



Office of the Council
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CHIPPEWAS OF THE THAMES FIRST NATION



Administration Office
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November 27, 2019

VIA: Environmental Registry of Ontario Online Portal

Mr. Michael Helfinger,
56 Wellesley Street West, 11th Floor
Toronto, ON M5S 2S3

Dear Mr. Helfinger,

RE: Bill 132, Better for People, Smarter for Business Act, 2019
ERO number: 019-0774

The Treaties, Lands and Environment Department for Chippewas of the Thames First Nation provides the attached comments in response to the proposed *Better for People, Smarter for Business Act, 2019*.

Chippewas of the Thames First Nation is a sovereign and self-governing nation residing on land that has never been ceded. Through a series of Treaties made with the Crown we agreed to share our duties and responsibilities over our traditional territory. We understand consultation to be a dialogue between communities, a mutual engagement, rather than a mere notification. Our engagement with your office regarding the proposed *Better for People, Smarter for Business Act, 2019* is governed by our Wiindmaagewin Consultation Protocol. We invite you and your colleagues to abide by this protocol as the foundation of our work together in relation to this proposed initiative.

We also remind you of your obligations under Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

We share these lands and we take seriously our obligation to consider the potential impacts of these proposed changes on seven generations of future Chippewas of the Thames First Nation citizens. As there may be potential impacts on the exercise of our rights caused by this initiative, we appreciate the opportunity to provide our comments. However, we are concerned that the development of this legislative proposal has failed to meet the standards of consultation and engagement expected by First Nations in Ontario. We request the opportunity to meet with you or your staff to further discuss our concerns.



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Chippewas of the Thames First Nation has invested time, resources and expertise into the development of the attached submission. No capacity funding has been provided to Chippewas of the Thames First Nation to support the costs of this work. In accordance with the Wiindmaagewin Consultation Protocol and as part of our consultation fee schedule, we have enclosed invoice # 11-003-19. We look forward to further discussions with the Government of Ontario regarding consultation capacity needs and the implementation of effective measures to enhance collaboration between our governments.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kelly Riley,
Treaties, Lands and Environment Director
Chippewas of the Thames First Nation
519-289-5555 Ext 249

Encls: invoice # 11-003-19
Chippewas of the Thames First Nations Comments – Bill 132



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Comments on the proposed *Better for People, Smarter for Business Act, 2019*

Chippewas of the Thames First Nation requests that the following comments be addressed and incorporated into Bill 132, the proposed *Better for People, Smarter for Business Act, 2019*.

SCHEDULE 9 - Proposed Changes to the *Environmental Protection Act*

Increased Contamination

Chippewas of the Thames First Nation is concerned that the modification of subsection 14(1) of the *Environmental Protection Act* to increase the threshold for the application of the prohibition against discharging contaminants into the environment from “may cause” to “is likely to cause” an adverse effect will result in increased environmental contamination in our traditional territory. The potential impacts of environmental contaminants on the rights and interests of land users from Chippewas of the Thames First Nation are unique. Our community members rely on environmental resources for food, social and ceremonial purposes and confidence in the safety and quality of those resources is important to the exercise of our aboriginal and treaty rights.

COMMENT 1 - Chippewas of the Thames First Nation requests that section 4(1) of Schedule 9 of Bill 132 be withdrawn and the existing threshold of “may cause” be maintained.

Enforcement

Section 16 of Schedule 9 introduces a new approach to enforcement that would utilize “administrative penalties” to promote compliance. Included in the proposed changes is a limitation on the total amount of the administrative penalty which may be applied. It stipulates that administrative penalties shall not exceed \$200,000 for each contravention. The repeal of section 182.1 of the *Environmental Protection Act* will also remove the daily application of fines potentially reducing overall fines for polluters responsible for ongoing contraventions. Chippewas of the Thames First Nation is concerned that these changes may diminish the motivation for polluters to remedy on-going contraventions and may fail to effectively deter major contaminant discharges.

COMMENT 2 - Chippewas of the Thames First Nation requests that section 16 of Schedule 9 of Bill 132 be modified to improve compliance through the application of increasing penalties for ongoing contraventions and higher penalties overall to deter major polluters.



