

THE FEDERAL GOVERNMENT'S RESPONSE

*to the Interim Report of the Standing
Committee on Natural Resources:*

STREAMLINING ENVIRONMENTAL REGULATION FOR MINING

Tabled in the House of Commons by
The Honourable A. Anne McLellan,
Minister of Natural Resources

June 1996

Canada

The Interim Report of the Standing Committee On Natural Resources entitled Streamlining Environmental Regulation for Mining was tabled in December 1995.

This document constitutes the Government of Canada's response to the Standing Committee's Interim Report.

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INTRODUCTION

The Government's response to the House Standing Committee recognizes the fact that the report is of an interim nature, and that recommendations were made after hearing only from federal agencies and the mining industry. The Government believes that stakeholders should have the opportunity to express their concerns, interests and ideas. The Government is pleased to see that the Committee has continued its study and has heard the views of other stakeholders, and looks forward to its final report this fall.

To facilitate ongoing discussions on streamlining environmental regulation for mining, the Government is responding to the Committee's Interim Report by outlining the Government's overall commitment to regulatory reform and environmental protection and indicating that the process is already well under way. A comprehensive response to the Committee's final report will be prepared and tabled within the appropriate timeframe when it is received.

Minerals and metals play a critical role in the everyday lives of Canadians from food production to transportation and medical care. Mining and minerals make a \$20 billion contribution to Canada's gross domestic product and provide jobs for approximately 350,000 Canadians. In 1994 this industry represented a trade balance surplus of over \$11 billion. Over the next five years it is estimated that mineral development has the potential to create in the order of 40,000 person-years of construction work, 15,500 long-term jobs and 15,500 indirect jobs. The cumulative value of export earnings that could result from new mine production is estimated to be in the order of \$5 billion over the next five years. The value would be substantially higher if the potential for diamond production were to be included.

While a strong regulatory regime, technological advances and voluntary measures on the part of industry have resulted in improved mining practices, the potential for significant effects remains. Each year, for example, the Canadian mining industry produces about 500 million tonnes of waste rock (some of which could produce acidic drainage containing heavy metals), and the primary metals industry produces over 840,000 tonnes of sulphur dioxide emissions annually. While mineral development is, and can continue to be, a significant contributor to the Canadian economy, virtually all stages of the process, including mining, smelting and refining, also have the potential to cause significant environmental effects as a result of surface disruption, solid waste generation, and toxic and non-toxic air emissions and liquid effluents.

An appropriate environmental regulatory regime is critical to ensure an investment climate that allows for responsible development in the mining sector and the maintenance of high environmental standards. As outlined in *Creating Opportunity*, the Government recognizes that business and environmental excellence have become intertwined. It is also acutely aware that tomorrow's prosperous industries will be those that achieve the efficiencies that accrue from integrating economic, environmental and social objectives. In the case of mining, *Creating Opportunity* and the *Liberal Mining Agenda* see the need to resolve the delays and uncertainty in the current regulatory processes and to improve environmental protection processes and practices as ways to enhance Canada's competitiveness.

The importance of sustainable development, a healthy environment, a positive investment climate, and the need for regulatory reform was supported by the federal departments, provincial and territorial governments, industry, labour, and Aboriginal and environmental groups that were part of the Whitehorse Mining Initiative (WMI). This

process resulted in a vision of a socially, economically, and environmentally sustainable and prosperous mining industry.

The *Building a More Innovative Economy* (BAMIE) initiative, announced in December 1994, was also an important government regulatory reform effort to improve the nation's investment climate and promote economic growth and job creation. Mining was one of six industrial sectors identified as part of BAMIE's regulatory reform package. For mining, the reform objectives were to improve the federal environmental regulatory regime to promote sustainable development, provide greater certainty, and reduce delays and costs.

On January 19, 1995, the *Canadian Environmental Assessment Act* (CEAA) was proclaimed in response to a commitment made in *Creating Opportunity* and in earlier position papers. The CEAA represents a more structured and predictable environmental assessment process than its predecessor, the Environmental Assessment and Review Process Guidelines Order (EARP). The EARP process caused long delays and created a climate of uncertainty for industry and, therefore, impeded job creation. The CEAA also provides a better framework for cooperative federalism in the area of environmental assessment. This Act and the accompanying regulations are sensitive to both the need for job creation and the Government's responsibility to protect the environment. It is carefully balanced to reflect the concerns of provinces, industry and environmental groups, and contains several provisions to improve the overall efficiency of the environmental assessment process.

