

**Comments on
Ban on the Land Application of Untreated Portable Toilet Waste
and
Consultation and Notification Requirements under the
Environmental Protection Act for land application sites for biosolids
and other non-agricultural waste**

EBR Registry Numbers: RA03E0016 & RA03E0017

Joint Paper by:

**Canadian Environmental Law Association
&
Sierra Legal Defence Fund**

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**Re: EBR Registry Number: RA03E0016
Ban on the Land Application of Untreated Portable Toilet Waste
and
EBR Registry Number: RA03E0017
Consultation and Notification Requirements under the Environmental Protection
Act for land application sites for biosolids and other non-agricultural waste**

Dear Ms. Smith:

Joint Submission

The Canadian Environmental Law Association (“CELA”) and Sierra Legal Defence Fund (“Sierra Legal”) write to provide comments regarding the proposed Ban on the Land Application of Untreated Portable Toilet Waste and the proposed Consultation and Notification Requirements under the *Environmental Protection Act* for land application sites for biosolids and other non-agricultural waste, posted to the *Environmental Bill of Rights* Registry (Numbers RA03E0016 and RA03E0017) on 25 April 2003.

Commendation

CELA and Sierra Legal wish to commend the Ministry of Environment for consulting widely on the proposed regulation, for providing plenty of time for written comment, and for providing background material in the posting and at the Nutrient Management consultation sessions held in December 2002, January and February 2003.

At the outset, it should be noted that CELA and Sierra Legal strongly support the need for effective and enforceable legislation to address the environmental and public health impacts

of agricultural operations in Ontario, particularly in relation to the land application of untreated portable toilet waste, biosolids and other non-agricultural wastes.

Although we understand that the currently proposed Regulations are only part of an overall regulatory plan, it is difficult to effectively review one or two regulations in isolation from the, as yet unseen, initiatives that we anticipate will follow. As was stressed by Commissioner O'Connor at the Walkerton Inquiry, **there must be an overall water policy for Ontario, and that policy must be implemented with multi-barrier protection beginning with source protection.** The *Nutrient Management Act*, its regulations and other proposed regulatory changes dealing with the land application of untreated portable toilet waste, biosolids and other non-agricultural wastes will be, of necessity, integral to the success or failure of the measures taken by Ontario to better protect our waters.

Canadian Environmental Law Association

CELA is a public interest law group founded in 1970 for the purpose of using and improving laws to protect the environment and public health and safety. Funded as a legal aid clinic specializing in environmental law, CELA lawyers represent individuals and citizens' groups in the courts and before tribunals on a wide variety of environmental protection and resource management matters.

CELA has previously provided various submissions on the subject of nutrient management and on topics relating to agriculture and environment. In May 2002, CELA made a submission to the Standing Committee on Governmental Affairs regarding Bill 81, Nutrient Management Act (CELA publication #425). In August 2001, CELA also made a written submission under the *Environmental Bill of Rights* regarding the then proposed *Nutrient Management Act*. More recently, in January 2003, CELA made written submissions on both the Stage 1 and Stage 2 proposed *Nutrient Management Act* regulation.

Over the years, CELA has been particularly active in casework involving agricultural operations, environmental protection, and land use planning. For example, CELA has frequently represented farmers in civil actions and administrative hearings in order to protect the health, safety and livelihood of our farming clients. Similarly, CELA provides summary advice to numerous members of the public who contact CELA with concerns and questions about the environmental and public health impacts of intensive agricultural operations. In addition, CELA has participated in numerous land use hearings in order to protect agricultural lands and specialty crop lands against urbanization. CELA represented the Concerned Walkerton Citizens in both phases of the Walkerton Inquiry, which, among other things, considered various aspects of nutrient management at the local, regional and provincial levels.

