

**Environmental
Commissioner
of Ontario**



Annual Report 1996

*Keep The Doors Open To
Better Environmental Decision Making*

Environmental
Commissioner
of Ontario



Commissaire à
l'environnement
de l'Ontario

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

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

April 1997

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

Dear Mr. Speaker:

In accordance with section 58 of the *Environmental Bill of Rights*, 1993, I am pleased to present the 1996 annual report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

Sincerely,

Eva Ligeti
Environmental Commissioner of Ontario

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



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

What's Inside

A Message From The Environmental Commissioner of Ontario	3	Part 5: Instruments	47
Executive Summary	5	What Is An Instrument?	48
Part 1: The <i>Environmental Bill of Rights</i> And The Environmental Commissioner of Ontario	9	Classifying Instruments	48
Part 2: The Environmental Registry	12	Posting Instruments On The Registry	48
Recommendations	14	Deemed Approvals	49
Part 3: Ministry Environmental Decisions	15	How Posting Instruments Affects Approvals Turnaround	50
Cutting Back Drinking Water Testing	17	Recommendations	51
Environmental Initiatives Reviewed In 1996	18	Part 6: Other Legal Rights	52
Dissolving Ontario's Acid Rain Program	20	Appeals	53
Self Monitoring For Ontario's Pits And Quarries	21	The Right To Sue	54
Ministry of Consumer and Commercial Relations	22	Whistleblower Rights	54
Ministry of Environment and Energy	22	Part 7: Statements of Environmental Values	55
Ministry of Municipal Affairs and Housing	25	Recommendations	58
Ministry of Natural Resources	26	Part 8: Education Initiatives	59
Ministry of Northern Development and Mines	30	Recommendations	61
Ministry of Transportation	31	Part 9: Financial Statement	62
Decision-Making Issues Across Ministries	31	Part 10: Summary Of Recommendations	66
Decisions Not Posted On The Registry	32	Part 11: Glossary of Terms	70
Summary of 1996 Ministry Reports	36	Key To Abbreviations And Acronyms	74
Recommendations	39	Part 12: Appendices	75
Part 4: Reviews And Investigations	41	Appendix A: 1996 Applications for Review	76
What Is A Review?	42	Appendix B: 1996 Applications for Investigation	78
What Is An Investigation?	42	Appendix C: Staff List	82
Applications Forwarded To Ministries	44	Appendix D: Environmental Commissioner of Ontario 1994-1995 Annual Report Summary of Recommendations	82
Groundwater Update	44		
Update On Refillables And Deposit-Refund Systems	45		
Recommendations	46		

A Message From The Environmental Commissioner of Ontario

The right to a healthy environment is critical. We are fortunate that this right is entrenched in Ontario's *Environmental Bill of Rights*.

The *Environmental Bill of Rights* makes the government responsible for protecting and conserving a healthy environment. As residents of this province, we all have the right and the responsibility to make sure that happens.

The *Environmental Bill of Rights* also establishes an Environmental Commissioner to provide an independent, impartial review of environmental decision making by provincial ministries. This helps Ontarians find out about, and evaluate how ministries meet their responsibility to protect the environment.

Throughout 1996, the ministries demonstrated an alarming lack of environmental vision. They failed to put their stated environmental values into action. Instead, their activities were characterized by omnibus-style legislation, cuts to environmental programs and the shift of environmental responsibilities to municipalities and the private sector.

Much of this was done without fully assessing the potential environmental effects and without enough public participation. I saw very little commitment to environmental monitoring and reporting, or to maintaining and increasing enforcement of environmental standards. I saw no commitment to providing assistance and supervision to municipalities, and to private sector and other organizations that now find themselves more responsible for delivering environmental protection. Without these commitments, Ontario will fall behind as a leader in environmental protection. And if we continue along this path, our right to a healthy environment will be jeopardized.

I encourage the ministries to add a new goal to their current restructuring efforts – stronger environmental protection. This requires a commitment from the ministries to allocate the staff and financial resources to put their stated environmental values into action. It also means keeping the door to environmental decision making open by providing the public participation opportunities required by the *Environmental Bill of Rights*.

In 1996, the *Environmental Bill of Rights* improved environmental decisions when ministries used it to solicit comments from Ontarians and to avoid environmental problems. You will find stories throughout this report where the public participation opportunities provided by the *Environmental Bill of Rights* led directly to better environmental protection.

The *Environmental Bill of Rights* encourages understanding of responsible environmental management. It promotes open dialogue and interaction among ministries, industry, environmentalists, citizen groups and employees to find the best environmental solutions.

We need to work toward these solutions with creativity and flexibility. We cannot afford to focus on short-term savings at the expense of long-term environmental health.



Eva Ligeti
Environmental Commissioner of Ontario



*Ontario's Environmental Bill of Rights
opens the door to environmental
decision making.*

Executive Summary

Introduction

Ontario's *Environmental Bill of Rights* opens the door to environmental decision making. It calls for the five-year appointment of an Environmental Commissioner who reviews and reports annually on how ministries comply with the law.

This is my second annual report as Environmental Commissioner. It covers the period from January 1, 1996 to December 31, 1996.

The Environmental Registry

The Environmental Registry is a computer bulletin board that gives people information about environmentally significant proposals and decisions, appeals, court actions and other things related to ministry environmental decision making.

New Registry user accounts rose steadily – about 200 every month. Total log-ons topped 11,000.

The Ministry of Environment and Energy's *Environmental Bill of Rights* Office (EBRO) announced a two-stage upgrade to the Registry. First, the Ministry of Environment and Energy started including an Internet address on some proposal notices, allowing users to download information. Second, the Registry will go on an Internet Web site in 1997, improving access and making it easier to post proposals.

I commend the Ministry of Environment and Energy for addressing some of the technical and administrative recommendations I made in my 1994-1995 annual report.

The Environmental Registry has now been tested and proven as a cost-effective way to open the door to government environmental decision making – if the ministries use it properly.

Ministry Environmental Decisions

Perhaps the most significant decisions made in 1996 were those that reduced the ministries' responsibility to protect the environment. The extent and pace of change were daunting. Given the enormous implications of many of these decisions, it is disturbing that many were made with a minimum amount of required public consultation.

Cutbacks Reduce Environmental Protection

I reviewed some specific programs where cost cutting increased the risk of compromising environmental protection – drinking water testing, Ontario's acid rain program, and the inspection of pits and quarries.

For years, the Ministry of Environment and Energy and the Ministry of Health provided drinking water testing to municipalities. With little notice, these services were transferred to municipalities that had to find testing labs and the money to pay for them. The public was not consulted. Nor were municipalities.

The government relied only on promises from private sector labs that they could handle the new workload and did no independent review of how much it would cost municipalities. Worse still, the Ministry of Environment and Energy did not assess how this shift affected the quality of drinking water testing.

Despite substantial improvements over the years, acid rain is



still damaging lakes and forests. Evidence shows that current sulphur dioxide emission levels are harmful to Ontario's more sensitive lakes.

Even though we need to do more, the Ministry of Environment and Energy continued to cut Ontario's acid rain program in 1996. Among other things, the Ministry will no longer monitor the recovery of acidified lakes in the Sudbury area.

We need to keep monitoring and researching acid rain. Otherwise, we won't know how much damage persists, or what we need to do to fully protect our lakes and forests.

The *Aggregate and Petroleum Resources Statute Law Amendment Act* changed the way the Ministry of Natural Resources regulates the aggregate industry. Now, all licensed pits and quarries operators will monitor their own environmental compliance.

This move to self monitoring was motivated by saving money, not by better environmental protection.

Review Of Selected Decisions

Ministry of Consumer and Commercial Relations

The *Safety and Consumer Statutes Administration Act* creates the Technical Standards and Safety Authority (TSSA), an industry-run, self-funded organization. The Ministry will hand over its authority to the TSSA to inspect and regulate underground fuel storage tanks. The Ministry did not indicate how compliance with standards will be ensured.

Ministry of Environment and Energy

The Ministry allowed the *Intervenor Funding Project Act* to expire. There was no opportunity for the public to comment on this decision, which reduces the ability of Ontarians to comment meaningfully on large environmental projects.

The *Environmental Assessment and Consultation Improvement Act* gives the Minister more discretion when deciding how much research must be done to prepare an Environmental Assessment. It represents the most sweeping reform of the *Environmental Assessment Act* since that *Act* was passed in 1975. Public consultation on this *Act* was inadequate. The Ministry should have published a detailed, objective analysis of the proposed changes and options.

A proposed amendment to a regulation under the *Niagara Escarpment Planning and Development Act* would have exempted Niagara Escarpment pits and quarry operators licensed before 1975 from having to get development permits for future activities. After the public commented, the Ministry changed the amendment to require a development permit for any activity involving water taking and the construction of new buildings.

The Ministry of Environment and Energy was the most consistently proactive in opening the door to its environmental decision-making processes. However, **Responsive Environmental Protection**, the Ministry's public consultation paper on regulatory reform, showed that a sweeping review of every Ministry environmental regulation is happening too quickly and is too narrowly focused.

Ministry of Municipal Affairs and Housing

The Ministry removed the requirements for full-height basement insulation from the Ontario Building Code. If insulation levels in new houses are reduced, more fuel will be burned for heating. Taking energy efficiency provisions out of the Code is inconsistent with the government's role in promoting energy conservation and improving air quality.

Ministry of Natural Resources

The Ministry restructured its core business in its May 1996 Business Plan and sector-specific business plans. These plans include a reduction in planning, operations, research, monitoring and enforcement activities in every resource sector.

The maintenance of Ontario's forests will now depend more heavily on the actions of the forest industry.

One of the Ministry's most high-profile decisions was about how land will be used in Temagami in Northern Ontario. Among other things, the Ministry will allow mining and logging in headwater areas of Lady Evelyn Lake. This decision allows mining in the area for the first time in 24 years, along with logging in more than one-third of the area's old-growth pine forests.

Ministry of Northern Development and Mines

The *Mining Act* now allows the Ministry to establish a self-certification system for mine closure and remediation. The Ministry said it will ensure compliance with mine closure standards through spot checks. This is questionable since the Ministry reduced its mine closure and rehabilitation staff from 18 to five.

Decisions Not Posted On The Registry

During the reporting period, many environmentally significant decisions were not posted on the Environmental Registry. This closed the door to environmental decision making.

Process Must Be Effective, Timely, Open And Fair

Regulatory reviews must be done with great care. If done too quickly, meaningful public input is impossible. And there is a risk of losing laws, regulations and policies that we need to protect the environment. There is no question that the effectiveness, efficiency and fairness of the regulation and policy-making process in Ontario can be improved. However, protecting public health, safety and the environment must be one of the goals.

Reviews And Investigations

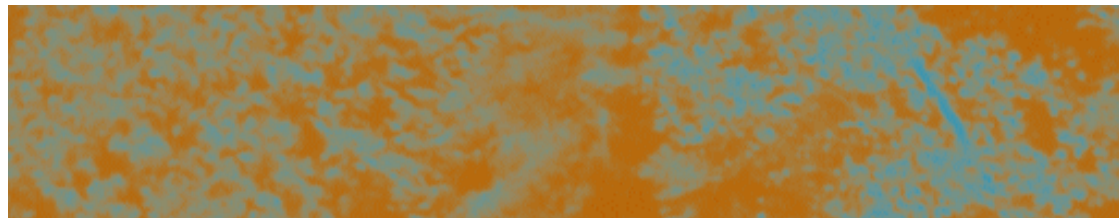
I received 13 Applications for Review and 17 Applications for Investigation during this reporting period. Many were well organized and backed by solid evidence.

Applications covered issues like resource management, air emissions, landfill management, mine closings and the need for intervenor funding.

The Ministry of Environment and Energy and the Ministry of Natural Resources denied several Applications that raised important public policy issues.

Update On Groundwater And Refillables

In its 1996 Business Plan, the Ministry of Environment and



Energy committed to developing a plan to protect Ontario's groundwater. I urge the government to make the development of a sustainable strategy for restoring, protecting and conserving groundwater a priority.

My research in 1996 showed that refillable beverage containers work. Plastic refillables are successfully used in Europe and South America. Deposit-refund systems should also be explored as a solution to waste management problems.

Instruments

Ministries must classify instruments based on how environmentally significant they are.

The Ministry of Natural Resources did not draft its instrument classification proposal during the reporting period. This denied Ontarians the right to comment on, appeal or apply for Reviews and Investigations of instruments issued by the Ministry.

The Ministry of Environment and Energy was the only ministry that had classified its instruments by 1996, and therefore was the only ministry that gave people the opportunity to comment on instruments. In some cases, public input helped improve the final instrument. In others, it led to the denial of instruments that did not adequately protect the environment.

I looked into concerns that the posting requirement added as many as 45 days to the instrument approval process. My review showed that approvals that have to be posted on the Environmental Registry were not delayed longer than approvals in general.

The *Environmental Approvals Improvement Act* proposes that approvals be “deemed” to exist if certain conditions are met. That means the Ministry of Environment and Energy would be less involved in the approvals process and the public would have fewer opportunities to comment.

Other New Legal Rights

During 1996, the appeal process applied to the Ministry of Environment and Energy only. At December 31, 1995, 11 applications for leave to appeal were pending before the Environmental Appeal Board: five were granted (all related to a decision on approvals for Petro-Canada Products in Mississauga); five were denied; and one was withdrawn.

Seven new applications for leave to appeal were made in 1996. One was granted, four were denied and two were withdrawn.

In the Petro-Canada appeal, the parties reached a settlement in which the company agreed to reduce sulphur dioxide

emissions from its Mississauga refinery. This appeal demonstrates that the rights created by the *Environmental Bill of Rights* are usable, practical and improve environmental protection. Communities that felt powerless in the past should take note of this case.

Statements of Environmental Values

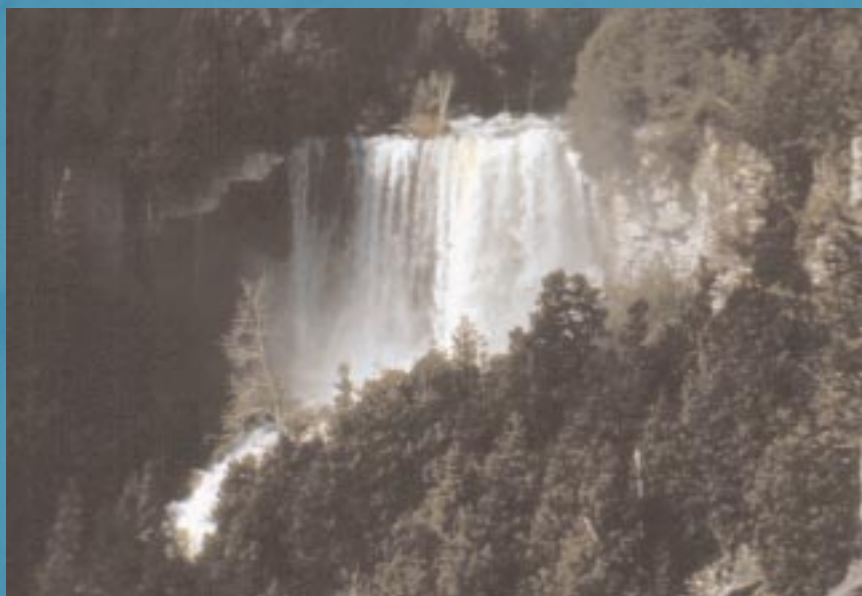
Last year I recommended that the ministries define environmental protection and sustainability goals and objectives for their daily operations either in their Statements of Environmental Values or in separate but complementary documents.

During this reporting period, I reviewed in detail how five ministries in particular considered their stated environmental values in developing their 1996 Business Plans. I found that these ministries failed to integrate environmental considerations into those Plans.

Education Initiatives

The number of requests for information and presentations during this reporting period makes it clear that Ontarians want to know about the *Environmental Bill of Rights* and their rights to take part in environmental decision making. My discussions with people across the province continue to confirm that Ontarians are interested in, and concerned about the protection, conservation and restoration of the natural environment, and want to know how they can get involved.

The Ministry of Environment and Energy's funding for the Ontario Environment Network's Environmental Registry Coordinator position ended, leaving an educational gap. The ministries of Environment and Energy, Consumer and Commercial Relations, and Transportation made some progress toward educating their staff and stakeholders about the *Environment Bill of Rights*.



Part 1

*Ontario's Environmental Bill of Rights
helps Ontarians make sure the
government is accountable for the
decisions it makes.*

Part 1:

The *Environmental Bill of Rights* And The Environmental Commissioner of Ontario

The *Environmental Bill of Rights*

Ontario's *Environmental Bill of Rights* opens the door to environmental decision making. It helps Ontarians make sure the government is accountable for the decisions it makes.

Preamble

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

Purposes

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



MINISTRIES COVERED BY THE *ENVIRONMENTAL BILL OF RIGHTS*

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

*On September 27, 1995, the Ontario government tabled Bill 1. If passed, it will result in the following reconfiguration of the ministerial portfolios of three ministries under the *Environmental Bill of Rights*: the Ministry of Municipal Affairs and Housing, the Ministry of Citizenship, Culture and Recreation and the Ministry of Economic Development, Trade and Tourism. This report uses the proposed names of the reconfigured ministries.

Public Rights To Participate

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

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

The Environmental Commissioner of Ontario

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

Mandate

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



Part 2

The Environmental Registry gives people access to environmentally significant proposals and decisions, appeals of instruments, court actions and other information related to government environmental decision making.

Part 2:

The Environmental Registry

What Is The Environmental Registry?

The Environmental Registry gives people access to environmentally significant proposals and decisions, appeals of instruments,

court actions and other information related to government environmental decision making. Ministries have to post environmentally significant proposals on the Registry so that the public can provide input on decisions – before they are made.

ENVIRONMENTAL REGISTRY STATISTICS JANUARY 1, 1996 - DECEMBER 31, 1996

January

Log-ons	1,221
New User IDs	250
Information Downloads	8,727

February

Log-ons	1,263
New User IDs	305
Information Downloads	9,676

March

Log-ons	902
New User IDs	182
Information Downloads	5,096

April

Log-ons	953
New User IDs	154
Information Downloads	6,921

May

Log-ons	803
New User IDs	144
Information Downloads	9,254

June

Log-ons	867
New User IDs	142
Information Downloads	7,990

July

Log-ons	1,062
New User IDs	195
Information Downloads	8,524

August

Log-ons	749
New User IDs	151
Information Downloads	5,607

September

Log-ons	778
New User IDs	158
Information Downloads	4,559

October

Log-ons	1,115
New User IDs	251
Information Downloads	5,229

November

Log-ons	1,178
New User IDs	180
Information Downloads	6,086

December

Log-ons	702
New User IDs	130
Information Downloads	7,325

Total Log-ons	11,593
Total New User IDs	2,242
Total Information Downloads	84,994

The Environmental Registry continues to grow as Ontarians' first point of access to the decision-making process. During this reporting period, new Registry user accounts rose steadily – about 200 every month. Total log-ons topped 11,000. And information downloads averaged around 7,000 a month.

Making The Registry More Effective

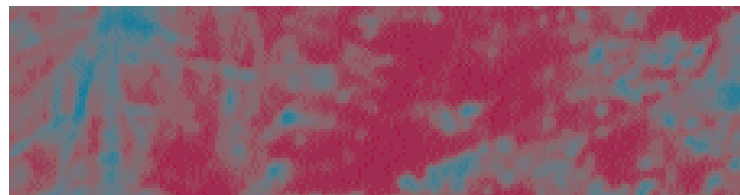
Few technical or administrative improvements were made to the Registry until late in the reporting period. Users pointed out fewer technical problems, but I still received complaints about spelling, French translation, incorrect information and poor search capabilities.

Last year, I recommended that a single authority operate the Registry and make it easier for people to use. In October 1996, the Ministry of Environment and Energy's *Environmental Bill of Rights* Office (EBRO) announced a two-stage upgrade. The first stage began in 1996 when the Ministry of Environment and Energy started including an Internet address for some proposal notices, allowing users to download the full text of proposals for some policies, Acts and regulations. In the second stage, the Registry will go on an Internet Web site where proposals will be linked to their full text. The site will have a direct dial-up feature for people who have a modem but no Internet access. This upgrade will improve Registry access and make it easier to post proposals.

A database of Registry information that users can search is planned too, and the technical and administrative functions of the Registry will both be handled by the EBRO. The EBRO will manage the information on the Registry for all ministries.

