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**CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW & POLICY**

517 College Street, Suite 400, Toronto, On. M6G 4A2
Tel: (416) 923-3529 Fax: (416) 923-5949 E-mail: cielap@web.net

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**Submission to the Ministry of Environment
Re: EBR Notice RA8E0023
Draft Waste Management Regulation**

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Prepared by:

Ramani Nadarajah
Theresa McClenaghan
Counsel
Canadian Environmental Law Association

and

Mark S. Winfield, Ph.D.
Director of Research
Canadian Institute for Environmental Law and Policy

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**Submission to the Ministry of Environment
Re: EBR Notice RA8E0023:
Draft Waste Management Regulation
September 9, 1998**

I. 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.¹ In February 1998, the Institute published a comprehensive study of hazardous waste management in Ontario, entitled Hazardous Waste Management in Ontario: A Report and Recommendations. A copy of this document is attached to this brief.

The purpose of this brief is to respond to the draft Waste Management Regulation 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 June 2, 1998, EBR Registry Number RA8E0023, with a three month comment period.

This submission consists of three parts. The first section, immediately following, consists of general and major comments with respect to the Draft Waste Management Regulation. The second section, attached in table format, consists of a clause by clause review and comment. The third section presents a summary of our comments. Copies of previous briefs by CELA and CIELAP dealing with matters raised by the proposed regulation are also attached to this submission.²

II. GENERAL COMMENTS

The Canadian Institute for Environmental Law and Policy and the Canadian Environmental Law Association are seriously concerned by the direction and content of the Ministry's proposed revisions to its waste management regulations and, with few

exceptions, cannot support their adoption. The proposed changes offer no improvements in the protection of the environment, human health or public safety. Indeed, in many cases, the Ministry is proposing to weaken existing environmental protection and public safety requirements. The proposals appear to be primarily motivated by a desire to produce cost savings for industry and other waste generators. Our general concerns include the following:

1. The Ministry's Proposals Fail to Address the Gaps in the Existing Regulatory Framework for Waste Management Identified by the Office of the Fire Marshal, the Provincial Auditor, CIELAP and Others.

The Draft Waste Management Regulation fails to incorporate the August 1997 recommendations of the Office of the Fire Marshal that regulatory controls on waste recycling and handling facilities be strengthened.³ The Fire Marshal's report, made in the aftermath of the July 1997 Pastimet Inc. PVC plastic recycling site fire in Hamilton, Ontario, stated that the requirements for such sites should include provisions regarding staff training and equipment for fire and spill response, confirmation of fire code compliance, criteria for facility location, and material storage quantity limits and requirements. None of these recommendations regarding recycling and waste handling sites are incorporated into the Ministry's proposed regulation.

The Draft Waste Management Regulation also fails to address many of the gaps and weaknesses identified by CIELAP in its February 1998 report, Hazardous Waste Management in Ontario. Only two of CIELAP's recommendations are proposed to be adopted: the introduction of a semi-annual reporting requirement regarding the on-site disposal of 'subject' (i.e. hazardous and liquid industrial) wastes;⁴ and the withdrawal of the exemption for waste agricultural pesticides from the definition of hazardous waste.⁵

Other gaps in the existing regulatory framework, including the need for the establishment of modern emission and operating standards for hazardous waste incinerators, sites using hazardous or Liquid Industrial Waste as fuel, and hospital and biomedical waste incinerators; the need for limits on land disposal of hazardous and liquid industrial waste; and strengthened regulatory oversight of 'recycling' and processing operations, remain unaddressed.

The proposed Regulation also fails to deal with the weaknesses in the hazardous waste monitoring and information system identified by the Provincial Auditor in his 1996 Annual Report to the Legislature.⁶ Similar concerns regarding the province's municipal waste management programs that were raised by the Auditor in his 1997 report⁷ remain unaddressed as well.

2. The Ministry's Proposals Weaken Existing Standards for Waste Handling and 'Recycling' Facilities.

In addition to failing to address the gaps in the existing regulatory framework identified by the Office of the Fire Marshal, CIELAP and others, the Ministry's proposals would weaken existing requirements in a number of important areas. These include: the removal of current fire and spill protection, site security, staff training and other requirements for 'municipal waste recycling sites' and 'selected waste depots;' the elimination of Certificate of Approval requirements for the on-site handling, storage, and processing of waste, including 'subject' waste and PCB wastes; the expansion of the 'recycling' exemption for certain types of wastes; the removal of certificate of approval requirements for used tire sites holding up to 5,000 tires, intermodal transfer stations, on-site incinerators, and the burning of off-site sources non-hazardous waste as fuel, the disposal of wastes as dust suppressants, among others.

3. The Ministry's Proposals Remove Opportunities for Public Participation in Decision-Making on Waste Handling and Disposal Activities

The Ministry's proposals would also reduce opportunities for public input into decisions regarding waste handling and disposal activities. Requirements for public notice prior to the granting of approvals under the *Environmental Bill of Rights* will be eliminated for activities regulated through 'standardized' approvals. The Ministry is proposing to remove public hearing requirements for approvals for a range of potentially significant changes to the design or operations of landfill or incineration facilities.

4. The Ministry's Proposals Rely Heavily on a Flawed 'Standardized' Approvals Concept.

The draft Waste Management Regulation relies heavily on Standardized Approvals Regulations (SARs), despite serious problems identified with the SAR concept by CIELAP and CELA. These issues include the loss of Environmental Bill of Rights Registry notice of the proposed approval of undertakings, the effective loss of common law rights of individuals whose person or enjoyment of their property is adversely affected by activities approved through SARs, and the Ministry's failure to present a monitoring and enforcement strategy for SAR approved activities.⁸ Where a Standardized Approvals approach is used (and where it is appropriate), the following comments apply:

- * Criteria for the application of Standardized Approvals must be made clear. They are only appropriate, if at all, for small scale, non-complex, and routine activities with minor/minimal potential environmental impacts. Many of the activities proposed by the draft Waste Management Regulation for SAR's clearly fail these tests.

Manufacturer controlled networks, on-site processing, collection and handling, and field operations, for example, are too diverse and too complex to be dealt with through the SAR concept. Similarly, the burning of municipal or hazardous waste as fuel, and use of wastes as dust suppressants are too significant in their environmental impacts to be SAR candidates. Certain types of selected waste depots may be appropriate candidates subject to appropriate conditions.

