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Cc: Jerry DeMarco, Commissioner of the Environment

Dear Mr. Helfinger, Mr. Martin and Ms. Asgarali,

Re: Bill 132 *Better for People, Smarter for Business Act*, 2019 ERO #019-0774 and associated proposals: ERO #019-0481 and #019-0750).

Please accept the following submission, endorsed by the undersigned [] organizations, as applying to the following Environmental Registry of Ontario notices: #019-0774, #019-0481 and #019-0750. Environmental Defence has several deep concerns with many aspects of Bill 132 and the impact the proposed changes will have on the environment and human health.

The following sections focus on changes proposed in Schedules 9, 14 and 16 of Bill 132, and provide a summary of recommendations. In addition to recommendations on specific proposals, this submission also provides comments on the policy process and lack of stakeholder consultation by the Government of Ontario.

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1. Executive Summary

The omnibus nature of Bill 132 renders it nearly impossible for stakeholders to fully grasp the potential environmental and human health consequences the proposed changes could have. The Bill proposes amendments to 12 environmental statutes, and the potential impacts cut across several important issues including: exposure to toxics, enforcement of polluters, groundwater quality, and risks to human health.

To introduce sweeping changes in the manner they are proposed here in Bill 132, without any prior notice or consultation, is to erode the civil society role in public policy making. Including the environmentally related components, Bill 132 proposes changes to 42 Ontario statutes, has been time allocated to limit debate, and allows only 30 days for the public and stakeholders to understand the changes and provide comment. This suggests that the Government of Ontario has little regard for public input. On the other hand, the pesticides and aggregate industries appear to have had a direct influence in the creation of the proposals in Bill 132 over an extended period of time^{1,2}.

The Bill proposes changes that could have significant environmental and human health consequences that could be avoided by inviting environmental stakeholders to consult prior to proposing legislative changes. As an overarching recommendation, we urge the government to repeal Schedules 9, 14 and 16 from Bill 132 and to initiate a process to meaningfully and adequately engage the public.

Recommendation: Repeal Schedules 9, 14 and 16 of Bill 132 until adequate public consultation on environment and human health impacts can be conducted and considered.

1 Ontario Stone, Sand and Gravel Association, Environmental Registry of Ontario Submission ERO 019-0556: Proposed Amendments to the *Aggregate Resources Act*: https://www.ossga.com/multimedia/2019-11-07-091657-33003/final_ossga_ara_changes_oct_2019.pdf

2 <https://croplife.ca/policy/>

The policy making process for Bill 132 also represents a severe undermining of the Environmental Bill of Rights and Environmental Registry of Ontario. Beyond the sheer volume of proposals involved in Bill 132, the content of the public notices are not reflective of the full breadth of proposed changes and their potential impact. For example, in posting #019 01750 entitled "Holding Polluters accountable by expanding the use of administrative monetary penalties for environmental contraventions", key impacts of the proposed changes are entirely missing from the registry notice, and the posting is misleading to the general public. For instance: the failure to explain changes to per diem penalties and the absence of any mention or explanation on the revocation of the reverse onus clause. The 30 day consultation period for this bill is the minimum required by law, but is not a sufficient amount of time for the public to understand all potential impacts to the environment.

The following sections provide comments on the potential impacts of proposed changes to the administrative monetary penalties framework, the *Pesticides Act* and associated regulations, and to the *Aggregate Resources Act*. A summary of Environmental Defence's recommendations can be found on page 9.

2. Administrative Monetary Penalties

Environmental Defence strongly supports the expansion of administrative monetary penalties to additional statutes. The Environmental Registry notice suggests Bill 132 operationalizes this expansion, but in fact Cabinet will need to approve regulations to do so, and no such regulations have been proposed to date. Therefore, it is impossible to say whether or not the enabling regulations will achieve the goals described in ERO notice #019-01750. In principle, the expansion of AMPs to new statutes is a welcomed step, however Environmental Defence was told by the Ministry of Environment, Conservation and Parks directly that there were no planned increases to enforcement capacity within the Ministry. Therefore it is uncertain whether, even when fully operationalized through regulation, the use of AMPs will be expanded in practice without additional resources in the Ministry to conduct enforcement activities. The changes that are clear, however, include many problematic elements.

