

## Recommendations for the *Clean Air Act*

Prepared for the Standing Committee on Climate Change and Environmental Stewardship

The Conservation Council of New Brunswick (CCNB) and the New Brunswick committee of the Canadian Association of Physicians for the Environment (CAPE-NB) commend the Government of New Brunswick for initiating a review of the *Clean Air Act* (CAA)—a critical opportunity to modernize legislation first enacted in 1997 to ensure it reflects current science, community needs, and the province's commitments. Premier Holt has pledged to update both the *Clean Air Act* and the *Clean Water Act* to guarantee that every New Brunswicker has the right to clean air and water—fundamental rights that must also be recognized in provincial law. This review is vital to close long-standing gaps, strengthen protections for people and the environment, and ensure the Act delivers on its purpose.

According to Health Canada, [exposure to ambient air pollution in Canada](#)—including fine particulate matter (PM<sub>2.5</sub>), ground-level ozone, and nitrogen dioxide—contributes to an estimated 15,300 premature deaths each year, alongside more than 2.7 million asthma symptom days, 35 million acute respiratory symptom days, and about CAD 120 billion annually in related economic and healthcare costs. Persistent industrial emissions and recurring wildfire smoke expose the fragility of New Brunswick's air quality. Since [air pollution impacts are cumulative](#), the *Clean Air Act* should require decision-makers to consider combined effects and prioritize protections for those most at risk—ultimately safeguarding the health of all New Brunswickers.

Below are CCNB and CAPE-NB's recommendations for the *Clean Air Act*.

**Recommendation #1:** Develop a process to consolidate New Brunswick's *Clean Environment Act*, *Clean Water Act*, and *Clean Air Act* into a single, comprehensive *Environment Act*.

New Brunswick's *Clean Air*, *Clean Water*, and *Clean Environment Acts* separately regulate pollution, despite the interconnected nature of air, water, and land. This separation creates duplication, with repeated provisions and facilities often requiring multiple permits. Unlike every other province, New Brunswick still maintains [three distinct "clean" Acts](#). Integrating them into a single *Environment Act* would streamline administration, reduce redundancy, and strengthen protections for people and ecosystems. While immediate reforms to the *Clean Air Act* should proceed, we recommend the Standing Committee signal a longer-term commitment to unifying the three Acts under one Act.

**Recommendation #2:** Amend the *Clean Air Act* to recognize New Brunswick residents' right to clean air:

- Include a provision stating: "Every resident of New Brunswick has a right to clean air".

- Include a provision stating: “the Government of New Brunswick has an obligation, within its jurisdiction, to protect the right to clean air recognized in the Act”.
- Add a principle to the purpose of the Act in section 2 stating: “in making decisions under this Act and the regulations, the Government of New Brunswick must consider the potential impacts on the right to clean air recognized in the Act”.

Across Canada and internationally, governments are increasingly enshrining environmental rights in law, recognizing that clean air is fundamental to health and well-being. Aligning with commitments already made in [ministerial mandate letters](#) and with environmental rights frameworks emerging across Canada, the revised Act should recognize clean air as a fundamental right and require the government to take reasonable steps to safeguard that right for all New Brunswickers.

**Recommendation #3:** Amend the Clean Air Act to expand the prohibitions in section 6(2) to prohibit the release of contaminants that endanger human health or well-being, including emissions that cause or contribute to adverse health impacts.

[Section 6\(2\)](#) of the Act currently prohibits harm to property and business but omits *human health* and the *environment*. This gap undermines the Act’s purpose, which is ultimately to protect people and ecosystems. We recommend expanding the prohibition to include contaminant releases harmful to human health or the environment. This would align the Act with its core purpose.

For example, [section 45](#) of Ontario’s *Air Pollution - Local Air Quality* regulation includes the following broad safeguard:

- 45.** No person shall cause or permit to be caused the emission of any air contaminant to such extent or degree as may,
- (a) cause discomfort to persons;
  - (b) cause loss of enjoyment of normal use of property;
  - (c) interfere with normal conduct of business; or
  - (d) cause damage to property

**Recommendation #4:** Strengthen PM<sub>2.5</sub> protection or include a limit for fine particulate matter in the *Air Quality Regulation*.