With respect to law and policy reform, CELA has submitted numerous briefs to the Ontario government on general land use planning matters, such as the Bill 20 amendments to the *Planning Act* and the Provincial Policy Statement. Similarly, CELA has submitted briefs on various iterations of Ontario's "right to farm" legislation.¹ More recently, CELA submitted a brief on the Ontario Ministry of Agriculture Food and Rural Affairs/Ministry of the Environment discussion paper on intensive farming operations.²

Sierra Legal Defence Fund

Sierra Legal is a registered charity providing free litigation and scientific services to environmental groups and concerned citizens in Canada. Sierra Legal is funded by public donations and foundation grants. It currently has over 30,000 individual supporters across Canada.

¹ See, for example, B. Mandelker, "Submission by CELA to the Standing Committee on Resource Development Regarding Bill 83" (Dec. 1988); D. Bigalow, "Submission by CELA to OMAFRA on the Draft Discussion Paper on the *Farm Practices Protection Act*" (Feb. 1997); and P. McCulloch, "Submission by CELA to the Standing Committee on Resources Development regarding Bill 146 (Feb. 1998).

Sierra Legal is very concerned about the protection of water quality in Ontario. Sierra Legal authored a report in 2001 entitled *Waterproof: Canada's Drinking Water Report Card*;³ made submissions to Part Two of the Walkerton Inquiry;⁴ reviewed, commented and made presentations on the *Nutrient Management Act* prior to its receipt of Royal Assent, and reviewed and commented upon each of the Stage 1 and Stage 2 Draft Regulations, Protocols and Strategies under the *Nutrient Management Act*.

Reports and Guidelines Considered

CELA and Sierra Legal have reviewed Mr. Justice Dennis O'Connor's recommendations in his Part One and Part Two Reports of the Walkerton Inquiry⁵ and various reports from the Environmental Commissioner of Ontario.⁶ In addition, we have reviewed the Ministry of Environment's current guidelines regarding Certificates of Approval for the land application of biosolids and septage ("Organic Soil Conditioning Cs of A"): *Guidelines for the Utilization of Biosolids and Other Wastes on Agricultural Land ("Guidelines for Utilization of Biosolids")*⁷ and *Guide to Applying for a Certificate of Approval to Spread Sewage and Other Biosolids on Agricultural Lands (Organic Soil Conditioning) ("Guide for Organic Soil Conditioning Cs of A")*.⁸

It is with this background that CELA and Sierra Legal have considered the proposed Ban on the Land Application of Untreated Portable Toilet Waste ("Untreated Portable Toilet

² E. Bruckman, "Submission by CELA to OMAFRA/MOE on the Discussion Paper on Intensive Agricultural Operations in Ontario" (Feb. 2000).

³ Randy Christensen, *Waterproof: Canada's Drinking Water Report Card* (Vancouver: Sierra Legal Defence Fund, January 2001). Available on-line at: www.sierralegal.org/reports/waterproof.pdf.

⁴ Elizabeth Christie, *A Paper On The Regulatory Approaches To Drinking Water Used In Canada And, Selectively, Abroad* (Toronto: Sierra Legal Defence Fund, August 2001).

⁵ The Honourable Dennis R. O'Connor, Commissioner, *Part One Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues and Part Two Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water* (Toronto: Queen's Printer for Ontario, 2002).

⁶ Gord Miller, *The Protection of Ontario's Groundwater and Intensive Farming, Special Report to the Legislative Assembly of Ontario* (Toronto: Environmental Commissioner of Ontario, July 2000) and Gord Miller, *Annual Report of the Environmental Commissioner of Ontario 2001-2002: Developing Sustainability* (Toronto: Environmental Commissioner of Ontario, September 2002).

⁷ Ministry of the Environment and Ministry of Agriculture, Food and Rural Affairs, *Publication Number 3425, March 1996 (Revised January 1998)*.

Waste Ban”) and proposed Consultation and Notification Requirements under the *Environmental Protection Act* for land application sites for biosolids and other non-agricultural waste (“Biosolids Consultation Requirements”). We offer our comments on the proposed regulatory changes in the hope that they may assist in furthering source water protection in Ontario.

