

VIA EMAIL: CharitiesComplianceDivisi.LPRA@cra-arc.gc.ca

March 21, 2012

Compliance Division, Charities Directorate
Canada Revenue Agency
Ottawa ON, K1A 0L5

Dear Sir or Madam:

**Re: Letter of Complaint Regarding Charitable Status of
Environmental Defence Canada Inc.
CRA Registration # 118830835RR0001**

We are instructed by the EthicalOil.org.¹

A complaint is hereby lodged on behalf of our said client in respect of Environmental Defence Canada Inc. ("**Environmental Defence**"), a charity registered with the Canada Revenue Agency ("**CRA**"). We are instructed to bring to your attention the matters set out below and request that you determine whether or not Environmental Defence is in contravention of the CRA rules surrounding registered charities and political activity. A registered charity is prohibited from engaging in political activity, and if you find that Environmental Defence is in contravention of the CRA rules, then Environmental Defence should have its charitable status revoked or otherwise be sanctioned by the CRA.

BACKGROUND

Environmental Defence is a registered charity that refers to itself as an "environmental action organization." Its mission is to "challenge, and inspire change in government, business and people to ensure greener, healthier and prosperous life for all".² Environmental Defence is engaged in a number of environmental campaigns. One such campaign, "Exposing the Tar Sands," has the following stated purpose:

The tar sands are the fastest growing source of global warming pollution in Canada. Yet, the federal government has no plan to curb their emissions.

Global warming isn't the only environmental problem made worse by the tar sands. Toxic waste ponds, air and water pollution, habitat and species destruction are all legacies of the enormous operations in northern Alberta.

¹ Legal name "Ethical Oil Institute".

² Environmental Defence, "About Us," <http://environmentaldefence.ca/about>.

We're not afraid to talk about how the tar sands are TARNishing the maple leaf. We've published a number of reports, and placed some ads about their effect on our health and our economy. We're demanding action from Ottawa to transition away from dirty oil, such as the tar sands, to clean energy and to reduce the negative effects of the tar sands while that is happening.

It doesn't have to be this way. There are ways to curb the damage being done to the tar sands. Yet the federal government has so far failed to get industry to clean up.

Because of their sheer scale, all Canadians are affected by the tar sands, no matter where they live.³

On February 12, 2011, Environmental Defence issued a press release entitled "Peter Kent Questioned on 'Ethics' in Thornhill: Environmentalists Scale Up Response To Tar Sands With Ads, Canvassing, And Calling All 50,000 Households," which stated:

Today Environmental Defence published in the local Thornhill newspaper *The Liberal* the winning letter to Environment Minister Peter Kent on "ethics" as part of a contest launched in the wake of the Minister's calling oil from the tar sands "ethical oil." The winner was Cheryl Shour from Toronto who drew on a question her daughter asked about Minister Kent: "Doesn't the minister of environment have to care about the environment?"

The contest is one part of a multi-pronged response in Peter Kent's home base in Thornhill, which includes ads, canvassing, and calling every household to identify citizens who disagree with the Minister's tar sands comments.

"The job of the environment Minister is to protect the environment, not to provide taxpayer- funded public relations help to the tar sands industry," said Gillian McEachern of Environmental Defence. "The citizens of Thornhill are now in a unique position to send that message."

Over the next few months, Environmental Defence is actively reaching out to Thornhill residents about the tar sands. The first phase of the campaign includes:

- The ethics contest, where winning entries can be viewed at environmentaldefence.ca/ethicscontest
- Street and door-to-door canvassing in Thornhill as part of a petition drive. Yesterday, the first few hundred signatures were delivered to his constituency office

³ Environmental Defence, "Exposing the Tar Sands," <http://environmentaldefence.ca/campaigns/exposing-tar-sands>.

- Calling all 50,000 households in Thornhill to identify those who disagree with the Minister's tar sands comments
- Ads in local media

Peter Kent was appointed environment minister of January 4, 2011. In several media interviews since his appointment, he has called tar sands oil 'ethical' and 'regulated' despite independent panels concluding that Ottawa is not meeting its responsibilities in that industry. The tar sands are the fastest growing source of global warming pollution in Canada, are leaking 11 million litres per day of toxic tailings into the surrounding environment, and First Nations communities living downstream of tar sands development have repeatedly raised concerns about elevated cancer rates.⁴

Environmental Defence is a signatory to an open letter addressed to Ambassadors and European decision makers. This letter will be delivered to various European powers as part of the "Dirty Oil Diplomacy" campaign headed up by Climate Action Network in partnership with Environmental Defence and other environmental organizations. The letter states:

Dear Ambassadors and European decision makers,

The undersigned, a wide range of Canadian civil society groups, are writing to ask you to support the European Commission's proposal on the implementation of the European Union's Fuel Quality Directive.

