

COMMENTS ON ENVIRONMENT CANADA'S ENVIRONMENTAL LEADERS INITIATIVE

A Discussion Paper

from the undersigned member organizations of the Toxics Caucus
of the Canadian Environmental Network

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SUMMARY

The undersigned agree with Environment Canada and Health Canada that there is a critical need to take credible early action on selected substances with toxicological characteristics. Unfortunately, CEPA 1999 risk assessments and subsequent actions will take a very long time. However, for the reasons set out in these comments, we cannot support the *Environmental Leaders Initiative* as a viable method of taking early action. We have found numerous flaws in this method. The Appendix to these comments offers ideas for alternative approaches. We would be pleased to discuss with Environment Canada these ideas and to investigate the potential for their further development.

The most fundamental flaws of Canada's proposed *Environmental Leaders Initiative* (Program Description – Draft July 18, 2001) are:

- It is not focused on elimination, or even virtual elimination. It does not even state virtual elimination as a goal.
- It does not focus on a pollution prevention approach.
- It is a totally voluntary approach and does not even meet the requirements set out by Canada's Commissioner of the Environment and Sustainable Development for voluntary programs.
- It provides incentives to industry that would result in a weakening or by-passing of the pollution prevention planning and environmental emergency planning provisions of CEPA 1999.
- It provides incentives to industry that could result in a perverse enforcement policy and a weakening of the compliance and enforcement activities under CEPA 1999 and the *Fisheries Act*.
- It would impede and retard actual regulatory action for substances ultimately determined to be CEPA toxic.

In 1993, the CEN's Toxics Caucus stopped participating in ARET because that program had serious limitations. The *Environmental Leaders Initiative* is just as flawed; indeed, it appears to be even more fundamentally flawed.

We fear that implementation of the *Environmental Leaders Initiative* would result in delays and weakening of the implementation of CEPA and, as a result, contribute to ongoing releases of contaminants to the environment. Canada's wildlife, its residents, and its workers cannot afford these ever increasing threats to their health.

Because the *Environmental Leaders Initiative* is so fatally flawed we urge Environment Canada not to proceed with this program. Instead, Environment Canada should focus its resources on implementation of the pollution prevention provisions in CEPA 1999. Two years have passed since the enactment of CEPA 1999 but only one emergency plan has been started and no pollution prevention plans have been required under section 56.

Moving rapidly forward with the use of sections 56 and 199 of CEPA would contribute substantially to improving the health and environment of Canadians. The *Environmental Leaders Initiative* would only sidetrack us from making this progress.

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Part 1: Introduction

In this paper, the undersigned members of the Toxics Caucus of the Canadian Environmental Network assesses Environment Canada's proposed program entitled *The Environmental Leaders Initiative*. Our comments in this paper are primarily based on information in Environment Canada's July 18, 2001 draft *The Environmental Leaders Initiative – Program Description*, and in Environment Canada's *Background Paper for the June 15, 2001 Workshop on the Environmental Leaders Initiative*. Our comments are also based on the ongoing participation of some of our members in Environment Canada's focus group on this program.

In addition, our comments are based on the decades of experience that our members have in dealing with toxics problems in our communities and in trying to address toxics issues through federal, provincial, territorial and municipal programs.

Part 2: Context of The Environmental Leaders Initiative

Environment Canada's Reasoning:

The *Canadian Environmental Protection Act* (CEPA) requires that the 23,000 substances on the Domestic Substances List be classified by 2006 according to their potential for exposure, their toxicity, their persistence and their bioaccumulative characteristics.

Once categorized, many of these substances will become subject to government regulation:

As a result of [this process of classification], there will be a large group of substances that are publicly identified as having inherent toxicological characteristics (persistence, bioaccumulateness or inherent toxicity)...Some substances assessed...may be declared CEPA-toxic; others may require more rigorous risk assessment [Environment Canada, *Background Paper for the June 15, 2001 Workshop on the Environmental Leaders Initiative*, p.1].

