



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

June 9, 2000

Ray Pichette, Acting Director
MNR Policy and Planning Co-ordination Branch
Room 6440, 99 Wellesley St. W.
Toronto, Ontario, M7A 1W3
Fax: (416) 314-1948

Dear Mr. Pichette,

RE: PROPOSED AMENDMENTS TO STATUTES ADMINISTERED IN WHOLE OR
IN PART BY THE MINISTRY OF NATURAL RESOURCES
EBR POSTING AB00E4001

INTRODUCTION

CELA is a public interest organization founded in 1970 for the purpose of using and improving laws to protect human and environmental health and conserve natural resources. CELA is also a legal aid clinic representing low income people and citizens' groups in a wide variety of environmental cases. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities. CELA's general interest mandate includes ensuring public access to decision making and accountability in government decision making.

The purpose of this brief is to provide comments on the recently proposed amendments to nine statutes administered in whole or in part by the Ministry of Natural Resources which were posted on the Environmental Registry on May 12, 2000 as posting AB00E4001.

CELA provided comments on earlier "omnibus" style legislation in Ontario which created sweeping changes to statutes administered by the MNR¹. In those earlier submissions, CELA stressed its concern about enacting large numbers of changes in a single legislative amendment. "Omnibus" amendment makes public review and comment

¹ McClenaghan, Theresa, "Submission by the Canadian Environmental Law Association to the Standing Committee on the Administration of Justice regarding Bill 25, *Red Tape Reduction Act, 1998 Schedule C and I*", October 1998. Swenarchuk, Michelle, letter to Mr. Rob Messervey, Ministry of Natural Resources, in response to EBR Registry Number RB7E40001.P regarding the posing of the *Red Tape Reduction Act (MNR) 1996*, dated March 21, 1997.

exceedingly difficult and reduces the accessibility of the legislative process. CELA strongly recommends that future Bills be limited to one topic at a time.

Our concerns about “omnibus” legislative amendment were amplified in this case in that the original posting to the Environmental Registry did not provide access to the text of the proposed amendments. We were not able to obtain the text until June 2, 2000, just nine days prior to the deadline for comments. Without the text, the comment period is meaningless. CELA contacted the Ministry to request that the deadline be extended, but such an extension was not provided. As the *Environmental Bill of Rights* (EBR) requires a 30 day comment period, it is our position that the refusal to extend the deadline is a violation of the EBR. On the other hand, CELA commends Ministry staff for quickly obtaining and posting the text once concerns were brought to their attention.

SUMMARY OF COMMENTS

CELA supports or has no objection to the majority of the changes proposed. We are concerned about a small number of the proposals. We provide detailed reasons for our support or concerns and recommendations below. We highlight our primary recommendations here:

1. The proposed subsection 30 (3) of the *Aggregate Resources Act* which would allow for amendments to site plans for wayside permits should include a provision for public notice and public comment.
2. The proposed subsection 31 (2) of the *Aggregate Resources Act* which would provide for extensions of wayside permits beyond 18 months should include a clear time limit beyond which a new permit is required. Wayside permits are intended to be temporary and the proposed amendment as it is currently drafted would allow indefinite extensions.
3. The proposed amendment to subsection 17 (2) of the *Lakes and Rivers Improvement Act* which would remove the ability of inspectors to report concerns regarding the functioning of dams to the Minister for corrective action should be abandoned. No changes which reduce guarantees of public safety should be implemented.
4. The proposed section 101.1 of the *Mining Act* which would allow the Minister to issue licenses for hydrocarbon storage in underground formations on Crown land should be abandoned until such time that it can be demonstrated that this activity poses no danger to the environment or to local communities.
5. The proposed new subsection 10 (1.2) of the *Niagara Escarpment Planning and Development Act* should include clear procedures for providing notice of public meetings.
6. The proposed amendment of subsection 10 (3) of the *Niagara Escarpment Planning and Development Act* which would require written objections to Plan amendments in

order to trigger a hearing should be abandoned. The proposed amendment is unnecessary as the majority of objections are already made in writing. The subsection should remain as is to ensure accessibility for those few who may find producing written objections difficult or may believe that their presence at a public meeting was sufficient to indicate their concerns.

