April 8th, 2024

To: **Hon. Steven Guilbeault and Hon. Mark Holland**
House of Commons
Ottawa, Ontario,
Canada
K1A 0A6

Re: Right to a Healthy Environment under the Canadian Environmental Protection Act

The Prospectors and Developers Association of Canada (PDAC) is the voice of Canada's mineral exploration and development industry. On behalf of over 7,000 corporate and individual members, we appreciate the opportunity to comment and inform how a right to a healthy environment in the context of the *Canadian Environmental Protection Act,* 1999 (CEPA) will be considered by the Minister of Environment and Climate Change and the Minister of Health in the administration of the Act.

In this submission, we provide perspective on the definition of healthy environments in Canada with particular focus on the context of early-stage mineral exploration and development projects. Mineral exploration includes a wide range of activities, from initial desktop and remote survey work and low-impact fieldwork by small groups, to larger camps, infrastructure and pre-mine development. Mineral projects create jobs, support critical infrastructure, and stimulate economic development in communities leading to improved access to healthcare services, infrastructure, and resources for the local population. Quite often, mineral exploration projects are located in northern and remote regions of Canada where few or no other economic opportunities exist.

Early engagement with Indigenous communities to establish mutual understanding and enable meaningful consultation is a fundamental element of the mineral industry, often involving the creation of agreements which can address a range of topics, including economic benefits, health, safety, and cultural considerations, skills training, environmental management, and grievance mechanisms. It's crucial to recognize that the environmental and social impact of exploration is significantly different and less extensive than that of operational mining.

The Canadian mineral industry is the largest industrial employer of Indigenous Peoples and there have been nearly 450 agreements signed between mineral exploration and mining companies and Indigenous Peoples in Canada over the last two decades. The evolution of engagement practices by the mineral industry with Indigenous Peoples and communities provides an opportunity to guide other industries and governments in their own approach to engagement and agreements.

Mineral exploration companies are typically small, at the lower end of the range for Small and Mid-sized Enterprises (SMEs) and they operate with limited human resources and capital. Mineral exploration and development companies are almost exclusively pre-revenue, and they rely on discoveries to drive market value creation to attract new capital on a continuing basis to advance project development, remain viable and not become a going concern. In addition to these challenges, mineral explorers must access remote environments with rugged terrain and

minimal transportation, energy, communication, or accommodation infrastructure. It's crucial to understand that only 1 in 10,000 mineral discoveries will lead to an operating mine. Exploration is the initial step in finding the minerals and metals that, years later, will drive emission reduction and the growth of renewable energy and clean technologies.

Mineral exploration plays an essential role in the transition to green energy and in achieving our emissions and climate goals as it is the first step in creating the mineral and metal supply chains necessary for renewable energy technologies, energy storage, and sustainable infrastructure.

PDAC was the first in mineral exploration to develop a best practice guidance suite known as Driving Responsible Exploration (formerly known as e3 plus). The framework is based upon 8 guiding principles: adopt responsible governance, respect human rights, commit to project due diligence and risk assessment, engage host communities, contribute to community development and social well-being, protect the environment, and safeguard the health and safety of workers and the local population. A company that follows these principles contributes to an overall healthy environment.

We recommend the considerations below be incorporated into the framework:

Minimize burden for junior companies by coordinating other initiatives and strategies

Upholding environmental protection and conservation is a paramount concern and it's crucial to balance regulatory requirements with the operational capacities of junior companies, which have limited resources and expertise of larger entities. Coordination efforts should focus on streamlining regulatory processes, providing technical assistance, and facilitating access to capacity-building programs that tailor to junior companies. By aligning environmental objectives with preexisting regulations, strategies and commitments, policymakers can ensure that the right to a healthy environment is upheld while minimizing undue burdens on small businesses and fostering a conducive environment for responsible and inclusive economic growth.

There is a significant suite of relevant regulations for mineral exploration and mining companies of all sizes that includes but is not limited to: the *Extractive Sector Transparency Measures Act*, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, the *Fisheries Act*, the *Species at Risk Act*, the *Migratory Birds Convention Act*, the *Canadian Navigable Waters Act*, the *Impact Assessment Act*, *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act*, and the *Canadian Net-Zero Emissions Accountability Act.*

Specific federal commitments relevant to mineral exploration companies include: the Canadian Minerals and Metals Plan, the 2030 Emissions Reduction Plan, the commitment to net-zero electricity by 2035, the commitment to net-zero carbon emissions by 2050, the 30 by 30 nature conservation goals, the Chemicals Management Plan, the forthcoming Biodiversity Strategy, the Canadian Critical Minerals Strategy, as well as other bilateral and multilateral strategies with other nations like the Minerals Security Partnership, and the Energy Transformation Taskforce between Canada and the U.S.

