

Making Your Voice Heard: Public Participation In Environmental Decision-Making

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Making the Links Environmental Justice Project
Cornwall: November 23, 2010



Introduction

Focus upon key opportunities for public participation in environmental decision-making at the federal, provincial and municipal levels

- Federal: *Canadian Environmental Protection Act, 1999*
- Provincial: *Environmental Bill of Rights, Clean Water Act*
- Municipal: *Municipal Act, Planning Act*

Constitutional Framework

- “Environment” and “health” are not areas specifically assigned to either federal or provincial government under the *Constitution Act, 1867*
- Federal initiatives related to environment may be upheld under: criminal law; sea coast/inland fisheries; navigation and shipping; “peace order and good government” residual power, etc.
- Provincial initiatives may be upheld under: property and civil rights; local works/undertakings; natural resources, etc.

Constitutional Framework (cont.)

- Municipalities are created and empowered by the province, and have authority to address environmental protection
- The division of legislative powers (and resulting concurrent jurisdiction over environmental matters) creates various opportunities for public engagement at different levels.
- A single issue may trigger involvement by the federal, provincial and municipal levels of government

Example: Action at Different Levels

- Using **pesticides** as an example:
- Federal govt: *Pest Control Products Act*
- Provincial govt: *Pesticides Act*
- Municipal govt: by-laws restricting cosmetic use of pesticides (upheld by Supreme Court of Canada in the *Hudson* case and by the Ontario Court of Appeal in the *Croplife* case)

Canadian Environmental Protection Act (CEPA), 1999

- CEPA is intended by Parliament to safeguard the environment and human health from risks/impacts of toxic substances, marine pollution, biotechnology, etc.
- Government is required to act expeditiously to assess whether existing or new substances are toxic or capable of becoming toxic, and assess the risk they pose to the environment and human life and health
- If found to be “toxic”, the substance may be regulated under CEPA

CEPA 1999 - Opportunities for Public Engagement

- Review Registry notices and research conducted (see www.ec.gc.ca/CEPARegistry)
- Provide input into standards and risk management approaches, such as the Chemicals Management Plan, proposed regulations, codes of practice, policies, etc.
- Use NPRI (www.ec.gc.ca/inrp-npri) and PollutionWatch (www.pollutionwatch.org)
- Suggest additions to the List of Toxic Substances
- File Notice of Objection if Minister decides not to include substance on List of Toxic Substances

PROVINCIAL LEVEL

Environmental Bill of Rights, 1993

- What is the EBR?
 - A provincial law that recognizes protection of the natural environment as one of its primary purposes. It also provides mechanisms for you to participate in environmental decision-making in your community.
- What does the EBR apply to?
 - The *EBR* applies to environmentally significant decisions/proposals made by prescribed Ontario Ministries under prescribed Acts. This includes Acts, regulations, policies, guidelines, instruments, etc.
- What does the EBR mean for you?
 - You can participate in government decisions about the environment and hold the government accountable (see www.eco.on.ca)

Using the EBR Registry

- The EBR Registry is an online database where environmentally significant proposals and decisions are posted and may be viewed – www.ebr.gov.on.ca
- If business is asking the government for a permit to undertake activities that could affect health or the environment, the public are notified via the Registry
- Example: If you want to know if a company in your area is asking the Ministry of the Environment for permission to release substances to a river or into the air, you can type in the company's name/location and obtain this information

Searching the EBR Registry



Environmental Registry
Registre environnemental



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| Add | EBR Registry Number | Ministry Reference Number | Title or Proponent | Type | Published Date |
|--------------------------|--------------------------|---------------------------|--|---------------------|--------------------|
| <input type="checkbox"/> | 011-1197 | 1043-88VK5C | BASF Canada Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Proposal | September 17, 2010 |
| <input type="checkbox"/> | 011-0916 | 4677-882KYZ | AS Canada, ULC (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Proposal | August 13, 2010 |
| <input type="checkbox"/> | 011-0865 | 8537-87ZJ55 | Sensient Flavors Canada Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Proposal | August 09, 2010 |
| <input type="checkbox"/> | 010-9114 | 1354-7Z2NKY | FCM Recycling Inc. (EPA s. 27) - Approval for a waste disposal site. | Instrument Decision | August 03, 2010 |
| <input type="checkbox"/> | 010-9268 | 2536-82QTJ5 | Xactics (2001) International Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Decision | July 08, 2010 |
| <input type="checkbox"/> | 011-0508 | 9270-86RNF9 | Advantech Advanced Microwave Technologies Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Proposal | July 05, 2010 |
| <input type="checkbox"/> | 011-0479 | 5924-85UPQR | Ray Bolger Steel Fabrication Limited (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Proposal | July 02, 2010 |
| <input type="checkbox"/> | 011-0103 | 1350-84QSB2 | Canlyte Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Proposal | May 25, 2010 |
| <input type="checkbox"/> | 010-6999 | 7192-7T4NQ2 | Brenntag Canada Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Decision | May 18, 2010 |
| <input type="checkbox"/> | 010-7332 | 8436-7TZJFV | Matrix Coatings Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air) | Instrument Decision | April 28, 2010 |

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Instrument Proposal Notice:

Proponent: BASF Canada Inc.
501 Wallrich avenue
Cornwall Ontario
Canada K6J 2B5

Instrument Type: Approval for discharge into the natural environment other than water (i.e. Air) - EPA s. 9

EBR Registry Number: 011-1197
Ministry Reference Number:
1043-88VK5C
Ministry:
Ministry of the Environment
Date Proposal loaded to the Registry:
September 17, 2010

Keyword(s): Air

The comment period for this proposal is now over.

