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A Submission to the

Standing Committee on Environment and Sustainable Development

on the 1996-97 Estimates for Environment Canada

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1. Introduction

A review of the 1996-97 Estimates for Environment Canada provides an opportunity not only to review proposed expenditures, current plans and the record of performance, but also an opportunity to reflect on the direction and role of the agency. It is apparent that these are very challenging times for both federal and provincial environmental agencies alike.

The purpose of this submission is to provide some general commentary on the overall role of Environment Canada in upcoming years and then to provide some specific comments on the 1996-97 Expenditure Plan. Although the 1996-97 Expenditure Plan raises many questions of significance, this submission will be limited to a number of issues of particular interest and concern to the Canadian Environmental Law Association and the Canadian Institute for Environmental Law and Policy.

1.1 Overview - The Canadian Attitudes Towards Regulation

A discussion of the direct, role and priorities of Environment Canada cannot be undertaken in a vacuum. It has to be reviewed in the context of ecological needs and the public mandate to support those needs and imperatives. In this latter context, there is ample evidence to suggest that Canadians are highly supportive of a strong federal role to protect the environment.

Five recent polls in Canada suggest that the public is concerned about the direction by both levels of government in terms of their approach to environmental protection. The polls demonstrate that, contrary to the trend, the public wants stronger, not weaker, government action to protect the environment.

In July of 1995, a survey by Ekos Research found that members of a general population sample placed "a clean environment" second only to "freedom" in a hierarchy of values for the federal government.[1]

The Canadian Council of Ministers of Environment has commissioned a series of polls to determine public attitudes to environmental issues over the past few years. The latest results demonstrate that the public attitudes have grown more supportive of strong environmental standards and laws over the years.[2]

In particular, the results of the September 1995 survey indicated that the majority of respondents believed Canada has gone only 30 percent of the way toward a safe environment. 78 percent said environmental regulations should be strictly enforced even in times of recession. When asked to identify the best way to reduce industrial

pollution, 48 per cent cited strict laws and heavy fines to punish companies and 29 per cent chose the use of public reporting of companies' pollution levels to embarrass them. Another 25 per cent favoured tax breaks and financial incentives. 70 percent believe government should restrict use of chemicals when there is only a possibility of damage, or evidence of damage but no proof (the application of the precautionary principle.) 27 per cent would wait for scientific proof (a decline of 9 per cent between 1988 and 1994).[3]

A late 1995 poll conducted by Metro Toronto, residents of the Greater Toronto Area (with a population of four million people) produced similar results. Respondents ranked environmental services as the most important of all the types of services provided by municipal government. 59 per cent supported increasing spending on these services.[4]

A January 1996 poll conducted for the World Wildlife Fund by Environics Research Group found that 81 per cent of Ontarians (67 per cent from Northern Ontario) favour government action to protect a system of parks and wilderness areas, even when reminded that this could result in reduced logging, mining and urban development. 76 per cent believe that completing a network of protected areas will make very little difference to the deficit.

Finally, recent surverys of business attitudes confirm the importance of strong laws and regulations in achieving environmental protection. KPMG Management Consultants conducted polls of over 300 businesses, school boards and municipalities in 1994 and 1996, questioning them about their environmental management programs.[5] Of those that had programs with the necessary elements, over 90 per cent stated that their primary motivation for establishing environmental management systems was compliance with regulations. Approximately 70 per cent cited potential directors' liability, a factor also related to environmental laws. Only 16 per cent claimed to have been motivated by voluntary programs in 1994. This figure rose to 25 per cent in the 1996 survey.

It follows from these polls that there is a trend to ever increasing support for environmental protection through regulation, rather than deregulation and voluntary measures. It also indicates that the Canadian public want governments to take a more proactive and leadership role to environmental regulation.

1.2 Role of the Federal Government

1.2.1 Defining the Essential Functions of the Federal Role

In light of the public support for continued and enhanced environmental protection, the federal government must seek to define its roles and responsibilities in that context. Detailed discussion is beyond the scope of this paper for this subject. A research paper, drafted by the Canadian Institute for Environmental Law and Policy is appended to this brief, outlines in more specific terms the kinds of roles and responsibilities that the federal government should adopt.[6] For the purposes of convenience, these can be summarized as follows:

(a) **The Provision for Leadership on International Environmental Issues**: The federal government should play an important leadership role in environmental matters that are international in scope such as climate change, ozone depletion, biodiversity conservation, transboundary air and water pollution, and the international movement of wastes. It must also retain responsibility for ensuring that Canada's international environmental obligations are fulfilled.

