



Minister
Environment Canada

Ottawa, Canada
K1A 0H3

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Mr. Alan D. Levy, B.A., L.L.B.
40 Hayden Street
Toronto, Ontario
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Dear Mr. Levy:

I am pleased to respond to your letter of November 20, 1984, regarding acid rain, which the Honourable David Crombie has forwarded to me.

Acid rain is causing serious environmental and economic damage. The resource base at risk from acid rain sustains eight per cent of Canada's Gross National Product (GNP). Acid rain is threatening our fisheries resource, killing and deforming fish eggs and fry, and disrupting fish reproductive and respiratory systems. Ten per cent of the salmon rivers in Nova Scotia are already so acidified that they no longer support salmon; an additional 20 per cent are seriously endangered. Almost half (43 per cent) of the lakes in Quebec and Ontario are similarly vulnerable to acidification.

Recent evidence also indicates that forest productivity is being affected by air pollution. Although the significance of the role that acid rain plays in causing this damage is still being studied, the potential threat is enormous. There are 71 million hectares (175 million acres) of productive forest land in eastern Canada; one in ten working Canadians is employed directly or indirectly in the forest industry; the eastern Canadian forests generated \$14 billion in export sales in 1982.

This government is committed to reducing domestic sulphur dioxide emissions by 50 per cent by 1994. We are prepared to consider assistance for the installation of appropriate control technologies at major sulphur dioxide emitting plants. Consultations to determine the extent and nature of government financial participation are now underway. To this end, I have met

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with my provincial counterparts and representatives of the four companies operating smelters in eastern Canada and with several public interest groups including the Canadian Coalition on Acid Rain. These discussions will continue, culminating in the formulation by March 1985, of a Canadian acid rain abatement program.

We are also concerned about emissions of nitrogen oxides (NO_x), the other constituent of acid rain. The Honourable Donald Mazankowski, Minister of Transport, organized a 3-day consultation meeting on motor vehicle emissions standards on December 3, 4 and 5. Decisions on new emissions standards will be made on the basis of information gathered from those discussions. The timing of those decisions will be determined by the Minister of Transport.

It is unfortunate that even if Canadian emissions were to cease altogether, negative environmental impacts would still be felt in many areas of this country due to the significant contribution of U.S. sources to our acid rain problem. Our government hopes to establish a co-operative acid rain reduction program with the U.S. Prime Minister Mulroney has raised the issue of acid rain in his discussions with U.S. President Reagan. Similarly, acid rain control has been an important element during meetings between External Affairs Minister Clark and his U.S. counterpart, Secretary of State Shultz.

Thank you once again for writing. I encourage you to remain active and continue to voice your concerns about acid rain. It is essential that we work together to preserve the unspoiled beauty and future potential of our natural environment.

Yours sincerely,


Suzanne Blais-Grenier

EDITORIAL

PROPOSED FEDERAL ENVIRONMENTAL
PROTECTION ACT: _
BILL OF RIGHTS OR BILL OF GOODS?

by Toby Vigod

On December 18, 1986 the Honourable Tom McMillan, Minister of the Environment, released the long-awaited federal Environmental Protection Act (EPA) in the form of a discussion bill. The Act was touted by Mr. McMillan as the most comprehensive piece of environmental legislation in the western hemisphere. He further stated that the proposed Act "constitutes the country's first Environmental Bill of Rights." The government's media releases stated that the new Act would deal with all aspects of a toxic chemical's lifecycle, i.e., from 'cradle to grave'.

Yet an examination of the proposed EPA reveals that with some exceptions, the bill is largely smoke and mirrors, and in fact is far from a comprehensive piece of environmental legislation. The heart of the legislation consists of provisions providing for the notification and evaluation of new chemicals entering Canada. These provisions amend the existing Environmental Contaminants Act and were the subject of a year-long examination by a multi-stakeholder committee of which CELA was a member. The sections of the EPA dealing with the new chemicals programme were long overdue. They finally bring Canadian chemicals law into the 20th century and in line with international commitments. They provide for a new chemical notification and testing programme and export notification of banned or restricted chemicals. Yet even these sections of the proposed EPA leave a lot of the detail still to come in the form of regulations, which to date have not been tabled for discussion. For example, the details of the testing protocols, hammered out after long debates by the multi-stakeholder committee, remain "to be prescribed by regulation", as does the time-frame for notification and evaluation. As a whole, however, these are the most substantive provisions of the new bill.

