

CELA Northern Services Presents:



"Making the Links" between industry, health, and the environment in Northern Ontario

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Webinar Presenters:



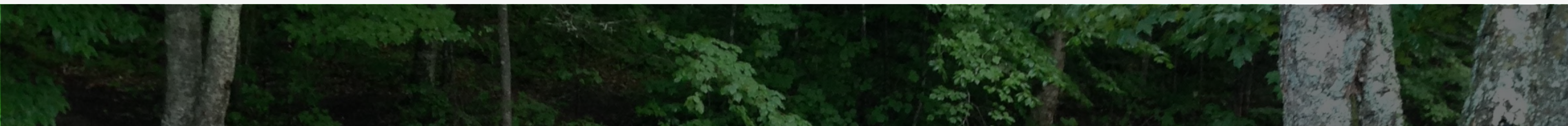
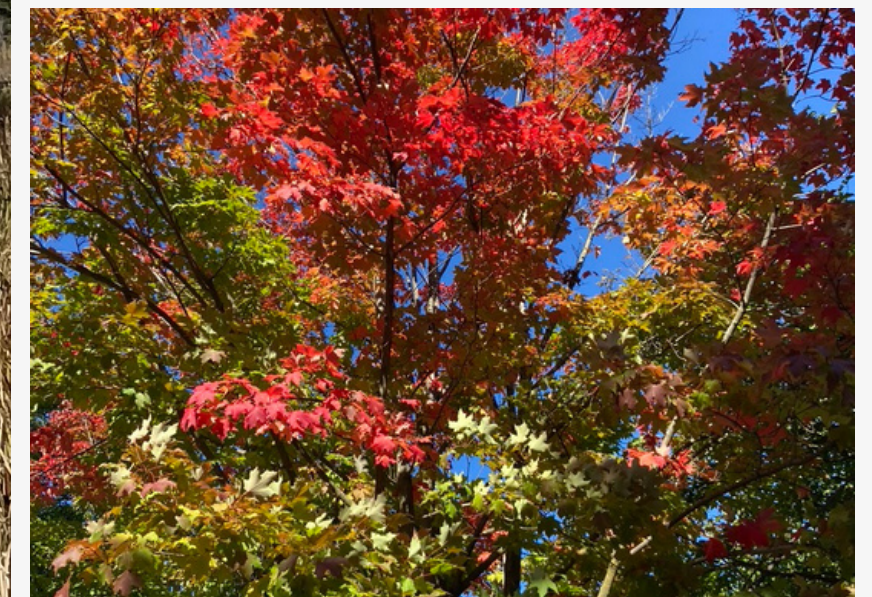
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Who is CELA: Northern Services?

- Founded in 1970s; non-profit, public interest organization that advocates for the protection of human health, safety and the environment
- Specialty clinic funded by Legal Aid Ontario to provide equitable access to justice
- Engage in litigation and law reform to advocate for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality



Who is CELA: Northern Services? (Cont.)

- Launched in September 2018 (9-month pilot)
- Established as permanent half-time position in 2019
- Collaborate with communities, residents, non-profits and community legal aid clinics on existing and emerging issues affecting human health and environmental protection
- Increase reach in areas historically underserved





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Introduction: Important Terms

What is environmental health?



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Environmental Health focuses on the interrelationships between people and their environments, and addresses “all the physical, chemical, and biological factors external to a person, and all the related factors impacting behaviours.”

Some issues impacting environmental health include:

- Access to clean water
- Access to healthy foods
- Exposure to toxins and carcinogens



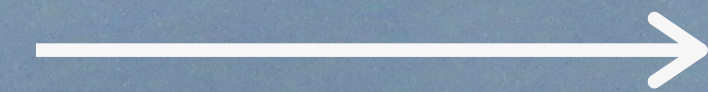


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How does industry impact
health outcomes in Northern
Ontario?



Air emissions



Water pollution



**Lack of access
to traditional
foods**



What is environmental justice?

Environmental Justice is the principle that environmental benefits and burdens should be equitably distributed among all persons, rather than allowing the majority of adverse impacts to be unfairly imposed upon poor people, visible minorities, or marginalized communities.


Environmental justice **requires** the elimination of environmental racism and class-based discrimination, as well as Indigenous self determination.



"Right to Know":

A "right to know" is a principle based upon a **basic human entitlement to information which directly impacts health and bodily integrity.**

- A public "right to know" includes databases which require the identity of chemicals to be disclosed, alongside their hazardous properties and potential health impacts.
- A workers' "right to know" is an employee's right to know the hazards of work based upon a basic human entitlement to information that directly impacts upon their health and bodily integrity.



Toronto's ChemTRAC program requires that reporting for 25 cancer-causing substances found in Toronto's air



Informed Consent:

Law: "Consent given only after full disclosure of what is being agreed to."

Medicine: Informed consent must be:

- 1) Given voluntarily
- 2) Given by a patient with capacity
- 3) Given by a patient who is properly informed

Low-income communities and individuals are especially vulnerable to coercion and undue influence due to monetary incentive

Free Prior and Informed Consent (FPIC)

Similar to the principle of informed consent, but it is a specifically legal concept. It is an inherent right of all Indigenous Peoples worldwide, and is detailed under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Free Prior Informed Consent

The consent is free, given voluntarily and without coercion, intimidation or manipulation. A process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.

The consent is sought sufficiently in advance of any authorization or commencement of activities.

A collective decision made by the right holders and reached through a customary decision-making processes of the communities. The engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.

