Ontario's Environment and the Common Sense Revolution:
A Fifth Year Report

Canadian Institute for Environmental Law and Policy
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Acknowledgements

Ontario's Environment and the Common Sense Revolution: A Fifth Year Report

By Karen L. Clark LLB MA, Legal Analyst and James Yacoumidis MA, Research Associate

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Canadian Institute for
Environmental Law and Policy
517 College Street, Suite 400
Toronto, Ontario
M6G 4A2

Website: http://www.cielap.org
E-mail: cielap@cielap.org
Telephone: 416.923.3529
Fax: 416.923.5949

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CHAPTER I – Introduction

"Trouble about common sense is that it can often let you down. After all, common sense suggests that the sun and stars revolve around the Earth. Einstein once remarked that 'common sense is that layer of prejudices laid down in the mind prior to the age of 18'."[1]

Ontario's environment and the Common Sense Revolution: July 1999 to June 2000

The purpose of this report is to record the important environmental events in Ontario for the period of July 1999 to June 2000.

Without question, the Walkerton tragedy in late May 2000 when deadly *E. coli* bacteria contaminated the town's drinking water supply was the most important environmental event in Ontario. This is not just because six people lost their lives and thousands more were made seriously ill. Walkerton was important because it encapsulated in its catastrophe just about everything that is wrong with environmental protection under the Common Sense Revolution.

The fifth in a series

This report is the fifth in a series that has recorded the important environmental events in the Province of Ontario since the Common Sense Revolution began in 1995 with the election of the current provincial government (copies of CIELAP's earlier reports are available from our offices and website).

This report details most of the major legal, policy and other initiatives undertaken by the province during the time between July 1, 1999 and June 30, 2000 (with some updates where time allowed their inclusion).

This introduction provides an overview of the year's important events by listing the top 10 things wrong with environmental protection under the Common Sense Revolution.

Q What are the top 10 things wrong with environmental protection under the Common Sense Revolution?

1. Ministries and agencies who protect the environment have too few staff and too few funds to do their job

Since the advent of the Common Sense Revolution, Ministry of the Environment budgets have been cut by about 60 percent, based on the combined cuts to capital and operating expenses.

The May 2000 budget continues the trend. In 1994, the ministry had an operating budget of almost $400 million and a capital budget of more than $150 million. For 2000-1, the Ontario budget shows $158 million for operations and $65 million for capital expenditures.

Budget cuts to the MNR are also significant. Staff at the ministry has been cut almost in half from 6,639 in 1995 to 3,380 in 2000. In the budget plan 2000-01, capital expenditures for the MNR are $376 million, a decrease of $82 million or 18 percent from the $458 million in the interim 1999-2000 budget.

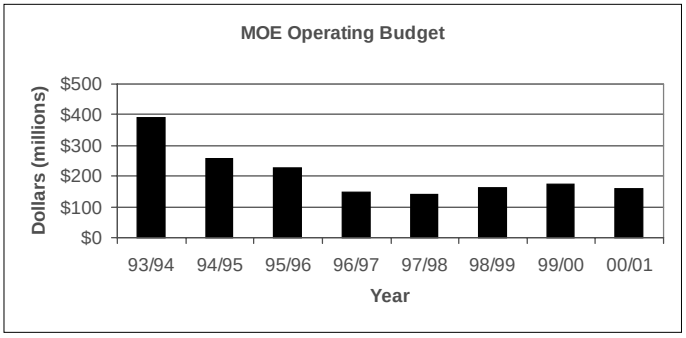
A survey of conservation authorities conducted by CIELAP in April 2000 found that many conservation authorities have been forced to scale back programs, implement smaller remediation projects, and delay the implementation of new initiatives due to limited funding and staff resources.[2] Overall, conservation authority staffing is at 50 to 75 percent of levels before the provincial reduction in operating grants in 1995.

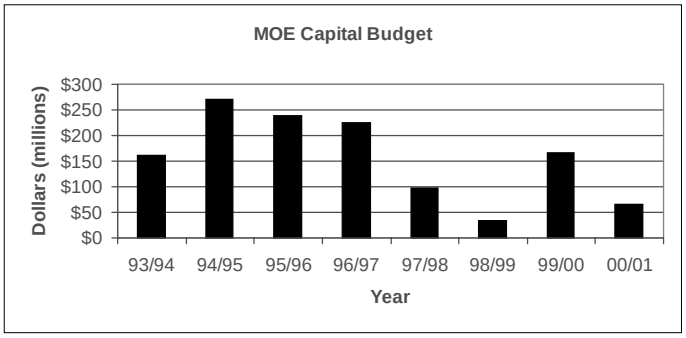
June 11, 1999

The Ontario Ombudsman Roberta Jamieson releases her annual report, which states that Ontario's public service is in a "state of crisis" as a result of downsizing, budget cuts and staff cuts.

December 31, 1999

A CIELAP *Freedom of Information Act* request discloses that the total staff in the Ministry of the Environment numbers 1,277. Of these, 120 are in the Corporate Management Division (human resources, information technology, etc.); 363 are in the Environmental Sciences and Standards Division (monitoring, reporting, standards development, etc.); 98 are in the Integrated Environmental Policy Division (waste management, water, air, land-use policy); 648 are in the Operations Division (investigation and enforcement, assessment and appeals, etc.).





2. The government loads environmental responsibilities on small municipalities on the one hand and limits their ability to protect the environment on the other

The Common Sense Revolution has transferred to municipalities a long list of responsibilities to manage with limited resources. In 1995, the province withdrew funding for municipal curbside recycling and household hazardous waste collection. In May 1997, the province withdrew funding for municipal sewer and water infrastructure and public transit. The Revolution has also, on the other hand, severely restricted the power of municipalities to manage environmental problems caused by factory farms and development pressures.

Small municipalities and water resources have been seriously affected by provincial downloading. The Walkerton *E. coli* outbreak in May 2000 is just the worst possible example of the problems caused.

In 1998, the provincial government enacted legal protection to large-scale industrial livestock facilities with the *Farming and Food Production Protection Act*. The act gives these facilities the right to appeal municipal by-laws aimed at controlling the environmental and health effects of their operations.

After Walkerton, the province has temporarily relented and permitted municipalities to pass interim control by-laws to limit further factory farm development.

3. The Common Sense Revolution thinks environmental protection is red tape

Deregulation – or cutting "red tape" – has been a major component of the Common Sense Revolution. Environmental "red tape" cuts include air and water quality monitoring systems, environmental assessment hearings, environmental inspections, provincial oversight of risky undertakings such as mining, and municipal controls on developers.

The first four years of the Common Sense Revolution accomplished most of the major cuts to environmental protection. During the report period, Bill 11 made some more small cuts to a few environmental laws. The province also cut the last of its acid rain monitoring program (total savings of this cut to the taxpayer: $100,000, an amount less than six percent of the $1.6 million annual budget of the Red Tape Commission).

The effects of all the cuts are becoming clear. At the end of May 2000, the Commission on Environmental Cooperation (CEC) released its Taking Stock, 1997 report. The report ranks Ontario as the second worst polluting jurisdiction for total air releases, fourth worst for total releases to all media, and

third worst for total transfers. The report shows that Ontario's total generation of pollutants increased by 5.9 percent from 1995 to 1997 and total transfers increased by 40 percent.[3]

This past year, the province made the Red Tape Commission a permanent legislative body. The RTC may be one of the most powerful and influential decision-makers in the province, but its deliberations and recommendations are exempt from access-to-information laws.

4. New laws and regulations do not adequately protect the environment

During the report period, the province proposed several new regulations: new endangered species and energy efficiency regulations, new laws for hazardous waste, air emissions and water quality and environmental assessments for new energy projects. Most of these initiatives have arisen as a response to crises (Walkerton) or to criticisms leveled at the government by the Environmental Commissioner, the environmental community (including CIELAP), organizations such as the International Joint Commission and the Provincial Auditor.

These and other initiatives aimed at protecting the environment show that the government is trying to do something. The problem with some of these attempts is that they pale in the face of other provincial policies. Another problem is that some of the measures are so weak they will not accomplish the province's stated goals.

For example, during the time period covered by this report, the province took the positive step of listing two more species – the king rail and the prothonotary warbler – under the *Endangered Species Act*. This is small progress, however, when compared with provincial policies under Ontario's Living Legacy Strategy announced in July 1999. Almost 400 new "protected" areas will be created under the strategy, but, where mineral deposits warrant, mining will be permitted as well. It is also an open question whether sport hunting will be permitted in Ontario's new "protected" areas.

Another positive step taken this year is the province's initiatives to regulate a privatized energy market. Beginning in January 2001, the government will introduce caps for NOx and SO_2 emissions for the province's electricity sector. The limits would cap total annual emissions from coal and oil-fired electricity generating stations in Ontario:

- NOx cap of 36 kilotonnes (kt) per year for the year 2001; and
- SO_2 cap of 157.5 kt per year for the year 2001.

However, these limits permit much higher emissions than recommended by the Ontario Medical Association,[4] and by the Canadian Council of Ministers of the Environment post-2000 acid rain control program.[5] Moreover, they do not include thermal or radiation emissions, which are a serious issue with Ontario's nuclear power plants.

The province took action in May 1999 to restrict bulk water exports from the Great Lakes, a positive, long overdue protection measure. However, over the report period, it also maintained its practice of permitting massive withdrawals of groundwater, for free, to practically any applicant. At one point, the province suggested it had placed a "moratorium" on issuing new permits to take water but this proved not to be true.

Probably the best example of an environmental initiative that is cancelled out by other provincial policies is Drive Clean, the program that requires drivers to emission-test their cars before they can renew their driver's licence. The program was initially limited to the Greater Toronto Area and the Region of Hamilton-Wentworth and extended to heavy trucks and buses in the fall of 1999.[6] The province claims Drive Clean is a success and achieving its target. However, in terms of improving overall air quality, Drive Clean hardly has a chance. Provincial land-use policies that support and subsidize urban sprawl, transportation policies that focus on highways and ignore public transit and 100 percent funding cuts to the Toronto Transit Commission and other municipal transit systems mean there are more cars on the road than ever before. More cars equals more emissions, not cleaner air.

5. The government beefs up enforcement, but will not commit to prevention and planning

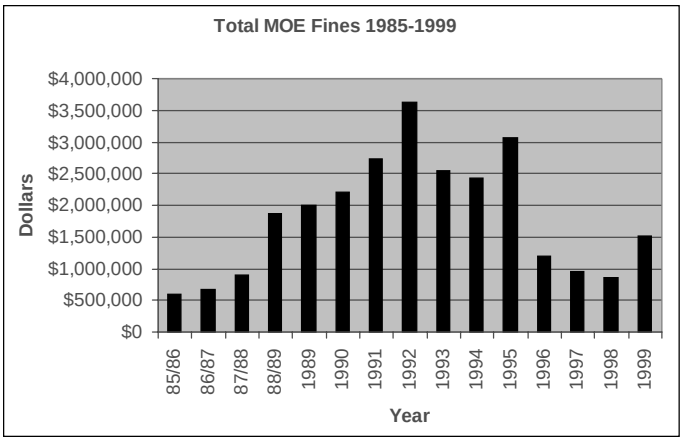
Enforcement of environmental laws in Ontario dropped sharply after 1995 when the Common Sense Revolution began. Criticized for its poor

ENFORCEMENT ACTIVITIES					
Activity	**1995**	**1996**	**1997**	**1998**	**1999**
Total number of Crown briefs received	196	143	145	204	351
Total number of charges against individuals	615	343	491	353	498
Total number of charges against corporate defendants	430	409	463	452	718
Total number of convictions against corporate defendants	232	148	215	243	389
Total fines against corporate defendants *(in 1000s of $)*	$1,845	$750	$760	$622	$1,169
Total number of convictions against individuals	280	189	203	171	222
Total fines obtained against individuals *(in 1000 of $)*	$1,220	$453	$195	$241	$340

enforcement record by the Environmental Commissioner, CIELAP and other members of the environmental community, the provincial government apparently increased enforcement activity in 1999. In response to Walkerton, too, the province promised more enforcement. This is a positive change.

However, enforcement is only one small part of an environmental protection regime. Furthermore, it imposes the cost of environmental protection almost entirely on the taxpayer and is much less effective in the end than preventive activities such as environmental assessment.

The province's record on prevention did not appreciably improve over the report period. The province did refuse Trans-Cycle Industry's application to accept PCB contaminated waste from outside Canada, but also approved with "unseemly haste" another PCB incineration facility in Cornwall. There has not been an environmental assessment hearing in the Province of Ontario since 1998. The Environmental Assessment and Appeal Board's greatest concern appears only to be that its decisions are made quickly. Performance measures for the Assessment Branch to follow up on and evaluate compliance with environmental assessments are poorly defined and still only under development.



6. Under the Common Sense Revolution, "protected areas" are not protected

The provincial government established the "Lands for Life" process in April 1997 to determine the future uses of public lands in Central and Northern Ontario, an area totaling 47 percent of the province's land area. The government said it would protect 12 percent of the lands in the planning area from development. But it also guaranteed the forestry and mining industries access to resources, some of which are within the boundaries of the so-called protected areas. In the case of mining, mineral tenure in new parks and protected areas will be maintained and prospecting and exploration permitted.

For the forestry industry, the government has committed to no long-term reduction in wood supply, no increases in the costs of the wood supply, potential exemptions for the biodiversity protection provisions of the *Crown Forest Sustainability Act* in areas of intensive silviculture, the opening of the region north of the 51st parallel to logging activities, and millions of dollars in new subsidies and compensation to the forest industry.

Lands for Life agreements mean that expansion of parks and protected areas in Ontario will require the agreement of the forestry and mining industries. Commercial fur harvesting and sport hunting and fishing will be permitted in most new protected areas, and consideration has been given to the expansion of hunting in existing parks.

During the report period, the province announced the implementation of the Living Legacy Land-Use Strategy. As proof that the province meant what it said when it committed to protect mineral tenure, an aggregate (gravel) company from Thornhill is, at

the time of writing, cutting and removing blocks of granite from the Mellon Lake Conservation Reserve under a permit issued March 23, 2000 by the Ministry of Northern Development and Mines. The company is also seeking approval under the *Aggregate Resources Act* to go into full production on the site. With its permit, the company will remove stone in 20-tonne blocks to be shipped to Europe for processing. All of this, in an area newly designated under the Living Legacy Strategy as a "conservation reserve."[7]

7. The provincial government refuses to act when it should to protect the environment

Over the report period there have been calls to the province to undertake action to protect Ontario's groundwater reserves from unrestricted taking, to protect the Oak Ridges Moraine from development and to protect Ontario surface water resources from factory farms.

The MOE did appear to move in early 1999 to protect the province's water supply when it announced a moratorium on new water permits.[8] In late July 2000, in his special report on Ontario's groundwater resources, the Environmental Commissioner, Gordon Miller, reported that there never was a "moratorium" in place, nor any notice on the Environmental Bill of Rights Registry regarding "new" criteria for issuing water-taking permits.[9]

Throughout 1999-2000, repeated requests were made to the provincial government to protect the Oak Ridges Moraine from development.[10] In February 2000, conservation groups presented a petition to the province signed by 465 scientists urging a moratorium on development on the moraine.[11] City and regional councils voted against approval of development applications on the moraine pending a provincial strategy. York, Durham and Peel Regions and Simcoe County asked the province to work with them on a coordinated policy on development that would protect the Oak Ridges Moraine.[12] The City of Toronto and a group of environmental organizations both requested a review under the *Environmental Bill of Rights* of provincial law and policy pertaining to the moraine.

The province never met with York, Durham, Peel and Simcoe to discuss their proposed coordinated policy. In response to the requests for review under the *Environmental Bill of Rights*, the Ministers of the Environment, Municipal Affairs and Natural Resources stated that current guidelines, policies and legislation were sufficient to protect the moraine and that a further review was not warranted.[13]

In January 2000, the Ontario Ministry of Agriculture, Food and Rural Affairs initiated a consultation on intensive agricultural operations and nutrient management in rural Ontario.[14] The consultation included a discussion paper on intensive agricultural operations that reveals a strong presumption against any kind of regulatory protection from the emissions of factory farms.[15] The discussion paper states "by-laws and regulations which unduly restrict the ability of agriculture to evolve, or establish unrealistic financial impediments are likely to contribute to an unhealthy and potentially unsustainable agricultural sector."[16]

This consultation began after the province granted protection to large-scale industrial livestock facilities with the *Farming and Food Production Protection Act*, in May 1998. The act gives these facilities the right to appeal municipal by-laws aimed at controlling environmental and health effects of their operations.

The province was, therefore, prepared to pass a new statute to protect factory farms from municipal by-laws, but reluctant to even consider a regulation to protect the environment and human health from the farm emissions.

With its announcement, after the Walkerton *E. coli* outbreak, of a new surface water protection law, the province appears to have changed its stance on factory farms.

8. Industry self-regulation and self-monitoring increase the risk of environmental damage

Industry self-regulation has been a dominant theme within the Common Sense Revolution. During the report period, the provincial government made changes to the *Mining Act* that both follow this theme and pose potentially great risks to the health of the environment and to the public purse.[17]

The changes apply to plans to ensure safe and environmentally sound mine closure and to "financial assurance" requirements that ensure public funds are not required to clean up a mess left behind by a private mining company.

The new provisions propose to more or less eliminate governmental oversight of closure plans, and to radically reduce financial assurance requirements. Specifically, the amendments include the option of demonstrating financial capacity to safely close and decommission a mine site with a "corporate financial test."

The corporate financial test does not adequately protect against the eventuality that, further along in the mine's operations, the company may not be as financially able either through falling mineral markets or a corporate restructuring. Mining is a risky business, subject to the fluctuations of the global commodities market. The "corporate financial test" does not take these risks adequately into account.

The provincial government enacted O.Reg 240/00 during the report period,[18] freeing the mining industry from the regulatory burden of government oversight of closure plans and from providing anything but the most insubstantial of financial assurance requirements.

The problem with these amendments is the same as the problem with other "reduced regulatory burdens" on other potentially hazardous or destructive undertakings (such as hazardous waste management) in the province: They provide an insufficient failsafe. The Common Sense Revolution appears not to believe in Murphy's Law (if something can go wrong, it will), or, possibly more accurately, is willfully blind to it.[19] "Reducing the regulatory burden" in many cases – and most especially the case with the amendments to the mining regulations – reduces the margin for error to practically zero.

9. Common Sense protects game animals and commercial fisheries, not wildlife

Fish and wildlife regulations, policies and strategies developed during the report period all reveal a ruling preoccupation within the Common Sense Revolution. What is called "wildlife" is in fact only game. "Fish" are treated the same way; the term means fisheries. If an animal can be caught on a hook or shot with a gun (or crossbow) then it falls within the purview of the regulatory regime. The only other animals included in regulatory activity over the report period were two birds listed on the *Endangered Species Act*.

During the report period, the province considered the conundrum of maintaining the commercial fisheries in the Great Lakes but at the cost of restoring the lakes' native fish populations. The commercial fishery prevailed. The province "restored" elk populations to Ontario for hunting, announced the success of the wild turkey population restoration, and expanded that hunting season.

In May 2000, the Ministry of Natural Resources issued Beyond 2000, a "strategic directions document" that describes the "desired outcomes" of MNR management activities. Regarding the outcomes, the environmental group Northwatch observed that in its overall tone and message, Beyond 2000 places too great an emphasis on management and consumption of natural resources, and insufficient emphasis on the protection and conservation of natural systems.[20] Northwatch also noted that the policy pays little attention to the issues of maintaining biological diversity and maintaining and restoring the diversity and function of natural habitat. The approach to wildlife is overwhelmingly focused on management and use, rather than on protection of habitat and supporting natural systems, and maintaining healthy populations.[21]

Northwatch's criticisms suggest the policies pose a threat to biodiversity. The fact that the document does not mention the protection of biodiversity as a "desired outcome," is a great cause for concern, as is the fact that, as Northwatch comments, the policy as a whole is preoccupied with consumptive uses of Ontario's natural heritage.

10. The Revolution fumbles national and international environmental protection initiatives

During the report period, the provincial government displayed little talent in working with other jurisdictions on important environmental problems. Ontario needed to work with other Canadian provinces to establish a plan of action to meet

Canada's obligations under the Climate Change Convention, and it "dragged its feet." Ontario needed to work with the federal government to renew a long-standing agreement regarding the protection of the Great Lakes. The future of that program is still in some doubt. Ontario also had the opportunity to work with American states on the pressing problem of transboundary air pollution. Instead, the province adopted a "tough" stance that achieved nothing but retaliation from New York State.

In March 2000, Ontario emerged as the "major obstacle to a federal-provincial agreement on climate change" at a meeting in Vancouver.[22] The negotiations finally failed on March 28.[23] Under the Framework Convention on Climate Change, Canada agreed to cut emissions by six percent from 1990 levels by 2010. The contribution by Ontario's Minister of the Environment Dan Newman to the discussion in Vancouver was to question the desirability of meeting the Kyoto target.[24]

Canada and Ontario share responsibility to restore, protect and sustain the Great Lakes ecosystem. Since 1974, they have maintained a "Canada-Ontario Agreement" that sets out their shared responsibility and describes priorities and programs to protect the lakes.

In March 2000, the existing COA expired. The provincial government's commitment to renew the COA agreement is uncertain. In its 2000-01 business plan, the MOE states, "we are committed to continuing efforts with the Federal Government and other partners to address environmental challenges in the Great Lakes Basin" but makes no specific commitment about the COA.[25] In June 2000, three months after the expiry of the COA, uneasy negotiations between the two governments

Operating Expenditures – Select Ministries 1994/95 to 2000/01 (in millions $)

Ministry	Actual 1994/95	Actual 1995/96	Actual 1996/97	Actual 1997/98	Actual 1998/99	Interim 1999/00	Plan 2000/01	Change from 94/95 to 00/01
Agriculture, Food & Rural Affairs	$ 409	$263	$324	$306	$309	$328	$446	+ 9%
Citizenship, Culture & Recreation	$363	$302	$316	$300	$365	$455	$398	+10%
Community & Social Services	$9,364	$8,816	$7,965	$8,047	$7,648	$7,604	$7,504	-20%
Consumer & Commercial Relations	$150	$140	$123	$92	$136	$135	$146	-3%
Economic Dev't., Trade & Tourism	$463	$385	$192	$140	$89	$94	$99	-79%
Energy, Science & Technology	$14	$13	$11	$69	$83	$128	$241	+1621%
Environment	$258	$226	$146	$142	$162	$174	$158	-39%
Health	$17,599	$17,607	$17,760	$18,284	$18,868	$20,600	$21,988	+25%
Native Affairs Secretariat	$16	$16	$17	$10	$10	$13	$16	0%
Natural Resources	$478	$519	$417	$405	$542	$458	$376	-21%
Northern Dev't. & Mines	$54	$66	$52	$62	$82	$114	$274	+407%
Transportation	$598	$1,054	$879	$709	$607	$618	$537	-10%

Source: Ontario's Fiscal Plan, Budget 2000, Appendix B

began. For example, both governments have undertaken consultations regarding the agreement, but not together.

Ontario stands by a "blame the U.S." strategy regarding transboundary air pollution. This stance has made it difficult if not impossible to successfully negotiate with the U.S. on cooperative action to clean the air. At the 1999 Great Lakes governor and premiers meeting in Cleveland, Premier Mike Harris "reinforced Ontario's opinion that several Great Lakes states have to do more to reduce emissions."[26]

During the summer months of 2000, Ontario's "get tough" strategy incited similar tactics from the other side of the border. On July 5, 2000, New York Attorney General Eliot Spitzer wrote to U.S. Secretary of State Madeline Albright to urge her to "pressure Canadian officials into pollution concessions at an upcoming Canada-U.S. Annex Agreement meeting."[27]

In fact, "getting tough" appears to equal "achieve nothing." Talking tough gives rise only to retaliatory accusations instead of meaningful cooperation that actually helps clean the air.

A note on the format

This report on the CSR's second mandate comes in a slightly different format than previous reports. We have organized our analysis under seven basic categories: water, environmental decision-making, garbage and hazardous waste, air, land - Southern Ontario, land - Northern Ontario, and natural resources (forests, mines, rocks and gravel). Previous reports included a detailed chronology of events which, in a resource-saving measure has not been included in this report. If users of this report find they would like to see the return of the chronology, please contact CIELAP and let us know.

Capital Expenditures – Select Ministries 1994/95 to 2000/01 (in millions $)

Ministry	Actual 1994/95	Actual 1995/96	Actual 1996/97	Actual 1997/98	Actual 1998/99	Interim 1999/00	Plan 2000/01	Change from 94/95 to 00/01
Agriculture, Food & Rural Affairs	$12	$5	$0	$1	$1	$1	$80	+ 567%
Citizenship, Culture & Recreation	$42	$29	$9	$7	$6	$15	$71	+69%
Community & Social Services	$72	$14	$116	$51	$30	$124	$156	+117%
Economic Dev't, Trade & Tourism	$117	$113	$9	$0	$0	$0	$0	N/A
Energy, Science & Technology	$0	$0	$0	$0	$273	$550	$0	N/A
Environment	$271	$238	$225	$98	$19	$7	$14	-95%
Water Protection Fund	N/A	N/A	N/A	N/A	$15	$160	$51	N/A
Health	$249	$168	$175	$106	$187	$340	$291	+17%
Native Affairs Secretariat	$17	$9	$13	$11	$10	$6	$8	-53%
Natural Resources	$54	$47	$33	$209	$62	$97	$83	+54%
Northern Dev't. & Mines	$240	$163	$168	$173	$177	$211	$273	+14%
Transportation	$1,757	$1,387	$1,279	$1,186	$892	$852	$799	-54%

Source: Ontario's Fiscal Plan, Budget 2000, Appendix B

CHAPTER 2 – Water

I The Common Sense Revolution and water resources so far

Note: The following lists show only a few of the changes implemented under the first four years if the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report.[1]

1.1 Defunding

In 1995 and 1996, the Ontario Clean Water Agency (which manages municipal assistance for sewers and water treatment) and Ontario's conservation authorities have millions of dollars cut from their operating budgets.[2]

In September 1996, the province terminates drinking water quality analysis services to municipalities.[3]

In February 1997, the province cancels funding for Great Lakes cleanup programs.[4]

In August 1997, the province replaces an annual $140 million program with a one-time, three-year $200 million program to upgrade municipal sewage systems.[5]

1.2 Deregulation

In 1995, 1996 and 1997 omnibus bills revised almost every law pertaining to the protection of water resources from pollution and harmful alteration. Included among these are *The Lakes and Rivers Improvements Act*, the MISA regulations under the *Environmental Protection Act*, and the *Ontario Water Resources Act*. The amendments generally tend to reduce regulatory oversight, permit more pollution and increase opportunities to build into or otherwise alter aquatic habitat without a permit.[6]

On September 19, 1997, the Ministry of Natural Resources announced that it was withdrawing from a 1989 agreement with the federal Department of Fisheries and Oceans to enforce the habitat protection provisions of the federal *Fisheries Act*. The ministry stated that it would take no further action to enforce the act in Ontario. The *Fisheries Act* contains strong provisions related to the protection of fish habitat such as wetlands, streams and shorelines. These include a prohibition on the alteration or destruction of fish habitat without the permission of the Minister of Fisheries and Oceans.[7]

1.3 Devolution of responsibility

In 1996-97, Bill 107 – The *Water and Sewage Services Improvement Act* – (part of the government's "mega week" initiative) restructured the responsibilities between province and municipal governments and sewer management in the province. The province terminated funding for municipal sewer and water infrastructure at the same time. These actions were partially based on the recommendations in the province's Who Does What Commission's report. The commission had recommended that the province transfer ownership of sewer and water facilities to appropriate municipalities, and terminate its sewer and water grant and loan programs, while continuing to set and enforce environmental standards.[8]

Chapter Overview

I Walkerton – water safety and the Common Sense Revolution

- *The O'Connor inquiry will take months to decide, but for now the record points to dangers created, and then disregarded by the province*

II Ontario's water: How much is safe to take?

- *Drought and doubt about the resilience of Ontario's water resources have not appreciably influenced the provincial practice of giving water free to commercial bottlers*

III Water pollution on the rise

- *Increased offences, fewer prosecutions, no new regulatory initiatives but the province may regulate factory farms*

IV Federal/provincial program to protect the Great Lakes: Uncertain future

- *The Great Lakes need forward-looking cooperation between Ontario and the federal government; what they have is delay and an uncertain commitment to renew the Canada-Ontario Agreement on the Great Lakes ecosystem*

V Conservation authorities

- *Once the stewards of wetlands and watersheds; now cash-strapped and struggling*

Related topics: *For fisheries-related issues see Chapter 8, for water-use related issues, see Chapter 6.*

II The Walkerton tragedy

Late in May 2000, residents of Ontario were shocked to read of thousands of victims of *E. coli* bacteria contamination – six of whom would die – in the quiet, prosperous farming community of Walkerton. In response to the public outcry from Walkerton, the provincial government called for a public inquiry. The inquiry has been given the task of answering the questions of what happened in Walkerton and who was responsible. This report will review the facts as they are publicly known.

This chapter will show that Walkerton is a single, tragic incident during a year characterized by increasing unease about Ontario's water resources and by very limited government action to address the issues causing concern.

2.1 Downloading responsibility and privatization of service broke the chain of accountability; inspections reduced

In 1996, the Ontario government downloaded the responsibility for the testing of drinking water to municipalities and closed the Ministry of the Environment (MOE) drinking water testing laboratories. Private facilities took over water testing services. Before these changes, the MOE labs automatically reported results to both the Ministry itself and the local Medical Officer of Health (MOH). After the change, the government did not enact reporting regulations to ensure that private facilities similarly reported their results to the MOE and MOH. Compounding the potential risks created, MOE budget and staff cuts throughout the late 1990s reduced inspections of water treatment facilities from once a year to once every three years.

2.2 Discovery of *E. coli* contamination in the Walkerton water supply

In May 2000, the water supply of the town of Walkerton was contaminated with *E. coli* bacteria following intense rains and heavy flooding in the area. An inquiry by the Provincial Coroner ultimately concluded that six people died from *E. coli* contamination. It took several days following the discovery of *E. coli* contamination for the Ministry of the Environment and the local authorities to be notified.

2.3 No reporting regulations for drinking water

The failure of the private laboratory and Public Utilities Commission to immediately notify the MOE District Officer and the local Chief Officer of Health may not have violated any provincial regulations concerning drinking water reporting. That answer relies on the terms of the Certificate of Approval for Walkerton's sewage works. However, Ontario's Drinking Water Objectives (1994) do state the following, "if the water contains any indicators of unsafe water quality for any of the reasons outlined, the laboratory will immediately notify the MOE District Officer, who will immediately notify the Medical Officer of Health and the operating authority to initiate collection of special samples and/or take corrective action."[9] Not following this guideline is not against the law. The guideline itself is not enforceable.[10]

2.4 Early warnings ignored

Government watchdogs – the Environmental Commissioner, the Provincial Auditor, several non-governmental organizations including CIELAP[11] and the Canadian Environmental Law Association – and internal government departments all sounded a warning in one form or another about Ontario's water resources and the systems in place to keep them safe.

In her report, the Environmental Commissioner commented regarding the consequences of the swift divestiture of the provincial labs and the services they provided to municipalities:

> Municipalities had barely eight weeks to find private labs. And while the Ministry of Health recommended municipalities choose certified or accredited labs – the law does not say they have to. It appears that the Ministry of the Environment and Energy did not make this a legal requirement because of costs, and because such a requirement runs counter to the government's move to cut regulations. The Ministry of the Environment and Energy did no independent review of the cost of private sector testing. Many tests will cost more now – some say five times as much as doing them at ministry labs in some cases. Worse still, the Ministry of the Environment and Energy did not check if drinking water testing is now being done properly.[12]

The Commissioner goes on to observe that:

> *This decision most likely increases the risk of inadequate drinking water testing in Ontario*. When it comes to inspecting and testing the quality of our drinking water to ensure public health and safety, and environmental protection, the Ministry must take every precaution.[13]

In 1996, the Provincial Auditor noted that, because of resource constraints, the ministry does not audit drinking water testing by hundreds of small treatment plants.

> The Drinking Water Surveillance Program was established in 1986 to monitor drinking water quality and to provide reliable and current information. As of December 31, 1993, the Program covered 120 of 490 water treatment plants serving about seven million or 70 percent of Ontario's population. The Ministry had planned to extend the Program to about 15 new plants every year. However, citing resource constraints, the Ministry has added only 13 plants since 1994. The Ministry is currently reviewing the Program and is placing more emphasis on plants with the highest risk.[14]

A January 2000 MOE draft document on proposed revisions to Ontario's Drinking Water Objectives warned about the public health implications of cuts to the MOE and the downloading of water treatment costs to municipalities and the use of private laboratories. Concerns in the draft document date back to 1997 and include the "non reporting of drinking water quality by smaller municipalities, the cost to smaller municipalities of sampling requirements contained in the ODWOs and recent administrative changes rendering the discovery of the adverse drinking water quality notification protocol obsolete."[15] The draft document also states that the move to private sector laboratories for testing drinking water "necessitates a review of the protocol for notification of the Medical Officer of Health on discovery of adverse drinking water quality."[16]

The government's response to the news of the Walkerton tragedy was at first to deflect criticism of its decisions.[17] The Premier stated that the former NDP government was responsible for the implementation of private testing laboratories. The Premier also said that municipalities were not

making use of provincial funds to improve their water supply infrastructure.[18]

2.5 Public inquiry called

In June 2000, the government called for a public inquiry into the Walkerton tragedy and appointed Justice Dennis O'Connor as its head.[19]

The inquiry's investigation will include:

- The circumstances which caused hundreds of people to become ill and several to die at a time when *E. coli* bacteria were found in the Walkerton water supply;
- The cause of these events including the effect, if any, of government policies, procedures and practices; and
- Any other relevant matters the commission considers necessary to ensure the safety of Ontario's drinking water.[20]

These terms of reference are broad and inclusive. The hearing will commence in September 2000.

2.6 New drinking water regulation

In response to the Walkerton tragedy, the Ministry of the Environment proposed in June a drinking water regulation. It will require the following:

- All laboratories or water treatment plant testing facilities that perform tests on drinking water must be accredited; this accreditation will include certification for all tests performed in fulfilling the requirements of the Ontario Drinking Water Objectives (ODWO);
- Municipalities must inform the MOE if they change the private lab facility that is testing their water;
- All water treatment facilities must have their certificate of approval reviewed at least once every three years;
- If any laboratory finds that a test result indicates unsafe drinking water quality, it must immediately inform the MOE and the Medical Officer of Health, as well as the municipal water facility operators.[21]

According to a comment by the Canadian Environmental Law Association, these proposed changes are, at best, the very least one would expect to see in a regulatory regime purporting to protect public health. They are, according to CELA, a very small step in the right direction, and a long way from the kind of reform needed to "prevent the occurrence of the Walkerton tragedy in Ontario."[22]

The submission concludes: "In general, the four requirements proposed by the MOE's drinking water regulation are unobjectionable and they should be implemented.… However, this new regulation, in and of itself, does little to address the widespread flaws in the current regulatory framework for protecting drinking water. Unless accompanied by more extensive reform, the proposed regulation will be little more than a 'band aid' solution."[23]

On August 26, the provincial government published Ontario Regulation 459/00 - Drinking Water Protection. The full text of the regulation can be found at: http://www.ene.gov.on.ca/envision/WaterReg/WaterReg.htm. The Canadian Environmental Law Association's comments on the new regulation can be found at http://www.cela.ca/mr000808.htm.

2.7 Province promises to step up inspections

The Minister of the Environment also announced acceleration in the inspection of the province's 630 water treatment plants. The announcement included no mention of new funding or new staff hiring. The ability of the ministry to carry out increased inspections of water treatment facilities needs to be considered in light of the further cuts in the MOE's budget and regional staff. The Ontario Drinking Water Objectives (1994) state that, "regional staff of the MOEE are responsible for enforcing the monitoring requirements at all water supply systems (ministry, municipal, or privately owned)."[24] But, regional staff in each of the five regional district offices has been cut by five to 13 percent from 1998 levels.

2.8 Other post-Walkteron initiatives

Very recent provincial government initiatives that will be discussed in detail in next year's report are the special emphasis on Operation Clean Water (see http://www.premier.gov.on.ca/english/news/Water080800_bkgd.htm) and the provincial hearing by the Water Resources Management Committee

Ministry of the Environment: Population Report Summary Table					
1995		1998		1999 [25]	
DIVISION/BRANCH/ OFFICE	Total	DIVISION/BRANCH/ OFFICE	Total	DIVISION/BRANCH/ OFFICE	Total
Board and Committees		Board and Committees		Board and Committees	
Advisory Committee on Environmental Standards	3	—	—	—	—
MISA Advisory Committee	1	—	—	—	—
Pesticides Advisory Committee	3	Pesticides Advisory Committee	2	Pesticides Advisory Committee	1
Environmental Sciences & Standards		Environmental Sciences & Standards		Environmental Sciences & Standards	
Environmental Monitoring & Reporting Branch	130	Environmental Monitoring & Reporting Branch	93	Environmental Monitoring & Reporting Branch	88
Policy		Policy		Policy	
—	—	—	—	Water Policy Branch	16
Operations (includes former Conservation and Prevention)		Operations (includes former Conservation and Prevention)		Operations	
Central Region	129	Central Region	98	Central Region	86
Northern Region	111	Northern Region	104	Northern Region	90
Eastern Region	125	Eastern Region	92	Eastern Region	86
Southwest Region	124	Southwest Region	97	Southwest Region	84
West Central Region	105	West Central Region	82	West Central Region	77
Spills Action Centre	13	Spills Action Centre	12	Spills Action Centre	10
Investigation and Enforcement Branch	97	Investigation and Enforcement Branch	70	Investigation and Enforcement Branch	87
TOTAL 1995 MOE STAFF	2208	TOTAL 1998 MOE STAFF	1494	TOTAL 1999 MOE STAFF	1277 [26]
Source: Ministry of the Environment					

June 24, 2000

A poll conducted by Ekos Research Associates finds that support for the Ontario Progressive Conservative party has slipped to 37 percent from 45 percent, which the Tories received in the last provincial election. The poll results show that the Walkerton tragedy has impacted Ontario residents' opinion of the provincial government and its role in protecting water quality in the province. The poll also finds that 68 percent of Ontarians want the government to control the drinking water supply, compared to 21 percent who think the responsibility should be given to the private sector.

chaired by Mr. Doug Galt. On June 14, 2000, the Canadian Environmental Law Association announced to the committee that it was developing model legislation called an "Act to Protect, Conserve, Restore and Enhance Ontario Waters".[27]

III Ontario's water: How much is safe to take?

3.1 Ground and surface water

An important factor in Ontario's economic growth has always been its abundant fresh water resources. However, even resources as abundant as Ontario's can show signs of stress, particularly if they are not well managed.

During the report period, Ontario's water resources were seen by some to be gravely threatened through drought, development pressure and uncontrolled taking for commercial purposes.

July 3, 1999

MOE figures show that the ministry approved 18 billion litres of water a year to be drained by commercial bottlers, free of charge, from Ontario's water supply. It is reported that the MOE has issued 48 free permits that grant long-term access (10 years or more) to the provincial water supply. The MOE insists that the water resources in the province are being managed well, but concerns about drought and low water tables prompted the former Minister of the Environment to announce in early 1999 that the government will no longer issue automatic permits. The Environmental Commissioner and water experts in the province warn that the government doesn't have a provincial water-management plan in place and it is not aware of how much groundwater is available in the province.

With drought in some parts of the province, and Great Lakes levels lower than they had been in years, the government approved water-taking permits for up to 18 billion litres for commercial water bottlers.[28] Water can also be "taken" by piping it from one place to another. Municipalities in the Greater Toronto Area approved new water pipeline projects to carry water from Lake Ontario to new housing developments.[29] Large-scale agricultural producers also put tremendous pressure on Ontario's water resources. In short, very large amounts of water are being taken out of Ontario's surface and groundwater systems without an overall plan or policy to control it or a way to sound a warning should something go wrong.

Throughout the summer of 1999, Great Lakes levels and levels in watersheds throughout the province reached historic lows. An interim report released by the International Joint Commission (IJC) in 1999 warned that water levels in the Great Lakes could lower because of climate change and future water demand in the basin.[30] At an IJC conference in April 2000, Great Lakes experts warned that low water levels in the Great Lakes Basin may negatively affect drinking water supplies for municipalities and well water users, and that lake levels will not improve in the near term.

In May 2000, five Ontario ministries and two associations reviewed Ontario Water Response – 2000, a draft report detailing the province's response plan to deal with low water conditions. The Ministry of Natural Resources posted notice of the policy on the EBR registry in July, 2000.[31] At time of writing, the notice period is still open. Next year's report will discuss this plan in more detail.

October 15, 1999

Ministry of the Environment briefing notes describe the ministry's concerns about the recent long period of below average precipitation in Ontario. Ministry briefing notes state, "tributary flows have decreased and concern is developing that groundwater levels may be decreasing." The briefing notes outline that the MOE would restrict water access to companies with provincial water-taking permits to ration water resources among competing users.

April 8, 2000

Water experts at an IJC conference warn that water levels across the Great Lakes are low and will not improve in the near term. Findings presented at the conference include the following:

- Lake Michigan has lost 100 trillion litres of water in the past two years;
- Lakes Michigan and Huron have experienced their sharpest two-year drop since records on water levels have been kept.

Municipalities and well water users are warned about the potential impact of low water levels on their drinking water supplies.

3.2 Water-taking permits and water exports

Water-taking by domestic water bottlers and the export of Great Lakes water were again high profile issues in 1999-2000. Back in 1997, the environmental commissioner of Ontario expressed concerns about the issuance of water-taking permits by the Ontario government.[32] In 1999, the concerns of the Environmental Commissioner and others aside, the

Ministry of the Environment approved water-taking permits for commercial bottlers allowing for the removal of 18 billion litres of water per year.[33]

The approval of long-term (up to 10 years) water-taking permits prompted some municipalities in the province to question the MOE's management of the water supply. The MOE has responded to the criticism by stating that the water supply is in no danger from water removal practices of bottled-water industry as the industry only takes one percent of water taken from provincial aquifers, which are far from being depleted. The ministry made the latter claim while acknowledging that it did not have any data to show how much water is in provincial aquifers.