(b) **The Provision of Leadership on National Environmental Issues:** The federal government must provide leadership on environmental issues that are national scope such as biotechnology, toxic substances, pesticides and endangered species No other government in Canada has the mandate to do so.

(c) **The Provision of Environmental Protection in Areas of Federal Jurisdiction:** The federal government should assume the primary role in those areas under federal jurisdiction. These areas include federal works, lands and undertakings and in operations of federal boards, agencies and Crown corporations, navigation and shipping, sea coasts and inland fisheries, and in partnership and cooperation with aboriginal peoples, environmental protection in aboriginal communities.

(d) **The Provision of Environmental Protection in Areas of National Concern and Provincial Incapacity:** The very constitutional basis for the federal government to act is based on the fact that there are areas which, although they may encroach on provincial matters, are truly matters of a national concern and there is a provincial incapacity to deal with them. The assessment of pesticides, new chemicals, and products of biotechnology could be cited as examples in this regard.

(e) **The Provision of Leadership in Environmental Science**: Traditionally, the federal government has had the leadership to provide the scientific basis for Canadians' understanding of the state of their environment, and for the

development of federal and provincial environmental standards.

(f) **The Provision of a Minimum Level of Environmental Protection for All Canadians**: One of the most essential roles for the federal government must be to ensure that all Canadians are assured some minimum level of environmental protection. To guarantee these protections, the federal government must not only assist provinces in development appropriate environmental protection frameworks, but also actively develop and enforce federal environmental protection standards.

1.2.2 Challenges

Despite the overwhelming desire of Canadians for more protective laws for the environment, there are incredible challenges to all Canadian environmental agency and in particular, Environment Canada. These include:

* the continued trend toward devolution of roles and responsibilities from the federal to provincial governments. Two current initiatives in this regard, which are being vigorously opposed by environmental groups, include the proposed Environmental Management Framework Agreement by the Canadian Council of the Ministers of the Environment[7] and the devolution of the various approvals and enforcement responsibilities under the Fisheries Act.[8]

* the move away from regulatory approaches in favour of voluntary, non-enforceable approaches to environmental protection; and

* the increasing tendency for Environment Canada to be subject to the criticism and lobbying of other government departments, and in particular, Natural Resources Canada, Industry Canada and Agriculture Canada. The agenda of these agencies, under the guise of sustainable development, remains clearly focussed on promoting the economic interests of resource-based industries.

In our view, these challenges speak to the need for a even stronger and better resourced Environment Canada to ensure that it can carry out its key duties and responsibilities.

2. Some Areas Of Concern in the 1996-1997 Estimates

2.1 Overview

One of the most disconcerting issues with the Estimates is the continual shrinking of the resources of Environment Canada. From 1995-1996 to the next fiscal year, the budget will shrink another approximately 16 per cent (from $649 million to $546 million).[9] This percentage decrease is consistent with the results of the Program

Review that called for a $230 million reduction, which totals over 30 per cent, from the 1994-5 fiscal year to the 1997-98. This includes the elimination of some 1400 positions and a number of key programs.

Like any agency, there are opportunities for cost savings through the more efficient use of resources and the better coordination of services. However, one of the key concerns is that the 1996-1997 Estimates demonstrates that Environment Canada is in the process both reducing both its influence and scope of activity in the protection of the Canadian environment. When Canadians are clearly wanting more governmental action to protect the environment, the institutional capacity by the Environment Canada to deliver on those expectations is declining.

Some of the following comments on specific sections in the 1996-1997 Estimates are symptomatic of this trend.