The Government's commitments to ensuring both a strong economy and environmental security were reaffirmed in the February 27, 1996, Speech from the Throne. Regulatory reform efforts will be continued in order to ensure that requirements are strong and clear, delays are minimized,

and activities are coordinated between departments and between levels of government. The reforms will be aimed at achieving the sustainable development of Canada's mineral resources by promoting both a proper climate for economic growth and job creation as well as a healthy environment.

The Government, in consultation with stakeholders, has made meaningful progress towards a more efficient and effective environmental regulatory regime affecting mining. However, further reforms are required to meet the Government's objectives. The December 1995 House Standing Committee on Natural Resources' Interim Report on *Streamlining Environmental Regulation for Mining* emphasized that: 1) immediate action to streamline regulation is needed; and 2) high standards of environmental protection must be met as we help restore the Canadian mining industry's international competitive position. The Government supports these points as a balanced approach to regulatory reform that is consistent with its objectives in *Creating Opportunity*, its *Guide to Green Government*, and the 1996 Speech from the Throne.

Recommendation No. 1

That the federal government, by establishing firm and achievable targets, accelerate its efforts to reform, streamline and harmonize the overall environmental regime facing the mining sector, in particular through its *Building a More Innovative Economy* (BAMIE) initiative and through the activities of the Canadian Council of Ministers of the Environment. The BAMIE initiative should be continued until its work is completed.

The federal government has been actively pursuing harmonization of environmental management with the provinces. Because environmental protection is a shared responsibility, an effective and efficient environmental management regime requires the cooperation and commitment of all levels of government. Since November 1993, Environment Canada and the Canadian Environmental Assessment Agency have signed 14 agreements with provinces and territories. In some provinces, there are "single window" frameworks for compliance, monitoring, and environmental emergencies, as well as joint environmental assessment processes. In addition, harmonization talks have occurred under the auspices of the Canadian Council of Ministers of the Environment (CCME). A draft discussion document on

federal-provincial harmonization was released in October 1995 for public review.

CCME discussions on the harmonization and streamlining of Canada's environmental management have pursued: the need for greater regulatory clarity, predictability and efficiency; the clarification of government roles and responsibilities; harmonization of environmental measures and policies; minimizing overlap and duplication; and, where appropriate, the implementation of a single window for delivery of environmental measures. While progress in these areas has been made through the CCME, advances, as noted above, have also resulted from other mechanisms such as bilateral and multilateral federal-provincial agreements. Building on the successful progress to date, the Minister of the Environment will continue to support, as a CCME priority, pragmatic approaches to bring greater efficiency, predictability and clarity to an improved environmental regulatory regime that also improves environmental protection and achieves the objective of sustainable development. The Minister of the Environment will be working with the provinces on a much strengthened process with which to confirm partnership on environmental management.

The BAMIE initiative was a broad government activity to improve the nation's investment climate and promote economic growth and job creation. As previously noted, mining was one of six sectors identified for regulatory reform. As a result of mining's inclusion in BAMIE, meaningful progress has been made in such areas as environmental assessment, the administration of the *Fisheries Act*, the definition of waste, and toxics management. Federal regulatory agencies and the mining industry have set the stage for further progress by agreeing to establish, before the summer of 1996, formal mechanisms for discussing pressing regulatory concerns and arriving at efficient and effective solutions related to land use, fish habitat

management, and environmental assessment. In addition, departments will seek to ensure that systems are in place to meet their responsibilities pursuant to the Government's Regulatory Process Management Standards by December 31, 1997, as required by the Government's 1995 Regulatory Policy.

The Government recognizes that further reforms are needed to promote a climate within which mining can make its full contribution to the Canadian economy in a manner consistent with sustainable development. Consequently, the Government will continue the efforts begun on regulatory reform for mining under BAMIE. The Department of Natural Resources and Treasury Board will have the responsibility for coordinating and reporting on this work. More specifically, the Department of Natural Resources will coordinate the preparation of a comprehensive progress report on regulatory reform of the mining sector for the Minister of Natural Resources by summer 1997.