July 12, 1999

The MOE states that the Ontario's water supply is in no danger from the water-removal practices of the bottled-water industry. A ministry spokesperson states that Ontario's water aquifers are far from being depleted and that the bottled-water industry uses only one percent of water taken from aquifers. The Minister of the Environment states that the province will take action if concerns that commercial bottlers are using up too much fresh water are proved valid.

3.2.1 "Moratorium" on new water removal permits

The MOE did appear to move in early 1999 to protect the province's water supply when it announced a moratorium on new water permits for large commercial consumers.[34] A ministry briefing about water resources in Ontario noted, "tributary flows have decreased and concern is developing that groundwater levels may be decreasing."[35] The MOE considered restricting water access to companies with provincial water-taking permits. In November 1999, according to reports in the press, the Ontario government apparently lifted the moratorium, notifying the Ontario Aggregate Producers Association directly but otherwise making no general, public announcement.[36]

In late July 2000, in his special report on Ontario's groundwater resources, Environmental Commissioner Gordon Miller reported that there never was a "moratorium" in place, nor any notice on the Environmental Bill of Rights Registry regarding "new" criteria for issuing water-taking permits.[37]

3.3 $6 million for groundwater monitoring

In 1999-2000 the provincial government announced it would provide $6 million to conservation authorities and municipalities to establish a groundwater monitoring network. The network will measure water levels across Ontario, establish a provincial information base, complete hydrogeological mapping to show availability to groundwater and undertake chemical analysis of groundwater supplies.[38]

August 20, 1999

The Oro-Medonte council, a municipality near Barrie, expresses concern that the Ministry of the Environment is incompetent in managing the area's water resources, after the MOE approves a 10-year permit to a water-bottling company to remove water from a local aquifer. The local council views these water-removal permits as a potential threat to the water supply in the area and sent a letter to the Environment Minister earlier in the year expressing its concerns. The MOE insists that there is no evidence water levels are declining in the area, though it admits that it does not keep overall figures on aquifer size in the area and does not run its own monitoring wells to check the water levels reported by permit holders.

3.4 Restrictions on inter-basin transfers of water

In May 1999, the provincial government adopted a regulation under the *Ontario Water Resources Act* (OWRA) restricting inter-basin transfers of water.[39] The Canadian Environmental Law Association identified several shortcomings with the new regulation including:

- The authority under the OWRA is insufficient to create a genuinely effective regulation; either the OWRA should be amended to grant specific authority to restrict inter-basin transfers by regulation, or, the preferred option, a *Sustainable Water Act* should be enacted by the province.

- Intra-basin transfers are as potentially threatening to the Great Lakes ecosystem health

as inter-basin transfers, and it is a unacceptable limitation of the regulation that intra-basin transfers are not dealt with.[40]

In the case of inter-basin water transfers, as with other issues that have arisen over the past year, the provincial government will appear to respond to a pressing environmental problem when there is sufficient public concern and political pressure. On closer examination, however, as in this case, the government's response can be weak. Sometimes the proposed change cannot achieve in fact the goals it has been set to serve. Moreover, sometimes reforms address only the immediate problem and not the larger issues causing the problem. In the case here, the proposed regulation deals with transfers but not with a more broad-based problem: increasing demands on water resources within the Province of Ontario.

3.5 Ontario takes the most Great Lakes water

An interim report released by the IJC in 1999 showed that Ontario is the biggest user of water among all the Great Lakes jurisdictions, taking nearly 29 percent of water that is withdrawn and not returned to the Lakes.[41] The report also warned that five percent of water taken from the Great Lakes is used and never returned.

The increasing demand for water resources was evident in the areas surrounding municipalities in Southern Ontario. In the Greater Toronto Area (GTA), York region approved a $200 million, 50-kilometre pipeline to carry water from Lake Ontario to municipalities within the region.[42] The town of Milton in Halton Region approved a similar project that same year.[43] Both projects were approved to meet increased demands for water because of development and anticipated new development in these regions. During the report period, one government action to deal with water use in Ontario was to distribute to small (less than 100,000 inhabitants) municipalities a booklet on water conservation produced by the Ontario Water Works Association.[44] Ontario is also involved in negotiations regarding the Great Lakes Charter, an agreement among the eight Great Lakes Governors and the Premiers of Ontario and Quebec.[45]

See Chapter 6, Land-use – Southern Ontario for more information on the impact on the water resources of provincial planning policies and urban sprawl in Southern Ontario.

June 2, 1999

Milton municipal council approves a pipeline project to supply water from Lake Ontario. It is predicted that developments that have been on hold in Milton will now go ahead and that the municipality will see a doubling of its population. Local residents express concern about the impact of new development on the local environment and the values of the community.

June 3, 1999

Halton Region approves the construction of a pipeline to bring water from Lake Ontario to areas of new development in Milton and to expand the water treatment plant in Oakville.

June 14, 1999

It is reported that York Region is planning to build a $200 million, 50-kilometre pipeline to provide water from Lake Ontario to newly developed areas in the region. The pipeline is required to meet the increase in water demand, as York Region is one of Canada's fastest growing areas with a very high rate of population growth and development.

November 22, 1999

The Ontario Municipal Board hears a petition from York Region to enable a pipeline development that will expand the King Township, an area of the Oak Ridges Moraine. Development plans would increase the population of the township from 5,000 to 12,000 by 2021. Environmentalists fear that several streams feeding into the Humber River will be damaged as a result of the development.

IV Water pollution on the rise

4.1 The official version: Things have never been better

The government continued over the past year to emphasize that its programs to protect Ontario's water resources are more successful than ever before. For example, in December 1999, then Minister of the Environment Tony Clement announced that Ontario's environment was in better shape than it had been for many years.[46] The minister cited progress in reducing chlorinated toxic substances

entering the Great Lakes, the return of fish and wildlife species and the quality of drinking water in the province.

These successes arise primarily from the Municipal/Industrial Strategy for Abatement (MISA) regulations and remedial action plans (RAPs). MISA regulations controlling discharges from nine industrial sectors including the pulp and paper industry have resulted in a 70 percent reduction in toxic pollutants discharged into Ontario waterways.[47] The RAPs are part of the Canada-Ontario Agreement Respecting the Great Lakes Ecosystem and were created to fulfill the agreement's first objective of restoring degraded areas around the Great Lakes.

The federal and Ontario governments entered the most recent Canada-Ontario Agreement in 1994 (other agreements date back to 1972 when President Nixon and Prime Minister Trudeau signed the Great Lakes Water Quality Agreement), setting themselves, among others goals, the target of "restoring 60 percent of impaired beneficial uses across all 17 areas of concern (AOC), leading to the delisting of nine AOCs by 2000." As of June 30, 2000, only one AOC – Collingwood Harbour – had been delisted and only approximately 13 percent of beneficial uses had been fully restored.[48] This shortfall between goals and accomplishments arises in part because of funding cutbacks on the part of both governments. It follows that the accomplishments claimed by the provincial government are less than they might have been had there not been so many funding cuts.

Provincial actions have also undermined the potential success of the MISA program. The provincial government has proposed several reforms to weaken MISA regulation – with the responsive environmental protection reform package released in July 1996, with proposals by the Red Tape Commission in 1997 and with the government's November 1997 document Better, Stronger, Clearer: Environmental Regulations in Ontario.[49]

Other reforms that weaken MISA include "program approvals" (described in more detail in Chapter 3) arising from 1995 changes to the ministry's compliance guideline.[50] Program approvals are "grace periods" granted to regulated industries by the Ministry of the Environment. Once granted a program approval, a company can work to come into compliance with a regulation, but is immune from prosecution under that regulation for the period of the program approval. In 1998, the nine approvals granted all applied to facilities failing to comply with MISA regulations. One concern arising from program approvals is that they appear to be prone to abuse – as in the case of the Chinook facility in Sombra, Ont., which still does not comply with MISA regulations after eight years. Another concern is that they are a sign of a ministry that no longer has the staff or fiscal resources to enforce environmental laws.[51]

Therefore, the successes seen under MISA are not as significant as they might be, due to staff and budget cuts and program approvals.

In summary, all of the successes claimed by the provincial government in its January 2000 announcement arise from programs initiated by previous governments. Moreover, these are all successful programs the current government has sought to weaken either through reduced funding or regulatory reform.

4.2 The real big picture: Fewer resources, less protection

In 1999-2000, the Ministry of the Environment saw further reductions in staff and budget. The Ministry of the Environment operating budget for 2000-01 is $158 million, down from $174 million. MOE capital expenditures were decreased from $167 million in interim 1999-00 (of which $160 million was allocated to the Water Protection Fund) to $65 million in the 2000-01 business plan (of which $51 million is allocated to the Water Protection Fund).

Staff levels at the MOE were cut in 1999 to 1,277 from 1,494 in 1998, which represents a 15 percent reduction in staff.

4.2.1 Nutrient runoff from agricultural operations: The need for regulatory action

Walkerton brought to the forefront the issue of nutrient runoff from agricultural facilities. While the source of the contamination in Walkerton is still unknown, there is a possible link with manure runoff from agricultural facilities. A 1995 report by Health Canada identified Walkerton as being in a

high-risk area for infection from *E. coli* because of the large local density of cattle operations. The report also found that 32 percent of Ontario's rural wells exceeded acceptable standards for fecal contamination.[52]

In her 1995 and 1996 annual reports, the then Environmental Commissioner, Eva Ligeti, advised the provincial government to develop a groundwater management plan. She recommended that the plan include implementation of groundwater protection buffer zones, a focus on the cumulative effects of agriculture on groundwater and a publicly accessible data management system consisting of monitoring information, inspections and enforcement and information about contamination.[53]

4.2.2 Consultation on intensive agricultural operations: Government reluctant to regulate

In January 2000, OMAFRA initiated a consultation on intensive agricultural operations and nutrient management in rural Ontario.[54] The consultation included a discussion paper on intensive agricultural operations and a questionnaire to be used for "developing a plan that will support farmers' right to farm while at the same time not infringing upon surrounding land-uses."[55]

The term "intensive agricultural operations" refers to large livestock facilities that may contain thousands of animals in one location. The enormous amount of animal waste generated by these facilities threatens surface water and groundwater. A draft State of the Environment Report by the Ministry of the Environment released in February 1997 indicated that runoff from agricultural operations is the leading cause of declining surface water quality in Southern Ontario.[56]

The provincial government enacted legal protection to large-scale industrial livestock facilities with the *Farming and Food Production Protection Act* in May 1998. The act gives these facilities the right to appeal municipal by-laws aimed at controlling environmental and health effects of their operations.

A reluctance to regulate industrial livestock facilities is evident in the OMAFRA discussion paper, which states, "by-laws and regulations which unduly restrict the ability of agriculture to evolve, or establish unrealistic financial impediments are likely to contribute to an unhealthy and potentially unsustainable agricultural sector."[57]

According to anecdotal evidence gathered by the Canadian Environmental Law Association, small-scale farmers and rural residents agree that large-scale livestock operations are not farms in the traditional sense and that they should be regulated as industrial facilities.[58]

4.2.3 After Walkerton, government more amenable to regulation

In June 2000, the provincial government reversed the position it had taken on municipal by-law control of industrial livestock facilities. The Minister for Municipal Affairs announced a directive stating that municipal interim control by-laws with a one-year life span are acceptable and cannot be challenged under the *Farming and Food Production Protection Act*.[59]

Early in July 2000, the Ministry of Agriculture announced that it will propose "strict environmental safeguards for agricultural practices" that would include:

- definition of categories for types of farms including livestock operations;
- standards according to size of the facility for manure handling storage and application;
- strict enforcement; and
- penalties and fines.[60]

Referring to this proposed legislation, the Environmental Commissioner of Ontario, in his Special Report released July 27, 2000, notes:

> OMAFRA has now completed its public consultation on intensive farming and has committed to introducing legislation to address manure management practices. But OMAFRA's primary client group is the Ontario farm industry. It is open to question whether the ministry can overcome this conflict of interest and effectively regulate this same industry.[61]

The Environmental Commissioner suggests that the Ministry of the Environment is the more suitable Ministry to administer and oversee compliance with the regulation.

4.2.4 New government agricultural initiatives: Healthy futures in agriculture

In December 1999, the government launched the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) program entitled "Healthy Futures for Ontario Agriculture." The four-year, $90 million program develops partnerships to carry out various projects. Under the program, the provincial government will fund 50 percent of total project costs, with the other 50 percent provided by municipalities, food industry groups, and business alliances in the agri-food sector and others.

While the Healthy Futures program is a positive initiative for protecting water quality in rural parts of the province, the program will have a limited impact on protecting and improving rural water quality in Ontario. In most cases, the initiatives are small-scale, aimed at reducing nutrients entering waterways. While welcome, the program does not counteract the incredible stress on rural surface and groundwater resources. It is reactive – fixing problems – rather than preventive – avoiding problems – and, with funding at $90 million over four years (only a portion of which is allocated to rural water quality), provides too few resources to achieve long-term beneficial results.

The cost-sharing structure of the program poses another limitation to the program's effectiveness as it places another financial burden on municipalities and conservation authorities.

4.2.5 OMAFRA field offices closed

In 1999-2000, the Ontario government shut down 29 field OMAFRA field offices that provided various services to farmers in Southern Ontario. These field offices were replaced with resource centres and "rural business enterprise centres" that focus on providing economic development advice to farmers. Other issues such as the protection of rural water quality and environmentally sustainable agriculture practices are not a priority.

4.2.6 Changes to the pesticides regulations

Pesticides pose two general categories of threat to the environment: poisoning ecosystems and encouraging the development of resistance in pest species. In rural areas, water supplies can be, and are, seriously contaminated by pesticides.

Pesticide use and application is regulated in Ontario. During the report period, two changes to Ontario Regulation 914 under the *Pesticides Act* made adjustments to how pesticides are classified for the purposes of notification under the Environmental Bill of Rights[62] and made changes to amendments made in 1999 regarding the supervision of trainees applying certain kinds of pesticides to farm lands.[63] The latter changes arose, according to the notice on the EBR registry, from stakeholder input. They permit a certified pesticide technician to supervise up to three trainees using "modern communications technology."

4.3 Increased violations of water pollution standards

Violations of water pollution standards increased between 1996 and 1998. A total of 167 companies and municipalities violated water pollution standards, guidelines or regulations in 1998, with a total of 3,363 violations, up from 1,013 violations in 1996.[64]

4.4 Pollution discharges to Ontario's water: Increasing violations, one prosecution

An analysis of water discharge violations by the Sierra Legal Defence Fund found that from 1996 to 1998, there has been a tripling of water pollution standards violations by companies and municipalities in Ontario. In 1998, the last year for which data is available, there were more than 3,000 violations, up from 1,013 violations in 1996.[65] A total of 167 companies violated water pollution standards in 1998; two-thirds were repeat offenders. Since 1998, there has been only one prosecution for a breach of wastewater discharge laws.[66]

4.5 The ministry's response

The Ministry of the Environment's response to questions about the significance of the reported increase in water pollution violations was to say that the increase results from more stringent regulations coming into place between 1996 and 1998. In fact, during this period, the MOE lessened regulatory requirements under the Municipal Industrial Strategy for Abatement (MISA) program. Changes to water pollution discharge regulations are described in Ontario's Environment and the Common Sense Revolution: A Four Year Report and include the reduction of monitoring and reporting requirements under MISA.[67] In January 1998, the MOE

October 8, 1999

The MOE releases the 1998 Waste Water Discharges Summary for the northern, eastern, central, west-central, and southwestern regions. The summary lists companies and facilities that have been found to be in non-conformance with MOE policies and guidelines, or in non-compliance with regulations and legal instruments. The 1998 summary highlighted the following:

- 42 industrial facilities and seven municipal facilities in the northern region were found to be in non-compliance, while two facilities were in non-conformance;
- 18 industrial facilities and 12 municipal facilities in the eastern region were found to be in non-compliance, while six facilities were in non-conformance;
- 11 industrial facilities and four municipal facilities in the central region were found to be in non-compliance;
- 20 industrial facilities and 13 municipal facilities in the west-central region were found to be in non-compliance, while one facility was in non-conformance; and
- 20 industrial facilities and seven municipal facilities in the southwestern region were found to be non-compliance, while four facilities were in non-conformance.

The MOE worked with these facilities to bring them into compliance, which involved inspections, requiring abatement programs and issuing orders.

amended the MISA regulations for the organic and inorganic manufacturing sector to raise the permissible discharge limits for "conventional" pollutants for a number of facilities.[68]

4.6 Ontario is North America's third worst water polluter

The Commission for Environmental Cooperation's (CEC) annual Taking Stock Report for 1997 cited Ontario as the third worst polluting jurisdiction for total releases and transfers in North America, behind Pennsylvania and Texas. The report ranks Ontario 20th out of 63 North American jurisdictions for pollutant discharges to surface water.[69] The Ministry of the Environment's response to the CEC report was to criticize the report as providing "a distorted picture of Ontario's environmental performance." The minister stated that the "NPRI is fundamentally flawed and cannot be considered reliable."[70] The Ontario government stated that between 1995 and 1997, total contaminant releases to water have decreased by 63.5 percent. The government attributed these reductions to a voluntary pollution prevention agreement between the government, five industrial sectors and one municipal government and partnership agreements reached with seven industrial sectors and organizations to reduce toxic substances and waste discharges. There is no third-party verification of these figures.

The government also cited reduction successes reported in the *Third Report of Progress Under the Canada-Ontario Agreement Respecting the Great Lakes Ecosystem* that shows reductions in the releases of dioxins, furans, and mercury, among other substances. These reductions are attributable to the MISA regulations.

4.7 Water standards revisions: Adopting the federal standards

In 1999-2000, the government proposed and adopted a number of drinking water quality objectives based on the Canadian Drinking Water Quality Guidelines. Proposed objectives were for fluoride, aluminum, monochlorobenzene, 1,2-diochlorobenzene[71] (interim guideline) radionuclides[72] and six pesticides.[73] It is beyond the purposes of this report to comment on each guideline. Dealing specifically with the proposal for radionuclides, the Canadian Environmental Law Association made a submission to the Standards Development Branch in October 1999, recommending, among other things, that Ontario not adopt the Canadian standards. CELA submitted "the Province of Ontario should immediately set the drinking water objective for tritium at 20 bq/l, and the drinking water objective for other radionuclides at zero."[74]

Since 1995, the Ontario government has limited the capacity of the MOE to establish its own water quality objectives, making it more necessary to rely on standards set by the federal and other governments. On the one hand, there is an obvious efficiency in all jurisdictions working together to establish consistent, Canada-wide standards. On the other hand, sometimes other factors besides public health and safety can influence the negotiations. In these cases, as in the case of the standards

agreed upon for radionuclides, Ontario should have the resources at hand to develop its own standards. But, in 1995, the government eliminated the Advisory Committee on Environmental Standards. From 1998 to 1999, the Standards Development Branch lost 19 staff and the Pesticide Advisory Committee lost one staff member, leaving it with only one staff member in 1999.

V Federal/provincial program to protect the Great Lakes: Uncertain future

5.1 Expiration of the Canada-Ontario Agreement on the Great Lakes ecosystem

In signing the 1994 Canada-Ontario Agreement (COA), Canada and Ontario share responsibility to restore, protect and sustain the world's largest fresh-water ecosystem, the Great Lakes Basin.

The COA specifies targets and objectives to restore degraded areas in the Great Lakes, to prevent and control pollution with the emphasis on virtual elimination of persistent toxic substances, and to conserve and protect human and ecosystem health.[75] Under COA, remedial action plans (RAPs) created and implemented strategies for the remediation and rehabilitation of Areas of Concern in the Great Lakes Basin.

In March 2000, the COA expired. This leaves Ontario without a comprehensive cooperative strategy for protecting the Great Lakes ecosystem.

The provincial government's commitment to renew the COA agreement is uncertain. In its 2000-01 business plan, the MOE states, "we are committed to continuing efforts with the Federal Government and other partners to address environmental challenges in the Great Lakes Basin" but makes no specific commitment about the COA.[76] In June 2000, three months after the expiry of the COA, the Minister of the Environment stated that the Ontario government is negotiating the renewal of the COA with the federal government.[77]

The provincial government demonstrated a lack of support for COA and RAP initiatives with continued reductions in funding for RAP programs. For example, provincial funding for Severn Sound RAP projects declined from $432,400 in 1997 to $139,200 in 1998.[78]

5.1.1 Importance of renewing the COA

COA's importance is apparent from its success to date. In its business plan 2000-01, the MOE describes the progress made under COA in remediating Collingwood Harbour and Spanish Harbour. However, a March 1999 CIELAP report[79] concluded that most of the agreement's other goals and objectives would not be met by the March 2000 expiry date. It is imperative that the provincial government renews the COA agreement in order to continue progress in achieving the unfulfilled goals and objectives of the first agreement, and to develop a new set of goals and objectives within a comprehensive cooperative strategy to protect the Great Lakes Basin ecosystem.

5.2 Provincial initiatives to protect the Great Lakes and Ontario's watersheds

During the report period, there was only limited government action to protect the Great Lakes and Ontario's watersheds. Ministry press releases announced programs begun in previous years such as the one-time funding provided under the Water Protection Fund (which expires in 2000-2001) and the government's $5 million investment in the Great Lakes Renewal Foundation, which was originally announced in the 1998 budget.

In January 27, 2000, the Ministry of Natural Resources announced the launch of the Great Lakes Heritage Coast project that encompasses 1.1 million hectares from Lake Superior to Georgian Bay. The project is meant to ensure the protection of natural values, enhance prosperity and market the coast internationally. The project's theme, "Imagine the Possibilities," shows an emphasis on recreational and commercial activities.[80]

VI Conservation authorities: The struggle to protect Ontario's lakes and watersheds

6.1 Conservation authorities: Limitations on water protection initiatives, no new provincial funding

The 1999-2000 period saw the continued impact of provincial government decisions to reduce funding to conservation authorities, including amendments to the *Conservation Authorities Act* to facilitate the sale of their lands. After cuts in provincial operat-

ing grants of 42 percent in 1995, conservation authorities made some progress in 1999-2000 in finding other sources of funding. Most of the new funding has come from fee-for-service programs such as geological information service (GIS) mapping and other technical services, which takes staff away from ecosystem protection projects. A survey of conservation authorities conducted by CIELAP in April 2000 found that while some conservation authorities had implemented new initiatives to protect water quality, many were forced to scale back existing programs, implement smaller scale remediation projects, and delay the implementation of new initiatives due to limited funding and staff resources.[81] Overall, staffing is at 50 to 75 percent of levels before the provincial reduction in operating grants in 1995.

December 4, 1999

It is reported in the print media that conservation authorities are being forced to sell and develop land in order to raise funds. Over the past five years, conservation authorities have seen their provincial funding slashed by 70 percent from $32 million to $8 million last year. An additional cut of $400,000 is revealed in a memo from the Deputy Minister of Natural Resources. To cope with provincial funding cuts, conservation authorities have been forced to cut staff levels, close parks, raise fees, and sell lands they have acquired to protect. The MNR Minister states that the government will make sure conservation authorities have the funds to do their primary job.

Opposition MPPs and environmental groups express concerns about the privatization of operations and the sale of land by conservation authorities, after a decision in November by the Hamilton and Region Conservation Authority to allow bottlers to buy water from its wells in one of its parks. Conservation authorities argue that provincial cutbacks are a reason why they are forced to raise funds through the selling of land and resources. A representative of Conservation Ontario agrees that there is increasing pressure to exploit conservation lands.

6.2 Hardest hit: Ability to protect local water resources

In 1999-2000, there was little new funding support provided to conservation authorities by the provincial government. In 1999, provincial government announced the OMAFRA Healthy Futures in Agriculture program that will provide $90 million to partners including conservation authorities for funding local initiatives including those to protect water quality. Seven conservation authorities expressed their intention to apply for funding under this new program. However, it was felt that long-term provincial funding, such as annual operational grants, was more useful in implementing new initiatives to protect water quality at the local level.

September 23, 1999

Natural Resources Minister John Snobelen joins more than 1,000 people to celebrate the designation of the Humber River as a Canadian Heritage River. It is announced that Ontario has spent $85,000 since 1995 on restoration projects along the Humber River.

February 1, 2000

The Toronto and Region Conservation authority votes against a plan to develop the Claireville Conservation Area near Brampton into the new home of the Canadian Open golf championship course. The authority votes against the plan due to public opposition. The Mayor of Brampton argues that the development would diversify habitat and reduce pollution to the Humber River.

6.3 Conservation authorities and golf

During the report period, two protected areas – Bronte Provincial Park in Oakville and the Claireville Conservation Area in Brampton – became potential sites for a new Royal Canadian Golf Association golf course. Public opposition to both proposals stopped them from proceeding.[82]

In the meantime, former Toronto mayor David Crombie approached cash-strapped provincial conservation authorities with the idea that they might play host to "environmentally friendly" golf courses.[83]

October 14, 1999

A citizen's coalition in King City calls for the termination of a "Big Pipe" project to connect King City with the York Durham sewage system. The coalition argues that the connection would allow for the development of the area, which is on the environmentally sensitive Oak Ridges Moraine and is virtually untouched by development. The development proposal has been approved by King City council and is scheduled to go to an Ontario Municipal Board hearing in November 1999.

VII Other water-related changes or decisions

7.1 Proposed changes to the *Lakes and Rivers Improvement Act*

During the report period, the ministry posted on the Environmental Bill of Rights Registry proposed changes to nine acts administered by the Ministry of Natural Resources. One of the proposed changes was that Section 23 of the *Lakes and Rivers Improvement Act* will be amended to authorize the Minister of Natural Resources to order the owner of a dam to prepare a management plan for its operation, and to operate the dam according to the plan.[84] This change is apparently in response to a report by the International Joint Commission on dam safety in the Great Lakes Basin.[85] These changes are currently only proposed, are not set out in a bill, and are not, at the time of writing, before the legislature.

7.2 More plans to privatize shelved after Walkerton

In June 2000, a cabinet document prepared by Municipal Affairs Minister Tony Clement revealed the provincial government's proposed plans to promote the privatization of municipal sewer infrastructure in Ontario.[86] In the wake of the Walkerton tragedy, the government abandoned the plan to privatize.[87]

VIII Conclusion

The tragedy in Walkerton is only one piece of a much larger problem. Over the past five years, the provincial government has reduced the resources available to monitor and protect Ontario's water resources. For the report period, the Ministry of the Environment and conservation authorities, to name two key players, remain understaffed and underfunded. Municipalities – particularly small municipalities – have been loaded with more than they can manage in the area of water and sewage management. There are simply not the protections and programs in place to adequately protect the environment or human health.

"Common sense" has simultaneously allowed tremendous pressure to build on Ontario's water resources through policies encouraging urban sprawl, factory farms and water pollution while reducing government capacity to protect those resources.

Positive initiatives such as the new groundwater monitoring program and the Healthy Futures agricultural program are too small-scale to achieve solutions to the problems they address.

CHAPTER 3 – Environmental decision-making

"What's happening is that a lot of Ontarians are looking at car-pooling with the high price of gas," [newly appointed Minister of the Environment] Dan Newman said. "So I would rather see the gas prices low in Ontario." When pressed, he continued: "Well, what we want to see is that the prices are lower so that people can, you know, obviously use vehicles [and] can do their jobs. High prices do have a detrimental effect on the economy of Ontario. "We want to ensure that our economy is strong in Ontario and high gas prices will not help the economy."[1]

I The Common Sense Revolution and environmental decision-making so far

Note: The following lists show only a few of the changes implemented under the first four years of the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report.[2]

1.1 Defunding

April 1, 1996, the *Intervenor Funding Project Act* expires.[3] This statute provided for funds for public interest intervenors at environmental assessment hearings. The provincial government did not renew it.

Operating with 40 percent less budget than in 1994, in February 1999 the Ministry of the Environment developed a delivery strategy for its staff, directing them not to respond to complaints about a wide range of environmental problems or to direct complaints to other agencies and municipalities. Examples included complaints arising from: activities related to agriculture; construction and demolition; diesel generators; gravel pits and quarries; mobile sources; recycling and composting; tire disposal sites with less than 5,000 tires; inquiries about pesticide use; and residential pesticide use.[4]

1.2 Deregulation

In July 1996, the Minister of Environment and Energy proposed changes to the *Environmental Assessment Act* through Bill 76 by introducing the amendments (which took effect in January 1997). These amendments, among other things:

- narrowed the scope of the act and the environmental assessment process;
- granted the Minister of the Environment and Energy expansive discretion over the application of the act, the granting of hearings and their scope;
- imposed strict time limits for all important steps in the process; and
- preserved barriers to citizen entry into the environmental assessment process.[5]

1.3 Devolution of responsibility

In 1997, the province created the Technical Standards and Safety Association. Among others, the Ontario Ombudsman expresses concern over the Ontario government's delegation of decision-making authority to private sector bodies – in particular the Technical Standards and Safety Authority – and the promotion of industry self-regulation.[6]

In November 1998, the Ministry of the Environment proposed the REVA initiative: "Recognizing and Encouraging Voluntary Actions." The new policy proposed reduced oversight for facilities on the basis of promises of good environmental performance, and that no new standards would be imposed without *quid pro quo* concessions to industry.[7]

Chapter Overview

I Environmental boards and tribunals

- *The Assessment and Appeals Board – emphasizing speed;*
- *The Ontario Municipal Board – controversial decisions appear to undermine municipal autonomy; inaccessible process undermines public confidence in decision-making;*
- *The Niagara Escarpment Commission – more development-friendly*

II Officers of the legislature and environmental-decision-making

- *The Environmental Commissioner of Ontario – controversial appointment draws opposition and media fire; issues first special report on groundwater and intensive farming for Walkerton hearing;*
- *The Information and Privacy Commissioner – the* Freedom of Information Act*, an essential tool comes under scrutiny by the province*

III Environmental emergencies and industry self-regulation

- *A methane leak at the Sarnia hazardous waste facility or a fire at a Scarborough chemicals plant – environmental emergencies small and large show the risks are increasing while the ability to manage risks grows less; the TSSA and REVA reach milestones in self-regulation, but Bill 42 does not pass*

Related topics: *For environmental approvals see Chapter 4, garbage and hazardous waste and Chapter 6, land – Southern Ontario.*

II Common Sense and environmental decision-making: The first mandate

For the purposes of this report, "environmental decision-making" is something of a "catch all" category. Described below are topics one might expect, such as the Environmental Assessment and Appeal Boards (please note, however, that this report will not deal with the Energy Board for the report period). Also described are less expected topics such as the Information and Privacy Commissioner and the Technical Standards and Safety Association.

The idea that connects these disparate topics under this chapter's heading is that the environment is a public good. As such, information and decisions about the environment are subject to special considerations.

A fundamental concept of governmental stewardship of public goods is that the decision-making process should be informed, open, balanced and should in some significant measure involve all affected stakeholders.

Environmental decision-making under the Common Sense Revolution has followed three basic themes. The first theme supports industry self-regulation and self-monitoring by replacing government oversight with the oversight of agencies formed by representatives of the regulated industries (the Technical Standards and Safety Authority, for example). The second theme promotes fast decision-making by enforcing short timelines on boards and tribunals, reducing or eliminating oversight of other ministries, and limiting public participation (the reduced number and scope of environmental assessment hearings, for example, and the discontinuation of the *Intervenor Funding Project Act*) in environmentally significant decisions. The third theme promotes "smaller government" by eliminating special agencies (such as the MISA Advisory Committee or the Environmental Assessment Advisory Committee) whose role had been to examine environmental problems. Environmental decisions are now made, consequently, with less expertise than they once were.

During its first mandate, the provincial government greatly reduced its own oversight of and public participation in decision-making that affects the environment. It reduced the expertise directed at solving difficult environmental problems and gave regulated industries – such as the aggregate and mining industries – greater opportunities for self-

regulation. In other words, the province has changed the fundamental concepts of environmental decision-making so that, at the very least, it is less open. This may also mean that it is less informed and less balanced. Over the past year, this situation has remained for the most part the same.

III Environmental boards and tribunals

3.1 The Environmental Assessment and Appeal Boards – emphasizing speed

The Environmental Assessment and Environmental Appeal Boards' mandates are to provide both an independent and impartial review of the decisions of directors appointed by the Minister of the Environment and the decisions of the Niagara Escarpment Commission, as well as a fair and unbiased public hearing process.[8] The principal task of Board members is to conduct fair, efficient, and impartial hearings at which they must consider all the evidence presented and make decisions (or recommendations) with written reasons in a manner that protects the environment.[9]

Since the amendments to the *Environmental Assessment Act* in Bill 76 were made law, the board's leading preoccupation has been with expediting hearing time.

December 21, 1999

The Environmental Appeal Board rules that the Ontario Ministry of the Environment acted reasonably when it granted a permit to Echo Springs Water Co. Ltd. to remove 176 million litres of water from an aquifer in Grey County. Local residents had requested the review of the MOE permit by the Appeal Board due to concerns about low water levels.

3.2 Chair of the board, committed to efficiency

Carl Dombeck, chair of both boards, is a career bureaucrat seconded to the position.[10] At the time of his appointment, some expressed concern that he might not be the appropriate choice to be chair of "what is expected to be an quasi-judicial decision-making body at arm's-length from the government."[11]

In public and in the pages of the boards' annual report, the chair has stated that the Appeal and Assessment Boards are "accountable to politicians and the public" which at first may not appear to accord with the idea of being at "arm's length" from government. However, by this statement Mr. Dombeck means that the boards must account to "politicians" for cost reduction and expedited hearings – in keeping with the preoccupation with minimizing "red tape" and reducing the cost of doing business in Ontario.[12]

To expedite hearings, the board established the practice of setting hearing dates regardless of prior commitments of the parties and placed strict limits on adjournments. In one case, the parties asked for an adjournment in order to undertake tests that would help them establish terms for a settlement. The board initially refused this request, forcing the parties to undertake unnecessary and expensive negotiations with the board.[13] The board adjusted its stance on setting dates after repeated objections from parties who now have a range of seven days from which to choose.

This chart, copied from the Environmental Appeals Board's website, sets out what are the boards' chief "performance measures":

> In accordance with the Government's accountability framework, the Board is reporting the results of the first six months of the fiscal year, tracking cases filed since April 1, 1999:

Average time to schedule a hearing, once all required materials received from Appellant:	08 days
Average time to issue decision, once the hearing has concluded:	17 days
Average total time at Board, from filing to final disposition:	74 days

According to this chart, the boards appear to have achieved some gains in speeding up the hearing process. The single-minded focus on timelines has, however, also led to some poor results, and some unsatisfactory decisions (see Chapter 4 for a discussion on the Adams Mine environmental assessment hearing; see also previous Common Sense Revolution reports[14]) that participants have described as "rushed through with unseemly haste."[15]

March 7, 2000

Opponents of the eastward expansion of Highway 407 press the federal government for a full environmental assessment and public hearings. The provincial environmental assessment for the 407 extension was approved in June 1998 without a hearing before the Ontario Environmental Assessment Board.

3.3 The auditor's report and the ministry's response

Two years ago, in his 1997 report, the Provincial Auditor expressed concerns about insufficient follow-up of conditions emanating from the environmental assessment process.

During the report period, in his 1999 report, the Provincial Auditor reviewed his recommendation and the status of the ministry response.

> Recommendation: For the environmental process to be more effective, the Ministry should establish indicators to measure and report on the effectiveness of the process and monitor compliance with the terms and conditions of the approved projects.
>
> Current Status: The Ministry has developed and implemented an electronic environmental-assessment information management system to record environmental assessment submissions and track outstanding terms and conditions of approval as part of a compliance monitoring process. The Ministry is in the process of integrating the Environment Assessment Branch and the Approval Branch into one branch. It has drafted a number of performance measures to evaluate the effectiveness of the environmental assessment process. The development of procedures for audit compliance and reporting on performance has been identified as a branch priority."[16]

As of July 2000, the Ministry of the Environment provides the following list as the developed performance measures:

- Implementation of the Timeline Regulation (Ontario Regulation 616, 1998) for environmental assessments;
- Two "time" indicators reported in the Ministry Business [Plan];
  - Reduced turn-around time for decisions on individual EAs;
  - Reduced turn-around time for EA Board decisions;
- class EA bump-up timelines for government decision-making;
- The "one window" approach to project management developed and adapted for projects requiring *Environmental Assessment Act*, *Environmental Protection Act* and *Ontario Water Resources Act* approvals; and
- A tracking system for all staff to follow up on conditions of EA approval.

In addition, work is continuing in the development of performance measures for the environmental assessment program.[17]

These performance measures further demonstrate the ministry's current preoccupation with fast decision-making. Most of the listed measures deal with expediting the process. The measures for follow-up on EA conditions and other EA performance issues are unspecific and work on the latter is only "continuing." It will be a measure of the ministry's response to the auditor's report if, by 2001, there are real performance measures in place for assessing compliance with EA conditions as well as measures for swift decision-making.

November 3, 1999

Durham council votes on Gan Eden, the largest development proposal on the Oak Ridges Moraine, which would comprise 2,500 housing units near Uxbridge. Durham Region's planning committee had previously prepared a report criticizing the development proposal as "contrary to the vision of the region, the township and the community." The plans were unanimously rejected by the council, which argued that the development would degrade the environmentally sensitive moraine. The developer appealed to the OMB.

3.4 The Ontario Municipal Board – controversial decisions appear to undermine municipal autonomy; process undermines public confidence in decision-making

The Ontario Municipal Board (OMB) is an independent and impartial adjudicative tribunal. It is made up of a chair, vice-chairs and members. The Ontario government appoints all board members, who have diverse backgrounds and come from different parts of the province. The OMB hears the appeals and concerns of people, public bodies or corporations who object to the decisions of public authorities such as local or regional councils, committees of adjustment, land division committees, the Assessment Review Board (but only for assessments before the 1998 tax year), the Minister of Municipal Affairs and Housing, or an expropriating authority. The board holds public hearings throughout the province.[18]

As a consequence of the high-profile public debate regarding the Oak Ridges Moraine, the Ontario Municipal Board has been subject to unaccustomed public scrutiny.[19] Attention first turned to the board with two decisions (one of which has been subsequently overturned by an Ontario court[20]) where municipal decisions regarding development of educational facilities[21] and rent control[22] were modified or "quashed" for not being in accordance with provincial policy.[23] These decisions appeared to contradict the provincial policy of allowing municipalities greater autonomy from provincial control.

At least one writer in the press has raised the question – especially with some recent decisions[24] — of how independent the decision-making of the OMB is.[25] Concerns have also been raised regarding amendments to the *Municipal Act* that give developers increased rights of appeal to the OMB in the event that a municipality makes a decision contrary to their interests or does not make its decision within 90 days.[26] Finally, because of the perception of increased cost awards [27] against citizens groups and the disproportionately large resources available to developers, the board has come to be perceived as non-welcoming to citizen participation. [28]

The tendency of the Common Sense Revolution is to support "autonomy" when it accords with downloading provincial programs to municipalities and when it justifies provincial inaction. When municipal autonomy interferes with provincial interests, then the response of the provincial government is very different.[29]

A recent, high-profile, example of the province going back on its stance of supporting municipal autonomy is the Minister of the Environment's response to Toronto's suggestion that it would prolong the life of the Keele Valley landfill and not ship its garbage to the Adams Mine. [30] The minister threatened to intervene with the city's decision (if made) even though managing municipal solid waste is entirely up to the municipalities.

Depending on how it affects special interests – such as developers and the aggregate industry – the province either supports what it calls municipal independence[31] (as in the province's reluctance to enact a policy to protect the Oak Ridges Moraine) – or opposes it (as in the province's reaction to municipal attempts to protect rental housing or to impose the obligation on developers to build schools).

Another example of the Revolution's selective "support" of municipal autonomy is the response to several municipalities' attempts to control industrial farm operations. For example, in 1998, Oxford County attempted to impose an interim control by-law on intensive farm operations until it had developed a strategy to deal with what appeared to be an increasing problem with nitrogen levels in local wells. Interim control by-law 3693-97 prohibited livestock operations larger than 500 livestock units. The Ministry of Municipal Affairs appealed the by-law to the Ontario Municipal Board.[32] The ministry withdrew from the case on a technicality; but the by-law was subsequently amended to lift the limit the municipality had set for livestock operations. Until the Walkerton tragedy made the Minister of Agriculture think twice about it, that ministry was also prepared to fight municipal efforts to control industrial farm operations.[33] The events in Walkerton may also have influenced a very recent Ontario Municipal Board decision generally upholding a municipality's by-law controlling the size of livestock operations and striking down only the provision controlling how far manure may be hauled before disposal.[34]

3.5 The Niagara Escarpment Commission – decision-making shifts from "fulfilling the purpose of the plan"

The Niagara Escarpment Commission (NEC) was established in June 1973 under the *Niagara Escarpment Planning and Development Act*. The commission has 17 members appointed by Order-in-Council. Nine members, including the chairman, represent the public-at-large and eight members represent counties and regions within the escarpment area. The commission reports to the Government of Ontario through the Minister of Natural Resources.[35]

The role of the commission is to oversee the implementation of the *Niagara Escarpment Planning Act* as it applies to development applications in the escarpment planning area. The process can occasionally give rise to disagreement. A backbench member of the provincial government has stated publicly that he would like to disband the commission.[36] But, according to environmental groups such as the Coalition on the Niagara Escarpment (CONE), the role of the commission is properly to ensure that the plan applies to all development requests within the Niagara Escarpment plan area.

