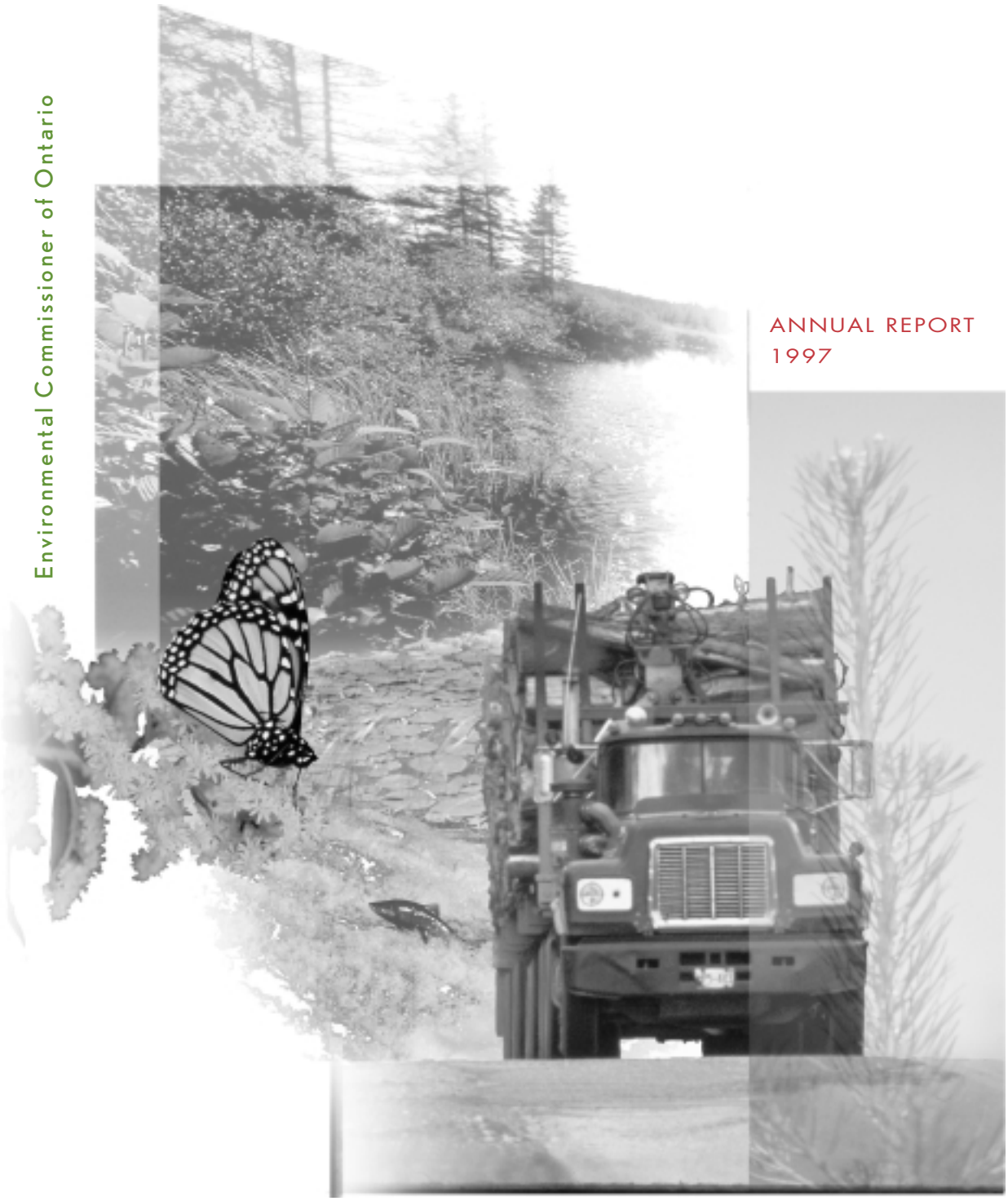
Environmental Commissioner of Ontario



ANNUAL REPORT
1997

Open Doors – Ontario's Environmental Bill of Rights

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Environmental
Commissioner
of Ontario

Commissaire à
l'environnement
de l'Ontario

Eva B. Ligeti
LL.B., LL.M.
Commisioner

Eva B. Ligeti
LL.B., LL.M.
Commissaire

April 1998

The Honourable Chris Stockwell
Speaker of the Legislative Assembly
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park

Dear Mr. Speaker:

In accordance with section 58 of the *Environmental Bill of Rights, 1993*, I am pleased to present the 1997 annual report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

Eva Ligeti
Environmental Commissioner of Ontario

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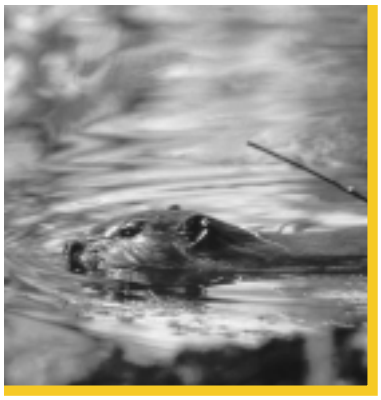

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A Message from the Environmental Commissioner of Ontario

The *Environmental Bill of Rights (EBR)* declares that the people of Ontario recognize the inherent value of the natural environment and their right to a healthful environment. It says that the government has the primary responsibility to achieve these goals, and that people should have the means to ensure they are achieved. As Environmental Commissioner of Ontario, I report to the Legislative Assembly of Ontario on how well the government is achieving its environmental goals.

This is my third Annual Report. In the past three years, a growing number of people, including members of industry associations, environmental public interest groups, cottagers and others, have called or written to me and my staff to alert us to their environmental concerns and to provide feedback on my Annual Reports. The efforts of Ontario residents who use the *EBR* reflect their deep commitment to a healthful and sustainable natural environment. Throughout this report, you will find examples of how people across the province used their *EBR* rights to influence decisions – from Newmarket and Peterborough and Guelph to Black Bay Peninsula and the Rossport Islands on Lake Superior.

Over the years I have met with staff in many ministries who have devoted their careers to building important environmental programs. In the past year, these staff members have seen the loss of both experienced colleagues and program resources. Yet ministry staff remain dedicated to providing quality services in the public interest. And they continue to be cooperative and helpful to me and my staff as we review ministry decisions, as required by the *EBR*.

The Ministry of the Environment (MOE) has continued to support the *EBR* within the ministry, in its dealings with other ministries, and in particular, in its support and expansion of the capacity of the Environmental Registry. MOE has continued to spend resources on Registry upgrades, and the staff of MOE's Environmental Bill of Rights Office have worked tirelessly to facilitate the implementation of the *EBR*. Their efforts are reflected in many of the reviews contained in this report.

I am pleased to report that in 1997 the Ministry of Natural Resources (MNR) made substantial progress in its compliance with the *EBR*, thanks to the efforts of ministry staff. In this report you will find many instances where MNR has used the Environmental Registry both to solicit public comments and to inform people of its response to those comments. This Annual Report focuses attention on a number of MNR natural resource issues and proposals, including a major overhaul of how the ministry manages natural resources on Ontario's public lands and how they are allocated to uses such as logging, tourism and conservation. The decisions the Minister of Natural Resources is making in this regard will have long-term effects on how future governments manage natural resources in Ontario. I also draw attention to the possible sale of some of Ontario's Crown lands, with little or no public notice or public input.

Overall, environmental health continues to be a very low priority for the ministers of this province. Ministry business plans indicate that ministers are withdrawing from their environmental commitments. More and more, they are failing to integrate their responsibility for the environment into their core business plans and into their social, economic and scientific considerations. I remind these ministers that a healthful environment is an important part of a healthy economy and a healthy society.

Recognizing the acknowledged and direct link between air quality and people's health, I paid particular attention in 1997 to decisions made by ministers that affect air quality. I found that "clean air" commands only a small portion of MOE's environmental protection budget, even though the Minister of the Environment has said that clean air is a major ministry focus. I found that MOE's "Smog Plan" relies on asking industry to cut emissions voluntarily and fails to provide details for fully half of its own stated goals. Moreover, the Smog Plan does not include any province-wide initiative to upgrade existing industrial approvals in order to incorporate proposed new improved standards. It also does not factor in changes announced by Ontario Hydro to move from nuclear to fos-

sil fuels. And while road vehicles are the number one source of smog-causing pollution, decisions made by other ministers, such as the Minister of Transportation and the Minister of Municipal Affairs and Housing, have had no apparent regard for air pollution, failing to integrate the effects of their decisions on the environment. I found that in the U.S., new standards set by the *Clean Air Act* will be mandatory in every state, while in Ontario, our more stringent, but unenforceable guidelines for inhalable particulates are regularly exceeded in cities such as Windsor, Hamilton, Toronto, Sault Ste. Marie and London. Ontario's focus needs to change from one of granting regulatory relief for polluters to improving its commitments to the environmental health of its residents and the natural environment.

In the face of the announcement in 1997 that State of the Environment reporting in Ontario would be discontinued, I looked at a number of government environmental monitoring programs. I wanted to determine whether these programs are giving Ontario residents the information they need to understand whether progress is being made in protecting our air, water, forests and wildlife. I found that many well-established monitoring programs were being restructured to cope with reduced resources. I also found that significant environmental information is not being collected, or if it is being collected, is not being analysed and reported. In some cases, such as the targets for air quality, the monitoring data to assess progress to the targets are not being kept. Some programs, such as the Hamilton and Windsor air quality monitoring programs, are not directly related to any environmental targets. In other cases, monitoring information is available, but it is not being used to improve the environment. In one of my major recommendations, I ask that when ministers state environmental targets, they also make a commitment to support their plans with effective monitoring programs that assess the actual environmental results, and that they promptly report these results to the public and to decision-makers so they can be acted upon.

In 1997, I received an application concerning the fire at the Plastimet recycling facility in Hamilton. I found that the Ministry of the Environment failed to explain why the Plastimet operation was considered to be exempt from regulatory requirements; the ministry cited no evidence in support of its contention that a certificate of approval is not required for Plastimet's activities. Despite the recommendation of the Ontario Fire Marshal to strengthen regulatory controls on recycling operations, MOE does not agree this is needed. I will monitor whether the ministry has adequate safeguards in place to ensure that exemptions from regulatory requirements do not result in increased risk to public safety and the environment.

In 1997, when provincial ministries used the Environmental Registry and complied with the *EBR*, members of the public benefitted from the increased opportunities to comment on environmental proposals. At the same time, there was a host of important new proposals that required close scrutiny: revisions to laws, new policies, new approaches such as voluntary measures and standardized approvals, the impacts of reduced ministry resources, and the diminished regulatory role of provincial ministries. In the end, my reviews of these proposals revealed that a host of changes does not necessarily advance the goals of the *EBR* – namely, to protect Ontario's environment. Thus, in this 1997 Annual Report, I have made some recommendations for improvement.

Eva Ligeti
Environmental Commissioner of Ontario

Executive Summary

Part 1 – Introduction

The *Environmental Bill of Rights (EBR)* gives the people of Ontario the right and the means to become involved in ministry decisions that affect the environment. The *EBR* calls for the appointment of an Environmental Commissioner of Ontario to review and report annually on how ministries comply with the law. This is the third Annual Report of the Environmental Commissioner of Ontario (ECO), and covers the period from January 1, 1997, to December 31, 1997.

Part 2 – The Environmental Registry

The Environmental Registry has proven to be a cost-effective way of opening the door to the decisions ministers make about the environment. The Registry is a computer bulletin board that provides people with electronic access to environmentally significant proposals and decisions, court actions and appeals. During 1997, people in Ontario continued to make good use of the Environmental Registry, with information downloads averaging more than 4,000 a month.

The Environmental Bill of Rights Office at the Ministry of the Environment (MOE), is continuing to upgrade the Registry and has now successfully mirrored the Registry on its Internet Web site. This will allow most users to download the full text of proposals for most policies, acts and regulations. A full migration of the Registry to an Internet Web site is expected in spring 1998, giving users full access to a complete database of all Registry postings.

I commend the Ministry of the Environment for investing the time and resources needed to upgrade the Registry.

Part 3 – Ministry Environmental Decisions

In an improvement over past years, some ministries are now posting more proposals and decisions on the Environmental Registry, thus giving recognition to the values of transparency and accountability embodied in the *EBR*. Two new laws, more than 20 regulations and 15 policies were posted on the Registry for extended periods of comment during 1997.

Trends in Ministry Decision-making

In my 1996 Annual Report, I noted that the scope and pace of change to the environmental regulatory system had been staggering. In 1997, ministries continued, at a reduced pace, to reshape the legal and regulatory regime related to environment. I estimate that amendments are pending or have been made to almost half the statutes and regulations prescribed under the *EBR*.

This year I reviewed in depth many of the important policies posted on the Environmental Registry in 1997. This includes the policies posted by MOE related to air pollution and the proposals posted by the Ministry of Natural Resources (MNR) dealing with the management of Ontario's natural resources. MNR posted 44 proposals for public comment during 1997.

At many points in this report, I refer to and reinforce the recommendations I made in previous ECO Annual Reports. As in 1996, there is a growing interest by ministries in alternative approaches to environmental regulation, including alternative service delivery systems, voluntary compliance mechanisms, and standardized approvals. Ministries also continue to move environmental requirements from statutes into regulations and policies, as I noted in my 1996 Annual Report.

Ministry Business Plans

The business plans of all the ministries were posted on the Registry in 1997. This is an improvement over the previous year, when the plans were not posted. Unfortunately, commitments that ministries have made to the environment in their Statements of Environmental Value (SEVs) are not reflected in the majority of the 1997 business plans, which are even weaker than last year's in terms of integrating the environment into ministry business. Mention of the environment has also been deleted from the vision, mission statements, or strategic directions set forth by many ministries in their 1997 business plans. It appears that gains in the recognition of the environmental aspects of their core business made by ministries in the early and mid-1990s are being eroded. I encourage ministers to take the opportunity provided by the development of their 1998 business plans to incorporate environmental values and environmental health into the core business of their ministries.

Unposted Decisions

Each year, my staff and I review environmentally significant proposals and decisions that were not posted on the Environmental Registry, in order to confirm that the public participation rights under the *EBR* have been respected. I am pleased to see that in 1997 there were far fewer unposted decisions. As well, two new acts were posted for public comment very early in their development, while still at the stage of discussion papers, which ensured that comments submitted by the public could have more effect on decisions. I continue to encourage ministries, when determining whether proposals are environmentally significant, to err on the side of posting a proposal for public comment, thereby increasing transparency and accountability and improving government decision-making.

Posting Information Notices

I commend ministries for posting some policies and plans on the Registry as "information notices" even when not required under the *EBR*. However, certain other proposals were posted incorrectly under this provision, since it does not require ministries to consider public comments. For example, MNR should have provided an opportunity for public comments on its decision not to enforce or administer an important provision of the federal *Fisheries Act* that safeguards fish habitat. Public feedback clearly indicated that people found this to be an environmentally significant decision with potentially far-reaching consequences for Ontario fish and waters.

Exceptions to Registry Posting

In certain specified situations, the *EBR* allows ministries not to post decisions and proposals on the Registry for public comment. In this Annual Report, we review several of these exceptions carefully, concluding that ministerial discretion could often have allowed the use of the *EBR* public participation processes in order to provide greater transparency and to alert members of the public to the nature of ministers' decisions.

Part 4 – ECO Reviews of Selected 1997 Ministry Policies and Decisions

During the past year, my staff and I carried out extensive reviews of several crucial ministry proposals that will have a significant impact on Ontario's environment. We reviewed whether the proposals were consistent with ministries' Statements of Environmental Values and with the *Environmental Bill of Rights*. We looked, in particular, at the degree of public involvement in ministry decision-making and whether public comments influenced ministry proposals and decisions.

The Quality of Ontario's Air — MOE

Over the past two years, the Minister of the Environment has announced almost a dozen initiatives aimed at improving air quality, and the ministry's 1997 business plan sets targets and deadlines to reduce pollutants that contribute most to smog. During the past year, my staff and I reviewed some of these initiatives, looking at their consistency with MOE's SEV and whether the public was involved in ministry decision-making.

Our reviews of these initiatives during 1997 have revealed several serious obstacles to achieving the smog reduction targets that MOE has set for Ontario. These obstacles include:

- The "Smog Plan" gives no detail on how approximately one-half of the needed smog reductions can be achieved.
- MOE is allocating only a small portion of the ministry's budget to clean air.
- MOE is relying on a voluntary approach to cutting air pollution.
- MOE has no plans to upgrade old certificates of approval to meet new and more rigorous air quality standards.

At the same time, the provincial government has no plans to improve public transit in Ontario, even though road vehicles are the number one source of smog-causing pollution. And although MOE's smog plan counts on Ontario Hydro's coal-burning power plants to reduce emissions significantly, Hydro is now planning to shut down seven nuclear reactors and shift to more burning of fossil fuels.

On the plus side, MOE posted several proposals and decisions on the Environmental Registry during 1997 that could produce positive results for air quality in the province. In December 1997, MOE posted a decision to begin a Drive Clean program, a vehicle inspection and maintenance program designed to reduce pollutants coming from cars, trucks and buses. And in June, the ministry posted a proposal for a Pilot Emission Reduction Trading project, an innovative, market-based approach to reducing emissions. MOE also made a formal submission to the U.S. Environmental Protection Agency, requesting that the U.S. adopt more rigorous standards for particulates and ground-level ozone.

The potential for these initiatives to improve air quality in the province will depend on how well the programs are implemented, whether transparency and accountability measures become part of their implementation, and how well the ministry carries out monitoring of air quality.

Managing Ontario's Natural Resources – MNR

In 1997 the Ministry of Natural Resources began a massive overhaul of land use planning. To understand the implications of the ministry's major new forest policies, my staff and I reviewed these policies in light of the forces shaping Ontario forests. These forces include:

- the terms and conditions imposed on MNR by the Environmental Assessment Board's 1994 Class Environmental Assessment for Timber Management.
- the increasing demand for wood.
- the intensification of resource conflicts between forestry, tourism, and natural heritage values.

MNR's ability to deal with these diverse pressures has been affected in the past two years by deep budget reductions, which have cut its staff and forest management budget in half.

In February 1997, MNR announced "Lands for Life," an ambitious review of land use planning and resource management on the Crown lands that make up Ontario's huge central forested area.

Regional Round Tables will be given the task of developing recommendations for allocating land on a long-term

basis to forestry, tourism and natural heritage protection. Within a relatively short period of time, the Round Tables have to absorb an enormous amount of information, understand complicated trends in wood supply and

demand, and consider many complex forestry policies and guidelines, the needs of the tourism industry, and the need to protect our natural heritage.

Our review of the Lands for Life process revealed significant concerns. These include:

- an extremely tight timetable for making long-term decisions.
- the public's concern that the consultation process has not been carried out fairly.
- concern about the quality of information available both to the public and to the Round Tables.

Environmental Monitoring

Environmental monitoring is the keystone to good environmental decision-making, as has been recognized in the Statements of Environmental Values by both MOE and MNR. In 1997, the ECO evaluated a number of MOE and MNR environmental monitoring programs relating to the management of air, water and natural resources. The programs were assessed to gauge the quality of both monitoring and reporting, and also to evaluate how effectively the programs are connected to any current stated ministry targets.

In our reviews, we found that in both ministries, significant environmental information is not being collected or, if collected, is not being analysed and reported. For example:

The Ministry of Natural Resources . . .

- has not analysed or reported forestry harvest data since 1991.
- has few population surveys for small game species or non-game wildlife, or population estimates for most wildlife species that are vulnerable, threatened or endangered.

The Ministry of the Environment . . .

- is not tracking total loadings of industrial discharges into waterways.
- does not monitor persistent toxics in effluents of sewage treatment plants.
- does not compile statistics on total loadings of raw sewage spills to waterways.
- has drastically reduced reporting on municipal/industrial discharges to water.
- has little data on the condition of the province's one million-plus septic systems.

In other cases, even when MOE has stated targets for environmental parameters, such as inhalable particulates and waste water discharges, the ministry often lacked monitoring data needed to assess progress toward the target. And a number of other programs monitoring other parameters, such as an incidence of spills, urban air quality, or quality of water in cottage lakes, were not connected to environmental targets. In still other cases, ministries have gathered monitoring information – databases on rare species, forest regeneration, contaminants in sport fish, or air quality in Ontario urban centres – but the information is not being used fully to bring about environmental improvement.

Many of these monitoring programs are undergoing major restructuring to cope with budget cutbacks, and must rely on strongly committed staff and volunteers.

Voluntary Agreements

In recent years, Ontario has joined a global trend toward relying on voluntary approaches to environmental protection rather than on government regulation. However, our review of these approaches during 1997 shows that voluntary agreements in Ontario are usually negotiated without any involvement of the public or environmental groups. In the future, it will be important to ensure that the negotiation process includes meaningful public involvement and backdrop regulations to increase public confidence in the use of voluntary agreements.

Alternative Service Delivery

Several provincial ministries introduced alternate methods of delivering services during 1997. ECO staff reviewed two of these programs – MNR's Aggregate Licensee Inspections and MOE's Remedial Action Plans (Support for Public Advisory Committees) – looking at the way changes to each delivery system were planned and then implemented by both ministries.

In our review, we looked at ministry planning before the implementation of the new delivery systems, at the quality of public consultation, and at the preparation and training of both ministry staff and the people who would

now be delivering the services. Finally, we asked whether the new alternative delivery systems would achieve the goals the ministry established when proposing the changes in service delivery. We found that a ministry's ability to achieve its goals is enhanced by good communications and careful advance planning.

Part 5 – Reviews and Investigations

Under the *EBR*, Ontario residents can ask ministers to review existing environmental policies, acts, regulations and instruments, or to review the need for a new policy, regulation or act. They can also ask ministers to investigate if they think someone is violating, or about to violate, an environmental law, regulation or the terms of approval of an instrument. Well-researched applications have led to positive results for the environment.

My staff provides assistance to people who request help in applying for reviews and investigations. Twenty-five applications were sent to the ECO this year, and we forwarded the completed applications to the ministries involved. Each year I report on how these applications were handled by the ministries.

Many applications dealt with matters that received wide public attention – for example, the discharges of contaminants by Ontario Hydro power plants and the regulation of recycling plants, including Hamilton's Plastimet site. Applications in 1997 covered topics that included potential damage to a provincially significant wetland, an MNR decision to withdraw from enforcement of federal *Fisheries Act* provisions, health concerns related to chlorination of drinking water, and the need for a watershed management plan to address drainage problems. As in previous years, the operation of landfill sites was the subject of applications.

This year's Annual Report includes in-depth reviews of several applications and the issues surrounding them, including applications regarding Ontario's Blue Box system, Ontario Hydro, the Plastimet fire in Hamilton, and watershed planning. Many of our findings highlight the difficulties people have in getting a problem resolved when several ministries as well as municipal organizations are involved, or when the province passes down to a municipal level of government new responsibilities and service obligations. Often, there is no evidence the municipal level of government has the capacity to solve the problem. For example, local authorities facing watershed management issues often rely on leadership and advice from the province. These are the kinds of problems that need to be dealt with on an ecosystem basis and not on the basis of political boundaries, and their solution needs provincial leadership to be viable.

Ministry Handling of Applications

In assessing ministry responses to applicants, we reviewed whether the responses were thorough, and whether ministries provided a clear rationale for not undertaking the review or investigation. In a small number of cases, the ministry was not helpful in explaining why an application was denied or what other recourse might be available for addressing the applicants' concerns. I encourage ministries to provide detailed reasons to applicants for denying an application. As well, in order to be impartial, ministries are encouraged to assign the decision whether to undertake a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue. Once the ministry has decided to undertake a review, it should be completed within a reasonable period of time.

Part 6 – Instruments

Instruments are the legal documents of approval granted by ministries before companies or individuals can carry out activities that can have an impact on the environment. Under the *EBR*, ministries must "classify" the instruments they issue according to how environmentally significant they are. Classification determines which instruments will be posted on the Environmental Registry for public comment and determines as well the extent of the opportunities for appeal, review or investigation.

Although MNR staff worked hard to develop an instrument classification regulation in 1997, it is still in draft form. And some environmentally significant instruments are still left out of MNR's draft regulation – such as sus-

tainable forest licences and proposals to supply forest resources to an individual or a company. Unfortunately, MNR is using an *EBR* exception to remove many of the ministry's instruments from public scrutiny, and is proposing another regulation that defines certain instruments as "field orders," removing them as well from many of the *EBR*'s public participation processes.

Both the Ministry of Northern Development and Mines and the Ministry of Consumer and Commercial Relations have drafted their proposals for instrument classification, but neither ministry had finalized their regulations as of December 31, 1997.

Part 7 – Other Legal Rights

The *EBR* allows the public to apply for leave to appeal ministry decisions to issue instruments, such as the permits, licences or certificates of approval granted to companies. At the beginning of 1997, one application for leave to appeal was pending before the Environmental Assessment Board (EAB). Two additional applications for leave to appeal were posted on the Environmental Registry. While two of these applications were denied, another was successful.

This year's Annual Report contains descriptions of cases where Ontario residents sought leave to appeal ministry decisions to issue instruments, one relating to a waste processing site in Northumberland County and another concerning a waste disposal site in Middlesex County. I also report on the conclusion to the Petro-Canada case, which involved an appeal of the certificates of approval granted by MOE for an expansion of the company's lubricant production process at its Mississauga plant. Although the applicants were ultimately successful, the case illustrates the difficulties and financial obstacles faced by the public when they use legal processes to protect the environment for themselves, their families and their community.

The *EBR* also gives Ontarians the right to sue for damages if they experience direct economic or personal loss because of a public nuisance causing environmental harm. Two landmark cases were filed in 1997 under this provision of the *EBR*. Residents in Maple and Richmond Hill are suing Toronto on the basis that odours, noxious gas, debris and noise emanating from the Keele Valley landfill have caused harm to local residents. In the other case, a Fort Erie resident began a class action proceeding against the municipality and the Regional Municipality of Niagara. The resident alleges that the water supplied to local residents is frequently contaminated by iron rust and microorganisms.

Part 8 – Summary of the Ministry Decision-Making Process

In this section of the ECO Annual Report, we review how all ministries have complied during 1997 with the technical requirements of the *EBR*, and in particular, how their actions have affected people's rights to use the *Environmental Bill of Rights*. I am pleased to see that overall there has been an improvement in this regard in 1997. However, there are still areas that could be improved, and I hope that this section of the report will assist ministries in complying with the *EBR* in the future.

Part 9 – Educational Initiatives

My staff and I travelled across Ontario in 1997, telling people about their rights under the *EBR*. From their response, and from the number of requests for information and presentations during 1997, it is clear that the people of Ontario want to know about the *Environmental Bill of Rights*. They continue to be interested in and concerned about the protection and restoration of our natural environment, and they want to know how they can become involved in ministry decision-making about the environment.

During the year, my staff and I spoke to service clubs, municipal councils, teachers and students at Ontario high schools, colleges and universities, and to community groups and conference participants. We met with business and municipal leaders, chambers of commerce, environmental groups, and MPPs and ministry staff members.

The ECO Public Information Officer responded to more than 1,500 inquiries for publications and we continued to distribute ECO publications – more than 36,000 in 1997.

PART ONE

The *Environmental Bill of Rights* and the Environmental Commissioner of Ontario

The *Environmental Bills of Rights (EBR)* gives the people of Ontario the right and the tools to become involved in ministry decisions that affect the environment. The *EBR* increases ministry accountability for these decisions, and it enables the public to ensure the decisions are made in accordance with a common goal of all Ontarians, that of protecting, conserving and restoring the natural environment of this province.

Preamble

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.
- While government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

Goals

The fundamental goals of the *Environmental Bill of Rights* are to protect, conserve and restore the integrity of the environment, to provide sustainability, and to protect the right of Ontario residents to a healthful environment.

These goals include preventing, reducing and eliminating the release of pollutants that unreasonably threaten the integrity of the environment. They include protecting and conserving biological, ecological and genetic diversity, and protecting and conserving Ontario's natural resources, including plant life, animal life and ecological systems. Further aims of the *EBR* are to encourage the wise management of our natural resources, and to identify, protect and conserve ecologically sensitive areas or processes.

Ministries covered by the *Environmental Bill of Rights*

- Agriculture, Food and Rural Affairs
- Citizenship, Culture and Recreation
- Consumer and Commercial Relations

- Economic Development, Trade and Tourism
- Environment
- Health
- Labour
- Management Board Secretariat
- Municipal Affairs and Housing
- Natural Resources
- Northern Development and Mines
- Transportation[1]

The Environmental Commissioner of Ontario

The *Environmental Bill of Rights* calls for the appointment of an Environmental Commissioner of Ontario (ECO).

Mandate

- Review implementation of the *Environmental Bill of Rights.*
- Review ministries' compliance with the *Environmental Bill of Rights.*
- Give guidance to ministries in complying with the *Environmental Bill of Rights.*
- Assist ministries to provide educational programs about the *Environmental Bill of Rights.*
- Deliver public education programs about the *Environmental Bill of Rights.*
- Advise and assist people who want to participate in *Environmental Bill of Rights* processes.
- Review use of the Environmental Registry.
- Review ministerial decisions to exempt proposals from posting on the Environmental Registry.
- Review the use of appeals and court actions by the public.
- Review the way ministries process and decide Applications for Review and Investigation.
- Review the use of whistleblower protection rights.
- Report annually to the Legislative Assembly of Ontario, including: reporting on the work of the Environmental Commissioner and a summary of information about compliance with ministry Statements of Environmental Values.
- Present special reports to the Legislative Assembly of Ontario.

Public Rights to Participate

The *Environmental Bill of Rights* gives Ontarians the right to:

- Get notice of, and comment on, proposed policies, acts, regulations and instruments that may affect the environment.
- Access the Environmental Registry.
- Appeal certain ministry decisions.
- Ask a minister to change or eliminate existing environmental policies, acts, regulations and instruments, or ask for new policies, acts and regulations.
- Ask a minister to investigate contraventions of environmental acts, regulations and instruments.
- Sue someone for harming a public resource.
- Sue for personal damages if an environmentally harmful public nuisance causes direct economic or personal loss.
- Whistleblower protection.

The ECO Mandate and the Ministry Statement of Environmental Values

As one of the first steps in implementing the *Environmental Bill of Rights*, each ministry prepared a Statement of Environmental Values (SEV) that must be considered whenever an environmentally significant decision is made in the ministry. Each SEV contains an unequivocal commitment by the minister that the purposes of the *EBR* will be applied to these decisions. Consideration of the minister's Statement of Environmental Values thus forms a key part of my evaluation of the decisions made by the minister.

[1] On October 10, 1997, the Ontario government announced the reconfiguration of three ministries under the *EBR*. This reconfiguration resulted in the transfer of the Energy portfolio of the former Ministry of Environment and Energy and the Technology portfolio of the Ministry of Economic Development, Trade, Technology and Tourism to the newly created Ministry of Energy, Science and Technology. It also recreated two ministries, the Ministry of the Environment and the Ministry of Economic Development, Trade and Tourism. For the sake of clarity, this Annual Report uses the new ministry names even though some of the actions described below may have been taken by the former ministries (as they then were named). It is expected that the Ontario government will table amendments to the Executive Council Act in 1998 to reflect the reconfiguration of the ministries.

