



**CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY**

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

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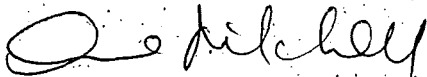
**Re:EBR Registry No. PA8E033 (REVA)**

To whom it may concern,

Please find attached the comments of the Canadian Institute for Environmental Law and Policy regarding the Ministry of the Environment's November 3, 1998 EBR Registry Posting PA8E033 (Recognizing and Encouraging Voluntary Actions (REVA)).

Please contact Dr. Mark Winfield, the Institute's Director of Research should you have any questions regarding our comments on this matter.

Yours sincerely,



Anne Mitchell,  
Executive Director.

cc: Eva Ligeti, Environmental Commissioner for Ontario.

CIELAP Shelf:  
Winfield, Mark S.; Canadian Institute for Environmental  
Law and Policy  
Comments on EBR Registry Proposal No: PA8E033  
REVA

RN 27254



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**Comments on EBR Registry Proposal No:PA8E033**

**REVA**

**CIELAP Brief 1/99**

**Canadian Institute for Environmental Law and Policy**  
**January 1999**

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PA8E033  
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**1. Recognizing and Encouraging Voluntary Actions (REVA)**

The proposed new policy framework raises a range of very serious concerns. In effect, the Ministry is proposing to offer reduced oversight of facilities on the basis of their promises of good environmental performance. The Ministry is also proposing to limit its future initiatives on the basis of these commitments.

The Ministry's proposals move from the reliance on voluntary action by industry as a supplement to a baseline regulatory framework to protect the environment and human health, to employing promises of voluntary action as a basis for modifications to that framework. Specific comments on the Ministry's paper include the following:

*Premises*

The Ministry's proposals are based on a number of premises that are open to serious challenge. These include the following:

*Conventional 'prescriptive' regulation provides minimal incentive to industry to exceed regulatory requirements.*

This premise is only true if there is no expectation on the part of industry that regulatory standards will be strengthened in the future, or that other policy instruments, such as environmental taxes or charges, or pollution prevention planning requirements, will be employed by government. In fact, certain aspects of REVA appear designed to preclude the use of such measures in the future, under the guise of providing regulatory 'certainty' to industry.

An extensive body of research on the development of new environmental technologies has concluded that "stringent and certain regulatory demands, backed by expectations of firm, predicable and targeted enforcement, are essential to promoting the development and adoption of pollution prevention and resource conserving technologies" (CIELAP "Putting the Environment into Green Industry Strategies," pp.9-10, various references).

*Building Public Confidence*

Public opinion research over the past five years has shown a consistent and strong expectation of governmental action, principally in the form of stronger laws and

regulations, to protect the environment. Public opinion survey research has consistently shown a low level of confidence in voluntary industry measures for environmental protection.

### *Making Industry More Competitive*

Industry has failed to present evidence to the public to support the claim that changes in the province's environmental policy framework are necessary to give industry greater flexibility in capital planning for environmental objectives. Nor has any evidence been presented regarding the desirability of such 'flexibility' from the perspective of the public.

### *Improving Regulatory and Investment Certainty*

Industry claims to be seeking greater "certainty" in the face of "rapidly changing regulatory requirements." No examples of such "rapid" changes to the regulatory framework are provided. It should be noted that major programs, such as MISA, often extend over more than a decade, from conceptualization to complete implementation. This has provided more than adequate notice of impending changes, and the process in Ontario has always been characterized by extensive consultation with industry.

Industry's desire for "certainty" appears to imply that there will be little or no change to the existing regulatory framework to strengthen environmental protection requirements. Such an approach would clearly be unable to respond to changes in the scientific understanding of the nature and significance of environmental problems, or changing public expectations with respect to environmental protection.

Furthermore, as noted earlier, the expectation of strengthened regulatory requirements for environmental protection in the future can be a major driver for innovation in pollution prevention.

### *Achieving Better Efficiency in Government*

The Ministry's proposal clearly goes well beyond "building incentives for voluntary action" into the Ministry's current regulatory and administrative system. Rather, it proposes changes to the system on the basis of promises of voluntary action by industry.

### *Building on Current Abilities and Leadership*

It is noted that the Ministry has terminated the bulk of its public environmental education

activities, and its public consultation activities have been severely curtailed.

More seriously, the Ministry's proposed framework would entrench a privileged position for a particular stakeholder group, regulated industries, in the Ministry's policy and standards development, administrative, approvals, and enforcement processes. Such an arrangement is inconsistent with the Ministry's fundamental mandate to protect the environment, and public health and safety, on behalf of all Ontarians.

The strengthening of Ministry of the Environment's accountability to the public for the protection of the province's environment is prominently absent as a premise for the proposed framework.

### *Principles*

The meaning of an "appropriate balance" between industry performance and administrative flexibility provided by government is not articulated.

The concept of regulation "where necessary and appropriately designed" is not articulated. However, the implication of this statement appears to be that the Ministry will only employ the enforceable, regulatory standards as an option of last resort. This is of particular concern given that the most significant gains in environmental protection in Ontario, including reductions in emissions of precursors of acidic precipitation, and in discharges to surface waters from the pulp and paper sector, achieved over the past decade have been brought about through regulatory initiatives.