Background

Under the *Environmental Protection Act* (“EPA”), Certificates of Approval (“Cs of A”) are required for the land application of biosolids and other non-agricultural wastes (processed organic wastes) – referred to as an Organic Soil Conditioning C of A.⁹ The *General – Waste Management Regulation* (“Regulation 347”) under the EPA sets out the standards for the “location, maintenance and operation of an organic soil conditioning site”. These standards include that the site provide “sufficient” depth to the groundwater table, distance to water wells (300 feet), and that the wastes shall not be applied when surface runoff is “likely”. The Guidelines for Utilization of Biosolids provide specific guidance as to how these standards are to be applied.

The Guidelines for Utilization of Biosolids limit both the nutrient content and the levels of other “undesirable” substances (including heavy metals, sodium, boron, and non-biodegradable constituents).¹⁰ These limits are linked to the substance’s usefulness or hazard to agriculture only (e.g., there is no discussion within this part of the guidelines as to the potential hazards to environmental quality measures such as water quality). Risk to water quality specifically is dealt

⁸ Ministry of the Environment, Publication Number 3681, March 1996 (Revised January 1998).

⁹ Processed organic waste is a designated waste under the *Environmental Protection Act* General – Waste Management Regulation. Processed organic waste is defined in the Waste Management Regulation as “waste that is predominantly organic in composition and has been treated by aerobic or anaerobic digestion, or other means of stabilization, and includes sewage residue from sewage works that are subject to the provisions of the *Ontario Water Resources Act*”.

¹⁰ Guidelines for Utilization of Biosolids, *supra*, note 7 at 4-9.

with under the criteria relating to spreading sites, requiring an assessment to “minimize the risk of contamination to surface watercourses, groundwater, wells and residences.”¹¹ The mechanism for managing risk to water quality is dealt with through separation distances (lesser distances may be approved and attached as conditions to the C of A).¹² Specifically, the Guidelines for the Utilization of Biosolids indicate:¹³

- no spreading at all within 10 m from watercourses – distances depend on steepness of slope and permeability of the soil (ranging from 50 to 200 m and prohibited on slopes greater than 9%);
- 1.5 m of soil depth to groundwater (although lesser can be approved depending on specific site conditions);
- 15 m from drilled wells and 90 m from other wells;
- winter spreading is most often, although not always, prohibited;
- no spreading on steep slopes (greater than 9%); and
- recommendations for suitable crops and waiting periods to harvest.

Septage (“waste from portable toilets, holding tanks, septic and aerobic systems”¹⁴) is considered to be a type of “hailed sewage”¹⁵ and, although a designated waste under Regulation 347, does not fall within the definition of a processed organic waste for the purposes of an Organic Soil Conditioning C of A. However, the Guidelines for Utilization of Biosolids indicate that other wastes can be applied to agricultural land if they “have an acceptably low potential to generate odours and ... contain acceptably low concentrations of organisms pathogenic to humans or animals.”¹⁶ This discrepancy (which seems to permit the spreading of untreated septage on agricultural lands) is presumably what the Ontario government intends to address with the current strategies and regulatory changes as proposed. CELA and Sierra

¹¹ *Ibid.*, at 11.

¹² *Ibid.*

¹³ *Ibid.*, at 12-15, 22.

¹⁴ Ministry of the Environment, Proposed Strategy for Five-Year Phase-out Of the Land Application of Untreated Septage, December 2002 at 2.

¹⁵ Guide for Organic Soil Conditioning Cs of A, *supra*, note 8 at 1.

Legal welcome such efforts and encourage the Ontario government to continue to implement regulatory changes to address concerns regarding the land application of biosolids, septage and other wastes to agricultural lands.

General Comments

As mentioned earlier, although CELA and Sierra Legal are encouraged by the government's efforts to address the environmental and public health impacts of agricultural operations in Ontario, particularly in relation to the land application of untreated portable toilet waste, biosolids and other non-agricultural wastes, we are disappointed that the *Nutrient Management Act* ("NMA") regulation, initially slated to be in force by March 31, 2003 after three stages of consultations, has yet to move beyond the Stage 2 consultations and is not likely to be in force until July 1, 2003 (with suggestions for much longer phase in periods for existing farms).