- * Where SARs are appropriate, requirements must be adequate to protect the environment, and public health and safety, and must be sufficiently specific to be enforceable. Training requirements, for example, should be described as "completion of X course or passage of Y examination or certification by Z", rather than "adequate training." We are particularly concerned by the Ministry's proposals to weaken the requirements relating to existing exemptions, such as 'municipal waste recycling sites' and 'selected waste depots.'
- * Provision must be made for public notice and comment prior to approval of SAR regulated activities.
- * There must be no commencement of operations without the acknowledgement of a SAR approval application by MoE.
- * It must be made clear that SAR approvals do not constitute "statutory authorization" in a defence to a common law nuisance, negligence or other tort court action. This may require a legislative amendment.
- * A monitoring and enforcement strategy for SARs must be presented by the Ministry of Environment *prior* to the implementation of SAR approvals.
- * A 'bump-up' process for approval of SAR regulated activities must be established to permit the Ministry to apply Certificate of Approval requirements to specific facilities where this is warranted by public concerns, or the nature of the proposed activity.
- * SAR regulations must be drafted in a manner that retains MoE capacity to impose conditions in addition to those in SAR regulations on specific undertakings. There will always be conditions or circumstances unique to a particular undertaking, or which were not anticipated when the SAR regulations for the activity were drafted.
- * There must be a publicly accessible registry of SAR approved sites.
- * Bill 57's Crown immunity clause with respect to persons negatively affected by Standardized Approvals Regulations or Approvals Exempting Regulations approved activities should be removed.

- * The Regulation and all approvals granted under the Regulation must explicitly state that the generator or carrier, as the case may be, remains subject to the general provisions/prohibitions in the Environmental Protection Act and the Ontario Water Resources Act; and that the activity may not cause an adverse impact or nuisance to neighbours or other persons. For example, the regulation and any approvals, including any SARs must not contradict the requirement of persons and persons responsible to comply with section 6 of the Environmental Protection Act.

5. The Ministry's Proposals are Conceptually Focussed in the Definitional Debates about 'Waste,' 'Recyclable Materials' and 'Products.'

The draft Waste Management Regulation continues to deal with materials in a manner that depends on whether they are considered a "waste", "recyclable material" or "product". This approach perpetuates the debates about the definition of these categories, and fails to consider that even if a waste is reclassified as 'recyclable' or a 'product,' the material in question may continue to have the properties, such as toxicity, reactivity, or flammability, that should lead to its handling as a waste and be a regulated activity. As suggested in Hazardous Waste Management in Ontario, the Ministry of the Environment should be moving to a system of the regulation of hazardous materials, regardless of whether they are a 'waste,' 'product,' or 'recyclable material.'

6. There are no Environmental Benefits Associated with the Ministry's Proposals

The benefits alleged to be associated with the proposed changes to the province's waste management regulations are based on claims that the revised regulations will promote 'recycling' and other waste reduction activities by reducing and 'streamlining' regulatory requirements. In light of the Plastimet fire and other recent events involving waste recycling and handling sites this can only be regarded as an extremely dubious,⁹ and potentially dangerous, assertion.

This approach is inconsistent with the approach taken by other jurisdictions, which have moved towards the establishment of enhanced public reporting and pollution prevention planning requirements, and the creation of producer responsibility obligations on the part of industry.¹⁰ It is of particular concern, given the extent of the gaps in the existing regulatory framework for waste management in Ontario. There is no evidence to suggest that the removal of specific regulatory requirements will result in more responsible action by waste generators and carriers. At the same time, the Ministry's failure to deal with the weaknesses of the existing framework continues to place the health, safety and environment of Ontario residents at risk.

7. The Ministry's Proposals Fail to Provide Ontarians with the Means to Evaluate their Impact on the Environment.

The government of Ontario has stated on numerous occasions that its regulatory reform proposals will not result in harm to the environment, health or safety of Ontario residents. However, the government has failed to make available to Ontarians the information necessary to evaluate these claims. Significant gaps in the information available regarding waste management in the province have been identified by the Ontario Waste Management Corporation, Environmental Assessment Board, the Provincial Auditor, CIELAP and others. With the exception of the introduction of semi-annual reporting requirements regarding the on-site disposal of 'subject' wastes, the Ministry's proposals do not address these gaps. In fact, a number of the proposals seem likely to expand them significantly.

III. COMMENTS ON THE SPECIFIC PROVISIONS OF THE PROPOSED REGULATION

CELA and CIELAP's comments on the specific provisions of the proposed regulation are presented in **TABLE 1**

TABLE 1
Clause by Clause Comments on the Proposed Ontario Waste Management Regulation
CELA/CIELAP
September 1998

Section	Summary of Proposed Change	Comments	Conclusion
s.101 Definitions "non hazardous solid industrial waste"		Proposed definition is unclear. Does it include 'asbestos waste' and 'treated biomedical waste'?	Clarify definition.

s.103 NO MANDATORY HEARINGS -- MUNICIPAL WASTE -- LANDFILLING SITES AND DUMPS	Permit changes in service area, rate of fill, date of site closure, types of municipal waste received, landfill reclamation, top&bottom contours waste footprint, environmental control networks, without public hearing before Environmental Assessment Board.	Changes may have significant implications for local community or environment.	Proposal is not supported as draft. Regulation should be amended to require: i) publication of public notice in newspaper of general circulation in affected geographical area in addition to EBR notice of proposed change; and ii) the holding of a public hearing in relation to the listed changes to landfill site sites where a member of the public, or municipal council in the affected geographical areas requests that there be one.
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s.104 NO MANDATORY HEARINGS -- MUNICIPAL WASTE -- INCINERATORS	Permit changes in service areas, types of municipal waste received, combustion unit modifications, changes in environmental control works without public hearing before Environmental Assessment Board.	Changes may have significant implications for local community or environment.	Proposal is not supported as draft. Regulation should be amended to require: i) publication of public notice in newspaper of general circulation in affected geographical area in addition to EBR notice of proposed change; and ii) the holding of a public hearing in relation to the listed changes to landfill site sites where a member of the public, or municipal council in the affected geographical areas requests that there be one.
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<p>Part II - Generator Registration</p>	<p>Introduces requirement for semi-annual reporting of on-site disposal (ss.209-210)</p>	<p>Partially addresses concerns of gaps in reporting of on-site fate, identified in <u>Hazardous Waste Management in Ontario</u>. Fails to address need for annual reporting on generation, composition, and fate of subject wastes by waste generators.</p>	<p>The introduction of semi-annual reporting requirements for on-site disposal is supported (s.209).</p> <p>Generator Registration should be required to occur on an annual basis as per Recommendation IV-1 of <u>Hazardous Waste Management in Ontario</u>.</p>
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<p>s.216 - Definitions</p> <p>"Hazardous waste"</p> <p>sub (i)</p>	<p>excludes of blood, blood products and other body fluids directly discharged into sewage works and septic systems from definition of hazardous waste.</p>	<p>The Ministry has failed to present information on the scientific and technical justification for the disposal of blood in this way as recommended in <u>Hazardous Waste Management in Ontario</u> (Recommendation VII-3) and requested in subsequent meetings with Ministry staff.</p> <p>The disposal of blood in sewers raises concerns over potential occupational exposure to blood borne disease in sewers and sewage treatment plants, the discharge of untreated blood into waterways as a result of overflows or STP malfunctions, and interference with sewer and STP operations. These issues were raised within the Blood to Sewer Committee (Minutes (Various dates 1992-1993))</p>	<p>Proposed exemption is not supported.</p> <p>Permitting of disposal of untreated blood in sewer systems cannot be supported without further technical and scientific justification.</p> <p>Permitting the disposal of blood in septic systems is not supported.</p>
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		<p>Permitting the disposal of blood in sewage systems within the meaning of Regulation 403/97 (i.e. septic systems) is of particular concern.</p> <p>There is no evidence that the drafters of Regulation 403/97 contemplated the disposal of blood in septic systems. Disposal of blood in septic systems raises concern over the release of untreated blood into the environment as a result of overflows or malfunctions.</p> <p>Blood to Sewer Committee background materials indicate that some jurisdictions require pre-treatment prior to disposal.</p> <p>Exemption is without qualification re: blood potentially infected with pathogenic agents, or quantities.</p>	
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		The exclusion of blood from the definition of hazardous waste also means that there will be no generator registration reporting with respect to blood, and blood products.	
"Liquid Industrial Waste"		Only change is addition of exclusion of 'Treated biomedical waste' from definition. Does this mean that 'treated biomedical waste could be in liquid form?	
"Subject Waste" (b) Waste batteries.	excludes waste batteries destined for a waste battery recovery facility from the definition of 'subject' waste.	Means no data will be generated on generation of waste batteries. This was identified as a significant data gap in <u>Hazardous Waste Management in Ontario</u> , (pp. IX 6-7). Problem will be compounded by proposed exemption from manifesting as well. Means no data on generation or on- or off-site fate.	Proposal is not supported.