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Schedule 16 – Proposed changes to the *Fish and Wildlife Conservation Act*

Section 39 of Schedule 16 proposes new powers for the Minister to address concerns relating to the management of wildlife disease. Chippewas of the Thames First Nation supports initiatives to respond to infectious diseases in wildlife populations. However, we have serious concerns relating to the absence of any content in the proposed legislative changes relating to the protection of aboriginal and treaty rights or consultation and accommodation of First Nations. The proposed changes include far reaching powers for the Minister to prohibit or restrict the hunting, trapping or possession of wildlife or to prohibit or restrict the purchase, sale or disposition of wildlife. The Minister would also be empowered to authorize individuals to undertake activities to assist in controlling or eradicating wildlife disease. These actions go to the heart of the relationship between Chippewas of the Thames First Nation and our traditional territory. Our stewardship responsibilities include obligations to consider and care for wildlife species. It is imperative that Chippewas of the Thames First Nation be engaged as a full partner in actions taken to manage wildlife populations within our traditional territory. Furthermore, in order for the proposed measures to be effective, it will be necessary for the Minister to collaborate with First Nations to ensure coordination of approaches in relation to lands and resources falling within First Nations jurisdiction.

COMMENT 3 - Chippewas of the Thames First Nation requests that the proposed changes to the *Fish and Wildlife Conservation Act* included in Schedule 16 be amended to provide for mandatory consultation with First Nations regarding the establishment of wildlife disease control and surveillance zones or measures to control or eradicate a wildlife disease.

Schedule 16 – *Aggregate Resources Act*

Section 3.1 of the *Aggregate Resources Act* includes a requirement that the Minister consider whether adequate consultation with Aboriginal communities has been carried out before exercising powers relating to licences or permits that have the potential to adversely affect established or credibly asserted aboriginal or treaty rights. There are a substantial number of pits and quarries located within the traditional territory of Chippewas of the Thames First Nation. Despite the requirement that the Minister consider whether adequate consultation with First Nations communities has been carried out, most of the aggregate development within the traditional territory of Chippewas of the Thames First Nation has proceeded without appropriate consultation or accommodation. Chippewas of the Thames First Nation recommends that the *Aggregate Resources Act* be amended to require assessment of the impact of proposed developments on aboriginal and treaty rights and mandatory consideration of Indigenous knowledge.

COMMENT 4 - Chippewas of the Thames First Nation requests that Schedule 16 be amended to include changes to the *Aggregate Resources Act* that would require mandatory consideration of Indigenous knowledge and assessment of potential impacts on aboriginal and treaty rights.



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General Proposals

Protection of Aboriginal and Treaty Rights

Section 2 of the *Mining Act* states that it should be implemented in a “manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult...” Chippewas of the Thames First Nation encourages the Government of Ontario to consider adopting similar provisions in other legislative and regulatory instruments to promote the effective protection of aboriginal and treaty rights. Recognition and affirmation of aboriginal and treaty rights is the foundation of reconciliation. Inclusion of similar language in other Ontario legislation that may have impacts on aboriginal and treaty rights would be a powerful statement by the Government of Ontario of its commitment to work in partnership with Indigenous Peoples.

COMMENT 5 - Chippewas of the Thames First Nation encourages the Government of Ontario to amend the proposed *Better for People, Smarter for Business Act, 2019* to advance reconciliation by including purpose sections similar to section 2 of the *Mining Act* in legislative and regulatory instruments that may have impacts on aboriginal and treaty rights.

Non-Derogation

Chippewas of the Thames First Nation supports the inclusion of non-derogation clauses in all legislation that may have a potential impact on aboriginal and treaty rights. Non-derogation clauses serve the important purpose of expressing to all the clear intention of the legislature that legislation should be interpreted and implemented in a manner consistent with section 35 of the *Constitution Act, 1982*. Section 6 of the *Crown Forest Sustainability Act* includes a non-derogation clause and may serve as a model for other Ontario legislation.

COMMENT 6 - Chippewas of the Thames First Nation encourages the Government of Ontario to amend the *Better for People, Smarter for Business Act, 2019* to include non-derogation clauses for all legislation that may have impacts on aboriginal and treaty rights.

Chippewas of the Thames First Nation reserves the right to comment further on other matters addressed within the proposed *Better for People, Smarter for Business Act, 2019*. We request that any changes to the proposed legislation be forwarded to our office for comment prior to proceeding to the third reading of Bill 132.

