

Submission to the Ontario Ministry of Environment and Energy
Re: EBR Notice RA7E0012.P
Amendments to Regulation 347

CELA Brief: 336

CIELAP Brief: 5/97

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1: INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. 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 issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

The Canadian Institute for Environmental Law and Policy (CIELAP) is an independent, not for profit, environmental law and policy research and education organization, founded in 1970 as the Canadian Environmental Law Research Foundation. Over the past fifteen years, the Institute has taken a strong interest in the management of hazardous wastes in the province of Ontario.

The purpose of this brief is to respond to the draft amendments to Regulation 347 made under the *Environmental Protection Act*, as proposed by the Ministry of Environment and Energy. The draft amendments were posted on the Environmental Bill of Rights Registry on October 22, 1997, EBR Registry Number RA7E0012.P, with a one month comment period. The authors both wish to note that they requested that background documents and the exact wording of the draft text of the proposed amendments be forwarded to them by the Ministry of the Environment and Energy. However, to date, this material has not been received. Therefore, the authors reserve the right to make further comments or amend this submission once they have had the opportunity to review this information.

According to the notice posted on the Environmental Registry, the purpose of the proposed amendments is twofold. Each is discussed separately below.

2. CLARIFICATION OF THE DEFINITION OF THE TERM "WASTE"

The first purpose of the proposed amendments is to clarify what residues from manufacturing, industrial or commercial processes or operations are considered "waste" and therefore can be regulated by the Ministry. This initiative is a response to a June 1997 decision of the Ontario Court (General Division).¹ In that case, the Court found that "chopline residue" could not be considered waste as defined under Part V of the *Environmental Protection Act* (EPA), stating that only "unusable leftovers" could be considered waste and regulated by the Ministry. This court decision, if allowed to stand, would have exempted a wide range of activities involving the "recycling" of hazardous wastes from regulation by the Ministry.

The Ministry opposed this application at the trial, an action which both CELA and CIELAP supported. The addition of paragraph 14 to section 2(1) of regulation 347 will re-establish the status quo as it existed before the *Philip* court decision. Consistent with our support in opposing the narrow definition of the term waste in the *Philip* court decision, CELA and CIELAP support the proposed addition of paragraph 14 to Regulation 347.

3. EXEMPTION OF FOUR WASTE STREAMS FROM REGULATION

In addition to adding paragraph 14, the proposed amendments include provisions which will exempt four specific waste streams from the requirements of Regulation 347, and Part V of the *Environmental Protection Act*. CELA and CIELAP do not support these proposed amendments for a number of reasons, which are outlined below.

GENERAL

The Ministry is proposing that the following activities be granted exemptions from the requirements of Regulation 347 and EPA Part V:

- (a) 'recycling' residues (called "chop line residues") from electrical wire recycling operations;
- (b) disposing of 'pickle liquor' in municipal sewage treatment plants;
- (c) 'recycling' of photochemical process wastes for silver recovery; and
- (d) 'recycling' sites and activities for chipped wood and waste wood.

These exemptions contradict the recommendations contained in the August 1997 report of the Ontario Fire Marshal which was written in response to the Plastimet Fire in Hamilton. The Fire Marshall called for the *strengthening* of regulatory controls on 'recycling' operations, including

- bans on siting in close proximity to schools, hospitals, correctional facilities, high density residential areas and similar sensitive sites; and
- compliance with fire safety requirements, including security measures, fire plans, inventory of materials, and training for company personnel.²

Instead, the proposed amendments would *remove* these four activities from regulatory requirements. Specific concerns regarding the exemption of these four specific waste streams are detailed below.

CHOP LINE RESIDUES

The proposed amendments to Regulation 347 with respect to chopline residue are completely at odds with the position that the Ministry of Environment and Energy (MoEE) took in a recent *Philip* court case.

The *Philip* Case

Philip Enterprises Inc (PEI) brought an application in the Ontario Court (General Division) seeking a declaration that chopline residue was not waste. PEI was obtaining chopline residue (leftover materials from chopping plastic covered wire; its components includes copper, lead, cadmium and at least two kinds of plastic) for recycling purposes. If chopline residue was found not to be waste by the court, it would not be subject to any regulatory controls under the Environmental Protection Act.

