

CANADA SUR AARHUS

Right to clean air, clean water, and a healthy environment

Petition: No. 163A

Issue(s): Air quality, human health/environmental health, international cooperation, and water

Petitioner(s): David R. Boyd

Date Received: 6 February 2006

Status: Completed

Summary: According to the petitioner, the right of Canadians to clean water, clean air, and a healthy environment is being violated, due to widespread environmental pollution. The petitioner asks the government to confirm this right and to make it explicit in the Canadian Charter of Rights and Freedoms. The petitioner also asks the government to explain why it is not participating fully in certain international conventions on access to information, public participation, and human rights, and why it has not recognized the human right to water in international forums.

Federal Departments Responsible for Reply: [Environment Canada](#), [Foreign Affairs and International Trade—Department of \[1996-2003\]](#), [Health Canada](#), [Justice Canada—Department of](#)

Petition

January 17, 2006

Office of the Auditor General of Canada
and the Commissioner of the Environment and Sustainable Development
Attention: Petitions
240 Sparks Street
Ottawa, Ontario
K1A 0G6

**Petition Regarding the Right of Canadians
to Clean Air, Clean Water, and a Healthy Environment**

Canadians are gravely concerned about the impact of environmental pollution on their health. Ninety percent of Canadians believe that environmental pollution has a negative effect on their health or the health of their children.¹ Pollution ranks second after stress when Canadians are asked about the major factors having a negative impact on their health.² The concerns of Canadians are warranted. There is extensive evidence that environmental degradation is harming the health and well-being of Canadians:

- a recent study of ordinary Canadians found the presence of dozens of toxic chemicals in their blood and urine, including pesticides, PCBs, flame retardants, and plastic softeners;³
- air pollution causes thousands of premature deaths, tens of thousands of hospitalizations, and hundreds of thousands of days absent from work and school annually;
- the dramatic 448 percent increase in the prevalence of childhood asthma between 1978 and 1995 is linked to environmental factors;
- contaminated drinking water causes roughly 90,000 cases of gastrointestinal illness annually;
- acute pesticide poisoning harms thousands of Canadians annually, mainly children and farm workers;
- a number of cancers that have known environmental connections are increasing, including skin cancer (50,000 cases annually) and lung cancer linked to radon exposures (2,500 deaths per year); and
- lead poisoning causes a range of chronic impacts, primarily affecting children, menopausal women, and the elderly.⁴

There are also serious concerns about future threats to human health from new and emerging environmental hazards. Examples include: chemicals such as PBDEs, which have increased 830 percent in women's breast milk in 12 years; cumulative lifetime chemical exposures from multiple sources; endocrine disrupting substances; aldehydes produced by the combustion of ethanol, a gasoline additive whose use is expected to grow rapidly in coming years; new products generated by nanotechnology and biotechnology; and vector borne diseases like West Nile virus whose impact may be exacerbated by climate change.⁵

The foregoing evidence indicates that the right of Canadians to enjoy clean air, clean water, and a healthy environment is being regularly, routinely, and systematically violated.

The right to a healthy environment has been explicitly recognized in the constitutions of at least **seventy** nations in recent years (see Appendix A* for a list of these nations). France is the most recent nation to amend its constitution, in early 2005, to explicitly acknowledge the right to a healthy environment (see Appendix B* for the French amendments). In a number of countries whose constitutions do not **explicitly** recognize environmental rights, courts have interpreted other constitutionally protected human rights, such as the right to life, liberty, and security of the person, as including the right to a healthy environment (e.g. Italy, the Netherlands, Nigeria, and India).

