



**April 8, 2024**

**Re: Implementation Framework for a Right to a Healthy Environment**

**From: Wallaceburg Advisory Team for a Cleaner Habitat (WATCH)**

[www.biowatch.ca](http://www.biowatch.ca)

**Dear CEPA:**

This submission addresses the Questions for Discussion under Principles Section 3.2. However, we hope that it may also address other areas of the Framework.

**Your Questions:**

**Are any of these principles and the way in which they can contribute to the protection of the right to a healthy environment under CEPA unclear?**

**Are there other opportunities within the CEPA management cycle to consider these principles and strengthen the protection of the right?**

We are extremely pleased and honoured that WATCH's initiative on community right to know for health environment is aligned with the principles of ECCC and your request for feedback. However, first we want to be assured that the regulator is doing their job and is imposing rules to protect the community. The public right to know for healthy environment is then about how the industry is measuring up to those requirements and how the regulator is performing with respect to oversight.

Through this submission we would like to share our lessons learned and road blocks we encountered in the past 6 years on Right to Healthy Environment (RTK) and how our roadblocks may assist ECCC in improving its programs. We hope ECCC can do the same for us as interested parties of the general public. Although not perfect, the work of the past 6 years has been challenging and rewarding. There have been many learnings outlined below for your consideration.

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**Background to WATCH initiatives on Right to a Healthy Environment**

In 2018, the Wallaceburg Advisory Team for a Cleaner Habitat (WATCH), helped the provincial and federal governments with the St. Clair River Area of Concern to address delisting of the Restriction on Drinking Water Beneficial Use Impairments (BUI). We encountered a road block in both the federal and provincial regulations when we requested information on spill prevention technology from facilities in Sarnia. There was no mandate from either government to supply the community with that information or mandate industries to provide that information. In the 2018 submission we write:

*It is distressing that the MOECC is powerless in terms of legal authority, enforcement capability or framework to direct these large dischargers to be transparent with downstream communities on spill prevention technology, emergency responses and subsequent corrective actions (lessons learned). See reference link below.*

Consequently, we requested to meet with the direct dischargers on a voluntary basis to discuss their spill prevention technology. It worked. The information and report was submitted to ECCC for supporting evidence to delist the BUI under Appendix 4. The 2018 submission from WATCH is very relevant to ECCC's framework.

Link from Friends of St. Clair River – Status Recommendation Report BUI9 Appendix 4.

<https://friendsofstclair.ca/wp-content/uploads/2023/10/DW-Report-V.3-Combined-reduced.pdf>

Link from WATCH webpage also shows Appendix 4.

<https://biowatch.ca/files/WATCH%20response%2020180419%20Drinking%20water%20BUI%20final.pdf>

In 2023, WATCH embarked on its second phase of a community right to know initiative regarding impact from Sarnia petrochemical cluster with a different set of questions. We were encouraged by the 2020 Environmental Emergency (E2) regulation under CEPA which required public notification. However, we ran into our first road block on E2, which will be detailed later in the submission.

As in 2018, the 2023 provincial and federal governments were unable to provide support to mandate facilities to answer the new questions. Consequently, we again asked petrochemical companies in Sarnia to voluntarily answer questions about issues that allow residents access to relevant information that could impact their health.

The questions under 2023 right to know included:

1. How have you communicated the Public Notification as per CEPA E2 regulation relating to health impacts?
2. Describe the technology the company uses to prevent spills to the air and watershed.
3. What is the company's process for community engagement (dialogue) for residents of St. Clair River, Walpole Island First Nations and Wallaceburg, Ontario?

We are encouraged that out of 9 companies 7 have now responded to most questions. However, 2 companies have chosen not to respond to the E2 regulation notification. Please review the WATCH webpage [www.biowatch.ca](http://www.biowatch.ca) Tab Right to Know to see the responses. Or link to RTK page.

[https://www.biowatch.ca/com\\_right\\_to\\_know.php](https://www.biowatch.ca/com_right_to_know.php)

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## **Lessons Learned based on our experience from the past 6 years regarding right to a healthy environment.**

### **1.0 The principle of Right to Healthy Environment has to be coupled with Right to Know legislation.**

The onus of the right to know has to be on facility emitters to be transparent in sharing information on pollution prevention initiatives for air, land and water. ECCC has to legislate the onus on industry to

provide information and then provide clear enforcement resources and guidelines, as opposed to a reverse onus, where communities apply to receive information. Voluntary initiatives such as the work done by WATCH in the past 6 years is not sustainable.