7. Section 11 of the *Niagara Escarpment Planning and Development Act* should not be amended to eliminate the provision of Plan amendments to land registry offices. Nor should amendments only be sent to those municipalities who are perceived as being affected. Land registry offices and municipal offices are important sources of information for the public throughout the Plan area and should each have a complete and up-to-date copy of the Plan.
8. Section 20 of the *Niagara Escarpment Planning and Development Act* which provides for a fund to ensure that persons, organizations, or corporations (including municipalities) are capable of undertaking needed policies or programs to implement the Plan should be amended to provide a guarantee of a base amount of funds. Such funding is a crucial element in ensuring that the goals and objectives of the Act are achieved.
9. The proposed new s. 24 (9) of the *Niagara Escarpment Planning and Development Act* which would make stop work orders available where a person is undertaking a development which is in contravention of the Act should not be limited to situations where the Minister has reasonable grounds to believe that the contravention is causing or is likely to cause a risk to public safety or significant environmental damage. Stop work orders are unlikely to be used frivolously as the proposed power can only be exercised by the Minister, Commission, or Director of the Commission. Such a limitation will, however, open the door to challenges to valid stop work orders engendering the waste of valuable resources. Worse, the limitation appears to validate violations of the Act.
10. The proposed amendment of subsections 38 (7), 38 (8), and 38 (9) of the *Public Lands Act* which would reduce the notice requirement under section 38(2) where the status of public land has changed and remove the ability of landowners to flag interests and to have those interests reflected in the certificate should be abandoned. Landowners should be kept fully informed of changes in the status of adjoining land and should be able to have their interests acknowledged.

DETAILED COMMENTS

Aggregate Resources Act

CELA supports the amendment to subsection 48 (2) of the *Aggregate Resources Act* which would permit the Minister to order a person to perform progressive or final rehabilitation even if the person is no longer a licensee or permittee. CELA also supports the proposed addition of section 62.1 which would require licensees and permittees to inform the Minister and the Aggregate Resources Trust of changes of name or address.

CELA also supports the proposed repeal of subsection 34 (6) which allowed a license to apply to more than one pit or quarry. Each pit or quarry should be assessed and licensed separately.

CELA does not support the amendment of subsection 30 (3) as currently worded. The proposed section would permit the amendment of site plans associated with a wayside permit, but does not include a requirement for public notice. In light of the more limited requirements associated with the initial granting of wayside permits, any proposed amendments to site plans should at least be posted on the property and there should be provision of a public comment period. This is particularly the case if there are to be extensions available to wayside permits beyond the current 18 month limit.

Recommendation #1: The proposed amendment to subsection 30 (3) should include a provision for public notice and public comment regarding proposed amendments to site plans for wayside permits.

CELA also does not support the proposed addition of subsection 31 (2) as currently worded. The proposed section would permit the extension of a wayside permit's expiration date where the project has not been completed and requires more aggregate from the same site. We understand that with large scale projects, the existing 18 month limit on wayside permits may prove restrictive and the requirement of re-applying for an additional permit is cumbersome for proponents of projects where only a short extension is needed. That said, we are concerned about the open-ended nature of the amendment. It would seem that a wayside permit can now be extended indefinitely and the amount of aggregate increased with an amendment to the site plan. As wayside permits are intended to be temporary, we recommend that the existing 18 month limit remain with the possibility of a *limited* extension upon application to the Minister.

Recommendation #2: The proposed subsection 31 (2) should include a clear time limit for extensions of wayside permits beyond 18 months.

Conservation Land Act

CELA supports the proposed amendment of subsection 3 (1) and 3 (11) of the *Conservation Land Act* which we understand would allow donees from outside Canada, including, for example, US conservation groups, to be able to grant easements to the Nature Conservancy.

Crown Forest Sustainability Act, 1994

CELA supports the extension of the section 3 definitions of "forest resource" and "forest resource processing facility" in the *Crown Forest Sustainability Act, 1994* to include parts of or residue from trees which we understand will allow the licensing of such facilities and allow the MNR to gather statistics on the use of such material.

CELA also supports the proposed amendments of subsection 58 (3) which would extend the limitation period for the notification of penalties, section 60 which would provide for the assignment of expenses for seizures and detentions to the person who incurred the order, subsection 61 (1) which would extend access rights to MNR employees, and subsection 64 (1) which would make it an offense to contravene any section of the Act.

Forestry Act

CELA supports the amendment of subsection 5 (1) of the *Forestry Act* which would allow the Minister to establish programs to encourage good forestry practices. We look forward to seeing pilot programs which demonstrate the viability of sustainable community-based forestry.

CELA also supports the amendment of subsection 11 (1) and section 20 which would allow municipalities to pass by-laws which adopt the minimum qualifications that are established under the *Crown Forest Sustainability Act, 1994*, for those engaged in forest operations and allow the approval of such by-laws by the minister either before or after passage by the municipality.

CELA has no objection to the amendment of subsection 2 (6) which would allow the Minister to redirect the whole of the proceeds from the sale or disposition of land to a municipality or conservation authority for the purpose of purchase of land for similar purposes.