We understand that the EU Fuel Quality Directive (FQD) is an important policy aimed at reducing emissions in Europe's transportation sector. The Commission's proposal rightly distinguishes unconventional fuels produced from coal, natural gas, oil shale and bitumen (or tar sands). These fuels typically have, on average, higher carbon footprints than conventional fuels.

We also understand that our federal government, joined by the Albertan government and industries active in the Canadian tar sands, have been lobbying against assigning bitumen a separate value. This lobbying has included: private meetings; open letters; public advertisements; being the only non-European country to participate in the FQD consultation; and threats that the proposal will be seen as a barrier to trade.

The FQD does not unduly target the Canadian tar sands. Not only are other high carbon fuels (including other potential producers of bitumen) assigned a value, the proposal allows suppliers to prove that their specific extraction or production method has lower emissions than a default value. This policy also provides important incentives for industry to clean up their production processes by

⁴ Environmental Defence, "Peter Kent Questioned On 'Ethics' In Thornhill," February 12, 2011, <http://environmentaldefence.ca/articles/peter-kent-questioned-%E2%80%99Cethics%E2%80%9D-in-thornhill>.

including this provision to apply for a project-specific value. A recent assessment of 13 scientific studies found tar sands fuels to be 18 to 49 per cent more GHG intensive than conventional oil consumed in the EU. The independent, peer-reviewed study financed by the European Commission is consistent with these findings.

Further, while the CETA negotiations have been a venue for this lobbying, trade agreements and rules should not be allowed to override social and environmental priorities.

We are collectively faced with a climate crisis that requires urgent action. Policies that discourage the use of high carbon fuels play an important role in reducing emissions alongside other measures such as increasing the efficient use of energy, renewable energy expansion and public transportation. The Canadian government has fallen far behind the EU and many other countries in this regard.

Rather than lobby to weaken the efforts of other countries, the Canadian government should focus on efforts that reduce emissions, support green jobs expansion and better regulate the serious social and environmental consequences of tar sands development. We are actively working in Canada to encourage these actions.

On behalf of millions of Canadians, please put our collective need to reduce greenhouse gas emissions ahead of narrow commercial interests and advance the European Commission's EU FQD proposal.⁵

Environmental Defence also runs a campaign entitled "Green Power." The "Green Power" materials state:

Environmental Defence is a leading member of the Green Energy Act Alliance, a grassroots coalition of trade associations, environmental groups, community groups, First Nations, farmers and land owners which fought successfully for the creation for the *Green Energy and Economy Act* in 2009.⁶

Environmental Defence also campaigned in support of the Ontario Liberals MicroFIT Program and "worked with the Green Energy Act Alliance to get the ground breaking *Green Energy Act* passed in Ontario".⁷

On January 18, 2012, Environmental Defence posted an article on its website titled "Statement by Rick Smith, Executive Director of Environmental Defence, in response to President Obama's

⁵ Climate Action Network Canada, Environmental Defence *et al*, "Open Letter," <http://canadians.org/energy/documents/tarsands/open-letter-EU-FQD-12.pdf>.

⁶ Environmental Defence, "Green Power," <http://environmentaldefence.ca/campaigns/green-power>.

⁷ Environmental Defence, "About Us," <http://environmentaldefence.ca/about>.

decision to reject TransCanada's proposed Keystone XL tar sands pipeline." The article stated that the U.S. decision to reject the Keystone XL pipeline:

... stands in stark contrast to the role that Canada's federal government has played in recent weeks with respect to Enbridge's proposed Northern Gateway tar sands pipeline, instigating a smear campaign against those opposed to the project in an effort to avoid talking about the contribution to catastrophic climate change and increased air and water pollution it would bring.