<p>"Subject Waste"</p> <p>c) Precious metal bearing waste.</p>	<p>Excludes precious metal bearing waste destined for a recovery facility from the definition of 'subject' waste.</p>	<p>In combination with proposed exemption from manifesting requirements means no data will be generated on generation and fate of precious metal bearing wastes. Wastes bearing precious metals may be hazardous and its handling may pose risks to human health and safety and the environment.</p>	<p>Proposal is not supported.</p>
<p>"Subject Waste"</p> <p>c) Common Mercury Waste.</p>	<p>Excludes precious common mercury waste destined for a recovery facility from the definition of 'subject' waste.</p>	<p>In combination with proposed exemption from manifesting requirements means no data will be generated on generation and fate of mercury wastes. Mercury is a highly toxic substance whose handling poses significant risks to human health and safety and the environment.</p>	<p>Proposal is not supported.</p>

<p>"Subject Waste"</p> <p>e, f, g, h, i, j.</p>	<p>Excludes biomedical wastes except from large institutions.</p>	<p>Excludes potentially cumulatively significant sources of biomedical waste from generator registration as no reporting required under s.511. These sources should be subject to some form of regular reporting requirement. See <u>Hazardous Waste Management in Ontario</u>, Recommendation VII-4.</p>	<p>Proposal not supported as drafted. See <u>Hazardous Waste Management in Ontario</u>, Recommendation VII-4.</p>
<p>Section 301</p>	<p>Manifests - Generator Requirements</p>	<p>Subsection 301(1)(b) does not explicitly state that this allowable exception for direct discharge to sewage works only applies to substances acceptable for discharge to sewer. e.g. under municipal sewer use by laws</p>	<p>Section 301(1), providing an exception for waste passing from a generator's control should be explicitly subject to discharges allowable for discharge to municipal sewers.</p>
<p>s.402(2)</p>	<p>Permits increase in service area of municipally owned landfill w/o CofA, or public hearing.</p>		<p>Increase in service area should be subject to public notice on EBR registry and opportunity to file comments. Opportunity to provide discretionary hearing should be left available.</p>

s.402(3)	Permits increase in rate of fill without public hearing (municipally owned).		Opportunity to provide discretionary hearing should be left available.
s.402(4)	Permits increase in service area of another municipally owned landfill w/o CofA, or public hearing (municipally owned).		As above.
s.402(5)	Permits increase in private landfill service area within municipality w/o CofA. public hearing.		Increase in service area should be subject to public notice on EBR registry and opportunity to file comments. Opportunity to provide discretionary hearing should be left available.
s.402(6)	Permits increase in private landfill service area within municipality w/o public hearing if limits on quantities delivered.		Opportunity to provide discretionary hearing should be left available.
s.404 - Status of Systems	Provides exemptions of common mercury waste transporters, precious metal bearing waste transporters and waste battery collection systems from the requirements of Part V of the EPA and the Regulation	See comments above. All present significant potential risks to the environment and human health and safety in transportation and handling. All should be subject to requirement for Certificate of Approval.	Proposal is not supported.

<p>s.405 - ON-SITE PRODUCTION, COLLECTION, HANDLING, 'TEMPORARY' STORAGE AND PROCESSING OF WASTE, INCLUDING 'SUBJECT' WASTE AND PCB WASTE.</p> <p>s.405.2(a)</p>	<p>Exempts on-site production, collection, handling, or temporary storage of municipal waste including waste that comes from off-site from requirement for certificate of approval. (SAR)</p>	<p>Activities normally require CofA under s.41 of EPA. No quantity limits, storage requirements or time limits on "production, collection, handling or temporary storage of municipal waste" including waste that comes from off-site. An obvious invitation to the operation of illegal waste disposal operations under the guise of collection, handling or temporary storage of wastes. Activities also pose potential fire risk as outlined in OFM August 1997 report.</p>	<p>Proposal is not supported. At a minimum should be subject to storage quantity limits, storage requirements (including fire and spill protection) and reporting requirements to the Ministry. The definition of "Identity of the undertaking" is unacceptably vague.</p>
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s.405.2(b)	Exempts production, collection, or storage of subject waste for up to two years from CofA requirements. (SAR)	Activities normally require CofA under s.41 of EPA. Covers an extremely diverse, complex and significant range of activities. Not an appropriate candidate for a single SAR. No quantity limits or storage requirements on "production, collection, handling or temporary storage of subject. An invitation to the operation of illegal waste disposal operations under the guise of collection, handling or temporary storage of wastes. Potential dangers of fire or spills. Note OWMC analysis indicated 'storage' a significant fate of 'subject' wastes.	Proposal is not supported. At a minimum should be subject to storage quantity limits, storage requirements (including fire and spill protection) and reporting requirements to the Ministry. Storage time limit should be reduced to 1 months. Immediate reporting should be required for high risk wastes.
s.405.2(c)	Exempts waste processing from requirement for CofA unless involves combustion or land application of municipal waste or final disposal of hazardous or liquid industrial waste.	Normally require Certificate of approval under EPA s.40. Re: hazardous and LIW see <u>Hazardous Waste Management in Ontario</u> , pg.IV-46. Potential nuisance problems and fire risk with municipal waste processing sites.	Do not support. See <u>Hazardous Waste Management in Ontario</u> , recommendation IV-22.