CELA also has no objection to the removal of the requirement in the section 1 definition that forest pests be designated in the regulations to allow Ministry staff to respond promptly and effectively to outbreaks. It is our understanding that no such regulation exists at this point and that MNR staff are already acting where they perceive a threat from forest pests.

Lakes And Rivers Improvement Act

CELA supports the amendment to section 23 of the *Lakes and Rivers Improvement Act* which would authorize the Minister to order the owner of a dam or other structure to prepare a management plan for the operation of the dam and require operation of the structure in accordance with the plan. CELA also supports the clarification of subsections 28 (1) and 28 (2) of the Act.

CELA does not support the amendment of subsection 17 (2) which would allow only an engineer to report concerns regarding the possibility of personal injury or loss or damage to property owing to the functioning of a dam. The existing text which allows an

inspector to make such a report should be retained. No changes should be instituted which may, even remotely, reduce guarantees of public safety.

Recommendation #3: The proposed amendment subsection 17 (2) which would remove the ability of inspectors to report concerns regarding the functioning of dams to the Minister for corrective action should be abandoned.

Mining Act

CELA has no objection to the proposed addition of section 101.2 regarding the extension of exploration, production, or storage licenses or leases under Part IV of the Act in respect of land which is already subject to a license or lease under that Part.

CELA does not support the proposed addition of section 101.1 to the *Mining Act* which would allow the expansion of licensing of hydrocarbon storage in underground formations onto crown land. We are not aware of sufficient evidence that this activity can be undertaken safely. We would recommend that the proposed addition be abandoned until such time when the Ministry can conclusively demonstrate that this activity does not pose a threat to the environment or to the health or safety of local communities.

Recommendation #4: The proposed section 101.1 should be abandoned until such time that it can be demonstrated that hydrocarbon storage in underground formations poses no danger to the environment or to local communities.

Niagara Escarpment Planning And Development Act

Please note: As the amendments proposed are extensive, we address them in the order listed in the proposal.

CELA has no objection to the amendment of the section 1 definition of “zoning by-law” in the *Niagara Escarpment Planning and Development Act* as it is our understanding that the change simply reflects the current definition in the *Planning Act*.

CELA supports the amendment of section 10 which would allow the Commission to hold a public meeting during the time for making comments on any proposed amendments to the Niagara Escarpment Plan. While we understand that this is frequently the practice of the Commission, it is important to include this provision in the Act to ensure that public meetings continue to be seen as important fora for concerned Ontario residents to express support or concerns about amendments to the Plan.

CELA would recommend, however, that the proposed new subsection 10 (1.2) be changed to provide a clearer procedure for giving the public notice of these meetings. CELA recommends that the proposed subsection 10 (1.2) be changed to include minimum notice procedures, including, at a minimum, notice in well circulated local media sources.

Recommendation #5: The proposed new subsection 10 (1.2) should include clear procedures for providing public notice of meetings.

CELA would recommend that the proposed amendment of subsection 10 (3) in which the word “objections” is replaced by the words “written objections” be abandoned. It is our understanding that the amendment is largely unnecessary as people generally do put their concerns in writing. That said, not all Ontario residents are capable of doing so and may assume that attendance at a public meeting is sufficient to demonstrate concern. Hearings are vital to ensuring that Plan amendments are appropriate and reflect the public interest. There should be no unnecessary changes to the Act which might risk reducing the number of hearings where residents have indicated, in writing or otherwise, that an amendment is of concern to them. Note planning act.

Recommendation #6: The proposed amendment of subsection 10 (3) should be abandoned. The amendment is unnecessary and reduces the ability of the public to participate in Plan amendments.

CELA does not support the amendment to section 11 of the Act which would eliminate the provision of Plan amendments to land registry offices. Nor should amendments only be sent to those municipalities who are perceived as being affected. Land registry offices and municipal offices are important sources of information for the public throughout the Plan area and should each have a complete and up-to-date copy of the Plan.

Recommendation #7: Section 11 should not be amended to eliminate the provision of Plan amendments to land registry offices and to municipalities which do not appear to be affected. All land registry and municipal offices should continue to have complete and up-to-date copies of the Plan.

CELA is supportive of the proposed section 12 which entrenches a requirement that the Commission to make the Plan available. It is our understanding that the Commission already makes the plan available to callers and to public libraries which request a copy, but it is important that this be reflected clearly in the Act.

CELA has no objection to the repeal of section 19, which makes funds available for the development of plans, proposals, or by-laws in order to address a conflict with the Plan, as it is our understanding that the funds made available under section 20 cover the same subject matter. That said, we understand that section 20 has itself been meaningless for some time as there have been no monies provided by the Legislature. CELA would advise the addition of a guarantee of a base amount of funds to ensure that persons, organizations, or corporations (including municipalities) are capable of undertaking needed policies or programs to implement the Plan. Such funding is a crucial element in ensuring that the goals and objectives of the Act are achieved.