Environment Canada is concerned that "there may be a lag time, sometimes significant, before there is sufficient information to determine what risk management instrument to develop under CEPA" for those substances that have been identified as being persistent and/or bioaccumulative and/or toxic [*Background Paper for the June 15, 2001 Workshop on the Environmental Leaders Initiative*, p. 1]. Environment Canada hopes through the *Environmental Leaders Initiative* to "encourage early action on these substances" [Environment Canada, *The Environmental Leaders Initiative – Program Description*, Draft July 18, 2001, p. 1]. Environment Canada states it hopes to encourage "voluntary risk reduction and, where possible, to reduce the need for more active risk management in the future" and "to minimize the pressure to develop new management interventions to deal with those substances of concern that are declared CEPA-toxic in the future" [*Background Paper for the June 15, 2001 Workshop on the Environmental Leaders Initiative*, pp. 1&2].

Overview of Federal Toxic Substances Initiatives:

Toxics management in Canada has been the subject of considerable uncertainty and changing policies since the mid-1980s. In 1990, after the passage of CEPA 1988, the definition of what has come to be known as “CEPA-toxic” was enshrined in legislation. To be considered “toxic” and thus subject to federal controls in Canada, a substance must:

- have an actual or potential harmful effect on the environment or on biological diversity,
- constitute or potentially constitute a danger to the environment on which life depends, or
- constitute or potentially constitute a danger in Canada to human life or health.

The first substances to undergo an assessment under CEPA for the “Priority Substances List” were dioxins and furans. The assessment was published in 1990. The resultant *Fisheries Act Regulations*, which took effect in 1993, swiftly changed the bleaching of pulp in Canada and thus dramatically reduced the major waterborne source of dioxin. Subsequent actions have waited upon harmonization agreements with the provinces and the evolution of the Canada Wide Standards (CWS). The CWS for dioxins and furans was signed in April 2001 and seeks to reduce some air-borne emissions. The CWS for air-borne dioxin pays lip service to pollution prevention, but leaves the provinces and territories to initiate action.

Another highlight of toxics management was the development of the Priority Substances List II in 1995 with the final assessments of 23 of the 25 substances completed in 2001.

As for actions on the 47 toxic substances on Schedule I as of January 2001, the *Toxics Substance Management Policy* evolved into a dizzying round of sector and media-specific Strategic Options Process Tables, Codes of Practice, Canada Wide Standards and currently the sectoral Multiple Emission Reduction Strategy. These have resulted in few regulatory controls and few true pollution prevention actions that focus on the elimination of the use of certain substances.

The CEN Toxics Caucus’ members who have invested considerable energy in participating in these programs are seriously concerned that this lengthy process has done little to improve the quality of the environment. We wish to ensure that we do not get involved in another lengthy process that consumes considerable resources of all sectors but does not result in substantial enough improvements or may even delay the taking of necessary actions.

In the meantime CEPA 99 has required the Department to categorize the 23,000 substances on the 1985 Domestic Substances List by 2007.

Environment Canada’s program has always had two prongs: regulatory and voluntary. Increasingly the focus has been on the voluntary aspects. In its report released in 1999, the Federal Commissioner of the Environment and Sustainable Development stated that

most of the toxic substances are managed solely through voluntary initiatives [*Managing the Risks of Toxic Substances: Obstacles to Progress*, p. 21].

Environment Canada's flagship voluntary reduction program was *The Accelerated Reduction/Elimination of Toxics* (ARET) program. In 1993, the representatives of the CEN's Toxics Caucus on ARET withdrew from the program because of the program's failure to focus on elimination targets and on pollution prevention and because of a lack of a regulatory backdrop and publicly verifiable reporting [Letter to Tony Clarke, Assistant Deputy Minister, Environment Canada, from Canadian Labour Congress, Great Lakes United, Pollution Probe, Toxics Watch Society of Alberta, and West Coast Environmental Law Association, September 17, 1993]. Further, the stakeholders in these discussions were uncertain whether the objectives coming from the work of the New Directions Group (a multistakeholder consultation that initiated the discussions on establishing a national process to eliminate and reduce toxic substances in the Canadian environment) was to establish regulatory or voluntary regimes for managing toxic substances. This uncertainty had a significant impact on the development of the ARET program.

