

# The Environmental Management Framework Agreement (EMFA) -- Discussion Paper on Harmonization

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The following paper is intended to serve as a focus for discussions on harmonization within the Atlantic Environmental Networks. The purpose of this paper is to outline the major policy concerns with harmonization, and to pose questions. By answering these questions, we hope to uncover the possible effects of the agreement in the Atlantic provinces. When answering these questions, please refer to examples within your knowledge and provide press clippings where possible.

The Agreement aims to harmonize environmental laws across Canada to make them consistent and avoid duplication. The impetus for this initiative came from government and industry concerns over regulatory duplication, and inconsistent standards. While none of us want to see money being needlessly spent, environmentalists are concerned that good environmental protection may be sacrificed to keep Canadian industry competitive and reduce government spending. Furthermore, good evidence of existing duplication has not been provided, nor has an assessment been undertaken of the Agreement's effect on the environment.

Specific concerns of environmental groups have been raised by the Canadian Environmental Law Association (CELA) and the Canadian Institute for Environmental Law and Policy (CIELAP) in an analysis of the Harmonization Agreement. The analysis gives an excellent overview of implications to the environment at a policy level. What is needed to supplement this analysis is an investigation into the effects on the environment "on the ground" within provinces.

## **Lack of Capacity in Provinces to Enforce Federal Legislation**

A major concern is that Agreement will transfer the obligation to enforce federal environmental legislation to the provinces, without a corresponding transfer of funds to enable provinces to fulfill their new roles.

Specifically, Schedule I transfers to the provincial governments the responsibility to monitor air and water discharges, water quality and ambient air quality. Schedule III transfers to the provincial governments the responsibility to ensure compliance with federal, as well as provincial laws related to industry.

Although the Agreement provides for the possibility of a transfer of funds to meet these additional obligations, it does not guarantee it. As the current federal fiscal situation is an impetus for the agreement, it is unlikely that the federal government will be able to make significant fiscal transfers to the provinces.

A particular concern is that the provinces may not have the technical and human resources to take on the federal government's functions in compliance and enforcement of the federal laws, such as the Fisheries Act (important sections prevent the pollution of waters that are fish habitat), Fisheries Act regulations (prevent pollution from pulp and paper, mining and agriculture sectors), and the Canadian Environmental Protection Act (prevents release of toxic substances across all industrial sectors).

### **Issues for discussion:**

- Do you consider it better to have the province or the federal government enforcing environmental standards against industry? Why?
- If records are available in your province, how many environmental prosecutions have there been, and under what acts? how accessible are such records?
- To your knowledge, how many inspectors are there in your provincial department of environment?
- To your knowledge, how many federal environmental inspectors operate in your province?
- Can you think of any examples where the province failed to enforce environmental standards but the federal government did? (examples might include water pollution, toxic pollution or environmental impact assessment) Please provide press clippings where possible.
- Are you aware of instances of duplication in the enforcement of environmental laws?
- Are you aware of instances of co-operation between provincial and federal governments in enforcement?

### **No Minimum Level of Environmental Protection to be Set by the Federal Government**

Under the Agreement, the federal government will be unable to act as a guarantor of a minimum standard of environmental protection for all Canadians, nor to prevent the emergence of "pollution havens" among the provinces.

According to the Schedule V of the agreement, so-called "national" guidelines will be established by negotiation amongst the provinces and the federal government. These unenforceable guidelines will then be implemented by the provinces.

The process of negotiation itself may lead to a downward harmonization of environmental standards towards the lowest level maintained by the individual provinces. According to the Framework Agreement, Provinces will be able to set stricter environmental standards. However, to do so, they must be justified by specific environmental circumstances, environments or environmental values within their jurisdiction.

### **Issues for Discussion:**

- What particular Federal environmental standards do you think must be maintained or strengthened? (for example in the pulp and paper, mining, potato processing, petroleum refining, meat and poultry products sectors, or with respect to the release of toxics)
- Is there a sector in your province's economy that could have a large, negative effect on environmental standard setting within the province? (Please provide examples and evidence where possible)
- Are you aware of instances of any duplication and waste that have resulted because of overlapping federal - provincial powers in standard setting?
- Are you aware of environmental benefits from federal regulation that might not have been achieved with provincial regulation? (for example pollution from pulp and paper plants)
- Do you believe there is a need for the Federal government, as opposed to the provincial government, to set air quality, drinking water quality, soil quality standards, and standards for discharges into air and water? Why or why not?

### **Canada's International Obligations**

Canada has signed numerous international environmental agreements which the federal government and the provincial governments must implement. According to the Vienna Convention on the Law of Treaties, while implementation may be delegated to the provinces, the government of Canada is ultimately responsible in international law for the implementation of its international obligations. Concerns have been raised that the harmonization agreement will mean that Canada will not be able to comply with its international obligations.

For example, under the North American Agreement on Environmental Co-operation (NAAEC), Canada is obliged to ensure that its laws provide for high levels of environmental protection and compliance with its environmental laws and regulations. According to NAAEC, Canada is responsible for the effective enforcement of its environmental laws. This does not mean that Canada cannot delegate enforcement responsibilities. However, delegation of enforcement without also transferring the resources required for enforcement may place Canada in breach of its international obligations.

In addition, the International Labour Organization's industrial accidents agreement requires that Canada have an emergency response system in place to minimize the effect of major industrial

accidents. Schedule VII of the Agreement makes the provincial governments responsible for emergency response to spills in the provinces. If a province lacks an emergency response plan, and is not transferred the resources to construct a plan, Canada may be in breach of its obligations relating to industrial accidents.

**Issues for Discussion:**

- Does your provincial government have an emergency response system in place to deal with major industrial accidents?
- Has your province experienced large industrial accidents? Are they likely to re-occur?
- What are the relative roles of the provincial and federal governments with respect to emergency response in your province?

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