

An Environmental Policy for Canada

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Introduction

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The more we understand the effects of environmental degradation – of toxins in our food and water, of climate change and ozone depletion, the more we see the links to ill health. The longer we ignore the effects of what we have done to our environment, the bigger, and more expensive, cleaning up after ourselves becomes. Canadians want and deserve a healthy environment. This is confirmed by recent polls in Canada.

Twice yearly, since 1988, the Canadian Council of Ministers of Environment commissioned polls to determine public attitudes to environmental law. The latest results, released last September, demonstrate that the public attitudes have grown *more* supportive of strong environmental laws over the years.

Most Canadians said Canada has gone only 30% of the way toward a safe environment. 78% said environmental regulations should be strictly enforced even in times of recession. When asked to identify the best way to reduce industrial pollution, 48% said the best way to reduce industrial pollution is to punish companies.

Every recent poll since has demonstrated similar results. In fact, a 1996 poll by Environics demonstrated that 82% of Canadians want stricter environmental laws. The only real difference of opinion was whether these laws should be strengthened immediately or over a period of time. In a more recent, Insight Canada poll, Canadians flunked the federal government's overall handling of environmental topics. They gave Canada a rating of

4.8 (out of 10) and the provinces a 4.7.

The federal government is at a cross-roads in terms of its role in the protection of the environment. The present trend is toward downsizing, devolution and deregulation.

Over the past three years, for example, Environment Canada has lost over 1500 positions and has suffered from substantial budget reductions. The federal government is also busy devolving its roles and responsibilities to the provinces through such initiatives as the proposed "Harmonization Accord". The effect of these changes will be to hand off traditional environmental responsibilities to the provinces, most of which have neither the ability nor the confidence of Canadians to do the job.

The third trend is deregulation. Bills such as Bill C-62, the proposed *Regulatory Efficiency Act*, and the prevailing push to voluntary (as opposed to regulatory) measures for industry compliance give the clear indication that the federal government may be slowly dismantling the regulatory foundation for environmental protection which has been constructed over the past 25 years.

Downsizing, devolution and deregulation pose significant threats to the health and well-being of Canadians. The directions and recommendations outlined in this document provide an alternative vision for the federal role and the protection of the Canadian environment. It is a vision we are asking leaders of all parties to embrace.

Environmental Report Card on the Government

Subject	Grade	Comments
Control of Toxic Substances	Unsatisfactory	The enactment of new legislation to make pollution prevention a national goal and "phase-out persistent toxic substances" was a Liberal Red Book commitment. Although Bill C-74, a new <i>Canadian Environmental Protection Act</i> was introduced in December, it did not make it to second reading. Even if it had passed, it would not have lived up to the Red Book's commitments.
Biotechnology	Unsatisfactory	Despite a Standing Committee report to develop a regulatory framework for the field, the government proposed to weaken requirements in Bill C-74.
Endangered Species	Unsatisfactory	The federal government attempted to get Bill C-65, a new <i>Endangered Species Act</i> through but could not, even though it would have included the amendments proposed by the Standing Committee.
Climate Change	Unsatisfactory	The CO ₂ commitments were never met and in fact emissions have increased almost 10% above 1990 levels (while the Red Book promised a 20% reduction of the 1990 levels). HCFC commitments to control HCFCs were weaker than promised and proposed phase-out deadline pushed back from 2020 to 2030.
Harmonization (Strong Federal Role)	Unsatisfactory	The federal government is about to conclude an agreement with the provinces to devolve significant roles and responsibilities to the provinces. Protection of fish habitat is also proposed to be downloaded.
Environment & Trade	Unsatisfactory	The Canadian government continues to pursue trade policies that have serious, negative effects on the environment. It has not kept its Red Book Commitments on trade.

General Comments

Canada is not working to its potential. The Liberal government should be commended for making strong promises to protect the environment in the 1993 Red Book. Some of those commitments were honoured, such as the establishment of an Environmental Commissioner. Other notable achievements include banning the substance MMT from gasoline. However, most promises remain unfulfilled. Moreover, the plan to import plutonium and selling Candu nuclear reactors in Asia, along with the issues identified above, make it impossible to give the government a passing grade. Canada must try harder and make environment more of a priority.

Toxics In the Canadian Environment – Poisoning Ourselves

Paul Muldoon

Toxic substances are a major problem in Canada. Bill C-74, which died with the election call, was supposed to update the *Canadian Environmental Protection Act* (CEPA), the federal government's main legislative tool with respect to toxics. However, Bill C-74 would have done very little to protect the environment and the health of Canadians. A new government needs to re-introduce a much improved CEPA. Canada should also commit to the elimination of the most dangerous toxics in international negotiations for global treaties.

