

HARMONIZATION OF ENVIRONMENTAL STANDARDS IN CANADA

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Résumé de l'article

Cette étude démontre que l'harmonisation des normes environnementales pourrait permettre d'atteindre des objectifs importants, principalement en ce qui concerne la législation et la réglementation des normes, l'économie et les impacts sur l'industrie de l'assurance. Tout en s'inspirant du concept de développement durable, l'harmonisation rendrait les entreprises canadiennes plus concurrentielles, en éliminant les duplications, en simplifiant les opérations et en diminuant les coûts. Nous remercions le BAC de nous avoir donné l'autorisation de publier ce mémoire. Préparé par KPMG Services Inc. il fut présenté par le BAC, en mars 1995, au Conseil Canadien des Ministres de l'Environnement.

Harmonization of Environmental Standards in Canada*

by the
Insurance Bureau of Canada

Cette étude démontre que l'harmonisation des normes environnementales pourrait permettre d'atteindre des objectifs importants, principalement en ce qui concerne la législation et la réglementation des normes, l'économie et les impacts sur l'industrie de l'assurance. Tout en s'inspirant du concept de développement durable, l'harmonisation rendrait les entreprises canadiennes plus concurrentielles, en éliminant les duplications, en simplifiant les opérations et en diminuant les coûts.

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Introduction

A. Purpose of the Submission

The purpose of this submission is twofold. Firstly, the Insurance Bureau of Canada (IBC) wishes to ensure that the perspective of a key stakeholder, the property and casualty insurance industry, is taken into consideration in the harmonization process. This document expresses the views of our members on the Environmental Management Framework Agreement (EMFA) and the harmonization process in general. In particular, IBC is firmly committed to the concept of national standards, and the objectives of the harmonization initiative as

* This report was prepared for IBC by KPMG Environmental Services Inc.

set out in the document entitled "Rationalizing the Management Regime for the Environment".

426 Secondly, IBC is extremely interested in ensuring the success of this harmonization initiative. We have therefore provided a relatively in-depth discussion of implementation options and issues. Our goal in analyzing the implementation aspects of harmonization is to assist the Canadian Council of Ministers of the Environment (CCME) in operationalizing environmental harmonization in Canada. Thus, we wish to be as constructive as possible by acting as a facilitator of harmonization, and in this spirit, contributing what we can to ensure the successful implementation of the harmonization initiative.

B. Overview of the Submission

Following this brief introductory section, the next section of our submission will provide support for IBC's firm commitment to environmental harmonization by outlining some of the specific benefits of harmonization. Following this discussion of benefits, we will provide an overview of the basic prerequisites for a workable agreement. Given our strong interest in moving the harmonization process forward, we will then devote a substantial portion of our submission to a discussion of the options and issues surrounding implementation of the agreement. The final section of the document will provide additional comments on the EMFA and the Schedules, for the consideration of the Lead Representatives.

The Case for Harmonization

Benefits of Harmonization

There are many general benefits of harmonization. This discussion does not attempt to reiterate the benefits of harmonization already provided in "Rationalizing the Management Regime for the Environment". Instead, this section discusses benefits from the perspective of promoting sustainable

development, and the impact on the insurance industry. Given the support for sustainable development that is a central underpinning of the EMFA, it is necessary to show both the economic and environmental benefits of harmonization, as well as to provide an understanding of the practical implications of such benefits. A specific result of harmonization, that has both economic and environmental benefits, is the facilitation of the development of insurance products. Therefore, after enumerating several economic and environmental benefits, a specific discussion of impacts related to the insurance industry follows.

The many environmental and economic benefits listed below support a strong link between harmonization and sustainable development. However, before launching into a discussion of these benefits, we would like to further explore this important link. Sustainable development as defined in the EMFA means development that meets the needs of the present, without compromising the ability of future generations to meet their own needs. We believe that this implies a balance between environmental and economic issues that permits progress to be made on both fronts. Harmonization is an example of a sustainable initiative, in that it permits progress in both areas: the environment and the economy. Harmonization will produce cost savings for both government and industry, while at the same time permitting a more consistent and coordinated approach to addressing environmental issues. For instance, cost savings from efficiency gains can be channelled into greater environmental protection. Also, a harmonized regulatory environment may encourage more companies to locate or expand their operations in Canada, thus improving the overall economy. Given the strong relationship between harmonization and sustainable development, we believe that this harmonization initiative is a vital step that Canada must take to work toward sustainable development.

