

October 3, 2014

RE: An Act to Amend Chapter 342 of the Revised Statutes, 1989, the Petroleum Resources Act

Ecology Action Centre Submission to the Law Amendments Committee

The Ecology Action Centre (EAC) acknowledges that the proposed amendment is welcome recognition of significant community concern over hydraulic fracturing.

Ecology Action Centre (EAC) highlights two aspects of the legislation as being keys to its positive potential:

- 1) The legislation establishes the notion that any move to overturn the prohibition on high-volume hydraulic fracturing must be made with careful consideration;
- 2) The legislation suggests parameters to be used within the context of such consideration.

Having acknowledged the strengths of Bill No. 6, EAC submits that certain amendments to the Act are required to safeguard the principle tenants of the proposed legislation and respect the concerns of Nova Scotians.

Testing and Research

Bill No. 6 states:

11A(2) No person shall engage in high-volume hydraulic fracturing in shale formations unless exempted by the regulations for the purpose of testing or research.

A mechanism must be established for determining whether a person may be allowed to engage in high-volume hydraulic fracturing for the purpose of testing or research and under what circumstances such testing and research would be deemed appropriate.

The EAC recommends the following clauses be added to the Act:

11A(2)(a) The Minister may exempt a person wishing to engage in high-volume hydraulic fracturing for the purposes of testing and research.

11A(2)(b) Where the Minister considers exemption from the prohibition, the Minister shall engage in prior, informed and meaningful consultation with the community where testing and research is to take place to ensure community consent to the process.

These additional clauses respect the findings of the Hydraulic Fracturing Review which establishes community consent as key to any future consideration of hydraulic fracturing.

The regulations must not include a general exemption from the legislated prohibition for testing and research purposes. To include such an exemption would fundamentally undermine the purpose of Bill No. 6.

Reviewing the Prohibition

Bill No. 6 rests the authority to review the prohibition of high-volume hydraulic fracturing solely with the Minister:

11B(1) The Minister may review the prohibition under Section 11A.

Given the presumed intention of Bill No. 6 to enshrine the caution against high-volume hydraulic fracturing as urged by Nova Scotians throughout the Hydraulic Fracturing Review, any potential to overturn the prohibition must be a matter for consideration by the full legislative assembly. Only the consideration of the Nova Scotia Legislature would adequately respect the deep concern expressed by Nova Scotians.

The EAC asks clause 11B(1) be amended to read:

11B(1) A review of the prohibition under Section 11A may be undertaken by the legislative assembly subject to a majority vote in the legislative assembly to undertake such a review.

Section 11(B) of Bill No. 6 outlines a helpful series of parameters that may be used to review the prohibition. EAC believes the 'net benefit' test as outlined must be required, rather than suggested, in order to safeguard the agency of Nova Scotian communities.

The EAC asks clause 11B(2) be amended to read:

11B(2) Where the Legislature reviews the prohibition, the Legislature must determine whether the net benefit to Nova Scotians, taking into account

- (a) **whether community consent is present;**
- (b) **social issues;**
- (c) **economic issues;**
- (d) **health issues;**
- (e) **environmental issues;**
- (f) **scientific and technical issues;**
- (g) **regulatory effectiveness and efficiency; and**
- (h) **any other matter or thing that the Legislature considers necessary or advisable.**

Definition of High-Volume Hydraulic Fracturing

Bill No. 6 tasks the regulations with establishing a definition of high-volume hydraulic fracturing. It is extremely unusual for such a definition to be left out of legislation and left up to regulations. EAC recommends that stakeholder input be considered in the development of a definition of high-volume hydraulic fracturing for the purposes of legislation in order to ensure the community concerns this legislation is responding to are appropriately reflected by the definition.

The following definitions have been recommended by other stakeholders and are supported by the EAC:

"... the transmission of a carrier fluid to apply pressure and transport proppants to an underground geologic formation to create or enhance subsurface fractures and facilitate the release of any petroleum or natural gas, but does not include fracturing for the production of wells for potable water;" (from NS Importation of Hydraulic Fracturing Wastewater Prohibition Act, Section 2(a))

or

"Injecting fracturing fluids into the target formation at a force exceeding the parting pressure of the rock thus inducing a network of fractures through which oil or natural gas can flow to the wellbore." (from Council of Canadian Academies, 2014 report on shale gas, p. 224)

Hydraulic Fracturing and Other Geological Formations

Bill No. 6 limits the prohibition of high-volume hydraulic fracturing to shale formations. EAC asks that all unconventional oil and gas development requiring high-volume hydraulic fracturing be included in this legislation. This would mirror the approach used by the provincial review of hydraulic fracturing.

Sincerely,

Catherine Abreu



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Ecology Action Centre