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Hon. Steven Guilbeault, P.C., M.P.
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Re: CME's comments relating to the Discussion Document on the Implementation Framework for a Right to a Healthy Environment (RTHE) under the *Canadian Environmental Protection Act, 1999* (CEPA)

On behalf of Canadian Manufacturers & Exporters (CME) and our member companies from across Canada, we are pleased to provide our comments with you on the Discussion Document on the Implementation Framework for a Right to a Healthy Environment (RTHE) under the Canadian Environmental Protection Act, 1999 (CEPA).

Canadian manufacturers are fully committed to creating a clean and healthy environment for all. We believe that industry can and should produce goods in the most environmentally friendly manner while meeting the highest global standards. CME strongly believes in environmental justice and non-regression and welcome the efforts of the Government of Canada to incorporate these aspects with regards to the implementation framework for a Right to a Healthy Environment.

Industry has been generally supportive of the Right to a Healthy Environment, with a qualification that its recognition of the right is a complex set of concepts that are integrated with one another. While it is appropriate to design the rights within the CEPA legislative framework, it is critical that the government continue to reinforce that this right is limited to decisions that are made under CEPA's authorities. To that end, the nature of the definitions in the Right to a Healthy Environment need to assert flexibility and include a balancing of rights.

As such, the CME proposes the following considerations to enhance the proposed framework:

Definition and Scope

1. The nature of the definitions in the Right to a Healthy Environment need to assert flexibility and avoid committing to a specific time frame.
2. The RTHE's implementation should be iterative, enabling it to respond to the changing needs of both the sector and society over time.
3. Ensure that the recognition of this right within CEPA's legislative framework is limited to decisions made under CEPA's authorities.

Reasonable Limits

1. Acknowledge that the foundation of any right should be considered on a case-by-case basis, and incumbent on individuals to assert what the right means to them. In this context, individual manufacturers are the best arbiters of their own rights.
2. Ensure that regulations and, by extension, Regulatory Impact Assessment Statements (RIAS) account for a balanced consideration of rights, including economic impacts. Balancing various rights is fundamental, informed by Canada's history of legal precedents.
3. The 'reasonable limits' clause of the Charter of Rights and Freedoms, along with the emerging Oakes analysis, should serve as a foundational reference for understanding how to balance provisions in this context. The government should rely on established precedents as a guide to shape this new right.
4. Data-driven decision-making, based on sound science, is crucial. Additionally, social, health, and economic factors, including Indigenous knowledge, should be considered.

Overarching Principles

1. Acknowledge that CEPA, especially the chemicals management plan, sets a global standard for public participation and transparency, which must be upheld and reinforced in the RTHE framework.
2. Ensure that information is easily accessible to foster trust and public confidence in the judicial system.
3. Finally, ensure annual reports on the RTHE's implementation are readily available to aid in transparency and engagement.

CME would be delighted to convene groups of concerned members for officials to go through the more technical considerations that are required to craft the implementation framework. Please contact us if we can help further on this or any other issue.

Sincerely,

Haroun Mansuar

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Manager, Environmental and Energy Policy

Canadian Manufacturers & Exporters