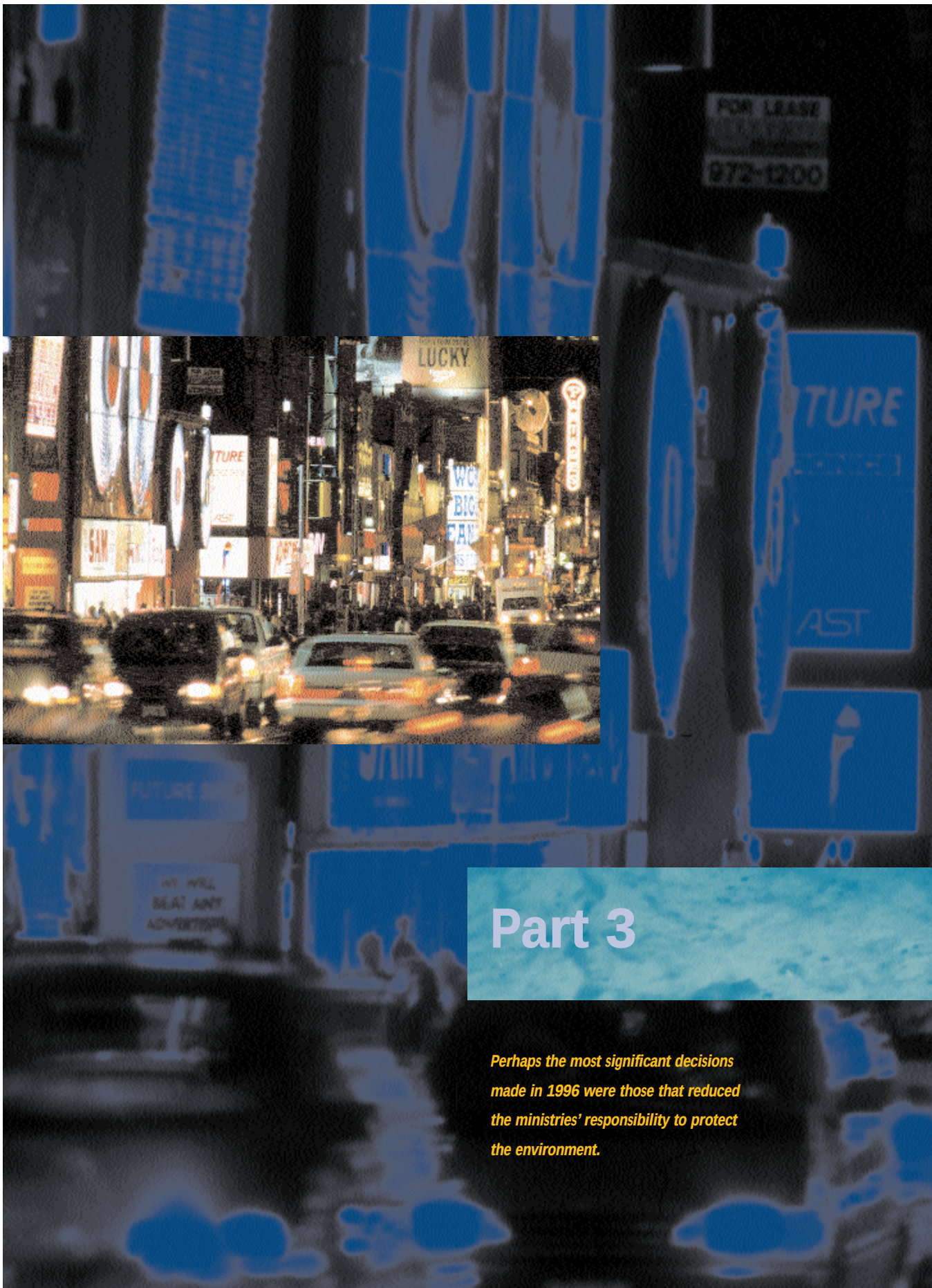
I commend the Ministry of Environment and Energy and the EBRO for addressing some of the technical and administrative recommendations I made in my 1994-1995 annual report. At the same time, it is still sometimes difficult for Ontarians who live far from Ministry offices to get the full text of proposals and decisions. It's even harder if they do not have Internet access. Ministries should develop and publish standard procedures for releasing the full text of proposals to the public and for enabling people who live far from ministry offices to stay informed.

The Environmental Registry has been tested, upgraded and proven as a cost-effective way to open the door to the government's environmental decision making process – if the ministries use it properly. It is time for ministries to maximize the public participation opportunities the Environmental Registry offers and keep the door open to environmental decision making in Ontario.



Recommendations

- 2.1 Ministries maximize the potential of the Environmental Registry to get public feedback by posting proposals early and often.
- 2.2 The Ministry of Environment and Energy continue to make technical and administrative improvements to the Environmental Registry.



Part 3

Perhaps the most significant decisions made in 1996 were those that reduced the ministries' responsibility to protect the environment.

Part 3:

Ministry Environmental Decisions

The following review shows the kinds of decisions ministries made in 1996, and whether they complied with the public participation and environmental protection requirements of the *Environmental Bill of Rights*.

Posting Proposals And Decisions On The Environmental Registry

In 1996, all 12 ministries were required to use the Environmental Registry for environmentally significant decisions. Five ministries did. They were:

- Consumer and Commercial Relations
- Environment and Energy
- Municipal Affairs and Housing
- Natural Resources
- Transportation

These ministries said they made no environmentally significant decisions in 1996 that required posting:

- Agriculture, Food and Rural Affairs
- Culture, Citizenship and Recreation
- Economic Development, Trade and Tourism
- Health
- Labour
- Management Board Secretariat
- Northern Development and Mines

The chart at the top of page 17 shows the number of proposals and decisions posted on the Environmental Registry, and the number of proposals undecided at the end of the reporting period.

Exceptions

Some environmentally significant proposals do not have to be posted on the Environmental Registry for public comment:

- if they are mostly financial or administrative
 - if they give effect to a budget or economic statement
 - if they are instruments that are part of projects approved or exempted under the *Environmental Assessment Act*
 - in emergencies when the delay caused by the posting would put people, the environment or property in danger*
 - if equivalent public participation has already taken place*
- *these decisions must be posted on the Environmental Registry as exception notices

In addition, Regulation 482/95 permanently exempted the Ministry of Finance from the *Environmental Bill of Rights*. It also exempted anything the other ministries did related to “realignment of government expenditures” from the public notice and comment requirements for 10 months, ending September 30, 1996.

The Ministry of Environment and Energy used this exemption sparingly. On the other hand, the Ministry of Natural Resources interpreted Regulation 482/95 as widely as possible. The ministries of Agriculture, Food and Rural Affairs, and Northern Development and Mines used the exemption too. As a result, proposals for new policies, Acts and regulations that I considered environmentally significant were not posted on the Registry for public comment.

ENVIRONMENTAL REGISTRY PROPOSALS AND DECISIONS

	Ministry	Proposals undecided* at Dec. 31, 1995	Proposals posted in 1996	Decisions posted in 1996	Proposals undecided* at Dec. 31, 1996
Policy Postings	MOEE	13	12	12	13
	MNR	6	13	2	17
	MMAH	0	3	2	1
	MTO	1	3	2	2
Act Postings	MOEE	0	2	0	2
	MNR	0	1	0	1
	MMAH	1	1	1	1
Regulation Postings	MOEE	21	17	20	18
	MNR	n/a	4	1	3
	MCCR	n/a	3	0	3

* Undecided means that no decision was posted

Restructuring Environmental Protection

Perhaps the most significant decisions made in 1996 were those that reduced the ministries' responsibility to protect the environment. Never before have Ontarians seen environmental laws and regulations changed so much or so quickly.

We need to review laws to make sure they still work. The *Environmental Bill of Rights* itself recognizes this by giving Ontarians the right to request a Review of environmental laws and policies.

However, little is gained when decisions are made too quickly, omnibus-style, and without adequate public consultation. Good decisions are more likely to happen, and be more acceptable to all Ontarians, when the process is effective, timely, open and fair.

Decisions To Cut Spending Reduce Environmental Protection

In April, the Ministry of Environment and Energy announced that 750 people would be laid off over the next two years – 400 were gone by the end of 1996. The Ministry of Natural Resources announced layoffs of 2,170 people over the next two

years – 900 were laid off in May alone. How will these reductions affect Ontario's environment? I reviewed some specific programs where cost cutting compromised environmental protection – drinking water testing, Ontario's acid rain program and the inspection of pits and quarries.

Cutting Back Drinking Water Testing

Drinking water must be rigorously tested to ensure contamination is found and fixed right away. Ontarians expect safe, reliable water to drink.

Ontario's drinking water treatment plants are usually owned and operated by municipalities. The Ministry of Environment and Energy issues waterworks approvals, including conditions on what kind of drinking water testing should be done. The Ministry inspects water treatment plants every two years to make sure they are complying with Ministry guidelines.

For years, the Ministry of Environment and Energy and the Ministry of Health provided drinking water testing services to municipalities. To save money, in 1996 the Ministry of Environment and Energy decided to stop its water testing service and the Ministry of Health followed suit. As a result, more than

continued on page 20

December 1995

Amending five MNR laws via Bill 26 (MNR)	Not posted on Registry**
Amending Municipal Act via Bill 26 (MMAH)	Not posted on Registry
Amending Mining Act via Bill 26 (MNDM)	Not posted on Registry
Marketing government land for development (MBS)	Not posted on Registry

January 1996

Provincial Policy Statement under Planning Act (MMAH)	60 days on Registry
Ontario Building Code Reform (MMAH)	34 days on Registry
Environmental Land Use Planning Reform (MOEE)	30 days on Registry
Temagami Land Use Plan (MNR)	30 days on Registry
Use of Biosolids on Agricultural Land (MOEE)	30 days on Registry

February 1996

Directive on Contaminated Property (MTO)	30 days on Registry
Tax Rebates for Managed Forests (MNR)	Not posted on Registry

March 1996

End of Intervenor Funding (MOEE)	Posted on Registry as information notice
----------------------------------	--

April 1996

Treatment Requirements for Combined Sewer Systems (MOEE)	45 days on Registry
Noise Assessment Criteria in Land Use Planning (MOEE)	30 days on Registry
Southwestern Ontario Transportation Perspective (MTO)	30 days on Registry
New governance for Serpent Mounds Park (MNR)	Not posted on Registry
Amending three MNR laws via Bill 36 (MNR)	Not posted on Registry
\$3-million grant for Cornwall Ethanol Plant (OMAFRA)	Not posted on Registry

May 1996

Increased size limit for fishing muskellunge (MNR)	30 days on Registry
Larder River Provincial Park Management Plan (MNR)	30 days on Registry
Business Plans (all ministries)	Not posted on Registry
Changes to Industrial Effluent Monitoring Regs (MOEE)	Not posted on Registry
Amendments to numerous Acts via Bill 46 (OMAFRA)	Not posted on Registry
Bill 52 governing aggregate and petroleum industries (MNR)	Not posted on Registry
Changes to Safety and Consumer Laws via Bill 54 (MCCR)	Not posted on Registry
Elimination of five Advisory Bodies (MNR)	Not posted on Registry
Ending Farm Pollution Advisory Committee (MOEE)	Not posted on Registry
Ending bacterial testing of tap water (MOH)	Not posted on Registry

June 1996

New Environmental Approvals via Bill 57 (MOEE)	87 days on Registry
Amending Environmental Assessment Act via Bill 76 (MOEE)	54 days on Registry
New Smog Plan for Ontario (MOEE)	75 days on Registry
New Landfill Standards (MOEE)	82 days on Registry

June 1996 (cont'd.)

Guideline for use at Contaminated Sites	Posted on Registry as exception
Instrument Classification under Gasoline Handling Act (MCCR)	45 days on Registry (1st posting)
Presqu'île Provincial Park Management Planning (MNR)	32 days on Registry
Forest Operations Prescription Guideline (MNR)	30 days on Registry
Unlicensed sale of animal parts (MNR)	Not posted on Registry
Creation of Massasauga Provincial Park (MNR)	Not posted on Registry
Eliminating Horticultural Inspectors (OMAFRA)	Not posted on Registry

July 1996

Lake Nipigon walleye/sauger sport fishing regulations (MNR)	30 days on Registry
Responsive Environmental Protection public consultation paper (MOEE)	76 days on Registry
Reopening of Mining Lands in Temagami (MNDR)	Not posted on Registry

August 1996

Changing Pesticide Regulations (MOEE)	38 days on Registry
Exemption for Niagara Escarpment pits and quarries (MOEE)	38 days on Registry

September 1996

Proposed changes to Game and Fish Act (MNR)	37 days on Registry
Amendment to North Bay District Land Use Guidelines (MNR)	30 days on Registry

October 1996

Three-Year Plan for Standard-Setting (MOEE)	60 days on Registry
Amendments to municipal legislation via Bill 86 (MMAH)	Not posted on Registry
Approval of Forest Management Planning Manual (MNR)	Posted on Registry as exception
New regulation under Public Lands Act (MNR)	Not posted on Registry
New regulation under Lakes and Rivers Improvement Act (MNR)	Not posted on Registry

November 1996

Two new standards under Gasoline Handling Act (MCCR)	30 days on Registry
Airport Policy Review (MMAH)	30 days on Registry
Changes to development charges legislation via Bill 98 (MMAH)	Not posted on Registry (Posted in 1997)
Amendment 101 to the Niagara Escarpment Plan (MOEE)	Posted on Registry as exception

December 1996

Classification of Instruments under Gasoline Handling Act (MCCR)	75 days on Registry (2nd posting)
Operational Constraint on Use of Furnace Slag (MTO)	45 days on Registry
Cochrane Remote (Wilderness) Tourism Strategy (MNR)	30 days on Registry
Prescribed Burn Planning Manual (MNR)	30 days on Registry
Wabikimi Provincial Park Expansion (MNR)	45 days on Registry
Mikisew Provincial Park Management Planning (MNR)	45 days on Registry
3 Regulations/1 Policy Implementing Bill 76 Amendments (MOEE)	30 days on Registry

***See Decisions Not Posted On The Registry chart for details of initiatives not posted on the Environmental Registry.*

continued from page 17

400,000 annual water quality tests were transferred to the private sector, and each municipality now has to pay for testing.

Ontarians Had No Say

This decision was not posted on the Environmental Registry for public comment by either ministry. The public was not consulted. Nor were 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 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 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 Environment and Energy did not check if drinking water testing is now being done properly.

In 1996, the Provincial Auditor noted that, because of resource constraints, drinking water testing by hundreds of small treatment plants is not audited by the Ministry. 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.

Dissolving Ontario's Acid Rain Program

Acid rain happens when moisture in the air mixes with pollutants, particularly sulphur and nitrogen oxides. It became a high-profile environmental issue in the 1970s when scientists discovered it was contributing to declining fish populations in south-central Ontario lakes.

In 1984, Canada's federal and provincial governments agreed to cap annual sulphur dioxide emissions at 2,300 kilotonnes in the seven eastern provinces by 1994. Ontario agreed to reduce its

emissions to 885 kilotonnes by the same year, and announced regulations to set specific limits for Ontario's four major acid gas emission sources in late 1985.

Acid Rain Still A Problem

Substantial improvements have been made, but acid rain continues to damage lakes and forests. The 1996 Canada-United States Air Quality Agreement Progress Report states that "acidifying emissions are still a serious problem for aquatic and terrestrial ecosystems and human health." Evidence also shows that current sulphur dioxide emission levels are harmful to Ontario's more sensitive lakes. Experts say further reductions are needed – some say as much as 75 per cent over and above currently planned reductions.

In addition, nitrogen oxide emissions (60 per cent of these emissions in Canada come from cars, trucks, trains, etc.) have not decreased. This is particularly worrisome in Ontario. Many of our most sensitive ecosystems get some of the highest levels of nitrate deposits in North America because they are close to high traffic areas.

The Need To Do More

Despite the need to do more, the government continues to dissolve its acid rain program. Since 1991, the Ministry of Environment and Energy's monitoring network dropped from 39 to 16 sites. There is more than 10 years' worth of unanalysed deposition data. Substantial cuts in 1996 resulted in decreased quality assurance procedures – compromising the completeness and integrity of data collected. As well, the Ministry decided to stop monitoring the recovery of acidified lakes in the Sudbury area, even though many consider that information to be critical to understanding how ecosystems recover from acidification.

Cuts to Ontario's acid rain program have reduced our ability to protect our lakes and forests and to contribute to the national and international fight against acid rain. A continued focus on acid rain is especially important given plans to deregulate power plants in the midwestern United States. This will likely increase coal burning and sulphur dioxide emissions and increase pollution in downwind regions like Ontario.

We need to allocate enough resources to keep monitoring and researching this problem. If we don't, we will have no way of knowing how much damage acid rain continues to cause, or what we need to do to fully protect our lakes and forests.

Self Monitoring For Ontario's Pits And Quarries

Sand, gravel and stone (aggregates) are taken from pits and quarries and used for construction and building roads. The Ministry of Natural Resources regulates aggregate operations on public and private lands.

The Ministry has issued about 2,700 licences to pits and quarries on private lands in Ontario. Of these, 1,000 are held by operators who belong to the Aggregate Producers Association of Ontario (APAO), 700 by municipalities and 1,000 by smaller,

non-APAO operators.

Passed in 1996, the *Aggregate and Petroleum Resources Statute Law Amendment Act* introduced many significant changes. The Ministry used to inspect all licensed pits and quarries each year and prepared four-year reviews with input from municipalities. Now, all licensed pits and quarries operators will monitor their own environmental compliance.

This move to self monitoring was motivated by saving money, not by better environmental protection. The focus on savings also led to a drop in Ministry Aggregate Resources Officers from 41 to 32 in 1996. The Ministry says self monitoring will free staff up to do more audits of "bad apples" and focus on compliance and enforcement.

PUBLIC INPUT IMPROVES DECISION ON NIAGARA ESCARPMENT PITS AND QUARRIES

The Ministry of Environment and Energy posted a proposal to amend Regulation 828 to the Niagara Escarpment Planning and Development Act. This amendment would have exempted Niagara Escarpment pits and quarry operators licensed before June 10, 1975 from having to get a development permit from the Niagara Escarpment Commission for future activities. In other words, the activities of those operators – about 40 pits and quarries, almost half of them in Halton Region – would not be reviewed for their environmental impact on the Niagara Escarpment.

The proposal notice acknowledged that the highest court in Ontario had ruled that development permits were required for certain types of operations – even though the aggregate extraction had been licensed since 1975. A quarry may have a licence to extract aggregate, but it still needs permits to take water and to do any development in the Niagara Escarpment area.

The Ministry received 249 comments on this posting. More than 200 of them, mostly from industry employees and their families, supported the original proposal.

Comments against the proposal came from organizations with large memberships, as well as those in a petition signed by hundreds of people.

The Ministry did not provide a contact name or phone number, the text of the proposed regulation was not available to the public for a week after the posting, and there was no Regulatory Impact Statement. The description of how the Ministry considered its Statement of Environmental Values (SEV) was vague. To its credit, the Ministry reposted the notice four times to update information to the public and considered public comments before it made its final decision.

The Final Decision

The proposed amendment was changed so that quarries must get a development permit to take water and discharge it into the environment, or to construct new buildings in the Niagara Escarpment Plan Area.

Together, high-quality public submissions and the Ministry's commitment to consider what the public had to say made this a better decision.

The Ministry should evaluate the effectiveness of the new self-monitoring system in achieving environmental protection and report annually on the results.

Poor Public Consultation

Public consultation on this decision was poor. The Ministry only consulted with the APAO. The Aggregate Strategy Task Force, whose members include the road builders association, municipalities and the Conservation Council of Ontario, first heard about it when the proposed Act was introduced in the Legislature.

The proposal was not posted on the Environmental Registry. And while legislative committee hearings were held, they are not a substitute for broad consultation through the Environmental Registry or for other consultation methods.

The Ministry's Business Plan suggests that the public and municipalities have a role in monitoring compliance. But Ontarians have no access to private property where pits and quarries are located, and municipalities have declining resources and no jurisdiction for enforcing compliance.

The Ministry committed to posting regulations under this new legislation on the Environmental Registry.

Review Of Selected Decisions

Ministry of Consumer and Commercial Relations

The Ministry of Consumer and Commercial Relations posted three proposals for regulations during the reporting period. However, the Ministry's most significant initiative, the *Safety and Consumer Statutes Administration Act*, was not posted.

The Decision: Safety and Consumer Statutes Administration Act

The *Safety and Consumer Statutes Administration Act* was passed in June 1996.

How The Decision Was Made:

This decision was not posted on the Environmental Registry. The Ministry said it was an administrative decision and not environmentally significant.

What The Decision Means:

This *Act* allows the Ministry of Consumer and Commercial Relations to delegate environmental monitoring, and health and safety inspections for underground fuel storage tanks to an industry-run, self-funded, not-for-profit organization – the Technical Standards and Safety Authority. The Ministry did not indicate how compliance with standards will be ensured.

Transferring the training, licensing, inspection and prosecution of those responsible for underground fuel storage to this new non-government organization is a significant environmental decision. There are hundreds of leaks and spills from gasoline storage tanks every year and they can have serious environmental effects, including soil, drinking water and groundwater contamination. Leaks are hard and costly to find, contain and clean up.

I expressed my concern to the Ministry about how these changes could affect Ontarians' right to be notified of instruments issued under the *Gasoline Handling Act* through the Environmental Registry, their right to comment, and to request Reviews and Investigations. The Ministry said these rights will not be compromised. I will continue to review the impact of this law.

Ministry of Environment and Energy

The Ministry of Environment and Energy posted 31 proposals for new policies, Acts and regulations. To its credit, the Ministry posted most of the initiatives I considered environmentally significant. Still, the implications of certain decisions are troubling.

The Decision: Intervenor Funding Project Act

The Ministry of Environment and Energy let the *Intervenor Funding Project Act* expire. This law required proponents of large projects to provide up-front financial support to individuals or organizations to take part in environmental hearings about those projects.