s.405.2(d)&(e)	Exempts processing contaminated soil, including contaminated soil that is municipal waste (?) and deposit of that soil		Do not support. Terms not defined. Processing of Contaminated soil may have significant environmental or health impacts.
S. 406	Standards for Waste Disposal Sites	The standards specified in the Draft Regulation are unacceptably vague and unenforceable. Terms like "adequate", "reasonable", "effective" and "sufficient" are unenforceable.	All terms should be specified in quantitative or specific and enforceable language. Definitions should be provided for terms such as "adequate treatment" (s. 406.4), "sufficiently above" and "sufficiently distant" (s. 406.5), "adequate provision for collection and treatment of leachate", (s. 406.5), "effectively prevent", "adequate measures", and "low permeability" in s. 406.6; "if necessary", "measures", "collection and treatment

section 406 continued			"collection and treatment" and "prevention of water pollution" in s. 406.7; "a reasonable distance" in s. 406.8; "compacted adequately" and "a proper landfilling operation" in s. 406.13; "adequately screened" in s. 406.17; and "where necessary" in s. 406.18 as examples.
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S. 407	Standards for incineration sites	<p>The standards specified are unacceptably vague and unenforceable through the use of non-specific language. Terms such as “adequate to efficiently process”, “minimum volume of residue”, “of sufficient size” and many other examples are not enforceable.</p>	<p>Specific, defined terms should be substituted for terms such as “a minimum volume of residue is obtained” and “the putrescible materials remaining as residue are reduced to a minimum” and “a minimum or air pollution results”, all in section 407.5; “properly enclosed” and “of sufficient size” in section 407.7. Section 9 should be clarified to require on-site fire protection in all cases, and to make it clear that the possibility of arrangements with a fire department does not reduce the Nuisances should be prohibited; rather than their “effects reduced”.</p>
			<p>the operator’s responsibility for on-site fire fighting capability. Specific requirements for training of local fire department personnel and emergency measures provisions should be added to the regulation.</p>

<p>s.503 - Wastes Not Subject to Part V. s.503(1)1. Agricultural Wastes.</p>	<p>Excludes wastes resulting from farm operations, including animal husbandry, food packing, preserving, animal slaughtering, meat packing, education and research. Does not include sewage, hazardous or LIW.</p>	<p>Brings waste pesticides under EPA Part V. Consistent with <u>Hazardous Waste Management in Ontario</u>, Recommendation VI-4. Concern regarding the exemption with respect to food packing, animal slaughtering, meat packing and agricultural research given potential for spread of disease, biological materials</p>	<p>Support inclusion of waste pesticides under Part V. Exemptions regarding animal and research wastes should be subject to conditions re: quantity and infectivity.</p>
<p>s.503(1)8. Oil Field Fluid.</p>	<p>Excludes oil field fluids regulated under <i>Oil, Gas and Salt Resources Act</i>.</p>	<p>The disposal of this fluid, which is a liquid industrial waste and possibly a hazardous waste, should be regulated through the waste management provisions of the EPA. Recent amendments (Bill 52) to the <i>Oil, Gas and Salt Act</i>, raise serious concerns regarding the level of oversight of these activities provided by the Ministry of Natural Resources.</p>	<p>Proposal is not supported.</p>

<p>s.504 - RECYCLABLE MATERIALS NOT SUBJECT TO PART V S.504(1)1.</p>	<p>General exemption, including hazardous and liquid industrial wastes.</p>	<p>Exemption is unchanged despite the Plastimet fire, recommendations of the Office of the Fire Marshal the its report on waste recycling and handling facilities, and CIELAP's recommendation VI-19 in its report <u>Hazardous Waste Management in Ontario</u>.</p>	<p>The exemption for hazardous and liquid industrial waste 'recycling' activities from the requirements of Part V of the EPA should be withdrawn.</p> <p>All 'recycling' operations should be subject to the conditions outlined by the Office of the Fire Marshal in its August 1997 report.</p>
<p>504(1)2.</p>	<p>General municipal waste recycling exemption.</p>	<p>Same as current exemption. Plastimet operated without Certificate of Approval due to this exemption.</p> <p>Transfer to a "site similar" to a municipal waste recycling site permitted. What does that mean?</p> <p>Recommendations of OFM not addressed. See comments on s.524.</p>	<p>Exemption should be reviewed in light of Plastimet fire and recommendations of Office of the Fire Marshal.</p> <p>Continuation of exemption in its current form is not supported.</p>

504(1)3.	Chop Line Residue 'recycling' exemption. Incorporated into Regulation 347 by Regulation 128/98 (March 1998).	Failed to consider CELA/CIELAP comments.	The exemption of this material is not supported for the reasons outlined in CIELAP Brief 5/97/CELA Brief 336 "Submission to the Ontario Ministry of the Environment and Energy Re: EBR Notice RA7E0012.P Amendments to Regulation 347," November 21, 1997.
504(1)4.	Chipped Wood 'recycling' exemption. Incorporated into Regulation 347 by Regulation 128/98 (March 1998).	Failed to consider CELA/CIELAP comment.	The exemption of this material is not supported as proposed for the reasons outlined in CIELAP Brief 5/97/CELA Brief 336 "Submission to the Ontario Ministry of the Environment and Energy Re: EBR Notice RA7E0012.P Amendments to Regulation 347, November 21, 1997. Provisions should be made regarding storage practices and limits to ensure fire safety.

504(1)5.	Waste Wood 'recycling' exemption. Incorporated into Regulation 347 by Regulation 128/98 (March 1998).	Failed to consider CELA/CIELAP comments	The exemption of this material is not supported as proposed for the reasons outlined in CIELAP Brief 5/97/CELA Brief 336 "Submission to the Ontario Ministry of the Environment and Energy Re: EBR Notice RA7E0012.P Amendments to Regulation 347, November 21, 1997. Provisions should be made regarding storage practices and limits to ensure fire safety.
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504(1)6.	Pickle Liquor used in STP exemption. Incorporated into Regulation 347 by Regulation 128/98 (March 1998).	Failed to consider CELA/CIELAP comments.	The exemption of this material is not supported as proposed for the reasons outlined in CIELAP Brief 5/97/CELA Brief 336 "Submission to the Ontario Ministry of the Environment and Energy Re: EBR Notice RA7E0012.P Amendments to Regulation 347, November 21, 1997. At a minimum provision must be made to ensure public reporting of the generation and fate of waste liquor, and to address potential contamination of sewage sludge with heavy metals contained in the liquor.
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504(1)7.	Silver bearing photographic waste 'recycling' exemption. Incorporated into Regulation 347 by Regulation 128/98 (March 1998).	Failed to consider CELA/CIELAP comments.	The exemption of this material is not supported as proposed for the reasons outlined in CIELAP Brief 5/97/CELA Brief 336 "Submission to the Ontario Ministry of the Environment and Energy Re: EBR Notice RA7E0012.P Amendments to Regulation 347, November 21, 1997. The Ministry has failed to provide requested information regarding the contents of solid photographic waste in addition to silver.
504(1)8.	Waste Fabric 'recycling' exemption.	Fire hazard, particularly synthetics, if stored in quantity.	Requirements should be established regarding storage limits and storage practices to ensure fire safety. This is particularly important with respect to synthetic fabrics.