2.2 Activity Resources - Healthy Environment - Toxics

General

The "Toxics" component listed under the Healthy Environment program activity is reduced by some $10.5 million which is approximately 32 full-time positions. This reduction is surprising in light of the fact that:

* The proposed amendments to the Canadian Environmental Protection Act (CEPA), which the Estimates predict will be in place at the end of the 1996[10], and in particular, chapters 5 and 9, will require additional resources for Environment Canada. There is, for example, a proposal to screen all substances on the Domestic Substances Lists (which is a list of all substances in commercial use in Canada) to determine whether they have certain toxic properties, such as the ability to persist in the environment and to accumulate in the fat tissue of fish and wildlife. There are numerous other examples where, even for a relatively short period, additional governmental resources will be needed to implement the changes to the statute; and

* none of the activity plans outlined in the Estimates mentions the additional resources to research the issue of endocrine disruptors, that is, those substances which have the ability to affect the hormonal activities of wildlife and probably humans.[11] Although there is the need to coordinate such responses with Health Canada, certainly Environment Canada should ensure that this issue is given significant agency priority.

When one would presume that these issues would lead to an increase, as opposed to a decrease, in agency capacity to deal with these new demands, the details in the personnel requirements is also telling. Figure 14 of the Estimates reveal that one of

the key areas where personnel requirements will be dramatically reduced is scientific research. Scientific research will reduce personnel from 261 (1994-95) to 221 (1996-97). When this amount is coupled with the 48 positions lost in the physical sciences, scientific positions are the most affected of all personnel reductions. The same is true for engineering and scientific support that shows a reduction of some 323 positions over three fiscal years, which is the single biggest reduction in the "technical" line item.

Certainly the overall objectives of the Toxics program activity are supportable. For example, the anticipation that "CEPA will be a vehicle for providing national leadership and standards in environmental and health protection, and ensuring government compliance with its own environmental laws"[12] is both laudable and appropriate. However, there is evidence in the Estimates that calls into question whether this objective is possible.

Moreover, the downsizing of Environment Canada has caused the elimination of a number of programs which should be of concern to the Canadian public.

Commitments to the Basel Convention

In the Estimates document, reference is made to Canada's obligation under the Basel Convention. It is stated that, in 1997, "a list of recyclables not subject to the Basel ban will be submitted to the Fourth Conference of the Parties to the Basel Convention."[13]

This workplan item is of concern. Adopted in September of 1995, recent amendments to the Basel Convention are intended to ban the export of hazardous wastes from OECD to non-OECD countries for recycling or energy recovery. The ban may affect metals which are classified as hazardous waste themselves, such as Lead or Mercury, or metals which are contaminated with hazardous wastes (e.g., old electrical equipment which is contaminated with PCBs.)

The problems associated with such exports are well documented, especially the export of wastes for disposal being disguised as export for "recycling." The ban is strongly supported by other parties to the Convention, particularly the non-OECD countries. The ban was also motivated by serious concerns regarding the existence of the necessary legal and institutional infrastructure in non-OECD countries to ensure the environmentally sound recycling of hazardous wastes and the safe treatment and disposal of residues.

CELA and CIELAP are concerned that Canada is attempting to block the implementation of the ban or to undermine it through the redefinition of "waste."[14] Canada should move to ratify the amendments as soon as possible.

It is for this reason that a legitimate question should be asked as to what is the context, purpose and substance of the " list of recyclables not subject to the Basel." Is it to define specifically those recyclables that are completely environmentally benign? Is it a means of extending the literal definition of recyclables in an attempt to avoid the ban, as set out in the Basel Convention?

Elimination of Funding for the Contaminated Sites Program

As part of the Program Review budget reductions, funds were eliminated under the Contaminated Sites Program for the clean-up of high-risk abandoned contaminated sites.[15] The problem of contaminated sites in Canada has been extensively reviewed by the Auditor General of Canada in May of 1995.[16] It is estimated that there are approximately 1,000 contaminated sites in Canada and that it would cost some $3 billion to clean-up. About 5 per cent of these sites are orphan sites in the sense that the responsible parties are either unknown or unable to take remedial measures.[17]

It is presumed that the federal government intends to rely on provincial resources to deal with non-federal sites. Further, despite the elimination of funding, the 1996-97 Targets for Results outlined in the Estimates states that an "overall approach and federal strategy will be developed for addressing the broad issues associated with contaminated sites."[18]

It is submitted, consistent with the findings of the Auditor-General's report, that there is a role for the federal government in the clean-up of the country's hazardous waste site. For example, it role, at a minimum, could be to:

* To examine the nature and extent of the contaminated site problem including federal contaminated sites in a comprehensive and rigorous manner;[19]