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1. Economic and Environmental Benefits

Harmonization offers an important opportunity to achieve significant environmental and economic benefits. As such, the

EMFA represents an opportunity for operationalizing the concept of sustainable development. In general, harmonization will improve the competitive position of Canadian industry by increasing efficiency through the elimination of duplication, the simplification of operations (particularly for transprovincial companies), the reduction of compliance costs, and the provision of greater certainty.

a) *Environmental and Economic Equity*

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Before getting into a discussion of the key issues of efficiency, compliance, and enforcement, it should be noted that harmonization addresses a number of concerns related to environmental and economic equity.

- Harmonization of standards avoids the irrational and unfair costs that can be imposed by a lack of standards. Specific companies can be put at a competitive disadvantage as a result of standards differing across provinces. In addition, a lack of standards can hinder enforcement, leading to inconsistent compliance both within and between jurisdictions. Harmonized standards will help to provide a level playing field for Canadian industry.
- Certain regions may become a haven for environmental polluters as a result of their lower standards.
- Varying standards indicate a missed opportunity to improve Canada's environment as a whole through comprehensive action on environmental issues.

b) *Efficiency*

Some examples will help to illustrate the potential for efficiency improvements.

- Some companies are required to use different measuring methods for the same substance: one for a provincial Certificate of Approval, and one for the federal National Pollutants Release Inventory (NPRI). Thus, companies must carry out considerably more work with no net benefit

to the environment. Funds spent on additional measuring activities could be channelled into other environmental activities resulting in a net environmental benefit. Moreover, such a system makes it difficult for governments to work together to achieve environmental goals, since sharing and comparing data is made more difficult, as the data are not totally compatible.

- Both the federal Canadian Environmental Protection Act and the new substance notification list set different standards for regulated substances in the workplace than, for example, Ontario's Occupational Health and Safety guidelines. It is very expensive for business to comply with different standards for the same area.
- Environmental procurement specifications are different at the provincial and federal levels. Coordinated specifications would facilitate company operations, as well as help to fuel Green Industry in Canada.
- Confusion and concern over environmental assessment can act as a major disincentive for companies wishing to locate new facilities. A harmonized environmental assessment process would reduce uncertainty and facilitate new investment in Canadian jurisdictions. Consider the case of a Canadian subsidiary of a foreign company considering new investment prospects. The company would find it extremely difficult to make a case for directing investment funds to a Canadian jurisdiction if the prospect of a long, expensive and uncertain environmental assessment process would be a prerequisite to the development.

In addition to increased efficiency in the private sector, harmonization can also produce cost savings for government. For example, if standards development is centralized, overall costs for developing standards will decrease. Cost savings that are achieved through harmonization would also allow governments to reallocate their limited resources and strengthen environmental protection in some areas.

c) *Compliance with Environmental Legislation*

Compliance with environmental legislation is a major concern for industry. Compliance is made increasingly difficult by a lack of harmonization. Some specific examples illustrate this problem.

- Federal and provincial PCB requirements vary in terms of the determination of thresholds for certain disposal requirements. For example, although in Ontario there is no aggregate threshold, there is in the federal legislation. Therefore, although certain individual quantities of PCBs may not trigger provincial disposal requirements, the aggregate amount may trigger federal disposal requirements.
- PCB requirements also vary for storage. In Ontario, storage requirements are not specifically detailed in legislation. However the federal requirements are not adopted. Instead, storage requirements are based on the regional director's instructions, which can even vary within the province, depending on the region.
- Although the federal Transportation of Dangerous Goods Act regulates interprovincial transport, some of the provinces have adopted this legislation to varying degrees for intraprovincial transport. Therefore, a company that operates in a number of different provinces would have to meet different requirements when transporting dangerous goods within different provinces.