Nature of the Problem

Toxic substances continue to pose a threat to the health of Canadians and their environment. According to the National Pollutant Release Inventory (*Summary Report*, 1994) some 190,000 tonnes of toxic substances are released into the Canadian environment each year. This number grossly underestimates the quantity of pollutants created since it does not take into account the shipment of waste off-site from the reporting facilities, or the thousands of small facilities that release pollutants into the environment.

The environmental impacts of these substances continue to be revealed. Historically, the focus on determining the effects of toxins was on the acute effects or the potential for them to cause cancer. However, in recent years, studies on a range of wildlife and fish species have indicated population declines, reproductive impairment, immune suppression, developmental problems and other effects.¹ These effects have been linked to the build-up of substances and the increasing body burden of chemicals. Of particular concern is the effect on endocrine systems. Some substances, such as dioxins, appear to act as artificial hormones that disrupt the normal hormonal activity in animals and possibly humans. Moreover, impacts on endocrine systems may not have to depend on long-time exposure since it is suspected that even single doses at critical times in the development stages can be detrimental.

In reviewing data on toxics in the Great Lakes, the International Joint Commission stated that:

“We do not know what **all** of the effects of human exposure will be over many years. Future research will clarify whether low-level and long-term exposures, repeated exposures, or isolated short-term exposures at sensitive stages of fetal development are most critical. For the Commission, however, there is sufficient evidence **now** to infer a real risk of serious impacts in humans. Increasingly, human data support this conclusion.” [*Emphasis in original text*]²

The primary federal legislative tool to address toxic substances is the *Canadian Environmental Protection Act* (CEPA). Enacted in 1988, CEPA has been long regarded as being in need of substantial reform. Some of the problems with the current CEPA include:

- Of the 23,000 substances presently in commerce in Canada, only 44 substances have been assessed under CEPA to determine their toxicity and only another 25 are currently being assessed;
- Some substances, which are commonly assumed to be toxic, such as Toluene and Used Crankcase Oils, have been found not to be “toxic” for the purposes of the Act; and,
- the enforcement regime is weak with only a handful of prosecutions a year.

Progress to Date

The House of Commons' Standing Committee on Environment and Sustainable Development initiated a review of CEPA in 1994 and released its recommendations in a 1995 report titled: *It's About Our Health! Towards Pollution Prevention*. The 141 recommendations in that report, if they had been accepted, would have significantly strengthened CEPA.

The federal government's response only proposed to adopt some of the Committee's recommendations.

On December 10, 1996, Bill C-74, the new *Canadian Environmental Protection Act* was introduced into Parliament. The election was called before it reached Second Reading. Although some provisions represented improvements, Bill C-74 still had a number of serious flaws.

- **The Bill did not commit to bans and phase-out of the most dangerous substances.** Although the Bill aimed for the "virtual elimination" of some substances, the definition of this term would have allowed industry to continue to use and generate these substances so long as releases are controlled to levels that are below detection and if those levels can be established to cause harm. There is no provision to "virtually eliminate" endocrine disruptors unless they are persistent and bioaccumulative.
- **The Bill would have made CEPA a residual statute.** Under the Bill, CEPA would have been transformed from being the cornerstone of federal environmental law to that of a residual statute, which only applies where no other federal laws apply.
- **The Bill's citizen rights provisions would have been ineffective.** While the Bill proposed a new right for Canadians to bring to court those who violate the provisions of CEPA, the right to bring such an action was limited by so many qualifications that it is essentially without effect. The provisions were only operative *after* damage to the environment or human health had occurred.
- **The Bill did not make pollution prevention mandatory.** While the Bill declared pollution prevention a national goal, it did not require pollution prevention activities, such as pollution prevention planning.

While Canada supports the development of an international treaty to deal with some toxics, such as persistent organic pollutants, it should take a more aggressive stance in calling for the global elimination of some of these pollutants. International negotiations are scheduled to begin in 1998.

CELA's Recommendations

1. A new CEPA must include provisions to comprehensively deal with toxic substances, including:

- (a) a commitment to the phase-out of the use and generation of all inherently toxic substances, and in particular, those that are persistent and bioaccumulative or disrupt the endocrine systems. Immediate priority should be given to the development and implementation of a dioxin elimination plan.
- (b) substances should be selected for regulation using a chemical class approach, with an emphasis on families of substances rather than a substance-by-substance approach.
- (c) mechanisms should be included to ensure that workers and communities are included in decisions to move toward cleaner production processes.
- (d) The use or manufacturing of new chemicals which are persistent, bioaccumulative and toxic should not be permitted in Canada.

2. A new CEPA must implement pollution prevention by mandating pollution prevention plans for all substances subject to the law. There is a need for government to examine how to fully implement pollution prevention and the way it is implemented under the federal environmental authority.

3. A new CEPA must include effective public participation rights, including the right to effectively participate in decisions and bring an action to prevent harm to the environment or to human health.

4. A new CEPA should apply to all departments in matters covered under the Bill.

5. Canada should aggressively urge the international community to implement strong provisions in international treaties designed to address toxics, and in particular to develop elimination strategies for substances of concern.

¹ TE Colborn et al, *Great Lakes, Great Legacy?*. Washington: The Conservation Foundation and the Institute for Research on Public Policy, 1990, Chapter 6.

² International Joint Commission (IJC), *Seventh Biennial Report*, 1995, p.5.

Biotechnology and the Environment – Tinkering with Creation

Paul Muldoon

Biototechnology presents substantial environmental and human health threats in Canada. At this time, the industry is suffering from the lack of a comprehensive regulatory framework to assess the environmental and human health risks from this technology and to ensure that the public have the opportunity to participate in decisions relating to environmental protection. What is needed is the development of that regulatory framework, and in particular, substantial improvements to the existing *Canadian Environmental Protection Act (CEPA)* regarding biotechnology.

Nature of the Problem

Biotechnology, that is, the genetic engineering of crops, farm animals, microbes, and other living things for commercial purposes, is a rapidly growing industry in Canada. By far, the busiest area of bio-engineering activities in Canada is the agricultural sector, and in particular, crop plants commonly found in local supermarkets such as canola-based oils, potatoes, tomatoes, corn and soybeans.¹ The number of releases has increased substantially since the first fourteen releases in 1988, to over 750 in 1994 and over 520 in 1995.

The potential, but real, environmental problems facing this new technology are enormous. There is concern that bio-engineered organisms may cause damage to other species, that genetic information may be transferred between a genetically engineered organism and a related species and that natural systems may be disrupted.

The current applications of biotechnology in the agricultural sector, together with their environmental concerns, include:²

- **Herbicide Resistance:** About one-half of the current research focuses on making crops resistant to herbicides. This means that a specified herbicide can be sprayed on crops allowing the crops to survive while poisoning the weeds around it. There are a variety of concerns with herbicide resistance. Most important, there is concern that the use of herbicide-resistant crops may increase the

total amount of herbicides used and that the intense use of herbicides will cause adoptive pressures which lead to herbicide-tolerant weeds.

- **Resistance to Pests:** Significant focus has also been put in pest-resistant crops. These crops have altered genes which produce chemicals to kill insects feeding on the crop. Commonly, these crops use the Bt gene (*Bacillus thuringiensis*). Ironically, while often used as an alternative to chemical pesticides, organic farmers are particularly opposed to the approval of Bt-engineered crops because of the fear that the widespread use of Bt crops will cause the target insects to develop resistance to the Bt toxin.
- **Anti-biotic Resistance:** Crops have also been altered to be resistant to certain bacteria. However, scientists have raised the question of whether disease-causing bacteria could somehow incorporate the anti-biotic resistant gene into their genetic make-up.
- **Genetically Altered Animals:** Farm animals have also been genetically altered to increase their body weight, to increase milk production or to fight diseases. Perhaps the most controversial application thus far has been the genetically engineered bovine growth hormone (BGH).

It has been noted that the moral questions raised by the emergence of bio-engineering and its products have yet to be fully debated in Canada. What are the ethical issues in the manipulation of species? Do Canadians even want or need genetically engineered food?³

Aside from ethical issues, there is a high risk of abuse. As *A Taste of Canada* notes:

“Bioengineered food does not have to be labelled as such. Canadian consumers are robbed of their right to know what they eat. No tracking or monitoring of bio-engineered food is done in Canada. We simply do not know where and how much bio-engineered food is grown in Canada and what supermarkets or grocers sell them.”⁴

Progress to Date

The regulation of biotechnology is marked by piece-meal legislative efforts producing an incomplete, insufficient and unsatisfactory regulatory framework. In 1995, the Standing Committee on Environment and Sustainable Development reviewed the topic in the context of the *Canadian Environmental Protection Act* (CEPA). The Standing Committee called for a new part of CEPA giving extensive powers to Environment Canada to regulate biotechnology.⁵ However, when Bill C-74, the new CEPA, was introduced in December of 1996, provisions governing biotechnology were among the most problematic.⁶

The effect of Bill C-74 would be to permit ministers other than the Environment Minister to exempt biotechnology products from CEPA's existing requirements to review their environmental and human health impacts prior to their introduction to Canada. For those products that are subject to a review, that review would not be as stringent or comprehensive, as is the case now.

