
MINISTRY OF THE ENVIRONMENT

4.06—Operations Division

(Follow-up to VFM Section 3.06, *Special Report on Accountability and Value for Money—2000*)

BACKGROUND

The Operations Division is responsible for administering the Ministry's approvals and enforcement activities. It also responds to reports of pollution and spills that may have health and environmental impacts. In addition, the Division cleans up abandoned contaminated sites using funds available in the Environmental Clean-Up Fund.

For the 2001/02 fiscal year, the Division had total expenditures of \$83 million and about 895 staff. For the 1999/2000 fiscal year, it had total expenditures of \$62 million and about 680 staff.

In our *Special Report on Accountability and Value for Money* (2000), we concluded that the Ministry did not have satisfactory systems and procedures in place to administer approvals and to enforce compliance with environmental legislation. Our major concerns included:

- Certificates of approval are required for any facility that discharges contaminants into the environment. The Ministry's systems did not enable it to assess whether the facilities for which over 220,000 certificates of approval had been issued since 1957 were in compliance with current environmental standards. As a result, the Ministry did not know the extent to which facilities were not meeting current environmental standards and, consequently, where corrective action had to be taken.
- An estimated over \$90 million in financial assurance was not obtained from facility operators, as required under legislation, to clean up potential damages that operators may cause to the environment.
- A 25% reduction in regional staff over the four-year period from 1995/96 to 1999/2000 had contributed to a 34% decrease in the number of ministry-initiated inspections conducted per year. Further, the Ministry relied extensively on facility operators to comply voluntarily rather than impose available stringent enforcement measures. This was of particular concern as one-third of violations found by ministry inspectors were repeat violations and the Ministry identified significant violations in 31% of the inspections it conducted.
- The Ministry usually learned of contaminated sites only after serious harm to the environment had already occurred.

- Over \$10 million in fines had accumulated over many years. The Ministry had not supported the collection of fines as it could have by aggressively enforcing environmental legislation that allows it to suspend violators' operations if necessary.

We also concluded that the Ministry was not measuring and reporting on its performance in a comprehensive and objective manner in order to demonstrate its progress in managing the environment.

Accordingly, we made a number of recommendations for improvement and received commitments from the Ministry that it would take corrective action.

CURRENT STATUS OF RECOMMENDATIONS

Based on information received from the Ministry, we concluded that continuing action was required to implement most of our recommendations. The current status of each of our recommendations is outlined below.

COMPLIANCE WITH ENVIRONMENTAL LEGISLATION

Certificates of Approval—Updating Certificates of Approval

Recommendation

In order to ensure that existing certificates of approval reflect current environmental standards, where required, and are being applied consistently, the Ministry should:

- *improve its information systems so that all certificates of approval can be assessed on the extent to which they need to be updated with new conditions and requirements;*
- *develop systems that would allow for updating certificates of approval in a timely and efficient manner; and*
- *establish action plans and timetables for when certificates of approval will be required to be up-to-date.*

Current Status

The Ministry was continuing its efforts to implement a new, computerized Integrated Divisional System (IDS), which was expected to improve the informational needs and efficiency of the Division.

In November 1999, the Ministry began using IDS to record and track certificates of approval. As of March 31, 2002, approximately 115,000 certificates previously stored within various databases and on a manual card index system were now recorded on IDS.

Since August 2000, the Ministry has updated approximately 3,000 certificates of approval for certain higher-priority facilities, such as water treatment plants serving municipalities. In

addition, the Ministry completed its internal program effectiveness review of its certificate-of-approval program in July 2001. The program effectiveness review resulted in 10 recommendations for updating certificates of approval to reflect current environmental standards, including a recommendation that all certificates of approval undergo a mandatory review every five to 10 years.

In January 2002, the Ministry's preliminary analysis on the extent to which certificates of approval require updating was as follows.

Ministry Analysis of Certificate-of-approval Updating Needs

Extent of Updating Required	Reason	Estimated Number of Certificates Affected
None	No significant change in environmental requirements has occurred (e.g., for watermains and storm and sanitary sewers)	120,000
N/A	Certificate holder no longer in operation	40,000
None	New exemptions in effect (e.g., for food preparation equipment)	10,000
Unknown	Insufficient information available	50,000
Total (estimated)		220,000

Source of data: Ministry of the Environment

The Ministry also indicated that it has developed a three-point pilot project that would support preparation of a comprehensive strategy for updating certificates of approval. The strategy includes:

- requiring updates for certificates of approval in cases where the certificate holder is applying to make significant changes to its operations;
- implementing a field-alert system to support compliance and inspection activities for identifying certificate holders whose certificates of approval require updating; and
- a risk-based proactive identification of strategically selected sectors in which certificates of approval require updating.

The three-point pilot project is expected to result in the updating of about 1,300 certificates of approval during the 2002/03 fiscal year.

