The Federation of Ontario Naturalists

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Comments to

The Standing Committee on Resources Development

Concerning

BILL 14

THE ENVIRONMENTAL ASSESSMENT ACT

1975

Clause by Clause Study

For Thurdsay July 10, 1975

Submitted by

The Federation of Ontario Naturalists

19 Mr. Chairman, the Federation strongly supports the intent of section 19.

We also appreciate the concern of the Ontario Petroleum Association regarding trade secrets or "confidential technical information".

We understand that, in legal interpretation, "other matters" as is presently worded, must refer to the aforementioned "intimate financial" or "personal" matters. This being the case, we would be agreeable to seeing the wording ammended so as to include "trade secrets". But, for obvious reasons, we would be opposed to the broad wording of "any matters".

Dealing with a second aspect of the clause, we have been provided with a copy of the addition proposed by the Canadian Environmental Law Association as subsection 2. We understand that the Honourable Members have each recieved a copy of the proposal, so we will not repeat it here. To the Federation, this clause would appear to have immense benefits both to the Government and to the Board; by specifiying carefully written reasons, the section would prevent any accusation of collusion or improprietry.

29 Mr. Chairman, we strongly support the intent of section 29, which would provide a course of action to prevent individuals from preceeding with illegal acts, and to invalidate improperly issued licences. Such a provision is, in our view, essential.

However, we are deeply concerned that the section apparently does not provide the ability for any person to seek such a Court Order. This is not to impute motives to the Minister, but is a realization that situations may arise where the Minister is not prepared to launch action. How often, for example, has any Minister sought a Court order affecting another Ministry. I would submit that this is very unlikely to occur, even if the violation is clear.

The Federation would therefore urge the Committee to consider an addition to Section 29, which would simply insert the words "or any person" immediately following "the Minister".

30 Mr. Chairman, we support the intent of section 30. Situations will exist, from time to time, where the Minister may wish to exempt a specific proposal, covered by regualtions, from Application of the Act.

We are concerned however, that the current wording of section 30 does not appear to include mandatory provision for adequate public scrutiny of such exemptions. We would submit that this is vitally important since some of the projects most likely to be treated as "emergencies" will be proposals from within the Ministry of the Environment - that is, the Ministry of the Environment may have to respond very quickly to various contingencies. If the Government is to retain the appearance of being honest, as well as being "honest", then such exemptions, we believe, must be open to public scrutiny.

We would therefore respectfully urge that the section be amended to provide that, where practical, any exempting order be placed before the Legislature, at the first opportunity thereafter, to be endorsed by Resolution. Such a provision exists in The Niagara Escarpment Planning and Development Act. We enclosed a copy of this as the final page of our Addendum - it is subsection 3 of section 3.

One alternative which is not without merit, would be to retain the existing provision, and to simply require publication of such an order, with the reasons therefore, in the Ontario Gazette.

These are our suggestions for the Committee's consideration.

31 Mr. Chairman, as with section 19, we have been provided with a copy of the addition suggested by the Canadian Environmental Law Association. We support the proposed addition and commend it to your Committee.

I should also note that, as in section 19, we are prepared to support the addition of "trade secrets" to the information which the Minister may order protected.

38(3) Mr. Chairman, as we noted in discussion of section 7 - that is, the discussion of the register earlier proposed by the Canadian Environmental Law Association - we share the Minister's concern about potential problems with mass notification. We concur that in many cases, advertisements will serve as a logical means of notice.

But, some people do not read all newspapers within their jurisdiction. Some may miss such an advertisement. And some may at the time of notice, be residing in another area (e.g. cottagers). As experience with The Pits and Quarries Control Act has clearly shown, people do miss such notices.

We would therefore urge the Committee to consider an addition, to the following intent:

(b) Notwithstanding clause (a), any person who, in writing, specifically requests personal notification, shall be given notification persuant to subsection 1 of this section.

39 Mr. Chairman, we strongly support the present wording of section 39.

Again, we have been provided with a copy of the addition proposed by the Canadian Environmental Law Association. We are inclined to share the Association's view that parties to the hearing, or at least those who make written submissions with respect to the proceedings, should reasonably be notified.

We therefore respectfully urge the Committee to consider such an addition, applying at least to situations where the change is of consequence.

40A Mr. Chairman, we have been provided with a copy of the additional section proposed by the CELA.

We share the Association's concern about the ability of any person to launch proceedings in the event of a violation and in the rare situation where the Crown failed to launch proceedings itself. To be frank, we would hope that such a mechanism would never have to be used. But, situations have arisen in the past, where violations have occurred, and where the Crown has failed to launch proceedings, notably against itself (i.e. other Government agencies).

The Federation supports the intent of the CELA - proposed addition, and respectfully urges the Committee to consider such an addition.

We do not look favourably upon any person benefiting financially by such prosecutions, for obvious reasons. But by the same token, we see no reason why any person who launches proceedings should be financially penalized for acting on the public's behalf - that is, where his case was successful. We therefore urge the Committee to include some stipulation to the effect that, upon the registering of a conviction, the person who laid the charge should be compensated for costs.

41(f) Mr. Chairman, we understand that the proposal has been put forward to delete clause (f) of section 41.

Given the tangled wording, I am not at all sure that we properly understand what is intended. Our reading suggests, and please correct me if I am wrong, that regulations may exempt any class of undertaking. But regulations may also be made exempting the private sector by requiring compliance by the public sector.

If this is the case, Mr. Chairman, the Federation supports the clause, and urges its adoption by the Committee.

41(2) Mr. Chairman, we are concerned about the addition which the Canadian Environmental Law Association has proposed as section 41(2). We share the Organization's view that public review should normally be undertaken before regulations are applied which may significantly affect the environment. This is particularly the case where the removal of a class of undertakings, from application of the Act is contemplated.

So we support the principle and, in general, the desirability of CELA's proposed addition.

But perhaps the authors did not fully realize the problems which their specific suggestion may create. There are instances where it may be necessary to bring regulations into force rapidly. We think of the hypothetical example where the Minister suddenly finds himself faced with a highly damaging proposal not covered yet by regulations. The Act can be made to apply only by regulation. Given this situation, and the proposed amendment, anyone - even the proponent - could delay the promulgation of regulations. In short, Mr. Chairman, we would be averse to any requirement which impeded the application of this Act.

We are frankly in a dilemma, sir; we believe that the regulations should be publicly reviewed, and that this requirement should be defined by statute. But we also feel that the ability should exist for the Minister to bring regulations into force quickly.

If the Committee is to seriously entertain this proposal, we would urge that the Minister be enpowered to implement regulations, under clauses (a) - (e) but not clause (f), for a period of not more than two months, without the regulation being placed before the Board for public review.

46 Mr. Chairman, our final concern regards section 46. We wonder why the Minister has proposed that the Act come into force, by Proclamation rather than by Royal Assent.

Some cynics believe that the present wording means another lengthy delay in implementing the Act.

It is our understanding, Sir, that the Act really will not apply to anything, until regulations covering specified activities are promulgated. For this reason, we cannot understand why the Act should not take force immediately on Royal Assent.

Perhaps we could ask the Minister why he has chosen Proclamation?