



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

August 28, 1997

Mark Dunn,  
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Re: Comments on "Environmental Management Agreement" - Three Party  
Agreement Between Environment Canada, MOEE and Dofasco, Inc.  
EBR Registry Number: PA7E0009.P

Please find enclosed comments on the above agreement which were prepared by Canadian  
Environmental Law Association.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Paul Muldoon  
Counsel

Ramani Nadarajah  
Counsel

Encls.

## MEMORANDUM

**Date:** September 10, 1997  
**From:** Paul Muldoon  
**To:** Suzanne Galloway, Alternative [sgallow@fes.uwaterloo.ca]  
**Subject:** Review of Manuscript

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Title of Manuscript reviewed: "Voluntary Pollution Prevention Initiatives: Some Reflections on Government's Role in Ensuring Public Involvement"

**Reviewer:** Paul Muldoon  
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### **Recommendation:**

Accept manuscript

### **Overall Comments**

It is my view that this article is well written, well researched and a very timely review of an enormously important public policy issue. The analysis is fair and balanced and written in a way that is both understandable and convincing. Although I have some substantive differences with points made in the article, the article puts forth good arguments with sufficient context and analysis. Further, it would have been interesting to have further discussion on whether the ARET consultation would have been successful if the government had taken a more authoritative role in the consultation.

Finally, the article does not debate at length the legitimacy of voluntary initiatives. I

realize that was not the intend of the article. Hence, while I submit the article is a very good one, it may be useful at some stage to have further publications on this broader topic.

This article will make a significant contribution to this area.

It is my recommendation that this article be accepted for publication.

### **Information**

I have had a long history in this issue and involvement in many of the matters discussed in this article. As far as I am concerned, the article is factual and accurate. The article uses the most relevant cites, many of which reflect the fact that there must have been enormous research efforts devoted to this subject. Although there are numerous other cites that could have been given, I am not convinced that additional cites are necessary.

One of the positive aspects of the article is that the material and information in the article is presented in a coherent and methodological manner. The fact that the author took the time to provide a context for the study and then undertook a very important case study provides both theoretical and practical insight to the reader.

I might add that it would be useful for **ALTERNATIVES** to have other articles exploring the strengths and weaknesses of voluntary initiatives as a policy instrument. I realize that this article was not intended to serve this purpose.

### **Analysis**

The analysis is backed by empirical material and well presented. The article starts out with a thesis and supports the thesis through a detailed case study.

### **Balance**

The topic of voluntary pollution prevention initiatives is a very controversial one. It is my view, however, that the author has presented the material in manner that is sensitive to those on both sides of this issue. In short, the article is very well balanced.

### **Originality**

Despite the fact that voluntary initiatives are very controversial, there is a surprisingly little written on the topic. There are very few publications that examine one issue in depth in a balanced manner. Most of the publications attempt to "sell" the benefits of

the initiatives without an in-depth appraisal of the issues raised by these initiatives.

Further, it is apparent that the "raw data" used for this article is a detailed case study which is obviously original material.

### **Relevance**

As noted above, this article will make a real contribution to the field. Moreover, I suspect it may even impact further initiatives. Hence, the article will certainly make a scholarly contribution and may even make a practical contribution by getting governments to rethink what their role is in voluntary initiatives.

### **Readability**

The author attempts to say a lot in a very few pages. In my view, the author is successful. I found the article interesting and readable without a lot of technical language or complex sentence structure. It is a very readable article.

### **Other Comments**

Although I am giving this article a very favourable review, I do have a few minor points which can be listed as follows:

Page 1 - "Man-made" chemicals

I suggest that this term be replaced with just the term "chemicals" or substances from human activities.

Page 3 - CEPA as a "command-and-control" model

I actually think that CEPA is not that good of an example of a command and control model of pollution control. Sections 34 of CEPA gives the minister enormous powers to regulate such that command and control measures could be taken. However, CEPA is also broad enough to use other measures.

A more general example could be used in this way:

Federal or provincial laws that direct industry not only the acceptable levels of emissions but also how to achieve those levels are classic examples of the command-and-control model.

Page 7 - "The objective of the Group was not to substitute these alternative policy instruments for regulation."

This statement is one that in fact could spark an interesting debate. While most agree

that voluntary initiatives should not replace regulatory instruments, environmentalists often argue that voluntary initiatives are agreed by industry in hope of avoiding further regulations. Hence, although this statement is very often stated, environmentalists would suggest that consequence of voluntary initiatives may in fact run contrary to this statement.

### **Final Comment**

At times, the article is frustrating because some of the interesting substantive debates in ARET are not articulated and discussed in detail. On the other hand, those substantive debates were not the subject of this article. This article thus establishes the ripeness of this issue for further debate and discussion.

PM

**Provincial Environmental Deregulation  
(as of March 3/97)**

1995

June

PC Government elected.

Provincial ban on incineration of municipal waste removed. It was replaced with regulations setting out the pollution emissions permitted from burning waste.

Terminate Interim Waste Authority and three landfill hearings in the GTA, with \$140 million expended to date.

Cuts to budget of MOEE and MNR.

Cuts to budget of Environmental Assessment Board, Environmental Appeal Board and Ontario Energy Board.

Repeal regulations which phase out the use of chlorine in the pulp and paper industry.

1996

Preservation program for the province's fruitlands ended.

Ministry of Finance no longer required to post proposed decisions which could have significant environmental impacts, on the Environmental Registry under the Environmental Bill of Rights.