Prioritize evidence-based decision-making

By relying on robust scientific research and expert assessments, policymakers can support objective decisions with data, leading to increased public trust and confidence in regulatory processes. A key focus is to enable the identification of suitable areas for mineral exploration and mining activities while considering factors such as increasing mineral demand, water quality protection, and the preservation of cultural heritage sites.

For mineral explorers in Canada, access to land is the essential first step in discovering and bringing new sources of critical minerals to domestic supply chains. Without discoveries and new mines, Canada will remain reliant on other regions around the world to deliver the materials and technologies needed to build sustainable energy infrastructure.

Canada has the potential to power the planet as it is the second largest nation on earth and host to nearly every type of prospective geological terrain for new mineral discoveries that can drive a global energy transition. This reality requires Canada to apply a holistic view of developing new mineral deposits and electrifying the country while conserving our natural ecosystems and the health of the community. By working collaboratively, we can ensure a sustainable and prosperous future for Canada, its ecosystems, and its people.

Please see below for detailed answers to the discussion paper questions. PDAC looks forward to the release of the implementation framework and any related collaboration. Please contact PDAC's Director - Policy & Programs, Jeff Killeen (jkilleen@pdac.ca), for more information or context on the contents of this submission.

3.1 Definition and scope of the right to a healthy environment in CEPA

What does a healthy environment mean to you in the context of the CEPA cycle described in section 2.2 or the issues described in section 3.1?

Canada has become a world leader in environmental preservation and species conservation through the implementation of stringent health, safety, and environmental standards. Evolving alongside Canada's regulatory landscape over decades, responsible mineral exploration companies prioritize best practices when interacting with the natural environment, in community engagement, as well as with the health and safety of their employees and surrounding communities. This approach to best practice and compliance, combined with the modernization of technology, works to mitigate the risk of accidents, occupational diseases and environmental hazards, thereby safeguarding the long-term health of the workforce, the environment, and regional stakeholders.

Following industry standards, such as the Mining Association of Canada's Towards Sustainable Mining or The Copper Mark Criteria for Responsible Production establishes a sustainable baseline for mining. PDAC's Driving Responsible Exploration (DRE) supports junior companies in early stages of the exploration and development process by providing a vast array of practical resources, such as DRE's Environmental Stewardship Toolkit, Social Responsibility Toolkit and Health and Safety Toolkit.

PDAC's encyclopedic tools allow an exploration company to both find flexible guidance for the regions they work in, improve their risk assessment and performance evaluations, and bolster 'on-the-ground' expertise – aspects that fit into the context of the CEPA cycle.

When it comes to assessing whether an industrial activity is "healthy", the primary consideration should be whether the activity follows applicable regulations and limits. For example, a mineral exploration or mining company that complies with all applicable regulations and permitted operating conditions regarding physical disturbance, waste and effluents, the treatment of species at risk, etc. can, for all intents and purposes, be considered a healthy industrial activity. This approach is important because it ensures that the activity is being conducted in a safe and responsible manner that is in line with established requirements that are transparent.

It's also crucial to base the definition of "healthy" on factual and scientific foundations. This means that any assessment of an industrial activity's health should be grounded in empirical evidence and objective data. By relying on scientific foundations, it is possible to ensure that the assessment is accurate, reliable, and consistent across different contexts.

How would you know if your environment is healthy?

A healthy environment does not equate to one where there is no infringement of the natural environment by residential, commercial, or industrial development. An environment can be deemed healthy when the ecological, biological, social, health, and economic conditions in that environment are well understood and there are measures in place to balance considerations between these factors to drive consistent improvement. In other words, an ideal healthy environment will have long-term metrics on the air, water, soil, flora, and fauna that respect and coincide with environmental regulations and the needs of the public.

A healthy environment should also have equitable access to resources and opportunities, with a focus on sustainability and social well-being. Positive indicators include transparent communication, respect for local cultural heritage, and economic diversification. Such a healthy environment promotes the overall well-being of all living beings that reside in it.

3.1.1 Reasonable limits

How would you see these factors to limit the consideration of the right being taken into account when making decisions under CEPA?

In the evaluation of public perspectives and scientific, health, safety, and environmental requirements, it is essential to consider the constraints faced by companies or projects. Reasonable limits or project alternatives need to weigh the risk of stagnation or non-development against opportunities for collaborative growth and potential contribution to national strategies or priorities. In other words, recommendations for no-action or project alternatives must consider realistic economic and technical limitations to ensure projects meet their purpose, and to avoid missed opportunities for essential infrastructure improvements, progress on federal targets, or advancements in sustainability initiatives.