The government's recent announcement that most farms would not be covered by the NMA proposed regulation until 2008 at the earliest, and recent discussion in the House that it may even be years beyond that date, if ever, is very disappointing. The proposed requirements to have all farms in Ontario meet reasonable minimum standards were long over-due. The government was strenuously insisting that it was going to proceed with the NMA regulation, so much so that many communities in the province have made decisions at local councils based on that promise and based on the detailed Stage 2 regulations that had been proposed. In fact, as recently as this spring government council were actively resisting at least one municipality's official plan amendments that would have protected well fields from biosolids, septage and even manure spreading in certain circumstances on the basis that these issues were to be covered by the NMA regulation.

¹⁶ Guidelines for Utilization of Biosolids, *supra*, note 7 at 4.

In addition, there were other elements of the NMA regulation, specifically dealing with biosolids and septage, which are not included in the present consultation. We trust that this is because they were the subjects of NMA regulation consultation already, but that the government intends to include these matters in the final Ministry of Environment regulation now proposed.

In addition, of course, the government has recently received the report of its Advisory Committee on Watershed Based Source Protection and is now consulting on that report. With the “changed direction” in the NMA regulation, the proposed source protection framework becomes the only remaining tool that may allow protection of groundwater and surface water sources from many land application impacts. We strenuously encourage the government to implement the advisory committee’s report, including passage of the recommended legislation as soon as possible as contemplated by the Final Report of the Advisory Committee on Watershed-Based Source Protection Planning: “Protecting Ontario’s Drinking Water: Toward a Watershed-based Source Protection Planning Framework”. CELA and Sierra Legal will each be providing written comments on the Framework under separate cover prior to the expiry of that consultation deadline.

Recommendation 1: The Ontario government should move forward immediately to complete the final drafting and implementation of the *Nutrient Management Act* regulation, as well as to include the matters dealing with biosolids and septage phase-out in a separate Ministry of Environment regulation as now proposed. As well, the government should develop drinking water source protection measures as contemplated by the Final Report of the Advisory Committee on Watershed-Based Source Protection Planning: “Protecting Ontario’s Drinking Water: Toward a Watershed-based Source Protection Planning Framework”.

Furthermore, Mr. Justice O’Connor has made a specific recommendation relating to the land application of non-agricultural wastes:

Recommendation 10: The Ministry of the Environment should not issue Certificates of Approval for the spreading of waste materials unless they are compatible with the applicable source protection plan.¹⁷

Until such time as source protection plans are fully developed, approved and implemented, the Ontario Ministry of the Environment should refrain from approving any Organic Soil Conditioning Cs of A.

As the Ontario government also begins to move forward with recommendations regarding source water protection, it is CELA and Sierra Legal's understanding that Organic Soil Conditioning Cs of A will be prohibited in areas determined to be vulnerable or sensitive under the individual source protection plans (once developed, approved and implemented).

Recommendation 2: Until such time as source protection plans are fully developed, approved and implemented, the Ontario Ministry of the Environment should refrain from approving any Organic Soil Conditioning Certificates of Approval.

Recommendation 3: Following approval and implementation of source protection plans, Organic Soil Conditioning Certificates of Approval will be prohibited in areas determined to be vulnerable or sensitive under the individual source protection plans.

As a result of our review for this brief, CELA and Sierra Legal believe that a thorough review of both the Guidelines for Utilization of Biosolids and the Guide for Organic Soil Conditioning Cs of A is required to ensure that these guidance documents are consistent with water source protection measures (as such measures are developed). Any standards that are developed to ensure that there is no risk to water sources must be incorporated into the regulatory standards for Organic Soil Conditioning Cs of A (in a manner that makes them binding on decisions to approve Organic Soil Conditioning Cs of A). An acceptable risk to water source must be determined using the precautionary principle.