How The Decision Was Made:

The Ministry provided no opportunity for the public to comment. The Ministry did its own review but refused to make it public.

What The Decision Means:

Eliminating intervenor funding reduces the ability of individuals and groups to take part in the environmental assessment process for large projects.

The Decision: The Environmental Assessment and Consultation Improvement Act

This *Act* amends the *Environmental Assessment Act*.

How The Decision Was Made:

This legislation was developed without enough public consultation. The Environmental Registry posting provided only 54 days for comment – not enough time for Ontarians to comment on such a complex initiative. There were legislative committee hearings, but most people cannot participate in those like they can through the *Environmental Bill of Rights* notice and comment provisions.

The Ministry should have published a detailed, objective analysis of the proposed changes and options, and provided expanded public consultation.

What The Decision Means:

This *Act* will significantly affect how Environmental Assessment is used as an environmental planning tool. The Ministry of Environment and Energy says it has these advantages:

- Harmonizes Ontario's environmental assessment requirements with the *Canadian Environmental Assessment Act*, eliminating regulatory overlap.
- Minister can focus hearings by the Environmental Assessment Board. For example, the Minister could define environmentally significant issues that must be addressed by the board and ensure that hearings are timely.
- Minister can reject an incomplete or an inadequate Environmental Assessment. Previously the Minister could only refer such Assessments to a potentially expensive and time-consuming hearing.

However, proponents can now avoid some of the key features of the previous *Environmental Assessment Act* – like providing

alternative ways to carry out projects – by carefully negotiating the terms of reference. The Ministry said that terms of reference for all proposed Environmental Assessments will be posted on the Environmental Registry for only 14 days.

The Minister will have more discretion when deciding how much research must be done to prepare an Environmental Assessment and whether a comprehensive study is required. As well, the Minister may limit issues for the Environmental Assessment Board's consideration, and impose deadlines for Board decisions.

The Decision: Guideline For Use At Contaminated Sites

This document gives advice and information about assessing the environmental condition of contaminated sites.

How The Decision Was Made:

Because the Ministry's Advisory Committee on Environmental Standards did extensive public consultation on the guideline in 1994, the Ministry did not post it on the Environmental Registry for public comment. This was an appropriate exception. The final posted guideline incorporated many of the Advisory Committee's recommendations.

However, the Canadian Petroleum Products Institute said the public consultation could have been better, and that all major stakeholders should have been at the table to draft the guidelines together.

What The Decision Means:

The guideline introduces several major policy changes, including offering property owners three approaches to restoring sites. It also reduces the Ministry's involvement in clean-ups.

The Ministry of Environment and Energy's Decision-Making Processes

Generally, the Ministry's processes for posting proposed policies, Acts and regulations, reviewing and considering public comments, and posting decisions were well designed.

The Ministry's regulatory reform initiative (see box on page 24) is an example of how to use the Environmental Registry properly. The Ministry first posted an information-only notice to let

The Ministry of Environment and Energy posted notice of **Responsive Environmental Protection**. This public consultation paper proposed changes to the 80 regulations covering every part of the Ministry's mandate. The Ministry said the goal was to create jobs, boost the economy, improve client service and reduce costs – all while maintaining high environmental protection standards.

The Ministry used the Environmental Registry to publicize this far-reaching initiative. The Ministry also held stakeholder meetings to discuss particularly controversial issues like waste reduction audits, marina pump-outs and transferring dust, noise and odor complaints to municipalities.

Staff Concerns Ignored

Relying partly on background materials prepared by the Ministry's staff, I reviewed 20 of the proposals covering a range of environmental issues. Much of the material prepared by Ministry staff contradicted the direction that the Ministry proposed publicly. The background material suggested options for strengthening environmental protection, but these were not made available for public consideration. For example:

- Staff said the regulation requiring sewage pump-out

stations at marinas was essential for protecting the environment. **Responsive Environmental Protection** proposed replacing the regulation with a voluntary code of practice.

- Staff said the regulation controlling the sulphur content of fuels in Metro Toronto is effective, fair and necessary. **Responsive Environmental Protection** described the regulation as obsolete and proposed to revoke it.
- Staff said an improved road salt regulation would help reduce environmental damage. Even though the regulation was already drafted, the Ministry did not include it in **Responsive Environmental Protection**.

Regulations only work if backed by adequate enforcement resources. There is no mention of the lack of enforcement resources problem raised by Ministry staff.

The Ministry should slow down and explore ways to strengthen environmental protection through its regulations. While the Ministry has agreed to post proposals for any new and amended regulations on the Environmental Registry, it is not clear if that alone will be enough of an opportunity to address longstanding concerns.

people know about it and the review process. The notice said any relevant comments would be incorporated.

A second Registry notice told Ontarians that **Responsive Environmental Protection**, the Ministry's consultation paper, was available. Although only a 46-day comment period was provided at first, the Ministry later extended it to 76 days. The Ministry says it will post individual proposal notices of changes to each regulation as they are developed.

Lack of time was a barrier to commenting on Ministry of Environment and Energy initiatives. For example, the

Environmental Approvals Improvement Act was first posted for a 30-day comment period – not enough time to respond to this complex proposal. The Ministry extended this to 89 days, but that extension overlapped with the comment period for the Ministry's regulatory review proposal.

Similarly, the *Environmental Assessment and Consultation Improvement Act* was also posted on the Registry for a 30-day comment period. While the Ministry extended that to 54 days, this coincided with the beginning of legislative committee hearings on the *Act*, and also overlapped with the comment period for the Ministry's regulatory review proposal.

THREE-YEAR PLAN FOR STANDARD-SETTING

The Ministry of Environment and Energy's Proposed Three-Year Plan For Standard-Setting encouraged input on a draft list of substances for standards development over the next three years. The Ministry regularly develops and updates standards for contaminants in air, soil, groundwater, surface water, drinking water, sediment and biota.

The Ministry opened up this standard-setting process by providing a 60-day comment period, clearly explaining how standards are used, the role of risk assessment, and how Ontarians can take part in the development of specific standards, and promising regular updates on the Environmental Registry.

I commend the Ministry for opening the door to this process. At the same time, the Ministry will need to update thousands of certificates of approval if the new standards are to have any practical effect on emissions. The Ministry should make sure it keeps the door open to this process as well.

Proposal notices were usually understandable and jargon-free, but the adequacy of information varied. No notices for regulations contained a Regulatory Impact Statement. Most notices did not have one or more of the following critical pieces of information – a contact name, telephone, or fax number. However, proposal descriptions improved over the reporting period.

Decision notices were not always posted promptly. The Ministry took considerable time – sometimes almost a year – to post decisions on regulations. Where notices were posted, they usually described the effect of public comment.

Ministry of Municipal Affairs and Housing

A number of this Ministry's decisions did not integrate social, environmental, economic and scientific considerations – a fundamental *Environmental Bill of Rights* requirement.

The Decision: Land Use Planning and Protection Act

The *Land Use Planning and Protection Act* became law in May 1996. A new Provincial Policy Statement came into effect at the same time.

How The Decision Was Made

The *Act* and the Policy Statement were posted on the Environmental Registry for 60-day comment periods. There were legislative committee hearings on the *Act*.

What The Decision Means:

Following four years of public consultation, the previous government made some substantial changes to improve environmental protection in the planning process. It handed over important decision-making powers to municipalities, but required that municipal planning decisions “be consistent with” provincial policy statements. The *Act* changed this to “have regard to” provincial policy statements. Now municipalities have more discretion to choose their own direction rather than follow provincial policy.

The new Policy Statement reduces protection for, among other things, environmentally significant natural areas. Development in prime agricultural areas used to be prohibited, but the new Statement allows it if there are no other “reasonable alternatives.” Because the terms are vague and municipalities need

only “have regard to” it, there could be disputes about what is actually required by the new Policy Statement.

The Decision: Ontario Building Code Amendments

The Ministry established new principles to guide the reform of the Ontario Building Code.

How The Decision Was Made:

The Ministry posted the proposal on the Environmental Registry for a 34-day comment period and released a discussion paper to stakeholders and the public.

Based on new principles for the Building Code, the Ministry proposed some revisions to the Code – including removing some energy conservation measures. For example, there is a proposal to decrease the amount of insulation required in above-grade walls by 33 per cent. The Ministry is consulting on these changes and expects to finalize them in 1997.

What The Decision Means:

The Ministry relied on the new principles to remove some insulation requirements from the Code, and to propose removing a number of other energy efficiency requirements. If insulation levels in new houses are reduced, more fuel will be burned for heating. This will increase pollution and greenhouse gas emissions.

The Ministry says that removing energy efficiency provisions from the Code will cut construction costs and make new homes more affordable. Stakeholders say that in the long run higher fuel costs will outweigh any savings from reduced insulation.

Taking energy efficiency provisions out of the Building Code is at odds with the government's commitment to addressing air-quality problems, and its plan for reducing greenhouse gas emissions.

The Decision: The Better Local Government Act

The *Better Local Government Act* reforms municipal laws so that municipalities can deliver services at lower costs to taxpayers.

How The Decision Was Made:

This *Act* was developed without broad public consultation and was not posted on the Environmental Registry. While it was scrutinized by a legislative committee, the *Act's* environmental implications were not raised.

What The Decision Means:

Ontarians can no longer sue municipalities in public and private nuisance for damage to their property from municipal sewers.

The importance of those rights is demonstrated by a lawsuit launched in 1996 against the Town of Fort Frances. Twenty-three families are suing the town for more than \$1 million for damage to their homes caused by sewer back-ups.

The Ministry of Municipal Affairs and Housing's Decision-Making Processes

In some cases, the Ministry did not include enough description in its decision notices. For example, the decision notice on the Provincial Policy Statement did not say when the Statement

took effect, how it would be put in place, or where people could get a copy of the final text.

On the other hand, the Ministry provided an excellent description of its decision on Back to Basics, its Ontario Building Code consultation paper, including the text of the new principles, how they would be used to guide development of the 1997 Building Code, and how the public can take part in the next stage of amendments.

Ministry of Natural Resources

The Ministry of Natural Resources restructured its core business in 1996, including a reduction in planning, operations, research, monitoring and enforcement activities in every resource sector. The Ministry made these changes to forest management alone:

- Amended the *Crown Forest Sustainability Act*
- Approved the new Forest Management Planning Manual
- Approved the new Forest Compliance Strategy
- Cut its forest management budget and staff by about 50 per cent
- Announced major restructuring of forest management in its Forest Management Business Plan

In every resource sector, the Ministry transferred its responsibility for aspects of planning, operations, monitoring and research to industry and client groups. Industries like forestry products and aggregates will now monitor and report on their own compliance with the law.

With budget and staff cuts announced in 1996, it is questionable whether the Ministry of Natural Resources will be able to adequately audit and enforce the law. And deep cuts to scientific and technological research and development jeopardize essential long-term forestry research.

The Ministry frequently used exceptions rather than posting proposals on the Environmental Registry, and rarely provided other consultation initiatives. This lack of public participation opportunities – especially in a year of major legislative and policy change – thwarts the purposes of the *Environmental Bill of Rights*.

The Decision: Changes to the Public Lands Act, the Lakes and Rivers Improvement Act, the Conservation Authorities Act, and the Game and Fish Act

The *Savings and Restructuring Act* amended the *Public Lands Act*, the *Lakes and Rivers Improvement Act*, the *Conservation Authorities Act* and the *Game and Fish Act*.

How The Decision Was Made:

This decision was not posted on the Environmental Registry. There were public hearings on some parts of the amendments as part of the legislative committee hearings on the *Savings and Restructuring Act*.

What The Decision Means:

Amendments to the *Public Lands Act* and the *Lakes and Rivers Improvement Act* show the move away from government control over environmentally harmful activities through traditional approvals. The Ministry says the number of approvals required by private interests wanting to use public lands will be cut by 80 per cent – saving more than \$1 million. Under the old *Public Lands Act*, mining companies had to get the go-ahead from the Minister before they could move heavy equipment or blast and strip away soil and vegetation from public land. Now, approvals will only be required for some large projects.

The *Public Lands Act* requires the Ministry of Natural Resources to protect lakes, rivers and public lands – lands that make up about 85 per cent of all Ontario land, including most waterways. Removing the review and approval of permits by the Ministry threatens the ecological integrity of lands supposedly held in trust for all Ontarians.

The *Conservation Authorities Act* now allows municipalities to sell conservation lands and to abolish conservation authorities.

Amendments to the *Game and Fish Act* create a fund for managing and conserving fish, wildlife and their ecosystems. An advisory council established by these provisions represents the interests of anglers and hunters, but does not provide a clear way to hear the voices of Aboriginal people, environmentalists or the tourism industry.



The Decision: An Act to Amend Certain Acts Administered by the Minister of Natural Resources

This *Act* amends the *Crown Forest Sustainability Act*, the *Game and Fish Act* and the *Provincial Parks Act*.

How The Decision Was Made:

This *Act* was not posted on the Environmental Registry, nor was it open to any other public consultation.

What The Decision Means:

This decision affects the management of forests and parks, and the enforcement of environmental protection laws in them. The Minister has more discretion when it comes to making decisions about the privatization of forest and park management.

The Decision: Aggregate Resources and Petroleum Statute Law Amendment Act

The *Aggregate and Petroleum Resources Statute Law Amendment Act* changes the *Aggregate Resources Act*, the *Petroleum Resources Act*, the *Mining Act* and the *Ontario Energy Board Act*.

How The Decision Was Made:

The Ministry did not post this *Act* on the Environmental Registry. Certain organizations like the Aggregate Producers Association of Ontario were consulted, and there were legislative committee hearings.

What The Decision Means:

This *Act* shows how the Ministry is reducing its responsibility for environmental protection, without giving the public enough information to put the cumulative environmental effects together. For example, this *Act* alone makes these changes:

- Operators will now monitor themselves.
- The Aggregate Resources Trust will now be responsible for funding the rehabilitation of abandoned pits and quarries where the licence or permit has been revoked, aggregate management research, and payments to the Crown and municipalities. The Trust may lack the information once collected and analyzed by the Ministry to help identify problem pits.
- Site plan requirements for licences and permits were removed from the *Act* and will be set out in the regulations. This will make it easier to change such requirements. The regulations and the details for site plans have not been developed yet.
- The Ministry of Transportation can now issue aggregate extraction permits. Considering the Ministry of Transportation's interest in an inexpensive, plentiful supply of aggregate for road projects, the Ministry may be subject to a conflict of interest.

The Ministry committed to posting proposals for regulations related to this *Act* on the Environmental Registry.

The Decision: Forest Management Planning Manual

This Manual addresses the preparation of forest management plans, and monitoring and reporting requirements, and will be used by Ministry staff, the forest industry and local citizens' committees.

How The Decision Was Made:

This decision was posted as an exception to the public notification requirements of the *Environmental Bill of Rights* because the Ministry said it had done equivalent public participation.

Early drafts of the Manual involved significant stakeholder input, but were not subject to province wide public notice. And changes to the final version were made without additional public review. This proposal should have been posted on the Registry to provide province wide notice and to allow stakeholders to comment on changes made to earlier drafts.

The Ministry did not cooperate when I asked to see documentation of this decision-making process – documentation that the Ministry's own *Environmental Bill of Rights* Manual requires.

The Ministry will probably revise the Manual again to reflect major changes in policy direction and government priorities. The Ministry should comply with the public participation requirements of the *Environmental Bill of Rights* when it makes any changes.

The Ministry did incorporate consideration of its Statement of Environmental Values and provided detailed requirements for posting forest management plans in the Manual. The Ministry will post proposal and decision notices on the Environmental Registry for all forest management plans intended for April 1, 1997 implementation.

What The Decision Means

The Manual sets out new rules for forestry operations, including the process for preparing forest management plans consistently across the province, along with rigorous requirements for public participation, plan content, monitoring, reporting and evaluation of forestry operations.

A major improvement over previous forestry planning is the addition of criteria and indicators to address forest sustainability.

Decision: Forest Compliance Strategy

The Forest Compliance Strategy sets out the government's "compliance partnership" with industry to help transfer more responsibility for forest management planning, operations and monitoring to the forest industry. It describes how compliance with forestry laws and regulations will be achieved – through industry self-regulation, Ministry inspections and the use of fees and penalties.

One of the most high-profile decisions the Ministry of Natural Resources made during the reporting period was about how land is used in Temagami in Northern Ontario.

Years Of Consultation Not Reflected

After years of study and consultation, the Ministry asked the Comprehensive Planning Council – a citizens' advisory committee – to make its final recommendations on land use in Temagami. The Council's draft land use strategy was posted on the Environmental Registry for public comment. More than 1,400 comments were submitted. The Council made some changes based on those comments, then submitted its final plan to the Ministry.

In June, the Minister announced that he accepted 22 of the Council's recommendations, and others with

“minor” changes. Some of these changes were not minor. Contrary to the Council's recommendation, the Ministry will permit mining and logging in some head-water areas of Lady Evelyn Lake. The Minister's decision allows mining in the Temagami area for the first time in 24 years, and logging in more than one-third of the area's old-growth pine forests.

Since significant changes were made, a revised proposal should have been posted on the Registry. The government failed to integrate social, economic, and environmental considerations. Originally, the Planning Council was asked to conduct a socio-economic study to help do that. However, the current government withdrew funding for the study. Without this information, and without public input on the final land use strategy, it is not surprising that the government's decision reflected mining and logging interests.

How The Decision Was Made:

The Ministry said the proposal was developed by a working group that included environmentalists and industry representatives, and that it was widely circulated. It was posted on the Environmental Registry for a 30-day comment period.

The Minister approved the Strategy “with modification.” The decision notice said only one written submission was received. Despite requests from my office, the Ministry did not provide the draft proposal, the approved Strategy or the public submission.

What The Decision Means:

I did not assess the impact of this decision, but I will review it when I receive the information I requested from the Ministry.

The Ministry of Natural Resources' Decision-Making Processes

The Ministry's most significant legislative, policy and regulatory changes were not posted on the Environmental Registry, and for the most part, were not open to public consultation other than legislative committee hearings (see chart on page 32).

There were problems with the few proposals the Ministry did post. Several notices were outdated. In one case, a notice about a proposed Remote Tourism Strategy for Cochrane invited the public to open houses that had been held by the time the notice was posted.

Some of the Ministry's parks planning proposals were posted before any background information or policy options were available, so the public did not have much to comment on. The Ministry should develop standard procedures so that it posts these proposals at the right times during the planning process.

Delays in posting decisions was another problem. Even though decisions were made on some proposals posted in 1995, those decisions were still not posted by the end of 1996.



Ministry of Northern Development and Mines

The Ministry of Northern Development and Mines significantly changed how it regulates mine closure and rehabilitation. However, it did not use the Environmental Registry during 1996.

The Decision: Mining Act Amendments

The *Savings and Restructuring Act* amended the *Mining Act* to create a self-certification system for mine closure and rehabilitation plans.

How The Decision Was Made:

These amendments were made without adequate public consultation. They were not posted on the Environmental Registry. The Ministry consulted with selected stakeholders in 1995, and a few stakeholders made their comments to a legislative committee.

The Ministry committed to posting the regulations, which will have more details on these changes, on the Environmental Registry.

What The Decision Means:

The *Mining Act* was changed in 1989 to require mine site rehabilitation as part of a mine's closure and that funds be set aside

for this. Mine operators had to report details of advanced exploration, production and closure plans to the Ministry. Before these changes were made, there were problems with clean-up and remediation of some sites. For example, unconfined sulphide tailings had contaminated lakes, rivers and streams with acidic leachate and silt.

Several issues remain. Some sites were abandoned and left in partial states of rehabilitation. Many were abandoned with little or no attempt at rehabilitation and sometimes the municipality is left to clean up. In 1991, the Ministry estimated more than 3,000 abandoned sites in Ontario may require some rehabilitation – nearly 300 may be hazardous to public health and safety, and the environment. The 1996 changes address some of these issues but also roll back other positive features of the 1989 amendments.

Changes include:

- Mine developers have more flexibility in designing the financial assurance provisions of their mine closure plans. A corporation may now pass a financial test or pledge financial assurance using less secure assets or royalties instead of providing cash or bonds. In some cases, the environmental damage caused by a mine may exceed the value of the less secure financial assurance provided.
- Mine developers do not need a Director's approval for a mine closure and rehabilitation plan before they start operations. Instead they have to prepare a closure plan and certify it themselves.
- Mine developers have to progressively rehabilitate mine sites whether or not a mine site closure has started or a closure plan has been filed.

The Ministry says the new self-certifying system for mine closure plans will be more efficient and require fewer staff. It also says it will use spot checks to ensure compliance with mine closure standards. But mine closure and rehabilitation compliance staff have dropped from 18 to five. One thing is clear – clean-up costs for many sites will be passed on to Ontario taxpayers despite the goal of the *Savings and Restructuring Act* to save taxpayers money.

Ministry of Transportation

The Ministry posted two decisions during the reporting period. One posting showed the need to remove jargon from Environmental Registry notices.

The Decision: Bridge Painting Guideline

The Ministry of Transportation finalized its Bridge Painting Guideline to help minimize the environmental effects of painting bridges.