The unwillingness of the industry to change and the failure of the federal government to do its job to regulate the sector are fueling [*sic*] the concerns among citizens in Canada, the U.S., Europe and elsewhere about the environmental damage caused by tar sands extraction. No amount of public relations spin can cover up the fact that expanding tar sands is a dangerous route for our health and the planet.⁸

The Environmental Defence website includes a page titled "Tides Foundation and Tides Canada Foundation," which states:

Oil extraction from the tar sands is the dirtiest project on earth. It catastrophically pollutes local land and water, and it contributes to climate change with global consequences. With the support of Tides Foundation and its Canadian counterpart, Tides Canada foundation, we are calling on the federal government to confront this industry and eliminate loopholes in federal carbon policy that are allowing it to continue.⁹

In an article posted on the Environmental Defence website titled "First Nation and Environmental Leaders in Washington to Discuss New Reality of Canadian Majority Government with U.S. Tar Sands Decision-Makers" on May 26, 2011, Gillian McEachern of Environmental Defence stated:

The tar sands are now a global concern, and the pressure will keep building for the new majority government in Canada. [...] Political leaders in the U.S. and elsewhere will be watching closely to see if tar sands impacts continue to be glossed over or if real changes are made.¹⁰

⁸ Environmental Defence, "Statement by Rick Smith, Executive Director of Environmental Defence, in response to President Obama's decision to reject TransCanada's proposed Keystone XL tar sands pipeline," January 18, 2012, <http://environmentaldefence.ca/articles/statement-rick-smith-executive-director-environmental-defence-in-response-president-obama%E2%80%99s>.

⁹ Environmental Defence, "Tides Foundation and Tides Canada Foundation," <http://environmentaldefence.ca/tides-foundation-and-tides-canada-foundation>.

¹⁰ Environmental Defence, "First Nation and Environmental Leaders in Washington to Discuss New Reality of Canadian Majority Government with U.S. Tar Sands Decision-Makers," May 26, 2011, <http://environmentaldefence.ca/articles/first-nation-and-environmental-leaders-in-washington-discuss-new-reality-canadian-majority->

Environmental Defence runs a campaign entitled “Good Green Jobs.” The “Good Green Jobs” campaign materials state:

Research done by Blue Green Canada, an alliance between Environmental Defence and the United Steelworkers, shows that Canada has lost 66,000 jobs because of the federal government's lack of action on clean energy.¹¹

The May 6, 2011 Environmental Defence article “With Federal Election Over, Provincial Leaders Challenged to Come Clean on Green Energy Jobs: “Will They Take My Job Away?” states:

Now that the federal election is over, Ontario’s provincial parties are being challenged to come clean with citizens on green energy jobs. Today, canvassers will be outside the constituency offices of Ontario’s three elected leaders in Ottawa, Beamsville and Hamilton, and geo-targeted online ads will be starting. In each case, the party leaders are being challenged to answer whether they will take away the clean energy jobs now being created in Ontario.

“There is a clean energy jobs boom unfolding in Ontario that could come to a screeching halt depending on what position Ontario’s political parties take,” said Rick Smith, executive director of Environmental Defence. “Those now getting hired have a right to know whether elected officials are planning to take their jobs away. We need our elected officials to come clean on where they stand on green energy jobs.”¹²

The November 28, 2011 “Statement from Environmental Defence Climate and Energy Program Manager, Gillian McEachern on the Government of Canada's potential withdraw from the Kyoto Protocol,” states:

If the Government of Canada officially pulls out of the Kyoto Protocol next month, it will make Canada the only country in the world to have signed and ratified the international agreement to tackle climate change, and then walked away from it. This news on the first morning of negotiations in Durban, SA, further hurts Canada's reputation for being a progressive actor on the world stage. Instead, we're throwing a wet blanket on progress towards a binding, international deal on climate change.

Canada had already disregarded the commitment made under the Kyoto Protocol to cut carbon pollution, and has not put in place rules to limit emissions from big polluters like the tar sands industry. Yet in the past, Canada has played

¹¹ Environmental Defence, “Good Green Jobs,” <http://environmentaldefence.ca/campaigns/good-green-jobs>.

¹² Environmental Defence, “With Federal Election Over, Provincial Leaders Challenged to Come Clean on Green Energy Jobs: “Will They Take My Job Away?,” May 6, 2011, <http://environmentaldefence.ca/articles/federal-election-over-provincial-leaders-challenged-come-clean-green-energy-jobs-%E2%80%9Cwill-they>.

a constructive role in solving major environmental crises by working with other countries such as our response to the ozone issue through the Montreal Protocol. We can do so again.¹³

CRA RULES REGARDING CHARITIES AND POLITICAL ACTIVITY

Section 149.1(1) of the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp.) provides that a charitable organization is required to devote all of its resources to charitable activities. Section 149.1(6.2) provides that a charitable organization may donate part of its resources to political activities, provided that the activities are ancillary and incidental to its charitable activities and do not include the support of, or opposition to, any political party or candidate. The application of the *Income Tax Act* is described in CRA Policy Statements, as set out below.