Understanding that factors are interrelated is key. Balancing scientific, health, social, and economic factors does not follow a one-size-fits-all approach. The best allowances are those that take into account the needs of vulnerable individuals as well as any limiting constraints. Constraints faced by companies or projects can be physical (e.g. geographical limitations), technical (e.g. noise and vibration) or economic (e.g. high initial investment).

Geographic limitations heavily affect mineral exploration and mine activity in Canada, where the location of a prospective geological terrain or mineral deposits dictate a project's location. Similarly, the development of infrastructure must be founded on geotechnically sound principles. In addition to constraints on the location of mineral deposits, certain facilities including smelters, processing plants, and tailing ponds, have restricted locational flexibility due to geotechnical, economic, transportation and social considerations.

Mineral exploration poses challenging odds for success and similarly poses significant investment risk, thus there is significant pressure from shareholders and stakeholders on mineral exploration companies to streamline activities and maximize efficiencies. By fostering a supportive business environment and promoting local procurement practices, the CEPA framework can reduce the operating footprint of the industry and build stronger alignment between community and project interests.

It should be noted that 'no-action' and 'assessment of alternatives' are significant chapters in the *Impact Assessment Act.* CEPA should incorporate a similar perspective, whereby public perception and project optics, though considered in the assessment, are weighed alongside technical and financial restrictions such that they do not prevent a project from achieving its intended purpose. This entails maintaining a reasonable approach when addressing concerns that are preferential versus legitimate health, safety, or environmental issues.

3.2 Principles

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?

As mentioned within the discussion document itself, environmental justice, non-regression, and intergenerational equity considerations do not have a standardized definition within CEPA. These three new principles are complex and multifaceted concepts that often involve assessing the long-term and cumulative impacts of environmental policies, projects, and decisions. Rigid definitions have the potential to block development that would otherwise meet standard health and environmental regulations and limits.

Predicting future trends, scenarios, and outcomes requires accounting for uncertainties, feedback loops, and dynamic interactions within complex social-ecological systems, which can be challenging to capture in static measurement frameworks. With these considerations, generating definitions within the framework must allow for reasonable flexibility by project proponents to interpret these principles and associated mechanisms.

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

The principles should clearly link to intergovernmental affairs to allow for cross-ministerial collaboration and avoid redundancies between the application of Acts on projects wherever possible. We must also highlight that the inclusion of a GBA Plus analysis has been effectively integrated into the Impact Assessment Act. The "Practitioner's Guide to Federal Impact Assessments under the Impact Assessment Act" and specifically the "Gender-based Analysis Plus in Impact Assessment" guide ensures that current impact assessments include an analysis of specific communities, their proximity to the project, and the disproportionate impact of potential project effects (social, environmental, health).

Linking the right to a healthy environment under CEPA to pre-established guidance provides the means to continually improve, attain better results for Canadians by being more responsive to specific needs and circumstances and will help prevent repetition.

Additionally, during the research and analysis stage, it's essential to look for opportunities to pull from existing data sources, such as other ministries, public health units, social services, or other public sources. This can help reduce the burden on proponents and stakeholders/rightsholders to compile or generate baseline socio-economic and health information.

Are there other principles within CEPA that could be considered as part of the framework (see Appendix 2 for list of CEPA principles and their definitions)?

PDAC continuously advocates for evidence-based decision-making and intergovernmental cooperation. To minimize ambiguity and ensure certainty for those conducting assessments under the framework, assessments should rely on scientific evidence in addition to public concerns to effectively design, implement, and measure the success of mitigation measures. Additionally, the framework should involve intergovernmental cooperation to reduce duplication between assessments and governing bodies and make use of existing information databases.

Public education could be considered as a principle of the framework. Mineral exploration and development projects already have a substantial duty to consult, meet high environmental standards and promote the health and well-being of their local communities and ecosystems. Helping the public understand the science-based decision-making and positive work being done within CEPA can help reduce public opposition that is not evidence-based which in turn can lead to fewer permitting delays.

