



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
*L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT*

Standing Committee on Natural Resources  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Fax 613-996-1626

And by E-mail  
[RNNR@parl.gc.ca](mailto:RNNR@parl.gc.ca)

November 17, 2009

Dear Chair Benoit, Vice-Chairs Cullen and Tonks, and Members Allen, Anderson, Bains, Brunelle, Guimond, Hiebert, Regan, Shory and Trost:

### **Re Bill C-20**

### **Recommendations for Clause by Clause Amendments Bill C-20, the Nuclear Liability and Compensation Act**

Further to our attendance before your committee on November 16, 2009, and our written submission of November 16, 2009, we write to provide our recommendations for consideration in potential amendments to the Bill during Clause by Clause review by the Committee. This submission is limited to the recommendations for clause by clause review only, and does not repeat any of the submissions as to the reasons or arguments for these suggestions which are contained in our November 16 submission.

The Canadian Environmental Law Association makes the following recommendations for consideration in Clause by Clause review of Bill C-20.

- Removal of Cap on Liability. Section 7 of Bill C-20 should be deleted. Section 21 of Bill C-20 should be deleted.
- Removal of exemption of liability on the part of other parties such as suppliers. From section 8 of Bill C-20, delete the following words:

“And no person other than an operator”

- Impose a minimum insurance requirement rather than a cap on liability. Amend section 24 of Bill C-20 by adding the words,

“The minimum amount of the financial security required to be held by an operator is \$1.2 billion.”

“The Governor in Council may, by regulation, amend the minimum amount of financial security required to be held by an operator to increase the amount.”

- Increase of financial assurances available in the event of a nuclear incident. Add a clause as follows:

In the event that a nuclear incident occurs in which damages assessed or likely to be assessed will exceed the financial security required by the regulations to be held by the nuclear installation, the Minister shall require an additional contribution by every other nuclear installation covered by this Act in the amount of 10% of the financial security held by them pursuant to the regulations to be paid to the Nuclear Liability Reinsurance Account every year for up to 10 years, or until the full amount of damages assessed to all claimants is satisfied, whichever occurs first, and the Minister shall make payments to the claimants from that Account.

- Limitation of Actions. Bill C-20 proposes to impose an ultimate limitation period of 30 years. However, solid tumour cancers may continue to manifest themselves for the remaining lifetime of exposed persons which could amount to 70 or 80 years instead of 30. The relevant U.S. legislation, the Price Anderson Act, no longer has an absolute limitation period; it only provides a three year limitation that runs from discovery of harm. This formulation was chosen because large proportion of the human health consequences of a nuclear incident might become evident so long after the accident had happened. Bill C-20 should be amended to provide a three year limitation to run from discovery of harm and should explicitly provide that there is no ultimate limitation period otherwise. Section 30 (2) should be amended by deleting the existing provision and replacing it with the following:

For further certainty, no claim shall be barred by reason of expiry of time from the day on which occurred the nuclear incident to which the action or claim relates; other than as provided in section 30(1).

- Extension of Incidents Covered. Amendments should be added akin to Price Anderson Act amendments made in 1988<sup>1</sup> to include coverage for nuclear incidents:

“Arising with respect to nuclear material which has been unlawfully diverted from its storage place or intended transportation route”; or

“which results from activities involving storage or disposal of radioactive waste from commercial nuclear reactors.”

- Definition of harm. Bill C-20 proposes to restrict compensation to cases of “bodily harm”, property damage, or psychological trauma in very restricted cases. This is a further narrowing of the kinds of harm and damage that may be compensated. The compensable harm should revert to the standard kinds of claims recognized at common law including all damages upon which tort claims may be brought, including harm for personal injury as is the case in the current Act.
- A purpose clause should be added to Bill C-20, for example as follows:

The purpose of this Act is to provide for compensation to those who suffer damage or harm from a nuclear incident.

- The *NLA* should provide that all decisions made pursuant to the *NLA* be made in accordance with the principle of inter-generational equity. This should be added to the purpose clause as follows:

The purpose of this Act is to ensure that use of nuclear fuel or nuclear material is conducted in a manner that equitably meets the developmental and environmental needs of present and future generations.

- The *NLA* should include a statement of the precautionary principle and should provide that all decisions made pursuant to the *NLA* be made in accordance with the precautionary principle. This should be added to the purpose clause as follows:

The purpose of this Act is to ensure that the precautionary approach is applied with respect to the use of nuclear fuel or nuclear material. Decisions made under this Act must anticipate, prevent and attack the

---

<sup>1</sup> Price-Anderson Amendments Act of 1988, Public Law 100-408

causes of environmental degradation. Where there are any threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

- In order to accord with the “polluter pays” principle, the *NLA* should be amended to remove the cap on liability and to remove the exemption from liability that is accorded to third parties, as well as to increase substantially the resources available by way of minimum insurance and pooled resources and other mechanisms so as to better internalize to nuclear plant operations the potential costs of severe accidents which escape containment. Examples of amendments to make these changes have been provided earlier in this letter. In addition, the purpose statement should include a provision in accordance with the polluter pays principle as follows:

Use of nuclear fuel and nuclear material in Canada shall be conducted in a manner that internalizes environmental costs, and accords with the principle that the polluter should bear the cost of pollution, with due regard to the public interest.

- Bill C-20 should include definitions of “sustainability” and “sustainable development” and in addition to the amendments recommended above, should provide in its purpose statement that all decisions made pursuant to the *NLA* be made in accordance with those definitions and principles as follows:

Use of nuclear fuel and nuclear material shall be conducted in a manner that is sustainable, based on an ecologically efficient use of natural, social and economic resources and in a manner that integrates environmental, economic and social factors in all decisions authorized or required to be made under this *Act*.

- Bill C-20 should include a requirement that all decisions made pursuant to authority granted by that *Act* be made consistently with the provisions of the purpose statement in the *Act* as follows:

All decisions authorized or required to be made pursuant to this *Act* shall be made consistently with the provisions of the statement of purpose in this *Act*.

- As is the case with other federal environmental legislation, Bill C-20 should include a provision for a five year review such as the following:

Five years after the coming into force of this section, a comprehensive review of the provisions and operation of this Act shall be undertaken by the Minister.

The Minister shall, within one year after a review is undertaken pursuant to this section or within such further time as the House of Commons may authorize, submit a report on the review to Parliament including a statement of any changes the Minister recommends.

Thank you for the opportunity to provide submissions before the Committee. We would be pleased to answer any further questions you may have at any time.

Yours very truly,



**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

Per

Theresa A. McClenaghan

Executive Director and Counsel

Encl. Copy of Written submission dated November 16, 2009 as provided to the Clerk of the Standing Committee on Natural Resources in regard to Bill C-20, the Proposed Nuclear Liability and Compensation Act.

CELA Publication 687 (*Also see publication 686*)

ISBN 978-1-926602-40-0