



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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12 October 1982

Honourable Keith Norton
Minister of the Environment
135 St. Clair Ave. W.
Toronto, Ontario
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Dear Mr. Norton:

RE: "S" Area Proposed Intervention

CELA would like to raise its concerns with the proposed intervention by your Ministry in the "S" Area negotiations. As you are aware, while we are not directly involved in this case, we represented Pollution Probe and Operation Clean-Niagara in the recent Hyde Park matter and continue to work with these groups on water quality issues.

While we certainly maintain that the Ministry should be taking a more active interest in these cases involving Ontario citizens' drinking water, we believe that in the situation where the public interest groups have taken a lead role, that the implications of direct intervention by the government becomes extremely problematic. It would be far more preferable, and indeed the Ministry would get full credit in offering financial and technical expertise, where required, rather than becoming a full party to the "S" Area lawsuit.

The problems that we fear could arise include:

1. a situation where the technical opinions of your Ministry and Pollution Probe and Operation Clean-Niagara's experts conflict. This would give Hooker Chemicals a golden opportunity in both a negotiation setting or in cross-examination during a hearing to point up contradictions and shed doubt on the validity of the Canadian case.
2. the danger of the Ontario government signing an agreement with Hooker Chemicals and the U.S. and New York governments that would preclude further claims for impairment to Niagara River and Lake Ontario drinking water caused by the "S" Area site.
3. the danger of impeding the Canadian government's ability to proceed through diplomatic channels. It would seem that with non-governmental Canadian environmental groups represented in negotiations, the federal government is not estopped from taking the diplomatic route (i.e. the Hyde Park scenario), whereas it may be estopped if Ontario intervenes. While we realize the limitations of the diplomatic approach, it would still be preferable to leave two, rather than one avenue open to address the "S" Area health threat.

CELA trusts that you will take these concerns into account before irrevocably entering into a course of intervention. We urge the Ministry to take the assistance to public interest groups approach rather than the direct intervention and possible confrontational route.

Thank you for your attention to this letter.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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