An extensive evaluation of ARET conducted by Environment Canada revealed serious shortcomings in the program. Two of the conclusions from this evaluation were:

- ARET participation was not one of the main factors in motivating industry to reduce releases of toxic substances;
- A small percentage of ARET participants were responsible for the vast majority of the ARET reductions [Environment Canada, *Evaluation of the Accelerated Reduction and Elimination of Toxics Initiative (ARET)*, April 2000, p. 5].

The Federal Commissioner of the Environment and Sustainable Development also expressed considerable concern about the effectiveness of ARET in his 1999 report.

Environment Canada has proposed *The Environmental Leaders Initiative* as a follow up to ARET, which ended in 2000. This program involves companies choosing substances from those on the Domestic Substances List that Environment Canada has decided have negative inherent toxicological characteristics and setting targets for their reduction. The companies would report on their progress towards these targets through an expanded National Pollutant Release Inventory (NPRI). The program would be entirely voluntary with companies choosing whether or not to participate, and choosing which substances to develop action plans for and themselves setting the targets. Environment Canada would provide incentives by giving the companies public recognition and certain adjustments in requirements for pollution prevention planning under CEPA and in compliance and enforcement activities.

Part 3: Evaluation of Proposed Environmental Leaders Initiative

To assess the adequacy of the proposed *Environmental Leaders Initiative*, the undersigned members of the CEN's Toxics Caucus have reviewed the planned *Initiative* from the perspective of the principles we have consistently used to assess toxics programs over the past 20 years and from the perspective of the reasons why we found the ARET program to be inadequate. The ARET problems were so severe that we stopped participating in that program. Nothing that happened with the ARET program after our departure made us feel any better about that program.

Elimination versus Reduction:

One of our main concerns with the ARET program was that it did not strive to eliminate the designated substances through a strategy that phased out the use and generation or production of these substances. We stated four main reasons for being so insistent on the elimination approach:

1. Government commitments to virtual elimination;
2. Failure of the end-of-pipe approach;
3. Lack of worker protection when the focus is on emissions from the facility; and
4. Lack of a safe level for substances that are persistent or bioaccumulative or toxic.

The list from which companies would be choosing substances for action in this program is those that have been determined to be persistent or bioaccumulative or toxic. Therefore, an elimination strategy is the only appropriate approach. But, unfortunately, the *Environmental Leaders Initiative* is even weaker on this issue than was ARET.

In section 3.3 of the proposed *Environmental Leaders Initiative*, Environment Canada says: "Targets must be for significant improvement by 2010 relative to 2000." There is no definition of the word "significant" and nowhere in the description of the *Environmental Leaders Initiative* is the word "elimination" even used. ARET at least included elimination as one of its goals.

In the proposed *Initiative*, companies are asked to commit "to prevent pollution from a wide range of toxic and other substances" [sec. 3.2]. "To prevent pollution" is not the same as "pollution prevention." CEPA 1999 calls for pollution prevention and defines it as "the use of processes, practices, materials, products, substances or energy that avoid or minimize the creation of pollutants and waste and reduce the overall risk to the environment or human health." This clearly calls for a focus on changing materials used and production processes. "Prevent pollution" by contrast is focused on the release of hazardous substances into the environment and implies the acceptance of a pollution control approach to "prevent pollution."

If the *Environmental Leaders Initiative* is to have a serious impact on toxics, several conditions fundamental to elimination and pollution prevention are required:

- the process is based on the workplace;
- rules for the assessment of success are established beforehand;

- public, community and worker involvement becomes an integral part of the process; social values are incorporated;
- the process is designed to affect all inputs and outputs as a unified whole, moving in cycles of continuous improvement;
- pollution prevention changes processes or products; closing the facility or discontinuing the product is not pollution prevention; and
- end of pipe controls, cross media transfer of contaminants, and substitution of one substance of concern with another substance of concern are not pollution prevention.