* To undertake an analysis of the adequacy and appropriateness of the provincial legislative frameworks for clean-up of contaminated sites in light of the accepted federal-provincial criteria for effective legislation in this regard;[20]

* Assess the impact of the Demonstration of Site Remediation Technology Program for the purposes of ensuring that positive impacts are transferred to other strategies;[21]

* The development of a national action plan to complete the clean-up of remaining orphan sites and provide oversight to those requiring long term strategies;[22] and

* The development of regulations and the funding for the clean-up of federal contaminated sites.[23]

It should be noted, that with respect to this last point, at least one-half of the 326 federal sites will need action immediately or in the near future. There is also a funding issue for the orphan federal sites in light of the fact that funding for federal sites through the National Contaminated Remediation Programs is no longer available.

In the end, Environment Canada must come to grips with contaminated sites clean-up in Canada. The jury is still out as to how the Department intends to deal with many outstanding issues.

Elimination of Funding for PCB Destruction Program

Like the contaminated site situation, the problem with the storage of PCBs is well known. In 1993, there are more than 110,000 PCB-containing items in use or in storage at 6,000 locations across Canada. The amount of PCBs wastes totals some 127,025 tonnes.[24]

It is disconcerting, therefore, that the Environment Canada is eliminating the PCB Destruction Program without a comprehensive plan.[25] Moreover, the options that were considered during the time of the Auditor-General's report, namely, the use of the Swan Hills facility or export of the waste to the U.S. are inappropriate. It is submitted that the Auditor-General's recommendation that Environment Canada should continue its leadership and its coordinating role in assisting departments to dispose of their PCBs wastes is an appropriate one.[26] In particular, this leadership is essential if the goal to deal with 50 per cent of PCB wastes stored in Ontario by the year 2000 is be met as outlined in the 1994 Canada-Ontario Agreement.

The federal government should also continue to track the use and storage of the substances and encouraging the research and development of non-incineration alternatives.

2.3 Activity Resources - Healthy Environment - Environment Compliance

The government's purported long term objectives are with respect to environmental compliance are: to ensure and promote compliance with Canada's environmental laws, minimize smuggling of designated plant and animal species, to discourage repeat offences, and work effectively with partners to strengthen the enforcement system.[27]

As a result of the budget reductions for 1996-1997 fiscal year, Environment Canada is proposing to utilize resources from other agencies to enforce CEPA. The government states "Enforcement capacity is sought to be strengthened through international cooperation, federal provincial agreements, interdepartmental Memoranda of Understanding and the use of improved technology. Promotion of

environmental laws will continue to be pursued using a variety of tools (e.g providing information, training, working with partners). Cooperation with other agencies such as the Royal Mounted Police, Customs of Canada and the United States Environmental Protection Agency, the U.S Fish and Wildlife Service and the provinces will be required. Cooperation with other federal and provincial enforcement agencies is essential to strengthen enforcement. Formal agreements are being sought with all agencies that have capacity to participate and support elements of the Departments's enforcement program."[28]

Enforcement is also to be strengthened by developing a computerized information system to track enforcement activities.[29]

General Problems of Federal Enforcement

The purpose of CEPA is to protect human health and the environment in Canada. It is only through effective and consistent enforcement that Environment Canada will be able to ensure that the Act lives up to its objective. Unfortunately, Environment Canada has had a disappointing record on the enforcement of CEPA. This is largely attributable to, among other reasons, the lack of adequate resources and the lack of coordination and centralization of enforcement functions.

The lack of adequate staff to conduct inspections and investigations has historically been a major problem in ensuring compliance with CEPA. In 1994, the province of Ontario instituted more than two hundred prosecutions for violations of provincial environmental laws and achieved an extremely high conviction rate.[30] In contrast, during the 1994 - 1995 fiscal year, enforcement under CEPA resulted in only eight prosecutions.[31] Not surprisingly, therefore, Environment Canada is considered to have a poor record on enforcing environmental laws in comparison to jurisdictions such as Ontario.

