



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

April 16, 2010

BY EMAIL

The Right Hon. Stephen Harper
Prime Minister
House of Commons
Ottawa, ON K1A 0A6

Dear Prime Minister Harper:

**RE: BILL C-9 (JOBS AND ECONOMIC GROWTH ACT) -- PROPOSED
AMENDMENTS TO THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT**

We are writing to strongly object to the amendments to the *Canadian Environmental Assessment Act* (CEAA) which have been proposed within the omnibus Bill C-9 (*Jobs and Economic Growth Act*).

For the reasons set out below, the Canadian Environmental Law Association (CELA) hereby requests that your government immediately take all necessary steps to delete or withdraw the proposed CEAA amendments from Bill C-9.

BACKGROUND

Founded in 1970, CELA is a public interest law group that has long advocated the need for federal environmental assessment (EA) legislation that is effective, efficient and equitable.

For example, CELA was extensively involved in the original development of CEAA and the implementing regulations during the early 1990s, and we have participated in the parliamentary reviews of CEAA that have occurred in recent years. We have also intervened in Supreme Court of Canada appeals involving the federal EA regime and its relationship to provincial EA processes (i.e., the *Oldman River* and *MiningWatch* cases). In addition, we have represented or advised individuals and groups who participate in project-specific EA procedures under CEAA.

In our opinion, CEAA is one of the most important environmental planning statutes in the country, particularly since CEAA often provides more detailed environmental scrutiny, and greater public participation opportunities, than are available under provincial EA laws. Moreover, for those projects and activities which are not subject to provincial EA requirements, only CEAA provides the procedural and substantive safeguards that are necessary to ensure that only environmentally sustainable projects are approved and undertaken by proponents.

Nevertheless, CELA recognizes that there is always room for improvement in the CEAA regime, and we look forward to participating in the automatic parliamentary review of CEAA that is scheduled to commence next month.

OBJECTIONS TO BILL C-9 PROPOSALS FOR CEAA AMENDMENTS

Introduced for First Reading on March 29, 2010, Bill C-9 proposes to make a number of significant changes to current CEAA provisions, including: statutory definitions; EA exemptions; role of the CEA Agency; Ministerial project-scoping powers; public participation; and other key matters.

CELA objects to both the timing and manner in which the proposed CEAA amendments have been brought forward in the context of a budget bill. More importantly, CELA is fundamentally opposed to the content of the proposed CEAA amendments, as described below.

(a) Timing Concerns

In our view, it is highly inappropriate for these profound changes to CEAA to be effectively buried within a voluminous budget bill that contains over 2,000 sections. For the purposes of ensuring openness, transparency and accountability, CELA submits that any proposed changes to Canada's national EA statute should proceed separately as a stand-alone legislative initiative, and should be fully subject to rigorous parliamentary debate and informed public review. In our view, tacking on the proposed CEAA changes to Bill C-9 does not achieve these public interest objectives.

It should be further noted that Bill C-9's changes to CEAA were introduced with little or no advance public notice, and they have been tabled just as the parliamentary review of CEAA is about to formally commence. CELA strongly submits that this upcoming review is by far the preferable forum for developing and consulting upon CEAA reforms. Thus, if your government believes that there is merit to its proposed amendments, then it is incumbent upon your government to withdraw the proposals from Bill C-9, and to re-submit them as the government's reform package during the upcoming parliamentary review of CEAA.

(b) Content Concerns

Most of Bill C-9's proposed amendments to CEAA go beyond mere "housekeeping" or routine matters; instead, the proposals attempt to entrench significant rollbacks of key provisions of the current CEAA regime. Indeed, many of these proposals are aimed at decreasing public participation rights, and increasing the Minister of the Environment's discretionary powers, under CEAA.

Arguably, however, the most objectionable CEAA amendment is Bill C-9's proposal to create a new section 15.1 in CEAA. If enacted, section 15.1 would empower the Minister to limit the scope of the project to be assessed by restricting the EA to only certain components of the overall project. More alarmingly, section 15.1 further proposes that the Minister should be able to delegate this unprecedented (and unjustified) project-scoping power to responsible authorities under CEAA.

In our view, the proposed section 15.1 immediately opens the door to the very type of project-splitting under CEAA that was recently – and correctly – rejected by the Supreme Court of Canada in the *MiningWatch* case. CELA submits that if section 15.1 is being proposed to address situations where the same project may trigger both federal and provincial EA requirements, then section 15.1 is clearly unnecessary since CEAA already contains provisions to facilitate coordinated (or harmonized) federal/provincial EA reviews, as was noted by the Supreme Court of Canada in *MiningWatch*.

In addition, CELA points out that project-splitting (or “segmentation”) has long been prohibited under the U.S. *National Environmental Policy Act* (NEPA), and there is a long line of NEPA jurisprudence where American courts have rejected attempts to circumvent federal EA requirements by breaking projects down into smaller components. Given that Canada’s largest trading partner has a federal EA regime that expressly prohibits project-splitting, we are unclear on the economic (or environmental) rationale for expressly allowing project-splitting under Canada’s federal EA regime.

In summary, the proposed CEAA amendments in Bill C-9 do not reflect sound public policy, and they are inconsistent with long-established principles of appropriate environmental planning. Accordingly, CELA urgently requests that the Bill C-9 amendments to CEAA be deleted or withdrawn by your government at the earliest possible opportunity.

We look forward to your timely response to this request. Please contact the undersigned if you have any questions or comments about this matter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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