The *Environmental Leaders Initiative* does not come even close to requiring that these conditions be met.

In a common sense move, Environment Canada has repeatedly suggested during these consultations that companies begin by working on those chemicals already under restriction for use in other OECD countries because of the inherent characteristics of those substances. However, most of the companies in the *Environmental Leaders* consultations appear to think that even acting on those toxic substances that are already under restriction by Canada's trading partners will put them at a competitive disadvantage. This gives little hope that they will take a true pollution prevention approach. This attitude has very serious negative health implications for workers and community residents throughout Canada.

The Voluntary Approach:

The *Environmental Leaders Initiative* – a completely voluntary program - is being promoted despite the history of voluntary emissions control programs, which have repeatedly failed to produce significant reductions in the release of toxic materials.

Throughout the last decade, pollution prevention has been touted as solving problems before they start, eliminating the need for regulation, ensuring markets and jobs, and avoiding legal liabilities.

However, despite extensive reliance on the voluntary approach by governments, actual examples of serious and successful pollution prevention tend to be few and far between, with a few famous cases (3M, Interface) proving the exception. Only rarely are those successful examples we have seen in Canada motivated by purely voluntary programs.

In a 1993 pollution prevention pilot program begun by the U.S. Natural Resources Defense Council, Dow Chemical, Monsanto, Amoco, and Rayonier Paper, participants wanted to know the reason for the lack of implementation of promising pollution prevention techniques.

A study was done at a Dow Chemical factory in La Porte, Texas, which produces methylene diamine diisocyanate (MDI), the major ingredient of foamed and thermoplastic polyurethane. The assessment team had a number of short-term pollution prevention suggestions. The suggestions were considered for adoption two times and

each time were put off in favour of other, more financially attractive business opportunities.

The authors concluded that had the US EPA required that Dow reduce these waste streams, the projects would have been mandatory, and the rate of return of the projects would have been irrelevant. However, because these were voluntary opportunities, they were considered in the same way as other business opportunities. To succeed, these opportunities needed to do more than reduce waste and save money: they needed to be superior to other options for capital investment. (Linda Greer and Christopher Van Loben Sels, "When Pollution Prevention Meets the Bottom Line," *Environmental Science and Technology*, Sept. 1997)

Environment Canada's Peter Krahn came to similar conclusions in his report on enforcement versus voluntary measures as effective tools to reduce pollution. In 1996, the Fraser River Action Plan conducted a review of compliance with technical criteria and effluent discharge limits by 19 industrial sectors. The data revealed that in most cases voluntary measures achieved a minimal positive result for both compliance rates and reductions in toxic discharges. It showed as well that mandatory environmental law enforcement strategies dramatically improved average compliance rates from a pre-enforcement average of 60% to over 90%, and subsequently reduced some harmful effluent discharges (kraft mill dioxins) by up to 99%.

Krahn notes that the nature of the competitive environment makes industry owners and/or managers poorly suited to impose environmentally responsible operating conditions on recalcitrant members of their particular sector. However, properly designed environmental law enforcement programs level the economic playing field and focus the cost of pollution control on the producers and consumers of polluting products and services (*Global Diversity*, Canadian Museum of Nature, Fall 1998.)

Canada's successes in eliminating and reducing toxic substances are overwhelmingly the result of regulatory programs at the federal, provincial and territorial levels. The *Fisheries Act Regulations* for dioxin in pulp and paper effluent and pentachlorophenol in defoamers are classic illustrations of an efficient regulatory mechanism that promoted the remarkable progress the pulp and paper industry has displayed in the last decade - a progress achieved by process changes, end of pipe controls, and product substitution. Without the regulations, some mills would have made some steps towards effluent improvement, but the progress would not have been industry wide, nor as sweeping.

