

THE CCME ENVIRONMENTAL "HARMONIZATION" AGREEMENT

A Statement by Canadian Environmental Non-Governmental Organizations

INTRODUCTION

The Canadian Council of Ministers of the Environment (CCME) is the major forum in Canada for discussion and joint action on environmental issues of national and international concern. Since November 1993, the CCME has focused on the harmonization of environmental management as its top priority. A draft Environmental Management Framework Agreement (EMFA) and four Schedules (Monitoring, Enforcement, International Affairs, and Environmental Assessment) for public comment on December 13, 1994.

The Agreement was originally scheduled to be "endorsed" by the federal, provincial and territorial ministers of the environment at the May 1995 meeting of the CCME, and signed at the October 1995 meeting. However, major disagreements emerged between the federal and provincial and territorial environment ministers at the May 1995 meeting over the direction of the initiative. As a result, there was no agreement to release the proposed EMFA and Schedules for public consultation.

Following the October 1995 CCME meeting a new draft Framework Agreement and ten Schedules (Monitoring, Compliance, International Affairs, Guidelines and Standards, Policies and Laws, Emergency Response, Education, Research and Development and Pollution Prevention) were released for public comment. The Environmental Assessment Schedule, which was contained in the December 1994 draft Agreement, was not released, and environmental assessment was stated by the federal government to be "off the table" for discussion as part of the CCME project.

Harmonization is an ambitious and sweeping project which proposes a new way to manage Canada's environment. Since the beginnings of the CCME's discussions on harmonization, the environmental community has raised serious concerns about the rationale, negotiation process and potential implications for the protection of Canada's environment of the initiative.

A detailed analysis of the draft EMFA and the ten schedules released in October 1995 has been developed by the Canadian Institute for Environmental Law and Policy. This analysis entitled "The Environmental Management Framework Agreement - A Model for Dysfunctional Federalism? An Analysis and Commentary," was submitted to the CCME in February 1996.

The undersigned organizations endorse the following findings and conclusions of the analysis.

THE IMPLICATIONS OF THE PROPOSED AGREEMENT

1. Rational and Justification: The Agreement Proposes to Solve a Problem Which Doesn't Exist

The harmonization agreement sets out to "solve" a "problem" that has never been clearly identified and, if identified as provincial/federal duplication and overlap, apparently does not exist to the extent or seriousness that the CCME suggests. This has been confirmed in numerous government and independent studies over the past three years. In a study completed in August 1995 for the CCME, for example, KPMG Management Consulting concluded that "most overlap and duplication which existed has been addressed."

2. The Agreement is a Framework for the Devolution of Federal Environmental Roles and Responsibilities

The proposed agreement would delegate responsibility for the enforcement of federal environmental laws to the provinces and territories, except on federal lands and at international borders. In light of the past track records of many provinces with the delegated enforcement of federal environmental law, and the likely absence of resource transfers from the federal government to the provinces, this seems likely to result in the de facto repeal of affected federal environmental law, such as the Canadian Environmental Protection Act and the Fisheries Act. In addition, the Agreement proposes a process for the systematic review of federal legislation and regulations for "overlap" with provincial environmental requirements. The pulp and paper, mining, and petroleum refining sectors, which are among the largest sources of industrial pollution in Canada, are targeted for early action under the proposed Agreement. Given the overall direction of the harmonization exercise, the likely result is the actual repeal of federal requirements which are concluded to "overlap" with provincial laws and regulations.

The proposed Agreement would also pre-empt the ability of the federal government to act on its own to protect the environment in the future. The development of national environmental policies and standards, Canada's positions in international environmental negotiations, and even educational materials on "national" environmental issues, such as air quality, would occur on the basis of agreement between the federal government and all twelve provinces and territories. In effect, the federal government would be unable to undertake any significant environmental action without the consent of the provinces and territories.

3. The Agreement Proposes to Create a New Level of Government, which is Illegitimate, Unaccountable and Unworkable

Under the proposed Agreement, environmental issues of national concern beyond federal lands would be dealt with through the "national" decision-making processes established through the

Agreement. Decision-making on "national" issues would occur on the basis of consensus among the thirteen Parties to the EMFA. The end result of thirteen different governments being required to reach consensus for action to be taken on "national" environmental issues will be either deadlock, or "lowest common denominator" outcomes.

The same problems would apply to the development of Canada's positions on international environmental issues, and in the implementation of Canada's obligations under such international environmental agreements as the Framework Convention on Climate Change and the North American Agreement on Environmental Cooperation. The establishment of Canada's positions and the implementation of Canada's international commitments would require the agreement of all twelve provinces and territories.