Recommendation No. 2

That, for large-scale mining projects, the federal government designate the Department of Natural Resources as the lead agency responsible for anticipating environmental assessments and coordinating the participation of all federal authorities in the review process in a timely and efficient manner.

The legislative mandate to manage and coordinate the federal environmental assessment process rests with the Canadian Environmental Assessment Agency (Agency). The Government acknowledges and agrees with the importance of anticipating environmental assessments of large-scale mining projects and agrees that environmental assessments and other federal permitting processes must be carried out in an efficient and effective manner. The Government also recognizes that major projects such as those for diamonds at Lac de Gras, Northwest Territories, and nickel at Voisey's Bay, Labrador, are being watched closely by domestic and international investors.

In addition to participating in the environmental assessment process, federal departments and agencies may be involved in large-scale mining projects because of responsibilities related, for example, to Aboriginal land claims, and

fiscal, tax, and trade policy. Government issues are often interrelated and, therefore, can affect the timing of project development. The Government believes that process efficiency can and should be increased by better overall coordination between federal departments and agencies. Consequently, in relation to major mining projects south of 60 degrees north, the Department of Natural Resources will work in partnership with other federal departments, especially those with regulatory mandates, to ensure open communication amongst relevant departments and agencies and, where appropriate, to facilitate the development of coordinated policy responses. The Department of Natural Resources has assumed this role with respect to Voisey's Bay.

On federal lands north of 60 degrees north, where the Department of Indian Affairs and Northern Development is the federal department responsible for mineral development, the Department of Natural Resources will continue to support that department's efforts to ensure an efficient and effective regulatory regime. However, the responsibility for licensing any uranium mine in Canada from the point of view of health, safety, security and the environment rests with the Atomic Energy Control Board.

Recommendation No. 3

That the federal government, through amendments to the regulations under the *Canadian Environmental Assessment Act* (CEAA), introduce and enforce binding time lines into environmental assessment processes. The regulations must permit adoption of time lines included in provincial processes in cases where the federal government has entered into bilateral agreements with those provinces.

Projects subject to the environmental assessment process may undergo a screening, a comprehensive study or public review involving mediation, or an environmental assessment panel. The Government recognizes that process time lines (and the flexibility to accept provincial time lines) are needed to help allay investor uncertainty.

The Agency is currently developing public review procedures (panels and mediations). These are being developed through the Regulatory Advisory Committee (RAC), a multi-stakeholder group set up and administered by the Agency to advise on regulatory initiatives (The Mining Association of Canada is a member). A subcommittee of the RAC,

which has representation from the Agency, the Department of Natural Resources, industry and the environmental community, is well advanced in developing public review procedures to be enshrined in a regulation or guideline. The objective of the procedures will be to ensure that federal public reviews are procedurally consistent, timely, predictable, efficient, effective, and conducted in a manner that is open and accessible to the public. By December 1996, the Agency will introduce procedures to be enshrined in a federal guideline or regulation for improving the panel review process that will include time lines. These procedures will result in a more predictable panel process that will take less time to complete on average than what is presently required. The procedures will permit the adoption of time lines included in provincial processes in cases where the federal government has entered into bilateral agreements.

With respect to comprehensive studies, the Agency is striving to ensure that Responsible Authorities are informed of the Minister of the Environment's decision on a course of action within 60 days of submission of the comprehensive study reports to the Agency. Two comprehensive studies have been completed to date. The Responsible Authorities were informed of the Minister of the Environment's decision 38 and 45 days respectively following submission of the comprehensive studies to the Agency.

Offices that provide proponents with a single window for federal departments involved in an assessment have recently been established by the Agency in Vancouver, Edmonton, Winnipeg and Halifax. These offices will assist in improving communications with industry. In addition, the Agency is developing generic guidelines (for various sectors, including mining) for the preparation of comprehensive study reports and environmental impact statements that will provide greater certainty for a proponent on

information requirements. Guidelines specific to the mining sector will be released before the fall of 1997.