Recommendation 4: The Ministry of the Environment should immediately conduct a thorough review of current guidance documentation for Organic Soil Conditioning Certificates of Approval in order to ensure consistency with source protection measures

¹⁷ Part Two Report of the Walkerton Inquiry, *supra*, note 5 at 124.

(as such measures are developed). New standards should be developed and incorporated into Regulation 347 in order to ensure there is no risk to drinking water sources. The determination of an acceptable risk must be achieved using the precautionary principle.

The interaction between the Organic Soil Conditioning Cs of A and any requirements for Nutrient Management Plans (“NMPs”) or Nutrient Management Strategies (“NMSs”) under the NMA needs to be clarified. It is CELA and Sierra Legal’s understanding that an Organic Soil Conditioning C of A will be required *in addition to* or *as a component of* any requirements for approved NMPs and/or NMSs. Since an Organic Soil Conditioning C of A is required under the EPA and the NMA states that it will not affect the application of the EPA in any situation where the EPA applies (see section 52 of the NMA), it is reasonable to assume that an Organic Soil Conditioning C of A will remain a separate requirement from NMPs and NMSs. Due to the risks to environmental quality from the disposal of biosolids, septage and other non-agricultural waste on agricultural lands, CELA and Sierra Legal recommend that an Organic Soil Conditioning C of A remain a requirement separate from any regulation under the NMA. Having said that, CELA and Sierra Legal do not believe that an Organic Soil Conditioning C of A should be a requirement that is completely independent from the regulatory scheme that is being contemplated under the NMA. In other words, a NMP or NMS must incorporate the Organic Soil Conditioning C of A and ensure that any other nutrients applied to land, in addition to those approved under any Organic Soil Conditioning C of A, meet any requirements meant to ensure the protection of water sources in Ontario.

Recommendation 5: The Ministry of the Environment should ensure that an Organic Soil Conditioning Certificate of Approval remain a separate (although not completely independent) component of any requirements under the *Nutrient Management Act* and its regulations.

In order to ensure clarity regarding an Organic Soil Conditioning C of A, CELA and Sierra Legal recommend amending the EPA such that the subsection 9(3)(e) exception does not apply to the land application of biosolids, septage and other non-agricultural wastes

regulated through Organic Soil Conditioning C of A. Subsection 9(3)(e) exempts “any plant, structure, equipment, apparatus, mechanism or thing used in agriculture” from the requirement of a C of A under subsection 9(1). As section 9 is part of the general provisions, of which the requirements for waste management are a specific component, CELA and Sierra Legal are concerned that the land application of biosolids, septage and other non-agricultural wastes could be interpreted as a “thing used in agriculture” and, as such, it should be clearly stated that an Organic Soil Conditioning C of A does not fall within the subsection 9(3)(e) exemption.

Recommendation 6: The *Environmental Protection Act* should be amended to clarify that the subsection 9(3)(e) exception from Certificates of Approval for agriculture does not apply to the land application of biosolids, septage and other non-agricultural wastes regulated through an Organic Soil Conditioning Certificate of Approval.

CELA and Sierra Legal are encouraged by MOE’s earlier stated commitment that the application of untreated septage will be phased-out. The Proposed Strategy for the Five-Year Phase-Out of the Land Application of Untreated Septage explained how the MOE wishes to phase out Cs of A for the spreading of untreated septage. The currently proposed Untreated Portable Toilet Waste Ban deals with untreated portable toilet waste only. As septage includes waste from holding tanks, septic and aerobic systems,¹⁸ in addition to potable toilet wastes, CELA and Sierra Legal recommend that the MOE immediately move forward with developing and implementing regulations that ban the land application of all untreated septage and that these regulations be included with the regulation subject to the instant consultation.

Recommendation 7: The Ministry of the Environment should immediately move forward with developing and implementing further regulatory changes to ban the land application of all untreated septage on agricultural lands.

¹⁸ Proposed Strategy for Five-Year Phase-out Of the Land Application of Untreated Septage, *supra*, note 14.