Each minister also made commitments in the SEV that are specific to the work of that particular ministry. For example, the SEV of the Minister of Natural Resources made a commitment to recognize, evaluate, and consider the non-market values of the natural environment. The SEV of the Minister of the Environment made a commitment to pollution prevention, and that of the Minister of Health, to include the environment in the ministry's framework for a "healthy public policy."

Protecting the rights of the people of Ontario to a healthful environment is at the core of the *Environmental Bill of Rights*. Members of the public use their rights under the *EBR* when they comment on ministry proposals or when they use an *EBR* application process to request actions by a minister to protect the environment. My staff and I undertake careful reviews of how ministries handle the comments and applications that come from the public. These reviews are an essential part of my mandate, and they are an important source of the information contained in my Annual Report to the Legislature.

In the ECO Annual Report, I review how the minister exercised discretion in relation to the rights of public participation that the *EBR* has granted to the people of Ontario. How did the minister respond to applications from the public requesting ministry action on environmental matters? Did ministry staff comply with the procedural and technical requirements of the law? And were the actions and decisions of the minister consistent with the ministry SEV and with the purposes of the *EBR*?

It is part of my mandate as Environmental Commissioner to encourage compliance with the goals, purposes and procedures of the *EBR*. My mandate also includes providing objective oversight in assessing the implementation of the *EBR*, and evaluating how ministers have considered their SEVs in making environmentally significant decisions. It does not include the power to force a minister to take a particular course of action. Rather, in reviewing decisions and reporting on them to the Legislative Assembly, I ensure that ministers are held accountable to the people of Ontario when they make decisions that affect the environment.

Can the Public Influence Decisions?

We have begun to see the benefits that can be achieved when people use their *EBR* rights to comment on the decisions ministers make about the environment. Throughout this Annual Report you will see examples of how people across Ontario used those rights in 1997 – such as the example on this page, where people in Sudbury were concerned that a proposal by the Ministry of Natural Resources would adversely affect the city's drinking water.

Four years after its proclamation, the *Environmental Bill of Rights* is fulfilling its promise. The hard work, time and effort of members of the public are being rewarded. In ways large and small, people using their *EBR* rights are contributing to a more healthful environment in Ontario.

Can the Public Influence Decisions?

Wanapitei Provincial Park

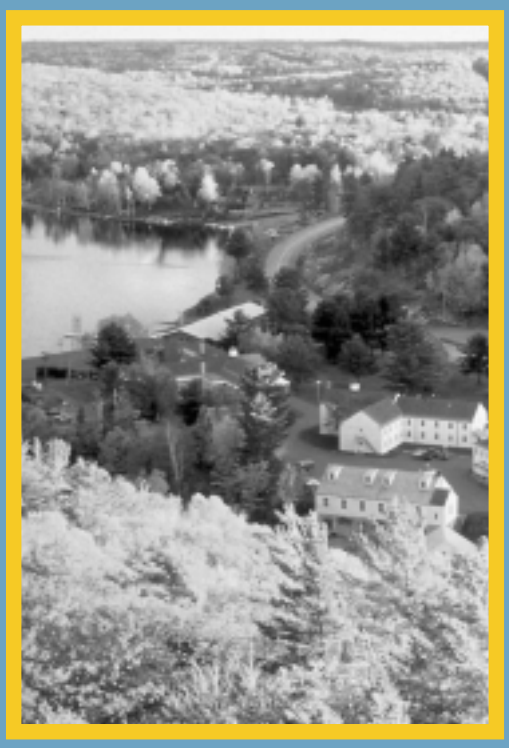
(Northeast of Sudbury)
Registry # PB5E3001

description When MNR prohibited mineral exploration in all provincial parks in 1988, the ministry made a commitment to remove an area of high mineral potential from Wanapitei Provincial Park to allow mineral exploration. MNR posted a proposal to deregulate this portion of the park.

public comments The primary concern of the public was that mining would affect the water quality of Wanapitei Lake, a source of drinking water for Sudbury.

decision MNR modified its proposed boundary changes, keeping Wanapitei Lake within Wanapitei Provincial Park. The ministry also created a steering committee to set further conditions on mineral exploration in the deregulated area.

PART TWO



The Environmental Registry

What is it?

The Environmental Registry is the technological backbone of the *Environmental Bill of Rights*. A computer bulletin board, the Registry provides electronic access to environmentally significant proposals and decisions, appeals of instruments, court actions, and other information related to ministry decision-making. Ministries have to post this information on the Registry so that the public is able to provide input on decisions before they are made.

During this reporting period, Ontarians continued to make good use of the Registry, and new Registry user accounts continued to rise steadily. Information downloads averaged 4,215 a month in 1997.

Upgrade Update

Last year I recommended that the Ministry of the Environment (MOE) make technical and administrative improvements to the Registry. In the past, equipment problems have sometimes resulted in shortening comment periods for some proposals and delays in posting for others. Fortunately, MOE's Environmental Bill of Rights Office (EBRO) has begun the first stage of the two-stage Registry upgrade reported last year. I am now pleased to report that the Registry has been successfully mirrored on the EBRO's Internet Web site, allowing users to download the full text of proposals for some policies, acts, and regulations.

The second stage of this upgrade – a full migration of the Registry to an Internet Web site – has been delayed due to technical difficulties until early 1998. This transfer to Internet Web technology will allow users to customize their searches and have full access to a complete database of all Registry postings. The direct dial-up feature will be maintained for people who have a modem but no Internet access. A hypertext link to the full text of proposals will be available to those with Internet accounts. I will continue to monitor and report on these improvements, which should increase access for all Ontarians.

I commend MOE and the EBRO for investing the considerable time and resources needed to upgrade the Registry technically. With the full transfer of the Registry to the Internet, there will no longer be any technical barriers to posting proposals in an efficient and timely manner.

The Environmental Registry is also the home of the Environmental Assessment (EA) home page, where information about activities which fall under the *Environmental Assessment Act* can be found. In addition, the site is the home of Terms of Reference documents that are submitted to MOE to facilitate public consultation on proposed EA activities, including information on how to comment, time frames for comments, and decisions made. According to MOE, "when combined with the activities and information obtained by accessing the *EBR* home page and the Environmental Registry, Ontarians have only one place to look for environmental activities planned or under way in the Province of Ontario."

The Environmental Registry is available in both English and French. The Registry can be accessed at the ECO's Resource Centre in Toronto, at community information centres and First Nations libraries, and at most of Ontario's public libraries.

The Registry continues to be a cost-effective means by which ministries can solicit public input into environmental decision-making.

1997 Environmental Registry Use

Total Log-ons	8,195
Total New User Ids	1,641
Total Information Downloads	50,587

Recommendation 1

The Ministry of the Environment should ensure that the migration of the Environmental Registry to the Internet maintains access for people who use public libraries as an access point or who have a modem but no Internet access.

PART THREE

Ministry Environmental Decisions

Decisions and Proposals for New Acts, Regulations and Policies

When the *Environmental Bill of Rights (EBR)* came into force in February 1994, it replaced the earlier discretionary approach to public consultation. Today, in order to promote transparency in environmental decision-making, the *EBR* requires that environmental acts, regulations and policies be developed and amended with at least a minimum of public participation.

In previous ECO Annual Reports, I have noted the failure of some ministries to comply with *EBR* requirements for posting environmentally significant proposals on the Registry. In the past year, some of these ministries appear to have improved their compliance in this area.

In my 1996 Annual Report, I noted that the scope and pace of legal and regulatory changes to the environmental regulatory system had been staggering. In 1997, ministries continued, at a reduced pace, to reshape the legal and regulatory regime related to environment. For example, I estimate that amendments are pending or have been made to almost half the statutes and regulations prescribed under the *EBR*. Five different ministries developed and formally proposed environmentally significant new acts and regulations during the period covered by this Annual Report. The chart in Table 1 (pp. 21-25) illustrates some of the key measures that were proposed and decided in 1997.

Many important policies were posted on the Registry in 1997. Significant policies posted by the Ministry of the Environment (MOE) included those related to its efforts to address air pollution. These are reviewed in detail in the discussion of air quality in Part 4 of this report (pp. 31-36). Also during 1997, MOE withdrew a number of proposed *Environmental Assessment Act* guidelines that had been posted on the Registry in 1995, indicating that new guidelines would be posted. MOE did post two of these guidelines in 1997: one on terms of reference for environmental assessments, and one on the use of mediation in environmental assessments. The Ministry of Transportation (MTO) also posted a number of new policies, including one dealing with dust suppressants (reviewed on p. 19). In 1997, the Ministry of Natural Resources (MNR) posted 44 proposals for new acts, regulations and policies for public

comment. Many of these are discussed in detail in the section of this report devoted to natural resource issues (pp. 37-45).

To the credit of the ministries involved, proposals for two new acts, more than 20 regulations, and 15 policies were posted on the Environmental Registry for extended periods of public comment.

Many of the new initiatives outlined in the chart in Table 1 have not been finalized. This table also shows initiatives that were launched in 1996 and remain incomplete at the end of 1997.

In my 1996 Annual Report, I recommended that ministries stop using omnibus-style legislation to reform Ontario's environmental laws. I draw attention to one such proposal this year. Bill 152, the *Services Improvement Act* contained environmentally significant amendments, related to septic systems, proposed by the Ministry of Municipal Affairs and Housing (MMAH). The bill also contained an environmentally significant amendment to the *Health Protection and Promotion Act*, proposed by the Ministry of Health (MOH), removing the requirement that the Chief Medical Officer of Health for the province be informed about occupational and environmental health matters. While the former amendments were posted on the Registry for public comment as required, the latter amendment was not. However, I was pleased that MOH decided to withdraw its proposed amendment in November 1997.

In my 1996 Annual Report, I reported that the Ministry of Consumer and Commercial Relations (MCCR) had transferred its authority for training, licensing, inspection and prosecution functions under the *Gasoline Handling Act* to an industry-run, self-funded, not-for-profit, non-government organization called the Technical Standards and Safety Authority (TSSA). I expressed concern that the rights of the public under the *EBR* to participate in environmentally significant decision- making activities of the TSSA might be compromised. I am pleased to report that I have carefully monitored the work of the TSSA and can report that, thus far, the implementation of this alternate service delivery (ASD) system does not appear to have altered the rights of the public under the *EBR*. However, some coordination problems between these two agencies are starting to appear.

I noted in my 1996 Annual Report that there was a declining interest by ministries in "command and control" regulatory approaches and a corresponding shift to ASD systems, voluntary compliance mechanisms, and systems for "standardized approvals." In 1997, ECO reviews of these developments found that the public is anxious about the lack of information and poor public consultation processes in the development of voluntary agreements and ASD systems.

In 1997, ministries continued to move requirements that were previously established in statutes into regulations and policies. For example, many of the public participation requirements for gravel pit operations previously set out in the *Aggregate Resources Act (ARA)* are now set out in standards that are referenced in the regulations under the *ARA*. Staff at MNR assure me that these standards have the full weight of law behind them. I will monitor their implementation.

The number of ministries that are prescribed for the *EBR* will be modified. The energy portfolio of the former Ministry of Environment and Energy has been transferred to the newly created Ministry of Energy, Science and Technology. Since there is a strong relationship between environmental issues and energy consumption, as demonstrated at the international Kyoto Conference on Climate Change in early December 1997, I was pleased that the Ministry of the Environment proposed to prescribe the new ministry for the *EBR*.

Ministry Business Plans

The Management Board Secretariat posted the 1997 business plans of all the ministries on the Registry with a 60-day public comment period. This is an improvement over the previous year, when the plans were not posted. However, this effort is diminished by the fact that the plans were posted after they had been finalized. Thus, while the public had notice of the plans, public comments could not be taken into consideration in their development.

In my 1996 Annual Report, I recommended that ministries make every effort to apply the environmental values contained in their Statements of Environmental Values (SEVs) and integrate them into their business plans. Our review of these plans revealed that commitments to the environment in the ministry SEVs are not reflected in the majority of the 1997 business plans. In fact, the plans of only three ministries (MOE, MNR, and the Ministry of Northern Development and Mines) mention their ministry's responsibility for the environment. The 1997 plans are even weaker than last year's in terms of integrating the environment into ministry business. For example, MMAH's 1996 plan indicated that the ministry would promote good planning and maintain tough environmental rules in land use planning, and included a performance measure to assess whether municipalities are adhering to provincial policy. In the 1997 plan, "environment" is not mentioned, and the measure of adherence to provincial policy is gone.

I note as well that mention of "environment" or "environmental sustainability" has been deleted from the vision or strategic directions of several *EBR* ministries. For example, in 1994 the mission statement of the Ontario Ministry of Agriculture, Food and Rural Affairs was "to foster an economically viable, environmentally sustainable agriculture and food system where the participants cooperate to meet the needs of the people of Ontario and to compete in global markets." The mission statement in the 1997 plan is "to foster competitive, economically diverse and prosperous agriculture and food sectors and promote the economic development of rural communities." Reference to the environment has also been removed from the ministry vision or strategic directions of the Ministry of Transportation and the Ministry of Economic Development, Trade and Tourism.

From our review of ministry business plans, it appears that the recognition of the environmental aspects of their core business by ministries in the early and mid-1990s is being eroded. This is contrary to the intent of the *EBR*. Ministers have another opportunity when they develop their 1998 business plans. I encourage them to use that opportunity to reflect how environmental health has been incorporated into the core business of the ministry. I remind them that a healthy economy and healthy society depend on a healthful environment.

Environmental Approvals Improvement Act, 1997

Standardized Approvals

The *Environmental Approvals Improvement Act (EAIA)* enables Cabinet to create a "standardized approvals" regime to replace, in certain cases, the need for certificates of approvals under the *Environmental Protection Act* and the *Ontario Water Resources Act*. The Ministry of the Environment (MOE) claims this new approach will cut red tape and lessen the ministry's workload. As well, MOE claims this system will apply to activities that have predictable, controllable and well-understood effects, such as restaurant exhausts.

One concern about standardized approvals is that polluters may be able to avoid liability in the civil courts if they are sued under the common law causes of action such as negligence, nuisance or trespass, or the public nuisance provisions in the *EBR*. This is because the polluters will be able to claim they were acting under legislative authority and thus have a permit to discharge pollution. MOE maintains that "the standards in the proposed regulations will have more stringent emission levels and design standards than might otherwise be required if an applicant were to apply for a certificate of approval." We must await the new regulations to determine the impact of this method of regulating polluting activities. The ECO will monitor these developments.

Dissolving the Environmental Compensation Corporation

The *EAIA* also dissolves the Environmental Compensation Corporation (ECC) and with it, the right of spill victims to apply for compensation. The ECC was set up to help victims of pollution spills in recognition of the difficulties people have in seeking redress through the court system. Victims of spills will now be required to initiate their own claims and legal actions against responsible parties to obtain compensation for spills. This will be time-consuming and costly for individuals and families. In those circumstances where the responsible parties are bankrupt, it is probable that spill victims will not be compensated.

Dust Suppressants

Registry # PE7E5605

Background

In 1997, the Ministry of Transportation (MTO) posted a proposal on the Environmental Registry noting that "MTO does not have the resources to commit to . . . testing," prior to approval, of the materials used to minimize dust during road construction and on unpaved rural roads. Instead of continuing to do its own testing, MTO will expand its list of permitted dust suppressants by relying on a list issued by the Ministry of the Environment (MOE). However, MOE's list comes with a disclaimer: "The MOE does not endorse any of the following products nor does it guarantee that the products are environmentally benign."

The Environmental Commissioner of Ontario has received numerous expressions of concern from members of the public in relation to the use and control of dust suppressants. In particular, people were concerned about the effects of the material when it runs into lakes and rivers. In response to MTO's proposal, one commenter said that only those dust suppressants found to be without environmental and health impacts should be permitted for use. During the past year, the ECO reviewed whether any ministry is assuming the responsibility for testing dust suppressants.

ECO Findings

Salt brine and calcium chloride are commonly used in Ontario as dust suppressants, but so are a number of "recycled" industrial by-products, including pulping liquors from pulp and paper mills and effluents from oil refining and chemical manufacturing.

MOE classifies dust suppressants either as "waste" or "products." Waste dust suppressants are surplus by-products of a manufacturing process and are subject to waste regulations and associated record-keeping requirements. Applicators must possess a certificate of approval for a Dust Suppressant Waste Management System. Companies prefer to have their dust suppressants classified as "products," and MOE staff indicate that no certificates of approval for applying dust suppressants have been issued since 1989.

Product dust suppressants are materials that MOE is satisfied are produced or refined for that purpose, and are not subject to waste regulations. Instead, companies must submit information to MOE on the product's toxicity test results, its chemical composition, how it is produced, and a description of any quality assurance/quality control programs. If MOE accepts the material as a product, a Letter of Agreement specifying the product's composition is struck between the ministry and the producer.

Although MOE's current approach provides some measure of control over dust suppressants, MOE relies on the information provided by the company, and does not conduct independent tests on dust suppressants. Nor are there regulated limits for the levels of contaminants permitted in dust suppressants. MOE has told the ECO that the ministry plans to release a dust suppressant regulation as part of the regulatory reform initiative, and the draft regulation will be placed on the Environmental Registry. According to MOE, the proposed regulation will address maximum contaminant levels allowed in dust suppressants, as well as proper application requirements. There will be reporting and record-keeping requirements, and the regulation will not distinguish between waste and product dust suppressants.

The ECO will continue to monitor this issue.

Can the Public Influence Decisions?

Small Septic Systems

Registry # AI7E0001

description The authority for regulating small on-lot septic systems was transferred in 1997 from the Ministry of the Environment (MOE) to the Ministry of Municipal Affairs and Housing (MMAH) and Ontario municipalities.

public comments During province-wide consultation, people told MMAH they wanted more clarity in the legislation about who could install and inspect septic systems, exactly what authority municipal officials would have, and what types of sewage systems would be involved. Responding to the Registry posting, representatives from an environmental public interest group said they were concerned the legislation would have negative effects on groundwater in Ontario.

decision Changes to the legislation clarified the authority of officials to enforce the qualification requirements for sewage system installers and inspectors and made clear exactly which types of sewage systems would remain under MOE's regulatory jurisdiction. MMAH is now carrying out more research into sewage system failures, making sure that ministry staff are involved in the development of a provincial groundwater strategy, and looking for people with experience in on-site sewage systems to serve on the Building Code Commission.

Ministry of the Environment: Regulatory Reform

Strengthening Environmental Regulations

In late November 1997, the Ministry of the Environment (MOE) released the second stage of its regulatory reform initiative, "Better, Stronger, Clearer: Environmental Regulations for Ontario" (BSC). BSC is part of MOE's overall regulatory review, an overhaul of regulations that started in July 1996 with the release of the discussion paper, "Responsive Environmental Protection" (REP). In my 1996 Annual Report, I reviewed REP and expressed concern that MOE appeared unwilling to consider the need to preserve and strengthen certain environmental regulations. Based on that review, I recommended that MOE make strengthening environmental protection a goal of future regulatory amendments. The ministry included this goal in its 1997 reform package.

Postings on the Environmental Registry

In my 1996 Annual Report, I recommended that ministers ensure that the public not be asked to comment on too many proposals at the same time. I urged them to extend comment periods to compensate for overlapping comment periods.

Sixteen of MOE's regulatory reform proposals were posted on the Environmental Registry in December. It will be challenging for people to become informed of the proposed changes and to provide meaningful submissions to the ministry since the comment periods on these proposals overlap. However, the schedule provided by MOE telling when these proposals will be posted on the Registry will help people to prepare for a review of the BSC proposals.

Can the Public Influence Decisions?

Treatment of Combined Sewer Systems

Registry # PA6E0004

description Storms can temporarily overwhelm the capacity of municipal sewer systems that carry both sanitary wastewater and stormwater in a single pipe, in some cases discharging untreated sewage into lakes and rivers. In February 1997, MOE posted a proposal on the Environmental Registry that would require municipalities with combined sewer systems to develop a pollution prevention plan, meet minimum overflow controls, and provide additional controls when beaches would be affected.

public comments The public asked MOE to clarify its requirements and make several technical changes.

decision Comments from the public resulted in a decision that gave clearer direction to municipalities. MOE clarified that although extensive new development will not be permitted in areas where combined sewer systems have serious deficiencies, small infill development will be permitted. Another change: when chlorination is used as the disinfection process, the effluent must be dechlorinated.

Table 1: Selected Posted Acts and Regulations

Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)

Bill 146, *Farming and Food Production Protection Act, 1997* (AC7E0001.P)

Proposal posted 28-Jan-97

Decision not posted

- Provides broader protection to farmers against complaints from neighbours than the *Farm Practices Protection Act (FPPA)* (1988), which it replaces
- Expands list of nuisances that farmers are permitted to cause as a result of normal farm practices from noise, odour, and dust, to include: flies, smoke, vibration, light.
- No municipal by-law can restrict a normal farm practice.

Environmental Implications and Public Participation

- If a farm practice is determined to be a "normal" practice by the Normal Farm Practices Protection Board, neighbours cannot succeed in stopping the practice through a court order.
- Under the new *FPPA*, as under the old *FFPPA*, environmental protection legislation is still paramount; "normal" farm practices are not protected practices if they contravene environmental regulations, permits, or statutory provisions
- The Normal Farm Practices Protection Board will have to be applied to before a complainant can sue in court for harm to a public resource or public nuisance (under the *EBR*) or for nuisance under common law.

ECO Commentary

- A discussion paper posted on the Registry in January 1997 proposed changes to the act; public consultation on the proposal led to Bill 146.
- The ECO commends the early posting of the discussion paper, thus maximizing the opportunity for public participation. However, to satisfy the *EBR* requirement to notify the public of proposals for environmentally significant acts, the proposal should have been posted a second time for public comment once the full text of the bill was drafted.
- The ECO will review this law when it is finalized.

Consumer and Commercial Relations (MCCR)

O.Reg 156/97 (Certification of Petroleum Equipment Mechanics), made under the *Gasoline Handling Act* (RL7E0003.P)

Proposal posted 7-Apr-97

Decision not yet posted

- The regulation creates a certification system for petroleum equipment mechanics; operators of licensed service stations and marinas will be required to have equipment installed, serviced, and maintained by certified persons.

Environmental Implications and Public Participation

- Certification will ensure minimum standards of knowledge among operators and maintainers of petroleum equipment in retail facilities which could reduce leaks and accidents. Such events can cause serious environmental harm and create a risk to the public.

ECO Commentary

- The regulation came in force in July 1997, but no decision notice was posted in 1997.
- The regulation was filed May 2, 1997, five days before the 30-day comment period had ended.
- MCCR or the TSSA should ensure that decision notices are posted in a timely manner and that they do not act contrary to the *EBR* by finalizing decisions before the end of the publicized comment period.

Table 1: Selected Posted Acts and Regulations

Standard adopted under the *Gasoline Handling Act:* Diking and Secondary Containment for Aboveground Tanks (RL6E0003.D)

Proposal posted 28-Nov-96

Decision posted 9-May-97

- Double-walled aboveground gasoline storage tanks will no longer be required to be surrounded by an earth dike (single-wall tanks will still require dikes).

Environmental Implications and Public Participation

- The TSSA reports that the use of double-walled tanks to contain potential spills may decrease the risk of leaks; secondary containment through double-walled tanks instead of dikes has been approved by the Underwriters' Laboratories of Canada (ULC), an organization that performs tests on equipment and certifies it for safety and standardized manufacturing.

ECO Commentary

- Documentation on SEV consideration provided by the TSSA showed that the TSSA applied MCCR's SEV carefully in making this decision.

Environment (MOE)

Bill 57, *Environmental Approvals Improvement Act, 1997* (AA6E0001.D)

Proposal posted 3-Jun-96

Decision posted 7-Aug-97

- Amends the *Environmental Protection Act (EPA)* and the *Ontario Water Resources Act (OWRA)*.
- Eliminates the Environmental Compensation Corporation and repeals the *Ontario Waste Management Corporation Act*.
- Allows exemptions from individual approval requirements of the *EPA* and *OWRA*.
- Companies may be deemed to have a certificate of approval (C of A) or may be exempt from applying for a C of A if they meet the requirements of Standardized Approvals Regulations (SARs); these regulations have not yet been released.
- Grants Cabinet a broad power to exempt companies, processes, activities, or entire industries from any provisions of the *EPA* or the *OWRA*.
- Expands the fee-charging authority under the *EPA* and the *OWRA*.
- MOE has told the ECO that "...many of the proposed regulations require a professional engineer to ensure that certain standards have been met, or require the consent of a municipality to the undertaking, or both. Under the proposed standardized approval regulations, regulated parties will be required to submit a notice to the ministry containing detailed information which will be subject to ministry review. In addition, the information contained in the notices is proposed to be included in an integrated ministry database system, which will be accessible by all ministry abatement and enforcement officers for inspection purposes."

Environmental Implications and Public Participation

- Allows Cabinet to make environmentally significant decisions without public notification or consultation.
- Commenters noted that holders of standardized approvals may be able to invoke the defence of statutory authorization in response to law suits – however, unlike certificates of approval, with standardized approvals there is little or no scrutiny either by the ministry or by the public in the granting of the approval.
- Could reduce the number of classified instruments issued under the *EPA* and *OWRA*, thus reducing opportunities for public participation under the *EBR*.
- Standardized approvals may make consideration of cumulative impacts on the environment difficult.
- In a summary of its decision- making record for Bill 57, MOE indicated that since all the changes are "financial or administrative in nature and would not result in any impacts on the environment," there was no need to consider its SEV. The ministry went on to add that the SEV will be considered when (SARs) are being developed to exempt the requirement for C of As for certain activities under the *EPA* and *OWRA*.
- Impacts will depend on the provisions of new regulations which will be made under the *EPA*.

ECO Commentary

- MOE's decision notice did not provide a description of the comments that had been made to the ministry; the notice should have described the substantial changes suggested and stated why those changes were not incorporated into the decision.
- ECO rejects MOE's assertion that because this bill is environmentally insignificant (financial or administrative in nature), there was no need to consider the ministry's SEV. This is an environmentally significant act which should have undergone SEV consideration.
- No SARs were posted on the Registry in 1997 but a posting outlining "proposal concepts" for 14 regulations was posted in early February 1998.
- The ECO will review the regulations when they are posted.

Bill 107, *Water and Sewage Services Improvement Act, 1997* (AA7E0001.D)

Proposal posted 20-Jan-97

Decision posted 29-Jul-97

- Authorizes the transfer of water and sewage works owned by the Ontario Clean Water Agency (OCWA) to municipalities.
- Municipal councils, and in unorganized areas, the Ministry of Municipal Affairs and Housing, are given enforcement responsibility for the sewage system provisions of the *Environmental Protection Act*.

Environmental Implications and Public Participation

- Septics provisions have not been proclaimed and are superseded by provisions in Bill 152, the *Services Improvement Act*, that transfer responsibility for septic systems from MOE to municipalities.
- It is unclear what environmental impact the transfer of water and sewage works to municipalities will bring about.
- Impacts cannot be accurately predicted, because they will depend on the choices of individual municipalities after transfers of works.

ECO Commentary

- MOE decision notice was informative and provided a good summary of the comments that had been made to the ministry and the ministry's responses.

Table 1: Selected Posted Acts and Regulations

Amendments to Regulation 347 (Waste Management), made under the *Environmental Protection Act* (RA7E0012.P)

Proposal posted on 22-Oct-97

Decision not yet posted

- Amends the list of designated wastes under the *EPA*.
- Several wastes are exempted from certificate of approval requirements, including: photographic waste that contains silver (when it is being transferred to a site where silver is recovered); chop line residues transferred by a generator and destined for a site at which it is to be processed for recovery of metal and plastic (chop line residue is residue remaining after metal is recovered from wire and cable, and it contains polyvinyl chloride, lead and cadmium); and spent pickle liquor (where it will be used as a treatment chemical in a sewage or wastewater treatment plant).

Environmental Implications and Public Participation

- The proposed regulation reduces regulatory control of these substances which all contain hazardous wastes.
- This was a complex proposal which only a few people felt qualified to comment on; one organization requested an extension of the comment period until Dec. 31, 1997, which was not granted.

ECO Commentary

- In December 1997, MOE indicated that the proposed amendments were still under discussion and that a decision notice was expected by the end of 1997. However, a decision notice has not yet been posted.

Proposed amendments to Regulation 351, Marinas Regulation, made under the *Environmental Protection Act*

Proposed 30-Dec-97 (RA7E0027.P)

Decision not yet posted

- In "Responsive Environmental Protection," MOE proposed to revoke this regulation and replace it with a voluntary code.
- The regulation requires marinas to provide and maintain waste management facilities for boaters: litter containers and facilities for pumping out waste tanks.
- Under the December 1997 proposal, MOE would retain the current regulation, and supplement it with the voluntary code of practice already produced by the Ontario Marina Operators Association.

Environmental Implications and Public Participation

- Compliance with the code by private marina operators should increase environmental protection.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.
- MOE changed its position after public and stakeholder comments were made on the REP proposal. The key public concern was that not all marinas would follow the voluntary code.

Proposed amendments to O.Reg. 77/92 (Exemption for Ground Source Heat Pumps), made under the *Environmental Protection Act*

Proposed 24-Dec-97 (RA7E0017.P)

Decision not yet posted

- The amendment would ban the use of methanol as a heat transfer agent in new ground source heat pumps.
- Prohibits the alteration, extension or replacement of existing ground source heat pumps that use methanol.

Environmental Implications and Public Participation

- Methanol is a highly toxic agent that can contaminate ground water and can cause death through either severe doses or prolonged exposure.
- The proposed amendment would require the use of safer alternatives to methanol as a transfer agent for ground source heat pumps.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.
- These amendments were first presented in "Responsive Environmental Protection" (RA6E0009.P) and are now proposed, without changes, as part of the "Better, Stronger, Clearer" initiative.

Consolidation of O.Regs. 660/85, 661/85, 663/85 and Regulation 355 ("Acid Rain Regulations"), made under the *Environmental Protection Act*

Proposal posted 30-Dec-97 (RA7E0030.P)

Decision not yet posted

- The proposed regulation would replace four previous regulations, which limit sulphur dioxide (and, in one case, nitric oxide) emissions released by four companies: Inco, Falconbridge, Algoma Steel, and Ontario Hydro.
- Under the new regulation emissions limits would remain the same; reporting would be reduced from twice or four times per year to once per year.

Environmental Implications and Public Participation

- The changes streamline existing regulations and make some administrative changes, while maintaining the same regulatory standards.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.

