

*Canadian Environmental Protection Act*

The third factor is the effectiveness in generally promoting compliance by others, that is, whether the enforcement action taken in this case will serve as an example and deterrent to other potential violators.

The fourth factor is the cost effectiveness of alternative procedures, that is, whether a warning or other enforcement action short of prosecution or injunction will achieve compliance within the same or a shorter period of time and at less cost.

However, cost effectiveness or alternative procedures will be weighed extremely carefully against the nature of the violation and the consideration of achieving compliance within the shortest possible time frame, with no recurrence of the violation. I think that is most important because Canadians expect firm, strong, and unwavering enforcement. They do not want the Government or a regulatory body to fool around or to keep giving violators extensions and time to comply. They want firmness. Although we look at cost effective alternative measures, it is important that we do not use that as an excuse for delaying what the public is looking for—effective enforcement.

Under the Canadian Environmental Protection Act, enforcement officials will have at their disposal several different enforcement measures. I want to comment on three of them—compliance guarantees, prosecution, and special court orders upon conviction for an offence under the Act.

Compliance guarantees are a new approach on which Environment Canada is seeking input from the public and other stakeholders during the consultation period for the enforcement and compliance policy. A compliance guarantee is a written commitment to compliance made by an individual or company which has failed to meet a requirement of the Canadian Environmental Protection Act. The purpose of the guarantee is to ensure compliance and to prevent repetition of the offence. A guarantee will contain technical details of corrective measures which the individual or firm must undertake to attain compliance or ensure continued compliance.

These measures could include such things as putting in place technology to prevent unauthorized releases of substances, and establishing programs. We heard from the Parliamentary Secretary yesterday about one of the effective ways in which some new technology was put in place in her own constituency in order to deal with a problem of this sort.

The compliance guarantee will also contain a condition requiring reports to the Minister on the progress in implementing the required measures.

When deciding whether or not to accept a compliance guarantee, enforcement officials will take into account several factors: First, whether the degree of harm to the environment, human life or health appears to be minimal; second, whether the individual or company has a history of good compliance with the Act; third, whether the individual or company has co-

operated fully with enforcement officials; fourth, whether the person or firm has made reasonable efforts to remedy or mitigate the consequences of the offence; and, finally, whether court related action is necessary as a general or as a particular deterrent.

A compliance guarantee will not be a licence to pollute or violate the Canadian Environmental Protection Act. Considerable forethought and evaluation of the case in question will be required before enforcement officials agree to accept a compliance guarantee. It is not intended that compliance guarantees will be renewed or extended. Again, it seems to me that that is very important and very significant, because if Canadians are to feel confident that effective and strong enforcement is taking place, they must feel that there is no waffling around or no extensions. It must not be the kind of situation which we saw recently in the Province of Ontario with pulp and paper companies, where extensions were given which undermined public confidence in the enforcement of environmental protection legislation.

Turning to prosecutions, where a violation of the Act meets the criteria of the enforcement and compliance policy for prosecution or other court related action such as an injunction, enforcement officials will pursue these avenues. The draft policy specifies those instances in which enforcement officials will always recommend prosecution proceedings.

These are where the death of a person occurs; where there is serious harm or risk of harm to the environment, human life, or health; where there is fraud; where the violation is deliberate; where the alleged violator did not take all reasonable measures to avoid the violation before the fact; where the history of compliance of the alleged violator indicates that he or she might repeat the offence; where the alleged violator obstructed the inspector in the carrying out of his or her duties and responsibilities under the Act; where the alleged violator concealed or attempted to conceal evidence or relevant information after the offence occurred; where the alleged violator did not take all reasonable measures to comply with a ministerial order issued under the Act or a direction by an inspector; where the alleged violator interfered with a substance seized and detained by an inspector; where the deterrent effect of prosecution on the alleged violator or other regulatees is high; or where a person or company convicted of an offence under the Act has not complied with a court order.

In all these cases the Canadian Environmental Protection Act stipulates that certain offences are to be prosecuted by summary conviction, and others by way of indictment. In the case of the so-called "hybrid" offences, where prosecution can take place by either means, of course it is up to the Crown prosecutor to decide whether to proceed by summary conviction or by way of indictment.

• (1210)

This Government has ensured that under this Bill the Crown prosecutor must always proceed by indictment where the