As the process for preparing comprehensive studies is relatively new, the Agency, departments and interested parties do not as yet have the experience that is needed to establish reasoned time lines with respect to this part of the assessment process. However, the Agency intends to initiate a consultative process with all stakeholders to develop procedural guidelines or regulations with time lines.

Recommendation No. 4

That federal departments involved in the environmental assessment of natural resource projects jointly develop a code of conduct and practices to guide and harmonize their regulatory involvement in the federal assessment process, and that these departments be required to adhere to such a code. The code could be part of the "process efficiency regulation" currently developed by the Canadian Environmental Assessment Agency to assist in meeting the objective of one project-one assessment. The development of this regulation should also be accelerated.

Harmonization and coordination of the involvement of federal regulatory agencies in mining projects are essential to a timely and certain process. Some progress was made through the Agency's 1995 guides "Lead Responsible Authority" and "Process Advice for the Participation of Federal Authorities in an Environmental Assessment." However, the Government also sees the need to develop a more rigorous code of practice to ensure efficient coordination among federal authorities.

To achieve this, the Agency is in the process of developing a Federal Coordination Regulation (formerly known as the Process Efficiency Regulation) to ensure that federal environmental assessments are timely, certain and efficiently coordinated among federal authorities under the *Canadian Environmental Assessment Act*.

The Regulation, which is being developed through the multi-stakeholder Regulatory Advisory Committee, will provide private sector proponents with certainty as to the timing of federal determinations; reduce the possibility of second environmental assessments; and facilitate successful harmonization with the provinces on environmental assessment. The Agency will accelerate the development of the Regulation in order to promulgate it before the end of 1996.

Recommendation No. 5

That the federal government clarify the CEAA provision on cumulative effects to more adequately delineate project proponents' regulatory requirements. Broader policy and land-use planning issues are more appropriately dealt with by governments and thus should not be the responsibility of project proponents.

The Government is committed to the goals of the Whitehorse Mining Initiative, one of which is "to ensure that project-specific environmental assessments . . . are conducted in the broader context of: an integrated land use planning process, and government policies and programs." It is not the intent of the Act to oblige proponents to undertake the responsibility for broad policy and land-use planning issues. However, consideration must be given to the cumulative environmental effects resulting from the environmental impacts of the proposed project being added to those of other relevant projects and activities.

The Agency published a reference guide in November 1994 which describes an approach for doing cumulative effects assessments (CEA) and clarifies how the specific provision in the Act on cumulative effects assessment should be interpreted. In addition, the Agency is collecting and will make available case studies as they are completed that illustrate the practice of CEA.

The Agency is committed to advancing the practice of CEA through cooperation and partnership with various sectors and jurisdictions. For example, the Agency has agreed to cooperate with The Mining Association of Canada in its work on the application of CEA. Both the Agency and other relevant government departments will contribute to efforts by the mining industry to develop a better understanding of the application and the requirements of CEA for mineral development projects.

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Recommendation No. 6

That the federal government accelerate current efforts to negotiate bilateral agreements on environmental assessment with all of the remaining provinces, using the agreement with British Columbia as a starting point for subsequent negotiations. However, these agreements should differ from the British Columbia model by providing for an effective single-window procedure. In the provinces where an environmental assessment policy equivalent to the federal policy already exists, the federal government should, wherever possible, recognize the predominance of the provincial process in order to facilitate the establishment of a single-window procedure.

The federal government supports the Committee's recommendation to accelerate current efforts to negotiate bilateral agreements on environmental assessment with all remaining provinces. As stated in the Speech from the Throne, the federal government will strengthen the process for working in partnership with the provinces to maximize opportunities provided under the *Canadian Environmental Assessment Act* to ensure that requirements are strong and clear, delays are minimized, and activities are coordinated.

The proposed Canada/British Columbia Agreement for Environmental Assessment Cooperation is an example of the progress that is being made towards the Whitehorse Mining Initiative's goal "to develop processes such that each new mining project is subject to a single timely environmental assessment by an appropriate single lead agency, which results in only one set of recommendations that meet the requirements of all jurisdictions." Under the proposed Agreement, the federal and provincial lead for screenings and comprehensive studies is clearly defined. In addition, the British Columbia agreement would advance the objective of process harmonization by providing for a single comprehensive study report that meets the needs of both jurisdictions and adopts time lines set out in provincial legislation. Recognizing that environmental management is a shared jurisdiction and that the federal government will retain its decision-making authority, the federal government will promote cooperative environmental assessments with other remaining jurisdictions using the British Columbia approach to the extent that it is legally and operationally possible.