In [Section 2\(h\)](#) scientific information is a fundamental part of decision-making. Fine particulate matter (PM<sub>2.5</sub>) is a leading cause of cardio-respiratory illness. Neither the regulations nor the Air Quality Approval terms for small quarry operations set limits on PM<sub>2.5</sub> concentrations. WHO’s 2021 [air quality guidelines](#) show harms at very low concentrations and have set stringent PM<sub>2.5</sub> limits. In addition, national guidance treats PM<sub>2.5</sub> as having [no safe level of exposure](#) and identifies it as the primary health risk in [wildfire smoke](#). The [Government of New Brunswick’s 2023 Air Quality Monitoring Results](#) report itself recognises that Total Suspended Particulate is becoming less relevant with the increasing recognition that PM<sub>2.5</sub> is what is essential to monitor.

- **Recommendation #4.1:** Amend the *Air Quality Regulations* to include a limit for PM<sub>2.5</sub> within one year.
- **Recommendation #4.2:** Update ambient objectives and operational guidance to reflect current science.
- **Recommendation #4.3:** Update provincial air quality objectives to match current [WHO 2021 guidelines](#), and be updated with future WHO guidelines.
- **Recommendation #4.4:** Require industries to limit emissions during wildfire smoke events to avoid compounding exposures.
- **Recommendation #4.5:** Redefine pollution limits with consideration of wildfire smoke.

**Recommendation #5:** Modernize air standards and contaminant limits.

Maximum Permissible Ground Level Concentrations (MPGLCs) are based on dispersion modelling at a single point in time and often fail to reflect actual population exposure or cumulative health risks. A modern framework must capture real-world impacts and align with today's science.

We recommend moving beyond outdated MPGLCs by adopting a robust, hybrid framework that includes:

- **Recommendation #5.1:** Keep the [Canadian Ambient Air Quality Standards \(CAAQS\)](#) and air-zones, but embed the CAAQS management levels and triggers directly in regulation, not just reports. Currently, CAAQS function as federal health-based benchmarks driving the Air Quality Management System, but aren't always legally enforceable. Making them binding ensures real accountability.
- **Recommendation #5.2:** Adopt [Point of Impingement \(POI\) standards](#), similar to Ontario, where facilities must demonstrate their emissions do not violate air quality thresholds at the point of impingement, backed by detailed guidance for modelling and implementation.
- **Recommendation #5.3:** Embed [emission and opacity limits](#), similar to Quebec, regulating both particulate and gaseous emissions, with clear thresholds across industries under the *Clean Air Act*.

**Recommendation #6:** Strengthen enforcement and deterrence.

The *Clean Air Act* provides the Department of Environment with enforcement tools such as investigations, orders, administrative penalties, and regulatory offences. However, administrative penalties are capped at only \$5,000 under section 31, limiting their effectiveness as a deterrent. Weak enforcement undermines the purpose of the Act, and [research from the University of British Columbia](#) shows that fines across Canada are often far below legislative limits, with repeat offenders frequently facing only warnings or minor penalties. In New Brunswick, the Public Register shows no convictions since 2006, no administrative penalties since 2013, and no Orders since 2004—raising serious concerns about lax enforcement and transparency.

- **Recommendation #6.1:** Increase the cap on administrative penalties to ensure they act as a real deterrent. Update penalty ceilings and administrative monetary penalties so they are risk—and history-based and high enough to deter, similar to [BC/Metro Vancouver](#) which can fine up to \$1M/day.
- **Recommendation #6.2:** Add ticketable offences for common breaches such as missed reports, monitoring failures, and opacity exceedances.
- **Recommendation #6.3:** Direct the Department of Environment to review and strengthen enforcement practices so they align with the purposes of the Act.
- **Recommendation #6.4:** Require the Department of Environment to update and maintain the Public Register with enforcement data.
- **Recommendation #6.5:** Improve enforcement within existing budgets by:
  - Mandating both monitoring and reporting in permits.
  - Conducting random inspections in addition to planned ones.
  - Increasing use of administrative penalties.
  - Standardizing public reporting of enforcement actions (who, what, when, where, and outcome).
  - Prioritizing enforcement and focus against high-risk offenders.

**Recommendation #7:** Implement a Prescriptive, Province-Wide Air Monitoring Directive.

The *Clean Air Act* lacks standardized monitoring and reporting requirements, undercutting transparency and enforcement. Adopting a New Brunswick “Air Monitoring Directive” modeled on [Alberta’s AMD](#) would align our province with best practices and ensure consistent, high-quality data across all ambient and industrial sources.