Canada's Commissioner of the Environment and Sustainable Development has said that, if Canada uses voluntary initiatives, it should establish "rigorous requirements" for them. He then listed what he considered to be the "minimum" requirements [*Managing the Risks of Toxic Substances: Obstacles to Progress*, pp. 4-25 to 4-26]. Environment Canada's proposed *Environmental Leaders Initiative* fails to meet at least two of these critical requirements: clearly identified environmental objectives, and consequences for failing to meet targets. It is impossible at this point to tell to what extent the other six

criteria would be met because of lack of detail on how the *Initiative* would be implemented.

Targets And Timelines:

Environment Canada's June 15th Workshop report notes that the Department will be making judgements on whether the priorities, targets and timelines selected by a facility are appropriate, according to a list of flexible criteria. If done properly, this would be an inherently expensive and time consuming process. However, since it appears that the *Environmental Leaders Initiative* will be run by one full-time staff, with some upfront aid from the regions for promotion to industry, it would be impossible for Environment Canada to do this effectively. When the program hits its target of roughly 500 participants, the staffer would have to deal, on average, with two companies, and six targets every working day; this would be on top of administration, liaison with NPRI, other departments, provincial jurisdictions, and the public. Sectoral environmental performance agreements would eventually lessen this workload, but the negotiation of these agreements still would involve a considerable workload.

A timeline of 2010 to complete a toxics reduction program on what may be only a few substances of concern (some of which have been on Schedule One, the Toxic Substances List, for over a decade) picked at random by the emitters leads us to fear that the *Environmental Leaders Initiative* will be a stalling tactic, since Environment Canada seems to have no intention of completing risk assessments and the other moves towards a regulatory framework until the results of the *Environmental Leaders Initiative* can be analysed.

We do not see the potential for substantial enough pollution reduction from self-selected companies voluntarily reducing a few substances self-selected from the lists of a couple of hundred identified substances, lists that have the potential to grow to several hundred or more, depending on classification processes and scientific developments. We are unable to see how this reduction, compared with the potential trade offs in delayed time lines for regulation, will make a serious enough improvement for the environment and community and worker health.

Incentives:

Voluntary programs rely on incentives to encourage participation.

“Recognition” is the first incentive listed by Environment Canada in the *Environmental Leaders Initiative* for participation in the program [*The Environmental Leaders Initiative – Program Description*, p. 9]. Environment Canada's current pollution prevention awards carry credibility because they are simple, clear, and because they single out examples of truly exceptional leadership. To confuse such an awards program with the more convoluted and much weaker vision of pollution prevention in the proposed *Environmental Leaders Initiative* would dilute the credibility of Environment Canada's current awards program.

Environment Canada quite rightly recognizes that awards and special ceremonies would not be sufficient motivation to result in substantial participation in the program. Therefore, it lists several other incentives. We think that several of the other incentives, however, are unacceptable.

1. Application of pollution prevention and environmental emergency plans under CEPA: Environment Canada's description of the *Environmental Leaders Initiative* vaguely refers to taking participation in the program as a "consideration" when deciding on the application of requirements for pollution prevention planning and environmental emergency plans under sections 56 and 199 of CEPA 1999. However, an April 25, 2000 memo from Alain Chung of Environment Canada's Toxics Management Program to Duncan Cameron of the Legal Services Branch makes the intent of this "consideration" much clearer:

Clarification of Questions For Which A Legal Opinion is Requested

The following questions address 3 possible incentives for participation in a program to replace ARET:

- An assurance of some kind that program participants will not be subject to a requirement to prepare a pollution prevention plan under s. 56 for program substances for a specified period of time ("pollution prevention plans" below).
- An assurance of some kind that program participants will not be subject to a s.93 regulation for program substances for a specified period of time ("regulatory exemption" below).
- An assurance of some kind that, for a specified period of time, program participants will not be subject to a regulated reduction requirement that differs from a target they have committed to under the program ("regulatory target certainty" below).

Participation in a voluntary program – especially one that is so vaguely worded so far as targets is concerned as is the *Environmental Leaders Initiative*, must not be used as the basis for delaying the application of certain sections of CEPA. To do so, would result in increased contamination of the environment.