The EPA does not contain or even come close to being an environmental bill of

rights, even though the Minister has claimed it to be. While there is a lengthy preamble stressing the importance of environmental protection, preambles are not legally enforceable, and would only be used as an aid for interpreting otherwise ambiguous sections of the Act. A real environmental bill of rights would contain some of the following elements:

- o the right of the Canadian public to a healthful, esthetically and culturally viable environment;
- o recognition of a public trust in Canada's lands, water and resources;
- o the right of any member of the public to bring a lawsuit for actual or threatened environmental harm or breach of a federal law, without the necessity of having to show personal injury or property interests of that individual;
- o the right of the public to become involved in the federal environmental decision-making process, such rights to include input into the standard setting process and the right to financial assistance, where necessary, to ensure effective public participation.

CELA has long been an advocate of an environmental bill of rights for Canada; so has the federal Minister of the Environment. In 1979, Mr. McMillan eloquently supported the need for such a bill during debate on a private motion by Mr. Charles Caccia calling for an environmental bill of rights in respect to federal matters. The bill would have incorporated many of CELA's proposals. Unfortunately, these sentiments have not been transferred to the proposed bill.

While the proposed Act encompasses some innovative sentencing tools for the courts to employ in environmental cases, these enforcement mechanisms will remain largely idle as most of the Act's powers to restrict the use of toxic substances are limited to those chemicals that must be placed in Schedule IV of the Act. At this time, there are only five chemicals in this Schedule to the EPA, these being the chemicals currently regulated by the Environmental Contaminants Act. They include the notorious PCBs, PPBs, PCTs mirex and chlorofluorocarbons of which three of the five are completely banned. In other words, if you illegally import PCBs across the border or spill the substance on a highway, the full wrath of the EPA may come

down on your head. However, if that chemical is one of the other 30,000 chemicals existing in Canada and not in Schedule IV to the Act, the EPA will have only limited applicability. It will be provincial law, where available, that will deal with these cases.

Another concern is the fact that the existing regulations under the Clean Air Act seem to have disappeared into a 'black hole'. Specifically, the existing Clean Air Act, administered by the Minister of Environment empowers Cabinet to set legally enforceable national emission standards for stationary sources of air pollution. It has done so in the case of secondary lead smelters, the asbestos mining and milling industry, chlor-alkali mercury plants and vinyl chloride operations. The Cabinet can also set standards for contaminants that cause transboundary air pollution. While the latter authority has been transferred to the new Act under Part IV, International Air Pollution, the direct authority to enact the existing regulations mentioned above, does not seem to have found its way into the new Act.

Under the proposed EPA, mercury, lead, asbestos and vinyl chloride would have to be placed under Schedule IV before regulations are passed governing their use. At the present time they are not listed in Schedule IV. This, hopefully, is an oversight by those who drafted the legislation that will be remedied immediately. Even this solution may not be entirely satisfactory as the existing Clean Air Act is administered solely by the Minister of the Environment, while the decision as to whether a substance is "toxic" under the new Act must be made by both the Minister of the Environment and the Minister of Health and Welfare. Before the government repeals the Clean Air Act, it should ensure that the existing provisions are not watered down.

The proposed Act also allows the Minister of Environment to set national quality objectives for air, water and land emissions. However, these would not be legally enforceable. The Minister should also have the authority to set legally binding standards.

Finally, a key public concern has long been access to environmental health and safety information. Unfortunately, the new bill, in the "non-disclosure of certain information" section -- section 10 -- provid-

es for a very broad range of circumstances which would result in freedom from information for the public. Instead of non-disclosure, the Act should provide for access to information, with only a narrow exemption for trade secret material.

What is also clear from an examination of the proposed EPA, is that Mr. McMillan lost a number of battles in Cabinet. Canada's major water pollution law, section 33 of the Fisheries Act, remains outside the EPA, as does pesticide law. The Act also does not provide the long overdue legislative basis for our federal environmental assessment review process (EARP). This means that a chance has been missed to ensure that the planning of federal projects, which may have a significant effect on the environment, is subject to mandatory scrutiny instead of being left up to the self-assessment and voluntary process we currently have in place -- a process Mr. McMillan has himself called "woefully inadequate". This omission undercuts the so-called preventive approach of the bill.

Only once a decade, it seems, do we get the opportunity to enact major environmental legislation. This is unfortunate. Mr. McMillan has for over a year told us that Canadians would have comprehensive environmental legislation. The discussion bill is currently out for public comment and will not be introduced for first reading until at least May of this year. So, there is still time for change. Recent opinion polls commissioned by the chemical producers have told us that the environment is number one on the public's political agenda. As it is presently proposed, the bill does not measure up to that sense of concern. But, ultimately, it still could.