CELA's Recommendations

Bill C-74 died on the order paper with the call for the federal election. What is needed is a stronger regulatory framework governing biotechnology. This would require strengthening a number of fed-

eral statutes, including CEPA. The crucial elements in this improved legislative framework are:

- **new provisions that would require the labelling of all bio-engineered food;**
- **provisions requiring the full assessment and comprehensive environmental monitoring of the products of biotechnology with immediate attention given to herbicide resistance and Bt-resistance crops. The approval for these crops should be reviewed and no new approvals given until these full assessments are undertaken;**
- **mechanisms that would dramatically increase funding to understand the ecological and human health implications of biotechnology, in the short and the long-term;**
- **provisions to make the decision-making processes more open and transparent regarding the products of biotechnology, including notice and comment on major regulatory decisions such as the approvals of field tests and product approvals; and better access to information and appeal procedures relating to major regulatory decisions; and,**
- **the establishment of an independent advisory commission to develop an appropriate legal and institutional framework for the regulation of bio-engineered products in Canada, as recommended by the Standing Committee on Environment and Sustainable Development.⁷**

¹ For a more detailed summary of the issues related to biotechnology, see: B. Mausberg & P. Muldoon, *A Taste of Canada – Comments and Analyses on Toxic Chemicals in Your Meals and Bio-engineered Food in Canada*, prepared on behalf of the Canadian Environmental Law Association, April 1997.

² *Ibid*, pp.16-17.

³ *Ibid*, pp.13-14.

⁴ *Ibid*, p.17.

⁵ Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June, 1995, Chapter 8.

⁶ For a submission critiquing the government response to the standing Committee's report on biotechnology, see, *It's Still About Our Health!*, Canadian Environmental Law Association and Canadian Institute for Environmental Law and Policy, March 1996, Chapter 7.

⁷ Standing Committee on Environment and Sustainable Development, *Biotechnology Regulation in Canada: A Matter of Public Confidence* Ottawa, 1996, pp. 38-39.

Endangered Species – Killing off Creation

Rick Lindgren

Canada is popularly known for its vast wilderness and its rich diversity of wildlife species. The reality, however, is that approximately 100 hectares of wilderness are lost *each hour* in Canada, and a number of wildlife species – such as the passenger pigeon, sea mink and blue walleye – have become extinct. Numerous other Canadian species – such as the burrowing owl, beluga whale and swift fox – are now at considerable risk, largely because of habitat destruction, toxic pollution, and other consequences of human activity.

These alarming statistics are reflected in the most recent wildlife status assessments prepared by the expert Committee on the Status of Endangered Wildlife in Canada (COSEWIC):

Category	No. of Species
Extinct	10
Extirpated	13
Endangered	66
Threatened	71
Vulnerable	131
Total	291

Although the number of species at risk has dramatically increased in recent years, **Canada still lacks federal legislation to protect endangered species or their habitat.** Most legal experts agree that the federal government has clear constitutional authority to enact endangered species legislation. However, the federal government has failed to exercise this jurisdiction to date.

Nature of the Problem

It is well recognized that conserving biodiversity in general, and protecting wildlife species in particular, is necessary for various reasons:

- **Ecosystem Benefits:** Flora and fauna play important roles in maintaining essential ecological functions and processes.
- **Recreational, Economic and Aesthetic Benefits:** Wildlife-based activity (eg. bird-watching, eco-tourism) is a billion-dollar industry in

Canada, and it provides numerous social, cultural and aesthetic benefits.

- **Food and Medicine:** Much of Canada's food, medicine and other material needs are provided by, or derived from, plants and animals.
- **Ethics:** Many persons believe that the human species does not have the moral right to cause the extinction of another species.

However, Canadian governments have successively failed to develop or implement effective protection for species at risk. As noted above, there is *no* federal endangered species law at the present time, and most provinces and territories lack endangered species legislation. Even in the few provinces that have endangered species laws (eg. Ontario, New Brunswick, Quebec and Manitoba), there have been serious ongoing problems with the scope, application and enforcement of such laws.

Given the numerous shortcomings in this piecemeal approach, there has been overwhelming public support in Canada for the passage of comprehensive *federal* endangered species legislation. For example, recent national polls reveal that over 90% of Canadians firmly support federal endangered species legislation -- even if such legislation restricts private land use or requires the expenditure of public funds.

Progress to Date

Since the early 1990's, there has been some limited progress in developing federal endangered species legislation in Canada. This progress may be traced back to the *Convention on Biological Diversity*, which Canada helped draft at the 1992 Rio Earth Summit. Among other things, the Convention obliges signatories, including Canada, to "develop or maintain necessary legislation ... for the protection of threatened species and populations".

In April 1993, Parliament's Standing Committee on Environment reviewed Canada's obligations under the Convention and concluded that Canada must

take immediate steps to develop an integrated legislative approach for protecting endangered species, habitat, ecosystems and biodiversity.

In November 1994, the federal government released a discussion paper on endangered species conservation. Several months later, the federal government established the Endangered Species Task Force. This committee, which included representatives from resource industries and conservation groups, unanimously recommended the passage of federal legislation that:

- applies to the full extent of federal jurisdiction, including protection of species that range across national borders;
- ensures that listing decisions are made by a scientific committee, not politicians;
- prohibits harm to endangered species or their homes; and,
- protects critical habitats through implementation of recovery plans.