Table 1: Selected Posted Acts and Regulations

Proposed amendments to O.Reg. 215/95 (Electric Power Generation Sector), made under the *EPA* (MISA reg.) (RA7E0018.P)

Proposed amendments to O.Reg. 214/95 (Iron and Steel Sector Regulation), made under the *EPA* (MISA reg.) (RA7E0019.P)

Proposed amendments to O.Reg. 562/94 (Metal Casting Sector Regulation), made under the *EPA* (MISA reg.) (RA7E0022.P)

Proposed amendments to O.Reg. 537/93 (Petroleum Refineries Sector Regulation), made under the *EPA* (MISA reg.) (RA7E0026.P)

All Proposed 30-Dec-97

Decisions not yet posted

- Reduces chronic toxicity testing frequency from semi-annual to annual following three years of semi-annual chronic toxicity testing and adequate data collection to understand the harmful effects of the effluent.
- Reduces monitoring requirements from daily to three days a week where effluent parameters are equal to or less than 75% of the limit for 12 consecutive months; more frequent monitoring must be reinstated if limits are exceeded.
- Removes requirement to monitor parameters not used or present on site for 24 consecutive months; discharger must continue to monitor these parameters annually and reinstate more frequent monitoring if limits are exceeded.

Environmental Implications and Public Participation

- Because chronic toxicity testing is important in determining whether effluent may cause harm over a long period of time, there is some concern that reduced chronic toxicity testing may compromise understanding of harmful effects of effluent.

ECO Commentary

- Decision notices were not posted on these proposals in 1997.
- The ECO will review this decision when it is posted.
- These amendments were first presented in "Responsive Environmental Protection" (RA6E0009.P) and are now proposed, without changes, as part of the "Better, Stronger, Clearer" initiative.

Proposed amendments to O.Reg. 760/93 (Pulp and Paper Sector Regulation), made under the *Environmental Protection Act* (MISA reg.)

Proposed 31-Dec-97 (RA7E0025.P)

Decision not yet posted

- Removes requirement that dischargers of AOX (total adsorbable organic halides) submit reports over time on how to eliminate AOX by year 2002, but introduces requirement that MOE review the science on AOX by 2000 in relation to its goal of eliminating generation of AOX.
- Advances date that dischargers must meet standard of 0.8 kg AOX/tonne of pulp from December 31, 1999 to the date this regulatory amendment is filed.
- Reduces chronic toxicity testing frequency from semi-annual to annual, following three years of semi-annual chronic toxicity testing and adequate data collection to understand the harmful effects of the effluent.
- Reduces monitoring requirements from daily to three days a week where effluent parameters are equal to or less than 75% of the limit for 12 consecutive months; more frequent monitoring must be reinstated if limits are exceeded.
- Removes requirement to monitor parameters not used or present on site for 24 consecutive months; discharger must continue to monitor these parameters annually and reinstate more frequent monitoring if limits are exceeded.

Environmental Implications and Public Participation

- While MOE remains committed to elimination of AOX, the removal of the requirement that dischargers submit elimination plans may have a negative impact on the environment because the requirement was meant to encourage innovative technologies to deal with AOX generation; the science on AOX may not produce new technologies if the deadline for elimination of AOX by 2002 no longer exists.
- Because chronic toxicity testing is important in determining whether effluent may cause harm over a long period of time, there is some concern that reduced chronic toxicity testing may compromise understanding of harmful effects of effluent.
- In "Responsive Environmental Protection," MOE proposed removing both the requirement to submit elimination plans and MOE's review of the reports against the goal of zero AOX; MOE appears to have compromised by retaining the goal of eliminating AOX.
- The date that dischargers must meet the standard of 0.8 kg AOX/tonne of pulp has been advanced because dischargers are already meeting this standard due to new technology.

ECO Commentary

- A decision notice was not posted on this proposal in 1997; the ECO will review this decision when it is posted.

Municipal Affairs and Housing (MMAH)

Bill 152, *Services Improvement Act* (AI7E0001.D)

Proposal posted 22-Aug-97

Royal Assent on 8-Dec-97

Decision posted 16-Dec-97

- Schedule B transfers authority for regulating small, on-lot septic systems from Part VIII of the *Environmental Protection Act* (administered by MOE) to the *Building Code Act, 1992* (administered by MMAH and enforced by municipalities). The small number of large and off-lot systems will still be regulated by MOE.
- The Building Code will establish standards that sewage systems must meet.
- The bill introduces mandatory certification of inspectors and installers under the Building Code.

Environmental Implications and Public Participation

- Following the transfer of responsibility for septic systems, it is unclear how MOE, MMAH and municipalities will work together to link septic issues to a strategy for the management and protection of groundwater.

Table 1: Selected Posted Acts and Regulations

ECO Commentary

- Regulatory responsibility for septic systems was transferred from MOE to municipalities as part of the government's "Who Does What" initiative, to facilitate "one window" building permits. This appears to place greater emphasis on the customer service side of septic system management rather than the environmental protection side.
- It is questionable whether all municipalities have adequate investigation and enforcement capabilities to deal with the cumulative and growing environmental and public health threats due to improperly functioning septic systems.
- Decision appears to be consistent with MMAH's SEV.

Natural Resources (MNR)

Bill 119, *Red Tape Reduction Act (Ministry of Natural Resources) 1997* (AB7E4001.P)

Proposal posted 6-Feb-97

Decision not posted

- Amends several acts prescribed under the EBR.
- Restrictions on the maximum size of parcels of public lands sold by MNR, and on their minimum price, would be removed from the *Public Lands Act* and such sales would be approved by the minister, rather than by Cabinet.
- Under the proposed legislation, many public land and water management decisions could be delegated to private organizations.
- Amendments to the *Conservation Authorities Act* would give conservation authorities the power to dispose of rights to gas and oil resources on their lands; extraction must be made from adjacent lands not owned by authorities.
- The provincial Cabinet would be given authority to make regulations "governing applications for approvals" under the *Lakes and Rivers Improvement Act*.

Environmental Implications and Public Participation

- Some commenters worry that Conservation Authorities would make deals for oil or gas extraction that harm sensitive lands in their ownership.
- Authorizing the delegation of environmental policy decisions to private organizations is of concern to some environmental groups, who argue that it is the role of governments to make such decisions.
- Public oversight of such delegation is not addressed in the proposals and accountability for these decisions may suffer.

ECO Commentary

- The bill received First Reading only during 1997; the bill was not passed before the session of the Legislature ended on Dec. 18, 1997, and thus died on the order table. The ECO will review if the bill is re-introduced.

Bill 139, *Fish and Wildlife Conservation Act, 1997*

Related proposal—AB6E5010.P—posted 30-Sep-96 and AB7E6001.P (information notice) posted 19-Sep-97

Royal Assent on 18-Dec-97

Decision not yet posted

- The act is similar to the *Game and Fish Act (GFA)*, which it replaces.
- The new act is better organized, and easier to read than the *GFA*.
- Terminology is somewhat different from the *GFA*; categories of "specially protected" species introduced.
- Compared to the *GFA*, the new act protects more species; certain penalties are increased, particularly those relating to the illegal trade in animal parts; provides MNR with improved enforcement capabilities.
- Prohibits the establishment of new dog training facilities using wild animals, but existing facilities are grandparented.

Environmental Implications and Public Participation

- MNR has conducted substantial public consultation on fish and wildlife policy over several years, outside the *EBR* regime.
- Proposed changes to the *GFA* were posted as a discussion paper in September 1996; public consultation led to Bill 139.
- New act offers somewhat expanded protection of species and better enforcement capability.
- Measures to combat the illegal trade in game parts (particularly black bear parts) were greatly needed, as pressure on the species from unauthorized hunting has increased dramatically.
- Game farming not regulated under new act will be regulated by OMAFRA following an environmental assessment.

ECO Commentary

- The ECO commends the early posting of the discussion paper, thus maximizing the opportunity for public participation. However, to satisfy the *EBR* requirement to notify the public of proposals for environmentally significant acts, the proposal should have been posted a second time for public comment once full text of bill was drafted.
- Bill 139 was posted a second time as an information item.
- Bill 139 strikes a careful balance among the competing interests of various groups.
- The ECO will review new *GFA* regulations after they are made available.

Why Review Unposted Decisions?

Public participation in environmental decision-making is at the heart of the *Environmental Bill of Rights*. When it comes to our attention that environmentally significant ministry proposals and decisions have not been posted on the Environmental Registry, we review them to determine whether the public's participation rights under the *EBR* have been respected. Table 2 illustrates the nature of these decisions, the rationale provided by each ministry for not posting them on the Registry, and a brief ECO commentary.

General Observations

Overall, there were far fewer unposted environmentally significant decisions in 1997 than in previous years, and I congratulate the ministries for this improvement in complying with the public participation provisions of the *EBR*. In particular, the Ministry of Natural Resources made a noticeable effort to improve its compliance with the *EBR* by posting numerous proposals for acts, policies and regulations.

Several new acts were posted for public comment very early in their development, while they were still at the stage of discussion papers. This practice of posting proposals during the decision-making process is a good one. It helps to ensure that comments are considered at a time when they can influence decisions. However, to provide greater transparency, the revised act that results from this process should be posted a second time for public comment, especially if the proposal is complex or there is considerable public interest.

There is a wide range of interpretations among ministries regarding the meaning of "environmental significance" and how to determine if proposals are subject to the *EBR* requirement to post them on the Environmental Registry. Ministries are encouraged, when in doubt, to err on the side of posting a proposal for public comment. The Registry creates opportunities for public participation that serve to enhance ministry decision-making. I would also remind all ministries that a decision that is likely to produce positive environmental effects is also an environmentally significant decision that is required to be posted on the Registry.

Ministries' Use of the Registry for Posting Information Notices

During 1997, the Ministries of the Environment (MOE), Natural Resources (MNR), Transportation (MTO), and Consumer and Commercial Relations (MCCR) posted information notices to inform the public about decisions. For example, MOE posted the government's White Paper on Electricity Restructuring on the Registry on behalf of the Ministry of Energy, Science and Technology, which is not yet a prescribed ministry under the *EBR*. MNR voluntarily posted notice of forest management plans, even though it's not required that these plans be posted, because they have been approved under the Timber Class Environmental Assessment. This is a good use of the Registry as a tool to inform the public about ministry activities.

There is, however, a drawback if ministries use this provision incorrectly, since the notice provision of the *EBR* does not compel the ministry to consider public comment and to explain how it made use of comments in its decision. For example, MNR should have provided an opportunity for public comment on its decision not to enforce or administer s.35 of the federal *Fisheries Act*. Instead, asserting this was only an administrative matter, MNR posted an information notice that the decision had been made and when it would take effect. Comments back to the ministry from members of the public clearly indicated

MNR Withdraws from Federal *Fisheries Act*

Background

The Ministry of Natural Resources (MNR) announced that on September 18, 1997, it was withdrawing from the administration and enforcement of the s.35 provisions of the federal *Fisheries Act*, which require authorization for anything that harms, alters, disrupts or destroys fish habitat. Under a 1989 agreement with the federal government, the ministry had taken over enforcement and authorization of projects under these provisions from the federal Department of Fisheries and Oceans (DFO).

The ministry posted its decision on the Environmental Registry as "information only" and thus not open to public comment. MNR said these were administrative and procedural changes that "will not significantly affect the environment" – as long as "the DFO moves to fulfill its constitutional responsibilities for fish habitat protection." However, the ministry inadvertently included a comment period when posting the decision, and several comments came in from the public, all of them critical of MNR's decision.

Public Comment

Several people argued that MNR's claims that fish habitat would not be harmed were misleading, since at the time that MNR announced its decision the DFO had only seven fisheries biologists in Ontario, all working in Burlington and none of whom have the authority to lay charges. Other commenters felt the ministry's action was designed to lever resources from the federal government. Trying to recreate the existing network of experienced biologists that MNR had in place across the province would be inefficient and costly to taxpayers, according to another commenter. Other people were concerned that MNR's action would result in red tape and delays for development projects, which would now have to be authorized by the limited DFO staff available.

ECO Commentary

This decision is inconsistent with several of the objectives in the ministry's Statement of Environmental Values (SEV), one of which is to "ensure the long-term health of ecosystems by protecting and conserving our . . . aquatic resources." Not consulting with the public in making this decision is also inconsistent with the ministry's SEV principle of "openness and consultation in decision-making that may significantly affect the environment." The lack of consultation is also at odds with MNR's 1997 business plan, in which "...decisions about natural resources protection and use are made in an orderly and open way," leading to a "high level of public satisfaction with involvement in decisions related to fish and wildlife." It is difficult to see how this decision will help MNR achieve one of its main corporate priorities for 1997: to increase angling and hunting opportunities in the province.

MNR Response

MNR has told the ECO that the ministry "is committed to assisting DFO during the transition period. Further, MNR is not issuing work permits under provincial legislation for work in or around water until DFO has provided advice or authorization on fish habitat protection. MNR staff provide DFO with any local habitat information that is on file. MNR informs clients of their responsibility under the act, and reports any potential fish habitat violations to the DFO. MNR is satisfied that DFO has recognized and resumed its responsibility in this regard and is working with DFO to ease the procedural transition."

that people found this to be an environmentally significant decision with potentially far-reaching consequences for Ontario fish and waters. (See the discussion above.)

Ministries should ensure that decisions are not posted merely for "information purposes" if they are legally required to be posted with an opportunity for public comment.

When Posting on the Registry is not Required – Exceptions

The *EBR* allows ministries in certain specified situations not to post decisions and proposals on the Registry for public comment. These are called "exceptions." ECO staff review how the ministries use these exceptions to make sure that people are not being unreasonably deprived of their public participation rights.

The incorrect use of exceptions continues to be a problem. In December 1997, we issued a draft discussion paper on exceptions. When the paper is finalized, we will issue a guidance document to assist ministries in complying with the posting requirements of the *EBR*.

One of the problematic issues in this area is how the ministries are using the exception provision for decisions they identify as "predominantly financial or administrative." It is my view that the financial or administrative exception should be used only if the proposal has minimal environmental significance. If a proposal is environmentally significant, the minister should use discretion and post for public comment. To see how the ministers used these and other exceptions, please see chart in Table 2 on unposted decisions.

The *EBR* requires that the minister consider the ministry Statement of Environmental Values (SEV) for all environmentally significant decisions the ministry makes. However, many ministries are not considering their SEVs if, in their opinion, the decision is not subject to the public notice and comment provisions of the *EBR*. This is an incorrect interpretation of the *EBR*.

Recommendation 2

Ministers should ensure that the ministry Statement of Environmental Values is considered whenever they make environmentally significant decisions, whether or not such decisions are subject to the Registry posting requirements of the *EBR*.

Table 2: Selected Unposted Decisions

Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)

Rural Job Strategy Fund

Unposted Decision

- A $30 million fund to be invested in rural Ontario through partnerships that will enhance the quality of Ontario products, capitalize on marketing and export opportunities and encourage the adoption of new or upgraded information technology.
- Ministry promotional materials, released in Oct. 1997, state that the development of Environmental Management Systems (EMSs) by pork farmers, wine producers and other farmers are eligible for this program.

Ministry Rationale

- The program is financial in nature and is intended to address major barriers to rural economic development.
- Consultations on the program revealed that rural clients want to ensure that their business projects are standardized to satisfy environmental management practices. Thus, only projects that comply with current environmental standards and laws will be approved. The program does not fund the development of new environmental management standards.
- The *EBR* did not apply to the program and the ministry concluded that it was not required to post it on the Registry.

ECO Commentary

- The development of EMSs by farmers can have positive environmental effects.
- This decision has environmental significance but did not need to be posted since it falls under the exception for predominantly financial and administrative decisions.
- Since the decision has environmental dimensions, in the future the minister is encouraged to use his discretion to post s. 6 information notices about these decisions on the Registry.
- The ministry did not indicate whether the SEV was considered.

Citizenship, Culture and Recreation (MCzCR)

Allocation of gaming funds

Unposted Decision

- Consultation process to determine how to allocate gaming funds to charities, with individuals and organizations from many sectors including the environment.
- Decision could have implications for the funding of environmental non-government organizations (ENGOs).

Ministry Rationale

- Not posted because the consultation did not contain any environmentally significant matters.

ECO Commentary

- The ECO agrees that decision was not environmentally significant. However, posting would have been a way to inform environmental groups about the opportunity to apply for funds.

Environment (MOE)

Deloro Mine cleanup

Unposted Decision

- In April 1997, MOE announced it would begin the cleanup of the abandoned Deloro mine site, on the Moira River near Belleville. According to MOE, this is one of Ontario's most contaminated sites. MOE took control of the mine in 1979 and has been involved in studies, investigations and remediation in the intervening years. Over the past few years, MOE has worked with the Ministry of Northern Development and Mines to take care of collapsing mine shafts and other hazard problems at the site. MOE is now ready to do the final work to address the mine's environmental problems. As of April 1997, more than $9 million has been spent cleaning up the site.

Ministry Rationale

- MOE's involvement with and intention to clean up the mine pre-dates the *EBR*.
- MOE assured the ECO that it will be following the *EBR* requirements in posting notices of the necessary certificates of approval on the Registry for public comment as part of the implementation of this project.

ECO Commentary

- The ECO will monitor MOE's involvement to ensure that instruments for the project are posted on the Registry. None were posted in 1997.
- In the fall of 1997, a private prosecution was launched by a Kingston environmental group in relation to alleged contraventions of the *Fisheries Act* caused by effluent from this site.
- This case highlights the cost of cleaning up abandoned mine sites, a theme discussed in the ECO's 1996 Annual Report in relation to amendments made to the *Mining Act* to loosen the financial assurance and mine cleanup rules that apply to mine developers. Some estimates suggest there are nearly 300 abandoned mine sites in Ontario that are in need of rehabilitation because they pose serious environmental or safety hazards.

Health (MOH)

Bill 152, *Services Improvement Act*

Unposted Decision

- Contained an amendment to the *Health Protection and Promotion Act* which would have removed the duty of the Chief Medical Officer of Health of the province to keep informed of matters related to occupational and environmental health. This amendment would have left a gap in the monitoring of environmental health matters of regional or provincial scope, and was thus an environmentally significant decision.

Ministry Rationale

- The amendment in question was removed during clause-by-clause committee hearings in November, thus was no longer an environmentally significant decision.
- Bill 152 received Third Reading from the Legislative Assembly and passed into law in December 1997.

ECO Commentary

- ECO commends the ministry for removing this amendment to the *Health Protection and Promotion Act*.

Table 2: Selected Unposted Decisions

Labour (MOL)

Discussion paper on *Occupational Health and Safety Act*

Unposted Decision

- Release of discussion paper for consultation as part of comprehensive review and reform of act.

Ministry Rationale

- Discussion paper does not propose changes to the act, hence does not fall under s. 15 of the *EBR*.
- Review of the act is not environmentally significant.

ECO Commentary

- ECO urged the ministry to post notice on the Registry.
- The ministry SEV states: "It is recognized that, on occasion, measures taken by employees to control worker exposure to hazardous materials may present a problem for the external environment."

Northern Development and Mines (MNDM)

Bill 120, *Red Tape Reduction Act (MNDM), 1997*

Unposted Decision

- Cabinet may prescribe circumstances where a proponent need not comply with a provision in *Mining Act* regulations respecting rehabilitation of mining lands.
- Eliminates requirement to stake out and record placer mining claims.
- This legislation was proclaimed on December 18, 1997.
- MNDM Director of Rehabilitation will monitor industry practices.

Ministry Rationale

- Changes in the act are positive and will be environmentally beneficial because they do not reduce requirements for closure plans as long as the standards met by the proponent exceed requirements under existing regulations. Thus, the proposal will have no significant environmental impact.

ECO Commentary

- The ECO recognizes that proponent compliance with higher mining land rehabilitation standards could increase environmental protection.
- Ministry response implies that there are no environmentally significant impacts if the proposal is intended to have positive outcome; however, *EBR* provisions apply to both positive and negative environmental impacts.

Transportation (MTO)

Municipalities to fund local transportation services fully

Unposted Decision

- Part of "Who Does What."
- Government claims it will reduce duplication in delivery of local transportation services by requiring municipalities to fund municipal transit and airports, GO Transit, and highways and ferries serving local needs.

Ministry Rationale

- Predominantly financial and administrative, hence not necessary to post on Registry or consider SEV.
- Municipalities responsible for maintaining standards of environmental protection and complying with the *Environmental Assessment Act*.

ECO Commentary

- Inappropriate exception.
- Failure to consider SEV.
- This decision seems likely to cause a decline in public transit ridership in many Ontario cities. Road vehicles are Ontario's number one source of smog-causing pollution, accounting for approximately 30 per cent of NOx and VOC emissions. Increased emphasis on public transit would help Ontario to achieve its smog reduction targets.

Expansion of Highways 11 and 69

Unposted Decision

- Portions of Ontario Highways 11 and 69 to be expanded to four lanes from the existing two lanes.

Ministry Rationale

- Road-building qualifies as an approved undertaking under *EAA* and therefore is exempted from *EBR*.
- Project was subject of extensive environmental assessment under *EAA*. No requirement to post either as a proposal or as an exception because of equivalent participation.

ECO Commentary

- The ECO found that the decision to expand the highways could have been characterized as a plan or objective of MTO, thereby constituting a "policy" for purposes of the *EBR*. Had the decision been exempt from the *EBR* public notice and comment requirements due to the equivalent public participation provision in s. 30 (1) (a), there would still be a need to post an exception notice on the Registry, which MTO did not do.
- The ECO encourages ministers to post these types of proposals as policies to alert members of the public to the nature of ministers' decisions and to provide greater transparency.

PART FOUR

Detailed Reviews of Ministry Decisions and Proposals

Air Quality

The Ministry of the Environment (MOE) maintains that overall air quality has improved in Ontario since 1970. However, the ministry also acknowledges that smog and fine particulates remain chronic problems. Over the past two years, MOE has announced almost a dozen initiatives aimed at improving air quality, and the ministry's 1997 business plan sets targets and deadlines to reduce pollutants that contribute most to smog. During the past year, I reviewed some of these decisions, and I will continue to monitor whether the outcomes are consistent with the ministry's Statement of Environmental Values and the purposes of the EBR, and how the public was involved in ministry decision-making.

Reducing Air Pollution

In June 1996, MOE posted a Smog Discussion Paper on the Environmental Registry that pointed out that Ontario has among the highest smog levels in Canada, and that human death rates from respiratory problems could be linked to exposure to inhalable particulates. The discussion paper, which was supported by technical documentation detailing scientific findings and uncertainties, presented key ministry goals over the next 20 years: to reduce nitrogen oxides (NOx) and volatile organic compounds (VOCs) by 45 per cent by the target year of 2015. The ministry hopes that this will reduce ozone exceedances (or "bad air days") by 75 per cent. The discussion paper received extensive public consultation, including a two-day workshop attended by more than 170 people.

During the public consultation, people recommended the ministry put a new emphasis on public transit and energy conservation measures, and more emphasis on air quality monitoring. They said the emission reduction targets in the discussion paper were too weak. Many people requested that MOE establish interim targets, with benchmarks that would measure progress well before 2015.

In January 1998, MOE released its smog plan, "A Partnership for Collective Action." However, none of the environmental organizations that were consulted endorsed this plan, citing the lack of detail and the need for stronger performance targets.

In fact, MOE's own emissions projections, which factor in future economic growth, show that even if all existing and proposed pollution control activities are carried out over the next 18 years, Ontario's overall air quality is likely to be somewhat worse in 2015 than it is today.

Obstacles to Smog Reduction

Plan of Action Goes Only Halfway: MOE's Smog Plan, released in January 1998, describes a set of plans and activities that would, at best, get Ontario only halfway to the stated smog target by the year 2015. There is no detail on how the other half of the needed reductions can be achieved.

Funding Priorities Unclear: Although MOE's 1997 business plan describes air quality as a "major focus," the same business plan allocates only 3 per cent of the ministry's environmental protection budget to clean air. MOE notes that this is an underestimate of actual spending on clean air, since its programs for "compliance" and "healthy ecosystems" also include some air-related work, which is difficult to quantify in the budget.

Smog Accord Voluntary: Although MOE acknowledges that air quality improvements over the last 25 years are due to regulation by the province, the ministry now plans to use a voluntary approach to cutting air pollution. Industry representatives who endorsed MOE's Smog Plan, including chemical and petroleum producers and the iron and steel sector, agree that Ontario has a smog problem and support the reduction target. But the workplans they develop for the Smog Plan will not be binding. Nor do they bind their companies or their sector to meeting targets, nor commit to specific reporting requirements on annual emissions of NOx and VOCs.

MOE has told the ECO that "...the Ministry of the Environment recognizes that 'Ontario's Smog Plan' has not provided all the solutions to obtain its ultimate goal in year 2015.... The first year of the Ontario Smog Plan process focussed on the organization of work groups and the identification of emission reductions. Key areas of focus over the next year include implementation of emission reduction plans; completion of the inhalable/respirable particulate management strategy; development of public acceptance and transportation demand management strategies; development of a performance evaluation, monitoring, reporting and verification process; and development of alternative approaches to further the implementation of emission reduction plans. We also need to ensure these and future actions are implemented and backstopped with reduction agreements or appropriate performance standards."

Recommendation 3

MOE should complete and publish a full list of the emission reduction actions that are still needed to achieve its stated air quality targets by the year 2015. The ministry should also establish interim targets, and should provide the public with annual updates on emission reductions achieved, trends in total emissions and air quality concentrations, and reductions still needed to meet near-term and long-term targets.

No Plan to Upgrade Old Certificates of Approval: MOE issues certificates of approval (Cs of A) for new, altered or expanded facilities that may be sources of air pollution. The C of A specifies how the facility must be built and operated so that air quality standards are not likely to be exceeded. Once a facility is built according to the C of A, MOE usually does no follow-up monitoring, and certificates of approval do not have expiry dates. MOE amends them only in rare cases where there is strong concern and clear evidence of a problem. This means that even if MOE sets new, more rigorous air quality standards for the province, there is no connected province-wide program to upgrade old certificates of approval. MOE may try to get individual facilities to improve, but faces resistance when it uses this case-by-case approach. For example, in 1997 when Falconbridge applied for an amended C of A for its Sudbury smelter because it was changing its refining process, MOE asked the company to cut particulate and sulphur dioxide emissions as part of the change. When Falconbridge launched an appeal, saying the ministry's proposal was unreasonable, unduly onerous and redundant, MOE backed down.

In my 1994-1995 Annual Report, I raised concerns about outdated certificates of approval for air pollution sources. But updating these Cs of A to reflect more stringent air quality standards does not seem to be a priority for the ministry. It is not mentioned in MOE's 1997 business plan, nor is it a component of the new Smog Plan.

No Plan to Improve Public Transit: Road vehicles are Ontario's number one source of smog- causing pollution, accounting for approximately 30 per cent of NOx and VOC emissions. MOE staff acknowledge that an increased emphasis on public transit would help Ontario to achieve its reduction targets. However, in January 1997, the Ministry of Transportation (MTO) announced that the province would eliminate all operating and capital funding for public transit in Ontario, effective January 1, 1998. This MTO decision was made without consulting the public, since the ministry called it an "administrative and financial" decision that could thus be excepted from posting on the Environmental Registry. While MOE is charged with reducing air pollution, it does not have jurisdiction over improving public transit. MTO, the Ministry of Municipal Affairs and Housing (MMAH), and municipalities determine transit policy. Currently, no ministry has measurable targets for improving public transit.

Recommendation 4

All ministries, especially MMAH and MTO, should ensure their policies and priorities regarding land use planning and public transportation support MOE's efforts to control vehicle emissions. MMAH, MTO and MOE should develop a joint strategy to address the problem of the steadily growing vehicle population in Ontario, which is a major barrier to improving air quality.

More Coal Burning by Ontario Hydro: MOE's smog reduction plan is counting on Ontario Hydro's coal-burning power plants to cut their NOx emissions very significantly, by 19,000 tonnes by 2000. These cuts were planned in 1991 and assumed continued operation of Hydro's nuclear plants. However, Hydro's unexpected announcement in August 1997 that it was shutting down seven nuclear reactors and shifting to more burning of fossil fuels has cast doubt on Hydro's ability to achieve these cuts to emissions. Ontario Hydro is now predicting that its fossil fuel emissions of several air pollutants will rise by about 70 per cent between 1996 and 1998.

Some Encouraging Signs: Potential for Improvement

The Drive Clean Program: In December 1997, the Ministry of the Environment posted a decision on the Environmental Registry to begin a Drive Clean program – a vehicle inspection and maintenance program designed to reduce pollutants coming from cars, trucks and buses. Road vehicles are Ontario's number one source of smog-causing pollutants, and their contribution to smog is expected to grow. The number of kilometres logged by passenger vehicles increased 17 per cent over the last decade; that growth rate is projected to continue over the next 10 years. The Drive Clean program has the potential to be a good tool to fight smog, but if it is the only tool, its impact will be limited by the increasing use of cars.

Scheduled to begin in fall 1998 in the Greater Toronto Area and Hamilton, the Drive Clean program, MOE says, will be expanded to other Ontario centres with serious smog problems within two to four years. The program is expected to cut the annual release of smog-causing pollutants by 22 per cent and microscopic dust particles by 6 per cent. A similar program has been running in Vancouver since 1992, and audits there have shown emissions cuts of almost 20 per cent.

However, the success of the Drive Clean program depends on the many technical details that have been laid out in a Code of Practice recommended by the Canadian Council of Ministers of the Environment. Although Ontario signed the Code of Practice, it is not following some of its key recommendations. For example, Ontario will allow both testing and repairs to be done in the same shop, creating a potential conflict of interest and the risk of fraudulent testing and repair work. The Code of Practice recommends testing annually, especially for older cars, but Ontario will be testing cars and light trucks only every other year. MOE's other key procedures have not yet been finalized: for example, how repair technicians will be trained; how quality control specifications will be applied; and how audits and monitoring programs will be put in place. The ECO will follow this issue.

Recommendation 5

In developing its Drive Clean program, MOE should adopt the best practices of other jurisdictions and the recommendations of the Canadian Council of Ministers of Environment, particularly on issues such as the separation of vehicle testing facilities from vehicle repair facilities, and the training and certification of repair technicians.

Recommendation 6

MOE should ensure that emission trends of the Ontario vehicle fleet are accurately monitored and reported, and that the effectiveness of the Drive Clean program in reducing emissions is accurately evaluated through periodic independent audits and public reports.

Emissions Trading – An Innovative Approach: Although economic tools have long been discussed as an effective way of achieving environmental goals, they have rarely been used. The Ministry of the Environment (MOE) is currently studying one economic policy instrument in particular – emissions trading.

MOE posted a proposal in June 1997 relating to its Pilot Emission Reduction Trading (PERT) project, describing it as a cost-effective option for reducing air contaminant emissions. The pilot project is intended to provide insight into the potential value of emissions trading in Ontario as a complement to the regulatory approach to achieving environmental goals.

The initiative is industry-led. Companies can earn "emission reduction credits" by reducing their emissions below existing voluntary commitments. These credits can be sold to other companies that have difficulty meeting their commitments. The ministry's role, according to MOE's proposal, is to establish emission targets, to audit trades to make sure that emission reductions are real, and to provide advice on regulatory and technical matters. The program focuses on the Windsor-Quebec corridor and on emissions of NOx and VOCs. It is intended to be compatible and perhaps eventually "merge-able" with a simi-

lar program in place in the northeastern United States.