The lack of adequate resources with respect to enforcement has not gone unnoticed. In fact, it should be recalled that the Standing Committee stated that "effective enforcement will require sustained political will and adequate resources".[32] Unfortunately, the reduction in enforcement funding and personnel will seriously erode Environment Canada's already inadequate ability to undertake more vigourous enforcement activity. Moreover, reliance on other agencies to enforce CEPA and regulations made pursuant to the Act will not ensure the government's stated aim of "compliance with Canada's environmental laws" for a number of reasons.

Consistency is an important objective in any enforcement policy. It is unlikely this objective will be attainable if enforcement activity is transferred to other federal and provincial agencies. With their own mandate and laws to enforce, these agencies, are unlikely to place a priority on enforcing CEPA. Furthermore, since the enforcement staff in these agencies will be only accountable to their own department, Environment

Canada will be unable to exercise any authority to prevent inconsistent and ineffective responses to violations under CEPA. Moreover, the enforcement personnel in other agencies will not have necessary familiarity with the Act or have the requisite technical training to undertake environmental investigations.

Consistency with the Standing Committee's Report

By devolving the enforcement function to other federal and provincial agencies, the government is pursuing an option which is directly counter to the Standing Committee's recommendations in its report titled It's About Our Health! Towards Pollution Prevention.

The Standing Committee recognized that a credible and effective enforcement program could only be established if Environment Canada underwent substantial restructuring and created an independent decision-making process to ensure enforcement decisions are consistent across the country.[33]

The Standing Committee recommended that Environment Canada revise its enforcement approach to CEPA. In particular, the Standing Committee recommended that Environment Canada establish an independent enforcement office with regional branches, revise CEPA's Enforcement and Compliance Policy, ensure that enforcement decisions are made in reference to the policy, establish training programmes for enforcement personnel, keep information of enforcement action in a centralized data bank and set up a legal branch within Environment Canada to prosecute offences under CEPA.[34] It should be noted that these recommendations are consistent with the practices in jurisdictions such as Ontario, where they have been proven effective.

It is recommended that even with these budget cuts Environment Canada focus its efforts on finding innovative ways to achieve the Standing Committee's recommendation to strengthen and focus its enforcement functions rather than devolving responsibility for enforcing CEPA to a host of federal and provincial agencies.

2.4 Activity Resources - Healthy Environment Conserving Canada's Ecosystems

There are a number of issues of concern under the heading of "Conserving Canada's Ecosystems." The one area that will be discussed, although it certainly does not represent all of the issues, pertains to the Great Lakes 2000 program.

Great Lakes 2000: Use, Generation and Release of Harmful Toxics is Prevented and Controlled

General - Environment Canada's Dependence on the Voluntary Approach

For the 1996-97 Targets for the Great Lakes 2000 program, there is a disturbing trend which pervades the program activities. In particular, it is noted that the efforts to reduce substances of major concern in the Great Lakes and agreed to under the Canada-Ontario Agreement will "involve the promotion of voluntary actions as a complement to existing regulatory approaches."[35]

Similarly, over the past few years, Environment Canada has been negotiating and signing voluntary agreements or "memorandum of understandings" (MOUs) with various industrial sectors. There are, for example, a growing number of existing or proposed "voluntary pollution prevention agreements." Examples of these agreements include: the Motor Vehicle Manufacturers' Agreement, the Canadian Chemical Producers' Agreement, the Metal Finishers' Agreement, and the Automotive Parts Manufacturers' Agreement among others.

The basic thrust of these agreements is to have industry reduce specific pollutant emissions through a series of actions identified in each agreement. Each agreement is different. Hence, the scope of the pollutants covered, the specificity of the initiatives, the types of activities, the reporting requirements, and the availability of information about progress under the agreement vary from one agreement to another.

It is proposed in the 1996-97 Estimates that some of the MOUs be extended.[36]

At this point, there are two concerns that should be noted. These are:

1) on the basis of the Estimates document, it would appear that Environment Canada is relying almost exclusively on the voluntary, as opposed to the regulatory, approach. This trend is particularly problematic in light of the fact some of the substances sought to be dealt with by the voluntary approach are some of the most problematic substances; and

2) Environmental Canada's reliance on the voluntary approach continues despite the lack of external audit and verification of data. As noted above, the primary motivation of industry environmental action remains to be compliance with regulations.