**1.1 Background to support the above:**

In 1988 Canada created its first CEPA regulation. In 1986 the US created its own SARA title iii to regulate more transparency in toxic emissions. During the 1980's the Canadian petrochemical industry lobbied for voluntary commitment to avoid similar regulation with the US. Canadian Chemical Producers Association (CCPA) created the Responsible Care Codes of practice and 152 code elements to satisfy the government, as to how it will monitor and execute the code elements through 3<sup>rd</sup> party verifications and reports in the public domain for each company that is verified. This was the Canadian voluntary version of SARA Title iii strategy to avoid regulations.

*"The Responsible Care initiative is an example of a program created in anticipation of regulations, under a multi-stakeholder partnership approach."*

Page 6: [https://www.eng.mcmaster.ca/sites/default/files/uploads/responsible\\_care.pdf](https://www.eng.mcmaster.ca/sites/default/files/uploads/responsible_care.pdf)

The current gap in the Canadian system is that there are no safety nets that parallel the checks and balances of legislation/voluntary partnerships as in the US.

Notation in the WATCH 2018 submission:

*Unlike other jurisdictions such as the US SARA Title 3, OSHA PSM and Alberta Directive060 which have community right to know enforceable components in regulations, we are optimistic and continue to look forward to engage with our industry partners to improve communication and transparency through localized voluntary commitments on spill prevention in the St. Clair River. We challenge the government agencies to find innovative strategies to join and engage in community right to know on spill prevention initiatives.*

Please see links of US programs which are good reference templates

California: <https://ww2.arb.ca.gov/capp>

US EPA: <https://www.epa.gov/environmentaljustice>

**1.2 Recommendation**

**WATCH recommends regulations similar to SARA Title iii to help community's access to facility information specifically at their fence line and Worst Case Scenario (WCS) impacted zones. The onus has to be on industries to be proactive, as opposed to forcing communities to jump through hoops. The current voluntary work by WATCH with industry partners to acquire pollution prevention information is not sustainable.**

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**2.0 The Chemistry Industry Association of Canada (CIAC formerly CCPA) created the Responsible Care Commitments currently consisting of Codes (Operations, Stewardship, Accountability) and 157 Code Elements. The Commitment document is a vital resource for ECCC's Framework.**

Page 6, the "Mechanisms to support protection of the right" of the Framework, needs to have a mechanism to instruct site facilities to answer questions directly on pollution prevention technology and emission reduction, (without infringement of proprietary information or security).

**2.1 Background to support the above:**

The Responsible Care commitments have been used by CIAC/CCPA member companies for over 30 years. It is an extremely comprehensive document as a resource for a regulatory framework. It has been tried and tested by many generations of company executives.

For example Accountability Code Element (AC) 129 e.

*Communities shall implement ongoing community awareness and dialogue processes that develop and maintain information for both responsive and proactive communication and dialogue with community, covering products, processes, services,, on-site historical waste sites, social impact benefits and hazards and associated risks, up to and including worst case scenarios.*

For example Accountability Code Elements AC153 to 157 address indigenous communities and expectations.

**2.2 Recommendation**

**ECCC should examine CIAC's own Responsible Care Commitments code of practices and 157 code elements to find regulatory language that has been used by CIAC members for the past 30 years to gain seamless acceptance and adoption for a new regulation on right to healthy environment.**

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**3.0 CEPA – E2 requirement for public notification – lessons learned from this experience**

WATCH applauds ECCC's E2 regulation as an attempt to drive the onus on facilities to provide community right to know information and to better understand the health impacts of toxic substances based on the risk of their worst case scenarios. However, after 3 years of E2 we are still running into serious road blocks with some facilities who choose not to share this information, even though we feel we are entitled to it as per E2. There seems to be very little recourse to address this gap in the system and no clear explanation of why some facilities can opt out.

**3.1 Background to support the above:**

CEPA E2 came into effect August 2020. As of August 2023, 4 companies in the Sarnia chemical cluster did not have an E2 notification to share with the community.

CEPA E2 states that there are requirements to disclose health impacts to communities. However, in spite of E2 requirement and as of April 2024, 2 companies have chosen not to share their public

notification as per E2 with no explanation.

How is this possible?