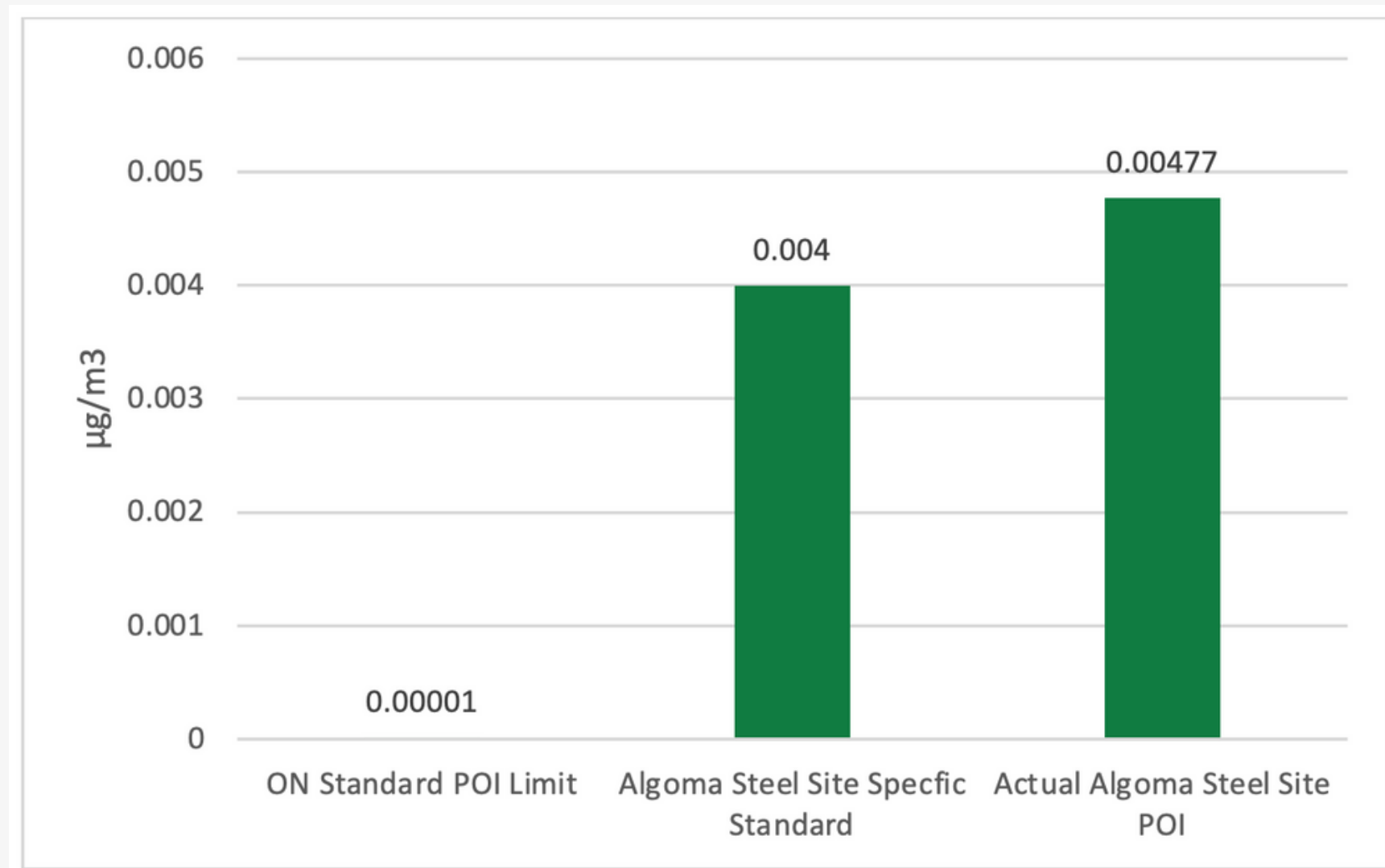


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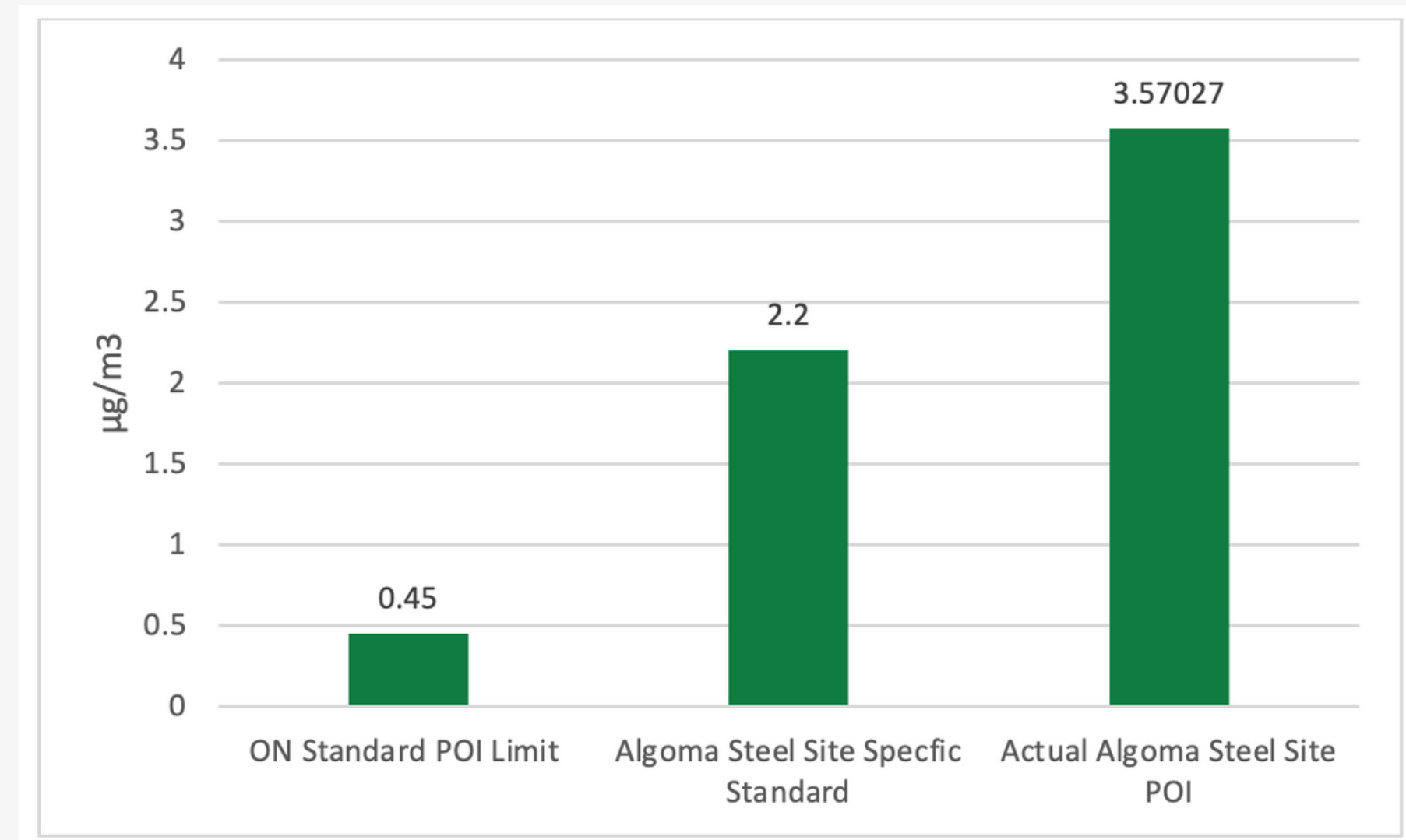
Environmental Health Issues in Northern Ontario: Case Studies

Case Study: Air Emissions

Site Specific Standards: For facilities that face "challenges in meeting a required air standard."



Benzo(a)pyrene



Benzene

Current site specific standards in Northern Ontario:

- Sault Ste. Marie
 - Algoma Steel - Benzene (Expires 2023)
 - Algoma Steel - Benzo(a)pyrene (Expires 2022)
 - Algoma Steel - Algoma Steel: Particulate matter < 44microns (Expires 2023)
- Sudbury
 - Glencore - Cadmium (Expires 2021)
 - Glencore - Nickel (Expires 2022)
 - Vale - Nickel (Expires 2021)

Acute Myeloid Leukemia

Sault Ste. Marie:

P6C: AML death rate 212.7% of the Canadian average

Thunder Bay:

P7E: AML death rate 194.9% of the Canadian average



Case Study: Glyphosate Aerial Spraying

Aerial spraying of herbicides in forests purposely alters the makeup of the forest and results in their being less browse (ie. understory vegetation) for ungulates, like deer and moose.

Concerns:

- Impact on vegetation, animals, berries and other foods
- Increased severity of forest fires
- Lack of research on glyphosate
- Lack of integration of TK



[Website](http://www.tekelders.weebly.com)



[Website](http://www.greenpeace.org)



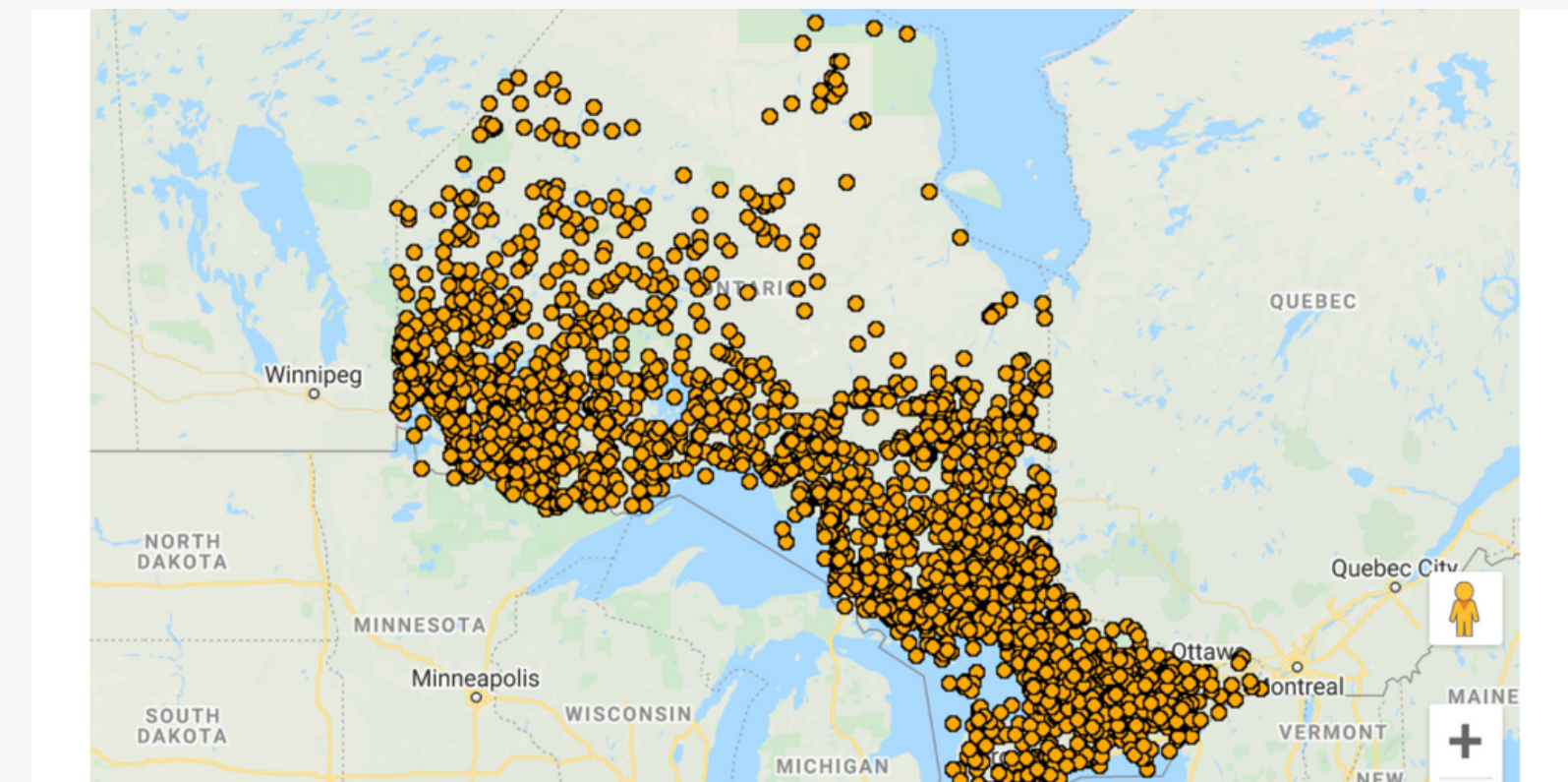
Case Study: Water Pollution and Fish Consumption