Once the PERT project is completed, people involved in the initiative will make recommendations on the potential for emissions trading as a pollution reduction tool. Companies taking part in PERT are asking MOE to sign a Letter of Understanding (LOU) that would give formal recognition to the emission reductions they achieve during the pilot project as counting toward future requirements.

The proposal received nine comments, all of which were supportive of the project. The ECO's preliminary review indicates that emissions trading as a tool for pollution reduction would benefit from transparency and accountability measures such as an accurate, up-to-date inventory of emissions, an agreed-upon cap on total emissions for a given locality, and the institutional ability to verify reduction rates. The ECO will continue to monitor this initiative as it evolves.

Ontario Submission to U.S. On Smog: In March 1997, MOE made a formal submission to the U.S. Environmental Protection Agency, requesting that the U.S. adopt more rigorous standards for particulates and ground-level ozone. On hot summer days, the MOE submission argued, more than 50 per cent of the ozone affecting Ontario comes from U.S. sources.

The Minister of the Environment stated in a news release that if the proposed new U.S. air quality standards were not strengthened, it would be difficult to ask Ontario industries to commit to strict standards. However, Ontario's negotiating position is weak. Although some of our air quality guidelines have lower concentrations than the new U.S. standards, Ontario numbers are only guidelines and unenforceable. As well, Ontario's numbers are frequently exceeded in our cities. For example, Ontario's new guideline for inhalable particulates is exceeded for several days or even weeks each year in Windsor, Hamilton, Toronto, Sault Ste. Marie, and London. In contrast, the standards set by the U.S. *Clean Air Act* will have to be met in every U.S. state by 2012.

Recommendation 7

MOE should set an enforceable, regulated standard for inhalable particulates, and develop a comprehensive compliance program to ensure the standard is met.

Low Smog Gas: Ontario has been slowly reducing the volatility of gasoline since 1989. In April 1997, MOE posted a new regulation on the Environmental Registry further reducing the smog-forming fumes of summer-grade gasoline. This latest cut is expected to reduce Ontario's total VOC emissions by about 2 per cent. But since Ontario's total VOC emissions are expected to grow by about 10 per cent per decade, this latest change to low smog gas may not improve air quality noticeably.

Setting Standards for Air Quality: MOE's 3-Year Plan

Many of Ontario's standards for air pollutants are out of date. In October 1996, MOE posted a proposal on the Environmental Registry to set 70 new regulatory standards for air contaminants over a three-year time span. During 1997, my staff monitored the ministry's progress on this initiative.

MOE's planned first step was to draft ambient air quality criteria (AAQC), which are typically set at concentrations where no adverse effect is observed to people or to the environment, based on continuous exposure. However, AAQC are not directly enforceable. MOE's planned next step was to negotiate new Point of Impingement (POIs) standards with affected industries, along with public consultation. POI standards are enforceable, but in the process of negotiation, their concentrations are adjusted up to levels that are agreed to be feasible given socio-economic and technical factors. While POI concentrations for any given pollutant can be significantly higher than for the AAQC, MOE says they are set at levels that are still considered protective of human health and the environment.

Original Goals – Cut Back

Because MOE staff resources needed to negotiate the POI standards with Ontario industries are now limited, the ministry has scaled back its plans. MOE is now proposing to take both steps only for selected toxic pollutants – "substances of greatest concern." For other pollutants, only guidelines – which are unenforceable – will be developed.

Consultation Plans – Unclear

MOE's plans for public consultation on the draft AAQC and POI standards for each of the priority contaminants are not clear, even though the ministry's earlier consultation on its original standard-setting proposal raised a number of concerns. Those meetings were held first only with industry, and other groups were excluded. Industry representatives were concerned about being consulted only at selected points in the process, and they noted that some of MOE's scientific information was out of date. They were also concerned whether the new standards would apply to both existing and new facilities, and how standards would be phased in. MOE plans to negotiate POI standards on a case-by-case basis with Ontario industries. Without transparent mechanisms to evaluate economic or technical feasibility, both industry and environmentalists may be reluctant to participate, or to accept the outcomes of negotiation.

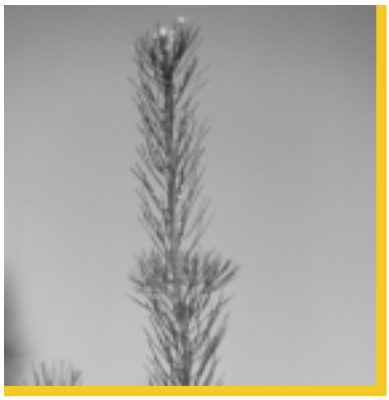
Implementation Plans – Undecided

MOE has said that regulatory POI standards for the priority contaminants would apply to both new and existing facilities. It is the responsibility of each facility, according to MOE, to ensure that the new standards are being met; the ministry monitors compliance through spot audits of certain sources. At this point, MOE is beginning a pilot project to collect data on emissions of air toxics from 10 major facilities in Ontario. Although MOE's SEV states that the ministry will continue to enforce environmental laws and to monitor changes in the environment, it is unclear whether the ministry will have the resources to ensure that thousands of facilities across Ontario are complying with the new standards.

Recommendation 8

MOE should ensure that its Three-Year Plan For Standard-Setting includes the following features:

- **a fair and transparent process for considering economic and technological limitations when developing POI standards from ambient air guidelines.**
- **a province-wide compliance program with public progress reports to ensure that facilities are meeting newly regulated air standards.**
- **monitoring and reporting by facilities emitting regulated air contaminants, permitting the ministry to develop and publish accurate emission inventories.**
- **regular updates on the Plan posted on the Environmental Registry.**



Changes to the Management of Ontario's Natural Resources

In 1997, the Ministry of Natural Resources (MNR) began a massive overhaul of how it carries out land use planning. A great deal of public attention and MNR staff resources are focussed on this effort. But at the same time MNR has also released a flurry of major new forest policies. To understand their implications for Ontario's forested lands, these initiatives have to be considered together.

What are the forces shaping Ontario forest policy?

Environmental Assessment Board Decision of 1994: In 1994, the Environmental Assessment Board (EAB) released its decision on MNR's Class Environmental Assessment for Timber Management – imposing 115 terms and conditions on the ministry, many with specific deadlines, aimed at strengthening the environmental aspects of forest management. MNR's 1997 Registry postings show that the ministry is still trying to meet some of those conditions, and trying to adopt an ecosystem, science-based approach for forest management.

Increasing demand for wood: The wood demand in Ontario is approaching the maximum sustainable harvest, and this means increased competition for available stands of forest.

Intensifying forest resource conflicts: There are chronic and increasing land-use conflicts between the northern Ontario tourism industry and the forest industry. Outfitters often argue that tourists won't stay at lodges where cut-over lands are visible or chainsaws can be heard. In their efforts to change the local forest management plans, tourist operators have often used the *Environmental Assessment Act* to halt forest operations for months or even years at a time. This makes for an unpredictable regulatory environment for both industries.

Pressure to complete parks system: Ontario has committed to protect a representative example of each of the province's natural features by the year 2000. But in April 1996, World Wildlife Fund gave Ontario a failing grade in the protection of its wilderness areas, noting that only five out of 65 candidate wilderness areas had full protection. Forestry companies are worried about the implications new parks will have for their wood supplies.

Deep cuts at MNR: Between 1995 and 1998, as part of government-wide budget cuts, the forest management budget and staff at MNR were cut by about 50 per cent. This cut affects most, if not all, forestry decisions the ministry is making.

As a result of all these diverse pressures, MNR is trying to do more with less – in some cases, with much less. Through the policy initiatives described in the following pages, MNR is attempting to resolve long-standing conflicts; shift responsibility, accountability and costs to other parties; involve the public in decision-making; and at the same time improve the management of forests and natural areas.

Can the Public Influence Decisions?

Cochrane District

Registry #PB6E2004

description When a committee set up by MNR was unable to resolve conflicting interests and agree on a remote tourism strategy, the ministry developed its own Cochrane Remote (Wilderness) Tourism Strategy. MNR's proposed strategy included setting aside a remote tourism management zone, containing 127,000 ha and more than 120 lakes, where forestry would be prohibited and access to fishing and hunting would be by air, canoe, or snowmobile only and not by roads. Two other remote tourism areas would allow forestry operations only under limited conditions. Forest harvesting would be the primary focus of a fourth area of the district, with increased access for fishing and hunting.

public comments Forest industry representatives argued that the remote tourism management zone would impact on local economic interests.

decision After the economic analysis MNR undertook in response to these forestry concerns suggested that remote tourism industry may have some greater economic benefits to the area than timber harvesting, the ministry made only minor changes to the strategy. Careful logging activities were permitted in a few fringe areas of the remote tourism management zone.

Can the Public Influence Decisions?

Rossport Islands, Lake Superior

Registry # PB5E2002

description Because of increasing pressures from tourism and mining, MNR created a unique citizen-only planning board to develop a resource management plan for the islands' Crown lands. The board's draft plan outlined the land uses and activities that would be permitted on the Rossport Islands.

public comments Local residents had major concerns: the draft plan guidelines had been extended to privately owned land over which MNR has no jurisdiction, and the public had not been adequately consulted, especially First Nations and private land owners.

decision Because the citizen-led planning board made no changes to their resource management plan in response to public concerns, MNR withdrew its support and rejected the plan.

Can the Public Influence Decisions?

Nipigon District

Registry # PB7E1001

description In February 1997, MNR posted a proposal on the Environmental Registry that would allow permanent road access on Black Bay Peninsula, located on the north shore of Lake Superior, to allow a forest company year-round access to the area.

public comments The proposal drew substantial media attention and public comment: a permanent road would mean the loss of one of the last remaining wilderness areas on Lake Superior, leading to habitat destruction and increased hunting, with negative effects on moose and on other wildlife, including fish.

decision Because of public opposition and media attention, MNR decided not to permit permanent road access to the Black Bay Peninsula.

Lands for Life

What is it?

In February 1997, MNR announced its decision to conduct an ambitious review of land use planning and resource management on Crown lands. MNR's decision, which was posted on the Environmental Registry in April 1997, described how land use strategies will be developed for the huge central area of Ontario (46 million hectares) that is important to the forest industry.

Previous public consultation had shown that many people supported MNR's proposal to develop a new system of land use planning. It was widely acknowledged that the existing District Land Use Guidelines approved in 1983 were out of date, and did not effectively address the increasing and costly land use conflicts.

Under Lands for Life, MNR has divided central Ontario into three large planning areas. Regional Round Tables, one in each planning area, will draft recommendations on how land and resources should be allocated. Members of the Regional Round Tables, who must be residents of their area, were appointed by the minister. They will have to sift through enormous amounts of information provided by ministry staff, consider hundreds of submissions from the public, and recommend which areas of land should be allocated to forestry, to tourism and to natural heritage protection. MNR has also laid out some policies to guide the Round Tables:

- **Nature's Best** covers natural heritage, and was posted on the Environmental Registry in March 1997. Nature's Best reconfirms MNR's goal of completing the parks system, and lays out an action plan for identifying potential parks and protected areas.
- The **Resource-Based Tourism Policy** sketches out how tourist outfitters will be allocated specific resources such as lodge sites, land, fish and wildlife. In return, the outfitters will be responsible for costs and stewardship of the resources. Some preliminary information was posted on the Environmental Registry in August 1997 for public comment. MNR is still working with tourist outfitters and the Ministry of Economic Development, Trade and Tourism to resolve issues such as eligibility criteria, allocation agreements, and resource inventories.
- **New approaches to Forest Tenure:** Although MNR has not set formal policy, it is expected that extended forest tenure will be a key outcome of Lands for Life. Currently, forestry companies receive forestry licences which last 20 years and grant them exclusive rights to harvest timber. But forestry interest groups want tenure in perpetuity, arguing that companies under the existing system have little incentive to plant and care for seedlings they may not be allowed to harvest. They also argue that tenure-holders should be compensated if tenured land were to be re-allocated to uses such as remote tourism or parks. MNR has developed draft wood supply agreements in 1997 that would grant companies "compensable tenure," and the minister confirmed his willingness to negotiate the length of tenure, based on scientific and business principles. MNR has decided to postpone the development of the enhanced tenure arrangement until later in the Lands for Life process.

What are the Implications of Lands for Life?

Lands for Life will change the landscape of Ontario – literally. It will affect how and where forestry and other land use activities are carried out, how much access Ontarians will have to public lands, and what areas will be protected.

Round Tables will have to wrestle with the question of how much land needs to be set aside for parks and protected areas. There is a great deal of support among

environmentalists for protecting, at a minimum, from 15 per cent to 20 per cent of the Crown lands. However, public consultation carried out so far by one of the Round Tables indicates that many residents of northern Ontario are opposed to the creation of additional parks. On the other hand, some people are concerned that MNR's approach of protecting one example of each representative feature of Ontario's natural heritage is not enough, especially if the example is very small. Ecologists also believe that interconnecting corridors are necessary for real habitat protection, rather than the fragmented islands of habitat MNR may be planning to protect.

Recommendation 9

MNR should use the "precautionary principle" stated in its SEV when it establishes the extent and sizes of land to be protected as Ontario's natural heritage features.

The Round Tables are also hearing debates about whether forestry, hunting and remote tourism should be allowed in "protected" areas, but it is not clear if Round Tables will be making recommendations on this issue. Many Ontarians believe that public lands should be open to multiple uses, and they oppose the dedication of resources to any one use. For example, they worry about the proposed allocation of lands to remote tourist outfitters, which might restrict access to public lakes.

Ontario's Forest Industry at a Glance:

- 89,000 direct jobs and 74,000 indirect jobs in primary forestry industries in Ontario in 1996
- $9 - 14 billion worth of sales annually
- 29 communities in northern Ontario have more than 25% of the local workforce directly employed in the industry

sources: MNR and Natural Resources Canada, 1997

Resource-Based Tourism at a Glance:

- 1600 resource-based tourism establishments in northern Ontario; about 800 of these are in remote areas with no road access
- $200 million worth of spending annually
- about 10,000 direct and indirect jobs in northern Ontario from resource-based tourism

source: MNR, 1996

Parks and Protected Areas:

- Provincial parks protect both rare and representative features of our natural heritage, while providing opportunities for outdoor recreation, interpretation and tourism.
- MNR says that with the regulation of several new parks and conservation reserves in 1997, Ontario's 272 provincial parks and 23 conservation reserves encompass 7.2 million hectares and make up about 7% of the province's lands and waters.
- MNR estimates that existing parks and conservation reserves represent about 8% of the Lands for Life planning area.

source: MNR, February 1998

Most important, the Round Tables will have to recommend how much forest land is needed for forestry in Ontario. They need to consider many factors: not only complicated trends in wood supply and demand, but also the many policies that affect how forests grow and how they are used. MNR's forest policy has been in turmoil in recent years, due to the conflicting pressures of the 1994 *Crown Forest Sustainability Act*, the 1994 EAB decision, the 1993 Policy Framework for Sustainable Forests, and the later budget cuts. Many new forest policies were drafted or finalized in 1997 (some of these policies are described on pages 42-44). It is hard to predict how these largely untried approaches will work in practice, but the Round Tables will have to take whatever information is available, and draft very far-reaching recommendations. And in most cases MNR will have to put these new policies into practice.

Timing and Lack of Information are Major Concerns

Because the Lands for Life process has such momentous implications, it has received a lot of public scrutiny. Significant concerns have been raised about the tight timetable, about fairness in public consultation, and about the quality of information available to the public and the Round Tables.

For example, in 1997 the ECO received an application for review of the Lands for Life process which had specific criticisms: the public is not adequately represented on the Regional Round Tables, whose members must reside in the planning area itself; input from southern Ontario is limited; the Round Tables are weighted in favour of industry; and there are no specific guidelines or policies for how the Round Tables will arrive at their recommendations.

In an attempt to address some of these concerns, MNR has increased consultation in southern Ontario, issued some guidelines for Round Tables, and allowed the Round Tables an additional three months to draft their recommendations. The earlier District Land Use Guidelines took more than 10 years to complete. In contrast, the Lands for Life process is to produce decisions about long-term resource allocations for much of Ontario within a very short time. The public will be consulted on these issues at different stages during the year; MNR is proposing that people have at least 30 days, and possibly more, to comment.

The Round Tables' tight schedule does not allow MNR staff enough time to compile detailed analyses of potential natural heritage areas or to identify existing old growth forests. MNR proposes that the boundaries of the new protected natural heritage areas be finalized by regulation in 1999. MNR has assured the ECO that in the second phase of planning, when more detailed zoning maps and specific land uses will be finalized, there will be opportunities to revisit and refine the area's natural heritage boundaries.

I remind the ministry that making such crucial decisions requires adequate time and information. This is underscored by MNR's Statement of Environmental Values, which states that:

" ....the social and environmental values society places on the natural environment must be recognized, evaluated and considered fully and fairly in the decision-making process.... Our understanding of the way the natural world works – and how our actions affect it – is often incomplete. This means that we exercise caution, and special concern for natural values in the face of such uncertainty, and respect the "precautionary principle."

Recommendation 10

MNR should ensure that the Round Tables have the time and the background information on forestry resources, natural heritage features and tourism issues to allow them to make informed recommendations.

Recommendation 11

MNR should provide a mechanism for periodic review of the Regional Land Use Strategies, and for public notice and comment using the Environmental Registry.

New Forestry Policies

In 1997, MNR proposed a number of important new forestry policies. Although they show that MNR is trying to take a more science-based, ecosystem approach to managing Ontario's forests, it is too early to say how well they will be implemented or whether there will be funding to make them all happen. The ECO will monitor future progress on these policies.

Setting wood supply targets: MNR released its new Forest Resources Assessment Policy (FRAP) in July 1997. In the future, the ministry plans to assess Ontario's forest resources, including timber supply and forest conditions, every five years, using a new "bottom-up" approach to setting targets for wood supply, harvest and regeneration, based on actual local assessments of forest capability. FRAP replaces the ministry's old "top-down" approach to setting targets by government decree, which was more arbitrary and did not consider what the ecosystem could produce.

Regional wood supply strategies will be critical documents for the Regional Round Tables when they make their recommendations for long-term allocations of land and resources in the regions they are dealing with. MNR says that draft wood supply strategies have been provided to the Round Tables.

Approach to Wilderness – unchanged: In April 1997, MNR posted its proposal for an "Approach to Wilderness" for a 30-day comment period, but the ministry's decision was posted the same day the comment period ended, giving little time for consideration of public comments. This is not a new policy direction, but simply a restatement of the ministry's existing commitment to complete Ontario's wilderness park system. People commenting on the policy were very unhappy that MNR provided no guidance on how Ontario's remaining roadless wilderness in areas outside parks would be protected. MNR responded to these concerns by committing to discuss this issue with the public.

Timber Supply Projected to Decline

The first assessment of Ontario's Forest Resources under the FRAP program was released by the Ministry of Natural Resources in June 1997 and showed that the province's timber supply is projected to decline gradually over the next 60 years, while industrial demand for timber continues to rise steadily. Shortfalls in softwoods, such as the commercially valuable spruce and pine, will be seen as soon as 2015, and will not rebound until late in the 21st century, when the trees planted in the 1970s and 1980s reach maturity. The assessment document lays out some possible approaches to addressing the problem. These include:

- Creating more forest, either in the "backlog" of logged areas that have not renewed satisfactorily, or in deforested lands in southern Ontario.
- Opening more Crown forest to timber harvest – for example, "certain forest reserves" or the millions of hectares of forested land north of currently permitted forestry operations.
- Increasing silvicultural investment. Current funding, which comes from forest industry fees, is about 20 per cent lower than 1994 spending, and much lower than in the late 1980s and early 1990s, when MNR was funding regeneration efforts.
- Improving forest management decision-making – for example, improving forest inventories, regeneration information, and better coordinating timber supplies.
- Accepting limitations in timber supply. Setting aside areas of the forest for tourism or natural heritage protection may reduce available timber supply, but may also provide an acceptable overall balance of benefits.

Recommendation 12

MNR should clarify its policy on protection of roadless wilderness areas outside parks, and provide direction on how the policy should be applied during forest management planning.

Old growth forests: In July 1997, MNR posted its proposal for a Conservation Strategy for Old Growth Forest Ecosystems on the Environmental Registry. The strategy has not been approved yet, but has been provided in draft form to the Lands for Life Round Tables as provincial policy direction.

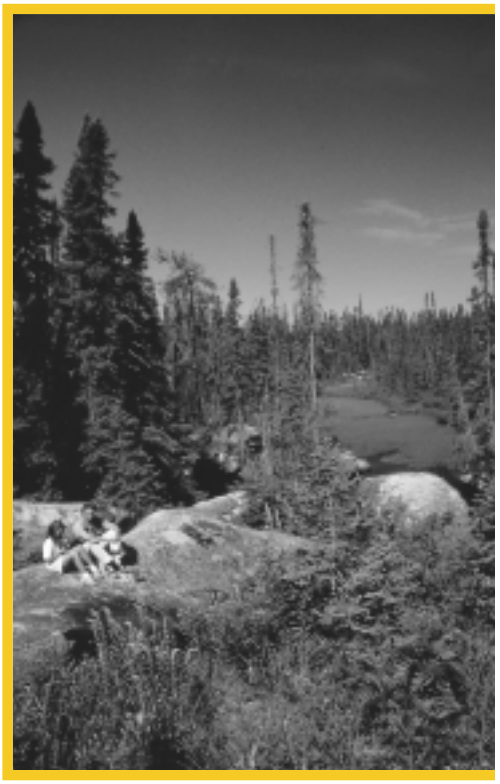
Public submissions to the Lands for Life Round Tables criticized MNR's lack of action on old growth and its plans to protect only one small example of old growth in each site district. Most of the ministry's work – developing detailed definitions and inventories of old growth stands – is yet to come. Unfortunately, this information will not be available in the crucial Phase I of the Lands for Life process when targets will be set for old growth conservation. MNR has told the ECO that "...if additional protected areas are required as a result of implementation of the 'Old Growth' strategy, this option will remain available even after phase 1 of Lands for Life."

The ECO will monitor whether public concerns are resolved through MNR's strategy.

Monitoring compliance with forestry rules: To cope with budget and staff cuts, MNR announced in April 1996 that the forest industry would have to take on more responsibility for some aspects of monitoring and compliance with forestry rules. In early 1997, the ministry released its Forest Compliance Strategy. When it was posted as a proposal on the Environmental Registry, it received criticism for its vague language and its shift toward industry self-compliance.

MNR has developed a Forest Compliance Handbook, and in spite of requests from the ECO, the policies, procedures and guidelines in the Handbook were approved – and several have since been further revised – all without public consultation. During 1997, MNR also developed new inspection and compliance policies as part of its transfer of responsibilities to the forest industry. Although the new policies were used to train both forest industry and ministry staff during 1997 and are environmentally significant, they were not posted on the Environmental Registry for public scrutiny and comment. MNR now says that it will post a policy proposal on this new compliance program in 1998. However, decisions have already been made, MNR and industry staff have already been trained, and the program will be fully in place by April 1998.

New guidelines for forestry management: The Environmental Assessment Board ordered MNR to prepare new guidelines that would protect the physical environment from damage during forestry operations, such as soil compaction and rutting, soil erosion and nutrient loss, and impacts on surface and groundwater. The proposed guidelines, posted on the Registry in 1997, present "best management practices" which may be used to minimize the impacts. The guidelines state that significant changes to standard operating practices may be required to protect sensitive sites.



A comment from a forestry company on the Registry posting of the guidelines challenged the ministry's estimates of the potential risk of these impacts and objected to many of the recommended practices. In response, the ministry removed many of the recommended restrictions on forest operations.

Although these new guidelines could help to protect the physical environment of the forest, the forest industry is required only to consider them – not apply them – even though the Environmental Assessment Board had ruled that use of the guidelines was to be mandatory.

Recommendation 13

To ensure that the Forest Management Guidelines for the Protection of the Physical Environment are applied in the field, MNR should give them the same mandatory status as other forest guidelines, and should require foresters to report when the guidelines are not applied.

Recommendation 14

In light of the fact that MNR will be making major environmental policy decisions over the coming year, the ministry should ensure there is improved public involvement in decision-making. MNR should ensure that the following initiatives include public consultations involving: (a) Ontarians from all parts of the province; (b) public scrutiny of the best available maps, inventories and other information; and (c) adequate public comment periods on the Environmental Registry:

- **Lands for Life Initial Options Reports and Preferred Options Reports.**
- **Regional Land Use Strategies. (Given the high public interest and complexity of the issues, the public should be allowed more than 30 days to comment on these.)**
- **Subregional Land Use Plans. (Where information gaps on natural heritage and tourism values have been identified, these should be addressed with updated inventories and maps).**
- **policies regarding extended tenure for the forest industry (especially since individual licences and wood supply agreements will not be posted on the Registry).**
- **policies, procedures and regulations regarding forestry compliance.**
- **policies on resource-based tourism.**

Disposition and Sale of Crown Lands

"Disposition of Crown lands" encompasses many kinds of ministry decisions, including leases, land use, and issuing hunting and fishing licences. It also includes the sale of these lands.

The Crown lands over which the Ministry of Natural Resources (MNR) has stewardship make up more than 87 per cent of the province, and their value has been estimated at $22 billion. In 1993, MNR changed its approach to the sale of Crown lands, saying the ministry wanted to accommodate opportunities for socio-economic development that are compatible with environmental and ecological integrity. MNR also wanted to increase non-tax revenues from the lands, and in 1995-1996, the ministry sold 151 surplus properties at market value for more than $4 million.

This approach continues to be an important strategy in MNR's 1997 business plan. MNR regional district managers will be asked to identify Crown lands that are no longer needed and are not environmentally significant. To streamline the sale of these lands, MNR has proposed amendments to the *Public Lands Act*, posted on the Environmental Registry in February 1997, that would remove limits on the maximum size and minimum price of parcels of public land to be sold. Other changes to the *Public Lands Act* would delegate the power to sell public land (including lakes) from Cabinet to the minister. These amendments have not yet been finalized.

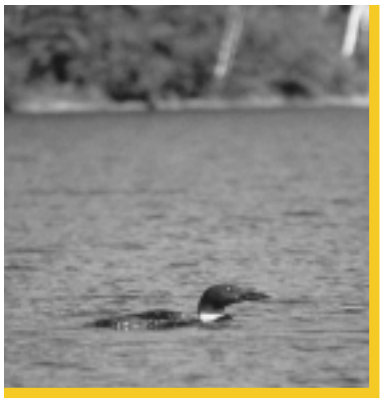
The potential for a sell-off of Crown lands is a very real one. All provincial ministries have been told to do more with less. In 1996-97, MNR experienced a budget cut of $90 million, with a loss of more than 2,000 staff. While MNR's revenue target from the sale of Crown lands is currently modest – approximately $5 million annually – the proposed legislative changes, if finalized, would permit a much more substantial sell-off of public lands in future years.

Province-wide consultation does not have to be carried out on the sale of these public lands and the *EBR* notice and comment periods do not apply. Public notice is given – and public consultation carried out – only if an MNR district manager feels a proposed project would have significant effects on the environment. The district manager also has the discretion to decide what kind of public consultation should be carried out. In the past these consultations have been local only, and not province-wide.

MNR has told the ECO that "MNR District Managers take seriously their obligations with respect to complying with this order – if a proposed disposition is environmentally significant, the public will be afforded the opportunity to participate and comment as provided in the *[EA] Act*."

Recommendation 15

MNR should ensure that all Ontarians are able to comment on decisions about the disposition of public lands, and should post on the Environmental Registry the ministry's annual province-wide plans and targets for disposition of Crown lands, and all proposals to sell specific parcels of Crown land.



Environmental Monitoring

Environmental monitoring is a keystone to good environmental decision-making. Without knowing the current state of air, water, forests or wildlife, it is impossible to evaluate whether our management of these resources is effective. Both the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR) have formally recognized this by incorporating the following into their Statements of Environmental Values (SEVs):

MOE: *The Ministry will adopt an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them. When making decisions, the Ministry will consider: the cumulative effects on the environment; the interdependence of air, land, water and living organisms...*

In making decisions, the Ministry will use science that meets the demanding standards of the scientific community.

The Ministry will continue to monitor and assess changes in the environment, and it will review and report on its progress in implementing the Statement of the Environmental Values.

MNR: *The Ministry will be a focal point for the establishment of information standards and the provision of data, information and knowledge about the geography of Ontario's landmass and its natural resources, and for reporting on the status of resources in Ontario.*

It is particularly important to determine what more is needed to be learned about Ontario's natural resources and factors impinging on them to set direction for policy and program development, or to assess existing programs.

Although MOE's SEV supports environmental monitoring, the ministry confirmed in early 1997 that it was reversing its earlier plans to develop a State of the Environment Report. The ministry explained that due to cost-cutting, state of the environment reporting was discontinued as part of MOE's workplan. Decision to stop was administrative in nature.

The Environmental Bill of Rights states that the ECO's Annual Report shall include a summary of information about compliance with ministry SEVs. Prompted by MOE's decision not to develop a report, the ECO reviewed how MOE and MNR are carrying out the elements of their SEVs that relate to environmental monitoring and reporting.

How the ECO reviewed environmental monitoring programs:

The ECO selected for review a number of environmental monitoring programs relating to the management of air, water and natural resources. The sample included well-established programs, relatively new programs, and also some programs connected to current top priorities of the ministries. The programs were evaluated to gauge the quality of both monitoring and reporting, and also to assess how effectively the programs connected to any current stated targets of the ministries. ECO staff carried out phone and personal interviews with almost 30 staff in both ministries, as well as interviews with outside experts. The ECO also reviewed any available reports and documents. A brief summary of some of these programs is provided in the chart in Table 3 (pp. 50-51).

What the ECO found:

The monitoring programs we reviewed varied considerably in quality and scope. Many programs were undergoing major or minor restructuring to cope with reduced resources – some more successfully than others. In fact, 11 of the 14 programs ECO staff reviewed had experi-

enced cuts in budget or staffing within the last five years, and of the remaining three, funding for one program (Wildlife Inventories) has recently increased, another program appears to be holding steady, and a third program has not been active. A number of monitoring programs rely on volunteers from the public and strongly committed staff who understand the significance of their work and are using innovative approaches to cope with cutbacks.

This review found that, in general, MOE has better-established monitoring and reporting programs than MNR. For example, MOE has a well-established tradition of providing comprehensive regular reports to the public on province-wide trends in air quality, spills, and contaminants in sport fish. In contrast, MNR has not published annual statistics on natural resource indicators since 1991.

To its credit MNR had started to develop good geographic information systems (GIS), linked to its resource management program needs. However, as a result of cuts to its budget, these have been delayed and scaled back.

The ECO also found that:

1. Significant environmental information is not being collected or is not being analysed and reported.

The Ministry of Natural Resources...

