



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

July 26, 1996

Hon. Anne McLellan
Minister of Natural Resources
580 Booth Street, 21st Floor
Ottawa, Ontario
K1A 0E4

VF:
CANADIAN ENVIRONMENTAL LAW
ASSOCIATION.
CELA BRIEF NO. 294; [Letter re:]
comment on the document...RM19172

Publication #294
ISBN# 978-1-77189-432-6

FAX: (613)992-8581

Dear Ms. McLellan:

Re: Comment on the Document "Partnerships for Sustainable Development"

We are writing to you to comment on the draft document, "Partnerships for Sustainable Development - The Minerals and Metals Policy of the Government of Canada," (hereinafter referred to as "draft policy"). Please regard these as preliminary comments. The short time for public comment simply does not allow for detailed analysis or extensive comment.

Our primary concerns with the draft policy relate to its failure to emphasize as a priority the need for a strong regulatory framework based on the concept of pollution prevention and the precautionary principle. It also does not recognize the need for a strong federal regulatory role.

As an introductory note, we have previously outlined the environmental problems associated with the metals and minerals sector in submissions before the Standing Committee on Natural Resources presented on April 16, 1996 entitled, "Brief to the House of Commons Standing Committee on Natural Resources Regarding Mining and Canada's Environment." This submission outlines a number of points relevant to the draft policy, including the need for a strong federal role, concerns with the voluntary approach and the need for a stronger, as opposed to a weaker, regulatory regime governing the mining sector in Canada.

The Emphasis Must Be On Prevention

While the draft policy recognizes on pages 8 and 9 the need for a strong regulatory framework, affirms the precautionary principle and endorses the concept of pollution prevention, the draft policy either fails to provide details on how these principles will be implemented or in fact suggests measures that contradict these principles.

For example, the acceptance of the principle of "safe use" is not put in context with the principle of pollution prevention. The report does not specify how the two concepts

interrelate and which principle takes precedence. We do not understand how the policy can have these two principles existing side-by-side without some rationalization. From the description on page 10 of the draft policy, it would seem to us that the principle of "safe use" is really a rationalization for the use of risk assessment methodologies.

The draft policy must emphasize a preventative and precautionary approach rather than focusing on acceptable risk approaches. The draft policy, therefore, should be consistently promoting pollution prevention approaches that seek to avoid the use, generation and release of pollutants rather than attempting to manage them through end-of-the-pipe controls. Pollution prevention holds the potential not only to reduce risk from mining-related activities, but also promote innovative cleaner production processes.

Similarly, we remain very critical of the Toxics Substances Management Policy (TSMP) mentioned on page 14. Rather than repeat our comments on the TSMP at this time, we have enclosed a submission outlining our concerns that was submitted during the development of that policy. We take issue with the government assumptions and definitions within the TSMP and the interpretation of the TSMP in the context of the draft policy. For example, the TSMP should not exclude the possibility that anthropocentric sources of metals and minerals should be phased out.

The Need for a Regulatory as Opposed to a Voluntary Approach

We also have considerable concern with the sections on "regulatory efficiency." In our view, the mining sector is not "over-regulated," but may not be sufficiently regulated to protect human health and the environment. The drive to make the regulatory framework more efficient cannot be at the expense of the principles of accountability and transparency in decision-making or compromise the protection now afforded to the public from long term environmental liability from mine pollution.

Rather than regulatory efficiency, emphasis should be placed in the policy on public accountability, transparency in decision-making and appropriate polluter liability principles.

Further, we have serious concerns with respect to the emphasis in the draft policy on voluntary approaches, and in particular, on pages 10 and 20 of the draft report. The draft policy gives blind support to the voluntary approaches despite the fact that:

- (1) there has yet to be a full public debate on their effectiveness and appropriateness to govern the metals and minerals sector;
- (2) voluntary approaches have yet to be demonstrated as being more efficient or more result-orientated than the regulatory approach; and
- (3) the voluntary approaches lack the essential protection afforded by the rule of law, such as public participation, accountability of results and enforceability.

In our view, the acceptance of the voluntary approach without both a public debate on the

effectiveness of the approach and strong evidence of its utility is inappropriate of this time.

In the end, it is our view that the policy does not sufficiently recognize the environmental and human health consequences of the metal and minerals industrial sector. Moreover, it does not clearly define and assert a strong federal role in the promotion of an environmentally sustainable industry. The federal government must maintain its role and obligation to ensure that ecological integrity is protected from irresponsible and inappropriate mineral development.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



for Paul Muldoon
Counsel

Encls.

cc: Honourable S. Marchi, Minister of the Environment
Honourable S. Copps, Deputy PM and Minister of Canadian Heritage
Honourable D. Dingwall, Minister of Health
Honourable F. Mifflin, Minister of Fisheries and Oceans
Honourable R. Irwin, Minister of Indian and Northern Affairs
Standing Committee of Natural Resources
Tom Balint, Canadian Environmental Network
Alan Young, Environmental Mining Council of British Columbia; Chair, Mining
Caucus of the CEN