2. Links to compliance and enforcement activities:

Environment Canada says that participation in the *Environmental Leaders Initiative* will be "accounted for" when determining priorities for inspections and compliance promotion, and when determining "the appropriate response to an alleged violation of CEPA, 1999 or the *Fisheries Act*." This implies that participants in the *Environmental Leaders Initiative* will be treated more leniently than non-participants. The environment and the health of workers, community residents and wildlife cannot afford to have such leniencies applied.

Environment Canada says that violations of discharge permits or the *Fisheries Act* could be excused if to the participants show that the violation is a result of activities involved in the *Environmental Leaders Initiative*. This could result in the legitimisation of certain unacceptable practices. For example, the members of the pulp and paper industry

sometimes claim they are unable to practise water conservation because they need the additional fresh water to dilute their effluent enough to meet the requirements of the *Fisheries Act*. Some members of the pulp and paper industry at pollution prevention workshops have been known to suggest that the *Fisheries Act* is retarding their pollution prevention efforts and should be removed.

3. Government dialogue:

As an incentive, Environment Canada proposes an annual meeting between *Environmental Leaders Initiative* participants and senior management at Environment Canada to discuss anticipated policy and regulatory developments. We oppose this special access given that access to senior management for industry associations is already not a difficult process, and that public access for similar policy development discussions is an inefficient and time-consuming chore.

4. Developing regulations on CEPA-toxics:

Although not specifically listed in the incentives section of the *Environmental Leaders Initiative*, the main incentive for participating in the *Initiative* is to avoid having regulations developed at all. For example, in the introduction to the proposed description, Environment Canada says, “*Environmental Leaders* will enable this type of voluntary risk reduction and, where possible, will reduce the need for more active risk management in the future.” This implies that Environment Canada hopes to avoid creating regulations if some actions are being taken. The danger here is that the actions taken may not be strong enough to adequately protect the environment and human health, but Environment Canada’s ability to create regulations to deal with the problem will have been weakened, because of inadequate actions taken under the *Environmental Leaders Initiative*.

In addition, the April 25, 2000 memo previously referred to, wherein Environment Canada asked for a legal opinion, proposes the delay of the application of regulated reductions to *Environmental Leaders Initiative* participants. This will lengthen the time that toxic substances may be discharged to the environment.

We are alarmed by the series of incentives proposed in the *Environmental Leaders Initiative*. These incentives would result in increased damage to the environment and to the health of wildlife and people.

Reporting, Verification and Accountability:

The undersigned are very pleased to see the role accorded the National Pollutant Release Inventory (NPRI) to record and verify releases and reductions in micropollutants. We encourage Environment Canada to expand the central role of NPRI, and the attendant public access to information about toxic releases, whenever possible and in all initiatives. Releases of every substance assessed under section 74 of CEPA should be reported to the NPRI.

The undersigned are also pleased to see Environment Canada's commitment to using the standards set out for environmental performance agreements, including accountability and verification.

We wish to point out a few concerns about ways in which companies often report progress:

- Companies should not be allowed to count the closing of a facility or a reduction in production as a reduction in toxics output.
- Audits should verify the process by which a substance is reduced, as well as checking that monitoring is appropriately carried out, to show that the reduction was truly achieved by pollution prevention. Public access to the details of that process change may violate confidentiality, but general information on the type of pollution prevention activity should be made public. For example, the audits should indicate that they have verified a process change, a product substitution, or whatever pollution prevention methodology was used to achieve the toxic reductions.
- Although pollution prevention takes place on a facility level, we believe that company performance should be evaluated jointly for all of a company's facilities in Canada as well as for each individual facility. The government should be protecting the entire country, not just those geographic areas or facilities where industry finds it easy or convenient to clean itself up.

Community Involvement:

Environment Canada wisely calls for community involvement in its proposed *Environmental Leaders Initiative*. This is defined as:

- inform local community members of matters of importance to them as they arise; and
- identify and respond to local community concerns [*The Environmental Leaders Initiative – Program Description*, pp. 5&6].