3.3 Procedural duties

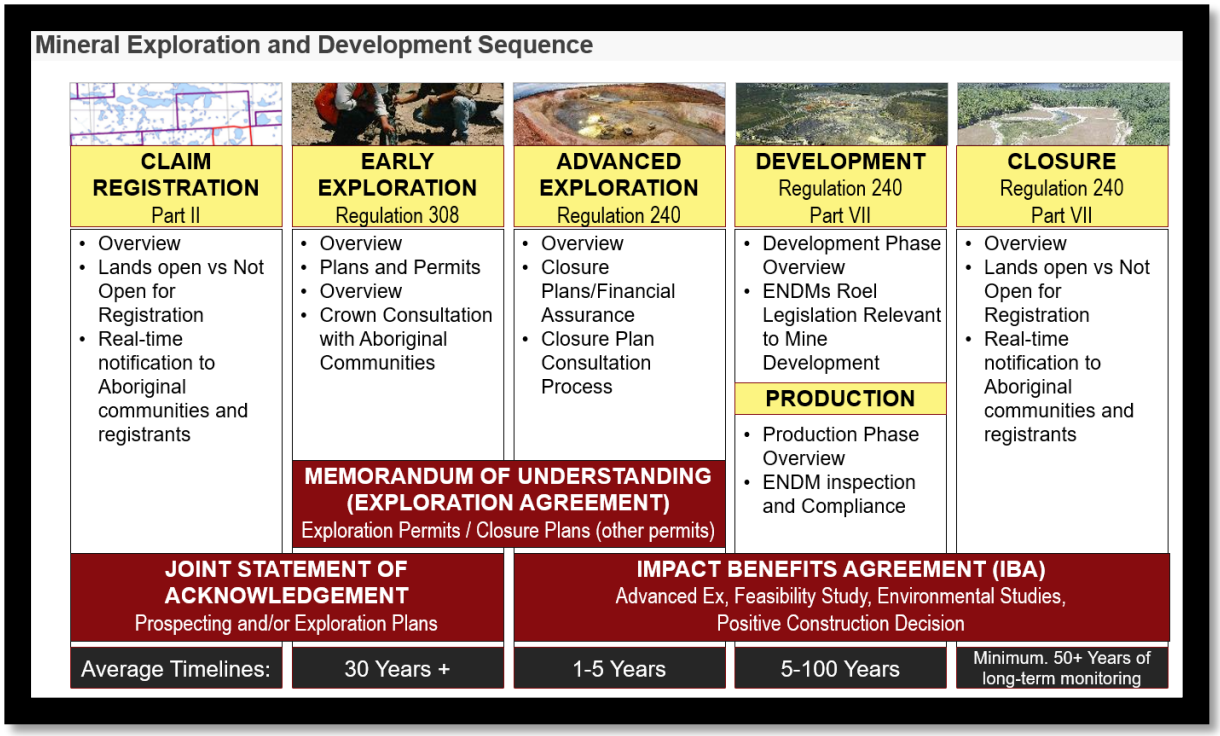
Are any of these procedural duties unclear?
Are there other opportunities within the CEPA management cycle to consider these procedural duties and strengthen the protection of the right?
Are there other procedural duties that could be considered as part of the framework?

Within the CEPA management cycle, procedural duties are adequately addressed as they are clear and standard.

3.4 Indigenous rights

How can the right to a healthy environment under CEPA support the priorities of First Nations, Inuit, Metis, Modern Treaty Partners, and Self Governments?

A key component of the right to a healthy environment is the ability to participate in environmental decision-making. CEPA can further support the priorities of First Nations, Inuit, Metis, Modern Treaty Partners, and Self Governments through improved regulatory efficiencies and the provision of funding and training programs which support environmental capacity-growth within communities. While there are many avenues and opportunities within the mineral and development lifecycle to comment on environmental management (at the issuance of exploration permits, throughout environmental/impact assessments, etc.), many communities lack the capacity to meaningfully participate in these opportunities. By aligning various levels of government and industry consultation, supporting environmental and regulatory education and training programs, and funding capacity growth, CEPA can effectively reduce the burden of over-consultation and enable more meaningful participation of communities in their right to a healthy environment. PDAC would also recommend a flexible framework which can be adapted on a community-by-community basis to reflect their unique engagement preferences and environmental priorities.



Best practice in mineral exploration, development and mining in Canada leads to establishing thorough and tailored agreements between industry and Indigenous communities. Mutually developed agreements (Memorandums of Understanding, Impact Benefit Agreements, Impact Assessment Agreements, etc.) often already consider the various environmental and cultural considerations and stipulations that this Framework seeks to address, including expected environmental management strategies, establishing sustainable practices, and providing grievance and reporting mechanisms.

Additionally, it is important to recognize the substantial contribution of Indigenous-led studies and impact assessments, a growing movement within the mineral industry, which not only informs various approvals processes but also ensures that concerns and perspectives of Indigenous communities are effectively integrated into decision-making processes related to mineral resource development.

How can the framework meaningfully consider Indigenous knowledge systems and bring them together with western knowledge systems to inform science, policy, and program decision-making?

Indigenous knowledge systems and traditional knowledge can provide unique insight into regional history, ecological relationships, and culturally and environmentally significant locations. The effective integration of traditional knowledge into environmental assessment and management strategies relies on the precision and accuracy of the information. The Framework should consider processes (adaptable to unique contexts) where the incorporation of traditional knowledge is verifiable by Indigenous communities and adds to a holistic

perspective when combined with industry research, historical records, and local observational data to ensure accuracy and consistency. An equitable assessment of impacts and benefits depends on accurate and verifiable information from all parties involved.

There should also be a standardized process through which Indigenous knowledge can be shared with regulatory decision-makers and the public, as well as a mechanism to address potentially sensitive information and limit or restrict public access to such information Indigenous communities wish to keep confidential. Informed decisions about protecting culturally or environmentally sensitive areas cannot be made if specifics of these areas are not shared with key decision-makers. For instance, the identification of a spawning ground during an environmental assessment needs to be shared with regulators and project proponents to ensure its protection. However, such specific information could be redacted or made more general prior to its being shared with the public (i.e. approximate locations, descriptive terminology such as “designated environment/cultural area”).

Are there specific distinctions-based elements you would like to see incorporated into the implementation framework?

As noted, the framework should respect other national priorities and strategies and there should be distinction for activities like mineral exploration, extraction, and mineral supply chain development, which are priority areas for our critical mineral strategy. The framework should also recognize the extensive nature pace of engagement between industry and Indigenous People, as well as Indigenous rights to self-determination, which are essential for maintaining healthy environments and sustainable livelihoods. The framework should also reflect how governments and industry stakeholders can establish mutually beneficial partnerships that support community well-being and promote environmental stewardship practices that benefit Indigenous and non-Indigenous communities alike.

4.0 Proposed approach for the framework

Recognizing that implementation will be progressive and incremental, should the framework prioritize certain activities under CEPA or focus on more general improvement? What would you like to see prioritized?

The implementation framework for the right to a healthy environment under CEPA should prioritize acute dangers to health such as environmental indicators that exceed established standards, or public health emergencies, which demand rapid response and coordinated efforts across multiple sectors and stakeholders. By prioritizing acute dangers, the implementation framework can strengthen preparedness, response, and recovery mechanisms for emergencies.

Industrial activity is necessary for societal needs, economic development, and green technology, but it should operate within regulatory standards to protect public health and the environment. The framework should align with robust environmental monitoring programs that

track air and water quality, soil contamination, and other environmental indicators to ensure activities comply with regulations and that any acute risks can be quickly identified.

This program should cross-reference information from intergovernmental departments and enable ease of access to data on geoscience, emissions, effluent discharge, hazardous waste generation, and community readiness to help reduce pollution and protect public health.

Given that the framework will need to elaborate on research, studies and monitoring to support protection of the right, are there any particular areas of importance related to these activities that should be considered?

It is of particular importance to ensure the activities supporting the protection of the right are pan-Canadian, this means that the data collection and application is equitable, accessible, and flexible.

Studies and monitoring that foster collaboration and partnerships between researchers, industry, government agencies, and the community will promote knowledge exchange and capacity-building initiatives that empower stakeholders. This needs to consolidate pre-existing research, studies, and monitoring activities, as well as ensure equitable access to research resources, libraries, data repositories, and technology platforms, across urban, rural, and remote areas.

As noted above, particular areas of research, and monitoring data that should be incorporated into the framework include geoscience, emissions, effluent discharge, as well as species at risk, migratory birds and where these activities cross over with Indigenous Knowledge.

What information would you need to see to feel confident that the right set out in the framework is being protected in CEPA decision-making? Are there specific actions that should be taken to assess this?

It is necessary to measure both economic and industrial growth as it relates to environmental and health indicators, for degradation in any of these areas is counter to the purpose of the act. By tracking key indicators such as greenhouse gas emissions, air and water pollution levels, biodiversity loss, and public health outcomes alongside economic and industrial output metrics, policymakers can identify opportunities to decouple economic expansion from environmental impacts.

In the context of climate change mitigation, sustainable extraction, and utilization of critical minerals, such as copper, nickel, lithium, and rare earth elements, are crucial for advancing renewable energy technologies, energy storage solutions, and low-carbon infrastructure. Without sufficient access to land, capital and people, the global transition to a low-carbon economy may be hindered, jeopardizing efforts to cut emissions, reduce habitat loss, and combat climate change which has significant feedback loops with health and the right to a healthy environment. Therefore, ensuring the responsible discovery, extraction, processing, and recycling of critical minerals is essential for achieving both economic prosperity and environmental sustainability in the fight against climate change.