How The Decision Was Made:

The 30-day comment period was appropriate, but the posted description was too vague and contained jargon. The description did not even mention bridge painting. Instead, it used the term “structural steel coating rehabilitation process.” This could be one reason why no one commented on the proposal.

What The Decision Means:

The Guideline does a good job of describing the environmental effects of bridge painting and the best management practices to reduce environmental damage. Its emphasis on pollution prevention is consistent with the *Environmental Bill of Rights*.

Unfortunately, the Guideline is for reference only – Ministry staff and contractors do not have to comply with it. This contradicts the Ministry’s 1996 Business Plan, which says it will set standards for the quality of contractor services and products, and make sure those standards are met.

Decision-Making Issues Across Ministries

Decisions Not Posted On The Registry

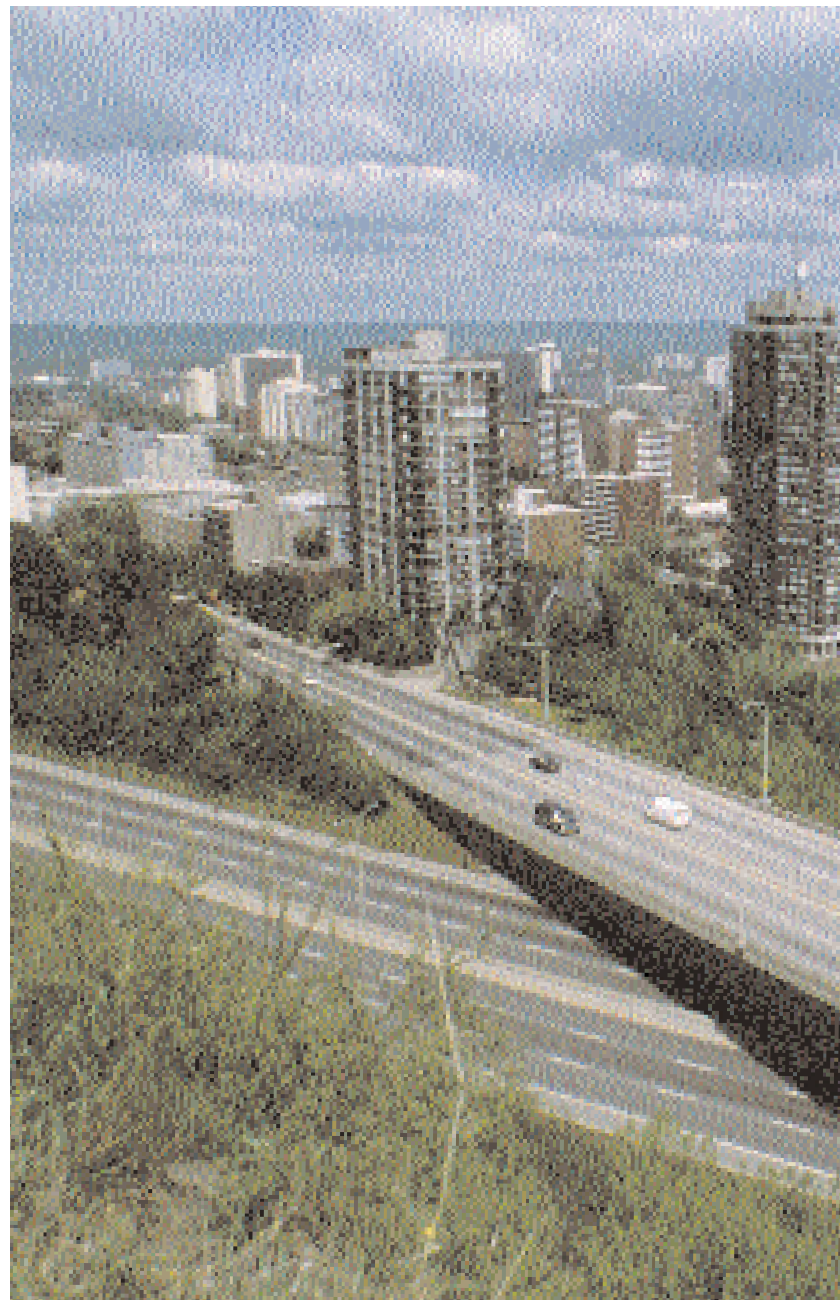
Too many decisions were not posted on the Environmental Registry, closing the door to environmental decision making (see chart on page 32).

Using The Environmental Registry

The Registry is a powerful public participation tool, but it is only one part of an adequate public participation system. Ministries should also provide additional comment opportunities like public meetings, mailings and newspaper announcements.

When ministries did post an environmentally significant proposal, there was often no attempt to explain the potential environmental effects. In most cases, ministries have prepared information on the environmental, social and economic effects of a proposal and the *Environmental Bill of Rights* allows ministries to include a Regulatory Impact Statement for proposed regulations. Regulatory Impact Statements assist the public to evaluate proposals and should be included with complex proposals.

I encourage all ministries to ensure all posted proposals are clearly written, accurately summarized and well organized with technical information explained.



Decision	Ministry Rationale	ECO Comment
Agriculture, Food and Rural Affairs		
Bill 46, Ministry of Agriculture, Food and Rural Affairs Statute Law Amendment Act, 1996 - established AgriCorp, a Crown agency to deliver crop insurance, market revenue and other agri-food programs - amended or revoked a number of Acts administered by or affecting OMAFRA and enacted three new Acts - amended <i>Game and Fish Act</i>	not posted because O.Reg. 482/95 invoked	Ministry met minimum legal requirements
Grant for Cornwall Ethanol Plant \$3-million grant for Cornwall's new ethanol production facility, which will create a market for about one-third of Eastern Ontario's corn crop	- not posted because of financial and administrative exception as this was a financial transaction - did not respond to ECO inquiry about SEV consideration	- appropriate exception - possible failure to comply with EBR requirement to consider SEV
Eliminating horticultural inspectors	- not environmentally significant because horticultural inspectors verify grade standards of produce and are not responsible for pesticide monitoring; this is done by the Pesticides Residues Program, although inspectors did pick up random samples for pesticide sampling; samples will continue to be collected by Ministry staff and the pesticide lab will provide testing - did not respond to ECO inquiry about SEV consideration	ECO will monitor for environmental consequences
Consumer and Commercial Relations		
Bill 54, Safety and Consumer Statutes Administration Act, 1996 - establishes a self-funded, not-for-profit organization to give industries a greater role in delivery of public safety programs and services - delegates role of MCCR in industry monitoring, health and safety inspection for certain activities, e.g., gasoline handling, to not-for-profit organization	- not posted because of administrative nature of Bill - not environmentally significant - considered SEV but because no significant impact on environment, SEV did not apply	- inappropriate exception - possible failure to consider environmental significance
Environment and Energy		
Sunsetting Intervenor Funding Project Act decision not to continue Intervenor Funding pilot project, which created a statutory process for awarding up-front funding to individuals or organizations wishing to participate in hearings before the Environmental Assessment Board, the Ontario Energy Board and Joint Boards	- not posted because it was not a prescribed Act; Ministry of Attorney General's jurisdiction; the announcement on the Registry was for information purposes only and does not make MOEE responsible for the legislation - did not respond to ECO inquiry about SEV consideration	- avoids public participation due to technicality - possible failure to comply with EBR requirement to consider SEV
Regulation 170/96 to amend Regulation 561/94 made under the Environmental Protection Act amends a regulation dealing with effluent monitoring and effluent limits for the industrial minerals sector with respect to the application of the regulation and to by-passes of sampling points	- not posted because administrative in nature - deemed not environmentally significant - no requirement to consider SEV - no other public consultation	- inappropriate exception - possible failure to consider environmental significance - possible failure to comply with EBR requirement to consider SEV

DECISIONS NOT POSTED ON THE REGISTRY

Decision	Ministry Rationale	ECO Comment
Environment and Energy		
Elimination of certain Agencies, Boards and Commissions task force recommended the elimination of the Farm Pollution Advisory Committee	- not posted due to O.Reg. 482/95 exemption - did not respond to ECO inquiry about SEV consideration	- Ministry met minimum legal requirements - possible failure to comply with <i>EBR</i> requirement to consider SEV
Health		
Elimination of water tests decision to stop testing Ontario tap water for bacteria beginning September 1, 1996	- not environmentally significant because decision will not alter quality or accuracy of testing; decision by MOEE to stop routine testing and MOH followed suit; transfer of testing from public to private sector or municipal labs - did not respond to ECO inquiry about SEV consideration	- possible failure to consider environmental significance - possible failure to comply with <i>EBR</i> requirement to consider SEV
Management Board Secretariat		
Accelerated disposal of surplus government lands province to market surplus government land throughout Ontario for productive development	- not posted because decision was financial and administrative, and not environmentally significant - sale of land not environmentally significant in itself; land sales involving ecologically sensitive areas are protected under Class Environmental Assessment process - some stakeholder consultation	- inappropriate exception - possible failure to consider environmental significance
Municipal Affairs and Housing		
Bill 86, Better Local Government Act, 1996 makes many amendments to municipal legislation, including adding a new section to the <i>Municipal Act</i> to limit nuisance lawsuits based on the escape of water or sewage from water or sewage works	- not posted because not environmentally significant - purpose is to protect municipalities from being sued by insurance companies - did not merit SEV tracking and consideration - consultation through Who Does What panel, legislative and committee debate	- Ontarians can no longer sue in public and private nuisance for damage to their property from municipal sewers - possible failure to comply with <i>EBR</i> requirement to consider SEV
Natural Resources		
Bill 36, An Act to Amend Certain Acts Administered by the Ministry of Natural Resources, 1996 - amendments related to Crown forest management, increasing revenues through park entrance and user fees, and allowing the privatization of provincial parks - some minor but positive measures to promote black bear protection, and a protection of property defence for deer culling are introduced as well	no response received to date	

Decision	Ministry Rationale	ECO Comment
Natural Resources		
Bill 52, Aggregate and Petroleum Resources Statute Law Amendment Act, 1996 - simplifies and removes legislation and regulations governing aggregate resources sector, establishes a self-regulation model of enforcement - delegates some MNR responsibilities to Ministry of Transportation - renames <i>Petroleum Resources Act</i>, simplifies regulations governing the petroleum and brine (salt) industries - private inspectors can be engaged to make compliance orders	- not posted because intended it to be exempted from posting by O.Reg. 482/95 but did not receive Third Reading before Sept. 30/96; will be posted as an exception under s. 30 due to equivalent public participation (public legislative committee hearings) - did not respond to ECO inquiry about SEV consideration	- inappropriate exception - legislative committee hearings were not equivalent public participation - only after ECO inquiry did Ministry commit to post as exception (but Ministry failed to post in 1996 or early 1997) - possible failure to comply with <i>EBR</i> requirement to consider SEV
Regulation 257/96 to amend Regulation 525 made under the Game and Fish Act exempts those who sell or purchase hides of black bear, deer or moose, or antlers of caribou, deer or moose from s. 51 of the Act, which prohibits the sale of a game animal without a licence	- not posted because administrative - deemed not environmentally significant - did not respond to ECO inquiry about SEV consideration	- inappropriate exception - possible failure to consider environmental significance - possible failure to comply with <i>EBR</i> requirement to consider SEV
Regulation 296/96 to amend Regulation 951 made under the Provincial Parks Act creates a new park, Massasauga Provincial Park (which has had interim status as Blackstone Harbour (Massasauga Wildlands) Provincial Park)	- will be posted as exception notice; public consultation carried out prior to enactment of <i>EBR</i> - determination of environmental significance and consideration of SEV subject to procedures outlined in MNR's <i>EBR</i> procedures manual	only after ECO inquiry did Ministry commit to post as exception (but Ministry failed to post in 1996 or early 1997)
Regulation 452/96 to amend Regulation 167/95 made under the Crown Forest Sustainability Act approves the Forest Management Planning Manual dated September 1996	- not posted because regulation only dealt with administrative process of formalizing status of Manual under Act; met requirements of <i>EBR</i> at time Manual was finalized through appropriate posting and consideration of comments at that time - did not respond to ECO inquiry about SEV consideration	- posted as exception after ECO inquiry - inappropriate exception — not equivalent public participation for final draft of Manual - Ministry referred to SEV in Manual
Regulation 453/96 made under the Public Lands Act - removes some approval requirements as a result of Bill 26 - work permits now only required for constructing buildings, trails, water crossings or roads on public land; dredging or filling shore lands; etc.	- not posted because O.Reg. 482/95 invoked, but missed deadline of Sept. 30/96; has undertaken to post exception file based on prior consultation with key interest groups - considered SEV based on evaluation criteria	- inappropriate exception - Ministry failed to post in 1996 or early 1997
Regulation 454/96 made under the Lakes and Rivers Improvement Act - removes some approval requirements as a result of Bill 26 - approval now only required to construct or make improvements to a dam; construct a large water crossing draining; channelize a river or stream with adverse effects to fish; etc.	- not posted because O.Reg. 482/95 invoked, but missed deadline of Sept. 30/96; has undertaken to post exception file based on prior consultation with key interest groups - considered SEV based on evaluation criteria	- inappropriate exception - Ministry failed to post in 1996 or early 1997

Decision	Ministry Rationale	ECO Comment
Natural Resources		
Reintroduction of Managed Forest Tax Rebate Program - offers property tax rebates to owners who manage their forests for long-term environmental benefits - owners must submit a management plan based on guidelines set by MNR	- not posted because of exception under s. 30(1)(a), <i>EBR</i> (equivalent public participation); program was in place from 1973 to 1991; its reinstatement was an election commitment; all previous participants in the program were notified by mail of the reinstatement after the decision was made - did not respond to ECO inquiry about SEV consideration	- exception not posted as required - possible failure to comply with <i>EBR</i> requirement to consider SEV
Hiawatha First Nation to govern Serpent Mounds Park MNR will turn over all of the park's fixed assets to Hiawatha First Nation and will assist, where possible, in setting up the park operation to create an economic development opportunity for the community	- not posted because considered to be an operational matter based purely on financial decisions, so not subject to <i>EBR</i> - did not respond to ECO inquiry about environmental significance - did not respond to ECO inquiry about SEV consideration	- inappropriate exception - possible failure to consider environmental significance - possible failure to comply with <i>EBR</i> requirement to consider SEV
Elimination of certain Agencies, Boards and Commissions task force recommended the elimination of the Moose River Basin Environmental Information Partnership Board, Provincial Parks Council, Windigo Interim Planning Board, Shibogama Interim Planning Board and Whitedog Area Resources Committee	- not posted because considered to be an operational, administrative matter, not subject to <i>EBR</i>; natural resource policy is not formulated by virtue of such bodies - did not respond to ECO inquiry about environmental significance - did not respond to ECO inquiry about SEV consideration	- inappropriate exception - possible failure to consider environmental significance - possible failure to comply with <i>EBR</i> requirement to consider SEV
Northern Development and Mines		
Reopening of mining lands in Temagami decision to allow staking of new mining claims in areas identified for resource development, beginning September 17, 1996	- not posted because staking considered to be an administrative matter - not environmentally significant because if development goes beyond staking, <i>Mining Act</i> and regulations provide for environmental protection; only lands identified by Comprehensive Planning Council as suitable for mineral development were reopened - staking of claims not considered to have environmental impact - broad public consultation	appropriate exception
Regulation 503/96 made under the <i>Mining Act</i> amends prescribed forms required to record a staked mining claim; transfer an unpatented mining claim; declare assessment or exploration work; declare prospecting and regional surveys on Crown land; and provide notice of intention to perform assessment work	- not posted because no environmental impact and predominantly administrative - allows forms to be changed without Order-in-Council approval - did not respond to ECO inquiry about SEV consideration	- appropriate exception - possible failure to comply with <i>EBR</i> requirement to consider SEV

SUMMARY OF 1996 MINISTRY REPORTS

Ministry	Reported actions (relative to the 1994-95 recommendations)	Commitments made (relative to 1994-95 recommendations)	ECO Comments/Other Issues
OMAFRA	No action undertaken, but the Ministry stated that it plans to work toward implementing some of the recommendations in 1997.	Commitments to update its SEV, and improve its <i>EBR</i> manual by including procedures for providing full text of proposals, providing high-quality postings, allowing longer than minimum comment periods and processing applications.	The report was heavier on commitments than actions. The Ministry stated that it made no environmentally significant decisions in 1996.
MBS	The report contained minimal information related to the recommendations.	No commitments made relative to recommendations. Ministry committed to incorporate <i>EBR</i> considerations into Ontario Public Service Guidelines.	Report lacked substance.
MCzCR	No action undertaken, but the Ministry stated that it plans to work toward implementing some of the recommendations in 1997.	Commitments to rewrite the SEV, finalize the <i>EBR</i> guide (and post it on the MCzCR local area network), increase staff awareness of <i>EBR</i> requirements, and promote the <i>EBR</i> .	The MCzCR report was heavier on commitments than actions.
MCCR	The Ministry has implemented providing full text of proposals, posting high quality proposal descriptions, requiring broad SEV consideration, allowing for more than the minimum posting time.	Commitments to enhance training, cooperate in developing ground water strategy, and finalize its instrument classification regulation.	MCCR reported significant progress toward <i>EBR</i> implementation although it has not developed processes for handling Applications.
MTO	The Ministry has implemented tailoring of environmental significance guidelines, documentation of environmental significance and SEV consideration, allowing more than the minimum posting time. Also, all program areas were reminded to consider the SEV in policy development.	Commitment to evaluate the effectiveness of "MOEE groundwater strategy."	MTO reported significant progress toward <i>EBR</i> implementation.
MNDM	Limited action undertaken. Procedures for SEV consideration, although untested, have been established.	Commitments to complete instrument classification, consider SEV for instruments, provide high-quality Registry postings, provide full text of proposals.	MNDM has made significant commitments but has taken limited action toward implementation of the recommendations.
MOH	No action undertaken.	Made qualified commitments to amend SEV, provide full text, provide high-quality postings, publicize the <i>EBR</i> .	The MOH report provided only weak commitments.
MEDTT	No action undertaken.	Commitments to provide full text of proposals, and allow more than the minimum posting time. Made qualified commitment to SEV changes.	MEDTT has yet to develop <i>EBR</i> procedures. The report was heavier on commitments than on actions.

SUMMARY OF 1996 MINISTRY REPORTS

Ministry	Reported actions (relative to the 1994-95 recommendations)	Commitments made (relative to 1994-95 recommendations)	ECO Comments/Other Issues
MOL	Action undertaken on publicizing the <i>EBR</i> .	Commitments to consider SEV, document SEV consideration, allow for more than the minimum posting time, provide high-quality postings as well as full text of proposals.	MOL does not foresee making any environmentally significant decisions "in the near future." The Ministry, however, has taken actions and made commitments relative to the recommendations.
MMAH	The Ministry has tailored the environmental significance guidelines and extended comment periods.	Commitments to update the SEV and provide information and training to staff during 1997 on the Ministry's new <i>EBR</i> procedures.	The Ministry has demonstrated its commitment to <i>EBR</i> implementation by developing new <i>EBR</i> procedures and undertaking a review of its SEV.
MNR	Developed procedures for Applications, promoted principles outlined in the SEV and developed environmental protection and sustainability goals and objectives.	Commitments to complete instrument classification regulation, to provide reasons to applicants whose Applications are rejected and to strengthen monitoring and reporting. Made qualified commitments to provide full text of proposals, and provide high-quality postings on the Registry. Rejection of SEV consideration for instruments, and allowance of more than the minimum Registry comment period.	MNR has implemented three recommendations and has partly implemented or committed to implementing several others. It was the only ministry to take action on developing environmental protection and sustainability goals and objectives. MNR acknowledged that "administrative protocols and procedures were not satisfactorily addressed" but that the Ministry would "improve upon those circumstances."
MOEE	Substantial action undertaken to take sole responsibility for the Environmental Registry and to upgrade the Registry system to Web technology. The Ministry continued to provide training and education about the <i>EBR</i> . MOEE has developed comprehensive <i>EBR</i> procedures, tailored the environmental significance guidelines, integrated SEV consideration into decision making and requires documentation of SEV consideration. The Ministry frequently extended the 30-day minimum Registry posting time for complex proposals. The Ministry also consulted with the public on its proposed amendments to its instrument classification regulation, as recommended.	Commitment to undertake further staff training, focusing on the importance of quality Registry postings (including the provision of a contact name, address, telephone and fax number). The Ministry also committed to strengthening monitoring and reporting efforts. The Ministry will continue to improve written reasons to applicants whose Applications are rejected. The Ministry commits to develop a more reliable and economical method of detecting cryptosporidium in drinking water in partnership with the ministries of Health and Agriculture, Food and Rural Affairs and the University of Guelph.	MOEE has made substantial progress on some recommendations and made significant commitments to implement other recommendations. MOEE did not respond to several recommendations and rejected others. Contrary to the 1994-1995 recommendations, MOEE still does not document environmental significance, or consider its SEV for exceptions to Registry posting or for instruments.

How Ministries Cooperated With The ECO

In my 1994-95 report I made recommendations to improve the way ministries carry out various *Environmental Bill of Rights* processes. For example, when ministries use the Environmental Registry properly, Ontarians can contribute to the decision-making process and help ensure the best possible outcome. Proper use of the SEV ensures that ministry environmental values are incorporated into each decision.