For consumption of Ontario fish, the Ontario government produces a detailed fish consumption guide. For information on current fish consumption advisories in your area, see: [The Guide to Eating Ontario Fish](#).

Although the guide is updated every two years, there is no guarantee that the science behind the allowable consumption has been updated.



The Guide to Eating Ontario Fish



Changes to the fish consumption guidelines for Porcupine Lake (2017-> 2019):

- Allowed Northern Pike consumption for the general population dropped from **4 meals to 2 meals per month**
- Allowed White Sucker consumption for the general population dropped from **8 meals to 1 meal per month**
- Allowed White Sucker consumption for the sensitive* population dropped from **4 meals to 0 meals per month**

*Sensitive populations are (1) women of child-bearing age, and (2) children under 15 years of age.



Species	Population Type	Advisory Year
Northern Pike	General	2017
		2019
	Sensitive	2017
		2019
Walleye	General	2017
		2019
	Sensitive	2017
		2019
White Sucker	General	2017
		2019
	Sensitive	2017
		2019
Yellow Perch	General	2017
		2019
	Sensitive	2017
		2019

Chart Courtesy of the MECP



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What Can I Do? Public Action Items and Opportunities for Engagement

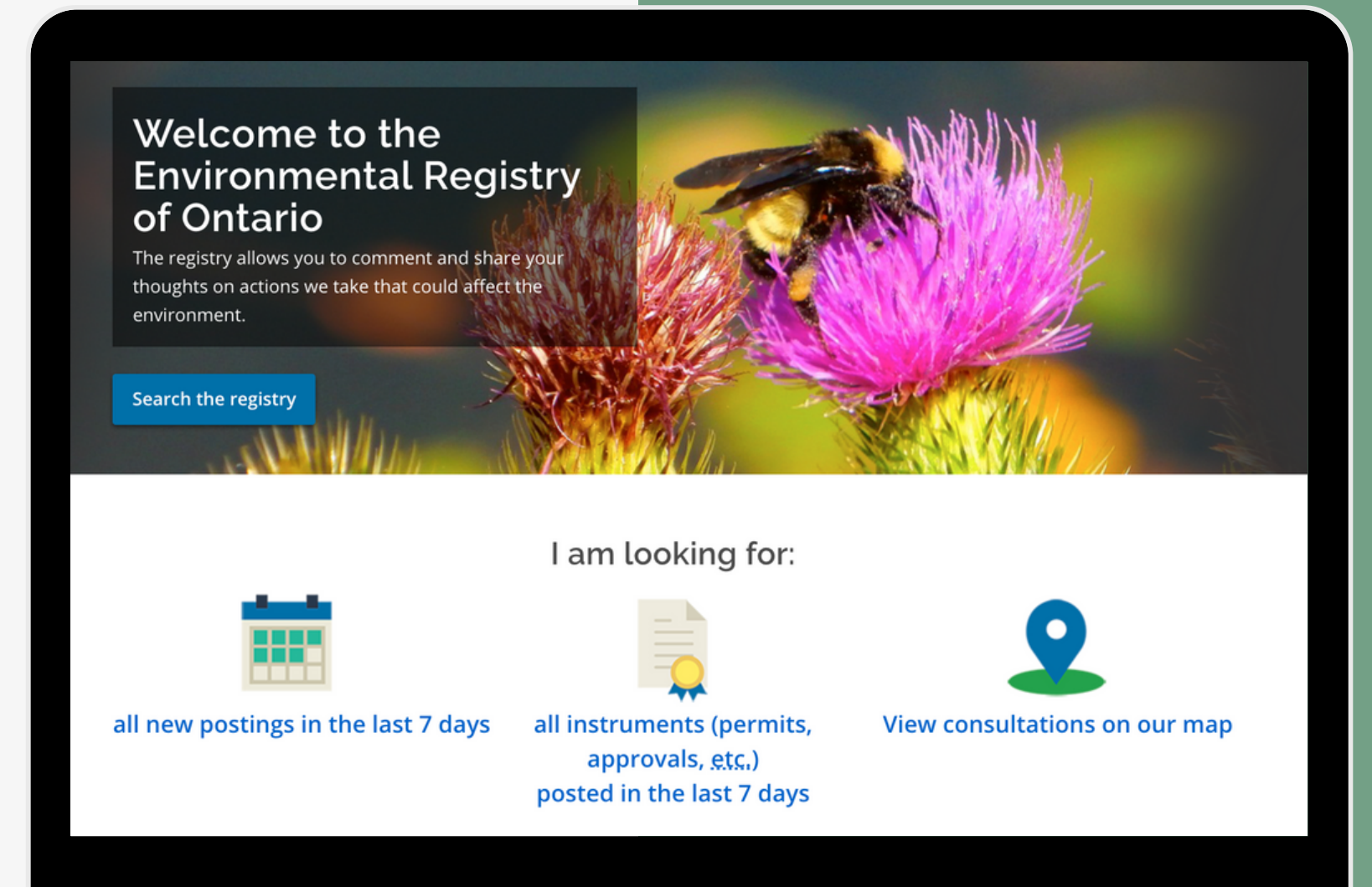


Take Action: The Environmental Registry of Ontario

The Environmental Registry of Ontario (ERO) has all of the postings regarding permits, approvals, and open consultation periods. This is an important website to bookmark to stay up-to-date on developments and environmental impacts. Each posting contains information of the public comment period.

The *Environmental Bill of Rights* provides:

- Right to comment (min. 30 days)
- Right to request investigation of violation/breach
- Right to request review of law/policy
- In some instances, right of appeal to challenge decision
- Duty to consult



Take Action: Site Specific Standards

When a company requests a site specific standard, there is always a public consultation period. You can search for site specific standards on the ERO website to find these dates.

Glencore Canada Corporation

Instrument type: Approval of a site-specific air standard

ERO number	019-0856
Notice type	Instrument
Notice stage	Proposal Updated
Proposal posted	May 8, 2020
Comment period	May 8, 2020 - June 22, 2020 (45 days) Closed
Last updated	July 17, 2020

This proposal is for a site-specific standard for cadmium for Glencore Canada Corporation's nickel smelter in Sudbury, Ontario. The Ministry of Environment Conservation and Parks has completed a review of the proposal and is seeking public input on the proposal and the proposed cadmium site-specific standard approval.



Take Action: Accessing Pollution Data



The National Pollutant Release Inventory (“NPRI”) is a publicly accessible database of pollutants released on site to the environment or transferred for disposal or recycling and is updated each year. It is published by Environment Canada

NPRI data is publicly available here, or through clicking "**Pollution data and reports**" on the main page. You can search by NPRI ID, company name, substance, and industry type, among others.

Example:

Location

Please select no more than **one** of the following location query options:

Province or Territory: [Help on province/territory \(Op](#)

Postal Code (Enter 1 to 3 characters): [Help on postal code \(](#)

Major Urban Center (population of at least 10 000):

[Help on r](#)

Sort by: Facility Name Sort order: Ascending

NPRI ID	GHGRP ID	Facility	City	Province
11215		Algoma Tubes Inc. - Tenaris Algoma Tubes	Sault Ste. Marie	ON
11148		Boniferno Mill Works ULC - Boniferno Mill Works ULC	Sault Ste. Marie	ON
10762		City of Sault Ste. Marie - West End Water Pollution Control Plant	Sault Ste. Marie	ON
11467		City of Sault Ste. Marie - East Wastewater Treatment Plant	Sault Ste. Marie	ON
11793		Essar Power Canada Ltd. - Essar Power Canada Ltd	Sault Ste. Marie	ON
1070		Essar Steel Algoma Inc. - Essar Steel Algoma Inc	Sault Ste. Marie	ON
5885		Flakeboard Company Limited - Flakeboard Company Limited	Sault Ste Marie	ON
10231		IMPERIAL OIL - Sault Sainte Marie Terminal	Sault Ste. Marie	ON
11244		Pioneer Construction Inc. - Sault Ste. Marie Facility	Sault Ste. Marie	ON
7265		Sault Ste. Marie Municipal Landfill - SAULT STE. MARIE MUNICIPAL LANDFILL	Sault Ste. Marie	ON
6672		Shell Canada Products - Sault Ste Marie Terminal	Sault Ste Marie	ON
11691		Triple M Metal LP - Sault Ste Marie	Sault Ste Marie	ON

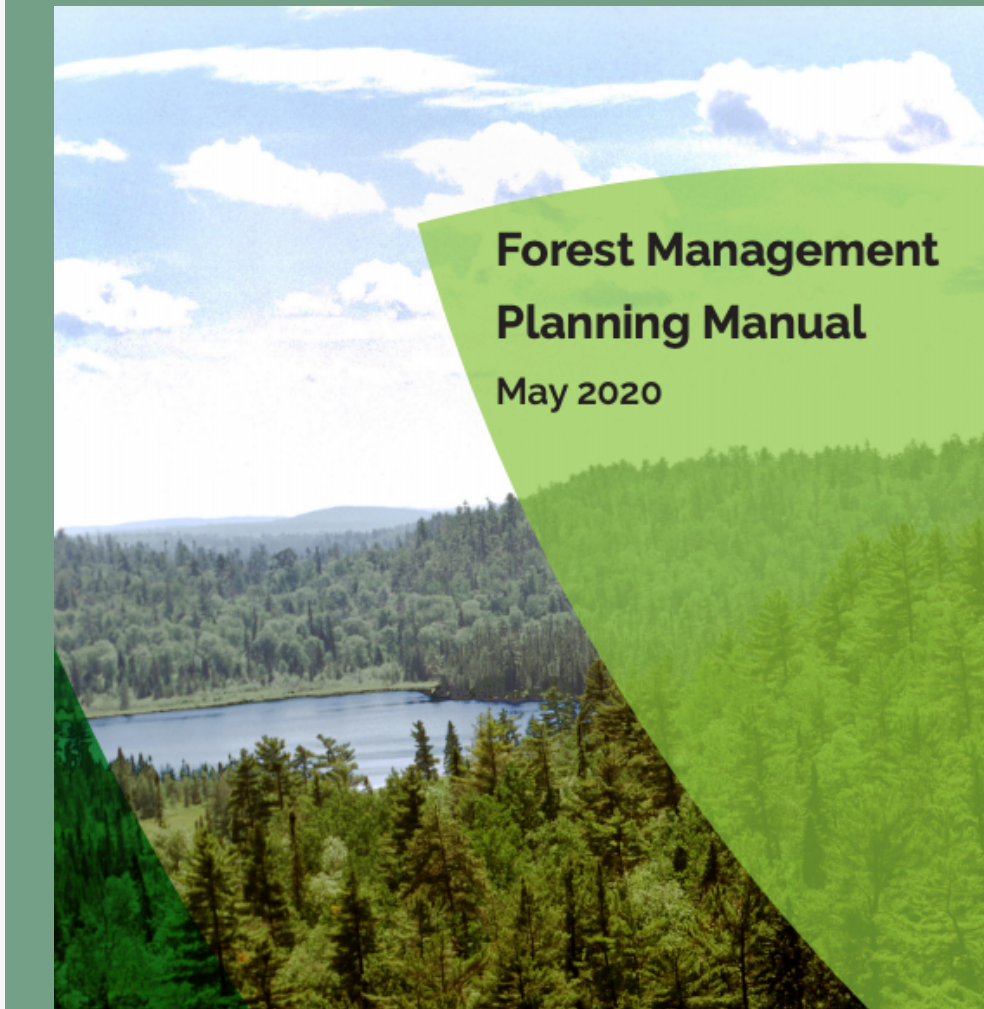
List of Substances (excluding CAC)

Substance	CAS Number	On-Site Releases			Disposal ⁽¹⁾			Units
		Air	Water	Land	On-Site	Off-Site ⁽²⁾	Off-Site Recycling	
<u>Acenaphthene</u>	<u>83-32-9</u>	3.3	-	-	3.3	-	-	- kg

Take Action: Forest Management Planning

There are five formal public consultation opportunities/stages in the preparation and approval of the FMP. Each stage is outlined on the MNDMNRF website, and includes FAQs such as "What if I have an unresolved issue?" The stages are as follows:

- 1) Stage One - Invitation to participate
- 2) Stage Two - Review of the long-term management direction
- 3) Stage Three - Review of proposed operations
- 4) Stage Four - Review of draft Forest Management Plan
- 5) Stage Five - Inspection of approved Forest Management Plan



Public involvement in preparing a Forest Management Plan

On this page

[Stage One - Invitation to participate](#)

[Stage Two - Review of the long-term management direction](#)

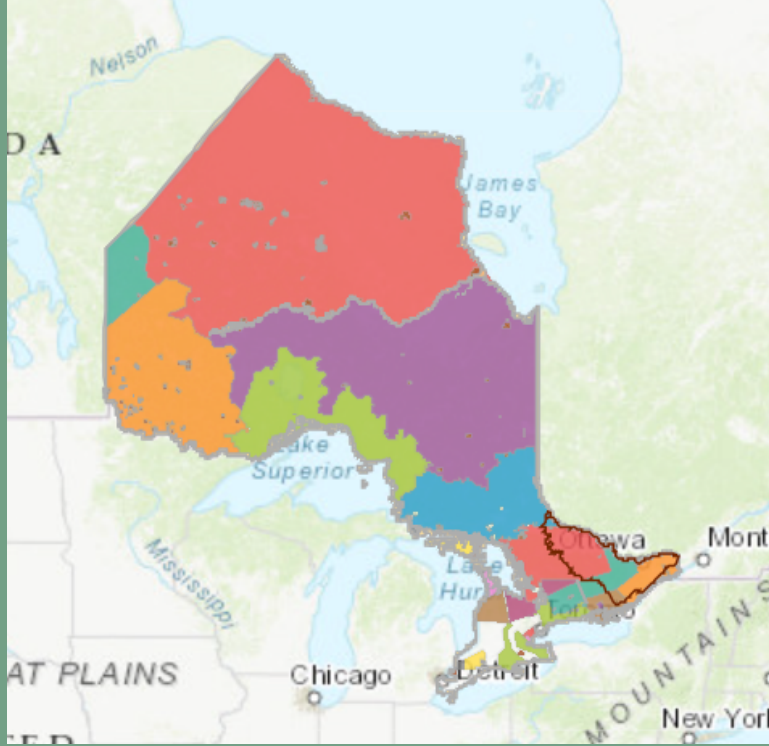
[Stage Three - Review of proposed operations](#)

[Stage Four - Review of draft Forest Management Plan](#)

[Stage Five - Inspection of approved Forest Management Plan](#)

[Contingency plans](#)

[Related links](#)



Take Action: Indigenous Rights

Canada and Ontario have a duty to respect the rights of Indigenous peoples as recognized by the Royal Proclamation, Treaties, the Constitution Act, 1982, and international human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).



- The Crown's duty to consult and accommodate is a foundational legal doctrine, applicable to Indigenous communities, their rights and interests.
- The constitutional recognition of treaty rights in s. 35 also gives rise to the duty to consult

Indigenous Rights (cont.)



Protecting Rights

- Rely on the principles and rights of UNDRIP including:
 - A community's right to give or withhold consent to the proposed activity (Article 32)
 - A right to participate in decision making (Article 18)
- Canada's obligations under UNDRIP:
 - Canada must take effective measures to ensure no storage or disposal of hazardous materials occurs on traditional territory (Article 29)
 - Canada must consult and cooperate in good faith (Article 19)

Indigenous Rights (cont.)

Furthering Access to Justice

- Set out your community's expectations for consultation (see CELA's [template](#) consultation and accommodation protocol)
- Advocate for the recognition of Indigenous jurisdiction / role in decision making
 - See CELA and Kebaowek First Nation's [call on Canada to enact an Indigenous jurisdictional regulation for the Gazoduq pipeline](#)
- Request a moratorium, pause or extension of timelines for consultation
 - See CELA and Friends of the Attawapiskat River [call for a moratorium in the Ring of Fire](#) (James Bay Lowlands)



"Making the Links" Toolkit

Designed for community and individual use (both settler and Indigenous)



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1

Introduction:

Covers key terms and background knowledge



2

Environmental Health Issues:

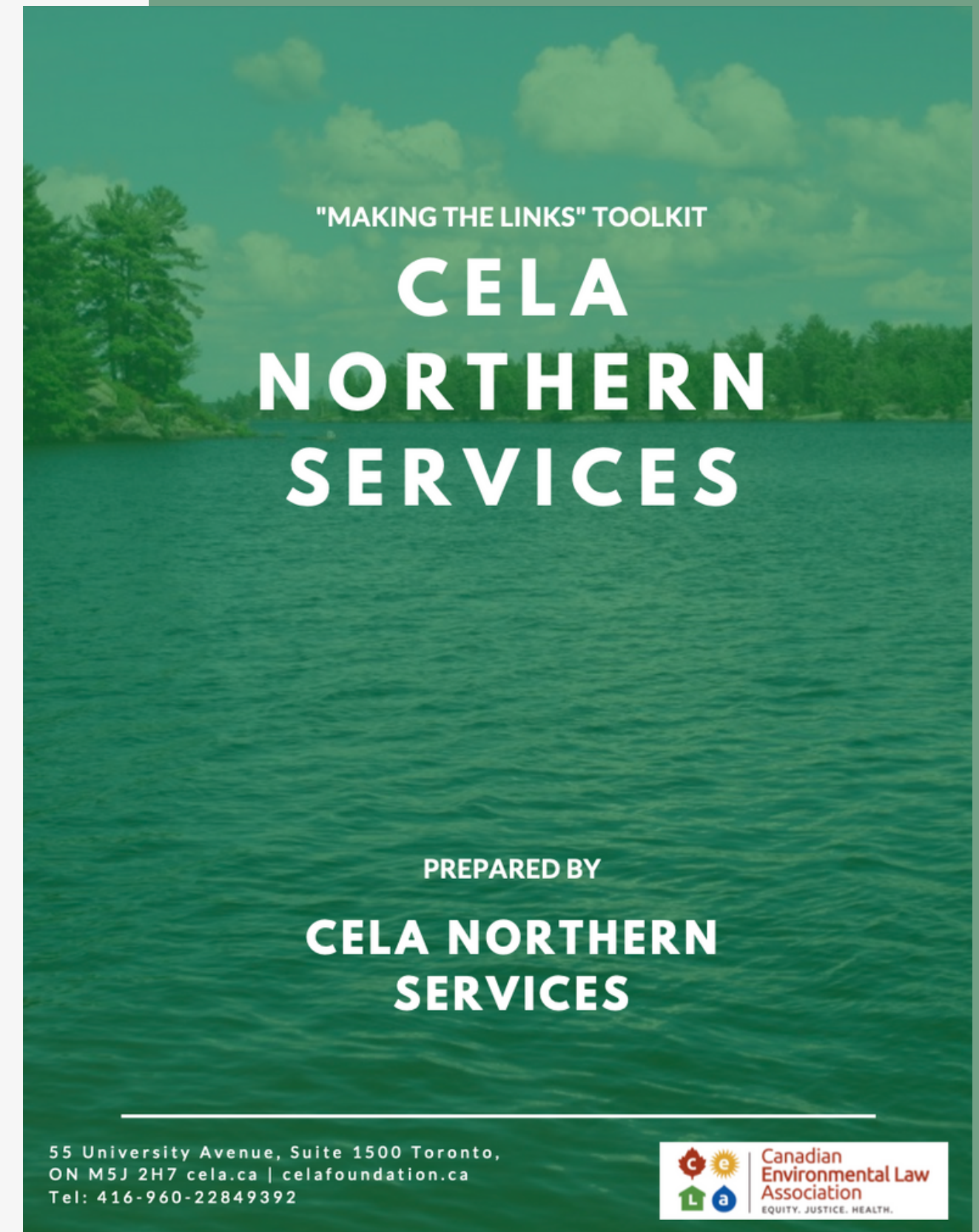
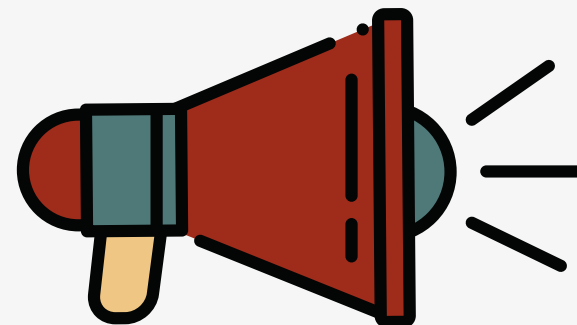
Discusses issues and health impacts



3

Getting Involved:

Lays out public participation tools



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"Making the Links" Toolkit

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Introduction:

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Release Date:

Mid -
September
2021

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communities, although today, many communities are creating their own research protocols and requirements for allowing researchers on their lands. This often includes recognition of the value of TEK, and reference to two-eyed seeing. A guide from the Assembly of First Nations (AFN) is available [here](#).

