



CANADIAN ENVIRONMENTAL
LAW ASSOCIATION
*L'ASSOCIATION CANADIENNE DU DROIT
DE L'ENVIRONNEMENT*



SIERRA LEGAL
advocates for the environment

Comments on Regulation Proposal: Optional On-Farm Treatment Technologies

EBR Registry Number: 010 - 0184

**Joint Comments by
Sierra Legal Defence Fund and
Canadian Environmental Law Association**

**Canadian Environmental Law Association
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May 2, 2007

Mohsen Keyvani, Senior Policy Coordinator
Ministry of the Environment
Waste Management Policy Branch
Floor 7, 135 St Clair Avenue West
Toronto, Ontario
M4V 1P5

Fax: (416) 325-4437
E-mail:mohsen.keyvani@ontario.ca

Re: EBR Registry Number: 010-0184
Ministry: Environment
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Optional On-Farm Treatment Technologies

Dear Sir:

The Canadian Environmental Law Association (“CELA”) and Sierra Legal Defence Fund (“Sierra Legal”) write to provide comments regarding the above noted proposal.

CELA is a non-profit, public interest group established in 1970 to use existing laws to protect the environment and to advocate environmental law reform. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens’ groups before trial and appellate courts and administrative tribunals on a wide variety of environmental protection and resource management matters.

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.

CELA and Sierra Legal have previously provided various and extensive submissions on the subject of nutrient management and on topics relating to agriculture and environment, both jointly and separately. For example, we each made submissions to the Standing Committee on Governmental Affairs regarding Bill 81, Nutrient Management Act. Similarly, we also made a written submissions under the *Environmental Bill of Rights* regarding the then proposed Nutrient Management Act. We have commented on all

aspects of the development and amendment of the Regulations under the *Nutrient Management Act, 2002*.

CELA and Sierra Legal wish to acknowledge that the Ministries of Environment, and Agriculture, Food and Rural Affairs have consulted widely on issues relating to the regulation of agricultural activities that may impact environmental quality and human health. In this case, the detail provided in respect of the proposed regulatory changes is appreciated.

CELA and Sierra Legal also wish to state, at the outset, that we strongly support the need for effective and enforceable laws to address the environmental and public health impacts of agricultural operations in Ontario, particularly in relation to the regulation of land application materials that may impact water quality. Although we understand that the currently proposed regulatory changes are only parts of an overall regulatory plan, it is difficult to effectively review one or two regulations in isolation from the still evolving initiatives, for example, with respect to source water protection under the *Clean Water Act*.

CELA and Sierra Legal remain concerned about the continued delay in the Province's full implementation of the *Nutrient Management Act* and response to key recommendations made by Justice O'Connor regarding regulation of farms. The three key recommendations are:

Recommendation 11

The Ministry of the Environment should take the lead role in regulating the potential impacts of farm activities on drinking water sources. The Ministry of Agriculture, Food and Rural Affairs should provide technical support to the Ministry of the Environment and should continue to advise farmers about the protection of drinking water sources.

Recommendation 12

Where necessary, the Ministry of the Environment should establish minimum regulatory requirements for agricultural activities that generate impacts on drinking water sources.

Recommendation 13

All large or intensive farms, and all farms in areas designated as sensitive or high-risk by the applicable source protection plan, should be required to develop binding individual water protection plans consistent with the source protection plan.

The Province has yet to adequately respond to these recommendations. CELA and Sierra Legal recognize that the Province has established the Nutrient Management Science-Based Standards Committee to develop a set of risk based scientific standards that will apply to all farms in order to address Recommendation 12. We also recognize that regulations are being developed and phased in under the *Clean Water Act*.