Specific Comments – Untreated Portable Toilet Waste Ban

CELA and Sierra Legal are encouraged that the proposed Untreated Portable Toilet Waste Ban changes to Regulation 347 will apply immediately to prevent new Cs of A for the land application of these types of wastes. In addition, the proposed prohibition of “disposal or distribution” of untreated portable toilet waste as of July 31, 2003 (except as permitted specifically under a C of A for drying purposes or for disposal to a sewage treatment plant) is an essential component of the changes. We do, however, have several specific recommendations that we believe will strengthen the proposed changes to Regulation 347.

There is nothing in the proposed Untreated Portable Toilet Waste Ban that defines what is required for the portable toilet waste to be considered “treated” versus “untreated”. Furthermore, there is nothing currently in the Regulation 347 to distinguish treated versus untreated septage generally. If wastes are required to be “processed” (as in the definition of processed organic waste) in order to be considered “treated”, this must be clarified in any changes to Regulation 347.

Recommendation 8: A definition of what is meant by “treated” (versus untreated) portable toilet waste (and other types of septage) should be included in any changes to Regulation 347.

Since it seems that treated portable toilet waste will be included as a waste covered by an Organic Soil Conditioning C of A, the definitions in Regulation 347 should be amended to make this clear. In fact, once all untreated septage has been banned or phased out (which recommend MOE immediately move to implement), Regulation 347 must be amended to clearly state which wastes form part of the permitted land applications under an Organic Soil Conditioning C of A and those that are absolutely prohibited from land application.

Recommendation 9: Regulation 347 should be changed to clearly state that treated portable toilet waste (and other types of septage), in addition to processed organic

waste, form part of wastes covered by an Organic Soil Conditioning Certificate of Approval.

Recommendation 10: Regulation 347 should be changed to clearly state those wastes that are absolutely prohibited from agricultural land application.

The proposed Untreated Portable Toilet Waste Ban includes, in addition to any requirements of a C of A, specific standards (including standards for heavy metals) as described in sub-clause 14.3(1)1. Although CELA and Sierra Legal are encouraged that the standards for regulated metals for treated portable toilet wastes are included in the proposed regulation, we recommend that the standards be reviewed (as mentioned above for the guidance documents) to ensure there is no risk to health or water sources. Environmental Defence Canada recently released a report that suggests the heavy metal concentrations (some toxic) in our food are sufficiently high to be putting Canadians at risk.¹⁹ Although Health Canada rejects the conclusions of the report,²⁰ the data was collected by Health Canada's own Total Diet Study. There must be requirements that the application of any treated portable toilet wastes (and treated septage generally) not cause the receiving soils to exceed maximum concentrations of heavy metals (and other substances) in order to protect both human health and environmental quality.

Recommendation 11: The Ministry of the Environment should immediately undertake a review of the standards that will apply to treated portable toilet wastes (and any treated septage that will be permitted for agricultural land application) to ensure that there is no risk to human health and environmental quality. (See also Recommendation 4.)

Specific Comments – Biosolids Consultation Requirements

CELA and Sierra Legal are encouraged that the MOE has proposed to make the land application of biosolids a more transparent and accountable process by introducing consultation

¹⁹ Environmental Defence Canada, *Metallic Lunch: An Analysis of Heavy Metals in the Canadian Diet* (Toronto: Environmental Defence Canada, May 2003).

²⁰ Martin Mittelstaedt, "Lead, cadmium in food, environmental groups says," *Globe and Mail*, Monday, May 5, 2003.

and notification amendments to Regulation 347. We do, however, have several specific recommendations that we believe will strengthen the proposed changes to Regulation 347.

The proposed Biosolids Consultation Requirements refers to “an application under Part V of the Act for approval to apply organic or inorganic waste on land to improve the quality of the soil”. Does this refer to an Organic Soil Conditioning C of A exclusively (with the addition of some inorganic wastes that may fall under such an approval) or are there two separate approvals? There is no reference to inorganic agricultural land applications in Regulation 347. This needs to be clarified.

