

To: Members of the Law Amendments Committee,

From: Barbara Gallagher, Co-Chair  
Citizen Action to Protect the Environment (CAPE)

Bill # 6 Re Ban on Hydraulic Fracturing

I am writing on behalf of Citizen Action to Protect the Environment (CAPE), a Hants County-based registered community group. We understand that Minister Younger aims to incorporate in legislation the main recommendations from the Wheeler report on hydraulic fracturing. I want to address two main concerns: community consent and other factors that need to be considered if/when the Minister reviews the ban.

We applaud the banning of fracking but are concerned about the omission of the need for community consent prior to the use of fracking for development of unconventional gas if/when there is consideration of lifting the ban. It is noted throughout the final Wheeler report that a precautionary approach must underpin provincial policy on hydraulic fracturing for the purpose of the development of unconventional gas and oil resources. On page 324 the authors state that they believe that the only level at which the precautionary principle becomes truly meaningful is at the community level where the costs and benefits can be weighed in a local context.

A Top Level Recommendation from the report was that NS should design and recognize the test of “a *community permission to proceed*” before exploration occurs for the purpose of using hydraulic fracturing in the development of these resources.

The first Contingent General Recommendation states that if new knowledge persuades communities to want to examine the costs and benefits of these resources, “then seismic testing for the purpose of pursuing hydraulic fracturing would proceed only when full, prior and informed community consent was established ...” (p.326).

Community members will incur the consequences of risks taken and will need to be fully informed and satisfied that the practice will not be harmful to their environment, health, or resources. One of the panellists, Ian Mauro, stated that when comparing the letters to research on fracking that he “found the risks and benefits perceived by regular people were generally well-founded” (Chronicle Herald Sept 13/14). Citizens had several months to become educated on the technical details and nuances of the material on fracking that was distributed by the panel and obtained from other sources.

With no mention of community consent in the legislation, we have to question whether adequate attention has been given to the requirement of the precautionary principle. We realize that it will take time to develop a process for determining community permission, but we believe a 30-day public comment period does not even allow for full and prior information, and certainly not informed consent.

Our members reside in the Windsor-Kennetcook Block where fracking occurred without them being fully informed or supportive. We are looking for legislation that includes a clause that affirms that full, prior and informed community consent is required before seismic testing and fracking occur. Our suggestion is:

11A(3) (a) High-volume hydraulic fracturing will only occur with full and prior consultation with area residents and their informed consent.

(b) Municipalities have the right to ban or restrict hydraulic fracturing in their municipalities.

In addition to full, prior and informed community consent, we recommend that other conditions also be added to those considered by the Minister when reviewing the ban. The review should include a transparent process for public consultation with the opportunity for input from independent experts. Even with the Wheeler review, we noticed that the material presented in drafts for public review tended to be biased in favour of industry, and some note-worthy reports omitted (Health Canada 2012 report on fracking). Information requested in responses to these drafts was often ignored.

Examples include:

- Information on TENORMS and procedures and safety precautions when removing them
- Details re treatment option for wastewater in Kennetcook; osmosis process- general info on the cost and who would pay; disposal and tracking of radioactive carbon filters

Community members are generally open to industry, but not when the environment, and then their health have to be sacrificed. As noted by the Wheeler panel, it is the community that should determine whether the level of risk is acceptable. Regulations are only as good the monitoring capabilities and the assurance of compliance.

We would recommend that the Ministerial review include a process to protect individuals and taxpayers from both short and longterm costs for water, resource, and health problems, as well as environmental remediation when damages occur from fracking. We are aware of the multi-year struggle by Jessica Ernst, from Rosebud Alberta and the Parr family in Texas to obtain compensation for their losses. We would recommend a condition of adequate liquid financial resources from companies to be held to cover potential financial losses to citizens and the province, with the cost of burden of proof on polluters. Timely compliance, such as problems with disposing of fracking wastewater, seems to be a common issue with environmental regulations, and we suggest that these liquid financial resources could influence actions.

Thank you for considering our proposed changes. We are hopeful this legislation will reflect the wisdom inherent in the quote from Cicero at the beginning of the final Wheeler report, “ **The health of the people is the highest law.**”

Respectfully submitted,  
Barbara Gallagher  
Co-Chair, CAPE