The political legitimacy of the establishment of this "national" approach to Canada-wide environmental issues must be questioned. None of the governments involved in this project can be said to have an electoral mandate to pursue such an approach to national issues, or to participate in the creation of such a wide array of new "national" institutions and processes. Furthermore, parliamentary, legislative or public accountability mechanisms for the institutions and processes created through the EMFA are completely absent. The "national" level of government created by the EMFA would not have public mandate and be answerable to no electorate or legislature. In addition, representatives to the potential Parties to the agreement appear, even at this late stage in the process, to be uncertain about the legal status of their obligations under the proposed Agreement.

4. The Agreement Fails to Address the Roles of Aboriginal People and First Nations Governments in the Management of Canada's Environment

The EMFA purports to construct a new environmental management framework for Canada. However, Aboriginal People and First Nations governments have not been effectively included in the development of the proposed "national" framework, and they are provided no role in the development of national or international environmental policies or other environmental measures.

5. The Agreement Fails to Address the Real Emerging Problems in Environmental Protection in Canada

The available research supports the conclusion that the problem of government duplication and overlap in environmental management in Canada is more rumoured than real. Yet the EMFA proposes to deal with this alleged problem through the dramatic step of devolving federal powers and responsibilities to the provinces and the "national" decision-making processes established by the Agreement. This approach will not result in better protection of Canadians' health or environment. At the same time, the Agreement fails to address the gaps in Canada's environmental protection system being caused by current and anticipated reductions in available resources for environmental protection at the federal, provincial and territorial levels.

PRINCIPLES FOR THE ESTABLISHMENT OF A MORE EFFECTIVE ENVIRONMENTAL PROTECTION SYSTEM IN CANADA

There is a real need to find means of ensuring environmental protection in the context of reduced government resources. Indeed, many Canadians are concerned about the growing gaps in Canada's environmental protection system as a result of budget restraints at all levels. Unfortunately, the proposed "harmonization" agreement does little to address this problem. Future efforts to provide for the more effective and efficient interface of federal, provincial, territorial, First Nations and aboriginal environmental protection efforts must be conducted on the basis of the following principles:

1. Respect for Canada's Constitution. Canadians have rejected, decisively, behind closed door federal-provincial constitutional deal-making. Governments should not attempt to do through administrative agreements what the public has rejected as constitutional change.
2. Improved Environmental Protection must be the Overriding Goal of Intergovernmental Environmental Agreements. Intergovernmental environmental cooperation is not an end in itself. It must be seen as a means to the ends of improved environmental protection and public accountability.
3. Recognition of the Importance of a Strong Federal Role in the Protection of Canada's Environment. This must include:
 - * the conduct of Canada's international environmental relations and the provision of leadership on international environmental issues such as climate change, ozone depletion, biodiversity conservation and persistent toxic pollutants;
 - * the provision of leadership on environmental issues of national concern such as toxic substances, biotechnology products, pesticides, endangered species, and activities which pose transboundary threats to the environment;
 - * the provision of environmental protection in areas of federal jurisdiction, including the operations and activities of federal agencies, and environmental protection in relation to navigation and shipping, interprovincial transportation, sea coasts and inland fisheries, and Indians and lands reserved for Indians;
 - * the provision of environmental protection in areas of national concern and provincial incapacity, such as the evaluation and regulation of new chemicals, biotechnology products and pesticides;
 - * the provision of an adequate science base for environmental policy-making in Canada; and
 - * ensuring that all Canadians have a minimum level of environmental quality, regardless of where they live in Canada through the provision of assistance to those provincial governments which lack the resources to ensure a minimum level of protection of their residents' environment

and through the existence and active enforcement of federal environmental standards.

4. Recognition of the Unconditional Right of Provinces to Raise Environmental Standards. Provinces must be able to move environmental protection forward without obtaining the approval of the other provinces and the federal government.

5. Recognition of the need to address the question of the role of aboriginal people and First Nations governments in the protection of Canada's environment in a manner which respects their aboriginal and treaty rights. Governments must live up to their commitments and fulfil their obligations with respect to aboriginal people and First Nations governments.

RECOMMENDED ACTIONS

The issues raised in the harmonization initiative are fundamental to the well-being of present and future generation of Canadians. In this context, we ask the federal, provincial and territorial environment Ministers to take the following steps:

- 1) do not endorse, sign or ratify the proposed EMFA; and
- 2) initiate a comprehensive and independent review of current federal, provincial, territorial, First Nations and aboriginal environmental roles, responsibilities and capabilities for the purpose of identifying essential needs and critical gaps in relation to the present and future state of Canada's environment. This process should be conducted on a realistic time line, and be supported by thorough research, and appropriate and effective mechanisms for public consultation.

We believe that these steps are essential to ensuring an environmentally sustainable future for present and future generations of Canadians.

Signatories

Canadian Institute for Environmental Law and Policy

Canadian Environmental Law Association

West Coast Environmental Law Association

Pembina Institute for Appropriate Development

Friends of the Oldman River Society