- has not analysed figures for forest areas harvested since 1991.
- does few population surveys for small game species or non-game wildlife.
- has no population estimates for most wildlife species that are vulnerable, threatened or endangered.
- is not analysing data on big game mortality, and is not producing provincial or regional reports.
- has weak information on rare species in Northern Ontario.

The Ministry of the Environment...

- is not tracking total loadings of industrial discharges into waterways.
- does not monitor persistent toxics in effluents of sewage treatment plants.
- does not compile statistics on total loadings of raw sewage spills to waterways.
- has drastically reduced reporting on municipal/industrial discharges to water.
- has little data on the condition of the province's one million-plus septic systems.
- has no reliable emission inventory for inhalable particulates.

Neither MOE nor MNR has compiled baseline environmental information on the state of the Niagara Escarpment, although MNR says that "many studies on ANSIs located on the Niagara Escarpment have been completed – the summary report has not yet been released."

2. In a few cases, MOE had a stated target for an environmental parameter, but lacked monitoring data needed to assess progress toward the target.

PM10 emission inventory: MOE's 1997 business plan sets a target to reduce emissions of inhalable microparticulates by 10 per cent by the year 2015. However, MOE acknowledges that it does not have adequate information on current emission levels. In this situation, target-setting is of limited value, although MOE says that it will compile "an improved PM10 emission inventory using the best information available... by March 31, 1998."

Waste water discharges: MOE's 1997 business plan says the ministry wants to measure the volume of toxic pollutants discharged to surface water, and sets targets:

- "reducing tonnes of current tier 1 toxic chemicals by 90% by the year 2000"
- "virtually eliminating industrial effluents acutely toxic to fish"

These targets would require a knowledge of the current total loadings of toxic chemicals, as well as total loadings of acutely toxic effluents to lakes and rivers. But MOE is not compiling these data.

3. A number of monitoring programs were not directly connected to any stated environmental targets.

Spills: The incidence of spills has been carefully monitored since 1985. Since 1992, MOE has explained in each annual spills report that the data are used to develop spill reduction initiatives, but the incidence of

spills has held steady, at around 5,000 a year. Each year, human error or equipment failure causes about 45 per cent of all spills, and MOE notes that spills can be prevented. But there is no stated provincial target or action plan that would focus resources on reducing the province-wide incidence of spills. Instead, the ministry is proposing to reduce reporting requirements.

Cottage lake water quality: The water quality of some cottage lakes is monitored for phosphorus and some other pollutants, but there is no goal, target or provincial action plan to prevent or control the eutrophication that can cause small lakes to be overtaken by algae. In fact, in 1997 MOE transferred the regulation of most septic systems (which can be major contributors to cottage lake pollution) to the Ministry of Municipal Affairs and Housing, which in turn handed the responsibility to municipalities. Similarly, since 1996, MNR no longer requires permits for the construction of most cottage docks and boathouses, or for the removal of aquatic vegetation. As well, MOE and MNR no longer review or

comment on local development proposals. It is not clear how MOE's monitoring of cottage lake water can be part of decision-making.

Hamilton air quality: Hamilton's air quality is monitored more intensively than in many other communities because the city has chronic air quality problems. It is estimated that there are at least 90 premature deaths and 300 additional hospital admissions per year due to current air quality in Hamilton-Wentworth. While MOE has a province-wide goal of improving air quality, there are no stated goals or targets that would focus resources on improving Hamilton's air quality.

Windsor air quality: Monitoring results show that Windsor, like Hamilton, has chronic air quality problems. For example, in 1995, Windsor recorded the highest provincial one-hour concentration for nitrogen dioxide, the most frequent instances of elevated ozone, the highest annual average for total suspended particulates, one of the highest annual average concentrations for sulphur dioxide, and elevated levels of inhalable particulates. As in the case of Hamilton, there are no stated goals or targets that would focus resources on improving Windsor's air quality.

4. In some cases, gathered monitoring information isn't being used fully to bring about environmental improvement.

Databases on rare species: The Natural Heritage Information Centre databases were not used during the ongoing Lands for Life Phase I planning work, due to time constraints. These databases could provide locations for habitat of rare species. MNR says that "information on rare species has been placed on maps that have been provided to the Round Tables – this data is being used to refine boundary locations."

Forest regeneration: MNR receives extensive data from the forest industry, but has not been compiling it. For example, MNR has not compiled data for the actual area harvested since 1991. This is clearly important information needed for long-term forestry planning.

Windsor air quality: An intensive monitoring study of airborne toxics was carried out in Windsor from June 1991 to March 1993. This study involved close to 20 MOE scientists, who produced seven technical reports plus an executive summary and a plain language summary. The studies found that eight toxic air pollutants were of concern in Windsor's outdoor air, based on estimates of potential cancer risk. It was planned at the time that a multi-stakeholder Windsor Air Quality

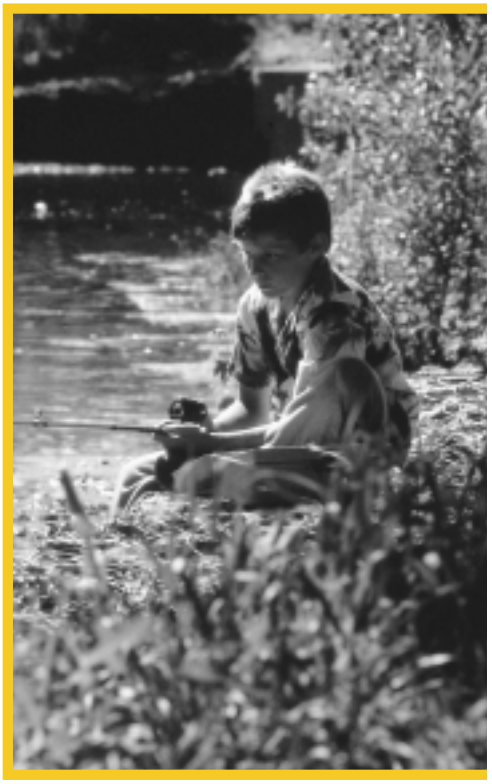
Committee would use the results of the study to develop recommendations for improvement. But because of MOE budget cuts, this committee has become inactive, the Windsor MOE office has lost half its staff, and there appears to be no local action plan or target to improve Windsor air quality.

Sport fish contaminants: This monitoring program was started in the mid-1970s and has built up a very large historical database. While the database is used effectively to alert anglers about elevated concentrations of contaminants in some catches of sport fish, there are closely related applications that are not getting much attention. In particular, the monitoring could help in researching the effects of persistent toxics on the sampled fish populations. There is a rapidly growing body of evidence that extremely low concentrations of persistent organochlorines can disrupt endocrine systems of animals, resulting in subtle or profound problems in embryo development and reproduction. Dr. Mike Gilbertson of the International Joint Commission has recently concluded that by 1940, the eggs of lake trout in Lake Ontario could no longer hatch because the concentrations of a specific form of dioxin were too high. MOE did have a researcher who evaluated the sampled fish for any visible health effects, but this position was lost in the most recent round of cutbacks.

Recommendation 16

Ministries should take stock of their environmental monitoring programs to ensure that they adequately cover their mandated responsibilities, and that they permit accurate, relevant reporting on the state of public resources such as air, water, wildlife and forests. To this end, ministries should ensure that:

- **sound monitoring programs are in place that accurately assess progress toward their targets. Ministries should measure not only the level of ministry effort, but also the actual environmental results.**
- **environmental monitoring data, once gathered, also receive effective analysis, including geographical trends and trends over time.**
- **monitoring data and results of trend analysis are promptly reported to decision-makers and the public.**
- **new information provided by monitoring programs is applied in the work of the ministry, and is acted upon in the setting of targets and in other environmental decision-making.**



Recommendation 17

Ministries should identify opportunities to strengthen their monitoring programs and improve their cost-effectiveness by:

- **achieving multiple research goals within a given monitoring program.**
- **sharing their databases with other agencies having similar goals.**
- **adopting legislated reporting requirements in some key areas. Such requirements have been shown to be critical factors to the maintenance of a number of monitoring programs, such as MISA, Spills Reporting and the Forest Resource Inventory.**

- **adopting Geographic Information Systems (GISs) that permit consistency across government systems. GISs have the potential to become key tools for environmental monitoring programs. If they are well designed, they can allow not only geographic referencing of data, but also easy manipulation, analysis and sharing of large databases. Although they involve some investment, GISs can improve the overall cost-effectiveness of monitoring programs.**

Table 3: Selected Environmental Monitoring Programs

Industrial waste water discharge monitoring

Relevance

Many industrial sources have approvals to discharge liquid wastes directly into lakes and rivers. Although these wastes are often treated to some degree, they still contain a large diversity of pollutants, including persistent toxic chemicals.

Related Ministry Targets

MOE's 1997 business plan says the ministry wants to measure the volume of toxic pollutants discharged to surface water, and sets these targets:

- "reducing tonnes of current tier 1 toxic chemicals by 90% by the year 2000"
- "virtually eliminating industrial effluents acutely toxic to fish"

These targets would require a knowledge of the current total loadings of toxic chemicals, as well as total loadings of acutely toxic effluents to lakes and rivers.

Quality of Monitoring

Much detailed data is collected, but very poor analysis.

Municipal Industrial Strategy for Abatement (MISA) regulations under the EPA require nine industrial sectors to monitor selected pollutants in their discharges to waterways. Details vary, but data must be submitted monthly to regional MOE offices, where they are checked for any exceedances of standards. Facilities report both flow rates and concentrations. Industries not caught under MISA may also have some monitoring/ reporting requirements in their certificates of approval.

MOE regional offices receive this data from about 300 industrial facilities across the province, and compile summary reports. They focus on any exceedances of standards, but do not calculate total loadings of pollutants, nor do they monitor year-to-year trends in the percentage of facilities in compliance. MOE has not been tracking total loadings of pollutants into waterways. MOE is working on developing emission inventories for the various industry sectors, but work so far has covered only a few pollutants emitted by the pulp and paper and the petroleum industries, such as AOx (total adsorbable organic halides), BOD (biochemical oxygen demand) and suspended solids. MOE has no target date for completing these inventories, and summary reports are not available.

Quality of Reporting

Very poor; has declined.

Data are submitted to the International Joint Commission under the Great Lakes Water Quality Agreement. Raw data are also shared with the public, but at a cost. An environmental group recently requested discharge records for all out-of-compliance facilities; MOE said this information would cost the group more than $10,000.

For 1991 data, MOE published a detailed report on industrial direct discharges, including useful analysis on compliance trends. About 50% of facilities were in compliance in 1991.

For 1994 and 1995 data, MOE published a listing of each facility in non-compliance. The lists contained no summaries, trend analyses, or information on pollution loadings by any facility. It is unclear when or if reports for 1996 or 1997 data will be published.

Inhalable particulates emission inventory

Relevance

"Inhalable particulates" are microscopic airborne particulates that are small enough to enter lungs.

"Emission inventories" are produced by measuring (or estimating) emissions from every important type of source and then adding them up to discover the total provincial emissions for that pollutant.

Inhalable particulates (PM10) are connected to respiratory disease and premature death. PM10 is a chronic concern in cities like Windsor, Hamilton, Toronto and Sault Ste. Marie. An emission inventory is needed to identify major sources, to develop effective control strategies and to track progress.

Related Ministry Targets

MOE's 1997 business plan has set a target: Emissions of inhalable micro-particulates reduced 10% by year 2015.

To evaluate progress toward this target, MOE would need an accurate emission inventory for a baseline year.

MOE has also committed to developing a comprehensive reduction strategy for PM10 by the end of 1998.

Quality of Monitoring

Poor.

MOE acknowledges that emission inventory information for particulates is very uncertain.

There is no mandatory monitoring or reporting by major sources. Emission estimates are obtained from voluntary surveys of sources, based on any information available. Contributions from road dust, construction, secondary pollutants, etc., are also poorly understood.

MOE has committed to producing an emission inventory for PM10, but has allocated only two staff and no research budget. Methodology and timelines are also unclear. MOE says that an improved PM10 emission inventory using 1995 statistical information will be completed by March 1998.

Quality of Reporting

Poor: MOE is reporting outdated, weak data.

MOE included a chart of 1990 emission estimates for PM10 in its December 1997 overview of air quality, but did not mention known weaknesses of data. According to an expert group assembled by MOE, improvements in estimates "are crucial" for combustion and industrial sources, while emissions from road dust, construction, farming, etc., "are not well known."

Forest Resources Inventory (FRI)

Relevance

Ontario's Crown forests support a very large forest industry. To manage and regulate forestry activities, MNR needs accurate, current information about the state of forests province-wide.

The FRI began in 1946, for forest industry needs. The forest industry is legally required to use and update the FRI to produce forest management plans.

In the absence of alternatives, MNR also uses the FRI to identify potential natural heritage lands and to estimate wildlife habitat potential, even though the database design and data collection methods were not meant to capture such information.

Table 3: Selected Environmental Monitoring Programs

Related Ministry Targets

For many years, MNR had ambitious but unrealistic targets for province-wide wood production that were set according to demand, not calculated from the ability of the land to produce that wood supply. MNR has begun a process to develop new wood targets (through FRAP, see page 42). MNR needs reliable FRI data as base information for the computer modelling system to create the wood supply estimates, and later to measure its progress toward achieving the desired forest condition.

MNR's 1997/98 Business Plan says the ministry wants core geographic information to be "available, accessible and affordable," and that the ministry wants to measure the "percentage of the province with current resource inventory and base maps." No target percentage is mentioned, however.

Quality of Monitoring

Database is being updated and being made more electronically accessible. It is not designed to measure values other than timber supply.

Inventory work begins by acquiring aerial photos, followed up by sampling forest conditions by ground crews. Then staff interpret forest cover and classify the area as either productive forest, non-productive forest, non-forested land, or water. More detailed attributes such as species, height and age of trees are also noted, and are critical for estimating current and future wood supplies. Ground-level vegetation, noncommercial forestry information and planning information are not monitored, but a new system which will integrate the FRI with other natural resource information in a Geographic Information System is just beginning.

MNR's FRI program has been criticized by many independent reviewers, including the Provincial Auditor in 1986 and 1994, a specially appointed auditor in 1994, and the EA Board in 1994.

In the past, inventories were updated every 20 years, by focussing on about 5% of the forest annually on a rotating basis across the province. Recently, in response to criticism, MNR has accelerated these updates, especially for intensive forestry regions, and is even aiming for "continuous updates" by having industry update the FRI with all new wildfire, harvest and free-to-grow information. Province-wide, the average age of the inventory is between 5 and 10 years old. But some regions, particularly in southern Ontario and the far north, have inventories older than 20 years. All locations inventoried since 1987 are in a digital database, but much of the Northwest Region is not yet digitized.

MNR funding for FRI has declined since 1995/96. It is now being paid for by industry, with the share the ministry used to pay now coming from industry fees paid into the Forestry Futures Fund, a special purpose account.

Quality of Reporting

Sporadic, with little trend analysis.

In 1997 MNR committed to much better analysis and reporting of FRI data.

MNR has produced periodic summaries of the FRI: for the years 1963, 1986, 1993 and 1996. These reports are mainly tables of data, with some descriptive text and useful maps.

In its 1997 Forest Resources Assessment Policy (FRAP), MNR committed to more thorough assessments of the forest condition, using the FRI and other information to describe trends in the forest condition from one report to the next. The first assessment report, An Assessment of Ontario's Forest Resources, was also published in 1997. (See further discussion, p. 42.)

Raw FRI data is available for a fee through MNR's Internet and Intranet sites, as well as at MNR's Information Centres. Forestry clients are licensed to access the data electronically.

Wildlife Inventory Database

Relevance

MNR needs to have accurate information on wildlife populations and habitats, and the stresses on them.

Related Ministry Targets

Fish and wildlife were described as one of MNR's top priorities in its 1997/98 business plan. MNR also said it would establish new targets for big game populations and make significant progress in achieving them by 2002.

Quality of Monitoring

Poor for many species; but improving.

Most attention is given to game species such as moose, deer and bear.

In 1995/96 MNR identified serious weaknesses and gaps in wildlife information. For example, problems were identified with bear population data, hunting data, and information systems.

There is little information collected on small game species or non-game wildlife.

Recent improvements:

1. The Environmental Assessment Board in 1994 required MNR to carry out a provincial wildlife population monitoring program to assess the effects of timber management on wildlife. MNR established the Wildlife Assessment Program in 1997 to monitor trends in populations of indicator species, including some non-game species for which data is currently lacking. The program is modest, with a budget of $500,000 annually from the Forest Management Program and six full-time staff in three regions.
2. MNR established dedicated funds for fish and wildlife inventory work during 1996/97, creating a special purpose account under the *Game and Fish Act* for fees received from hunting and fishing licences. About $1.2 million is now budgeted annually on inventories, primarily of game species. This appears to be slightly more than was spent in the past.
3. Available wildlife data is being put into a new electronic database, which should provide improved access to data and allow statistics to be aggregated provincially.

Quality of Reporting

Poor.

For example, MNR manages a bear hunt which harvests about 7,000 bears annually. Although MNR has put out news releases estimating the Ontario bear population at 75,000 to 100,000 individuals, the ministry has not published any reports on bear population numbers.

The Big Game Mortality System has the capacity to produce provincial and regional reports, but they haven't been produced for several years because the data were not entered by field staff.

MNR intends to report the results of the new Wildlife Assessment Program in future in the five-year State of the Forest Reports.

Pollution Prevention through Voluntary Agreements

In recent years, Ontario has joined a global trend toward relying on alternatives to the regulatory approach to environmental protection. These include voluntary approaches – industry codes, self-management schemes, government-run pledge programs, and voluntary agreements. In its 1997 business plan, the Ministry of the Environment (MOE) stated that "over the next three years there will be a new emphasis on encouraging and helping communities and companies to adopt voluntarily good environmental practices beyond regulatory requirements."

Some of the potential benefits of voluntary agreements come from the greater efficiency and flexibility they could provide. The potential drawbacks to voluntary agreements include their lack of clear and measurable goals, the fact that the agreements are not enforceable, and the decrease in government accountability, since they are often negotiated “behind closed doors.”

In fact, reviews carried out by the ECO during 1997 show that voluntary agreements have usually been negotiated without direct public involvement. Industry representatives generally feel negotiations should include only industry and government, according to a survey conducted for Environment Canada in 1995. But the survey also indicated that environmental non-governmental organizations (ENGOs) were reluctant to accept agreements negotiated without public or ENGO participation. Our review also shows that many European jurisdictions have created legal frameworks for voluntary agreements, including legislated requirements which apply if the voluntary efforts are not producing the expected environmental improvements (often called backdrop regulations). Unlike European environmental agencies, Ontario's MOE has created no legal framework or policies for voluntary agreements, although a recent report prepared for the ministry recommended that MOE develop these policies and then enact legislation to support them.

Since 1992, according to a recent MOE publication, the ministry has signed five memoranda of understanding (MOUs) with Ontario industrial sectors and one with a regional municipality. As well, MOE has entered into several "partnership agreements." (Often unwritten, these are less formal than MOUs.) Since most of this activity took place before the *Environmental Bill of Rights* was passed, public comment could not be solicited through the Environmental Registry. The first pollution prevention MOU signed by MOE (as well as by Environment Canada) was with the Canadian Motor Vehicle Manufacturers' Association. The agreement was patterned closely on a similar American project, and subsequent agreements carefully followed the structure of this first MOU. Currently, however, there are ongoing discussions to renew several MOUs, and it is hoped that the public will soon have an opportunity to comment on them through Registry postings. (For further discussion, see Table 4.) One proposed voluntary agreement was posted on the Registry during 1997 – the agreement with Dofasco, discussed below.

ECO Commentary

The public’s role in environmental policy-making has increased dramatically over the past 30 years. The passage of the *Environmental Bill of Rights* in 1993 affirmed that Ontario residents have a right to comment on policies that may affect the environment. If ministries continue to make more environmental policy decisions during the negotiation of voluntary agreements, it is important to ensure that the negotiation processes provide opportuni-

Voluntary Agreements: The Dofasco Environmental Management Agreement

Dofasco is one of Hamilton's two major steel producers. Recently, Dofasco, the Ministry of the Environment (MOE), and Environment Canada announced they had concluded a draft agreement. The aim of the agreement is to reduce pollution from Dofasco's Hamilton facilities and to reduce the use of toxic materials; Dofasco will implement the agreement through its existing environmental management system.

The final agreement, posted on the Registry in early January 1998, committed Dofasco to using "all reasonable efforts" to meet several targets for reducing air and water emissions and solid waste production. For example, by year 2000 Dofasco will attempt to reduce by 80 per cent its 1993 levels of benzene emissions from all by-product plants. As well, by the end of 1998 Dofasco will attempt to exceed its commitments under the federal Accelerated Reduction/Elimination of Toxics (ARET) program by reducing total ARET substance emissions by 50 per cent from the base year.

Dofasco's Regulatory Obligations may be Altered

The agreement also includes commitments by MOE and Environment Canada. MOE will use "all reasonable efforts" to exempt Dofasco from one of the requirements of a provincial waste management regulation, under which all carriers of waste on public roads must create a manifest for each truckload of waste at all points of transfer. Since copies of the manifest must be quickly submitted to the ministry and other copies retained by the carrier and the waste generator, a large amount of paperwork is created. Under the agreement, wastes that are transferred between Dofasco's Hamilton facilities would be exempted from the requirement, although Dofasco would continue to keep internal records. MOE claims that "regulatory obligations on Dofasco will not be altered."

MOE will also attempt to streamline the process of amending Dofasco's existing certificates of approval. Existing certificates for single sources (like a smokestack) might be consolidated into larger permits for a single plant or process, allowing for faster changes in processes or production levels.

Differences from Past Voluntary Agreements

Past voluntary agreements in Ontario have been primarily signed with industry associations, not with individual companies, and their terms have been quite general, making it difficult to assess their effectiveness. The Dofasco agreement, in contrast, includes specific terms and targets, against which the effectiveness of the agreement can be judged. Like earlier agreements, however, the provisions of the agreement with Dofasco cannot be enforced by MOE or by Environment Canada. MOE claims, however, that any party to the agreement "may seek damages, etc.," through the court system.

The agreement was posted on the Environmental Registry, with a 30-day comment period, and a public meeting was held when the agreement was released. One member of the public was appointed to the group which negotiated the agreement.

ties for meaningful public involvement. Consultation, including through the Environmental Registry, will be an important step in gathering public input and increasing public confidence in their use. As well, the credibility and effectiveness of voluntary approaches would be enhanced if the Ontario ministries contemplating their use as a tool for improving the environment would adopt the successful practices of other jurisdictions. These would include adopting a clear legal framework and enforcement alternatives such as the creation of backdrop regulations.

Recommendation 18

The ministers developing programs to promote environmentally significant voluntary agreements should establish a general legal and policy framework for their use, and broadly consult the public on this.

Recommendation 19

Ministers should ensure that voluntary agreements are developed with backdrop regulations that contain effective monitoring and reporting mechanisms and clear and measurable goals that allow for verification of results by the public.

Recommendation 20

The ministers entering into voluntary agreements should establish a clear role for public consultation in the design and implementation of individual voluntary agreements.

Table 4: Selected Ontario Voluntary Agreements

Automotive Parts Manufacturing Pollution Prevention Project

MEMORANDUM OF UNDERSTANDING (MOU), 1993.
MOE, Environment Canada, Automotive Parts Manufacturers' Association (AMPA). Eight participating companies.

The agreement expired in 1996, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the winter of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program
The MOU established a Task Force with industry and government representatives. General objectives include training opportunities for sharing information on pollution prevention and developing courses and workshops on pollution prevention planning. As well, the companies undertook to identify and prioritize pollution prevention opportunities and implement them to achieve verifiable reductions in the use or discharge of toxics.

The Task Force is responsible for monitoring progress and ensuring that results are verifiable.

Selected results to date
1994 - 1997:

1. The Task Force identified four priority processes for the participants' pollution prevention efforts.

2. AMPA published the results of a survey which established benchmarks for technologies in cleaning and degreasing and in the use of metal-working fluids. A survey on surface-coating practices was initiated.

3. Several workshops on environmental management systems and pollution prevention were conducted.

Reductions:

Two progress reports (1994 and 1996) document 22 case studies achieving annual emissions reductions of 660 tonnes of toxic substances and other wastes discharged to air and water.

Canadian Automotive Manufacturing Pollution Prevention Project

MOU, 1992; RENEWED 1994.
MOE, Environment Canada, the Canadian Motor Vehicle Manufacturers' Association and the Canadian subsidiaries of the "big three" auto makers (Ford, GM, Chrysler). Although not a signatory, custom transport truck maker Navistar International has participated by submitting pollution prevention case studies.

The agreement has expired, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the winter of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program
MOU established a Task Force responsible for meeting the objectives set in the Terms of Reference. The implementation plan, prepared in late 1992, focused on the development of pollution prevention plans at both the company and plant level. Each company developed a candidate list of toxins and other contaminants for voluntary reduction/elimination, based on a larger candidate list agreed to in the MOU and a latter addendum which renewed the MOU.

Results reported on a case study basis. Technology transfer to other industry members and to suppliers is another key aim of the projects undertaken by participants.

Selected results to date
1993 - 1996:

1. Industry held several workshops with suppliers to encourage project support.

2. Second Progress Report issued with 15 case studies documenting reductions of 2,200 tonnes annually in discharges of contaminants of concern; MOU renewed, target list of toxics expanded.

3. Third Progress Report indicated annual reductions of 126,937 tonnes of toxic substances and waste, through 24 pollution prevention projects.

4. Fourth Progress Report indicated annual reductions of 21,385 tonnes of toxic substances, through 26 pollution prevention projects

Reductions:

- To 1995, 65 pollution prevention projects had been reported on by the parties, with a total annual reduction of 150,522 tonnes.

Joint Canadian Chemical Producers' Association and the Ontario Ministry of the Environment Pollution Prevention & Reduction Program

MOU, 1994.
Canadian Chemical Producers' Association, MOE, and Environment Canada; six participating companies (one was not an original signatory). Participants include Du Pont Canada, Imperial Oil (Chemicals Division), Dow Chemical Canada, and Nova Chemicals.

Expiry date was February 1996. Not yet known whether the MOU was renewed.

Design features of the program
The MOU was intended to lead to the development of a four- stage voluntary pollution prevention program:

1. Preparation of a planning framework.
2. Sharing of pollution prevention knowledge.
3. Production of site- specific pollution prevention plans.
4. Implementation of the site plans.

Selected results to date
Reductions:

- 11 facilities have 15 toxic substance and waste reduction projects underway.
- Through 1995, participating companies reported the following reductions in annual discharges:

  Solid wastes: 9,500 tonnes/yr.

  Hydrocarbons: 2,372.5 tonnes/yr.

  Organic liquids: 58.2 tonnes/yr.

  Wastewater treatment sludge:

  2.7 tonnes/yr

  CFCs: 1.7 tonnes/yr.

Hamilton District Autobody Repair Association (HARA) Partnership

PARTNERSHIP AGREEMENT, 1995.
HARA, MOE. This agreement was signed after joint MOE-HARA initiatives were underway, and the agreement commits the parties only to distribute information on environmentally sound practices in the autobody repair industry.

Expiry date is not known (there may not have been an expiry date, but a number of projects were to be completed before the end of the agreement).

Design features of the program
The Partnership Agreement relates to educational initiatives.

HARA has proposed a mix of self-regulatory and external control mechanisms: that the Canadian Council of Ministers of the Environment's (CCME) draft National Standards and Guidelines for the Reduction of Volatile Organic Compounds from Canadian Commercial/Industrial Surface Coating Operations be adopted and applied by an industry-run organization, the Autobody Repair Registration Inspection and Verification (ARRIV) Board. ARRIV would manage the implementation and enforcement of the proposed CCME standards by issuing a certificate, similar to a certificates of approval, and would then inspect, monitor and enforce the proposed standards. Without a certificate, facilities would not receive payment from insurers.

Selected results to date
1994 - 1995

- HARA conducted outreach activities for the over 300 auto repair businesses in the Golden Horseshoe. HARA won an MOE award (the P4 Leadership Award) for its programs in 1994.
- Under the Partnership Agreement, HARA developed a workbook and video on environmentally sound practices for autobody repair shops. A draft of the workbook was produced. HARA is involved in an organization which has conducted several workshops in southern and southwestern Ontario which provide information on: CCME VOC emission standards, efficient paint application techniques, avoiding problems through good environmental practices and industry self-regulation and accreditation.

Metal Finishing Industry Pollution Prevention Project

MOU, 1993; RENEWED IN 1995.
Environment Canada, MOE, Canadian Association of Metal Finishers, American Electro-platers and Surface Finishers Society, Metal Finishers Suppliers Association. Seventeen participating companies, not all signed the MOU.

The agreement has expired, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the spring of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program
At this point, the project has involved assistance in pollution prevention planning, the production of educational materials, and the reporting of case studies.

Selected results to date
Reductions:

Three progress reports were issued prior to October 1996 (First Progress Report, June 1994; Second Progress Report, April 1995; Third Progress Report, September 1996). The Fourth Progress Report was issued in September 1997 and identifies nine new case studies and 1,664 tonnes of waste reduced or eliminated.

Printing and Graphics Sector Pollution Prevention Project

MOU, 1994.
MOE, Environment Canada, Ontario Printing and Imaging Association, Printing Equipment Supply Dealers Association. Fifteen participating companies, including some of the largest in this industry (Kodak Canada, Quebecor Printing Canada, Kwik Copy Printing, Davis & Henderson, Du Pont Canada).

The agreement has expired, but MOE expects that a proposed Addendum to the Agreement will be posted on the Registry in the spring of 1998. The ministry expects that the renewal would be until 2000.

Design features of the program
The agreement is described in an MOE publication as "a joint pollution prevention planning agreement that [targets] toxic substances and wastes."

The approaches are similar to those in other MOU's with a planning focus, involving the distribution of general information related to pollution prevention and the development of industry-specific guides to best practices. Reduction actions are, of course, at the discretion of the companies involved.

Selected results to date
1994 - 1996:

Prior to the signing of the MOU, a clean technology committee was formed to inventory the chemicals used and wastes generated in the industry.

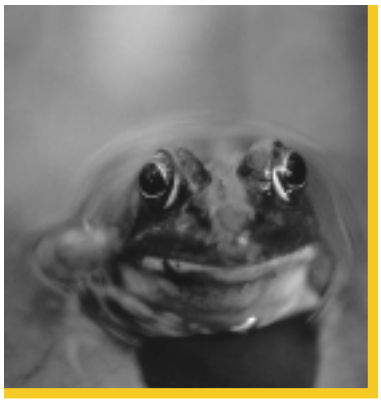
Another committee developed materials about pollution prevention for the sector.

Training workshops explaining pollution prevention and clean technologies were held. A progress report was released in 1996.

Reductions:

The First Progress Report was issued in April 1996. There were 23 facilities undertaking pollution prevention projects, and two had already reported some results – a reduction of 52 tonnes in the use of isopropyl alcohol and other solvents.

