

April 30, 2003

Our File: Consultations

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RE: Disclosure of Information Commentary

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. Accordingly, we have prepared comments on the Proposed Changes to the Disclosure of Information Regulation (*Alberta Environmental Protection and Enhancement Act*) (the EPEA).

Part of what makes a good environmental law is developing a transparent information system that provides opportunities for the public to participate. Accessibility and availability of materials about activities, applications, approvals, policies, codes, correspondence, programs, enforcement and compliance promotes transparency of the process to the public and provides for accountability. By making a greater amount of information available, government, industry and the public have more opportunity to work together and there is less opportunity for doubt in the openness of the process. Providing for easier accessibility of information through Alberta Environment would be beneficial to the public process.

The process of a formal request through the *Freedom of Information and Protection of Privacy Act* can be cumbersome and expensive. The more information the public can gain access to and obtain freely, the better for the flow of the communication system. Many of those who want to review material are asked to pay for it. At minimum one free copy of material should be provided. *The Disclosure of Information Regulation* currently provides for this, subject to some restrictions such as a prior request for information from the source or holder of the documentation. Also important is the time available for a person to view or pick up a document. It may be difficult at times for a person to inspect a document during normal business hours, therefore provision for mailing a document free of charge is an important consideration.

The proposed additional information and records that would be made available to the public are a welcome addition to the disclosure of information process. Although Alberta Environment may want to protect itself from the release of certain information for liability purposes, the proposed materials appear to be acceptable and broaden the scope of what is accessible for the public. In particular it is very important that records intended as statements of concern be available to those who may want to know others' positions. Also, individuals may want to know what direction was given by an inspector or director with respect to a request for an inquiry or investigation on

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a particular environmental situation. This complements the proposed additional inclusion and release of inspection reports to the public. Often people just want to know what happened or what follow up transpired with respect to a particular issue or occurrence.

Another important addition to the release of material is the release of records and reports submitted to Alberta Environment under Part 5 of the EPEA, relating to release of substances generally and contaminated sites. Anyone who considers themselves to be affected or directly affected in a situation that may involve release of a substance or contamination issue will be able to access information regarding a situation without having to make a formal information request. Also, with water being such an important issue on the minds of citizens right now, releasing groundwater reports including water well drilling, quality, yield and removal is a good idea. Generally, an individual affected by an activity, spill, occurrence, decision, or accident will be looking for as much information as possible on how a clean up or enforcement action is proceeding. Providing information on petroleum storage tanks, remediation, correspondence, and documentation of the transport and delivery of hazardous waste can potentially alleviate a stressful situation.

With regard to information that will not be released, the first point concerning information on an open investigation or enforcement already exists in the EPEA so there is no change here. The second point is not clear. It would be helpful to explain what is meant by information that links generators, carriers or receivers, or information on individual waste stream composition and quantity. It would be easier to comment on the non-release of information if the document was more specific in outlining what generators, carriers or receivers are contemplated. The same is true for water stream composition and quantity as it is unclear why this information is confidential. A clearer explanation of what this point is referring to would be helpful. The third point regarding records that are already available for purchase from an external agency may have a downside. That is, having to pay for materials can be a barrier to the public gaining access to important information. Therefore the Department may wish to reconsider this last restriction that can hinder the promotion of an open and transparent information process. Further, the public should not bear Alberta Environment's costs associated with reproducing information that an approval holder has not provided.

It is not clear which part of the legislation is being amended. Section 35 of the EPEA provides the authority for release of documents and information to the public, and the regulation provides the form and manner for the release. The proposed additional types of information and records that are going to be made available to the public should then be added by way of amendment to section 35 of the EPEA, not the regulation. The intention here should be made clearer.

On behalf of the Environmental Law Centre, thank you for considering our comments. Should you have any questions regarding them, or would like further assistance/input from our office, please do not hesitate to contact me at (780) 424-5099 extension 309.

Submitted by,

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