504(1)10 and 504(3).	Agriculture-related waste 'recycling' exemption.		The maintenance and expansion of the exemption of agricultural wastes from the requirements of Part V of the EPA is not supported for the reasons outlined in CIELAP Brief 96/10 (<u>Comments Regarding Responsive Environmental Protection: A Consultation Paper</u>), pp.27-28.
504(2)	Limit on General 'recycling' Exemption. Requires carrier to have documents from receiver re: fate of materials.	Proposal is supported but does not provide adequate protection of public safety, public health and the environment.	Proposal is supported. However, the exemption for 'subject' waste 'recycling' activities should be withdrawn, (<u>Hazardous Waste Management in Ontario Recommendation IV-19</u>) and the August 1997 recommendations of the Office of the Fire Marshal implemented with respect to 'municipal waste' recycling operations.

<p>BIOMEDICAL WASTE</p> <p>s.511. Treated Biomedical Waste.</p>	<p>If in contact with human or animal cultures, stocks or cell lines or material or has come into contact with such items and become waste, autoclaved to 99.9990% reduction <i>bacillus stearothermophilus</i> spores is achieved.</p> <p>Otherwise autoclaved to 99.999% reduction <i>bacillus stearothermophilus</i> spores or chemical or other treatment to 99.99% reduction.</p>	<p>The Ministry has failed to provide technical and scientific evidence regarding the safety of the disposal of 'treated biomedical waste' in sanitary landfill as recommended in <u>Hazardous Waste Management in Ontario</u> (Recommendation VII-4).</p> <p>Proposal does not require record keeping or reporting regarding off-site disposal of 'treated biomedical waste' or reporting of on-site treatment. On-site disposal should be captured under generator registration for large institutions (?).</p> <p>Requires record keeping but not reporting of collection and fate of small source quantities (s.507). (s.507(7) - what does "with such changes are necessary" mean? - this isn't legal language)</p>	<p>Provide required technical and scientific justifications regarding blood disposal and disposal of 'treated biomedical wastes.'</p> <p>Require record keeping and reporting to the Ministry of off-site disposal of 'treated biomedical waste' including quantity, date and location of disposal.</p> <p>Require reporting to the Ministry re: fate of small quantities of biomedical wastes.</p>
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		Biomedical Continued: What about small generators excluded from generator registration but larger than 5kg?	
s.514 - DUST SUPPRESSANTS Grandfathering	Permits existing dust suppression sites with Certificates of Approval to continue.	The use of waste as a dust suppressant as a waste management practice should be phased out, as the use of waste in this way results in the direct release of waste into the environment. See <u>Hazardous Waste Management in Ontario, Recommendation IV-23.</u>	Ministry should schedule phase out of existing dust suppression sites using wastes as dust suppressants.
s.515 - DUST SUPPRESSANTS - Waste Oil	Maintains prohibition on use of waste oil as a dust suppressant.		Maintenance of prohibition is supported.

s.516 - DUST SUPPRESSANT - Standardized Approvals	Establishes a SAR for the use of wastes as dust suppressants.	The use of waste as a dust suppressant as a waste management practice should be phased out, as the disposal of waste in this way results in the direct release of waste into the environment. See <u>Hazardous Waste Management in Ontario</u> , Recommendation IV-23.	The establishment of a SAR for dust suppressants is not supported. The use of waste as a dust suppressant should be subject to the EPA s.40 requirement for a Certificate of Approval. No further uses of waste as dust suppressants should be approved, and existing uses should be phased out.
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<p>s.519 Municipal Waste Depot</p>	<p>Exempts municipal waste depots from ss.9 (no adverse effect), 27 (CofA); 40(deposit on land) 41 (processing, storage) of EPA. even if depot is on same site of HHW depot.</p>	<p>Exemption from general "adverse effect" provisions of EPA.</p> <p>No requirements to report location of depot. No requirement for public notice prior to establishment of depot. No total waste amount stored limit.</p> <p>No fire protection or emergency response requirements.</p>	<p>Proposal is not supported as drafted.</p> <p>Remove EPA s.9 exemption.</p> <p>Require public notice and comment period prior to establishment of depots.</p> <p>Limit total amounts of waste that can be on site at any given time. Require servicing/pick-up of waste on regular basis (e.g. minimum one pick-up per week).</p> <p>Set storage and fire protection requirements.</p>
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<p>s.522 - MUNICIPAL WASTE PROCESSING - MOBILE</p>	<p>SAR for mobile municipal waste 'processing"</p> <p>Includes "soil excavated for clean-up that is municipal waste." This term does not appear to be defined.</p>	<p>Processing to be carried out in a manner to prevent any "adverse effect." Simply repeats language of the EPA. Regulation needs to be specific about what this means.</p> <p>No specific requirements regarding noise, odour, or dust, only reference to "no adverse effect."</p> <p>No limits on scale of operation, quantity of material to be handled. Requires no reporting on scale of operation, type or quantity of material to be handled, potential impacts on the environment.</p> <p>Requires no public notice or comment prior to commencement of operations.</p>	<p>Establish specific requirements regarding noise, odour, and dust.</p> <p>Establish limits and reporting requirements on scale of operation, quantity of material to be handled. Require reporting in start up notice on scale of operation, type or quantity of material to be handled, potential impacts on the environment.</p> <p>Require public notice and opportunity to comment prior to commencement of operations. Notice could be required to be given directly within immediate area of operation. Could require notice for large operations, or operations that will last more than 2 days.</p>
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<p>s.523 - MUNICIPAL WASTE RECYCLING DEPOTS</p>	<p>SAR for municipal waste recycling depots.</p>	<p>No limits on amounts of materials that may be stored at site.</p> <p>No time limits on storage.</p> <p>No reporting requirements regarding quantities of waste collected or its fate.</p> <p>No requirements regarding qualifications of operator.</p> <p>No requirements regarding storage practices, except that waste is to be placed in containers (not fireproof).</p> <p>No requirements re: fire preparedness or response.</p> <p>No public notice or comment on establishment of facility.</p>	<p>Do not support as proposed. Address gaps as outlined:</p> <ul style="list-style-type: none"> * Public notice prior to commencement of operations; * storage limits; * reporting requirements; * operator qualifications; * storage practices; and * fire protection and response. <p>Improve specificity of requirements for removal of waste, clean up and control of nuisance impacts. "Reasonable care" terminology should be deleted. "Reasonable care" is a negligence</p>
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			<p>concept; not applicable to nuisance actions in common law court actions; use of the term in this context may deprive neighbours of their common law rights to be free of nuisance impacts and to enforce those rights in the courts. Furthermore, enforcement of the regulation is very difficult with terminology such as "reasonable care".</p>
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<p>s.524 - MUNICIPAL WASTE RECYCLING SITES</p>	<p>SAR for municipal waste recycling sites.</p>	<p>Proposal significantly weakens existing requirements in Regulation 101/94 for these sites. Eliminates requirements for notice to municipality, neighbouring landowners, and local MoE office (s.16); reduces notice period to 7 days from 90 days; removes requirement to prevent unauthorized access (s.11); requirement for employee training in equipment operation (s.13); emergency procedures training (s.14); maintenance of roads, parking areas, loading and unloading areas (s.15); reduces information required in notice to director (s.17); eliminates requirement for site maps (s.22); weakens requirements for operating plan(.23); removes requirement for emergency plan (s.24); removes requirement for contingency plan (s.25); removes requirement for fifty metre buffer zone (s.27).</p>	<p>Requirements of Regulation 101/94, ss.21-28 should be retained. Recommendations of the Office of the Fire Marshal should be incorporated into requirements.</p>
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		s.524 continued. Proposal contradicts the August 1997 recommendations of the Office of the Fire Marshal regarding waste handling and recycling sites.	
s.525 - MOBILE PCB DESTRUCTION			