- **Recommendation #7.1:** Establish a New Brunswick Air Monitoring Directive, prescribing monitoring design, siting criteria, approved methods, QA/QC protocols, reporting formats, and public posting timelines for both ambient networks and facility/source testing. This mirrors [Alberta’s AMD](#), which standardizes monitoring across nine chapters, from equipment specifications to data quality and reporting, ensuring consistency and comparability province-wide.
- **Recommendation #7.2:** Require Continuous Emissions Monitoring (CEMs) for select high-risk sources, alongside real-time data disclosure to the public. Alberta’s [CEMS Code](#) (effective January 1, 2022) outlines performance, installation, and quality assurance standards for continuous monitoring systems that NB can mirror.
- **Recommendation #7.3:** Introduce standardized monthly and annual emissions reporting requirements, supported by a publicly accessible digital portal to ensure transparency and accountability. Alberta’s Annual Emissions Inventory Reporting (AEIR) standard under its [Air Monitoring Directive \(AMD\)](#) provides a model for consistent, reliable reporting that could be adapted as best practice.

**Recommendation #8:** Strengthen procedural safeguards to uphold the right to clean air. Procedural environmental rights support the protection of the substantive environmental right to clean air and can be divided into three interrelated categories:

- (a) access to information on the environment:
  - **Recommendation #8.a.1:** Amend section 12(4) of the *Clean Air Act* to require the Public Register be made available online.
  - **Recommendation #8.a.2:** The Department must include monitoring reports provided by Air Quality Approval holders pursuant to Air Quality Approval terms and conditions in the online registry.
- (b) access to participate in environmental decision-making:
  - **Recommendation #8.b.1:** Amend section 16 of the *Clean Air Act* to broaden public consultation opportunities by providing public consultation periods for all classes of Air Quality Approvals.
  - **Recommendation #8.b.2:** Recommendation: Amend the *Clean Air Act* to provide that any two residents who believe that an existing policy or regulation under the *Clean Air Act* should be made, amended, or repealed in order to protect air quality, may apply to the Minister for a review.
- (c) access to justice when environmental harms occur:
  - **Recommendation #8.c.1:** Amend the *Clean Air Act* to include an environmental protection action right for violations of the right to clean air similar to that in the *Canadian Environmental Protection Act, 1999*.
  - **Recommendation #8.c.2:** Amend the *Clean Air Act* to include private prosecution rights in respect of offences under the Act. An example of provisions to this effect is as follows:
    - (1) An adult person resident in New Brunswick may commence a private prosecution in respect of an offence under this Act.
    - (2) Despite subsection (1), a person shall not commence a private prosecution unless (a) they have first applied for an investigation under section 28, (b) an investigation under section x has been conducted, (c) the investigation (i) confirmed there are reasonable grounds to believe that a person has caused or is likely to cause an adverse effect on the environment, or (ii) concluded unreasonably that there are no grounds to believe that a person has caused or is likely to cause an adverse effect on the environment, and (d) following the conclusion of the investigation, there was no enforcement action by the Government.
    - (3) The Attorney General may not stay a private prosecution commenced under subsection (1) unless the person who commenced the prosecution did not comply with subsection (2) or the Attorney General believes on reasonable grounds that the prosecution is frivolous, vexatious, or bears no reasonable prospect of conviction.
    - (4) A decision by the Attorney General to stay a private prosecution commenced under subsection (1) is subject to judicial review.
    - (5) When a private prosecution under subsection (1) results in a conviction, the court may order at the time the sentence is imposed that all or a portion of a fine imposed, when collected, shall be paid to the person commencing

the prosecution to assist in defraying the expenses incurred by the person in respect of the prosecution.

**Recommendation #9:** Amend the *Clean Air Act* to add the following requirements to section 15(3) for the Minister to consider when making decisions regarding approvals and permits: a) comments received during section 16 public comment period, b) the duty to protect New Brunswick residents' right to clean air, and c) the cumulative effects of the proposed release of contaminants with other contaminants in the airshed.

**Recommendation #10:** “Amend the Clean Air Act to require persons responsible for an unauthorized release of contaminants to report the incident to the Department, with the information made public as soon as possible, including immediate notification to public health authorities so that communities can take necessary precautionary measures.

This review is a critical opportunity to modernize the *Clean Air Act*, close gaps in protection, and align it with today's science and best practices. New Brunswick can better safeguard public health and the environment by recognizing the right to clean air, strengthening enforcement, addressing cumulative impacts, and streamlining legislation.

The Conservation Council of New Brunswick (CCNB) works to protect the province's land, air, and water by advocating for sustainable solutions, educating the public, and driving action on pressing environmental challenges.

The Canadian Association of Physicians for the Environment (CAPE) is a national physician-led organization that mobilizes health professionals to advocate for policies that protect both human health and the environment, recognizing their deep interconnection. CAPE New Brunswick is one of 10 regional committees across Canada.

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