



Canadian Environmental Law Association
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SUBMISSIONS OF THE
CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE GREEN PLAN CONSULTATION
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INTRODUCTION

The Canadian Environmental Law Association (CELA) has a twenty year history of involvement with environmental law and policy issues at the federal level. It is with considerable frustration that we convey our comments on the "Green Plan - A Framework for Discussion on the Environment". We consider this document and the process by which it is being publicly reviewed to be seriously flawed. We have prepared comments on the consultative process, general comments on the framework document and the recently received "Report on the Green Plan Consultations", hereinafter referred to as the "synthesis document", as well as some specific comments on a number of key areas in each of these two documents.

THE CONSULTATIVE PROCESS

Beginning with an extremely vague document, the government provided the public with very little substance about which to consult and frequently inappropriate opportunities to provide input. The long list of communities across the country where information sessions were to be held attempted to give the impression that the government was going cross-country to seek input from Canadians. In fact, with a vague document and no formal presentation, these sessions were little more than public relations exercises. When the "consultation" sessions were held later in the Spring, they were by invitation only, were held only in the provincial capitals and Ottawa, and, incredibly, during Environment Week in Toronto. The level of frustration in many of the workshop sessions (in Toronto at least) was palpable.

From our perspective, the workshops did not provide an opportunity to provide input directly to government officials responsible for the Green Plan. Instead, we consulted with consultants who would then summarize the information for the government. As well, we were asked to sit down with representatives from a wide variety of sectors and agree upon an environmental agenda for the government. We rarely discussed the discussion document at all except to agree that it was far too vague. But instead of having a clear agenda for the group to follow, we used a matrix prepared by the consultant which only served to make the discussion even vaguer.

The matrix was designed in such a way that the only session that allowed for discussion of reforms to federal environmental law and policy was entitled "objectives/policy framework". We spent, or wasted, literally hours discussing what we should be discussing including whether the workshop was the appropriate place to discuss specific points for reform of federal legislation, regulation and enforcement despite the fact that this was the only session that remotely came close to providing an opportunity to discuss these topic areas in their entirety. In addition, the facilitator systematically

refused to consider using the "consultation worksheets for the green plan consultation" that had been prepared by Environment Canada. (At 33 pages of material copied for close to 300 participants, an enormous amount of paper appears to have been wasted on these worksheets.)

The outcome of such a process was predictable: agreement on non-controversial items and much ambiguous, rhetoric. Environmental groups across the country represent millions of Canadians. Yet, their voices were often squelched in the workshops by the simple expedient of majority rule - reflecting a majority of the workshop, but not of the Canadian public. In the workshop in which we participated, many of our recommendations for legislative and policy reforms never made it into the workshop report because we were out-voted by the majority of participants who were from industry or government departments. However, we were assured in the workshop, that the consultant's report would include, in an appendix, a detailed list of points for federal legislative and policy reform about which the group agreed to brainstorm but did not entirely agree. After waiting until August 8th and having not yet received a copy of the consultant's report, we discovered that the consultant had neglected to send it out to the workshop participants. More important, once we received the report we found that the promised appendix to the workshop session was not included. We can only conclude that the government did not receive the full scope of views and opinions from these consultation sessions which we, as participants, had been assured.

This censorship of input occurred despite assurances in the consultant's report of the Toronto workshops that the objective was not to reach consensus in the groups. In fact, in our experience, unless there was consensus in the room, the points raised rarely made it into the consultant's report. We are therefore conveying input now as part of the national wrap-up sessions.

GENERAL COMMENTS ON THE FRAMEWORK DOCUMENT AND THE SYNTHESIS DOCUMENT

We have prepared some specific comments on the initial document. As well, we have reviewed and, in the limited time available, made some comments on the synthesis paper as preparation for the national wrapup session.

It should first be pointed out however, that it is very discouraging to be asked to consult on a document with so little substance particularly in areas beyond the direct purview of the Minister of the Environment. The Cabinet and bureaucratic stalling of a more

substantive document appears to have been based in part on a misguided belief that public concern for environmental protection is "soft" and will recede with a downturn in the economy. Rather than responding with concrete proposals, we have a government that considers the unprecedented level of concern for the environment as the musings of an affluent public that has nothing more important to concern itself rather than a legitimate reaction to global ecological crisis. The decision to consult widely on a vague discussion paper using a process that will likely generate consensus on a few timid proposals may satisfy the dinosaurs in Cabinet and the federal bureaucracy but it will not satisfy the Canadian public.

In addition, we must preface all of our remarks with the fact that we can have very little confidence in the outcome of this process given the policy context within which this document is offered to the Canadian public. The economic policies to which this government ascribes, including for example the Canada-US trade deal, the subsidization of nuclear power and energy megaprojects, and an agenda of deregulation and privatization are frequently and fundamentally at odds with a meaningful commitment to environmental protection.