January

Special report to Legislature by Environmental Commissioner complaining about failure to post proposed changes which may have significant environmental impacts, on Environmental Registry, and making Ministry of Finance exempt from requirements of EBR.

Jan. 10

Environment Minister Brenda Elliott revoked the positions of five board members of Ontario Hydro. They were considered to be the strongest advocates of environmental protection on the board. Within a week, an Ontario Divisional Court Judge overturned her ruling.

Feb. 14

Report in Globe on a leaked MOEE document indicating a major shift away from emphasizing recycling and toward making the establishment of garbage dumps easier. As part of regulatory overhaul, and in order to ease the way for companies and municipalities to open dumps, this option would curb the ability of landowners and environmentalists to

Cuts to budget of MNR, which will reduce reforestation programs, weaken controls on some rural dumps, reduce wildlife monitoring, and reduce vigilance over forest industry cutting practices.

Announced consideration of privatizing Ontario Hydro.

Cut funding for public transit in major urban areas (\$50 million), thus contributing to increased air pollution, congestion and traffic accidents.

In northern Ontario, basic bus, train and plane services have been cut further, forcing increased use of private cars. \$10 million cut from Ontario Northland Transportation Commission.

Cut funding to the Niagara Escarpment Commission, resulting in the lay-off of 50% of the Commission's staff who are responsible for protecting the internationally significant Niagara Escarpment.

Proposed that decisions affecting the Escarpment will be made by local municipalities, not the NEC.

Delete changes to Ontario Building Code which promote energy efficiency.

Eliminate programs related to energy efficiency, waste diversion, environmental science, research and education, community environmental action, and sustainable forestry.

Virtual elimination of provincial oversight and management of Ontario's public forests.

Proposed "closure, consolidation, co-location or partnering" of 60 of Ontario's provincial parks or park facilities.

Delete funding for programs which support retrofitting buildings to make them more energy efficient. Cut funding for provincial building energy audits, as well as for commercial and industrial operations.

Funding for developing energy efficiency standards for buildings and appliances was terminated.

Grants for renewable energy development and green industry research and development were also wiped out.

Terminated funding of Ontario's 18 Green Communities.

Terminated the Environmental Compensation Corporation, which was formed to deal with claims arising out of environmental spills.

October 2nd special report by Environmental Commissioner to Legislature complaining about very limited or no notice about changes to environmental laws and regulations, and failure by ministries to assess and report on environmental effects of the proposed changes.

October The 1996 Annual Report of the Provincial Auditor included section 3.09 on "Environmental Sciences and Standards Division," commencing at p.113. Among other things, Auditor found many standards for air pollutants were developed over 20 years ago and are out of date. A 1992 survey by MOEE of 289 air pollutants found that only 21% did not require revision. 91 require "substantial reduction and/or reassessment" and 135 require further review. None of these reviews were complete by date of report.

Oct. 16 Globe reports that Provincial Auditor Erik Peters said the previous day: "Even when the ministry knew that some of [the pollutants] had been identified as being cancer-causing, there was still no action being taken to bring them up to date or up to speed." Minister Norm Sterling told the legislature that he agrees with the Auditor. The MOEE has embarked on a 3-year plan, in which 25 new standards are under development, and 48 more will be finished by 1999. Peters said: "My concern is about the speed of action that is being taken by the Ministry of the Environment to ensure that we know how good or bad that the air we breathe really is."

Reversed a decision to spend \$4.7 million to clean up rural beaches, help farmers to reduce agricultural runoff.

\$3.5 million cut from a program to clean up polluted beaches in cities.

Oct. 18 Globe reported that earlier in October Norm Sterling approved a regulation exempting long-term quarry operators from requiring a permit for most of their mining activities along the Niagara Escarpment. Reg 828 amended to exempt aggregate operations in NE from development control requirements.

Nov. 13 Globe reported following government announcements in January.



37% since new government elected, and 31% of staff eliminated. On Nov.13/96, Globe reported MNR in middle of a 2 year plan to cut staff by 33%.

January 10 Globe report that under the current provincial government legal actions against corporate polluters and fines for breaking environmental laws have both plunged. Charges in 1996 down 21% from previous year, and fines dropped 57%.

January Panel of Conservative MPPs (Sheehan committee) recommended end to regulation requiring minimum of 30% of soft drink containers sold be refillable.

January Announcements that several MOEE offices to be closed.

January 23 Globe report that provincial draft report on the state of the environment, the existence of which was denied by the MOEE Deputy Minister, has now been found. The *1992 Status Report on Ontario's Air, Water and Waste* noted that ozone layer thinning causing increase in ultraviolet light hitting Ontario. Ultraviolet radiation increased in Toronto by 35% annually in winter and 7% in summer. Average temperatures in Ontario are rising. Since 1980, 0.5% in north and 0.6% in south. Manganese concentrations in air double since 1980s. Dioxins in Windsor air 3 or 4 times higher than in Toronto. 19,000 lakes are acidic enough to cause damage to animals living in them.

February Indicated that province will no longer contribute to cost of Remedial Action Plan clean-ups at the 16 or 17 water pollution hot spots around the Great Lakes, in accordance with Canada-Ontario Agreement and Great Lakes Water Quality Agreement between Canada and U.S. Cuts ordered by Minister Norm Sterling.

February MOEE instructed to prepare legal defence for claims of regulatory negligence in 75% of its functions. These claims are expected to arise out of environmental damage which cannot be prevented by province due to huge staff cuts.

Merge Environmental Assessment Board and Environmental Appeal Board into one tribunal, with reduced staff and members.

SOURCE: ANON