



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

June 21, 2006

BY FAX

Blair Rohaly, Project Manager
Strategic Policy Branch
Ministry of the Environment
135 St. Clair West, 11th Floor
Toronto, ON M4V 1P5

Dear Mr. Rohaly:

RE: O.REG. 276/06 – EBR REGISTRY NO. XA06E0006

We are writing to provide CELA's comments on yesterday's re-posting of the above-noted *Environmental Bill of Rights* (EBR) Registry notice in relation to O.Reg.276/06. These comments are being provided to you since you are listed as the Ministry contact person in the EBR Registry notice.

Clearly, the past week has seen a number of bizarre twists, controversial announcements, confused arguments, and unprecedented manoeuvres by the Ontario government in relation to the Integrated Power System Plan (IPSP). In our view, the most objectionable actions by the Ontario government were the deliberate decisions to bypass the *Environmental Assessment Act* (EA Act) and to contravene public notice/comment obligations under the EBR, as described below.

First, on June 13th, the Ontario government unveiled its proposed content for the IPSP, which unfortunately includes a large nuclear component and further delays in coal plant closures.

On June 14th, the public learned, for the first time, that the Ontario government had quietly passed a regulation under the EA Act which not only exempted the IPSP from the Act, but also exempted all Crown enterprises and activities related to the IPSP. The Ontario government has subsequently attempted to rationalize the EA Act exemption on a number of highly questionable grounds, including the convoluted argument that the IPSP was exempted because it was not subject to the EA Act. We remain puzzled by this circular reasoning, to say the least.

On June 15th, an "information notice" was posted on the EBR Registry to announce *ex post facto* that the exempting regulation had been passed. This Registry notice did not solicit public comment on the regulation, and it claimed that the regulation was merely "administrative" in nature.

On June 19th, we filed an EBR Application for Review which requested that the exempting regulation be revoked on the grounds that the passage of the regulation contravened the EBR, represented poor environmental planning, and contained no terms and conditions to safeguard the public interest.

On the same day, the Environmental Commissioner of Ontario issued a media release which soundly rejected the Ontario government's claim that the exempting regulation was "administrative", and strongly criticized the Ontario's bypassing of the EA Act and EBR in this manner.

On June 20th, the EBR notice was re-posted with essentially the same questionable content as the June 15th posting, except this new notice now states that "the Ministry is seeking public input on this information posting." To our knowledge, however, the regulation itself has not been revoked and it remains in force.

In our view, soliciting public comment on an "information notice", but leaving the actual regulation intact and undisturbed, is ludicrous and unacceptable. As we note in our EBR Application for Review, the Ministry was clearly required under the EBR to post notice of the exemption as a proposal, not a *fait accompli*. Simply put, re-posting the EBR "information notice", and belatedly seeking public comment, does not remedy the Ministry's blatant non-compliance with the EBR in relation to the exempting regulation.

Accordingly, the only course of action that can bring the Ministry into compliance with the EBR is for the Ministry to immediately revoke O.Reg.276/06, and then to re-post the exemption as a proposal, with an appropriate public comment period, in accordance with normal procedures under section 16 of the EBR. This suggestion presumes, of course, that the Ontario government still intends to wholly exempt the IPSP from the EA Act, which we maintain is an unjustified and unreasonable proposal. If the IPSP is a safe, suitable and credible plan, as claimed by the Ontario government, then it should have no problem getting through the rigorous public scrutiny of the EA Act in a timely and efficient manner.

Moreover, if the IPSP is exempted from the EA Act, then we anticipate that the Ministry may argue down the road that any prescribed instruments (i.e. approvals under the *Environmental Protection Act*, *Ontario Water Resources Act*, etc.) needed to implement projects under the IPSP are also exempt from public notice/comment under the EBR due to the "EA exception" in section 32 of the EBR. CELA does not concede the validity of this position, but if this position is taken by the Ministry, then the Ministry will not be posting these proposed instruments on the EBR Registry for public notice and comment. In effect, this manoeuvre may shield important project design/operational details from meaningful public review under Part II of the EBR, and represents another compelling reason why O.Reg. 276/06 should be revoked forthwith.

Please be advised that unless and until O.Reg. 276/06 is revoked, we will not be providing further comment on the re-posted "information notice," and we will instead be vigorously pursuing our EBR Application for Review.

We trust that these comments will be taken into account as the Ontario government decides its next move regarding the IPSP, EA Act and EBR. Please feel free to contact the undersigned if you have questions or comments about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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cc. The Hon. Laurel Broten
Gord Miller, Environmental Commissioner