The MoEE opposed the application by PEI. However, the court granted the declaration that the applicant was seeking. The Ministry appealed the court decision on July 16, 1996. In the period between the date of the appeal and the date on which the amendments to Regulation 347 were placed on the EBR registry, the MoEE has apparently completely reversed its previous position on whether chopline residue should be subject to regulatory controls.

MoEE staff position on the issue of whether Chopline residue should be regulated

At the Ontario Court (General Division) the MoEE relied on the affidavit of Mr. Adam Ciulinui, an MoEE witness who stated the following:

- 1) The Ministry's regulation of chopline residue is simply part of a much larger regulatory framework which exists in Ontario to ensure that people manage waste according to the standards that protect the public and the environment and conserve natural resources.³
- 2) A definition of waste which excluded recyclable materials such as chopline residue and included only valueless material as proposed by PEI would effectively frustrate the MoEE's resource conservation and protection objectives. It would contradict the existing regulatory framework and could seriously undermine the Ministry's authority to regulate recycling within the Province, with far-reaching environmental implications(emphasis added).⁴

Another MoEE witness, Mr Martin McConnochie, provided an affidavit in which he stated the following:

- 1) Chopline residue is a moderate health hazard. According to PEI's Ontario and Federal waste manifesting documents, it is "leachate toxic waste" under Ontario Regulation 347 due to high levels of lead and cadmium. If it is leachate toxic it is also hazardous waste.⁵

- 2) It is clear from the available evidence there are significant health risks associated with the chopline residue - it could result in lead poisoning if handled in such a manner as to result in its inhalation or ingestion. Lead poisoning has, as its early symptoms, persistent metallic taste, anorexia constipation and abdominal cramps. Continued exposure may result in muscle weakness, fatigue, degenerative changes in motor neurons, pallor anaemia, liver and kidney damage, headaches and insomnia.⁶

Chopline residue was, until recently, disposed at a Superfund landfill site in the United States, which in that country means a site "which threatens the environment to a significant degree."⁷ The MoEE stated that despite the changes proposed in its July 1996 document entitled Responsive Environmental Protection Reforms it "was unlikely that a waste processing operation such as PEI's involving hazardous waste such as chopline residue would be exempted from the approval requirements of the Part V of the EPA. If such an exemption regulation was made, it is also likely it would impose environmental standards to control the negative environmental effects associated with such a recycling site."⁸

It is abundantly evident therefore, that the proposed changes to Regulation 347 ignore the very serious concerns expressed by the MoEE staff to the court regarding the need for regulatory controls over chopline residue. Moreover, the proposed changes are contrary to the positions taken by the MoEE staff in court. Consequently, CELA and CIELAP cannot support the proposed amendment to Regulation 347 to exempt the 'recycling' of 'chopline residue' from the requirements of the regulation or Part V of the EPA.

PICKLE LIQUOR

Pickle liquor is a high strength sulphuric or hydrochloric acid waste produced from steel making processes. It results from the use of these acids to clean metal surfaces and typically is contaminated (5-10%) with dissolved ferrous sulfate and other substances. CIELAP and CELA note that a report prepared for MoEE on industrial sewer use under the MISA program stated that "all demonstration municipalities recognized the need for tighter control on hauled waste (disposed of at sewage treatment plants) due to its potential for impact on STP process sludge quality and effluent quality."⁹

CIELAP and CELA requested background information on the specific contents of 'pickle liquor' and its impact on STP operations. We understand that the use of 'pickle liquor' in sewage treatment plants is permitted in the United States by the Environmental Protection Agency. However, it is our understanding that these uses are subject to stringent conditions.¹⁰ The short comment period has not permitted us to investigate these conditions in detail.