To be useful, community involvement would have to be more than the usual programs that are company controlled and always in danger of becoming "greenwash." They need to be programs that result in serious ongoing interaction among community members, workers, regional environmental groups, and company owners and managers.

Although Watershed and Airshed Councils, Good Neighbour Agreements and Public Advisory Committees are labour intensive for all concerned, the undersigned believe that these processes yield the best results because community members, workers, regional NGOs, and companies gain a better understanding of each others' needs and concerns. This often results in new innovative solutions to problems being encountered by the company. Time also delivers personal relationships, and the shape of community politics is probably more frequently determined by the quality of "cross-sectoral" personal relationships than any other factor.

We have identified the following elements as critical to public and community involvement in pollution prevention exercises:

- There must be an appropriate balance in any committees or councils set up to communicate over the issues so that no sector feels deprived of its voice by imbalances.
- Participant funding and resources, including funding for day care where required, need to be allocated to the community, in proportion to the amount of time and effort requested by the company.
- The public needs access to scientists and technological advice independent of the company. (In a smooth process, it is agreed at the outset that any members of the committee may request a report to the committee.)
- Proceedings of meetings should be recorded.
- Timelines for the duration of the process and the number of meetings should be set at the outset, and meetings should never be called without adequate (at least two weeks) notice.
- Participants should jointly develop a clear mandate for the committee at the beginning and lay out ground rules.
- Workshops should be held in the local community, with written minutes, a multi-stakeholder secretariat, and the local community should be provided access to science.
- NGOs with expertise and experience in the issue should be mobilised to participate; regional and special focus NGOs should be included in the process because they have training in the fields under discussion and can share their knowledge and networks with local community members. Their presence also provides the process with credibility in a setting beyond the community.
- Companies promoting their involvement in pollution prevention should encourage the formation of worker environment committees, since worker involvement in pollution prevention development can lead to identification of pollution prevention opportunities and efficiencies. Worker environment committees also contribute to the public credibility of the facility's efforts.

Part 4: Conclusion

During our assessment of the *Environmental Leaders Initiative*, we have found numerous flaws in Environment Canada's proposed program. The most fundamental of these flaws are:

- It is not focused on elimination, even virtual elimination. It does not even state virtual elimination as a goal.
- It does not focus on a pollution prevention approach.
- It is a totally voluntary approach and does not even meet the requirements set out by Canada's Commissioner of the Environment and Sustainable Development for voluntary programs.
- It provides incentives to industry that would result in a weakening or by-passing of the pollution prevention planning and environmental emergency planning provisions of CEPA 1999.

- It provides incentives to industry that could result in a perverse enforcement policy and a weakening of the compliance and enforcement activities under CEPA 1999 and the *Fisheries Act*.
- It would impede and retard regulatory action for substances ultimately determined to be CEPA toxic.

In 1993, the CEN's Toxics Caucus stopped participating in ARET because that program had serious limitations. The *Environmental Leaders Initiative* is just as flawed; indeed, it appears to be even more fundamentally flawed.

We fear that implementation of the *Environmental Leaders Initiative* would result in delays and weakening of the implementation of CEPA and, as a result, contribute to ongoing releases of contaminants to the environment. Canada's wildlife, its residents, and its workers cannot afford these ever increasing threats to their health.

Because the *Environmental Leaders Initiative* is so fatally flawed we urge Environment Canada not to proceed with this program. Instead, Environment Canada should focus its resources on implementation of the pollution prevention provisions in CEPA 1999. Two years have passed since the enactment of CEPA 1999 but only one emergency plan has been started and no pollution prevention plans have been required under section 56.

Moving rapidly forward with the use of sections 56 and 199 of CEPA would contribute substantially to improving the health and environment of Canadians. The *Environmental Leaders Initiative* would only sidetrack us from making this progress.