The Second Progress Report was issued in October 1997 and identifies seven new case studies and 360 tonnes of waste reduced or eliminated.



The Introduction of Alternate Service Delivery: Two Examples

The year 1997 saw the introduction of alternate service delivery systems (ASDs) by several provincial ministries. Two of these programs – MNR's Aggregate Licensee Inspections and MOE's Remedial Action Plans (Support for Public Advisory Committees) – were reviewed by ECO staff during the year. The following is a review of the way the changes to each delivery system were planned and then implemented.

Aggregate Licensee Inspections, MNR

Background: Under the *Aggregate Resources Act (ARA)*, Ministry of Natural Resources (MNR) inspectors were required to inspect each licensed aggregate site annually. But because of fiscal constraints and reduced staffing, between 1991 and 1996 inspectors were not able to inspect all licensed sites each year. In April 1995, MNR and the Aggregate Producers Association of Ontario (APAO) began discussing alternatives to the inspection process, and in 1997 a new compliance reporting process was established.

Aggregate licensees will now file their own reports annually on how they complied with the *ARA*, its regulations, the site plan, and licence conditions. MNR says it will then review the reports and select priority sites for partial or full inspections. The first compliance assessment reports from licensees were due the end of November 1997, and licensees had until February 28, 1998, to correct any deficiencies identified in the reports. MNR inspections will start in spring 1998.

Are the Changes Clear? MNR was clear in communicating to the aggregates industry the changes to aggregate licensee inspections and how the new system would be different.

Planning for Change

Before the Decision was Made: Beginning in April 1995, MNR and APAO developed various alternatives and models for a new aggregate inspection program. The potential benefits and risks of all the alternatives were assessed, and the ministry evaluated the costs, benefits and risks of each alternative – including how to mitigate any risks – before the decision was made to adopt a new compliance reporting system. The new process was then tested in pilot projects with selected companies during 1995, and in 1996 all APAO members voluntarily used the new system. The 1995 trial run was then evaluated by MNR and found to be generally favourable.

Public Consultation: Consultation on the changes to the inspections program was initially poorly carried out. While there was considerable consultation with the 1,000 producers who belonged to APAO, there was only limited consultation with 1,700 non-APAO licensees and permit holders and with the public. Moreover, the proposed changes to the *ARA* were not posted on the Environmental Registry, and licensees and permit holders received notice of the proposed changes only when the *ARA* amendments went to First Reading in the Legislature. Later, however, the ministry's public consultation process improved. Both the proposed new regulation and the new standards that came out of the amended act were posted on the Registry for public comment.

Implementing the New Service Delivery System

Preparation and Training: Advance notice of the new system was given well before the changes were implemented – two years before in the case of APAO members, and one year for non-APAO producers. There was also extensive prior preparation and training for APAO members before implementation of the new system, although non-

APAO producers did not receive training until the new program was being put in place in July and August 1997. More than 1,800 people attended the training sessions held at that time.

Ministry Staff and Resources: MNR developed its new operating procedures, processes and practices before implementing the new program and will continue updating and reviewing its processes.

Preparation and training of MNR staff took place over two and a half years before the new system was implemented. Workplans have now been assigned, and the ministry intends to inspect all aggregate sites over the next two years. MNR says that the non-inspection work of inspectors will be reduced so that 90 per cent of their time will be spent on inspections.

Reaching Stated Objectives: The number of aggregate inspectors at MNR has declined from 66 in 1994 to 20 in 1996, during a period when the ministry was already having problems inspecting each site. MNR can probably meet its inspection goals (20 per cent of all sites in the first year, 50 per cent in subsequent years), but it will have difficulty reaching these goals if the ministry loses any more inspectors or if inspectors have to fill other roles as well.

All in all, the new alternate delivery system has been well planned so far. However, since the compliance reporting process is new – not yet having completed its first year – it is premature to comment on whether MNR's well-laid plans were successfully implemented.

Remedial Action Plans, MOE

Background: In 1985, the International Joint Commission, an organization of Canadian and U.S. federal governments, established Remedial Action Plans (RAPs) to remediate 43 "Areas of Concern" (AOC) in the Great Lakes. The RAPs were also supported by provincial and state governments. Each AOC is an area with toxic substance problems. Seventeen AOCs are in Ontario and five were shared between Ontario and the U.S. One AOC in Ontario – Collingwood Harbour – has been remediated.

Each AOC has a Public Advisory Committee (PAC) made up of government and community members to oversee the remediation of the local AOC. Each AOC had a RAP Coordinator funded by the province. In January 1997, the Ministry of the Environment (MOE) stopped almost all funding to the PACs and eliminated most of the RAP Coordinator positions. The ministry says that it will continue to provide program support for the RAPs, but that funding will have to come from "alternative funding" – private sector and other donors.

Are the Changes Clear? It is not obvious what has been changed and reduced in this MOE program, and what hasn't been. There had been prior cutbacks to activities that supported the RAPs – for instance, labs – but these were not announced as part of cutbacks to RAPs. On the other hand, the ministry now says that some cleanup activities in the Great Lakes that were not ostensibly part of the RAPs will continue. And, according to MOE, some indirect funding to PACs is going to the Lake Superior Program Office and to the Severn Sound Environmental Association under new funding arrangements. In addition, some RAPs were supported more by the federal government than by Ontario, and provincial cutbacks did not affect these programs as much, according to the ministry.

Planning for Change

Before the Decision was Made: There was no consideration by MOE of any alternatives to the course the ministry took, including no overall strategy for moving RAPs to alternative funding and support. While MOE staff developed some proposals after the cutbacks were made, these were still not approved as of December 31, 1997. As well, the ministry did not consider how cutting non-RAPs services (e.g., the labs) would affect the RAPs. Although the ECO asked for evidence of any cost/benefit analysis of the effects of the cutbacks, none was provided. The ministry did carry out an analysis of whether RAP Coordinators should be retained: ministry staff say that some RAPs had progressed far enough to be able to continue without RAP Coordinators while other RAPs still needed them. However, all RAP Coordinators were eliminated.

There were no pilot projects or trial runs with new service providers or with industry. Although the ministry, and some PACS, were able to develop new local funding and support mechanisms (e.g., the Severn Sound Agreement), these were developed after the cutbacks took place. And these were all local initiatives and not part of a ministry overall plan. Piecemeal initiatives to help individual RAPs were also made *after* cutbacks. Although MOE staff have put forward some good ideas on supporting RAPs overall, as of the end of 1997, these ideas were not approved by MOE.

Public Consultation: The cutbacks in funding and the elimination of provincially funded RAP Coordinators were announced on January 14, 1997 – without any prior consultation with PAC members or with the public, and without posting the changes on the Environmental Registry. The ministry has been telling PAC members since 1994 that cutbacks would occur, but no information was given on the nature, extent and timing of cutbacks. The cutbacks to services that support the RAPs, such as the labs, were also made without consulting PAC members or the public. Because the MOE labs were closed, two RAPs had to stop testing water.

Implementing the New Service Delivery System

Preparation and Training: Only limited preparation and training was undertaken by MOE before the changes were made. The ministry prepared a toolkit/ binder with the aim of helping the PACs be more independent. It gives advice, for instance, on how to establish a non-profit organization, recruit members, and raise funds through membership fees, bingo games, or corporate sponsorships.

Ministry Staff and Resources: There was no preparation and training of MOE staff prior to instituting these changes. Instead, there were sudden staff layoffs.

Reaching Stated Objectives: It is uncertain whether RAP objectives will be met by 2000; it may depend on the local area. There are some good initiatives – for instance, the Severn Sound Agreement – but the RAPs program still lacks an approved overall plan.

Recommendation 21

Ministers should ensure that alternate service delivery systems that replace or complement ministry laws, regulations, programs and policies are developed and implemented in accordance with the Registry posting and SEV consideration requirements of the *EBR*, and with the principles of good management. Also, ministry staff should ensure that, in addition to public notice and comment on the Registry, adequate and meaningful consultation with all interested persons, including industry officials, public interest groups and the public, is undertaken in the development of ASD systems.

PART FIVE

Reviews and Investigations

What is a review?

Under the *EBR*, Ontario residents can ask a minister to review existing environmental policies, acts, regulations and instruments, or the need for a new environmental policy, act or regulation. These are called reviews.

What is an investigation?

Ontario residents can also ask the minister to investigate if they think someone is violating, or about to violate, an environmental act, regulation, or the terms of approval of an instrument. These are called investigations.

My staff assist people who want to apply for reviews and investigations, and the completed applications are forwarded to the ministries involved. Each year I review and report on how these applications were handled by the ministries.

Summary of 1997 Applications

During 1997, two ministries, the Ministry of Natural Resources (MNR) and the Ministry of the Environment (MOE), were required to consider applications for review and investigation from the public. Twenty-five applications were submitted during the year.

Many applications dealt with matters that received wide public attention. For example, a number of applications related to discharges of contaminants by Ontario Hydro power plants. Other applications concerned the regulation of recycling plants, including Hamilton's Plastimet site.

Applications covered a diversity of topics, from potential damage to a provincially significant wetland in Whitby by a proposed housing development, to an MNR decision to withdraw from enforcement of the federal *Fisheries Act* provisions that safeguard fish habitat. Other issues included health concerns related to chlorination of drinking water in Milton, emissions caused by burning used oil in small space heaters, and the need for a watershed management plan to address drainage problems. As in previous years, the operation of landfill sites was the subject of applications.

The *Environmental Bill of Rights* provides an opportunity for residents to address issues that have eluded other

approaches. Well-researched applications can lead to positive and even unexpected results. In one example, applicants alleged that their neighbours straightened a river bank by adding outside fill to their property, causing increased silting, erosion and flooding on the applicants' property, and the destruction of fish habitat. MNR concluded that the alteration was in violation of the federal *Fisheries Act* and initiated a prosecution under the act. MNR withdrew the charges after the accused agreed to rehabilitate the stream back to its original condition.

During 1997, the ECO assessed the handling by the ministries of 13 applications for review and 16 applications for investigation, including some that had been submitted in previous years.

Ministry responses when applications are denied

In most cases, ministry responses to applicants were thorough, providing a clear rationale for denying the application. In a small number of cases, however, the response of the ministry was not helpful in explaining why the application was denied or what other recourse might be available for addressing the applicants' concerns.

Ministries are encouraged to provide detailed, accurate reasons to applicants for denying an application.

Impartial reviews and investigations

Decisions on some applications were taken by the same department originally involved in the issue. To obtain a fresh and impartial perspective on the matter, ministries are encouraged to assign the decision whether to undertake a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue. For example, MOE did this when it assigned an application for investigation to its separate Investigation and Enforcement Branch.

Recommendation 22

To obtain a fresh and impartial perspective, ministries are encouraged to assign the decision for undertaking a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue of concern.

Reasonable time frame for resolution of applications

Once the ministry has indicated that it will undertake a review, there is an expectation that the ministry will complete it within a reasonable period of time. Problems arise when the ministry links the completion of a review or investigation to an external event over which it has no control. For example, a three-year-old application submitted by almost 500 applicants seeking the review of a drinking water standard for tritium is yet unresolved due to a related federal initiative. MOE is encouraged to establish an interim standard pending the outcome of the federal review.

Recommendation 23

Since the review of a drinking water standard for tritium has taken longer than three years, MOE should establish an interim standard pending the outcome of the federal review.

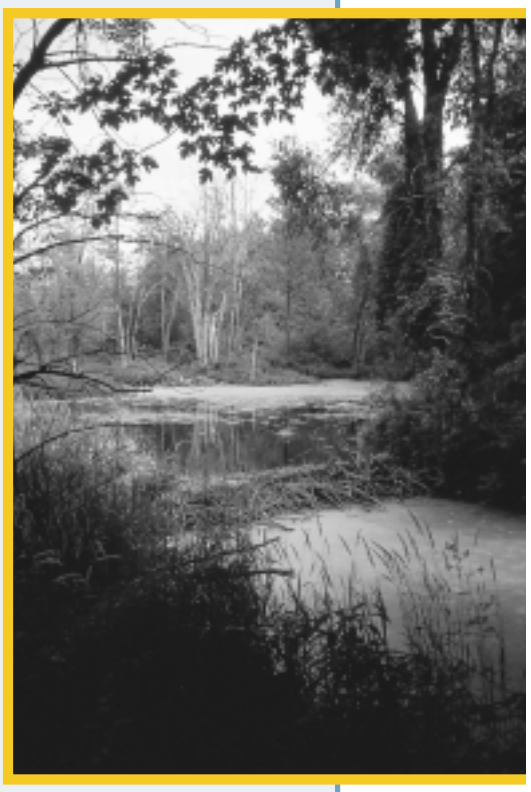
Applications Forwarded to Ministries

	Reviews	Investigations
Undertaken and Completed	1	3
Undertaken but Not Yet Completed	0	6
Not Undertaken	9	5
Undecided	1	0
TOTAL	11	14

Areas of Natural and Scientific Interest (ANSI)

The ANSI program – "areas of natural and scientific interest"^– was announced in 1983 by the Minister of Natural Resources and was aimed at protecting natural heritage values in areas not covered by the provincial park program. The public's concern about MNR's criteria for identifying and classifying ANSIs and the kind of protection conferred by an ANSI designation was evident in two *EBR* applications during 1997, and in public comments on ANSI management plans posted on the Environmental Registry. People wondered, for instance, whether resource use and extraction are permitted in ANSIs.

The minister claims that members of the public are confused about ANSIs, and in February 1997, said that MNR will no longer use the term. The ministry has told the ECO that "the designation is not meant to confirm some degree of protection." In Ontario's huge central forested area, it appears that existing ANSIs not regulated as parks or conservation reserves through the Lands for Life planning process may become available for resource extraction.



Dropping the ANSI program could have a negative effect on land conservation in southern Ontario. There, most ANSIs are on private land and are referred to in a number of ministry policies affecting private land. For example, owners with provincially significant ANSIs on their property are encouraged to protect their natural heritage values, and if they do so, do not have to pay property taxes on the ANSI lands. In addition, the Provincial Policy Statement under the *Planning Act* states that development may be permitted in a provincially significant ANSI only if it does not negatively impact on its natural features or ecological functions.

Evidence reviewed by the ECO shows that ANSIs play a valuable role in the protection of Ontario's natural heritage features. Thus far, MNR has not posted any proposed changes to the ANSI program on the Environmental Registry.

Recommendation 24

MNR should clarify any changes it plans to make to the ANSI program and post the proposal on the Environmental Registry for comment. MNR should clarify the degree of protection afforded to the natural heritage values of lands that have been designated as ANSIs, the criteria for identifying and evaluating ANSIs, and the ministry's procedures for confirming or changing an ANSI designation.

Making Ontario's Blue Box System Better

During 1996 and 1997, my staff and I reviewed MOE decisions on refillable soft drink regulations and the Blue Box system in order to understand more fully the concerns raised by the public in their applications for investigation and review of these issues.

In January 1995, a Toronto-based environmental group applied for an investigation, alleging that two companies had contravened refillable soft drink regulations. Then in March 1995, two Ontario residents applied for a review of these same regulations. In response to the application for investigation, the Ministry of the Environment found that the two companies had contravened the regulations. MOE did not lay charges, however, saying it would be inappropriate to prosecute because the ministry and industry were working toward a solution. MOE also said it was waiting for two industry studies of the issue, originally promised for 1993. To date, these reports have not been completed.

In response to the application for review, MOE agreed to include the soft drink regulations in "Responsive Environmental Protection," the ministry's full-scale review of 80 environmental regulations announced in July 1996.

In my 1994-95 Annual Report, I recommended that MOE announce the changes it intended to make to Ontario's soft drink regulations, and in the absence of such change, that the Minister of the Environment enforce the regulations as they exist. To date, neither has been done.

The results of our ongoing reviews led me to recommend in my 1996 Annual Report that MOE and the Ministry of Consumer and Commercial Relations research the costs and the environmental, scientific, economic and social benefits of adopting new refillable container technologies in Ontario and implementing a deposit-refund system for liquor containers. In fact, many Canadian provinces, such as Alberta, British Columbia and Quebec, already have regulations in place requiring deposit-refund systems.

To date, the ministries have not announced any new action, and in November 1997, with respect to my recommendation, the Minister of the Environment said that he intends to delay any further action on beverage containers until after April 1998.

In December 1997, I received another application for review on this issue, this time from a large municipality in southern Ontario. The application requests that MOE establish a regulation that would enable municipalities to recoup the costs of providing Blue Box programs to residents. The application also requests that the new regulation provide an incentive to producers and retailers to take full responsibility for reducing the environmental effects of packaging waste.

In its 1997 report to me, MOE states that the ministry has been consulting the public on alternate approaches to promoting refillable containers. In addition, the ministry states that it has referred the related issues of funding the Blue Box system and clarifying roles and responsibilities in the province's solid waste management system to the Recycling Council of Ontario (RCO). The RCO, in turn, "has assembled a broad range of stakeholders to develop options to address product stewardship issues, specifically to address the sustainability of the Blue Box program." The ministry states it will "consider the RCO's recommendation with respect to this issue."

In its 1997 report to me, the Ministry of Consumer and Commercial Relations states that it will facilitate the exchange of environmental, scientific and economic information between the Liquor Control Board of Ontario and MOE on refillable container technologies.

ECO Commentary

The *Environmental Bill of Rights* asks Ontario ministries to integrate economic, environmental, social and scientific considerations when they make decisions that may affect the environment. The evidence that I have reviewed indicates that refillable bottles are a good choice for the environment and make good economic sense, too.

While revising its refillable soft drink regulations, the Ministry of the Environment has an opportunity to promote a sustainable system for packaging and distributing beverages based on refillable containers that:

- Maximizes environmental benefits and minimizes environmental damage
- Lets consumers choose and enjoy high-quality products
- Keeps Ontario industries competitive
- Conserves energy
- Shifts responsibility for managing packaging waste from taxpayers to the producers and users of packaging

Waste issues are of great importance to Ontario residents. Decisions about beverage packaging waste will have a significant impact on the abilities of the province and municipalities to manage waste problems. There is strong public support for innovative solutions to these problems. It is time for the Minister of the Environment to act.

I repeat the recommendations I made in my first and second Annual Reports:

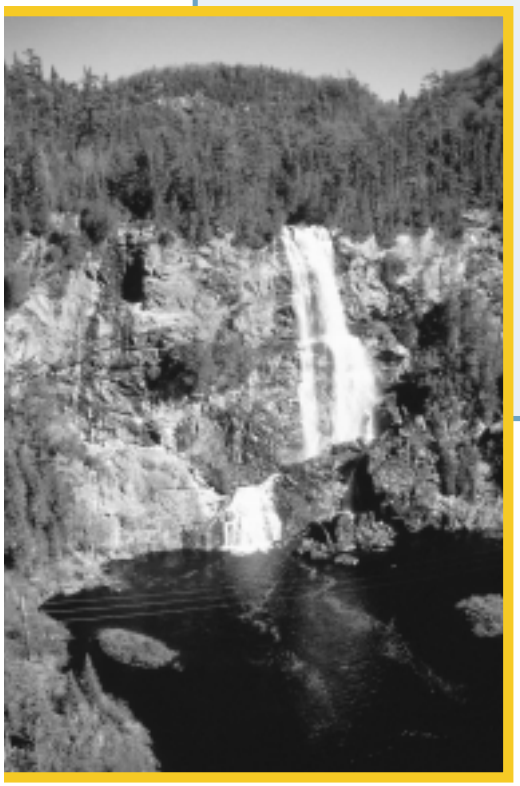
- The Ministry of the Environment should announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently under way are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of the Environment should begin to enforce the refillable soft drink container regulations under the EPA.
- The Ministries of the Environment and Consumer and Commercial Relations should undertake environmental, economic and social research on the benefits and costs of adapting new refillable container technologies to Ontario's beverage industries and implementing a deposit-refund system for liquor containers, and make the information public.

Ontario Hydro

A number of applications alleged that Ontario Hydro has discharged large quantities of heavy metals into the Great Lakes due to the erosion of brass condenser tube walls at its power plants. Investigations were undertaken by the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR) and are expected to be completed in 1998.

In July 1997, Hydro also struck a panel of internal and external experts to review its nuclear operations. The panel recommended that the brass condensers be replaced, or coated, at several locations, and that programs be developed at fossil fuel plants to minimize metal emissions.

The recommendations regarding management problems at Ontario Hydro were more far reaching. According to the expert panel, there were "gaps and inadequacies in the management system in the areas of environmental accountability and awareness." Management exercised "poor judgement by not formally advising MOE . . . . The relationship with MOE . . . was to tell MOE the minimum required." The panel concluded that "there does not appear to be a strong environmental ethic within Ontario Hydro's nuclear business." A follow-up third-party assessment, undertaken in December 1997, concluded that Hydro had made a determined effort to implement many of the recommendations of the expert panel.



In September 1997, the Ontario Legislature formed a "select committee" to scrutinize Hydro's recovery plan, which called for mothballing seven reactors and upgrading the remaining 12. In October, a "Nuclear Report Card" indicated that Hydro had achieved its target of upper quartile ratings for most performance indicators set by the World Association of Nuclear Operators.

For its part, MOE issued a Director's Order under the *Ontario Water Resources Act* (posted on the Environmental Registry in August 1997), requiring Hydro to determine the corrective action needed to minimize future releases of metals and the time frame required to implement the corrective action. The Order also required Hydro to undertake further investigations into the precise nature of the problem and its effects.

In a separate Director's Order under the *Environmental Protection Act*, MOE attempted to address the elevated tritium levels detected in the groundwater in the vicinity of the Ontario Hydro Pickering Nuclear Generating Station heavy water upgrading plant.

ECO Commentary

MOE reacted quickly once environmental problems at the Ontario Hydro Nuclear Division came to light. I will continue to monitor developments, including the results of the MOE and MNR investigations.

Plastimet Fire

During 1997 I received an application that alleged violations concerning the plastics fire at the Plastimet recycling facility in Hamilton.

The Background

The Plastimet fire started on July 9, 1997, and raged for three days in a mixed industrial and residential neighbourhood of the city. It consumed 400 tonnes of plastic, including polyvinyl chloride (PVC), and resulted in a one-day evacuation of area residents because of fears about airborne toxics. (One of the by-products of PVC combustion is dioxin, an extremely toxic substance that is thought to cause cancer and disruptions to endocrine systems.) The company had been cited by the Hamilton Fire Department with a number of Ontario Fire Code violations in October 1996, and at the time of the fire, had yet to install a sprinkler system and prepare a fire safety plan.

In September 1997, when the owners of the plant, in breach of an MOE Order, failed to clean up the fire-ravaged site in a timely manner, the Ministry of the Environment (MOE) took it over and assumed responsibility for the cleanup. A ministry Order under the *Environmental Protection Act (EPA)* requiring Plastimet to pay the costs of the cleanup was appealed by the company in early 1998.

At the request of the Solicitor General, the Ontario Fire Marshal investigated, and in an August 1997 report, called for strengthening the regulatory controls on recycling operations. The Fire Marshal's report recommended that recycling facilities that are not required to obtain a certificate of approval (C of A) from MOE be required to meet the following conditions prior to start up:

- "confirmation from the local municipality that the facility complies with local zoning bylaws and is not in close proximity to sensitive land uses (e.g., schools, hospitals, etc.).
- "confirmation from the local fire department that the facility is in compliance with fire safety requirements."

The Fire Marshal, noting that Standardized Approval Regulations could be used to set out these requirements, also made a number of other recommendations, including proposed changes to the Ontario Fire Code.

The Application

The application under the *Environmental Bill of Rights* alleged that MOE contravened the *EPA*, both because of the ministry's slow response to the fire, and because the ministry had issued a C of A to Plastimet while knowing that the company was not in compliance with environmental regulations and the Fire Code.

MOE denied the application. The ministry also denied that its response was untimely. MOE said that applicants cited inappropriate sections of the *EPA* and that charges could not be laid against the ministry under those sections. The ministry also said it could not have improperly issued a certificate of approval to Plastimet, as a C of A is not required for Plastimet's activities.

ECO Commentary

My review shows that under Reg. 347 of the *EPA,* activities are exempted from the requirement to obtain a waste management C of A only if a company is storing recyclables to meet a realistic market demand. However, if there is no realistic market demand, the exemption does not apply. MOE cited no evidence that there was a demand for the plastics stored at Plastimet, and the ECO has found that markets for recycled PVC plastics have been weak for at least two years. The ministry failed to explain why a C of A was not required and why it considered the Plastimet operation to be exempt from the requirements. My review also showed that while the ministry correctly denied this particular application, it missed an opportunity to explain what evidence it used to decide that Plastimet did not require a C of A.

I also found that the ministry is not moving in the direction recommended by the Ontario Fire Marshal to strengthen regulatory controls on recycling facilities. Previously, in reviewing its own regulations in 1996, MOE had indicated that it would continue to exempt from *EPA* waste approval requirements those sites and facilities that accept and store recyclable material that meets a realistic market demand and to modify its definition of waste to allow more types of recyclable materials to be exempt from waste approvals. In 1997 the Minister of the Environment confirmed his intention to proceed with exemptions for companies dealing with certain recyclables.

MOE has told the ECO that "... the Ministry is working with the Fire Marshal's Office in reviewing the 12 recommendations made in its report on the Plastimet fire. As part of this review, the Ministry is considering notification to local municipalities as one of the requirements that a facility must comply with under the standardized approval regulations (SARs) before it can begin to operate."

I will monitor these proposed amendments and whether MOE has adequate safeguards in place to ensure that exemptions from the *EPA* approvals do not result in increased risks to public safety and the environment. The public will have another opportunity to comment on the proposed changes to Reg. 347 when they are posted on the Registry for public consultation in 1998.

Permits to Take Water

The 1994-95 ECO Annual Report included a recommendation that ministries work together to review and upgrade Ontario's groundwater management framework. The permits to take water issued by the Ministry of the Environment (MOE) are an integral part of managing and protecting groundwater quantity.

Anyone taking more than 50,000 litres of water per day is required to obtain a permit to take water (takings for domestic needs and some farming needs are exempted from this requirement). Permits are issued for a variety of purposes, including municipal water supplies, industrial uses, irrigation, wetland creation, aggregate extraction, commercial water-bottling operations, and snowmaking. MOE posts proposals for most long-term permits (i.e., those permitting water-taking for more than one year) on the Environmental Registry for public comment. Since December 1994, MOE has posted almost 1,000 proposals for water-taking permits.

Many of these permits are issued without concerns being raised by adjacent water-users. In some cases, however, water-taking permits meet with substantial resistance. Those that cause most concern include water-taking for commercial water-bottling, aggregate extraction and irrigation (often for golf courses).

Concerns about dewatering – pumping water out – for an aggregate operation in Dunnville, Ontario, were raised through three different *EBR* processes in 1997: an application for investigation, comments submitted on a new permit to take water for the operation, and a subsequent application for leave to appeal the ministry's decision to issue the permit. Members of the public were concerned that the dewatering would lower the groundwater table, causing wells and ponds to dry up. In another case, a proposed permit to take water for snowmaking for a ski hill and irrigation of a golf course in Dufferin County resulted in eight comments being submitted to the ministry. (See p.73 for further discussion of this case.)

Summary of Concerns Raised in Relation to Permits to Take Water:

- Incomplete understanding by MOE of hydrogeology and potential impacts, including cumulative impacts, of water-taking prior to issuing permits.
- Lack of enforcement by MOE of terms and conditions of permits.
- No expiry dates on permits.
- Insufficient notice provided by MOE to members of the public regarding proposed water-takings.

ECO Commentary

Continued concern with groundwater issues underscores the need for a comprehensive groundwater management strategy in Ontario. In my 1994-95 Annual Report, I recommended that ministries review and upgrade Ontario's groundwater strategy. MOE indicates that it is working with other provincial ministries to develop such a strategy, and that issues highlighted in my 1996 Annual Report are being considered in its development. I look forward to the release of this strategy, which should address some of the deficiencies of MOE's current permit to take water program.

Recommendation 25

MOE, MNR, MMAH and OMAFRA should make public the progress they have made to date in developing a groundwater strategy, and indicate when the strategy is expected to be completed.

Watershed Management

Three related applications during 1997 involved drainage problems allegedly resulting from poor watershed planning. In separate applications to the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR), the applicants requested a review of the need for a watershed management plan. More specifically, they also requested an investigation into the alleged failure of MOE to enforce conditions of a certificate of approval (C of A) issued to a nearby recycling plant requiring it to correct surface drainage problems. As a result of these drainage problems, a serious washout caused erosion on the applicants' property.

MOE undertook the investigation and found that the C of A conditions were not being violated. However, the applicants' request for a review of the need for a watershed management plan was denied by both MNR and MOE on the basis that this was not a provincial responsibility. The ministries referred the applicants to the municipality and the local Conservation Authority.

ECO Commentary

The ministries' response to these applications was not helpful to the applicants. My staff followed up on the applications and found that MOE, MNR, the Ministry of Transportation, the regional municipality and the local Conservation Authority have met on this particular problem a number of times. Thus far, they have not been able to develop a satisfactory solution to the problem.

Though the local Conservation Authority is currently looking at specific measures to assist the applicants, at this time the Authority can only afford to provide consulting support. In recent years, MNR has substantially cut its share of funding to Conservation Authorities, from 33 per cent to 5 per cent. The ability of Conservation Authorities to undertake activities such as erosion control and watershed management planning is severely limited. A recent Ontario government report declares that as of 1997, provincial funding will no longer be available for watershed or sub-watershed planning projects – although MNR has told the ECO that "a more recent decision retains watershed planning as an item that MNR could consider to fund."

The ministries' response to the application is particularly troubling since both ministries indicate in their Statements of Environmental Values that they have adopted an ecosystem approach to resource management and environmental protection. And MOE's 1997 business plan states the ministry will provide "... guidance on watershed plans...." However, in refusing to undertake the review, MOE indicated concern that any actions the ministry took would duplicate those of the local municipality and be at variance with policies contained in the Provincial Policy Statement under the *Planning Act*.

This application also highlights the difficulties people have in getting a problem resolved when several ministries as well as municipal organizations are involved. The gaps and overlaps in jurisdiction over watershed management matters can become a basis for allowing problems to continue unaddressed for many years. Local authorities facing watershed management issues often rely on leadership and advice from the province. At the same time, watershed management problems need to be dealt with on an ecosystem basis and not on the basis of political boundaries. This kind of approach, however, needs provincial leadership to be viable.

Recommendation 26

MOE, MNR and MMAH should encourage the development of watershed management plans at the local level, and provide both technical and financial resources and assistance to municipalities and Conservation Authorities in developing such plans.

PART SIX

Instruments

What are instruments?

Companies or individuals must get legal documents – such as licences, orders, permits or certificates of approval – from ministries before they can carry out activities that will have a significant effect on the environment. Under the *EBR*, these documents are called "instruments." They are normally issued, for instance, before a company can operate a gravel pit, discharge pollution into the air or take large quantities of water.