Description of Instrument:

This proposal is for the renewal of Basic Comprehensive Certificate of Approval (Air) No.2592-6PXXK62 which is a single Certificate of Approval that replaces the existing Certificate(s) of Approval (Air), and includes the addition of new or historically unapproved sources for all emissions from BASF Canada Inc. located in Cornwall, Ontario. This facility processes and blends various chemicals for industrial and commercial uses.

This application is for all sources of emissions from the facility which includes process emissions, laboratory fumehoods, storage tanks, sumps, lagoons, cyclones, truck loading, furnaces, cooling towers, emergency generator, and boilers.

Contaminant emissions to the atmosphere include volatile organic compounds such as 1-hexanol, 1-octanol, and methylene diphenylene diisocyanate, particulate matter, and products of combustion such as nitrogen oxides.

The Basic Comprehensive Certificate of Approval (Air) requires that the company demonstrate compliance on an ongoing basis with Ontario Regulation 419/05, applicable Ministry Guidelines for Air and Noise and other performance requirements as specified in their conditions. It permits modifications such as process changes, de-bottlenecking or addition of new equipment subject to limits on operational flexibility that include a production limit for the facility to be specified on the Basic Comprehensive Certificate of Approval (Air). The limited operational flexibility conditions have a five year expiry date. The company will be required to make application for amendment at that time to renew these conditions. Of specific public interest, one condition that will be included on the Basic Comprehensive Certificate of Approval (Air) will require

Contact:

Application Processor
Client Services Section
Ministry of the Environment
Operations Division
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West
Floor 12A
Toronto Ontario
M4V 1L5
Phone: (416) 314-8001
Fax: (416) 314-8452

Location(s) Related to this Instrument:

501 Wallrich Avenue

Cornwall, United Counties of Stormont, Dundas and
Glengarry K6J 2B5

Public Engagement: Instruments

- The EBR requires that government give notice to the public (via the EBR registry) of requests for the issuance/amendment of prescribed approvals, permits, or licences
- The public has a right to review/comment on these proposals before governmental decisions are made
- If issued, the public may apply under the EBR for leave (permission) to appeal these instruments to the Environmental Review Tribunal; if leave is granted, the Tribunal holds a public hearing

Other EBR Tools

- The EBR also recognizes the right of the public to request a **review** of an existing approval, permit, or license held by a company
- The EBR further recognizes a right in the public to request government to **investigate** alleged violations of environmental laws
- If not satisfied with the government response, the public can **sue** a polluter for causing environmental harm to a public resource
- If harm is caused by a **public nuisance**, you can sue for damages (monetary compensation) in certain cases

Clean Water Act (Ontario)

- *Clean Water Act* passed in 2006 to protect quality and quantity of current/future sources of drinking water
- Source protection planning areas are established on a watershed basis. Source Protection Committees must:
 - (a) identify drinking water sources (groundwater or surface water);
 - (b) evaluate vulnerability of areas around intakes or wellheads;
 - (c) assess activities/facilities or “conditions” which pose or may pose threats to drinking water
- Threats that are significant require mandatory measures in source protection plans (due in 2012)

Clean Water Act-

Opportunities for Engagement

- Follow or attend meetings of local drinking water source protection committee (Raisin – South Nation Source Protection Committee – www.yourdrinkingwater.ca)
- Give input re threats assessment report and source protection plan once proposed
- Support strong measures for significant threats to drinking water sources; request appropriate policies for low/moderate threats in vulnerable areas
- Review/comment on provincial rules, regulations, etc.

MUNICIPAL LEVEL

Municipal Act (Ontario)

- Municipalities have extensive powers regarding health, safety and nuisance, and regarding the natural environment (i.e. trees, noise, nuisance, sewer use, etc.)
- Municipalities may regulate for the health, safety and well being of the inhabitants of the municipality in matters not specifically enumerated in the *Municipal Act, 2001*
- Municipalities may pass community “Right to Know” by-laws (i.e. requiring companies to publicly report on their use/release of certain hazardous chemicals)

Planning Act - Opportunities for Public Engagement

- Establishes a planning process for controlling land use, growth/development, severances, subdivisions, etc.
- The Province “speaks through policy” (Provincial Policy Statement, 2005 – now under review)
- Municipal decisions (i.e., official plans, zoning by-laws, subdivision plans, etc.) “shall be consistent with” the PPS
- The planning process includes mandatory public notice (i.e. ads, signs, mailouts) and comment opportunities (i.e. public meetings), and the public can file appeals as of right to the Ontario Municipal Board

Overview of Statutes covered in Making the Links Justice Project

- Canada Labour Code
- Canadian Environmental Protection Act
- Hazardous Products Act
- Consumer Safety Products Act
- Pest Control Products Act
- Food and Drug Act
- Environmental Bill of Rights, 1993 (Ontario)
- Occupational Health and Safety Act (Ontario)
- Toxics Reduction Act (Ontario)
- Environmental Protection Act and Ontario Water Resources Act
- Municipal Act (Ontario)
- Clean Water Act (Ontario)
- Safe Drinking Water Act (Ontario)
- Planning Act (Ontario)
- Health Protection and Promotion Act (Ontario)
- Nutrient Management Act (Ontario)

Conclusions

- Federal, provincial and municipal levels of government all have jurisdiction over matters affecting environmental protection and public health/safety
- Important to be familiar with roles/responsibilities of different levels of government, and to take advantage of opportunities for public participation in the environmental decision-making process at all levels
- For assistance or more information, go to www.cela.ca

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