s.527(3)	<p>Mobile Thermal waste management system not subject to mandatory public hearing requirements.</p> <p>Not subject to CofA requirements if: CofA has been issued; CofA has been issued for use of same system at a different site; or system is located at site of generator of PCB or PCBs have been legally brought to the site.</p>	No CofA implies no public notice or comment.	<p>First use of a system should be subject to public hearing. CofA with discretionary hearings should be required for subsequent uses of the technology. See <u>Hazardous Waste Management in Ontario</u>, Recommendation V-3.</p> <p>At a minimum public notice should be required for new sites, or if PCBs are to be brought to the site from off-site.</p>
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s.528(4)	<p>Mobile PCB Chemical Facilities</p> <p>No discretionary or mandatory public hearings for mobile PCB chemical sites or mobile PCB transformer sites.</p> <p>No certificate of approval if CofA issued for site or if CofA issued for use of same system at a different site.</p>		<p>First use of a system should be subject to public hearing. CofA with discretionary hearings (at request of host municipality or public) should be required for subsequent uses of the technology at additional sites. See <u>Hazardous Waste Management in Ontario</u>, Recommendation V-3.</p>
s.529	<p>Mobile PCB Processing facilities</p> <p>No discretionary public hearing.</p> <p>No certificate of approval if CofA issued for site or if CofA issued for use of same system at a different site.</p>		<p>First use of a system should be subject to public hearing. CofA with discretionary hearings (at request of host municipality or public) should be required for subsequent uses of the technology at additional sites. See <u>Hazardous Waste Management in Ontario</u>, Recommendation V-3.</p>

ss.532-537 Stationary Refrigerant Waste	Continues existing exemption for "stationary refrigerant wastes (i.e CFC's)" recycling.		See comments in <u>Hazardous Waste Management in Ontario</u> , pg.III-8
ss.538-544 - Mobile Refrigerant Waste	Continues existing exemption for "mobile refrigerant waste" recycling.		See comments in <u>Hazardous Waste Management in Ontario</u> , pg.III-8
s.546 - Tires	Exempts from waste CofA requirement tire sites with less than 5,000 tire units and total volume of less than 300 cubic metres.	There have been numerous fires at small tire sites over the past year. (See various reports referenced in <u>Our Future Our Health: The Consequences of Inaction</u>). Tire sites continue to require close supervision by the Ministry. Motor vehicle service centres may be permitted to store small numbers of tires for short periods of time.	Proposal is not supported.
s.547 - Hauling Used Tires	No CofA for trucks hauling tires.	Will be difficult to control where tires end up if the haulers aren't under some sort of control. Limit exemption to individuals taking own tires for disposal.	Proposal is not supported.

<p>s.548 - INTERMODAL TRANSFER STATIONS</p>	<p>Exempts intermodal transfer stations from Certificate of Approval requirements.</p>	<p>No requirements regarding reporting location or operations of facilities, numbers of containers that may be stored or handled, spill or fire protection, controlling odours, noise and dust.</p> <p>Proposal seems designed to facilitate the long-distance transport of waste.</p>	<p>Proposal is not supported. Given potential variation in scale, and potential for large scale operations, Certificate of Approval requirements should be retained.</p> <p>Certificates of Approval for such facilities should establish requirements regarding reporting location or operations of facilities, numbers of containers that may be stored or handled, spill or fire protection, controlling odours, noise and dust.</p> <p>Public notice and comment for establishment of facility.</p>
<p>s.601 - STANDARDS FOR DEEP WELL DISPOSAL SITES</p>	<p>Permits discharge of liquid waste into geological formation.</p>	<p>Practice has been associated with serious environmental problems in the past.</p>	<p>Province should prohibit discharge of liquid waste into geological formations by means of a well. An exception may be made for the disposal of uncontaminated brine.</p>

s.602 - EXISTING HOSPITAL INCINERATORS	Requires pre-1985 incinerators to report on source, nature and quantity of waste disposed of and compliance with Regulation 346.	Ministry staff highlighted problems with these facilities during development of <u>Responsive Environmental Protection</u> . Requirement to report on compliance with regulation 346 is inadequate/	Proposal is support in so far as it goes. However, it is an inadequate response to this problem. Existing hospital incinerators should be required to come into compliance with the emission requirements of Guideline A-7 (municipal waste incinerators) or regulatory emission and operating standards specific to medical waste incinerators within a set time frame. See <u>Hazardous Waste Management in Ontario</u> , Recommendation VII-6.
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<p>s.603 - FIELD OPERATIONS</p>	<p>No requirements for Certificate of Approval, generator registration or manifesting from 'field operations.' These include construction, forestry, mining, servicing, communications networks, power lines, field testing, mobile health care, ambulance services, etc away from the primary place of business, plant, warehouse, factory or health care facility of the person undertaking the operations.</p> <p>Includes SAR for operation of transfer facilities.</p>	<p>No requirement to report waste generation, transfers to MoE or public.</p> <p>No requirements at all regarding 'field operations' themselves. Requirements only apply to field operations transfer stations. No training, internal reporting or waste handling requirements.</p> <p>No requirements at all regarding transportation from field operation to field operation transfer station.</p> <p>Storage and fire protection requirements for field operation transfer stations are inadequate.</p> <p>No limits on the amounts of material that can be gathered and stored at a field operation transfer station.</p>	<p>Do not support as proposed.</p> <p>Requirements must be established re:</p> <ul style="list-style-type: none"> i)field operations themselves (e.g. staff training in handling materials, spill response. etc; scale and duration of operation permitted to qualify); ii)transportation from field operations to field operation transfer stations (training, spill containment capability); iii)storage and spill and fire protection requirements for transfer stations; iv)limits on quantities that can be gathered and stored at transfer stations. v)reporting requirements to MoE re: location and activities at field operations and transfer stations.
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		<p>Field Operations Continued:</p> <p>Appears to allow things like mines and major construction operations to be classified as field operations if head office is in Toronto. No limits on scale or duration of operations.</p> <p>No requirement for notice to MoE or submission of plan of operations prior to commencement.</p> <p>Generally to complex and diverse to be dealt with through single SAR. Might establish requirements in relation to different types of operations.</p> <p>Serious problems with hazardous waste management have been identified with forestry 'field' operations. See Sierra Legal Defence Fund and Wildlands League <u>Cutting Around the Rules: The Algoma Highlands Pay the Price for Lax Enforcement of Logging Rules</u> April 1998.</p>	<p>Field Operations Continued:</p> <p>vi) require notice to MoE prior to commencement of operations. Require operators engaged in multiple activities to file plan of upcoming activities, including location, nature of activities, on a regular basis.</p>
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<p>s.605 - MANUFACTURER CONTROLLED NETWORK</p>	<p>Provides a SAR for operation of waste consolidation site at which the receiving, collection handling, sorting, bulking, baling, consolidation, packaging, temporary storage, transferring and shipping of 'spent products', including products that are hazardous wastes, except for asbestos waste, biomedical waste except medical needles and equipment and supplies from a residence, PCB waste, radioactive waste and severely toxic waste. Also provides for SAR for MCN collection system. Part V approval, waste generator registration and manifesting requirements do not apply.</p> <p>Requires annual report to the Director.</p>	<p>Concept of a SAR for spent product collection is only supported for collection point of spent product from the purchaser user. This would fall under the selected waste depot provisions.</p> <p>Transportation, handling of spent product should be subject to normal waste management requirements from that point onwards.</p> <p>A specific form of approval for a waste management system might be provided for MCM.</p> <p>Potential scale of operations and variety of products is too broad to deal with through a "one size fits all" SAR.</p>	<p>Do not support as proposed. Collection depots should fall under Selected Depot Regulations. Otherwise systems should be subject to waste management system Certificate of Approval. Proposed regulation could be used as basis of a guideline for approval of such systems.</p>
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<p>s.606 - ON SITE INCINERATORS</p>	<p>The exempts on-site incinerators not burning hazardous or liquid industrial wastes from requirement for CofA or public hearing.</p>	<p>Facilitates incineration.</p> <p>Facilities not subject to Guideline A-7</p> <p>Facilities not required to report on sources or amounts of waste disposed of.</p> <p>Not clear if facilities can take off-site waste.</p>	<p>Proposal is not supported. On-site incinerators should be subject to requirements of s.27 and 30 of the EPA and Guideline A-7.</p>
<p>s.607 - SAME COMPANY SUBJECT WASTE CONSOLIDATION</p>	<p>Would permit same company subject waste consolidation from different sites without manifesting or system requirements.</p> <p>CofA is required for system.</p> <p>Annual reporting to the Director is required.</p>	<p>Extent of waste movement that would occur under this proposal is unclear.</p> <p>Reporting would only occur on an annual basis, as opposed to near real time with manifesting.</p> <p>Reasons for exemption from system requirements are unclear. Why should these wastes be treated differently from other 'subject' wastes. No environmental rationale. Only rationale appears to be cost savings to company.</p>	<p>Proposal is not supported.</p>