Since 1990, the federal government has conducted 25 panel reviews of which 18 (72%) were managed jointly with the provinces. Five of these 18 joint panel reviews have focused on mining/smeltering proposals. Since 1974 a total of 11 such proposals have been subject to a federal panel review. As has been done in the past in the case of

many successfully administered reviews with the provinces, the federal government will use, whenever possible, the provincial processes as a vehicle for meeting its legal obligations. Where bilateral agreements do not exist, the federal government will work cooperatively with the provinces on the development of project-specific agreements to avoid duplication in environmental assessment activities. This will be the case for the Voisey's Bay mining proposal and for the Terra Nova and Sable Island hydrocarbon proposals.

Recommendation No. 7

That the Joint Monitoring Program on the *Canadian Environmental Assessment Act* be extended for the time necessary to accumulate the baseline information on which to monitor the environmental assessment process affecting large-scale mining projects.

The Joint Monitoring Program (JMP) was initiated to determine whether, in practice, the CEAA is meeting its objectives, and to identify, in a timely manner, whether it is having any significant adverse impacts on competitiveness. The program was launched April 1, 1995, and ended on March 31, 1996. In the summer of 1996, the Ministers of the Environment and Industry will release a report on the results of the JMP for the first year of implementation of the Act. Preliminary results suggest that the monitoring program has not revealed evidence of significant adverse impacts on competitiveness.

Consequently, ongoing monitoring of the CEAA, in the context of regulatory reform, is appropriate. The Agency will continue to monitor the application of the CEAA in collaboration with its partners. Particular attention will be given to comprehensive study and panel review processes in order to address any process implementation problems that may affect large-scale mining projects. Departments will also put in place systems that ensure compliance with the Government's 1995 Regulatory Process Management Standards, as well as reporting, as appropriate, on compliance with these standards. Information from this monitoring program will be used in the preparation of the comprehensive progress report on the regulatory reform of the mining sector (see Recommendation No. 1).

Recommendation No. 8

That the federal Department of Fisheries and Oceans rapidly take steps, by the summer of 1996, to apply its "no net loss" guiding principle across the country in a consistent manner.

The Department of Fisheries and Oceans (DFO) has a responsibility to protect fish and fish habitat in support of sustainable fisheries for Canadians. DFO endeavours to carry out its responsibilities in a fair and consistent manner.

Apparent inconsistencies in the application of the "no net loss" principle may result from project-specific differences in the type of fishery resources or habitat impacted, rather than inconsistencies in the decision-making process. While DFO may accept habitat compensation for the destruction of habitat in some instances, compensation may not be acceptable where the habitat is considered critical habitat or where it supports an important fishery.

The Government supports the objectives of certainty and consistency in the application of the Policy for the Management of Fish Habitat and its "no net loss" guiding principle. With this in mind, DFO has developed a number of tools to nationally promote consistent decision-making and fairness in the administration of the habitat protection provisions of the *Fisheries Act*. These measures include:

- *Habitat Conservation and Protection Guidelines*, released in January 1994, which outline the principles and procedures for the application of the "no net loss" guiding principle (the guidelines have been summarized in a brochure entitled *Fish Habitat Conservation and Protection: Guidelines for Attaining No Net Loss*, which is available from DFO's regional offices);
- *Directive on the Issuance of Subsection 35(2) Authorizations*, which clarifies the circumstances under which a subsection 35(2) authorization will be issued by DFO (the Directive has been summarized in a brochure entitled *Fish Habitat Conservation and Protection: What the Law Requires - The Directive on the Issuance of Subsection 35(2) Authorizations*, which is available from DFO regional offices); and

- *Decision Framework for Determining and Authorizing the Harmful Alteration, Disruption, and Destruction of Fish Habitat (HADD)*, which provides a practical, scientifically sound and nationally consistent decision-making tool for assessing the impacts of proposed projects on fish habitat.