All 12 ministries submitted reports (see summary chart on pages 36-37) on their progress toward implementing my

The Ministry of Natural Resources implemented, partly implemented or committed to implementing 10 recommendations but indicated no intended action on another four. However, the Ministry did not respond to some requests for information, and generally took longer than other ministries when it did respond. The Ministry failed to cooperate with my process review by refusing to let my staff examine its files or interview its staff. The Ministry acknowledged in its report that “administrative protocols and procedures were not satisfactorily addressed” in 1996, but that it would “improve upon those circumstances” in future.



1994-95 recommendations. I used these reports as the main, but not the sole, indicators of how the ministries cooperated with my office.

The Ministry of Environment and Energy implemented, partly implemented or committed to implementing 14 recommendations but indicated no intended action on another seven. The Ministry usually responded promptly to my requests for information on decisions that were not posted on the Environmental Registry. During my review of the Ministry’s *Environmental Bill of Rights* processes, Ministry staff were helpful and cooperative.

Reports from the Ministry of Consumer and Commercial Relations and the Ministry of Transportation indicated considerable progress toward implementing my recommendations. The Ministry of Agriculture, Food and Rural Affairs reported more commitments than actions, but it did cooperate with my review of its processes. Management Board Secretariat provided little information in its report. The Ministry of Northern Development and Mines’ report indicated some progress toward implementing my 1994-95 recommendations. The Ministry of Municipal Affairs and Housing developed new *Environmental Bill of Rights* procedures and will review its SEV.

Recommendations

Environmental Registry Proposal Notices

- 3.1 Ministries assess and summarize the potential environmental effects of proposals, include this information in the Environmental Registry posting, and provide Regulatory Impact Statements for proposed regulations.
- 3.2 Ministries ensure that proposal notices avoid jargon and provide clear information about the purpose of the proposed decision and the context in which it is being considered.
- 3.3 Ministries ensure that proposal notices include a contact name, telephone and fax number, and information about where people can review written material on proposals.

Public Comments On Proposals

- 3.4 Ministries ensure that the public is not asked to comment on too many proposals all at once. Where this is not possible, ministries should extend comment periods to compensate for overlapping comment periods.
- 3.5 Ministries consider the complexity of an issue and the level of public interest when deciding on the length of comment periods.

Environmental Registry Decision Notices

- 3.6 Ministries ensure that decision notices contain sufficient information including where people can get a copy of the new policy, Act or regulation.

Public Consultation

- 3.7 Ministries recognize that posting proposals on the Environmental Registry is the minimum legal requirement and provide additional opportunities for public consultation whenever possible.
- 3.8 Ministries follow the process used by the Ministry of

Environment and Energy for **Responsive Environmental Protection** in publicizing and inviting comment on major initiatives.

- 3.9 Ministries stop using omnibus-style legislation to reform Ontario's environmental laws and regulations, except for housekeeping matters.
- 3.10 Ministries assess and summarize the anticipated environmental consequences of planned cutbacks and transfer of responsibilities, make the information public, and allow the public to comment.

Ministry of Environment and Energy

- 3.11 The Ministry of Environment and Energy establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.
- 3.12 The Ministry of Environment and Energy provide adequate resources to enforce its regulations and regularly report on enforcement activities.
- 3.13 The Ministry of Environment and Energy publish a plan for updating certificates of approval to ensure the new standards of the Three-Year Plan for Standard-Setting are met.
- 3.14 The Ministry of Environment and Energy conduct audits to ensure that all municipal drinking water supplies, especially smaller treatment plants and plants with historical compliance problems, undergo adequate routine testing.
- 3.15 The Ministry of Environment and Energy update its goals regarding acid rain, set clear emission and deposition targets for pollutants that contribute to acid rain, and establish control programs to meet those targets.

Ministry of Natural Resources

- 3.16 The Ministry of Natural Resources establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.

3.17 The Ministry of Natural Resources provide adequate resources to enforce its regulations and regularly report on enforcement activities.

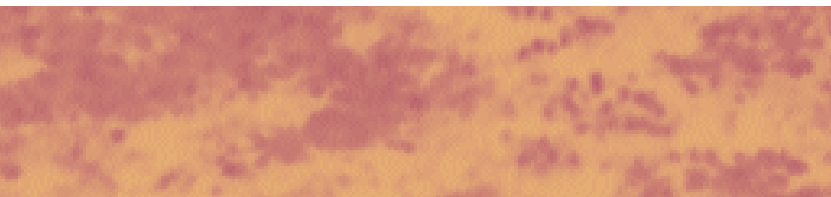
3.18 The Ministry of Natural Resources assess and report on the effectiveness of the self-monitoring system with respect to aggregates and forest management in achieving environmental protection and make this information public annually.

Ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing

3.19 The ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing work together to develop ways to ensure that up-front financial assistance is provided to participants in environmental decision making and hearings

Ministry of Northern Development and Mines

3.20 The Ministry of Northern Development and Mines assess and report on the effectiveness of the self-certifying system for mine closure plans in achieving environmental protection.





Part 4

I received 13 Applications for Review and 17 Applications for Investigation during this reporting period. The expertise and commitment shown by most applicants was impressive.

Part 4:

Reviews And Investigations

What Is A Review?

Ontarians can ask ministries to review existing environmental policies, laws, regulations and instruments, or the need for new environmental policies or laws. These are called Reviews.

What Is An Investigation?

Ontarians can also ask ministries to investigate if they think someone is breaking, or is about to break, an environmental law, regulation or instrument. These are called Investigations.

My office assists people who want to apply for Reviews and Investigations. I forward completed Applications to the ministries and review how each Application is handled.

I received 13 Applications for Review and 17 Applications for Investigation during this reporting period. The expertise and commitment shown by most applicants was impressive. For a summary of all the Applications I forwarded to the ministries in 1996, see the Applications Forwarded To Ministries on page 44, and Appendices A and B.

The Review and Investigation processes applied to the Ministry of Environment and Energy throughout the reporting period. Beginning April 1, 1996, both processes applied to the ministries of Natural Resources, Northern Development and Mines, and Consumer and Commercial Relations and the Review process applied to the Ministry of Agriculture, Food and Rural Affairs.

Natural Resources Issues Raised

Some applicants were concerned about the Ministry of Natural Resources' fishery management at a cottage lake. Others asked for changes to a quarry permit to prevent damage to an important wetland along Lake Ontario. Another Application asked for a Review of the government's decision to allow mining in Temagami.

Old And New Problems

Applications to the Ministry of Environment and Energy reflected many of the issues raised last year – including air emissions from lead smelters and waste transfer sites, neighborhood traffic, illegal burning of garbage and concerns about landfill management.

New issues were raised too, like the effect of a closed mine on ground and surface water, compliance with waste audit requirements and the importance of intervenor funding.

Applications Improve Environment

Some Applications led to environmental improvements. In one case, the applicants alleged that a large company was not doing waste audits and waste reduction workplans required by the 3Rs regulations. The Ministry of Environment and Energy investigated. It found the company was violating the *Environmental Protection Act* in relation to air emissions and liquid industrial waste, as well as the 3Rs regulations. The Ministry issued a violation notice and the company is working on a plan to improve its compliance.



In another case, the applicants asked the Ministry of Environment and Energy to revoke a number of certificates of approval for a closed lead smelter near a residential area. The Ministry denied this Application for Review, but revoked some certificates shortly after it received the Application. The Ministry had already started negotiations with the company about revoking the unused certificates, and it looks like the Application helped move those talks along.

Applications Denied

The Ministry of Environment and Energy and the Ministry of Natural Resources denied several Applications that raised important public policy issues. The ministries' reasons were technically acceptable, but valid concerns raised by the applicants were not addressed.

One Application for Review raised the need for intervenor funding legislation (see also Part 3: Ministry Environmental Decisions). The Ministry of Environment and Energy denied the Application because it had already done an internal review. The Ministry's reasons did not indicate if the Ministry adequately reviewed the evidence provided by the applicants, or if it considered any public input during its internal review. Shortly after denying this Application, the Ministry posted notice on the

Environmental Registry that the *Intervenor Funding Project Act* – the law that made intervenor funding possible over the past eight years – would not exist after March 31, 1996.

Another Application requested a Review of fisheries management by the Ministry of Natural Resources in Buckshot Lake. The applicants said the lake should be managed for trout, not walleye. Lake trout management requires stricter controls for local development. The applicants were concerned that a proposed subdivision would raise the lake's phosphorus levels and prevent restoration of the lake trout population. However, the Ministry denied the Application and did not respond adequately to the comprehensive evidence presented by the applicants.

How Investigations Were Handled

Sometimes Ontarians applied for an Investigation of an issue they had raised with a ministry in the past, but the issue was never resolved to their satisfaction. In at least two cases the Ministry of Environment and Energy assigned these kinds of Investigations to the same local offices that dealt with the previous complaints. This provides the benefit of local-level experience, but does not allow for a fresh perspective. I encourage ministries to combine a new, independent review with the expertise of local staff in these cases.

APPLICATIONS FORWARDED TO MINISTRIES

Applications for Review

Total Forwarded To Ministry of

Environment and Energy 6

Denied 4

Undecided 1

Under way 1

Total Forwarded To Ministry of

Natural Resources 4

Denied 3

Undecided 1

Total Forwarded To Ministry of

Northern Development and Mines 1

Denied 1

Applications for Investigation

Total Forwarded To Ministry of

Environment and Energy 10

Completed 4

Denied 2

Undecided 3

Under way 1

Total Forwarded To Ministry of

Natural Resources 6

Denied 2

Undecided 3

Under way 1

GROUNDWATER UPDATE

In my 1994-1995 annual report, I recommended that the ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation work together to upgrade Ontario's groundwater management framework.

Ministry of Environment and Energy Takes The Lead

In its 1996 Business Plan, the Ministry of Environment and Energy committed to developing a plan to protect Ontario's groundwater. Later in the year, the Ministry announced it will head up a review of groundwater management. I commend the Ministry for taking these important first steps.

A Comprehensive Groundwater Strategy For Ontario

I urge the government to make it a priority to develop a sustainable strategy for restoring, protecting and conserving Ontario's groundwater, which includes:

- *Economic assessment of the value of our groundwater resource, including current and replacement value.*

- *Strong emphasis on preventing contamination.*
- *Establishment of specific groundwater protection zones.*
- *Assistance to regional or municipal governments to develop controls to restrict activities that may contaminate groundwater.*
- *Focus on priority candidate regions.*
- *A publicly accessible inventory of groundwater resources.*
- *A long-term monitoring network of water levels for major aquifer systems.*
- *An inventory of current and past sources of contamination and evaluation of their potential effect on health and ecosystems.*
- *A program to control the effects of contaminated sites.*
- *A focus on the cumulative effects of agriculture, septic systems, lawn chemicals and municipal systems on groundwater.*
- *A publicly accessible data management system, including water-well records, monitoring information, complaints, inspections and enforcement, and information about contamination and remediation.*

Last year, I recommended that the Ministry of Environment and Energy either propose changes to the refillable soft drink container regulations under the Environmental Protection Act and post them on the Environmental Registry, or enforce the existing regulations.

*In its public consultation paper **Responsive Environmental Protection**, the Ministry said the regulations need revision. Consequently, the Ministry did not enforce them during the reporting period.*

Refillables Work

According to a recent study, recycling and disposing non-refillable plastic polyethylene terephthalate (PET) soft drink containers through the Blue Box program cost Ontarians about \$12 million a year. In contrast, refillable containers can be reused many times, saving resources and money while reducing pollution, litter and solid waste.

Better still, new refillable technology promises improved environmental and economic performance. Evidence suggests there are no technological and few economic barriers to adopting these new refillables in

Ontario. And handling costs are paid by beverage producers and consumers – not subsidized by taxpayers.

The Role Of Deposit-Refund Systems

Deposit-refund systems are worth exploring as a solution to waste management problems.

The Liquor Control Board of Ontario is a good place to start. A recent study estimated that the cost of recycling and landfilling liquor bottles in Ontario is about \$10 million a year. Municipal taxpayers foot most of this bill, while the Liquor Control Board continues to report a profit. A deposit-refund system would ensure the cost of managing these containers is paid for by the Liquor Control Board and its customers, not municipal taxpayers at large.

Next Steps

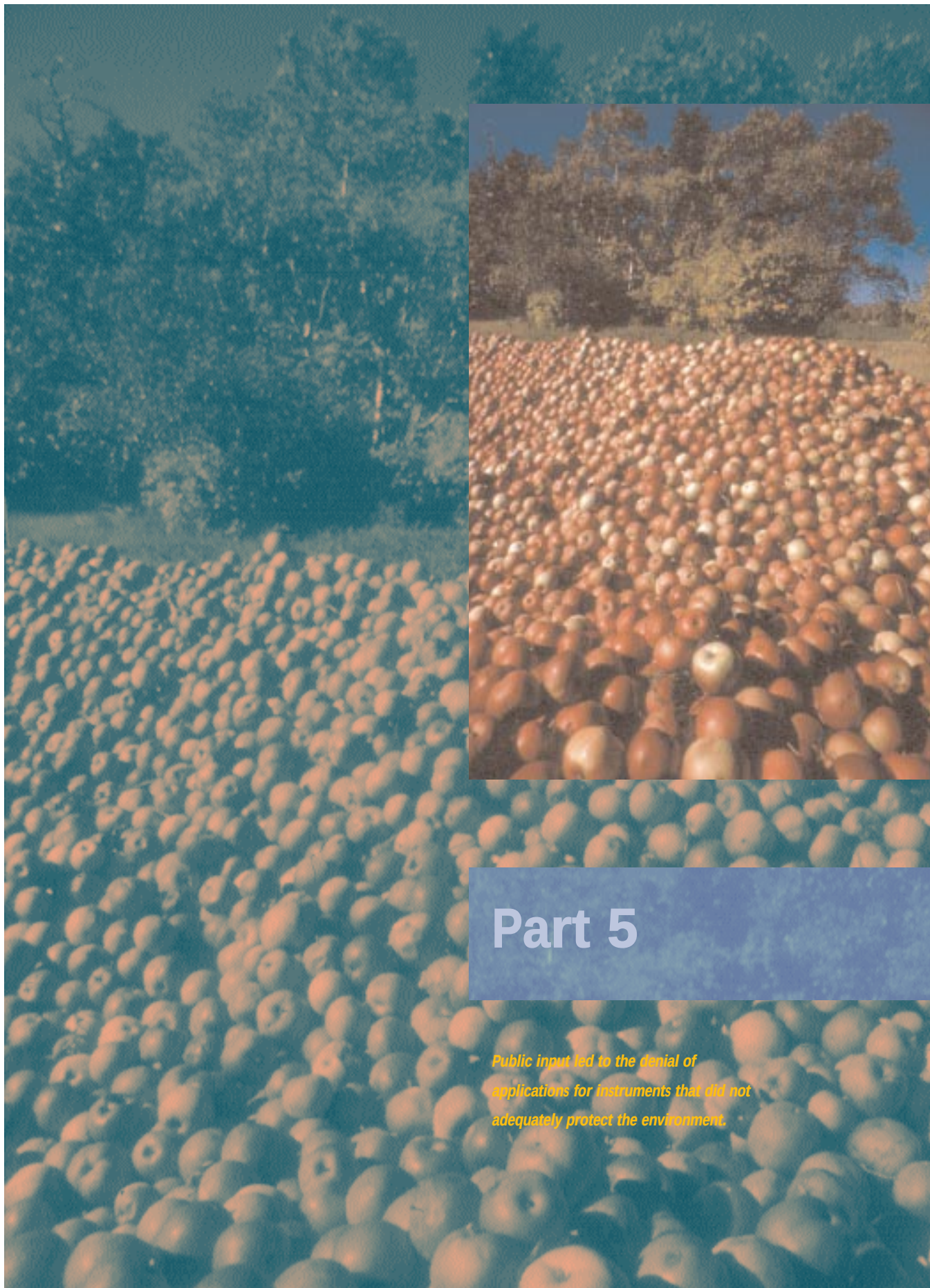
The Ministry of Environment and Energy and the Ministry of Consumer and Commercial Relations should work with Ontario beverage industries to assist them to implement refillable plastic container options. The Ministry of Environment and Energy should review progress made and publish the results.



Recommendations

- 4.1 Ministries develop procedures for handling Applications that include an independent evaluation for situations where the Application involves previous decisions by local staff.
- 4.2 Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *Environmental Bill of Rights* and cite any additional factors in their decision such as limited resources required to carry out a Review. Whenever possible, valid concerns of the applicants should be addressed.
- 4.3 The Ministry of Environment and Energy, along with input from other ministries, follow through on its commitment to develop a comprehensive groundwater management strategy.
- 4.4 The ministries of Environment and Energy and Consumer and Commercial Relations undertake environmental, scientific, economic and social research on the benefits and costs of adapting new refillable container technologies to Ontario's beverage industries and implementing a deposit-refund system for liquor containers, and make the information public.





Part 5

Public input led to the denial of applications for instruments that did not adequately protect the environment.

Part 5:

Instruments

What Is An Instrument?

Companies and individuals usually have to get government approval to do something that will affect the environment. These approvals are called instruments and include orders, permits, licences and certificates of approval.

Classifying Instruments

Ministries must classify instruments (Class I, Class II and Class III) based on how environmentally significant the instrument is. Classification determines what kinds of approvals will be posted on the Environmental Registry for public comment and the extent of public participation opportunities.

Ontarians can only ask for a Review or Investigation, or apply for leave to appeal an instrument if it is classified. If an instrument is not classified, it does not have to be posted on the Environmental Registry and is not subject to Reviews, Investigations or appeals.

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

The Ministry of Natural Resources did not classify its instruments during the reporting period.

The Ministry of Northern Development and Mines drafted its classification proposal for instruments but had not posted it on the Environmental Registry at the end of the reporting period.

The Ministry of Consumer and Commercial Relations posted its instrument classification proposal but I asked the Ministry to repost it with better information and for a longer comment period. I commend the Ministry for doing this, but the new proposal did not include all environmentally significant instruments.

Posting Instruments On The Registry

The Ministry of Environment and Energy was the only ministry that had classified its instruments in 1996, and therefore the only ministry that gave people the opportunity to comment on instruments. Of approximately 2,000 instruments posted, more than 75 per cent were air emissions approvals. The rest were mostly approvals for water-taking and waste disposal sites.

The Ministry of Environment and Energy excepted many landfill and sewage related approvals because they were approved or exempted under the *Environmental Assessment Act*. To its credit, the Ministry posted about 75 of these as information notices on the Environmental Registry – letting Ontarians know that comments were welcome, but that they could not appeal the final decision. I encourage the Ministry to continue to use the Environmental Registry to inform the public about these kinds of decisions and to invite feedback.

Approval Denied, Environment Improved

Public input led to the denial of applications for instruments that did not adequately protect the environment. For example, after the public complained about a proposed air approval for a Port Perry food factory, the Ministry of Environment and

Proposed in 1996, the Environmental Approvals Improvement Act contemplates dramatic changes to Ontario's approval system. Its most serious consequence is allowing Cabinet to set up deemed approvals systems under the Ontario Water Resources Act and the Environmental Protection Act. That means approvals will be deemed to exist if certain conditions are met. Companies and individuals will no longer have to get certain approvals from the Ministry of Environment and Energy, eliminating the public notice opportunities provided by posting those approvals on the Environmental Registry.

With deemed approvals, the Ministry of Environment and Energy will be less involved and the public will have fewer opportunities to comment. It will be harder for the Ministry to enforce environmental protection provisions. Ontarians will not be notified about proposed approvals through the Environmental Registry, will not be able to appeal them using the Environmental Bill of Rights, or apply for a Review or Investigation.

The Ministry of Environment and Energy says a deemed

approvals system will cut red tape and ease workloads. But it also gives Cabinet more power and discretion to exempt things – without telling the public first – from environmental approval requirements. And the Ministry will be able to avoid liability for problems that result from exemptions from certificate of approval requirements.

Deemed approvals systems pose other disadvantages:

- *There is no safeguard to restrict deemed approvals to minor activities – the system could be used for major activities too.*
- *Without certificates of approval, it will be hard for the Ministry of Environment and Energy to track and monitor numbers and locations of sources, source size and other data.*
- *Because the public notice and participation requirements of the Environmental Bill of Rights will not apply to deemed approvals, Ontarians will not be able to use certain environmental rights and I will not be able to review how these decisions are made.*

Energy discovered that many noise sources were missing from the approval application and several pieces of equipment that emit noise and contaminants were not covered under existing approvals. Not only did the Ministry deny the application, it ordered remedial work to bring the facility into compliance.

When an application for a water-taking permit for a proposed water bottling plant in West Hawkesbury (northeast of Ottawa) was posted on the Environmental Registry, local residents and the municipality complained that the company's test well had interfered with neighbors' wells. As a result, the Ministry did a groundwater investigation, found the wells had indeed been affected, and denied the application.

Air Approval Reposted

Ministries can decide whether an instrument proposal has been changed so much that it has become a new proposal. The Ministry of Environment and Energy reposted some instruments for this reason.

The Roastery Coffee Company in Toronto, for example, submitted four different applications to address public and Ministry concerns about noise and odor. The Ministry posted each new application on the Environmental Registry, and once the final decision was made, added a description of the whole decision-making process.