Appendix: Some Alternative Approaches

The undersigned members of the Toxics Caucus have come up with some ideas for programs that we think are worth Environment Canada considering as alternatives to the *Environmental Leaders Initiative*. These are simply ideas that have not been fully developed or discussed by the whole Caucus.

Focus on Chemical of the Week: the Challenge is Yours!

Environment Canada should use the new (and expanded) NPRI data to aggressively track and report facility performance re: micropollutants and CEPA toxics, reporting on all facilities, not just those that sign up for a voluntary program. Progress would be measured in terms of total non-product output (i.e., releases + transfers + on site disposal) not just releases. The public, and government, would get targeted facility specific reporting on substance releases and transfers.

A report on a substance a week all year (naming the biggest generators, whose generation has gone up or down, etc) would constitute a de facto voluntary “challenge” to facilities to improve the situation, without compromising the department’s future options. Instead of issuing an actual challenge, with all the expensive attendant design and stakeholder issues, Environment Canada should just announce the aggressive tracking and reporting on facility performance on these priority substances. Industry would respond with reductions in use/generation; the public would get detailed reporting on releasers of priority substances (which should be community’s right to know); and the goal moves from reducing releases to generation/use reduction, in line with pollution prevention.

Three Consonants and You’re Out!

Environment Canada makes it clear to industry that if a substance is deemed Persistent, Bioaccumulative and Toxic, by Canada or any of our trading partners, that chemical will be subject to mandatory pollution prevention planning, and that the Department’s goal will be to complete the regulatory hoops to mandatory zero discharge. There is no climate of uncertainty, and industry is provided with fair warning that it is not a question of “cherry picking” substances of concern. Timelines and action plans are still flexible, but the program is on the record; any facilities that are surprised when the zero discharge regulation comes into effect will receive no sympathy or subsidies. This approach has the added advantage of being extremely cost effective for both industry and government. Resolute action on two or three PBITs within the next two years should be sufficient to move the entire programme into motion providing much needed credibility to the department at the same time.

The Green Dozen: Real Leaders

All sectors of industry should be invited to participate in the program, and those companies which make dramatic improvements in their pollution prevention activities and emissions should be loudly and repeatedly praised. These improvements must be measured by independent monitors (a company should not be allowed to determine the degree of its own success or failure, lest the Environmental Leaders program become an

exercise in marketing and nothing else) using specific, publicly announced criteria (the number and severity of polluting events, the total product non-output - the number of releases plus the number of transfers plus the number of on-site disposals, the amount of money expended by the company in pollution prevention, etc.). A limited number of truly exceptional companies should be singled out for accolades - perhaps a dozen; a yearly list of the “Green Dozen” should be produced.

One question does remain, however: how exactly should the *Green Dozen* be praised? Perhaps Environment Canada should develop a public relations campaign to announce significant improvements by worthy companies.

Toxic Tax

By taxing toxic chemicals, defined as persistent or bioaccumulative, probably with some of the funds to be transferred to technical assistance, or provincial pollution prevention programs, the government can encourage the same “voluntary measures” but with a real incentive to promote involvement. Serious “tax shifting” to favour P2 investments in a revenue neutral fashion, should also be developed as part of the tool box.

Pollution Prevention Activities in the Workplace

Currently, CEPA cannot legislate mandatory pollution prevention planning mainly because the authority to regulate toxic substances belongs to the provincial governments. However, through Schedule 1 the federal government has the authority to take action on toxic substances on a case by case basis, even if a substance has not been declared CEPA toxic. Over the years, issues about jurisdictional powers have been a significant factor in Canada's ability to address toxic substances. One method the federal government can use to promote pollution prevention planning would be to require the development of pollution prevention planning models for all federal undertakings. Such an effort would pressure provincial governments to adopt similar models for their own jurisdictions, which would result in significant reductions in the use of toxic substances. Such a model includes a system of fees and tax incentives that furthers the efforts of facilities in implementing these pollution prevention plans. The Canadian Labour Congress has supported the need for pollution prevention planning in the workplace.