Throughout 1995, the federal government undertook public consultation and held a series of workshops on endangered species protection. In August 1995, the federal government released a "legislative proposal" that would have largely left endangered species protection to the provinces.

In the February 1996 Throne speech, the Liberal government promised that federal endangered species legislation would be passed during the current mandate. In October 1996, Canadian wildlife ministers developed the *National Accord for the Protection of Species at Risk*, which called upon Canadian governments to establish legislation to protect endangered species and their habitat.

Shortly thereafter, federal Environment Minister Sergio Marchi introduced Bill C-65, the *Canada Endangered Species Protection Act*. This Bill contained a number of important reforms, such as entrenching the role of COSEWIC and establishing procedures for developing recovery plans.

Canada's conservation groups, however, strongly objected to the limited scope and application of Bill C-65, which, in essence, was restricted to fish, migratory birds, and species living upon federal lands. The fate of the remaining species at risk would generally be left to the patchwork of provincial laws

and programs. Among other things, conservation groups also expressed considerable concern about the limited amount of habitat protection found in Bill C-65.

After its introduction, Bill C-65 was referred to the Standing Committee on Environment and Sustainable Development, which heard from over 100 witnesses during public hearings on Bill C-65. Thereafter, the Standing Committee passed some modest amendments to Bill C-65; however, the federal government proposed some subsequent amendments that generally weakened Bill C-65. Second Reading debate on Bill C-65 commenced in April 1997 but was effectively terminated by the federal election call. Thus, Bill C-65 was *not* passed into law.

CELA's Recommendations

Given the urgency of endangered species conservation, it is incumbent upon the next Government of Canada to immediately pass federal endangered species legislation. At a minimum, this legislation should provide for:

- **national standards covering *all* species at risk throughout Canada;**
- **the listing of species at risk on a sound scientific basis by a non-partisan, expert and independent scientific committee;**
- **prior assessment and review of all undertakings that may affect species at risk or their habitat;**
- **development and implementation of recovery plans for species at risk;**
- **broad prohibitions against harming endangered or threatened species or their habitat;**
- **substantial penalties for violations under the legislation; and**
- **effective enforcement and compliance mechanisms, including administrative orders and citizens' suits.**

Given the widespread public support for federal endangered species legislation, the enactment of such legislation should be a high priority for the new Government of Canada.

Climate Change – Upsetting the Balance

Kathy Cooper

Canada is moving fast in the wrong direction on energy policy to confront climate change. The continued build-up and long-term presence of greenhouse gases in the earth's atmosphere will have devastating consequences on the climate, human settlements, and the biosphere. Commitments to reduce greenhouse gas emissions made in the Liberal Red Book and by the Liberal government have not been met.

Nature of the Problem

The science is irrefutable. Billions of tonnes of human-made greenhouse gases - mainly carbon dioxide from burning coal, oil, gas, and wood - are changing the earth's climate. Other greenhouse gases include methane, nitrous oxide, and coolants, like hydrochlorofluorocarbons (HCFCs) and other ozone-depleting substances, all of which are many times more potent than CO₂ as greenhouse gases.

What are the predictions? In a consensus document¹ by over 2500 scientists from around the world, the picture is very bleak. Climate scientists state that global average surface temperatures will increase between 1.0 and 3.5 Celsius degrees by 2100. As a global average, this change amounts to the fastest warming trend in 10,000 years. Effects will include:

- rising sea level and changing ocean currents
- changing precipitation patterns
- changing temperature zones
- increasing storm frequency and more intense rain
- more heat waves and droughts
- increased incidence of forest fires and pest outbreaks

Heat waves:² "Unusual" weather may become routine if scientific predictions continue to pan out. Since 1980, the eleven hottest years in recorded history likely contributed to record increases in heat wave-related deaths in large cities. With more warming, these killer heat waves will continue to increase in number and severity around the world.

Disease: Public health specialists are noticing

evidence of higher mortality rates as the spread of infectious diseases is on the rise in a warmer world. Scientists note that the weather impacts, including severe droughts, heavy rainfall and higher temperatures, will all assist the spread of new varieties of pests, pathogens and parasites³. For example, we could see malaria as far north as Toronto, and the northern spread of hanta virus and Lyme's disease⁴.

Canada: Environment Canada scientists point out that Canada's mid- to high-latitude location and large interior will mean higher increases in temperature and precipitation. Plants and animals are unlikely to be able to adapt quickly enough. Extinctions are likely. Several recent events and trends confirm what the scientific models are predicting. The 1.8 million sq. km. Mackenzie Basin watershed has warmed at three times the global rate over the last 100 years with record forest fires, low lake levels and melting permafrost. The increased number and extent of forest fires has extended across the northern Prairies due to below average snow cover, early and fast spring warming and drying of vegetation combined with record heat in June and July. Alberta and Manitoba have experienced the worst flooding in a hundred years. The conditions that have contributed to the Red River flood are fully consistent with predictions of the effects of climate change on the interior of North America.