Posting Frustrates Public

A posted instrument involving Toronto sewage sludge frustrated the public for a number of reasons. The proposal was to treat sewage sludge in Toronto, then ship it to Sudbury and spread it on mine tailings. The Environmental Registry posting did not mention that the sludge would wind up in Sudbury – making it impossible for Sudbury residents to understand the impact of the proposal.



This posting also failed to explain how big the project was. It involved moving 10,000 tonnes of sludge every year for five years. Ontarians only got 30 days to comment (during peak vacation season), and there was no description of any other forms of public notice even though required by the *Environmental Bill of Rights*.

How Posting Instruments Affects Approvals Turnaround

Some people raised concerns that the requirement to post proposals for certificates of approval on the Environmental Registry added as many as 45 days to the approvals process. My review showed this is not the case:

- For approvals as a whole, turnaround times increased by 13 days (from 30 to 43 days) since the Ministry of Environment and Energy had to start posting on the Registry.
- For approvals posted on the Environmental Registry, turnaround times increased by 10 days (from 50 days to 60 days) during the same period.

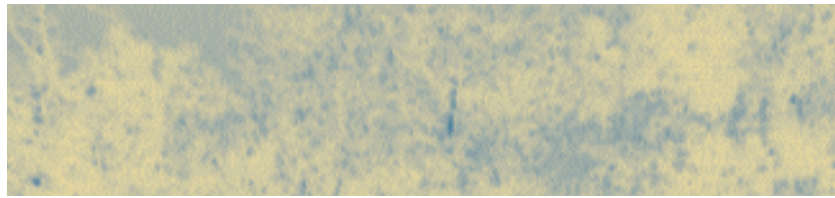
These increases were due to several things, including reduced staff and increased workloads, which added to the processing time for all approval applications. Approvals that have to be posted were not delayed longer than approvals in general.

“Un-Classifying” Instruments

As part of its regulatory review initiative, the Ministry of Environment and Energy proposed removing some instruments from its classification regulation to reduce “clutter” on the Environmental Registry. I urge the Ministry to be cautious here, because removing instruments could also remove Ontarians’ rights to appeal, and to apply for Reviews and Investigations. The Ministry should implement the second stage of its Registry upgrade first. A more user-friendly Registry may eliminate the need to get rid of “clutter” instruments.

Recommendations

- 5.1 The Ministry of Natural Resources immediately comply with the *Environmental Bill of Rights* by drafting a proposal for classifying its instruments, provide full public consultation for the proposal, and implement it.
- 5.2 The Ministry of Environment and Energy assess how user-friendly the Environmental Registry becomes through the planned technical upgrade before deciding to strip the so-called “clutter” instruments from the Registry.





Part 6

*The Environmental Bill of Rights
gives Ontarians a number of
important legal rights.*

Part 6:

Other Legal Rights

The *Environmental Bill of Rights* gives Ontarians a number of important legal rights, including the right to:

- Appeal certain government decisions.
- Sue if someone is breaking, or is about to break, an environmental law and is harming a public resource.
- Sue for compensation for direct economic or personal loss because of a public nuisance that is harming the environment.
- Protection against reprisals for reporting environmental violations in the workplace.

Appeals

During 1996, the appeal process applied to the Ministry of Environment and Energy only. At December 31, 1995, 11 applications for leave to appeal were pending before the Environmental Appeal Board. Five of these applications were granted (all related to a decision on approvals for Petro-Canada Products in Mississauga), five were denied, and one was withdrawn.

Seven new applications for leave to appeal were made in 1996. One was granted, four were denied, and two were withdrawn. The following appeals highlight some significant issues raised and decided during the reporting period.

Fletcher Tile

The Issue:

Application to the Environmental Appeal Board for leave to appeal the Ministry of Environment and Energy's decision to issue a certificate of approval to allow waste to be received at a

landfill in southwestern Ontario.

The Background:

In 1995, the Ministry posted a proposal to amend a certificate of approval for the landfill to include the submission of a closure plan. This landfill had been inactive since 1978, and although the owner, Fletcher Tile, had been trying to reopen it since the 1980s, the Ministry said the company had not shown that this could be done properly.

The Ministry received 17 comments on this proposal, including letters from local municipalities and a citizens' group supporting closing the landfill, and a request from Fletcher Tile to reopen it. During the comment period, Fletcher Tile committed to address all outstanding technical concerns. As a result, the Ministry reversed the original proposal, allowing Fletcher to reopen the site.

The Decision:

This was the first successful *Environmental Bill of Rights* leave to appeal application. The Environmental Appeal Board concluded that the Ministry of Environment and Energy Director may have acted unreasonably and that reopening the site could significantly harm the environment.

In November 1996, the applicants, Fletcher Tile, the local municipality and the Ministry reached a settlement agreement. As part of the agreement:

- The Ministry will revoke the certificate of approval.
- The Township will get the 25 acres of land from Fletcher Tile where previous landfilling occurred and submit a site closure plan.

- Fletcher Tile will keep about 150 acres of agricultural lands, identify the nature and location of waste on these lands, and submit an appropriate clean-up plan.

Petro-Canada Products

The Issue:

Five separate individuals or groups appealed decisions by the Ministry of Environment and Energy on two instruments – an air emissions approval and a sewage approval issued to Petro-Canada Products' Mississauga refinery.

The Decision:

The Environmental Appeal Board granted leave to appeal the air certificate of approval on two grounds:

1. It was unreasonable of the Director to issue an approval for which no application was made. In granting the certificate of approval, the Director allowed more than what was requested in the original application, and provided for expansion of the Petro-Canada refinery.
2. It was unreasonable of the Director to limit records retention for maintenance, repair, monitoring and recording activities related to the certificate of approval to two years, because this condition was applied as a generic provision, and the Director did not determine what was necessary in the public interest in this case, contrary to Ministry policy.

In a settlement reached by the parties in January 1997, Petro-Canada agreed to:

- Modify the refinery to reduce sulphur dioxide emissions to within 20 per cent of the current allowable legal limit by 1999.
- Restrict the burning of bunker oil as fuel for the boilers in the existing facility.
- Report on the status of sulphur dioxide emission controls to the Public Liaison Committee.
- Provide \$250,000 for research into airshed management.

The Right To Sue

Ontarians have the right to sue if someone is breaking, or is about to break, an environmentally significant Act, regulation or instrument and has harmed, or will harm, a public resource. People can also sue for personal damages caused by a public nuisance.

These rights were not used during the reporting period.

Whistleblower Rights

The *Environmental Bill of Rights* protects employees from workplace reprisals if they report the unsafe environmental practices of their employers. There were no whistleblower cases in 1996.





Part 7

*The Statement of Environmental Values
is a good tool for assessing how
each ministry complies with the
environmental protection goals of the
Environmental Bill of Rights.*

Part 7:

Statements of Environmental Values

What Is A Statement of Environmental Values?

Each ministry has a Statement of Environmental Values. The SEV should explain:

- how the ministry will consider the environment when it makes decisions that may significantly affect the environment.
- how the ministry will integrate environmental factors with social, economic, scientific and other considerations.

Setting Environmental Goals

The SEV is a good tool for assessing how each ministry complies with the environmental protection goals of the *Environmental Bill of Rights*. Last year, I recommended the ministries define environmental protection and sustainability goals and objectives for their day-to-day operations either in their SEVs or in separate but complementary public documents. The Ministry of Natural Resources was the only ministry to take any action on this.

The Ministry of Environment and Energy did not consider its SEV when developing its proposals for instruments, or for proposals that did not have to be posted on the Environmental Registry. It did consider its SEV and documented that consideration for all other posted proposals. However, some descriptions of how the SEV was considered were too brief and vague.

The Ministry did not appear to consider its SEV in carrying out its regulatory review initiative or in developing its 1996 Business Plan.

The Ministry of Natural Resources has excellent procedures for SEV consideration and documentation but did not seem to use them. The Ministry provided me with only one document showing how its SEV was considered, although I requested many more.

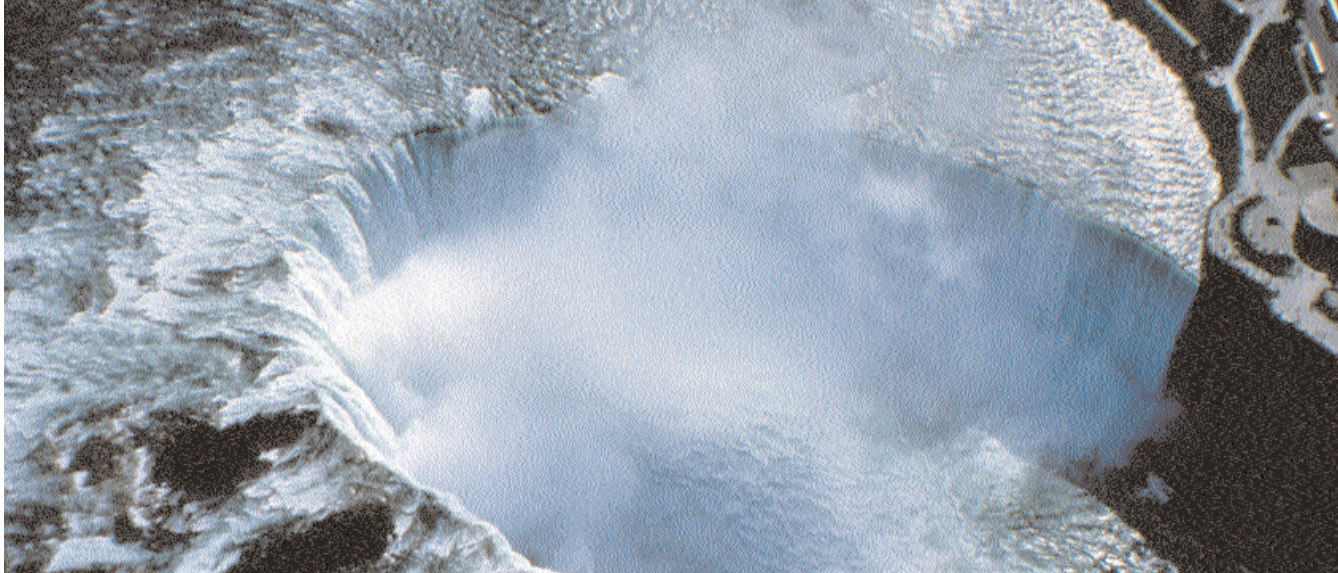
During this reporting period, I reviewed in more detail to what extent five ministries in particular considered their stated environmental values in developing their 1996 Business Plans.

Management Board Secretariat

Management Board Secretariat's Statement of Environmental Values says that, in operations of government and the public service, the health of the natural environment must be sustained for practical, economic and aesthetic reasons. It mentions the Green Workplace, Procurement, Information Technology and Property Development and Management as key environmentally significant aspects of the Ministry's mandate. It says real estate activities are considered significant too.

In its 1996 Business Plan, Management Board Secretariat focuses exclusively on economizing and reducing costs, without indicating how these goals might involve greening measures – even ones that explicitly aim to save money while protecting the environment, like waste reduction and recycling programs and energy efficiency measures. In fact, the environment is not mentioned at all.

The Ministry makes several references to real estate, including speeding the sale of government lands, but fails to note any potential environmental effects. My review showed that the Ministry incorrectly used an exception in the *Environmental*



Bill of Rights to avoid posting this initiative on the Environmental Registry (see Decisions Not Posted On The Registry in Part 3: Ministry Environmental Decisions).

Ministry of Citizenship, Culture and Recreation

In its SEV, the Ministry of Citizenship, Culture and Recreation says it will promote the conservation of Ontario's cultural and archival heritage in a way that promotes environmental sustainability, yet the word "environment" does not appear in its Business Plan. Nor is there any reference to the Ministry's SEV, suggesting it was not considered when the Ministry prepared its Plan. This violates the Ministry's SEV commitment to integrate social, economic and environmental considerations.

Ministry of Economic Development, Trade and Tourism

The Ministry of Economic Development, Trade and Tourism states in its SEV that it is committed to a productive and efficient economy that encourages sustainability of the environment. The former Ministry of Culture, Tourism and Recreation, which was previously responsible for tourism, stated in its SEV that tourism "depends on healthy communities, their unique culture and protection of the environment."

Meanwhile, the vision, goal and mission sections of the Ministry's Business Plan make no reference to the environment. This is remarkable since the SEV explicitly lists sustainability of the environment first among the Ministry's goals and objectives.

The Ministry's "operating philosophy" refers to "rich natural resource base as one of Ontario's strengths." However, the

environment is not included among the factors described as necessary "to achieve sustainable economic growth and renewal."

The Economic Development Strategy does not refer to the natural environment either as a "source" of new materials or as the "sink" into which economic activity dumps wastes or emissions. There is absolutely no recognition of the environmental basis of economic activity in Ontario.

Ministry of Health

In its SEV, the Ministry of Health says it will play a major role in preserving the physical and social environment and protecting Ontarians from existing potential health hazards caused by environmental contaminants. One of the Ministry's stated objectives is the prevention and promotion of activities to control cancer.

Health promotion is mentioned in the Minister's Message to the 1996 Business Plan. The Ministry's vision includes illness prevention and the promotion of healthy lifestyles. The Business Plan also mentions community-based solutions but there is not one reference to physical or social environments.

Ministry of Labour

The Ministry's SEV states its commitment to environmentally sound practices and greening its programs.

The Ministry's Business Plan makes no mention of monitoring proposals for environmental significance although reports to my office indicate this is in fact being done.

Directions For 1997

Each ministry acknowledged in their SEVs that much of their activity has environmental significance, but they gave little consideration to their stated environmental goals in carrying out that activity during 1996.

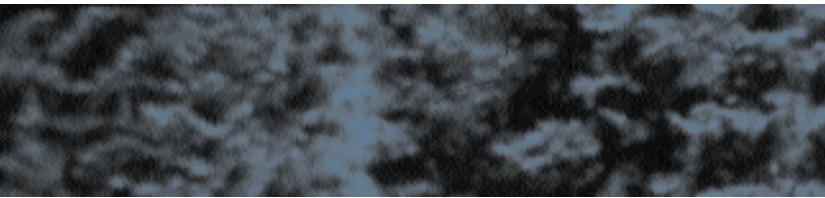
This lack of attention to the SEVs is unacceptable.

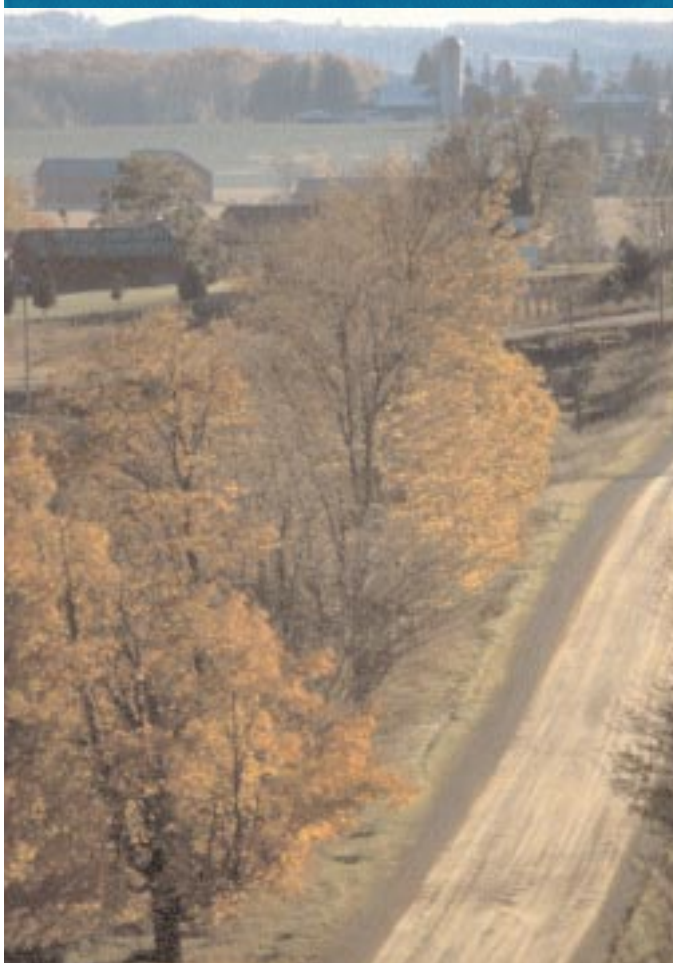
Environmental accountability requires political and administrative will. Otherwise, the Statements of Environmental Values remain more rhetoric than institutional principles and practice.

I will continue to work with the ministries in 1997 to identify ways to put environmental values into action.

Recommendations

- 7.1 Ministries make every effort to apply the environmental values contained in their Statements of Environmental Values and integrate them into their Business Plans and other decision-making activities.





Part 8

We expanded our environmental resource materials to provide Ontarians with a strong information bank about the Environmental Bill of Rights, government ministries and environmental issues.

Part 8:

Education Initiatives

Teaching The *Environmental Bill of Rights*

My staff and I made hundreds of educational presentations and speeches in 1996. We met with many groups and sectors, including MPPs, municipal leaders, environmental non-government organizations, business leaders, industry groups, chambers of commerce, service clubs, labour representatives, students and teachers. We complemented this by setting up displays at trade fairs, conferences, shopping malls and other public venues.

Getting The Word Out

We continued to distribute publications (approximately 30,000) to people throughout Ontario, including our popular **Ontario's *Environmental Bill of Rights And You***, an easy-to-use guide to the *Environmental Bill of Rights*.

Circulation of our newsletter **EBRights** grew to about 3,000. A survey conducted during the reporting period showed that readers value the newsletter as a tool for keeping up to date on *Environmental Bill of Rights* issues.

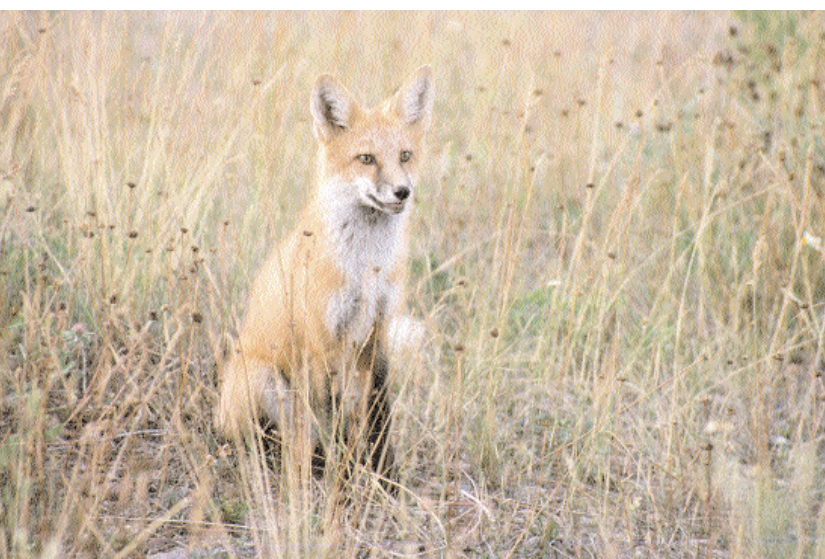
We introduced some new publications too, including brochures about how the *Environmental Bill of Rights* affects municipalities, organized labour and business. We developed **Teaching the *Environmental Bill of Rights***, a resource kit for high school teachers, produced an introductory video to the *Environmental Bill of Rights* and how people can get involved, and launched our Web site.

Resource Centre Grows

We expanded our environmental resource materials to provide Ontarians with a strong information bank about the *Environmental Bill of Rights*, government ministries and environmental issues. Open to the public and staffed with research professionals, the Resource Centre also provides access to the Environmental Registry. As well, the complete text of all posted proposals and decisions is available from our office.

In-house Education Events

Throughout my term I have hosted educational events that bring together members of the community to share the insight of environmental experts. In 1996, guest speakers included Nigel Roome, Professor, Haub Program in Business and the Environment, Schulich School of Business, York University, who discussed how environmental issues are being introduced into the business curriculum and how business can meet its



environmental responsibilities. Arthur FitzGerald, an environmental consultant to the World Bank, shared his expertise on environmental protection guidelines for developing countries.

We also held a multi-stakeholder roundtable to discuss voluntary compliance initiatives.

Ministry Stops Funding Registry Coordinator Position

Funded by the Ministry of Environment and Energy, the Ontario Environment Network's Environmental Registry Coordinator provided invaluable educational support to non-government organizations during 1996.

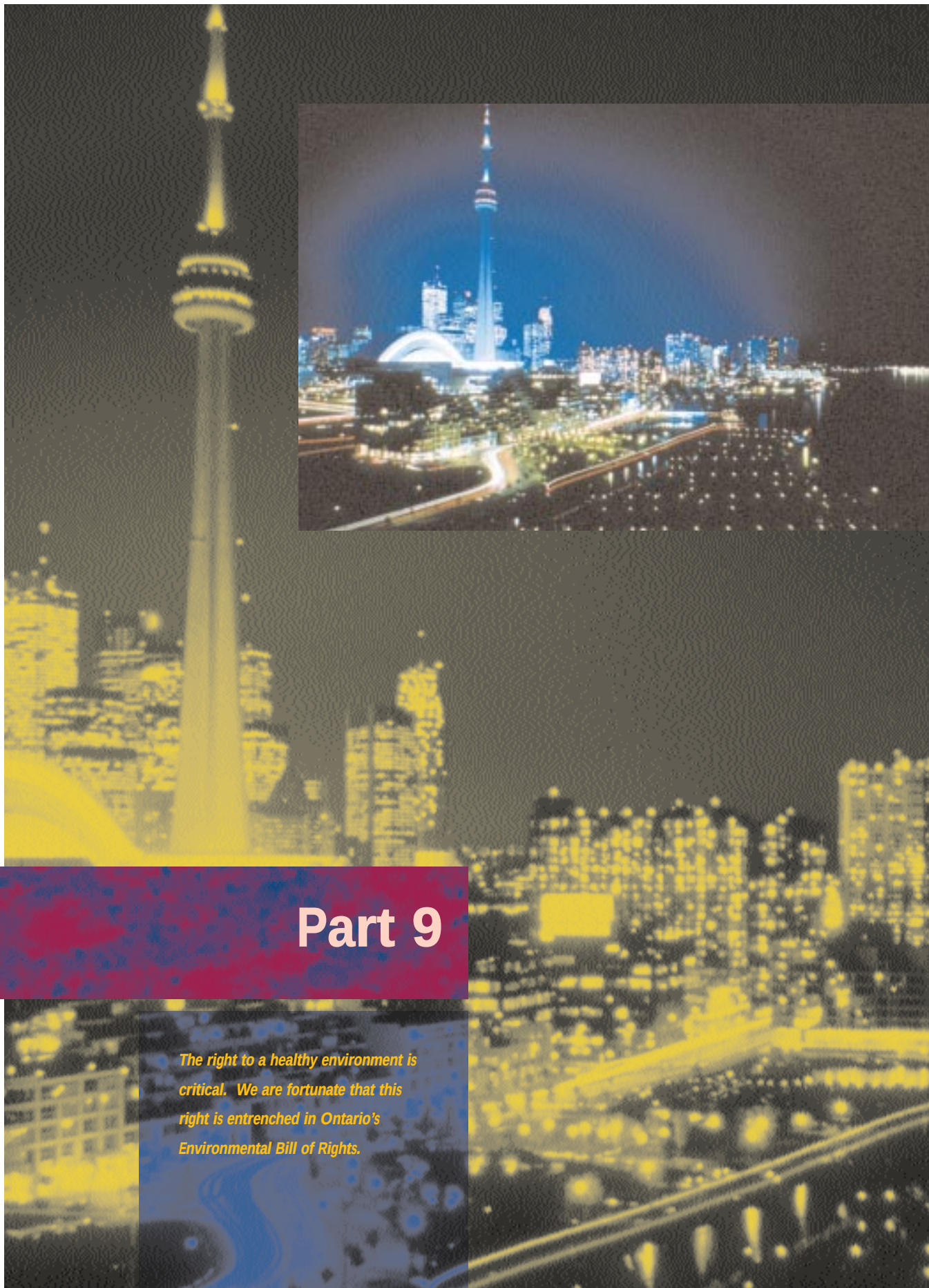
Unfortunately, the Ministry's revocation of financial support for the position as of April 1997 ends this work.

Ministry Staff Training

Last year, I recommended that all ministries increase their efforts to publicize the *Environmental Bill of Rights*, and the Environmental Registry in particular, to their staff and stakeholders. The ministries of Environment and Energy, Consumer and Commercial Relations, and Transportation made some progress toward this recommendation. Several other ministries said they intend to conduct educational initiatives in 1997.

Recommendations

- 8.1 Ministries show their commitment to their stated environmental values by educating staff, stakeholders and clients about the *Environmental Bill of Rights*.
- 8.2 The Ministry of Environment and Energy address the gap left by the elimination of the Ontario Environment Network Registry Coordinator position by ensuring that efforts to educate the public on the Environmental Registry continue and are well coordinated.



Part 9

The right to a healthy environment is critical. We are fortunate that this right is entrenched in Ontario's Environmental Bill of Rights.

Part 9:

Financial Statement

Office of the
Provincial Auditor
of Ontario



Bureau du
vérificateur provincial
de l'Ontario

Box 105, 15th Floor, 20 Dundas Street West, Toronto, Ontario M5G 2C2
B.P. 105, 15^e étage, 20, rue Dundas ouest, Toronto (Ontario) M5G 2C2
(416) 327-2381 Fax: (416) 327-9862

Auditor's Report

To the Environmental Commissioner

I have audited the statement of expenditures of the Office of the Environmental Commissioner for the year ended March 31, 1996. This financial statement is the responsibility of that Office. My responsibility is to express an opinion on this financial statement based on my audit.

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

In my opinion, this financial statement presents fairly, in all material respects, the expenditures of the Office of the Environmental Commissioner for the year ended March 31, 1996, in accordance with the accounting policies described in note 2 to the financial statement.

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

K.W. Leishman, CA
Assistant Provincial Auditor

Toronto, Ontario
July 3, 1996

Office Of The Environmental Commissioner

Statement of Expenditures For the Year Ended March 31, 1996

	For the Year Ended March 31, 1996 \$	For the Period from May 30, 1994 to March 31, 1995 \$
Salaries and wages	1,030,035	336,123
Employee benefits (Note 4)	104,836	30,722
Transportation and communication	75, 857	24,951
Services	597,181	603,646
Supplies and equipment	<u>151,467</u>	<u>375,174</u>
	<u>1,959,376</u>	<u>1,370,616</u>

See accompanying notes to financial statement.

Approved:



Environmental Commissioner

Notes to Financial Statement March 31, 1996

1. *Background*

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

2. *Significant accounting policies*

(a) Basis of Accounting

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

(b) Capital Assets

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

3. Expenditures

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

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

The *Ontario Public Service Employees' Union Pension Act, 1994* provides for a reduction of the employer's contributions to the PSPF for each of the three fiscal years ending 1995-1997. For the current fiscal year, the impact of these reductions on the Office's pension expense was a reduction of \$45,100 (1995 - \$16,509).

4. Pension Plan

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

The Office's share of contribution to the Fund during the period was \$16,401 (1995 - \$3,362) and is included in employee benefits in the statement of expenditures.

Unaudited Statement of Expenditures For the year ended March 31, 1997

Salaries and wages	\$1,117,600
Employee benefits	\$167,300
Transportation and communication	\$48,700
Services	\$232,900
Supplies and equipment	<u>\$39,500</u>
Total	<u>\$1,606,000</u>

Public Sector Salary Disclosure Act

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

Employee	Salary	Taxable Benefits
Eva Ligeti	\$109,652.76	\$262.68
Environmental Commissioner		



Part 10

The Environmental Bill of Rights makes the government responsible for protecting and conserving a healthy environment. As residents of this province, we all have the right and the responsibility to make sure that happens.

Part 10:

Summary Of Recommendations

Part 2: The Environmental Registry

- 2.1 Ministries maximize the potential of the Environmental Registry to get public feedback by posting proposals early and often.
- 2.2 The Ministry of Environment and Energy continue to make technical and administrative improvements to the Environmental Registry.

Part 3: Ministry Environmental Decisions

Environmental Registry Proposal Notices

- 3.1 Ministries assess and summarize the potential environmental effects of proposals, include this information in the Environmental Registry posting, and provide Regulatory Impact Statements for proposed regulations.
- 3.2 Ministries ensure that proposal notices avoid jargon and provide clear information about the purpose of the proposed decision and the context in which it is being considered.
- 3.3 Ministries ensure that proposal notices include a contact name, telephone and fax number, and information about where people can review written material on proposals.

Public Comments On Proposals

- 3.4 Ministries ensure that the public is not asked to comment on too many proposals all at once. Where this is not possi-

ble, ministries should extend comment periods to compensate for overlapping comment periods.

- 3.5 Ministries consider the complexity of an issue and the level of public interest when deciding on the length of comment periods.

Environmental Registry Decision Notices

- 3.6 Ministries ensure that decision notices contain sufficient information including where people can get a copy of the new policy, Act or regulation.

Public Consultation

- 3.7 Ministries recognize that posting proposals on the Environmental Registry is the minimum legal requirement and provide additional opportunities for public consultation whenever possible.
- 3.8 Ministries follow the process used by the Ministry of Environment and Energy for **Responsive Environmental Protection** in publicizing and inviting comment on major initiatives.
- 3.9 Ministries stop using omnibus-style legislation to reform Ontario's environmental laws and regulations, except for housekeeping matters.
- 3.10 Ministries assess and summarize the anticipated environmental consequences of planned cutbacks and transfer of responsibilities, make the information public and allow the public to comment.

Ministry of Environment and Energy

- 3.11 The Ministry of Environment and Energy establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.
- 3.12 The Ministry of Environment and Energy provide adequate resources to enforce its regulations and regularly report on enforcement activities.
- 3.13 The Ministry of Environment and Energy publish a plan for updating certificates of approval to ensure the new standards of the Three-Year Plan for Standard-Setting are met.
- 3.14 The Ministry of Environment and Energy conduct audits to ensure that all municipal drinking water supplies, especially smaller treatment plants and plants with historical compliance problems, undergo adequate routine testing.
- 3.15 The Ministry of Environment and Energy update its goals regarding acid rain, set clear emission and deposition targets for pollutants that contribute to acid rain, and establish control programs to meet those targets.

Ministry of Natural Resources

- 3.16 The Ministry of Natural Resources establish strengthening environmental protection as an explicit goal for current and future regulatory amendments.
- 3.17 The Ministry of Natural Resources provide adequate resources to enforce its regulations and regularly report on enforcement activities.
- 3.18 The Ministry of Natural Resources assess and report on the effectiveness of the self-monitoring system with respect to aggregates and forest management in achieving environmental protection and make this information public annually.

Ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing

- 3.19 The ministries of Environment and Energy, Natural Resources, and Municipal Affairs and Housing work

together to develop ways to ensure that up-front financial assistance is provided to participants in environmental decision making and hearings.

Ministry of Northern Development and Mines

- 3.20 The Ministry of Northern Development and Mines assess and report on the effectiveness of the self-certifying system for mine closure plans in achieving environmental protection.

Part 4: Reviews And Investigations

- 4.1 Ministries develop procedures for handling Applications that include an independent evaluation for situations where the Application involves previous decisions by local staff.
- 4.2 Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *Environmental Bill of Rights* and cite any additional factors in their decision such as limited resources required to carry out a Review. Whenever possible, valid concerns of the applicants should be addressed.
- 4.3 The Ministry of Environment and Energy, along with input from other ministries, follow through on its commitment to develop a comprehensive groundwater management strategy.
- 4.4 The Ministries of Environment and Energy and Consumer and Commercial Relations undertake environmental, scientific, economic and social research on the benefits and costs of adapting new refillable container technologies to Ontario's beverage industries and implementing a deposit-refund system for liquor containers, and make the information public.

Part 5: Instruments

- 5.1 The Ministry of Natural Resources immediately comply with the *Environmental Bill of Rights* by drafting a proposal

for classifying its instruments, provide full public consultation for the proposal, and implement it.

- 5.2 The Ministry of Environment and Energy assess how user-friendly the Environmental Registry becomes through the planned technical upgrade before deciding to strip the so-called “clutter” instruments from the Registry.

Part 7: Statements of Environmental Values

- 7.1 Ministries make every effort to apply the environmental values contained in their Statements of Environmental Values and integrate them into their Business Plans and other decision-making activities.

Part 8: Education Initiatives

- 8.1 Ministries show their commitment to their stated environmental values by educating staff, stakeholders and clients about the *Environmental Bill of Rights*.
- 8.2 The Ministry of Environment and Energy address the gap left by the elimination of the Ontario Environment Network Registry Coordinator position by ensuring that efforts to educate the public on the Environmental Registry continue and are well coordinated.





Part 11

The Environmental Bill of Rights encourages understanding of responsible environmental management. It promotes open dialogue and interaction among ministries, industry, environmentalists, citizen groups and employees to find the best environmental solutions.

Part 11:

Glossary of Terms

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

acidic leachate

A corrosive liquid usually produced when water percolates through industrial or mining operation wastes.

Act

A law passed by the Ontario Legislature.

aggregate

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

airshed management

The management of air quality within a geographical region.

appeal body

A board or tribunal to whom an appeal or application for leave to appeal is referred. For example, the Environmental Appeal Board hears most appeals on decisions made by the Ministry of Environment and Energy.

Application for Investigation

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

Application for Review

An *EBR* process that allows two Ontario residents to ask a minister to review existing policies, Acts, regulations or

instruments if they think the environment is not being protected, or to establish new policies, Acts or regulations to protect the environment.

aquifer

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

biosolids

Treated municipal sewage sludge.

biota

The plant and animal life of a region or ecosystem.

certificate of approval

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

conservation authority

An authority established under the *Conservation Authorities Act* to further the conservation, restoration, development and management of natural resources such as rivers, streams and public lands, within an area over which the authority is granted jurisdiction.

contaminated sites

Locations that have been polluted by activities involving substances that cause adverse environmental or health effects.

decision

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

EBR

See *Environmental Bill of Rights*.

ecosystem

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

environment

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

environmental assessment

An analysis, report or body of evidence relating to a specific project or development, that includes a description of the expected environmental impacts of the project, actions that could prevent or mitigate these environmental impacts, and alternative ways to carry out the project.

Note: The term “environmental assessment” has a more specific meaning in legislation such as the *Environmental Assessment Act*.

Environmental Bill of Rights (EBR)

A statute of Ontario, S.O. 1993, c. 28, proclaimed in Ontario in February 1994, which recognizes that the Ontario government has the primary responsibility for protecting, conserving and restoring the natural environment, but also recognizes that the people of Ontario have the right to participate in government decision making and to hold the government accountable for those decisions. The *EBR* provides a number of ways for the citizens of Ontario to participate in environmental decision making.

environmental decision making

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

Environmental Registry

A computerized bulletin board established by the *EBR* to provide information about the environment to the public, including the text of the *EBR*; general *EBR* information; the ministries' Statements of Environmental Values; summaries of proposed policies, Acts, regulations and instruments; notices of appeals of instruments and appeal decisions; notices of court actions and final results; and Application forms for Reviews and Investigations.

environmentally significant

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

furnace slag

An industrial by-product of the steel-making industry.

groundwater

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

hazardous waste

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

industrial effluent

Liquid waste produced by industry that is discharged into the environment.

instrument

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

instrument classification

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

land use planning

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

leave to appeal

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

muskellunge

A freshwater sport fish.

Planning Act

A statute of Ontario, R.S.O. 1990, c. P.13, as amended. The *Planning Act* was amended significantly by Bill 163, which received Royal Assent on December 8, 1994. The *Act* was significantly amended again, by Bill 20, which received Royal Assent in 1996.

policy

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

prescribed (ministries, Acts, regulations or instruments)

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

public resource

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

regulation

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

Regulatory Impact Statement

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

reporting period

The period of time — January 1, 1996 to December 31, 1996 — covered by this report.

sauger

A freshwater sport fish.

silt

Loose sedimentary material that often chokes or obstructs waterways and rivers.

SEV

See Statement of Environmental Values.

Statement of Environmental Values (SEV)

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

sulphide tailings

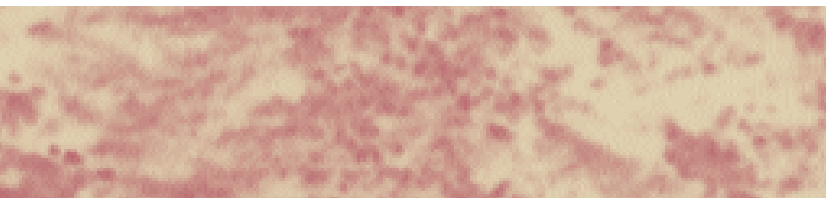
By-product of mining operations that use sulphur to process minerals.

sustainability

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

voluntary code of practice

A set of standardized, written commitments agreed to by one or more individuals or organizations that is designed to influence or control behaviour, and is applied consistently by those who adopt it. A voluntary code is not legally enforceable.



Key To Abbreviations And Acronyms

<i>EBR</i>	<i>Environmental Bill of Rights</i>
ECO	Environmental Commissioner of Ontario
OMAFRA	Ministry of Agriculture, Food and Rural Affairs
MCzCR	Ministry of Citizenship, Culture and Recreation
MCCR	Ministry of Consumer and Commercial Relations
MEDTT	Ministry of Economic Development, Trade and Tourism
MOEE	Ministry of Environment and Energy
MOH	Ministry of Health
MOL	Ministry of Labour
MBS	Management Board Secretariat
MMAH	Ministry of Municipal Affairs and Housing
MNR	Ministry of Natural Resources
MNDM	Ministry of Northern Development and Mines
MTO	Ministry of Transportation
SEV	Statement of Environmental Values



Part 12

Appendices

1996 APPLICATIONS FOR REVIEW

Application, Topic, Ministry	Issues	Outcome	ECO Comments
R0333: Need for groundwater resources policy (MOEE)	The applicants applied for a Review of the need for a co-ordinated and scientifically based groundwater resources policy statement. They stated concern that community development is being approved without first doing an adequate evaluation of groundwater supply, and that aquifers are being polluted.	No Review by MOEE. MOEE indicated that it was already undertaking an integrated strategy for the management and protection of groundwater in conjunction with other ministries, and therefore a separate Review under the <i>EBR</i> would not be conducted.	MOEE's rationale for not conducting a Review was reasonable. The ECO will continue to monitor progress of the Ministry's groundwater strategy.
R0334: Classification of chromium-containing materials as hazardous waste (MOEE)	The applicants requested that Ontario Regulation 347 under the <i>Environmental Protection Act</i> be reviewed. Under the current regulation, a waste is considered toxic if the total chromium extracted from it during a leachate test exceeds 0.05 mg/L. The applicants said the legislation should differentiate between toxic and non-toxic forms of chromium. Treating a non-toxic material as hazardous places an unnecessary economic burden on industry.	MOEE will conduct a Review. MOEE indicated that Regulation 347 will be reviewed in the broader context of overall program streamlining.	The ECO will continue to monitor the progress of this Review.
R960001: Need for intervenor funding legislation (MOEE)	The applicants requested that MOEE enact and proclaim new permanent intervenor funding legislation. They said this legislation is needed because the existing statute, the <i>Intervenor Funding Project Act (IFPA)</i> , expired on April 1, 1996. The applicants said a lack of statutory funding will have a negative effect on the soundness, credibility and fairness of decisions made by the Energy Board, Environmental Assessment Board and the Joint Board.	MOEE decided not to conduct a Review, noting that the Ministry had already undertaken a comprehensive internal review of the need for such legislation. The Ministry noted that the decision resulting from that review would be made available on April 1, 1996. On March 28, 1996, MOEE placed an information notice on the Environmental Registry stating that the <i>IFPA</i> would be permitted to sunset on March 31, 1996.	The Ministry was already conducting an internal review. It is unclear whether any public input was considered. The Ministry's decision not to continue intervenor funding should have been subject to an open public review.
R960004: Lead contamination from lead smelting facility (MOEE)	The applicants requested that 27 certificates of approval (C of As) for a blast furnace previously used for lead smelting be revoked. The applicants said the current C of As did not adequately protect the natural environment in the area (a residential neighbourhood in Metro Toronto) from lead contamination. The applicants said if the company wanted to resume lead smelting on the site, it should be required to submit an application for a new C of A.	MOEE determined that a Review was not needed as the Ministry had already revoked 15 C of As related to the lead smelter, and as a result the lead smelting operation was no longer approved. These C of As were revoked after the Ministry had received the Application for Review.	Although the Ministry did not conduct a Review, the applicants were successful in having the certificates of approval revoked.
R960006: Noise, odor and traffic from waste transfer site (MOEE)	The applicants requested a Review of a provisional certificate of approval for a waste transfer site in Metro Toronto. They said that the C of A was not consistent with the Ministry's SEV; the public consultation on the decision to issue the C of A was inadequate, and that there was new social and economic evidence showing the waste transfer site was not required. They were concerned about odor, noise and traffic issues related to the site.	MOEE decided not to conduct a Review, noting that there was no evidence showing new social and economic information that could bring into question the issuance of the C of A. It also noted that extensive public consultation had been conducted.	The Ministry's rationale for not conducting the Review is reasonable. Although there was disagreement between the applicants and the Ministry on the adequacy of the public consultation, there did appear to be public consultation consistent with the <i>EBR</i> .