An organization with political purposes does not qualify for registration as a charity. Political purposes are those that seek to:

- further the interests of a particular political party; or support a political party or candidate for public office; or
- retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.¹⁴

Registered charities are prohibited from participating in partisan political activity. Partisan political activity involves direct or indirect support of, or opposition to, any political party or candidate for public office. A charity may make the public aware of its position on an issue, even if that position is supported by a candidate or political party, provided:

1. it does not explicitly connect its views to any political party or candidate for public office;
2. the issue is connected to its charitable purposes;
3. its views are based on a well-reasoned position; and
4. public awareness campaigns do not become the charity's primary activity.¹⁵

¹³ Environmental Defence, "Statement from Environmental Defence Climate and Energy Program Manager, Gillian McEachern on the Government of Canada's potential withdraw from the Kyoto Protocol," November 28, 2011, <http://environmentaldefence.ca/articles/statement-environmental-defence-climate-and-energy-program-manager-gillian-mceachern-govern>.

¹⁴ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

¹⁵ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

A charity may provide information to the public on how all Members of Parliament or legislative body voted on an issue connected with the charity's purpose. However, a charity must not single out the voting pattern of any one elected representative or political party.¹⁶

A registered charity may take part in *limited* political activities provided the activities are non-partisan and connected and *subordinate* to the charity's purposes.¹⁷ A charity engages in political activity if it:

1. explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government);
2. explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if retention is being reconsidered by a government), opposed, or changed;
3. explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country; or
4. attempts to sway public opinion on social issues.¹⁸

While not all attempts to inform public opinion on an issue are political activity, any purpose that suggests convincing or needing people to act in a certain way and which is contingent upon a change to law or government policy is a political purpose.¹⁹

THE COMPLAINT

Based on the CRA requirements set out above, Environmental Defence engages in prohibited political and partisan activity. In its campaign "Exposing the Tar Sands," Environmental Defence states that it is "demanding action from Ottawa to transition away from dirty oil, such as the tar sands, to clean energy and to reduce the negative effects of the tar sands while that is happening" and that "the federal government has so far failed to get industry to clean up".²⁰ These statements are political activity in that they explicitly communicate to the public that the

¹⁶ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

¹⁷ Canada Revenue Agency, "Other acceptable activities permitted within certain limits," January 7, 2010, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/ctvts/thr-eng.html>.

¹⁸ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

¹⁹ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

²⁰ Environmental Defence, "Exposing the Tar Sands," <http://environmentaldefence.ca/campaigns/exposing-tar-sands>.

federal government's policies related to Alberta's oil sands should be opposed and changed. The statements also attempt to sway public opinion on the federal government's oil sands policies.²¹

Environmental Defence engaged in partisan political activity when it issued its press release "Peter Kent Questioned on 'Ethics' in Thornhill." This press release explicitly opposed the views of one particular elected representative: Environment Minister Peter Kent. The press release refers to a "multi-pronged response in Peter Kent's home base in Thornhill, which includes ads, canvassing, and calling every household to identify citizens who disagree with the Minister's tar sands comments." The press release states that Environmental Defence would call all 50,000 households in Thornhill regarding Minister Kent's comments on the oil sands, and "identify those who disagree" with him. This activity was an explicit call to political action and communicated to the public that the policies of Canada's Environment Minister should be opposed. The press release encouraged the residents of Thornhill to send a message to Minister Kent, demonstrating Environmental Defence's intention to put pressure on the Environment Minister to change oil sands policies.²² This is prohibited partisan political activity.

The open letter which is part of the Dirty Oil Diplomacy campaign is political activity because it encourages foreign governments to adopt the European Union Fuel Quality Directive and oppose the policies of the governments of Canada and Alberta as related to the Oil Sands. The letter also explicitly communicates the government of Canada should change its policies regarding the Oil Sands.²³

Environmental Defence's "Green Power" campaign is also political activity. As a part of this campaign, Environmental Defence was a leading member of the Green Energy Act Alliance, which lobbied in favour of Ontario's *Green Energy and Economy Act* in 2009.²⁴ Environmental Defence explicitly communicated to the public that the law in Ontario should be changed, and participated in an organized alliance to achieve this end.