s.609 - ROSTER WASTE	<p>No waste generator registration, no manifesting for waste produced in less than 100kg a month or otherwise accumulated in an amount less than 100kg.</p> <p>Excludes biomedical waste, severely toxic waste, PCB waste, radioactive waste or acute hazardous waste chemicals.</p> <p>Requires filing of quarterly report from carrier to Director on sources amount transported, composition, and name and addresses of receivers.</p>		<p>Provide detailed and specific reporting requirements on who waste generators are, amounts and composition of waste they produce. Requiring generator to develop report, or a least receive report from carrier might promote pollution prevention among generators.</p>
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<p>s.610 - HHW WASTE CARRIER</p>	<p>SAR for moving own HHW or HHW from depot to disposal site.</p> <p>No CofA, generator registration or manifests.</p>	<p>Handling and transportation requirements vague, inadequate.</p> <p>No reporting requirements regarding amounts of HHW transported, composition, sources or fate.</p> <p>No limits on amount of HHW that can be transported.</p>	<p>Exemption should be limited to moving own (domestic) HHW to a collection depot.</p> <p>Movements from collection depot to disposal site should be subject to normal manifesting and reporting requirements.</p>
<p>s.611 - HHW WASTE DEPOTS</p>	<p>SAR for operation of HHW depots by municipality or the Crown. No CofA.</p> <p>HHW is defined to include small quantities of hazardous waste and roster wastes from IC&I sources in addition to waste from domestic sources.</p>	<p>No storage limits, no specific storage practices, no requirements to ensure fire or spill safety, no requirements regarding facility location. No regular reporting requirements to the Ministry or the public.</p>	<p>Do not support as proposed.</p> <p>Definition of HHW should be limited to 611(1)(a) waste from domestic sources, not small quantities or roster waste from IC&I sources.</p> <p>Establish requirements re: storage limits and practices, staff training, facility location, reporting requirements to the Ministry and public.</p>

<p>s.612(1) - SELECTED WASTE DEPOTS</p>	<p>SAR for selected waste depots. Expands to include batteries, domestic pesticides, agricultural or commercial pesticides, mercury containing lamps, medical needles, mercury light switches, paints, pharmaceuticals, propane, mercury containing thermometers and thermostats.</p> <p>No CofA, manifests.</p> <p>No limits on amounts of commercial/agricultural pesticide received.</p>	<p>Operational requirements are significantly weakened from existing provisions of Regulation 347 (ss.43-60 (motor vehicle waste); ss.61-73 (pesticide containers)).</p> <p>Provisions removed include specific training requirements (ss.51, 68); limits on quantities received (s.52); specific storage requirements (ss.53, 70); spill containment (s.54); spill and fire fighting equipment (s.55); record keeping (s.57 and 71) notification of Fire Officials (s.59); site access control (s.65); limits on storage time (s.73).</p> <p>See comments on Selected Waste Depots in <u>Hazardous Waste Management in Ontario</u> Recommendations, IV-2, VI-5 (pesticides), VI-9 (pesticide containers); VIII-12 (waste oil); IX-4 (HHW and General) on elements to be included in requirements.</p>	<p>Existing requirements for automotive waste and waste pesticide depots outlined in ss.43-73 of Regulation 347 should be retained.</p> <p>Similar specific requirements appropriate to each other waste type should be specified in the regulation.</p> <p>See <u>Hazardous Waste Management in Ontario</u> Recommendations, IV-2, VI-5 (pesticides), VI-9 (pesticide containers); VIII-12 (waste oil); IX-4 (HHW and General) for a general outline of the issues to be covered in selected waste depot requirements.</p>
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		<p>Selected Waste Depots, Continued:</p> <p>Requirements are too vague and general to deal with high risk wastes, like mercury containing materials.</p> <p>No reporting requirements re: amounts of waste collected and its fate.</p> <p>No standards re: facility location.</p> <p>No public notice and comment requirement re: facility establishment.</p> <p>Given reduced resources, the Ministry's capacity to oversee a large increase in the number of facilities operating under such a SAR approval system must be questioned.</p>	
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<p>s.613 - WASTE DERIVED FUEL SITES</p>	<p>Continues exemption from C of A and mandatory hearing for on-site use of hazardous waste as fuel, and adds of off-site sourced non-hazardous waste to definition of waste derived fuel.</p>	<p>Does not require compliance with Guideline A-7 for combustion and air pollution control for sites burning hazardous waste as fuel. Only standards are for inputs, which only deal with heavy metal content. Combustion products (e.g. dioxin) not addressed.</p> <p>Permits burning of tires as waste-derived fuel. Also opens possibility of widespread burning of municipal waste as fuel. See CIELAP <u>Comments on Responsive Environmental Protection</u>, pp.33-34.</p> <p>Requires maintenance of records but no reporting to the Ministry.</p>	<p>Proposals are not supported. Should require C of A for facilities burning hazardous and non-hazardous waste as fuel, with public hearing if requested by public or host municipality.</p> <p>Emission standards should be established for the disposal of hazardous and liquid industrial wastes as 'fuel.' See <u>Hazardous Waste Management in Ontario</u>, Recommendation IV-18.</p> <p>Reporting requirements should be established for facilities burning waste as fuel.</p>
<p>s.704 - WASTE REDUCTION WORK PLANS</p>	<p>Removes audit requirements from Waste Reduction Work Plans</p>	<p>Requirements were subject of extensive consultation when drafted. In manner consistent with EBR, should not be opened without good reason.</p>	<p>Proposal is not supported. Audit requirements should be retained. Furthermore, all such audits and plans should be required to be publicly available.</p>