d) *Enforcement*

National standards are easier to enforce for a number of reasons. In general, standardization equals simplicity, while diversity equals complexity; complexity always stands in the way of enforcement. In addition, a lack of environmental standards can lead to an erosion of stricter standards, as regions that have strict standards may not enforce them because other regions with low or non-existent standards are realizing

advantages over them. In turn, standards that are not properly enforced are not respected. In addition, future attempts to enforce increased or improved standards are made more difficult. Additional aspects to consider regarding enforcement include the following:

- A lack of standards creates confusion in the public's view. Different standards may result in erroneous assumptions. It also becomes more difficult for the public to track standards.
- There are educational and training benefits in having common standards. Investigation and enforcement personnel can develop common practices and bodies of knowledge, which over time improves the efficiency and effectiveness of investigation and enforcement activities.
- National environmental standards are more credible, thus encouraging consistent reporting and compliance and facilitating enforcement.
- National standards are easier to enforce in the courts because they offer a meaningful, straightforward benchmark to the judiciary and allow for the development of case law that reinforces these standards.

National standards that are properly enforced provide assurance both to companies and the public. Companies will be able to implement procedures for their organizations and obtain assurance that they will be in compliance across the country. The public, in turn, will be assured that Canadian industry is living up to its environmental obligations. Some specific examples of enforcement-related duplication includes the following:

- If a company has an accidental emission into the environment, for certain substances, management would be required to report the incident twice: once to the federal authorities, and once to the provincial authorities.
- If a company has a single incident of a discharge into a body of water, they could be charged twice: for example,

under the Ontario Water Resources Act, and under the federal Fisheries Act.

e) *Facilitating the Use of Non-Regulatory Instruments*

Harmonization will require the various levels of government to review the methods that they employ to promote environmental protection. This process should include the review of non-regulatory tools for addressing environmental issues. Given the importance of pollution prevention in reducing environmental risk over the long term, this opportunity for increased flexibility and creativity is important. Harmonization offers a number of opportunities for the use of non-regulatory tools.

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- There could be an increased use of economic incentives to improve environmental performance, for example by permitting the development of a market for tradable permits.
- The development and implementation of environmental management systems is facilitated, by allowing companies to develop policies and procedures that can be implemented company-wide. The specific examples of a lack of harmonization cited above illustrate some of the difficulties in implementing environmental management systems for companies that operate in more than one province.
- Harmonization facilitates the incorporation of international standards into Canada's environmental regulations and procedures, thus ensuring that Canadian companies are at the forefront of environmental management. One such international standard would be the International Organization for Standardization's 14000 Series of Environmental Management Systems documents. These guideline documents provide organizations with a methodology to effectively initiate, improve or sustain environmental management systems. Such systems are essential to an organization's ability to anticipate and meet growing environmental performance expectations and to

ensure ongoing compliance with national and/or international requirements.

f) Process Improvements

Harmonization has the potential to improve the processes used for creating and implementing environmental policies and programs. For example:

- Standardization will permit the federal government to take a leadership position on environmental protection.
- A centralized process for standard setting could facilitate public consultations.
- An effective central body for national harmonization could provide Canadian citizens with a vehicle for voicing their environmental concerns in cases where provinces are not meeting established environmental standards.
- By encouraging a comprehensive approach, harmonization will assist in addressing current gaps in environmental legislation, such as those identified in IBC's August 1994 *Report of the Environmental Liability Committee - Improving the Climate for Insuring Environmental Risks*.

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g) Other

There are many other environmental and economic benefits of harmonization, including the following:

- Harmonization would permit comparison of environmental performance among different jurisdictions. For instance, if comparisons of environmental infractions are to be made across provinces, common standards are required for such comparisons to be meaningful. With standardization, data tend to be more easily comparable.
- Harmonization within Canada will facilitate further progress toward meeting current and future commitments made through international environmental agreements. Harmonization will also make it easier for Canada to work

with the United States on our many common environmental concerns. An important example is our ability to cooperate on Great Lakes water quality standards.

2. Harmonization and the Insurance Industry

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IBC is in a unique position to elaborate on the advantages of harmonization related to the availability of environmental coverages and the development of new environmental insurance products. Many businesses say that they need and want environmental insurance, however, coverage is limited and made expensive, due in part to the lack of harmonization. In addition, as a parallel example, one only needs to look to the effect that harmonization of building and fire codes had on the provision of property insurance, to see the effect that harmonization of standards can have on the insurance industry.