DFO has also initiated a project to review policy issues with respect to habitat compensation in order to ensure national consistency and fairness. DFO intends to make the draft discussion paper available to stakeholders, including the mining industry, for review and comment before the end of 1996.

Recognizing the need to address ongoing concerns that relate to fish habitat management and mining, DFO is prepared to participate in initiatives aimed at developing better communications with the mining industry and other stakeholders. These initiatives will be designed to ensure that industry has a clear understanding of how the Policy for the Management of Fish Habitat applies to mineral development projects. As well, they will permit the development of new mechanisms for enhancing the efficiency and certainty of the process. Specifically, DFO is prepared to:

- work immediately with the mining industry to develop information requirements and consultative procedures aimed at enhancing the review process for mining proposals with respect to fish habitat issues;
- develop and participate in workshops, beginning in early 1997, with the federal departments of Natural Resources, Indian Affairs and Northern Development, and the Environment, and The Mining Association of Canada to promote a better understanding of DFO's policies and programs;

- continue development of service standards in consultation with stakeholders as part of a government-wide program to improve the delivery and efficiency of programs; and
- assist the mining industry in developing guidelines for a code of best practice for mineral development projects.

Recommendation No. 9

That the federal government, through the Department of Fisheries and Oceans, promptly undertake a formal delegation of freshwater fish habitat management to the provinces, which already manage their own fisheries under federal legislation, or to local co-management boards.

The federal government recently indicated in the February 27, 1996, Speech from the Throne that it plans to propose a strengthened process to work in partnership with provinces in the area of freshwater fish habitat.

Inland provinces are currently managing their own freshwater fisheries under delegated federal authority. However, the federal government continues to be responsible for the management of habitat supporting these fisheries. The Government believes that fish habitat protection could be improved by better coordination of provincial land and water management processes and freshwater fish habitat management.

The Department of Fisheries and Oceans is developing proposals, in consultation with stakeholders, to formalize and clarify fish habitat management arrangements with inland provinces.

Recommendation No. 10

That Section 36 and any other related section of the *Fisheries Act*, including pertinent regulations, be amended to allow for a more scientifically based approach to ensuring water quality with more realistic implementation measures.

The Government is committed to ensuring that federal environmental protection regulations reflect a sound scientific approach and that this statute, including regulations, allows for a scientific approach to ensuring water quality and realistic implementation measures. The Government is of the view that Section 36 of the *Fisheries Act* is sufficiently broad and flexible enough to allow for a science-based approach and realistic implementation measures.

While Subsection 36(3) of the *Fisheries Act* prohibits the deposit of deleterious substances in water frequented by

fish unless authorized by regulation, the power to make such regulations under subsections 36(5) and 37(3) of the *Fisheries Act* permits flexibility in regulating deposits of effluents and specifying realistic monitoring requirements for the effluents and receiving waters.

In 1977, the Government promulgated the Metal Mining Liquid Effluent Regulations (MMLER) under Section 36 of the *Fisheries Act*. These national baseline standards and regulations are scientifically based and set the allowable limits (concentration) of certain deleterious substances contained in the effluents from base-metal, uranium and iron ore mines. They were developed on the basis of Best Practicable Technology.

In 1993, the Department of the Environment established a multi-stakeholder process involving federal and provincial government departments, industry, environmental groups and Aboriginal groups to review and assess the effectiveness of the MMLER in order to determine if they need to be updated and strengthened. Referred to as the AQUAMIN project, the participants were asked to review, identify and scientifically assess the reported effects of Canadian mine effluents on the aquatic environment. The project will result in recommendations to the Department of the Environment, including: the research needed to identify relationships between reported mine effluent qualities and observed effects in the receiving environment; a protocol for an environmental effects monitoring process for metal mines; and possible amendments to the MMLER.

The AQUAMIN group's recommendations are expected in June 1996. The AQUAMIN reports will be distributed publicly, and the Minister of the Environment will announce before the end of 1996 if any measures to update, strengthen or further harmonize the MMLER are needed.

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Recommendation No. 11

That the Metal Mining Liquid Effluent Regulations under the *Fisheries Act* be amended to take into account natural background levels of metals in water and sediments.

