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BY EMAIL

November 18, 2011

Mark Warawa
Chair, Standing Committee on Environment and Sustainable Development
House of Commons
Ottawa, Ontario K1A 0A2

Dear Mr. Warawa,

Re: Seven Year Statutory Review of the *Canadian Environmental Assessment Act*

We are writing on behalf of West Coast Environmental Law Association, however the content of this letter is informed by the concerns we have heard raised generally among several legal and environmental groups and some individuals who have already participated or will be participating in the seven year statutory review of the *Canadian Environmental Assessment Act* (“CEAA”).

CEAA and its regulations make up a critically important legislative and regulatory scheme that has a significant impact on how Canadians are involved in decisions, what kind of decisions we make about resource extraction and other relevant projects, and what sorts of questions we pose in relation to those proposed projects. We therefore hold the work of this Committee in the highest regard, and we appreciate the opportunity to be able to participate in the review and make submissions.

We understand the Standing Committee on Environment and Sustainable Development (ENVI) has a specific mandate and powers. We also understand that at ENVI’s October 20, 2011 meeting a budget of \$39,750 was adopted in relation to the statutory review of CEAA. Apart from generic information on House of Commons Committees, we are not aware of any document that gives further details on the budget, estimated timeline, terms of reference, goals, or any other type of plan in relation to the work that ENVI or its Subcommittee on Agenda and Procedure (SENV) may do or plan to do in carrying out the statutory review of CEAA.

Please advise if we are mistaken and there are planning or budget documents that have not yet been posted on the Committee’s website.

If we are not mistaken, then there is good reason for past and prospective witnesses invited by the Committee to request additional direction from the Committee, in particular from its Chair, on the process that is underway and how witnesses can be of the greatest assistance to the Committee in its study.

Specific concerns we have are as follows:

- 1) Very short notice is being given to witnesses, which inhibits the ability to prepare detailed briefs to facilitate an informed and effective review;
- 2) Allowing only 10 minutes for presentation to the Committee further limits the ability of witnesses to deliver a meaningful and in depth presentation;
- 3) There is a lack of transparency in that written briefs submitted by witnesses are not being made publicly available on the Committee's website;
- 4) There was a lack of clarity from the Committee about the purpose of the hearings, causing pervasive confusion among witnesses and we believe among some Committee members as to whether the Committee was undertaking an initial scoping (to be followed by a more substantive, planned review) or whether the full review was in progress. Some witnesses made submissions to the Committee based on this misunderstanding, based on communication from the Committee, that these hearings are preliminary to a more fulsome later review;
- 5) While we recently sought direction from the Clerk in relation to the above issue (4), there is still no publicly-known plan in relation to the timing, scope or focus of the Committee's review of CEAA and therefore witnesses do not have direction on what their submissions should be focused on; and
- 6) There is no publicly-known timeline on when the Committee plans to deliver an interim or final report to the House of Commons.

We therefore request that the Committee clarify in writing at its earliest convenience:

- 1) The planned timeline for the review of CEAA, including approximate dates for:
 - a. the remainder of hearings,
 - b. submission of briefs by the public,
 - c. when written briefs of witnesses will be posted on the Committee's website;
 - d. an interim report to be tabled in the House of Commons, if any; and
 - e. a final report to be tabled in the House of Commons and whether it will include a request for response and recommendations;
- 2) Any intentions of the Committee to focus its review on particular subject matter or aspects of the CEAA scheme, whether procedural or substantive;
- 3) While recognizing the independence of each witness and their ability to make submissions to the Committee as they choose, we are interested in knowing if the Committee as a whole has been focusing or intends to focus on hearing about certain areas from witnesses. For example, if the Standing Committee is focusing on hearing about *problems* in the current regime at a particular stage in its review, at what point there be a stage to hear again from witnesses on proposed *solutions* in response to those identified problems?
- 4) Any additional information on parameters the Committee has placed on its review of CEAA or the type of interim and final reports it is considering tabling in the House of Commons;

