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

517 College Street, Suite 401, Toronto, Ontario M6G 4A2
Telephone (416) 960-2284
Fax (416) 960-9392

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The Honourable Jim Bradley
Minister of the Environment
15th Floor
135 St. Clair Avenue West
Toronto, Ontario
M4V 1P5

Dear Mr. Bradley:

Re: Proposed Recommendations of Phase I of the Environmental Assessment Program Improvement Project (EAPIP)

The Canadian Environmental Law Association is pleased to have the opportunity to comment on the above-noted proposals. CELA has always viewed environmental assessment (EA) as a cornerstone of sound environmental planning and proper resource management. We are supported in this view by the reports of the World Commission on Environment and Development and the National Task Force on Environment and Economy, both of which recommended a strengthened role for EA in order to implement the principles of sustainable development.

Our comments on the Phase I proposals must be prefaced by our concerns about the development and content of the internal government document entitled "Reforming Our Land Use and Development System" that was leaked to environmentalists last week. As we outlined in a letter to Premier Peterson today, (see attached), that document includes a clear and unwarranted attack on the Environmental Assessment Act. It would appear that those in the government who prepared the report are intent on circumventing the EAPIP process. Their actions are an indication of bad faith and serve to ignore one of the basic tenets of a good EA process, that is, an open consultation process.

We and several other organizations (see list attached to our letter to Mr. Peterson) have also asked for the Premier's assurance that he will clarify the mandate of EAPIP as the legitimate vehicle for a critical evaluation of environmental assessment in Ontario. Central to this commitment is an assurance that those in his government who prepared the report will cease their efforts to circumvent appropriate reform processes. Their actions make a

mockery of the frequently stated commitments to "open government" made by Mr. Peterson. We asked Mr. Peterson to make his commitment to environmental assessment and the integrity of the EAPIP process within two weeks. Without these assurances we cannot imagine our continued involvement in EAPIP either as members of the public, of public interest groups or as members of the EAPIP Public Advisory Committee.

Ontario's Environmental Assessment Act (EA Act) is one of the most important pieces of environmental planning legislation in North America. We support the need to review the EA Program in Ontario and hope to continue participating in this review. While CELA agrees that some of the proposed changes will "help to simplify procedures or clarify features of the Environmental Assessment Act", as stated in your letter of August 3rd, we do have serious concerns about some of the Phase I proposals. These concerns are more fully described below.

CLASS ENVIRONMENTAL ASSESSMENTS

We submit that the Phase I proposals dealing with Class EAs present an unwarranted threat to the EA process in Ontario. The proposed changes to Class EAs have inappropriately been subject to the "fast-track" procedures of Phase I of EAPIP, and thus have not been subjected to the full examination and debate which Phase II of the EAPIP process will entail. Given that Phase I was to deal with non-controversial issues, we consider that changes to Class EAs, being highly contentious and of great public significance, must be given greater consideration by being dealt with in their entirety in Phase II of EAPIP.

More important, in our view, the proposed changes in the Class EA process signal that the Government of Ontario is abandoning its oft-stated commitment to meaningful environmental assessment, and is deliberately gutting the EA Act. We submit that the use of the class approach for whole industries, such as forestry or mining, has already constituted an abuse of the legislation. A single class environmental assessment, or even a single class hearing, cannot adequately address the diverse activities and environmental effects of thousands of specific projects within an entire industry. Many of these projects are very large in scale and should therefore be subject to individual assessment. Furthermore, this proposal should not serve as a substitute for extending the ambit of the Act to private sector activities. The extension of this class EA approach with the changes proposed by EAPIP effectively ends the possibility of credible environmental assessment for significant areas of economic activity.

In our view, the clarification of the legal status of Class EAs may be useful to the EA process, but only if the legislated change

precisely defines activities which may constitute a class, and only if the definition clearly limits use of the Class EA process to relatively small projects of limited environmental impact. We will be pleased to contribute to drafting of such language through the EAPIP Phase II process. Other essential amendments to the Act include a broad and clear public right to "bump-up" projects to individual EA status based on criteria specified in the Act, and procedural reforms in the conduct of the Class EA process in both the pre-hearing and hearing stages.

Finally, we are shocked at the last-minute intention to allow the Minister to waive all or some of the requirements of sub-section 5(3) of the Act in relation to the content of Class EAs. At present, the requirements of sub-section 5(3) provide some of the only sources of protection of the public interest in relation to Class EAs by providing a minimum standard of content required. The proposed elimination of this legislative protection provides a clear indication of the intention of government to "reform" EA by minimizing its effectiveness.

In short, the current and proposed future use of the Class EA process is not a non-contentious feature of environmental assessment which can be speedily improved by the measures proposed in EAPIP Phase I. **We therefore repeat our submission, that no changes to the legislation be made in relation to Class EAs without the full examination possible in Phase II of the reform process.**

AMENDMENT TO SECTION 34 OF THE ACT

We agree with the criticism that Section 34, clause (a) of the EA Act, as it presently stands, provides a means for exemption from the Act and we agree with the need for some assurance that the provisions of the EA Act apply. However, we are concerned with changes that would allow for an end-run around the mandatory hearing provision of Part V of the Environmental Protection Act (EPA). For example, in the case of a landfill siting, expansion or alteration, the Environmental Assessment Board and the public should be assured of the ability to review the technical detail presently required under Part V of the EPA. We are not supporting the need for an extra hearing; however, the EPA, Part V requirements for provision of technical details is extremely important and needs to be maintained as part of the EA.

Finally, while we generally support the other Phase I proposals, we believe that the recommended change for requiring early notice to the public of submission of an EA "without undue delay" is unnecessarily vague. Rather, in the interest of streamlining the process, we would recommend that the proponent issue a "Notice of Submission" to the public at the same time as the EA is submitted to the EA Branch.

We look forward to continued involvement in the EAPIP process should Mr. Peterson agree that it is the legitimate vehicle for reform of the EA Act. In particular, we are anxious to see the contentious issue of Class EAs deferred to Phase II where it can benefit from full public debate.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Kathy Cooper
Researcher

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