As outlined in the report of IBC's Environmental Liability Committee, the proper role of insurance is that of prevention and response to environmental damage that is truly accidental in nature. The report called for the development of national standards in six key areas: aboveground storage tanks, underground storage tanks, hazardous waste management, wastewater management, hazardous waste site standards and pollution prevention. As explained in the report, harmonization and the development of national standards facilitates the development and availability of environmental insurance products by creating the opportunity to develop a large number of homogeneous exposures, because everyone is on the same playing field, and thus assists in quantifying exposures. Enforcement of standards is particularly relevant for IBC and its member companies, since insurers must know that standards are being complied with and must be able to rely on historical data in developing and pricing insurance products. With lax enforcement, the integrity of data is brought into question, thus undermining the ability of insurers to manage and measure risk, price risk and moreover, to encourage pollution prevention.

Benefits of environmental insurance relate to both environmental and economic impacts.

- Facilitating the development of environmental insurance will permit the insurance industry to underwrite new products with some predictability of prices and expected losses. This will not only allow the insurance industry to introduce new products, but will also provide organizations with a useful tool to address their environmental issues.
- Environmental insurance allows businesses to better manage their environmental risks by providing protection against accidental pollution. Environmental insurance can provide organizations with greater certainty that if a truly accidental event does occur, it should not threaten the overall viability of the organization. This added certainty thus allows organizations to enter into economic ventures that they may not have otherwise entered into if insurance was not available.
- By providing greater certainty, environmental insurance will allow companies to better manage their environmental risks. Environmental insurance will not be a stand-alone solution to environmental risks. Organizations will be encouraged to make environmental insurance part of their overall environmental risk management program. By requiring policy holders to meet the requirements set out in their environmental insurance policies, for example, the performance of audits, the introduction of standards of good risk management, and the implementation of a comprehensive environmental management system, companies will be encouraged to develop and implement a comprehensive approach to these issues. The influence of the insurance industry in this regard was recently demonstrated in KPMG's 1994 Canadian Environmental Management Survey. Forty-six percent of respondents indicated that their insurers' requirements were an important factor in influencing their organization's actions on environmental issues.

Prerequisites for a Workable Agreement

A. The Fundamental Requirements

There are some fundamental requirements that are necessary for the EMFA's success. On a very basic level, a successful intergovernmental agreement requires:

- a consensus among all governments and all stakeholders on the need to pursue harmonization;
- 436 • an intergovernmental structure that allows everyone to see what is going on (transparent process, verifiable behavior); and,
- a basic agreement on very fundamental values.

We have some concerns that these basic elements may not be present among all of the stakeholders negotiating environmental harmonization. Although it appeared that a consensus was reached in the original document *Rationalizing the Management Regime for the Environment*, we do not find that the spirit of this document has been carried forward into the EMFA. We wish to ensure that a consensus is indeed present so that undue delays in the harmonization process can be avoided.

There are other important requirements that will be vital for the successful implementation of the harmonization agreement. These requirements are outlined below, and build on the basic concepts above.

B. A Commitment to National Standards

A fundamental principle in the *Rationalizing the Management Regime for the Environment* document was that "consistent national standards will be developed and maintained". We believe that this has not found its way into the principles set out in the EMFA.

We recognize that sections 5.1(b)(i) and 5.1(c)(vi) make reference to the development of nationally applicable environmental measures, however, we believe that this

commitment must be made more explicit in the framework, and then operationalized in the Schedules. We suggest that in section 5.3 it should be made explicit that the roles of the parties should include "The development, and acceptance by all levels of government, of National Standards."

The development of national standards and the commitment to align provincial programs across the country will also "lead to greater clarity, predictability and certainty in government decision making", which is one of the objectives in *Rationalizing the Management Regime for the Environment*.

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However, clause 5.1(c)(i) of the EMFA states that the provinces include in their responsibilities "developing, implementing and managing environmental policies, procedures and mechanisms that meet the needs of their citizens and their provincial environment". This does not appear to reduce uncertainty or unpredictability, but rather it seems to support it by allowing each province to develop its own policies, procedures and mechanisms.

We recognize the right of each Province to manage its own affairs. We also recognize that it may make sense to have regional standards in certain circumstances, e.g., air quality standards. However, we strongly suggest that 10 different provincial programs for most environmental areas will lead to continued confusion and uncertainty.

Thus, we look to one of the objectives of the Australian Intergovernmental Agreement on the Environment -- Schedule 4 on National Environment Protection Measures -- where it states:

that decisions of business are not distorted and markets are not fragmented by variations between jurisdictions in relation to the adoption or implementation of major environment protection measures.

We strongly agree with the above objective and suggest that this principle be incorporated into the body of EMFA.

C. Fair and Effective Resource Allocation

438 The provinces must have an incentive to implement a cooperative agreement. Such incentives have traditionally been monetary, most often some sort of cost sharing agreement. Given the current fiscal reality, creativity will be essential in terms of exploiting non-monetary incentives. Moreover, an appreciation for the actual costs of implementing the standards will be necessary. It is our understanding that a separate sub-committee of the Lead Representatives is responsible for reviewing the issue of resource allocation, and plans to commission an impact study. We have limited our comments in this area pending the results of this study.

D. A System to Ensure Accountability

An effective system must be put in place to ensure that parties to the EMFA uphold the provisions of the agreement. Components of this system must include: mechanisms for auditing and monitoring compliance with the agreement, reporting and dispute resolution. Accountability is discussed further as part of implementation

Successful Implementation of the EMFA

As previously stated, IBC is firmly committed to the concept of harmonization, and as such, we are concerned about ensuring the successful implementation of the EMFA. With this goal in mind, we offer some suggestions regarding the practical aspects of harmonization and standards development.

Firstly, we offer a general suggestion relating to the overall context for the discussions regarding environmental harmonization. The efforts of CCME toward environmental harmonization are part of a larger trend toward regulatory harmonization in Canada. Given the fiscal realities that governments are facing, this harmonization trend cuts across many areas, including trade, health-care, taxation, and social policy. CCME should seek to further its environmental

harmonization efforts by building on and learning from other harmonization activities in Canada.

A. IBC's Proposed Approach

More specifically, we would like to outline a basic approach for the development of national standards, as well as offer suggestions regarding key decisions that will need to be made in order to move this process forward. The approach focuses on the four key components of the harmonization process -- policy development, standard setting, standards development (technical), and monitoring and enforcement -- and assigns these functions to an appropriate committee or body of experts.

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Policy development involves discussion and decision making in a number of key areas, including standard-setting principles, the type and nature of standards to be developed, approval standards, and the type of people required for the technical standards development function. Given the high level nature of these issues, we feel that these types of decisions should be made at the political level, most appropriately through a committee of federal, provincial and territorial ministers of the environment. Decisions could be made through regularly scheduled meetings on an annual or bi-annual basis.

Beyond this very high level, strategic decision-making process, there is a need for a body to deal with the more detailed aspects of implementation, and to act as a link between the political and technical functions related to harmonization. The standard setting body would define the process in more detail and provide an organizational structure. In addition, it would review policy, review developed standards, and select the people to perform the technical standards development function. These types of activities would most appropriately be carried out by a coordinating committee of deputy ministers of the environment. This coordinating committee would meet more frequently than the policy development committee, and would also provide

public information on the harmonization process and act as an access point for public input into the process.

A committee composed of technical experts would be required to carry out the actual standards development function. This committee would review existing standards and develop new standards. There are a number of options for the composition of this committee, including:

- a non-governmental body of experts;
- 440** • a committee of provincial technical officials who work in the standards development area; or
- a blended committee of provincial technical officials and non-governmental experts.

Through the secondment of provincial environmental officials or non-governmental experts, a committee could be established with excellent technical qualifications.

Finally, a monitoring and enforcement function is necessary for national standards to be effective. We believe that provincial authorities should enforce the standards and that these enforcement activities should be monitored by a federal audit body. We recognize that the Compliance Licensing and Approvals Schedule generally reflects this approach to enforcement, but we do not see a mechanism for monitoring such enforcement activities.

Our proposed approach to standards development can be summarized as follows:

	Function	Body	Instruments/ Tools
Policy Development	<ul style="list-style-type: none"> • establish principles for standards setting • decide what standards need to be developed • broad direction on substance of the standards • approve standards • decide the types of people required for the standards development body 	<ul style="list-style-type: none"> • committee of federal, provincial and territorial environment ministers 	<ul style="list-style-type: none"> • required meeting once or twice a year
Standard Setting	<ul style="list-style-type: none"> • specify process • provide organizational structure • review policy • review standards • choose people for standards development body 	<ul style="list-style-type: none"> • coordinating committee of deputy ministers of the environment 	<ul style="list-style-type: none"> • required meetings at set intervals • multistakeholder consultations process facilitated by CCME Secretariat to feed into policy development process
Standards Development	<ul style="list-style-type: none"> • review existing standards • develop new standards 	<ul style="list-style-type: none"> • non-governmental body of experts, OR • committee of provincial technical officials who work in standards development area, OR • blended committee of provincial technical officials and non-governmental experts 	<ul style="list-style-type: none"> • legislation/regulations to embody standards • secondment of provincial technical staff
Monitoring and Enforcement	<ul style="list-style-type: none"> • enforce standards • monitor enforcement 	<ul style="list-style-type: none"> • provincial enforcement officials and federal audit committee 	<ul style="list-style-type: none"> • institution-alized audit function

We would also suggest the following as consistent with the approach described above :

- use CCME Secretariat to provide administrative support to the committees/bodies;
- use existing CCME guidelines and codes of practice as a starting point for this work;
- adopt a phased approach that focuses on environmental priority areas first, and builds a workable process by reviewing and revising the process based on experience with initial priority areas;
- consider possibilities for developing a method for building environmental standards into a profession(s) for the design, manufacture and operation of industrial equipment.

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B. Accountability

A principle put forward in *Rationalizing the Management Regime for the Environment* states that the framework will be transparent and will provide for clear lines of accountability. The EMFA attempts to define roles and obligations, but does not demonstrate how the parties will be held accountable for maintaining or meeting those obligations.

Similar accountability issues have been addressed by the European Community (EC) with respect to the implementation of EC environmental rules by Member States. One suggested proposal put forth by the United Kingdom was the establishment of an "audit inspectorate" to monitor the performance of national inspectorates in enforcing EC laws. The proposal called for the inspectorate to report publicly on its findings on the performance of regulatory authorities in the Member States. We suggest that a similar public reporting of provincial compliance with the EMFA is one possible means to build accountability into the agreement.

We suggest that the newly formed federal Environmental Commissioner, that is part of the Auditor General's department,

could perform this function. It is currently envisioned that the Environmental Commissioner will report to the federal parliament on the environmental performance of the federal government. This role could be expanded to include reporting on compliance with the EMFA by all parties.

An additional issue surrounding accountability is the development of an appropriate dispute resolution process. Recently each of the provinces, territories and the federal government signed an interprovincial trade agreement -- Agreement on Internal Trade -- that included formal dispute resolution procedures. 443

The agreement recognizes the interconnection between trade and environmental protection and the work of CCME on the harmonization of environmental measures. The agreement also provides a role for CCME to provide initial assistance in resolving disputes, prior to the implementation of the more formal dispute resolution process.

Given that the parties to the EMFA were able to negotiate and agree on a dispute resolution process in the above interprovincial trade agreement, we believe that the Lead Representative Committee should consider using the same mechanism for the EMFA dispute resolution process. This approach would avoid duplication of efforts and in fact might avoid confusion as to which mechanism is applicable in any given situation.

C. Other Key Implementation Considerations

There are a few aspects of our approach that will require considerable thought and discussion by CCME in order to develop a workable implementation plan. We would like to highlight a number of priority considerations that need to be worked out before our approach is implemented.

1. The Development of a Multistakeholder Consultation Process

The design and implementation of an effective and efficient multistakeholder consultation process is vital. One option for the process design is to conduct consultations on a provincial basis, so that each provincial deputy minister of the environment would bring the consultative information and perspectives into the process. The principles for consultation should be designed by the committee of environmental ministers and managed by the committee of deputy ministers.

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2. Defining the Scope and Setting Priorities at an Early Stage in the Process

It is important that the process not get bogged down by an overwhelming number of areas that require standardization. Early in the process, the policy development body of environmental ministers should set the priorities of what needs to be standardized. Decision rules for the task in general should be clearly laid out.

