

JULY 8, 1975

BILL 14

THE ENVIRONMENTAL ASSESSMENT ACT, 1975

ONTARIO PETROLEUM ASSOCIATION PROPOSED AMENDMENTS TO THE BILL IN ITS FORM ON SECOND READING JULY 4, 1975.

SECTION 1 - Insert definitions of "environmental damage" and "significant environmental damage". Specific wording for these definitions will be submitted later.

SECTION 2 - This Section states the purpose of this Act. OPA recommends that the Section be redrafted to read as follows:

"The purpose of this Act is to ensure the betterment of the whole or any part of Ontario by

- (i) determining whether a proposed undertaking to which this Act applies will result in significant environmental damage, and, if so
- (ii) determining whether the benefits resulting from the proposed undertaking will exceed the environmental damage."

SECTION 5 (3) (b) (c) - To any undertaking, there must be literally countless alternative ways of doing it. In fairness to the proponent and in order to expedite the assessment process, OPA recommends that the words "reasonably available to and within the capability of the proponent" be inserted immediately after the words "alternative methods

of carrying out the undertaking" and "alternatives to the undertaking" wherever they appear.

SECTION 5 (3) (c) (ii) (iii) - These sub-paragraphs refer to "effects" that might reasonably be expected upon the environment. The assessment process should not become bogged down by examining all "effects that might reasonably be expected upon the environment", but should focus its attention only on those effects which cause "environmental damage". OPA therefore recommends that sub-paragraph 5 (3) (c) (ii) be amended to read:

"the environmental damage that will be caused or that might reasonably be expected to be caused specifying the environmental damage which can be considered 'significant environmental damage'",

and that sub-paragraph 5 (3) (c) (iii) be deleted.

SECTIONS 7, 12, and 13 - It has been often said that a delay in justice is a denial of justice. Those who oppose change and development often resort to delaying tactics, when they are aware their case on the merits is weak, in the hope that unending delays will frustrate the undertaking and cause it to be cancelled. OPA believes it is essential to safeguard the society against such delaying tactics and recommends that the assessment process be expedited by stipulating maximum delays for any given procedure. Specifically, OPA recommends

that Section 7 (1) be amended by inserting, after the word "Minister" in the last line, the following:

"within sixty (60) days of receipt of the environmental assessment",

and that in Section 7 (2), the following words be deleted:

"or within such longer period as may be stated in the notice".

In Sections 12 and 13, insert immediately after the words "shall give reasonable notice thereof", wherever they appear, the following:

"not to exceed a maximum of sixty (60) days".

SECTION 7 (3) - Since the withdrawal of an environmental assessment by the proponent entails the loss of all hope of proceeding with the undertaking, the right of the proponent to withdraw should be without strings or conditions. OPA therefore recommends that Section 7 (3) be amended to read as follows:

"A proponent may withdraw an environmental assessment at any time or may amend an environmental assessment prior to the day on which the notice is given under sub-section (1) and thereafter may amend an environmental assessment with the consent of the Minister and subject to such terms and conditions as the Minister may, by Order, impose."

SECTION 11 - OPA recommends that this Section be amended to require the Minister to state in what respect the environmental assessment "does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory", and the proponent should have an opportunity to submit arguments to the contrary before the Minister requires him to carry out costly and time consuming works. Specific wording for this amendment will be submitted at a later date or on request.

SECTIONS 14 (1) (b) (i), 20 (d) and 39 - The Environmental Protection Act ensures that the proponent must take all reasonable precaution to mitigate environmental damage before a "Certificate of Approval" is granted authorizing him to proceed with the undertaking. The purpose of the function of the assessment process is therefore to decide whether or not the undertaking should proceed. OPA therefore recommends that Sections 14 (1) (b) (i), 20 (d) and 39, be deleted.

SECTION 17 - This Section obliges proponent to take certain steps whenever he proposes changes to the undertaking. Since any major undertaking involves countless changes before going on stream, this would impose an impossible burden on the proponent. OPA recommends that Section 17 be restricted to "significant change" in the same manner as Section 45 (2) (b) is already limited.

SECTION 31 - In the manufacturing and process industries which are so crucial to the economic welfare of Ontario, confidential technical information and trade secrets are often the most important asset

of the industry. It is imperative that these be protected and since by a well known rule of statute interpretation it is doubtful whether these things are included in the words "other matters", OPA recommends that the words "confidential technical information" be inserted immediately before the words "intimate financial, personal or other matters" in Section 31.

SECTION 45 (2) (c) - This Section applies, without qualification, to all activities "proposed or made before the coming into force of the regulation". This would result in the regulations applying to all business activities existing at the time they come into force. OPA does not believe that the regulations should apply retroactively to all existing business activities and therefore recommends that Section 45 (2) (c) be deleted.