As a general policy, the Government recognizes that naturally occurring substances may need to be considered in some circumstances. Data for about 100 mines (including mines under regulations and mines under guidelines, but excluding gold mines using cyanide) have been monitored and reported on in the MMLER compliance report "Status Report on Water Pollution Control in the Canadian Metal Mining Industry (1990 and 1991)." These data, combined with other information, do not reveal any apparent situations for operating metal mines where the MMLER limits are lower than natural background levels of the same metals. Thus it appears, as a practical matter, that there will be few, if any, situations that warrant special consideration.

The Department of the Environment suggests that there may be situations where effluent concentration limits need to be lower than background levels in order to protect fish and fish habitat. However, the water quality requirements of the MMLER are similar to background levels. If the first such situation did arise, the risks and environmental impacts would be evaluated. Such an evaluation would be facilitated by the Metals in the Environment Program that is being developed by the Department of Natural Resources (Geological Survey of Canada) to distinguish the relative contribution of metals to the environment from natural resources and from human activities. Depending on the results, appropriate limits could be established using the regulatory powers provided in Section 36(5). As indicated in the discussion on Recommendation No. 10, the authority to make regulations under the pollution prevention provisions of the *Fisheries Act* is sufficiently broad so that such circumstances could be addressed as part of an overall updating of the MMLER.

Recommendation No. 12

That the Metal Mining Liquid Effluent Regulations under the *Fisheries Act* be harmonized with provincial effluent regulations.

The Government recognizes that both the federal and provincial governments regulate liquid effluents. This was one aspect of overlap and duplication examined in a 1993 study on Canada's Mineral Investment Climate that was undertaken by a federal/provincial/industry task force established by federal and provincial mines ministers. The task force reported on a number of problems in the areas of compliance monitoring and enforcement (e.g., same inspection functions being done by different agencies). There does not, however, appear to be any significant uncertainty with respect to numerical limits. Where provinces have more stringent or comprehensive limits, these, rather than the federal baseline standards, would apply.

In the case of some regulations promulgated pursuant to the pollution prevention provisions of the *Fisheries Act* (e.g., the Pulp and Paper Regulations), the Department of the Environment has pursued bilateral agreements with the provinces and territories as a means of providing for more efficient administration and enforcement. For example, the September 15, 1995, agreement with Saskatchewan provides industry with a single provincial window to deal with both levels of government so that industry will be able to meet both federal and provincial requirements.

At the October 1995 meeting of the CCME in Whitehorse, ministers expressed the hope that multilateral progress could occur quickly and that three to four areas of likely success could be brought forward to the Council. The Minister of the Environment will continue discussions on bilateral or multilateral agreements to harmonize the administration of the MMLER as a priority.

Recommendation No. 13

That the federal government recognize the importance of the Canadian metals recycling industry by diligently modifying its definition of "wastes" to exclude metal recyclables. Furthermore, the Government should work with its international counterparts to exempt materials containing metals used in recycling or other environmentally beneficial processes from the transboundary movements restrictions under the UN Basel Convention.

The Government recognizes that recyclable materials are captured by the current definition of "wastes" and that this description can inhibit the use of recyclable materials. It also recognizes that recycled metals are essential raw material components to metallurgical industries. Because of their economic and environmental importance, the Government is committed to, and is working towards, the elimination of the negative connotation given to recyclables associated with the term "waste." Also, a clear definition of waste will help the recycling industry become more competitive and will help Canada meet the CCME's 50 percent waste reduction target (from a 1988 base) by the year 2000.

The Government is presently consulting with the provinces through the CCME to review the definitions of "waste" and "hazard" and to develop an appropriate definition of waste to be used domestically and for input to the Organization for Economic Co-operation and Development's discussions. This activity will be completed by March 1997.

Recyclable materials that exhibit hazardous characteristics and pose risks to the environment, are problematic, or have a history of mismanagement should continue to require waste-like controls. However, normal commercial controls are generally suitable for recyclable materials that do not pose a risk to human health or the environment and whose industrial use is well managed. The Government will therefore identify recyclable materials that require controls but do not need to be managed as if they were a waste. As well, the Government will remove transboundary restrictions from recyclable metals that do not pose a risk to human health and the environment and are well managed in their industrial use. In addition, the Government will continue to work with the provinces and its international counterparts to apply appropriate movement and management controls to materials in relation to their risk to human health and the environment.

