Maxine Cole and Philip Awashish

Ms. Maxine Cole (Co-ordinator, Eagle Project, the Assembly of First Nations):

I'll go first Mr. Chairman. My name is Maxine Cole and I'm at the Assembly of First Nations I'm the Eagle Project co-ordinator ## aboriginals from Great Lakes environment project.
Thank you for inviting the Assembly of First Nations to address the committee on the pending Canada wide accord on environmental harmonization. I have reviewed and present to you the concerns of the environment committee of the AFN regarding the accord.
As you know the AFN is a national organization whose primary purpose is to lobby and advocate for the inherent treaty and constitutional rights of its aboriginal members. The AFNs environment committee was created from the passing of resolution 28 in 1988 by the confederacy of nations to establish an environmental conservation and sustainable development committee.
The purpose of the environment committee is to persevere in forging a nation to nation relationship with government and order to influence public policy making decisions that impact on our environment and community health.
On a parallel process first nations must lay the foundations for aboriginal environmental policy. Members to the committee are delegates from the nations from the directions from the east, south, west and north, New Brunswick, Ontario first nations technical committee, British Columbia and Yukon.
From the review of the accord, in particular it was interesting that the vision statement for the accord reads Governments working in partnership to achieve the highest level of environmental quality for all Canadians. First nations are a third level of government which should be parties to the accord. If the vision statement is an accurate reflection of how this process will be undertaken to attain the highest level of environmental quality.
First nations have a unique relationship with the federal government that is entrenched in section 35 of the Canadian Constitution and has been upheld in Supreme Court decisions. Furthermore the federal government has a fiduciary obligation to first nations that cannot be delegated or transferred to the provinces. The accord is viewed by the environment committee as a downloading of responsibilities of the federal to the provincial governments. This redistribution of responsibilities will have detrimental impacts to treaty and aboriginal rights. The relationship between federal and aboriginal peoples must be maintained to ensure these rights for these peoples.
Principles 6 and 11 relate specifically to aboriginal peoples, yet there is no substantive role in regards to these peoples mentioned in the accord. Structures of governance do exist currently within first nations and yet the federal and provincial governments have not acknowledged these

structures. Throughout this process this has been a major criticism of the accord that consultation with aboriginal peoples has not happened due to a lack of non-recognition of the governing bodies within the first nations. First nations should be parties to the agreement. Their role has not been recognized in the agreement but in northern Canada they have more power than the territorial governments with respect to the environment. The Assembly of First Nations sits at the national advisory group tabled for information and monitoring purposes only.

The AFN was asked to participate in the NAG midway through the process. AFN has stated in the past that it would not be part of the NAG because the relationship is not clearly defined. If AFN were to become a member of the NAG this action would undermine the nation to nation relationship that is only befitting for first nations. Therefore recognition of a nation to nation relationship is the only way to develop and sustain a working relationship with all first nations.

Aboriginal people are mentioned in section 2.20 of the subagreement on environmental assessment. In it states that the subagreement does not apply in areas where land claims and environment assessment process exists. The intent is viewed by AFN that it narrowly limits this exclusion to land claim and self-government agreements.

The federal policy guide for aboriginal self government states that in laws dealing with environmental protection, assessment and pollution, federal or provincial laws would prevail over aboriginal laws. This raises the question of how valid section 2.20 is? If the federal or provincial laws of primacy ## over aboriginal laws then it will not matter when first nations land claims environmental processes ## exist. The federal provincial governments will refuse to recognize first nations jurisdiction before their own.

Significant transfer of responsibility for environmental protection from the federal government to the provinces, this action would beg that the question be asked and what you have in front of you is just notes and I told the clerk that I would be adding amendments to those notes as I go along. Again this action of transfer responsibility for environmental protection from the federal government to the provinces.

I would like to ask, is there a significant problem in Canadian environmental policy today in regards to duplication overlap of

o 1005 [English]

again this action of transfer of responsibility for environmental protection from the federal government to the provinces.

I would like to ask is there a significant problem in Canadian environmental policy today in regard to duplication and overlap of services. Virtually no background research has been conducted to answer this question. If there is an overlap, there isn't a significant amount of money spent in that overlap. Perhaps the CCME is overlooking the fact that shared jurisdiction may lead to a more effective environmental protection regime.

The relationship, as is, provides a system of checks and balances which would be lost if the downloading from federal to provincial governments did take place.

Again, what is CCME's definition of consultation, the definition of co-operation. Concerns were stated that the consultations were information sessions only. These concerns were aired by the aboriginal peoples. True consultation is an acknowledgement of the other partners at the onset of any work. This acknowledgement of the other parties demonstrates respect for the presence of existing infrastructures and the wealth of knowledge other than their our own.

The consultation process employed throughout the design, plan and review of the accord may be viewed as an exercise in rubberstamping a plan already in place. This plan again did not receive substantive input from aboriginal peoples.

As I review notes regarding the harmonization, I would like to ask if new moneys have been budgeted for aboriginal consultation. CCME and related working groups continually assume incorrectly that the AFN and other aboriginal organizations have the resources and communication infrastructure to address the CCME initiatives properly. Resources to communities and organizations are necessary to participate.

What accountability safeguards are in place for the agreement. Who will review the accord and the subagreements in five years. If the public is considered in this review, then the depth of participation of the public needs to be determined and the vehicle to be used for participation and again not only the public, aboriginal people must be included in the review if this accord does take place.

It appears that the accord can only be amended by unanimous consent of parties. Consequently, amendments will be virtually impossible.

In conclusion, harmonization seems to be ## by non-environmental considerations. The AFN objects to the direction that Environment Canada and the CCME continue to take in regard to the Canada wide accord on harmonization of environmental management. Periodic updates on the progress related to implementation of the accord and its subagreements does not constitute an open, transparent or inclusive process for first nations.

Due to exclusion of first nations peoples in Canada, the accord and subagreements have no meaning to us.

Due to this exclusion of aboriginal people in this Canada-wide accord, it is imperative that the accord not be signed. Further assessments of the potential implications of federal-provincial agreements must be undertaken specifically in regard to aboriginal peoples. In the absence of that assessment, it would be a serious infringement of aboriginal rights for the ministers to sign such an agreement.

The AFN is open to the idea of working with the federal government on this issue. The partnership must include mutual respect ensuring that all parties have the resources and capacity to come to the table as equals, a common agenda and for both sides to benefit in having a mutually agreed

upon goal.
Thank you for the opportunity to present these concerns.
The Chairman: Thank you, Ms. Cole. That's very helpful and quite comprehensive and we move on now to Mr. Awashish, the next speaker. Mr. Awashish, proceed. You have ten minutes.
Mr. Philip Awashish (Director, Federal Relations, Grand Council of the Crees of Quebec (Eeyou Istchee)): Thank you. I'd like to thank the chair and the members of the standing committee for the opportunity to appear before it and make known to you the position of the Cree nation of Quebec. My name is Philip Awashish. I am a Cree from ## which is located in the Cree territory, northern Quebec. I am a special advisor to the Grand Council of the Crees which is a political body representing the Cree first nations, or Eeyou Istchee as we are called.
I am also an advisor to the Cree Regional Authority which is the technical and administrative arm of the Cree nations of Quebec. With me today also on behalf of the Grand Council of the Cree Regional Authority are Brian Craik
o 1010 [English]
technical and that administrative arm of the Cree nations of Quebec.
With me today also on behalf the Grand Council of the Cree Regional Authority are Brian Craik who's the director of federal relations; Franklin Gertler who's the legal counsel.
Due to the short notice in coming before you our brief is in English only. We have filed with the clerk of the committee for the record so they may be consulted by you three full copies of our submission including the four appendices which are in English and French. We would especially ask that you carefully consider the revisions of our treaty, the James Bay and Northern Quebec Agreement which are found in appendix 1
We congratulate the standing committee on its position to hold hearing regarding the current environmental harmonization initiative of the Canadian Council of Ministers of the Environment. ## We welcome this opportunity to make our views known.
Of course our submission is under reserve of and without prejudice to Cree positions, rights, interests and remedies including in negotiations and litigation.
For a considerable time the Crees have been expressing concerns with respect to both the process and substance of the current harmonization initiative. To date we have not been appropriately included in the talks and our concerns have not bee reflected in the changes to the proposed texts.
First a word of background and regarding our process concerns.
In order to appreciate our approach to current harmonization initiative it is necessary to briefly consider our relationship to the land, resources and environment of Eeyou Istchee. ## and understand the central role of the 1975 James Bay and Northern Quebec Agreement and the rights protected thereunder in safeguarding the Cree way of life. The Eeyou Istchee is the traditional ancestral and historic territories which have been used and occupied by the Cree ## since time immemorial in pursuits of their hunting,