Recommendation 12: The use of the term “inorganic” in the proposed changes to Regulation 347 needs to be clarified since there is no reference to inorganic waste under the current regulations for Organic Soil Conditioning Certificates of Approval.

The proposed Biosolids Consultation Requirements does not indicate what the consequences will be of failing to meet the consultation and notification requirements. Failure to meet the consultation requirements should prevent the approval of the Organic Soil Conditioning C of A. Failure to meet the notification requirements should be considered a failure to meet the conditions of the Organic Soil Conditioning C of A. These consequences should be clarified in the proposed changes to Regulation 347 in order to properly guide the Director’s discretion in approving an Organic Soil Conditioning C of A.

Recommendation 13: The proposed changes to Regulation 347 should include the consequences of failing to meet the consultation and notification requirements. Specifically, failure to meet the consultation requirements should prevent the approval of the Organic Soil Conditioning Certificate of Approval and failure to meet the notification requirements should be considered a failure to meet the conditions of the Organic Soil Conditioning Certificate of Approval.

The proposed Biosolids Consultation Requirements sets out requirements for consultation and notification to apply to the “generator” of organic and inorganic wastes.

“Generator” is a defined term in Regulation 347.²¹ However, “generator” is also proposed as a defined term under the draft Nutrient Management Regulation (Stage 2).²² As it is expected there will be interaction between the requirements for an Organic Soil Conditioning C of A under the EPA and any requirements under the NMA and its regulations, care should be taken to ensure there is no confusion with respect to the term “generator”. With respect to the Biosolids Consultation Requirements, the term “generator” should include all those who require an Organic Soil Conditioning C of A in order to dispose of wastes via agricultural land application. This will include those “generating” biosolids, treated septage and other acceptable wastes. This distinction needs to be clarified in any amendment to Regulation 347.

Recommendation 14: The term “generator” as currently defined in Regulation 347 should be changed to ensure all those who require an Organic Soil Conditioning Certificate of Approval in order to dispose of wastes via agricultural land application are included. Alternatively, a new term could be defined that includes those “generating” biosolids, treated septage and other non-agricultural wastes. Care must be taken to ensure the use of the term “generator” in Regulation 347 is not confused with any similar term used in any future *Nutrient Management Act* regulation since there is likely to be interaction between the requirements of Regulation 347 and those under the *Nutrient Management Act* regulation.

The proposed Biosolids Consultation Requirements sets out a requirement for a written plan to be prepared by the generator of organic or inorganic waste and submitted to the MOE and the municipality in which the site is located. It is not clear whether this plan is part of the NMPs and/or NMSs under the NMA. This should be clarified.

Recommendation 15: The proposed changes to Regulation 347 should be clarified to indicate whether the plan to be prepared by the “generator” of organic or inorganic waste and submitted to the Ministry of the Environment and the municipality in which the site is located will be part of the Nutrient Management Plans and/or Nutrient Management Strategies under the *Nutrient Management Act*.

²¹ “generator” means the operator of a waste generation facility;

²² “generator” means a person who owns or controls an operation in the course of which prescribed materials are generated, and includes an intermediate generator;

Conclusions and Summary

CELA and Sierra Legal are encouraged by the Ontario government's stated commitment to implement all of Mr. Justice O'Connor's recommendation from his Reports for the Walkerton Inquiry. We are also encouraged that the Ontario government is moving forward to implement the Proposed Strategy for the Five-Year Phase-Out of the Land Application of Untreated Septage. We are concerned, however, that the Ontario government continues to move ahead in a piece-meal fashion, without the benefit of source protection legislation and plans. It is difficult to comment on each aspect without knowing how it will apply within the geographically based source protection measures. We hope that the Ontario government will move expediently toward implementing source protection legislation so that all other efforts to regulate "nutrient management" can be properly assessed and revised.