Progress To Date

At the first Earth Summit in Rio in 1992, then Prime Minister Brian Mulroney signed the Framework Convention on Climate Change. Canada committed to reducing, by the year 2000, greenhouse gases to 1990 levels - an incredibly modest commitment given that climate scientists were saying that reductions of 20% and ultimately 60 to 70% were (and still are) required.

The Liberal Red Book promised a 20% reduction in CO₂ emissions (from 1990 levels). Also promised were deadlines for stopping production and consumption of hydrochlorofluorocarbons

(HCFCs). Since the Liberals came to power, HCFC controls have been weaker than promised and a proposed deadline for total phase-out has been pushed back from 2020 to 2030.

Once in government, the Liberal election commitment on CO₂ was reduced to stabilizing emissions at 1990 levels. Nor has this commitment been met; as of 1995, emissions had increased almost 10% above 1990 levels. Liberal tax breaks to Alberta tar sands development have spurred more than \$6 billion in investment committing Canada to significant increases in greenhouse gas emissions.

Canada's strategy for achieving the most significant emission reductions from the major polluters is through the "Voluntary Challenge and Registry (VCR)". Like many voluntary programs, it is unaccountable and ineffective and in the face of this failure, contains no teeth to require emission reductions by regulatory means.

According to a report⁵ commissioned by Canada's Energy and Environment Ministers, the reporting requirements of governments and industry under the VCR make it impossible to assess progress. Despite such a crucial flaw, Natural Resources Canada is making rosy assumptions about the success of the program in achieving the 1990 stabilization target by 2000. In contrast, the consultants suggest that greenhouse gas emissions in Canada could be 12.3% above 1990 levels in 2005, 16.5% above 1990 levels in 2010 and 34% above 1990 levels in 2020.

In international negotiations Environment Minister Sergio Marchi has helped to draft important statements for countries to adopt during future negotiations including commitments for a legally binding emissions reduction target. However,

Marchi has not had federal Cabinet or provincial backing. Indeed, Ontario, Nova Scotia, Alberta and the fossil fuel sector are against the legally binding emissions reduction target and the industry argues that Canada's negotiating delegation should be handled by trade representatives not the Environment Minister.

CELA's Recommendations

To adapt to global warming and to offset the most serious consequences, Dutch scientists now conclude that the *rate* of change is crucial. They recommend that average warming should not exceed 1/10th of a degree per decade and long term sea level rise should not exceed 20 cm. To achieve this rate of change, CO₂ emissions in Annex 1 (OECD and East European) countries should be cut by 35 to 65% by 2010.⁶ In addition:

- **Canada's next federal government must ensure Canada's Rio commitment to reduce greenhouse gas emissions to 1990 levels by the year 2000.**
- **Canada must support a legally binding commitment of 20% cuts in greenhouse gas emissions from 1990 levels by 2005 at the Third Conference of the Parties of the Framework Convention on Climate Change to be held in Kyoto, Japan in December 1997.**
- **To achieve the emission targets Canada should implement the Climate Action Network rational energy program and generate a million person years of work by 2010.**

Thanks to: Sierra Club of Canada, Climate Action Network, Greenpeace and the Natural Resources Defense Council.

¹ *Second Assessment Report of the Intergovernmental Panel on Climate Change*, 1995.

² University of Delaware climatologist, Laurence Kalkstein, as reported in "Global warning", *Amicus Journal*, Spring, 1996.

³ Paul Epstein, Harvard School of Public Health, as reported in "Global warning", *Amicus Journal*, Spring, 1996.

⁴ "The Warming Warning: Climate Change" in *The Fate of the Great Lakes, Sustaining or Draining the Sweetwater Seas?*, Canadian Environmental Law Association and Great Lakes United, February, 1977.

⁵ "Reviewing the Progress Made Under Canada's National Action Program on Climate Change", *Resource Futures International*, et. al., November, 1996.

⁶ *The Global Climate System: Near Term Action for Long Term Protection*. Image Project. RIVM, National Institute of Public Health and the Environment, The Netherlands, February, 1996.

Harmonization — Undermining the Federal Role

Paul Muldoon

There are many threats to the Canadian environment, including how environmental laws and policies are developed, administered and enforced. Proposals under discussion right now by the federal and provincial governments would effectively delegate important roles and responsibilities to the provinces, even though the provinces may not have the will or the capacity to do the job. These discussions are important because they will undermine 30 years of Canadian environmental law and policy.