Classifying Instruments

Under the *Environmental Bill of Rights*, ministries must "classify" the instruments they issue according to how environmentally significant they are. This is an extremely important step for Ontario citizens who want to use their rights under the *EBR*. Classification determines the type of approvals that will be posted on the Environmental Registry for public comment and the extent of the opportunities there will be for public participation, appeal, review and investigation. The public can use these *EBR* processes only for instruments that are classified.

The Ministries of Natural Resources, Northern Development and Mines, and Consumer and Commercial Relations had to classify their instruments within a reasonable time after April 1, 1996.

Ministry of Natural Resources (MNR)

In 1997, MNR fulfilled its *EBR* requirement to develop a draft instrument classification regulation. The ministry's second version of the proposed regulation reflects a determined effort to address some of the concerns raised by members of the public during the first comment period. MNR worked hard on the instrument classification process, and ministry staff are to be commended for undertaking two notice and comment periods on this regulation. However, the delay in the finalization of the regulation delayed as well the ability of Ontarians to use the *EBR* fully with respect to the permits and approvals the ministry issues. For example, Ontario residents have not been able to ask for reviews of existing permits for aggregate operations, or to apply for investigations of contraventions of the conditions of these permits.

MNR's instrument classification proposal does not comply with the intent of the *EBR*. Some environmentally significant instruments are still left out of the proposal. Because of this, for example, members of the public will not be able to comment on MNR proposals to grant a sustainable forest licence to harvest forest resources, or on proposals to supply forest resources to an individual or company. (To its credit, however, it should be noted that MNR is voluntarily posting forest management plans, which let people know how timber operations will comply with laws and other requirements for sustainable forestry practices.)

There are also gaps in public participation created by the interaction of MNR's activities and the *Environmental Assessment Act (EAA)*, due to exceptions created by the *EBR*. Although the ministry's second version of its classification regulation contains more instruments than its first, many instruments will not be posted on the Environmental Registry for notice and comment, since they are exempted from or covered by the *EAA* and thus also from the public participation requirements of the *EBR*, under *EBR* s.32. MNR is using the s. 32 *EBR* exception in a legally correct manner, but the result, unfortunately, will still remove many of the permits, licences and approvals granted by the ministry from public scrutiny. The ministry is also proposing a regulation that would define certain classified instruments as "field orders," removing them from all of the public participation processes of Part II of the *EBR*.

Ministry of Northern Development and Mines (MNDM)

The Ministry of Northern Development and Mines drafted its proposal for instrument classification in 1997. The proposal was posted on the Environmental Registry for 90 days, from May 15, 1997, to August 13, 1997, and included the actual text of the proposed regulation. Other public consultation, primarily with the minister's Mining Act Advisory Committee, was also undertaken.

At the end of 1997, MNDM had not yet finalized this regulation. Thus, the public is still unable to see proposals for mining operations and to use the *EBR*'s opportunities for comment, review and investigation.

Ministry of Consumer and Commercial Relations (MCCR)

MCCR drafted its proposal for classifying instruments and posted it on the Environmental Registry in late June 1996, and again in December 1996. MCCR reported to the ECO that it had prepared the text of the regulation and given it to the Ministry of the Environment in mid-1997, for inclusion in MOE's environmental regulatory reform package, "Better, Stronger, Clearer." The proposed regulation was posted in late 1997.

Can the Public Influence Decisions?

Guelph

Registry # IA7E0714.D

description PPM Canada applied for a change to their existing certificate of approval that would permit PCB waste to be transferred to their site for repackaging prior to being taken to the U.S. for incineration.

public comments Fourteen people commented on the application, four of them through the Environmental Registry. They were concerned about the impacts on existing and planned residential areas, about groundwater contamination through the site's porous soil, and about the potential for a fire or a spill. People pointed out that the PCBs would have to be transported through a heavily populated area.

decision Because of these public concerns, PPM Canada withdrew its application.

Can the Public Influence Decisions?

Newmarket

Registry # IA7E0402

description Malecki Drum Inc. applied for a permit to store on site the liquid wastes left at the bottom of the steel and plastic drums they recondition and recycle.

public comments A member of the public commented on the Registry proposal suggesting that the company should ensure that any spillage from the liquid waste storage tank be contained.

decision MOE included a condition in the permit that Malecki Drum install a containment system around the tank.

Ministry of the Environment (MOE)

At the end of 1997, MOE posted amendments to its *EBR* instrument classification regulation on the Environmental Registry. The original proposal, which was part of MOE's regulatory reform initiative, "Responsive Environmental Protection," proposed removing certain instruments from the Registry posting requirements of the *EBR*. Because of comments received from the public, as well as future ministry plans for standardized approvals, MOE decided not to remove those instruments from its instrument classification regulation.

Recommendation 27

The ministers of MNR, MNDM and MCCR should ensure that their instrument classification regulations are finalized as swiftly as possible, in a manner consistent with the purposes of the *EBR*.

Why Instruments are Important: Environmental Impacts at the Local Level

A resort in Dufferin County applied for a permit to take water for snowmaking and irrigation from two spring-fed ponds located next to the Nottawasaga River. The resort had been taking water for its golf and ski operations for six years without a valid permit, and had received no complaints. The applicants applied to take water for irrigation to a maximum of 650,000 litres per day, and for snowmaking to a maximum of 1,500,000 litres per day.

The 30-day comment period on this instrument proposal, posted on the Environmental Registry in April 1996, was extended to 70 days in response to requests from members of the public. The eight comments submitted to the Ministry of the Environment (MOE) all expressed concern about the amount of water being taken and the potential effects on water flow in the Nottawasaga River. Several commenters asked that the exact source of water in the ponds be determined prior to the permit being issued. The river is a spawning ground for salmon and rainbow trout, people pointed out, and declining water levels could harm these species.

In May 1997, MOE issued a permit, without an expiry date, approving the amounts of water requested by the resort. The ministry did add some conditions to the permit in response to the concerns people had raised, requiring the resort to monitor and report to MOE on the streamflow of the Nottawasaga River. However, MOE did not require the resort to undertake a full study to determine the hydraulic connection between the ponds and the river before issuing the permit.

ECO Commentary

Since the resort had been taking water for six years without complaint, requiring a full hydrological study before issuing the water permit may not have been warranted. However, MOE could have issued a short-term permit, instead of one without an expiry date. This would have given the ministry an opportunity to revisit the conditions of the permit if the monitoring report began to show negative impacts on the river from the water-taking.

Can the Public Influence Decisions?

Peterborough

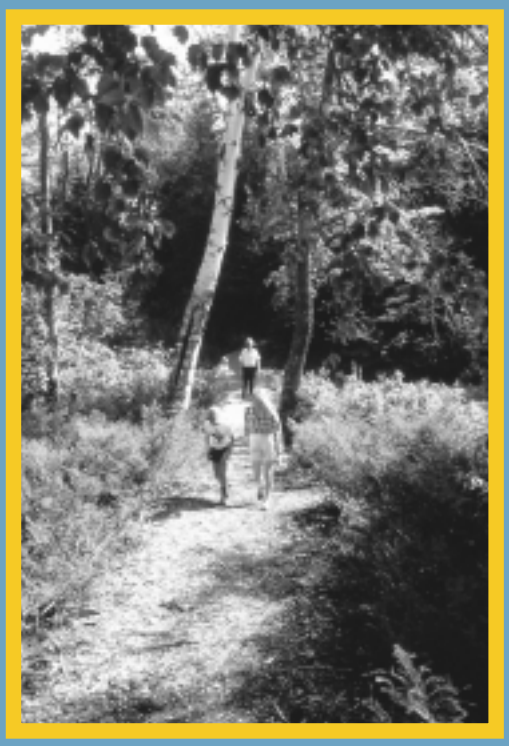
Registry # IA7E0790

description A local injection-moulding and electroplating firm, Formax Enterprises, had already failed to comply with prior MOE Orders to clean up its property, where wastes were being illegally stored. MOE investigations revealed that chromium-contaminated surface waters were flowing from the property into the Otonabee River. The ministry drafted Orders that would require Formax to hire a consultant to implement a remediation plan to remove the wastes, protect surface and groundwater, and identify any off-site contamination caused by the property's contaminated soil.

public comments The nearby City of Peterborough recommended that the company be required to identify all off-site contamination, including contamination caused by surface and groundwater as well as by contaminated soil, and that the consultant's plan should also address remediation of off-site and on-site contamination.

decision MOE changed its Orders according to the city's recommendations.

PART SEVEN



Other Legal Rights

Other Legal Rights

The *Environmental Bill of Rights* gives several important legal rights to the people of Ontario. They now have the right to appeal certain government decisions; the right to sue if someone is breaking, or is about to break, an environmental law and is harming a public resource; and the right to sue for compensation for direct economic or personal loss because of a public nuisance that is harming the environment. Under the *EBR*, Ontarians also have protection against reprisals for reporting environmental violations in the workplace.

Appeals

The *EBR* allows members of the public to apply for leave to appeal ministry decisions to issue certain instruments, such as the permits, licences or certificates of approval that ministries issue to industrial facilities. (Neighbours, for example, may want to appeal the approval given to a company to discharge chemicals into the environment.) The person asking for the permission to appeal a permit or licence must apply to the proper appeal body, such as the Environmental Appeal Board (EAB), within 15 days of the decision being posted on the Environmental Registry. They must show they have an "interest" in the decision, that no "reasonable" person could have made the decision, and that it could result in significant harm to the environment.

Status of Appeals

At the beginning of 1997, one application for leave to appeal was pending before the EAB. Two additional applications for leave to appeal were posted on the Environmental Registry. While two of these applications were denied, another was successful.

To make sure that Ontario residents have information about the opportunity to participate in appeals on approvals granted by ministries, the *EBR* also requires that the Environmental Commissioner of Ontario post on the Registry any appeals of instruments that are made by the companies or people who hold them. During 1997, five such notices of appeal were posted on the Environmental Registry. Of these regular instrument holder appeals, three were withdrawn.

The Right to Sue: Public Nuisance

Any person in Ontario who experiences direct economic or personal loss because of a public nuisance causing environmental harm – such as a widespread pollution problem – may sue for damages or other personal remedies under section 103 of the *EBR*. (There is an exception that may protect farmers against public nuisance lawsuits relating to odour, noise and dust under the *Farm Practices Protection Act*.) In contrast, individuals and citizen groups in almost every other part of Canada have limited access to the courts when they want to sue for public nuisances.

The *Environmental Bill of Rights* eliminates some previous barriers to people's ability to sue for public nuisances. It eliminates the need for people to have the Attorney General of Ontario either take on their case or give consent to the case being undertaken. The *EBR* also clarifies that direct damages are recoverable, and specifies that the person does not have to suffer unique economic damages or personal injuries to make a successful claim.

Two Landmark Public Nuisance Cases

Two landmark cases were filed during 1997, relying in part on the public nuisance provisions of the *Environmental Bill of Rights*.

First Public Nuisance Case - The Keele Valley Landfill

In February 1997, the first public nuisance case relying on section 103 of the *EBR* was filed in the Ontario Court of Justice in Whitby on behalf of 30,000 residents of Maple and Richmond Hill. These residents are suing the Municipality of Metropolitan Toronto (now the City of Toronto) on the grounds that odours, noxious gas, debris and noise have emanated from the Keele Valley landfill since it began operations in 1983 and that these emissions have caused harm to local residents.

This is a class action suit under the *Class Proceedings Act* (only possible since 1993, with the passage of the *Class Proceedings Act*). Toronto faces a $600 million claim – $500 million in compensatory damages and $100 million in punitive damages. In addition, the residents are seeking an injunction preventing Toronto from continuing to pollute the local environment.

Second Public Nuisance Action - Fort Erie's Water System

In August 1997, a Fort Erie resident began a class action proceeding against the Town of Fort Erie, her local municipality, which operates a municipal water system, and the Regional Municipality of Niagara, which owns and operates the water treatment plant that supplies Fort Erie's water system.

The plaintiff alleges that the water supplied to residents is frequently contaminated by iron rust and microorganisms present at levels that exceed the Ontario Drinking Water Objectives and the Guidelines for Canadian Drinking Water Quality. She also claims that the contaminated water is a nuisance, and she relies on s.103 of the *EBR* on that ground. In addition, she claims that the defendants are liable for trespass, breach of contract, negligence and negligent misrepresentation, and for loss or damage under the *Environmental Protection Act*. She is seeking $30 million in damages on behalf of the class of residents and an injunction preventing the defendants from adding corrosion inhibitors to the water they supply.

The ECO is monitoring these landmark cases and will report on future developments.

The Right to Sue for Harm to a Public Resource

The *Environmental Bill of Rights* gives Ontarians the right to sue if someone is violating, or is about to violate, an environmentally significant act, regulation or instrument, and has harmed, or will harm, a public resource. This right was not used during 1997.

Whistleblower Rights

The *Environmental Bill of Rights* protects employees from reprisals if they report the unsafe environmental practices of their employers or if they use their rights under the *EBR*. There were no whistleblower cases in 1997.

Leave to Appeal: Waste Disposal Site — Aaroc Aggregates Ltd (Aaroc)

In April 1997, the Ministry of the Environment (MOE) granted Aaroc Aggregates Ltd. a certificate of approval (C of A) for a waste disposal site that would allow the company to receive a maximum of 1,500 tonnes of construction and demolition waste daily and to process this waste for recycling. The maximum amount of waste allowed to be stored on the site was 100,000 tonnes. The site is an existing aggregate operation and is located on the Westminster/West Oakes aquifer in Middlesex County, just outside London, Ontario.

The people who applied to the Environmental Appeal Board (EAB) for permission to appeal Aaroc's certificate of approval live within 1.6 km of the site and rely on well water from the Westminster/West Oakes aquifer for drinking and other uses.

The applicants gave several reasons why they believed the ministry acted unreasonably and why the environment would suffer significant harm. The municipal zoning for the site does not permit the operation of a waste recycling facility, the applicants stated, and the site was previously operated without a C of A. It is not reasonable, the applicants added, to issue an approval to a company with a history of contraventions of provincial environmental laws. The applicants also noted that the ministry had not considered their concerns about the groundwater aquifer which underlies the site and surrounding area: MOE's hydrogeologist was not consulted to assess potential impacts on the aquifer, and the need for surface water protection was not considered prior to granting the approval. Thus, the applicants claimed, the ministry's decision could result in significant harm to the environment, specifically to the Westminister/West Oakes aquifer, and could have nuisance impacts on residents of the area surrounding the site.

In its reply to the application, Aaroc stated that the approval will allow it to mix construction and demolition waste with the limited gravel resources available at the site, allowing them to reduce the amount of gravel that needs to be removed from the site. The company also stated that "there is no significant nuisance associated with the operation."

The EAB found that the applicants succeeded in showing good reason to believe that the ministry acted unreasonably on one of the grounds alleged – inadequate consideration of groundwater and surface water issues. Nevertheless, the applicants failed to show that the ministry's decision could result in significant harm to the environment. Therefore, the application for leave to appeal was denied.

The EAB added an important note: If the EBR right to leave to appeal is to be meaningful, the Board stated, the information and expert opinion relied on by the ministry should also be accessible to leave applicants. "Very few people will have the time, resources and experience to use the *Freedom of Information and Protection of Privacy Act*," said the Board, "when compiling their submission under severe time constraints."

Recommendation 28

The ministers of MOE, MNR, MNDM, MMAH and MCCR should make available to applicants and their counsel appropriate information and expert opinions when they apply under the *EBR* for leave to appeal, instead of requiring the applicants to request this information under the *Freedom of Information and Protection of Privacy Act*.

Leave to Appeal: Waste Processing Site — County of Northumberland

In summer 1996, residents in Northumberland County applied to the Environmental Appeal Board (EAB) for permission to appeal the decision of the Ministry of the Environment to amend the county's provisional certificate of approval for its waste processing site. The applicants maintained that the changes would result in a higher landfill disposal rate and therefore greater harm to the environment. Their application was denied on August 1, 1996, and the EAB issued its reasons for denying the application in February 1997.

Although the EAB found that the applicants had an interest in the decision – as people who had attended public hearings on the matter and were residents of the county where the system was located – the Board ruled that the residents failed to provide any evidence that the ministry's actions were unreasonable or that significant harm to the environment would result from the amendment to the certificate of approval.

The EAB also noted that the County of Northumberland has agreed to incorporate some of the applicants' suggestions into the operational procedures for the facility.

Petro-Canada Case

In my two previous Annual Reports, I discussed a landmark case involving the appeal of a certificate of approval held by Petro-Canada Products. I also talked about the impact of the cancellation of the Intervenor Funding Project Act, which provided up-front funding to people who wished to take part in hearings before appeal bodies such as the Environmental Assessment Board. The following illustrates the difficulties and financial obstacles members of the public now face when they use legal processes to protect the environment for themselves, their families and their community.

In September 1995, the Ministry of the Environment (MOE) granted two certificates of approval – one for air and one for water – to Petro-Canada for an expansion of the lubricant production process at its Mississauga plant.

Prior to granting these approvals, MOE posted notices of the proposed instruments on the Environmental Registry, as required by the *EBR*, and received 531 comments from the public during the 30-day comment period. An additional 548 comments were received after the comment period ended, most of them requesting an environmental assessment of the expansion. Clearly, there was a great deal of public interest in this project. Shortly after the certificates of approval were granted, appeals of the instruments were launched by members of the public.

The first hurdle the applicants had to cross was obtaining leave to appeal from the Environmental Appeal Board (EAB). The test for leave to appeal is stringent: the EAB must have good reason to believe that no reasonable person could have granted the instrument being appealed, and the granting of the instrument could result in significant harm to the environment. Applicants for leave to appeal generally require legal representation and ample resources to gather sound and convincing evidence. Since the passage of the *EBR* in 1994, there have been only three cases where leave to appeal a certificate of approval was granted to applicants, and 12 cases where it has been denied.

In June 1996, the EAB announced its decision to grant the applicants leave to appeal one of the certificates of approval (air) on limited grounds. Now the applicants faced another tough legal battle – to win the appeal. They were opposed by two parties: the Legal Services Branch of MOE, whose role it was to defend the decision of the ministry to grant the certificate of approval; and the instrument-holder, Petro-Canada, which was defending the terms of the certificate of approval.

One applicant, Greenpeace, joined forces with the Sierra Legal Defence Fund (SLDF), a nonprofit environmental advocacy organization that provides free legal services to citizens and groups with environmental concerns. A citizen's group applicant, Residents Against Company Pollution (RACP), hired a private law firm to represent it. One applicant continued to appear on her own behalf. Petro-Canada was represented by a large Toronto law firm.

In the time between the granting of leave to appeal and the beginning of the actual appeal hearing, Petro-Canada and MOE launched seven procedural motions, each of them requiring appearances by counsel and sometimes expert affidavit testimony. In addition, there was extensive correspondence between all the lawyers and some attempts at negotiating a settlement. The proceedings were extremely costly. Indeed, RACP ran out of money shortly after the hearing began and had to let their lawyers go, although some RACP members continued to be present at the hearing. Greenpeace was able to obtain funding from the Greenpeace Charitable Foundation to pay for the scientific research and detailed evidence necessary to support their case, since SLDF did not have a budget for this. A witness statement from a U.S. expert, explaining how Petro-Canada's refinery process fell below U.S. standards and how it could be upgraded, turned out to be crucial in expediting the final terms of settlement.

The hearing itself began on November 28, 1996, and lasted 19 days before the parties and the EAB finally agreed to a settlement. During the hearing, the EAB heard testimony from expert witnesses describing the potential environmental impacts of Petro-Canada's manufacturing processes. The terms of settlement, which were described in last year's Annual Report, were considered to be a fair compromise among the parties, satisfying the EAB that the settlement was in the best interests of the public and represented an improvement in the protection of the natural environment.

The Petro-Canada case can be called a victory for the citizens who challenged MOE's actions, and an illustration of how use of the *EBR* led to greater environmental protection. However, it also highlights the formidable barriers facing concerned residents. Litigants face enormous costs and time commitments when they oppose instruments MOE issues to industries, and many are discouraged by these barriers in spite of the merits of their cases. The rules of the EAB do not allow it to award costs to any party in an appeal. Because of the costs involved, the Petro-Canada case might not have been brought to a successful conclusion had it not been for SLDF and Greenpeace.

PART EIGHT

Decision-making Processes

The following summary is based on my review of decision-making processes as reflected by ministry postings for policies, acts and regulations on the Environmental Registry. The following ministries made environmentally significant decisions using the Registry in 1997: Environment (MOE), Natural Resources (MNR), Municipal Affairs and Housing (MMAH), Consumer and Commercial Relations (MCCR), Transportation (MTO), Northern Development and Mines (MNDM), Agriculture, Food and Rural Affairs (OMAFRA), and Management Board Secretariat (MBS).

SEV Consideration

Ministries considered their Statements of Environmental Values (SEVs) when developing most proposals posted on the Registry. MOE provided reliable documentation of SEV consideration when it was requested. Although MNR failed to provide documentation of how its SEV was considered in the development of some 1997 decisions, SEV consideration, when provided, was thorough.

Posting Potential Environmental Effects

Many postings failed to provide information on the potential environmental effects of proposals. For example, none of MMAH's and only about one-third of MNR's proposal postings included this information. On the other hand, MOE described potential environmental effects in more than half of its postings and, beginning in July, consistently posted Regulatory Impact Statements with its regulation proposals. MCCR was the only ministry in 1997 to provide information routinely on potential environmental effects in proposal notices.

Posting at the Right Time

During 1997, some proposals were posted too late in the decision-making process. For example, MOE's Drive Clean program was posted after the ministry had announced its decision to undertake the project. Several of MNR's policies were also posted late. For example, management plans for an Area of Natural and Scientific Interest (ANSI) and a Provincial Nature Reserve, and a land use plan for the Madawaska Highlands, were posted as proposals after the plans had been approved.

Extending Comment Periods (beyond the 30-day minimum)

Ministries frequently provided extended comment periods. Fifty-three per cent of MOE proposals and 33 per cent of MNR proposals had comment periods longer than the minimum. However, some ministry proposals should have had longer comment periods. For example, MOE provided only 30 days for comment on a complex proposal to amend its general waste regulation, despite receiving two requests that the comment period be extended. MOE also provided only 30-day comment periods for several proposals posted during busy holiday seasons (summer and Christmas). During June and July 1997, MNR posted seven forest management policy proposals with overlapping comment periods, but only provided the minimum 30 days for each.

Including Full Contact Information (contact name, phone and fax number)

Most ministries consistently provided full contact information. MTO was an exception. None of the ministry's 1997 proposal postings included a contact name, and only one included a phone number.

Posting Decision Notices Promptly

MNR posted decision notices promptly after decisions had been made in 1997, a significant improvement over 1996. MMAH also posted decisions promptly. Decision notices were not posted promptly by MOE, continuing a 1996 trend. For example, MOE took an average of 156 days to post decisions on regulations in 1997, and 94 days to post decisions on acts. MCCR also failed to post decisions promptly during 1997.

Describing How Public Comments Affected the Decision

These descriptions varied in quality, even within ministries. For example, MOE's description of public comments on Bill 76, amending the *Environmental Assessment Act*, was excellent. The ministry described each comment and the ministry's response to it, including what changes were made (if any) as a result of the comment. On the other hand, MOE's decision notice on Bill 57, amending the *Environmental Protection Act*, provided no description of the concerns raised by commenters, or why the ministry decided that no changes were needed.

Telling Where to Get Written Material on the Proposal or a Copy of the Decision

Ministries did not always provide details about where members of the public could view written information on proposals. Additionally, for all decision postings by ministries, when a decision document existed, the public was informed of where to get it only 50 per cent of the time.

Recommendation 29

Ministries should ensure that all of the EBR procedural requirements for posting proposals and decisions on the Environmental Registry are followed by ministry staff, including the following:

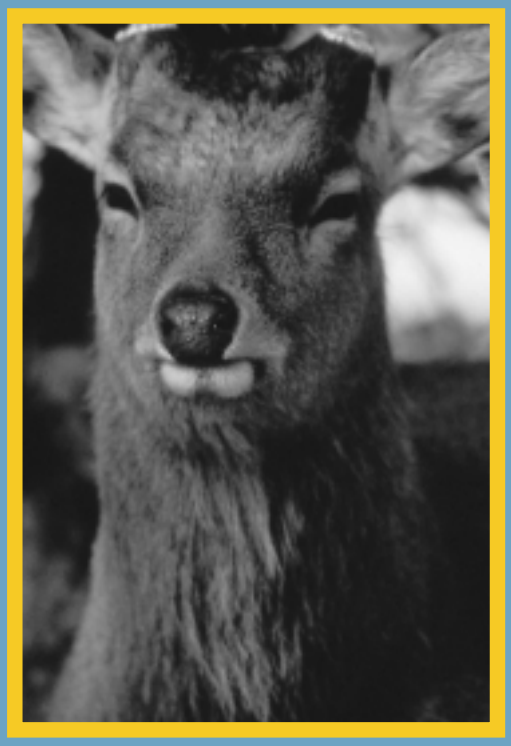
- **If a proposal changes substantially following its initial posting on the Registry – for example, if the initial posting is for a discussion paper that will eventually lead to new or amended legislation – and the proposal involves complex or controversial issues, ministries should post the proposal a second time once it is in legislative form for public release (e.g., once the proposed legislation has been drafted and tabled in the Legislature).**
- **Ministries should post decision notices on the Registry promptly after decisions are made.**

Recommendation 30

Ministries are encouraged to consider the following measures in planning and implementing EBR notice and comment procedures:

- **Whenever possible, ministries should include the actual text of proposals for new regulations and policies in Registry postings. Where the text is not included, ministries should clearly indicate whether further written information on proposals is available, and if it is, where.**
- **In Registry decision postings, ministries should include descriptions of the full range of comments received (including those that did not affect the decision), and, where possible, a ministry response to those comments.**
- **Where decisions are exempted from Registry posting requirements, ministries should consider posting information notices on the Registry to keep the public informed about environmental decision-making to the greatest extent possible.**

PART NINE



Educational Initiatives

The *Environmental Bill of Rights (EBR)* requires that I provide education to Ontario residents about their rights under the *EBR*. My staff and I travelled across the province during 1997 to tell people what those rights are and how they can participate in the decisions ministries make about the environment. We talked to Rotary Clubs, municipal councils, faculty members and students at Ontario high schools, colleges and universities, community groups and conference participants. We met with business and municipal leaders, chambers of commerce, environmental groups, and provincial MPPs and government staff members.

The ECO's Public Information Officer responded to more than 1,500 inquiries for publications and information, which came into our Toronto office by phone, fax or through on-site visits. Staff members made full use of the informational video about the *Environmental Bill of Rights* and set up displays and distributed educational brochures. Workshops were held at colleges, universities and public libraries to demonstrate how people can use the Environmental Registry to find information about the environmentally significant proposals and decisions that ministries are making.

Working with Ministries

In our role of assisting ministries to comply with the *EBR* – in this case with the notice and public comment provisions of the act – we prepared and distributed a discussion paper in 1997, entitled "Implementing the *Environmental Bill of Rights*: Exceptions." The paper outlines a four-step process that will help ministries assess whether a proposal for a policy, act, regulation or instrument should be posted on the Environmental Registry for public comment – or as an exception. It provides an approach to the appropriate use of exceptions under the *EBR*, and sets out in detail the criteria for each of the exceptions and how to apply them properly.

ECO staff also travelled to Thunder Bay, Timmins and Peterborough in fall 1997 to join in training of MNR staff about the *Environmental Bill of Rights*. Feedback from ministry staff who participated in the sessions indicated that the training was helpful in understanding more fully the

principles of the *EBR* and how to apply them in their day-to-day environmental decision-making.

Community Visits

One of our most successful educational programs is the Commissioner's community visit, a one-to-three-day swing through a community, where my staff and I hold information sessions about the *EBR* and talk to residents about how they can use it to address particular environmental issues in their community. In the last two years, we've gone from Thunder Bay to Peterborough to Kenora to Ottawa. These encounters with the public are some of the most rewarding of my work as Commissioner.

In September 1997, we visited Windsor. No stranger to environmental conflicts, with air and water quality issues looming large, Windsor residents were sophisticated, receptive, and quickly understanding of how the *EBR* can empower them. So it was no surprise when we learned, a day or two into our trip, that a group of residents had filed the area's first application for review. Coverage of our visit, was intensive and complemented our educational goals. By meeting reporters from the Windsor Star and TV and radio stations, we reached far more people than we could have with our presentations, meetings and speeches.

We met with the Windsor mayor and city council, a local MPP, the acting president of the University of Windsor, the dean of the law school and numerous high school and environmental law and chemistry students. I spoke to the Windsor and District Chamber of Commerce and the Rotary Club. The public forum at the Windsor Public Library was an ideal way to hear from local people, including the Windsor Environmental Advisory Committee, the Windsor Air Quality Committee, the Canadian Auto Workers, and various other community organizations.

Resource Centre

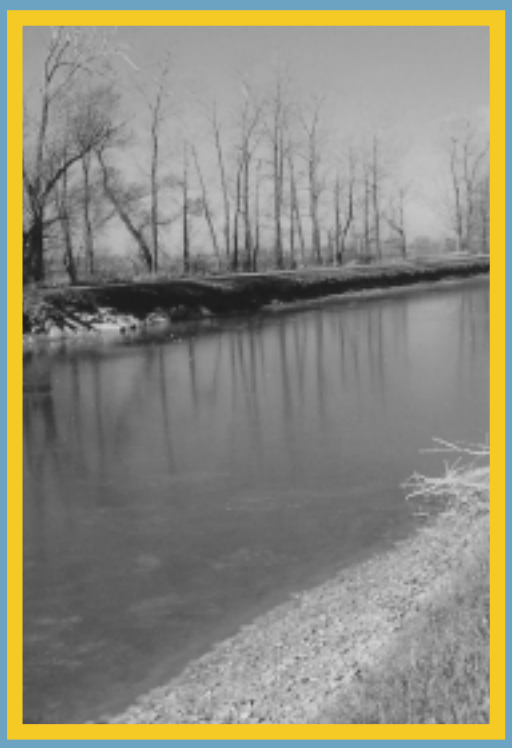
Our Resource Centre, open to the public, is home to a growing collection of environmental resource materials, focusing primarily on law and policy. During the past year, we acquired several new reference works, ranging from landfill engineering to the principles of environmental economics and hazardous waste incineration. The collection includes Ontario government publications, federal government reports, environmental management literature, publications of non-governmental organizations, and a range of environmental periodicals. The ECO's library assistant answers questions, directs visitors to the material they're looking for, and helps with the use of the on-site computer terminal that gives people access to the Environmental Registry.

Spreading the Word

During the year, staff continued to distribute ECO publications – more than 36,000 in 1997. These included our 1996 Annual Report, *Keep the Doors Open to Better Environmental Decision Making*, and our useful guide, *Ontario's Environmental Bill of Rights and You*. During 1997 we also sent out more copies of our *ECONOTES* – 30 different factsheets on topics that range from environmental assessments and composting to how Ontario residents pursue specific rights under the *EBR*.

