

Guide to the Canada-wide Accord on Environmental Harmonization

Introduction

The Canadian Council of Ministers of the Environment (CCME) is a unique intergovernmental council whose members are the 13 ministers of the environment for the federal, provincial and territorial governments in Canada. Working as equal partners in an area of shared jurisdiction, the ministers come together at the CCME table to meet the three objectives set out in 1991 in the CCME by-laws:

- to establish and maintain an intergovernmental forum for discussion and joint action on environmental issues of national, international and global concern;
- to harmonize environmental legislation, policies, procedures and programs; and
- to develop nationally consistent environmental objectives, standards and scientific databases and complementary strategies, accords and agreements.

In 1993, CCME members agreed their top priority over the next several years should be to harmonize environmental programs and policies. Whereas the focus of CCME work had been on individual areas of environmental protection – such as water quality guidelines, codes of practice for underground storage tanks, or principles for cleaning up contaminated sites – the harmonization initiative would aim to build a more effective and efficient system of environmental management in which the actions of all governments would be complementary, and appropriate to their jurisdiction.

Environmental management is an area of shared constitutional authority. The goal of the harmonization initiative, therefore, is to find better and more efficient ways of co-operating in fulfilling governments' role as environmental stewards. Negotiations on harmonization under CCME have taken place between federal, provincial, and territorial governments, with the intent of achieving concrete environmental results through effective co-operation and collaboration.

The Accord

The Canada-wide Accord on Environmental Harmonization is the framework agreement that establishes the common vision, objectives and principles that will govern the partnership between jurisdictions, and the development and implementation of sub-agreements.

The Accord envisions governments working in partnership to achieve the highest level of environmental quality for all Canadians, and defines the partnership that will be established to address issues of Canada-wide interest. In particular:

- all governments agree to a number of fundamental principles, including the polluter pays principle, the precautionary principle and a recognition that pollution prevention is the preferred approach to environmental protection.
- all governments retain their legislative authorities.

- the features of sub-agreements to be developed under the Accord are defined, including a one-window approach; the notion of roles being assumed by the government best situated to take them on; accountability through regular public reporting of measurable obligations and results; and a commitment to develop alternative plans if obligations are not met.

Most importantly, the Accord reflects the willingness of governments to come together as partners, and their commitment to meet their legal obligations for environmental protection. Governments are free to introduce more stringent environmental measures if circumstances call for them; if a consensus is not achieved in any given area, governments are free to act within their existing authorities, and all governments may continue to take action consistent with existing emergency response agreements. In this way, the Accord seeks to achieve a useful balance, as governments take advantage of the potential for co-operation, efficiency and consistency without affecting their legitimate authority to protect and manage the environment.

The Accord and sub-agreements do not affect Aboriginal or treaty rights, which are constitutionally protected. Rather, it indicates that co-operative approaches with Aboriginal peoples and their structures of governance will be required for a comprehensive and effective environmental management regime.

The Accord also contains a number of administrative clauses, including provision for a government to withdraw on six months' notice, and for the Accord to be reviewed after five years.

Sub-agreements

The Accord provides for sub-agreements to be developed in areas of environmental management that would benefit from Canada-wide co-ordinated action. A workplan attached to the Accord outlines the likely areas where sub-agreements will be pursued. Currently, three sub-agreements have been developed, dealing with environmental inspections, environmental standards, and environmental assessment.

Canada-wide Environmental Inspections Sub-agreement

The goal of the inspections sub-agreement is improved efficiency and cost-effectiveness through one-window delivery of environmental inspection activities. The sub-agreement focuses on situations where federal, provincial, and territorial governments all have the ability to take action. In these instances, inspection activities will be decided upon by the government best situated to carry them out, and the sub-agreement contains a number of criteria to determine which government that may be.

In practical terms, a federal inspector might verify compliance with federal, provincial, and territorial environmental regulations in the case of a facility on federal lands; similarly, a provincial or territorial inspector might inspect against provincial, territorial, and federal laws in the course of a visit to an industrial facility. This split of responsibilities will be established between the relevant governments in subsequent negotiations. Arrangements may vary by jurisdiction since each environment department has its own operating structure.

Bilateral or multilateral implementation agreements would set out the detail of these arrangements, as well as any additional requirements such as the co-ordination of training,

development of consistent procedures, and establishment of compatible databases. Governments also agree to the need for regular information sharing, including timely notification of suspected violations. Such information will be useful in developing a future sub-agreement on enforcement.