Nature of the Problem

The Canadian Council of Ministers of the Environment (CCME) are "harmonizing" environmental laws and policies between the federal and provincial governments. These discussions are premised on the assumption that there was an extra-ordinary and unnecessary "duplication and overlap" of environmental laws and policy between the two levels of government. Despite repeated requests from environmental and community groups from across Canada, no studies were produced or undertaken to identify the nature and extent of overlap and duplication. The first draft agreement, entitled *Environmental Framework Management Agreement* (EMFA), along with a series of subagreements, was released in the fall of 1994.

The 1994 EMFA was renegotiated in 1995, yet was not concluded when the provincial and federal ministers met in May of 1996. The third try was endorsed, but not concluded in November of 1996. The Agreement, now entitled *A Canada-Wide Accord on Environmental Harmonization*, is set to be concluded in the fall of 1997. This document has three sub-agreements: environmental assessment, standards, and inspections. Over the next three years, virtually every aspect of environmental law and policy will be covered by a sub-agreement including enforcement, monitoring, policy and legislation, international agreements and state of the en-

vironment reporting. What is driving the harmonization process is not the avoidance of duplication and overlap, but the strong desire of the provinces to have more control over environmental issues, or put another way, less federal influence in environmental protection.

Why should we be concerned about this proposed "harmonization agreement"? The key concerns about the proposed agreement include the following:

- **Downloading:** The agreement will result in the downloading of federal environmental protection responsibilities to the provinces and do away with the "failsafes" provided by the presence of the federal government. Under the proposed sub-agreement on inspections, for example, once responsibility for the enforcement of a federal law is transferred to a province, the federal government would not be permitted to conduct inspections, even if the province fails to do so.
- **Abandoning the federal standard-setting role:** Under the proposed agreement, national environmental priorities and standards would be set by the CCME, not the federal government. Even where national "standards" are agreed to, in most cases their implementation would be at the discretion of each province.
- **Federal enforcement lacking:** The federal government would no longer be responsible for the development and enforcement of standards applicable to particular industrial sectors, including *existing* federal water pollution control regulations for pulp and paper mills, metal mines, and other industries.

The *Canada-Wide Accord on Environmental Harmonization* is only one example of federal downloading. Another is the proposal by the Dept. of Oceans and Fisheries to amend section 35(2) of the *Fisheries Act* to allow the administrative delegation, to the provinces of provisions pertaining to the granting of approvals for works affecting fish habitat. This amendment would also delete this *Fisheries Act* provision as a trigger for the application of

the *Canadian Environmental Assessment Act*, except if a project is specifically listed in a regulation. A recent critique by the Quebec Environmental Law Centre noted the stated rationale for the proposal (to avoid duplication in environmental enforcement and negative economic effects) "has not been backed up with hard evidence."¹

These initiatives seem to run contrary to the expectations of Canadians with respect to the federal role in environmental protection. In late May, some 140 environmental and other organizations representing every province and territory endorsed a document entitled: "A Statement of Support for a Strong Federal Role in Environmental Protection."

CELA's Recommendations

Environmental protection, not economic expediency, must be the primary reason for harmonization.² As such, the focus of inter-governmental discussions should be on how to improve and enhance cooperation rather than the delegation of authority.

1. The approval of the proposed National Accord, and in particular, its three sub-agreements, should be deferred indefinitely, or at least until a full and complete consultation process, (supported by research to identify, for example, real duplication and overlap) has been established.

2. Any proposal to change the regime for the administration and enforcement of section 35(2) of the *Fisheries Act*, and in particular, any delegation to the provinces should not be contemplated until there has been a comprehensive public review of current practices and their effectiveness, and of the

available policy options.³

3. The federal government should confirm, and not renounce, its role and responsibility for the protection of the Canadian environment, namely:

- leadership on international environmental issues,
- leadership on national environmental issues,
- strong initiatives in areas of national concern and provincial incapacity,
- leadership in environmental sciences, and
- commitment to achieve a minimum level of environmental protection for all Canadians regardless of where they live in Canada.

4. The federal government should also provide adequate funding to protect the environment, particularly in the areas of standard-setting and the enforcement of environmental laws.

5. There should be a commitment to empower Canadians to assist government in protecting the environment through the development and implementation of a federal Environmental Bill of Rights.

6. Although the harmonization agreement is supposed to be between the governments in Canada, it is not clear what role First Nations are to play with respect to this initiative. The federal government carries a fiduciary obligation to Native peoples. First Nations must be seen as legitimate and full partners along with the federal and provincial governments in environmental protection.

7. Even if the proposed harmonization accords are deferred indefinitely, there is a need to reform the CCME to ensure it is more accountable and accessible to the public. It should not have the power to develop standards but instead, act as a forum for intergovernmental discussion.

¹ Quebec Environmental Law Centre (CQDE), *ENGO Concerns and Policy Options Regarding the Administration and Delegation of Subsection 35(2) of the Fisheries Act, Proposed Subsection 35(3) and Consequences for Federal Environmental Assessment*, prepared for the Fisheries Working Group, Canadian Environmental Group, p.vii.

