

ENVIRONMENTAL LAW CENTRE

RESPONSE TO REQUEST FOR COMMENTS ON THE POSSIBLE STRUCTURE AND CONTENT OF THE STAKEHOLDER PARTICIPATION SECTION OF THE ANNEX TO THE CANADA-WIDE ACCORD ON ENVIRONMENTAL HARMONIZATION

INTRODUCTION

The Environmental Law Centre (ELC) would like to thank the Ministers for the opportunity to provide comments on how stakeholder participation should be built into the *Canada-Wide Accord on Environmental Harmonization* (“the Accord”). One of our major concerns related to the Accord is the reliance on administrative agreements and the corresponding lack of transparency and opportunity for public scrutiny and participation in the process of formulating these agreements. The incorporation of public involvement processes within the framework of the Accord is a positive step that we welcome, but we also caution that public involvement must be made meaningful for participants in order to avoid having it become a meaningless exercise.

The ELC has had the opportunity to participate extensively in public consultations on proposed environmental laws at the federal and provincial level. Legal staff and Board members have sat as members of hearing bodies, made presentations before hearing bodies, submitted briefs, participated in workshops, participated in specialized advisory bodies and appeared before Parliamentary Committees. In fact, our participation in law reform public consultation has been so extensive that we gathered our experiences together in a monograph called, *Public Consultation and Environmental Law Reform: Learning As We Go*, a copy of which is enclosed with this brief. It is our experience that the most successful law reform consultation processes are those where the government’s objectives in the process are clear and transparent, the ultimate decision making process is as open as possible, and the rationale for policy choices are made known to participants. While some participants may be disappointed that their point of view was not adopted, they will usually respect the outcome of the process if they believe their views were heard and considered.

The ELC is a non-profit charitable organization incorporated under the *Societies Act* in 1982. The ELC employs 4 experienced full-time lawyers who offer public interest environmental law programming in education, information and referral, research and law reform. These programs are supported by the ELC’s public library of environmental law, which contains over 14,000 specialized environmental law materials. The goal of the ELC is to make the law work to protect the environment. In support of this goal, the ELC pursues 3 policy objectives: one, that good environmental laws are enacted by governments; two, that the public has an effective role in environmental regulatory and law-making processes; and three, that these processes offer a level playing field to participants.

ACCESS TO PARTICIPATION

We feel that the stakeholder participation process under the Accord should be broadly based, allowing for the participation of all stakeholders and parties with an interest in the outcome or matter being considered. In particular, given the broad scope and nationwide application of the Accord, the process should seek to involve stakeholders at the national, regional and local levels to ensure full representation of all concerns and interests.

A key element of accessibility to a consultation process is funding. Funding should be made available to assist groups with a need, such as non-governmental environmental groups and interested members of the public. Many such groups are currently stretched to the limit with respect to available funds, and should not be prevented from making a valuable contribution due to financial considerations only. The Ministers should also give consideration to means of consultation that will be broadly available to potential participants, such as written suggestions and responses, or use of the Internet. However, it should be kept in mind that there are many individuals and groups throughout the country that do not have Internet access, and an alternate means of participation should also be made available.

PARTICIPATION/CONSULTATION PROCESS

The participation process developed for the Accord should have a broad scope, and should allow for stakeholder and public participation and input in relation to the following:

- development of sub-Agreements under the Accord;
- the planned two-year review of the Accord and initial sub-Agreements, and any other reviews of the Accord or sub-Agreements;
- modification of the Accord or any sub-Agreement;
- development, review and modification of bilateral or multilateral agreements for implementation of sub-Agreements.

Stakeholder and public participation related to the last point should occur on both a regional and local basis.

A means of providing access to information and providing for information sharing between parties should be built into the participation process. There should be a way for all stakeholders and interested members of the public to access relevant information, including:

- the Accord;
- all sub-Agreements;
- bilateral and multilateral agreements related to implementation of the Accord;
- other information on implementation and administration of the Accord and related agreements.

Consultations under the participation process should take place before governments have committed to particular positions on the subject matter of the consultation. To do otherwise would render stakeholder and public input meaningless. As well, the participation process must allow adequate time for all participants to prepare their positions and participate in a meaningful way. For example, the time period allowed for providing these comments was very short; we only received the request for comments on June 2 and had to fit this work in with our ongoing schedule of regular matters, which this year has been ample. The same concerns will apply for all participants and in particular those groups that rely largely on volunteer efforts.

The process should be inherently flexible and should provide for an ongoing dialogue with participants regarding process effectiveness. This would allow for the process to be “fine-tuned” to ensure the most meaningful opportunities for participation for stakeholders and members of the public and the most effective input for use by the Ministers.

The expected roles of the participants should be established clearly at the outset of any particular consultation/participation initiative. It should be made clear whether participants are being involved in the process as experts on certain matters or as representatives of particular constituencies, as this will affect the tone of the proceedings and the parties’ preparations for participation. As well, at the outset of each consultation, the Ministers, as the decision-makers, should make clear the way in which they will be using the recommendations that will arise from the consultation. The planned use of the consultation’s results is very relevant to stakeholder planning for participation and will affect the nature and extent of that participation.

In developing the actual participation process, the Ministers should establish objectives for the process. We suggest that the objectives for the consultation process under the Accord should be to obtain and incorporate meaningful input from stakeholders and the interested public on the implementation of the Accord and agreements related to the Accord.

CONCLUDING COMMENTS

Again, we would like to thank the Ministers for the opportunity to provide our comments regarding the process for stakeholder and public participation regarding the Accord. We look forward to reviewing the draft version of the process that will be created and would appreciate receiving a hard copy of that draft once it is available for review.

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