Canada's *Charter of Rights and Freedoms* does not **explicitly** recognize the right to a healthy environment. However, s. 7 of the *Charter* does state that:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 of the Charter, by virtue of its references to the right to life and the right to security of the person, incorporates an **implicit** right to a healthy environment. In addition, Canada signed the *Hague Declaration on the Environment* in 1989, along with 23 other nations. The *Hague Declaration* recognizes that all individuals have: "the right to live in dignity in a viable global environment, and the consequent duty of the community of nations vis-à-vis present and future generations to do all that can be done to preserve the quality of the environment."⁶

In 1995, the Supreme Court of Canada explicitly endorsed a passage from a Law Reform Commission report that stated "a fundamental and widely shared value is indeed seriously contravened by some environmental pollution, a value which we shall refer to as the right to a safe environment."⁷

The full passage from the Supreme Court of Canada's decision is as follows:

It is clear that over the past two decades, citizens have become acutely aware of the importance of environmental protection, and of the fact that penal consequences may flow from conduct which harms the environment.... Everyone is aware that individually and collectively, we are responsible for preserving the natural environment. I would agree with the Law Reform Commission of Canada, *Crimes Against the Environment, supra*, which concluded at p. 8 that:

. . . a fundamental and widely shared value is indeed seriously contravened by some environmental pollution, a value which we will refer to as the *right to a safe environment*.

To some extent, this right and value appears to be new and emerging, but in part because it is an extension of existing and very traditional rights and values already protected by criminal law, its presence and shape even now are largely discernible. Among the new strands of this fundamental value are, it may be argued, those such as *quality of life*, and *stewardship* of the natural environment. At the same time, traditional values as well have simply expanded and evolved to include the environment now as an area and interest of direct and primary concern. Among these values fundamental to the purposes and protections of criminal law are the *sanctity of life*, the *inviolability and integrity of persons*, and the *protection of human life and health*. It is increasingly understood that certain forms and degrees of environmental pollution can directly or indirectly, sooner or later, seriously harm or endanger human life and human health. [emphasis in original]

The Supreme Court of Canada referred to this passage with approval again in 1997 in another landmark environmental law decision.⁸ In addition, the Supreme Court of Canada has repeatedly endorsed the report of the World Commission on Environment and Development (the Brundtland Commission), called *Our Common Future*, which concludes "All human beings have the fundamental right to an environment adequate for their health and well-being."⁹

Related Issues

a) The Aarhus Convention

Canada belongs to the UN Economic Commission for Europe, but has not ratified the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*.¹⁰ The objective of the *Aarhus Convention* is "to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being." During the negotiation phase of the *Aarhus Convention*, Canada argued against the explicit recognition of a right to a healthy environment.¹¹

b) The San Salvador Protocol

Canada also belongs to the Organization of American States, but has not ratified the *Additional Protocol to the American Convention on Human Rights* (known as the *San Salvador Protocol*). The *San Salvador Protocol* includes a specific reference to the right to a healthy environment:

Art. 11.1 Everyone shall have the right to live in a healthy environment and to have access to basic public services.

11.2 The state parties shall promote the protection, preservation, and improvement of the environment.¹²

c) The International Human Right to Clean Water

In a 2002 meeting of the United Nations Commission on Human Rights, 53 countries voted on a resolution calling for access to clean water and sanitation to be recognized as a fundamental human right alongside the right to food and shelter. The **only** country that voted against the resolution was Canada.¹³

Questions for the Government of Canada

1. Does the Government of Canada recognize that Canadians have a right to clean water, clean air, and a healthy environment?

2. Does the Government of Canada recognize that the right of Canadians to clean water, clean air, and a healthy environment enjoys constitutional protection because this right is **implicit** in s. 7 of the *Charter of Rights and Freedoms*?

3. Would the Government of Canada support an amendment to the *Charter of Rights and Freedoms* to **explicitly** recognize the right to clean water, clean air, and a healthy, ecologically balanced environment?

4. Why is Canada not a party to the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*?

5. Why has Canada failed to ratify the *Additional Protocol to the American Convention on Human Rights* (the *San Salvador Protocol*)?

6. Why, during international meetings and negotiations, does Canada refuse to recognize the human right to water?

These questions may fall under the purview of Environment Canada, Health Canada, the Department of Justice, and the Department of Foreign Affairs and International Trade. I look forward with great interest to receiving detailed responses from the relevant federal departments.

Please do not hesitate to contact me if you seek clarification or further information regarding this petition.