Environmental Defence's Keystone XL pipeline article also constitutes political activity. The article refers to the federal government's "smear campaign" against individuals opposed to pipeline projects, and states that the federal government is failing to "do its job" in regulating the oil and gas sector.²⁵ These statements are political activity in that they communicate that

²¹ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

²² Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

²³ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>; Climate Action Network Canada, Environmental Defence *et al*, "Open Letter," <http://canadians.org/energy/documents/tarsands/open-letter-EU-FQD-12.pdf>.

²⁴ Environmental Defence, "Green Power," <http://environmentaldefence.ca/campaigns/green-power>.

²⁵ Environmental Defence, "Statement by Rick Smith, Executive Director of Environmental Defence, in response to President Obama's decision to reject TransCanada's proposed Keystone XL tar sands pipeline," January 18, 2012, <http://environmentaldefence.ca/articles/statement-rick-smith-executive-director-environmental-defence-in-response-president-obama%E2%80%99s>.

the federal government's policies on the energy sector, pipeline projects and climate change should be opposed, and attempt to sway public opinion accordingly.²⁶

The "Tides Foundation and Tides Canada Foundation" page on the Environmental Defence website is also political activity, because it expressly calls on the federal government to change its policies regarding carbon emissions and the energy industry.²⁷ Further, the comments of Gillian McEachern in the article "First Nation and Environmental Leaders in Washington to Discuss New Reality of Canadian Majority Government with U.S. Tar Sands Decision-Makers," are political activity in that they express opposition to the federal government's oil sands policies.²⁸

The materials on the Environmental Defence website regarding the "Good Green Jobs" campaign also constitute political activity. In stating that the federal government's energy policies have cost the Canadian economy 60,000 jobs, Environmental Defence effectively stated that the federal government's energy policies should be opposed and changed.²⁹

The article "With Federal Election Over, Provincial Leaders Challenged to Come Clean on Green Energy Jobs: "Will They Take My Job Away?" is political activity because it (and the canvassing the article refers to) was intended to organize to put pressure on Ontario's political parties to retain the current policies of the Ontario government regarding green energy jobs.³⁰ The "Statement from Environmental Defence Climate and Energy Program Manager, Gillian McEachern on the Government of Canada's potential withdraw from the Kyoto Protocol," also constitutes political activity in that it communicates that the federal government's positions on the Kyoto protocol and climate change should be opposed and changed.³¹

²⁶ Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

²⁷ Environmental Defence, "Tides Foundation and Tides Canada Foundation," <http://environmentaldefence.ca/tides-foundation-and-tides-canada-foundation>; Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

²⁸ Environmental Defence, "First Nation and Environmental Leaders in Washington to Discuss New Reality of Canadian Majority Government with U.S. Tar Sands Decision-Makers," May 26, 2011, <http://environmentaldefence.ca/articles/first-nation-and-environmental-leaders-in-washington-discuss-new-reality-canadian-majority->; Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

²⁹ Environmental Defence, "Good Green Jobs," <http://environmentaldefence.ca/campaigns/good-green-jobs>; Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

³⁰ Environmental Defence, "With Federal Election Over, Provincial Leaders Challenged to Come Clean on Green Energy Jobs: "Will They Take My Job Away?," May 6, 2011, <http://environmentaldefence.ca/articles/federal-election-over-provincial-leaders-challenged-come-clean-green-energy-jobs-%E2%80%9Cwill-they>; Canada Revenue Agency, "Policy Statement - Political Activities," February 14, 2011, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>.

³¹ Environmental Defence, "Statement from Environmental Defence Climate and Energy Program Manager, Gillian McEachern on the Government of Canada's potential withdraw from the Kyoto Protocol," November 28, 2011, <http://environmentaldefence.ca/articles/statement-environmental-defence-climate-and-energy-program->

These activities of Environmental Defence contravene the CRA rules relating to the prohibited political activities of registered charities. It is unacceptable that a registered charity should engage in such blatant political activity, particularly such targeted, partisan political activity.

CONCLUSION

It is urged that in these circumstances, you should determine whether Environmental Defence should be de-registered as a charitable organization, or otherwise be sanctioned.

Yours truly,

Jensen Shawa Solomon Duguid Hawkes LLP



DARREN J. REED

DJR:jr

cc: Environmental Defence (via facsimile: 1-416-323-9301)
Attn: Dr. Rick Smith, Executive Director