Firstly, the proposed change to introduce maximum per-contravention fines rather than daily maximum fines represents a weakening of the framework. Capping maximum penalties at a fixed amount regardless of how many days a contravention occurs will undermine the AMPs effectiveness as a financial compliance incentive. Environmental Defence agrees with and supports major multi-day spills and contamination events being escalated to prosecution rather than dealt with by AMPs. However, the removal of per diem penalties will only limit the AMP

framework rather than strengthen it. We recommend that per diem penalties be preserved in the *Environmental Protection Act*, the *Ontario Water Resources Act and Nutrient Management Act* and introduced into the *Pesticides Act and Safe Drinking Water Act*.

Recommendation: Retain per diem penalties where they exist in current statutes and extended to the *Pesticides Act* and *Safe Drinking Water Act*.

The most concerning element of the proposed changes to the AMP framework is the revocation of the reverse onus clause³. This clause is an essential component in what makes AMPs swift and effective compliance tools. The reverse onus clause, currently outlined in the *Environmental Protection Act* ensures that if a polluter is fined with an AMP and wants to appeal, the onus is on the polluter to prove the contravention didn't happen or didn't cause an adverse effect⁴. This makes AMPs difficult to appeal, and reduces the caseload on the Environmental Review Tribunal. Further, it ensures that AMPs remain a faster and cheaper compliance tool for industrial polluters as the government of Ontario currently describes them⁵.

The reverse onus clause acts as a disincentive to appeal an AMP, and the change proposed in Bill 132 removes that disincentive. The reverse onus clause crucially assures certainty that an AMP will be a swift and inexpensive tool for the Ministry of Environment, Conservation and Parks to use. The reverse onus clause was introduced as part of the "Spills Bill" in 2005 that was introduced in response to increasingly prevalent toxic spills in Ontario⁶

The "Spills Bill" was introduced after contamination events such as the Imperial Oil spill in Sarnia, Ontario. That spill involved 250,000 litres of highly volatile industrial chemicals contaminating the St. Clair River and shutting down the local drinking water supply. The compliance framework for similar incidents was strengthened in 2005, but Bill 132 proposes to erode essential elements of this framework. The Environmental Registry notice fails to illustrate this component of the proposed changes, or communicate the potential impact to the public. Removing the reverse onus clause is a step in the opposite direction to holding polluters accountable and increasing enforcement ability, as the ERO notice states. By revoking this clause, Bill 132 will undermine AMPs as a compliance tool, make the Environmental Review Tribunal more expensive, and limit accountability of polluters. We recommend this clause 8 of Schedule 9 be stricken from Bill 132 and the reverse onus clause remain

³ Bill 132, *Better for People, Smarter For Business Act*, Schedule 9, cl 8

⁴ *Environmental Protection Act*, s 145.5: <https://www.ontario.ca/laws/statute/90e19#BK186>

⁵ Environmental penalties five year review, 2015: <https://www.ontario.ca/page/environmental-penalties-five-year-review>

⁶ *Environmental Enforcement Statute Law Amendment Act, 2005*:

<https://www.ola.org/en/legislative-business/bills/parliament-38/session-1/bill-133>

intact.

Recommendation: Retain the reverse onus clause in the *Environmental Protection Act* and the *Ontario Water Resources Act*.

Thirdly, Bill 132 proposes to remove the requirement for mandatory five-year public reports on the use of environmental penalties. This is an important component of public accountability that would be lost if the Bill passes as its written. While the requirement to post annual spreadsheets that include data on which polluters were fined with AMPs and the amounts, the five-year reviews are important transparency documents that will be lost. The five-year reviews present data on the AMPs levied in the five year period in a way that the public can easily interpret⁷. The annual reports do not illustrate trends or have any interpretation or context. The five year reports should remain mandatory as an important public accountability tool.

Recommendation: Maintain the mandatory five year reviews of AMPs under the *Environmental Protection Act* and the *Ontario Water Resources Act*.

For the Ministry of Environment, Conservation and Parks to proclaim that they are holding polluters accountable and increasing enforcement is inaccurate and misleading⁸. The proposals in Bill 132 allow Cabinet to expand the use of AMPs to other statutes, however they do not operationalize this expansion. Only the details of the regulations can clarify whether or not these actions will actually increase accountability and enforcement. However, no such regulations are proposed at this time and there is no effort to meet with environmental stakeholders to discuss the regulations. Meanwhile, the revocation of the reverse onus clause and the revocation of the separate yet related Municipal Industrial Strategies for Abatement (MISA) regulations⁹ represent a weakening of the framework.

Expanding the framework is a positive step in theory, however, if Bill 132 passes as its currently written that framework will be significantly weakened. The proposed changes undermine any progress gained by the potential expansion. These changes are a smoke in mirrors exercise that appear positive but erode the integrity of AMPs in the important details. We strongly urge the Ministry of Environment, Conservation and Parks to consider our recommendations and preserve the integrity of the AMP framework.