Respectfully,

[Original signed by David R. Boyd]

David R. Boyd

Trudeau Scholar, University of British Columbia
Adjunct Professor, Resource and Environmental Management, Simon Fraser University
Research Associate, POLIS Project on Ecological Governance, University of Victoria

1321 MacKinnon Road, RR1
Pender Island, BC V0N 2M1

Tel: 250-629-9984 or 604-709-9256
Email: davidrichardboyd@yahoo.com

*[attachments not posted]

- 2 . Environics International. 2003. Environmental Monitor. 2003-1.
- 3 . Environmental Defence Canada. 2005. Toxic Nation: A Report on Pollution in Canadians. www.environmentaldefence.ca Similar results have been obtained by studies conducted in the United States. See Centers for Disease Control. 2005. Third National Report on Human Exposure to Environmental Chemicals. www.cdc.gov
- 4 All Canadian health and environment statistics are gathered from Health Canada publications.
- 5 All Canadian health and environment statistics are gathered from Health Canada publications.
- 6 1989 Hague Declaration on the Environment, 11 March 1989, 28 I.L.M. 1308 (1989).
- 7 Ontario v. Canadian Pacific [1995] 2 S.C.R. 1031 at 1075-1076.
- 8 R. v. Hydro-Quebec, [1997] 3 S.C.R. 213, at para. 124.
- 9 World Commission on Environment and Development (Brundtland Commission). 1987. Our Common Future, p. 348.
- 10 See Status of Ratification, Aarhus Convention on Public Participation. www.unece.org
- 11 ECO. 1996. Report from 2nd negotiating session. Proposed UN ECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-making.
- 12 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. 17 Nov. 1988, 28 I.L.M. 156
- 13 Mike Blanchfield. 2003. "Our painful vote against clean water," Ottawa Citizen, September 21, 2003.

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Joint Response: Environment Canada, Foreign Affairs and International Trade—Department of [1996-2003], Health Canada, Justice Canada—Department of

June 15, 2006

Mr. David R. Boyd
1321 Mackinnon Road
R.R. #1

Pender Island, British Columbia
V0N 2M1

Dear Mr. Boyd:

I am writing in response to your Environmental Petition No. 163 to the Commissioner of the Environment and Sustainable Development, regarding the right of Canadians to clean water, clean air, and a healthy environment. The petition requests that the Ministers of Health, the Environment, Justice and Foreign Affairs review and respond to six specific questions, and was received in the Department on February 15.

Due to the nature of the issues being raised in the petition, Environment Canada, along with a number of other government departments, have collaborated with my Cabinet colleague, the Honourable Tony Clement, Minister of Health, to prepare the government's response to your petition. This response has been reviewed by my departmental officials, who are in concurrence with its conclusions.

I appreciate your interest in this important matter.

Yours sincerely,

[Original signed by Rona Ambrose, Minister of the Environment]

Rona Ambrose

c.c.: The Honourable Tony Clement, P.C., M.P.
The Honourable Vic Toews, P.C., M.P.
The Honourable Peter Mackay, P.C., M.P.
Ms. Johanne Gélinas, Commissioner of the Environment and Sustainable
Development

**GOVERNMENT OF CANADA'S RESPONSE TO ENVIRONMENTAL
PETITION 163 FILED BY MR. DAVID R. BOYD UNDER THE *AUDITOR
GENERAL ACT*
(RECEIVED FEBRUARY 16, 2006):**

Right of Canadians to Clean Air, Clean Water, and a Healthy Environment

June 2, 2006

Minister of the Environment
Minister of Justice and Attorney General of Canada
Minister of Health
Minister of Foreign Affairs

Acronyms

ACHR	American Convention on Human Rights
CCME	Canadian Council of Ministers of the Environment
CEAA	<i>Canadian Environmental Assessment Act</i>
CEPA	<i>Canadian Environmental Protection Act</i>
CIDA	Canadian International Development Agency
NPRI	National Pollutant Release Inventory
SEP	Safe Environments Programme

Introduction

While all orders of government play an important role in protecting the environment, the responses reflect the Federal Government's policies and laws. There is no federal legislation which protects an express "right to clean water, clean air and a healthy environment". However, the Government of Canada, through legislation, policies and cooperative work with provinces and territories, seeks to ensure that Canadians have access to a healthy environment, clean air, and safe drinking water.