It is, however, our understanding that no such conditions are included in the proposed amendment to Regulation 347. Furthermore, the proposed exemption would mean that there would be no publicly available information, currently contained in the MoEE Waste Manifest Data base, regarding the quantities and sources of 'pickle liquor' disposed of in Ontario STPs.

Given these considerations, and in the absence of specific information regarding the contents of 'pickle liquor' and its impact on STP operations, sludge quality, effluent quality, and occupational health and safety, and in light of the conclusions of the MoEE sewer use study and our understanding of USEPA practices in this area, CELA and CIELAP cannot support the proposed amendment to Regulation 347 which provides an exemption for the use of 'pickle liquor' in STPs.

PHOTOCHEMICAL WASTES

An exemption for photochemical wastes from the requirements of Regulation 347 was first proposed in July 1996, in the Ministry's publication entitled Responsive Environmental Protection. CIELAP and CELA note that photochemical wastes contain a very wide range of significant contaminants in addition to silver.¹¹ CELA and CIELAP have requested up to date information from MoEE regarding the contents of photochemical wastes. No response had been received as of November 21, 1997.

In the view of CELA and CIELAP, the proposed amendment would exempt materials containing a wide variety of substances from regulatory requirements which would meet the Ministry's definition of hazardous waste and require appropriate handling, treatment and disposal. In our view, such action has the potential to pose significant danger to environmental quality and human health and safety. The proposed amendment to Regulation 347 cannot be supported for these reasons.

WOOD AND WOOD CHIP RECYCLING

An exemption for wood and wood chip recycling from the requirements of Regulation 347 was also proposed in Responsive Environmental Protection. This is of concern given that wood wastes constitute an obvious potential fire hazard. Given that what is proposed is an exemption, there would be no limits on how much of these materials can be processed or stored on site at a given time, no requirements for fire protection as were recommended in the Fire Marshal's report on Plastimet,¹² and no requirement to even report existence of operation to the MoEE or local Fire Departments.

The proposed exemption cannot be supported for these reasons. CELA and CIELAP would be prepared to discuss with the Ministry arrangements for such waste sites that would ensure adequate protection from fire and other hazards. This could include requirements regarding the location of sites, registration and regular reporting to the Ministry on activities, and enforceable requirements for fire protection and staff training.