7 Environmental penalties five year review, 2015: <https://www.ontario.ca/page/environmental-penalties-five-year-review>

8 <https://ero.ontario.ca/notice/019-0750>

9 <https://ero.ontario.ca/notice/019-0773>

3. Pesticides (Schedule 9)

The proposed amendments to the Pesticides Act in Schedule 9 of Bill 132 and related proposed amendments to the Pesticide Regulation (O. Reg. 63/09. General) undermine a robust and precautionary regulatory framework that has provided Ontarians and ecosystems with strong protections from harmful pesticides.

Environmental Defence recommends that the government repeals Schedule 9 from Bill 132 until adequate public consultations are conducted and concerns about environmental and public health risks are addressed.

Environmental Defence intends to provide detailed comments to highlight specific concerns related to the proposed amendments to the Pesticide Regulation by the consultation deadline of December 12, 2019 (ERO number 019-0601).

4. Occupational Health and Safety Act (Schedule 14)

Schedule 14 of Bill 132 proposes to repeal section 34 of the Occupational Health and Safety Act, which requires that any new chemical or biological agent is reported to the government if the chemical or agent is to be used in workplaces in Ontario. Furthermore, the section enables the government to acquire from the manufacturer, distributor or supplier specific information about the chemical or agent and its manner of use. Such information can be crucial for understanding potential occupational hazards and risks. The repeal of S. 34 eliminates the Ontario government's ability to ensure that new chemicals manufactured, distributed or supplied for commercial or industrial uses in occupational settings do not pose undue risk or harm to workers and communities.

Workers are often disproportionately affected by the acute and chronic effects of harmful chemicals. The federal government's Chemicals Management Program enabled by the Canadian Environmental Protection Act (CEPA) has neglected occupational exposures in assessing and managing the risks of existing and new chemicals since the introduction of the program in 2006.

According to Health Canada, "while CEPA 1999 is broad in scope, occupational exposure has not been included in risk assessments or risk management carried out under the CMP. This is a departure from the practices of most other international chemicals management agencies, where occupational exposure is often the driver for risk management. The WHMIS system currently operates in parallel with CMP,

but there is very little integration between the two programs.”¹⁰

The repeal of S. 34 would leave workers in Ontario more vulnerable to the potential harmful effects of new chemicals that pose an acute or chronic health risk.

Recommendation: Repeal Schedule 14 of Bill 132 to ensure workers in Ontario continue to have regulatory protections from potentially harmful new chemicals.

5. Aggregate Extraction

Bill 132 proposes to legislate changes included in a September 20, 2019 Environmental Registry of Ontario notice regarding aggregate extractions¹¹. The Bill and the legislative amendments were proposed before the 45 day public comment period was closed. The Bill was introduced on October 28, 2019 and the deadline for public comment on changes to aggregate resource extraction closed on November 4, 2019. This demonstrates a blatant disregard for public feedback, and sends a clear message to the interested public that their concerns and feedback are of little concern and will not be considered in policy making.

In addition to the disregard for public input, the proposed changes themselves present many issues and potential impacts to the environment and human health. There is a demonstrated need to improve the environmental footprint of aggregate operations in Ontario, as described in the Environmental Commissioner’s 2017¹². These legislative amendments propose a step in the entirely opposite direction by weakening oversight, undermining municipalities’ powers to protect groundwater, and removing key mitigation measures designed to mitigate the environmental risks of aggregate production.

Schedule 16 proposes to remove municipalities’ authority to issue zoning by-law restrictions on depth of extraction. The proposal to make these types of zoning by-laws inoperative weakens groundwater protection and directly interferes with a municipalities’ responsibility to identify and safeguard the groundwater resources their communities rely on as per the Provincial Policy Statement section 2.2.1 under the *Planning Act*¹³. Municipalities’ role in protecting groundwater should be maintained and supported as the responsible government for delivering safe drinking water to its citizens and preserving future water resources for growing

10 <https://www.canada.ca/en/health-canada/programs/consulting-integrated-strategy-protection-canadian-workers-exposure-chemicals/document.html>

11 <https://ero.ontario.ca/notice/019-0556>

12 ECO, 2017 *Annual Report: Good Choices, Bad Choices*, pg. 168.

13 Provincial Policy Statement, 2014: <https://www.ontario.ca/document/provincial-policy-statement-2014/part-v-policies-20#section-2>

populations.

