

February 23, 2001

C/O Jillian Flett (Director)
Environmental Assessment & Compliance Division
Alberta Environment
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Dear Ms. Flett:

RE: Proposed *Administrative Penalties Statutes Amendment Act* - Comments

Introduction

On behalf of the Environmental Law Centre, I thank you for giving us the opportunity to comment on the proposed *Administrative Penalties Statutes Amendment Act*.

The Environmental Law Centre is a non-profit organization that has operated in Alberta since 1982. The Environmental Law Centre provides services in environmental law education and assistance, environmental law reform and environmental law research to achieve its objective of making the law work to protect the environment. It is in pursuit of these objectives that we provide our comments regarding the proposed *Administrative Penalties Statutes Amendment Act*.

Our comments will focus on the material, both written and oral, presented by Alberta Environment during the information session on proposed changes to the administrative penalty process held in Edmonton on January 23, 2001. However, we also discuss other issues that we consider important. In our commentary, we first include general comments, followed by specific comments which follow the structure of the oral presentation.

General Comments on proposed regulatory framework

- We strongly agree that Alberta requires an *Administrative Penalties Statutes Amendment Act*, which amends parts of the *Environmental Protection and Enhancement Act* (EPEA), the *Water Act*, the *Forests Act*, the *Public Lands Act*, and the *Mines and Minerals Act* (the five Acts hereafter).

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- We agree that overall, the new *Act* will provide for a fairer, more consistent and efficient administrative penalty process. The *Acts'* obvious focus on the principles of administrative law (such as procedural fairness) is highly desirable.
- We agree with the concept that compliance with legislation can be achieved through education activities, prevention activities (including inspections, reviews and audits), and enforcement activities.
- We agree that enforcement responses should be based on a polluter pays/resource restitution philosophy as outlined on page 5 of the "Compliance Assurance Principles".
- We agree with the creation of a consistent terminology in the legislation and making a consistent range of enforcement tools available under all Alberta Environment (AENV) legislation.
- We strongly agree with the public release of enforcement legislation.
- We recommend that revenues generated by penalties imposed under all five Acts not be deposited in the General Revenue Fund. We suggest that penalties be deposited in the Environmental Protection and Enhancement fund, or a similar fund, if possible.
- We strongly recommend continued public involvement in the development of this legislation.

Specific Comments

1 Administrative Penalties

- 1.1 We agree that the term "administrative penalty" should be consistently used in all five Acts. This would be consistent with the terminology used in EPEA and the Water Act, which is desirable.
- 1.2 We agree with the "Proposed Administrative Penalty Process" outlined on page 8 of the printed version of the oral presentation.

2 Publication of Information on Enforcement Action

- 2.1 We strongly agree with the publication of information on enforcement action, particularly for its potential deterrent effect. We suggest that all relevant information be published after action has been taken by the department,

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including, at a minimum, the name of the person receiving an administrative penalty notice, the municipality where he or she resides, a description of the contravention and the amount of the penalty.

3 Administrative Penalty Contraventions and Offences

- 3.1 We strongly agree that all five Acts should set out the contraventions which can result in an administration penalty being issued and identify the contraventions that constitute an offence.

4 Liability for Administrative Penalties

- 4.1 We agree that all five Acts should provide for corporate director's liability and employer liability for employee action.

5 Ticketable Offences (Specified Penalty)

- 5.1 We agree that all five Acts (with the *Provincial Offences Procedures Act*) should have specified penalty tickets available for minor contraventions.

6 Maximum Administrative Penalty Amount Per Contravention

- 6.1 The proposed Act suggests establishing a "single maximum penalty amount for each of the five Acts" to "ensure more consistent maximum penalty amounts for all Acts." The maximum amount is not suggested; however, if EPEA and the *Water Act* are followed, the maximum would be \$5,000. If it is decided that a single maximum penalty amount be established for each of the five Acts, then we recommend that the maximum amount be substantially greater than \$5,000.

7 Limitation Period for Issuing Administrative Penalties

- 7.1 We agree that all five Acts should have the same limitation period for the issuance of administrative penalties. We agree with the suggestion of a 2 year limitation period.

8 Collecting Unpaid Administrative Penalties by Filing with the Court of Queen's Bench

- 8.1 Section 223(3) of EPEA allows the Minister to file a copy of an administrative penalty notice with the Court of Queen's Bench when there is a failure to pay. We agree with this approach and strongly recommend that all five Acts allow for a penalty notice to be filed at the Court of Queen's Bench without having to go through a debt trial to ensure that administrative penalties are collected.

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9 Collecting Unpaid Administrative Penalties by Non-Renewal or Non-Issuance of Authority

9.1 We agree that all five Acts should provide the Minister with the discretion to not issue a new authorization or renewal of any authorization where there is an outstanding debt.

10 Collecting Unpaid Administrative Penalties by Canceling or Suspending Existing Authorization

10.1 We agree that all five Acts should clearly specify that decision-makers can cancel or suspend existing authorizations for non-payment of debt. We also agree that canceling or suspension for unpaid debts should only be used in the most serious situations.

11 Appeal of Administrative Penalties

11.1 We strongly agree that all five Acts should provide for an appeal of administrative penalty decisions to an independent administrative tribunal. We recommend that that the administrative tribunal be the Environmental Appeal Board.

11.2 We agree that the appeal be limited to whether the decision-makers decision was reasonable on review of the record (all documents on the contravention and response).

12 Regulation Making Powers

12.1 We agree that all five Acts should include regulation-making powers regarding: consistent penalty ranges; when administrative penalties would be used; calculation of penalties and economic benefit; details of enforcement action information and details on the appeal process.

On behalf of the Environmental Law Centre, I thank you for considering our comments. Should you have any questions regarding them, please do not hesitate to contact me at (780) 424-5099, extension 306.

Sincerely,

Robert R.G. Williams
Staff Counsel

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