3. CONCLUSIONS

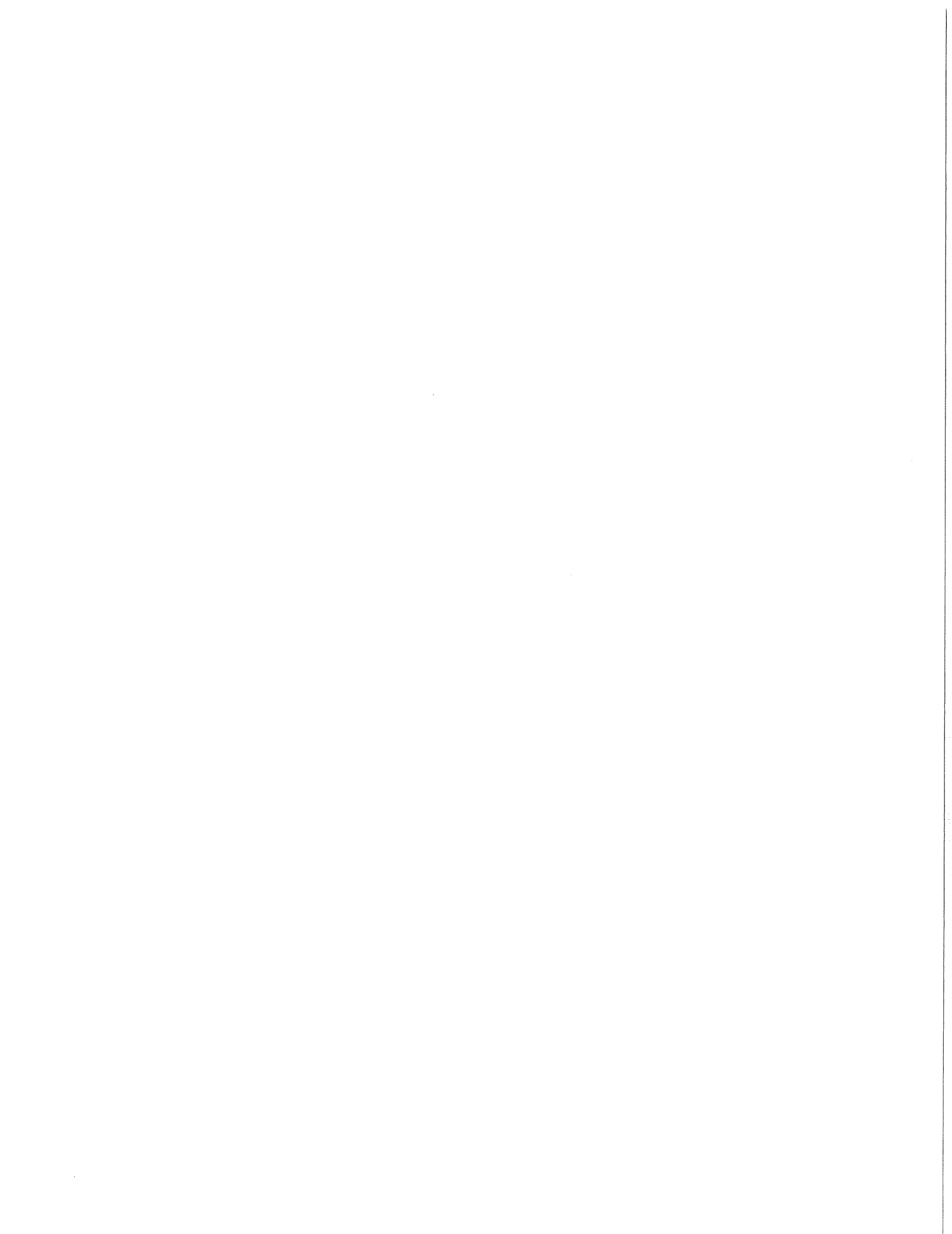
CIELAP and CELA welcome the opportunity to comment on the Ministry's proposed amendments to Regulation 347. However, both organizations feel the need to express serious concerns over the short public comment period provided on this proposal, and the Ministry's failure to respond to their requests for additional information regarding the rationale and impacts of the proposed amendments within the public comment period.