Recommendation No. 14

That the *Navigable Waters Protection Act* and its associated regulations be amended to provide for greater certainty and reduce delays with respect to economic development projects. In particular, a clear definition of "navigability" should be included in the Act.

The Government appreciates the concern over delay proponents sometimes experienced when seeking *Navigable Waters Protection Act* (NWPA) approval for proposed projects. Projects which significantly interfere with navigation trigger an environmental assessment pursuant to the *Canadian Environmental Assessment Act*. Therefore, in addition to assessing the navigation impacts, a collaborative environmental impact assessment must be conducted that involves all federal government departments having interests in matters related to the proposed project.

The Government agrees that the NWPA needs to be modernized and harmonized with other processes. Accordingly, DFO, in consultation with stakeholders, will propose amendments to the NWPA to provide for, amongst other things, a better definition of the scope of the application and purpose of the Act, and a provision to enable delegation of responsibility for certain types of "work" to other administrations including interested provinces. It is anticipated that these amendments will be introduced in 1997.

Recommendation No. 15

That, in acting on regulatory reform, the federal government consider alternative approaches to traditional regulation, including voluntary measures, to attain a more efficient regulatory system.

The Government agrees that voluntary measures and other complements to regulation are a key component of regulatory reform.

Stakeholders of the Whitehorse Mining Initiative agreed that voluntary and regulatory means were needed to ensure minimum environmental impact during mining, exploration, development and closure. While regulations remain an important and essential mechanism for achieving some objectives, their limitations need to be recognized. The regulatory process is sometimes slow, confrontational, prescriptive, punitive, and costly to administer for both government and industry. Non-regulatory or voluntary measures can effectively complement regulations to produce a more efficient regulatory system without any reduction in environmental standards.

The CCME's National Commitment to Pollution Prevention addresses the role of voluntary action in one of its guiding principles. It states that: "Voluntary action, regulation and economic instruments all have important, and often complementary roles to play in pollution prevention. All approaches for prevention should be considered, with a view to using the most effective approach, or combination of approaches. Voluntary approaches will be encouraged."

Canada's mining sector has demonstrated its willingness to adopt non-regulatory measures to address the challenge of sustainable development. Members of The Mining Association of Canada (MAC) actively worked to launch, in 1992, a program to voluntarily accelerate reduction or elimination (ARET) of twelve toxic substances. Thirteen members of MAC, representing 83 percent of the value of Canadian base-metal production, voluntarily submitted action plans to reduce their ARET-listed annual emissions by 71 percent by the year 2000. As of March 1995, there had been a reduction of 41 percent in metal releases in the five-year period 1988-93. Corporate commitments are for all their facilities that might be found in various regulatory jurisdictions across Canada and are beyond what is established in the regulation.

Non-regulatory approaches are not necessarily applicable in all circumstances and should be used to complement, not replace, the traditional regulatory system. In addition to continuing to improve the current regulatory system, it is in the Government's interest to monitor the success of such approaches and to promote their application where possible and feasible. It is also worthwhile for the Government to encourage participation in and support for programs (such as ARET) as a complement to regulation. In such cases, the Government will look to industry to demonstrate that it can meet its environmental commitments made through complementary non-regulatory approaches.

Prior to making any decisions to develop new environmental regulations, the Government will give due consideration to the use of all non-regulatory measures. The Government will establish objectives and continue to consult with all stakeholders during the development of its environmental measures.

CONCLUSION

The Government recognizes both the critical role of minerals and metals in the everyday lives of Canadians and the potential for mineral development to have significant impacts on the environment. The Government is committed to ensuring both a strong economy and environmental security, as reaffirmed in the February 27, 1996, Speech from the Throne. It understands that regulatory reform that does not compromise environmental protection objectives is crucial to the future prosperity of the mining industry. Consequently, the Government will continue to identify and focus its regulatory reform efforts on real regulatory problems and ensure that requirements are clear, predictable and efficient. The Government looks forward to the Committee's final report that will be developed after hearing from all stakeholders. This will provide further direction and allow the Government to build on its ongoing initiatives. At that time, a comprehensive and forward-looking response will be prepared.