowing an adequate margin of uncertainty consistent with application of the precautionary principle, are required to protect the public health. **National secondary ambient air quality standards to protect public welfare** (2) National secondary ambient air quality standards prescribed under section 174.1, shall specify a level of air quality the attainment and maintenance of which in the judgment of the Minister determined objectively, based on such criteria, is required to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.	

	<u>Implementation Plan for National Primary and Secondary Ambient Air Quality Standards</u> **<u>Development and adoption of implementation plan</u>** <u>174.3(1) The Minister shall, after reasonable notice and opportunity for public comment, develop and adopt within 3 years after the promulgation of a national primary and national secondary ambient air quality standard, or any revision thereof, for any Schedule 1 toxic substance under section 174.1, a plan that provides for implementation, maintenance, and enforcement of such primary and secondary standard.</u> **<u>Contents of plan</u>** <u>(2) The plan referred to in subsection (1) shall:</u> <u>(a) include enforceable emission limitations and other control measures, means, or techniques, including economic incentives such as marketable permits and auctions of emissions rights, as well as schedules and timetables for compliance, as may be necessary or appropriate to ensure attainment and maintenance of the primary and secondary standard;</u> <u>(a.1) describe how the plan will work in conjunction with existing regulatory authorities including, but not limited to, the *Multi-Sector Air Pollutants Regulations*, SOR/2016-151, as amended;</u> <u>(b) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, analyze, and make publicly available, data on ambient air quality;</u> <u>(c) include a program to provide for the enforcement of the measures described in subparagraph (a), and regulation of the modification and construction of any stationary</u>	

	<u>source covered by the plan as necessary to ensure that national ambient air quality standards are achieved;</u> <u>(d) contain adequate provisions prohibiting any source or other type of emissions activity from emitting any Schedule 1 toxic substance in amounts that will:</u> <u>(i) contribute significantly to nonattainment of a national primary or secondary ambient air quality standard; or</u> <u>(ii) interfere with measures in the plan required to prevent significant deterioration of air quality or to protect visibility;</u> <u>(e) provide assurance that adequate personnel and funding are available to carry out the plan;</u> <u>(f) require:</u> <u>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; and</u> <u>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources;</u> <u>(g) provide for plan revision:</u> <u>(i) from time to time as may be necessary to take account of revisions of a national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and</u> <u>(ii) whenever the Minister finds on the basis of information available to the Minister that the plan is substantially inadequate to attain the national ambient air quality standard that it implements;</u> <u>(h) summarize the public consultation that occurred in respect of development of the plan and, at a minimum, shall set out:</u>	

	(i) with whom the Minister consulted on the plan; (ii) the public notice initiating consultation on the plan and whether the notice invited any person to send written comments on the proposed plan within the time specified in the notice; (iii) a summary of any reports evaluating the health and environmental risks of the substance prepared or considered by the Ministers, and proposed course of action on the plan and the reasons therefor; (iv) comments received from the public on the plan; (v) the Ministers' decision statement on the plan and, notwithstanding section 53, any confidential test data developed for the plan that the Ministers consider to be in the public interest where such data evaluates health or environmental hazards or risks of a Schedule 1 toxic substance that is the subject of the plan; (i) contain such other measures as the Minister deems necessary to achieve attainment of national primary and secondary ambient air quality standards for the Schedule 1 toxic substances identified in section 174.1(1). **Consultation** (2.1) In carrying out the duties under subsections (1) and (2), the Minister shall offer to consult with provincial, territorial, and aboriginal governments, and may consult with the Committee, a government department or agency, aboriginal people, representatives of industry and labour and municipal authorities or with persons interested in the quality of the environment or the preservation and improvement of public health. **Minister shall act** (2.2) At any time after the 60th day following the day on which the Minister offers to consult in accordance with subsection (2.1),	

	<u>the Minister shall act under subsections (1) and (2) if the offer to consult is not accepted by provincial, territorial, or aboriginal governments or members of the Committee who are representatives of aboriginal governments.</u> **<u>Same</u>** <u>(2.3) Where offers to consult are accepted under subsection (2.1), the consultations shall be completed within two years of the coming into force of this division.</u> **<u>Publication</u>** <u>(2.4) The Minister shall publish the plan issued under the authority of this section in the *Canada Gazette* and in any other manner that the Minister considers appropriate.</u> **<u>Administration and Equivalency Agreements</u>** <u>(3) The Minister may enter into agreements pursuant to sections 9 and 10 of this Act to effectuate the purposes of the plan.</u>	

TAB 8 – BILL S-5 AMENDMENTS TO CEPA,1999 – GEOGRAPHICALLY TARGETED REGULATIONS - CELA CHANGES TO S-5 AND RATIONALE FOR CHANGES

Bill S-5	CELA Proposed Changes to S-5	Rationale for CELA S-5 Changes
55 Subsections 330(3) and (3.1) of the Act are repealed.	**55 Subsections ~~330(3)~~ ~~and~~ (3.1) of the Act ~~are repealed~~ <u>is replaced by the following:</u>** **<u>Limited geographical application</u>** <u>330 (3.1) A regulation made under section 93, 135, 140, 167, 177 or 200, or an interim order made under section 94 may be made applicable in only a part or parts of Canada in order to protect the environment or its biological diversity or human health.</u>	The government argues that Bill S-5, by repealing ss. 330(3) and (3.1) of the Act, will facilitate making geographically targeted regulations that could help with pollution "hot spots". However, these sections of the existing Act already provide precisely that authority and it is not clear that repealing them and not replacing them with anything comparable will produce the desired result. It would be simpler, more straight-forward, and less likely to attract litigation, for Parliament to retain ss. 330(3) and (3.1) and simply extend the authority for geographically limited regulation in subsection (3.1) to other sections of the Act that enable regulatory authority, as the CELA proposed changes to Bill S-5 do. For further discussion see CELA February 2022 Submissions on Bill C-28, pages 16-17.