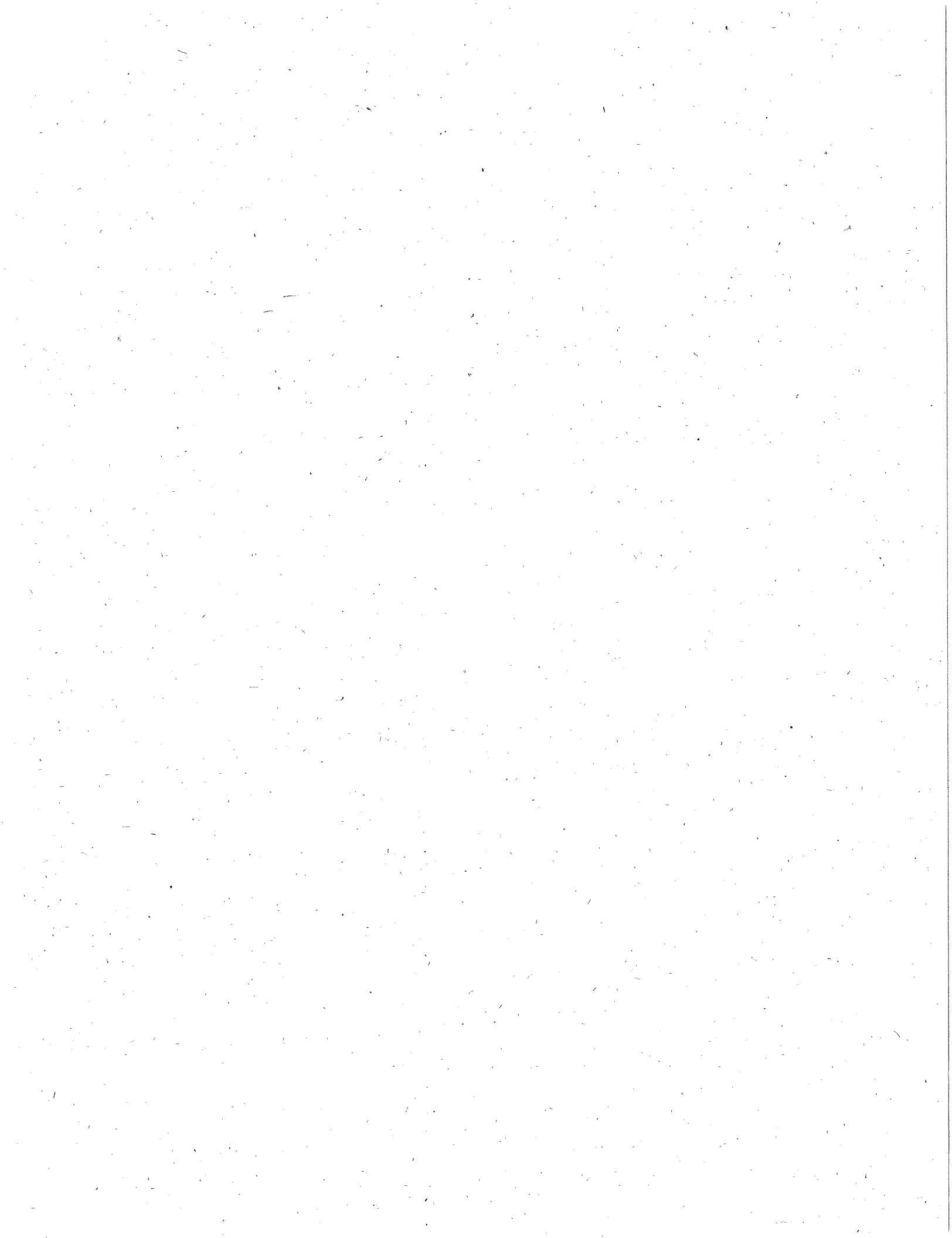
CELA and CIELAP support the Ministry's proposed clarification of the definition of waste. However, we cannot support the proposed amendments regarding the exemption of the 'recycling' of 'chopline residue,' photoprocessing wastes, and 'pickle liquor,' from Regulation 347 and Part V of the *Environmental Protection Act*. The proposed exemption of wood and wood chip 'recycling' operations and sites cannot be supported in the absence of adequate provisions regarding accountability, public oversight and fire protection.

CIELAP and CELA would be pleased to respond to any questions which the Ministry may have regarding their views on these matters, or to discuss them further with the Ministry.

Endnotes

1. *Philip Enterprises Inc. v. Ontario (Ministry of Environment and Energy)* (18 June 1997), Hamilton 13800/96 (Ont. Ct. Gen. Div).
2. Office of the Fire Marshal, Protecting the Public and the Environment by Improving Fire Safety at Ontario's Recycling and Waste Handling Facilities (Toronto: Ontario Ministry of the Solicitor General and Correctional Services, August 1997), pg 8.
3. MoEE factum, pg. 11, para 48
4. MoEE Factum, pg. 12, para 52.
5. MoEE Factum, p. 10, para 39.
6. MoEE factum, p. 11, para 43.
7. MoEE factum, p. 9, para 37.
8. MoEE factum, pp. 14-15, para 60,61 and 62.
9. Proctor and Redfern Ltd., Summary Report of the MISA Sewer Use Control Program Demonstration Projects (Draft) (Toronto: Ministry of Environment and Energy, May 1994), pg. 9-3.
10. Pers. comm., Byron Swift, Senior Attorney, Environmental Law Institute, October 31, 1997.
11. See, for example, Profit from Pollution Prevention: A Guide to Industrial Waste Reduction and Recycling (Toronto: Pollution Probe Foundation, 1982), pp.153-155.
12. See note 2, *supra*.







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