According to CONE,[37] and to some members of the commission,[38] members are increasingly making decisions not necessarily in accordance with the plan. Instead, members are evaluating applications according to criteria independent of the plan. For the most part, these considerations "on the merits" coincide with commission staff recommendations, but in a small percentage of applications – about four percent of the time – the commission votes against the recommendations of staff, and against the requirements of the plan.[39]

One example of a "non-conforming" decision was the application by the Niagara Land Company to amend the plan to permit the development of a winery resort that included a new winery, a 120-seat restaurant, 56 guest cottages and a culinary teaching centre on 36 hectares of land located at the edge of the Niagara Escarpment forest. The Niagara Escarpment Commission approved the application and then the Niagara Escarpment Hearing Office (part of the Environmental Appeal Board/Assessment Board amalgamated offices) made the recommendation to the Minister of Natural Resources that the application be approved. These decisions must also be approved by cabinet. This application sat for many months in cabinet office which, apparently, is not subject to the new timeline restrictions. Unexpectedly, on June 19, 2000, cabinet refused the proposed amendment to the Niagara Escarpment plan.

CONE is very pleased with the decision of cabinet. Certainly, the decision conforms with the overall intention of the plan. However, CONE recently applied for judicial review of another decision by the Niagara Escarpment Hearing Office that does not follow the plan. Moreover, in his decision, the hearing officer states that decisions do not need to conform to the provisions of the plan.[40] The cabinet decision regarding the winery development may conforms to the plan, but it does not necessarily signal an end to the nonconforming rulings.

IV Officers of the legislature

4.1 The Environmental Commissioner of Ontario

Ontario's *Environmental Bill of Rights (EBR)* seeks to protect, conserve and restore Ontario's natural environment for the benefit of all Ontarians, and for future generations. The *EBR* explicitly states that the Ontario government has the primary responsibility for achieving these goals.

To ensure that the environmental goals of the *EBR* are achieved openly, the legislation provides for minimum levels of public participation when government makes important decisions about the environment.

The mandate of the Environmental Commissioner of Ontario is to review how provincial ministries carry out the requirements of the *Environmental Bill of Right*s, and to report to the Legislative Assembly annually.

Eva Ligeti was Ontario's first Environmental Commissioner. Appointed by an all-party committee during the last year of the Bob Rae NDP government, she spent most of her five-year term monitoring the Common Sense Revolution. On August 18, 1999, the government did not renew her appointment. After considering amalgamating the ECO and Ombudsman's office,[41] the province decided to appoint a new Environmental Commissioner.

4.1.1 Controversial appointment draws opposition and media fire

The successful candidate, chosen by a committee dominated by Tory members of the legislature, was Gordon Miller. Comments in the press noted that Mr. Miller was allegedly a good friend of Premier Harris,[42] and an involved member of the Premier's political party.[43] He was appointed by a vote in the legislature on December 23, the last day it sat before the winter break. On that day, Marilyn Churley, a member of the New Democratic Party and Environment Critic entered a petition against Mr. Miller's appointment.[44]

4.1.2 Issues first special report on groundwater and intensive farming for Walkerton hearing

Shortly after the Walkerton tragedy reached the newspapers, the Environmental Commissioner's first comments seemed to justify the concerns that had been raised about him. The Toronto Star quotes Mr. Miller as saying that the closing of provincial labs did not cause the deaths and illnesses in Walkerton and that the problems lay with reporting procedures. The article states that the Environmental Commissioner "insisted the closing of the provincial labs had no bearing on the Walkerton tragedy. 'I don't think it represents any widespread or systemic problems for drinking water at this time. If there are problems, they lie with reporting procedures, not the private labs,' Miller argued. 'The lab did its job.' "[45] These statements echo the "human error" statements made by the Premier, who is quoted on the same day in The Globe and Mail saying "I think we have one of the safest systems in the world. Clearly we found out here in Walkerton it's not foolproof." [46]

A few days later, the Commissioner, said that he "will not step in to act or comment on the *E. coli* outbreak in Walkerton yet."[47] On June 6, the Commissioner suggested that his office may prepare a special report on the Walkerton tragedy and groundwater pollution issues.[48]

As this report was being completed, Mr. Miller submitted his first "special report" – on groundwater and intensive farming – to the Legislative Assembly of Ontario.[49] The report repeats warnings made in earlier Environmental Commissioner reports about the dangers of mismanaged, overstressed water resources and recommends a groundwater management and protection strategy.

4.1.3 Environmental Bill of Rights *litigation rights workshop*

The "litigation rights" set out in the *Environmental Bill of Rights* are intended to provide Ontario residents with a set of tools to help them protect Ontario's environment. There are four main litigation rights in the *Environmental Bill of Rights*:

- Leave to appeal – grants residents the right to appeal certain decisions made by designated government ministries if it can be demonstrated that there is good reason to believe that the decision is unreasonable and could result in significant environmental harm;
- Action Arising from Harm to a Public Resource – enables residents to sue another person or corporation that have contravened or will immediately contravene environmental laws and caused or will cause harm to a public resource;
- Action Arising from a Public Nuisance – expands the rights of individuals to sue under the common law right of public nuisance persons or corporations that are harming the environment;
- Whistleblower Protection – protects employees who exercise their *EBR* rights from reprisals by their employers.

In May 2000, the Environmental Commissioner's office engaged stakeholders in a day-long workshop about the litigation rights under the bill.[50] The discussion revolved around the fact that individuals and environmental groups have used these mechanisms infrequently during the six years since the *Environmental Bill of Rights* became law.[51]

The Commissioner's office has not yet issued its report from this workshop. Some of the points raised focused on how difficult it was for individuals or environmental groups to use the litigation tools. The tests are difficult to meet; the remedies are potentially adequate but the risks in seeking them are high; leave to appeal hearings tend to amount to hearings on the merits which throws another hurdle in the path of those looking for remedies under the act.

July 16, 1999

The second harm to a public resource action is initiated under the *Environmental Bill of Rights*. The plaintiffs, whose property is adjacent to a ski resort, maintain that the defendant was negligent in issuing a certificate of approval for a septic system for the resort.

July 22, 1999

A study completed by the Canadian Newspaper Association finds that the Ontario Ministry of the Environment has the worst record for responding to Freedom of Information requests in 1998. The MOE handled 21 percent of FOI requests within 30 days in 1998, compared to 74 percent for the Ministry of Labour.

July 23, 1999

The Canadian Environmental Law Association criticizes the government for imposing higher Freedom of Information request fees, making it more difficult for the organization and the public to attain provincial environmental information. CELA also states that the MOE no longer has the staff to compile and release detailed information on environmental matters. This weakens environmental protection in the province.

4.2 The Information and Privacy Commissioner – the *Freedom of Information Act*, an essential tool comes under scrutiny by province

The *Freedom of Information and Protection of Privacy Act* applies to Ontario's provincial ministries and agencies, boards and most commissions, as well as community colleges and district health councils.

The act requires that the government protect the privacy of an individual's personal information existing in government records. It also gives individuals the right to request access to government information, including most general records and records containing their own personal information.[52]

> The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.[53]

Freedom of Information requests have been a crucial and invaluable tool for environmental groups such as the Sierra Legal Defence Fund and the Canadian Institute for Environmental Law and Policy to obtain information about environmental protection in Ontario.

In the same week that the Sierra Legal Defence Fund issued a report critical of the government's enforcement of environmental laws using documents obtained through the *Freedom of Information Act*, the government struck a committee of MPPs to review the legislation.[54] This event coincides almost to the day with another instance of the provincial government having trouble with privacy legislation.[55] The mention of reviewing the act drew expressions of concern from opposing MPPs and the Privacy Commissioner, Ann Cavoukian.[56]

June 10, 1999

The provincial Information and Privacy Commissioner expresses concern about the Ontario government's intention to exempt Ontario Hydro's successor companies, Ontario Power Generation and Ontario Hydro Services Co., from *Freedom of Information* legislation. The exemption would make it extremely difficult for the public to get information on environmental, health and safety issues related to the companies' operations.

V Environmental protection, public safety and industry self-regulation

> *"I suggest when it comes to public safety, [the Ministry of the Environment] is doing a lot less with a lot fewer resources."*[57]

5.1 Environmental emergencies small and large – risks may be increasing while the ability to manage risks grows less

Facilitated approvals and fewer ministry resources to monitor and enforce environmental laws create the potential for accidents both minor and major. Described below are a few instances during the report period that may indicate more care could

have been taken during the approval stage, more care needs to be taken now, or, without action now, there may be more serious events in the future.

5.1.1 Methane leak at Safety-Kleen

On November 30, 1999, Caroline Di Cocco MPP for Sarnia, asked the Minister of the Environment to shut down the Safety-Kleen toxic hazardous waste landfill site in Moore. A Ministry of the Environment investigation had revealed that the clay liner at the site was leaking methane gas and water in three areas. Ms. Di Cocco noted that the "Ministry fast tracked the expansion in 1997 to 300 acres [120 hectares] and Safety-Kleen has bought another 1,000 acres [400 hectares].... 386,493 tonnes of toxic hazardous waste in 10 months have been landfilled at this site. Now the liner has leaks."[58]

On December 14, the Ministry of the Environment issued an order prohibiting Safety-Kleen from landfilling hazardous waste at its site. On December 24, 1999 the MOE re-opened the Safety-Kleen facility after it issued an order for the facility to meet more stringent conditions for landfilling hazardous waste. There have been no more incidents reported at the site.

5.1.2 Sulphuric acid spill on rail line to Adams Mine

At the end of March 2000, 692 tonnes of sulphuric acid spilled from a train derailment south of Temagami near Hornet Lake. The Ministry of the Environment estimated that the clean up would take several weeks. There was a reported loss of some fish life. The accidental spill is significant because it occurred on the same rail line that will carry Toronto garbage to Kirkland Lake after the opening of the Adams Mine landfill. The state of repair of the rail line and the safety of the people living close to it were issues not heard at the environmental assessment for the Adams Mine landfill.

5.1.3 Reduced spill reporting requirements

In August 1999, the Ministry of the Environment posted its decision concerning the classification and exemptions of spills under the *Environmental Protection Act*.[59]

According to the ministry posting, an estimated 20 percent of the 5,000 spills reported annually are trivial in nature; the reporting by the dischargers and documentation by the ministry takes away priority from spills that are more serious.

The reforms give dischargers an incentive to plan and prepare for all spills by providing them with a reporting exemption for minor spills if their contingency plan specifies the type of spills they intend to report to the ministry.

It seems unlikely that minor spills really "take priority away" from major spills. It is more likely that this reform has been implemented to accommodate the ministry's sharply reduced ability to adequately respond to spills. Proactive planning by dischargers is potentially a positive outcome of this reform if the ministry has adequate resources to evaluate the contingency plans.

5.1.4 Hickson plant fire

Thanks to a lucky wind, and a prepared fire-fighting team equipped with a community safety plan, the April 2000 fire at the U.S.E. Hickson Products plant in Scarborough was not anything like the 1997 Plastimet fire in Hamilton. The Hamilton blaze required the evacuation of 4,000 residents for a day-and-a-half. Furthermore, Hamilton firefighters did not know what was burning on that site. They believed it was a recycling plant and were unprepared when they learned it was a storage facility for more than 500 tonnes of plastic.

When fire fighters responded to the Hickson fire alarm, they already had a good idea of which chemicals were on site. Following their own community safety plan created a decade ago and updated annually, they promptly brought the fire under control. It should be noted that this well-executed plan had nothing to do with lessons learned from the Plastimet fire in Hamilton. "There has never been a full inquiry [into that fire], the provincial government chose not to."[60] The province has the legal capacity under the *Environmental Protection Act* to require facilities that store and manage quantities of hazardous materials to have a certificate of approval.[61]

In debates in the Legislature after the fire, opposition members called for new "Public Right to Know" legislation, and the Minister of the Environment mistakenly stated that the owner of a facility with hazardous chemicals on the premises "must submit a plan [to the government] on the type of hazardous materials and what will be done with those hazardous materials."[62] The minister corrected his misstatement in subsequent debate.

October 9, 1999

The Atomic Energy Control Board criticizes Ontario Power Generation for the safety performance of the Bruce plant, which has failed to meet acceptable levels in half of the 67 categories that are monitored for safety. The board warns OPG to reduce the plant's power output, or it could close part of the plant.

5.2 Nuclear safety still an issue

In May 2000, the Atomic Energy Board (now the Canadian Nuclear Safety Commission) released its annual report on the performance of Ontario's nuclear power stations noting that, while somewhat improved over the previous year's report, the plants "must do better."[63] In June 2000, the Bruce nuclear reactors A and B were leased by Ontario Power Generation to British Energy, which plans to create a new power company in Canada.[64] As well, the environmental assessment under the *Canadian Environmental Assessment Act* of the Pickering A reactor, "laid up" since 1997, is underway.[65]

August 7, 1999

Plans by Ontario Hydro to sell its nuclear assets are temporarily suspended while the provincial government focuses on restructuring its electricity sector. The government has approved up to $1.4 million in spending and signed a contract with Salomon Smith Barney, which expires in February 2000, to mediate the sale of "all or a portion" of its nuclear assets. The company could earn up to $7 million (U.S.) from the sale of the nuclear assets. The plan is revitalized in mid-August.

May 25, 2000

In an annual report released by the Atomic Energy Control Board, Ontario nuclear generating stations receive mixed reviews. Performance at the Pickering, Bruce and Darlington stations are rated "acceptable" in two of eight general categories. The stations receive a "conditionally acceptable" rating for six of the eight performance categories, which means the stations must make changes to meet AECB standards. The six categories where performance can be improved include nuclear security, operations, environment, training, safety analysis and management and equipment fitness.

5.3 The TSSA and REVA reach milestones in self-regulation, but Bill 42 does not pass

5.3.1 The TSSA

> *"The ministry and the Technical Standards and Safety Authority have received more than 25 letters from industrial associations … in support of this proposed legislation. Clearly the record is there that after wide consultation the minister has broad endorsement."*[66]

December 20, 1999

The *Technical Standards and Safety Act* consolidates seven statutes into one law, including: *Amusement Devices Act, Boilers and Pressure Vessels Act, Elevating Devices Act, Energy Act, Gasoline Handling Act, Operating Engineers Act* and *Upholstered and Stuffed Articles Act*. The regulations would specify the day-to-day enforcement of the new act by the Technical Standards and Safety Authority (TSSA), which was created in 1997 and is responsible for the inspection and administration of services in areas regulated by the Ministry of Consumer and Commercial Relations.

On May 5, 1997, responsibility for ensuring the safe operation of a range of products and devices such as boilers, elevators, ferris wheels, roller coasters and underground storage tanks for gasoline was transferred from the provincial Ministry of Consumer and Commercial Relations to the Technical Standards and Safety Authority (TSSA), a private, non-profit corporation without share capital.

The Technical Standards and Safety Association is the CSR's "solution" to the pressing problem of ensuring public safety. As with other initiatives, the provincial government has handed over supervision and enforcement of regulations to the regulated industries themselves. "This highlights the need in privatization initiatives for accountability mechanisms to ensure that the private sector partner acts fairly with the public."[67]

In April 2000, the Canadian Institute for Environmental Law and Policy issued a report describing the strengths and weaknesses of the TSSA model.[68] The report makes a number of recommendations to address the weaknesses identified. These include:

- The provision of a clear and specific statutory mandate, giving priority to the protection of public safety, health and the environment;
- The restructuring of the Board of directors to ensure that a majority of the directors are independent of regulated economic interests; and
- The adoption of strong conflict of interest rules where directors of their employers have economic or policy interests affected by TSSA activities and decisions.[69]

In June 2000, a coroner's jury released its verdict of the investigation into the death on August 24, 1999 of Jerome Charron. Mr. Charron died of an accidental fall due to the failure of the safety features of a "bungee cord" device at an Ottawa amusement park. A TSSA inspector had recently inspected the device.

Among others, the coroner's jury's recommendations were:

- The TSSA should aim for a balance of industry and non-industry representation on its Board and its technical advisory committees.
- The Ministry of Consumer and Commercial Relations … should ensure regular and rigorous audits of the approval and inspection processes of the TSSA and make the results of such audits available to the public. Such an audit should be conducted within the next 12 months.
- Responsibility for investigating possible violations of the *Amusement Devices Act* or legislation replacing it should be returned to the direct control of the MCCR. In the circumstance of serious bodily harm or death arising from an incident involving an amusement device, the local police force should take the lead role in the investigation.[70]

General concerns about the adequacy of the TSSA model to protect the public interest – raised to greater effect because of the Walkerton tragedy, the findings of the coroner's jury and CIELAP's report – stalled the passage of Bill 42, *Technical Standards and Safety Act, 1999*.

The future status of the proposed legislation is uncertain. On its web page, the TSSA notes that it "has been advised that it is the intent of the Ontario government to continue Third Reading of Bill 42 when the Legislature resumes sitting this fall. We do not anticipate that the implementation of the proposed new Act and Regulations will be significantly delayed. In the interim, TSSA will continue to assist the Ministry in its review of the Regulations proposed under the new Act."[71]

5.3.2 REVA

The provincial government posted its draft proposal to Recognize and Encourage Voluntary Action (REVA) to the Environmental Bill of Rights Registry in November 1998 and posted its decision to move ahead with the initiative in August 1999. Two documents available through the EBR Registry notice dated June 1999 describe the potential new policy framework for voluntary pollution prevention and reduction in Ontario, and "Performance Plus", a demonstration program under REVA.

REVA proposes to achieve "environmental improvement that is based upon a partnership of trust and a balance between voluntary and regulatory actions." [72] The basic concept of REVA is described as:

> In practical terms, industrial facilities that voluntarily and consistently adhere to high standards of environmental planning, performance and accountability in excess of regulatory requirements and, in accordance with ministry environmental objectives and priorities, would be accorded greater operational flexibility and administrative efficiency in their relations with the ministry.

The report goes on to observe: "This approach has the potential for bringing benefits to both industry and government, while enhancing protection of the environment. This approach does not negate the need for regulation, but focuses on a combination of smart regulation and incentives for voluntary action."

Concerns have been raised around the practice of government and regulated industries entering partnerships that may compromise the government's role of regulator and enforcer of the law.[73] According to the Ministry, there have been no pilot projects initiated under REVA or Performance Plus.[74]

5.4 Program approvals

In her April 1999 annual report, the Environmental Commissioner Eva Ligeti noted a marked increase in the Ministry of the Environment's use of "program approvals," which permit companies to operate and emit pollutants at levels higher than regulated limits, with the understanding that the polluter is undertaking a program that will eventually result in the company's achieving compliance. Only two approvals were granted in the period 1994-1997, but nine were issued in 1998 alone.[75]

While a program approval is in place, a polluter may not be prosecuted for processes described in the approval, and the Ministry of the Environment cannot revoke or amend a program approval before its expiration date except in certain circumstances. The ministry's ability to issue control or stop orders is also restricted when a program approval is in place.[76] This change arises from a 1995 amendment to the ministry's compliance guideline which removed restrictions on the authority of ministry directors to issue program approvals. The activity with program approvals during the report period continues this trend.

5.4.1 Approvals that expired during the report period

Two program approvals served to Ontario Hydro regarding emissions (and their inability to comply with Clean Water Regulation 215/95) from Pickering and Darlington Nuclear Power Stations expired December 31, 1999.[77]

> May 25, 2000
>
> A notice of proposal for policy is posted to the EBR (Registry Number: PA00E0022), regarding a Proposed Environmental Management Agreement between Environment Canada, Ministry of the Environment and Algoma Steel Inc.
>
> The purpose of the proposal is stated as follows:
>
> A three party Environmental Management Agreement has been drafted between Environment Canada's Environmental Protection Branch-Ontario Region, the Ontario Ministry of the Environment and Algoma Steel Inc. in Sault Ste. Marie. The objective of this agreement is to clearly define a list of initiatives with negotiated timelines for environmental activities that Algoma Steel Inc. agrees to undertake. The activities identified in this draft agreement deal with issues, which the three stakeholders agree, are priorities but have specific objectives which are currently beyond the compliance regime administered by Environment Canada or the Ministry of the Environment. This is a voluntary initiative, which complements the existing regulatory process and assists Algoma Steel Inc. in planning and prioritizing a multi year environmental program. The draft agreement will cover a period from date of signing to December 31, 2005.

A program approval issued in September 1999 was for testing of ethylenediamine tetraacetic acid (EDTA) as a treatment for Placer Dome's South Porcupine Mine effluent in order to achieve compliance with MISA mine effluent lethal toxicity test. The program approval expired on January 15, 2000.[78]

5.4.2 New approvals granted during the report period

A program approval was granted November 18, 1999 to Chinook Group in the Township of Sombra to extend its program to achieve compliance with Clean Water Regulation 63/95. The extension will expire on July 31, 2000.[79]

An approval issued February 8, 2000 and served February 10, 2000 to Abitibi-Consolidated Inc., Kenora Division, was for a program including an impact assessment report, a study into the land

application of leachate, an evaluation of treatment options and a submission of an application for an EPA Part V Approval Amendment on an existing certificate of approval. The purpose of the program is to abate leachate concentrations of phosphorous that exceed the certified limit of 0.03 ppm in runoff from the landfill site operated by the corporation. The program approval will expire on August 21, 2001.[80]

Four program approvals issued May 16 and served May 23 apply to four locations of Mohawk Canada retail outlets in various cities in Northwestern Ontario. The company imports and sells ethanol blended motor gasoline which exceeds the volatility requirement of O. Reg 271/91. All approvals apply to a program to enable the company to locate lower volatility gasoline in order to meet the volatility requirement by June 1, 2001.[81]

A program approval was granted – for an indefinite time – to Bowater Pulp and Paper in Thunder Bay for construction and operation of a new recovery boiler on the company's A mill.[82]

5.4.3 Approvals proposed during the report period

Two new proposals, both related to problems complying with MISA regulations, were posted on the Environmental Bill of Rights Registry in late 1999/early 2000.

Praxair Canada (in Paris, Ont.) requests a program approval to bring the emissions of its air separation plant (the facility produces gases of oxygen, nitrogen and argon) into compliance with MISA. The water that is used for the cooling of the plant's components becomes contaminated and must be treated before being discharged. Problems are being encountered and these are to be resolved with the implementation of upgraded systems. During the past year, excessive levels have been found in the effluent from the company's operation. As part of its effort to comply, the company will be making improvements to its process during the construction and commissioning of the new air separation plant. The company has requested that a program approval be issued to cover the construction and commissioning period.[83]

In February-March 2000, St. Lawrence Cements requested for a program approval. SLC manufactures cement at 2391 Lakeshore Rd. W. in Mississauga. From August 26, 1997 to December 31, 1999, 11 technical standards and safety violations of Ontario Regulation 561/94 have occurred at SLC. These incidents have been attributed to the management of stormwater at the site. SLC has requested that the ministry enter into a program approval to bring themselves into compliance with Ontario Regulation 561/94 as amended.[84]

VI The Ministry of the Environment

The Ministry of the Environment is, of course, a key decision-maker regarding the environment in Ontario. It performs fundamental tasks – setting standards and enforcing environmental laws – that set the baseline for environmental quality. In the past five years, through staff and budget cuts, the provincial government has severely restricted the ministry's capacity to perform its fundamental tasks. During the report period, this lack of capacity has been demonstrated in a variety of ways – some of which are described elsewhere in this report (see the introductory chapter for staff, budget and enforcement figures). Described below are other signs of incapacity to protect the environment: insufficient standard setting, a SWAT team that did not happen, and a plan to "fix" the Ministry of the Environment with an efficiency evaluation. Finally, and possibly most importantly, this section notes the new, permanent status of the Red Tape Commission, an agency whose decision-making has a profound impact on environmental protection but is almost completely obscured from public view.

6.1 Standards setting

Setting standards is a "core business" activity of the Ministry of the Environment.[85] On October 10,1996, the Ministry of the Environment and Energy posted on the EBR Registry a proposal for a new standards setting plan and posted a revised proposal for comment between November 1999 and January 2000. The term "standard" includes any numerical environmental quality limit set by the ministry.

The amended standards setting plan includes: revised priorities for setting standards for several environmental media, refinements to the process

used for setting standards for airborne contaminants, a review of all current air standards to determine whether they are consistent with standards in other jurisdictions and a recommendation that 75 air standards be confirmed at their current values. These reconfirmed air standards were identified in the early nineties as out of date and inadequate to protect the environment and human health.[86]

Earlier Common Sense Revolution reports have noted that the standards-setting process within the ministry is very slow and relies heavily on initiatives – the Canada Wide Standards process and the Canadian Council of Ministers of the Environment – external to the government.[87] Earlier reports also noted that these external initiatives tend to establish "lowest common denominator" standards.[88] During the report period, the ministry also adopted a number of standards for air, water and drinking water quality set by the Canadian Council of Ministers of the Environment.[89] According to the Canadian Environmental Law Association, some of these standards, particularly the standards for tritium (a radionuclide) are insufficiently protective of human health. [90]

6.2 The SWAT team

In June 2000, there was a brief flurry of press attention around a draft cabinet document leaked by an opposition party. [91] The cabinet document[92] describes in detail the implementation of the provincial government's campaign promise to create an environmental "SWAT" team to "get tough" with polluters and to establish a "hotline" allowing Ontario residents to alert ministry personnel to environmental infractions. [93] For a short time the Premier appeared to think the document was not real. The cabinet document is real, but it is not clear that cabinet ever actually reviewed the document. Certainly, the plan was not put in place during the report period. The estimated price tag of the SWAT team was $18.5 million to start up and $14.6 million a year to maintain. These amounts are only roughly one-fifth of the revenues cut from the Ministry of the Environment's budget but they may account in part for why the plan did not get implemented.[94] Two other elements of the program may conflict with provincial policy: taking a tough stand with polluters is inconsistent with the provincial government's practice of supporting and cooperating with regulated industries (see discussions above); and the "pollution hotline" may overtax scarce investigation and enforcement resources (see enforcement resources in the introductory chapter).

June 1999

The MOE business plan 1999-2000 highlights the establishment of an environmental SWAT team. The SWAT team is "a specialized group of ministry staff that will audit industries to make sure they're obeying the rules." The ministry plan also states that the MOE, "will develop and promote a toll-free pollution hotline for Ontarians to report possible acts of pollution."

June 24, 2000

The Premier states that a March 2000 MOE document outlining the establishment of an environmental inspection SWAT team is "phony baloney". The document detailed the costs involved ($14.6 million) in establishing an environmental SWAT team and recommended that 138 new employees were needed at the MOE. The document stated, "less than 10 percent of sources of pollution in the province are inspected in any one year." Premier Mike Harris later promises the implementation of an anti-pollution SWAT team by summer.

December 14, 1999

The *Taxpayer Protection Act, 1999* and *Balanced Budget Act, 1999* receive royal assent. The acts require a referendum prior to new tax increases and that the provincial government produce a balanced budget.

6.3 "Fixing" the Ministry of the Environment

By June 2000, the provincial government was under tremendous pressure. The Walkerton tragedy and the Oak Ridges Moraine were two leading issues in the press. Both issues appeared to require the provincial government to do something about protecting the environment.

In response to this pressure, the Premier announced that Valerie Gibbons, a career bureaucrat who has done work for all three major political parties in Ontario, will undertake an evaluation of the ministry and make recommendations to increase the

efficiency of its operations.[95] On the one hand, this proposed remedy accords with the Common Sense Revolution theme that government can do "more with less." What remains to be seen will be how the government will respond to an evaluation that suggests in order to do more, the ministry requires more resources.

November 9, 1999

The *Red Tape Reduction Act*, 1999 is introduced in the legislature and contains more than 200 amendments to acts in more than a dozen ministries. The new act includes amendments to the *Highway Traffic Act* that will integrate Ontario's commercial vehicle registration program with the one used by American states, and amendments to the *Mining Act* and the *Consumer Protection Act*. The government reports that the Red Tape Commission process has resulted in the passing of 11 Red Tape Reduction bills since 1995. These bills have repealed 28 statutes and amended 149 acts. The government states that these changes will remove barriers to job creation and economic growth.

6.4 Red tape – and all that implies

On May 25, one day after the Walkerton tragedy first hit the newspapers, the Premier's office issued a press release announcing that "Premier Harris today announced the establishment of a permanent watchdog to eliminate and prevent red tape."[96]

In the release, the Premier blames prior governments for building a mountain of red tape "that killed jobs." With another death toll so prominent in the headlines, the Premier appeared not to make the connection between so-called "red tape" and public safety.[97] Others have made the connection:

> "Red tape" is the pejorative term for any rule or requirement … that prevents you from doing what you want to do the way you want to do it … The Ontario government has been devoted to "cutting red tape." To wit: environmental standards, investigations, procedures and prosecutions…[98]

The Premier also remarks in his release that the vigilance of the permanent commission is required so that "government is never again tempted to choke small business with pointless paperwork." Following the point made in the quotation above, under the Common Sense Revolution "pointless paperwork" has included, among other things, monitoring water quality and air quality in the province, environmental assessment hearings, inspection to ensure compliance with environmental protection laws, provincial oversight of risky undertakings that pose substantial threats to public health and safety, and the ability of municipalities to put controls on developers to protect public health and the environment.

If it is the role of the Red Tape Commission to ensure that government is never again tempted to protect the public interest in these and other ways, then it will be the single most important environmental decision-making body in the province.[99]

Given this, it is very important to note that *Freedom of Information* access requests to documents pertaining to the deliberations and recommendations of the Red Tape Commission have been denied pursuant to Section 12(1)(b)(d)(e) of the act.[100]

Finally, if it is true that the government is doing "more with less" it should also follow that those agencies with more resources are performing a great many tasks for the government. If this is true, then impacts on environmental decision-making may be measured by the following figures. Ontario's annual budget has allocated $1.6 million to the Red Tape Commission. The Premier's office budget for 1999-2000 is $3.3 million, a tenfold increase from $341,500. The cabinet office budget for 1999-2000 is $18.9 million, a tremendous increase from $1.4 million.[101]

May 25, 2000

Premier Mike Harris announces the establishment of a permanent Red Tape Commission (RTC). The RTC is developing a business impact test, by which all new regulations will be tests for the effects they could have on business in the province. The RTC is also to coordinate new red tape reduction plans for each ministry's business plans.

VII Education

In earlier reports, CIELAP noted that environmental studies and environmental science have been removed as separate areas of study from the Ontario public and high school curricula.[102] "Environ-

ment" is now a subset of other disciplines such as geography, biology and world studies. The full impact of these changes to the curriculum will not be known for some years. Neither will it be known for some time the impact of the following additions to Ontario's schools.

December 21, 1999

Draft guidelines for the Ontario grade 9 to 12 curricula remove environmental sciences as a core curriculum area of study for grades 11 and 12. Opposition MPPs and educators from universities across the province argue against dropping environmental sciences from the grade 11 and 12 curriculum guidelines. The Ministry of Education argues that environmental sciences will be integrated into other subject areas.

7.1 Partners in Air

In November 1999, the Ministry of the Environment issued a press release regarding a new "Partners in Air" project at Lorne Park Secondary School in Mississauga.[103] Petro-Canada, a lead sponsor of Partners in Air,[104] presented a cheque for $60,000 to help cover the cost of the program at Lorne Park for the next two years. Petro-Canada recently announced that it can reduce the sulphur in its gasoline (presently, at 800 parts per million, the highest sulphur content in the developed world) to 30 parts per million by 2003.[105] Partners in Air gives students an opportunity to conduct air quality studies and to discuss their findings with students and scientists via the Internet.[106]

7.2 Hunting manuals for inner-city schools

In March 2000, the Ontario Federation of Anglers and Hunters distributed to secondary schools across the province a manual that shows students how to load, aim and fire handguns (the guide was produced with the cooperation of the MNR but distributed without consulting with the ministry first).[107]

7.3 Making the miners of tomorrow

In May 2000, the Minister of Northern Development and Mines announced that the Ontario government is providing $34,000 to promote awareness of the mining industry among elementary school children.

> Equipping our schools with this educational material will help our students appreciate the importance of geology and mining in Ontario.… Sparking an interest in rocks and minerals at an early age will help influence future career choices and ensure the province has an ample supply of future geologists and mining professionals.[108]

The effects of the exclusion of environmental studies and the inclusion of hunting and mining instruction are very difficult to measure at this point, and, in any case, far beyond the purposes of this report. The generalization that may apply to these changes to the school curriculum is simply that they reveal a bias within the government evident elsewhere. There is a disproportionate emphasis on old economy-style resource extraction and, generally, an impatience or disregard for the environment as a distinct and valuable area of government interest.

VIII Conclusion

This chapter began with a discussion of the concepts attached to government decision-making about public goods such as the environment. It should be informed, open, balanced and should in some significant measure involve all affected stakeholders.

This report also identified three themes in provincial government reforms that have affected decision-making about the environment: industry self-regulation and self-monitoring, fast decision-making and smaller government. These reforms have reduced the quality of environmental decision-making in the province by excluding stakeholders, expediting decision-making to the point where important environmental issues are not dealt with, and removed whole areas of decision-making from public view and public accountability. The net result of these impacts are evident in the events of the past year: reduced public confidence in bodies such as the OMB, increased risk to the environment and public health through "hasty" decisions by such bodies as the EAB, and, as discussed in Chapters 7 and 8, environmental decisions that overwhelmingly support the interests of industries that consume resources.

CHAPTER 4 – Garbage and hazardous waste

I The Common Sense Revolution and garbage issues so far

Note: The following describes only a few of the changes implemented under the first four years of the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report. [1]

1.1 Defunding

In the fall of 1995, the province withdrew all funding for recycling and household hazardous waste programs.[2]

1.2 Deregulation

A ban on the establishment of new municipal waste incineration facilities was removed in December 1995. A Ministry of the Environment "Delivery Strategy" revealed to the public in February 1999, directed ministry staff not to respond to complaints about a wide range of potential violations of waste management-related laws and regulations.[3]

Bill 76 – the Common Sense Revolution's new environmental assessment law – came into force in January 1997. The new act changed environmental assessment in Ontario completely – virtually eliminating public hearings from the process, making the consideration of "alternatives to the project" subject to the director's discretion and increasing the chance that projects would receive approval without an environmental assessment at all.[4]

Some decisions under the new environmental assessment regime include:

September 1997: The ministry approves a 1.9 million-tonne expansion of the Laidlaw/Safety-Kleen commercial hazardous waste landfill.

November 1997: The use of a scrap metal smelting furnace by Gary Steacy Dismantling is approved for the destruction of low-level PCB (polychlorinated biphenyls) wastes in Northumberland County, with a capacity of up to 1.8 million litres of transformer fluids and 700 tonnes of waste fluorescent light ballast.[5]

May 1998: A facility to remove PCBs from electrical equipment operated by the U.S.-based firm Trans-Cycle Industries is approved in Kirkland Lake, Ont., with an approved capacity of 101,000 tonnes of waste per year. The facility is approved to receive wastes from all provinces.

November 1999: The use of a modified scrap metal smelting furnace by SRBP Material Resource Recovery is approved for high-level PCB incineration in Cornwall. The facility is approved to receive up to 130 tonnes of liquid mercaptan residues, 1,250 tonnes of other mercaptan wastes and up to 4,380 tonnes of PCB wastes per year with no restrictions on sources.[6]

1.3 Downloading

The November 1995 withdrawal of provincial funding from recycling amounted to a virtual downloading of responsibility for all recycling to municipalities.

Chapter Overview

I Approvals process – more, worse, landfills and processing facilities

- *Taro, Adams Mine and Safety-Kleen prove that hasty decisions benefit no one, put the public at risk and incite conflict; new PCB incinerator approval proves the lesson has not been learned*

II In Taro's wake – a "six-part plan" to manage hazardous waste

- *Taking overdue action, the province implements a weak control program that avoids land disposal regulations and ignores hazardous waste reduction; meanwhile, a new CIELAP study shows hazardous waste is a growth industry in Ontario*

III Municipal garbage and recycling – Part I

- *Criticized by the Provincial Auditor for inaction on waste reduction, the province creates the Waste Diversion Organization, a plan that will not fix the problem*

IV Municipal garbage and recycling – Part II

- *The Adams Mine saga: Shipping garbage hundreds of kilometres to a hole in the ground*

Related topics: *For approvals and standard-setting issues, see Chapter 3, environmental decision-making, for other northern land-use issues, see Chapter 7.*

II Common Sense and garbage

Depending on one's perspective, waste management is either big business (with opportunities to create jobs and generate wealth[7]) or a pressing environmental problem (with threats to human health, water quality and air quality from toxins, among many other serious waste-related issues[8]).

The perspective of the Common Sense Revolution is that waste is big business, and, as with all the other businesses supported by the provincial government, the Revolution's tendency has been to assist the industry with streamlined approvals,[9] a lightened regulatory burden[10] and the benefit of the doubt when concerns have been raised about a facility.[11] As with all its other environmentally related policies and programs, the provincial government has over the past 12 months claimed great success with hazardous waste management and solid waste diversion programs.[12]

However, from the other perspective – the one that acknowledges that waste management deals with complex and serious environmental issues – the provincial record raises multiple concerns. Concerns have arisen over the provincial government's handling of municipal solid waste. The provincial government withdrew its support of recycling programs in 1995. The Provincial Auditor, among others, has singled out the province's waste diversion programs as falling short of the goals the province set for itself.

The province has, since 1995, greatly increased in-province capacity to burn PCB and other hazardous wastes. On the one hand, this increased capacity may achieve the beneficial result of finally destroying stockpiles of PCB contaminated waste held, for example, by Ontario Power Generation. In fact, the issue is not so much that PCB furnaces are suddenly appearing in Ontario (though some would say that it is an important issue) as it is whether or not the approvals process is adequately assessing both the technology and the potential risk to the public posed by these facilities.

III Waste approvals

3.1 Landfill environmental assessment hearings

There were no environmental assessment hearings for waste facilities in 1999-2000, just as there were no hearings in 1998-1999.[13] There are no environmental assessment hearings pending for any waste facilities, either.

3.2 Routine waste facility applications

Generally speaking, new waste disposal projects such as brand new landfills, are not common in Ontario. Rather, under the Common Sense Revolution, it is much more usual to see existing landfills apply to extend their operating life and/or increase the area from which they can receive waste.

Two representative applications are the Clarington Waste Processing Centre[14]…

> Clarington Waste Processing Centre Limited proposes the continued use and expansion of the landfill site. The landfill site has existed for approximately 40 years but has not been actively accepting waste for several years. The site proposes to accept municipal non-hazardous solid waste, as well as industrial, commercial and institutional waste primarily from the Counties of Hastings, Peterborough, Northumberland and Victoria, and from the Regions of York and Durham. In addition, the proponent will be seeking approval to accept waste from the remaining areas of the province. The proponent has projected that annual capacity may reach 130,000 tonnes per year with a site life of between 10 and 20 years.

… and the Canadian Waste Services Inc., Richmond Landfill Site Expansion.[15]

> Canadian Waste Systems Inc. currently operates the Richmond Landfill Site under the provisions of Provisional Certificate of Approval No. A-371203, and now proposes to expand the area of the Richmond Landfill Site and the geometric volume of the waste which may be deposited at it.

Applications such as these are numerous, and none, as already noted, have given rise to an environmental assessment hearing, although many are reviewed by the Environmental Approvals Branch and some undergo an environmental assessment "according to the act.'" An assessment according to the act could, it should be noted, include a declaration order (once called an exemption) under the act that would permit the project to proceed without an assessment of environmental impacts.[16] "According to the act" could also mean that only a very narrow range of potential environmental impacts of a site will be assessed.

3.3 Less routine waste facility applications

3.3.1 Trans-Cycle application refused

In December 1999, the Ministry of the Environment refused an application by Trans-Cycle Industries to amend its certificate of approval (C of A). Trans-Cycle operates a PCB waste recycling and transfer facility in Kirkland Lake, Ont. The application requested to change Trans-Cycle's C of A to expand the facility's service area to receive PCB material from other Basel Convention and Organization for Economic Co-operation and Development (OECD) countries.

The director decided to refuse this application because it was not in the public interest.[17] Trans-Cycle made the application in order to receive and treat a shipment of PCB-contaminated electrical equipment taken from a U.S. military base in Japan. When Vancouver Harbour refused to accept the shipment,[18] Trans-Cycle abandoned its appeal of the director's decision.[19]

3.3.2 PCB and other hazardous waste incineration in Cornwall

The Environmental Assessment Board approved the application by Material Resource Recovery SRBP Inc. (MRR), located in Cornwall, Ont., to amend its certificate of approval to permit the incineration of PCB electrical transformers, PCB ballast, PCB capacitors, cable and other debris laden with PCB wastes, medical and pharmaceutical wastes and other hazardous material. The MRR application was heard by the Environmental Assessment Board, but was not an environmental assessment hearing. Rather, the hearing, held pursuant to the *Environmental Protection Act*,[20] dealt only with a discussion of the technology involved.

Polychlorinated biphenyls (PCBs) are very stable; they resist chemical and physical degradation. They are also persistent and bioaccumulative in living organisms and can enter the food chain. Once released into the atmosphere, PCBs can travel extremely long distances. They are found both in the Great Lakes region and in the Arctic.

Because of their stability, persistence and capacity to "migrate", PCBs pose grave threats to the environment. They also present, therefore, serious disposal problems. Ontario has only one perma-

nent facility permitted to incinerate PCBs, the Steacy Dismantling site.[21]

MRR established a limited light ballast decommissioning facility in the City of Cornwall in 1998. MRR's existing certificate of approval permits it to operate, among other things, a minor metal reclamation and car bottom furnace at its facility. MRR is permitted to burn in its incinerator mercaptan (the substance which gives natural gas its smell) residues and fluorescent light ballasts containing less than 50 ug/g (micrograms per gram) of PCBs.

The Material Resource Recovery application would have expanded the quantities and kinds of wastes processed at its facility, including the incineration of large quantities of PCB wastes and other hazardous substances. Its submission was that, for the furnace at issue:

> Similar technology has been approved for the PCB destruction at a facility in Colbourne, Ontario [the Steacy Dismantling facility]. The temperature and residence time capabilities of the metal reclamation furnace could meet typical requirements for safe PCB destruction. [The company] undertook a series of test burns in November 1998 that proved … that the furnace could easily handle a PCB concentration up to 30,000 ppm.[22]

However, another party before the board, Ellen Connett, challenged these and other assertions made by the company. The Ministry of the Environment also questioned the test results, saying that the amount of PCBs used in the test burns was not accurately measured and there were no witnesses to corroborate the tests.[23] When the board subsequently approved the application to amend the company's certificate of approval, Ellen Connett and Dr. Paul Connett appealed the decision stating, among other things, that the approval sets a "disturbing precedent.… If the destruction of PCBs were this simple it would have been done this way many years ago. Such a momentous decision required far more careful scrutiny and scientific analysis than it has been given to date. This process has been rushed through with unseemly haste."[24] At time of writing, this appeal is still before cabinet.

It also should be noted that when the board approved the Steacy facility in Colbourne – the precedent, as it were, for the MRR application – it questioned why the project had not been designated under the *Environmental Assessment Act* and expressed concern about granting approval to a proponent with no prior experience in handling hazardous wastes.[25]

3.3.3 Rotary kiln to burn contaminated soil

Bennett Environmental Inc. (Bennett) has applied to the Ministry of the Environment for a certificate of approval under the *Environmental Protection Act* (*EPA*) and the *Ontario Water Resources Act* (*OWRA*) to construct and operate a high temperature rotary kiln thermal oxidizer facility in Kirkland Lake to treat contaminated soil and other solid waste material from contaminated site remediation projects.

The proposed treatment capacity would be 200,000 tonnes per year of soil and other solid waste material contaminated with chlorinated and non-chlorinated hydrocarbons including PCBs, pentachlorophenols, pesticides and herbicides.

The proposed regulation would make the construction and operation of a rotary kiln thermal oxidizer facility by Bennett subject to the requirements of the *Environmental Assessment Act* (*EAA*).[26]

September 18, 1999

In conjunction with the proposal to toughen Ontario's hazardous waste regulations, the Environment Minister says he has instructed MOE officials to review a February 1997 decision by Ontario to give blanket approval to all import permits for hazardous waste. The 1997 decision made by the previous Environment Minister waived the province's right, under federal regulations, to review and reject proposed hazardous waste imports.

IV In Taro's wake: A six-point action plan on hazardous waste

4.1 The Taro landfill

In July 1996, the province approved, without a public hearing, a 10 million-tonne landfill site for solid non-hazardous waste. The site, on the Niagara Escarpment, was an old aggregate pit operated by a subsidiary of Philip Environmental called Taro Aggregates Ltd. Allegations began to circulate that the site was receiving hazardous

waste, and, eventually, the province undertook an investigation of the facility.

Between June and September 1999, the Ministry of the Environment completed its investigation of the Taro East Landfill. The investigation began with expressions of concerns from neighbouring residents that the site was receiving hazardous waste. The ministry investigated Philip's actions in accepting waste materials or mixtures from CyanoKEM in Michigan for disposal at the site and subsequently asked Philip to stop taking the waste.

The investigation found that – due to a "loophole" in the regulation – there were no illegal actions undertaken by Philip. The ministry investigation found that the facility mixed imported hazardous waste with Portland cement. When the mixture solidified it "passed" the provincial leachate toxicity test and legally could be disposed in the landfill.

4.2 The response – the six-part plan

On September 17, 1999, Environment Minister Tony Clement announced a six-point action plan to address some of the weaknesses in Ontario's hazardous waste regulation and requirements for hazardous-waste facilities. The plan involves:

1. giving immediate legal force to the Generator Registration Manual;
2. revising the hazardous waste regulation,[27] effective immediately, to ensure that, even if a hazardous waste is mixed with other substances, it will still be considered the same type of hazardous waste (the "mixture rule");
3. the revision of the current hazardous waste manifest requirements and regulations to be comparable to, and compatible with, U.S. rules;
4. amending the certificate of approval for the Philip Enterprises Imperial Street facility in Hamilton;
5. revising other certificates of approval of a similar nature that have been issued at other sites across Ontario; and
6. establishment of an independent expert panel to examine the potential for any long-term effects as a result of waste deposited at the Taro East landfill.[28]

4.2.1 New hazardous waste regulations

The ministry announced its revisions under the third part of the plan and posted the proposed regulation on the Environmental Bill of Rights Registry for review on February 3, 2000.[29] Along with amending the "mixture rule" to ensure that hazardous waste management rules apply to hazardous wastes even if they have been mixed with another substance, the new regulations:

1. replace the Leachate Extraction Procedure (LEP) with the Toxicity Characteristic Leaching Procedure (TCLP) and replace Schedule 4 with an expanded Schedule 4 (Leachate Quality Criteria) to include additional chemicals;
2. add a derived-from rule to the definition of hazardous waste; and
3. harmonize the Schedules of listed hazardous wastes in Regulation 347 (Schedules 1, 2A and 2B) with the latest listings used in the United States.

The net effect of these changes is to increase the number of substances potentially subject to hazardous waste management regulation in the Province of Ontario.

CIELAP noted that while these changes were welcome, they did not provide complete protection to the public and the environment. CIELAP identified other necessary elements of a comprehensive hazardous waste management regime:

- annual or biennial reporting requirements for hazardous waste generators and receivers;
- publicly available annual or biennial reports compiling data submitted by generators and receivers;
- regulated emergency preparedness procedures for generators and receivers of hazardous waste;
- regulated construction, design and operating standards for treatment and disposal facilities;
- provision for full public participation at the permit application stage for all new storage, treatment and disposal facilities;
- regulatory standards for waste storage and handling equipment such as drums, tanks and impoundments;
- restrictions on the land disposal of untreated hazardous wastes;

- regulated operating and emission standards for facilities burning hazardous waste for destruction or energy/materials recovery; and
- financial assurance requirements calculated on the estimated most-expensive closure cost of a facility.

These elements of a hazardous waste management regime are particularly necessary in Ontario because, as the following section describes, Ontario is importing and generating ever-increasing amounts of hazardous waste.

Responding to the increased traffic and processing of hazardous waste in the province, CIELAP made an application through the Environmental Bill of Rights Registry requesting a review "of current policies and regulations related to the approval of hazardous waste disposal sites and systems under Part V of the *Environmental Protection Act* and the *Environmental Assessment Act*."[30] Citing its plan to propose the amendments above, the ministry refused the request in February 2000.[31]

August 1999

Data from Environment Canada reports that 540,000 tonnes of hazardous waste, most of it from the U.S. was received in Canada in 1998. This quantity is an increase of 487,000 tonnes from 1997 and five times the quantity received in 1989. Most of this waste was received in Ontario and Quebec. CIELAP warns that Canada is becoming "a continental dumping ground" for hazardous waste and highlights environmental concerns pertaining to Ontario's disposal regulations, which are less stringent than those in the U.S.

4.3 Ontario: Open for toxics

A CIELAP report released in July 2000 finds that since 1994, the generation of hazardous waste within Ontario has increased sharply.[32] In that time, hazardous waste transfers within the province increased 42 percent, and imports from other jurisdictions, principally the United States, increased from 56,000 tonnes in 1993 to 288,000 tonnes in 1998. The report found that the greatest increase in domestic sources of hazardous wastes arose from municipal and private landfills, from steel making and from industrial processes relying on halogenated solvents (carcinogenic substances used as degreasing agents and cleaners, such as perchlorethylene). Hazardous waste shipped in from the United States came, for the most part, from generators in Michigan, New York and Ohio. Safety-Kleen Inc.,[33] with facilities in Ohio and Sarnia was the main exporter and importer of U.S. hazardous waste in Ontario.

Insofar as the Safety-Kleen facility (see discussion above) was quickly approved in 1996 in order to receive waste from Ohio, there is at least this connection between the increased traffic of hazardous waste and the increase in hazardous waste disposal facilities in the province.

September 27, 1999

Records show that Environment Canada approved the import of 10.9 million tonnes of hazardous material into Canada from the U.S. in the first six months of 1998. Only one percent of requests to import U.S. hazardous wastes to Canada were rejected by Environment Canada. U.S. documents show that Dynecol Inc., a hazardous waste company in Michigan, received permission from the U.S. EPA and the Canadian government to ship 473,000 tonnes of toxic material to Ontario.

February 20, 2000

An EBR request by CIELAP for a review of hazardous waste management practices and regulations is denied by the MOE. The MOE states, "the public interest does not warrant a review of the matters raised in the application."

V Municipal garbage and recycling, Part I – the Waste Diversion Organization

5.1 Provincial Auditor criticizes Ontario waste management in 1997

In his 1997 report, the Provincial Auditor criticized the government's lack of progress on waste diversion, noting that since 1994, the Ministry of the Environment had not assessed the waste reduction programs established in 1989. At the time diverting 32 percent of its waste, the province had only two years to reach its goal of 50 percent reduction by 2000.

In his 1999 report, the Provincial Auditor reviewed his four recommendations made in 1997 regarding waste management and waste diversion. The recommendations were to:

- be more effective in meeting the provincial waste reduction goal;
- ensure the blue box program was sustainable;
- work with municipalities to adopt use of full costing for assessing the most cost-effective method for the disposal of waste; and
- expedite a review of the legislation regarding refillable soft drink containers and work with the industry to develop a solution to address municipal concerns.

In his 1999 report, the Auditor notes the province's response to his recommendations. In answer to each recommendation the Ministry of the Environment gives the Auditor the same response: the Waste Diversion Organization (WDO).[34]

5.2 The government's response: The WDO

The Waste Diversion Organization (WDO), announced by Environment Minister Tony Clement on November 3, 1999 is a partnership of government, municipalities and industry to help finance municipal blue box and other waste diversion programs. WDO members have "committed" $14.5 million to the program under a one-year voluntary Memorandum of Understanding.[35] However, of that $14 million figure, only $2.3 million will actually go to new waste diversion programs. The rest will go to supporting existing programs and overhead. An allocated $1.9 million will go to "administration", "WDO process, Executive and Secretarial Service, Implementation Support" and ongoing "demonstration projects"[36], of which only the latter appears directed at actual recycling initiatives. Finally, with the exception of the two-year, $4 million a year commitment from the Liquor Control Board of Ontario, none of the rest of the funding appears to be firmly committed.

The one-year agreement of the members of the WDO, among other things, will create a funding formula to finance waste diversion programs for an initial five-year period. The stated goal is to achieve 50 percent reduction, compared to 1987, by 2005, and to equitably share the cost of recycling between municipalities and industry.

There are at least three potentially insurmountable problems with the WDO:

- Insufficient emphasis on reduction – in fact, there is no emphasis on reduction, and no mechanisms contemplated to provide incentives for retailers, manufacturers and other providers of consumer goods and products to reduce or even, in the case of soft drink manufacturers, to reuse their packaging.
- Speed – the province has imposed an arbitrary September 15 deadline for the funding formula on the WDO board. This has limited the board's capacity for consultation, and this has possibly contributed to the WDO's first fundamental flaw.
- *Déjà vu* – there have been two other, similar, attempts to manage recycling through voluntary partnerships among government, industry and municipalities. They failed where the WDO seems also bound to fail.[37]

The WDO released its interim report at the end of June 2000.[38] The weaknesses described above are, if anything, more deeply entrenched in the interim report.

Just as this report is going to press, the WDO released its report to the provincial government. The press release claims that if the report recommendations are adopted, "Ontario will have the single, most comprehensive, public/private sector shared responsibility agreement on waste diversion management anywhere in the world."[39] That may well be, but experts reviewing the report say the fundamental test – achieving real waste diversion through waste reduction – has not been met by the recommendations. Next year's report will provide more analysis on the actual success of the WDO recommendations.

VI Municipal garbage and recycling, Part II – the Adams Mine

6.1 The environmental assessment hearing – decided in haste

After one of only two environmental assessment hearings held during the Common Sense Revolution, the Environmental Assessment Board approved the Adams Mine landfill in June 1998. The hearing, in accordance to the new approvals proc-

ess, was scoped down to deal only with leachate containment issues, was given a deadline of May 30, 1998 (extended to June 19, 1999) and was completed in 15 hearing days. In its decision, the Board notes that completing the hearing in three weeks "was made possible by all parties and their counsel accepting the discipline of a scoped hearing."[40] The decision does not mention that the deadline was also made possible by parties agreeing to make presentations to the board well into the night. Several hearing days went until 10 p.m. or later. According to Carl Dombeck, the board chair, the member who drafted the decision also had to make a tremendous effort to release the decision within the timeline.[41]

To put this frenzied rush in some perspective, we should look at some of the other timelines involved with the Adams Mine proposal. The time between referral to a hearing and decision was three days more than six months (December 16, 1997 to June 19, 1998). The landfill itself will operate for at least 20 years. It also has the potential to release leachate into local groundwater (feeding three major watersheds) for an estimated thousand years, possibly more. Why even another month could not be spent giving fuller consideration to the potential environmental impacts of the project is not clear.

December 21, 1999

The Ontario Court of Appeal rules that a class-action lawsuit filed against the Keele Valley landfill has no legal grounds to proceed. The $600 million class-action suit filed by a Vaughan resident on behalf of 30,000 residents of Maple and Richmond Hill alleged that the City of Toronto allowed large quantities of methane, hydrogen sulphide and vinyl chloride gases to escape from the landfill, causing odours that impacted upon local residents.

6.2 Application for judicial review dismissed, removing "any potential shadow"

In July 1999, the Ontario Superior Court of Justice dismissed an application by the Adams Mine Intervention Coalition for judicial review of the Environmental Assessment Board's decision regarding the Adams Mine.[42] When the court made its decision known, the proponent Gordon McGuinty stated to the press that "This brings closure to the whole issue.… It removes any potential shadow to sign a contract and move forward."[43]

6.2.1 Well, almost any shadow

During the summer of 2000, the City of Toronto surveyed its waste disposal options. The hastily approved Adams Mine was scheduled to start to receive waste from Toronto in 2002,[44] but the estimated cost ($65 million) had the city looking for alternatives.[45] The city originally proposed to extend the life of the Keele Valley landfill to 2006, four years past its current close date. This proposal met with resistance from the City of Vaughan, which houses the landfill,[46] and from the Minister of the Environment, who threatened to prevent the city from keeping the Keele Valley landfill open.[47] By late June, the City of Toronto had not entirely rejected the option of keeping Keele open and the Adams Mine site was the second choice.[48]

On August 2, 2000, Toronto City Council voted to approve the Adams Mine proposal.

February 15, 2000

An opinion poll shows that 66 percent of Kirkland Lake residents oppose the plan to convert the Adams Mine into a landfill. Other findings from the poll include: 85 percent of residents are concerned about water contamination as a result of the landfill; 72 percent of residents are concerned over the lack of a referendum over the issue; and 73 percent of residents feel that garbage should not be shipped away from its source.

6.2.2 Shadows yet to come

The Adams Mine decision has created controversy and dissent that has not abated since the city made its decision. This may be the result of an approvals process that puts more emphasis on speed than environmental protection or public participation in environmental decision-making. It may be the case that the truncated and hasty hearing process – as with the facilitated approvals for Taro and Safety-Kleen in Sarnia – may serve no one well after all. When a concerned public finds itself excluded (when there are no hearings) or inadequately heard (when the hearing is scoped too narrowly) the public finds other ways to make itself heard. The

City of Toronto may have just approved the plan to send its garbage to the Adams Mine commencing in 2002, but the civil disobedience is also just starting.[49]

VII Conclusion

The provincial government's apparent emphasis on waste management as "big business" has, in its turn, created concerns. Facilitated approvals and an "open border" to imported U.S. wastes has greatly increased hazardous waste-related activities in the province. Due to the complications arising from the Taro landfill, the province has created a new waste management regulation (which, at time of writing, is still not law in the province) that does not entirely address the concerns attached to landfilling hazardous waste, nor deals with the problems potentially arising from incinerating hazardous wastes with inadequate technology.

In the area of municipal solid waste, the Waste Diversion Organization is almost certain to fail, either completely as a program, or, if it actually results in action, it will fail to deal adequately with Ontario's growing municipal solid waste diversion problems.[50]

Finally, if the provincial government believes it is serving the interests of business by hastening the approvals process, the public reaction to the Adams Mine may disprove that assumption.

CHAPTER 5 – Air

I The Common Sense Revolution and air issues so far

Note: The following describes only a few of the changes implemented under the first four years of the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report.[1]

1.1 The Environmental Commissioner's evaluation in 1998

The Environmental Commissioner of Ontario's 1998 report stated Ontario's air quality programs are incapable of achieving their stated goal of improved air quality: "Even if all of the ministry's proposed pollution-control activities are carried out, 20 years from now Ontario's air quality will be worse than it is today." The Commissioner observed:

- even where the government has adequate regulation, the laws tend to go under-enforced as a result of substantial budget cuts;
- the provincial government's retreat from supporting municipal transit;
- Ontario's Smog Plan has almost no details as to how it will achieve one-half of the required reduction in smog agents;
- the MOE is relying heavily on voluntary actions by industry to meet air quality targets;
- new technology exists to cut air emissions but the government has no plan to phase out the older equipment in use under certificates issued in the past;
- Ontario Hydro's heavier reliance on coal under the Nuclear Asset Optimization Plan.[2]

1.2 Air quality initiatives, a comparison of positive and negative

As described in greater detail in our previous reports, this is a short list of some of the things the CSR has done to improve air quality in Ontario before the current report period:

Positive Initiative	Negative Initiative
• Instituted Drive Clean in 1999	• Cut back on enforcing environmental regulation for air emissions • Implemented Nuclear Asset Optimization Plan, which relies heavily on fossil fuel-fired generating stations to replace power from nuclear generators taken out of service. NAOP has increased carbon dioxide, sulphur dioxide, nitrogen oxides and other health-threatening emissions in the province • Opposed federal action on reducing sulphur levels in gasoline, and national action on climate change, smog, air toxics, acid rain, particulate matter and ozone • Repealed a ban on municipal solid waste incinerators • Adopted land-use and transportation policies that have led to increased car use • Terminated financial support for public transit • Rather than showing leadership to reduce emissions in Ontario, has adopted a strategy of blaming the United States, increasing the difficulty of international negotiations to improve air quality in Canada and the United States[3]

➤

1.3 The province and air quality: Actions speak louder than words

The provincial government maintains it is working hard to protect Ontario's air. Then Minister of the Environment Norm Sterling stated in June 1999 that the Ontario government is the only government that has taken significant action to improve air quality.

It is hard to gauge what the minister means when, for the second year in a row, the Commission on Environmental Cooperation in its Taking Stock report shows that Ontario is the second worst air polluter, after Texas, in North America.[4] The Taking Stock report explains Ontario's performance by observing that, while other jurisdictions are moving forward with initiatives to prevent and better control emissions to air, similar strategies in Ontario have stalled or not been developed.

The CEC's numbers suggest that ministry press releases are not telling the whole story. While the province states it is doing everything possible to improve air quality in Ontario, its actions say something else.

1.4 The important connection between air quality and energy policy

Air quality in Ontario is inextricably entwined with the provincial government's energy policy and its plans to "privatize" or "de-regulate" the power market. The fact that Ontario has made only halting progress with the latter endeavour suggests there will be more delays before progress can be made with air quality.[5]

Chapter Overview

I Drive Clean – the "centrepiece" of Ontario's clean air strategy
- ❖ vehicle emissions *are* part of the problem; but Drive Clean is not enough of a solution to Ontario's air pollution

II Ontario's Strategic Attack on Air Pollution
- ❖ Ontario's power plants *are* a big part of the problem, but weak strategic attack will not achieve desired results

III The anti-smog campaign
- ❖ The province takes "tough stands" with the wrong players and avoids a firm stance with Ontario Power Generation

IV Ontario and national air initiatives
- ❖ At the national level, Ontario leads in foot-dragging opposition and delay

V Other air-related matters
- ❖ Ozone-depleting substances regulations slip through the cracks

Related topics: *For vehicle emission-related issues, see Chapter 6, land – Southern Ontario, for standards development, see Chapter 3, environmental decision-making.*

II Common Sense and air quality: The past 12 months

2.1 Drive Clean – 1.5 million cars tested; cleaner air still pending

"Drive Clean is the centrepiece of our air strategy."[6]

"Drive Clean is an exercise in political cosmetics producing no discernable result."[7]

Car, truck and bus exhaust is a chief cause of smog (about one-third of smog precursors come from cars and trucks), a cause that can be reduced by making sure a vehicle is well maintained and operating efficiently. Many jurisdictions in North America have made it a condition of getting a licence that vehicles undergo an emissions test. If a vehicle fails the test, it must be repaired before the owner's driver's licence will be renewed.

After years of wavering on initiating its own program,[8] on April 1, 1999, the government made a "Drive Clean" inspection a mandatory condition of vehicle license renewals. The program was initially limited to the Greater Toronto Area and the Region of Hamilton-Wentworth and extended to heavy trucks and buses in the fall of 1999.[9]

On January 11, 2000, on the occasion of the millionth Drive Clean auto emissions test, then Minister of the Environment Tony Clement stated in a press release: "Drive Clean is proving that simple vehicle maintenance and repairs of emission problems identified by the Drive Clean test can improve our air quality."[10]

March 24, 2000

Ontario's Minister of the Environment states that Ontarians will be given a strong voice at the meeting of the Joint Ministers of the Environment and Energy, which is being held to discuss the national implementation strategy on climate change. It is stated that Ontario has achieved significant reductions in the release of carbon dioxide from vehicles through its Drive Clean program, and that the province has committed $10 million through its Climate Change Fund to develop actions to reduce emissions.

While this carefully worded statement is unquestionably true, it is not necessarily true that Drive Clean has demonstrably improved air quality in Ontario or that Drive Clean will achieve the results the province claims it will.

2.2 What is the real impact of Drive Clean?

Drive Clean has been plagued since its inception with charges of corruption and conflict of interest because the same garages that do the tests also do repairs.[11] One investigation undertaken by the The Toronto Star charged that testing stations do not train Drive Clean inspectors adequately.[12] Another investigation revealed that test results can be variable: The same car tested at 20 different test stations passed 11 times and failed nine times.[13] These results may cast some doubt on exactly how clean the 1.3 million cars that passed their initial test are.

The Minister of the Environment announced in January 2000 that Drive Clean has reduced emissions by 6.7 percent. That is, Drive Clean has achieved 30 percent of its original target of 22 percent reduction of vehicle emissions. Not everyone is convinced that these figures show progress in cleaning Ontario's air.[14]

The ministry, however, maintains that it is on track and achieving its objectives with Drive Clean:

> Based on a million cars being tested in 1999, we have reduced vehicle pollutants by an *estimated* 6.7 percent. That one million vehicles represents about one-fifth of the vehicles that will be covered by Drive Clean once the Phase 2 expansion is complete, from Peterborough to Windsor and down into the Niagara Peninsula.
>
> Obviously, we are on the road to reaching our target of a 22 percent reduction when the program is in full operation by 2004. [emphasis added][15]

Note that every number in the above passage is an estimate or hypothetical figure, including the number of cars tested.[16] AirCare, a similar program running in British Columbia since 1992, undertook the evaluation of the effectiveness of Drive Clean that arrived at the numbers quoted above. If the experience of the AirCare program is any indica-

tion, the 22 percent target set by Drive Clean is conservative. The Fifth Year Evaluation of Benefits for the AirCare Program found that:

> the cumulative effects … represent a reduction in emissions of almost 30 percent relative to the pre-AirCare baseline. A further reduction of 22.5 percent due to the replacement of older vehicles with newer, lower-emitting vehicles can be added to this benefit, resulting in a total reduction in vehicle-related emissions of over 50 percent since 1992. The estimated fuel savings since 1992 are 23 million litres. This amount of gasoline would have produced 57,000 tonnes of carbon dioxide, and represents a significant contribution to reducing greenhouse gas emissions.[17]

AirCare has been quite successful, then. However, that success needs to be measured against the fact that the Fraser Valley – where the program is implemented – is still one of the worst locations in Canada for smog, and the chief cause of the smog is vehicular traffic.[18] This means that Drive Clean can be very successful, even as successful as AirCare, but Ontario's air quality will not demonstrably improve – at least, not any more than the air in the Fraser Valley has improved.

2.3 Bottom line: Drive Clean doesn't hurt, but hardly helps

Public concerns about how "legitimate" the program is are the least of Drive Clean's flaws. Drive Clean is at best an innocuous program that will give drivers a reason to keep their cars in better repair.

The fundamental issue, however, is that Drive Clean could be a complete success and still not address the bigger problems affecting Ontario's air: Ontario's coal-fired power plants, lax enforcement of air regulations (that are themselves archaic),[19] transportation policies that subsidize highways and starve public transit, and land-use planning policies that encourage sprawl.[20] These are the policies that *really* affect air quality and they threaten to render Drive Clean moot.

As of July 3, 2000, the Ministry of the Environment posted the following numbers for Drive Clean:

Light-duty vehicles tested since Jan 02/1999	1,600,817	(100%)
Vehicles passed initial test	1,360,054	(85%)
Vehicles failed initial test*	240,763	(15%)
Accredited light-duty Drive Clean facilities		
Test only Stations	29	
Test / Repair Stations	894	
Repair only Stations	136	
Total	1,059	
Certified technicians and inspectors		
Inspectors	3,159	
Inspectors / Repair Tech	1,725	
Repair Technicians	321	
Total	5,205	

**Includes 70,051conditional passes issued after a retest*

III Strategic Attack on Air Pollution

May 18, 2000

A new study from the Toronto Public Health Department finds that 1,000 people in the City of Toronto die from smog-related illnesses each year. The study also finds that 5,500 people are admitted to hospitals in the city due to problems with smog. Nitrogen dioxide and carbon monoxide, emitted primarily by the transportation sector, are identified as the main pollutants contributing to smog-related deaths in the city. Particulates and sulphur dioxides from industrial sources are also highlighted in the report as contributing to the problem. The study finds that harm to human health occurs despite the fact that pollutant levels are many times lower than the existing air quality criteria.

3.1 Energy sector is the right target: But weapons weak and ineffectual

After a trend of general improvement since the early 1970s, Ontario's air is getting worse. Since 1994, SO_2 emissions have steadily risen.[21] The increase is attributed to "economic activity reflected

in the … utility sector."[22] In fact, Ontario's coal-fired power plants contribute tremendously to poor air quality in the province.[23] This is more directly attributable to the Nuclear Asset Optimization Plan (the plan to produce enough energy for Ontario without several of Ontario's aging nuclear power plants)[24] than to "economic activity."

The provincial government's Strategic Attack on Air Pollution's primary target is the energy sector. However, as with other new regulatory initiatives, the government's response seems weak.

January 11, 2000

Environmental groups urge the province to tackle growing pollution from power generating plants and lobby the U.S. to do the same. These groups warn that the year-old Drive Clean program will barely make a dent in smog levels in Ontario. The Drive Clean program has tested one million vehicles in its first year and government numbers show a seven percent decrease in smog-causing pollution from tested vehicles, well below the 22 percent goal. The 22 percent goal will only result in a two to five percent cut in the total smog-causing pollution in Ontario.

3.2 Three parts to Strategic Attack: Emissions caps, emissions monitoring, environmental assessment

On January 24, the government announced its Strategic Attack on Air Pollution. There are three major components: new emissions limits; new reporting requirements for the energy sector that will apply to all sectors in 2001; and environmental assessment requirements for new players in Ontario's privatized energy market.

3.2.1 Amendments to the Environmental Assessment Act *will apply to whole energy sector*

The *Environmental Assessment Act* (*EAA*) currently applies only to projects undertaken by public-sector organizations, such as Ontario Power Generation. With the imposition of a competitive electricity market, the government introduced a new regulation that makes the requirements of the *EAA* applicable to the entire electricity sector. Assessments under the *EAA* would be triggered by the environmental significance of an electricity project.[25] The new environmental assessment requirements give Ontario Power Generation an apparent advantage in the market as all of its generation facilities are already approved. It should also be noted that the environmental assessment requirements will not apply to any new nuclear power facilities proposed in the province. At the end of June 2000, a draft discussion paper[26] a draft screening guideline[27] and a draft regulation for energy sector environmental assessment have been posted on the Environmental Bill of Rights Registry.[28]

May 23, 2000

A proposal for regulation is posted to the EBR (Registry Number: RA00E0012) for the Toronto Renewable Energy Co-operative (TREC) in partnership with Toronto Hydro Energy Services Inc. (Toronto Hydro) Toronto Lakefront Wind Turbine Project.

The posting states that the MOE is currently involved in developing a new environmental approvals regime for the electricity market in Ontario, which is scheduled to open to competition in late 2000. Under the proposed environmental regime, projects with less significant environmental effects such as wind turbines likely would not be required to prepare an individual environmental assessment. The ministry is proposing to develop a screening process to apply to projects with environmental effects, but whose effects could be mitigated. The screening process will require proponents to conduct consultation and ensure that any environmental concerns are considered and addressed. Some wind projects could be subject to the screening process.

However, until the new regime is in place sometime later this year, and in consideration of the types of potential environmental effects of the Toronto lakefront wind turbine project and the federal and the municipal technical, environmental and land-use approval requirements that currently apply to this project, the minister is proposing to apply Ontario's *Environmental Assessment Act* through the issuance of a declaration order rather than requiring an individual environmental assessment.

The reasoning for the proposal is that it will set out a streamlined, customized set of provincial environmental assessment requirements to be fulfilled by TREC/Toronto Hydro.

3.2.2 Mandatory emissions monitoring and reporting

In anticipation of the privatized electricity market scheduled to open in late 2000, the government enacted regulations[29] in May requiring all electric power generation facilities in Ontario's electricity sector to report annually on their emissions of oxides of nitrogen (NOx), sulphur dioxide (SO_2) and a variety of other substances such as mercury and carbon dioxide (CO_2). As of January 1, 2001, these reporting requirements may apply to all sectors.

Notable by their absence from the regulation are radioactive and thermal emissions, both applicable to nuclear power plants.

3.2.3 Public reporting requirements

According to its press releases, the government is relying heavily on these reporting requirements to spur regulated industries to reduce their emissions. However, the regulation requires only that the records be kept on the facility premises, and that members of the public may have access to them if they request them at the facility premises during business hours.[30] Furthermore, due to the changes in the structure of the former Ontario Hydro, Ontario's largest power generating company is exempt from access-to-information legislation. Apparently, the Ministry does intend to publish the information electronically, with a faster posting schedule than the two years it takes Environment Canada to post NPRI data on its site.[31]

3.2.4 New emission limits

Beginning in January 2001, the government will introduce caps for NOx and SO_2 emissions for the province's electricity sector. The limits would cap total annual emissions from coal- and oil-fired electricity generating stations in Ontario:

- NOx cap of 36 kilotonnes (kt) per year for the year 2001; and
- SO_2 cap of 157.5 kt per year for the year 2001.

These limits permit much greater emissions than recommended by the Ontario Medical Association,[32] and by the Canadian Council of Ministers of the Environment's post-2000 Acid Rain control program.[33]

The efficacy of these limits must also be considered in light of the province's proposed emissions reduction trading program.

3.2.5 Emissions reduction trading

> "The Ministry of the Environment is proposing the use of an emissions reduction trading system to help industries reduce the release of contaminants that cause smog, acid rain and other air pollution problems.… Emissions reduction trading provides an incentive to industries to make greater reductions in pollutant discharges than are required by law. Trading credits helps meet province-wide environmental targets in a flexible, cost effective manner."[34]

The government is placing great faith in emissions reduction trading as a means to genuinely reduce emissions.

That emissions trading will lead to *reduced emissions* in Ontario is still unproven.[35] Certainly, Ontario Power Generation has been purchasing credits to avoid the expense of actually achieving its own reductions, but this has had no beneficial effect on local air.[36] Credits will allow OPG to exceed the sulphur dioxide emission limit set in the mid-'80s, which will also contribute to no net improvement in local air quality.[37]

February 2000

The Ontario Clean Air Alliance releases Pollution Loopholes, An Assessment of Ontario's Approach to Air Pollution Control in the Electricity Sector. The report describes flaws in the Ontario government's proposed emissions credit trading system. The report also describes the Ontario government's failure to regulate eight key pollutants in its emission-performance standards. The report concludes that the measures announced by the Ontario government could increase Ontario Power Generation's total coal-fired electricity related emissions and total emissions in Ontario's airshed.

3.2.6 Caps and emissions trading could result in more pollution

According to the Ontario Clean Air Alliance, this new package of measures could, in reality, actually permit an increase in OPG's total coal-fired electricity-related emissions and total emissions in Ontario's airshed:

- OPG's acid-gas emissions from its coal-fired power plants could increase by 42 percent relative to its current emission caps.
- Ontario's total (domestic and imported) acid-gas emissions from coal-fired power plants could increase by 63 percent relative to OPG's current acid-gas emission caps.
- OPG's releases of mercury (a potent neurotoxin), cancer-causing elements (arsenic, beryllium, cadmium, chromium, lead and nickel) and carbon dioxide (the principal greenhouse gas responsible for climate change) from its coal-fired power plants could rise by 54 percent relative to OPG's 1998 emission levels.
- Ontario's total (domestic and imported) mercury, cancer-causing and carbon dioxide emissions from coal-fired power plants could rise by 156 percent relative to OPG's 1998 emission levels.[38]

3.2.7 Provincial Emission Performance Standards (EPS)

The government is proposing emission performance standards for all electricity sold in Ontario. The standards, in theory, will apply to generators in Ontario and to generators outside of Ontario selling into the province. The proposed plan is to require power retailers to certify that the power they provide – whether generated in the United States or Ontario or some other Canadian province – has been generated according to Ontario standards.

IV The anti-smog campaign

Smog is the air quality issue of greatest public and government concern. Reports issued over the past few years conclude that thousands are dying from the air in cities.[39] The Ontario Medical Association estimates that 1,800 people die prematurely each year in Ontario because of bad urban air.

This report has already described how the province's chief air quality initiative, Drive Clean, cannot measurably improve air quality because of other provincial policies and because of Ontario's coal-fired power plants. Having sustained severe criticism for these air quality problems from the Environmental Commissioner, the health community, and non-governmental organizations, the government has launched several initiatives.

May 19, 2000

Toronto finance officials release an analysis of gas taxes in the City of Toronto. The analysis shows that the province receives $400 million from gas taxes in the City of Toronto. City officials argue that a portion of the gas tax revenue should be devoted to funding public transit in Toronto. Historically, the province had paid 75 percent of Toronto's transit capital costs, but funding has been eliminated in recent years by the Ontario government. The city argues that Toronto has been stuck with $251.7 million in downloading costs from the province, mostly representing TTC capital costs.

4.1 Initiative #1: Deflect criticism to someone else

4.1.1 Sulphur in fuel

In May 2000, Environment Minister Dan Newman "condemned the federal government for not moving fast enough to reduce sulphur content of gasoline produced in Canada"[40] and asked the rhetorical question, "Ottawa has the power to act – why has it failed to do so?" The answer to this question may be that in October 1998, three Ontario ministries, including the Ministry of the Environment, wrote to the federal government and asked the Federal Minister not to announce new standards that would dramatically lower the sulphur content in gasoline.[41]

4.1.2 Acid emissions

Ontario continues to stand by its "blame the U.S." strategy even though it has made it very difficult to successfully negotiate with the U.S. on cooperative action to clean the air. Every ministry communication on air quality takes pains to note that 50 percent of Ontario's bad air originates in the United States. At the fall 1999 Great Lakes governor and premiers meeting in Cleveland, Premier Mike Harris "reinforced Ontario's opinion that several Great Lakes states have to do more to reduce emissions."[42]

At the Toronto Smog Summit, Federal Minister of the Environment David Anderson described the impact of this strategy; how, unless Canada came to the table with "clean hands," it would be very difficult to obtain concessions from the U.S.[43] The media took this comment to mean that Ontario's stance was making it very difficult to move forward on clean air with the U.S.

In the meantime, during the summer months of 2000, Ontario's "get tough" strategy has incited similar tactics from the other side of the border. On July 5, 2000, New York Attorney General Eliot Spitzer wrote to U.S. Secretary of State Madeline Albright to urge her to "pressure Canadian officials into pollution concessions at an upcoming Canada-U.S. Annex Agreement meeting."[44]

In fact, "getting tough" appears to equal "achieve nothing." Talking tough gives rise only to retaliatory accusations instead of meaningful cooperation that actually helps clean the air.

4.2 Initiative #2: Make unspecific commitments

4.2.1 Gas conversion of coal-fired plants: Not now, but when they're sold

On May 17, 2000, the Ministry of the Environment issued a press release announcing that Ontario has placed an "environmental" moratorium on the sale of all coal-fired electricity generation facilities. This announcement shows some progress has been made. As recently as April 2000, the government was uncertain about converting its dirtiest coal-fired plant – Lakeview, in Mississauga – to gas for fear of the cost.[45] For this reason, the announcement is considered a "victory" by the Ontario Clean Air Alliance.

4.2.2 SO_2 from Lennox to arrive in Montreal a few days later

At the Smog Summit held in Toronto on June 21, Minister of the Environment Dan Newman announced that "as of June 1 of this year, Ontario Power Generation is operating the Lennox Generation Station ahead of the Lakeview plant on days when smog alerts are called.… The change in operating regime … should help alleviate part of the smog problems … in Toronto."[46] The Ontario Clean Air Alliance followed up on this claim and received the information that due to the technicalities involved, there could be no guarantees that this plan would work as the minister suggests. Moreover, as noted in the paragraph heading, even if this proposed plan could work, Lennox's emissions – which, it should be noted, are substantially less than Lakeview's – would still pollute the air south and east, in Montreal and the Maritime provinces.

4.3 Initiative #3: Enter unenforceable agreements

Environment Minister Dan Newman signed a Smog Summit declaration on June 21, 2000 with the Federal Ministers of the Environment and Transportation and the City of Toronto.

The ministry is already a party to the Smog Accord. The accord is a voluntary agreement between government and some industries to reduce emissions of smog-causing nitrogen oxides and volatile organic compounds by 45 percent by 2010. Earlier this year, bowing to pressure from other members of the accord, Ontario changed its voluntary target date from 2015 to 2010. The actual value of this change will be apparent only in 2010. Because the whole program is voluntary, there are no consequences to the Smog Accord members if the targets are not met.

> June 28, 2000
>
> A report released by the Ontario Medical Association concludes that smog will cost the Ontario economy and the health care system more than $1 billion this year. The report states that smog will cause 1,920 deaths and 9,800 hospital admissions in Ontario in 2000.

4.4 Initiative #4: Appoint a committee

In his speech at the Smog Summit, Environment Minister Dan Newman announced the appointment of an executive committee to Ontario's Anti-Smog Action Plan (ASAP), which will implement agreements under the Smog Accord.

The executive committee, originally the idea of then Environment Minister Clement, is comprised of 11 individuals, three from industry, three from environmental non-government organizations, two from the health community, two from academia/

research, and one from the Ministry of the Environment.[47] The representation on this committee is a good example of an equitable mix of stakeholders. As of the end of June 2000, the committee had not met yet to determine its goals. The committee is tasked to review progress, suggest targets and timelines and report to the minister on further action. The suggestion has been made that the committee would be best advised to base performance evaluation in terms of number of tonnes of emissions reduced.

V Ontario and national air initiatives

After a trend of general improvement since the early 1970s, Ontario's air is getting worse. Since 1994, SO_2 emissions have steadily risen.[48] As noted above, this increase can be attributed for the most part to the increased use of Ontario's coal-fired power plants. It is problem enough that Ontario still has not found a way to manage these emissions, but it gets worse. In its negotiations with other provinces and the federal government, Ontario makes it everyone's problem.

March 27, 2000

Ontario is considered the major obstacle to a federal-provincial agreement on climate change as a meeting to discuss the issue opens in Vancouver. Various industry and environmental groups criticize the lack of commitment on behalf of the Ontario government. A spokesperson for the Canadian Association of Petroleum Producers states that the provincial government needs to step up and take a leadership role to change energy consumption habits. Federal government sources say that Ontario has become the lead foot-dragger in dealing with emissions reductions.

Ontario Environment Minister Dan Newman states that Ontario has already taken significant steps to deal with the issue and will supplement its $10 million climate change fund with "new ideas, new action and greater participation," following the Vancouver meeting. Earlier in the month, Mr. Newman stated that he would like to see gasoline prices come down so people would not be forced to car-pool.

5.1 Commitments to the Climate Change Convention – Ontario lead "foot-dragger"

In March 2000, Ontario emerged as the "major obstacle to a federal-provincial agreement on climate change" at a meeting in Vancouver.[49] The negotiations finally failed on March 28.[50]

During the Kyoto round of discussions regarding obligations under the Framework Convention on Climate Change, Canada agreed to cut emissions by six percent from 1990 levels by 2010. The contribution by Ontario's Minister of the Environment Dan Newman to the Vancouver discussion in March was to question the desirability of meeting the Kyoto target.[51]

Canada has still not ratified the Climate Change Convention. Its inability to act on its commitments has damaged its reputation internationally and Ontario has made a significant contribution to this fact.

June 1999

The 1999-2000 business plan for the Ministry of Economic Development and Trade states the following objectives concerning air quality:

"We (the Ministry) will also identify and remove barriers to business growth and investment through continued support and partnerships with sectors and key business clusters. For example, we will engage in discussions on global climate change to ensure that the concerns of Ontario industries are addressed in the Canadian greenhouse gas emission reduction implementation plan."

5.2 Canada-Wide Standards and the Canadian Council of Ministers of the Environment

Ontario's coal-fired plants, among other things, influenced the outcome of the Canadian Council of Ministers of the Environment (CCME) negotiation of Canada-Wide Standards for certain air emissions. Ontario's stance at the CCME, and at the Climate Change Convention negotiations (described above), belies its assertions to residents of Ontario that it is acting aggressively to protect Ontario's air. Rather, Ontario aggressively fought for national ground-

level ozone levels several parts per billion less than Ontario's current standard, and for no mercury emissions levels for coal-fired electric power generating plants.[52]

5.3 New standard-setting initiative

On October 10, 1996, the Ministry of the Environment and Energy posted on the Environmental Bill of Rights Registry, for 60 days, a proposal for a new standards setting plan. The updating of standards for toxic air pollutants was identified as a priority for this effort. The province's current standards in this area are widely recognized as being out of date and inadequate.[53] This point was emphasized by the Provincial Auditor in his October 1996 annual report. In February 2000, the ministry posted its decision regarding the new procedure.[54]

The changes to the ministry's standards setting plan include: revised priorities for setting standards for several environmental media, refinements to the process used for setting standards for airborne contaminants, a review of all current air standards to determine whether they are consistent with standards in other jurisdictions and a recommendation that 75 air standards be confirmed at their current values.

On February 21, 2000 the Ministry of the Environment posted policy proposals on the EBR Registry (EBR Registry Numbers PA00E0003 to PA00E0020) for Rationale for the Development of Ontario Air Quality Standards, for the following:

Acrylonitrile	Isopropyl benzene
Ammonia	Methanol
Chlorine	Methyl ethyl ketone
Chloroform	Methyl isobutyl ketone
Ethyl benzene	Mineral spirits
Ethyl ether	Propylene oxide
n-Heptane	Toluene
n-Hexane	Dichloroethene 1,1-
Hydrogen chloride	Xylenes

The posting is part of an announcement by the Ministry Standards Branch issuing discussion documents for developing Air Quality Standards for all of the above.

The concerns raised by these proposals relate to what is not on these lists and not set out in the standards setting plan. Other, very important substances such as sulphur dioxide (SO_2) benzene and mercury are not included in this process. Rather, they are part of the Canadian Council of Ministers of the Environment's Canada-Wide Standards process, where decision-making is not based on health standards, but on consensus.

Another undescribed part of the process is what occurs after the standards have been set. The Ministry of the Environment undergoes an extensive risk management based negotiation with regulated industries to determine whether the standard will be met by individual facilities. The full practice is described in a report recently issued by the Canadian Environmental Law Association.[55] The author of the relevant chapter in the report, Theresa McClenaghan, concludes that:

> The original question for the study was whether air standard setting is intentionally protective of children. The answer differs between jurisdictions and is mixed.
>
> In Ontario, for those standards that remain unchanged and not yet reviewed, there is no evidence that the standards were intended to protect children in particular when originally set, and no evidence that they are in fact protective of children. However, the Ministry of the Environment's Standard Setting Plan, announced in 1996 and revised in 1999 holds out promise that matters will improve. For example, the MoE chooses the most sensitive receptor for its hazard analysis, and that may be children. The MoE takes into account a multi-media, pathways approach in considering who or what is the most sensitive receptor. Where there is a receptor more sensitive than children (for example, an ecosystem effect), then children should also be protected. What remains to be seen is whether after the risk assessment stage, when [the] hazard is identified, whether the risk management stage results in standards that are in fact protective of children. For example, for the current group of 18 standards presently under review, the risk management stage has yet to be undertaken and the criteria for evaluation and application of any alleged obstacles to implementation of the new standards has yet to be developed. The methodology and results of this stage will be critical.[56]

VI Other air-related initiatives

6.1 Acid rain – target set but monitoring program cut

The government has set a target of reducing total SO_2 emissions by 50 percent by 2010 as part of its contribution to the Canada-Wide Acid Rain Strategy for Post-2000.

The province's contribution to the Canada-Wide Acid Rain Strategy also includes the discontinuation of a program that monitored acid rainfall in Ontario for 20 years.

To save $100,000, the government in June 2000 completed the disassembly of an acid rain monitoring program begun as part of Ontario's original strategy to combat acid rain. According to Tom Brydges, who chaired the Canada-United States Committee of the Effects of Acid Rain, "Ontario's monitoring stations were essential to Canadian success and signing of the Canada-United States Air Quality Agreement in 1991."[57]

In 1996, Eva Ligeti, the then Environmental Commissioner of Ontario noted in her annual report: "The government continues to dissolve its acid rain program. Since 1991, the Ministry of the Environment's monitoring network dropped from 39 to 16 sites. This has reduced our ability to protect our lakes and forests and to contribute to the national and international fight against acid rain."[58]

6.2 Air quality monitoring

On January 24, 2000, the province announced a $4 million upgrade to the provincial air monitoring network to augment the Air Quality Index data system which provides daily updates of air quality information across the province.[59]

6.3 NOx emission limits for new, large boilers/heaters

In September 1999, the Ministry of the Environment proposed a new policy to enforce the National Emission Guideline for Commercial/Industrial Boilers and Heaters, approved by the Canadian Council of Ministers of the Environment in March 1998.[60] The purpose of the policy is stated to be to reduce smog in Ontario, by reducing the emission of oxides of nitrogen by new, large boilers and heaters. The policy would also apply to re-submission for certificates of approval of modified, existing, large boilers and heaters.

April 27, 2000

The Ontario Environment Minister announces new measures for air quality monitoring and reporting in the province. The new Air Quality Ontario initiative includes:

- A two-tier air quality forecast that provides three days' notice when poor air quality is predicted;
- Direct smog alerts via email for Ontarians who subscribe to the smog alert network;
- A new website that provides air quality monitoring data;
- An increase in the number of air quality updates reported to the public;
- Air quality data for nine additional communities in southwestern Ontario and the Greater Toronto Area;
- Smog watches and advisors for smaller geographic forecast areas.

The guideline specifies limits for emissions of oxides of nitrogen (NOx) for new, fossil-fuel, boilers and heaters that have a fuel energy input greater than 10 million Btu/h (10.5 GJ/h) [British thermal units per hour; gigajoules per hour). The guideline specifies various NOx emission limits, based on the fuel and the size of boiler/heater, with specified credits for high efficiency. The NOx emission limits are specified in units of grams NOx per GJ of fuel energy consumed. The new emission limits would not apply to coal-fired boilers, or to certain industrial boilers and heaters that are listed in the guideline.

The guideline also contains recommendations for non-regulatory activities, to reduce NOx emissions by older and smaller boilers and heaters.

6.4 Provincial air program forgets the ozone layer

The Ministry of the Environment posted two notices to the Environmental Bill of Rights Registry noting that it needed to extend by one year the six-year period Ontario had given itself to find viable alternatives to ozone-destroying chemicals.[61] Given the seriousness of the issue, it may have been appropriate for the province to extend its notice past the minimum requirements of the *Environmental Bill of Rights*.

The registry notice describes a consultation process where:

> The Ministry heard representations from both sides of the debate[62] concerning the lack of suitable alternatives in certain critical industries. One of the conclusions from the consultation is that there are a small number of critical uses where no alternative exists. [The "critical uses" are not listed on the posting.]
>
> This extension will provide the Ministry the time necessary to identify and assess claims from individual companies and industries that would require exemptions. It would also give the opportunity to consider a more precise, restrictive regulation that could provide exemptions for certain applications until such time as suitable non-ozone depleting, non-global warming alternatives become available.

In other words, six years ago, an Ontario government gave affected industries six years to find an alternative to using substances that destroyed the ozone layer. Now, the government is giving itself one more year to consult with industry and determine which of the industries will be legally permitted to continue to use ozone-depleting substances.

The *proviso* that the exemption will last only until an alternative becomes available is likely self-defeating. These industries apparently resisted for six years; granting an extension may only incite further delay – and further damage to the ozone layer.

6.5 Province tests a "facility-wide" permitting system for air emissions

In March 2000, the Ministry of the Environment posted notice of approval of its decision to issue a "site-wide certificate of approval" to the General Motors plant at 700 Park Rd. S. in the City of Oshawa, just east of Toronto.[63] "Facility-wide" certificates are seen as an improvement over existing practices that require a separate certificate of approval for each stack. A facility-wide permit saves costs for the regulated facility as well as the enforcing agency. This is why the ministry is proposing to issue these permits first to facilities that are already in compliance with existing standards and to hold it as an incentive to those not in compliance.

As of August 2000, the General Motors Plant is the only facility in the province with such a permit.

6.6 Proposed regulation to set minimum efficiency levels for six products

In March 2000 the Ministry of Energy Science and Technology proposed (and approved in July) a regulation to set minimum efficiency standards for vending machines, commercial refrigerators, ceiling fans, exit signs, drinking water coolers and high mast luminaries (street lights) and to update the regulations for electric ranges, icemakers and incandescent reflector lamps.[64]

The regulations are intended to increase the efficiency of these products so that they consume less energy. Less energy consumption equals less emissions and less impact on the environment. The regulation adds six minimum efficiency levels to the forty-three that are now covered under the *Energy Efficiency Act*.

VII Conclusion

The air quality in some parts of Ontario is so bad it is actually lethal. In response to this problem, the government implements weak legislation and programs (Drive Clean, emission limits for the electricity sector that will not protect human health or the environment) with one hand, and exacerbates the problem with the other (land-use policies that encourage sprawl and 100 percent funding cuts to public transit, as described in Chapter Six). The province "gets tough" with the United States when the proper, effective, strategy would be to show leadership in cleaning up its own airshed. When the task before it is setting national standards or meeting international agreements, the province fights hard for the lowest standards possible and blocks meaningful action.

CHAPTER 6 – Land – Southern Ontario

I The Common Sense Revolution and Southern Ontario land-use so far

Note: The following lists show only a few of the changes implemented under the first four years of the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report.[1]

1.1 Defunding

In July 1995, the Agriculture Minister announced that the province will withdraw $15 million from a program to protect the Niagara fruit belt from development.[2]

In April, 1996, the province releases its Interim Report on Business Planning and Cost Saving Measures. This plan cuts millions of dollars from conservation authority budgets.[3]

In December 1997, Finance Minister Ernie Eves informs municipalities that they will need to further reduce their expenditures by $565 million.[4]

Between 1995 and 1998, the provincial government reduces support of municipal transit systems to zero.[5]

1.2 Deregulation

In November 1995, the government introduces Bill 20, the *Land-use Planning and Protection Act*. The bill repeals most of the recommendations of the Sewell Commission on Planning and Development Reform.[6]

1.3 Devolution of responsibility

In March 1997, the provincial government transferred responsibility for protecting the Niagara Escarpment from the protection-oriented Ministry of the Environment to the development-oriented Ministry of Natural Resources.[7]

In 1998, the Red Tape Commission and the Ministry of Municipal Affairs and Housing announce that they will explore the feasibility of a "one window" approach to approvals. This will exclude the Ministries of the Environment, Natural Resources and Agriculture from the planning process and limit the role of conservation authorities, thereby reducing the opportunities to protect fragile ecosystems and agricultural land.[8]

Chapter Overview

I The Oak Ridges Moraine
- ❖ *High-profile issue just one prominent example of the results of poor land-use planning in Southern Ontario*

II Sprawl – omnivorous, wasteful, unsustainable
- ❖ *Not just unique ecosystems such as the Oak Ridges Moraine and the Niagara Escarpment are endangered by sprawl: air, water and prime agricultural land are too*

III Transportation policies – more roads, fewer trains and buses, less good air
- ❖ *More highways, zero funding to public transit, more gridlock*

IV The Niagara Escarpment
- ❖ *Comprehensive protection program eroding under pressure of "common sense"*

Related topics: *Issues related to land-use policies are Chapter 3, environmental decision-making, Chapter 2, water, Chapter 5, air, and Chapter 4, garbage and hazardous waste.*

II The Oak Ridges Moraine

About 13,000 years ago, receding glaciers left behind what is now called the Oak Ridges Moraine – a mound of ground rock and gravel that extends above Lake Ontario from the Niagara Escarpment in the west to the Trent River in the east. Over the centuries, life has come to flourish on the moraine. Its porous structure gathers rainwater that recharges groundwater and feeds streams and rivers flowing both south to Lake Ontario and north to Lake Simcoe and Georgian Bay. Its hilly contours rich in forests, kettle lakes and wetlands made it a safe haven for many forms of life, and, until recently, made it unsuitable for intensive development. Since the time Europeans first came to Canada, the moraine has stayed sparsely settled and for the most part green.

In the last decade of the 20th century, the natural history of the Oak Ridges Moraine has taken a turn. Urban development around the fringes of Toronto threatens to chop the moraine to bits with roads, splatter development and cube stores. This perceived threat to the moraine has generated a great deal of public concern.

The looming conflict over the moraine has attracted a lot of media attention, but it is really a symptom of a larger problem: a planning system that is seriously out of balance. Common Sense Revolution policies and reforms intended to facilitate applications and support development have triggered unmanageable sprawl in the Greater Toronto Area.

Sprawl hurts more than the moraine. Agricultural land is lost forever once paved. Far-flung low-density development is very expensive to service with roads, sewers, schools, hospitals, power and amenities. More people living far from where they work puts more pressure on roads, and more emissions into the air.

It is important to emphasize that sprawl does not just "happen." It is the product of the planning law and policy entirely under the control of the provincial government. As well, controlling sprawl, protecting the moraine, protecting agricultural land, promoting sustainable transportation – these are all within the power of the provincial government. They are also, for the 1999-2000 report period, powers the province chose not to use.

2.1 The moraine: Details of the dispute

2.1.1 The threat to the moraine

A March 2000 report issued by the Neptis Foundation describes the threat posed to the moraine by encroaching development. The study finds that the urbanized sections in the Greater Toronto Area

January 12, 2000

The town of Richmond Hill votes 8-1 to approve Official Plan Amendment 200, which would re-zone 3,250 hectares – its last stretch of open moraine – to allow for urban development. Almost 1,000 environmentalists and residents gather at the council chambers to protest the proposal, and 600 signed a petition demanding tougher regulations on development in the area. Arguing that they "have no option but to accommodate the march of growth," councillors claim that the plan allows them to protect the moraine. Developers, owning approximately 60 percent of the moraine property, have filed applications before the OMB to build a total of 17,000 new homes in the town, citing that the town has failed to accommodate their plans.

have expanded rapidly in the 1990s. In 1998, there were over 300,000 residential units in the planning approvals process in the GTA[9] and this potential development is "overwhelmingly concentrated at the urban fringe of the region, forming a continuous band along the urban/rural fringe, from Burlington in the west to Clarington in the east."[10] The report states that, "given the natural geography of the GTA, expansion at the urban fringe will generally either be on prime agricultural lands or on the Oak Ridges Moraine." [11] Planned population growth on the moraine is estimated to increase from 77,837 in 1991 to 226,007 by 2021.[12]

June 29, 1999

The Ontario Municipal Board approves the re-zoning of 133 hectares of land in the Georgetown area of Halton Hills, in order to enable the construction of an estimated 2,300 to 2,500 homes.

2.1.2 Appeals to the province to protect the moraine

Throughout 1999-2000, environmental organizations, members of the general public and municipalities throughout the GTA called on the provincial government to protect the Oak Ridges Moraine from development.[13] In February 2000, conservation groups presented a petition to the province signed by 465 scientists urging a moratorium on development on the moraine.[14] City and regional councils voted against approval of development applications on the moraine pending a provincial strategy. York, Durham and Peel Regions and Simcoe County asked the province to work with them on a coordinated policy on development that would protect the Oak Ridges Moraine.[15]

In March 2000, two groups, the Federation of Ontario Naturalists and Save the Oak Ridges Moraine submitted a request under the *Environmental Bill of Rights* for a review of existing legislation to assess their ability to protect the Oak Ridges Moraine. The City of Toronto submitted a similar request at about the same time. In May 2000, the environmental groups released a map showing the 160-kilometre long stretch of the Oak Ridges Moraine that should be protected from all future urban development.

November 25, 1999

The provincial government announces that there will be no freeze on development on the Oak Ridges Moraine, arguing that the existing development regulations are sufficient to protect the area, and that tighter controls have been placed on developers. The government also states that it does not plan to create a provincial land-use policy that would govern development of the moraine.

2.1.3 The government's response

Throughout the past year, the government adopted the position that existing guidelines and policies were sufficient to protect the moraine and that it did not need to create a special provincial land-use policy. Involved municipalities said they did not have the necessary tools to protect the moraine. The government repeatedly asserted that the municipalities did.

The province did not change its stance because of the scientists' petition or the environmental groups' proposed protected corridor. The province never met with York, Durham, Peel and Simcoe to discuss their proposed coordinated policy. In response to the requests for review under the *Environmental Bill of Rights*, the Ministers of the Environment, Municipal Affairs and Natural Resources stated that current guidelines, policies and legislation were sufficient to protect the moraine and that a further review was not warranted.[16]

2.1.4 Province makes submission to protect one strip of the moraine

In May 2000, as a party in a major hearing before the Ontario Municipal Board regarding development of over 7,000 homes on the moraine, the provincial government recommended that a 600-metre to two kilometre-wide green belt be established on the moraine for that one portion in Richmond Hill.[17] Although described in the media as a "plan" to protect the moraine, it is only a submission subject to a decision of the OMB in its deliberation of the dispute.

Under authority of the *Planning Act*, the province could approve a policy that would protect the whole moraine and to which municipal official plans, all development applications and all decisions of the OMB would have to regard. The province could also enact new, special legislation for the Moraine, just as it passed special legislation for the Niagara Escarpment. In comparison to these and other powers available to it, the submission in the Richmond Hill case seems to be only the very least the province could do.[18]

The future of the Oak Ridges Moraine is very uncertain. There are applications for development pending along almost its entire length in the GTA. An application made by King City to double its size has already been approved. The Richmond Hill decision may follow this precedent and that does not bode well for the rest of the moraine.

III Provincial actions, reforms and policies supporting sprawl

3.1 Legislation and process reform

The threat of further intensive development on the Oak Ridges Moraine is a symptom of the larger issue of urban sprawl in Southern Ontario. During the first four years of the Common Sense Revolution, the provincial government changed land-use planning legislation and policies in Ontario effectively to encourage urban sprawl. In 1996, the provincial government enacted Bill 20 (*The Land-use Planning and Protection Act*) that repealed the work of the Commission on Planning and Development in Ontario (the Sewell Commission).[19] The government also introduced a Provincial Policy Statement weakening requirements for natural heritage and environmental protection. In 1997 and 1998, the provincial government removed most provincial approval requirements for official plan amendments and plans of subdivision.

3.2 Land transfer tax exemption

In the 2000-01 budget, the government announced that legislation would be introduced to make permanent the Land Transfer Tax Exemption, which was established in the May 1996 budget and suspends the Land Transfer Tax on the purchase of new houses.[20] This *de facto* subsidy creates the incentive for first-time buyers to purchase houses in new developments. There is no corresponding incentive for first-time buyers seeking to invest in established neighbourhoods.

3.3 Virtually no protection for prime agricultural land

The Neptis report finds that prime agricultural land in the Greater Toronto Area has been lost to urbanization between 1967 and 1999 and virtually all of the urban growth in the GTA in recent decades has been on prime agricultural land.[21] The report also notes that, "provincial policies permit the loss of agricultural land to accommodate the planned expansion of urban and rural settlement areas."[22]

In November 1999, the Federations of Agriculture in Halton, Peel, York and Durham Regions reported that 3,000 hectares of prime agricultural land are lost to development every year. The report also predicted that 66,000 hectares of agricultural land would be irrevocably lost in Southern Ontario by 2021.[23]

3.4 Unrestructured 905 drives more sprawl

Municipal amalgamation has been a prominent element of the Common Sense Revolution. The government passed in December 1999 the *Fewer Municipal Politicians Act*, which amalgamated the region of Hamilton-Wentworth and its local municipalities into a single-tier government. Ottawa-Carleton is another municipal region amalgamated during the report period.

The Ontario government has not, at least to date of writing (August 2000), restructured municipal

governments in the rapidly growing 905 region (Halton, Peel, York and Durham), leaving this region with four regional governments and 24 local municipalities.

Leaving the 905 municipalities unamalgamated contributes to sprawl. The Neptis report describes how the fragmentation of planning functions among several regional and local municipalities within the 905 area presents several problems for setting boundaries to urban growth.[24] Competition among municipalities for development exacerbates sprawl as it creates disincentives for any individual municipality to put into place restrictions to support higher development densities.[25] Lack of inter-regional coordination can result in inefficiencies and overspending on infrastructure.[26]

Amalgamation by itself will not solve the problem of urban sprawl. However, the *status quo* exacerbates the problem.

IV Transportation planning: Expansion of the highway network

4.1 Transportation policies starve transit, subsidize car culture

The government's transportation planning initiatives in 1999-2000 show an overwhelming preoccupation with highways and little or no attention paid to more environmentally sustainable modes of transportation. The government also cut operating subsidies for GO Transit and eliminated funding for municipal transit capital projects.[27]

4.1.1 New highways

The provincial government's transportation funding priorities in 1999-2000 focus on highway construction and expansion projects in Southern Ontario. Following the spring 1999 election, the government announced that much of the funds under the $20 billion SuperBuild Growth Fund would go to renewing Ontario's highway infrastructure. The government also approved the eastward extension of Highway 407 without an environmental assessment hearing, and initiated studies for the expansion of highways linking Ontario with the United States.

June 1999

The Ministry of Transportation releases its 1999-2000 business plan. The plan outlines the ministry's priorities as road user safety, highway preservation and highway expansion projects. The ministry states that its transportation policy and planning "contributes to Ontario's economic prosperity by helping to plan the highway network and promote competitive industry through a supportive policy and regulatory environment". As part of a "reliable, efficient, accessible and integrated transportation system," the ministry states its "commitment to maintaining a standard whereby 90 percent of the province's population lives within 10 kilometres of a major provincial highway corridor."

The key achievements highlighted in the business plan include the following:

- Transfer of GO Transit to the Greater Toronto Services Board (GTSB) on August 9, 1999;
- The sale of Highway 407 to the private sector for $3.1 billion;
- Highway capital program of $667 million in 1998-1999.

The key commitments and strategies for 1999-2000 outlined in the plan include the following:

- Deliver highway maintenance programs in partnership with the private sector;
- Increase investment in strategic highway expansion projects;
- Ensure Ontario's trade corridors continue to accommodate the transportation needs of Ontario's north-south trading relationship;
- Continue provincial efforts to develop climate change strategies for the transportation sector that protect the environment and secure Ontario's economic well-being.

During the 1999 construction season, the government invested $692 million in its highway capital program.[28] In March 2000, the Minister of Transportation announced that the province would undertake a study to examine the potential expansion of the Queen Elizabeth Way and other transportation alternatives in the Niagara Peninsula, including the construction of a new mid-peninsula highway. In

May 2000, the minister announced the government would commit $200 million to improve provincial highways in the Greater Toronto Area.

December 24, 1999

The Ontario government announces that it has invested $692 million in upgrades to provincial highways in 1999 construction season, more than has ever been spent in the province in any one year.

4.1.2 The ultimate goal: 10 kilometres or less to a highway

In the Ministry of Transportation (MTO) 1999-2000 business plan, priorities are highway preservation and expansion projects and road user safety. The Ministry's goal is to "maintain a standard where 90 percent of the province's population lives within 10 kilometres of a major provincial highway corridor."[29] Other commitments and strategies include private sector involvement in delivering highway maintenance programs, increased investment in strategic highway expansion projects, and ensuring the accommodation of transportation need of Ontario's north-south trading relationship.

April 13, 2000

In response to Federal Transportation Minister David Collenette's comments that the Ontario government should invest in transit rather than cut taxes, the Ontario Transportation Minister David Turnbull releases an open letter to the federal minister. In the letter, Mr. Turnbull criticizes the federal government's $2.65 billion infrastructure program as doing little for public transit. The provincial minister highlights the province's investment in highways and the downloading of transit responsibilities to municipalities.

4.1.3 Public transportation not part of the plan

Public transit in southern Ontario is not mentioned anywhere in the MTO 1999-2000 business plan. The plan does state that the province will "continue to develop climate change strategies for the transportation sector that protect the environment and secure Ontario's economic well-being." However, there is no specific mention of the role of public transit to achieve this objective. Nor is there anything in the plan to describe how these strategies will be developed.

In August 1999, the provincial government transferred the operation and management of GO Transit to the Greater Toronto Services Board.

When the federal government criticized Ontario's abandonment of public transit, the provincial Minister of Transportation deflected the criticism and blamed the federal government's $2.65 billion infrastructure program for not helping public transit more.[30]

In November 1998, Toronto City Council supported a Toronto Transit Commission (TTC) request to the province to consider a gasoline tax as an alternative funding mechanism to support transit systems in Ontario municipalities.[31] The request was in part due to the elimination of provincial subsidies for the TTC in 1999.

Toronto is the only major city in North America where the total subsidy for transit is covered through municipal property taxes. In 1999, the TTC covered almost 81 percent of its operating costs from fares. It is estimated that one cent per litre of the gas tax would generate $19 to $28 million dollars in revenue for the City of Toronto.

The Ontario government has not responded positively to the idea of using a portion of the provincial gasoline tax to fund the public transit system in the City of Toronto. At a one-day transit summit in Toronto, the Minister of Municipal Affairs Tony Clement rejected the idea of sharing the revenue from the provincial gasoline tax with municipalities to fund public transit.[33]

V The Niagara Escarpment

The Niagara Escarpment is the most prominent topographical feature of the southern part of Ontario. A massive ridge, the product of seismic upheaval millions of years ago, the Southern Ontario portion of the escarpment is now a forested corridor 725-kilometre long. In February 1990, the Niagara Escarpment was designated a World Biosphere Reserve by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

In 1973 the province established a land-use planning regime for the escarpment with the *Niagara Escarpment Planning and Development Act*. The Ontario cabinet approved the first Niagara Escarpment plan in 1985. The Niagara Escarpment Commission is the provincial agency responsible for ensuring that a system of development control on the escarpment is implemented in accordance with the detailed provisions of the plan.

The provincial government has made several changes to the original escarpment protection plan, and has made some controversial appointments to the commission.[34]

5.1 Changes during the report period

5.1.1 Fewer permits required

The provincial government proposed an amendment to Regulation 828 under the *Niagara Escarpment Planning and Development Act*.[35] The proposed amendment would exempt less environmentally significant development proposals from permit requirements. The proposed amendment would also expand the number – from 19 to 35 – of the classes of development that are exempt from permitting.

5.1.2 New decision-making powers for commission

In May 2000, the Ontario government posted a proposal to the Environmental Bill of Right Registry to amend the *Niagara Escarpment Planning and Development Act*.[36] These proposed changes would delegate certain responsibilities and authority from the Minister of Natural Resources to the Niagara Escarpment Commission. The stated purpose of these changes is to provide the NEC with "enhanced capabilities to promote compliance with the Act and the Niagara Escarpment Plan, and to contribute to the more timely and effective administration of the Act."[37]

Most of the changes are minor, although the Canadian Environmental Law Association has commented that some of the amendments would reduce opportunities for public participation. One change could have very serious effects if not amended. The ministry proposed amending section 24, which provides for stop work orders where person(s) are undertaking developments that contravene the act. While this is a welcome power under the act, the amendment also provides that this power be limited only to situations where the minister has reasonable grounds to believe that the contravention is causing or is likely to cause a risk to public safety or significant environmental damage.

CELA comments:

> The proposed new s.24(9) ensures that such orders come only from the Minister, Commission or the Director of the Commission. [Therefore], there is no danger that the stop work order would be used frivolously. The amendment as worded leaves a window for persons contravening the Act to challenge a valid stop order on the grounds that there is not sufficient evidence to demonstrate a risk to public safety or significant environmental damage.[38]

In other words, the amendment permits a person to ignore the act, and possibly defeat a stop order so long as there is no "significant" environmental damage. These amendments, and others proposed to change nine acts administered by the Ministry of Natural Resources, are at draft stage. They are not part of a bill, and have not been put before the legislature.

5.1.3 New protected areas on the escarpment

The provincial government acquired several areas on the Niagara Escarpment with funding from the Natural Areas Protection Program, which was announced in May 1998 and which provides $20 million over four years to protect significant natural areas on the Niagara Escarpment, the Rouge Valley and in Lynde Marsh. The government's acquisitions included Delphi Point, 339 hectares of prime escarpment wilderness, the largest single addition to the parks system since approval of the Niagara Escarpment plan in 1985.[39] The government announced that it has acquired 28 properties comprising 600 hectares of protected land on the escarpment since December 1997.[40]

VI Other land-use-related issues

6.1 The sale of public lands: Bargains for developers

In 1999-2000, allegations arose about the sale of publicly owned lands to developers by the Ontario Realty Corporation (ORC) for below-market values. Some of these public lands contain ecologically significant areas that could be developed. For example, in 1999 the ORC was negotiating the sale to a developer of 14 hectares of land on the Oak Ridges Moraine in Aurora.[41] In April 2000, the Pickering City Council decided to ask the ORC to suspend the sale to developers of an environmentally sensitive 13-hectare corridor in order to preserve the area.[42]

Forensic audits were conducted to investigation any possibility of wrongdoing in the sale of these publicly owned lands by the ORC. Late in July, the province announced it was bringing a lawsuit against several ORC employees in connection with some of these transactions.

6.2 Toronto waterfront revitalization: Uncertain provincial investment

In March 2000, the Toronto Waterfront Task Force report was released outlining a plan for the revitalization of the City of Toronto's waterfront. The plan presents a vision for the Toronto waterfront that incorporates environmental initiatives including the creation of two large waterfront parks, naturalization of Toronto's Don River mouth, and remediation of contaminated lands in Toronto's port lands. The government has committed to funding the revitalization project along with the federal government and the City of Toronto.[43] As of June 2000, the amount of provincial funding for the project had not been announced.

VII Conclusion

In the chapters on air and water, we observed that environmental problems caused by government policies tend to overwhelm government environmental protection programs. This same pattern is evident in this chapter. Ontario's transportation policies render Drive Clean almost completely irrelevant. Ontario's support of intensive farming makes the Healthy Futures in Agriculture program virtually moot. And the Ontario government's development laws and policies make its conservation policies so ineffectual, not even the municipalities who use them believe they can work to protect the Oak Ridges Moraine.

However ineffectual the conservation tools may be, the provincial government stood firm in its position that they were enough. By next year's report, many of the pending applications before the OMB will have been heard. While there will be more evidence to measure the putative efficacy of provincial policy, there may also be quite a lot less undeveloped moraine.

CHAPTER 7 – Land – Northern Ontario

I The Common Sense Revolution and northern land-use issues so far

Note: The following describes only a few of the changes implemented under the first four years of the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report.[1]

1.1 Major past initiatives: *The Fish and Wildlife Conservation Act* and Lands For Life

1.1.1 The Fish and Wildlife Conservation Act

In December 1997, the *Fish and Wildlife Conservation Act* was enacted. The act provides for the protection and management of both game and "specially protected" species; protects black bears from traffickers in animal parts; strengthens enforcement provisions; gives greater discretion for the Minister of Natural Resources to make regulations previously made by the cabinet; and "facilitates" new business relationships with the private sector to assist in fish and wildlife management.

Concerns have been expressed that the legislation:
- continues to advance the privatization of fish and wildlife resource management;
- lacks necessary legal mechanisms to adequately protect wildlife;
- allows for a wide range of ministerial discretion on the application of the act;
- will limit the investigation of hunting, fishing and trapping activities;
- is not strong enough to prevent the trafficking of animal parts.[2]

1.1.2 Lands For Life

The provincial government established the Lands for Life process in April 1997 to determine the future uses of public lands in Central and Northern Ontario, an area encompassing 47 percent of the province's land area. The government stated its intention to protect 12 percent of the lands in the planning area from development. This commitment is subject to strong guarantees to the forestry and mining industries. In the case of mining, mineral tenure in new parks and protected areas is to be maintained, prospecting and exploration permitted in these areas, and land will be "borrowed" from parks for mining purposes if significant mineral deposits are found.

To the forestry industry, the government has committed to no long-term reduction in wood supply, no increases in the costs of the wood supply, potential exemptions for the biodiversity protection provisions of the *Crown Forest Sustainability Act* in areas of intensive silviculture; the opening of the region north of the 51st parallel to logging activities; and millions in new subsidies and compensation to the forest industry.

Lands for Life agreements mean that expansion of parks and protected areas in Ontario will require the agreement of the forestry and mining industries. Commercial fur harvesting and sport hunting and fishing will be permitted in most new protected areas, and consideration has been given to the expansion of hunting in existing parks.

Chapter Overview

I Lands For Life and Ontario's Living Legacy strategy
- ❖ *Only 12 percent of public lands set aside for "conservation," which includes hunting and mining*

II "Beyond 2000" ministry vision document
- ❖ *The MNR's framework for management planning gives priority to consumptive uses of Ontario's wilderness*

III New species protection
- ❖ *There are two new protected species in Ontario but resource-use policies still threaten non-game animals and their habitat*

IV Conservation partnerships
- ❖ *Ontario Parks Legacy 2000 helps accomplish portion of provincial commitment to protect habitat and rare ecosystems*

V Wildlife management regulations
- ❖ *Many regulations, programs, policies and plans to manage game species and bait and to count peregrine falcons, among other things*

VI Other land-use related initiatives

Related topics: *Forestry, fisheries and mining, also related to northern land-use issues, are discussed in Chapter 8. Other northern land-use issues that are discussed elsewhere are garbage and hazardous waste in Chapter 4.*

II Lands For Life and Ontario's Living Legacy strategy

2.1 In the language of Common Sense, protection means sport hunting and mining

The provincial government's Lands For Life proposal contemplated from the outset that mining and hunting would be permitted in so-called "protected areas."[3] However, after the announcement of the program in July 1999, some participants in the process were surprised.[4] The Minister of Natural Resources[5] made it clear that when the government discusses "protection" the term includes hunting and mining.[6]

The province has pledged that where protected areas are "deregulated" to permit mining, a comparable parcel of land will be added to the protected area. This policy presumes, apparently, that one square hectare of protected area is in some way equivalent to all others. This presumption runs counter to most principles of ecosystem preservation.[7] As a hypothetical example, it could be the case somewhere in Ontario that just where a very rich mineral deposit lies there also grows a distinct subspecies of wild ginseng. This plant grows nowhere else, and can be transplanted nowhere else. Mining the land will destroy the habitat the wild ginseng relies on. No other patch of land is "equivalent" to this habitat, but the provincial policy suggests that there is.

Examples in real life that are like the hypothetical may or may not be rare. The point is that the policy has the general potential to destroy unique and irreplaceable habitat.

Furthermore, along with this capacity to destroy unique habitat, the policy may actually achieve a net loss of protected areas. The impact of a mine on protected areas extends far beyond the square metres of disturbed surface.

> What harm is a 10-acre [four-hectare] mine in a park of 500,000 acres [200,000 hectares]? The mine requires a hydroelectric development, a portable sawmill for pit props, a tailings disposal site, a mining mill site, mill effluent disposal sites, many roads, a camp, barge shipping and tugs on a major lake, loading out works, then a highway through the park all for just a starter. That 10-acre [four-hectare] hole influences 100,000 acres [40,000 hectares] of the choicest part of the park.[8]

The provincial government's presumption that land can be "protected" and mined and roamed by sport hunters all at the same time reveals a strong general policy bias – noted elsewhere in this report – that human use of land "trumps" all other uses including conservation.

2.2 "Deregulation" of protected areas exempt from environmental assessment

In September 1999, the Ministry of Natural Resources posted a declaration request under the *Environmental Assessment Act* for regulation of new provincial parks, park additions and conservation reserves approved through Ontario's Living Legacy. This means that the new parks, their regulation and subsequent "deregulation" to permit extractive uses such as mining, will be exempt from the *Environmental Assessment Act*. The minister, with the concurrence of cabinet, approved Order-in-Council 182/2000 on February 2, 2000.

The importance of this order in council is that when the lands are deregulated to permit mining, the provincial government will not require an assessment of the potential impact on the environment of its decision.

In another February decision, declaration order MNR-65 was made under the *Environmental Assessment Act*.[9] The order permits the provincial government to establish by regulation and provide interim management for the provincial parks and conservation reserves identified in the Ontario's Living Legacy Land-Use Strategy.

2.3 Land-use designations and distribution under the strategy

The basic purpose of the Lands for Life process and the resulting Living Legacy Strategy was to set out, on public lands in the province, an over-reaching land-use policy. In other words, huge portions of provincial land now have designated uses.

The Living Legacy Strategy identifies five land-use designations (LUDs):

- provincial park
- conservation reserve
- forest reserve
- general use area
- enhanced management area (EMA)

There are seven categories under the enhanced management area:

- natural heritage
- recreation
- remote access
- fish and wildlife
- Great Lakes coastal areas
- resource-based tourism
- intensive forestry

The Living Legacy website describes how the land-use designations will be applied.

Resource management within all land-use designations and enhanced management areas will be undertaken in accordance with applicable policy and guidelines. Management of the full land base will be carried out in a manner that ensures ecological sustainability, protection of significant natural heritage and biological features, and continued availability of resources for the long-term benefit of Ontarians. Management will be undertaken in recognition of the many interests and users of the resource, and resource-management activities in all land-use areas will ensure that they do not compromise values in adjacent areas.

The land-use categories have been allocated among the "planning area" as shown on the following chart.

Summary of Land-use Categories in the Planning Area

Land-use Category	Number	Area (ha)	Percent of Planning Area
Provincial Parks (see notes 1, 2, 3)	246	3,674,788	8.14
Algonquin recreation/ utilization zone (see note 2)	1	591,129	1.31
Conservation Reserves (see notes 1, 3)	300	1,537,194	3.41
Forest Reserves	14	31,442,540	0.07
General-Use Areas	—	31,419	69.68
Enhanced Management Areas (Total)	86	1,602,349	3.55
Natural Heritage	24	51,478	0.11
Remote Access	35	613,509	1.36
Great Lakes Coastal Area	3	50,101	0.11
Fish and Wildlife	5	210,163	0.47
Recreation	19	677,098	1.50
Resource-Based Tourism	0	0	0.00
Intensive Forestry	0	0	0.00
National Parks	2	186,521	0.41
Private and Federal Lands (excluding national parks)	—	6,058,918	13.43
TOTAL PLANNING AREA (including private and federal lands)	—	**45,124,858**	**100.00**

Notes:

1. The existing and recommended parks and conservation reserves have been combined in this table.

2. The recreation/utilization zone in Algonquin Park where logging is permitted is not included in the area for existing parks and is shown separately.

3. Numbers for parks and conservation reserves are based on the consolidation of additions with existing protected areas.[10]

2.4 Fifty-one new conservation reserves: Mining permitted where mineral reserves warrant

Although "conservation reserves" are lands included within the 12 percent "protected" areas under Lands for Life, they can be mined, and, in at least one case, they are.

In November 1999, the Ministry of Natural Resources posted notice regarding the establishment of 51 conservation reserves by amending O. Reg 805/94 made under the *Public Lands Act*.[11] The amended regulation would establish the boundaries of the 51 conservation reserves.

> Under Section 1 of Ontario Regulation 805/94, conservation reserves are established with the purpose of protecting natural heritage areas and natural features on public land, and preserving traditional public land-uses, such as wildlife viewing, *hunting*, fishing, walking, snow shoeing, cross-country skiing and boating [emphasis added].

Section 2 specifies that lands within a conservation reserve shall not be used for mining, commercial forest harvest, hydroelectric power development, extraction of aggregate and peat or other industrial uses. However, these are not all the rules that apply.

Ontario's Living Legacy Land-Use Strategy provides more specific policy direction for the new conservation reserves, including treatment of existing activities and the opportunity for mineral exploration within some conservation reserves.[12] The actual meaning of the policy is that, while in some cases mining or other extractive activities may not be permitted in conservation reserves, these activities will be permitted where mineral or other resources within the reserve warrant.

2.5 The strategy in action: The Mellon Lake Conservation Reserve

This is exactly what appears to be happening at the Mellon Lake Conservation Reserve. An aggregate (gravel) company from Thornhill is cutting and removing blocks of granite the "size of a pickup

truck" under a permit issued March 23, 2000 by the Ministry of Northern Development and Mines. The company is also seeking approval under the *Aggregate Resources Act* to go into full production on the site. With their permit, they will remove stone in 20-tonne blocks to be shipped to Europe for processing. All of this, in an area newly designated under the Living Legacy strategy as a "conservation reserve."[13]

III Policy document released

In May 2000, the Ministry of Natural Resources issued Beyond 2000, a "strategic directions document." As such, the document establishes the framework of ministry actions, decision-making and planning.

Beyond 2000 outlines nine "desired outcomes" of MNR's management efforts:

- The long-term health of ecosystems is maintained.
- The continuing availability and sustainability of natural resources is secured.
- Significant natural heritage features and landscape values are protected.
- Economic development potential associated with natural resources is maintained.
- Ontarians receive a fair return for the use of natural resources.
- A variety of natural resource-based recreation opportunities are provided.
- Human life, property, and natural resource values are protected from hazards such as forest fires, floods and erosion.
- Management decisions are based on high quality natural resource science and information.
- The public interest in Ontario's natural resources and the need to manage them sustainably is appreciated.[14]

These outcomes have raised some concerns among the environmental community. In its comments to the Ministry of Natural Resources, the Northern Ontario environmental advocacy group Northwatch made several critical observations about the policy. Among other things, Northwatch noted:

- in its overall tone and message, Beyond 2000 places too great an emphasis on management and consumption of natural resources, and insufficient emphasis on the protection and conservation of natural systems.[15]

Generally speaking, this observation appears to be correct in that although maintaining ecosystem health is first on the list of "desired outcomes," consumptive uses and resource management considerations dominate the list. Northwatch further comments:

- There is little attention paid to the paramount issues of maintaining biological diversity and the maintaining and restoring the diversity and function of natural habitat;
- The approach to wildlife is overwhelming focused on management and use, rather than on protection of habitat and supporting natural systems, and maintaining healthy populations;
- The policy's commitment to sustainable development is greater than the commitment to ecological sustainability. Ecological sustainability should be paramount;
- The discussion of resource stewardship describes "allocating Crown land and resources fairly to various users, as well as prescribing standards for their management..."; wholly absent from this discussion is the place of protection, conservation and retention of natural values as an integral part of resource stewardship; and
- Perhaps most significant in its absence is the acknowledgement of the *constitutionally protected* aboriginal and treaty rights of First Nations, and their rights to a significant role in resource management decision-making, and use and access to natural resources.[16]

These comments and the ministry's policy may be considered in light of some observations made by the World Wildlife Fund in its analysis of the root causes of biodiversity loss.[17]

The Root Cause Study examined 10 developing countries and its recommendations are most applicable to them. However, some of the report's observations may helpfully apply to Beyond 2000.

For example, the study observes that two types of international pressure – macroeconomic change and trade – tend to promote biodiversity loss through an increased reliance on natural resources to meet macroeconomic goals.[18] This leads to ecosystem conversion and unsustainable levels of consumption. These pressures also result in failures to acknowledge and address long-term environmental costs associated with economic growth objectives. These failures in turn lead to the adoption of environmentally destructive practices.[19]

The report also notes that public policies developed to address the problems created by international pressures such as global competitiveness can exacerbate biodiversity loss. The report describes themes common across all of its case studies:

- policies promoting resource use at unsustainable levels;
- inadequate or ineffective environmental policies and laws that lead to poor domestic environmental management and protection;
- few or inadequate efforts to assess or mitigate the harmful effect that the implementation of public policies may have on the environment; and
- policy decisions that remove local incentives for sustainable resource use.[20]

The question arising from Northwatch's criticisms and the findings of the World Wildlife Fund study is how much does the MNR policy *avoid* threats or *pose* a threat to biodiversity. The fact that the document does not mention the protection of biodiversity as a "desired outcome," may be a cause for concern, as is the fact that, as Northwatch comments, the policy as a whole is preoccupied with consumptive uses of Ontario's natural heritage.

April 7, 2000

The Ontario Ministry of Natural Resources offence report for fiscal year 1999-2000 shows the following:

Total number of charges laid in 1999-2000: 9,212
Total number of convictions in 1999-2000: 5,390
Total amount of fines in 1999-2000: $1,125,181.62

This information was requested by CIELAP as a Freedom of Information request.

IV Species protection

During the report period, as described in greater detail below, the provincial government followed through on promises to add two species to the *Endangered Species Act (ESA)*. It also added a total of 39 plant and animal species to a non-regulatory list providing no actual protection at all to the species.

4.1 Regulatory framework: What protected status means

4.1.1 Under the Endangered Species Act

The Ontario *Endangered Species Act* provides for the protection of the habitat of a protected species as well as individual members of the species. The Ministry of Natural Resources enforces the act.[21]

In January 2000, the Ministry of Natural Resources designated the prothonotary warbler and the king rail for protection under the *ESA*.[22] This brings the number of species so designated in the province to 26. However, an endangered species list compiled for the federal government by wildlife scientists states that a total of 51 plants and animals are at risk in the province. Included on this list is the red mulberry, a Carolinian tree found naturally only in a few areas of the warmer southwestern part of Ontario.[23]

March 2, 2000

The Sierra Legal Defence Fund asks the Environmental Commissioner to conduct a public inquiry into Ontario's listing practices for endangered species. The group states that the Ontario's government listing practices violate the National Accord for the Protection of Species at Risk. According to the Ontario government, there are 26 endangered species in Ontario, but federal wildlife scientists find that 51 species are at risk in the province.

4.1.2 Under the Fish and Wildlife Conservation Act

Protected status is somewhat different under the *Fish and Wildlife Conservation Act* (*FWCA*).

Under Section 5 of the *FWCA*, it is illegal to hunt or trap "specially protected" mammals, amphibians, reptiles, invertebrates, or birds, subject to some exceptions.[24] Unlike the *ESA*, the *FWCA* does not protect plants or the habitat of species that have a "specially protected" status.

Some weak habitat protection is afforded through land-use planning policies. Species with protected status under both the *ESA* and *FWCA* receive recognition under Section 2.3.1 a) of the natural heritage component of a provincial policy statement (PPS), which states: "Development and site alteration will not be permitted in … significant portions of the habitat of endangered and threatened species." Planning authorities are required to "have regard to" the PPS when making municipal land-use planning decisions.

4.1.3 Additions to the list of "vulnerable, threatened, endangered, extirpated or extinct species of Ontario"

The ministry announced a decision in March 2000[25] to list 20 species as provincially "threatened" and 17 species as provincially "vulnerable."[26] A "threatened" species is any native species that, according to the best available scientific evidence, is at risk of becoming endangered throughout all or a significant portion of its Ontario range if the limiting factors are not reversed. A "vulnerable" species is any native species that, according to the best available scientific evidence, is a species of special concern in Ontario, but is not a threatened or endangered species.

Listing these species affords no protection under either the *ESA* or the *FWCA*. The list is for identification and science purposes only.

V Provincial parks/conservation partnerships/other conservation initiatives

The Common Sense Revolution has markedly affected the provincial parks system. Major budget cuts occurred in 1995 and 1996. The management of more than a dozen parks has been transferred to non-governmental partners and, in 1996, "Ontario Parks" began a revenue generation plan for parks through fee-for-service programs.[27]

During the report period, conservation "partnership" initiatives moved ahead with the success of the Ontario Parks Legacy 2000 program and were further facilitated by changes to the *Conservation Land Act*. Private interests in provincial parks may benefit from the substantial extension of leases for private resorts within Algonquin Park.

5.1 Ontario Parks Legacy 2000: Partnership with the Nature Conservancy of Canada

In April 1996, the province entered into a partnership with the Nature Conservancy of Canada to create new provincial nature reserves and other park lands to mark the millennium.

The original target commitments were for the province to contribute an initial $600,000 and for the Nature Conservancy to raise at least $4 million before April 1, 2000.

As of June 2000, the province's contribution has been increased to $1.5 million and the Nature Conservancy has raised more than $10 million to acquire ecologically important land. Included among the properties protected under this program are a 3,100-hectare globally rare habitat known as alvar on the south shores of Manitoulin Island, the Morris Tract near Goderich, Beattie Pinery south of Alliston, and the Menzel Centennial Provincial Nature Reserve in Southeastern Ontario.

All of the Nature Conservancy properties are classified as "nature reserves" under the *Parks Act*, which should mean hunting is prohibited in these areas. However, MNR records suggest the matter might still be open to discussion.[28]

5.2 Proposed changes to the *Conservation Land Act*

As part of a proposed omnibus bill making changes to nine acts administered by the Ministry of Natural Resources, Section 3 of the *Conservation Land Act* will be amended to permit the Lieutenant Governor in Council to expand the definition of "conservation body" by regulation. Section 3 of the existing act permits conservation bodies to enforce certain easements and covenants for the conservation, maintenance, restoration or enhancement of land or wildlife.[29]

This change will allow for additional groups or organizations to be eligible to hold conservation easements, including groups identified as prescribed donees under the federal *Income Tax Act*.

These changes were at the proposed draft stage during the report period, are not part of a bill and have not been tabled before the legislature.

5.3 Commercial leases in provincial parks

In September 1999, the Ministry of Natural Resources posted on the EBR Registry a proposal to amend Regulation 952 (General) RRO 1990 made under the *Provincial Parks Act* to renew and extend nine commercial leases in Algonquin Park.[30] The leases were originally intended to run in 21-year intervals. The current proposal may extend the lease period to 60 years. The amendment would not permit either the expansion of the current operations holding the leases (primarily youth camps) or any fundamental change to operations.

At the time of writing this report, no decision had been made regarding the commercial leases.

5.4 Other land-use related changes during the report period

5.4.1 Confirmation procedure for Areas of Natural and Scientific Interest

The Ministry of Natural Resources posted on the Environmental Bill of Rights Registry notice of its decision to approve a confirmation procedure for Areas of Natural and Scientific Interest (ANSI).[31] ANSIs are natural landscapes or features that have been identified as having earth science or life science values related to protection, scientific study, or education. Life science ANSIs contain provincially significant representative ecological features, while earth science ANSIs contain provincially significant representative geological features.

The confirmation procedure:

- streamlines the collection, analysis, presentation and distribution of scientific information on existing ANSIs and sites under consideration;
- ensures timely and appropriate contact with locally affected persons, including landowners; and
- clearly defines the roles and responsibilities of MNR staff.

According to the EBR notice, this procedure formalizes what has been the ministry's practice over a number of years.

5.4.2 Proposed changes to the Public Lands Act

As part of a proposed omnibus bill making changes to nine acts administered by the Ministry of Natural Resources, contraventions of several provisions of the *Public Lands Act* are made subject to the general penalty provided for in section 70 of the act. Section 70 and several other provisions of the act will be amended to provide for the possibility of higher fines and for fines for each day that an offence continues. Courts would also be authorized to make orders to obtain compliance. A two-year limitation period would be established for offences under the act.[32]

When a certificate is sent to the land registry office under subsection 38(2) of the act stating that land that is registered in the Crown's name or that has reverted to or vested in the Crown is deemed to be "public" lands, it would no longer be necessary for the Minister of Natural Resources to give notice to adjoining landowners. Notice will be given through local media and through contact with those landowners identified by the ministry as having a material interest.

The proposed changes were in draft form only during the report period are not part of a bill nor have they been tabled before the legislature.

5.4.3 Class environmental assessment in provincial parks

In April 2000, the Minister of the Environment approved the terms of reference (TOR) for the preparation of an environmental assessment for a class environmental assessment (EA) for provincial parks and conservation reserves.[33]

The terms of reference set out how the MNR proposes to comply with the *Environmental Assessment Act* requirements for the preparation of a class EA. The TOR will provide the framework for preparing the class EA, and serve as a benchmark for its review and approval. The class EA will be prepared in accordance with the requirements as set out in section 14(2) of the *EA Act*.[34]

5.4.4 Class environmental assessment for small-scale MNR projects

In September 1999, the Minister of the Environment approved the terms of reference for the preparation of an environmental assessment for the class environmental assessment for small-scale MNR projects.[35]

In the late 1970s and early 1980s, the MOE accepted and approved separate MNR class EAs for ten activities in areas where the MNR has stewardship responsibilities: provincial parks, natural heritage areas, forests, fish habitat, wildlife areas, mineral aggregate deposits, fuel mineral deposits and Crown lands and waters.

These 10 activities were approved for inclusion in a class EA because of their predictable range of environmental effects, their similarity, their regularity of implementation and the efficacy of standard mitigation measures. In 1992, these activities were collected into one document: the Class Environmental Assessment for Small Scale MNR Projects.

The approval for that class EA expired April 20, 1999; an extension was granted until April 20, 2000. On April 20, 2000, Environment Minister Dan Newman further extended the period to April 20, 2001 to give the MNR the time to incorporate "the activities of previously approved exemptions and changes to the *Environmental Assessment Act* into a revised Class Environmental Assessment for Small-Scale MNR Projects."[36]

5.4.5 Aulneau Peninsula enhanced wildlife management plan proposed [37]

With the July 1999 release of Ontario's Living Legacy Land-Use Strategy (Registry Number PB7E4003), the Aulneau Peninsula was designated as enhanced management area (EMA) E2376w. EMA is a new land-use category established by the strategy to provide more detailed land-use direction in areas of special features or values. The Aulneau Peninsula has been categorized as a "fish and wildlife" EMA. In the case of the Aulneau Peninsula, it is to be managed, in particular, for the maintenance and enhancement of wildlife habitat and populations, while allowing for the multiple-use of other natural resources.

VI Several wildlife management-, hunting- and fishing-related regulatory and policy initiatives

During the report period, the Ministry of Natural Resources proposed and passed many wildlife management, hunting- and fishing-related regulations.

July 5, 1999

The MNR expands the fall black bear hunting season in Ontario. In many areas, the season will open two weeks earlier in the fall than in previous years. It is stated that the MNR intends to expand mandatory reporting of hunting activities to resident hunters by early 2000.

6.1 Fall bear hunt season

On July 6 1999, O.Reg. 387/99 came into effect. The regulation provides for the expansion of the fall season for hunting black bear. Depending on the area, the change provides that the season may start one or two weeks earlier than in previous seasons.[38]

October 22, 1999

The Ontario Black Bear Association, which represents outfitters, hunters and guides in Ontario, launches a suit against the Premier and the Minister of Natural Resources due to the cancellation of the spring bear hunt by the province.

6.2 Policies and procedures on wildlife in captivity: Proposed policy

As part of implementing the *Fish and Wildlife Conservation Act* and regulations made under it, the Ministry of Natural Resources prepared three policies and procedures on wildlife in captivity. These will provide direction to MNR staff on how to interpret the act and its regulations. These policies will also describe procedures for persons authorized to keep wildlife in captivity; for controlling the propagation of wildlife in captivity; and the circumstances under which wildlife may be kept for education, science or other purposes.[39]

6.3 Elk restoration program

In 1998, the Ministry of Natural Resources adopted a plan to re-establish self-sustaining populations of elk in Ontario (Registry Number PB7E6015). Elk that were native to the province disappeared in the late 1800s as a result of over-hunting and habitat loss. The Ministry of Natural Resources posted a decision on the Environmental Bill of Rights Registry regarding this plan to restore elk in Ontario.[40]

To date, 109 elk, brought from Elk Island National Park in Alberta, have been released in Ontario near Burwash (the Nipissing-French River Elk Restoration Area).

6.4 Escaped farmed animals policy

The Ministry of Natural Resources issued for comment policies and procedures for authorizing the release of wildlife and protocols to be followed when an unauthorized release or escape of farmed animals occurs under the *Fish and Wildlife Conservation Act*.[41]

6.5 Archery-only moose hunt regulation

The Ministry of Natural Resources expanded the open seasons for hunting moose with archery-only equipment to 15 additional wildlife management units (WMUs).[42]

O. Reg. 670/98 was amended by O. Reg. 22/00, which came into effect on February 3, 2000 and was published in the February 19, 2000 edition of the Ontario Gazette.[43]

6.6 New moose hunt in WMU 65

To deal with the tenfold increase in moose population, the Ministry of Natural Resources proposed an annual controlled hunting season for moose in WMU 65.[44] The open season would consist of a three-day archery-only season from October 5 to October 7 (beginning in the year 2000, which would be open only to disabled persons) and a seven-day archery-only season open to other hunters from October 8 to October 14 inclusive (beginning in the year 2000, in any year).

6.7 Grouse hunting for Christmas

The ministry announced changes to grouse hunting season because, apparently, hunting opportunities over the Christmas holidays were being missed in some wildlife management units. The entry on the EBR Registry notes:

> Grouse seasons currently open on September 15 across northwestern Ontario. Most grouse hunting occurs in the first few weeks of the three-month open season. Late season hunting for grouse is more difficult. The proposal would provide additional opportunities for grouse hunting in December, when there is often more personal leisure time.[45]

6.8 Trapping policies and procedures

As part of implementing the *FWCA* and the regulations made under it, the Ministry of Natural Resources has prepared four policies and procedures on trapping.[46] These will provide direction to MNR staff on how to interpret the act and its regulations.

The four policies are:
- Trapping on registered traplines – administration and licensing (WilPo.1.1.1);
- Trapping on private land and licensing (WilPp.1.1.2);
- Licensing of native trappers (WilPo.1.1.4); and
- Authorizing a secondary trapping licence (WilPp.1.1.5).

6.9 Policies and procedures on the purchase, sale and disposition of wildlife

As part of implementing the *FWCA* and the regulations made under it, the Ministry of Natural Resources has prepared four policies and procedures on the purchase, sale and disposition of wildlife.[47] These will provide direction to MNR staff on how to interpret the act and its regulations. The four policies are:

- Commercial bullfrog moratorium (WilPo.5.3.4);
- Buying and selling live "specially protected wildlife" and "game wildlife" that are in captivity and carcasses of specimens that have died in captivity (WiPp.5.3.5);
- Disposition of live wildlife; and

- Management of "specially protected invertebrates" under the *FWCA.*

6.10 Expansion of season for hunting deer and opening hunting of deer to non-residents in Cockburn Island

On April 2000, the Ministry of Natural Resources made notice of its decision to amend O. Reg 670/98, making changes to the hunting season on Cockburn Island.[48]

6.11 Expansion of wild turkey hunt – addition of new wildlife management units

Spring gobbler hunts for bearded wild turkeys (a characteristic primarily of male wild turkeys) were initiated in two wildlife management units in the Trenton area in 1987. Since then, the hunts have expanded to encompass 28 WMUs and sub-units in Southern Ontario.[49]

6.12 Nuisance bears

As part of implementing the *FWCA* and the regulations made under it, the Ministry of Natural Resources prepared a policy on the management of nuisance bears (WilPo.3.1.2). This policy will provide direction to MNR staff on how to interpret the act and its regulations. In April 2000, the decision was made to proceed with the proposed policy for the management of nuisance bears.[50]

6.13 Bait

Comments could be made during July and August 1999 regarding proposed amendments to O. Regs. 664/98, 665/98 and 666/98 under the *Fish and Wildlife Conservation Act*: commercial bait operators' harvest data reports; commercial and non-commercial harvest of leeches and frogs; harvest and sale of salted bait.[51]

These changes address species defined as bait-fish under the Ontario Fishery Regulations made under the federal *Fisheries Act*, i.e., lake herring, crayfish, darters, minnows, mud minnow, sculpins, stickleback, suckers and trout perch, as well as leeches and frogs. Changes include modification to reporting bait harvesting, regulation of leech harvesting and sale for bait, banning the use of most frogs as bait, and banning the use of salted minnows as bait. The ministry posted its decision regarding the proposed amendments, incorporating the comments received, in June 2000.

July 27, 1999

MNR establishes a new partnership with the bait industry. Changes include licence fee increases and the Bait Association of Ontario taking on administrative responsibilities formerly carried out by the MNR. The MNR states that these changes will improve enforcement and better manage the bait resource.

6.14 Peregrine falcon survey

In May 2000, the Ministry of Natural Resources announced it is coordinating a province-wide survey of peregrine falcons, as part of a national monitoring program. These surveys are conducted every five years as part of the National Peregrine Falcon Recovery Program.[52]

6.15 Significant Wildlife Habitat Guide

The Ministry of Natural Resources issued a proposal for a Significant Wildlife Habitat Guide (SWHG) in March 2000 to assist in land-use planning decisions.

The SWHG contains technical information and recommended approaches for identifying, evaluating and protecting significant wildlife habitat, and for considering this habitat in context with the other natural heritage features. The guide has been designed to assist municipal planning authorities (and others having an interest in land-use planning) in their obligation to "have regard to" the policies in Section 2.3 when making decisions about land-use planning and development, including site-alteration, under the *Planning Act*.[53]

The guide:

- encourages the use of a landscape approach for conserving significant wildlife habitat;
- defines four broad categories of such habitat, and sources of data, information and methods to assist in identifying and mapping it;
- suggests criteria and guidelines that can be used for evaluating and ranking such habitat;

- provides guidelines that can be used for determining how much of this habitat ought to be protected; and
- defines the value of considering such habitat in the context of an area's complete natural heritage system (i.e., assessing significant wildlife habitat together with other types of natural heritage, as can be identified and assessed using MNR's Natural Heritage Reference Manual), including using gap analysis as a means of identifying unrepresented or under-represented natural heritage, and opportunities for restoration and rehabilitation.

The four broad categories of significant wildlife habitat include:
- seasonal concentration areas;
- rare vegetation communities or specialized habitats for wildlife;
- habitats of species of conservation concern, excluding the habitats of endangered and threatened species; and
- animal movement corridors

The SWHG is the second technical guide that has been prepared by MNR as a support document to the Section 2.3 (Natural Heritage) policies of the Provincial Policy Statement.

VII Conclusion

On the one hand, the Ministry of Natural Resources' activities during the report period show considerable effort has gone into significant projects: the Beyond 2000 policy, the implementation of the Living Legacy strategy and developing and passing more regulations than any other ministry discussed in this report.

On the other hand, as noted in this and the following chapter, the activity tends to show a bias toward consumptive uses of Ontario's natural heritage and a low level of attention paid to conservation, particularly biodiversity protection. Protecting two species under the *ESA* while potentially threatening rare habitats through the Living Legacy policies of permitting mining and sport hunting in protected areas does not strike a balance between conservation and consumption.

CHAPTER 8 – Natural resources (fisheries, forests, rocks and gravel and mines)

I The Common Sense Revolution and natural resource issues so far

Note: The following describes only a few of the changes implemented under the first four years of the Common Sense Revolution. The complete list may be found in Ontario's Environment and the Common Sense Revolution: A Four Year Report.[1]

The key component of natural resource management in the province since the beginning of the Common Sense Revolution has been an emphasis on industry self-regulation. Bill 26, the *Government Savings and Restructuring Act*, implemented the greatest part of this policy. Lands for Life accomplished another significant portion.

1.1 Defunding

Between them, since the first year of the Common Sense Revolution, the Ministries of the Environment and Natural Resources have seen huge cuts in their capital and operating budgets (see discussion in Chapter 1). By the end of fiscal 1999, the Ministry of the Environment's operating budgets were 38 percent less than in 1995; capital budgets 93 percent less.

Budget cuts to the MNR, although not quite as severe, are still significant. Staff at the ministry has been cut almost in half from 6,639 in 1995 to 3,380 in 2000.

1.2 Devolution/self-regulation

1.2.1 Aggregates

In May 1996, the Ministry of Natural Resources introduced changes to the regulation of the aggregates, petroleum and brine (salt solution mining) industries through Bill 52, *Aggregate and Petroleum Resources Statute Law Amendment Act*. The bill amended the *Aggregate Resources Act, Petroleum Resources Act, Mining Act* and the *Ontario Energy Board Act*.[2]

Changes included transferring responsibility for site inspections and monitoring from the MNR to the regulated industries. Details include:

- self-monitoring by the mineral aggregates industry;
- responsibility for day-to-day site inspections and monitoring for compliance with the terms of site plans and licences under the *Aggregate Resources Act* is to be transferred from the MNR to the aggregates industry.[3]

1.2.2 Fisheries

In July 1997, the Minister of Natural Resources appointed 11 members to the Fish and Wildlife Advisory Board. The members are almost exclusively from fishing and hunting interests and represent no conservation interests. The board provides advice on potential revenue sources as well as continued expansion of fishing and hunting opportunities. ➤

In December 1997, the *Fish and Wildlife Conservation Act* was enacted. The act, among other things, provides for greater discretion for the Minister to make regulations previously made by the cabinet and for the facilitation of new business relationships with the private sector to assist in fish and wildlife management. These changes raised the concerns that, among other things, the legislation continues to advance the privatization of fish and wildlife resource management, and allows for a wide range of ministerial discretion on the application of the act.[4]

1.2.3 Mining

In October 1995, the Ministry of Northern Development and Mines announces the replacement of the existing mine closure review process with a self-regulating regime.[5]

In January 1996, the Ontario Legislature enacts Bill 26, the *Government Savings and Restructuring Act*. The bill amends the *Mining Act* to reduce obligations for reporting, financial assurance, mine closure, decommissioning and rehabilitation. The bill also amends work permit provisions of *Public Lands Act* and reduces capacity of courts to order restoration.[6]

1.2.4 Forestry

Late in May 1996, the Ministry of Natural Resources announces that it will restructure forest management in the province. "Restructuring" amounts to handing over most of the supervision of the industry's activities to the industry itself. The forest management business plan drafted for the purposes of the restructuring states the MNR will:

- reduce its direct involvement in forest management operations;
- shift new and/or additional responsibilities to forest industries along with the costs of meeting those responsibilities;
- no longer consider forest management a core ministry business;
- rely on forest company reports as its primary source of information when verifying compliance.

Forest industries, among other things, will be responsible for:

- monitoring, inventory and data collection;
- wood measurement, seed and seedling production;
- preparing forest compliance plans;
- conducting inspections of their operations;
- identifying areas where standards and guidelines have not been followed;
- undertaking and paying for remedial work;
- ensuring that staff are properly certified and re-certified.[7]

1.3 De-regulation/re-regulation

On July 16, 1999, the Ministry of Natural Resources announces its decision on the March Lands for Life proposals. Key elements include:

- mineral exploration will be permitted in areas with very high mineral potential in new provincial parks and conservation reserves under controlled circumstances. If a site is to be developed for a mine, the area would be removed from the park or conservation reserve by deregulating, and another area would be added to the park or conservation reserve to replace the deregulated area;
- existing bait fishing, commercial fishing, commercial fur harvesting and wild rice harvesting will be permitted to continue indefinitely in existing provincial parks, except in wilderness and nature reserve parks and zones in parks where these activities will be phased out by 2010. When these activities occur in new parks, they will be permitted to continue indefinitely except in nature reserve parks and zones; ➤

- sport hunting will be permitted in all new provincial parks and park additions except in nature reserve parks and zones;
- existing authorized seasonal recreation camps will be permitted to continue indefinitely in new provincial parks and will be eligible for enhanced tenure, but not purchase of land;
- efforts will be made to identify potential locations for future road crossings for forestry purposes prior to regulation of new provincial parks or conservation reserves.

The government also states that "MNR will consider opportunities to provide additional hunting opportunities during park management planning for existing parks, including existing wilderness parks."[8]

Chapter Overview

I Fisheries – demonstrating the government's commitment to anglers

- ❖ *Fisheries policy focuses on commodity value*

II Forests – implementing the Living Legacy

- ❖ *the Ontario Forest Accord Advisory Board works its way through the accord – ENGOs investigate non-compliance of self-monitoring industry*

III Rocks, gravel and salt

- ❖ *Small changes to further benefit industry*

IV Mining

- ❖ *Changes to mine closure and financial assurance requirements expose public to huge potential clean-up costs; another program for self-regulation*

Related topics: *Forestry, fisheries and mining related to northern land-use issues are discussed in Chapter 7. Chapter 4 deals with another northern land-use issue, garbage and hazardous waste.*

II The past 12 months

During the report period, most provincial government activity focused on implementing decisions made under Lands for Life and Bill 26. In the mining and aggregate sectors, the province carried through on earlier announcements to deregulate or otherwise increase the ease of operation. The Ontario Forest Accord Advisory Board has met several times since July and is dealing with issues under that agreement.

November 6, 1999

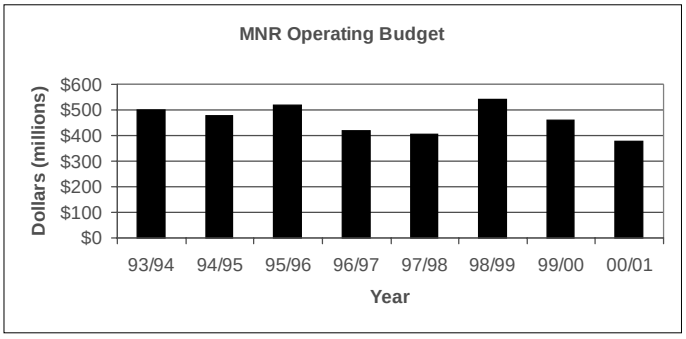
It is reported that the Ontario cabinet has approved a cut of $500 million from Ministries of the Environment, Agriculture and Natural Resources among others. The cuts will lead to an average five percent reduction in every ministry except for health and education. This new round of cuts follows significant downsizing of various ministries in the government's first term. The environment ministry has already seen its budget slashed from $226 million to $169 million by the Conservative government.

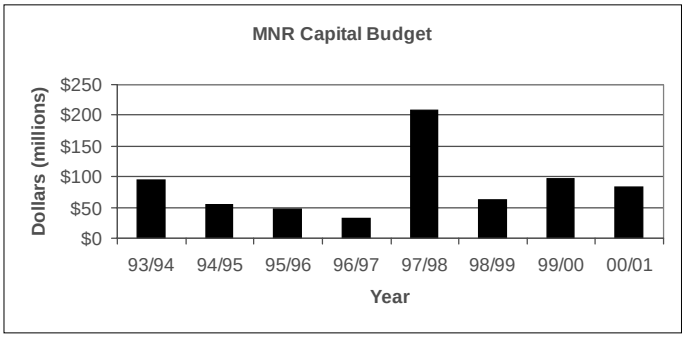
2.1 Ministry of Natural Resources: New strategy, fewer resources

In November 1999, the Ministry of Natural Resources released its strategic policy document entitled Beyond 2000, Ministry of Natural Resources Strategic Directions (see Chapter 7 for a discussion of Beyond 2000).

In budget plan 2000-01, capital expenditures for the MNR are $376 million, a decrease of $82 million or 18 percent from the $458 million in the interim 1999-2000 budget.

On the one hand, the self-regulation of the forestry, mining, aggregates and other resource-based industries make it possible for the Ministry to cut its staff and budgets so severely. On the other hand, with its reduced capacity, and its reduced involvement in self-regulated industries, it may be difficult for the ministry to achieve the "desired outcomes" of the strategy set out in Beyond 2000 (see Chapter 7).





III Fisheries – demonstrating the government's commitment to anglers

Earlier reports have noted provincial withdrawal from enforcing fish habitat protection provisions under the federal *Fisheries Act* and have described agreements MNR has entered into with commercial fisheries[9] and bait fish associations,[10] instituting industry self-regulation programs that are a familiar theme within the Common Sense Revolution.[11] Another dominant theme, also discussed in Chapter 7, is the overriding policy preoccupation with natural resources as commodities.

3.1 Great Lakes sport fisheries – the horns of a dilemma

The value of Great Lakes sports fisheries in Canada (primarily Ontario) and the United States – $53 million CAD and $71 million U.S.D, respectively – dominates policy considerations. As noted in the August 1999 Report of the Great Lakes Fishery Commission, it is reasonably well understood that the conditions conducive to a healthy sports fishery (particularly the highly prized Chinook salmon) are "incompatible with native-species restoration."[12] So the Fish Community Objectives for Lake Ontario conclude "Given the social and economic importance of the fishery, … trout and salmon abundance should be maintained to provide quality fishing opportunities."[13] Maintaining "trout and salmon abundance" requires maintaining the alewife (a non-indigenous species introduced to the lakes by way of the St. Lawrence Seaway). The alewife increases native-species mortality as a predator and as a carrier of a disease fatal to native fish.

The "dilemma" the objectives embrace is that, even though involved stakeholders (largely sport and commercial fishermen) would like to see the restoration of native species, they also want their sport fish. Since sport fish thrive on a species that thrives on native species, the outcome will be that native fish populations will not recover so long as policies support sport fisheries.

This description of the devastating effects of introduced sport species on native species is taken from a submission to the Ministry of Natural Resources from the Chippewas of Nawash First Nation:

> Fish in the Great Lakes are being affected … by introduced salmonines through: disease and parasites, predation, competition, genetic alteration, environmental alteration and community alteration…. The fish stocking program is deleterious to the long term health of the fishery and its ecosystem, does not protect and conserve the fishery resource, undermines its biological foundations, detracts from the continued availability of the natural resource, creates a

> hazard to that resource, acts counter to the conservation of the fishery and ignores the interests of the impacted First Nation communities.…[14]

The MNR consulted with stakeholders (that is, sport and commercial fishers) in 1996 and 1997 regarding the Fish Community Objectives for Lake Ontario, and posted its decision regarding the policy in June 2000. The ministry's decision was to follow the policy, dilemma and all.[15]

3.2 Bay of Quinte walleye study

The Ontario government has provided $30,000 in funding for an assessment of the walleye population in the Bay of Quinte and eastern Lake Ontario. Again, the primary motivation is to support sport and commercial fisheries.[16]

"Walleye are highly valued by resident anglers, tourists, and commercial fishing operations," said Natural Resources Minister John Snobelen. "This study is critical to the management of this valuable fishery. It also demonstrates the government's commitment to Ontario's anglers and fisheries."

3.3 New fishing regulations

3.3.1 Requirements for non-resident anglers

In July 1999, the U.S. filed a complaint under NAFTA against an Ontario requirement that non-resident anglers in the border waters area must stay in the province overnight to keep their catch.

In response to this complaint, the Ontario government made an announcement that it would make an amendment to O. Reg. 664/98 (fish licensing) made under the *Fish and Wildlife Conservation Act* and changes to the Ontario Fishery Regulations (OFR) in Divisions 22 and 32 (border waters of northwestern Ontario) under the federal *Fisheries Act*.[17]

The amendment to O. Reg. 664/98 under the FWCA removes the requirement for non-residents to stay overnight at authorized Ontario facilities. As well, it includes an amendment to the OFR to set new daily catch limits for walleye, sauger and lake trout for non-residents angling in parts of Division 22 and all of Division 32, and increases the possession limit for walleye and sauger for resident and non-resident anglers on Rainy Lake in Division 22.

3.3.2 New fishing limits in northwest region of Ontario and new fish sanctuary; new muskie limits

In December 1999, the ministry announced changes to fishing regulations affecting some water bodies in the northwest region of Ontario beginning January 1, 2000. Regulation changes include new catch and possession limits for crappie (15) and yellow perch (50) throughout waters of the northwest region, except on Whitefish Lake in Thunder Bay where the limit for perch will be 100. The new regulations also establish a new fish sanctuary on the Troutlake River, and close Shebandowan Lake to lake trout fishing.

Sport fishers across the province were also restricted by the new regulation to a daily catch and possession limit of 120 baitfish throughout the entire year.

In March, the ministry announced a simplification of limits for the popular sport fish muskellunge.[18]

Other fisheries-related activities included policies and procedures on aquaculture under the *Fish and Wildlife Conservation Act*,[19] and a draft plan for the Credit River Fisheries Management Plan.[20]

IV Forestry

4.1 Living Legacy – Forest Accord

The Lands for Life process, completed in July 1999 as Ontario's Living Legacy, has for the most part made the decisions determining the fate of Ontario's forest resources. Ontario's Living Legacy sets out an approved land-use strategy which, in turn, lists land-use categories. These categories apply to the whole of the land area subject to the Lands for Life process (see Chapter 7).[21]

4.2 Ontario Forest Accord Advisory Board

The Ontario Forest Accord Advisory Board (OFAAB) is constituted according to commitment 6 of the Ontario Forest Accord, which states:

> The Board would report to the Minister of Natural Resources and consist of appointed representatives of the forest industry, the environmental community and the MNR.[22]

Accordingly, the Forest Accord Advisory Board is composed of three representatives from each of the industry, the environmental community and the ministry.

As required by the 1999 Ontario Forest Accord, the board will consider and develop means to provide advice to the minister to:

- Help implement the recommendations and joint commitments made in the Forestry Accord, and develop and recommend further mitigation and transition strategies if required;
- Monitor the achievement of ecological representation and parks targets, and develop procedures for achieving industry/environmental group/government resolution of shortfalls;
- Help resolve disputes that arise related to the matters listed above, and other related matters referred to the Board by the Minister; and
- Develop methods to update and amend the accord to ensure that it remains current and can be responsive to future needs and emerging issues. [23]

The OFAAB is tasked to develop a strategy for additions to the parks and protected areas system through a jointly acceptable process but that also addresses the benefit of increased productivity.

The board is also required to give consideration to and develop:

- mechanisms to ensure the board's work is transparent and open to all interested parties; and
- within one year (by July 2000) consider and provide advice to the minister on expanding the membership of the board.

So far, the board has made the discussions and agendas at its meetings readily available to the public through the Internet.[24] The board members representing the Partnership for Public Lands are also seeking to limit, if they can, the province's agreement made last year with the Ontario Federation of Anglers and Hunters to permit hunting in wilderness parks.[25]

April 6, 2000

Native trappers file a lawsuit against the provincial government and Abitibi-Consolidated Inc. The suit filed on behalf of the trappers by the Sierra Legal Defence Fund and claims that the MNR did not have the right to licence forestry operations in the Whiskey Jack forest management unit. The natives argue that clear-cutting by Abitibi has destroyed animal populations in the area.

4.3 Forestry practices

4.3.1 Forest Management Competency Program

This program, initiated during the report period has arisen, apparently, because of an earlier ministry decision to no longer regard forestry management as one of its "core" business functions.

> "Changes in the delivery of forest management in Ontario required that emphasis be given to forest management competency. The program was initiated in order to respond to:
> - increased involvement of the forest industry in forest management;
> - less opportunity in MNR for hands-on operations experience; and
> - losses of knowledge, skill and experience in MNR due to staffing changes."[26]

The program website notes that its objectives are to provide "the forest management workforce" with:

- a better understanding of job expectations;
- better, more focused learning opportunities;
- a higher level of professional confidence; and
- recognition and acknowledgement of skills and knowledge.

The program will, for both the MNR and the forestry industry:

- assist with recruitment, workforce planning and succession planning;
- contribute to ecological sustainability and result in high quality decisions; and
- ensure that training delivery is appropriate, meaningful and cost-effective.

Other aspects of the program include application of competency training and principles at the task, job and occupation levels.

The Forestry Management Competency program appears to consider re-introducing forestry management as a "core business" for the ministry.

4.3.2 Self-regulation reality check

There are other indicators that "competency training" is necessary for the still largely self-regulated forestry industry.

In February, the Wildlands League and the Sierra Legal Defence Fund released a report accusing loggers in Algonquin Park of allegedly violating rules requiring timber harvesters to avoid environmentally sensitive areas within their harvest area. The report alleged violations in more than one-third of the sites inspected.[27] The SLDF also assisted Environment North in December 1999 in drawing the attention of the Ministry of Natural Resources to logging violations in the Brightsand Forest north of Thunder Bay.[28]

4.3.3 Silviculture manual amendment

In July 1999, the Ministry of Natural Resources proposed an amendment to the Forest Operation and Silviculture Manual and Scaling Manual and an amendment to O. Reg. 167/95 under the *Crown Forest Sustainability Act*.[29] The amendment would basically change the definition of "wasteful practice" to exclude, under certain conditions, trees left standing by a forestry company, either because the trees were not merchantable or because there was insufficient (or no) market demand for the species of wood.[30]

4.3.4 Defining a clearcut

In response to an order by the Minister of the Environment under s. 16(3) of the *Environmental Assessment Act*, the Ministry of Natural Resources posted a proposal on the Environmental Bill of Rights Registry for defining a clearcut.

The ministry proposes that forest disturbances be delineated using temporal and spatial data in addition to existing delineation criteria, which are a description of the area to be clearcut and a description of the activity: "the removal of the entire standing crop of trees over a considerable area in one operation, with or without leaving seed trees."[31]

4.3.5 Fire management strategy

In May 2000, the Ministry of Natural Resources posted a proposal for a new Fire Management Strategy, reportedly observing a need to set new direction in fire management consistent with the *Crown Forest Sustainability Act*, Ontario's Living Legacy Land-Use Strategy and Ontario's Forest Accord.

The strategy would provide a province-wide foundation for:

- the design of MNR's fire management program;
- daily response to fires;
- priority setting in severe fire situations;
- performance measurement;
- managing the total cost of fire management; and
- balancing the need for fire protection with the cost involved in carrying out fire management and the role that fire plays in sustaining Ontario's ecosystems.

MNR's intent is to establish objectives for fire management that take into account the need for public safety, existing and planned infrastructure values, plans for wood supply, protected areas, resource-based tourism, and wildlife habitat.[32]

4.4 Miscellaneous initiatives: Surplus hardwood, sunken logs, etc.

4.4.1 Changes to the Forestry Act *and the* Crown Forest Sustainability Act, *1994*

The Ministry of Natural Resources has proposed amendments to several acts it administers including the *Crown Forest Sustainability Act*, 1994. The MNR, in one change, proposes to expand the definition of "forest resource" to include parts of or residue from trees in a forest ecosystem and to make a change in the definition of "forest resource processing facility" to include processing of parts or residues.[33]

Other proposed changes include extension of the limitation period for notification of an administrative penalty under the act, a provision for recovering the cost of seizing forest resources, increased powers of entry for MNR employees and amendment to the offence and enforcement portion of the act.

Another proposed change is to remove the stipulation in the definition of forest tree pests in the act that they be designated in regulations. The rationale for this change is that it will provide greater ability to respond promptly and effectively to pest outbreaks directly through the minister's control authority.[34]

Another change is to amend the *Forestry Act* so that if the Minister of Natural Resources made a grant to a municipality or conservation authority for the purpose of assisting in the acquisition of land for forestry purposes, more than 50 percent of any proceeds from the sale or other disposition of that land could be directed to the municipality or conservation authority for similar purposes.

The *Forestry Act* has been proposed to be further amended so that municipal by-laws regulating the cutting of trees would be allowed to adopt the same minimum qualifications that are established under the *Crown Forest Sustainability Act*, 1994 for persons engaged in forest operations. A further amendment allows the minister to approve a by-law either before or after it has been passed by a municipality.

These changes are not part of a bill and have not been tabled before the legislature.

4.4.2 Sunken logs

In consideration of an apparently growing sunken-log retrieval business (the EBR notice mentions that there is a "growing interest in manufacturing wood products from logs that have been submerged in Ontario's lakes and rivers for several decades"), the province proposed to develop a policy "to revise the procedure governing the retrieval of sunken logs to streamline the documentation, review and approval process while requiring adherence to legislation protecting public and worker safety, fish and aquatic habitat and water quality and heritage values."[35]

4.4.3 Termination of agreements under the Forestry Act

In April 2000, the province posted notice of its decision to terminate the Agreement Forests Program (AFP), a decision actually made in 1994. The AFP dates back to the 1920s. The Ministry of Natural Resources would agree to manage forests on non-provincially owned land (for the most part subject lands belong to municipalities and conservation authorities). As part of the AFP, the ministry assumed responsibility for carrying out management activities such as forest renewal and maintenance.[36]

4.4.4 Surplus hardwood

In April 2000, the minister announced a plan to dispose of one million cubic metres of "surplus" hardwoods. The MNR sent requests for proposals to the forest industry in Ontario and throughout North America, and will accept proposal until August 4, 2000.[37]

4.4.5 Ontario Seed Plant

In April 2000, the Ministry of Natural Resources made new facts sheets available regarding Ontario Seed Plant. OSP is a seed collection program initiated in the 1920s. In the heyday of forest harvesting, increased quantities of white and red pine seed were needed to supply the provincial forest stations. The province decided to locate a seed extraction plant in Angus, Ont.

There are now 50 different species in the storage facility and a total of 8.1 billion viable seeds. Annually the Ontario Seed Plant ships 1.1 to 1.4 billion viable seeds. The seed used for direct seeding programs account for about 70 percent of all seed shipped.[38]

V Rocks, gravel and salt

May 17, 2000

Aggregate producers have filed 13 appeals to the Ontario Municipal Board to appeal rules that restrict the opening of new aggregate extraction mines in the Town of Caledon. The rules approved by Caledon Council in April 2000 restrict the opening of new mines until existing ones are closed, and also place restrictions on truck haulage routes and require aggregate producers to prepare plans for landscape restoration.

5.1 Gravel pits still trump municipal planning

Revisions to the *Aggregate Resources Act* under Bill 11 clarify amendments made earlier.[39] The amendments provide, in the first and subsequent versions, that municipalities may not pass a zoning by-law prohibiting aggregate extraction without the approval of the Ontario Municipal Board.[40]

5.2 Wayside permits to change under *Aggregate Resources Act*

As part of a proposed omnibus bill making changes to nine acts administered by the Ministry of Natural Resources, the *Aggregate Resources Act* may be amended to permit the amendment of the site plan for a wayside permit and to permit the extension of a wayside permit's expiration date, provided that the project has not been completed and requires more aggregate from the same site.[41]

The act may be also be amended to permit the Minister of Natural Resources to order a person to perform progressive rehabilitation or final rehabilitation in accordance with the act, even if the person is no longer a licensee or permittee, and to require a licensee or permittee to notify the minister and Aggregate Resources Trust of changes in name or address.

These proposed changes have not been set out in a bill nor tabled before the legislature.

5.3 Changes to the *Oil, Gas and Salt Resources Act*

As part of a proposed omnibus bill making changes to nine acts administered by the Ministry of Natural Resources, the *Oil, Gas and Salt Resources Act* may be amended to make it an offence for a director or officer of a corporation to direct, authorize, assent to, acquiesce in, or participate in the commission of an offence by the corporation.[42]

This change will enhance the ministry's ability to seek remedies when corporations have dissolved or where there are violations or outstanding required actions under a permit or licence (e.g. proper closure of an oil well).

These proposed changes have not been set out in a bill nor tabled before the legislature.

VI Mining

April 19, 2000

Mining Minister Tim Hudak states that, "Operation Treasure Hunt is living up to its promise," with the release of results from a lake sediment survey which identifies 40 areas in Northeastern Ontario with excellent potential for precious and base metals. The minister states that the government is, "helping to identify new targets to spur exploration and promote investment in Ontario."

6.1 Substantial subsidies to the mining industry

During the report period, the provincial government developed and enacted a number of direct and indirect subsidies to the mining industry. Direct subsidies include a $50,000 contribution to the Ontario Mining Association to update a financial report on the economic and fiscal contribution of mining in Ontario[43] and a three-year, up to $4 million program to support the establishment of a new prospectors association that will work with the private sector to promote grassroots mining exploration in Ontario.[44]

In January, Ontario announced an indirect subsidy to the mining industry: $516,000 of taxpayers' money (of a potential total of $27 million) to clean up and restore lands left unreclaimed and abandoned by the mining industry.[45]

The most generous indirect subsidy, described in detail in the section following, was made law in the Province of Ontario in May 2000: a new regulation under the *Mining Act* to "lighten" the regulatory burden on the mining industry and increase the risk that the cost of mine rehabilitation and cleanup will be borne by the taxpayer.

September 15, 1999

The Northern Development and Mines Minister announces a $27 million mine rehabilitation program. The minister states that the program will clean up mine sites so that they "may be used for recreational and community activities, or redeveloped for economic purposes such as further mineral exploration."

Finally, there is the generous guarantee under the Lands For Life process that permits mining in provincial parks where mineral potential warrants.

6.1.1 The Mining Act*'s Part VII Regulation and Mine Rehabilitation Code*

Mining is a risky business with potentially devastating effects on the local environment. During a mine's operation and closure, adequate measures are required to protect public health and safety, and the quality of the environment. Without these measures, the costs to the public to remediate poorly operated, improperly closed mines can run into the billions of dollars.[46] Poorly remediated mines can have profound negative impact on local economies by contaminating waters relied on by local fishers.

During the report period, the provincial government made changes to the *Mining Act* that pose potentially great risks to public health, to the health of the environment, and to the public purse.[47]

The changes apply to plans to ensure safe and environmentally sound mine closure and to "financial assurance" requirements that ensure public funds are not required to clean up a mess left behind by a private mining company. A notice on the Environmental Bill of Rights Registry describes the proposed changes to the *Mining Act*:

> Once proclaimed, Part VII of the *Mining Act* R.S.O. 1996 will greatly streamline and improve the closure plan submission process while still maintaining and upholding the province's stringent environmental standards.[48]
>
> Currently, proponents submit closure plans to be extensively reviewed by staff in this Ministry (MNDM) as well as the Ministry of Labour (MOL), the Ministry of Natural Resources (MNR) and the Ministry of the Environment (MOE). After the proponent has satisfactorily addressed revisions to the closure plan, the Ministry accepts the Closure Plan, including the appropriate financial assurance. This system resulted in a lengthy review process.[49]

The new provisions propose to amend this lengthy process by more or less eliminating governmental oversight of closure plans, and by radically reducing financial assurance requirements. Specifically, the amendments include the option of demonstrating financial capacity to safely close and decommission a mine site with a "corporate financial test." Of all forms of security such as cash, bonds, or letters of credit, the corporate financial test is the least realizable. A corporate financial test provides assurance that, at the time of application, the corporation has sufficient ability to cover the cost of a cleanup.

This is a very low hurdle to overcome, and does not adequately protect against the eventuality that, further along in the mine's operations, the company may not be as able either through falling mineral markets or a corporate restructuring. Mining is a risky business, subject to the vicissitudes of the global commodities market. The corporate financial test does not take these risks adequately into account.

A review of the proposed regulation and code by CIELAP and the Canadian Environmental Law Association concluded that while the proposed changes may make it easier for mining companies to do business in Ontario, this is achieved at the cost of significantly weakening the environmental safeguards in the *Mining Act*.[50] The changes erode regulatory oversight over closure plans. Moreover, the changes to the financial assurance requirements would increase the public's financial exposure to cleanup costs for environmental degradation caused by mining activities.

These concerns notwithstanding, the provincial government enacted O.Reg 240/00 during the report period,[51] freeing the mining industry from the regulatory burden of government oversight of closure plans and from providing anything but the most insubstantial of financial assurance requirements.

The problem with these amendments is the same as the problem with other "reduced regulatory burdens" on other potentially hazardous or destructive undertakings (such as hazardous waste management) in the province: They provide an insufficient failsafe. The Common Sense Revolution appears not to believe in Murphy's Law (if something can go wrong, it will), or, possibly more accurately, is willfully blind to it.[52] Reducing the regulatory burden in many cases – and most especially the

case with the amendments to the mining regulations – means that the margin for safety has been reduced to practically zero. If the market value for a metal plummets; if a mining company sinks under bad luck or bad management, it is gone – along with its financial "assurance" with no one but the taxpayer left to pick up the cleanup tab.

6.2 Other proposed changes to the *Mining Act*

As part of a proposed omnibus bill making changes to nine acts administered by the Ministry of Natural Resources, Part IV of the *Mining Act* may be amended to authorize the Minister of Natural Resources to issue storage licences for the temporary storage of hydrocarbons (natural gas) and other substances prescribed by regulation in underground formations on Crown land. The amendments would also permit exploration licences, production leases and storage leases to be issued under Part IV in respect of land that is already subject to a licence or lease under that part.[53]

The changes are proposed in order to create the necessary legal authority for the ministry to issue such permits.[54] The practice of storing natural gas in these naturally occurring underground formations has existed for several decades. The only change under this proposal is that the storage will also occur in natural formations on Crown land.

6.3 Self-regulation of Ontario geoscientists

The Ministry of Northern Development and Mines has worked with the Association of Geoscientists of Ontario to develop draft legislation in response to recommendations of the Mining Standards Task Force. Established by the Toronto Stock Exchange (TSE) and the Ontario Securities Commission (OSC) in the wake of the 1997 Bre-X scandal, the task force advanced the concept of "qualified person" to reduce incidents of fraud in public disclosure by mineral exploration and mining companies.

The draft legislation would establish a regulated association of geoscientists with the power to admit only qualified persons, encourage continuing professional competence, discipline members for professional misconduct and prevent unqualified individuals from practising. It would also license geoscientists working in environmental fields to ensure that only qualified, accountable persons, working under recognized professional standards are allowed to make decisions that affect the welfare of the public.

Prospectors are specifically excluded in the legislation. It would not apply to their activities under the *Mining Act*. Also excluded are professional engineers, land surveyors and land information professionals.[55]

VII Conclusion

The story of the state of the Great Lakes fisheries told in this chapter is a good example of Common Sense resource management. When ecological values (restoring native fish populations to the lakes) are "balanced" with commercial values (the value of the sport fishery), especially when the "balancing" is done by special interest advisory boards and committees, commercial considerations tend to trump conservation values. So Great Lakes commercial fisheries flourish at the cost of the native fish population, the aboriginal communities who rely on the native fish and the environment in which native fish might flourish.

The unbalancing element in this resource management strategy is the exclusion of most voices except those of the "regulated" industries. When the provincial government also grants these industries the power to regulate themselves, it more or less guarantees the outcome that no conservation value – if it is incompatible with commercial values – will prevail. So it comes to pass that the Wildlands League and Sierra Legal Defence Fund find a high rate of noncompliance in forestry practices. The failure of "self regulation" is also apparent in the fact that the province has to implement a forestry competence program because the industry will not develop one on its own.

Even though the Ontario Forest Accord Advisory Board includes among its members groups committed to conservation, the board as a whole has to "to develop a strategy for additions to the parks and protected areas system through a jointly acceptable process but that also addresses the benefit of *increased productivity*." Under the Common Sense Revolution, apparently, an area is protected only insofar as it has no other use.

CHAPTER 9 – Conclusion

This report has covered the first year of the second mandate of the Common Sense Revolution. The first four years of the Revolution (1995-1999) saw tremendous changes to environmental protection in the province, marked by three big themes: deregulation, defunding and devolution of responsibility. In four years, the province reduced environmental regulation, lessened or eliminated provincial oversight of many industries and downloaded recycling, water and sewage programs and public transit (to name three environmentally significant programs) onto municipalities.

Government activities over the 1999-2000 report period fit into three broad categories:

1) Reacting to criticism and crises with regulatory and other initiatives inadequate to protect the environment and human health.

2) Deflecting responsibility for inaction on other pressing environmental issues: groundwater resources, air quality, climate change, the Oak Ridges Moraine, the Canada-Ontario Agreement to protect the Great Lakes ecosystem and so on.

3) Implementing the gigantic Living Legacy strategy and enacting dozens of regulations focused on game animals, sport fish and other resources.

The past year can be characterized as one where the provincial government either avoided its responsibility to protect the environment or did what it felt pressured to do (but with insufficient resources). The exception to this generalization is the extensive work undertaken to benefit the mining and forestry industries and to benefit those who hunt and fish.

The Walkerton tragedy may push the provincial government to improve environmental protection in the province, or it may not. The Premier's suggestion in June 2000 that the Ministry of the Environment needs only to be more efficient to be "fixed" suggests that the government still misses the point.

The point is that protecting the environment is not "red tape." Government is the best protector of public goods such as air, water and natural heritage. It is the government's job to do. The proof of this statement is the evidence all around Ontario where the government has abandoned its responsibilities. Bad air, bad water, and endangered ecosystems all make the case that the Common Sense Revolution has been very bad for the environment.

A better approach could emphasize the importance of the protection of the health and environment of Ontario residents and would not only provide a more sustainable basis for Ontario's economy, but also allow the province to avoid future costs. The most important of these would be health care costs due to pollution. As well, the promotion of more compact forms of urban development could generate long-term savings through reduced costs for infrastructure maintenance, air pollution and losses of ecologically or agriculturally significant lands.

Endnotes

Chapter 1 — Introduction

1 Quoted in Relativity for Scientists and Engineers by R. Skinner (Dover, New York, 1982), page 27.

2 Yacoumidis, J., Protecting the Great Lakes Basin Ecosystem, A survey of local initiatives by conservation authorities and municipalities in Ontario. (Toronto: Canadian Institute for Environmental Law and Policy, 2000), page 21.

3 See http://cec.org/pubs_info_resources/publications/protect_human_enviro/tak97.cfm?varlan=english

4 See Health Effects of Ground-Level Ozone, Acid Aerosols & Particulate Matter at http://www.oma.org/phealth/ground.htm#recommendations

7.3 Recommendations Concerning the Control of NOx:
b. The OMA recommends that in Ontario, the government should replace Ontario Hydro's voluntary commitment to NOx reductions with a regulation under the *Environmental Protection Act* which would limit the corporation's NOx emissions (including emissions associated with any power imports from the U.S.) to no more than 6,000 tonnes annually.

5 On October 19, 1998, Energy and Environment Ministers signed the Canada-Wide Acid Rain Strategy for Post-2000 in order to further protect the environment from acid deposition. The primary long-term goal of the strategy is "to meet the environmental threshold of critical loads for acid deposition across Canada." Achieving that ambitious goal will necessitate additional reductions of sulphur dioxide (SO_2) emissions in Eastern Canada and the United States. Reductions of nitrogen oxides (NOx) will also be required, though the level of reduction to achieve will depend on what further scientific research reveals. See http://www.ccme.ca/3e_priorities/3eb3_acidrain.html

6 The Ministry of the Environment Business Plan notes: "The heavy duty program for trucks and buses was launched on September 30, 1999 with province-wide diesel testing and non-diesel testing in the same areas as passenger vehicles." MOE Business Plan 1999-2000, page 7.

7 See http://www.wildlandsleague.org/mellon.htm

8 "Earlier this year, fear of drought putting [the] supply [of water] in peril prompted former environment minister Norm Sterling to announce that the government will no longer issue new permits automatically." Mittlestaedt, Martin,"Bottlers free to drain of groundwater," The Globe and Mail, July 3, 1999.

9 Environmental Commissioner of Ontario, The Protection of Ontario's Groundwater and Intensive Farming: Special Report to the Legislative Assembly of Ontario, July 27, 2000, page 5.

10 These groups include Save the Oak Ridges Moraine (STORM), the Federation of Ontario Naturalists, Sierra Legal Defence Fund among others, and municipalities including the City of Toronto.

11 Immen, W., "Fragile moraine poorly managed: scientists," The Globe and Mail, February 2, 2000.

12 Immen, W., "Groups trying to drag province into moraine fight," The Globe and Mail, March 9, 2000.

13 Letter to Applicants (Federation of Ontario Naturalists and Save the Oak Ridges Moraine) from the Ministers of Municipal Affairs and Housing, Natural Resources and the Environment, May 29, 2000.

14 EBR Registry Number: TC00E0001.

15 Ministry of Agriculture, Food and Rural Affairs, 2000. Discussion Paper on Intensive Agricultural Operations in Rural Ontario. (Toronto: Queen's Printer for Ontario.)

16 Ibid., page 4.

17 Robinson, Allan, "Ontario proposes to let mining firms avoid cleanup bonds," The Globe and Mail, November 1, 1999.

18 Ontario Gazette, May 13, 2000, page 361.

19 It is not as if the provincial government does not know that mines – even recently opened mines – are abandoned unrehabilitated. Ontario is spending $2.7 million, about one-tenth of the estimated total cost, to clean up and reclaim abandoned mine sites in the province. As well, after considerable high-profile pressure, the government is also planning on spending $18 million to clean up a single site: the Deloro mine north of Belleville. See http://www.ene.gov.on.ca/envision/news/03899.htm

20 Lloyd, Brennain, Northwatch, Letter to Acting Director, Corporate Planning and Financial Management Branch, Ministry of Natural Resources, Re: EBR Registry Number: PB9E4002, December 17, 1999.

21 Ibid.

22 Mickleburgh, Rod, "Ontario's emissions an issue as ministers meet in Vancouver," The Globe and Mail, March 27, 2000.

23 Ibid.

24 MacKinnon, Mark, "Climate talks founder as frustration mounts," The Globe and Mail, March 29, 2000, page A8.

25 Ontario Ministry of the Environment, 2000-01 Business Plan.

26 McDermott, Dan, "Harris Needs to Join this Clean Up Plan," The Toronto Star, February 14, 2000.

27 "N.Y. Urges Albright to Push Canada on NOx" AIR Daily, July 17, 2000, page 2.

Chapter Two – Water

1 Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

2 Ibid., page A.50.

3 Ibid., page A.51.

4 Ibid., page A.52.

5 Ibid., page A.54.

[6] Ibid., pages A.50 to A.54.

[7] Ibid., page 4-25.

[8] Ibid., page A.53.

[9] Ontario Ministry of the Environment, Ontario Drinking Water Objectives, 1994, page 23.

[10] In 1995 and 1997 the MOE issued a letter and a further guidance document to specify the responsibility of laboratories and owners of Public Utility Commissions to notify the MOE District Officer and the local Chief Medical Officer of Health in the case of contaminated water samples. These documents were guidance documents and were not regulations that are legally enforceable.

[11] Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999), pages 3-35 and 3-36.

[12] Environmental Commissioner of Ontario, Annual Report 1996, pages 19-20.

[13] Ibid., page 20.

[14] See the Auditor's report at http://www.gov.on.ca/opa/en/96chap4.htm

[15] Ministry of the Environment, Water Policy Branch, Draft, Proposed Revisions to Ontario Drinking Water Objectives, January 2000, page 2.

[16] Ibid., page 2.

[17] Editorial, "Premier Harris ducks and weaves on Walkerton: He has worked hard not to take any of the responsibility," The Globe and Mail, June 8, 2000, page A14.

[18] Mallan, Caroline and Brennan, Richard, "Premier offers apology for chastising the town," The Globe and Mail, June 8, 2000.

[19] Ministry of the Attorney General, "News release: O'Connor Inquiry to explore all matters necessary to ensure drinking water," June 13, 2000. http://www.newswire.ca/government/ontario/english/releases/June2000/13/c4570.html

[20] Ibid.

[21] EBR Registry Number: RA00E0014.

[22] Lindgren, Rick, "Submission of the Canadian Environmental Law Association to the Director, Standards Development Branch, Ministry of the Environment Regardng the Proposed Drinking Water Regulation, EBR Registry Number: RA00E0014". (Toronto: CELA, June 2000.)

[23] Ibid., page 12.

[24] Ontario Ministry of the Environment, Ontario Drinking Water Objectives, 1994, page 3.

[25] As of December 31, 1999.

[26] MOE staff total for 1999 does not include minister's office or unclassified staff.

[27] Letter to Mr. Doug Galt, Chair, Water Resources Management Committee, from Theresa McClenaghan and Sarah Miller, June 23, 2000.

[28] The 18 billion litre total is based on Ministry of the Environment data which shows that 48 free permits grant long term (up to 10 years or in some cases indefinite) water-removal licences that cumulatively equal 50,103,690 litres per day or approximately 18 billion litres per year. Mittelstaedt, M., "Bottlers free to drain off groundwater," The Globe and Mail, July 3, 1999, pages A1, A7.

[29] Immen, W., "A long drink of water," Globe and Mail, June 14, 1999, pageA1, A9.

[30] See http://www.ijc.org/boards/cde/interimreport/interimreporte.html

[31] EBR Registry Number: PB00E6011.

[32] See page 3-37 in Ontario's Environment and the Common Sense Revolution, A Four Year Report. (Toronto: CIELAP, 1999.)

[33] See note 28, above.

[34] "Earlier this year, fear of drought putting [the] supply [of water] in peril prompted former environment Minister Norm Sterling to announce that the government will no linger issue new permits automatically," Mittlestaedt, Martin, "Bottlers free to drain of groundwater," The Globe and Mail, July 3, 1999.

[35] Mittelstaedt, M., "Low rainfall worries experts, records show," The Globe and Mail, October 15, 1999.

[36] Mittelstaedt, Martin, "Province ends moratorium on new water permits," The Globe and Mail, November 6, 1999.

[37] Environmental Commissioner of Ontario, The Protection of Ontario's Groundwater and Intensive Farming: Special Report to the Legislative Assembly of Ontario, July 27, 2000, page 5.

[38] Ontario Ministry of the Environment, 2000-01 Business Plan.

[39] EBR Registry Number: RA8E0037.

[40] Submission on Regulation Made Under the *Ontario Water Resources Act*: Water Transfers, EBR Registry Number: RA8E0037, Submitted by Paul Muldoon and Sarah Miller. February 16, 1999, Brief No. 364. See http://www.cela.ca/watransf.htm

[41] By jurisdiction: The largest user is Ontario at 29 percent followed by Michigan at 22 percent; Wisconsin at 21 percent; Indiana at 7 percent; New York, Quebec, and Ohio at 6 percent each; Minnesota at 2 percent; and Pennsylvania and Illinois at less than 1 percent each. http://www.ijc.org/boards/cde/interimreport/interimreporte.html

[42] Immen, W., "A long drink of water," The Globe and Mail, June 14, 1999, pages A1, A9.

[43] Halton Regional Council approved construction of the water pipe which will expand the water treatment plant in Oakville and build a 19-kilometre line to the east side of Milton – a new sewage pipeline is also to be built. Immen, W., "Halton council approves new development," The Globe and Mail, June 3, 1999.

[44] Ontario Water Works Association, Water Efficiency: A Guidebook for Small & Medium-Sized Municipalities in Canada. 1999.

[45] See http://www.cglg.org/demo.html

[46] See http://www.ene.gov.on.ca/envision/news/07199nre.htm. Note in particular the minister's statement: "Ontario's drinking water is second to none. A soon-to-be-published report (Drinking Water in Ontario) indicates that it is better than, or equal to, that found anywhere in the world."

[47] MOE media backgrounder, May 30, 2000.

[48] Governments of Ontario and Canada, Third Report of Progress Under the Canada-Ontario Agreement Respecting the Great Lakes Ecosystem 1997-1999, page 5.

[49] Winfield and Jenish, page 3-25 and following.

[50] Ibid., pages 2-24 - 2-25.

[51] Livesy, Bruce, "License to Pollute?" eye Magazine, July 27, 2000, page 10.

[52] Nikiforuk, A., "Health Canada saw danger to district," Globe and Mail, May 31, 2000.

[53] Environmental Commissioner of Ontario, Annual Report. (Toronto: ECO), page 44.

[54] EBR Registry Number: TC00E0001.

[55] Ministry of Agriculture, Food and Rural Affairs, Discussion Paper on Intensive Agricultural Operations in Rural Ontario. (Toronto: Queen's Printer for Ontario, 2000.)

[56] Ontario Ministry of the Environment and Energy, 1992 Status Report on Ontario's Air, Water and Waste (unpublished), page 45.

[57] Ministry of Agriculture, Food and Rural Affairs, 2000. Discussion Paper on Intensive Agricultural Operations in Rural Ontario. (Toronto: Queen's Printer for Ontario), page 4.

[58] Canadian Environmental Law Association, Submission by the Canadian Environmental Law Association to the Ministry of Agriculture, Food, and Rural Affairs and Environment on the Discussion Paper on Intensive Agricultural Operations in Ontario, (Toronto: CELA), page 14.

[59] See http://www.gov.on.ca/OMAFRA/english/about/directive.html and, among others, Laidlaw, S. and Brennan, R., "Tories flip-flop on factory farms," The Toronto Star, June 29, 2000, pages A1, A25.

[60] See http://www.gov.on.ca/OMAFRA/english/infores/releases/071000.html

[61] Environmental Commissioner of Ontario, Backgrounder," The Protection of Ontario's Groundwater and Intensive Farming: Special Report to the Legislative Assembly of Ontario, July 27, 2000, page 3.

[62] EBR Registry Number: RA00E0008.

[63] EBR Registry Number: RA00E0001.

[64] Sierra Legal Defence Fund, Who's Watching Our Waters? (Toronto: Sierra Legal Defence Fund, 2000), page 7.

[65] Ibid.

[66] Sierra Legal Defence Fund, media release "Ontario: Open for Business – and an Open Sewer!!" May 15, 2000.

[67] Winfield and Jenish, page 3-31.

[68] EBR Registry Numbers: RA7E0018.P and RA7E0026.P.

[69] Commission for Environmental Cooperation, Taking Stock, North American Pollutant Releases and Transfers, 1997. (Montreal: Commission for Environmental Cooperation, 2000), page 16.

[70] MOE news release, "Ontario deeply concerned by environmental reporting system used by federal government," May 30, 2000.

[71] EBR Registry Number: PA9E0009.

[72] EBR Registry Number: PA9E0006 and PA9E0007.

[73] EBR Registry Number: PA9E0010.

[74] McClenaghan, Cooper, and Miller, "Comments by Canadian Environmental Law Association Re: Proposal to Adopt the Canadian Drinking Water Quality Guideline for Radiological Characteristics as an Ontario Drinking Water Objective for Radionuclides," CELA Brief 380, October 1999.

[75] The Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem, 1994.

[76] Ontario Ministry of the Environment, 2000-01 Business Plan.

[77] The Honourable Dan Newman, Minister of the Environment. Notes for remarks to the Standing Committee on Estimates, June 13, 2000. See http://www.ene.gov.on.ca/envision/news/0034s.htm.

[78] Severn Sound Environmental Association. Annual Report, 1997 and 1998.

[79] Winfield and Jenish, Troubled Waters? A Review of the Performance of Canada and Ontario under the 1994 Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem. (Toronto: CIELAP, March 1999.)

[80] "The theme of the project – *Imagine the Possibilities* – will encourage and challenge leaders along the coast to come forward with ideas to attract more tourists, build new businesses, strengthen communities and bring the world to the distinctive cultural heritage and outdoor beauty of the Great Lakes heritage coastline." MNR news release, "Ontario launches Great Lakes Heritage Coast Project," January 27, 2000.

[81] Yacoumidis, J., Protecting the Great Lakes Basin Ecosystem, A survey of local initiatives by conservation authorities and municipalities in Ontario. (Toronto: Canadian Institute for Environmental Law and Policy, 2000), page 21.

[82] See, among others, Mittelstaedt, Martin, "Cabinet discussed golf group's bid," The Globe and Mail, December 7, 1999; Funston, Mike, "Golf course plans opposed: petition urges protection of Oakville park," The Toronto Star, December 21, 1999; Mittelstaedt, Martin, "Golf Association nixes plan for course at provincial park," The Globe and Mail, January 1, 2000; Mittelstaedt, Martin, "Conservation authority votes against turning Toronto-area park into golf course," The Globe and Mail, April 1, 2000.

[83] Mittelstaedt, Martin, "Crombie pushing drive for golf in conservation areas," The Globe and Mail, February 9, 2000.

[84] EBR Registry Number: AB00E4001.

[85] In February 1998, the International Joint Commission released a report on the safety of dams along the Canada-U.S. border. The report concluded that some regulated facilities were not subject to comprehensive government safety inspections and that oversight by governments was unsatisfactory. The Commission was particularly concerned about the situation in Canada, where it concluded that "there does not appear to be any way of obtaining regular government safety inspections for regulated facilities." The Commission recommended regular, periodic, complete and independent on-site inspections by qualified experts; timetables for the implementation of all inspection report recommendations; the establishment and testing of emergency action plans; and public access to all reports and documentation relating to safety issues.

[86] The cabinet document outlines that the province's 571 municipalities must prove to the provincial government that services delivered by them are "better value". The article reports that unless the local governments can demonstrate that the advantages of municipal services "clearly outweigh" those of privatized services "then they may not directly provide the service." Gray, J. "Tories study privatizing municipal water, sewage," The Globe and Mail, June 13, 2000, page A1.

[87] Mackie, Richard, "Harris Drops Privatization," The Globe and Mail, June 15, 2000, page A9.

Chapter Three – Environmental decision-making

[1] See Brennan, Richard and McAndrew, Brian , "`Dan who' is sworn in as environment minister: Tories prove lack of interest in portfolio: critics" The Toronto Star, March 4, 2000.

[2] Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

[3] Ibid., page A.4.

[4] Ibid., page 3-4.

[5] Ibid., page A.4.

[6] Ibid., page A.12.

[7] Ibid., page A.14

[8] Annual Report, Environmental Assessment Board/ Environmental Appeal Board, April 1, 1998 to March 31, 1999, page 3.

[9] Ibid.

[10] Mr. Dombeck was appointed chair of both boards on December 4, 1997. See http://www.ene.gov.on.ca/envision/news/06497.htm

[11] Riley, John, Acting Executive Director, Federation of Ontario Naturalists, Letter to the Honourable Norm Sterling, December 11, 1997.

[12] In his first annual report, for the period April 1, 1997 to March 31, 1998, the chair thanks his staff and says "suffice to say that the public and politicians are well served by these public servants" page 2. In his second report, for the period April 1, 1998 to March 31, 1999, he says, "I am pleased to report that the public and the government are very well served by [the agency's members and staff]."

[13] Letter to Carl Dombeck from the Canadian Environmental Law Association, July 14, 1999. The letter, alluding to the board's practice and how it affects parties, states in part: "We are concerned about the Board's refusal to grant adjournments *sine die*… when parties are involved in ongoing negotiations, environmental testing may sometimes be required before terms of settlement can be finalized… the Board's failure to provide for adequate time for adjournment will mean the parties have to make frequent requests for adjournments thereby causing unnecessary expense for all parties."

[14] See Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999), page 2.11 and following.

[15] Letter of Appeal from Dr. Paul Connett and Ellen Connett to the Lieutenant Governor in Council, November 30, 1999.

[16] See http://www.gov.on.ca/opa/en99/en99.html/400en99.html

[17] Communication from MOE Communications Branch, August 18, 2000.

[18] See: http://www.omb.gov.on.ca/about/index.html

[19] In a controversial OMB decision permitting King Township, just north of Toronto, and on the Oak Ridges Moraine, to double its size in 20 years, OMB member Ronald Emo is quoted in the press stating "there are inherent problems with petitions or polls as a form of direct democracy." Mr. Emo is referring to a petition put before the Board as evidence of public opposition to the plan. This prompted one citizen to write: "As an unelected political appointee whose one-man band played to the tune of the development industry, I believe Mr. Emo has no lessons to offer on democracy." See "Public opinion not pivotal, OMB ruling makes clear," The Globe and Mail, March 9, 2000 and "Letter to the Editor" Hotte, Vicki, The Globe and Mail, March 11, 2000.

[20] *Mississauga (City)* v. *Britannia North Holdings Inc.* [1999] O.J. No. 4672, Ontario Superior Court of Justice Divisional Court, December 3, 1999.

[21] In the matter of appeals of the OMB pursuant to section 51 of the Planning Act R.S.O., c.P.13, concerning a condition of subdivision approval imposed by the Corporation of the City of Mississauga with respect to draft plan of subdivision numbers 2IT-M97007, 2IT-M940034, 2IT-M95995 and 21T-M95043. The condition the city sought to impose on each of the developers' four draft plans of subdivision was: "Prior to approval, the City shall be advised by the School Boards that satisfactory arrangements regarding the adequate provision and distribution of educational facilities have been made between the developer/applicant and the School Boards for this plan."

[22] Moloney, Paul,"Critics blast OMB, cite housing crisis," The Toronto Star, March 10, 2000, page B4.

[23] Goldlist Properties Inc. v. Toronto (City) [1999] OMBD No. 1022.

[24] Barber, John, "Has land-use planning become Kafkaesque in Ontario?" The Globe and Mail, January 21, 2000.

[25] Barber, John, "The grotesque pandering of the OMB," The Globe and Mail, April 14, 2000, page A18.

[26] Presentation by the Canadian Environmental Law Association to the Ontario Municipal Board, May 17, 2000, by Theresa McClenaghan.

[27] The OMB made a precedent-setting cost award against a citizen's group seeking to protect property on the shoreline of Georgian Bay, Lamard v. Tiny Township [1997] O.M.B.D. No. 1613. The board levied a gigantic $15,000 award – larger than any award against a citizen group before or since.

[28] Immen, Wallace, "Ontario Municipal Board draws citizens' ire: New version of provincial appeal tribunal called secretive, costly, inaccessible, legally complex and rubber stamp for developers," The Globe and Mail, May 29, 2000, page A16.

[29] For example, on April 14, 2000, the province announced new regulations to restrict municipal referendums, claiming they are a "waste of taxpayer time and money." See Lewington, Jennifer, "New rules would limit municipal referendums," The Globe and Mail, April 14, 2000.

[30] Southworth, Natalie, "Ontario Raises Stink Over Landfill," The Globe And Mail, June 21, 2000, page A15.

[31] See Ministry of Municipal Affairs and Housing Business Plan 1999-2000, page 5.

[32] Oxford County Federation of Agriculture v. Oxford (County) [1998] O.M.B.D. No. 278, Ontario Municipal Board, February 17, 1998.

[33] Laidlaw, Stuart and Brennan, Richard, "Tories flip-flop on factory farms: Municipalities can temporarily ban big outfits," The Toronto Star, June 29, 2000.

[34] Re: Zoning By-Law No. 100-1998 Municipality of West Perth. Ontario Municipal Board, July 18, 2000, Decision number 1045.

[35] See http://www.escarpment.org

[36] Bruce-Grey MPP Bill Murdoch is a proud opponent of the Niagara Escarpment and has recently stated that he "plans to introduce a private member's bill … that would abolish the commission." See McNichol, Phil, "Group fails 3 locals now on NEC," Owen Sound Sun Times, May 10, 2000.

[37] See On The Edge, Newsletter of the Coalition on the Niagara Escarpment, Spring 2000, Issue Number 55, the whole issue, but particularly pages 1 and 6.

[38] See various newspapers including the Georgetown Independent and Free Press, May 10, 2000, page 10 "Krantz pleased with failing grade from Escarpment watchdog group," where Commission member and Milton Mayor Gordon Krantz describes his role on the Commission: "I'm there to protect the interests of everybody," and, in the Owen Sound Champion, he explains that the "plan is a guideline, not a rule book."

[39] See NEC Report Card Background report for the period January 1999 to March 2000, compiled for the Coalition on the Niagara Escarpment (CONE) by Jason Thorne, May 4, 2000. The report notes in 520 applications, the commission did not accept or amended the recommendations of staff 19 times, or for about four percent of applications.

[40] See *Coalition on the Niagara Escarpment* v. *Niagara Escarpment Commission*, 2000, NEHO, Case No.: 99-114, David Hutcheon, Hearing Officer. In this case, CONE appealed a decision of the commission approving a development which, according to the recommendation of commission staff, simply did not conform to Niagara Escarpment Plan development controls. CONE argued that a dangerous precedent would be set by this decision. The Board responded "given each case is decided on its own merits, I find that the fear of setting a precedent is not sufficient reason to deny this application," *supra*, page 12.

[41] Mackie, Richard, "Tories may scrap environmental watchdog post, assign duties to ombudsman," The Globe and Mail, August 28, 1999, page A6.

[42] Editorial, "Blatant Cronyism," The Toronto Star, December 18, 1999.

[43] At the time Gordon Miller applied for the Environmental Commissioner's post, he was the president of the Conservative Riding Association in the Premier's own riding.

[44] "Whereas the first Environmental Commissioner appointed under the NDP's *Environmental Bill of Rights*, Eva Ligeti, courageously documented the Harris government's attack on environmental protection in Ontario; and

"Whereas the Harris government refused to reappoint Ms. Ligeti, instead choosing a close political ally of the Premier to fill the position; and

"Whereas Ontario needs the Environmental Commissioner to serve as a tenacious watchdog on the government; and

"Whereas the former Conservative Riding Association president in the Premier's riding accepted thousands of dollars in political donations when he ran for the Harris Tories from Falconbridge Ltd., Mallette Lumber, Timmins Forest Products, Abitibi-Price, Millson Forestry Service, Columbia Forest Products, Grant Lumber, Erocon Waste Management, Timmins Logging Inc, Westland Logging and Gaetan Levesque Logging; and

"Whereas, given the candidate's strong personal ties to the Premier of Ontario, the candidate cannot be trusted to protect Ontario's environment;

"We, the undersigned, call on the Legislative Assembly of Ontario to reject the nomination of Gord Miller as Environmental Commissioner, and to choose instead a highly qualified candidate with no political ties to the current government." Ontario Hansard, December 23, 1999.

[45] Grewal, San and Boyle, Theresa, "Amid a tangle of regulations, utility may have broken the law," The Toronto Star, May 27, 2000, pages A1 and A11.

[46] Alphonso, Caroline and Bourette, Susan, "After the Tragedy: denials and outrage," The Globe and Mail, May 27, 2000, pages A1 and A10.

[47] Mackie, Richard , "Harris cites human error in Walkerton *E. coli* deaths," The Globe and Mail, May 31, 2000, page A8.

[48] Mackie, Richard ,"Province must accept role in water woes, Harris concedes," The Globe and Mail, June 6, 2000, page A8.

[49] The Protection of Ontario's Groundwater and Intensive Farming, Special Report to the Legislative Assembly of Ontario. (Toronto: Environmental Commissioner's Office, July 27, 2000.)

[50] The workshop was held on May 25, 2000. Attendees included the commissioner, the chair and members of the Environmental Assessment and Appeal Boards, ministry personnel, environmental lawyers from the private bar and the Ministry of the Environment, and members of the environmental community (including CIELAP, CELA, TEA, SLDF and others).

[51] See http://www.eco.on.ca/english/publicat/index.htm for documents referred to at the workshop.

[52] See http://www.ipc.on.ca/english/acts/pocket/mini-pagehtm

[53] *Dagg* v. *Canada (Minister of Finance)* [1997] 2 S.C.R. 403, paragraph 63 and following.

[54] Mackie, Richard, "Tories to tinker with information act," The Globe and Mail, May 18, 2000, page A8.

[55] Mackie, Richard, "Tories blocking privacy probe; case may be contempt Ontario Speaker finds," The Globe and Mail, May 19, 2000.

[56] Mackie, May 18, 2000, op. cit.

[57] Mrs. Lyn McLeod, MPP (Thunder Bay-Atikokan), debate before the legislature regarding Bill 42, an act to enhance public safety and to improve competitiveness by ensuring compliance with modernized technical standards in various industries, June 13, 2000.

[58] See http://www.dicocco.sarnia.net/pages/safetykleen1.html

[59] EBR Registry Number: RA8E0017.

[60] McManus, Sean, Canadian Director of the International Association of Fire Fighters quoted in, Kerry Gillespie, "Community Safety Plan Equips Firefighters," The Toronto Star, April 10, 2000, page A6.

[61] McAndrew, Brian, "Province didn't monitor plant's pollution," The Toronto Star, April 12, 2000.

[62] Hansard Issue: L039A, April 10, 2000.

[63] Calamai, Peter, "Ontario nuclear stations get lukewarm report card," The Toronto Star, May 25, 2000.

[64] See http://www.brucepower.com/

[65] See http://www.pwu.ca/2K/Framesets/Specials/Specialsframe.html

[66] Mr. John O'Toole MPP (Durham), debate before the legislature regarding Bill 42, an act to enhance public safety and to improve competitiveness by ensuring compliance with modernized technical standards in various industries, June 13, 2000.

[67] Mallan, Caroline, "Watchdog issues warning to Tories: public protection crucial warns Ombudsman," The Toronto Star, June 16, 2000.

[68] Winfield et. al., The New Public Management Comes to Ontario: A Study of Ontario's Technical Standards and Safety Authority and the impacts of putting public safety in private hands. (Toronto: CIELAP, April 2000.)

[69] Ibid., page v.

[70] Verdict of coroner's jury, *In the Matter of the Death of Jerome Charron, 24 August, 1999*, June 21, 2000.

[71] See http://www.tssa.org/TSSA/tssapubs.nsf/309705056f041cdc852565f500715887/a3d82cf77d4b2dc98525690700796acf?OpenDocument

[72] See http://www.ene.gov.on.ca/envision/env_reg/documents/a/revappagehtm

[73] For a detailed discussion of REVA see "Comments on EBR Registry Proposal No.(A8E033 (REVA)," CIELAP Brief 1/99, January 1999.

[74] Conversation with Ministry Communications Officer, August 16, 2000.

[75] Winfield and Jenish, page 3-31.

[76] See McClenaghan, Theresa, "Comments by the Canadian Environmental Law Association to the Minister of the Environment Regarding Program Approval Applications for Darlington, Pickering and Bruce Nuclear Generating Stations," CELA Brief No. 349, June 19, 1998.

[77] EBR Registry Number: IA9E0913 and IA9E912.

[78] EBR Registry Number: IA9E0858.

[79] EBR Registry Number: IA9E1034.

[80] EBR Registry Number: IA9E1373.

[81] EBR Registry Number: IA00E0687; IA00E0688; IA00E0686; IA00E0685.

[82] EBR Registry Number: IA00E0405.

[83] EBR Registry Number: IA9E1416.

[84] EBR Registry Number: IA00E0333.

[85] EBR Registry Number: PA9E0004.

[86] See generally Dick, I., McGowan, J., Meneguzzi, P. and Swaigen, J., "Air Quality," in Swaigen, J and Estrin, D., Environment on Trial: A Guide to Ontario Environmental Law and Policy. (Toronto: Emond-Montgomery Publishers Ltd. and CIELAP, 1993.) See also Office of the Provincial Auditor 1996 Annual Report: Accounting Accountability and Value for Money (Toronto: Queen's Printer for Ontario, 1996), pages 115-116.

[87] Winfield and Jenish, pages 2-30 and 2-31.

[88] Ibid.

[89] EBR Registry Numbers: PA9E0013, PA9E0014, PA9E0015, PA00E0013, PA00E0004, PA00E0009, PA00E0011, PA00E0020, PA00E0019, PA9E0004, PA00E0010, PA00E0018, PA00E0017, PA00E0008, PA00E0007, PA00E0006, PA00E0005, PA00E0016, PA00E0015, PA00E0014.

[90] Cooper, McClenaghan and Miller, "Comments by Canadian Environmental Law Association Re: Proposal to Adopt the Canadian Drinking Water Quality Guideline for Radiological Characteristics as an Ontario Drinking Water Objective for Radionuclides," CELA Brief 380, October, 1999.

[91] NDP press release, "Government Rejected Plan to Enforce Environmental Laws," June 22, 2000.

[92] Cabinet Submission. A Cleaner Ontario: Toughest Penalties Legislation, Environmental SWAT Teams and a Toll-Free Pollution Hotline. Ministry of the Environment: March 14, 2000, pages 27 of 28.

[93] See Blueprint: Mike Harris' Plan to Keep Ontario on the Right Track, PC Party of Ontario, 1999, page 34.

[94] The May budget for fiscal 2000-2001 shows a reduction in Ministry of the Environment operating expenditures from $174 million to $158 million, and a doubling of capital expenditures, from $7 million to $14 million (excluding $160 million and $51 million for the Water Protection Fund).

[95] See: http://www.premier.gov.on.ca/english/news/Walkertonappoint160600.htm

[96] See http://www.premier.gov.on.ca/english/news/redtape052500.htm

[97] Stanford, Jim, "Death By A Thousand Cuts," The Globe and Mail, June 1, 2000, page A17.

[98] Dianne L. Martin, "Connecting the Cutback Dots," Law Times, June 2000.

[99] See Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, 1999), page 2-27 ff. for a fuller discussion of the impact the the Red Tape review process.

[100] Section 12 describes the "cabinet exemptions" to the act:

12. (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

(b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

(c) a record that does not contain policy options or recommendations referred to in clause

(b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

(d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and

(f) draft legislation or regulations.

[101] Mallan, Caroline, "Red Tape Cuts Cost $1.6 million," The Toronto Star, May 31, 2000.

[102] Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September, 1999), page 2-51.

[103] See http://www.ene.gov.on.ca/envision/news/06199NR.htm

[104] Other partners are Shell Oil, Ontario Power Generation, General Motors and Dofasco.

[105] Op-Ed Article, "Facing the summer with dirty gas," The Toronto Star, May 7, 2000.

[106] See http://www.partnersinair.org

[107] Grewal, San and Nguyen, Lily, "Hunter's guide sent to schools drawing fire," The Toronto Star, March 18, 2000.

[108] News release, Ontario Ministry of Northern Development and Mines, May 29, 2000.

Chapter 4 – Garbage and hazardous waste

[1] Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

[2] Ibid., page 3-12.

[3] Ibid., page 3-12.

[4] Ibid., page 3-18.

[5] Environmental Assessment Board, Gary Steacy Dismantling Ltd., File No.: EP97-03, December 1997.

[6] Environmental Assessment Board, Material Resource Recovery SRBP Inc., File No.: 98-123, November 1, 1999.

[7] For example, the Adams Mine landfill in Kirkland Lake is expected to create more than 340 direct and indirect jobs and bring $75 million to the local economy. See http://www.railcyclenorth.com/index.html

[8] For example, the Adams Mine landfill in Kirkland Lake has been criticized for turning Northern Ontario into a dumping ground for Toronto's trash. The project has also raised concerns among the local community that groundwater resources will be irretrievably contaminated by leachate from the landfill. During the environmental assessment hearing for the project, the Environmental Assessment Board accepted as fact the prediction that the leachate potential for the site – estimated to have an operating life of 20 years – would be at least 1,000 years. See http://www.davidramsay.on.ca/issues/toronto.html

[9] See discussion below on environmental approvals.

[10] See previous reports in this series for a complete description of regulatory reform directed at waste disposal.

[11] For example, when Liberal MP Caroline Di Cocco suggested to then Minister of the Environment Tony Clement that the Safety-Kleen hazardous waste site in Sarnia posed a health and safety risk to the area, his response was "prove it." Less than a month later, on November 2, 1999, the ministry issued an order to cease operations to the Safety-Kleen landfill after methane gas emissions and a leak were discovered at the landfill site. Less than two weeks later, the site was back in operation.

[12] See, for example, http://www.ene.gov.on.ca/envision/news/mb0041.html

[13] The first two environmental assessment hearings after the amendments made by the provincial government were also the last two. Since the Adams Mine decision (Notre Development Corporation, EAB Case Number EA-97-01) and the aborted Quinte Landfill Hearing (Fibre Environmental and Ecology Limited EAB Case Number EA-97-02), there have been no environmental assessment hearings.

[14] EBR Registry Number: RA9E0006.

[15] EBR Registry Number: RA8E0026.

[16] EBR Registry Number: RA9E0001.

[17] See http://www.ene.gov.on.ca/envision/news/0024.htm

[18] Mittelstaedt, Martin, "PCBs won't land in Vancouver: firm," The Globe and Mail, April 6, 2000.

[19] Op. cit., http://www.ene.gov.on.ca/envision/news/0024.htm

[20] *Environmental Protection Act*, R.S.O. 1990, c.E-19, s. 30 as amended.

[21] Gary Steacy Dismantling Ltd., see http://www.steacydismantling.com/index.html

[22] Excerpt from statement of witness Damian Rodriguez, president, MRR, Environmental Assessment Board Decision 98-123, Material Resource Recovery SRBP Inc., November 1, 1999, page 5.

[23] Mittelstaedt, Martin, "Proposal calls for bargain-basement PCB furnace," The Globe and Mail, October 18, 1999.

[24] Letter, from Dr. Paul Connett and Ellen Connett to the Lieutenant Governor in Council, November 30, 1999.

[25] See Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999), page 3-18.

[26] EBR Registry Number: RA00E0013.

[27] Currently O. Reg. 347.

[28] Members of the panel: Dr. David Bell is the director of York Centre for Applied Sustainability and is a professor in Environmental Studies, Political Science and Social and Political Thought at York University. Dr. Otto Meresz is an independent consultant and adjunct professor in the University of Toronto's Department of Chemical Engineering and Applied Chemistry. Dr. Thomas Podor, a Stoney Creek resident, is an associate professor of the Department of Pathology and a member of the medical staff at the Hamilton Civic Hospital Research Centre. Dr. Kerry Rowe is an expert in landfill design and operations and is a full professor at the University of Western Ontario and associate dean in the Faculty of Engineering Sciences. Wilf Ruland is a hydrogeologist and principal of Citizens Environmental Consulting. Mr. Ruland holds a masters degree in earth sciences from the University of Waterloo. Dr. Fran Scott is a research associate (Academic) of the McMaster Institute of Environment and Health and associate professor of Clinical Epidemiology and Biostatistics. Joe Stephenson is president of Hydromantis, Inc. serving as manager, project manager, and senior advisor on water and wastewater treatment projects. Mr. Stephenson holds a masters degree in engineering from McMaster University. Dr. Antoon van der Vooren is the senior manager at Simon Environmental responsible for all aspects of air resources and risk assessment.

[29] See EBR Registry Notice RA00E0002.

[30] CIELAP, "Application for Review Under Section 61 of the Environmental Bill of Rights," December, 1999.

[31] Letter to the Canadian Institute for Environmental Law and Policy from Keith West, Director, Waste Management Policy Branch, February 21, 2000.

[32] Yacoumidis, James, Ontario: Open For Toxics. (Toronto: Canadian Institute for Environmental Law and Policy, June 2000.)

[33] On June 9, 2000, Safety-Kleen announced that it and 73 of its U.S. subsidiaries filed voluntary petitions for Chapter 11 (bankruptcy) relief . Safety-Kleen's operations in Canada and Mexico are not part of the bankruptcy filings. Canada NewsWire: www.newswire.ca

[34] See http://www.gov.on.ca/opa/en99/en99.html/400en99.html

[35] See http://www.ene.gov.on.ca/envision/Waste/index.htm

[36] Waste Diversion Organizational Forecast for the Year 2000.

[37] Anonymous letter to the editor, "Looks A Lot Like CIPSI," Solid Waste and Recycling Magazine, December/January 2000, page 5.

[38] See http://www.wdo.on.ca

[39] WDO press release, September 5, 2000.

[40] Notre Development Corporation (Adams Mine Site) Decision and Reasons for Decision, EA-97-01, June 19, 1998, page 9.

[41] Presentation to the Canadian Bar Association of Ontario, October 18, 1999.

[42] *Adams Mine Intervention Coalition* v. *Ontario (Environmental Assessment Board*) [1999] O.J. No. 2701. Heard: July 13, 1999; oral judgment given July 20, 1999.

[43] Osborne, Michelle, "Environmentalists lose bid to block northern landfill," The Globe and Mail, July 14, 1999.

[44] See the Rail Cycle North website at: http://www.railcyclenorth.com

[45] See, among others, Palmer, Karen, "Extend dump's limit, city urged: Toronto also eyes U.S. alternatives to Kirkland Lake plan, " The Toronto Star, June 20, 2000 and Southworth, Natalie, "New trash offer raises the stakes: Council narrows its options to three; Keele Valley landfill site 'not off the table' ", The Globe and Mail, June 24, 2000.

[46] Rusk, James, "Toronto Wants to Extend Life of Keele Dump," The Globe and Mail, June 20, 2000, page A18.

[47] Southworth, Natalie,"Ontario Raises Stink Over Landfill," The Globe and Mail, June 21, 2000, page A15.

[48] Republic Services of Canada Inc., a parent company of Republic Services Inc., which owns a dumpsite across the border from Windsor, told the committee meeting that it will lower its initial price to transport and dispose the waste.… "We can take the garbage right away by truck or rail. Whatever council wants," said Bob Webb, vice-president of Republic Services of Canada. See "New trash offer raises the stakes; Council narrows its options to three," by Southworth, Natalie, The Globe and Mail, June 24, 2000.

[49] Palmer, Karen, "It's Final: City Trash Is Going North," The Toronto Star, August 3, 2000.

[50] Since the beginning of the Common Sense Revolution, Ontario has lost ground to other provinces in waste diversion programs. Right now, Quebec, Alberta, even Manitoba have more fully developed waste diversion and recycling programs than Ontario.

Chapter 5 – Air

[1] Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

[2] Ibid., page A.35.

[3] "At last fall's (1999) Great Lakes governor and premiers meeting in Cleveland, [Mike] Harris "reinforced Ontario's opinion that several Great Lakes states have to do more to reduce emissions." McDermott, Dan, "Harris Needs to Join this Clean Up Plan," The Toronto Star, February 14, 2000.

[4] Washington Bureau; Source: Commission for Environmental Co-operation, August 10, 1999.

Washington — Ontario has become the second-worst polluter in North America, according to a controversial NAFTA report to be released today — even though the province's level of emissions has decreased. Ontario ranks second only to Texas among Canadian provinces and U.S. states in total emissions and transfers of pollutants in the third annual Taking Stock report, produced by the Montreal-based Commission for Environmental Co-operation. It shows that Ontario industries released a total of 68,763,262 kilograms of pollutants into the environment in 1996. That's down from 74,278,803 kilograms in 1995, but not enough to stay behind Louisiana, which was second in 1995. Ontario also ranked third in 1994. Quebec ranks 20th, Alberta is 27th and other provinces are well below that this year.

The rankings are based both on direct emissions into air, land or water and on transfers made to other sites for disposal. The report measures roughly 170 different pollutants. But the Ontario government was quick to dismiss the findings, accusing the CEC of using flawed methods to track polluters. "What this report does not do is give a clear indication of what's being done in Ontario," said Dan Schultz, an aide to Ontario's new Environment Minister, Tony Clement. He said that combining both direct emissions into the environment and transfers provides an unfair snapshot of polluters and environmental conditions. Mr. Schultz also complained that the CEC does not track more serious pollutants, such as dioxins, nitrous oxides and particle emissions.

Polluting Provinces:
North American ranking of Canadian provinces by total amount of pollutant releases and transfers:

2.	Ontario	68,763,262 kg
20.	Quebec	22,940,209 kg
27.	Alberta	15,174,849 kg
40.	British Columbia	6,271,403 kg
43.	New Brunswick	4,852,765 kg
47.	Manitoba	3,308,100 kg
51.	Nova Scotia	1,600,964 kg
56.	Saskatchewan	799,321 kg
59.	Newfoundland	400,708 kg
62.	Prince Edward Island	17,553 kg

[5] See, among others, Spears, John, "Hydro policy generates confusion, The Toronto Star, July 22, 2000.

[6] Notes for remarks by the Honourable Dan Newman, Minister of the Environment, at the Toronto Smog Summit, Council Chambers, Metro Hall, Toronto, Wednesday, June 21, 2000, page 2 of 4.

[7] Clee, Richard, Letter, The Toronto Star, February 19, 2000, page H38.

[8] See Ontario's Environment and the Common Sense Revolution, A Four Year Report, pages 3-6 and 3-7.

[9] The Ministry of the Environment Business Plan notes: "The heavy duty program for trucks and buses was launched on September 30, 1999 with province-wide diesel testing and non-diesel testing in the same areas as passenger vehicles." MOE Business Plan 1999-2000, page 7.

[10] Terauds, John, "Minister Supports Drive Clean," The Toronto Star, January 15, 2000, page G2. See also Ministry press release, January 10, 2000 at http://www.ene.gov.on.ca/envision/news/00100NR.htm

[11] Environmental Commissioner of Ontario, Annual Report 1998, page 46.

[12] Lai, Eric, "Drive Clean inspectors ill-trained, expert charges," The Toronto Star, January 15, 2000, page G8.

[13] Coninx, Paul, "Drive Clean Hurting Consumers: Investigator" The Toronto Star, January 15, 2000, pages G1 and G2.

[14] Coninx, Paul, "Drive Clean Makes Money, Not Clean Air: Investigator," The Toronto Star, February 19, 2000, page H38.

[15] See http://www.ene.gov.on.ca/envision/news/0044s.htm

[16] The calculations for estimated reductions based on 1,000,000 cars tested were made in November 1999, two months before the millionth car actually was tested in January 2000.

[17] See Stewart, S.J. PhD., P.Eng, AirCare Evaluation of Benefits Program Year Five September 1996 to August 1997 at http://www.aircare.ca/pdf/5years.pdf, page 3.

[18] See: http://www1.tor.ec.gc.ca/cd/factsheets/smog/page2_e.cfm?xyz.

[19] See "Air Quality," in Environment on Trial: A Guide to Ontario Environmental Law and Policy, 3rd Edition (Toronto: CIELAP, 1993) page 492 ff.

[20] See Ekstrand, Patrick, "The Vicious Circle of Cars and Smog: Technology May Decrease the Output of Pollution from Cars but the Ever-Increasing Number of Vehicles Cancels Out the Benefits," Metro, July 5, 2000, pages 10-11.

[21] Ontario Ministry of the Environment, Air Quality In Ontario: A Concise Report on the State of Air Quality in the Province of Ontario 1997. (Toronto: Ministry of the Environment, August, 1999), page 19.

[22] Ibid.

[23] Mackie, Richard, "Environmentalists victorious in fate of coal-burning plants," The Globe and Mail, May 19, 2000.

[24] See Ontario's Environment and the Common Sense Revolution, A Four Year Report, page 3-8.

[25] See EBR Registry Number**:** RA00E0005.

[26] See: http://www.ene.gov.on.ca/envision/env_reg/er/documents/2000/ra00e0005.pdf

[27] See: http://www.ene.gov.on.ca/envision/env_reg/er/documents/2000/ra00e0005a.pdf

[28] See: http://www.ene.gov.on.ca/envision/env_reg/er/documents/2000/ra00e0005b.pdf

[29] See O. Reg. 226/00.

[30] O. Reg. 227/00, s.4 (3) provides: "The generator shall ensure that, for at least seven years after the report is submitted to the Director, it is made available, on request, for examination by any person during regular business hours at the generation facility."

[31] Shier, Donna, "Industry Air Monitoring/Reporting NPRI Not Good Enough – Newman," Environmental Law (Toronto: Willms & Shier, Summer 2000), page 3.

[32] See Health Effects of Ground-Level Ozone, Acid Aerosols & Particulate Matter at http://www.oma.org/phealth/ground.htm#recommendations

7.3 Recommendations Concerning the Control of NOx:

b. The OMA recommends that in Ontario, the government should replace Ontario Hydro's voluntary commitment to NOx reductions with a regulation under the *Environmental Protection Act*, which would limit the corporation's NOx emissions (including emissions associated with any power imports from the U.S.) to no more than 6,000 tonnes annually.

[33] On October 19, 1998, Energy and Environment Ministers signed the Canada-Wide Acid Rain Strategy for Post-2000 in order to further protect the environment from acid deposition. The primary long-term goal of the strategy is "to meet the environmental threshold of critical loads for acid deposition across Canada." Achieving that ambitious goal will necessitate additional reductions of sulphur dioxide (SO_2) emissions in Eastern Canada and the United States. Reductions of nitrogen oxides (NOx) will also be required, though the level of reduction to achieve will depend on what further scientific research reveals. See http://www.ccme.ca/3e_priorities/3eb3_acidrain.html

[34] Ministry of the Environment media backgrounder, "Enhancing Ontario's Air Quality, January 24, 2000, at http://www.ene.gov.on.ca/envision/news/00600MB.html

[35] See, among others, Gibbons, Jack and Bjorkquist, Sara, Trading Our Health: Ontario Power Generation's Plan to Violate Its Air Pollution Reduction Commitment, (Toronto: Ontario Clean Air Alliance, October 1999); and Gibbons, Jack, Pollution Loopholes: An Assessment of Ontario's Approach to Air Pollution Control in the Electricity Sector, (Toronto: Ontario Clean Air Alliance, February 2000), http://www.cleanair.web.ca/resource/loophole.html

[36] "Ontario Power, in the smoggy first week of May, boosted its power exports to the U.S. – to the equivalent of nearly 600,000 cars" Dirty Hands, Op-Ed Story, The Toronto Star, June 14, 2000.

[37] "Full of Loopholes," The Toronto Star, January 25, 2000.

[38] Gibbons, Jack, Pollution Loopholes: An Assessment of Ontario's Approach to Air Pollution Control in the Electricity Sector, (Toronto: Ontario Clean Air Alliance, February 2000), http://www.cleanair.web.ca/resource/loophole.html

[39] The City of Toronto's Medical Officer of Health Dr. Sheela V. Basrur released Air Pollution Burden of Illness in May 2000. Report available from the City of Toronto. See also MacPhail, J. et.al., Ontario Medical Association Position Paper on Health Effects of Ground-Level Ozone, Acid Aerosols & Particulate Matter (Toronto: Ontario Medical Association, May 1998.)

[40] "Ontario Demands Faster Federal Action To Cut Sulphur Levels in Gasoline," Ministry of the Environment press release, May 4, 2000, http://www.ene.gov.on.ca/envision/news/0026.htm

[41] Blackwell, Tom, "Tories fear changes to gas: Federal limits on sulphur content said to be too costly, The Hamilton Spectator, October 19, 1998.

[42] McDermott, Dan, "Harris Needs to Join this Clean Up Plan," The Toronto Star, February 14, 2000.

[43] The minister's exact words were:

"Getting a Canada-U.S. Ozone Annex is crucial for clean air in Canada. But we must have clean hands otherwise we cannot pressure the U.S. to reduce its cross-border emissions.

"Here in Ontario, for instance, action must be taken to reduce emissions from Ontario Power Generation's fossil-fueled power plants. If Canada is to receive a strong commitment from the United States in the new annex to the Air Quality Agreement, our heavy industries must also reduce their emissions."

See: http://www.ec.gc.ca/minister/speeches/000621_s_e.htm

[44] "N.Y. Urges Albright to Push Canada on NOx" AIR Daily, July 17, 2000, page 2.

[45] "Shut Down Lakeview for Smog Season," The Toronto Star, April 24, 2000.

[46] Notes for Remarks by the Honourable Dan Newman, Minister of the Environment, at the Toronto Smog Summit, Council Chambers, Metro Hall, June 21, 2000, page 2 of 4.

[47] The ASAP Executive Committee members are:

- Mark Nantais, President, Canadian Vehicle Manufacturers' Association
- Pat Creaghan, Vice-President, Marketing, Shell Canada Products Ltd.
- Bob Reid, Chief Executive Officer, Union Gas
- Ken Ogilvie, Executive Director, Pollution Probe
- Elizabeth May, Executive Director, Sierra Club of Canada
- Lois Corbett, Executive Director, Toronto Environmental Alliance.
- Sheela Basrur, Medical Officer of Health for the City of Toronto
- Brian Stocks, Air Quality Manager, Ontario Lung Association
- Peter Victor, Faculty of Environmental Studies, York University
- Ian Rowe, President and CEO of the Centre for Research in Earth and Space Technology
- Stien Lal, Deputy Minister, representing the Ministry of the Environment.

[48] Ontario Ministry of the Environment, Air Quality In Ontario: A Concise Report on the State of Air Quality in the Province of Ontario 1997. (Toronto: Ministry of the Environment, August, 1999), page 19.

[49] Mickleburgh, Rod, "Ontario's emissions an issue as ministers meet in Vancouver," The Globe and Mail, March 27, 2000.

[50] Ibid.

[51] MacKinnon, Mark, "Climate talks founder as frustration mounts," The Globe and Mail, March 29, 2000, page A8.

[52] Eggertson, Laura, "Smog-level deal falls short of goal: Ottawa and provinces to agree on diluted national standards," The Toronto Star, November 25, 1999.

[53] Dick, McGowan et al, "Air Quality" in Swaigen and Estrin, Environment on Trial (3rd ed.). See also Office of the Provincial Auditor, 1996 Annual Report, pages 115-116.

[54] EBR Registry Number: PA9E0004.

[55] Canadian Environmental Law Association and the Ontario College of Family Physicians Environmental Health Committee. Environmental Standard Setting and Children's Health (Toronto: CELA and OCFPE, May 25, 2000.)

[56] Ibid., page 195.

[57] Smith, Cameron, "Ontario Pulls Plug on Acid Rain Program," The Toronto Star, June 24, 2000.

[58] Environmental Commissioner of Ontario Annual Report 1996 at http://www.eco.on.ca/english/publicat/ar96/part03.pdf, page 20.

[59] See http://www.airqualityontario.com/index.cfm

[60] EBR Registry Number: PA9E0005.

[61] EBR Registry Number: RA9E0014; RA9E0012. "Under the existing provisions in Section 3 subsections 9 and 10 of O.Reg. 717/94 no HCFC-based solvents may be released into the natural environment, nor shall anyone make, use or transfer such a solvent after January 1, 2000. The Ministry is proposing a one (1) year extension to all dates involving the ban of Class II (HCFC-based) solvents."

[62] It is unclear what "both sides" means as the notice goes on to say that only industry stakeholders were consulted. Other than the EBR notice, there was no public consultation, nor any consultation with the academic or environmental community.

[63] EBR Registry numbers: IA9E0572; IA00E0615.

[64] EBR registry number: RO00E0001.

Chapter 6 – Land – Southern Ontario

[1] See Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

[2] Ibid., page A.17.

[3] Ibid., pages A.17-18.

[4] Ibid., page A.19.

[5] Ibid., pages A.99 to A.102.

6 Ibid., page A.17.

[7] Ibid., page A.22.

[8] Ibid., page A.20.

[9] Blais, P., Inching Toward Sustainability: The Evolving Urban Structure of the GTA. (Toronto: Neptis Foundation, March 2000), page 16.

[10] Ibid., page 16.

[11] Ibid., page 36.

[12] Ibid., page 34.

[13] These groups include Save the Oak Ridges Moraine (STORM), the Federation of Ontario Naturalists, Sierra Legal Defence Fund among others, and municipalities including the City of Toronto.

[14] Immen, W., "Fragile moraine poorly managed: scientists," The Globe and Mail, February 2, 2000.

[15] Immen, W., "Groups trying to drag province into moraine fight," The Globe and Mail, March 9, 2000.

[16] Letter to Applicants (Federation of Ontario Naturalists and Save the Oak Ridges Moraine) from the Ministers of Municipal Affairs and Housing, Natural Resources and the Environment, May 29, 2000.

[17] See *1133373 Ontario Inc.* v. *York* (Regional Municipality).

[18] In June 2000, Bill 71, an NDP-sponsored private member's bill passed second reading in the legislature with the support of two backbench Conservative MPPs. The bill entitled *An Act to freeze development on the Oak Ridges Moraine and to amend the Planning Act to increase and strengthen the protection of natural areas across Ontario*, would freeze development on the moraine until a policy statement dealing with the moraine is issued under the *Planning Act*. At time of writing, the fate of Bill 71 is unknown.

[19] See page 2-37 in Ontario's Environment and the Common Sense Revolution, A Four Year Report.

[20] Ministry of Finance. "News release: 2000 Budget Delivers 67 More Tax Cuts," May 2, 2000.

[21] The Neptis Foundation study found that 62 percent of the Greater Toronto Area was comprised of Class 1 to Class 3 farmland in 1967, the figure in 1999 was 44 percent. Hall, J, "Sprawl", The Toronto Star, June 10, 2000, page V3.

[22] Blais, P., Inching Toward Sustainability: The Evolving Urban Structure of the GTA. (Toronto: Neptis Foundation, March 2000), page 25.

[23] Greater Toronto Area Agricultural Economic Impact Study commissioned by the GTA Federations of Agriculture Project Management Committee, November 19, 1999.

[24] Ibid., page 19.

[25] Ibid., page 41.

[26] The cost of unchecked urban sprawl in the Greater Toronto Area over the next 25 years is estimated at $69 billion. Hall, J, "Sprawl", The Toronto Star, June 10, 2000, page V3.

[27] See page 5-8 in Ontario's Environment and the Common Sense Revolution, A Four Year Report. (Toronto: CIELAP, 1999.)

[28] Ministry of Transportation. 1999-2000 Business Plan. (Toronto: Queen's Printer for Ontario, 1999), page 1.

[29] Ibid., page 11.

[30] Hurling blame at other parties in order to deflect criticism is, apparently, standard operating procedure for the provincial government. In response to Walkerton, air-quality issues, water-quality issues and this instance, the first response in each case was to blame someone else.

[31] City of Toronto, Council Highlights, November 25, 26, 27.

[33] Lewington, J., "Clement calls for transit investment," The Globe and Mail, April 11, 2000.

[34] For example, in March 1997, responsibility for administering the act was transferred from the Ministry of the Environment to the Ministry of Natural Resources, and in June 1997, new appointments to the Niagara Escarpment Commission included people who have called for the dissolution of the Niagara Escarpment Plan itself.

[35] EBR Registry Number: RB8E6005.

[36] EBR Registry Number: AB00E4001.

[37] Ibid.

[38] Letter from the Canadian Environmental Law Association to Ray Pichette, Acting Director, MNR Policy and Planning Coordination Branch, June 9, 2000.

[39] MacKenzie, Bruce, "Delphi Point Protected as Key Escarpment Park," On the Edge, Winter 2000, page 2.

[40] Ministry of Natural Resources, "News release: Ontario Adds to Niagara Escarpment Protected Areas," March 21, 2000.

[41] Stein, D.L., "Trouble continues on Oak Ridges," The Toronto Star, November 11, 1999.

[42] Josey, S., "Pickering to limit development near the Rouge," The Toronto Star, April 12, 2000, page B3.

[43] In the May 2000 budget speech, the Finance Minister stated that the Ontario government is "Ready, willing and able to do our part to revitalize Toronto's waterfront." Robert Fung, the chair of the Waterfront Task Force estimates that the province would have to provide $1 billion as initial funding for the waterfront plan. Urquhart, I., "Waterfront plan requires commitment," The Toronto Star, May 10, 2000.

Chapter 7 – Land – Northern Ontario

[1] Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

[2] See Winfield and Jenish, page A.81.

[3] See Canadian Environmental Law Association Brief No 373 for a detailed overview of the process and critique of the proposals. Canadian Environmental Law Association, "The Lands for Life Proposals: A Preliminary Analysis." (Toronto: CELA, May, 1999.)

[4] Boyle, Theresa, "Parts of parkland deal bothered wildlife group," The Toronto Star, October 5, 1999.

[5] Mittlestaedt, Martin, "Ontario to open wilderness parks to hunting, Snobelen confirms: pre-election memo outlines pledge to angler, hunter federation," The Globe and Mail, February 9, 2000.

[6] See, among many others, Canadian Press, "More hunting to be allowed in new parks," The Toronto Star, July 23, 1999.

[7] CELA Brief No. 373, page 18.

[8] Ibid., page 26. Citing Environmental Mining Council of B.C., "More Precious Than Gold: Endangered Spaces Discussion Paper on Mining and the Environment [Workshop Draft, May 1997], page 9.

[9] EBR Registry Number: RA9E0011.

[10] See http://www.mnr.gov.on.ca/mnr/oll/alus/landuse7.htm

[11] EBR Registry Number: RB9E6011.

[12] Specifically, the Living Legacy Strategy provides that:

The more flexible approach on mineral exploration in new protected areas addresses the need of the mineral exploration sector to keep land open for exploration, while ensuring that environmental values are protected. In addition, the strategy clarifies that:

- existing *Mining Act* tenure (e.g., claims and leases) will not form part of the new protected areas;
- necessary access to existing claims or leases for mineral exploration or development purposes will be permitted; and
- the current rules about the implicit right to develop and to mine continue to apply to existing claims and leases.

See http://www.mnr.gov.on.ca/MNR/oll/ALU.S./landuse4.htm

[13] See http://www.wildlandsleague.org/mellon.htm

[14] Ontario Ministry of Natural Resources. Beyond 2000. (Ontario: Queen's Printer for Ontario, 2000), page 7; see also http://www.mnr.gov.on.ca/MNR/pubs/beyond2000.pdf

[15] Lloyd, Brennain, Northwatch, Letter to Acting Director, Corporate Planning and Financial Management Branch, Ministry of Natural Resources, Re: EBR Registry Number: PB9E4002, December 17, 1999.

[16] Ibid.

[17] Robincon, Doreen L., "Root Causes of Biodiversity Loss, Executive Summary," (Sweden: World Wildlife Fund, Macroeconomics Program Office, November 1999.)

[18] Ibid., page 9.

[19] Ibid.

[20] Ibid., pages 10-11.

[21] Section 5 of the *ESA* states:
"No person shall willfully,
(a) kill, injure, interfere with or take or attempt to kill, injure, interfere with or take any species of fauna or flora; or,
(b) destroy or interfere with or attempt to destroy or interfere with the habitat of any species of fauna or flora, declared in the regulations to be threatened with extinction."

[22] See news release: http://www.mnr.gov.on.ca/mnr/csb/news/jan5fs00.html

[23] Mittelstaedt, Martin, "Ontario endangered-species list slammed," The Globe and Mail, March 2, 2000, page A8.

[24] *FWCA* ss. 5(2).

[25] EBR Registry Number: PB9E6004.

[26] **Aquatic species "threatened" in Ontario**
- Redside Dace (*Clinostomus elongatus*)
- Cutlips Minnow (*Exoglossum maxillingua*)
- Pugnose Shiner (*Notropis anogenus*)
- Lake Chubsucker (*Erimyzon sucetta*)
- Black Redhorse (*Moxostoma duquesnei*)
- Kiyi (*Coregonus kiyi*)
- Shortjaw Cisco (*Coregonus zenithicus*)
- Channel Darter (*Percina copelandi*)
- Spotted Gar (*Lepsosteus oculatus*)
- Northern Madtom (*Noturus stigmosus*)

Terrestrial species "threatened" in Ontario
- Hill's Pondweed (*Potamogeton hillii*)
- Wild Hyacinth (*Camassia scilloides*)
- Blunt-lobed Woodsia (*Woodsia obtusa*)
- False Hop Sedge (*Carex lupuliformis*)
- Deerberry (*Vaccinium stamineum*)
- Smallmouth Salamander (*Ambystoma texanum*)
- Fowler's Toad (*Bufo fowleri*)
- Black Rat Snake (*Elaphe obsoleta*)
- Queen Snake (*Regina septemvittata*)
- Eastern Fox Snake (*Elaphe vulpina gloydi*)

Aquatic species "vulnerable" in Ontario
- Northern Brook Lamprey (*Ichthyoyzon fossor*)
- Silver Chub (*Machrhybopsis storeiana*)
- Pugnose Minnow (*Opsopoeodus emiliae*)
- Spotted Sucker (*Minytrema melanops*)
- River Redhorse (*Moxostoma carinatum*)
- Bridle Shiner (*Notropis bifrenatus*)
- Blackstripe Topminnow (*Fundulus notatus*)
- Warmouth (*Chaenobryttus gulosus*)

Terrestrial species "vulnerable" in Ontario
- Riddell's Goldenrod (*Solidago riddellii*)
- Crooked-stemmed Aster (*Aster prenanthoides*)
- Willow Aster (*Aster praealtus*)
- Five-lined Skink (*Eumeces fasciatus*)
- Butler's Garter Snake (*Thamnophis butleri*)
- Least Bittern (*Ixobrychus exilis*)
- Yellow Rail (*Coturnicops noveboracensis*)
- Eastern Mole (*Scalopus aquaticus*)
- Polar Bear (*Ursus maritimus*)

[27] See Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999), page 4-16 ff.

[28] At http://www.mnr.gov.on.ca/mnr/csb/news/oct19fs99.html the following "FAQs" are answered:

Q. Hunting has traditionally occurred on and around the Manitoulin alvars. Will hunting be allowed to continue for the 1999 hunting season?

A. Discussions are under way with a view to seeing the traditional hunt continue in 1999.

Q. What will the Ontario government and the NCC do with the Manitoulin alvar lands now that they have been acquired? Will hunting be allowed to continue beyond the 1999 hunting season?

A. Ontario Parks, MNR, the NCC and other partners involved in the acquisition will engage in discussions with conservation groups, as well as with representatives of Manitoulin Island, about the future management of the Manitoulin alvar lands. Given the traditional uses of the community and past use of the area for hunting, there is an intention to allow hunting and other recreational uses to continue on much of the land, as long as the highest value alvar habitats are protected. Any future considerations for use of the site will be addressed through the park management planning process.

[29] EBR Registry Number: AB00E4001.

[30] EBR Registry Number: RB9E6010.

[31] EBR Registry Number: PB00E6002.

[32] EBR Registry Number: AB00E4001.

[33] EBR Registry Number: PB9E6013.

[34] For a detailed comment on the class EA, see Lindgren, Richard, "Re: Draft Terms of Reference: Parks class EA," Canadian Environmental Law Association, Brief No. 379, October 1999.

[35] In October 1992, the Ministry of the Environment approved the "Class Environmental Assessment for Small Scale MNR Projects" (the "class EA"). This class EA provides a planning framework under which the Ministry of Natural Resources considers the potential environmental effects associated with the following projects:
- access points and docks;
- access road to mnr facilities;
- canoe routes;
- dams and dykes;
- fish stocking in new waters;
- fishways;
- shoreline and streambank stabilization;
- water-related excavation, dredge and fill activities;
- ponds; and,
- solid waste disposal.

[36] Letter from Dan Newman, Minister of the Environment to John Snobelen Minister of Natural Resources, April 20, 2000.

[37] EBR Registry Number: PB00E1006.

[38] EBR Registry Number: RB9E6002.

[39] EBR Registry Number: PB9E6007.

[40] EBR Registry Number: PB9E2011.

[41] EBR Registry Number: PB9E6012.

[42] An amendment to Ontario Regulation 670/98, made under the *Fish and Wildlife Conservation Act*.

[43] EBR Registry Number: RB9E6016.

[44] EBR Registry Number: RB9E3002.

[45] EBR Registry Number: RB9E1001.

[46] EBR Registry Number: PB9E6009.

[47] EBR Registry Number: PB9E6008.

[48] The hunting season for deer in WMU 44 was expanded by two weeks, and during the period of the expansion, hunting will be permitted using archery equipment only (i.e., long bows, compound bows and crossbows). This hunting season would be separated from the gun-hunting season by a period of nine days. Both the archery and gun seasons are opened to resident and non-resident hunters.

[49] For the 2000 open-hunting season, it is proposed that nine new units be added to be added to the 28 WMUs and sub-units in which wild turkey hunting was permitted in 1999:
To give legal effect to this proposal, an amendment would be made to O. Reg. 670/98, as amended by O. Reg. 580/99, the effect of which would be to add the above WMUs to Column 2 for Item 32 of Table 7 (Game Bird - Open Season).

[50] EBR Registry Number: PB9E6010.

[51] EBR Registry Number: RB9E6007.

[52] See http://www.mnr.gov.on.ca/mnr/csb/news/may17fs00.html

[53] EBR Registry Number: PB00E6005.

Chapter 8 – Natural resources

[1] See Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: CIELAP, September 1999.)

[2] Ibid., page A.97.

[3] Ibid.

[4] Ibid., page A.81.

[5] Ibid., page A-94.

[6] Ibid.

[7] Ibid., pages A.71 - A.72.

[8] Ibid., pages A.89 - A.90.

[9] News release, "Snobelen Signs Commercial Fishing Agreement," January 12, 1998.

[10] EBR Registry Number: PB8E6023.

[11] See, generally, Ontario's Environment and the Common Sense Revolution: A Four Year Report. (Toronto: The Canadian Institute for Environmental Law and Policy, 1999.)

[12] See Fish Community Objectives for Lake Ontario, (Ann Arbor: Great Lakes Fishery Commission, August, 1999), page 32.

[13] Ibid., page 33.

[14] Letter to Mr. Derryk Renton, Environmental Assessment Coordinator, from Theresa McClenaghan, Counsel, Canadian Environmental Law Association on behalf of Chippewas of Nawash First Nation Re: Terms of Reference for the Review of the "Class Environmental Assessment for Small Scale MNR Project," EBR Registry Number: PB8E6012.

[15] EBR Registry Number: PB8E3016.

[16] News release, November 9, 1999. See: http://www.mnr.gov.on.ca/MNR/csb/news/nov10nr99.html

[17] See October 29, 1999 Ministry of Natural Resources press release, "Ontario Protects Walleye Fishery," at http://www.mnr.gov.on.ca/MNR/csb/news/oct29nr99.html

[18] See news release at http://www.mnr.gov.on.ca/MNR/csb/news/mar22nr00.html

[19] EBR Registry Number: PB00E6001.

[20] EBR Registry Number: PB8E3008; see also Calleja, Frank, "Province to Protect Credit River," The Toronto Star, June 16, 2000.

[21] The whole body of documents appurtenant to Ontario's Living Legacy can be found at: http://www.mnr.gov.on.ca/MNR/oll/

[22] See http://www.mnr.gov.on.ca/mnr/oll/ofaab/index.html

[23] See Status of the Accord Commitments at: http://www.mnr.gov.on.ca/mnr/oll/ofaab/articlelist.htm

[24] See http://www.mnr.gov.on.ca/mnr/oll/ofaab/meetings.html

[25] See http://www.mnr.gov.on.ca/mnr/oll/ofaab/agendas/apr10.htm

[26] This quote is taken directly from http://www.mnr.gov.on.ca/MNR/forests/general_forests/competency/forestcompetency_index.htm

[27] Mittelstaedt, Martin, "Report pans loggers in Algonquin Park," The Globe and Mail, February 10, 2000.

[28] Holenstein, Julian, "Forest Industry Breaking the Rules," in OEN Network News, December 1999, page 10.

[29] *Crown Forest Sustainability Act*, 1994, Statutes of Ontario, 1994, Chapter 25, Am. by: 1996, C. 14, S. 1; 1998, C. 18, Sched. I, SS. 15-18.

[30] EBR Registry Number: RB9E6006.

[31] EBR Registry Number: PB9E7001.

[32] EBR Registry Number: PB00E7001.

[33] EBR Registry Number: AB00E4001.

[34] EBR Registry Number: AB00E4001.

[35] EBR Registry Number: PB00E7002; the decision was made to proceed with the proposed policy, with slight changes suggested by public commentators, in April 2000.

[36] EBR Registry Number: PB00E7003.

[37] See news release at http://www.mnr.gov.on.ca/MNR/csb/news/apr18nr00.html

[38] See http://www.ontariotreeseed.com/index.htm

[39] Another, minor, amendment was made to O.Reg.244/97, prescribing the minerals petalite, spodumene and lepidolite and coal as not being "rock" for the purposes of the act. See EBR Registry Number: RB9E6008.

[40] Section 1(4) of Schedule N to Bill 11 provides, among other things, that "no by-law passed … may prohibit or require a licence for the carrying on or operating of a pit or quarry or wayside pit or quarry."

[41] EBR Registry Number: AB00E4001.

[42] EBR Registry Number: AB00E4001.

[43] News release, Ontario Ministry of Northern Development and Mines, March 6, 2000.

[44] News release, Ontario Ministry of Northern Development and Mines, March 7, 2000.

[45] News release, Ontario Ministry of Northern Development and Mines, January 6, 2000.

[46] For a detailed discussion of the costs to society and the environment of mining, see Winfield and Chambers, Mining's Many Faces: Environmental Mining Law and Policy in Canada. (Toronto: CIELAP, 2000.)

[47] Robinson, Allan, "Ontario proposes to let mining firms avoid cleanup bonds," The Globe and Mail, November 1, 1999.

[48] EBR Registry Number: RD9E1001.

[49] Ibid.

[50] Winfield and Nadarajah, Submission by the Canadian Environmental Law Association and the Canadian Institute for Environmental Law and Policy to the Ministry of Northern Development and Mines Regarding Part VII of the *Mining Act* and the Mine Rehabilitation Code. 1999.

[51] Ontario Gazette, May 13, 2000, page 361.

[52] It is not as if the provincial government does not know that mines – even recently opened mines – are abandoned unrehabilitated. Ontario is spending $2.7 million, about one-tenth of the estimated total cost, to clean up and reclaim abandoned mine sites in the province. As well, after considerable high-profile pressure, the government is also planning on spending $18 million to clean up a single site: the Deloro mine north of Belleville. See http://www.ene.gov.on.ca/envision/news/03899.htm

[53] EBR Registry Number: AB00E4001.

[54] Letter to Ray Pichette, Acting Director, MNR Policy and Planning Co-ordination Branch, from the Canadian Environmental Law Association, June 9, 2000. CELA Brief 389.

[55] See http://www.gov.on.ca/MNDM/MINES/OGS/reg/introe.htm, and EBR Registry Number: AD00E2001.

Canadian Institute for Environmental Law and Policy
517 College Street, Suite 400
Toronto, Ontario
M6G 4A2

Website: http://www.cielap.org
E-mail: cielap@cielap.org
Telephone: 416.923.3529
Fax: 416.923.5949