We continue to have serious concerns about the *Nutrient Management Act*, and related Regulations and Policies. The Notice posted to the Environmental Registry indicated

that, through the regulatory changes proposed, “the government continues to add regulatory requirements for agricultural activities that generate impacts on drinking water sources, as recommended by Justice O’Connor.” In the Notice, the government of Ontario has failed to indicate exactly how the proposed regulated activities are a potential threat or concern for source water protection, such that the regulatory action is required. In fact, the proposal for on-farm mixed anaerobic digestion systems would take away regulatory requirements for a Certificate of Approval under the *Environmental Protection Act*. Removal of regulatory oversight from the Ministry of the Environment is in direct contradiction of Justice O’Connor’s Recommendation 11. The intent, as we read it, is that the Ministry of the Environment would have regulatory oversight of land applied materials and the Ministry of Agriculture, Food and Rural Affairs would provide necessary technical input and advice.

Recommendation 1:

We strongly recommend that the Ministry of the Environment maintain regulatory oversight of the use of on-farm treatment technologies.

Furthermore, it is unclear in the proposal as to how, when removing regulatory oversight of on-farm treatment technologies, the public can be assured that there will be adequate compliance and enforcement with the proposed standards. Particularly, it is unclear how a proposed on-farm mixed anaerobic digestion facility (a waste processing site) would receive the same environmental and legal scrutiny that is required for similar facilities that are licensed under the *Environmental Protection Act*.

Currently, an on-farm mixed anaerobic digestion facility that is using only agricultural source material, is exempt from approval requirements under Part V of the *Environmental Protection Act*. However, a person wanting to construct or operate an on-farm mixed anaerobic digestion facility, which can incorporate off-farm waste materials, must submit an application to the Ministry of Environment. A summary of the application proposal is then posted on the Environmental Registry, with a 30-day notice period for comments from the public.

A reviewer from the Ministry of Environment then reviews the whole process to ensure that all steps have been completed. The Ministry then drafts the Certificate of Approval (C of A). The C of A is issued and a decision notice is posted on the EBR, including the conditions related to the C of A. The decision is appealable with a 15-day deadline for the receipt of appeals.

The proposed regulatory framework for on-farm treatment technologies effectively removes the public from the entire process of dealing with such activities that could potentially impact drinking water sources in Ontario.

Similarly, the regulations contemplate that the output from the anaerobic digestion process will be land applied as a non-agricultural source material, subject to certain restrictions. It is unclear to us whether the restrictions have been developed within the context of assuring that the goal of protecting water quality and human health is met.

The stated purpose of the need for these proposed regulations suggests that the current regulatory regime for adopting on-farm treatment technologies “were perceived to be a hindrance”. The government of Ontario fails to advise the public as to why the proposed regulatory changes – making it easier to adopt the technologies, is likely to reduce the threat/risk to water sources. Without additional information, the public cannot be assured that removing regulatory oversight from the Ministry of the Environment will continue to provide for an appropriate level of compliance and enforcement.

Anaerobic digestion will generate particularly harmful greenhouse gas emissions (methane). The proposed regulation would require that the “biogas” be collected and combusted. This proposal has obvious consequences for any strategy aimed at addressing climate change. CELA and Sierra Legal support the requirement that the methane be captured rather than released. However, additional information is needed about how the energy and heat generated from incinerating the biogas will be used (if at all) to ensure that these facilities are carbon-neutral.

Recommendation 2:

The regulation should require that on-farm mixed anaerobic digestion facilities manage all biogas generated through methods that ensure the facilities are carbon-neutral.

CELA and Sierra Legal have similar concerns in respect of proposed requirements for vegetated filter strip systems (currently requiring approval from the Ministry of the Environment as sewage works).

CELA and Sierra Legal appreciate the opportunity to provide comments on the proposal for regulation of Optional On-Farm Treatment Technologies. We note that these are initial comments and we would we would reserve the right to change or add further detail at a later date.

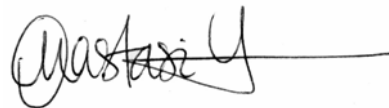
Yours truly,

**CANADIAN ENVIRONMENTAL LAW
ASSOCIATION**



Marlene Cashin
Counsel

SIERRA LEGAL



Anastasia M. Lintner, PhD, LLB
Staff Lawyer & Economist