There are a number of studies on the problems with the voluntary approach, particularly with the voluntary pollution prevention agreements.[37] Attached to this brief are a paper prepared for a workshop on deregulation by the Canadian Environmental Law Association, and a paper on the use of Voluntary Pollution Prevention Agreements in Canada prepared by the Canadian Institute for Environmental Law and Policy.

At this point, a number of concerns with respect to this approach should be noted.

Concerns with the Voluntary Approach

One of the key constants of any democratic society is respect for the rule of law. The rule of law recognizes the rights and duties of government and citizens, and that the interpretation of those rights and duties is the responsibility of the judiciary, carried out with due process. The fundamental importance of the rule of law is that it invokes a number of key principles. Without attempting to be exhaustive, the key principles include public accountability, and due process.

Loss of Accountability of the Regulated Community

One of the basic concerns with the voluntary approach is that there is simply less accountability from both the regulated community and the government. This loss of accountability manifests itself in a number of ways, such as enforcement and disclosure.

The very fact that many self-regulation initiatives are "voluntary" suggests that enforcing the commitments in these initiatives is not possible. It is often argued that enforcement of these initiatives would not be through traditional enforcement mechanisms, but through the "court of public opinion." The failure to abide by commitments is supposed to create an embarrassment factor that would compel industry to comply with its promises.

However, enforcement through the "court of public opinion" carries with it many assumptions, including:

* whether public interest groups and government personnel have the resources, interest and information sufficient to determine when the commitments are not being met;

* the existence of an interested media that is willing to publicize the problem; an interested public that will be able to take action when companies do not meet voluntary commitments; and

* that corporate decision-makers that regard it a high priority to live-up to such initiatives even during times of recession.

Loss of Due Process for the Public

Greater citizen involvement in decisions with significant social, consumer, and environmental impacts has been a central theme of the reform of adminstrative law in Canada over the past quarter century.[38] Therefore, many of the legal reforms

instituted over the past twenty-five years both established a framework of legal regulation, and incorporated mechanisms for increased public participation as an element of reform.

In addition to these provisions, common law has also broadened access to the courts through liberalized standing and intervention rules. Similarly, most governmental agencies have developed policies recognizing the value and need for public participation in decisions affecting the environment and natural resources.

Comparable structures have been established in other public policy fields. In addition, governments now are increasingly obliged to consult with concerned groups and individuals before changing policies or laws.

The elimination of government oversight through deregulation removes not only the framework of standards, but also the opportunities for public involvement in devising standards, in monitoring effects, and requiring enforcement when appropriate.

The legal process of regulation-making, in itself, has provided a basic level of public notice and information, with opportunities for public involvement and accountability through reporting. Voluntary measures remove these hard-won rights of public involvement in legal processes, which are fundamental to our democratic system.

Indeed, the vast majority of voluntary pollution prevention agreements concluded to date have been negotiated behind closed doors. In fact, the agreements were devoid of any consultation with the public, environmental groups, unions or health and safety organizations.

Pre-empting Public Debate on Important Issues

Apart from the lack of public input into the negotiation of the self-regulation initiatives, self-regulation also deprives citizens of legitimate public policy debates. As a general rule, voluntary agreements expressly recognize the ability of government to regulate regardless of the agreement.[39] However, in practice, a presumption by the regulated industries is that government would be pre-empted or hesitate to regulate industries on matters that are covered under a voluntary agreement. Industry is willing to risk a short term detriment (as defined under a voluntary agreement) to "cover the field" in order to anticipate and prevent future, more stringent, regulatory action by government.

This phenomena of pre-emption has two consequences. First, with the proliferation of voluntary agreements coupled with government downsizing, the capacity of government to regulate is at risk. Second, it should be recognized that most of the voluntary agreements are in areas of very significant and frequently controversial public policy.

One clear example of this consequence pertains to the goals and scope of the voluntary agreements. In effect, the inclusion of more modest goals and scope have pre-empted the broader public policy debate on the topic. A classic example with respect to pollution-related issues is whether pollution prevention initiatives are limited to "emissions" of toxic substances, or can also focus the "use" of substances in the first place. Industry has argued strongly that the focus of the regulatory programs must be limited to emissions. The key voluntary programs relate to reduction of emissions rather than focusing on use.[40]

The Need for a Regulatory Approach

There is little question that a more detailed analysis is needed with respect to self-regulation initiatives. Moreover, each initiative has to be examined to determine precise concerns. However, one of the key questions that should be asked in that analysis is simply this: should effort be expended on attempting to devise a different system to guide behaviour or should more effort be put in improving and bettering the existing regulatory framework?