More than 3,000 people in Ontario now receive our newsletter, *EBR*ights, which carries updates on the public's use of the *EBR*, reviews of new books in our Resource Centre, and information about ECO publications and about new initiatives taken on by staff members – for instance, the promotion of our 100-per-cent-cotton, free-of-charge, reusable lunch tote, specially commissioned in 1997 to celebrate the third anniversary of the *Environmental Bill of Rights*. In each issue of the newsletter, in "Commissioner's Corner," I sum up my thoughts on how ministries are complying with the *EBR*, and share my views on how best the mandate of the Environmental Commissioner of Ontario can be fulfilled.

PART TEN



Financial Statement

Notes to Financial Statement
March 31, 1997

1. Background

The Environmental Commissioner, which commenced operation May 30, 1994, is an independant officer of the Legislative Assembly of Ontario, and promotes the values, goals and purposes of the *Environmental Bill of Rights, 1993 (EBR)* to improve the quality of Ontario's natural environment. The Office of the Environmental Commissioner monitors and reports on the application of the *EBR*, and participation in the *EBR*, and reviews government accountability for environmental decision making.

2. Significant Accounting Policies

(a) Basis of Accounting

The Office uses a modified cash basis of accounting which allows an additional 30 days to pay for expenditures incurred during the period just ended.

(b) Capital Assets

As is currently accepted for not-for-profit public sector entities, capital assets are charged to expenditure in the year of acquisition.

3. Expenditures

Expenditures are paid out of monies appropriated by the Legislature of the Province of Ontario.

Certain administrative services are provided by the Office of the Assembly without charge.

4. Pension Plan

The Office of the Environmental Commissioner provides pension benefits for its permanent employees (and to non-permanent employees who elect to participate) through participation in the Ontario Public Service Pension Plan (PSPF) established by the Province of Ontario.

The *Ontario Public Service Employees' Union Pension Act*, 1994 provides for a reduction of the employer's contributions to the PSPF for each of the three fiscal years ending 1995-1997. For the current fiscal year, the impact of these reductions on the Office's pension expense was a reduction of $45,100 (1996 - $45,100).

The Office's share of contributions to the Fund during the period was $14,589 (1996 - $16,401) and is included in employee benefits in the statement of expenditures.

Office of the
Provincial Auditor
of Ontario

Bureau du
vérificateur provincial
de l'Ontario

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Auditor's Report

To the Environmental Commissioner

I have audited the statement of expenditure of the Office of the Environmental Commissioner for the year ended March 31, 1997. This financial statement is the responsibility of that Office. My responsibility is to express an opinion on this financial statement based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Office of the Environmental Commissioner for the year ended March 31, 1997, in accordance with the accounting policies described in note 2 to the financial statement.

K.W. Leishman

Toronto, Ontario
July 22, 1997

K.W. Leishman, CA
Assistant Provincial Auditor

Statement of Expenditure
For the Year Ended March 31, 1997

	1997 $	1996 $
Salaries and wages	978,223	1,030,035
Employee benefits (Note 4)	108,060	104,836
Transportation and communication	57,312	75,857
Services	346,833	597,181
Supplies and equipment	108,583	151,467
	1,599,011	1,959,376

See accompanying notes to financial statement.

Approved:

Environmental Commissioner

Unaudited Statement of Expenditures for the year ended March 31, 1998

Salaries and wages	$ 1,050,400
Employee benefits	$ 232,900
Transportation and communication	$ 58,400
Services	$ 197,800
Supplies and equipment	$ 64,900
Total	$ 1,604,400

Public Sector Salary Disclosure Act

This statement is provided under the Public Sector Salary Disclosure Act. The following employees of the Environmental Commissioner of Ontario were paid a salary of $100,000 or more during the reporting period.

Employee	Salary	Taxable Benefits
Eva Ligeti	$128,732.23	$326.12

Environmental Commissioner

PART ELEVEN

Summary of 1997 Recommendations

Part 2: The Environmental Registry

Recommendation 1

The Ministry of the Environment should ensure that the migration of the Environmental Registry to the Internet maintains access for people who use public libraries as an access point or who have a modem but no Internet access.

Part 3: Ministry Environmental Decisions

Consideration of Statements of Environmental Values

Recommendation 2

Ministers should ensure that their ministry Statements of Environmental Values are considered whenever they make environmentally significant decisions, whether or not such decisions are subject to the Registry posting requirements of the *EBR*.

Part 4: Detailed Reviews of Ministry Decisions and Proposals

Air Quality

Smog Plan

Recommendation 3

MOE should complete and publish a full list of the emission reduction actions that are still needed to achieve its stated air quality targets by the year 2015. The ministry should also establish interim targets, and should provide the public with annual updates on emission reductions achieved, trends in total emissions and air quality concentrations, and reductions still needed to meet near-term and long-term targets.

Improving public transit

Recommendation 4

All ministries, especially MMAH and MTO, should ensure their policies and priorities regarding land use planning and public transportation support MOE's efforts to control vehicle emissions. MMAH, MTO and MOE should develop a joint strategy to address the problem of the steadily growing vehicle population in Ontario, which is a major barrier to improving air quality.

Drive Clean Program

Recommendation 5

In developing its Drive Clean program, MOE should adopt the best practices of other jurisdictions and the recommendations of the Canadian Council of Ministers of Environment, particularly on issues such as the separation of vehicle testing facilities from vehicle repair facilities, and the training and certification of repair technicians.

Recommendation 6

MOE should ensure that emission trends of the Ontario vehicle fleet are accurately monitored and reported, and that the effectiveness of the Drive Clean program in reducing emissions is accurately evaluated through periodic independent audits and public reports.

Standard for inhalable particulates

Recommendation 7

MOE should set an enforceable, regulated standard for inhalable particulates, and develop a comprehensive compliance program to ensure the standard is met.

Three-Year Plan for Standard-Setting

Recommendation 8

MOE should ensure that its Three-Year Plan For Standard-Setting includes the following features:

- a fair and transparent process for considering economic and technological limitations when developing POI standards from ambient air guidelines.
- a province-wide compliance program with public progress reports to ensure that facilities are meeting newly regulated air standards.
- monitoring and reporting by facilities emitting regulated air contaminants, permitting the ministry to develop and publish accurate emission inventories.
- regular updates on the Plan posted on the Environmental Registry.

MNR Resource Management

Lands for Life

Recommendation 9

MNR should use the "precautionary principle" stated in its SEV when it establishes the extent and sizes of land to be protected as Ontario's natural heritage features.

Recommendation 10

MNR should ensure that the Round Tables have the time and the background information on forestry resources, natural heritage features and tourism issues to allow them to make informed recommendations.

Recommendation 11

MNR should provide a mechanism for periodic review of the Regional Land Use Strategies, and for public notice and comment using the Environmental Registry.

Approach to Wilderness

Recommendation 12

MNR should clarify its policy on protection of roadless wilderness areas outside parks, and provide direction on how the policy should be applied during forest management planning.

Forest Management Guidelines for the Protection of the Physical Environment

Recommendation 13

To ensure that the Forest Management Guidelines for the Protection of the Physical Environment are applied in the field, MNR should give them the same mandatory status as other forest guidelines, and should require foresters to report when the guidelines are not applied.

Public consultation on Natural Resources

Recommendation 14

In light of the fact that MNR will be making major environmental policy decisions over the coming year, the ministry should ensure there is improved public involvement in decision-making. MNR should ensure that the following initiatives include public consultations involving: (a) Ontarians from all parts of the province; (b) public scrutiny of the best available maps, inventories and other information; and (c) adequate public comment periods on the Environmental Registry:

- Lands for Life Initial Options Reports and Preferred Options Reports.

- Regional Land Use Strategies. (Given the high public interest and complexity of the issues, the public should be allowed more than 30 days to comment on these.)

- Subregional Land Use Plans. (Where information gaps on natural heritage and tourism values have been identified, these should be addressed with updated inventories and maps).

- policies regarding extended tenure for the forest industry (especially since individual licences and wood supply agreements will not be posted on the Registry).

- policies, procedures and regulations regarding forestry compliance.

- policies on resource-based tourism.

Disposition and Sale of Crown Lands

Recommendation 15

MNR should ensure that all Ontarians are able to comment on decisions about the disposition of public lands, and should post on the Environmental Registry the ministry's annual province-wide plans and targets for disposition of Crown lands, and all proposals to sell specific parcels of Crown land.

Environmental Monitoring

Recommendation 16

Ministries should take stock of their environmental monitoring programs to ensure that they adequately cover their mandated responsibilities, and that they permit accurate, relevant reporting on the state of public resources such as air, water, wildlife and forests. To this end, ministries should ensure that:

- sound monitoring programs are in place that accurately assess progress toward their targets. Ministries should measure not only the level of ministry effort, but also the actual environmental results.

- environmental monitoring data, once gathered, also receive effective analysis, including geographical trends and trends over time.

- monitoring data and results of trend analysis are promptly reported to decision-makers and the public.

- new information provided by monitoring programs is applied in the work of the ministry, and is acted upon in the setting of targets and in other environmental decision-making.

Recommendation 17

Ministries should identify opportunities to strengthen their monitoring programs and improve their cost-effectiveness by:

- achieving multiple research goals within a given monitoring program.

- sharing their databases with other agencies having similar goals.

- adopting legislated reporting requirements in some key areas. Such requirements have been shown to be critical factors to the maintenance of a number of monitoring programs, such as MISA, Spills Reporting and the Forest Resource Inventory.

- adopting Geographic Information Systems (GISs) that permit consistency across government systems. GISs have the potential to become key tools for environmental monitoring programs. If they are well designed, they can allow not only geographic referencing of data, but also easy manipulation, analysis and sharing of large databases. Although they involve some investment, GISs can improve the overall cost-effectiveness of monitoring programs.

Voluntary Agreements

Recommendation 18

The ministers developing programs to promote environmentally significant voluntary agreements should establish a general legal and policy framework for their use, and broadly consult the public on this.

Recommendation 19

Ministers should ensure that voluntary agreements are developed with backdrop regulations that contain effective monitoring and reporting mechanisms and clear and measurable goals that allow for verification of results by the public.

Recommendation 20

The ministers entering into voluntary agreements should establish a clear role for public consultation in the design and implementation of individual voluntary agreements.

Alternate Service Delivery Systems

Recommendation 21

Ministers should ensure that alternate service delivery systems that replace or complement ministry laws, regulations, programs and policies are developed and implemented in accordance with the Registry posting and SEV consideration requirements of the *EBR*, and with the principles of good management. In addition, ministry staff should ensure that, in addition to public notice and comment on the Registry, adequate and meaningful consultation with all interested persons, including industry officials, public interest groups and the public, is undertaken in the development of ASD systems.

Part 5: Reviews and Investigations

Fresh and Impartial Perspective

Recommendation 22

To obtain a fresh and impartial perspective, ministries are encouraged to assign the decision for undertaking a review or investigation, as well as the review or investigation itself, to a branch or person without previous involvement or a direct interest in the particular issue of concern.

Interim Drinking Water Standard for Tritium

Recommendation 23

Since the review of a drinking water standard for tritium has taken longer than three years, MOE should establish an interim standard pending the outcome of the federal review.

Areas of Natural and Scientific Interest

Recommendation 24

MNR should clarify any changes it plans to make to the ANSI program and post the proposal on the Environmental Registry for comment. MNR should clarify the degree of protection afforded to the natural heritage values of lands that have been designated as ANSIs, the criteria for identifying and evaluating ANSIs, and the ministry's procedures for confirming or changing an ANSI designation.

Permits to Take Water

Recommendation 25

MOE, MNR, MMAH and OMAFRA should make public the progress they have made to date in developing a groundwater strategy, and indicate when the strategy is expected to be completed.

Watershed Management

Recommendation 26

MOE, MNR and MMAH should encourage the development of watershed management plans at the local level, and provide both technical and financial resources and assistance to municipalities and Conservation Authorities in developing such plans.

Part 6: Instruments

Instrument Classification

Recommendation 27

The ministers of MNR, MNDM and MCCR should ensure that their instrument classification regulations are finalized as swiftly as possible, in a manner consistent with the purposes of the *EBR*.

Part 7: Other Legal Rights

Accessible Information

Recommendation 28

The ministers of MOE, MNR, MNDM, MMAH and MCCR should make available to applicants and their counsel appropriate information and expert opinions when they apply under the *EBR* for leave to appeal, instead of requiring the applicants to request this information under the *Freedom of Information and Protection of Privacy Act*.

Part 8: Decision-Making Process

Recommendation 29

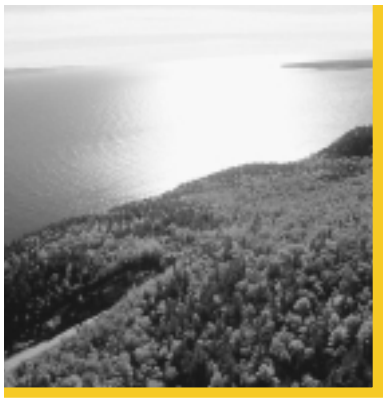
Ministries should ensure that all of the *EBR* procedural requirements for posting proposals and decisions on the Environmental Registry are followed by ministry staff, including the following:

- **If a proposal changes substantially following its initial posting on the Registry – for example, if the initial posting is for a discussion paper that will eventually lead to new or amended legislation –and the proposal involves complex or controversial issues, ministries should post the proposal a second time once it is in legislative form for public release (e.g., once the proposed legislation has been drafted and tabled in the Legislature).**
- **Ministries should post decision notices on the Registry promptly after decisions are made.**

Recommendation 30

Ministries are encouraged to consider as well the following measures in planning and implementing *EBR* notice and comment procedures:

- **Whenever possible, ministries should include the actual text of proposals for new regulations and policies in Registry postings. Where the text is not included, ministries should clearly indicate whether further written information on proposals is available, and if it is, where.**
- **In Registry decision postings, ministries should include descriptions of the full range of comments received (including those that did not affect the decision), and, where possible, a ministry response to those comments.**
- **Where decisions are exempted from Registry posting requirements, ministries should consider posting information notices on the Registry to keep the public informed about environmental decision-making to the greatest extent possible.**



Glossary of Terms

This glossary includes words that are defined according to their meaning in the *Environmental Bill of Rights* and as they are used in this Annual Report.

Accelerated Reduction/Elimination of Toxics (ARET) A voluntary program developed in the mid-1990s by Canadian industries and Environment Canada to challenge companies to eliminate gradually and/or reduce certain persistent, bioaccumulative and toxic substances. Participating companies voluntarily agree to pursue ARET target goals and objectives, but there are no sanctions against signatories if they fail to meet the goals of ARET.

act A law passed by the Ontario Legislature that expresses the will of the Legislature.

aggregate Gravel, sand, clay, earth, shale, stone and rock.

alternative service delivery The delegation or sharing of responsibilities for delivering services, developing policies, or regulating industries that were previously government responsibilities. Can include many different kinds of partnership or power-sharing arrangements between governments, corporations, voluntary or industry organizations, and individuals (examples include cost recovery, joint ventures, privatization, and self-regulation).

ambient air Outdoor air. Not air enclosed within a building or chimney, or air within a plume of smoke. See also ambient air quality criteria.

ambient air quality criteria (AAQC) For many pollutants, Ontario has established ambient air quality criteria (or AAQC). They are generally set at the level below which no adverse effect is observed on people or the environment. AAQCs are used as guides and are not enforceable.

appeal body A tribunal to which an appeal or application for leave to appeal is referred. For example, appeals under the *Environmental Protection Act* are referred to the Environmental Appeal Board.

Application for Investigation An *EBR* process that allows two Ontario residents to apply together to ask a ministry to investigate if they think someone is violating an environmentally significant act, regulation or instrument.

Application for Review An *EBR* process that allows two Ontario residents to apply together to ask a minister to review existing acts, regulations, instruments or policies if they think the environment is not being protected, or to establish new acts, regulations or policies to protect the environment.

aquifer An underground water-bearing layer of rock or sand that has enough water to serve as a source of groundwater.

Area of Natural and Scientific Interest (ANSI) An area of land and water containing natural landscapes or features that has been identified by MNR as having life science or earth science values important for natural heritage protection, appreciation, scientific study or education. ANSIs may be located on public or private land, and are intended to complement the provincial parks system. Unlike provincial parks, ANSIs are not protected by legislation.

Areas of Concern (AOCs) Locations along the Great Lakes with toxic substance problems, identified in 1985 by the International Joint Commission (IJC), an organization of Canadian and U.S. federal, provincial and state governments along the Great Lakes.

backdrop regulation Supplemental regulations passed by government to support the achievement of goals and programs set out in voluntary agreements or codes. Backdrop regulations may apply to the entire industry, or only to non-participants in the voluntary scheme. Such regulations may be called for in order to provide sufficient coverage of an industry or to provide for enforceable sanctions.

Better, Stronger, Clearer (BSC) A report released by the Ministry of the Environment in November 1997 as part of its Regulatory Review project. Outlines many proposed changes to MOE regulations. See also **Responsive Environmental Protection, MOE Regulatory Review Project**.

bump-up, bump-up request Where an undertaking is subject to a class environmental assessment, a person may request that the Minister of the Environment "bump-up" the undertaking to a full environmental assessment. See also **class environmental assessment and environmental assessment**.

certificate of approval A permit issued by a ministry under a specific provision in an act or regulation that allows the discharge of a limited volume of polluting substances, according to the terms and conditions set out in the permit.

class environmental assessment A class environmental assessment describes an environmental assessment procedure which applies to **undertakings** that are part of a group of similar undertakings (for example, highway construction projects or forest management planning processes). The procedures are less extensive than for individual (or full) environmental assessments, although a request to "bump-up" to an individual assessment may be made. (See also **bump-up, bump-up request**.)

Conservation Authority A public agency established under the *Conservation Authorities Act* to further the conservation, restoration, development and management of natural resources such as rivers, streams and public lands, within an area over which the Authority is granted jurisdiction. There are 38 Conservation Authorities in Ontario.

Crown land Land in Ontario that is public land under the jurisdiction of the provincial government, including land under water.

decision The use of discretion by the minister or delegated staff of a prescribed Ontario government ministry in relation to an environmentally significant proposal.

dioxin Common term for 2,3,7,8-tetrachlorodibenzo-para-dioxin, thought to be the most toxic of 75 different dioxins. Identified as a carcinogen in animal tests. Dioxin is produced in very small amounts as a by-product of several industrial processes and is sometimes released when plastics are burned in an uncontrolled manner.

District Land Use Guidelines (DLUGs) Land use plans approved by MNR in 1983. The guidelines identified land uses for **Crown land** in MNR's administrative Districts. These prescribed land uses provided guidance for resource managers in identifying where various resource management activities should take place. For private lands, the guidelines included direction that attempted to influence the use, management and protection of natural resource through municipal planning.

ecological system, ecosystem A community of interdependent plants and animals, together with the environment they inhabit and with which they interact.

employer reprisal protection The protection provided by the *EBR* for employees who may be dismissed, penalized, disciplined, coerced, intimidated or harassed by their employers for reporting environmental violations or participating in public processes under the *EBR*.

environment The air, land, water, plant life, animal life and ecological systems of Ontario.

environmental assessment An analysis, report, or body of evidence, relating to a specific project or development, that includes a description of the expected environmental impacts of the project, actions that could prevent or mitigate these environmental impacts, and alternative methods of carrying out the project. The term "environmental assessment" has a more specific meaning in legislation such as the *Environmental Assessment Act*.

Environmental Bill of Rights (EBR) A statute of Ontario, S.O. 1993, c. 28, that came into effect in Ontario in February 1994, which recognizes that the Ontario government has the primary responsibility for protecting, conserving and restoring the natural environment, but also recognizes that the people of Ontario have the right to participate in government decision-making and to hold the government accountable for those decisions. The *EBR* provides a number of new ways for the residents of Ontario to participate in environmental decision-making.

environmental management system (EMS) A system which sets out practices and procedures to develop and implement the environmental policies, objectives, and targets of an organization.

Environmental Registry A computerized bulletin board established under the *EBR* to provide information about the environment to the public in English and French. This information includes: the text of the *EBR*; general *EBR* information; the ministries' Statements of Environmental Values; summaries of proposed acts, regulations, policies and instruments; notices of appeals of instruments and appeal decisions; notices of court actions and final results; and application forms for reviews and investigations.

environmentally significant Factors to be considered in determining environmental significance include the measures required to prevent environmental harm, the geographic extent of environmental harm, and the public and private interests involved. Environmental significance is determined by looking at the potential effects of a proposal on the sustainable use of resources, the protection and conservation of biodiversity, pollution prevention and healthy communities. These are the types of government decisions that are subject to the public participation requirements of the *EBR*.

exception The *EBR* provides several types of exceptions to the requirements to provide public notice of a proposal. For example, policies, acts or regulations that are predominantly financial or administrative in nature are excepted.

forest regeneration The renewal of a tree crop by natural (self-sown seed or by vegetative means) or artificial means (seeding and planting).

geographic information system (GIS) A computerized information system that stores data based on geographic reference points. GIS allows data to be easily sorted, retrieved, mapped, analysed and modelled.

groundwater Water that exists beneath the earth's surface and flows through geological formations such as sand layers, porous rock layers or fractured rock layers.

harm to a public resource action The right under the *EBR* to sue an individual or company which is violating, or is about to violate, an environmental act, regulation or instrument and is harming, or will harm, a public resource.

hazardous waste Waste that is harmful to health or to the environment because of its physical characteristics, quantity, or concentration; can be toxic, corrosive, ignitable, reactive, or infectious.

inhalable particulates Microscopic airborne particles which are a component of smog and are small enough to be inhaled. See also **smog** and **PM10**.

instrument Any legal document issued under an act, including a permit, licence, approval, authorization, direction or order, which must be granted before companies or individuals can carry out activities that will have a significant effect on the environment.

instrument classification The requirement in the *EBR* that certain ministries prepare a regulation to classify proposals for instruments as Class I, II or III proposals according to their level of environmental significance, public notice and participation requirements, and the potential for public hearings to be held.

instrument holder The individual or business that has an instrument issued to it.

land use planning Includes identifying problems, defining objectives, collecting information, analysing alternatives, and determining a course of action for the uses of land within a geographical area.

Lands for Life A new planning process for **Crown land** and natural resources announced by MNR in early 1997. The Lands for Life planning area covers 46 million hectares across central Ontario, and is divided into three regions.

leave to appeal The process under the *EBR* of requesting permission from an appeal body to appeal a ministry decision to grant an instrument.

Memorandum of Understanding (MOU) A document setting out the terms of a relationship between two or more organizations. MOE has entered into several Memoranda of Understanding (MOUs) establishing joint pollution prevention projects with industry organizations. See also **voluntary agreements**.

MOE Regulatory Review Project MOE's review of its environmental regulations, which commenced in October 1995. Two discussion papers have been published outlining the review. For information on those papers, see **Responsive Environmental Protection** and **Better, Stronger, Clearer**.

nitrogen oxides (NOx) Air pollutants that contribute to smog and acid rain.

old growth Old growth forests are ecosystems characterized by the presence of old trees with their associated plants, animals, and ecological processes. They show little or no evidence of human disturbance.

ozone Ozone, a molecule composed of three atoms of oxygen, serves an important role in the earth's ozone layer by insulating the planet from excessive ultra-violet radiation. But at ground-level, ozone is harmful to health. Ground-level ozone (produced largely through combustion in automobiles) is a component of smog. See also **smog**.

PM10 Small inhalable particulates of under 10 micrometres in diameter. They can penetrate lungs more deeply than larger particulates, affecting sensitive groups like children and people who experience respiratory difficulties. (See also **inhalable particulates**.)

point of impingement standards Under an Ontario regulation (O.Reg. 346), a point of impingement is a theoretical maximum concentration of a pollutant when it contacts the facility's property line. In Ontario, emissions limits included in certificates of approval are established based on point of impingement standards rather than top-of-the-stack (or point of emission) standards. See also **certificate of approval**.

policy Under the *EBR*, a policy is a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of instruments.

polychlorinated biphenyls (PCBs) A class of synthetic organic compounds which are toxic and very persistent in the environment. PCBs accumulate in living organisms over their lifetimes.

polyvinyl chloride (PVC) A plastic that releases hydrochloric acid and dioxin when burned.

prescribed (ministries, acts, regulations or instruments) The various ministries, acts, regulations or instruments that are specified in the regulations made under the *EBR* and to which the provisions of the *EBR* apply.

public nuisance action A public nuisance is an interference with public rights, or can arise from the commission of many private nuisances. Prior to the passage of the *EBR*, the right of an Ontario resident to conduct a law suit for damage to their use and enjoyment of land from a public nuisance was limited. The *EBR* permits anyone who experiences direct economic or personal loss because of a public nuisance causing environmental harm to sue for damages or other personal remedies.

quarry dewatering Where extraction of sand and gravel takes place below the water table, water seeps into the quarry. To allow extraction, quarry operators must pump the water away from their quarry and into nearby bodies of water. Dewatering can lower the level of underground aquifers, causing adverse environmental impacts and threatening the water supplies of nearby well users.

Regional Land Use Strategies (RLUS) Phase 1 of the MNR's new land use planning process, **Lands for Life**, will result in three RLUSs. Each RLUS will include: broad objectives for natural resources; land use designations for general use, forest management, parks and protected areas, and **resource-based tourism**; and strategies for other issues such as fishing and hunting. The RLUSs will also provide direction for more detailed land use and resource management planning in Phase 2, Sub-Regional Land Use Planning.

regulation A legislative regulation, rule or order made or approved under an act and having the force of law when in effect.

Remedial Action Plans (RAPs) RAPs work to reduce pollution in Areas of Concern identified under the Canada-United States Great Lakes Water Quality Agreement. They are prepared and implemented through cooperation among federal, provincial, and municipal governments. Coordinators, assisted by Public Advisory Committees, manage each RAP.

resource-based tourism A sector of the tourism industry which provides tourists with opportunities to experience nature in a remote setting.

Responsive Environmental Protection (REP) A document released in July 1996 by the Minister of the Environment as an early step in its Regulatory Review Project. The ministry proposed an overhaul of many of Ontario's environmental regulations and requested comments through the Environmental Registry. In November 1997 the ministry issued a follow-up report (**Better, Stronger, Clearer**) which includes an outline of planned changes to the regulatory system. See also **MOE Regulatory Review Project**.

review period The period of time, January 1, 1997 to December 31, 1997, covered by the third Annual Report of the Environmental Commissioner of Ontario.

smog A mixture of noxious gases and suspended particles from motor vehicles, industry, and other sources. Large cities have the greatest problems with smog, especially during the summer.

standardized approval The *Environmental Protection Act* and the *Ontario Water Resources Act*, after a 1997 amendment, allow for the creation of standardized approval regulations (SARs). Activities regulated by the SARs would no longer require individual **certificates of approval** for each site. MOE says the activities which would be regulated through SARs are predictable, controllable, and have well-understood environmental impacts. No standardized approval regulations had been made by the end of 1997.

Statement of Environmental Values (SEV) A ministry statement, required by the EBR, that explains how the purposes of the *EBR* are to be applied when environmentally significant decisions are made in the ministry and how consideration of the purposes of the *EBR* should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry.

sustainability The concept that economic development must take full account of the environmental consequences of economic activity.

tritium Tritium is a radioactive form of hydrogen that is recognized as a carcinogen. It occurs naturally, but the major source in Ontario is from water and air emissions from nuclear energy plants operated by Ontario Hydro.

undertaking An enterprise or activity, or a proposal, plan or program. Environmentally significant undertakings of the Ontario government, municipal governments, and some private persons (designated by regulation) are subject to requirements of the *Environmental Assessment Act*.

unposted decision A decision that may be **environmentally significant** made by a ministry prescribed by the *EBR* which was not posted on the **Environmental Registry** for public comment.

volatile organic compounds (VOCs) Organic compounds that evaporate easily. They reach the atmosphere largely through combustion in automobiles, but also from the evaporation of solvents, paint, and dry-cleaning fluids.

voluntary agreements (VAs) Agreements made between government and industry associations or individual companies which include commitments to environmental values, goals or targets. These commitments are voluntary and are generally not enforceable.

watershed An area of land that drains into a river and its tributaries.

watershed groundwater management The management of groundwater resources on the basis of watershed boundaries rather than municipal or other jurisdictional boundaries.

wood supply agreements Under s. 25 of the *Crown Forest Sustainability Act*, the Minister of Natural Resources may, with the approval of Cabinet, enter into an agreement to supply a person with forest resources.

Abbreviations and Acronyms

AAQC	ambient air quality criteria
ACES	Advisory Committee on Environmental Standards
ANSI	Area of Natural and Scientific Interest
AOC	Area of Concern
ARET	Accelerated Reduction/Elimination of Toxics
BOD	Biochemical oxygen demand
BSC	Better, Stronger, Clearer
CFSA	*Crown Forest Sustainability Act*
CCME	Canadian Council of Ministers of the Environment
DLUGs	District Land Use Guidelines
EAA	*Environmental Assessment Act*
EBR	*Environmental Bill of Rights*
EMS	environmental management system
GIS	geographic information system
MCzCR	Ministry of Citizenship, Culture and Recreation
MCCR	Ministry of Consumer and Commercial Relations
MEDTT	Ministry of Economic Development, Trade and Tourism
MISA	Municipal Industrial Strategy for Abatement
MOE	Ministry of the Environment
MOH	Ministry of Health
MOL	Ministry of Labour
MBS	Management Board Secretariat
MMAH	Ministry of Municipal Affairs and Housing
MNR	Ministry of Natural Resources
MNDM	Ministry of Northern Development and Mines
MTO	Ministry of Transportation
NOx	nitrogen oxides
OMAFRA	Ontario Ministry of Agriculture, Food and Rural Affairs
OWRA	*Ontario Water Resources Act*
PCBs	poly-chlorinated biphenyls
PVC	polyvinyl chloride
RAPs	Remedial Action Plans
REP	Responsive Environmental Protection
RLUS	Regional Land Use Strategy
SEV	Statement of Environmental Values
TSSA	Technical Standards and Safety Authority
VAs	voluntary agreements
VOCs	volatile organic compounds

Staff of the Environmental Commissioner of Ontario

The work of the Environmental Commissioner of Ontario was enhanced by the hard work and dedication of the following people during 1997:

Karen Beattie, Legal Analyst

Robert Blaquière, Bilingual Public Information Officer

Antonella Brizzi, Researcher

Maureen Carter-Whitney, Legal and Policy Officer

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Dharlene Dandy-Valeda, Library Assistant

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Elaine Hardy, Policy and Decision Analyst

Adrienne Jackson, Communications/Public Affairs Coordinator

Joel Kurtz, Senior Policy Advisor

Peter Lapp, Executive Assistant

Nina Lester, Legal and Policy Officer

Derwin Mak, Auditor

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Enza Ragone, Public Information and Education Officer

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