fishing and trapping and related activities. It is in essence our homeland.
For the Crees a fundamental premise and condition of the James Bay and Northern Quebec Agreement was continuing federal responsibility for protection of our way of life and environment on which we depend. We have a right to a continued and effective federal role. Our rights under our constitutionally recognized and affirmed under section 35 of the Constitution Act of 1982.
Section 22 of the James Bay and Northern Quebec Agreement that deals with "Environment and Future Development" ## provides us with constitutional rights to the establishment of an appropriate and comprehensive regime of environment and social protection and a right to participate in the elaboration, administration and application of that regime. The required regime goes well beyond the environmental and social impact assessment. Our rights in this regard are to be given effect notably through the James Bay Advisory Committee on the Environment ## which is contemplated ## our treaty.
Unfortunately the federal track record with respect to its obligations is very poor indeed. In addition to refusing broad application of the environmental assessment process under section 22, the Government of Canada has consistently failed to ensure the existence and implementation of appropriate environmental legislation in the James Bay and Northern Quebec Agreement territory and has failed to support and make proper use of the advisory committee.
It is shocking that the total annual federal jurisdiction to both the Cree and Inuit environment committee under sections 22 and 23 of the James Bay and Northern Quebec Agreement is $95,000 for a territory of approximately 1 million square kilometres.
The process by which the harmonization agreements have been negotiated ignores the special role for the Crees and the role of the advisory committee as the preferential and official forum for governments in the formulation of laws and regulations relating to the environmental and social protection and their administration. Any effective changes to the James Bay and Northern Quebec Agreement requires Cree consent.
We now turn to the substance of the harmonization initiative and the impact it will have on the exercise of Cree rights.
A Canada-wide accord ## and all three subagreements are subject to principle 12 where it is asserted that the accord and subagreements do not affect aboriginal treaty rights. Nonetheless the accord and the subagreements would shift more effective power to Quebec, which has proven itself incapable of protecting the environment in the Cree territory and which is
o 1015 [English]
and subagreements do not affect aboriginal treaty rights. Nonetheless the accord and the subagreements would shift more effect to power to Quebec, which has proven itself incapable of protecting the environment in the Cree territory and which is slashing its own environmental budgets. Thus, the harmonization initiative will most certainly affect the exercise of Cree

rights and will have the effect of accelerating federal withdrawal from the environmental field in our territory and breach our rights under section 22 ## .

With reference to the Canada-wide accord, within the objectives of the harmonization, it sets out clearly that positive environmental goals are seen as being best achieved when any issue is in the hands of, and I quote "one order of government only". We do not agree with this approach. Under section 22 the Crees have a right to the active involvement of both Canada and Quebec. For us, harmonization does not mean withdrawal of one level of government, but rather the co-ordinated efforts of both levels with the direct participation of the Eeyou, or the Cree.

We will now turn to the subagreements. The definition of standards as set out in paragraph of 2.1 ## of agreement on standards is cause for concern. The Crees do not believe that guidelines and objectives are a substitute for the rigorous and legally binding environmental standards required to protect the environment and human health. This subagreement appears to completely ignore the rights of the Crees under section 22 to participate in the establishment and implementation of environmental standards.

The subagreement does not acknowledge or refer to the advisory committee even though paragraph 8.1 does include saving language for resource management institutions established under aboriginal claims' agreements in the Yukon and the Northwest Territories. This difference in treatment is unexplained and unacceptable.

With respect to the initial candidate list for Canada-wide environmental standards, the Crees have a particular interest in the risks to human health and the environment which are approached by mercury ## . Our involvement in setting the relevant standards is essential and efforts with regard to mercury must be tailored so as to take into account the mercury contamination which is associated with hydro-electric development.

With the Canada-wide accord and the other subagreements there is an implication through the subagreement on environmental inspections that there is a serious problem in Canada of duplication of inspection authority and effort. Our experience is rather of the almost total absence about federal and provincial inspections. Regular reports by Cree trappers of serious environmental problems have been systematically neglected.

Paragraph 5.1 ## and similar provisions in the accord and the other subagreements contemplates the dubious practice of blanket refusal of governments to exercise powers, in this case their discretion with respect to inspections. It is extremely doubtful that it is legal for a government to agree to entirely abdicate the responsibilities imposed upon it by legislation and simply hand those responsibilities off to another level of government.

Finally, with respect to the subagreement on environmental assessment, paragraph 2.2.0 ## makes it inapplicable in the areas with aboriginal claims or self-government agreement assessment processes. This would be a good thing if the section 22 ## regime were being applied properly.

Instead, the effect will be to continue and to legitimize the unacceptable refusal of the governments of Canada and Quebec to apply the section 22 federal regime of environmental assessment to development projects which involve matters of federal jurisdiction.

In conclusion, despite what may be positive aspects of harmonization in theory, we have great difficulty in supporting the current initiative. The definition of harmonization being applied and both the process and the outcome of the initiative are very seriously flawed with great implications for the rights of the Crees and the exercise of those rights. Therefore, we recommend the signing of the accord and the subagreements be postponed until our interests have been protected and our conceptual process and substantive concerns are resolved and the Department of the Environment, on behalf of the Government of Canada, immediately cease the James Bay Advisory Committee on the Environment of the whole of the harmonization initiative.

We acknowledge the harmonization initiative may provide opportunities with respect to the implementation of section

o 1020 [English]

says the James Bay Advisory Committee on the Environment of the whole of the harmonization initiative. We acknowledge that the harmonization initiative may provide opportunities with respect to the implementation of section 22 and its modernization.

We will continue to seek such progress, notably through the negotiations with the federal government which are now getting underway.

In this regard and given the poor record of the Government of Canada, we ask that the standing committee call upon the Government of Canada to proceed immediately with the true implementation of section 22 of the James Bay and Northern Quebec Agreement.

Thank you for your time. Together we will be pleased to answer your questions in Cree, English or French.