

ENVIRONMENTAL HARMONIZATION IN CANADA DOES MORE THAN WHAT IT WAS MEANT TO DO

BY GARY GALLON

Environmental regulations and policies vary from province to province, making it confusing and more costly for companies to provide goods and services across Canada. For example, soft drink recycling and recovery legislation differ. One province requires cans to be made of 100 per cent aluminum. Others require a steel top on the cans. One province mandates 30 per cent refillable soft drink containers; others do not.

The lack of harmonization of environmental laws drives up the cost of doing business and, ironically, impedes environmental cleanup. Harmonizing this kind of patchwork of environmental regulation has been long overdue.

The same confusion applies to the approval of new environmental technologies. Verification and approval in one province do not apply in another. Thus the technology has to be tested and verified for each province—at great loss in cost and time to the companies. The lack of harmonization of environmental laws

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The Canadian Council of the Ministers of the Environment (CCME) began a process to harmonize environmental programs and policies in November 1993. The CCME “directed officials to minimize overlap and duplication between federal and provincial/territorial programs, to clarify what role each order of government should play in protecting the environment, and to bring greater consistency to environmental laws and policies across the country. An underlying tenet was that environmental protection must be maintained or enhanced by the initiative”.

In the Fall of 1994, the Environmental Management Framework Agreement (EMFA) was drafted. It consisted of a framework Agreement and 11 schedules. The schedules refer to areas of functional responsibility between the provinces and the federal government, specifically Monitoring; Environmental Assessment; Compliance; International Agreements; Guidelines, Objectives and Standards; Policy and Legislation; Environmental Education/Communication; Environmental Emergency Response; Research and Development; State of the Environment Reporting; and Pollution Prevention.

DISTORTION OF ENVIRONMENTAL HARMONIZATION

The intention of the effort was correct. The need for harmonization was being addressed. However, other forces converged from 1993 onward to distort the effort. The new forces would morph harmonization into what was essentially devolution.

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What were these forces? First, in 1993 the federal government was going through a major deficit-cutting exercise. The Finance Minister ordered each of the ministries to conduct a “program review”. Environment Canada was ordered to cut its operating budget 40 per cent. It could do that without devolving most of its powers (and costs) to the provinces. Environment Canada severely downsized its environmental laboratories, let go of most of its scientists, and privatized a number of its traditional functions. Environment Canada’s Deputy Minister, Ian Glen, wrote in a memo

to staff during the most recent round of 200 staff cuts, that the “cuts in these areas are consistent with the on-going direction of federal-provincial harmonization.”

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However, the provinces were in no position to take the added responsibilities. They, too, were busy slashing their environment budgets. Ontario Environment Ministry’s operating budget has been cut 43 per cent since 1995, from \$290 million to \$165 million. Staff levels have been reduced 36 per cent, from 2,430 to 1,550. Quebec’s environment function was cut 64.9 per cent, from \$151 million in 1994-95 to \$53 million in 1997-98. Newfoundland Environment Department’s budget has been cut 60 per cent since the 1994-95 fiscal year, from \$10.6 million to \$3.6 million. Alberta’s Environment Protection Ministry will cut its environment budget 29.4 per cent, from \$405 million to \$296 million by the year 2000.

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continued on page 18

ENVIRONMENTAL HARMONIZATION IN CANADA DOES MORE... *from page 17*

and other provinces, such as Alberta and British Columbia, are clamouring for more independent environmental powers. They want to reduce, or eliminate, federal environmental responsibilities within their jurisdictions.

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The Committee recommended that "therefore it seems doubtful to the Committee that the Accord and Sub-agreements will be successful in achieving greater administrative efficiency or cost savings."

Also, the provinces viewed environmental protection as being an impediment to economic growth. Most have been cutting their environmental regulations, and pressing for soft voluntary measures. Alberta, Quebec, and Ontario have taken direct aim at reducing the role environmental protection will take in their

provinces. This effort has been coordinated with the resource, energy, and chemical industry sectors, through "The Friday Group", whose representatives have been sitting at the drafting-and-review table of the CCME harmonization process.

One action that made it clear the provinces were not as interested in harmonization as they were in devolution was the fact that they initiated a 50 per cent budget cut to CCME's annual budget of \$3 million. Total contributions from the provinces and the federal government were reduced to \$1.4 million in 1996-97. This was at a time when CCME was being given the added responsibilities for coordinating the implementation of the harmonization effort. It effectively was stripped of the capacity to carry out the harmonization mandate.

FAULT STUDIES USED TO "PROVE" COSTS OF OVERLAPPING JURISDICTIONS

To prove that overlapping jurisdictions and excessive environmental regulations are a burden, provinces like Alberta and the industry associations funded a number of cost studies to strengthen their arguments at the CCME harmonization negotiations. Alberta, for example, funded two studies by the Macleod Institute for Environmental Analysis in Calgary on additional costs to industry from overlapping federal-provincial environmental regulations. When the first paper, prepared under subcontract to the Macleod Institute by the Canadian Institute for Resources Law (CIRL) found no evidence of excessive costs, Alberta quickly funded a second study by the

Macleod Institute. Called "Working Paper #3", it was subcontracted to the Economics Department of the University of Calgary. The department built a hypothetical economic model that postulated potential losses to industry from "unexpected delays" to projects resulting from overlapping environmental assessments imposed by the federal government. The model posited that, in a worst-case scenario, the cost of project delays lasting six months to 1.5 years can range from \$38 million to \$110 million for a \$240 million project in Alberta.

Alberta Environment Minister, Ty Lund, relied on this report and the "Lean Green" Conference Board of Canada study to opine that "uncertainty and delays in obtaining project approvals due to the different provincial federal environmental regulations is costing industry millions of dollars", and told senior industry and government officials from across Canada that the federal and provincial governments must work harder to harmonize Canada's environmental regulatory framework.

At the same time, the Vice President of the Conference Board of Canada, who circulated the "Lean Green" cost study to senior government officials, wrote that "unharmonized requirements of government agencies impose documented costs on the Canadian economy. A more efficient federal-provincial regulatory system that maintains environmental quality could save Canadian firms in the manufacturing, mining, and utility sectors \$500-600 million per year. And a more efficient and effective regula-

tory system would enhance the climate for investment in Canada." The dollar figures (\$550-600 million) he used were based on another inadequate economic model that used poor assumptions.

The moment for the CCME harmonization accord has been substantially reduced. What appeared to be a sure thing in 1997 appears uncertain for 1998, when the ministers will again meet on the subject. In the end, many of the good aspects of the harmonization accord have already been addressed in an ad hoc fashion by the federal and provincial governments. They have virtually eliminated duplication in the administration of environmental law, or are in the process of doing so.

HOUSE OF COMMONS HEARINGS ON ENVIRONMENTAL HARMONIZATION


The lobbying effort paid off. At their November 20, 1996 meeting, the Council of Ministers gave approval in principle to the Canada-Wide Accord

on Environmental Harmonization. It contained three sub-agreements covering environmental assessments, the setting of Canada-wide standards, objectives, and guidelines in areas such as air, water and soil quality, and inspection activities by environmental departments.

The ministers of CCME were scheduled to sign the accord in the first week in November 1997. However, concerned about the deal, the House of Commons Standing Committee on Environment and Sustainable Development, chaired by Charles Caccia, decided to hold a lightning set of hearings on "Harmonization Initiative of the Canadian Council of Ministers of the Environment" between October 20-29, 1997 in Ottawa. It recommended against signing the accord. The evidence at the Committee was overwhelming in favour of taking a cautious approach. The concerns were conveyed to the federal Environment Minister Christine Stewart and to other Cabinet members. Judiciously, Stewart asked for the signing session of CCME to be postponed into the new year—due to preparations for the Kyoto global warming talks.

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Gary Gallon, President of the Canadian Institute for Business and the Environment (CIBE), Montreal, worked as Senior Policy Advisor to the Ontario Minister of the Environment (1985-90), and was President of the Canadian Environment Industry Association, Ontario (1993-96).

NOTES

1. Canadian Council of Ministers of the Environment (CCME) Website, www.ccme.ca/ccme, Winnipeg, December 1997.
2. Tom Spears, *The Citizen*, Ottawa, July 28, 1997.
3. See the analysis of these studies in G. Gallon, *Analysis of Five Canadian Environmental Cost Studies* (Montreal: Canadian Institute for Business and the Environment, March 1997).
4. Working Paper #2, *Overlapping Environmental Jurisdiction: A Selective Survey of Industry Perceptions and Costs in Alberta*, by S.A.

Kennett, Canadian Institute for Resources Law (CIRL), E.J. McCoy, Q.C., and Dr. G.A. Yarranton, The Macleod Institute for Environmental Analysis at the University of Calgary, (Calgary, January 1996).

5. Working Paper #3, *Overlapping Environmental Jurisdictions: Estimation of Economic Costs Associated with Regulatory Delay*, by J. Jorgensen, Chair, Insurance and Risk Management and Professor, Faculty of Management, University of Calgary; P. Mokkelbost, Professor, Faculty of Management, University of Calgary; and their students, A. Smith, C. Butler Wutzke (Calgary: Macleod Institute for Environmental Analysis, May 1996).

6. *Lean Green: Benefits From a Streamlined Canadian Environmental Regulatory System*, by A. Howatson, Senior Researcher, Business and Environment Research Program, The Conference Board of Canada (Ottawa, April 1996).


7. "Lund Stresses Need for Harmonization at National Energy Forum", Press Release No. 96-069, Alberta Environmental Protection Ministry, Edmonton, May 28, 1996.

8. Letter to Mel Cappe, Deputy Minister, Environment Canada, from Gilles Rheaume, Vice-President, Policy, Business and Society, The Conference Board of Canada, Ottawa, May 13, 1996.

9. *Draft Report on the Harmonization Initiative of the Canadian Council of Ministers of the Environment*, the Standing Committee on Environment and Sustainable Development, Hon. Charles Caccia, Chair, House of Commons, Ottawa, December 1997.

THE KYOTO PROTOCOL WILL COST ALL CANADIANS BUT MAY NOT ACHIEVE MUCH from page 7

served to significantly reduce the risk of global warming, or that the objectives will be achieved at the lowest cost possible.

Needless to say, future governments will have to face most of the costs of these commitments. In my view, they are unlikely to feel bound by them without the explicit backing and approval of Canadians on the measures required to implement the Protocol. Consequently, I reiterate my earlier position that ratification of this Protocol should be preceded by extensive public consultations, a Parliamentary debate, and a free vote held in the House of Commons. 

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