Canada-wide Environmental Standards Sub-agreement

The aim of the standards sub-agreement is to encourage governments to work together on key issues requiring standards Canada-wide. The focus of the sub-agreement is on ambient standards, so that all Canadians can expect a common high degree of environmental quality. It also anticipates standards for products and discharge limits, where such standards represent the best strategy for achieving the environmental goal.

The document facilitates joint agreement on key priorities requiring standards, and encourages complementary workplans to achieve those standards, based on the unique responsibilities and legislation of each government. In other words, it envisions governments doing what makes sense for each of them to do so that they collectively solve the problem and meet the agreed-upon ambient standard. For example, the federal government is likely better positioned to address the import/export or manufacturing of specific products or substances, whereas provincial and territorial governments are likely better positioned to address industrial discharges. This approach represents responsible co-operation towards a common goal, rather than delegation of authority.

The process includes opportunities for public input in determining priorities, setting the standards, and developing implementation plans. As well, jurisdictions will report to the public on progress.

Like current CCME environmental guidelines, Canada-wide standards will be based on sound science and the evaluation of risk to human health and the environment. However, governments will be more accountable for meeting the standards and there will be enhanced opportunity for public input. Measures developed to attain agreed-upon standards will recognize environmental and socio-economic considerations.

The CCME Policy for the Management of Toxic Substances has been developed in parallel with the sub-agreement and is compatible with it. In practical terms, Canada-wide standards may be developed and implemented for a number of substances identified under the policy.

Sub-agreement on Environmental Assessment

The environmental assessment sub-agreement concerns the effective use of environmental assessment where two or more governments are required by law to assess the same proposed project. In such cases, a single assessment and review process would take place, which would be designed to meet the requirements of all the governments involved. An anticipated result is greater predictability and fewer delays in the process.

Governments would agree to base their decisions on the information generated by the one process. The review would take place under the lead of one government, but necessarily involve the collaboration of the other government. Each government would retain its authority to issue or refuse permits, and to approve or disallow the project, but it would agree to do so on the basis of the results of the agreed and co-ordinated process. There is no transfer of legal

obligations or decision-making between governments involved; rather the sub-agreement provides a framework for collaboration and promotes predictability in how an assessment proceeds.

The co-ordinated process would provide for public participation in a manner consistent with the policies and legislation of each government involved in the assessment. For example, where the federal assessment process was triggered under the sub-agreement, participant funding would be provided consistent with the provisions of the Canadian Environmental Assessment Act.

Bilateral agreements between provincial or territorial governments and the federal government will be required in order to translate the general framework of the sub-agreement into a specific operating plan, based on the legislation of the particular jurisdictions.

The sub-agreement does not apply where environmental assessment processes have been established as part of Aboriginal land claim or self-government agreements.

Looking Ahead

Harmonization of environmental management is an ongoing objective of CCME. The Council of Ministers has set out a workplan for developing additional sub-agreements under the Accord, including ones on monitoring, environmental emergencies, and research and development.

The task of implementing the sub-agreements already endorsed by the Council of Ministers now begins, and offers governments an opportunity to put into practice this co-operative approach to environmental management. It will also allow governments to evaluate the effectiveness of this approach and, if necessary, make adjustments based on what has been achieved. Most importantly, the work under these sub-agreements, such as that on Canada-wide environmental standards, will provide concrete solutions to identified issues of Canada-wide significance.

The Canada-Wide Environmental Standards Process At a Glance

Governments in Canada want to identify important environmental issues that benefit from national treatment, establish a common level of environmental protection for all Canadians, and take coordinated action to attain an agreed-upon level of environmental quality. The Canada-Wide Environmental Standards Sub-Agreement provides a framework to achieve this.

To help clarify how the sub-agreement will work, the Canadian Council of Ministers of the Environment (CCME) sponsored a meeting of representatives from federal, provincial and territorial governments, and some stakeholder groups, to discuss priorities and opportunities for public input. Based on the results of this meeting, a description of the process for implementing the sub-agreement has evolved. This process contains three basic phases: (1) setting priorities (through nomination, screening and selection stages); (2) developing standards; and (3) implementing them.

Phase 1: Setting Priorities

January - April: Nomination

- ⇒ A jurisdiction, for example the government of British Columbia, identifies a substance or issue that could be better dealt with by coordinated action with other jurisdictions.
- ⇒ Discussions are held among governments and it appears this issue or substance is a common concern across much of Canada.
- ⇒ Using a CCME template, British Columbia prepares a brief report, including:
 - potential impact on human health and the environment;
 - level of public priority or concern; and
 - need for coordination among jurisdictions.