One such example is the 2008 Wikwemikong Community Needs Assessment Research Model. This [model](#) contains a four-step research methodology based on Two-Eyed Seeing. An adapted version is displayed visually below:



Picture courtesy of [Cindy Peltier](#)

Chapter 5: What is informed consent?

Informed consent is an important principle that is often used in medicine, and has important applications in environmental development as well. In law, informed consent is "consent given only after full disclosure of what is being agreed to. The more familiar medical context provides important lessons on what is considered valid consent. For this, consent **must be**:

- Given voluntarily
- Given by a patient with capacity
- Given by a patient who is properly informed

Scenarios with valid informed consent:

- Sam is receiving a vaccination before travelling. His doctor discusses the risks and benefits of the vaccine with him. Sam decides that the benefits outweigh the small risks, and decides to receive the vaccine.
- Autumn needs surgery for appendicitis. Her doctor walks her through the risks of the operation, and explains the health benefits of surgical correction. She understands, and signs off on the surgery.

Scenarios without valid informed consent:

- Layla is pressured to receive a medical intervention.
- Cindy has dementia, and is unable to consent to a routine procedure, as she does not have capacity.

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Chapter 8: Food Security and Traditional Foods


Food security is an **important issue** affecting many Northern communities, particularly First Nations with fly-in/ice road access. Many people rely heavily on harvesting traditional foods, including through hunting, fishing, and gathering. This is especially important culturally, as well as because of the inflated prices and low availability of store-bought foods. From the [Assembly of First Nations \(AFN\)](#).

Future developments further threaten quality and quantity of traditional foods. The **Ring of Fire** region in Northern Ontario contains large quantities of minerals, such as chromium, nickel, and copper. Mining is currently in the exploratory stage. The projected development includes a ferrochrome processing plant in Sault Ste Marie, which processes chromium.

Recently, CELA joined leading Indigenous and environmental organizations in authoring a [Call for a Moratorium](#). This call is in support of the [original moratorium](#) by Mushkegowuk Council and Neskantaga First Nation of Treaty 9.

As a part of their concerns, First Nations leaders have expressly mentioned traditional foods. From [Chief Robert Nakogee](#) of Fort Albany First Nation:

"The Albany River and all the other waterways flowing through our land are the life blood of our culture and our way of life. To have road access and bridges over them will mean that we will see permanent changes to fish, the migration of caribou and to the hydrology of the river and wetlands."



Ring of Fire, courtesy of the Canadian Geographic.

However, land degradation through industry and climate change has reduced the availability of healthy traditional foods. In their 120 page [report](#), "My Fear is Losing Everything" The Climate Crisis and First Nations' Right to Food in Canada, Human Rights Watch outlines the climate crisis' impact on First Nations food security, community resilience in the face of crisis, and the Federal government's failure to address climate change and food poverty.

When traditional food is available, levels of pollution and toxins from industry are an increasing concern. Generally, the higher up the food chain, the more the toxins accumulate. Toxins of particular concern are mercury, cadmium, arsenic, and lead. However, as per the [AFN](#), a 'research gap' exists, and research is needed to assess contaminants in traditional foods and ensure quality traditional foods for Indigenous people.

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Chapter 13: Duty to Consult and s.35 Rights

Under Section 35 of the [Constitution of Canada](#), and the honour of the Crown,"" the Canadian government has a legal **duty to consult** and accommodate Aboriginal (First Nations, Inuit, and Métis) peoples. The duty to consult arises "when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it" This duty rests with the Crown.


This can be broken down into three elements:

- The Crown's knowledge, actual or constructive, of a potential Aboriginal claim or right;
- Contemplated Crown conduct
- The potential that the contemplated conduct may adversely affect an Aboriginal claim or right.

Historically, the degree of consultation has depended on:

- The strength of the claim to particular rights,
- The potential harm that could be caused to those existing or asserted rights

This can be visualized below, in the diagram courtesy of [Oitthius Kleer Townshend LLP](#).

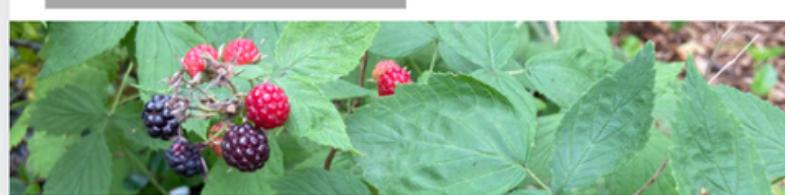


However, Canada has recently adopted The United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") with the royal assent of Bill c-15: [An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples](#).

The "free, prior and informed consent" provisions in UNDRIP (see next page) initially kept Canada from endorsing the declaration. This Government of Canada was concerned that approving UNDRIP would lead to an Indigenous veto over lucrative development projects.

In 2016, however, the Government of Canada endorsed UNDRIP "without qualification." In 2021, Bill c-15, was given **royal assent**.

*** "In a constitutional monarchy such as Canada, the Crown is the source of non-partisan sovereign authority. It is part of the legislative, executive and judicial powers that govern the country."
- [The Canadian Encyclopedia](#)





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