- 5) Whether there will be an opportunity for individuals or organizations who presented to the Committee in its early meetings on the basis of the miscommunicated information to make supplementary submissions (we note that the Clerk of the Committee has acknowledged in a letter dated November 2, 2011 that there may have been confusion caused by the office of ENVI);

Follow up on October 25, 2011 letter from the RCEN EPA Caucus Co-Chairs

We would also like to take this opportunity to follow up on the October 25, 2011 letter sent to the Standing Committee and addressed to you, as Chair, from the Canadian Environmental Network (RCEN) Environment Planning and Assessment (EPA) Caucus (attached for your reference). In that letter, some suggestions were made in relation to the conduct of the Parliamentary review of CEAA. West Coast Environmental Law Association supports those recommendations, which are summarized as follows:

- Ensure the seven year review is an inclusive democratic process by holding a portion of hearings in each region of the country.
- Seek to hear from a greater number of groups and individuals than previous reviews have, as sustainability and climate change have become ever more important issues to Canadians.
- Make a special effort to hear from First Nations, Inuit, and Métis from all across Canada, and to include their particular concerns as an integral component of the consultative process.
- Allow sufficient time for participants to prepare detailed briefs to facilitate an informed and effective review.
- Ensure the review is comprehensive and evaluates the legislation, regulatory framework, and practice of Canadian environmental assessment in its entirety.

We remain hopeful that the Standing Committee will consider and adopt some of these recommendations. Unfortunately, we are highly skeptical that the budget allocated for the review of CEAA is insufficient to carry out these recommendations.

Like the RCEN EPA Caucus, we feel that the goal of this review should be to build an environmental assessment regime that ensures economic activity contributes to long term environmental and social sustainability, including decreased contributions to climate change nation-wide, and that Canadians should be *actively* encouraged to participate in reaching this goal. The review process to date has not met this hope and, as we are not yet aware of any plan or schedule for the remainder of the review, we cannot say with certainty whether it will. However, we do believe there is still time and opportunity for the Standing Committee to provide greater focus, engagement and progressive purpose to this review process.

Thank you for your consideration of and prompt response to our concerns. Kindly direct any reply to this letter to our direct attention, care of Rachel Forbes at rachel_forbes@wcel.org

Sincerely,

WEST COAST ENVIRONMENTAL LAW ASSOCIATION



Rachel S. Forbes
Staff Lawyer



Josh Paterson
Staff Lawyer

cc. Hon. Peter Kent, Minister of the Environment
Clerk, Standing Committee on the Environment and Sustainable Development
Standing Committee Members
Jamie Kneen, RCEN EPA Caucus Co-chair



October 25, 2011

Mark Warawa
Chair, Standing Committee on Environment and Sustainable Development
House of Commons
Ottawa ON
K1A 0A2

Dear Mr. Warawa,

Re: Review of *Canadian Environmental Assessment Act*

Congratulations on your appointment as Chair. We look forward to working with you over the upcoming Parliamentary session. We write today in relation to an important piece of business before you this fall, as we did when this matter was first put on the Committee's agenda: the review of one of Canada's most important environmental laws, the *Canadian Environmental Assessment Act* ("the *CEA Act*"). We understand that the committee is currently considering how to undertake the upcoming review of the *CEA Act*.

The Environmental Planning and Assessment Caucus of the Canadian Environmental Network (RCEN) represents over 60 national and local conservation and community groups with a long history of work on, and involvement with, the environmental assessment process in Canada. It is with this perspective that we respectfully submit our suggestions for the upcoming Parliamentary review of the *CEA Act*. The review is an opportunity for a much-needed 'root and branch' appraisal of the substance and process of environmental assessment in Canada, and it potentially provides a forum to engage Canadians, who are increasingly concerned about anthropogenic climate change and about environmental decisions taken at all levels of government. We feel that the goal of this review should be to build an environmental assessment regime that ensures that economic activity actually contributes to long-term environmental and social sustainability, including decreased contributions to climate change nation-wide, and that Canadians should be encouraged to participate in reaching this goal.