It is heartening to see that the discussion paper states that "the Government of Canada will systematically review its policies, laws and regulations and propose modifications as necessary". The synthesis paper contains several suggestions for such an overall review some with and another without a specific timeframe. As well, there are similar suggestions for reviews of legislation and regulations with respect to specific areas including waste management and recycling objectives, mining tax regulations and wetlands. As well, under "International Partnerships" the suggestion is made to "review all federal government trade, debt and aid policies and programs, and make any necessary changes to ensure their consistency with the government's environmental objective of sustainable development" (p. 58). We recognize that there is duplication between sections of the report and these items are "possible policy, program and legislative elements of the Green Plan". However, it is clear from the diverse areas where this kind of review has been suggested that it is an essential task, broadly supported, and fundamental to a federal "green plan".

While we support the concept of such a review, the details must be clarified. The definition of "policy" is critical to know what will be covered by such a review and we must know the mechanism for public input into any policy reviews. Only a thorough, publicly accountable process will be credible. It is late however, in this government's political agenda to take seriously a suggestion to revise such trade initiatives as the Canada-U.S. trade deal.

As such reviews are clarified and initiated however, the need for immediate action on critical environmental protection measures remains clear. Diverse, internationally respected and recognized scientists, academics, and organizations around the globe are making this call to action and three years worth of public opinion polls have shown vigorous support for it. This government has a clear mandate to implement the kind of environmental protection measures that have been presented by environmental organizations for many years. The most recent example and a good starting place is the "Greenprint for Canada". Further actions beyond those outlined in the Greenprint are similarly overdue and we have endeavoured to outline some of them.

Yet, the action steps currently contemplated are already far too weak. If we understand the consultation process correctly, the synthesis document has been prepared as a summary of the input received during the consultations. The section headings of the synthesis document follow the same as those in the Green Plan and in each section, the "suggestions for further consideration" are possible policy, program and legislative elements of the final Green Plan to be discussed at the national wrap-up session.

In the limited time available, a review of these suggestions shows that they are heavily weighted towards more research, more consultation, education, information, and monitoring. It is not surprising that there would be broad consensus on the need for more information. Lack of consensus in more controversial areas however, does not relieve the government of its responsibility for action in the face of controversy. While many of these information-based steps are laudable, it has been frequently pointed out that the lack of information will not disappear and that action is necessary despite uncertainties. Indeed, such recommendations will not be credible without much more commitment to immediate action to address pressing environmental concerns as well as further action steps to be conducted according to clearly specified timeframes. In addition, many of the recommendations are simply commitments to either initiating or finalizing programs that have been in place or promised for some time. Or, they are commitments that will simply reinstate programs that have either disappeared or suffered badly from financial cuts made during this government's administration.

SPECIFIC COMMENTS

We have chosen a number of individual sections in the two documents and used the same section headings to convey some specific comments. Time did not permit a more thorough review of each and every section.

Science and Technology, Better Information, Better Education

In each of these three sections, as noted above, the synthesis document is positively glowing in its reporting that there was broad consensus among consultation participants that more environmental research, monitoring, information and education was needed and that it needs to be available in layman's terms. It should be pointed out however, that this government has cut research funds substantially in many areas. Any increased commitment to environmental science and technology should be to restore the cuts that have already been made. Increases above and beyond such restored programs would indicate a real commitment to these areas.

Legislation, Regulation and Enforcement

The framework document asks Canadians if the government should emphasize increased inspection and legal actions or an expansion of the government's role as an advisor on regulatory requirements. It is peculiar that these two roles should be characterized as mutually exclusive. The outcome of the consultation, as reported in the synthesis document was entirely predictable: non-industry participants favoured strong, effective enforcement and industry favoured "consensus, cooperation, consultation and "working with" companies to achieve compliance, rather than the federal government's carrying out inspections and initiating legal action when violations are detected" (p.27). So who is surprised? Of course industry wants to maintain the private deal-making approach that has characterized pollution control for so many years and has contributed to the environmental crisis that we face. When the questions is framed in such a way that the government can say that there was not consensus on one approach, the resulting recommendations are weak and little more than commitments to undertake reforms or only consider undertaking reforms for which this government has had a mandate for many years.

The suggestion for a "Canada Environment Act to provide an umbrella for federal environmental legislation" is impossible to comment upon without more detail. However, it is difficult to imagine what possible purpose would be served by such a law. Why go through the laborious process of an entirely new "umbrella" piece of legislation when the government already has a mandate to implement a broad agenda of new legislation, legislative and regulatory reform, as well as the broader review of all federal legislation, regulations and policies for their environmental impacts?

Suggestions two through nine on pages 32 and 33 of the synthesis document regarding enactment of legislation involve legislative reforms and new legislation for which much of the groundwork has already been done. In particular, we support enactment, not just consideration, of an Environmental Bill of Rights. We support all of these initiatives and, to have any public credibility, would expect to see them in the House of Commons within the year.

Suggestion number ten to review all federal laws and regulations by 1995 to determine their impacts on the environment and make modifications necessary to ensure their consistency with environmental protection is a laudable concept. The timeframe could probably be moved forward, the review should include federal policy as well, and most important, as noted above, the public must be involved in the review.

The suggestion to tighten automobile emissions to the California standards by 1994 (number 11) has already been announced by the Transport and Environment Ministers. Similarly, the Canadian Council of Ministers of the Environment have already committed to a 50% waste reduction goal. Recommendations 23 and 24 to establish standards, regulations, policies, etc. to achieve 50% waste and packaging reductions should be prepared within the year.