1996 APPLICATIONS FOR REVIEW

Application, Topic, Ministry	Issues	Outcome	ECO Comments
R960007: Management of lake as a walleye fishery (MNR)	The applicants requested a Review of the decision to manage Buckshot Lake (in eastern Ontario) as a warm water walleye fishery. They said the lake should be managed as a lake trout fishery, which would make it subject to stricter development controls. They said the Ministry based its decision to manage the lake for walleye on insufficient evidence, and provided evidence that lake trout are reproducing naturally in the lake.	MNR decided not to conduct a Review, citing a number of reports and studies that support its decision to manage the lake for walleye. The Ministry also noted there was public consultation on the Fisheries Management Plan for the area, which was developed in 1987.	The Ministry's rationale for not conducting the Review was weak. Many of the reports and studies cited to support its decision were the same reports the applicants were concerned about. Many of the applicants' concerns were not addressed. MNR also did not address evidence provided by the applicants.
R960008: Quarrying in a provincially significant wetland (MNR)	The applicants requested a Review of a licence issued under the <i>Aggregate Resources Act</i> . They were concerned about plans by the company to divert a creek and to quarry in a Class II wetland on Lake Ontario. They said the licence does not allow quarrying and that the company would need a separate permit to quarry in the wetland.	MNR decided not to conduct a Review because it pertained to an instrument (a quarry licence) that was not prescribed under the <i>EBR</i> .	MNR has not yet classified its instruments, although the <i>EBR</i> requires that this be done as soon as reasonably possible after April 1, 1996. The fact that MNR has not classified its instruments is blocking the rights of Ontario residents to apply for Reviews relating to MNR instruments.
R960009, R960010: Reopening of mining claim staking in Temagami (MNR and MNDM) (Also sent to MOEE: see R960011)	The applicants requested a Review of MNR and MNDM's decision to reopen lands for mining in Temagami without an environmental assessment of the Temagami land use strategy, and in the absence of appropriately drafted regulations under the <i>Mining Act</i> . Although MNDM had begun developing regulations (designed to minimize damage caused during staking of mining claims in a particularly sensitive area of Temagami), the applicants were concerned that they would not be in place before the area was to reopen for staking.	MNR and MNDM submitted a joint rationale for their decision not to conduct a Review. The ministries stated that environmental assessments of land use plans are not required by the <i>Environmental Assessment Act</i> . Regarding the regulations under the <i>Mining Act</i> , the ministries informed the applicants that, shortly before the Application for Review was received by the ministries, they deferred the reopening of the area until the new regulations were in place.	MNR and MNDM provided a reasonable rationale for not conducting a Review. To its credit, MNDM deferred the reopening of the area of concern until the regulations are promulgated under the <i>Mining Act</i> , even before the Application was received. It appears that one of the principal concerns of the applicants was addressed by the Ministry's action.
R960011: Reopening of mining claim staking in Temagami (MOEE)	The applicants requested a Review of MNR and MNDM's decision to reopen lands for mining in Temagami without an environmental assessment of the Temagami land use strategy, and in the absence of appropriately drafted regulations under the <i>Mining Act</i> .	No Review by MOEE. MOEE returned the Application to the ECO, stating that the issues raised do not fall under the jurisdiction of the Ministry.	The ECO will review this Application in 1997.
R960012: Downgrading of Areas of Natural and Scientific Interest (MNR)	The applicants requested a Review of MNR's guidelines pertaining to Areas of Natural and Scientific Interest. They said the Ministry is downgrading and eliminating these areas in an ad-hoc manner without clear criteria.	The Application was received late in 1996. In January 1997 MNR decided not to conduct a Review.	The ECO will review this Application in 1997.
R960013: Adverse health effects from flare gases (MOEE)	The applicants said they and their livestock are suffering adverse effects from flare gases from a heavy water plant for the nuclear industry. They requested the C of As for the hydrogen flare system and hydrogen sulphide recovery system be amended to include additional conditions related to operating procedures for the flare stack.	The Application was received late in 1996. In February 1997, MOEE decided not to conduct a Review.	The ECO will review this Application in 1997.

1996 APPLICATIONS FOR INVESTIGATION

Application, Topic, Ministry	Issues	Outcome	ECO Comments
I0016: emissions from asphalt plant allegedly causing health problems (MOEE)	The applicants said that a company operated an asphalt plant without a C of A in 1992. They also said the company was operating an oil-fired asphalt plant with a C of A that only allows the use of natural gas fuel. The applicants submitted evidence showing that the company was operating the plant under certain wind directions, which is prohibited in the C of A. The applicants did not, however, clearly request an Investigation of this issue.	MOEE decided not to conduct an Investigation, noting the company was charged in 1994 for operating the asphalt plant without a C of A. It indicated that burning oil is permitted under the current C of A. MOEE also noted that, since the Application did not specifically request an Investigation of the operation of the plant under certain wind conditions, the Ministry did not comment on this in its response to the Application. It did note that the company had been charged in 1995 with failing to comply with conditions of the C of A related to operation of the plant under certain wind conditions.	The Ministry's reasons for not investigating were reasonable. The applicants' concern about operation of the plant during certain wind conditions appears to have been addressed, as MOEE laid charges on the company shortly before the Application was submitted.
I960002: allegations that a landfill was contravening the <i>Environmental Protection Act</i> (EPA) and its C of A (MOEE)	The applicants were neighbours of a landfill in southwestern Ontario that they said was operating outside the boundaries of its C of A; accepting more waste than allowed in its C of A; and contravening other conditions of its C of A.	MOEE investigated and concluded that the company was in compliance with the EPA and the conditions of its C of A.	MOEE assigned the Investigation back to the same District Office involved in regulating the landfill. The Ministry relied on its past inspections and the company's data, instead of following up on the applicants' evidence. This Investigation should not have been done by the District Office involved in past decisions.
I960003: alleged failure by a company to comply with Ontario's 3Rs regulations under the <i>Environmental Protection Act</i> (MOEE)	The applicants said the company was contravening the 3Rs regulations by not performing a waste audit, not implementing a waste reduction work plan and failing to have a consistent plan for source separating waste. The applicants provided evidence that the company had been made aware of the regulatory requirements, but had not taken action.	MOEE's Investigation revealed that the company had not complied with requirements regarding waste audits and waste reduction workplans. MOEE also discovered that the company did not have a C of A for air emissions, and had failed to register as a generator of liquid industrial waste under Ontario Regulation 347. MOEE and the company agreed to a deadline for submitting the applications. In addition, MOEE issued violation notices to the company.	In this case, a clear, focused Application received a thorough, appropriate response from the Ministry, and resulted in improved protection of the environment.
I960004: alleged contravention of the <i>Lakes and Rivers Improvement Act</i> in the construction of a dam (MNR)	The applicants alleged that MNR, MOEE and the owners of a power company contravened the <i>Lakes and Rivers Improvement Act</i> when building a dam near Nipigon, Ontario in the early 1990s. Their concerns included erosion and interference with fish spawning.	No Investigation by MNR. MNR stated that the allegations had been thoroughly investigated in 1994 and 1996 by MNR, and in 1994 by the Ombudsman. The MNR and MOEE have already required the owners of the dam to fix many of the problems identified in the Application. In addition, the applicants provided no new evidence of environmental harm to warrant a new Investigation.	The Ministry's rationale for not conducting a new Investigation was valid.

1996 APPLICATIONS FOR INVESTIGATION

Application, Topic, Ministry	Issues	Outcome	ECO Comments
1960005: alleged contravention of the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> from runoff from a closed iron ore mine (MOEE) (Also sent to MNR: see 1960011)	The applicants alleged that a closed iron ore mine in Temagami continues to discharge contaminants (primarily heavy metals) into the environment, impairing surface and groundwater and fish habitat.	Investigation conducted by MOEE. MOEE conducted sampling at seven sites and the samples were tested for heavy metals, pH and conductivity. The Ministry concluded that the concentration of contaminants was within the guidelines set out in the Mine Closure Plan finalized in 1995, and that the water quality had improved over time.	The ECO will review this Application in 1997.
1960006: alleged contravention of s.14 of the <i>Environmental Protection Act</i> through excessive traffic in residential area (MOEE)	The applicants said that the local municipality allows an excessively high volume of traffic to be routed onto their street (in a residential area of Metro Toronto). They said the municipality had contravened s.14 of the <i>Environmental Protection Act</i> and s.6 of Ontario Regulation 346.	MOEE decided not to investigate, noting that, in its opinion, the municipality was not responsible under s.14 of the <i>Environmental Protection Act</i> nor under s.6 of Ontario Regulation 346 for noise and emissions from private individuals' vehicles. The Ministry stated that the management of traffic flow by the municipality could not be considered to violate these provisions.	MOEE's response did not give any basis for the Ministry's legal opinion that the municipality was not responsible under s.14 of the <i>EPA</i> or s.6 of Ontario Regulation 346 for noise and emissions from private vehicles. The Ministry's reasons not to investigate may have been valid, but the reasons given to the applicants were inadequately explained.
1960007: alleged contravention of <i>Crown Forest Sustainability Act</i>; inadequate public consultation on a Contingency Forest Management Plan (MNR) (Also sent to MOEE; see 1960008 below)	The applicants said that MNR provided public review periods for a Contingency Forest Management Plan for the Black Sturgeon Forest that were shorter than legally required and that MNR provided confusing and wrong information to the public. The legal requirements are set out as part of the Conditions of the Class Environmental Assessment for Timber Management. The applicants presented seven specific concerns, all relating to inadequate public consultation on the Contingency Plan.	MNR decided not to investigate, noting that the alleged contravention was not likely to cause harm to the environment, and was not serious enough to warrant an Investigation. While MNR agreed that wrong information was given to the public, MNR noted that this error was immediately corrected. MNR also noted the unusual circumstances surrounding the alleged contravention (documents being destroyed in a fire and the 1996 civil service strike), and indicated that this combination of unusual circumstances was unlikely to be repeated. MNR determined that the public still had a reasonable ability to comment within the minimum time frame and that all comments received were considered.	Both MNR and MOEE dealt with this Application appropriately and made reasonable decisions. Ministries should, however, make every effort to provide clear, accurate information along with adequate comment periods when consulting the public on specific decisions. Unusual circumstances that threaten to restrict public consultation may require creative measures by Ministry staff to allow adequate opportunities for public involvement.
1960008: alleged contravention of <i>Environmental Assessment Act</i>; inadequate public consultation on a Contingency Plan (MOEE) (Also sent to MNR; see 1960007 above)	The applicants said that MNR provided public review periods for a Contingency Forest Management Plan for the Black Sturgeon Forest that were shorter than legally required and that MNR provided confusing and erroneous information to the public. The legal requirements are set out as part of the Conditions of the Class Environmental Assessment for Timber Management. The applicants presented seven specific concerns, all relating to inadequate public consultation on the Contingency Plan.	MOEE decided to investigate one of the seven issues raised by the applicants. MOEE concluded that interested groups and individuals did not get at least 15 days of notice to inspect the Contingency Plan before operations were scheduled to proceed. However, MOEE then described four mitigating factors and decided not to pursue that matter further.	Both MNR and MOEE dealt with this Application appropriately and made reasonable decisions. Ministries should, however, make every effort to provide clear, accurate information along with adequate comment periods when consulting the public on specific decisions. Unusual circumstances that threaten to curtail public consultation may require creative measures by ministry staff to allow adequate opportunities for public involvement.

1996 APPLICATIONS FOR INVESTIGATION

Application, Topic, Ministry	Issues	Outcome	ECO Comments
I960009: alleged burning of waste in a wood-burning stove (MOEE)	The applicants said the owners of a garage located adjacent to the applicants' house were illegally burning waste in a wood-burning stove. They said the smoke was causing damage to their property and surrounding trees.	The Ministry decided not to investigate stating that an investigation of the alleged contravention had already been completed. The Ministry inspections (which were conducted in 1995 and 1996, prior to the submission of the Application) revealed that only clean wood was being burned in the wood-stove, and did not reveal smoke damage to the house.	The Ministry's reasons for not conducting the Investigation were reasonable, although the Ministry did not address the applicants' evidence that damage to their property had occurred.
I960010: alleged de-watering of a stone quarry in contravention of a Permit to Take Water (MOEE)	The applicants said de-watering of a stone quarry adjacent to their farm was interfering with the water level in the aquifer. They alleged that the aggregate company that was de-watering the quarry failed to submit a water management plan, failed to submit reports to the MOEE when changes were made to the dewatering operation, and failed to monitor water levels as required in the terms and conditions of the Permit to Take Water.	Investigation conducted by MOEE and completed in February 1997.	The ECO will review this Application in 1997.
I960011: alleged contravention of Fisheries Act, by runoff from a closed iron ore mine (MNR)	The applicants said that a closed iron ore mine in Temagami continues to discharge contaminants (primarily heavy metals) into the environment, impairing surface and groundwater and fish habitat.	MNR decided to investigate. At the end of the reporting period, MNR had not yet completed the Investigation.	The ECO will review this Application in 1997.
I960012: alleged contraventions of the Public Lands Act and the Lakes and Rivers Improvement Act by proposing to permit development of a campground (MNR) (Also sent to MOEE; see I960013)	The applicants said MNR violated the <i>Public Lands Act</i> and the <i>Lakes and Rivers Improvement Act</i> . The allegations related to the Ministry's proposal to issue a land use permit for a private campground on Munro Lake in the District of Cochrane.	This Application was submitted late in 1996. At the end of the reporting period, MNR had not yet decided whether it would conduct an Investigation.	The ECO will review this Application in 1997.
I960013: alleged contraventions of the Environmental Protection Act by proposing to permit development of a campground (MOEE) (Also sent to MNR; see I960012)	The applicants said MNR violated the <i>Environmental Protection Act</i> . The allegations related to the MNR's proposal to issue a land use permit for a private campground on Munro Lake in the District of Cochrane.	This Application was submitted late in 1996. In January 1997, MOEE decided not to investigate.	The ECO will review this Application in 1997.

1996 APPLICATIONS FOR INVESTIGATION

Application, Topic, Ministry	Issues	Outcome	ECO Comments
I960014: alleged contravention of the <i>Lakes and Rivers Improvement Act</i> and the federal <i>Fisheries Act</i> by altering a river bank. (MNR) (Also sent to MOEE; see I960015)	The applicants said their neighbours straightened a river bank by adding outside fill to their property in 1994. This allegedly caused increased silting, erosion and flooding on the applicants' property and destroyed fish habitat.	MNR decided to investigate. At the end of the reporting period, MNR had not yet completed the Investigation.	The ECO will review this Application in 1997.
I960015: alleged contravention of the <i>Environmental Protection Act</i> and the <i>Ontario Water Resources Act</i> by altering a river bank. (MOEE) (Also sent to MNR; see I960014)	The applicants said their neighbours straightened a river bank by adding outside fill to their property in 1994. This allegedly caused increased silting, erosion and flooding on the applicants' property and destroyed fish habitat.	This Application was submitted late in 1996. In January 1997, MOEE decided not to investigate.	The ECO will review this Application in 1997.
I960016: alleged operation of a gravel pit in contravention of the <i>Aggregate Resources Act</i> (MNR)	The applicants said MNR approved a gravel pit application under the <i>Aggregate Resources Act</i> that did not meet the requirements of the <i>Act</i> . They said the site plan failed to show a well and a pond on the property; claimed incorrectly that a Provincially Significant Area of Natural and Scientific Interest had been downgraded; failed to identify groundwater on the site; and allows the destruction of a significant natural feature.	This Application was submitted late in 1996. In January 1997, MNR decided not to investigate	The ECO will review this Application in 1997.
I960017: alleged approval of activities in contravention of sections of the <i>Environmental Assessment Act</i> (MOEE)	The applicants said MNR approved construction of a road, harvesting of trees, clearing of vegetation, construction of parking facilities and construction of a boat ramp without following the public participation procedures set out in MNR's Class Environmental Assessment for Small Projects.	This Application was submitted late in 1996. In February 1997, MOEE decided not to investigate.	The ECO will review this Application in 1997.

Appendix C

The work of the Environmental Commissioner of Ontario was enhanced by the hard work and dedication of the following people during 1996:

Karen Beattie, Legal Analyst
Robert Blaquière, Bilingual Public Information Officer
Maureen Carter-Whitney, Legal and Policy Officer
Beverley Dottin, Administrative Assistant
Manik Duggar, Education Officer
Dianne Elliott, Education Coordinator
Modesta Galvez, Case Flow, Records and Systems Manager
Averil Guiste, Communications Assistant
Elaine Hardy, Policy and Decision Analyst
Adrienne Jackson, Communications Coordinator
Joel Kurtz, Senior Policy Advisor
Therese Lamie, Librarian
Peter Lapp, Executive Assistant
Nina Lester, Legal and Policy Officer
Derwin Mak, Auditor
David McRobert, Senior Policy Analyst/In-House Counsel
Enza Ragone, Public Information and Education Officer
Cynthia Robinson, Human Resources, Finance and Administration Coordinator
Ellen Schwartzel, Research and Resource Centre Coordinator
Lisa Shultz, Policy and Decision Analyst

The following individuals assisted on short- and long-term projects:

Christine Beckerman, Database Developer
Ann Cox, Library Assistant
Dharlene Dandy-Valeda, Library Assistant
Cathy De Rubeis, Researcher
Susan Griffin, Library Assistant
Dale Hamilton, Education Officer
Richard King, Education Officer

Appendix D

Opening The Doors To Better Environmental Decision Making Environmental Commissioner of Ontario 1994-1995 Annual Report

Summary of Recommendations

Statements of Environmental Values

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

The Environmental Registry

1. The Ministry of Environment and Energy designate a single authority to operate (including both administrative and technical operations) the Environmental Registry, and
 - a. resolve the Environmental Registry's technical problems by upgrading the entire system or by upgrading the current software;
 - b. upgrade the Environmental Registry platform so the public can access and use its information as a database.
2. All ministries develop and publish standard procedures for releasing the full text of proposals to the public. Ministry staff should make every effort to accommodate those who live far from district and regional offices.

3. All ministries continue to improve the quality and value of the information posted on the Registry by:
 - clearly and accurately summarizing proposals, giving enough information, identifying additional public consultation opportunities, and explaining how comments affected the decision;
 - ensuring all Registry postings are well organized, clearly written, proofread and that technical information is explained; and
 - ensuring all entries include ministry contact telephone and fax numbers.
4. All ministries post on the Environmental Registry annual summaries of all environmentally significant activities, including the number of policies, Acts, regulations and instruments posted, and the disposition of Applications for Review and Investigation.

Ministry Environmental Decision Making

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

Reviews And Investigations

1. The Ministry of Environment and Energy assess the occurrence of trichlorethylene in Ontario's drinking water supplies using existing data from its Drinking Water Surveillance Program. MOEE should then decide if further action is required, such as more intensive sampling of water supplies that appear to be at risk. Depending on the magnitude of the risk, MOEE should consider a more stringent guideline on an interim basis until the matter is formally resolved by the Federal-Provincial-Territorial Subcommittee on Drinking Water.
2. The Ministry of Environment and Energy assess the needs of the approximately 40 surface water treatment plants in Ontario that are potentially vulnerable to *Cryptosporidium*. For plants that are most vulnerable, planning for the installation of filtration should proceed, unless it can be demonstrated to be unnecessary. The Ministry of Environment and Energy and the Ministry of Health should also consider installing *Cryptosporidium* detection methods at the most vulnerable plants to provide early warning of a breakout.
3. The Ministry of Environment and Energy verify the status of reviews by the Federal-Provincial-Territorial Subcommittee on Drinking Water and other scientific panels before citing such reviews as a reason to decline Applications for Review under the *Environmental Bill of Rights*.
4. The Ministry of Environment and Energy address public concerns about air pollution from smokestacks by focusing more resources on resolving the underlying factors within its mandate, including outdated Certificates of Approval, inadequate monitoring of sources, and regulations that focus too heavily on short-term concentrations of pollutants and not enough on long-term loadings to the environment.
5. The Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing, in their role of reviewing and approving municipal land use plans, estab-

lish and apply guidelines to help prevent future land use conflicts caused by air emissions.

6. Ministries cooperate to review and upgrade Ontario's groundwater management framework. These ministries would include the ministries of Environment and Energy, Natural Resources, Consumer and Commercial Relations, Agriculture, Food and Rural Affairs, and Transportation. As a first step, ministries should compile current, accurate information on groundwater data, as well as statistics on inspections of potential contamination sources and enforcement of relevant legislation. This information should be made public.
7. The Ministry of Environment and Energy, working with municipalities, focus more efforts on minimizing groundwater and other environmental impacts of existing landfill operations. These efforts should include a shift in focus from merely monitoring leachate plumes in groundwater to an increased emphasis on preventing such contamination. A first step might be a review of existing provincial rules and guidelines governing landfill operations. Such a review should involve the public, and reflect the regional diversities of waste disposal in Ontario.
8. The Ministry of Environment and Energy announce what changes, if any, it will make to the refillable soft drink container regulations under the *Environmental Protection Act* once studies currently under way are completed, and place the relevant proposal on the Environmental Registry. If no change is made, the Ministry of Environment and Energy should begin to enforce the refillable soft drink container regulations under the *EPA*.
9. Ministries provide detailed reasons to applicants whose Applications are rejected based on the criteria in the *Environmental Bill of Rights* and cite any additional relevant factors in their decision such as limited resources required to carry out a Review. Whenever possible, valid concerns of the applicants should be addressed.
10. Ministries follow the lead of the Ministry of Environment and Energy whose procedures for the receipt and handling

of Applications for Review and Investigation are exemplary.

Instrument Classification

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

Education Initiatives

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



Environmental Commissioner of Ontario

1075 Bay Street Suite 605

Toronto, ON Canada M5S 2B1

Tel: 416-325-3377

Fax: 416-325-3370

Toll free: 1-800-701-6454

www.eco.on.ca

Printed in March 1997

Disponible en français

ISSN 1205-6928