During the summer of 2002, the Ministry was expecting to refine the estimates of the number of certificates of approval requiring updating. Based on the refined estimates, experience from pilot projects, and a consideration of the recommendations resulting from the program effectiveness review, a strategy for updating existing certificates of approval is to be developed over the next fiscal year. The plan and timetable as to how and when the over 100,000 remaining certificates of approval may be recorded on IDS is also to be established as part of the new strategy.

Certificates of Approval—Financial Assurance

Recommendation

To minimize financial risk to the province relating to environmental clean-up costs, the Ministry should:

- *establish controls to ensure financial assurance requirements are assessed and specified in the certificates of approval and then followed; and*
- *identify, for each facility operator, the correct amount of financial assurance outstanding and take timely action to obtain the necessary assurance.*

Current Status

The Ministry has completed a review of internal procedures for financial assurance and has established and incorporated the results into a revised draft guideline. The revised draft guideline updates criteria as to when financial assurance should be required, how the amount of financial assurance should be determined, what form of financial assurance should be provided, and when financial assurance should be used by the Ministry to pay for compliance activities.

In addition, the financial assurance database has been upgraded. A user's manual and an administrator's manual have been completed for use by staff. As ministry staff access the database, they are also reviewing existing data to confirm its validity. In addition, a specific project is underway to double-check data validity and update the information.

The Ministry has validated previously identified potentially delinquent accounts and has determined that 155 of the original 553 certificate-of-approval holders were in fact delinquent in meeting financial assurance requirements. The Ministry indicated that, as of March 31, 2002, its follow-up had resulted in receiving confirmation that 69 operations were no longer in business, and compliance was obtained from 53 operations. The Ministry was continuing its efforts to collect from the remaining 33 delinquent accounts, and regular progress reports were being submitted to senior ministry management. As a result, about 80% of outstanding financial assurance cases have been resolved, and approximately \$9 million has been collected.

Certificates of Approval—Costs Of Monitoring Compliance

Recommendation

To enable the Ministry to cost-effectively increase the scope of its environmental oversight role, it should consider imposing conditions on certificates of approval that include:

- *greater use of self-reporting requirements that demonstrate owner compliance, including, where warranted and practical, certification by independent experts; and*
- *owners paying a greater share of costs associated with monitoring their compliance.*

Current Status

In 2000/01, the government passed new regulations requiring that self-reporting and detailed third-party engineering assessments for municipal water treatment plants be submitted to the Ministry every three years. The reports and assessments are to be checked for compliance with the plants' certificates of approval and current drinking-water standards.

In addition, the Ministry has established or expanded a few pilot projects with several large operators with proven track records to test new approaches and best practices that include self-reporting and owners paying a greater share of the costs of monitoring their compliance.

However, the Ministry has not developed the guidelines indicated in its response to our recommendation, which would identify appropriate activities, circumstances, and mechanisms that require third-party compliance verification by independent experts and reporting.

Enforcement—Inspection Coverage

Recommendation

To more effectively enforce compliance with environmental legislation, the Ministry should explore options and develop procedures for significantly increasing its inspection coverage.

Current Status

The Ministry has introduced several changes to increase its inspection coverage. Most notably, in September 2000, the Ministry introduced an Environmental SWAT Team, which focuses on priority areas where compliance by industries or companies is a major concern. The team includes approximately 30 dedicated inspectors capable of conducting approximately 1,000 inspections per year.

In January 2001, the Ministry hired an additional 25 inspectors to allow it to meet its commitment of conducting annual inspections of all municipal water treatment plants across the province.

The following chart shows the number of inspections over the last three years.

Number of Inspections, 1999/2000–2001/02

Year	Number of Inspections		Total Inspections
	District Offices	Environmental SWAT Team	
1999/2000	4,182	N/A	4,182
2000/01	4,268	78	4,346
2001/02	3,836	1,005	4,841

Source of data: Ministry of the Environment

In June 2002, the Standing Committee on Public Accounts issued its report on hearings held on our audit report with representation from the Ministry. The Committee acknowledged the Ministry's recent commitment to improve its enforcement but concluded that a level of assurance was required from the Ministry to guarantee the inspection commitment over the long term. As a result, the Committee made the following recommendation: "The Ministry of the Environment should assess its risk, review, and inspection coverage for the period 2001–2003 and report to the Standing Committee on Public Accounts by June 1, 2003 on its corrective action to improve inspection coverage to reduce the range of environmental risks."