### *Other Jurisdictions*

In general, no detailed or specific description or discussion of the initiatives adopted by other jurisdictions is provided. No evaluation of their impact on environmental protection or public accountability, or their appropriateness to the Ontario is provided. Serious problems have been identified, for example, with USEPA's XL program, and the discussion reflects some misunderstandings of the Dutch 'Covenants' program.

### *REVA - A Policy Framework Concept*

The reference to a "balanced" "quid pro quo" appears to suggest that the Ministry will not strengthen environmental protection requirements without some form of other concession to industry. This implies that there can be no net gain in environmental protection requirements.

### *Conclusion - REVA*

The Ministry's proposals raise a range of serious concerns. In effect, the Ministry is proposing to trade off of reduced Ministry oversight of facilities in exchange for commitments to improved environmental performance by those facilities. The Ministry's proposal entails significant potential costs in terms of public oversight of pollutant generating facilities and the accountability to the public of the government for environmental protection.

In addition, the Ministry's proposal appears to provide affected Industries with a privileged position in the Ministry's program and policy development, approval, administrative, and enforcement processes. It also appears to provide a commitment not to move forward significant new initiatives without industry consent under guise of regulatory "certainty." The proposal also implies that if new requirements are moved forward, they will be accompanied by "quid pro quo" concessions to industry.

Furthermore, the Ministry's proposed approach contradicts the conclusions of the extensive literature on pollution prevention technology development, and the findings of numerous empirical studies on environmental technology innovation.

The adoption of the proposed framework would also constrain the ability of ministry to respond to the emergence of new science and changing public expectations regarding environmental protection. The Ministry's REVA proposal cannot be supported for these reasons.

## **2. Proposal to Established "Performance Plus+"**

This document expands on the concepts presented in the REVA document.

The section of the document dealing with "Commitments from the Ministry of the Environment" make it clear that substantial concessions would be provided to regulated facilities through the proposed program.

The "bubble" limit concept is a key element of the Ministry's proposed approach. However, virtually no details are provided as to how such a system would be applied. Among other things, the discussion of "approvals streamlining" related to the concept implies that there could be extensive changes to facility operations, and the profile and fate the pollutants they generate, without Ministry review and oversight, and without opportunities for public notice and comment through the EBR Registry process.

Furthermore, the proposed review of Certificates of Approval would occur on the basis on participation in the program, not environmental need. The proposed removal of "non-essential" monitoring and reporting requirements is of particular concern, give the

extent of the gaps that have been identified in the Ministry's current information gathering and reporting efforts (see CIELAP, "Hazardous Waste Management in Ontario," 1998)

### **3. Conclusions**

The Ministry's proposed REVA Policy Framework and "Performance Plus+" program are seriously problematic. They are based on a premise of the exchange of reduced Ministry of the Environment oversight of waste and pollutant generating facilities for promises of improved environmental performance by those facilities.

The proposed framework is grounded on the assumption that such an approach is only way that environmental protection can be enhanced in Ontario. Indeed, under the guise of providing the affected industries with "regulatory certainty," and "quid pro quo" arrangements with respect to any action that might be taken by the Ministry, the framework seems designed to preclude the pursuit of other options by the province to strengthen environmental protection and promote pollution prevention. These might include such things as the adoption of more stringent environmental standards, the use of environmental taxes or changes, or the introduction of pollution prevention planning requirements. All of these approaches have been successfully employed in other, comparably jurisdictions to Ontario.

The Ministry's proposal also implies a privileged position for a particular stakeholder group, namely the participating industries, in the Ministry's program and policy development, approvals, administration, and inspection and enforcement activities. In effect, the Ministry is proposing the formalization of a return to an environmental policy-making process of closed-door industry/government negotiations. However, unlike the previous "control order" regime of the 1970's and early 1980's (CELR "Control Orders and Industrial Pollution Control in Ontario," 1983), the requirements for industry performance would not be legally binding.

The Ministry's proposals include the application of a poorly defined "bubble" concept to participating facilities. This would appear to permit substantial changes in facility operations, and changes in the profile and fate of the pollutants they generate, without Ministry oversight, or opportunities for public notice and comment through the EBR Environmental Registry. Indeed, the Ministry's proposal fails to even mention strengthened environmental protection and public accountability as interests and concerns of government.

The potential cost-effectiveness of the Ministry's proposals must also be questioned. In effect, the Ministry is proposing to advance environmental protection in Ontario on a piecemeal, facility by facility basis. Such an approach is particularly problematic in the context of the Ministry's reduced capacity and resources.

The Ministry's proposals cannot be supported for these reasons. Rather, the Ministry should focus its energies on addressing the gaps in its existing legal and policy framework for pollution prevention and control. Among other things, this should include the implementation of comprehensive pollution and hazardous waste monitoring and reporting requirements, and the modernization of the province's standards for hazardous air pollutants and the management of hazardous wastes.

Voluntary action by industry to improve its environmental performance should be encouraged and supported. However, such action cannot be relied upon as a replacement for a comprehensive, effective, and continuously strengthened framework of laws, regulations, policies and other instruments to ensure the protection of the environment and public health and safety.