[https://www.biowatch.ca/com\\_right\\_to\\_know.php](https://www.biowatch.ca/com_right_to_know.php)

The E2 regulation wording is too ambiguous allowing the company to decide what/how/when to respond or completely opt out due to unclear content. Ambiguous language cannot be enforced, makes ECCC and CEPA look ineffective and fosters public outrage. Examples of ambiguity are:

1. There is no frequency requirement, where the information is located or how to access.
2. The regulation allows the company to choose how and to whom to deliver the message. As a result of the ambiguity, we have discovered that the information is available when ECCC auditors come to the site, but not available to the public. This is a "check box" strategy with loop holes, deliberately used by some companies, which enable them to ignore public access for information while passing audits.
3. The definition of "impacted community" is left up to the facility, can be based on home address, not include workplaces or recreational activities such as people walking in the impacted area.

The Canadian Environment Protection Act and its Environmental Emergency (E2) Regulations require facilities to produce and manage specified hazardous contaminants above a defined threshold to develop and implement E2 plans. However, the federal E2 plans are primarily voluntary because of minimal expectations and enforcement. Following is an excerpt from Chapter 8.2 of the E2 regulations – technical guidelines.

*"8.2 What is a Reportable Environmental Emergency? Based on these authorities, the reporting of environmental emergencies under Section 18 of the E2 Regulations is only required when the criteria listed above are met (i.e., the release must be uncontrolled, unplanned, or accidental **and** have the potential to harm the environment, human life, or health). **The responsible person must use their professional judgement to determine whether or not a release from their facility meets the reporting criteria...**"*

[https://publications.gc.ca/collections/collection\\_2020/eccc/En4-386-2020-eng.pdf](https://publications.gc.ca/collections/collection_2020/eccc/En4-386-2020-eng.pdf)

Although the link below illustrates the lack of oversight regarding the Transportation Safety Board of Canada findings from the Lac-Mégantic investigation, we have experienced the same lack of oversight with E2 regulations. As of August 2023 (3 years after the regulation came into effect), initially 4 facilities in the Sarnia chemical cluster did not have an E2 public notification to share when requested by WATCH. We can only assume that the lack of response was because **they were "using their professional judgement"**.

<https://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054-r-es.html>

### 3.2 Recommendation

**We recommend that the CEPA E2 regulation should be reviewed and embedded with language that is enforceable, geared to easy access and requires a facility onus with ongoing frequency of public right to know about health impacts. Are there CSA or other Standards that can be cited within the regulations to support enforcement tools and eliminate ambiguous terminology?**

**As stated above, Chemistry Industry Association of Canada Responsible Care initiative has 3 Responsible Care Codes and now over 157 Code Elements to benchmark member adherence in**

**Responsible Care. We strongly suggest that ECCC examine the Code Elements for CEPA processes and mechanisms.**

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**4.0 Public notification and reporting should be designed for public comprehension.**

It has been our experience that when government agencies create public reporting tools, the information relayed by companies is geared to regulators. ECCC needs to add a "public view" lens as a criteria as opposed to a single "technical standards" lens.

**4.1 Background to support the above:**

It has been our experience on air emissions that government agencies design "public" notifications that are not "public" friendly. The information from the MOECP in the following link may be important to regulators but it is very difficult for the public to read and/or understand health impacts. A Public User twin report with appropriate level of wording would be helpful.

e.g. [https://www.shell.ca/en\\_ca/about-us/projects-and-sites/sarnia-manufacturing-centre/\\_jcr\\_content/par/expandablelist/expandablesection\\_1158510984.stream/1710521282134/087c8d23a1f132fd517d2873a30637e99001aea0/2023ry-annual-plm-report.pdf](https://www.shell.ca/en_ca/about-us/projects-and-sites/sarnia-manufacturing-centre/_jcr_content/par/expandablelist/expandablesection_1158510984.stream/1710521282134/087c8d23a1f132fd517d2873a30637e99001aea0/2023ry-annual-plm-report.pdf)

WATCH has to rely on ECCC and MOECP staff to address our questions which is much appreciated. Although they have been very accommodating with assistance, it is apparent that additional resources are required.