CELA and Sierra Legal look forward to the government's response to the specific concerns outlined herein, which are summarized below:

Recommendation 1: The Ontario government should move forward immediately to complete the final drafting and implementation of the *Nutrient Management Act* regulation, as well as to include the matters dealing with biosolids and septage phase-out in a separate Ministry of Environment regulation as now proposed. As well, the government should develop drinking water source protection measures as contemplated by the Final Report of the Advisory Committee on Watershed-Based Source Protection Planning: "Protecting Ontario's Drinking Water: Toward a Watershed-based Source Protection Planning Framework".

Recommendation 2: Until such time as source protection plans are fully developed, approved and implemented, the Ontario Ministry of the Environment should refrain from approving any Organic Soil Conditioning Certificates of Approval.

Recommendation 3: Following approval and implementation of source protection plans, Organic Soil Conditioning Certificates of Approval will be prohibited in areas determined to be vulnerable or sensitive under the individual source protection plans.

Recommendation 4: The Ministry of the Environment should immediately conduct a thorough review of current guidance documentation for Organic Soil Conditioning Certificates of Approval in order to ensure consistency with source protection measures (as such measures are developed). New standards should be developed and

incorporated into Regulation 347 in order to ensure there is no risk to drinking water sources. The determination of an acceptable risk must be achieved using the precautionary principle.

Recommendation 5: The Ministry of the Environment should ensure that an Organic Soil Conditioning Certificate of Approval remain a separate (although not completely independent) component of any requirements under the *Nutrient Management Act* and its regulations.

Recommendation 6: The *Environmental Protection Act* should be amended to clarify that the subsection 9(3)(e) exception from Certificates of Approval for agriculture does not apply to the land application of biosolids, septage and other non-agricultural wastes regulated through an Organic Soil Conditioning Certificate of Approval.

Recommendation 7: The Ministry of the Environment should immediately move forward with developing and implementing further regulatory changes to ban the land application of all untreated septage on agricultural lands.

Recommendation 8: A definition of what is meant by “treated” (versus untreated) portable toilet waste (and other types of septage) should be included in any changes to Regulation 347.

Recommendation 9: Regulation 347 should be changed to clearly state that treated portable toilet waste (and other types of septage), in addition to processed organic waste, form part of wastes covered by an Organic Soil Conditioning Certificate of Approval.

Recommendation 10: Regulation 347 should be changed to clearly state those wastes that are absolutely prohibited from agricultural land application.

Recommendation 11: The Ministry of the Environment should immediately undertake a review of the standards that will apply to treated portable toilet wastes (and any treated septage that will be permitted for agricultural land application) to ensure that there is no risk to human health and environmental quality. (See also Recommendation 4.)

Recommendation 12: The use of the term “inorganic” in the proposed changes to Regulation 347 needs to be clarified since there is no reference to inorganic waste under the current regulations for Organic Soil Conditioning Certificates of Approval.

Recommendation 13: The proposed changes to Regulation 347 should include the consequences of failing to meet the consultation and notification requirements. Specifically, failure to meet the consultation requirements should prevent the approval of the Organic Soil Conditioning Certificate of Approval and failure to meet the notification

requirements should be considered a failure to meet the conditions of the Organic Soil Conditioning Certificate of Approval.

Recommendation 14: The term “generator” as currently defined in Regulation 347 should be changed to ensure all those who require an Organic Soil Conditioning Certificate of Approval in order to dispose of wastes via agricultural land application are included. Alternatively, a new term could be defined that includes those “generating” biosolids, treated septage and other non-agricultural wastes. Care must be taken to ensure the use of the term “generator” in Regulation 347 is not confused with any similar term used in any future *Nutrient Management Act* regulation since there is likely to be interaction between the requirements of Regulation 347 and those under the *Nutrient Management Act* regulation.

Recommendation 15: The proposed changes to Regulation 347 should be clarified to indicate whether the plan to be prepared by the “generator” of organic or inorganic waste and submitted to the Ministry of the Environment and the municipality in which the site is located will be part of the Nutrient Management Plans and/or Nutrient Management Strategies under the *Nutrient Management Act*.

Yours truly,

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cc. Mr. Gordon Miller, Environmental Commissioner of Ontario