

# *Modernizing Environmental Assessment*

September 19, 2023

## **RE: Feedback, Environmental Assessment Legislation**

Dear Minister Halman,

Thank you for the opportunity to comment on government suggestions for modernizing the environmental assessment process.

Change is greatly needed. The current approval process destroys communities and creates windfall profits for corporations.

EA approvals are exactly backwards. Instead of beginning with an understanding of the complexities of natural systems and appropriate protections, you focus on a list of environmentally damaging industries with the goal of enabling them to pollute. This leads to a rote set of concerns with little room for innovation.

Environmental Assessments are pollution permits.

Some of the most important *changes* you suggest already exist within the Environment Act (access to information, public involvement, transparency, accountability) but neither the Department nor corporations have respected the intent of the Act in this regard because these provisions were only "intentions or suggestions" that were never given the force of law.

If you do not write your proposed changes into law, they may meet the same fate, and the more things change, the more they will stay the same.

The topics and questions in the survey are self-serving and incomplete. If you do wish to affect real change, here are the issues that must be addressed:

- PRINCIPLES
- ACCOUNTABILITY
- CONFLICT OF INTEREST
- ENVIRONMENTAL RIGHTS AND RESPONSIBILITIES
- PUBLIC AWARENESS, PARTICIPATION, AND GOVERNANCE
- ENFORCEMENT
- BETTER SCIENCE AND OPEN DATA
- INTEGRITY



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[twitter.com/WaterkeepersNS](https://twitter.com/WaterkeepersNS)  
902-907-2990

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## PRINCIPLES

The overarching Environmental Principle is that government does not own Nova Scotia's natural resources. The Crown is but a temporary caretaker of the people's property. No one, government or business, has any right to despoil these resources without consent from the people.

The Environment Act codifies the right of the people to access requisite information and voice their will in the matter of project approvals. It does not grant business and government the unfettered right to consume the people's resources at will.

The Act, as It has been interpreted by Governments-of-the-day now largely limits access to information to FOIPOP requests. It has also been interpreted to restrict public consultation to specific circumstances and time restraints. There is an underlying assumption that business has a right to pollute and the government has a duty to assist business in the name of economic development.

NSECC (Nova Scotia Environment and Climate Change) has therefore become a "Regulator of Harm," a purveyor of "Pollution Permits," rather than a custodian of the People's resources.

Sadly, the changes you propose would only serve to reinforce the status quo, the entitlement of business. They do not respect the rights of the people.

For example, the principle of "certainty" clearly caters to business interests, by defining (and limiting?) application requirements and timelines. However, since each proposal will be unique, no single set of requirements can possibly address many varying circumstances.

No similar benefit seems to accrue to the public from application of the principle of "certainty." How do you propose to change the "certainties" the public has learned from experience: the certainty that proposals contain false, misleading, or "colored" information, the certainty that NSECC will not bother to check the factual integrity of applications, and the certainty that the project will be approved, no matter how vehemently communities may object. There is deep-seated certainty that business exerts undue influence on NSECC and the Crown, an influence that public opinion cannot possibly equal.

Also, as a matter of principle, it would be useful to all parties to have access to a uniform and reasonably comprehensive pre-registration document. Such a document would be publicly available, allowing viewing by anybody at any time. These are topics to be addressed in the pre-registration document:

- Water quality



*AnnapolisWaterkeepers@gmail.com*  
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*twitter.com/WaterkeepersNS*  
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- Air quality
- Species diversity
- Agriculture
- Forests
- Fisheries
- Health
- Employment

These would all be good topics for a Crown supplied "guide."

**As a matter of principle**, let us require that approvals for business proposals must outline bona-fide net zero environmental impacts.

**As a matter of principle**, let us require the Act to give primacy to environmental protection, preservation, and restoration.

**As a matter of principle**, let us agree that the People shall have the final say.

## ACCOUNTABILITY

Unfortunately, NSECC suffers from a long track record of lack of accountability. The department has long disavowed any responsibility for:

1. Checking claims in registration documents for factual accuracy; NSECC does not fact-check applications.
2. Any harmful effects that result from approvals
3. Water, air, or soil testing on abutting properties affected by project activities
4. Providing authors names and credentials on scientific documents prepared by department staff

NSECC is well known for maintaining a culture of secrecy, only sharing information when forced to by a FOIPOP request. And no one at NSECC has ever admitted responsibility for making any departmental decisions.



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*twitter.com/WaterkeepersNS*  
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## CONFLICT OF INTEREST

The most needed change to Environmental Assessments is to eliminate any opportunity for conflict-of-interest, which is so brazenly built into the current system:

Action	Problem
<ul style="list-style-type: none"><li>• Proponents pay a substantial filing fee</li></ul>	<ul style="list-style-type: none"><li>• Dependence, exclusivity</li></ul>
<ul style="list-style-type: none"><li>• Then they hire a firm to make their case</li></ul>	<ul style="list-style-type: none"><li>• Only positive reports</li></ul>
<ul style="list-style-type: none"><li>• ECC evaluates the report</li></ul>	<ul style="list-style-type: none"><li>• Other affected parties excluded</li></ul>
<ul style="list-style-type: none"><li>• 90% of the time, the Minister decides favorably within 50 days.</li></ul>	<ul style="list-style-type: none"><li>• <i>Res ipse locuter</i> (The thing speaks for itself - obvious negligence)</li></ul>

We have records of 79 Ministerial decisions. Only 1 was rejected. The perception is of a biased process.

If project registrations are prepared, funded, and vetted by independent companies, who are assigned randomly by NSECC, all of the above opportunities for conflict-of-interest and undue business influence will be eliminated.

## PUBLIC AWARENESS, PARTICIPATION, AND GOVERNANCE

Diversity, equity and inclusion all hinge on the people's right not only to be heard, but to accept or reject project proposals. Such a right would finally end Nova Scotia's ongoing legacy of environmental racism, classism, and marginalization.

There does not seem to be any suggestion to revise the artificially imposed time restraints placed on public engagement and comment re: project developments, assessments, appeals, etc. These restraints unfairly restrict public involvement and indemnify the Business and Crown against public criticism.



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Neither do suggested changes include any more effective plan for public notifications. The Crown has the wherewithal to directly notify any individuals who may be affected by a particular project proposal, but continues to avoid organizing effective notifications. Public right to comment and appeal is therefore unduly and unnecessarily restricted by ineffective notice.

Also missing in both the Act and the planned revisions, is a mechanism for determining whether a particular project is needed or even desirable. This is not a determination an ECC agent can make; it is a decision that must be made by the public.

### ENFORCEMENT

Suggested changes to the Assessment process (and Act) do not include any consideration for more diligent and robust enforcement actions. The department's undeniable record of non-enforcement is clearly compliant with business requirements. Failure to enforce is not only failure to deter unlawful acts, but an unlawful act in itself. In this way, NSECC aids and abets illegal activity.

For example, failure to execute an EA for hazardous waste disposal at Arlington Heights in 2005, as required by the Act at the time, rendered department approvals unlawful and therefore made NSECC party to thirteen years of illegal asbestos disposal. Similarly, failure to stop illegal dumping of ASR at the same facility, from 2016 to 2021 constitutes criminal departmental inaction.

The department also failed in 2018 to penalize the permit holder at Arlington Heights for clearcutting almost five hectares of forest wetland without NSECC approval or compensation plan.

Ministerial discretion cannot be used to avoid bona-fide legal obligations.

It has become commonplace for business to proceed with development before securing department approval because no punishment of any consequence ever ensues. After-the-fact approvals are almost always granted, often with little or no punishment or compensation required.

In a related issue, there is no mention of revising the two-year statute of limitations for offenses against the Act and permit terms and conditions. It has become clear that the Crown will allow some charges for violations of the Act to languish in the prosecutor's office until they must be abandoned by reason of these limitations. Once again, the Crown bows to business demands.

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## SCIENCE AND DATA

Staff and policy must keep abreast of current science. Asbestos regulations are a prime example. NSECC enforces regulations developed from industry studies of the 1950's. These studies were not only shamelessly industry-biased, but, as modern research has proved, factually incorrect. NSECC still clings to the death-making notion that ingested asbestos is not harmful.

All projects must assess potential damaging cumulative effects and take appropriate measures to eliminate them.

The department shall not accept any documentation that is not independently generated and fact-based in science.

Information gathering, storage, and access must be upgraded and fully digitized. FOIPOP requests now return jumbled unsearchable paper files. Requiring FOIPOP applications, even for innocuous information, is an unreasonable restriction of the public right to information.

Why not vet documents when they are created and make them public immediately?

## INTEGRITY

NSECC will have to work hard to establish department credibility.

We have cataloged numerous misleading, false and misinformed statements in department correspondence, and abundant evidence of ongoing lack of intellectual and scientific rigour. Whether these problems result from attempts to justify poor past decisions, or lack of qualification, they are issues that must be addressed if public faith is to be created.

For example, in her letter (53729) of October 3, 2018 to a neighbor in the community, Minister Miller says "Asbestos fibers are not water soluble and do not move through groundwater to any appreciable extent."

A May, 2000 publication "Guidance for Managing Asbestos Disposal Sites" from the state of New Hampshire says "Asbestos fibers are not water soluble and do not move through groundwater to any appreciable extent."

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We might expect this kind of unattributed information from CHAT-GPT in 2023, but 5 years ago it was still called plagiarism, and was grounds for censure and expulsion from all educational institutions. (And, places of employment too.)

The Western District Manager saw no problem with appropriating someone else's work and calling it your own; he said he would do the same! He then threatened to sue us for publishing FOIPOP documentation!

