

SUMMARY OF ISSUES OF CONCERN

Discussion points for NBEN members attention:

Introduction: The following issues, concerns, omissions and ideas for improvement have been raised to assist NBEN members in their analysis of the new Clean Air Act introduced last spring.

1. NBEN members should obtain a copy of the new Clean Air Bill from any Department of the Environment office or by calling 453-3700. As NBEN members, we must take on a leadership role to promote and encourage groups and individuals to make presentations at the upcoming hearings.
2. Although it is important to critique the failings of the proposed act, it is also important we acknowledge the positive aspects of the proposed legislation and we must work to keep them in. Industrial polluters are going to be unhappy with certain aspects of the proposed legislation, such as; Purposes of the Act, Public Consultation and Public Involvement.

ISSUES

1. Standards Vs Objectives - - Section 8 (1) -- Section 10

It appears that there will be a change from existing Provincial standards under the Clean Environment Act. This new legislation moves away from numerical standards and ties standards into 'Certificates of Approval' and regulations which may vary within different Air Resource Management Areas (ARMA). These regulations could also vary within other areas of the Province.

This approach would have advantages in that areas which experience higher levels of pollution could have tougher emission standards than other areas which do not experience high levels of industrial pollution.

The current Clean Environment Act has at least 5 standards that are applied evenly throughout the province. If one of these standards is not met, the law has been broken. Many people are concerned with the proposal to replace standards with objectives arguing that standards are clear and easy to interpret.

8 (4) 'The Minister shall report annually to the Legislative Assembly on the success in meeting objectives . . .'

This proposed requirement could have a positive outcome in terms of public accountability. Would the Minister of the Environment want to report on failures? Currently, the Minister does not assume any responsibility for providing an annual report on the state of air quality.

2. Discretionary Language

The proposed legislation is riddled with 'discretionary language' and 'Ministerial Discretion'. Many times it is 'the Minister may' not the 'Minister will or should.'

3. Certificates of Approval (COA)

The new legislation places far more emphasis on the Certificate of Approval process to ensure reduced emissions and the setting of new objectives and standards. The approach is an industry by industry and region by region approach.

With pro-active citizens groups and assurance of public participation, there might be a better chance of achieving better air quality. However, in an area with an uninvolved public, industry might get away with

inadequate standards and the consequences of public apathy might be poor air quality in certain regions.

8 (2) b ' . . . shall give notice to the public and such other persons as the Minister considers appropriate of the intended establishment or modification of the objectives in accordance with section (3)'

We need to see the proposed regulations under this section. We want meaningful public participation and consultation with plenty of notice, ample response time and intervenor funding.

8 (3) Public Notice -- when objectives are to be modified, 1 newspaper ad is insufficient. Ads, Internet notices, letters to interested groups and individuals are but a few ways to ensure adequate public notification.

Section 11

This is a prime example of where the existing law may be better than what is being proposed. Both the old and the new have requirements for a register but existing legislation does not have a section that reads:

11 (2) ' The Minister may withhold from a register kept under Subsection (1), any documentation or other information the confidentiality of which is established in the regulations for the purposes of this section.

The implications of Section 11 (2) is unsettling. The industry could suppress or withhold important information under the guise of this confidentiality clause.

4. Re: Industries being exempted from this act and regulations - Section 45K.

We want no escape hatches that would permit polluters to avoid being held publicly responsible for their industrial practices that result in air pollution. This section provides for such exemptions and does not require the public to be notified of these exemptions!

5. Pollution Prevention Plans Section 14(4)

There needs to be a public opportunity to see these plans.

This legislation could incorporate the same model already in use in the Crown Lands and Forest Act. We need a 25 year master plan, accompanied by a 5 year pollution plan filed every 5 years. Think of it as a public report card. With such a mechanism in place, the public would know how things are going, true public accountability.

6. Re: ARMA Advisory Committees -- Section 13 (1) a to h

13 (1) c -- This section calls for ARMA committees 'to receive comment from the public, including, where the committee considers it appropriate the holding of public meetings.'

Too much discretionary power here. If only a few citizens or community groups get involved, they could decide to forgo public hearings.

(d) ' . . . to share among its members information . . . '

This should read 'to share among its members and the general public.'

We must make sure that information includes meeting minutes and discussions of advisory committees. This is the only way to ensure a transparent and open process with these advisory committees.

On a positive note, it is important to recognize the value of advisory committees.

7. Citizen's Right to Enforce

There is no provision for the public or a citizens group to challenge before a court decisions of the Minister. Ontario has a Commissioner of the Environment and Alberta allows for citizens to apply to a court for a review or challenge a decision. NB needs a similar process with an independent arbitrator.

Section 27 (1) We should be supportive of this section. Under application for investigation, 'Any two or more persons who are residents of New Brunswick who are of the opinion that an offense has been committed under this act or the regulations, may apply to the Minister for an investigation of an alleged offense.' (We should ask though, what if the Minister declines?)

We have heard that industry will be challenging this section. If we don't support it, the government could bow to the pressure of those opposed or it could be watered down to the point where it is useless.

8. Re: Consultation Process

The word 'consultation' is used a great deal in this new Act. We will settle for nothing less than genuine consultation which means government cannot design regulations in isolation and present them to the public without ample time to study and react.

9. Purpose of Act

Section 2: An excellent feature with various environmental values and principles spelled out such as a polluter pay prevention approach.

This section must remain strong so that when cases go to court, the judge can refer to "Purpose of the Act" when making his ruling. It is likely this section will be strongly challenged.

10. Offences and Penalties

Section 30 (1) Administration Penalties

The idea of having a range of penalties such as administrative penalties gives DOE more enforcement powers and penalties to deal with the minor but still important infractions that often get overlooked.

Section 30 (4)

This section could limit what polluters have to pay under 'administrative penalty.' Note the total is 'not to exceed \$5000.' This is far too low.

Section 31 (1)

Many think the fines are too low for first offences. Others would like to see jail sentences for corporate directors and owners of polluting companies.

Respectfully submitted

Gordon Dalzell

NBEN Clean Air Action Group

For Clean Air Legislation