Responses to Petition Questions

Question 1: Does the Government of Canada recognize that Canadians have a right to clean water, clean air, and a healthy environment?

Response to Question 1:

In Canada, ensuring that Canadians enjoy a healthy environment, including clean air and access to safe drinking water is a shared priority for all governments. Given this reality and the number of collaborative activities the various levels of government undertake, a series of examples has been provided which highlight the Government of Canada's commitment to ensuring access to safe drinking water, clean air and a healthy environment.

The 1995 amendments to the *Auditor General Act* impose upon federal departments further responsibilities respecting the quality of the environment and the health of Canadians. The amendments mandate the Commissioner of the Environment and Sustainable Development to ensure that departments make progress towards sustainable development, achieved through a variety of actions, including the protection of the health of Canadians and the protection of ecosystems.

Departments deliver on this requirement through the development of Sustainable Development Strategies as a tool for departments to systematically consider the implementation of sustainable development through their policies, legislation, programs and operations.

For example, Health Canada and Environment Canada both work towards ensuring access to safe drinking water for all Canadians. Health Canada has developed Guidelines for Canadian Drinking Water Quality with the provinces and territories. These guidelines are used as the basis for each jurisdiction in establishing their own regulatory requirements to ensure drinking water safety. Furthermore, under the auspices of the Canadian Council of Ministers of the Environment (CCME), Environment Canada, in collaboration with the provinces and territories, is responsible for developing Canadian Environmental Quality Guidelines related to other water uses, including fresh water and marine life, as well as agricultural, recreational and industrial uses. More information is available on the CCME web site at www.ccme.ca/ceqg_rcqe/index.html.

With regards to ensuring clean air, the government of Canada, in conjunction with the provinces, territories and municipal governments, have worked together to address air issues, especially smog since the Nitrogen Oxides and Volatile Organic Compounds Management Plan was conceived in 1990. In 1998, under the auspices of the CCME, the provinces (with the exception of Quebec) signed the Canada-Wide Accord on Environmental Harmonization. A key element of the Accord is a sub-agreement on Canada-Wide Standards. This sub-agreement provides a framework for federal and provincial/territorial environment ministers to work together on key issues of environmental protection and health-risk reduction that require national standards. Individual jurisdictions are responsible for implementing and enforcing these standards. Environment Canada and Health Canada have worked with the provinces and territories to establish Canada-Wide Standards for key air pollutants, including ozone and particulate matter. The Federal-Provincial Committee on Health and Environment, also under the auspices of the CCME is tasked with developing assessments that provide the scientific basis for some of the air-related Canada-Wide Standards.

A legislative example of the Government of Canada's commitment can be found in the *Canadian Environmental Protection Act* (CEPA). CEPA provides the primary authority and policy direction for the assessment and management of environmental contaminants in Canada. Among its many provisions, CEPA requires that the Ministers of Health and the Environment take action with respect to the control or management of substances that are harmful to the environment or dangerous to human health or life that may already be in use in Canada.

From a human health perspective, Health Canada assesses the potential health risk to the general population associated with new substances, including products of biotechnology, as well, as the health risk associated with environmental exposure to new substances in products subject to the *Food and Drug Act*. If a risk is identified, measures are taken to reduce the risk by controlling or even banning the substance.

Environment Canada carries out a similar function, coordinated with Health Canada, to ensure that any potential risks from an environmental perspective are mitigated. Specifically, at Health Canada, it is the mandate of the Safe Environments Programme (SEP) to help Canadians have access to clean air, clean water and a healthy environment. SEP promotes healthy living and working and recreational environments by identifying and assessing health risks to Canadians posed by environmental factors. SEP develops national risk management strategies that help reduce risks to human health from the environment, supported by scientific research, and which is directly aligned with Health Canada's sustainable development strategy.

Question 2: Does the Government of Canada recognize that the right of Canadians to clean water, clean air, and a healthy environment enjoys constitutional protection because this right is **implicit** in s.7 of the *Charter of Rights and Freedoms*?

Response to Question 2:

In the above question, you are asking for a legal interpretation of s.7 of the *Charter of Rights and Freedoms*. As you know, the Department of Justice is the legal advisor to the Government of Canada. As such, the Department provides ongoing legal advice to the Government of Canada, including all departments that are also involved in responding to this petition.

Legal advice to the Government includes the interpretation of statutes, legal obligations of departments, and legal risk management. This advice is subject to solicitor-client privilege.

By substantively providing information in answer to the question in the petition that pertains to the law and its interpretation, the Department of Justice would be providing you with legal advice. The Department of Justice does not provide legal advice to the public.

Question 3: Would the Government of Canada support an amendment to the *Charter of Rights and Freedoms* to **explicitly** recognize the right to clean water, clean air, and a healthy, ecologically balanced environment?

Response to Question 3:

The Government of Canada is of the view that existing legislation and management institutions provide the basis for ensuring that Canadians have access to clean air, safe drinking water, and a healthy, ecologically balanced environment. There is no plan to amend the Canadian *Charter of Rights and Freedoms* in this regard.

Given the role of the Federal Government and that of the provincial and territorial governments in ensuring that Canadians enjoy safe drinking water, clean air, and a healthy environment, the Government of Canada will continue to support an effective regulatory system involving all levels of government that embodies the concept of

sustainable development as it seeks to protect the health of Canadians and the environment.

Question 4: Why is Canada not a Party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters?

Response to Question 4:

The Aarhus Convention was negotiated from 1996 to 1998. It was open for signature on June 25, 1998, and entered into force on October 30, 2001. While the Convention's focus was to create processes for interaction between governments and the public relating to environmental decision-making, it did not create obligations owed from one government to another. As such, Aarhus targeted the newly emerging democracies in the former Eastern Bloc, which had minimal provisions for public involvement in decision-making. To date, the signatories are all European and Eurasian states.

While Canada played an active role in the development of the Guidelines on Access to Environmental Information and Public Participation in Decision-Making adopted at the Third Ministerial Conference "Environment for Europe" in 1995, Canada is not a party to the Aarhus Convention primarily because Canada maintains a well-established and advanced system of engaging the public. There already exist a number of mechanisms in Canada that permit public access to environmental information and the appropriate recourse to address concerns in environmental matters. For example, there are provisions to facilitate public participation generally in the federal *Access to Information Act*, which gives Canadian citizens and permanent residents of Canada access to records held by federal government institutions.

Regarding environmental matters more specifically, the *Canadian Environmental Protection Act, 1999* (CEPA) establishes a public registry (CEPA Environmental Registry—www.ec.gc.ca/CEPARegistry/default.cfm) that improves the public's access to environmental information with the aim of encouraging and supporting public participation in environmental decision-making through access to various documents arising from the administration of the Act, gives citizens the right to sue where a CEPA violation results in significant harm to the environment and the Federal Government fails to take appropriate action, and provides expanded "whistle blower" protection.

The National Pollutant release Inventory (NPRI), www.ec.gc.ca/pdb/npri/, also established under CEPA, provides nation-wide, publicly-accessible information on annual releases to air, water, land and disposal or recycling from all sectors—industrial, government, commercial and others.

The *Canadian Environmental Assessment Act* (CEAA) establishes the Canadian Environmental Assessment registry (www.ceaa-acee.gc.ca/050/index_e.cfm) which contains information about projects undergoing environmental assessment under CEAA.

The Act also provides opportunities for public consultation for screening level reviews and requires public consultation for comprehensive studies and review panels.

Accordingly, Canada is by and large already compliant with most of the provisions and objectives of the Aarhus Convention. Therefore, acceding to the Convention would have limited added value to existing protections and processes in place in Canada.

In addition, Aarhus does not provide the flexibility required by a federal state, in that it has no mechanism for reservation from obligations, and the obligations are equally applicable to the state and subordinate bodies.

Question 5: Why has Canada failed to ratify the Additional Protocol to the American Convention on Human Rights (the San Salvador Protocol)?