Coordination among jurisdictions: Does this issue cross domestic or international borders? Is coordinated government action critical to resolving the issue? Will coordinated action provide a level playing field, and/or a consistent level of protection for Canadians? How will a Canada-wide standard address the problem? Is a Canada-wide standard the best way to address the issue?

- ⇒ B.C.'s report is filed with the CCME Secretariat in the spring for consideration by CCME as part of its annual planning cycle. It is made available to CCME members and federal/provincial organizations who are partners in the CWS process: Committee on Environment and Occupational Health; the federal-provincial advisory committee on the Canadian Environmental Protection Act, and the National Air Issues Coordinating Committee. The substance or issue is now a **nominated candidate priority**.

This example uses a province as the originator of the nomination, but it could also be a federal/provincial working group that identifies the issue or substance. Regardless of who identifies an issue, a CCME member must submit the nomination papers.

- ⇒ The list of nominated candidate priorities, and related supporting material, is not released to the public or stakeholders. However, in nominating a candidate priority, jurisdictions may wish to consult with the public.

May - September: Screening

- ⇒ The list of nominated candidate priorities is reviewed and evaluated as part of the CCME planning cycle. During this screening stage, the significance of each nominated candidate priority is considered, as well as the amount of available information.

Confirmation of significance: What potential harm does this issue pose (including risk and exposure)? What is the extent or scope of the issue's potential impact? What does the preliminary socio-economic analysis (including relative benefits of actions) suggest? What are the benefits/impacts of action/inaction?

Sufficiency of information: Recognizing that lack of scientific certainty should not be a deterrent to action, is there a sufficient amount of information to determine whether a Canada-wide standard can or should be developed?

- ⇒ From the pool of nominated candidate priorities, CCME develops a list of **candidate priorities**. A "champion" is identified for each candidate priority.

Champion jurisdiction: This jurisdiction leads the process for a specific candidate priority. This includes: keeping it on track and schedule; assembling a team to do the work; solving delays, funding issues or other obstacles; leading the consultations; facilitating the socio-economic evaluation; and compiling the implementation workplans prepared by each jurisdiction.

- ⇒ Working with its partners, CCME develops strategies for each of the candidate priorities. Work plan options include:

- outlining measures necessary to complete a Canada-wide standard;
- identifying how information gaps will be addressed; or
- describing why the development of a standard may not be appropriate or possible.

- ⇒ The list of candidate priorities is released to the public, along with all pertinent information used in the screening stage. The distribution of this material could be done a number of ways:

- posting on the CCME Internet home page
- mailing to relevant CCME stakeholders; and
- distribution by CCME members in their respective jurisdictions.

- ⇒ The public and stakeholders are asked for their comments on the list of candidate priorities, including their views on the relative degree of significance or need for action for each candidate priority.

October- November: Selection

- ⇒ The strategies and a summary of the views and comments received from the public are provided to the Council of Ministers to help them select priorities for which Canada-wide standards will be developed. All this material is made available to the public using the methods described above.
- ⇒ Ministers determine by consensus whether a candidate priority is of Canada-wide significance, and merits selection as a **priority** for development as a CWS.
- ⇒ Recognizing that some standards may take several years to develop, a progress report will be made at each fall meeting of the Council of Ministers.

Phase 2: Standards Development

- ⇒ The sub-agreement allows the Council of Ministers to determine the process of developing Canada-wide standards on a case-by-case basis. The champion jurisdiction is responsible for providing regular progress reports to other CCME members.
- ⇒ The nature and degree of opportunities for public/stakeholder participation in the development phase depend on the individual priorities selected by ministers.
- ⇒ Champions will make use of the *CCME Guidelines for Consultations and Partnerships* in designing consultations for the development and implementation phases of the CWS.
- ⇒ A draft communication and consultation strategy will be prepared for each candidate priority submitted to ministers for their consideration. If a candidate priority is selected for the development of a CWS, the draft communication and consultation strategy will be released to the public for comment. The final communication and consultation strategy will also be a public document.

Phase 3: Implementation

Each CCME member will be responsible for implementing the Canada-wide standard in its own jurisdiction, with the goal of effective, efficient, and harmonized implementation. Information on implementation will be contained in the workplans developed by each jurisdiction, as agreed to in section 6.4 of the Canada-Wide Environmental Standards Sub-Agreement.