



Environmental Commissioner of Ontario  
Annual Report 1994 - 1995

Opening The Doors to Better  
Environmental Decision Making

**ECONOTE EVALUATION**  
Dear ECONOTE USER ...

We would like your input into our ECONOTE program. Please take a moment to fill out the ECONOTES.

1. Was the ECONOTE useful?  
Yes

2. Did the ECONOTE improve your understanding of the issue?  
Yes

Did you feel the ECONOTE was worth your time?  
Yes  No



**ECO**



Environmental  
Commissioner  
of Ontario



Commissaire à  
l'environnement  
de l'Ontario

Eva B. Ligeti  
LL.B., LL.M.  
Commissioner

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

June 1996

The Honourable Allan McLean  
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 1994-1995 Annual Report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

A handwritten signature in blue ink that reads 'Eva Ligeti'.

Eva Ligeti  
Environmental Commissioner of Ontario

1075 Bay Street, Suite 605  
Toronto, Ontario, M5S 2B1  
Tel: (416) 325-3377  
Fax: (416) 325-3370  
1-800-701-6454



1075, rue Bay, bureau 605  
Toronto (Ontario) M5S 2B1  
Tél: (416) 325-3377  
Télé: (416) 325-3370  
1-800-701-6454



# Contents

	A Message From The Environmental Commissioner of Ontario .....	5
Part 1:	Introducing The <i>Environmental Bill of Rights</i> .....	6
Part 2:	The Mandate of The Environmental Commissioner of Ontario .....	9
Part 3:	Statements of Environmental Values .....	11
Part 4:	The Environmental Registry .....	26
Part 5:	Ministry Environmental Decision Making .....	30
Part 6:	Reviews And Investigations .....	45
Part 7:	Instrument Classification .....	59
Part 8:	Other New Legal Rights .....	62
Part 9:	Education Initiatives .....	65
Part 10:	Financial Statement .....	68
Part 11:	Glossary of Terms .....	71
	Summary of Recommendations .....	Centre Insert



## A Message From The Environmental Commissioner of Ontario

Dear Reader:

As government explores ways to work with fewer resources, the need for open, transparent and participatory environmental decision making is more important than ever. Even in a climate of fiscal restraint, environmental protection and sustainability are not only possible, they are absolutely necessary to the future well-being of this province.

Ontario's environmental values have matured over the past 25 years. As the government moves to review and reform environmental safeguards, the challenge will be to retain what we have accomplished and to ensure future environmental protection and competitive economic development.

The *Environmental Bill of Rights* is instrumental to meeting Ontario's environmental goals. It asks us to balance the desire for quality of life, future prosperity and environmental sustainability. Our success depends on the willingness of government ministries to honour the purposes of the *Environmental Bill of Rights* and to improve the way government manages the natural environment.

This report is the beginning of my examination of the stated environmental values of Ontario ministries, and how they are reflected in laws, policies and practices. We are beginning to appreciate the full dimension of the relationship between the environment and other social, economic and scientific factors. The *Environmental Bill of Rights* recognizes that connection, and insists that we honour it when we make decisions that affect environmental quality. It is my job to make sure the connection is honoured.

Ontario's environmental values are deeply rooted. The people of this province expect a safe and healthy environment in which to live, work and play. As the government streamlines its operations in the coming years, the *Environmental Bill of Rights* will open the doors to all Ontarians and provide them with the opportunity to participate in decisions that have environmental consequences.

Eva Ligeti

Environmental Commissioner of Ontario

## Part 1: Introducing The Environmental Bill of Rights

The *Environmental Bill of Rights (EBR)* gives all Ontario residents new ways to participate in government decisions that affect the natural environment. Other Canadian jurisdictions have “environmental rights” legislation, but Ontario’s *Environmental Bill of Rights* goes further. It recognizes that the people of Ontario have a right to a healthful environment and a common goal to protect, conserve and restore the environment for the benefit of present and future generations.

### **The Environmental Bill of Rights**

#### **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.*

#### **Purposes**

- *Protect, conserve and restore the integrity of the environment*
- *Provide sustainability*
- *Protect the right of Ontario residents to a healthful environment*
- *Prevent, reduce and eliminate the use, generation and release of pollutants that unreasonably threaten the integrity of the environment*
- *Protect and conserve biological, ecological and genetic diversity*
- *Protect and conserve natural resources, including plant life, animal life and ecological systems*
- *Encourage the wise management of our natural resources, including plant life, animal life and ecological systems*
- *Identify, protect and conserve ecologically sensitive areas or processes*
- *Provide ways for Ontario residents to participate in environmental decision making*
- *Increase government accountability for its environmental decision making*
- *Increase access to the courts for Ontario residents who want to protect the environment*
- *Improve protection for employees who take action against their employers for harming the environment*



The *Environmental Bill of Rights* gives government the primary responsibility for achieving this goal, but it also gives Ontario residents tools to take part in the process. And it assigns environmental responsibility to, and promotes sustainability among, diverse government ministries.

### **Ministries\* Prescribed By The Environmental Bill of Rights**

- *Environment and Energy*
- *Natural Resources*
- *Northern Development and Mines*
- *Consumer and Commercial Relations*
- *Municipal Affairs*
- *Agriculture, Food and Rural Affairs*
- *Culture, Tourism and Recreation*
- *Economic Development and Trade*
- *Health*
- *Housing*
- *Labour*
- *Management Board Secretariat*
- *Transportation*
- *Finance\*\**

\* On September 27, 1995 the Ontario Government tabled Bill 1 amending the Executive Council Act. If passed, this law will result in the following reconfiguration of the ministerial portfolios for three ministries under the EBR: Ministry of Municipal Affairs and Housing, Ministry of Citizenship, Culture and Recreation, and the Ministry of Economic Development, Trade and Tourism.

\*\* The Ministry of Finance is no longer a prescribed ministry as of November 29, 1995.

Access to information is a key benefit of the *Environmental Bill of Rights* and this report shows the new ways Ontarians can use information to make sure the government works efficiently, cost-effectively, and keeps the environment safe and clean. Now, Ontarians can call government ministries to account for the environmental decisions they make.

## The Environmental Bill of Rights

### Public Rights To Participate

- The right to get notice of, and comment on, proposed policies, Acts, regulations and instruments that may affect the environment
- Access to the Environmental Registry, a computer bulletin board of proposals, decisions, and other information related to the Environmental Bill of Rights
- The right to appeal certain ministry decisions
- The right to ask a minister to change or eliminate existing environmental policies, Acts, regulations, and instruments
- The right to ask a ministry to consider the need for new policies, Acts, and regulations
- The right to ask a ministry to investigate contraventions of environmental Acts, regulations and instruments
- The right to sue someone (eg. a polluter) for harming a public resource
- The right to sue for personal damages if an environmentally harmful public nuisance causes direct economic or personal loss
- The right to whistleblower protection

The *Environmental Bill of Rights* is a genuine break with the past. It has the power to build understanding of the risks and benefits of environmental decisions and it speaks to the connection between actions and outcomes. For example, under the *Environmental Bill of Rights*, building a road is not just a transportation issue. It is also an environmental activity that affects the quality of air, water, land, plants, animals and people. The *Environmental Bill of Rights* asks all of us to seek better environmental solutions through shared knowledge, participation, responsibility and accountability.



## Part 2: The Mandate of The Environmental Commissioner of Ontario

The *Environmental Bill of Rights* calls for the five-year appointment of an Environmental Commissioner of Ontario. I began my term as Ontario's first Environmental Commissioner on May 30, 1994.

My primary responsibility is to review ministry compliance with the *Environmental Bill of Rights* and support political accountability by reporting independently to the Legislative Assembly of Ontario. As an officer who reports directly to the Legislative Assembly, not to a government minister, I have the right and responsibility to exercise my duties impartially and without undue interference.

For insight on interpreting my mandate, I looked at the roles of the Provincial Auditor, the Ombudsman, the Information and Privacy Commissioner, and similar officers in jurisdictions outside Ontario. For example, I corresponded with Helen Hughes, New Zealand's Parliamentary Commissioner of the Environment whose goal is dispute resolution and finding the best possible solutions to environmental issues.

After careful reflection, I chose to pursue my mandate with a combination of informed leadership, fairness, understanding, open communication and the exploration of workable solutions.

### **The Environmental Commissioner of Ontario**

#### **Mandate**

- Review implementation of the *Environmental Bill of Rights*
- Review ministries' compliance with the *Environmental Bill of Rights*
- Provide guidance to ministries on complying with the *Environmental Bill of Rights*
- Assist ministries in providing educational programs about the *Environmental Bill of Rights*
- Provide public education programs about the *Environmental Bill of Rights*
- Advise and assist people who want to participate in the *Environmental Bill of Rights* decision-making processes
- Review use of the *Environmental Registry*
- Review ministerial decisions to exempt proposals from being placed on the *Environmental Registry*
- Review the use of appeals and court actions by the public
- Review the way ministries process *Applications for Review and Investigation*
- Review use of whistleblower protection rights under the *Environmental Bill of Rights*
- Report annually to the Legislative Assembly of Ontario
- Present special reports to the Legislative Assembly of Ontario

## Setting Up Shop

Creating a new organization is not easy. I gratefully acknowledge the support of Legislative Assembly staff, particularly Mike Horn, Director of Facilities Management; Ellen Schoenberger, Director of Human Resources; Ajit Deshmukh, Director of Finance; and their staff.

Early advice and assistance from Erik Peters, Provincial Auditor; Roberta Jamieson, Ombudsman; Tom Wright, Information and Privacy Commissioner and his Executive Director, Judy Hubert, also proved invaluable. Dr. Peter Victor, Assistant Deputy Minister, Environmental Sciences and Standards Division, Ministry of Environment and Energy, Helle Tosine, Director, *Environmental Bill of Rights* Office, Ministry of Environment and Energy, and Sharon Suter, Manager, *Environmental Bill of Rights* Office, Ministry of Environment and Energy, were equally supportive.

Members of the Task Force on the *Environmental Bill of Rights* (see Glossary) shared with me their insight into the legislation and my role. John Macnamara, Michael Cochrane and Paul Muldoon were particularly helpful. Indeed, John Macnamara facilitated the development of an informal business network of industry representatives to complement my work.

The Interministerial Committee (see Glossary), a group of dedicated staff from 14 ministries who are key to the implementation of the *Environmental Bill of Rights*, also provided me with great assistance.

I owe many thanks to Ontario's environmental community leaders for helping to facilitate my work with environmental groups and for communicating to me the good will, support and concerns of the people of this province who are devoted to protecting and preserving Ontario's natural environment.

By December 31, 1995 I had built a solid policy, legal, education and administrative foundation reflecting not only the suggestions of these groups and individuals, but also, I hope, the spirit of the *Environmental Bill of Rights* itself.



## Part 3: Statements of Environmental Values

### What Is A Statement of Environmental Values?

The *Environmental Bill of Rights* requires each prescribed ministry to develop a Statement of Environmental Values (SEV) to guide ministry staff when they make environmentally significant decisions (see Glossary). The SEV should explain how a ministry will consider the environment when it makes decisions that may significantly affect the environment, and how it will integrate environmental factors with social, economic and scientific ones.

The SEV is a unique and innovative tool which will also assist the people of Ontario and me assess how each ministry complies with the environmental protection goals of the *Environmental Bill of Rights*.

### Statements of Environmental Values

Each minister must prepare a Statement of Environmental Values that:

- Explains how the purposes of the EBR will be applied when the ministry makes environmentally significant decisions
- Explains how consideration of the purposes of the EBR will be integrated with social, economic, scientific and other considerations

### How The SEVs Were Developed

By May 1994, the 14 ministries had posted their draft SEVs on the Environmental Registry for public comment until August, and were required to post final SEVs by November 1994. I urged all ministries to clarify what unique decision-making aspects of their work would affect the natural environment. I also emphasised the need for appropriate benchmarks.

External stakeholders had something to say too, and while most agreed the SEVs were a step forward, they pointed out these SEV weaknesses:

- No clear connections between types of decisions and potential environmental consequences
- No clear indication of how ministries will apply the purposes of the *Environmental Bill of Rights* in decision making
- No commitment to timely SEV review
- Inconsistent terminology among ministries
- Lack of verifiable statements
- No explanation of how each ministry will integrate the purposes of the *Environmental Bill of Rights* with other considerations
- Lack of program details

I asked the ministries for details about how their programs might significantly affect the environment, and to state their environmental values, then translate those values into specific activities and goals. Additional public consultation on their revised SEVs was encouraged.

However, the ministries did not agree with my interpretation of the function and content of the SEV. They consider the SEV a statement of philosophy which guides management. One Deputy Minister's words capture the ministries' general view: "If the SEVs were to set out goals within them, they would go beyond influencing policy decisions and become policy themselves." We must work together to resolve this difference in interpretation.

Each ministry amended its SEV with a clear undertaking to apply the purposes of the *Environmental Bill of Rights*, and to integrate those purposes with social, scientific, economic and other considerations. The ministries also agreed to review their SEVs and invite public comment after they had applied their SEV for about one year, then report to me in November 1995.

Ministries that consulted publicly received limited response. Reasons for this lack of response could include the fact that the SEVs were originally posted on the Registry in spring 1994, and that more advertising was necessary. (For my detailed review of the ministries' one-year reports, please contact my office for a copy of the Appendix to this report.)

#### **How The Environmental Commissioner Evaluated The SEVs**

*To evaluate the SEVs, the Environmental Commissioner developed the following criteria:*

- *Commitment to endorse and apply the purposes of the EBR*
- *Connection of ministry programs, policies and activities to the purposes of the EBR*
- *Commitment to integrate the purposes of the EBR with social, economic, scientific and other considerations when ministry staff make decisions, and how this will be achieved*
- *Description of classes of ministry decisions subject to consideration of EBR purposes*
- *Recognition of environmental issues related to the ministry's mandate*
- *Reference to government-wide or interministerial environmental initiatives and goals, such as 3Rs, the Green Workplace, and energy and water conservation*
- *Commitment to partnerships with other ministries and agencies on environmental initiatives, such as research, public education, equipment or facility sharing*
- *Commitment to good public consultation*
- *Commitment to monitoring SEV use and performance*
- *Commitment to periodic SEV review and revision after November 1995*
- *Use of plain language*

## Future SEV Development

On their own, Statements of Environmental Values will not change government ministries. Instead, they must be accompanied by strong action plans, with clear purposes and goals. As such action plans, Environmental Management Systems are increasingly proving their worth in many Canadian companies.

### Environmental Management Systems

*Good management practices\* include:*

- *Setting objectives and goals; developing procedures to achieve them*
- *Defining and documenting responsibility, authority and interrelations of key personnel whose activities may affect the environment*
- *In-house verification requirements and procedures and providing adequate resources and personnel for verification activities*
- *Appointing a management representative to ensure standards are met and maintained*
- *Establishing communication and training programs to assure that responsible personnel are competent in this area*

*\* KPMG, The Canadian Environmental Management Survey, 1994.*

By remodelling their SEVs in line with current Environmental Management Systems, or developing a separate Environmental Management System to guide the application of their SEVs, ministries could achieve practical in-house action plans for managing the environmental aspects of their initiatives. Ultimately, this would connect the SEVs to measurable goals and help ministries report progress.

### Canadian Corporate Environmental Reporting

#### NORANDA

*Employees: approximately 13,000*

*Products/Activities: mining, metals, forest products, oil and gas*

*Annual Environmental Report:*

- *Produced since 1991*
- *Sets goals for energy conservation and emissions of metals to water and air*
- *In 1995, Noranda reported: "We have met our goal in reducing energy needs. By the end of this year we will be very close to our target for air and water requirements."*

## DOFASCO

Employees: over 7,000

Products: steel

Annual Environment, Health and Safety Report:

- Preface to the 1993 edition states: "We have identified quantifiable measures of performance. This helps to gauge our progress and maintain momentum while closing the gap between our current performance and targets. Wherever possible we have included benchmarks and targets for the key performance measures. This is an evolving process. We are working to refine and improve our benchmarking capabilities."

## DOW CANADA

Employees: approximately 3,000

Products: chemicals

Annual Environmental Report:

- Produced for several years
- Includes inventory of chemical emissions, along with five year emission projections, showing anticipated reductions

Now is the time for ministries to look seriously at Environmental Management Systems. Environmental Management Systems are not explicitly required by the *Environmental Bill of Rights*, but they could support the practical achievement of its goals.

The public's ability to participate and ultimately the success of the *Environmental Bill of Rights* depends on the ministries' willingness to produce quality SEVs. I will work with the people of Ontario and each ministry that requests my assistance to continue to enhance the application and effectiveness of the Statements of Environmental Values.

## Evaluating The SEVs

My evaluation of each SEV follows. I evaluated ministry SEVs using two sets of criteria. The first set reflects the basic requirements of the *Environmental Bill of Rights* and public comments, and the second set assesses ministry commitment to the next steps in effective SEV implementation.

Please note that although several ministries were merged or reorganized beginning in the summer of 1995, those ministries have not yet updated their SEVs so I evaluated the SEVs as originally posted on the Environmental Registry.



## Ministry of Agriculture, Food and Rural Affairs

In its SEV, the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) recognizes the purposes of the *Environmental Bill of Rights* and commits to applying them when it makes environmentally significant decisions. The Ministry values public input and commits to providing consultation opportunities.

However, much of this SEV is vague, with no mention of the Ministry's commendable initiatives like programs to reduce pesticide use and improve manure management. Indeed, one wonders why this SEV does not endorse Food Systems 2002, a provincial goal to cut use of agricultural pesticides in half by 2002.

The SEV makes no commitment to staff training on environmental issues, monitoring key environmental parameters, or reporting on progress toward environmental goals. Its silence on pollution prevention, food-land protection and protection of ecologically significant areas is striking.

### What The Public Said:

*"Consultation with stakeholders. This should be done before policy/program approval. We recognize that you later state that the 'Ministry values public input.' However, we believe that the public input process should be more formalized." Ontario Farm Environmental Coalition; August 5, 1994*

*"There is no provision to monitor losses of agricultural land in the province. It could monitor trends in foodland preservation, such as increases in non-farm ownership of farmland. Remedial and protective measures, such as the use of vegetation buffers along municipal drains and natural watercourses, could be tracked." Canadian Environmental Law Association and five other groups; August 15, 1994*

## Ministry of Consumer and Commercial Relations

The Ministry of Consumer and Commercial Relations (MCCR) commits to developing ways to assess and report annually on the implementation of its SEV. The SEV states that the Ministry's programs have several objectives that promote environmentally responsible decisions.

The SEV briefly outlines the Ministry's interest in the storage and handling of hydrocarbon fuels and pressurized liquids and gases. It points to the Ministry's goals to reduce associated emissions and contamination, but does not explain its responsibility for administering and enforcing the *Gasoline Handling Act*, a law that is prescribed under the *Environmental Bill of Rights*. Nor does the SEV identify any environmental issues connected with the Ministry's role in potentially environmentally significant areas like regulating boilers or motor vehicle repairs.

Beyond this, the Ministry weakly commits to public consultation and does not acknowledge the importance of staff training on environmental issues or the *Environmental Bill of Rights*, or for information or research on relevant environmental issues. Also missing is a recognition of the need to monitor or report environmental para-

meters related to the Ministry's mandate, the need for clear objectives and measurable goals for the Ministry's environmental programs and policies, and the need to join with other ministries on environmental initiatives.

**What The Public Said:**

*"In order to conform to the EBR's three primary purposes, and the Ministry's sensitivity to the environment, the Ontario government must ... establish mandatory cash deposits on all drink and other containers ... [and] ... set up collection depots in all LCBO outlets for deposit and non-deposit containers bought through LCBO."* Individual; August 12, 1994

### **Ministry of Culture, Tourism and Recreation**

The Ministry of Culture, Tourism and Recreation (MCTR) commits to using the Environmental Registry to collect input on environmentally significant policies, Acts, and regulations and promises to encourage open public consultation. The SEV also states MCTR will promote recreational opportunities to raise environmental awareness.

Unfortunately, this SEV makes no commitment to clear objectives or measurable goals for environmental programs and policies. It only briefly describes the Ministry's activities, provides little detail about how those activities are linked to the environment, and is silent on how it will incorporate environmental considerations into its daily decisions. Beyond that, there is no mention of partnering with other ministries and agencies on environmental initiatives, surprisingly since the Ministry does exactly that on recreational projects like trail-building for cyclists, pedestrians, hikers and snowmobilers.

The SEV makes no commitment to specific interministerial environmental initiatives like 3Rs programs, or energy and water conservation. Nor does it acknowledge the need for staff training on environmental issues or for information or research on environmental issues relevant to Ministry operations. This is regrettable since MCTR financially supports construction projects in recreational and natural areas throughout Ontario, projects likely to affect the environment.

**What The Public Said:**

*"The draft SEV speaks only to the promotion side of Ministry programs. How will the Ministry incorporate the SEV when it reviews industry development proposals (i.e. reviews plans to build a new facility or expand an existing facility)?"* Northern Ontario Tourist Outfitters Association; July 29, 1994

*"We at the Hotel Association of Metropolitan Toronto (HAMT) support, in principle, the objectives of your draft."* HAMT; May 27, 1994

## Ministry of Economic Development and Trade

The Ministry of Economic Development and Trade (MEDT) promises to develop a process to integrate the purposes of the *Environmental Bill of Rights* into its decision making. It also commits to an *Environmental Bill of Rights* staff awareness program and to encouraging waste reduction and conservation. The Ministry says it values public input and will provide public consultation opportunities.

Regrettably, the SEV is short on details about how the Ministry will integrate environmental considerations into its daily operations. The language in this SEV is vague and will no doubt make it hard for Ministry staff and the public to identify environmentally significant decisions.

Again, there is no mention of working together with other ministries and agencies, the need for information or research on relevant environmental issues, or the need for monitoring environmental parameters. Like many others, this Ministry's SEV does not commit to clear objectives or measurable goals, or to monitoring and reporting on progress towards those goals.

### What The Public Said:

*"Statements such as "promoting a productive and efficient economy that is environmentally sustainable" and "considering the environment in its decision making" may sound impressive. Yet how does one assess whether the Ministry is really adopting these guidelines in its daily functions?" Canadian Environmental Law Association and five other groups; August 15, 1994*

## Ministry of Environment and Energy

The Ministry of Environment and Energy (MOEE) commits to monitoring and evaluating environmental changes, noticeably one of only two ministries to do so in their SEV. The MOEE will consider cumulative effects on the environment, promote energy and water conservation, and encourage 3Rs programs to divert materials from waste disposal.

Unfortunately, considering MOEE's mandate, its SEV is generally disappointing. It is particularly troubling that environmentally significant programs, including high profile waste reduction initiatives, monitoring and reporting ambient air quality, and administering Ontario's environmental assessment legislation, go unmentioned. Without an overview of the Ministry's key environmental programs, research activities, or existing measurable targets for waste reduction, this SEV forfeits significant public education potential.

As well, the SEV contains no provision for working together with other ministries and agencies to meet environmental goals. Given that co-operation is often cost-effective, the SEV should set out ways for Ministry staff to pursue partnerships. Interestingly, other ministries have told me they rely on MOEE for advice and assistance when developing environmentally-related policies.

#### **What The Public Said:**

*"There does not appear to be a commitment to disseminating information and public outreach." Ontario Round Table on Environment and Economy (Secretariat); July 4, 1994*

*"Delays in decision-making may be caused by scientific uncertainty, which is a problem that has been addressed by the SEV. However, the SEV does not deal with the inherent delays in the Ministry's regulatory and decision-making processes." Kingston District Chamber of Commerce, L.I.F.E. Committee; August 15, 1994*

*"The Ministry should recognize MNR's policy principle that anticipating and preventing negative environmental impacts before undertaking new activities is less costly and more effective than correcting or curing environmental problems." Canadian Land Reclamation Association, Ontario Chapter; August 18, 1994*

#### **Ministry of Health**

This SEV is superior in many ways. For example, the Ministry of Health (MOH) commits to stating if there is, or is not, a significant environmental effect before approving and implementing policies, directives, guidelines, strategies and advice. The Ministry will develop monitoring and reporting mechanisms for its environmental goals and will report annually on its Environmental Protection Program. That report will identify environmentally significant decisions.

The Ministry commits to water and energy conservation, and waste management and minimization strategies in its daily operations. It will also provide advice and training to assist staff apply the purposes of the *Environmental Bill of Rights*. The SEV makes managers accountable for SEV compliance.

The Ministry's SEV does not recognize the need for information or research about how health issues are connected to the environment or the need to monitor environmental and health parameters. In addition, environmental program objectives are too vague to measure.

#### **What The Public Said:**

*"... an emphasis on addressing the particular waste problems of hospitals (i.e. bio-hazardous wastes, wastes associated with packaging materials, air pollutants from incinerators, etc.) needs attention." The Ontario Chamber of Commerce; August 15, 1994*

*"The ministry does address the role of environmental contaminants in some of its programs, but this section needs to be more explicit." Individual; August 15, 1994*

*"Greater recognition is required in the SEVs that the ministries themselves may impact the environment in program delivery and policy formulation. For example, the SEVs of the ministries of Health and Labour do not acknowledge this potential." Ontario Natural Gas Association; August 15, 1994*

## Ministry of Housing

The Ministry of Housing (MHous) states its commitment to promoting energy efficiency, water conservation, efficient land and public housing use, along with reduction, reuse and recycling in internal operations. It also promises to facilitate 3Rs through its building regulations.

The SEV indicates MHous will monitor, review and report its progress in implementing environmental principles in its annual report. It will develop a SEV Implementation Plan, including a protocol for identifying decisions subject to the SEV and/or the Environmental Registry notice requirements.

The SEV describes parts of the Ministry's mandate that affect the environment, but gives no attention to how the Ministry will consider its SEV in specific decision-making areas like administering and reviewing the *Building Code Act* and the *Rent Control Act*. The SEV also ignores public education activities related to development standards and the Ministry's substantial involvement in large housing development projects both on green field sites and abandoned industrial lands.

Like others, this SEV makes no commitment to setting clear objectives or measurable goals for environmental programs and policies. Nor does it recognize the need for information or research on relevant environmental issues or for monitoring environmental parameters.

### What The Public Said:

*"Specific goals and objectives, targets, deadlines and evaluation procedures should be established. Include long-term health costs, social costs, maintenance, capital replacement costs and environmental costs in the decision to approve housing. The Province should establish goals and programs to encourage and require the use of environmentally responsible technology in all new projects and in retrofitted projects."* Housing Development Resource Centre; Aug. 15, 1994

*"In our opinion, simply reviewing the environmental actions outlined in the existing strategic plan would have been sufficient and consistent with the EBR implementation and review requirements."* Metropolitan Toronto Apartment Builders Association; August 11, 1994

## Ministry of Labour

In its SEV, the Ministry of Labour (MOL) states it will work with other ministries and agencies on environmental matters, is committed to environmentally sound practices, supports and promotes greening of its programs and practices and promotes reduction, reuse and recycling in its daily operations. At the same time, it promises staff training on implementing and applying the purposes of the *Environmental Bill of Rights*. It also supports public participation.

Unfortunately, this SEV ignores the need for information and research on relevant environmental issues, and for monitoring and reporting on the Ministry's progress in meeting environmental goals. And while the Ministry encourages its employees to commit to consistent, measurable progress in implementing the Code of Practice, curiously no measurable goals are mentioned.

#### **What The Public Said:**

*"Employees also need the right to refuse to pollute. This has been a significant criticism of the EBR process to date by all sectors of Labour." Windsor and District Labour Council; August 15, 1994*

*"The Statement is much too vague and requires a definition of sustainability. .... Defined goals or objectives need to be incorporated into the Statement and a plan on how the Ministry will accomplish these goals or objectives needs to be clearly defined."*

*Ontario Chamber of Commerce; August 15, 1994*

### **Management Board Secretariat**

The Management Board Secretariat (MBS) SEV is considerably stronger than many others. Of particular note, it includes practical examples of environmental activities, including the Green Workplace program, and incorporates environmental considerations like waste reduction, reuse and recycling in its purchasing guidelines. The SEV also describes the Ministry's participation in specific government-wide and interministerial environmental initiatives, like promoting 3Rs and energy and water conservation.

MBS states it will monitor the way it applies its SEV and will cooperate with my review of SEV compliance.

The SEV commits to staff training about the *Environmental Bill of Rights* and to leading training in other ministries. It notes that MBS's real estate activities have the greatest potential impact on the natural environment, and describes how it will apply the *Environmental Bill of Rights* and the *Environmental Assessment Act* to those cases.

Still, this SEV misses the mark in other important areas. Notably, it does not address the need for measurable goals for environmental programs and policies, to monitor or report on progress in meeting those goals, or to monitor relevant environmental parameters.

#### **What The Public Said:**

*"Key issues for the ministry include defining best practices, environmental impact assessment and performance reviews. The initiatives listed are good examples of the current level of commitment within Management Board." Individual; August 15, 1994*

*"Many ministries make reference to promoting a Green Workplace and to undertaking an environmental education program for employees. This should be made to apply to all ministries." Professional Engineers of Ontario; August 9, 1994*

## Ministry of Municipal Affairs

This SEV emphasizes the Ministry of Municipal Affairs' (MMA) mandate to define the roles, responsibilities and authority of municipalities, including their environmental responsibilities. It states that the Ministry works closely with other ministries to integrate its activities and decisions with provincial environmental interests. It is committed to developing systems to ensure it considers its SEV during environmentally significant decision making, including staff training programs.

The SEV acknowledges the need "to protect prime agricultural land for long-term agricultural use", a statement regrettably absent in the SEV of the Ministry of Agriculture, Food and Rural Affairs.

However, this SEV does not refer to the Comprehensive Set of Policy Statements (the Provincial Policy Statement after January 1996) issued under the *Planning Act* Statements that describes the environmental objectives sought by that *Act*. This Ministry plays a unique role in land use planning and can prevent negative environmental impact. Unfortunately, its SEV neither states nor implies support for a preventative approach to land use planning policy.

Although the SEV briefly lists initiatives to which it applies, that list is too vague to effectively guide Ministry staff. Nor does the SEV acknowledge the need for clear objectives and timelines, for environmental parameters, for measurable goals for environmental programs and policies, or for the need to monitor or report on progress towards those goals.

### What The Public Said:

*"MMA has the greatest control of the land use practices throughout the province. They should recognize that the mosaic of ecosystems on the landscape must be a fundamental background criteria for land use planning decisions. They should also recognize that in allocating land use some land must be set aside to allow ecological processes to be retained." Canadian Land Reclamation Association; August 18, 1994*

## Ministry of Natural Resources

This SEV offers a long list of philosophical principles for managing natural resources. The Ministry of Natural Resources (MNR) proactively seeks partnerships with other agencies and groups involved in resource planning and development. It also states that to assess or set policy and program direction, it is important to identify information requirements. Therefore, the Ministry commits to leadership in establishing information standards and providing data about Ontario's land mass and natural resources, and in reporting on the status of resources.

While the SEV acknowledges the need for environmental monitoring and reporting, those intentions are diminished when it then fails to describe how the Ministry will set or meet priorities. The SEV affords only two sentences to the Ministry's substantial resource management responsibilities.

This SEV is completely silent on desired results for managing forests, aggregate, fisheries, game animals, and

wilderness areas. There is no mention of plans to identify the classes of Ministry decisions subject to the requirements of the *Environmental Bill of Rights*. And while the SEV states: "preferred results must be clearly defined and priorities need to be more explicitly determined," a commitment to clear objectives and measurable goals for environmental programs and policies remains to be seen.

Although the Ministry provides considerable staff training, its SEV makes no mention of the need to train staff on environmental issues. Nor does the SEV commit to government-wide environmental initiatives like 3Rs, the Green Workplace Program or water and energy conservation.

#### **What The Public Said:**

*"NOTO believes that government ministries must take responsibility (or hold agents of the Crown responsible) for environmental problems created through activities that have been permitted by the Crown. .... With this in mind, NOTO would like to see this value statement [relating to degraded environments] re-written to clearly state that the Ministry (or its agents) will restore and rehabilitate degraded ecosystems." Northern Ontario Tourist Outfitters Association; July 29, 1994*

*"I also suggest that the Ministry encourage and support voluntary citizen initiatives in environmental monitoring and protection. The more basic need is to involve the public by providing timely and credible information regarding the need for conservation and environmental protection, and status reports on renewable resources." Individual; August 13, 1994*

### **Ministry of Northern Development and Mines**

This SEV commits the Ministry of Northern Development and Mines (MNDM) to reviewing proposals for advanced exploration and mining development before closure plans are approved. It also promises to "promote the fundamental importance of applied environmental research, the development of new rehabilitation technology" as well as environmentally sustainable development activity, and to recognize that "prevention is more effective than remediation and rehabilitation of an environmental problem."

Remarkably, this SEV focuses almost exclusively on the mining aspects of the Ministry's mandate, even though that mandate also includes northern development.

The SEV does not show how the Ministry will integrate environmental considerations into its decision-making processes and is non-committal about public consultation. It does not mention any Ministry involvement in government-wide or inter-ministerial environmental programs. And while the SEV supports preventing environmental disturbances during mining, as well as new mining rehabilitation technology, it is again unclear how the Ministry will turn support into action. Finally, like so many others, this SEV does not address the need for training staff on environmental issues.



### **What The Public Said:**

*"Where is the reference to the Northern Development component of the Ministry's mandate? Nowhere in the entire SEV is there any mention of it!" Ontario Mining Association; August 12, 1994*

*"In summary I see the SEV as unwanted and unneeded. If it must stay then it must become significantly more specific."*  
Member - Mining Act Advisory Committee

## **Ministry of Transportation**

The Ministry of Transportation (MTO) states its commitment to encouraging public awareness and to ensuring that transportation decisions involve the community and benefit from comprehensive environmental information and expertise. MTO will participate in government environmental performance reviews and pursue an environmentally skilled and informed workforce. The SEV describes the Ministry's environmental research and development priorities which include environmentally compatible transportation technologies research, and its environmentally-sensitive design, construction and maintenance techniques.

Despite these respectable commitments, this SEV is missing details about how the Ministry will minimize the environmental impact of transportation planning, construction and maintenance activities. In fact, it does not commit to clear objectives or measurable goals for any environmental programs or policies.

The Ministry says it: "will seek to protect natural habitats", qualified by: "whenever possible and practical." The SEV is vague about the kind of actions that would lead to improved environmental responsibility in the transportation sector (promoting mass transit or introducing mandatory vehicle emission testing programs, for example). Nor does it address the need to monitor and report on relevant environmental parameters like Ontario's vehicle fleet emissions or the use of road salt.

### **What The Public Said:**

*"Detailed environmental analysis should reflect the various impacts by mode/option of noxious emission, water contamination, road congestion, land-use/incursion, etc." Transport 2000 Ontario; August 5, 1994*

*"To have this kind of program in place shows a responsibility that we in Ontario must applaud. The influence and the potential impact on the environment that all of the ministries listed can and do have in the province is significant." Ready Mixed Concrete Association of Ontario; August 8, 1994*

*"...to be truly accountable to the people of Ontario, the Ministry should establish clear goals and measurable targets with respect to environmental protection." Pollution Probe; August 10, 1994*

## Ministry of Finance

Originally prescribed by the *Environmental Bill of Rights*, the Ministry of Finance (MOF) was removed from its requirements by Regulation 482/95 on November 29, 1995. As a result, this Ministry no longer has to consider its Statement of Environmental Values. However, the following review was prepared since this Ministry was subject to the *Environmental Bill of Rights* for most of the reporting period. The exemption of the Ministry of Finance from the requirements of the *Environmental Bill of Rights* was the subject of a Special Report that I submitted to the Legislative Assembly on January 17, 1996. My report expressed my concern that this exemption will impede Ontario's progress toward a healthful, sustainable environment.

In its SEV, the Ministry committed itself to broad pre-Budget consultation, including discussions about sustainable development. It recognized the need to consider how its physical operations affect the environment, along with the benefits of waste reduction and natural resource conservation in its daily operations.

Still, the Ministry made little attempt to show how it would incorporate environmental considerations into its decision-making systems. The SEV did not commit to working with other ministries and agencies on environmental initiatives, to setting clear objectives and measurable goals for environmental programs and policies, or to monitoring and reporting on progress toward those goals.

Again, this SEV did not acknowledge the need for staff training, or for information or research about relevant environmental issues.

### What The Public Said:

*"We commend the Ministry of Finance for its recognition of 'the need to consider the impacts of its physical operations on the environment.' We recommend that each ministry establish a guiding principle that ensures that its practices fall under the objectives of the EBR." Ontario Forest Industries Association; August 15, 1994*

*"Could the ministry encourage both government ministries and private institutions to report on their environmental operations to the Ministry of Finance? Will tax incentives or subsidies be considered to encourage green business? Will the ministry advocate the use of full-cost accounting principles both internally and among its clients?" Ontario Round Table on Environment and Economy Secretariat; July 4, 1994*

*"Ultimately, the value of having SEVs will depend on the extent to which ministries take them seriously and incorporate them into their decision-making processes. Given its role as a central agency within the provincial government, the Ministry of Finance could have an important impact on the effective implementation of SEVs throughout the government .... This could involve identifying some objectives that will be met and that might provide a way of monitoring progress toward implementing sustainability measures."*

*Dr. David Bell, Dean, Faculty of Environmental Studies, York University; June 30, 1994*

## Recommendations:

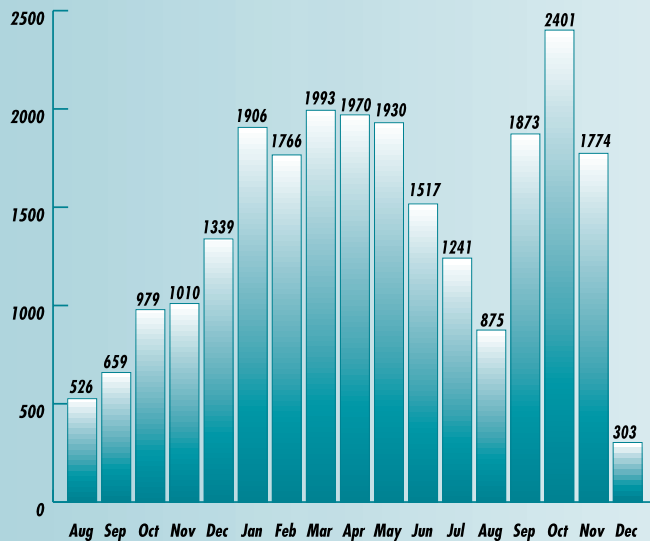
1. All ministries recognize the educational potential of the SEVs and use them to generate understanding among ministry staff and the public about the relationship between the ministries' mandates and their environmental values.
2. All ministries define environmental protection and sustainability goals and objectives for their daily operations either in the SEVs or in a separate but complementary public document.
3. All ministries explore ways to strengthen monitoring and reporting of key environmental parameters relevant to their mandates.

## Part 4: The Environmental Registry

The Environmental Registry is a computer system that gives the public access to environmentally significant proposals and decisions, appeals of instruments, court actions and other information related to the government's environmental decision making.

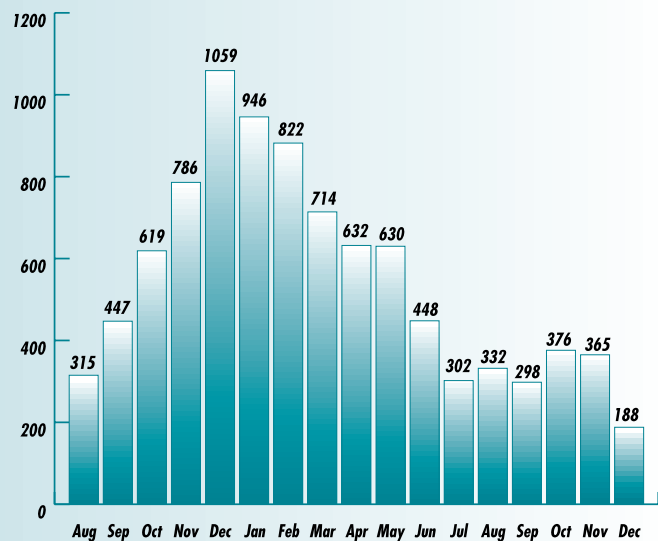
The *Environmental Bill of Rights* requires prescribed ministries to post environmentally significant proposals on the Registry so that the public can provide input into decision making before decisions are made. (For a complete list of proposals posted on the Registry during the reporting period, contact my office). During this reporting period, almost 10,000 Ontarians logged on to the Registry, and that number continues to grow.

The Environmental Registry is a cost-effective and efficient way to open the door to the government's environmental decision-making process. By all accounts, it is a remarkable accomplishment. The challenge in coming years will be to solve technical problems and to provide broader public awareness.



Environmental Registry  
Total Log-ons  
August 1, 1994 - December 31, 1995

Environmental Registry  
New User ID's  
August 1, 1994 - December 31, 1995



## Making The Registry More Effective

To boost public access to the Registry, the Ministry of Environment and Energy teamed up with the Ministry of Culture, Tourism and Recreation to provide Registry access at more than 300 public and First Nations libraries. My office developed support materials, including an *Environmental Bill of Rights* citizen's guide, information brochures and fact sheets. We also offered access to the Registry in our public Resource Centre.

All the same, there were some problems. For example, there was a concern about how the Registry is administered. Currently, various government bodies share administrative responsibility for the system. However, the *Environmental Bill of Rights* allows the Ontario government to establish a single authority to operate the Registry. In my view, this would improve operational accountability, consistency and efficiency.

Usually, new technology is a positive step forward, but start-up problems are not uncommon. The Registry was no exception and a number of glitches, including search function and data entry difficulties, arose during implementation. At the same time, some users were surprised to find that the Registry is not interactive and that they could not comment online.

We also received complaints about spelling and French translation errors, technical jargon and wrong information that was contained in Registry notices. This is unfortunate since diminished or poorly presented information can mask environmental significance. For example, a multi-million dollar expansion proposal was described on the Registry as the addition of four heaters to an existing refinery.

If the Registry is to be of value to the public, posted information must be relevant and well organized, with clear explanations of technical material. In response to inquiries by my staff and public comments made directly to the MOEE, the Ministry asked its district offices to include all necessary information on the Registry and, where possible, an email address.

Additional information must also be available to allow members of the public to understand Registry postings. Indeed, the *Environmental Bill of Rights* states Registry notice shall include "a statement of where and when members of the public may review written information about the proposal."

Just the same, I received complaints from members of the public that such information was hard to get at some government offices. These concerns were repeated at a multistakeholder round table I hosted to discuss barriers to participating in the *Environmental Bill of Rights* in September 1995.

To review these concerns, my staff made nine visits to six Ministry of Environment and Energy offices — the only ministry required to post proposals for environmentally significant policies, Acts, regulations and instruments in 1995. They did not identify themselves as employees of the Environmental Commissioner of Ontario. Their goal was to evaluate:

- If Ministry staff were prepared to deal with public inquiries
- If proposal information was reasonably accessible to the public
- If Ministry staff could answer questions about the proposal

Despite minor variations in how offices dealt with public inquiries, Ministry staff were generally prepared to receive inquiries, gave reasonable access to the information and could usually answer questions about the proposal. For example:

- Ministry staff tended to know where to find the information and that the public had a right to see it

- The Ministry employee responsible for dealing with the proposal was usually available for discussion, and if not, other staff usually did their best to help
- The Ministry did not impose time limits on reviewing the information and allowed viewers of the information to make notes and photocopies at little or no charge

While most offices required no advance appointment, two did. Still, no one was denied access to information just because they did not have a prior appointment. I recommend members of the public contact ministry offices before visiting just to be sure that the most knowledgeable person on a specific Registry file is available.

Unfortunately, one office deviated so greatly from the norm, and was so unprepared and uncooperative, a different member of my staff went back and tried again. At this office:

- Ministry staff did not know information was located in their office, although they later discovered it was there
- My staff had to show identification
- Ministry staff set a 30-minute time limit for viewing information
- My staff were not allowed to make notes or photocopies of the information they sought

This office's public information access procedures starkly contrasted with all others. Complacency about the public's right to participate in accordance with the provisions of the *Environmental Bill of Rights* is unacceptable and I expect ministries to ensure proper training for staff.

Some members of the business community felt the Registry would delay the approvals process and reveal proprietary information to competitors. However, the MOEE approval process currently averages about 45 days and runs concurrently with the 30-day Registry posting period. And, when people have the opportunity to comment early in the decision-making process, costly delays are often avoided.

In addition, businesses do not have to release proprietary information on the Registry. In fact, they can and do ask the Ministry of Environment and Energy to screen such information from Registry postings. Posting requirements are applied equally to all Ontario businesses, promising consistency and fairness in the application of environmental regulation. Indeed, the Registry provides a unique window on industry developments and innovative businesses are already using it to identify new markets and competitive developments.

The Environmental Registry opens the doors to environmental information and to transparent decision making in Ontario. Over the next few years, my office and the MOEE's *Environmental Bill of Rights* Office will continue to work together to enhance the current Registry system and increase awareness about this unique public participation tool.



## Recommendations

1. The Ministry of Environment and Energy designate a single authority to operate (including both administrative and technical operations) the Environmental Registry, and:
  - a. resolve the Environmental Registry's technical problems by upgrading the entire system or by upgrading the current software
  - b. upgrade the Environmental Registry platform so the public can access and use its information as a database
2. All ministries develop and publish standard procedures for releasing the full text of proposals to the public. Ministry staff make every effort to accommodate those who live far from district and regional offices.
3. All ministries continue to improve the quality and value of the information posted on the Registry by:
  - clearly and accurately summarizing proposals, giving enough information, identifying additional public consultation opportunities, and explaining how comments affected the decision
  - ensuring all Registry postings are well organized, clearly written, proofread and that technical information is explained
  - ensuring all entries include ministry contact telephone and fax numbers
4. All ministries post on the Environmental Registry annual summaries of all environmentally significant activities, including the number of policies, Acts, regulations and instruments posted and the disposition of Applications for Review and Investigation.

## Part 5: Ministry Environmental Decision Making

To review environmentally significant decision making, I followed the steps of the decision making process itself. For each step, I examined ministry processes and how they were applied. I then reviewed some decisions that were posted on the Environmental Registry, and others that were not posted, but which I considered environmentally significant.

I may seem to single out the Ministry of Environment and Energy. But while all ministries have had to consider their SEVs since November 15, 1994, MOEE is the only ministry that was required to post all its proposals for environmentally significant policies, Acts, regulations and instruments on the Registry during this reporting period. Because other ministries were subject to a much lesser extent, I reviewed them largely based on the processes they developed but, for the most part, have yet to apply (see Tables).

Each ministry provided me with a report on EBR implementation. I made extensive use of these reports to gain insight into ministry processes for the purpose of my review.

### Proposals And Decisions Ministry of Environment and Energy

Acts from 8/15/94	Acts from 8/15/94	Policies from 8/15/94	Policies from 8/15/94	Regulations from 11/15/94	Regulations from 11/15/94	Instruments from 11/15/94	Instruments from 11/15/94
Proposals	Decisions	Proposals	Decisions	Proposals	Decisions	Proposals	Decisions
0	0	33 (includes one exception)	19	31 (includes 6 exceptions)	4	2393	1591

### Proposals And Decisions Other Ministries

Ministry	Acts from 4/1/95	Acts from 4/1/95	Policies from 4/1/95	Policies from 4/1/95
	Proposals	Decisions	Proposals	Decisions
Agriculture Food and Rural Affairs	0	0	0	0
Consumer and Commercial Relations	0	0	1	1
Culture, Tourism and Recreation	0	0	0	0
Economic Development and Trade	0	0	0	0
Finance	0	0	0	0
Health	0	0	0	0
Housing	0	0	0	0
Labour	0	0	0	0
Management Board of Cabinet	0	0	0	0
Municipal Affairs	1	0	0	0
Natural Resources	0	0	9	3
Northern Development and Mines	0	0	1	1
Transportation	0	0	1	0



## Reviewing Decision Making Steps

### *STEP 1 - Deciding whether a proposed decision is environmentally significant*

The requirements of the *EBR* apply to environmentally significant decisions made by the ministries. Each ministry reported to me on how it determines whether a proposed decision is environmentally significant and how many of those decisions it made during the reporting period. Six said they made no environmentally significant decisions during the reporting period. These ministries were OMAFRA, MBS, MCTR, MEDT, MOH, and MOL.

MCCR, MMA, and MTO reported making only one environmentally significant decision each. The Ministry of Housing reported two environmentally significant decisions.

MNR reported 31 environmentally significant decisions, while MOEE reported making more than 2,000 environmentally significant decisions.

I commend the ministries for working together through the Interministerial Committee to develop common "Guidelines for Assessing the Environmental Significance of a Policy, Act, Regulation or Instrument". Most ministries indicated that their staff use these guidelines. I encourage the ministries to go one more step and tailor the guidelines to each ministry's mandate. So far, MTO, MBS and MOEE have moved in this direction.

Seven ministries (OMAFRA, MMA, MNR, MHous, MTO, MCTR, and MBS) document their decisions on environmental significance. MCCR and MOH keep partial records. Based on their reports to me, MOL, MNDM, MOEE and MEDT keep none. A trackable and reproducible process for determining environmental significance will strengthen the accountability of decision making and enable ministry staff to understand how each decision is made.

As well, ministries could clarify their process for determining environmental significance by identifying specific programs where environmentally significant decisions are made.

### *STEP 2 - Consideration of the SEV*

Once a ministry identifies a proposal for an environmentally significant decision, it must consider its Statement of Environmental Values. This is challenging for ministries since they failed to include in their SEVs the kinds of benchmarks and criteria that are critical to this type of assessment. Without such measures, objective analysis is extremely difficult, and, many would say, impossible.

Despite this weakness, most ministries said they have processes in place to ensure their SEV is considered during environmentally significant decision making. These processes vary from ministry to ministry.

As noted, many ministries reported they made no environmentally significant decisions during the reporting period, and therefore did not use their SEV consideration processes. Still, ministries should develop such processes to ensure the SEVs are properly applied once environmentally significant decisions are identified in the future.

To ensure fairness and public accountability, ministries must be able to track government decision making. Nine ministries (OMAFRA, MBS, MTO, MNDM, MCCR, MMA, MNR, MOEE, and MOH) reported their decision

tracking systems will include how their SEV is considered. Four ministries (MOL, MCTR, MHous and MEDT) did not report an intention to include SEV consideration in their decision tracking.

I urge all ministries to integrate SEV consideration into their existing decision tracking systems. Since the *Environmental Bill of Rights* requires ministries to weigh environmental issues in decision making, consideration of the SEV must be clear to me and to the public.

MOEE jeopardized decision-making transparency when it chose not to consider its SEV in deciding to issue instruments. The Ministry offered two explanations.

In an August 1995 discussion paper on the use of its SEV, MOEE stated: "issuing, review, repeal or amendment of instruments is guided by policies, Acts, or regulations." It maintained that since the SEV is considered in the development of these policies, Acts and regulations, considering it again for the granting of instruments is not necessary.

In its 1996 annual report to me, the Ministry states that SEV consideration is not required for instrument proposals because MOEE already considered the SEV when it developed its classification regulation for instruments.

Both explanations are at odds with the intent of the *Environmental Bill of Rights* and do not justify the exclusion of environmentally significant instruments from the requirement of SEV consideration. The *Environmental Bill of Rights* provides no exemptions from the SEV consideration requirement for environmentally significant decisions.

By excluding proposals for instruments from SEV consideration, MOEE effectively removed more than 95 per cent of its environmentally significant decisions from that requirement. This is a troubling departure from the intent of the *Environmental Bill of Rights*. MOEE should explicitly subject all its environmentally significant instrument decisions to SEV consideration and ensure that the related documentation is part of the ministry file.

### *STEP 3 - Public participation through the Environmental Registry*

**Registry Posting Periods** - The *Environmental Bill of Rights* requires posting of environmentally significant proposals on the Environmental Registry for a minimum of 30 days for public comment. When posting proposals for policies, Acts or regulations, the minister must also consider extending that posting period based on factors listed in the *Environmental Bill of Rights* and detailed in a discussion paper produced by my office.

## **Environmental Registry Notice and Comment Procedures:**

### **An Environmental Commissioner of Ontario Discussion Paper**

*This discussion paper (provided in draft to the ministries in October 1995) suggests that members of the public need adequate time and information to participate in decision making on policies, Acts and regulations (the paper does not apply to instruments) and ministries should do their best to provide these. It recommends that information about proposals be relevant, understandable, well-organized and clearly written, technical information be explained and background materials be available for comment.*

*The paper also proposes a framework to assess when a proposal should go on the Registry. It discusses which circumstances require additional consultation. The framework is based on the EBR requirements that the complexity and level of public interest in a decision should guide ministries in determining the required level of public participation. The paper provides a recommended approach to ministry staff for determining the length of notice and comment periods, and how to use the Registry to get feedback from stakeholders, depending on the level of complexity and public interest.*

During the reporting period, 12 per cent of policy proposals and eight per cent of regulation proposals were posted for more than the minimum 30 days. For complex proposals for new, or amendments to existing, policies and regulations, 30 days is usually too short for meaningful public input, particularly if the Registry is the primary method of public consultation. The ministries should allow more than the 30-day minimum time for complex proposals to facilitate informed public comment.

**Posting Exceptions** - A minister can exempt a proposal from the public notice and comment provisions of the *Environmental Bill of Rights* if public participation equivalent to that required by the Act has occurred. Ministers can also exempt proposals in emergencies or when the delay caused by giving notice on the Registry would endanger people, the environment or property. Either way, the minister must post an exception notice on the Registry and give notice to my office. These exceptions only apply to posting on the Registry; ministries are still required to consider their SEVs for these proposals.

Half of all emergency exception notices posted during the reporting period involved interim expansions or "emergency" Certificates of Approval for landfill sites. Granted, lack of landfill space is an urgent issue for Ontario municipalities and MOEE staff, but as one commenter noted: "lack of landfill capacity rarely occurs overnight". The Ministry of Environment and Energy should develop criteria for determining emergency exemptions for landfill sites and make those criteria public through the Environmental Registry.

**Transition Issues** - The Ministry of Environment and Energy made remarkable efforts to ensure the smooth transition to the new *Environmental Bill of Rights* requirements. However, difficulties are inevitable during the change to a new regime.

As of November 15, 1994, the Minister of Environment and Energy had to provide public notice on the Environmental Registry of proposed environmentally significant instruments. On November 18, 1994, the Ontario government passed Regulation 719/94, exempting any application for proposed instruments received

by the Ministry earlier than November 15, 1994 from the Registry posting requirements. This was meant to reduce the number of instruments that MOEE would have to post during the start-up period.

What it also meant was the exemption of 282 approvals applications, including permits, or amendments to permits, for 187 waste disposal sites and other environmentally significant facilities. Notice of this exemption regulation was not posted on the Registry.

Trying to undo some of the damage, MOEE passed a second regulation in March 1995. Regulation 108/95 reinstated the Registry posting requirement for those proposed instruments that were exempted previously. Again, no notice of the regulation was provided on the Registry.

Bud Wildman, MOEE Minister at that time, acknowledged that both regulations significantly affected the environment, that both should have been posted on the Registry, and that efforts would be made to avoid such errors in the future.

### **S e l e c t e d   D e c i s i o n   R e v i e w s**

The *Environmental Bill of Rights* requires ministers to consider all relevant comments received during the consultation process. Registry notice of the ministry's final decision must include a brief description of the effect of these comments. I focussed my examination of individual decisions on the transparency of the public participation process and the impact of public consultation on the final decision.

**Policies, Acts, Regulations and Instruments** - Only the Ministry of Municipal Affairs posted a proposal for an environmentally significant Act but no decision was made during the reporting period.

Across all ministries, 43 policies and 25 regulations were posted, along with two policies and six regulations that were posted as exceptions to the public comment provisions. The majority of these policy proposals and all of the regulation proposals were posted by MOEE.

The government's new policy on municipal waste incineration received substantial public comment (see Box). The "incineration package" which was posted on the Registry comprised two regulations and one policy. My review of how public comments influenced this decision shows MOEE took every reasonable step to consider all comments received when making its decision.

MOEE addressed the concerns of both proponents and opponents of the proposal. The decision notices posted on the Environmental Registry offered a comprehensive summary of the comments received, an explanation of how those comments were considered, what impact they had on the decision, and MOEE's rationale for rejecting comments. And even though the comments did not change the government's overall direction on municipal incineration, they did make a difference to the particulars of the decision.

I also considered the incineration issue itself. Today, the main alternative to municipal waste incineration continues to be landfill disposal, and both options are potentially harmful to the environment. As long as waste management planning continues to require a public examination of alternatives, and to focus on minimizing environmental impacts, then this decision is not necessarily a licence to burn. Municipalities now have another waste disposal option, but they still have to show that the choices they make are environmentally sound.

## **Municipal Waste Incineration Policy And Regulations**

### **Proposal and Background**

The Ministry of Environment and Energy posted a package of three proposals concerning the removal of the existing ban on new municipal waste incinerators on the Registry in July 1995. The proposals were a regulation to remove the ban on new municipal waste incinerators, a regulation exempting municipalities who conducted waste management planning processes while it was illegal to establish new municipal waste incinerator sites in Ontario and, therefore, did not consider incineration as a waste management alternative, and a policy setting out combustion and air pollution control requirements for new municipal waste incinerators.

### **Anti-Incineration Views**

Incinerators emit toxic heavy metals and organic contaminants that may endanger human health, as well as waste gases that contribute to acid rain, smog and global warming. Solid waste incinerators create large quantities of contaminated incinerator ash and other solid waste residues that must be disposed of as hazardous wastes. Incineration is less cost-effective than, and competes with, recycling for raw materials. It is more expensive than other waste disposal options.

### **Pro-Incineration Views**

While there has been intense scrutiny of air emissions from incinerators in Canada, there is no comparable study of air emissions from landfill sites. Some American studies suggest incinerator emissions compare favourably with landfill emissions. Incineration and recycling programs do not compete for the same raw materials so the use of these options in combination is very effective.

### **Public Comments**

The proposed policy and regulations were posted on the Environmental Registry for 45 days. MOEE received 75 comments. Some members of the public expressed concern to the Environmental Commissioner that it was difficult to respond to this complex proposal within these timelines. The Ministry responded to the comments in its decision notices on the Environmental Registry, maintaining that: the environment and human health in Ontario would be protected, as the proposed limits are stricter than those needed to just protect human health and the environment; the alternative of zero discharge fails to take into account the impact of emissions from alternatives to incineration; and that the ministry continues to support 3Rs activities. The policy was revised to respond to concerns about management of incinerator ash and the need for environmental monitoring.

### **Decision**

The decisions to finalize the two regulations and the policy were posted on the Environmental Registry on January 2, 1996. The policy was revised substantially as a result of comments received. No changes were made to one regulation and only a few minor changes were made to clarify the other regulation.

### **Conclusions**

The decision to remove the ban on municipal waste incinerators was made as an election promise and public comment on the proposals had little impact on the government's policy decision.

Public comment significantly affected the details of the policy, which was revised to raise emission limits for some parameters, to include specifications for the management of incinerator ash, to include monitoring protocols, to exclude wood waste and sewage sludge incinerators from the guidelines, to provide special allowances for cement and lime kilns, and to require plain language reports to the Ministry and the public.

The MNR's two provincial park management plan amendment proposals also spurred considerable public interest — approximately 300 comments were received.

## **Rondeau And Pinery Provincial Park Plan Amendments**

### **Proposal And Background**

The Ministry of Natural Resources proposed amendments to the *Rondeau and Pinery Provincial Parks* management plans to allow park managers to develop partnerships for managing white-tail deer herd reductions.

*Rondeau's Carolinian forest ecosystem is considered provincially threatened and Pinery's Oak Savanna ecosystem is considered globally threatened. Extensive browsing by white-tail deer is threatening vegetation and other animals who depend on that vegetation. The effects have extended beyond the boundaries of Pinery Provincial Park in the form of crop damage, car/deer accidents on the nearby highway and extensive browsing in area subdivisions.*

*These policy proposals were posted on the Environmental Registry for 45 days beginning July 28, 1995. The proposal for *Rondeau Park* generated 125 comments. The proposal for *Pinery Park* generated 163 comments.*

### **Public Comments**

*Most of the comments supported the proposals. Many supported the amendment but differed on how to cull the deer. The amendments, however, do not specify how the herd reduction will be carried out. It remains to be seen how the Ministry will take public comment into account in implementing the decision to reduce the herd.*

### **Decision**

*The Ministry stated that the original amendments were approved because of the general support received. The amendments state that herd reductions will be undertaken when required to protect and preserve the biodiversity of the ecosystems, and that partnerships may be used to complete the herd reduction.*

### **Conclusions**

*In this case, the public consultation process, which included the public notice posted on the Registry, affirmed substantial public support for the proposals and did not result in changes to the proposed amendments. However, that so many people commented suggests that there is a great deal of public interest in how Ontario's parks are managed.*

## Instruments

MOEE posted more than 2,300 instrument proposals during the reporting period; people commented on 29. In some cases, like the Petro-Canada decision discussed below, more than 500 people commented on two instrument proposals. The number of public comments is low overall partly because the *Environmental Bill of Rights* is new legislation and Ontarians are still learning about their right to participate through the Environmental Registry.

It would be hasty to measure the public value of posting information on the Registry strictly by the quantity of public comments. For example, many instrument proposals dealt with burning used motor oil in garage space heaters, but comments were rare. Still, oil recycling companies and citizens' groups noted the large number of such instruments granted, asked questions about airborne pollutants from burning used oil, and talked to government about whether used oils should be recycled and re-refined, as opposed to being burned in heaters. For the first time, Ontario residents could see the total number of such proposals and could offer alternatives to the current pattern for managing these used materials.

There have been suggestions for removing certain types of instruments like proposed expansions of landfill sites from Registry posting requirements. My review has shown that instruments relating to waste disposal sites have attracted more public comment through the Registry than many other types of instruments. De-classifying such instruments, which are often of local public interest, would be contrary to the intent of the *Environmental Bill of Rights*.

My reviews of a number of instrument decisions show that the Registry posting did not often alter the final decision. However, judging by the comments received, it is clear that public comments did affect the terms and conditions of the permits issued by MOEE. Moreover, the structured opportunity for participation enhanced public awareness about the complex trade-offs that decision makers face.

## Petro Canada Products

### Proposal and Background

*Petro-Canada Products sought air emissions and sewage works approvals to expand its Mississauga operation which is close to several residential areas. The Ministry of Environment and Energy stated on the Registry that the proposed expansion involved the installation of four new heaters and a change of service for one existing heater, as well as connection to existing storm and process water sewers, as part of a new lubricants production process.*

### Public Comments

*The proposal for the air emissions approval was posted on the Environmental Registry on May 18, 1995 and the proposal for the sewage works approval was posted on May 19, 1995. The public had 30 days to respond. These proposals generated more than 1000 public comments; 531 were received during the 30-day comment period. Most opposed the approvals and requested an Environmental Assessment. Most of the letters received after the Registry comment period supported the facility.*

*The most frequent concerns were present and future odours, air and water pollution, increased truck, rail and boat traffic, noise levels, high risks of fire and explosion, proximity to wetlands and wildlife, and risks to human health.*

The public comment prompted MOEE to add conditions to the Certificate of Approval for air emissions. These included the establishment of a formal Public Liaison Committee including members of the community, monitoring and reporting requirements for leak detection, ambient air monitoring, noise, odour and sulphur dioxide, and a requirement to provide copies of emission inventories, odour assessments, noise studies and quarterly and annual reports to the Public Liaison Committee.

#### **Decision**

MOEE granted Certificates of Approval for both air emissions and sewage works. The air approval did contain the conditions described above. Notice of these decisions was placed on the Registry on October 3, 1995. This decision was the subject of a third party leave to appeal application which was pending at the end of this reporting period.

#### **Conclusions**

Public opposition to the proposals prompted MOEE to impose new conditions, including the formation of the standing Public Liaison Committee, which is to have regular access to reports on the environmental impact of the operation.

In deciding to approve expansion of the existing Petro-Canada plant, MOEE had to weigh the validity and relative importance of two priorities — the economic activity of the plant and the community's desire for greater environmental protection, and was challenged to find solutions which satisfied both.

### **Uniroyal Chemical Ltd.**

#### **Proposal and Background**

Uniroyal, a producer of organic chemicals, proposed an amendment to its Certificate of Approval for sewage works. Waste disposal on the site has contaminated some soil and groundwater. In 1989, a municipal well in nearby Elmira and several private wells in the area were found to be contaminated with Nitrosodimethylamine (NDMA), considered a potential human carcinogen by MOEE. In addition, wastewater discharges from Uniroyal to the Elmira sewage treatment plant were elevating levels of NDMA in effluent from the sewage treatment plant.

In November 1991, MOEE issued a Control Order requiring Uniroyal to contain and treat on-site groundwater. The amendment sought approval for sewage works to hydraulically contain the southwest part of the site and treat the contaminated groundwater from the top beds of the upper aquifer. Once treated, the water would be discharged into a creek that runs through the property.

#### **Public Comments**

MOEE received 10 comments on the proposal before it was posted on the Environmental Registry as part of regular public consultation. Notice was posted on the Registry for 30 days. During this period, two comments were submitted.

The Ministry said it used the comments submitted during the consultation period to refine the terms and conditions of the proposal. Although some of the proposed amendments were incorporated into the approved Certificate, others were not. Specifically, MOEE did not incorporate a submission that the Certificate of Approval should provide for the full containment of the entire Uniroyal site.

#### **Decision**

The amended Certificate of Approval was approved on August 2, 1995, and notice of the decision was posted on the Environmental Registry that day. Local citizen's group Assuring Protection for Tomorrow's Environment applied to the Environmental Appeal Board for leave to appeal the decision. That application was denied on September 29, 1995.



# Summary of Recommendations

## Statements of Environmental Values

1. All ministries recognize the educational potential of the SEVs and use them to generate understanding among ministry staff and the public about the relationship between the ministries' mandates and their environmental values.
2. All ministries define environmental protection and sustainability goals and objectives for their daily operations either in the SEVs or in a separate but complementary public document.
3. All ministries explore ways to strengthen monitoring and reporting of key environmental parameters relevant to their mandates.

## The Environmental Registry

1. The Ministry of Environment and Energy designate a single authority to operate (including both administrative and technical operations) the Environmental Registry, and:
  - a. resolve the Environmental Registry's technical problems by upgrading the entire system or by upgrading the current software
  - b. upgrade the Environmental Registry platform so the public can access and use its information as a database
2. All ministries develop and publish standard procedures for releasing the full text of proposals to the public. Ministry staff should make every effort to accommodate those who live far from district and regional offices.
3. All ministries continue to improve the quality and value of the information posted on the Registry by:
  - clearly and accurately summarizing proposals, giving enough information, identifying additional public consultation opportunities, and explaining how comments affected the decision
  - ensuring all Registry postings are well organized, clearly written, proofread and that technical information is explained
  - ensuring all entries include ministry contact telephone and fax numbers
4. All ministries post on the Environmental Registry annual summaries of all environmentally significant activities, including the number of policies, Acts, regulations and instruments posted and the disposition of Applications for Review and Investigation.

# Summary of Recommendations

## Ministry Environmental Decision Making

1. All ministries tailor the environmental significance guidelines to their own particular operations, provide adequate staff training on the application of the guidelines, and ensure determination of environmental significance is trackable and reproducible.
2. All ministries integrate SEV consideration into existing decision-making tracking methods, explicitly apply SEV consideration to all environmentally significant decisions (including decisions on instruments), and ensure related documentation is part of the ministry file.
3. All ministries extend the 30-day minimum Registry posting time for complex, new or amended proposals for policies, Acts and regulations to enable informed public comment.
4. The Ministry of Environment and Energy develop criteria for determining emergency exceptions for land-fill sites and make those criteria public through the Environmental Registry.

## Reviews And Investigations

1. The Ministry of Environment and Energy assess the occurrence of trichlorethylene in Ontario's drinking water supplies using existing data from its Drinking Water Surveillance Program. MOEE should then decide if further action is required, such as more intensive sampling of water supplies which appear to be at risk. Depending on the magnitude of the risk, MOEE should consider a more stringent guideline on an interim basis until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.
2. The Ministry of Environment and Energy assess the needs of the approximately 40 surface water treatment plants in Ontario which are potentially vulnerable to Cryptosporidium. For plants which are most vulnerable, planning for the installation of filtration should proceed, unless it can be demonstrated to be unnecessary. The Ministry of Environment and Energy and the Ministry of Health should also consider installing Cryptosporidium detection methods at the most vulnerable plants to provide early warning of a breakout.
3. The Ministry of Environment and Energy verify the status of reviews by the Federal-Provincial-Territorial Subcommittee on Drinking Water and other scientific panels before citing such reviews as a reason to decline Applications for Review under the *Environmental Bill of Rights*.

## Summary of Recommendations

4. The Ministry of Environment and Energy address public concerns about air pollution from smokestacks by focusing more resources on resolving the underlying factors within its mandate, including outdated Certificates of Approval, inadequate monitoring of sources, and regulations which focus too heavily on short-term concentrations of pollutants and not enough on long-term loadings to the environment.
5. The Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing, in their role of reviewing and approving municipal land use plans, establish and apply guidelines to help prevent future land use conflicts caused by air emissions.
6. Ministries cooperate to review and upgrade Ontario's groundwater management framework. These ministries would include the Ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation. As a first step, ministries should compile current, accurate information on groundwater data, as well as statistics on inspections of potential contamination sources and enforcement of relevant legislation. This information should be made public.
7. The Ministry of Environment and Energy, working with municipalities, focus more efforts on minimizing groundwater and other environmental impacts of existing landfill operations. These efforts should include a shift in focus from merely monitoring leachate plumes in groundwater to an increased emphasis on preventing such contamination. A first step might be a review of existing provincial rules and guidelines governing landfill operations. Such a review should involve the public, and reflect the regional diversities of waste disposal in Ontario.
8. The Ministry of Environment and Energy announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently underway are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of Environment and Energy should begin to enforce the refillable soft drink container regulations under the *EPA*.
9. Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *EBR* and cite any additional relevant factors in their decision such as limited resources required to carry out a review. Whenever possible, valid concerns of the Applicants should be addressed.
10. Ministries follow the lead of the Ministry of Environment and Energy whose procedures for the receipt and handling of Applications for Review and Investigation are exemplary.

# Summary of Recommendations

## Instrument Classification

1. Ministries complete their instrument classification process and consult with the public on classification proposals and amendments to classification regulations.
2. Ministries determine those high-volume instruments which are likely to produce cumulative environmental effects, and post annual statistics for these non-classified instruments on the Environmental Registry.

## Education Initiatives

1. All ministries increase their efforts to publicize the *Environmental Bill of Rights*, and particularly the Environmental Registry, to their staff and stakeholders.

## Conclusions

The comment period provided an opportunity for the public to make their concerns known to MOEE. Also, comments submitted during the comment period tended to be more detailed than earlier ones, and several of the specific wording changes suggested were incorporated into the final Certificate. The more structured opportunity to comment provided by the Registry posting encouraged interested parties to suggest specific changes to the proposed instrument. Comments submitted during the comment period enhanced the credibility of the group in its application for leave to appeal the instrument.

## Inter-Recycling Systems Inc.

### Proposal And Background

Inter-Recycling Systems Inc. applied for approval to amend its Certificate of Approval for its waste disposal site to extend the service area and to clarify the maximum daily waste limit to 200 cubic yards (150 tons).

### Public Comments

The proposed instrument was posted on the Registry for 60 days beginning February 21, 1995. According to MOEE, the comment period was extended to allow for a public meeting. The Registry notice states that 47 comments were received. The decision notice states that many public concerns were addressed, where appropriate, through terms and conditions. Concerns included compliance with daily limits of waste and recyclables, traffic, noise, dust, asbestos, property values, water tables, and road size and conditions. In response, MOEE amended the Certificate of Approval to include the development of a landfill operations plan in consultation with the newly established Inter-Recycling Landfill Liaison Committee, restrictions on the daily amount of waste accepted, types of recycling operations and when waste is received, conditions for depositing waste at new sites, and noise and odour limits.

### Decision

The Certificate of Approval was issued on September 27, 1995. Notice was given on the Registry on October 10, 1995.

### Conclusions

Negotiations between the public, MOEE and the proponent led to changes to accommodate many concerns. That MOEE extended the public notice period to 60 days indicates the Ministry considers the Registry an important way to solicit input.



The case of K & E Waste Resource Inc. is an example of an excellent public consultation process. MOEE extended the public notice period, mediated outstanding issues, and considered comments received both before and after the public notice period. The Registry decision notice was comprehensive. My review indicates that public comment had a significant effect on the final decision. I commend MOEE for its efforts to get public input on this proposal.

## ***K & E Waste Resources Inc.***

### ***Proposal and Background***

*K & E Waste Resources Inc., a subsidiary of Philip Environmental, applied for approval to make changes to its waste disposal site in the City of Sarnia. The proponent wanted to revise the final contours of the landfill site within the approved capacity of the site, and to increase the fill rate from a maximum of 100 tonnes per day to an average of 1000 tonnes per day and a maximum of 1500 tonnes per day. According to the Ministry of Environment and Energy, the revised final contours would increase the maximum height of the site to approximately 12 metres above grade. The increased fill rate would reduce the lifespan of the landfill site from 40-50 years to 5-7 years. The Registry notice also stated that the application included a new design and operation report and control works involving a leachate collection system and stormwater detention pond.*

### ***Public Comments***

*The proposal was posted on the Environmental Registry for 30 days beginning April 20, 1995. The comment period was extended to June 9, 1995, as requested by members of the public. The decision notice states that 315 comments were received. The main concerns were volume, fill rate, final height, and local effects of dust, odours and noise.*

### ***Decision***

*The Registry decision notice states that on June 16, 1995 the Director issued an interim decision approving the design and operation report for the landfill but restricting the rate of fill to 600 tonnes per day until October 31, 1995, and imposing an operating height limit of five feet above grade. This interim decision, which was posted on the Registry on June 26, 1995, was granted to allow the company and the public time to resolve outstanding issues. Following the interim decision, the company undertook a community survey to identify the outstanding issues and began negotiations to resolve those issues. These negotiations led to several agreements, including property value protection, no fault nuisance compensation and future development of a golf course on the site.*

*On November 1, 1995, MOEE posted notice on the Registry that it had issued a final approval. That approval reflected the agreements reached and approved the fill rate of 1000 tonnes per day average and 1500 tonnes per day maximum, removed the five foot above grade operating restriction, imposed a total volume limit of 3,454,000 cubic metres of fill material, imposed an end closure date of no later than September 12, 2002, required the company to financially support the community advisory committee, provided a separate tipping area for local residents, and amended other conditions to improve the clarity of the approval.*

### ***Conclusions***

*MOEE extended the public notice period beyond the 30 days, required mediation of outstanding issues, and considered public comments received before and after the EBR-related public notice period. The Registry decision notice described the proposal, public concerns, and the impact of those concerns on the Ministry's decision. The Certificate of Approval indicates that public comment had a significant impact on the final decision.*

## Decisions That Were Not Posted

I reviewed a number of decisions that were not posted as proposals on the Registry. I reviewed whether the ministries had met the *Environmental Bill of Rights* public notice and comment requirements, and whether the ministries had considered their SEVs. The ministries had indicated that they were using common “Guidelines for Assessing the Environmental Significance of a Policy, Act, Regulation or Instrument.” I wanted to know how effectively those guidelines identified environmentally significant decisions which would then be subject to SEV consideration and Registry notice.

The ministries provided information showing that, because ministry definitions of “decision” and “environmentally significant” were too restrictive, ministries sidestepped public consultation and SEV consideration requirements on a number of environmentally significant decisions.

Decision was defined narrowly, for example, by the Ministry of Municipal Affairs when it indicated that the Minister’s part in rejecting a City of Toronto request to regulate the idling of vehicles (“the idling by-law”) was not a decision. The Ministry of Transportation said that deferring construction of the Eglinton Subway Extension did not constitute a decision. However, for the purposes of the *Environmental Bill of Rights*, when ministers exercise their discretion in deciding a matter with potential environmental impact, an environmentally significant decision is implied.

Ministries also interpreted “environmental significance” narrowly. For example, the Ministry of Agriculture, Food and Rural Affairs said cancelling the Niagara Tender Fruitlands program (which would have helped keep 2,000 acres of Ontario’s fruitbelt lands in fruit production) would not affect the environment, and therefore the decision was not considered environmentally significant.

Ministry failure to subject these decisions to the *Environmental Bill of Rights* could be attributed to a number of factors. The “Guidelines for Assessing the Environmental Significance of a Policy, Act, Regulation or Instrument” may be too general or too specific to be useful; or, ministries may not be proficient in applying the guidelines; or, the minister may have decided not to apply them. I encourage ministries to review and refine the guidelines and ensure adequate staff training.

Some ministries said that some decisions had been made at Cabinet level. While it is true the *Environmental Bill of Rights* does not apply to executive decisions made by Cabinet, neither *EBR* public notice and comment, nor alternative public consultation, took place when these decisions were made. Just as the *Environmental Bill of Rights* seeks to open the door to environmental decision making, this tendency to shift environmental decision making to Cabinet level threatens to shut it again.

Decision	Ministry Response
<p><b>Agriculture, Food and Rural Affairs</b></p> <p><b>Cancellation of Niagara Tender Fruitlands Program</b></p> <ul style="list-style-type: none"> <li>established 1994 to protect 2,000 acres of Niagara tender fruit land from conversion to non-farming uses</li> <li>Province committed \$19 million/ Region committed \$1 million, over 10 years</li> <li>restrictive covenants on property titles based on payments to landowners</li> <li>voluntary landowner participation</li> </ul>	<ul style="list-style-type: none"> <li>program is financial in nature</li> <li>Cabinet decision</li> <li>program was cancelled before it was implemented</li> <li>no impact on the environment</li> <li>EBR does not apply</li> </ul>
<p><b>Environment and Energy</b></p> <p><b>Disbanding Three Environmental Advisory Committees</b></p> <ul style="list-style-type: none"> <li>The Advisory Committee on Environmental Standards (ACES), the Environmental Assessment Advisory Committee (EAAC), and the Municipal Industrial Strategy for Abatement Advisory Committee (MAC)</li> <li>3 committees provided independent analysis, expertise and advice to minister</li> <li>EAAC and ACES provided high quality public consultation on specific issues</li> <li>advice of EAAC and ACES to minister was made public, as were the public comments received</li> <li>EAAC was established in 1983, and produced over 60 reports in response to ministerial requests for advice</li> <li>ACES was established in May 1990, and produced recommendations on a number of environmental standards, including lead, NDMA, Lakefilling Guidelines, tritium and Guidelines for the Clean-up of Contaminated Sites</li> </ul>	<ul style="list-style-type: none"> <li>advisory committees completed their jobs</li> <li>committees are sunsetted as part of a \$55 million cost-cutting initiative by the MOEE</li> <li>foundation has been laid for the ministry to take advantage of the new EBR Registry and do more direct consultation and standard setting</li> <li>ministry now has a sufficiently sound basis of advice and experience to ensure the effective operation of the Environmental Assessment Program</li> </ul>
<p><b>Regulation 482/95 to amend Regulation 73/94 made under the EBR</b></p> <ul style="list-style-type: none"> <li>exemption of Ministry of Finance from the EBR</li> <li>temporary suspension (for 10 months) of public notice requirements of the EBR for many decisions</li> <li>failure by the MOEE to post this Regulation on the Environmental Registry</li> </ul>	<ul style="list-style-type: none"> <li>Cabinet Office took the lead on this decision</li> <li>Ministry of Finance relies on input from other ministries on matters of environmental significance</li> <li>exclusions from Registry requirements due to government restructuring are primarily financial and administrative</li> <li>SEV was applied and Section V (requiring integration of social, economic and other considerations) was emphasized</li> </ul>
<p><b>Cancellation of Clean Up Rural Beaches Program</b></p> <ul style="list-style-type: none"> <li>\$57 million committed in 1991 over 10 years</li> <li>financial assistance to rural landowners who undertake remedial action and adopt new practices as part of a local Water Quality Improvement Plan</li> <li>MOEE 1993/94 Report: "The ministry estimates that the \$5.9 million spent on program led to at least \$11.8 million in capital expenditures in local economies throughout rural Ontario — an investment that has created close to 150 new jobs"</li> </ul> <p><b>Cancellation of Green Communities</b></p> <ul style="list-style-type: none"> <li>Program joint MOEE/MNR initiative to encourage local people, groups and businesses to use energy and water more efficiently and to reduce waste and prevent pollution</li> <li>ministry staff work with local communities on a wide variety of green projects</li> <li>Minister of Environment and Energy Brenda Elliott in a speech Nov. 27, 1995 (three days before program was cut): "Greening is essential to stimulate economic renewal. The Green Communities Initiative awakened a latent factor shared by all Ontarians - a strong sense of loyalty, support and commitment to our environment and our community"</li> </ul> <p><b>Reduction or Elimination of 19 Programs by MOEE</b></p> <ul style="list-style-type: none"> <li><b>Reduced Spending:</b> Boards and Committees; monitoring, testing and standards development; program administration and support; conservation and planning; regional operations program delivery; compensation for emergency response</li> <li><b>Elimination of Programs:</b> Municipal Recycling Blue Box; Municipal Recycling Support; Municipal 3Rs; Environmental Research; Industrial 3Rs; EnerSearch and Industry Renewables; Industrial Process Equipment Demonstration; Market Entry for Energy Efficient Technologies; Industrial Energy Retrofit; IESP Feasibility Studies; Industry Energy Partnerships; Transportation and Commercial Energy Management; Scrap Tire Management</li> </ul>	<ul style="list-style-type: none"> <li>program cuts are necessary to achieve the government's fiscal objectives in the most environmentally and economically sound fashion, as called for in the ministry's SEV</li> <li>the following considerations were used:             <ol style="list-style-type: none"> <li>refocus ministry role to emphasize direction setting through environmental and energy policy, standards and objectives</li> <li>focus on environmental priorities which pose the greatest health or environmental risk and require provincial attention</li> <li>shift from being a major funding partner for projects undertaken by others; instead facilitate the exchange of expertise and encourage innovative solutions and the formulation of partnerships</li> </ol> </li> </ul>



## Decision

## Ministry Response

### Municipal Affairs

#### Rejection of a Private Bill Application proposing to enable City of Toronto to Regulate and Prohibit Idling of Vehicles and Boats (“idling by-law”)

- the Minister of Municipal Affairs indicated that he would not support an application by the City of Toronto for a bill to control idling engines and the resulting air pollution
- bill would have imposed fines up to \$10,000

- not a decision
- merely a letter from the minister to mayor of Toronto urging a reconsideration of the “idling by-law”
- an opportunity for public participation would be provided through the requirement on the City of Toronto to publish notice of the application

### Natural Resources

#### Cancellation of the Community Harvesting Conservation Agreement with Natives for Fish and Wildlife

- this program guaranteed the granting of agreed numbers of fishing and hunting licences to members of 7 Indian Bands

- within the context of government’s aboriginal program
- deemed not environmentally significant
- an administrative instrument within an existing regulatory framework
- does not affect sustainability of resource

#### Bill 26 Amendments to statutes

- *Conservation Authorities Act*, including: municipalities given power to dissolve Conservation Authorities, province loses power to appoint members to boards of Conservation Authorities
- *Game and Fish Act*, including: all fees collected under the Act are to be held in Consolidated Revenue Fund for purposes of fish/wildlife/ecosystem management, or human activities related to fish and wildlife
- *Lakes and Rivers Improvement Act*, including: government given power to make regulations prescribing circumstances in which approval is required to construct or improve a dam
- *Public Lands Act*
- *Forest Fires Prevention Act*

- no response from ministry to date

### Northern Development and Mines

#### Bill 26 Amendments to Mining Act

- MNM Director not required to approve mine closure plan
- requirement to file annual report repealed
- confidentiality provided to mining companies on financial assurance
- option provided to mining company to surrender mining lands or rights under certain conditions and avoid liability under the *Environmental Protection Act*

- a response to Cabinet instruction to reduce costs, increase efficiency
- Closure Plan amendments more efficient, promotes economic growth and job creation
- “polluter pay principle” maintained
- other *Mining Act* amendments - strengthen areas to ensure rehabilitation of mine sites
- instrument approval timelines include the requirement to post notices on the Environmental Registry
- ministry has met the difficult task of meeting government direction without compromising environmental quality, hence complies with SEV

### Transportation

#### Cancellation of Toronto Transit Commission’s Eglinton Subway Extension

- withdrawal of provincial support for a previously approved subway extension in view of a SEV commitment “to promote an integrated transportation system”

- not a decision; a deferral

### Housing

#### Transfer of title of Ataratiri from city to province

- province will take title to site of cancelled Ataratiri project
- many of these properties have some degree of soil and groundwater contamination

- directly tied to government’s need to reduce the deficit and therefore not appropriate to consult the public
- best means of promoting SEV principle #5: remediation strategies which integrate environmental and socio-economic considerations

#### Cancellation of Non-Profit Units

- with the cancellation of 390 non-profit projects, a number of sites which may have been decommissioned could remain environmentally contaminated

- directly tied to government’s policy agenda and the need to reduce the deficit and therefore not appropriate to consult the public
- ministry continues to promote SEV principle #5: remediation strategies which integrate environmental and socio-economic considerations through the requirement that the remaining non-profit sites must be decommissioned before the ministry will forward financial assistance to the non-profit organization to acquire the site

## Recommendations:

1. All ministries tailor the environmental significance guidelines to their own particular operations, provide adequate staff training on the application of the guidelines, and ensure determination of environmental significance is trackable and reproducible.
2. All ministries integrate SEV consideration into existing decision-making tracking methods, explicitly apply SEV consideration to all environmentally significant decisions (including decisions on instruments), and ensure related documentation is part of the ministry file.
3. All ministries extend the 30-day minimum Registry posting time for complex, new or amended proposals for policies, Acts and regulations to enable informed public comment.
4. The Ministry of Environment and Energy develop criteria for determining emergency exceptions for land-fill sites and make those criteria public through the Environmental Registry.

## Part 6: Reviews And Investigations

### What Are Reviews And Investigations?

The *Environmental Bill of Rights* allows Ontario residents to ask prescribed ministries to review existing environmental policies, Acts, regulations and instruments, or the need for new environmental policies or laws. These are called Reviews. Ontario residents can also ask prescribed ministries to investigate alleged contraventions of environmental laws. These are called Investigations.

When requested, my staff assist members of the public interested in using these processes. It is my responsibility to review and forward completed Review and Investigation Applications to the ministries responsible, and to report on how the ministries receive and handle Applications. A complete list of Applications received during the reporting period is available from my office.

### How The Ministry Of Environment And Energy Received And Handled Applications

During the reporting period, the Review and Investigation processes applied only to the Ministry of Environment and Energy which met all the procedural requirements for receiving and handling Applications.

I forwarded 313 Applications for Review and 13 Applications for Investigation to MOEE (see Tables). The Ministry met all of the required timelines for acknowledging receipt of Applications to applicants and to my office, and for determining whether or not to conduct a Review or Investigation. Where Investigations were undertaken, but not completed within the required 120-day period, the ministry provided the required notice of time extensions to the applicants. I encourage all ministries to set similar goals.

#### **Applications for Review (MOEE)**

TOTAL Forwarded to MOEE	313
Reviews undertaken	227*
Reviews completed	0
Reviews denied	53**
Returned to ECO	33

\* These 227 applications related to 2 topics:  
(1) tritium and (2) soft drink regulations

\*\* These 53 applications related to 14 different topics

#### **Applications for Investigation (MOEE)**

TOTAL Forwarded to MOEE	13
Investigations undertaken & completed	3
Investigations denied	9
Not yet decided	1

## What Are Reviews And Investigations? Compliance With Investigation Procedures

I undertook a detailed review during this reporting period with the following objectives: to determine whether the Ministry of Environment and Energy complied with the legislated requirements for Applications for Investigation; and whether it had adequate procedures for dealing with those Applications. Although not required by the *EBR*, the Ministry often proposed alternatives to applicants when an Investigation was not undertaken.

Overall, I observed that:

- The Ministry's process for considering Applications for Investigation is well designed and that receipt and handling procedures comply with the *Environmental Bill of Rights* and support accountability for each stage in the process
- The Ministry processed Applications for Investigation within the required timelines
- Where an investigation was already underway, the Ministry reported the results of that investigation to the applicants within the timelines that an Investigation under the *Environmental Bill of Rights* would require
- The Ministry issued all required correspondence
- Procedures were documented and duties and responsibilities were clearly assigned to units and employees
- The Ministry had clear criteria for accepting or denying Investigations
- All applicants denied an Investigation were told why based on *Environmental Bill of Rights* criteria
- If the Ministry decided not to conduct an Investigation and an alternative existed, the Ministry tended to suggest it to the applicants

## Disposition Of Applications

Out of 16 different topics raised in Applications for Review, two were reviewed by the MOEE. Out of 13 Applications for Investigation, three were undertaken and completed by the MOEE.

## Ministry Priorities For Conducting Reviews

Reviews take time and resources. The *Environmental Bill of Rights* allows ministries to set priorities for conducting thorough Reviews of policies, Acts, regulations and instruments.

In late 1995, I asked the MOEE about the status of the Reviews it accepted during the 1994-95 reporting period. In a letter dated January 15, 1996, the Ministry indicated that it expected to complete its Review of the Ontario Drinking Water Guideline for Tritium in late 1996.

## Ontario Drinking Water Guideline For Tritium

### Issues

Concern over the Ministry of the Environment and Energy's decision to establish an interim Ontario Drinking Water Objective (ODWO) for the level of tritium in drinking water at 7,000 becquerels per litre (Bq/L) generated the most Applications for Review. These Applications were based on a public campaign by Energy Probe, a Toronto-based environmental group.

Tritium is a radioactive form of hydrogen that is known to be carcinogenic. While tritium is found naturally in the environment, the majority of tritium in Lake Ontario is a by-product of nuclear reactor operations. The original ODWO was based on the Canadian Drinking Water Guidelines for radionuclides.

The Advisory Committee on Environmental Standards (ACES) conducted an independent public review of the standard established by MOEE's Standards Development Branch for tritium in the water. The ACES review of a report developed by MOEE's Standards Development Branch resulted in different recommendations concerning tritium levels in drinking water. MOEE recommended that an interim ODWO of 7,000 Bq/L be adopted but the ACES report recommended that tritium levels be set at 100 Bq/L and reduced to 20 Bq/L over the next five years. While the ACES report calculated the safe human exposure to tritium based on the lifetime exposure of an individual, the MOEE report was based on individual exposure over one year.

The Review applicants believed that the decision by MOEE to implement the recommendations of an internally developed report rather than the review performed by an independent, scientific panel like ACES reflects a lack of stringent guidelines for radioactive carcinogens in Ontario.

### Outcome

MOEE is reviewing the interim Ontario Drinking Water Objective for Tritium and will make its decision in the latter part of 1996.

The Ministry also expects to complete its Review of the *Environmental Protection Act* regulations governing Refillable Beverage Containers in the first quarter of 1997.

## Applications Denied

While the Ministry of Environment and Energy met the procedural requirements for Applications, some members of the public expressed concern about how the Ministry applied its criteria for deciding whether to pursue Applications. The Ministry of Environment and Energy rejected the majority of Applications for Review and Investigation, even though many had merit and raised important public policy issues, including drinking water standards, air pollution control, groundwater protection, and landfill and waste matters.

## Issues Raised By Applications

### 1. Drinking Water

I received a number of Applications involving drinking water. The Ministry of Environment and Energy concluded none of the issues raised warranted a Review. As a result, I reviewed in detail two Applications for Review. These Applications asked the Minister of Environment and Energy to develop drinking water standards for trichloroethylene (TCE) and Cryptosporidium.

### Trichloroethylene

Trichloroethylene is used primarily in dry cleaning and metal-degreasing operations. It is released mainly to the air, but may be introduced into surface and groundwater in industrial effluents. Canada classes TCE as a possible human carcinogen, the World Health Organization lists it as nonclassifiable, and the United States Environmental Protection Agency deems it as a probable human carcinogen.

MOEE rejected this particular Application for Review because: "The Ontario Drinking Water Objectives were revised in 1994, and include an objective for trichloroethylene which is currently under review by Health Canada and the Federal-Provincial-Territorial Subcommittee on Drinking Water. Following the completion of this initiative, which is expected in 1996, Ontario will consider adopting the revised guideline as an Ontario Drinking Water Objective."

The Canadian/Ontario drinking water guideline for trichloroethylene is nearly ten years old. As noted above, it was under review when MOEE responded to this particular Application. However, I discovered that TCE earned low priority on the Federal-Provincial Subcommittee's agenda.

In the short term, I urge MOEE to assess the occurrence of TCE in Ontario's drinking water supplies using existing data from the MOEE's Drinking Water Surveillance Program. This should help MOEE decide if more action is needed, such as more intensive sampling of water supplies which appear to be at risk. Depending on the size of the risk, MOEE should consider a more stringent interim guideline until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.

Although MOEE's decision to forgo this Review may have been appropriate at the time, the fact that the Subcommittee may not review TCE any time soon suggests the need for further examination by MOEE. Indeed, the Ministry may wish to develop a tracking procedure for revisiting these kinds of issues.

If the Ministry intends to cite future reviews by scientific panels like the Federal-Provincial-Territorial Subcommittee on Drinking Water as a reason for not performing EBR-related Reviews, then MOEE should verify the status of the Subcommittee review process and approximately when a new guideline (or reconfirmation of the existing guideline) will be available.

## Cryptosporidium

All surface water, and groundwater influenced by surface water, is potentially vulnerable to *Cryptosporidium* contamination. *Cryptosporidium* is a protozoan parasite that causes disease in humans and other hosts. In many cases, water treatment practices need to be upgraded to remove *Cryptosporidium* and defend against the organism.

As in the TCE Review Application, the Ministry of Environment and Energy decided not to conduct a Review on *Cryptosporidium* with respect to Ontario's Drinking Water Objectives because the Federal-Provincial-Territorial Subcommittee on Drinking Water is already reviewing the issue.

On one hand, MOEE's decision is reasonable since the matter is under consideration by the Subcommittee. On the other, a guideline for *Cryptosporidium* may be subject to much discussion before it is accepted by the Subcommittee. In the interim, MOEE should assess the needs of the approximately 40 surface water treatment plants in Ontario which are potentially vulnerable to *Cryptosporidium*. For plants which are most vulnerable, planning for the installation of filtration should proceed, unless it can be shown to be unnecessary. MOEE and MOH should also consider installing *Cryptosporidium* detection methods at the most vulnerable plants to provide early warning of an outbreak.

Since MOEE responded to this Application, an outbreak of cryptosporidiosis was confirmed in Collingwood. Although not proven, the water supply is suspected as the source. Similar outbreaks have been documented in other Ontario communities. These outbreaks suggest that the water supply could be vulnerable because the treatment does not include filtration. The Collingwood outbreak underlines why MOEE should take a proactive approach to protecting Ontario's drinking water from *Cryptosporidium*.

## 2. Air Pollution

Air pollution emissions from smokestacks continue to pose problems. MOEE frequently deals with complaints about air quality and odour. In fact, these complaints represent about 80 per cent of all complaints received by the MOEE's regional offices.

Because Certificates of Approval for air emissions are not updated regularly, they may not reflect current environmental standards or public expectations. In 1990, MOEE proposed major revisions to smokestack emissions regulations and planned to deal with an estimated 20,000 air pollution sources. These positive changes would have required reviewing Certificates of Approval every 10 years, and ordering emitters to regularly upgrade their emission controls. Best management practices were also promised as a routine part of Certificates of Approval. Regrettably, these regulatory reforms were never implemented.

Several Applications cited the local effects of daily or occasional air emissions from asphalt plants, smelters, cement companies and metal stripping operations.

## Excessive Factory Smoke

### Issues

The applicants alleged that a factory was releasing too much black smoke into the air. MOEE did not conduct an Investigation because, prior to receiving the Application, it had scheduled a routine inspection of the factory's waste management practices. The Ministry sent a copy of the inspection report to the applicants. The inspection report was issued within the same timelines required for an Investigation under the EBR and the inspection also examined areas not mentioned by the applicants.

Ministry staff visited the factory and found various deficiencies in its operations, including outdated Certificates of Approval, no assessment of smoke levels and contaminants, the discharge of waste in sewers in compliance with municipal by-laws but without provincial Certificates of Approval or guidelines, and a dated environmental contingency plan.

### Outcome

The Ministry asked the factory to make improvements to its operations, some required by law, others "strongly recommended." The Ministry also required the factory to give a written workplan and implementation schedule of the improvements within a month of the report.

### Conclusions

Ministries need to help businesses by making recommendations to improve operations and promote pollution prevention, not just when a law or regulation has been violated. The Ministry is commended for asking the factory to submit a written workplan and implementation schedule of requested improvements.

## Countdown Acid Rain Program

### Issues

Ontario's Countdown Acid Rain Program concentrated on regulating emissions from four corporations which together produce approximately 80 per cent of sulphur dioxide emissions in the province. The goal of the program, which is run by MOEE, was to reduce acid rain-causing industrial emissions from the 1980 base level of 2,194 kilotonnes per year to 877 kilotonnes per year in 1994. MOEE's monitoring has shown that all four companies have met the regulated targets, and in fact have done better than the requirements.

The applicants believed that not enough is being done to prevent damage from the emissions from a high smokestack used by a metals refinery and that these emissions affect forests and lakes in the Muskoka area. Applicants noted their concern about other high smokestack pollutants, including arsenic, lead and aluminum. They also said MOEE does not use appropriate wind pattern information when monitoring such emissions.

### Outcome

MOEE declined to undertake a Review, citing the successes of the Countdown Acid Rain Program. It also pointed out that the control processes used to reduce acidic emissions from the superstack reduced heavy metal emissions by approximately 50-75 per cent since the early 1980s. MOEE stated that further improvements are expected.

### Conclusions

Ministers can decline Reviews on the grounds that the matters are otherwise subject to periodic review. In this case, the Ministry has been conducting periodic reviews using independent auditors through its Countdown Acid Rain Program.



In most cases, the Ministry was aware of these longstanding concerns and decided not to conduct an Investigation or Review, an investigation had been undertaken previously, or the ministry was involved in ongoing negotiations to reduce emissions.

One Application noted MOEE's reliance on a dilution approach to air pollution which encourages construction of high smokestacks, without reducing overall air pollution loadings or seeking pollution prevention.

Several Applications pointed to a perceived lack of service for air pollution complaints. One said local residents often saw a factory stack emitting late at night. Several applicants were frustrated because repeated complaints produced no action.

In most situations MOEE staff have no relevant monitoring data when they try to follow up on complaints about air emissions from specific sources. It is not clear what criteria MOEE staff use to evaluate eyewitness evidence, or how they decide to deploy available monitoring equipment.

Underlying factors like historical land-use zoning, Ontario's aging manufacturing infrastructure, outdated Certificates of Approval, reliance on dispersion of air pollutants, and inadequate monitoring of specific sources all mean MOEE can expect to spend more of its limited resources addressing complaints about unacceptable air emissions in the future. Public resources might be better used addressing these factors.

In the past MOEE reviewed new land use plans and policies to prevent such conflicts from occurring in future. It is no longer clear if these reviews will continue under the *Planning Act* as amended by Bill 20. Regardless of who conducts environmental reviews after the passage of Bill 20, Ontario must take a preventative approach to air pollution problems.

### 3. Groundwater

About 23 per cent of Ontario's population relies on groundwater (see Glossary) for drinking water. Moreover, groundwater is the only source of water for about 90 per cent of the rural population. Once impaired, restoring groundwater is difficult and expensive.

MOEE is responsible for managing and protecting groundwater resources. The Ministry of Consumer and Commercial Relations regulates fuel storage in underground tanks to prevent leaks into groundwater, while the Ministry of Transportation and Ontario municipalities are responsible for the effects of road salt on groundwater.

MOEE is also responsible for ensuring proper installation and operation of water wells. Under the *Ontario Water Resources Act (OWRA)* MOEE licenses all well contractors/drillers and well technicians.

Groundwater can be impaired by wastewater treatment infiltration basins, landfills, waste disposal into deep wells, spray irrigation, sludge use or disposal operations, septic tank systems and mine tailings — all of which are regulated through Certificates of Approval issued by MOEE.

A number of activities that do not require specific approvals under the *OWRA* or the *EPA* can also contribute to groundwater contamination, including improper crop fertilization, manure application and salt spreading, salt storage, unlicensed and closed landfills, and leaks and spills. Unlike some jurisdictions, Ontario has no specific legislation or programs to designate or protect significant groundwater recharge areas.

Thirteen Applications requested a Review of the way Ontario manages groundwater. Applicants called for a more comprehensive, preventive approach to groundwater protection and cited the cost of cleaning up conta-

minated groundwater.

Applicants were concerned that MOEE can only require cleanups after contamination, and that staff with hydrogeological expertise are few and far between. They also worried that municipal and regional governments wanting to act on groundwater protection have limited jurisdiction to do so. MOEE declined these Applications for Review, stating that current laws and regulations adequately protect Ontario's groundwater.

Protection of groundwater quality is a challenge we must meet given the large numbers of potential contamination sources. Detection of contamination is often difficult, and may occur years later, sometimes making it impossible to identify the responsible person or company.

For example, MOEE can only inspect a small percentage of Ontario's septic systems. Recently, its Cottage Pollution Control Program inspected about 1,000 systems annually. Meanwhile, approvals for approximately 40,000 new septic systems are issued every year.

Many contaminant sources affect the quality of Ontario's vital groundwater. Effective control of these contaminant sources is impeded by inadequate legislation, plus inadequate inspection and enforcement resources.

Some provincial resource managers are recognizing the need for more action on groundwater protection. For example, in 1993 MOEE and MNR jointly published several guidance documents encouraging municipalities to manage water on a watershed basis. They proposed that watershed management plans include groundwater management and recommended that baseline information include location maps for groundwater, the direction of groundwater movement, recharge zones and the susceptibility of groundwater to contamination.

Clearly, MOEE and MNR saw conservation authorities as the right choice for coordinating the preparation of watershed plans. However, provincial funding for conservation authorities across Ontario has been cut 70 per cent, while their mandate is now restricted to flood control. Given the financial constraints of Ontario municipalities, it is not likely many of them will voluntarily take on new responsibilities like groundwater management. At the same time, MOEE and MNR also face substantial funding reductions, and early indications are that environmental monitoring programs will be particularly affected.

While MOEE declined to conduct a Review of its groundwater policy, in an interview with the Kitchener-Waterloo Record in November 1995 the Honourable Brenda Elliott called for a strategy for groundwater protection: "I'm anxious to see what has been done and if we can do that better."

Cost-effective protection strategies are possible. For example, in 1993 the Commission on Planning and Development Reform recommended that MOEE inspect all private and communal septic systems every five years, and implement a user fee to cover costs. This recommendation has not been implemented.

Ontario's groundwater management framework should be reviewed and updated. This would require active participation and co-operation from MOEE, MNR, MCCR, OMAFRA and MTO, who should start by compiling current, accurate groundwater data, plus statistics on inspections of potential contamination sources and enforcement of relevant legislation — information that should be made public. (I was pleased to receive a letter dated February 19, 1996 from MOEE stating: "The Ministry of Environment and Energy, in conjunction with the Ministry of Natural Resources, Ministry of Agriculture, Food and Rural Affairs, and the Ministry of Municipal Affairs and Housing, is currently in the process of developing an integrated strategy for the management and protection of the groundwater resource.")

## **Groundwater Contamination Activities**

### **Spills:**

MOEE documents approximately 5,000 spills annually in Ontario. About 900 of the spills reported in 1992 involved soil contamination.

### **Septic systems:**

Ontario has approximately one million conventional septic systems. About 30 per cent are malfunctioning and discharge sewage to either surface or groundwater. MOEE studies in Muskoka and Haliburton found one third of septic systems inspected were designed below standards.

### **Leaking Underground Storage Tanks:**

Approximately 200 spills from such tanks are reported to the Ministry of Consumer and Corporate Relations' Fuels Safety Branch each year. While MCCR estimated the average cost of an individual site cleanup after a spill of petroleum products is \$200,000, sometimes costs climb into the millions. By some estimates, Ontario has about 34,000 underground storage tanks containing gasoline, oil, aviation fuel and a variety of other chemicals. In 1986, Environment Canada estimated that between five and 10 per cent were leaking.

### **Road Salt:**

Wherever road salt is spread, the potential for groundwater contamination exists. Well contractors recommend that wells be located some distance from highways to avoid this threat. In 1990-91, approximately 700,000 tonnes of salt were used on Ontario's roads. The next year, that number dropped to 640,000 tonnes, the result of a salt reduction program by the Ministry of Transportation. In 1992-93, the MTO's salt reduction target of 150,000 tonnes was projected to save about \$6.5 million.

### **Pesticides:**

While Ontario farmers have reduced their use of pesticides in recent years, pesticides are still a key to controlling weeds and crop pests. For example, in 1991 farmers reported pesticide expenditures averaging more than \$4,000 per farm. Pesticide application may result in pesticide residues in local groundwater. In the winter of 1991-92, approximately 1,300 domestic farm wells in Ontario were sampled for pesticide residues and were resampled that summer. In the winter survey, some eight per cent had detectable levels of pesticide residues, as did 12 per cent in the summer. While agriculture accounts for approximately 70 per cent of pesticide use, residues may also enter groundwater after being applied to golf courses, public parks, residential gardens and highway rights of way.

#### *4. Landfill Site Management*

Ontario has 1,400 active and almost 2,500 closed landfill sites. This includes many older landfills still operating under permits issued in less stringent regulatory times. MOEE has classed approximately 40 per cent of the active sites as having the potential to affect human health. And, once closed, sites do not automatically stop producing leachate.

I received three Applications for Investigation concerning existing landfill site management during the reporting period. MOEE conducted a preliminary investigation in one case and a more complete one in a second case. MOEE did not conduct the third Investigation because it would duplicate an investigation done the previous year.

While the Ministry agreed there was leachate migration off-site in two cases (into a creek and into groundwater), neither Investigation led to prosecution. However, MOEE states it will continue to monitor leachate impacts, and will encourage abatement activity by landfill site operators.

The fairness and efficacy of the "reasonable use" policy for groundwater, which is specifically related to the application of two MOEE guidelines, arose in several Applications. Basically, these guidelines set an upper limit on the amount of contamination owners of adjacent properties should have to tolerate. Since landfill leachate may contain hundreds of different contaminants, the guidelines permit degradation of groundwater depending on whether the specific contaminant is health or non-health related.

Neighbours must rely on the results of year-to-year monitoring of groundwater to see if contamination levels have surpassed the reasonable use threshold. This has serious limitations, including doubt about whether current methods accurately estimate the quantity or type of contamination that will be discharged by a disposal facility.

One applicant raised concerns about continued dumping of household hazardous waste at landfill sites. If landfill sites do not have effective leachate controls, contaminants from household hazardous waste will eventually migrate to groundwater.

Applicants also pointed to the management of existing landfill sites. They were concerned about too much focus on leachate clean-up and crisis management, and too little on prevention. They also complained about odour, dust and noise.

Based on my review, and MOEE's approach to handling landfill management disputes, I expect that landfill management practices will continue to attract the attention of adjacent landowners and the public.

Both municipalities and MOEE must minimize the environmental effects of Ontario's existing landfill operations. A review of provincial rules and guidelines governing landfill operations would reduce current threats. A review must be open and participatory, and reflect the regional diversities of waste disposal practices in Ontario. If such a review reveals that increased resources are needed, then those resources must be provided either from general revenues or dedicated user fees. Ultimately, the benefits of protecting human health and groundwater are worth substantial investment.

## Leachate Leakage From Landfills

### Issues

The applicants alleged that leachate from a landfill was leaking onto their property and that the leachate was harming the quality of their groundwater, which could otherwise be used as drinking water. The applicants also alleged that there was litter, blowing dust, noise, odour and uncovered garbage at the landfill, contravening regulated standards for landfill operations.

The Ministry of Environment and Energy conducted an Investigation into whether the contaminant leakage violated the Ontario Water Resources Act and whether the landfill violated the Environmental Protection Act. Ministry staff reviewed records and reports of previous inspections and the information provided by the applicants, and conducted some water tests in areas near the landfill. The applicants complained about the time this took, but the Ministry met the timelines required by the EBR.

### Outcome

The Ministry concluded that the leachate leakage did not significantly harm the surface water beyond the landfill. The groundwater beyond the landfill had a contaminant, dichloromethane, at 35 parts per billion (ppb), a level above Ontario's "Reasonable Use Limit" (12.5 ppb) but still below the 50 ppb level prohibited by Ontario's drinking water standards. Since the contamination was never above the level prohibited by the Ontario Drinking Water Objectives and was still declining, and measures to prevent further contamination were installed, the Ministry did not prosecute.

The Ministry did not consider the other problems like odours, blowing dust, noise and litter significant enough to violate the Environmental Protection Act. The blowing dust and noise were not considered ongoing problems by immediate neighbours of the landfill and odour and litter problems were resolved whenever Ministry staff told the landfill operator to take corrective action. The Ministry stated that some of these nuisances will occur from time to time because of routine landfill operations.

## 5. Soft Drinks and Packaging Waste

During the reporting period, I received one Application requesting a Review of Ontario government policies on packaging wastes, and one requesting an Investigation of the use of refillable and recyclable non-refillable soft drink containers.

The MOEE responded to one Application by looking into the soft drink sales of the companies cited and even went so far as visiting convenience stores to count drinks sold in different containers. The law was indeed being broken. The Ministry then told the applicants it would not be laying charges because of ongoing discussions between MOEE and the industry on how to meet the required refillable rations. The Ministry also indicated it was waiting for the results of two studies concerning soft drinks and packaging wastes.

In reviewing this decision, I concluded that all commercial sectors involved in packaging waste achieved substantial increases in packaging recycling in the last 10 years. In light of past progress, I concluded the Ministry's decision to await the outcome of the studies made sense. However, once the results are in, the Ministry should explain what changes, if any, it will make and place the proposal on the Environmental Registry.

## Soft Drink Container Regulations

### Issues

Since the late 1980s, the Ministry of Environment and Energy has not enforced Ontario's soft drink container regulations. Regulations 340 and 357 of the Environmental Protection Act deal with soft drink containers. The first encourages the recycling of non-refillable containers and the second encourages re-use of refillable containers; the latter also requires soft drink companies to sell their products only in refillable containers (e.g., a money-back glass bottle). Still, Regulation 340 allows them to sell a certain ratio of soft drinks in recyclable non-refillable containers (e.g., metal cans, recyclable plastic bottles). A company may sell soft drinks in either refillable or recyclable non-refillable containers, provided that, annually and monthly, at least 30 per cent by volume of each brand is sold in refillable containers.

However, all parties agree that no soft drink company has met that requirement. Since 1991, the soft drink industry, in consultation with the Ministry and other stakeholders, has explored ways to increase refillable container sales. In 1995, the industry was working on two pilot projects to evaluate the potential use of plastic refillable bottles.

The applicants alleged that two soft drink companies sold fewer than 30 per cent of their soft drinks in refillable containers from 1991 to 1994. MOEE reviewed the two companies' sales reports from May 1994 to May 1995, concluding that the companies did not sell 30 per cent of their soft drinks in refillable containers in any month during that period.

### Outcome

The Ministry found the two companies violated Regulations 340 and 357. However, it did not lay charges because of a concern that it would be inappropriate to prosecute while the Ministry and the industry are working together to find a solution. The Ministry is also awaiting the completion of two industry studies of the issue.

## A Sustainable Packaging And Distribution System

The Ontario government has the opportunity to set ground rules to promote a sustainable system for packaging and distributing food and beverages that:

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

## Recommendations:

1. The Ministry of Environment and Energy assess the occurrence of trichlorethylene in Ontario's drinking water supplies using existing data from its Drinking Water Surveillance Program . MOEE should then decide if further action is required, such as more intensive sampling of water supplies which appear to be at risk. Depending on the magnitude of the risk, MOEE should consider a more stringent guideline on an interim basis until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.
2. The Ministry of Environment and Energy assess the needs of the approximately 40 surface water treatment plants in Ontario which are potentially vulnerable to Cryptosporidium. For plants which are most vulnerable, planning for the installation of filtration should proceed, unless it can be demonstrated to be unnecessary. MOEE and the Ministry of Health should also consider installing Cryptosporidium detection methods at the most vulnerable plants to provide early warning of a breakout.
3. The Ministry of Environment and Energy verify the status of reviews by the Federal-Provincial-Territorial Subcommittee on Drinking Water and other scientific panels before citing such reviews as a reason to decline Applications for Review under the *Environmental Bill of Rights*.
4. The Ministry of Environment and Energy address public concerns about air pollution from smokestacks by focusing more resources on resolving the underlying factors within its mandate, including outdated Certificates of Approval, inadequate monitoring of sources, and regulations which focus too heavily on short-term concentrations of pollutants and not enough on long-term loadings to the environment.
5. The Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing, in their role of reviewing and approving municipal land use plans, establish and apply guidelines to help prevent future land use conflicts caused by air emissions.
6. Ministries cooperate to review and upgrade Ontario's groundwater management framework. These ministries would include the Ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation. As a first step, ministries should compile current, accurate information on groundwater data, as well as statistics on inspections of potential contamination sources and enforcement of relevant legislation. This information should be made public.

7. The Ministry of Environment and Energy, working with municipalities, focus more efforts on minimizing groundwater and other environmental impacts of existing landfill operations. These efforts should include a shift in focus from merely monitoring leachate plumes in groundwater to an increased emphasis on preventing such contamination. A first step might be a review of existing provincial rules and guidelines governing landfill operations. Such a review should involve the public, and reflect the regional diversities of waste disposal in Ontario.
8. The Ministry of Environment and Energy announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently underway are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of Environment and Energy should begin to enforce the refillable soft drink container regulations under the *EPA*.
9. Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the EBR and cite any additional relevant factors in their decision such as limited resources required to carry out a review. Whenever possible, valid concerns of the Applicants should be addressed.
10. Ministries follow the lead of the Ministry of Environment and Energy whose procedures for the receipt and handling of Applications for Review and Investigation are exemplary.



## Part 7: Instrument Classification

### What is an Instrument?

Companies and individuals do things that affect the environment. In many cases, they must receive approval from the provincial government before doing so. For example, installing a septic system or air pollution control equipment or pumping large quantities of groundwater requires ministry approval. These approvals are called instruments.

The *Environmental Bill of Rights* requires ministries to classify certain instruments to reflect their environmental significance. This is important because classification determines which types of approvals, permits or licences will be posted for public comment on the Environmental Registry, and how much public participation will take place during the decision-making process on that instrument.

Only the Ministry of Environment and Energy was required to classify its instruments during the reporting period. Ultimately, three other ministries will follow suit, guided by MOEE's experience. I advise those ministries to prepare adequate background information about their instruments so that the public can provide meaningful input into their classification proposals.

### MOEE's Instrument Classification Regulation

After limited public consultation, the Ministry of Environment and Energy released its draft regulation on instrument classification in August 1993. The ministry provided no regulatory impact statement or background information to show the significance of classifying some instruments while excluding others. Instead, it released a set of proposed instrument classifications, invited public comment, and released the final regulation in October 1994.

The Task Force on the *Environmental Bill of Rights* underscored the importance of public input in 1992 when it recommended consultation before MOEE finalized its classification regulation. Taking stock of MOEE's minimalist approach, I encouraged the three other ministries - Natural Resources, Consumer and Corporate Relations, and Northern Development and Mines to start the classification process in late 1995, and to consult broadly on their draft regulations. These three ministries must classify their instruments within a reasonable time after April 1, 1996.

### MOEE's Classification Of Instruments

MOEE classified more than 30 types of instruments issued under the *Environmental Protection Act*, the *Ontario Water Resources Act*, and the *Pesticides Act* during the reporting period. MOEE issues between 2,500 and 3,500 classified instruments a year.

Because MOEE released no information about the numbers or types of instruments it issues annually, or a regulatory impact statement, it was difficult to evaluate the ministry's proposed classification system.

For example, anyone who wants to take more than 50,000 litres of water per day from any water source has to apply to the MOEE for a Permit to Take Water. These permits are classified instruments, except for Permits to Take Water for irrigating farm crops and Permits to Take Water for periods of less than one year, which have not been classified and do not show up on the Registry.

It may be that these types of Permits to Take Water are not classified because few are issued under these two exceptions, or because they are not deemed to be environmentally significant. However, in parts of Ontario where groundwater shortages occur, even a single new user pumping more than 50,000 litres every day could affect local groundwater levels. Had the MOEE offered more information about how many instruments it issues every year under these two exceptions, and reasons for excluding them, the public would have been able to provide informed comment.