Response to Question 5:

According to Article 21 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* ("Protocol of San Salvador"), only State Parties to the base document, the *American Convention on Human Rights* (ACHR), are entitled to sign and ratify or accede to the Protocol. Canada is not a State Party to the ACHR, and therefore is not legally entitled to become a State Party to the Protocol of San Salvador.

Although not addressing a right to a healthy environment, Canada is a State Party to the United Nations *International Covenant on Economic, Social and Cultural Rights* which covers many of the same rights as the Protocol of San Salvador.

Question 6: Why, during international meetings and negotiations, does Canada refuse to recognize the human right to water?

Response to Question 6:

We understand this question to refer to the recognition of a human right to water at the international level, and our response is focused accordingly.

The Government of Canada has publicly expressed views on the issue of water as a human right at the United Nations Commission on Human Rights.

In 2002, Canada voted against a decision to approve the appointment of a Special Rapporteur to "conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights, and the promotion of the realization of the right to drinking water supply and sanitation, at the national and international levels, taking also into account questions related to the realization of the right to development, in order to determine the most effective means of reinforcing activities in this field and defining as accurately and fully as possible the content of the right to drinking water in relation to other human rights". The decision did not call "for access to clean water and sanitation to

be recognized as a fundamental human right alongside the right to food and shelter", contrary to what is stated in the Petition. At the time, Canada delivered an Explanation of Vote, which is attached with this document (see Annex A*).

While Canada was the only member of the Commission to vote against this decision, fifteen other members, including European countries, abstained. It is clear from the fifteen abstentions that there was a lack of international consensus on this issue.

In 2003, Canada again delivered an Explanation of Vote on the issue of water as a human right, this time during the adoption of the resolution on the right to food. The Explanation of Vote delivered by Canada at the time is also attached with this document (see Annex A*).

While a "right to water" has been read into the *International Covenant on Economic, Social and Cultural Rights* by the Committee on Economic, Social and Cultural Rights through one of its non-binding General Comments, General Comment 15, an express "right to water" as such is not explicitly protected in existing international human rights treaties to which Canada is a party. International law develops mainly through the negotiation by States of binding rights and obligations, rather than through the work of independent experts and bodies. There is presently no international consensus among States on the legal status of a "right to water", its content or scope. The issue of water as a human right is the object of ongoing discussion within the Federal Government, and Canada continues to follow closely the developments in international law on State obligations in relation to access to safe drinking water.

The federal, provincial and territorial governments in Canada seek to ensure Canadian residents have access to safe drinking water through legislation, policies and programs. For example, national Guidelines for Canadian Drinking Water Quality, which are used by all jurisdictions as a basis for ensuring the safety of drinking water, have been developed in collaboration between Health Canada, and the provincial and territorial governments.

Another important example is the landmark report entitled *Threats to Water Availability in Canada* issued by Environment Canada's National Water Research Institute. Mention should also be made of the Plan of Action to address drinking water concerns in First Nations communities announced since February 2, 2006, by the Government of Canada. Canada is making substantial investments in upgrading, maintaining and monitoring water and wastewater systems on First Nations reserves.

Moreover, Canada is committed to doing its part to address the global challenge of lack of access to safe drinking water in developing countries. Canada remains committed to the achievement of the Millennium Development Goals, including Target 10 on water and sanitation. Canada's development assistance is delivered primarily through the Canadian International Development Agency (CIDA) and the International Development Research Centre. From 1987 to 2002, CIDA spent an estimated \$600 million on water-related programming, or 2.5 percent of total CIDA budgets for the same period.

The Canada Fund for Africa is providing \$50 million to water-related multilateral initiatives: \$15 million to UN Habitat's Water and Sanitation Trust Fund; \$10 million to the Global Water Partnership to fund the development of Integrated Water Resource Management plans in five African countries; \$20 million to support the African Water Facility; and \$5 million to the African Development Bank to strengthen capacity in water-related activities. As part of Canada's support for the G8 Action Plan on Water (June 2003), Canada is investing \$33.7 million over five years to help developing countries provide their citizens with better access to safe drinking water and basic sanitation among other development priorities, in Africa, Asia, the Americas and through multilateral initiatives.

*[attachment not posted]