The CCME Harmonization Initiative

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Backgrounder on the CCME Harmonization Project
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The CCME harmonization initiative began in November 1993. The current draft Accord and Sub-Agreements are the third major set of proposals brought forward by the CCME. The previous drafts have been withdrawn as a result of very negative responses from non-governmental stakeholders. At the November 1996 CCME meeting the federal and provincial ministers of the environment agreed "in principle" to the "National Accord on Environmental Harmonization." The Ministers are scheduled to sign the Accord and sub-agreements in the areas of standing setting, inspections and environmental assessment at the May 1997 CCME meeting. Further sub-agreements, in such areas as international affairs, emergency response and reporting and monitoring are scheduled to be developed over the next three years.

The "National Accord on Environmental Harmonization."
This was "approved in principle" by the Ministers in November 1996. Accord includes statements of goals and objectives, including a commitment to achieving the "highest level of environmental quality." However, this commitment is qualified by placing it in the context of "sustainable development." The core of the Accord is the section dealing with sub-agreements. It requires a "one window" approach to the delivery of services, and explicitly bars the other level of government acting when one level of government is assigned a specific responsibility. This eliminates the possibility of "backstopping" by one level of government when the other fails to act. The Accord can only be amended by unanimous consent, and contains no sunset clause.

The Inspections Sub-Agreement.

The Inspections Sub-Agreement specifically targets situations where there is the potential for "backstopping" by different levels of government for elimination (Section 2.3). Under the proposed Sub-Agreement, inspection activities for the purposes of the enforcement of federal law applicable to industrial and municipal facilities and discharges are to be assigned to the provinces. Once this arrangement is in place, the federal government would not be permitted to conduct inspections where a province fails to do so, even in cases of potential for immediate harm to the environment and health. Faced with an intransigent province, under the proposed agreement, it could take up to a year, and require abrogation of the agreement, for the federal government to be able to conduct an inspection for the purposes of the enforcement of its laws.

Such arrangements could lead to extremely dangerous situations. It would mean, for example, that the federal government would be unable to inspect a PCB storage site for compliance with the *Canadian Environmental Protection Act* (CEPA) regulations, were a province has failed to do so, even if it had information that PCB's were being stored or handled improperly. The sub-

agreement also has major implications for the principle of Ministerial responsibility, as the Minister of the Environment would be barred from taking the steps necessary to enforce laws such as CEPA, the pollution prevention provisions of the *Fisheries Act*, for whose administration he or she is responsible to Parliament.

The Standards Sub-Agreement.

The proposed sub-agreement on standards is also deeply problematic. Under the agreement standards will be set on the basis of unanimous agreement among the parties. This almost certain to result in lowest common denominator standards, as the jurisdiction favouring the weakest requirement will have a veto over any proposed Canada-wide standard.
Perhaps even more seriously, it appears that the proposed Canada-wide standards will hardly be standards at all, given the degree of flexibility proposed for their implementation (ss. 3.1.6, 4.2, 6.1). In addition, there are no effective mechanisms proposed to deal with situations in which a jurisdiction fails to implement an agreed standard. Indeed, other levels of government are explicitly barred from acting in such situations (ss. 4.4 and 6.6).

The assignment of responsibility to the provinces for the implementation of standards affecting the industrial and municipal sectors is also of serious concern. In combination with the other proposed provisions of the sub-agreement, this would eliminate the possibility of the development and implementation of federal baseline standards for the major sources of air and water pollution in Canada in the future.

This proposal is particularly alarming given that Environment Canada officials have indicated that there is an intention to apply the proposed agreement retroactively to the existing federal air and water pollution control standards under CEPA and the *Fisheries Act* for pulp and paper mills, metal mines and smelters, and petroleum refineries and other industrial facilities. Such a step would effectively eliminate the only meaningful Canada-wide environmental standards currently in existence, and remove what few constraints exist on the moves of many provinces to lower their own environmental standards.

The Environmental Assessment Sub-Agreement.

A sub-agreement in this area is under development. It is apparently going to focus on areas of potential overlap between federal and provincial environmental assessment processes. This is despite the fact that the CCME has be unable to provide any examples of when separate federal and provincial assessments have occurred in parallel on the same project, and that the Canadian Environmental Assessment Agency has indicated that this has not, in fact, ever happened. Many provinces, including Alberta and Quebec, are pressing for the elimination of federal environmental assessments requirements for projects which occur off federal lands.