Enforcement—Resolving Violations

Recommendation

To make enforcement actions more timely and effective, the Ministry needs to strengthen its enforcement activities by:

- *taking appropriate action on violations and following up on a more timely basis; and*
- *ensuring policies and procedure manuals encourage the use of more stringent compliance measures, where appropriate.*

Current Status

In March 2000, the Ministry issued a directive to district staff providing clarity and direction on mandatory abatement and instructing staff to strictly adhere to the existing compliance policy. In addition, monthly abatement/enforcement activity reports on the use of enforcement tools available under the legislation to compel corrective action were introduced. According to the Ministry, this has resulted in more aggressive use of mandatory abatement actions against violators, including issuing control orders that specify actions and completion dates to bring about compliance. For example, the total number of control orders issued by environmental officers to operators requiring corrective action in 1999/2000 was less than 500; in 2000/01, almost 1,500 orders were issued; and in 2001/02, over 2,200 were issued.

In addition, the Ministry anticipates that, by fall 2002, it will be in a position to commence imposing new administrative monetary penalties on violators of up to \$10,000. The use of administrative monetary penalties is expected to significantly increase and strengthen the range of enforcement tools available to the Ministry for obtaining compliance.

Enforcement—Significant Versus Minor Violations

Recommendation

To minimize environmental and health risks, the Ministry should:

- *reassess its policies, procedures, and criteria for determining the severity of violations; and*

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- *ensure that the significance of preventative measures is better understood and communicated to staff.*

Current Status

The Ministry indicated that it has reviewed its operating policy and procedures to ensure that the severity of violations is consistently and appropriately assessed and that the full range of compliance tools is used across all programs. In addition, a revised draft compliance policy with strengthened considerations of human health and environmental consequences has been developed. This draft is expected to be finalized in the 2002/03 fiscal year. The revisions are largely based on the experience obtained through the SWAT risk-compliance project and take into account the implementation of administrative monetary penalties.

Enforcement—Managing Inspections

Recommendation

To make its inspection program more effective in supporting the enforcement of environmental legislation, the Ministry should:

- *review its policies, procedures, and guidelines over ministry-initiated inspection activities to ensure that adequate record-keeping and reporting requirements are in place; and*
- *ensure that inspections are consistently planned for and conducted.*

Current Status

As an interim measure, the Ministry implemented two databases for the collection of information associated with planned inspections: the Interim Inspection System for water treatment facilities was introduced in 2000, and the Municipal Sewage Inspection System was introduced in 2001. In order to enhance and maximize its inspection planning, the Ministry has, in several program areas, instituted centralized planning of, resource allocation for, training in, tracking of, and evaluation of inspection activities.

In addition, the Ministry indicated that it has reviewed and amended its annual workplan for inspection priorities and frequency for the various types of operations to ensure that regional offices are addressing all inspection priorities.

The Integrated Divisional System operational plan and inspections components were scheduled for rollout to ministry staff in fall 2002. The operational plan and inspections components are expected to help staff plan, conduct, and record inspections on a consistent and priority-driven basis.

Enforcement—Management Information

Recommendation

To better support and to improve the delivery of its enforcement efforts in protecting the environment, the Ministry should:

- *establish a system to identify all conditions of approvals that require follow-up by specific dates to assess owner compliance and, where necessary, initiate timely enforcement action;*
- *develop an accurate and comprehensive management information system to assist in identifying and prioritizing facilities for inspection; and*
- *periodically assess the types and frequency of violations and the effectiveness of enforcement measures used.*

Current Status

The new Integrated Divisional System was designed specifically to support and improve the information needed for enforcement. According to the Ministry, the development of the remainder of the system, including modules for pollution incident reporting, inspection activities, investigation/prosecution, operational planning, and time and task tracking, was completed in September 2001. In addition, a module to assist with the follow-up and tracking of conditions on certificates of approval was completed in November 2001, and a field-alert prototype system to allow field staff to request an update or revocation of any environmentally significant, out-of-date certificates of approval was developed in December 2001. Primary testing, system debugging, and staff training were in progress, and the operational plan and inspections components were scheduled for rollout to ministry staff in fall 2002.

When fully functional, the system is expected to run reports focused on facility type, violation type, and enforcement action, as well as inspection reports. This will allow for strategically targeting compliance inspection and enforcement activities and would focus field staff efforts on areas that have the most impact on environmental protection.

Enforcement—Unpaid Fines

Recommendation

To be more effective in enforcing environmental legislation and to improve collection of outstanding fines, the Ministry should investigate the reasons why outstanding fines are unpaid and use its statutory authority to suspend environmental approvals for violators who do not pay their fines.

Current Status

The process of issuing and collecting environmental fines is a shared responsibility between the provincial and municipal governments. The Ministry is responsible for conducting the majority of the environmental prosecutions in the province; the municipalities have responsibility for collection of the fines, and the Ministry of the Attorney General and the municipalities keep the fines information current on the provincial Integrated Court Offences Network (ICON) tracking system. The Ministry is now using ICON data as the source data to track and monitor information related to unpaid environmental fines.