To protect the environment for future generations and respond to climate change, Canada's system for making environmental decisions needs to be improved and strengthened. This Seven-year Review is the ideal moment for Parliament to speak directly with Canadians about the best ways to manage the impacts of human activities on land, water and air. We urge you to make the Seven-year Review a truly democratic,

inclusive, and comprehensive process aimed at developing a world-leading environmental assessment regime that Canadians can be proud to hold up as a model of environmental governance.

As the Committee plans its review of the *CEA Act*, we make the following recommendations for a serious and effective consultative process:

- Environmental assessment affects Canadians in every corner of this country, so the Committee's Seven-year Review should engage with Canadians nation-wide. The Committee should demonstrate its commitment to an inclusive democratic process by taking its hearings outside of Ottawa to be held in every region of the country. Special emphasis should be placed on reaching out to people heavily affected by environmental decisions but who are far from decision-making centres, in the Territories and in rural and northern communities in each province. Such a process will benefit from the input of those whose lives and land are affected by large economic and infrastructure projects, and who know first-hand the effects of these projects upon their local environment. The previous Five-year Review of the *CEA Act* included a cross-Canada consultation. The upcoming Committee-led review should be no less inclusive, and should seek to hear from more groups and individuals, as sustainability and climate change have become ever more important issues to Canadians. By taking the Seven-year Review on the road, Parliament will show that it takes seriously the need to involve Canadians in this process, and that it is committed to making reforms to the *CEA Act* based on the most comprehensive input and evidence.
- The Seven-year Review should also provide the opportunity and travel funding for interested Canadians and experts who do not live where hearings are held to come to the Committee's hearings in Ottawa or other locations to share their experiences with environmental assessment and put forward their recommendations for changes.
- The Seven-year Review must make a special effort to hear from First Nations, Inuit, and Métis from all across Canada, and to include their particular concerns as an integral component of the consultative process. The meaningful and central involvement of Indigenous individuals, communities, and organisations in the Seven-year Review process should reflect the appropriate legal role of Indigenous peoples as decision-makers in their own right.
- Sufficient time must be allowed for participants to prepare detailed briefs to facilitate an informed and effective review.
- The Seven-year Review should be comprehensive and should evaluate the legislation, regulatory framework, and practice of Canadian environmental assessment in its entirety. No element of the *CEA Act* and related regulations and practice should be ignored, and no area where there may be need for reform should be left off the table. Every aspect of the regime should be scrutinized in an effort to update and improve policy that is of paramount importance for the lives and well-being of Canadians.

With these key goals and principles guiding the review process, the Committee will be able to gather evidence and make recommendations for reform to the *Canadian Environmental Assessment Act* on a solid foundation, and will be sending a clear signal that it is determined to involve Canadians and to listen and respond to their growing concerns about environmental, cultural and economic sustainability. As the certainty of climate change begins to affect Canadians more and more, environmental assessment in Canada must become stronger, more rigorous, and broad in scope in order to prevent, and to mitigate, harmful effects of human activities upon the environment. The upcoming review is a singular opportunity to bring the legislation into line with the demands of environmental sustainability in the 21st century.

We sincerely hope, as we are sure you do, that the upcoming Seven-year Review will be an open and constructive dialogue, in the best spirit of democracy. We hope that Canadians will be invited to engage in a far-reaching consultative process that substantially improves the quality of environmental assessment legislation in Canada.

Please share this letter with your Committee colleagues. We would appreciate the opportunity to discuss this matter with you at your earliest convenience and will be following up with your office to arrange a meeting, as we will with other Committee members.

Kindly direct any reply to this letter to our direct attention, care of Josh Paterson at jpaterson@wcel.org, or by fax at 604-684-1312.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is for Josh Paterson, featuring a large, stylized 'J' and 'P'. The signature on the right is for Jamie Kneen, with the name 'Jamie' written in a cursive script and 'Kneen' in a more blocky, stylized font.

Josh Paterson and Jamie Kneen
RCEN EPA Caucus Co-chairs

cc. Hon. Peter Kent, Minister of the Environment
Clerk, Standing Committee on the Environment and Sustainable Development
Committee Members