Recommendation #8: Section 20 should be amended to provide a guarantee of a base amount of funds to ensure that persons, organizations, or

corporations (including municipalities) are capable of undertaking needed policies of programs to implement the Act.

CELA supports the proposed amendment to section 24 of the Act which will allow the registering of agreements against land.

CELA supports the proposed amendments to section 24 which provides for the availability of stop work orders where person(s) are undertaking developments which are in contravention of the Act. CELA is not, however, supportive of the limitation of this power to situations where the Minister has reasonable grounds to believe that the contravention is causing or is likely to cause a risk to public safety or significant environmental damage. There is no reason to limit stop work orders in this way. The limitation, in fact, appears to legitimize developments which are in contravention of the Act by leaving the Commission powerless to stop them.

As the proposed new s.24 (9) which ensure that such orders come only from the Minister, Commission, or Director of the Commission, there is no danger that the stop work order will be used frivolously. Leaving the amendment as is, however, leaves a window for persons contravening the Act to challenge valid stop work orders on the basis that there has not been sufficient evidence to demonstrate a risk to public safety or significant environmental damage. This will waste significant resources which are better used elsewhere. CELA recommends removing the limitation from the proposed amendment.

Recommendation #9: The proposed new s.24 (9) should not be limited to situations where the Minister has reasonable grounds to believe that the contravention is causing or is likely to cause a risk to public safety or significant environmental damage.

CELA is supportive of the proposed addition of subsections 24 (7.1) and 24 (7.2) which provide that contraventions of demolition order and stop work orders are offenses with significant penalties.

CELA is very supportive of the proposed amendment to subsection 25 (4) which stresses that decisions by the Minister's delegates, including the Commission and Hearing Officers must be made *in accordance with the Niagara Escarpment Plan*. It has been our experience that there is some confusion at the Commission and among Hearing Officers as to the extent to which they are required to make decisions which comply with the Plan. It would seem that some believe that the Plan is a guide to be merely considered, along with other factors, when making decisions as to development approvals. This amendment will remind delegates that the Plan is, in fact, a set of rules which must be complied with in order to fulfill the goals and objectives of the Act.

Oil, Gas And Salt Act

CELA supports the amendment to section 19 of the Oil, Salt, and Gas Act which make it an offence for a director or officer of a corporation to direct, authorize, assent to, acquiesce in, or participate in the commission of an offence by the corporation.

Public Lands Act

Please note: CELA called the Ministry for clarification of a number of the amendments below, but our call was not returned. We have therefore been unable to comment on the proposed repeal of section 10, which would remove the power of the Lieutenant Governor in Council to appropriate lands for certain public purposes and make free grants thereof.

CELA supports the amendment of subsections 13 (3), 14 (4), 24 (9), 27, 28 (2), 52 (5), 65 (4), and 70 and the proposed addition of subsection 70.2 of the *Public Lands Act* which provides the possibility of higher fines or penalties, the ability of courts to order compliance, and which make contraventions of several provisions subject to the general penalty provided under section 70 of the Act. CELA also supports the amendment of clause 47 (b) which would allow the Minister to make regulations prohibiting certain activities on public lands.

CELA supports the addition of subsections 55.1 (1) and 55.1 (2) which would allow the Minister to stop up certain roads provided notice is given to those affected. CELA also supports the addition of subsection 55.1 (3) which would allow the Minister to sell, lease, or otherwise dispose of the soil and freehold of any road or road allowance stopped up under subsection (1).

CELA does not support the amendment of subsections 38 (7), 38 (8), and 38 (9) which would reduce the notice requirement under section 38(2) of the Act. Sending of a certificate to the land registry office stating that land registered in the Crown's name or that has reverted to or vested in the Crown is deemed to be public lands is not a mere technical matter which does not require notices to adjoining land owners. All those who live on land adjoining public lands should be fully aware of the status of that land and of changes to that status. Further, where an adjoining landowner has obtained an interest in that land, they should be able to make that interest known to the Minister and know that there is a possibility that the Minister may amend the certificate to reflect their interest.

Recommendation #10: The proposed amendment of subsections 38 (7), 38 (8), and 38 (9) which would reduce the notice requirement under section 38(2) and remove the ability of landowners to flag interests and to have those interests reflected in a certificate should be abandoned. Landowners should be kept fully informed of changes in the status of adjoining land and should be able to have any interests they have acknowledged.

If you or your staff have any questions about our comments or would like to discuss these further, please do not hesitate to contact us at (416) 960-2284.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'E. Brückmann', with a long horizontal flourish extending to the right.

Elisabeth Brückmann
Student at Law