According to the Ministry, fines assessed for the period from 1992 to December 31, 2001 totalled \$26.9 million, of which \$15.9 million has been collected, leaving an outstanding balance of \$11 million. Ministry analysis indicates at least \$2.7 million may not be collectable due to bankruptcy and insolvency, which leaves an outstanding balance of \$8.3 million.

The Ministry was revising its business practices to support the ongoing collection of unpaid fines. The Ministry plans to regularly review the information related to unpaid environmental fines and identify those defaulters who hold an environmental permit, licence, or certificate of approval. The Ministry indicated that it will contact the appropriate municipalities and advise them that it is prepared to support municipal collection of fines using suspensions until payment is received. In addition, a new procedure in the Ministry's approval process is to be instituted in which all applicants are to be screened against unpaid fines. This process is to be in place before March 31, 2003.

Contaminated Sites—Identifying Contaminated Sites/ Liability and Financial Considerations

Recommendation

To help ensure that the Ministry's efforts and programs are effective in minimizing damage to the environment, the Ministry should develop a strategy for:

- *the early identification of all contaminated sites and responsible parties, which would allow for prioritizing clean-up requirements; and*
- *the establishment of incentives to encourage property owners to voluntarily clean up contaminated sites.*

Current Status

In response to our *Special Report on Accountability and Value for Money—2000*, the Ministry informed us that it would consider developing a strategy, with the co-operative involvement of other levels of government, to expand efforts that would encompass a wider range of contaminated sites and address means of identifying those sites earlier and encouraging clean-up of those sites.

The Ministry indicated that it is a key contributor to the multi-ministry strategy to facilitate the clean-up and redevelopment of contaminated sites. The contaminated sites include brownfield sites, which typically are large, abandoned, or decaying industrial or commercial sites with contamination that limits their future use. The *Brownfields Statute Law Amendment Act, 2001* received Royal Assent on November 2, 2001 and provides incentives for cleaning up contaminated sites, as well as mechanisms that ensure that sites meet appropriate standards when an owner requests a change in use. This legislation establishes:

- rules and requirements for the assessment, clean-up, and limitation of environmental liability for contaminated sites;
- mandatory filing of a record of site condition in a publicly accessible environmental site registry; and
- changes that streamline the planning process to expedite brownfield projects and allow municipalities to provide financial support for site assessment and clean-up costs associated with contaminated brownfield sites.

The Ministry was in the process of developing regulations for implementing the legislation and was developing the site registry, with targeted completion by fall 2002.

In addition, from August 2001 to March 2002, the Ministry provided \$10 million in funding for groundwater studies to help municipalities map sensitive groundwater areas and to identify potential risks, such as contaminants, to groundwater sources.

However, the Ministry has not initiated significant changes to its operations to deal with the other risks of site contamination that we identified in 2000; such changes would allow for the timely identification of all contaminated sites and the parties responsible for their clean-up. For instance, no new measures were introduced to:

- identify existing industrial and commercial sites that were a high risk for contamination;
- determine whether closed private and municipal landfill sites posed a hazard to surrounding areas; and
- identify abandoned underground fuel storage tanks, which are the focus of about half of the projects being funded by the Environmental Clean-Up Fund administered by the Ministry.

Information System Contract

Recommendation

To facilitate the efficient and effective delivery of the Division's programs, the Ministry should ensure that the remaining portions of the Integrated Divisional System are completed in a timely and cost-effective manner and in accordance with required approvals.

Current Status

On February 15, 2000, the Management Board of Cabinet (MBC) approved a total cost of about \$2.9 million for this project, which included actual and estimated costs from the 1997/98 fiscal year to the 2002/03 fiscal year. As of March 31, 2002, the Ministry had spent the entire amount approved by MBC. Certain components of the system were already in use, and others, while further delayed, are scheduled to be operational during the 2002/03 fiscal year, following final testing and training of staff.

MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

State of the Environment Reporting

Recommendation

To ensure that the Ministry's progress in managing the environment is measured and communicated in an objective manner, a state of the environment report should periodically be prepared using a set of comprehensive outcome measures that assess the quality of and changes to the environment over time.

Current Status

The Ministry has neither prepared nor committed to prepare a state of the environment report. Instead, the Ministry has continued with its long-term strategy of using its Web site to publicly share information on its own activities, such as results of enforcement efforts, as well as information on how the higher-risk regulated sectors (for example, municipal water works and the manufacturing and mining industries) are performing in their responsibilities related to the environment.

Divisional Performance Reporting

Recommendation

To provide a more comprehensive assessment of the Division's contribution to protecting the environment, the Ministry should develop more results-oriented performance indicators to measure and report on the effectiveness of the Division's operations.

Current Status

The Ministry was continuing to use its existing activity-based performance measures but indicated it was working towards the development of outcome-based performance measures. The Ministry expects that it will be better able to generate the data needed to develop enhanced performance measures when the new information systems in progress become operational.