Proponents of self-regulation often suggest that the present regulatory system is not working. However, there is little analysis available to support this contention.[41] A report prepared for the Standing Joint Committee for the Scrutiny of Regulations put the issue this way: " There is no inherent reason why the regulatory process cannot be more responsive to changing circumstances. In the end any process, including the regulation-making process, can only be as effective as those in charge of it."[42]

Michael Porter and Claas van der Linde, in a recent edition of the Harvard Business Review, outlined six reasons for the promotion of regulations. The commentators list a number of reasons for regulations:

* to create pressure that motivates industry to innovate...

* to improve environmental quality in cases in which innovation and the resulting improvements in resource productivity do not completely offset the cost of compliance;

* to alert and educate companies about likely resource inefficiencies and potential areas for technological improvement...;

* to raise the likelihood that product innovations and process innovations in general will be environmentally friendly;

* to create demand for environmental improvement until companies and customers are able to perceive and measure the resource inefficiencies of

pollution better;" and

* to level the playing field during the transition period to innovation-based environmental solutions, ensuring that one company cannot gain position by avoiding environmental investments.[43]

In the end, making the regulatory system work better serves the broader public interest better than devising an alternative system with potentially equal or greater pitfalls than the current approach.

In our view, it is imperative that the regulatory capacity of the Environment Canada be maintained and enhanced. It is our concern that the current spending program and direction is in contraposition to this position. Otherwise, in our view, the overall goal of the Healthy Environment program of Environment to "develop national strategies and standards and ensure that those strategies and standards are vigorously applied."[44]

2.5 Activity Resources - A Greener Society - Pollution Prevention

General - Reliance on Pollution Prevention

Under the "Greener Society" program, Environment Canada discusses the issues of pollution prevention. This is a topic where extensive comment has been provided to the Committee and will not be repeated here.[45]

Again, the only emphasis on the program for pollution prevention relates to voluntary measures and in particular, the Accelerated Reduction/Elimination of Toxics (ARET).[46] Environmental and labour groups withdrew from the process in 1993 due to fundamental disagreements regarding its direction. Other examples of voluntary and certification approaches in this section pertain to the National Packaging Protocol[47] and the ISO Environmental Management process and in particular, the ISO 14000 certification.[48]

Our concerns as to the need for a regulatory emphasis, as noted above, are also applicable at this point.

Community Action - Action 21 Program

The Action 21 program as described in the estimates replaces the Environmental Partners Fund. There are growing concerns among environmental non-governmental organizations regarding this program, particularly with respect to its focus on "direct action." This has made it difficult, if not impossible for organizations to access funds for background research, or for the development of public education materials and public education activities.

ENDNOTES

1. Rethinking Government - 1994: An Overview and Synthesis (Ottawa: Ekos Research Associates, Inc. 1995), Exhibit 6.

2. See: The Environmental Monitor, "Canadians and the Environment" Presentation to the Canadian Council of Ministers of the Environment, Whitehorse, Yukon Territories, October 23, 1995.

3.Ibid.

4. The GTCC Quality of Life Steering Committee, Comparative Advantage: An Enviable Quality of Life (October, 1995).

5. KPMG Management Consultants, Canadian Environmental Management Survey, (1994); and KPMG Management Consultants, Canadian Environmental Management Survey (1996).

6. See: Canadian Institute for Environmental Law and Policy, "The Future Role of the Federal Government in the Protection of Canada's Environment" (January, 1996).

7. CIELAP has provided extensive commentary on this issue in: M. Winfield and Karen Clark, The Environmental Management Framework Agreement - An Analysis and Commentary (February, 1996).

8. For an NGO perspective, see: F.S. Gertler and Y. Corriveau, ENGO Concerns and Policy Options Regarding the Administration and Delegation of Subsection 35(2) of the Fisheries Act, Proposed Subsection 3593) and Consequences for Federal Environmental Assessment (Montreal: CQDE, 1996).