Recommendation: Section 3 of Schedule 16 be removed from Bill 132 and municipalities ability to issue zoning-bylaws for depth of extraction be preserved.

Proposed amendments to the *Aggregate Resources Act* will also allow proponents of aggregate resource extraction projects to “self-file” amendments to their approved site plans for “routine activities”. However, the details on what would constitute a routine activity have not been disclosed. Environmental Defence agrees with and supports the recommendation presented in the Canadian Environmental Law Association submission and brief, that this “permit-by-rule” approach should not be pursued by the Ministry of Natural Resources and Forestry¹⁴. The details and criteria for what will be counted as “low-risk” or routine activities are critical in evaluating potential environmental and human health impacts. Aggregate extractions have many environmental components and even small changes to site plans or operations could have serious impacts. As such, these changes should continue to require Ministerial approval and adequate oversight. Therefore, amendments to section 18(2) should not move forward.

Recommendation: Do not enact the amendments proposed to section 18(2) of the *Aggregate Resources Act*.

Finally, Schedule 16 proposes to remove the consideration of haulage routes and proposed truck traffic to and from aggregate sites in a Minister’s or Local Appeal Planning Tribunal (LPAT) decision on a licence application. This proposed amendment would apply to all pending and future licence applications. Traffic is a major concern for residents and haul trucks can cause major and costly damage to municipal infrastructure. In addition, Schedule 16 proposes to make it easier for aggregate site boundaries to be expanded to include adjoining road allowances when “prescribed conditions” are met. Similarly to the above, the prescribed conditions have not been defined by regulation and is another example of the problematic “permit-by-rule” approach described above. We recommend that truck traffic and haulage routes remain a consideration in Ministers’ and LPAT decisions, and maintain oversight in site boundary modifications.

Recommendation: Maintain the need to consider impacts to local roadways in site approval decisions, and the oversight of site boundary modifications.

The changes proposed in Bill 132, Schedule 16 have not only been made in blatant disregard for environmental stakeholder input but also clearly flow from the

¹⁴ CELA Brief on Proposed Changes to the *Aggregate Resources Act* and Ontario Regulation 244/97: <https://cela.ca/wp-content/uploads/2019/11/CELA-Response-ARA-proposals.pdf>

Aggregates Summit as described in the MNR's communications about the ARA amendments. The results of the Aggregates Summit and their integration into these proposed legislative amendments, as CELA states in their November 4, 2019 brief are "one-sided attempts to satisfy the aggregate industry, and they do not constitute fair, balanced and effective measures that safeguard all public and private interests that may be affected by aggregate operations¹⁵."

As stated in Environmental Defence and Ontario Nature's November 4, 2019 submission to Environmental Registry notice on ARA amendments, the proposed changes represent a weakening of environmental protections that are not in the public interest and should be reconsidered¹⁶.

6. Summary of Recommendations

Recommendation #1: Repeal Schedules 9 and 16 from Bill 132 until adequate public consultation on environment and human health risks can be conducted and considered in a redrafting of the proposed changes.

Recommendation #2: Retain per diem penalties where they exist in current statutes and extended to the *Pesticides Act* and *Safe Drinking Water Act*.

Recommendation #3: Retain the reverse onus clause in the *Environmental Protection Act* and the *Ontario Water Resources Act*.

Recommendation #4: Maintain the mandatory five year reviews of AMPs under the *Environmental Protection Act* and the *Ontario Water Resources Act*.

Recommendation #5: Repeal Schedule 14 of Bill 132 to ensure workers in Ontario continue to have regulatory protections from potentially harmful new chemicals.

Recommendation #6: Section 3 of Schedule 16 be removed from Bill 132 and municipalities ability to issue zoning-bylaws for depth of extraction be preserved.

Recommendation #7: Do not enact the amendments proposed to section 18(2) of the *Aggregate Resources Act*.

Recommendation #8: Maintain the need to consider impacts to local roadways in site approval decisions, and the oversight of site boundary modifications.

¹⁵ CELA Brief on Proposed Changes to the *Aggregate Resources Act* and *Ontario Regulation 244/97*: <https://cela.ca/wp-content/uploads/2019/11/CELA-Response-ARA-proposals.pdf>

¹⁶ Ontario Nature and Environmental Defence, *Proposed amendments to the Aggregate Resources Act*: <https://ontarionature.org/wp-content/uploads/2019/11/ERO-019-0556-ARA-amendments.pdf>

7. Endorsing Organizations

This submission and its recommendations are supported by the following organizations: