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CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU DROIT ET DE LA POLITIQUE DE L'ENVIRONNEMENT

Submission

to the

Advisory Committee On Competition In Ontario's Electricity System

by

Jack Gibbons

On Behalf Of

The Canadian Institute for Environmental Law and Policy

January 24, 1996

CIELAP Shelf:

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Environmental Law and Policy**

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BRIEF 96/2

About **CIELAP**

Founded in 1970, the Canadian Institute for Environmental Law and Policy (CIELAP) is an independent, not-for-profit professional research and educational organization committed to environmental law and policy analysis and advancement. CIELAP's research is intended to assist government, industry, public interest groups and individuals in their decision-making, and to promote the principles of sustainability.

There is a significant level of public support for eliminating Ontario Hydro's virtual monopoly with respect to the generation and sale of electricity and creating a competitive electricity market.

Everything else being equal, it is reasonable to assume that a competitive market will lead to a reduction in the financial cost of electricity. However, since there are significant environmental externalities associated with the generation of electricity, a competitive market will not necessarily lead to a reduction in the societal cost of electricity generation.

For example, Ontario Hydro has committed to: 1) stabilize its greenhouse gas emissions at its 1990 level by the year 2000; and 2) reduce its greenhouse gas emissions by 26%, relative to its 1988 level, by 2005.¹ As long as Ontario Hydro maintains its virtual monopoly with respect to the generation and sale of electricity, a 26% reduction in Ontario Hydro's greenhouse gas emissions will ensure that the total greenhouse gas emissions associated with electricity use in Ontario will also be reduced by approximately 26%. However, if Ontario Hydro loses its virtual monopoly, Ontario's total electricity-related greenhouse gas emissions could rise even if Ontario Hydro's fall by 26%.

It is the Canadian Institute for Environmental Law and Policy's (CIELAP's) submission that the financial benefits of a competitive electricity market should not be achieved at the expense of our quality of life or sustainable development.²

Therefore it is CIELAP's submission that if a competitive electricity market is established, a system of emission quotas which will ensure that the greenhouse gas

emissions associated with electricity use in Ontario are:

1. stabilized at their 1990 level by the year 2000;
2. reduced by at least 26%, relative to their 1988 level, by the year 2005; and
3. reduced by more than 26%, relative to their 1988 level, after the year 2005;

should be put in place at the same time.

Endnotes

1. Ontario Hydro, A Strategy To Manage Greenhouse Gas Emissions, (1995), p. 2.
2. According to the World Commission on Environment and Development, sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." World Commission on Environment and Development, Our Common Future, (Oxford: Oxford University Press; 1987), p.43.

**Comments on The State of Compliance with Selected Federal
Environmental Legislation - Vol 1**

**Canadian Institute for Environmental Law and Policy
June 26, 1995**

1. General Comments

- in general the report interprets the available data to present the most positive possible picture of the compliance situation regarding the federal regulations under review.
- tone of introduction is almost apologetic about enforcement activities
 - seems to say enforcement is something we have to do, but don't really like it. The paper hardly conveys the impression that serious consequences are likely to flow from non-compliance with federal environmental regulations, even though these regulations deal with activities which may cause serious harm to human health and the environment.
 - this point is reinforced by the long discussion of alternatives to regulations (pg. 6, para 1).

2. Methodology

- in general "compliance" rates are presented as percentages of the total numbers of sites or operations inspected. These leads to a number of problems, including the following:
 - little information is provided regarding the seriousness of the "non-compliance" findings. The 3% found in "non-compliance" with a given regulation, for example, may include events ranging from extremely serious violations resulting in significant harm to human health or the environment, to minor "technical" incidents of "non-compliance." Some indication of the seriousness of the violations occurring should be provided;
 - in many cases the compliance rates presented are based on extrapolations from limited samples. It is assumed that in cases where all sites or activities have not been inspected, those which have been inspected provide a reliable representative sample of all sites and activities. This may not be a sound assumption. The compliance rates should be presented in terms of percentages of sites and operations inspected and not in a way which implies that the rates apply to all sites and operations:

- many of the compliance figures are based on the results of a very limited number of inspections per site. Indeed, in many cases, data is presented on the basis of a single inspection. It is also unclear how many of these inspections were scheduled events for which the regulatee would have had an opportunity to "get its house in order," as opposed to surprise spot checks. Questions must arise regarding the degree to which scheduled inspections provide data which reflects the normal state of affairs at the site in question;
- in general there is a great deal of emphasis on compliance with administrative reporting requirements, as opposed to actual releases of regulated materials or substances into the environment. The latter is likely to be the issue of greatest interest to most audiences.

3. Ocean Dumping Regulations

- this report provides a good example of the problem of extrapolating data from a limited number of inspections (in this case only 27% of sites and operations) to all cases.
- no information is provided regarding the amounts of illicit dumping which may be occurring without permits, particularly away from major ports, and on the open ocean. Evidence exists that both may be significant problems.
- are "unobtrusive observations" (p.15) adequate to ensure that materials to be dumped only include approved materials?
- no information is provided regarding the non-compliance events against which enforcement actions (letters, prosecutions) were taken (i.e. location, date, name of violator, nature of violation).

4. Pulp and Paper Effluent Regulations

- the data is largely based on the results of a single inspection per year of mills. Given the extent of these inspections one would assume that they are scheduled, as opposed to surprise events. This raises the question of whether the data collected once a year in a scheduled inspection, for which the regulatee has the opportunity to prepare, really provides an accurate impression of the compliance state of the mill under normal operating conditions.
- report states that compliance varies from region to region, but provides no data about these variations.

- no information is provided regarding the non-compliance events against which enforcement actions (letters, prosecutions) were taken (i.e. location, date, name of violator, nature of violation).
- report tends to emphasize administrative reporting requirements, as opposed to compliance with the effluent standards, which are the most important element of the regulation.

5. PCB Storage Regulations

- pg. 24 para 2 - regulations are promulgated by the governor-in-council (i.e. cabinet) not enacted by Parliament.
- does the total of 999 sites inspected reflect the total number of federal sites?
- no data is provided regarding compliance at private sites, even though these apparently outnumber the total number of federal sites. Are the provinces providing adequate oversight of private sites? Are the provinces providing compliance data on these sites to the federal government?
- compliance data appears to be based on a single inspection per site. This seems insufficient to provide a reliable data base.
- no information is provided regarding the non-compliance events against which enforcement actions (letters, prosecutions) were taken (i.e. location, date, name of violator, nature of violation).

6. Pulp and Paper Dioxin and Furan Regulations

- again the data on which the compliance rates are based is very thin. It appears to be largely based on less than 1 inspection per mill per year. In addition, as with effluent regulations, it is not clear if the data is based on scheduled or surprise inspections, with similar implications for the degree to which it reflects the normal state of events at the mill in question. This point is reinforced by the weak compliance record regarding test result reporting (72%).
- what steps has the federal government taken to ensure quality control in the monitoring data provided by the provinces with which administrative agreements have been signed. The problems associated with the use of provincially gathered data in the recent prosecution of the Proctor & Gamble Mill in Alberta should be noted in terms of their implications for the reliability of such data.

- no information is provided regarding the non-compliance events against which enforcement actions (letters, prosecutions) were taken (i.e. location, date, name of violator, nature of violation).

7. Hazardous Waste Import/Export Regulations

- given serious indications of non-compliance with this regulation (<30% in some areas) the statement that Environment Canada regards the general compliance level as "satisfactory" (p.42) is appalling. These regulations relate to Canada's obligations under international agreements, and consequently should be vigorously enforced to maintain Canada's international reputation.
- no information is provided regarding the non-compliance events against which enforcement actions (letters, prosecutions) were taken (i.e. location, date, name of violator, nature of violation).
- note that by comparison failure to comply with hazardous waste manifesting requirements in Ontario usually results in prosecution.
- lack of inspections of materials being transported means that Environment Canada doesn't really know what is being shipped. It is simply taking the word of the transporter. Given the state of compliance reported in other areas related to the shipment of hazardous wastes, this may not be a sound approach.

8. Ozone Depleting Substances Regulations

- pg. 43 para 3 - regulations are promulgated by the governor-in-council (i.e. cabinet) not enacted by Parliament.
- compliance rates presented on pg 44 are based on total numbers of sites and products inspected. What is the total number of sites and products available to be inspected (i.e. what is size of sample in relation to total number of sites and products)?
- no information is provided regarding the non-compliance events against which enforcement actions (letters, prosecutions), where taken (i.e. location, date, name of violator, nature of violation).
- note the apparent inconsistency with CEPA 1993-94 annual report, which indicates only 1 prosecution undertaken under these regulations, and pg. 46 which claims that 12 prosecutions have been undertaken.