

April 21, 2006

Our File: P-99-881

Hon. Guy Boutilier
Minister of Environment
#423 Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6

Dear Minister Boutilier:

RE: Bill 29, *Environmental Protection and Enhancement Act, 2006*

I am writing to provide the Environmental Law Centre's comments on Bill 29, the *Environmental Protection and Enhancement Act, 2006*, and the changes that would ensue from the Bill's enactment.

About the Environmental Law Centre

The Environmental Law Centre (ELC) is a registered charity incorporated in 1982 to provide an objective source of information on environmental law and policy in Alberta and Canada. The ELC's mission is to ensure that laws, policies and legal processes protect the environment. In pursuit of this mission, the ELC seeks to achieve the following ends:

- enactment and effective enforcement of sound environmental law and policies; and
- effective and informed public participation in environmental regulatory, law making and decision making processes.

These elements underlie our comments regarding Bill 29.

Positive changes

The ELC supports the following elements of Bill 29.

- We are pleased to see the expansion of protection for municipalities from liability for contamination, as set out in section 2 of the Bill. This provision is consistent with the recommendations of the Contaminated Sites Stakeholder Advisory

Recycled Paper

Committee (CSSAC), of which the ELC is a member, and should assist in the redevelopment of brownfield sites within Alberta.

- The ELC generally supports the enabling of creation of a broader range of documents by the Minister, as set out in section 3 of the Bill, although we suggest that section 3 be amended to include a requirement to undertake public consultation as an initial step in the development of such documents. We are less supportive of section 9, which expands the range of documents that can be incorporated by reference into regulations under the *Environmental Protection and Enhancement Act*. We believe that such a step has the potential to make it much more difficult for Albertans to determine and understand regulatory requirements. For such an expansion to succeed, Alberta Environment must be strongly committed to broad public access to these documents and to clearly and explicitly incorporating such documents, where merited, into the regulations.
- We strongly support section 7, which we expect will facilitate broader public access to information, and section 10, dealing with appeals related to remediation certificates.

Our concerns

The ELC has significant concerns regarding sections 4 – 6 of the Bill, which expand the scope of delegation and transfer of administration of powers and duties under the Act from government employees to any person. While we understand that such a change will facilitate the implementation of programs such as third party reclamation or remediation certification, it is the extensive scope of the amendments, without clear checks and accountability requirements, that is the basis of our concerns. These sections, without amendment to include such requirements, are inconsistent with basic principles of public accountability in relation to regulatory responsibilities. It will prove very difficult for the public to assess whether statutory responsibilities delegated or transferred under these provisions are properly carried out.

We suggest that sections 4 – 6 be amended to provide for a publicly accessible register of all delegations and transfers of administration made under the Act, which would include access to the relevant agreements or other documents. These provisions should also require annual public reporting by parties to whom powers have been delegated or transferred.

A number of our concerns relate to amendments sparked by CSSAC's recommendations in its two reports to you and Dr. Taylor in 2004 and 2005. While the ELC strongly supports the initiative to improve Alberta's regulatory system for dealing with contaminated sites, we are very disappointed to see that the province has not accepted CSSAC's strong and consistent position that its recommendations should be "implemented in a singular, integrated effort" (as indicated in CSSAC's report of June 2005). The CSSAC recommendations are the result of in-depth, committed work and negotiations by a wide range of stakeholders on complex issues, and recognize that there are still outstanding issues, resolution of which are key to successful implementation of

Recycled Paper

an improved regulatory system for contaminated sites. We urge you to recall CSSAC to complete its work on the outstanding issues identified in its June 2005 report and to refrain from further implementation activity until such time as those issues have been resolved and changes can be made in a complete and integrated fashion.

While the clarification that will be provided by section 11 of the Bill in relation to reporting of historical releases is a positive step, the Bill lacks certain elements that would give proper effect to the new provision. The new duty to report set out in section 11 must be accompanied by amendments to sections 227 and 228 of the Act, to make failure to report under the new provision an offence and establish the penalty for such an offence. Without these elements, the new reporting duty will be meaningless.

Section 12 of the Bill, which replaces section 112 of the Act and recognizes a wider range of steps for dealing with contamination, effectively downgrades the level of remediation required. Currently, section 112 provides that a substance causing an adverse effect must be dealt with “in such a manner as to *effect maximum protection to human life, health and the environment*”. The proposed amendment would change this to require action “in such a manner as to *prevent an adverse effect or further adverse effect*”. We believe that this reduction is neither justified nor warranted in relation to expanding the measures that can be taken to respond to effects of substance releases, and suggest that section 12 be amended to retain the level of protection currently imposed in section 112 of the Act.

Section 13 of the Bill seeks to provide clarification regarding environmental protection orders and historical releases of substances. The ELC is concerned that this section contains no preventive element, which would effectively limit the Director to taking action only where adverse effect occurs, even if he or she is aware of the potential for such effect before it occurs. We suggest that section 13 be amended to enable the Director to issue an environmental protection order if he or she is of the opinion that an adverse effect may imminently occur. Such an amendment would ensure the Director’s ability to require preventive action, in accordance with the precautionary principle, without imposing undue requirements in relation to historical releases.

While the ELC generally supports section 14 of the Bill, which enables inspectors to issue remediation certificates, we are concerned that the proposed subsection (3) may result in broad variations in application requirements as between inspectors across the province. We suggest that section 14 be amended to have subsection (3) read: “An application for a remediation certificate must be made to the Director or an inspector in a form and manner acceptable to the Director.” We also suggest that the proposed subsection (3.2) be expanded to enable the Director or inspector to refuse to issue a remediation certificate where the applicant is in non-compliance with the Act, regulations or orders, or is the subject of an outstanding order or other enforcement action.

We are concerned by section 17 of the Bill and the potential scope of progressive reclamation. While progressive reclamation may have applicability in certain long-term, large scale situations, such as large oil sands operations, we believe that it is inappropriate for upstream oil and gas operations and would offer the temptation to

Recycled Paper

operators to selectively reclaim the simplest portions of an operation, while leaving the more difficult or more contaminated portions unreclaimed. This could cause significant hardship to landowners affected by these operations. We suggest that enactment of this section be delayed until stakeholder consultation can be undertaken on this matter.

Conclusion

While Bill 29 offers a variety of changes to strengthen environmental protection and public involvement in Alberta, it requires amendments, as discussed above, to improve these changes. We strongly urge the province to make the amendments we have suggested and also to refrain from further implementation of changes to the contaminated sites regulatory system until such time as those changes can be made as an integrated package, following additional work by CSSAC to deal with the outstanding issues identified in its most recent report.

We would be pleased to discuss our suggestions with you in further detail.

Yours truly,

Cindy Chiasson
Executive Director

Cc: Leonard Mitzel, MLA
Liberal Environment critic
ND Environment critic
Contaminated Sites Stakeholder Advisory Committee

Recycled Paper