**4.2 Recommendation:**

**Add resources for education, community dialogue and outreach to the public. WATCH recommends a designated department for community outreach, education and proactive dissemination, with a 3<sup>rd</sup> party performance review. This department needs to be active and proactive in the communities that it serves. We recommend expansion of resources for Public Outreach. Although we support Technical Standards public reporting and would like it to continue, we recommend twinning of a Public User reporting at appropriate technical level. This would be a preventative investment to minimize public outrage in the future.**

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**5.0 Principles 3.2 page 12**

**Right to healthy environment cannot exist without a right to know.**

**5.1 Background**

Under the section "These principles include:"

Although "right to healthy environment" is addressed at the beginning, we do not see "right to know" as one of the principles as it is a fundamental corner stone of any principle for healthy environment.

## 5.2 Recommendation

Create clear understanding of:

- a) What is the expectation of "right to know" for citizens (outside of proprietary or security topics)?
- b) How does ECCC define the scope?
- c) Where is right to know addressed under CEPA and its regulations?

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## 6.0 Effectiveness of Current ECCC tools and addressing limitations

### 6.1 Background to support the above

Although CEPA data on aggregate and regional reporting is useful, our challenge is addressing the toxic compounds at the fence line for specific facilities in the Sarnia chemical valley. It is too easy for low performance "free rider" facilities to go under the radar using aggregate totals and limited data collection. We realize that much of the jurisdictions for emissions falls under provincial regulations. This is a problem when one jurisdiction is not at the same level of performance as the other.

Current tools, such as the National Pollution Release Inventory (NPRI), site are very helpful to understand annual estimated emissions, but there is no requirement to track actual emissions in the community for some facilities under provincial jurisdiction. Therefore NPRI is like a federal road that leads nowhere because the province is not maintaining the road. For example CF Industries in Courtright NPRI shows 34.62 estimated tonnes of ammonia in 2022. CF Industries is not required to (nor do they) report any fence line emissions or stack emissions of that 34.62 tonnes of ammonia to the community. There is no accountability by the company to the impacted populations to report on advancements in ammonia emission release technology or emission data on an ongoing basis.

### 6.2 Recommendations

- a) Facilities who emit need to publically report on their site on an annual ongoing basis for emission data and pollution prevention technology related to health impacts.
- b) The threshold for reporting needs to be based on the risk of WCS and account for health impact and risk of WCS beyond the fence line.
- c) ECCC under CEPA needs to work with MOECP to enforce and support community right to know facility emissions and tools where MOECP has jurisdiction applying global best practice thresholds.

### Conclusions as a result of our "lessons learned" experience:

1. Clear evidence is needed that strong enforcement tools are available to the regulators unlike what WATCH experienced for E2 regulation 2020. This experience has been frustrating and confusing.
2. We need CEPA to strengthen the current E2 regulations on principles for a right to healthy environment about "hazardous to health substances" for communities who live, work and occupy within their worst case scenarios of companies in the Sarnia Lambton region. There is clear evidence that the current E2 regulation language on public notification is not clear, allows facilities not to respond (i.e. opt out) and needs strengthening through the right to know and Right to Healthy Environment lens.
3. Let's reverse the onus so we are not forcing communities to jump through hoops to access specific site facility information as this type of behaviour fosters greater public outrage in the long term.

Instead of contacting ECCC or MOECP about emissions and operations for prevention technology, we need regulations that require facilities to address these types of issues directly as a requirement under CEPA.

4. Create clear and enforceable instructions on expectations of how communities receive information and a recourse for situations where requests for relevant information such as disclosure of pollution prevention technology and emissions are being ignored by facilities.

E.g. an ombudsman to handle inadequate responses or a "step up" process where communities are not satisfied. We support 3<sup>rd</sup> party annual performance reviews by CEPA and external panels to critique government performance.

4. The focus of healthy environment data and technology improvements should be facility driven, not industry sector driven. Aggregate data from both industry and government do not protect communities which are impacted by a facility in their area and favours some companies to operate under the radar of public interests.

WATCH has attempted to post the community right to know answers relevant to St. Clair River, Walpole Island, and Wallaceburg to the webpage. Although we were fairly successful and appreciate the participation of facilities who responded to our community right to know projects, the voluntary process without a strong regulatory framework is not sustainable. We need help and support from both government and industry stakeholders for successful oversight.

Thank you for giving WATCH the opportunity to comment,



Kris Lee, Chair  
on behalf of Wallaceburg Advisory Team for a Cleaner Habitat (WATCH)  
[www.biowatch.ca](http://www.biowatch.ca)