MOEE reported to me later that it issues about 113,000 instruments annually. More than 80,000 are for private septic systems. In other words, about 33,000 of the MOEE's annual instruments are not septic permits, and approximately 2,700 of these (fewer than 10 per cent) have been classified as environmentally significant.

### **Cumulative Environmental Effects And Cumulative Posting**

MOEE's decision not to classify certain types of high-volume instruments, like permits for private septic systems, is pragmatic and, in some respects, reasonable. Still, over time many small isolated decisions can have significant cumulative environmental effects.

It is important to identify factors that contribute to the slow deterioration of natural resources, and we need the data early on. We must also be able to identify unexpected regional clusters of certain types of instruments which might indicate inconsistent application of policies across the province.

Currently, Ontario does not adequately monitor or inform the public about many types of individual environmental decisions. Ministries do not systematically report absolute numbers of instruments issued, nor do they compare instruments from region to region or from year to year.

The Environmental Registry should be used to track and report on certain high-volume instruments that may have cumulative environmental effects. Indeed, ministries could post aggregate numbers of certain types of approvals or licences issued annually or semi-annually.

This approach should be applied to approvals for Ontario's approximately one million septic systems. MOEE studies show 30 per cent of those septic systems may be malfunctioning. Moreover, the Ministry approves approximately 40,000 new septic systems each year. An individual septic system may not affect the environment much but, over time, many can overwhelm the capacity of lakes and groundwater to deal with the effluent.

## Recommendations:

1. Ministries complete their instrument classification process and consult with the public on classification proposals and amendments to classification regulations.
2. Ministries determine those high-volume instruments which are likely to produce cumulative environmental effects, and post annual statistics for these non-classified instruments on the Environmental Registry.



## Part 8: Other New Legal Rights

### Appeals

The right of “third parties” (see Glossary) to apply for leave to appeal ministry decisions on certain types of instruments is an important legal innovation established by the *Environmental Bill of Rights*.

Acknowledging that members of the public often have an interest in a ministry's decision to issue an instrument, along with the environmental safeguards that the ministry has put in place, the *Environmental Bill of Rights* gives third parties (downstream users of water or factory neighbours, for example) the right to ask an independent tribunal to grant them a hearing.

If other realms of public policy with more inclusive appeal rights are relevant precedents, this new leave to appeal process will encourage better decisions.

### Using The Appeal Provisions

The Chair and staff of the Environmental Appeal Board, the first appeal body required to hear leave to appeal applications under the *Environmental Bill of Rights*, developed guidelines to make this new process as smooth as possible. I appreciate the Board's support and I look forward to working with other appeal tribunals in the future.

Fourteen applications for leave to appeal were made during the reporting period. They all related to MOEE decisions, and 10 of them concerned approvals sought by Petro-Canada Products in Mississauga (see Box).

### Requiring Adjudication Within 30 Days

Appeal tribunals must decide whether to grant leave to appeal within 30 days after the day the leave application is filed (in unusual circumstances, the tribunal can take more time). For the first leave applications, that 30-day timeline proved too short.

Requests by parties for more time to present their positions ranged from one to four months, and these delays were of concern to proponents seeking approvals and permits from MOEE. These delays seem due to several factors: all parties are interpreting the appeal provisions with particular caution; the issues before the Board are often complex; and the lawyers involved often have competing demands on their time.

### Early Appeal Results

Of the 14 applications for leave to appeal made during the reporting period, two were decided during that time, one was withdrawn, and decisions on the remaining 11 were pending at the end of December 1995.

In its first two decisions the Environmental Appeal Board rejected both applications. While it supported the public's opportunity to influence decisions, the Board did not find compelling reasons to grant the applicants a full hearing.

The third party appeal right is not likely to generate volumes of applications. However, the intense interest in certain instrument decisions shows that the process will prove valuable when competing uses of the environment are not resolved satisfactorily.

## **Petro-Canada Leaves To Appeal**

### **Tribunal**

*Environmental Appeal Board*

### **Issues**

*The Petro-Canada leave to appeal applications involved two separate decisions. The first was an approval by the Ministry of Environment and Energy under the Ontario Water Resources Act for sewage works required as part of a new 8,000 barrels-per-day lubricants production process. The second was an MOEE approval for air emissions under the Environmental Protection Act allowing four new heaters and a change in the servicing of an existing heater required as part of the new lubricants production process. (For more detail, see Part 5: Ministry Environmental Decision Making).*

*There were five applicants for leave to appeal both of these decisions. An access to information issue arose under the Freedom of Information and Protection of Privacy Act when a request for technical information was initially refused. This lengthened the time necessary for the Environmental Appeal Board to make a decision on the appeal application.*

### **Outcome**

*The Board's decision is pending.*

## **The First EBR Leave To Appeal Application: The Hunter Decision**

### **Tribunal**

*Environmental Appeal Board*

### **Applicant And Instrument Holder**

*Mr. Albert Hunter Jr., applied for leave to appeal a decision of a Director of the Ministry of Environment and Energy to issue a Certificate of Approval to operate eight air emission points at a wood product plant of OSBBC Ltd., a subsidiary of Boise Cascade, a large pulp and paper company.*

### **Decision**

*In its reasons for the decision released in September 1995, the Environmental Appeal Board found that Mr. Hunter passed the initial "direct interest" test because he was a neighbour who might potentially suffer adverse effects from the proposed facility's air emissions. The Board turned down the application based on the first aspect of the leave to appeal test; the reasonableness of the Director's decision. The Board was satisfied that the Director acted reasonably in applying standard Ministry procedures to determine that emission levels from the facility would be within acceptable levels set by regulation. Accordingly, it dismissed Mr. Hunter's application.*

### **Issues**

*Mr. Hunter raised concerns about the appropriateness of the Registry as a tool for public participation in the North, particularly where the minimum 30-day comment period is used. For example, members of the public in Northern or rural Ontario could have difficulty getting Registry information, because they have to travel long distances to do so. The Board noted that while the adequacy of the public consultation in this case did not bring the reasonableness of the Director's decision into question, there could be situations where the public notice is so inadequate that even if it met the minimum requirements under the EBR, it could make a Director's decision unreasonable and result in a decision that harms the environment.*

## The Right To Sue

The *Environmental Bill of Rights* gives Ontario residents the right to sue anyone who is breaking, or about to break, an environmentally significant Act, regulation or instrument and has caused, or will cause, harm to a public resource. It also allows people to sue for personal damages caused by a public nuisance. These rights were not used during the reporting period.

## Whistleblower Rights

The *Environmental Bill of Rights* provides protection from workplace reprisals to employees who blow the whistle on the unsafe environmental practices of their employers or participate in the processes established by the *EBR*. There were no such cases during the reporting period.



## Part 9: Education Initiatives

In addition to reviewing and reporting on environmental issues, I provide public education about the *Environmental Bill of Rights*. To promote maximum public awareness, my staff and I visited communities throughout Ontario and met with as many groups as possible during the reporting period, including MPPs, municipal leaders, conservation authorities, environmental non-governmental organizations, librarians, health professionals, business leaders, industry groups, chambers of commerce, service clubs, environmental trade organizations and labour representatives. We also worked with students and teachers in colleges, universities, high schools and youth groups. And to extend our reach, we set up displays at trade fairs, conferences, shopping malls and other public venues.

To support our education strategy, I established an Education and Communications Advisory Committee. This team of education and communications experts helped us develop and implement our educational programs. Their assistance and advice was invaluable.

To provide Registry access for the public in under-served or high-demand communities, my office loaned computers to groups such as CleanNorth, the Sault and District Recycling Association, the St. Lawrence River Institute, the Carlingwood branch of the Ottawa Public Library Board, the Canadian Environmental Law Association, and the Canadian University Students' Environmental Network at Queen's University, as well as to five community information centres.

The Ministry of Environment and Energy complemented our education efforts by distributing information about the *Environmental Bill of Rights*. And working together with the Ontario Environment Network (OEN), the Ministry provided outreach to environmental groups around the province. My staff worked closely with the OEN's Environmental Registry Coordinator, Cathy Taylor, to provide information to non-government organizations. With financial support from the Ministry of Environment and Energy, Ms. Taylor helped large numbers of people across Ontario access the Environmental Registry, greatly supporting the public participation goals of the *Environmental Bill of Rights*.

Meanwhile, the Ministry of Culture, Tourism and Recreation highlighted the Environmental Registry during Ontario Public Library Week 1994, and my staff and I participated in a number of Registry launches around the province.

My staff also produced a variety of publications during the reporting period, including *EBRights*, our quarterly newsletter, Ontario's *Environmental Bill of Rights and You*, a citizen's guide to the legislation, a presenter's resource kit, and a series of fact sheets. We also established a public Resource Centre — home to a comprehensive collection of environmental resource materials and services to help the public learn about their new environmental rights and how to participate.

Additional educational highlights included a visit by Dr. Helen Hughes, New Zealand's Parliamentary Commissioner for the Environment; an information-sharing forum featuring delegates from Fundacion Ambio, a Costa Rica-based environmental regulation research organization; an educational session for Legislative Assembly personnel; two multistakeholder round tables on the *Environmental Bill of Rights*; and a presentation by Doug Miller, President of Synergistics Consulting.

## Ministry Staff Training

In its Statement of Environmental Values, the Management Board Secretariat states: "In partnership, MBS and the Ministry of Environment and Energy will provide advice and assistance to prescribed Ministries in the development and delivery of their training on the *EBR*."

So far, MBS has fallen short of its commitment. On the other hand, MOEE provided general information to staff in other ministries in 1994 and a total of 143 staff in other ministries received *EBR* training during the reporting period.

To complement that work, in June 1995 my office hosted a one-day conference on the *Environmental Bill of Rights* for the prescribed ministries. Staff from each ministry attended — more than 100 in total. The meeting focused on the Statements of Environmental Values, training issues, defining environmental significance, the role of public consultation, and processes for tracking, evaluating, monitoring and ensuring compliance.

By the end of 1995, most ministries had completed some staff training on the *EBR*, but content and scope varied from ministry to ministry. The special efforts of MCCR, MOEE, MMA, MNR and MTO deserve particular acknowledgement.





## Recommendation:

1. All ministries increase their efforts to publicize the *Environmental Bill of Rights*, and particularly the Environmental Registry, to their staff and stakeholders.

Office of the  
Provincial Auditor  
of Ontario



Bureau du  
vérificateur provincial  
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2  
B.P. 105, 15<sup>e</sup> étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2  
(416) 974-9866 Fax: (416) 327-9862

### *Auditor's Report*

To the Environmental Commissioner

I have audited the statement of expenditure of the Office of the Environmental Commissioner for the period from the commencement of operations on May 30, 1994 to March 31, 1995. 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 period from the commencement of operations on May 30, 1994 to March 31, 1995, in accordance with the accounting policies described in note 2 to the financial statement.

Toronto, Ontario  
September 29, 1995

A handwritten signature in blue ink that reads "K.W. Leishman".

K.W. Leishman, CA  
Assistant Provincial Auditor

# Office of the Environmental Commissioner

## Statement of Expenditure

For the Period from the Commencement of Operations on May 30, 1994 to March 31, 1995

	1995(\$)
Salaries and wages	336,123
Employee benefits (Note 4)	30,722
Transportation and communication	24,951
Services	603,646
Supplies and Equipment	<u>375,174</u>
	<u>1,370,616</u>

See accompanying notes to financial statement.

Approved:



Eva Ligeti  
Environmental Commissioner

# Office of the Environmental Commissioner

## Notes to Financial Statement

March 31, 1995

### 1. Background

The Environmental Commissioner, an independent officer of the Legislative Assembly of Ontario, 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*, 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 generally accepted for not-for-profit public sector entities, capital assets are charged to expenditure in the year of acquisition.

### 3. Expenditure

Expenditure is 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 \$16,509.

The Office's share of contributions to the Fund during the period was \$3,362 and is included in employee benefits in the Statement of Expenditure.

## Part 11: 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.

### **Act**

A law passed by the Ontario Legislature.

### **aggregate**

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

### **appeal body**

A board or tribunal to whom an appeal or application for leave to appeal is referred. For example, the Ministry of Environment and Energy's appeal body is the Environmental Appeal Board.

### **Application for Investigation**

An EBR process that allows two Ontario residents to ask a ministry to investigate if they think someone is contravening a prescribed environmentally significant Act, regulation or instrument.

### **Application for Review**

An EBR process that allows two Ontario residents to ask a minister: to review existing policies, Acts, regulations, or instruments if they think the environment is not being protected; or to establish new policies, Acts or regulations to protect the environment.

### **aquifer**

An underground water-bearing geological formation that is capable of transmitting water in sufficient quantities to serve as a groundwater supply.

### **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.

### **conservation authority**

An authority 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.

### **decision**

A course of action resulting from the use of discretion by a prescribed Ontario government ministry.

## **EBR**

See *Environmental Bill of Rights*.

## **ecological system**

A community of interdependent plants and animals together with the environment that they inhabit and with which they interact.

## **ecosystem**

See ecological system.

## **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 ways to carry out the project. NOTE: The term "environmental assessment" has a more specific meaning in legislation such as the *Environmental Assessment Act*.

## **Environmental Assessment Act**

A statute of Ontario, R.S.O. 1990, c. E.18.

## **Environmental Bill of Rights (EBR)**

A statute of Ontario, S.O. 1993, c. 28, proclaimed 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 citizens of Ontario to participate in environmental decision making.

## **environmental decision making**

The process by which decisions having a significant effect on the environment are made within Ontario government ministries subject to the *EBR*. See environmental significance.

## **Environmental Management System (EMS)**

Part of the overall management system of an organization which sets out practices and procedures to develop and implement the environmental policies, objectives, and targets of the organization.

### ***Environmental Registry***

A computerized bulletin board established by 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 policies, Acts, regulations, and instruments; notices of appeals of instruments and appeal decisions; notices of court actions and final results; and Application forms for Reviews and Investigations.

### ***environmental significance***

See environmentally significant.

### ***environmentally significant***

The description of types of government decisions which are subject to the requirements of the *EBR*. 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.

### ***groundwater***

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

### ***hazardous waste***

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

### ***household hazardous waste***

Household hazardous waste is hazardous waste from homes, hotels, campgrounds, etc., and can include old batteries, paint cans, solvents, pesticides, old lubricating oil, polish, bleach, etc..

### ***Interministerial Committee (IMC)***

A group consisting of staff responsible for administering the *EBR* in all *EBR*-prescribed ministries.

### ***instrument***

Any document of legal effect issued under an Act, including a permit, licence, approval, authorization, direction or order.

***instrument classification***

The *EBR* requires certain ministries to 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 obtained an instrument.

***land use planning***

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

***leachate***

Liquid that percolates through landfill waste and contains contaminants leached from such waste.

***leachate plume***

An underground leak of leachate from a landfill site into soil and groundwater.

***leave to appeal***

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

***Planning Act***

A statute of Ontario, R.S.O. 1990, c. P.13, as amended. During the period covered by this Annual Report, the *Planning Act* was amended significantly by Bill 163, which received Royal Assent on December 8, 1994. The *Act* was significantly amended again, by Bill 20, which received Royal Assent on April 1, 1996.

***policy***

A program, plan or objective and includes guidelines or criteria used in making decisions about the issuance, amendment or revocation of instruments.

***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 resource**

Air, public, navigable waters, unimproved public land, public land used for recreation, conservation, resource extraction or management, and the plant and animal life and/or ecosystems associated with air, public land or public water.

#### **regulation**

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

#### **regulatory impact statement**

A statement that may be prepared by a ministry to permit more informed public consultation on a proposed regulation. It includes: a statement of the objectives of the proposal; a preliminary assessment of the environmental, social and economic consequences of implementing the proposal; and an explanation of why the environmental objectives of the proposal would be achieved by making, amending or revoking a regulation.

#### **reporting period**

The period of time, December 14, 1993 to December 31, 1995, that the Environmental Commissioner's first Annual Report is required by law to cover.

#### **Statement of Environmental Values (SEV)**

A 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.

#### **sludge**

Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant or air pollution control facility. Also referred to as bio-solid or processed organic waste.

#### **sustainability**

The concept that economic development must take full account of the environmental consequences of economic activity. Sustainability of the environment is achieved through the use of resources that can be replaced or renewed and therefore are not depleted.

#### ***Task Force on the Environmental Bill of Rights***

A task force established in 1991 by the Ontario Minister of the Environment to make recommendations about the purpose and content of an *Environmental Bill of Rights*. It was made up of representatives from the business community, environmental groups and the Ontario government. The Task Force came to a unanimous consensus on the content of the *Environmental Bill of Rights*.

#### ***third party***

A person who is not a part of the original decision about a classified instrument, but who may have a right or an interest in the decision.

#### ***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.





Environmental Commissioner of Ontario  
1075 Bay Street, Suite 605  
Toronto, ON M5S 2B1  
Phone: (416) 325-3377  
Toll Free: 1-800-701-6454  
Fax: (416) 325-3370