Similarly, department inspectors were dispatched to scrutinize the properties of citizens who complained about activities at the Arlington Dump, in what appears to be a blatant attempt to intimidate critics of the dump and NSECC.

Department inspectors apparently felt no obligation to inform the public (as the Act requires) about the release of toxic smoke and water during the ASR (auto-shredder residue) fire at Arlington Heights in 2020, or in two previous Arlington auto-fluff fires, either. Unlike responsible government actions re: ASR fires in other jurisdictions, (Saint John's, N.B. Sept. 15) no one advised us to evacuate or shelter in place as the toxic smoke wafted through our communities. This is a clear failure to protect public health and safety.

Minister, how can you possibly make appropriate decisions if your staff lacks the integrity to behave and advise you with honour?

**From our point of view, the more you propose to change the regulations, the more they seem to stay the same. Your survey seems to have been designed to produce the answers that the Crown wants in order to maintain the status quo.**

**We have a couple of survey questions of our own:**

1. *Why do you persist in attempting to make NSECC an engine of economic development by giving business easy access to our common natural resources, and indemnifying them against claims for environmental destruction and pollution?* If giving away our resources was the answer to economic prosperity, we should all be rich by now, because we have been doing exactly that for a very long time.
2. *Why do you refuse to hear citizen demands to preserve and protect our natural resources from industrial depredation?* Taxpayers are consistently demanding that NSECC abandon its traditional role as "regulators of harm" for a forward-looking, pro-active commitment to the duty of preservation and protection of our environment and our health.



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### A Word About *Netukulimk*

Do you have any indigenous staff members working on this? Have you reconciled Netukulimk with the science you allegedly use? Netukulimk includes the idea that community resources are meant to benefit the community. But in this context it smacks of cynical Cultural Appropriation. Just saying the word does not make it so.

Please find below a Universal Declaration of Human Rights **created by Nova Scotians and adopted by thousands of organizations and individuals across the province:**

## **Declaration of Universal Environmental Rights and Responsibilities**

### **We Declare**

That our communities are places of rare natural beauty and peace that presently suffer degradation of Air, Water, and Land, caused by environmental exploitation.

That the health, livelihoods and security of people and all other living things are threatened;

That there is urgent need to protect and restore the health of our environment, our community, and all our natural resources for the wise and thoughtful benefit of everyone;

### **We Pledge**

To each other, our communities, and our world, to nurture and care for our common living spaces.

### **We Therefore Agree**

#### **Article 1**

We proclaim and assert the Universal Human Right to Environmental Security.

We make this claim on behalf of ourselves, our heirs, and all of Humankind now living or yet to be born.



*AnnapolisWaterkeepers@gmail.com*  
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*twitter.com/WaterkeepersNS*  
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## **In particular:**

1. The right to clean air
2. The right to clean water
3. The right to security of person and quiet enjoyment of property
4. The right of community primacy - to be consulted and to approve of development proposals

## **Article 2**

We accept the responsibility, individually and together, to nurture, protect, and advocate for these rights by peaceful means.

## **Article 3**

We vow to instruct and require our elected representatives, at all levels of government, to vigorously defend, promote, and enhance these rights. We further instruct and require our representatives to immediately and forcefully redress and restore these rights where they may have been abused.

We further vow to enforce these instructions by the application of swift electoral justice.

~

## **So, here are our recommendations for real change:**

1. The Act **must** give primacy to environmental protection, preservation, and restoration.
2. Approvals for business proposals **must** require bona-fide net zero environmental impacts.
3. Proposals **must** be funded and assessed independently.
4. Effective notice **must** be given.
5. Artificial time restraints both for community involvement and prosecution of Act violations **must** end.
6. Approvals **must** require community consent.



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For a party steeped in a long history of Environmental Racism, Boat Harbor and East Lake being only two examples of many, the attempt to appropriate the Mi'kmaq concept of Netukulimk smacks of insincerity and election opportunism. In doing so you ignore the idea that community resources are meant to benefit the community, not nameless shareholders in unknown lands.

Shame on you.

### CONCLUSION

We all have the right to a safe place to live, clean land, air, and water. Sadly, the history of environmental regulation (or lack thereof) in this province has created a legacy of "forever" contamination that will continue to compromise citizen health and safety for many generations to come. Nova Scotians suffer from the highest cancer rates in the country. The revisions that the Department proposes will do little to stop this ongoing trend, much less reverse it. We urge the Department to use this moment as an opportunity to effect REAL change, not just put a bonnet on a pig.

*Kip McCurdy, Gus Reed and Beth Cranston*

*for Annapolis Waterkeepers*



*AnnapolisWaterkeepers@gmail.com*  
*facebook.com/AnnapolisWaterkeepers*  
*twitter.com/WaterkeepersNS*  
*902-907-2990*