9. Environment Canada, 1996-97 Estimates - Part III, Expenditure Plan (1996), p. 22 , [hereinafter referred to as "Estimates"]

10. Estimates, p. 41.

11. This issue is outlined in a new book: Theo Colborn et al. Our Stolen Future (New York: Dutton, 1996).

12. Estimates, p. 38.

13. Estimates, p. 41.

14. For example, see: letter to the Hon. Sheila Copps from the Institute for Environmental Law and Policy, re: Canada's position on the "Basel Ban" dated September 25, 1995.

15. Estimates, p. 39.

16. Auditor General of Canada, Report of the Auditor General of Canada to the House of Commons, Chapter 2 - Environment Canada: Managing the Legacy of Hazardous Wastes May, 1995.

17. Ibid., p. 2-9.

18. Estimates, p. 43.

19. Auditor-General Report, p. 2-12.

20. Auditor General Report, p. 2-11.

21. Auditor-General's report, p. 2-16.

22. Auditor-General's Report, p. 2-15.

23. Auditor-General's Report, p. 2-11.

24. Auditor-General's report, p. 2-20.

25. Auditor-General's Report, p. 2-23.

26. Auditor-General's report, p. 2-25.

27. Estimates, p. 45

28. Estimates, p. 45.

29. Estimates, p. 45.

30. Government of Ontario, *Offences against the Environment* - Convictions in 1994, pp. 7-8.

31. Environment Canada, *Canadian Environmental Protection Act, Report for the Period April 1994 to March 1995,* Ministry of Supply and Services Canada, 1996, p. 41.

32. Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention,* June 1995, p. 242.

33. Ibid., p. 244.

34. Ibid., pp. 245- 246.

35. Estimates, p. 63.

36. Estimates, p. 64.

37. For example, see: K.L. Clark, The Use of Voluntary Pollution Prevention Agreements in Canada: An Analysis and Commentary (Toronto: Canadian Institute for Environmental Law and Policy, 1995).

38. There is considerable literature on this issue. For an earlier perspective, and then a more recent one, see: P.S. Elder, (ed.) Environmental Management and Public Participation (Toronto: Canadian Environmental Law Research Foundation, 1976) and Marcia Valiante and Paul Muldoon, "A Foot in the Door: A Survey of Recent Trends in Access to Environmental Justice" in Steven A. Kennett (ed.), Law and Process in Environmental Management (Calgary: Canadian Institute of Resources Law, 1993), pp. 142- 169.

39. For example, see: CCPA Voluntary Pollution Prevention Partnership MOU, at 2.

40. For example, the purpose of the MOU between CCPA and the MOEE is to "reduce emissions." [p. 1] Most of the programs are emissions based. However, 23 U.S. states now have toxic use reduction laws that do focus on chemical use. Similarly, the International Joint Commission which monitors regulatory programs of both U.S. and Canada have recommended examining feedstocks and chemical use as a means of furthering pollution

prevention. See: International Joint Commission, Seventh Biennial Report to the Governments of Canada and the United States (1994).

41.For an overview of current criticism of the regulatory process in Canada see M.Winfield, The Ontario Regulation and Policy-Making Process in a Comparative Context: An Exploration of the Possibilities for Reform (Toronto: Unpublished manuscript, January 1996), Chapter 1.

42. Report on Bill C-62, Prepared for the Standing Joint Committee for the Scrutiny of Regulations, February 16, 1995, at 15-16.

43. Michael E.Porter and Claas van der Linde, "Green and Competitive: Ending the Stalemate" Harvard Business Review, September-October 1995, p. 128.

44. Estimates, p. 24.

45. See: CELA and CIELAP, It's Still About Our Health! A submission on CEPA Review: The Government Response Environmental Protection Legislation Designed of rhte Future - A Renewed CEPA - A Proposal March 1996, chapter 6.

46. Estimates, p.95.

47. Estimates, p. 95.

48. Estimates, p. 93.

ATTACHMENTS

Michelle Swenarchuk and Paul Muldoon, Deregulation and Self-Regulation in Administrative Law: A Public Interest Perspective A paper prepared for a workshop on Deregulation, Self-Regulation and Compliance in Administrative Law, (Canadian Environmental Law Association) March, 1996.

M.S. Winfield, "The Future Role of the Federal Government in the Protection of Canada's Environment" (Toronto: Canadian Institute for Environmental Law and Policy, January 1996).

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