² For elaboration of many of these points, see, Canadian Institute for Environmental Law and Policy, *Harmonizing to Protect the Environment? An Analysis of the CCME Environmental Protection Process*, November 1996.

³ For a more comprehensive set of recommendations, see, Quebec Environmental Law Centre, *ENGO Concerns and Policy Options*.

Environmental Impacts of the Trade Agreements

Poorer Resources and Weaker Standards

Michelle Swenarchuk and Ken Traynor

Since 1988, the federal governments of Canada have committed the country to five "free" trade agreements: the Canada-US Free Trade Agreement, NAFTA, the new World Trade Organization agreement (WTO), and bi-lateral trade deals with Chile and Israel. They have simultaneously pursued economic policies which emphasize perpetual export-led growth as the central strategy for wealth and job creation in Canada.

Nature of the Problem

During the same time period, consciousness has grown world wide of the negative impacts on the environment and on environmental protection flowing from the implementation of these trade agreements.

The limits on governmental powers to manage natural resources, to control rates of extraction and export, and to utilize strategies such as local processing to increase job creation have accelerated Canadian resource depletion. The collapse of the Atlantic fishery is a graphic example of our unsustainable resource (mis)management policies.

The agreements also limit our flexibility in establishing environmental and health standards best suited for our particular ecosystems and communities. They give primacy to international standardization, often developed by bodies outside Canada to which citizens have no access. In allowing trade panels to rule on whether a particular standard is "necessary", the agreements have led to the loss of some Canadian standards. (eg. regulations under the *Fisheries Act*).

Most important, "free trade" has become the excuse constantly given by politicians and bureaucrats for refusing to improve environmental laws as they cave in to industry anti-green lobbying.

In the 1993 Redbook,¹ the current government made commitments on trade and international envi-

ronmental policies, including:

- making sustainable development a "fundamental goal" of trade negotiations;
- pushing for strong and effective international conventions to deal with global environmental threats;
- reviewing the NAFTA labour and environmental agreements "to ensure that they are in Canada's best interests"; and,
- re-negotiating both the FTA and NAFTA to obtain a subsidies code; an anti-dumping code; a more effective dispute resolution mechanism; and the same energy provisions as they apply to Mexico.

The government has not kept these commitments.

Progress to Date

Just as the Canadian government has not integrated economic and environmental planning in Canada, it has not taken a leadership role regarding integrating trade and environment policy internationally to make sustainable development a "fundamental goal" of trade negotiation.

The government failed to renegotiate the FTA and NAFTA in North America.

In Geneva, our representatives to the World Trade Organization (WTO) have not supported initiatives to limit the impact of WTO requirements on green laws. The WTO has a Committee on Trade and Environment which issued a report in December 1996. The only recorded Canadian initiative, according to that report, was an attempt to extend the reach of trade law, by making voluntary eco-labelling schemes subject to WTO rules. This would prejudice citizen-led forest certification schemes like the Forest Stewardship Council.

In fact, the federal government's major activity regarding trade and environment has been to assist

in attempts to internationalize a sustainable forest certification scheme developed by the Canadian forest industry. This scheme has been found totally inadequate by Canadian and international greens.

Canada's international trade and environmental policies are oriented in the wrong direction.

CELA's Recommendations

The next Canadian government should:

- **take an international leadership role in the integration of environmental and trade policies,**

including at the WTO;

- **stop portraying economic growth as sustainable development, and shift its economic and trade policies away from a singular emphasis on export-led growth;**
- **use the opportunity of the four year review of NAFTA to do a serious, intellectually honest appraisal of its impact; and,**
- **become an advocate for the inclusion of a significant social and environmental dimension into the negotiations for the Free Trade Agreement of the Americas.**

Trading Away Our Water

During negotiations of the two North American trade agreements, CELA and others warned that Canadian water was being put at risk of export as a commodity. Those agreements are bearing fruit – but not for Canadians.

In the entrepreneurial climate that has dominated federal politics during the last two administrations, water resources are fair game for free trade and water services are being seen as being “in need of economic development”. Public-private partnerships are being promoted by the lead federal government agency with responsibility for sustainability in Canada (the National Roundtable on the Environment and the Economy) in its December 1996 report, *Water and Wastewater in Canada*.

The NRTEE report promotes “opening up a major export market” for Canadian entrepreneurs abroad; but, in fact, the government has opened up the Canadian market to French, British and American water firms. Indeed, fast on the heels of the release of that report, public-private contracts were let. The danger here is that there are no laws governing the scope and practices of these partnerships. Will private profits be used to upgrade and protect vital water services? They haven't been, in England, where privatization has meant huge water bills and degraded services for citizens.

— Sarah Miller

¹ *Creating Opportunity: the Liberal Plan for Canada*, Liberal Party of Canada, 1993.