The recommendations dealing with control of toxic substances should embody the principle of zero discharge of persistent toxic substances as outlined in the Great Lakes Water Quality Agreement. Again, timelines for swift application of these measures are required.

Finally, the framework document mentions that important gaps remain in environmental legislation in regard to responding to concerns about pesticides. It mentions that the government intends to strengthen the regulatory provisions of existing acts and refers the reader to more detail in the next section of the report. However, pesticides are not mentioned again. Again, initiatives beyond the purview of Environment Canada are neglected. It is clear to environmental organizations and the public that any far-sighted national agenda for environmental protection should include a specific commitment to reduce overall pesticide use. The Ontario and Dutch targets of a 50% reduction of overall pesticide use by the year 2000 would be a laudable start.

Environmental Stresses

Toxics, Waste, Environmental Emergencies, Health

In the summary of the consultation provided in the synthesis document as well as the

summary of the Toronto consultation session prepared by the consultant, several points that were raised in the workshop we attended and in the plenary sessions do not appear in the report. A few examples include the recommendation, which was widely supported by environmental organizations, to define routine emissions from nuclear facilities as persistent toxic substances. Another recommendation regarding environmental emergencies, specifically related to tanker traffic on the west coast, was to restrict tanker traffic as a means of reducing risk. This recommendation does not appear in either report. Neither does the overall commitment to zero discharge of persistent toxic substances. The federal government has already pledged itself to this principle in the Great Lakes Water Quality Agreement although it has yet to truly uphold it. While we have objected above to the "suggestions for further consideration" in the synthesis document including commitments already made, the government could at least be consistent and include in a final "green plan" an indication of those commitments that have already been made and a clear indication of how and when they will be implemented.

Global Warming

Both the framework document and the synthesis document present Canadians with a government that is abdicating its responsibility to address the threat of global warming. We are asked if "Canada should commit itself to greenhouse gas targets?" The question is insulting. While the questions that follow imply that targets are likely and input is requested on how they should be developed, it is embarrassing at this stage in the environmental crisis for our government to even ask such a question. It is similarly disturbing to be asked, in the framework document, if energy megaprojects are consistent with a commitment to greenhouse gas reductions. No, they are not. While Canada did set a very modest target in Bergen to stabilize CO₂ emissions at 1990 levels by the year 2005, there is international scientific consensus that this target is nowhere near enough of a commitment.

This target does present a starting point, but it is ironic that the synthesis document's tenth "suggestion for further consideration" at the national wrapup sessions (p. 89) is to "actively support international programs concerned with climate change such as the World Meteorological Organization and the United Nations Environment Programme". As this government well knows, these two organizations set up, in 1988, the Intergovernmental Panel on Climate Change (IPCC) which has reported on four occasions, most recently and significantly in June, that drastic cuts in greenhouse gases are essential. Just to stabilize the atmospheric concentrations of carbon dioxide, at present levels in order to slow down but not stop climate change, the IPCC says we

must cut emissions of these greenhouse gases by 60% immediately.

We are left wondering when the synthesis document suggests that we actively support "international programs and institutions concerned with climate change" whether we are to support their findings as well. If so, then the recommendations that follow regarding limiting emissions are indeed "first steps", as the document describes and should be much more clearly spelled out to incorporate state-of-the-art energy efficiency techniques and technologies, and swift implementation. The suggestions to enhance research and development and other programs that address energy efficiency is the most glaring area where funding cuts made by this government should first be restored as the baseline from which further increases are considered.

The broad scientific consensus and dramatic implications that the IPCC findings represent clearly provide this government with a mandate for action. The consultation summary in the synthesis document implies that the lack of consensus apparent in the participants justifies more research and further consultation to determine whether "more far-reaching measures may be required to stabilize or reduce greenhouse gas emissions" (p. 85). This lack of consensus speaks to a failure in the consultation process and in no way provides this government with an excuse not to act swiftly and decisively to control these emissions.

The recommendation to review the role of nuclear energy in a long-term strategy to reduce CO2 emissions is unnecessary. The analysis has already been done. Why waste a lot of taxpayers money to show that nuclear power is irrelevant in the solution to global warming. In this context, it is very disturbing that the only reference to nuclear power in the framework document is as a potential solution to global warming. A review that is long overdue is an inquiry into nuclear power in Canada and an immediate repeal of The Nuclear Liability Act.

CONCLUSION

We have attempted in this analysis to focus on the consultative process, the context for this process, and a few major issues. It is clear from this short review that the consultation process for the Green Plan framework document is a failure. It cannot provide much more than the lowest common denominator for a federal environmental agenda.

The Green Plan must contain diverse and concrete proposals for a federal

environmental agenda. The need for aggressive measures to protect the environment and repair damage already done, is well documented. The action steps have been identified beginning with the "Greenprint for Canada". This government has a clear mandate to put in place an aggressive agenda and to generate any credibility in the public's eye, it must begin to exercise leadership and move beyond the rhetoric to action.