3. Involving Municipalities in the Process

Municipalities have not been adequately considered in the harmonization activities to date. In order to effectively implement harmonization, the involvement of municipalities will be essential. A process for incorporating municipalities should be designed, keeping in mind the different perspectives that provinces will likely have on their involvement, and the need to keep the process workable and effective. This is discussed further in the next section of this document.

Additional Comments

To assist the Lead Representatives Committee formulate its final recommendations to the Council of Ministers, below we provide specific comments and observations on the draft EMFA and accompanying Schedules. In preparing our comments we have reviewed the underlying principles found in the CCME's

"Rationalizing the Management Regime for the Environment" and compared these to the principles found in the draft EMFA. In addition we have reviewed the work and progress of other jurisdictions, namely Australia, the Netherlands and the European Community.

We have organized our comments according to the format set out in the draft EMFA and accompanying schedules.

A. Draft EMFA

1. Sustainable Development

One of the objectives set out in "Rationalizing the Management Regime for the Environment" is to "lead to improvements in environmental protection and sustainable development". Although the concept of improved sustainable development is included in the objectives and principles of the EMFA, it does not find its way into the roles, responsibilities and obligations of the various levels of government. Specifically, we recommend that section 5.3, which sets out the criteria for determining whether a function is federal, provincial/territorial or national, should include specific criteria as to whether the degree to which functions are divided "leads to a stronger, growing and diversified ecologically sustainable economy".

2. Role of Local Governments

Where is the role for municipalities in the EMFA? Reference is made in the Compliance Schedule, point 3.2 a), that the provincial/territorial governments shall ensure compliance pertaining to municipal activities including water and waste water treatment systems, and waste management systems. The role of municipalities in the enforcement and monitoring of these activities is crucial and we are concerned that their absence from involvement in this process may be detrimental. The concept of harmonization that stops at the provincial level and does not incorporate municipal activities may allow duplication and

inefficiencies to continue that could be avoided. The Australian Agreement specifically recognized this point:

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The Commonwealth, the States and the Australian Local Government Association acknowledge that while the Association is a party to this Agreement, it cannot bind local government bodies to observe the terms of this Agreement. However in view of the responsibilities and interests of local government in environmental matters and in recognition of the partnership established between the three levels of government by the Special Premiers Conference process, the Commonwealth and the States have included the Association as a party to this Agreement and included references in the Agreement to local government and all levels of government

The Dutch National Environmental Policy Plan also recognized the importance of municipal involvement in the process:

Provinces, municipalities and water management boards carry out important tasks in environmental policy itself, but also in taking opportunities offered by other areas of government concern and using them to realize environmental aims.

For the sake of a strong environmental policy, the provinces and municipalities have, after consultation, declared themselves willing to broaden, intensify, or where necessary reconsider their existing policies.

We believe that the CCME should endeavor to incorporate one or two representatives of local government in their future deliberations, in order to ensure this significant level of government is also actively involved in this process. We would suggest that local government representation would be most appropriate as part of the committee or body of experts responsible for standards development.

B. Accompanying Schedules

1. Environmental Assessment

We strongly support the adoption of this schedule and the elimination of overlap in environmental assessment processes. We would encourage CCME to focus on the development of common criteria for screening and other decisions, for determining the scope of the assessment and for the capability to require information regarding impacts, mitigation, alternatives, socio-economics, etc.

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We caution, however, that in section 3.2 the development of an audit function as part of the accountability model should not be done in such a way as to allow for a full second assessment of a project and thus defeat the objective of eliminating duplication.

2. Compliance, Licensing and Approvals

Section 3.6 suggests that national compliance standards should be developed pursuant to this schedule, yet we cannot find a definition of national compliance standards. It is difficult to determine what the difference is between national standards as referenced in the Implementation section of this report and national compliance standards.

We have recommended an approach for implementation earlier in this report, but for greater clarity, we believe that the mechanism for implementation of this schedule requires the development of national standards.

The auditing function that we have suggested in our proposed approach, could be housed in the Office of the Environmental Auditor General (or the Environmental Commissioner as the position is now being referred). It seems to us that this is a natural extension of this role. The appropriate reporting relationship is in place (i.e. directly to parliament) and many of the skills are in place.