



Canada: Public Participation in Environmental Decision-Making

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CANADA

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

In Canada, jurisdiction to enact environmental legislation is divided between the Federal government and the governments of the ten provinces. The latter have all enacted broad statutes that apply to most types of contaminants affecting land, air, and water. The Federal Government has also enacted a Canadian Environmental Protection Act¹ to deal with international pollution, certain highly toxic substances, pollution on Federal lands, and a number of more specialized matters. Since the Federal and provincial laws overlap to a considerable extent, it is difficult to state exactly what is covered by each level of government. This is all the more true on account of the fact that the broadest Federal and provincial laws are supplemented with quite a few related statutes. On the administrative level, the Federal and provincial governments have been working to coordinate their laws and policies through an environmental council.

Canada's Federal Government does not issue clean air certificates as is the case with the Federal Government in the United States. Approval to release contaminants in controlled quantities is given by provincial authorities acting upon provincial legislation that incorporates some Federal rules and guidelines. An example of applicable provincial legislation is Ontario's Environmental Protection Act. Section 9 of this statute states that "no person shall, except under and in accordance with a certificate of approval issued by the Director, construct, alter, or replace any plant, structure...or thing that may discharge...a contaminant into any part of the natural environment other than water."² This section does not apply to industrial plants and structures used in agriculture or to contaminants of a class exempted by the regulations. Nevertheless, it does apply to almost all manufacturing facilities. Municipalities do not have the authority to issue by-laws prohibiting the discharge of contaminants authorized by a provincial certificate.³

¹ R.S.C. ch. 16 (4th Supp. 1989). The largest part of this statute was brought into force in 1994, 1994 S.I. No. 40.

² R.S.O. ch. E.19, s. 9(1)(a) (1990), as amended.

³ Ontario (Attorney General) v. Mississauga (City) (1981), 10 C.E.L.R. 91

Ontario's Environmental Protection Act does not contain provisions respecting public participation in official decision-making. However, in 1993, the Government of Ontario enacted the Environmental Bill of Rights.⁴ This statute sets out minimum levels of public participation that the Government must meet before making decisions on significant proposals.⁵ Proposals subject to the public comment are divided into three classes. It would appear that building a large industrial plant would fall into the third class and, thus, invite the highest level of public participation. The Ontario Environmental Protection Act also requires 30 days notice of proposals. In order to meet this requirement, the Government has created a web site that lists all relevant proposals.

Ontario's Environmental Protection Act has greatly increased public participation in environmental decision making in Ontario. At least one major construction project in the town of Mississauga was held up through public representations. The project only went ahead when the company involved agreed to meet standards higher than those normally required by the regulations.⁶

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⁴ 1993 S.O. ch. 28. A copy of the statute is appended.

⁵ *Id.* S. 3.

⁶ Information obtained from Environment Canada in Ottawa.