Schedule 1 - Hazardous Industrial Wastes			The exemption from this schedule for ICI Canada Inc Cornwall, Brine Purification Muds should be removed.
Schedule 702-2	Recyclable waste other than Blue Box waste. No distinction between plastic resins or different types of metals.	In light of Plastimet, definitions should distinguish between plastic resins.	Schedule should list specific plastics and exclude waste PVC plastic. Waste PVC plastic should be added to Schedule 1 of the Regulation.

IV. SUMMARY AND CONCLUSION

The draft Waste Management Regulation appears to rely on the assumption that reduced regulatory requirements will promote pollution prevention and waste reduction. This approach is disturbing from a number of perspectives. First, and most significantly, it is environmentally unsound and potentially dangerous to public safety, given the extent of the gaps that have been identified within the existing regulatory framework for waste management in Ontario. The Ministry's first priority should be to address these gaps by completing the 'baseline' regulatory structure.

Secondly, the Ministry's complete reliance on the voluntary actions of industry to achieve the goals of waste reduction and pollution prevention is inconsistent with the approach taken by other jurisdictions to this issue. Most Canadian provinces have implemented, or are moving towards the adoption of, producer responsibility requirements regarding the management of waste oil and other household hazardous wastes. These arrangements require industry to internalize the post-consumer management costs of their products.

More broadly, the U.S. federal government and many states have adopted legislation to link reporting activities under the Toxic Release Inventory to requirements that waste generating facilities undertake pollution prevention planning programs. The 'materials accounting' model employed in legislation adopted in Massachusetts and New Jersey, for example, has resulted in significant reductions in the use of toxic chemicals and the generation of hazardous wastes, as well as substantial cost savings to the affected industries.

There is no empirical basis for assumptions that the removal of specific regulatory requirements will result in more responsible action by waste generators and carriers. Rather, the available data to date indicates that such an approach will result in reduced compliance with environmental laws. A 1996 survey, for example, conducted by KPMG Management Consultants of Canadian companies, municipalities schools and hospitals questioned them about their motivation to take action on environmental issues. 93% said their primary motivation was to ensure compliance with regulations.¹¹

In this context we are concerned that the proposed changes in the draft waste management regulation will result in reduced protection of the environment and undermine compliance with existing requirements. Our concerns are reinforced by the Ministry's loss of capacity to enforce environmental laws due to budgetary and staff reductions. These reductions have been evidenced by significant decline in the environmental law enforcement activities initiated by the Ministry of Environment as noted in CIELAP's report entitled Ontario's Environment and the Common Sense Revolution: A Third Year Report.

The Ministry has indicated that the principal 'benefit' of its waste management

proposals will be an increase in 'recycling' activities. In light of the Plastimet fire and other recent events, this is a dubious assertion. Rather, the Ministry's proposals appear to be driven primarily by a desire to produce costs savings for industry and other waste generators.

In the context of these consideration, and a detailed review of the Ministry's proposals, CELA and CIELAP can only support two of the Ministry's proposals as presented. These are: the introduction of semi-annual reporting requirements regarding the on-site disposal of 'subject' waste by waste generators; and the removal of the general exemption for from the regulation's 'subject' waste requirements for waste agricultural pesticides.

As has been indicated in our detailed comments, a number of the Ministry's other proposals, such as the establishment of 'standardized' approvals for certain types of waste depots may be acceptable, subject to the amendments which we have proposed. However, CIELAP and CELA are unable to support the bulk of the Ministry's proposals. These fail to address the gaps in the existing regulatory framework for waste management in the province. In fact, many of the Ministry's proposals would weaken the existing requirements significantly. These changes have the potential to endanger the quality of Ontario's environment and the health and safety of its residents.

In her 1997 report to the Legislature, the Environmental Commissioner for Ontario stated that

"Ontario's focus needs to change from one of granting regulatory relief to polluters to improving its commitment to the environmental health of its residents and the natural environment."¹²

Significant problems and threats to the environment, health and safety of Ontarians have been identified in the area of waste management, by a number of independent and authoritative bodies. These have included the Environmental Commissioner's Office, the Office of the Provincial Auditor, and the Office of the Fire Marshal. CELA and CIELAP would welcome the opportunity to work with the Ministry in addressing these matters, and more generally, in the modernization of the province's regulatory framework for wastes and hazardous materials.

ENDNOTES

1. See, for example, D. MacDonald and Pickfield, From Pollution Prevention to Hazardous Waste Reduction (Toronto: CIELAP, 1989) Ontario Hazardous Waste Management Forum: Proceedings and Background Papers (Toronto: Canadian Environmental Law Research Foundation, 1987).
2. M. Winfield and G. Jenish, Comments on Responsive Environmental Protection (Toronto: CIELAP, October 1996); Responding to the Rollbacks: Comments on Responsive Environmental Protection (Toronto: CELA, October 1996); M. Winfield and R. Nadarajah, Submission to the Ontario Ministry of the Environment and Energy RE: EBR Notice RA7E0012.P Amendments to Regulation 347 (Toronto: CIELAP and CELA, November 1997); R. Nadarajah and M. Winfield, Comments on MoE's Proposal for Standardized Approval Regulations and Approval Exempting Regulations EBR Registry No. RA8E0008.P (Toronto: CIELAP and CELA, March 1998).
3. Office of the Fire Marshal, Protecting the Public and Environment by Improving Fire Safety at Ontario's Recycling and Waste Handling Facilities (Toronto: Ministry of the Solicitor General and Correctional Services, 1997).
4. This is a partial adoption of Recommendation VI-1.
5. Recommendation VI-4.
6. Office of the Provincial Auditor, 1996 Annual Report: Accounting, Accountability, and Value for Money (Toronto: Queen's Printer for Ontario, October 1996), pp.119-120.
7. Office of the Provincial Auditor 1997 Report of the Provincial Auditor of Ontario to the Legislative Assembly (Toronto: Queen's Printer, November 1997), pp.113-121.
8. See, Winfield and Nadarajah, Comments on MoE's Proposed SAR and AER Regulations (March 1998) (attached).
9. See N. Palardy et al. Our Future, Our Health: The Consequences of Inaction (Toronto: Ontario Environmental Protection Working Group, June 1998) (attached).
10. Winfield, Hazardous Waste Management in Ontario, pp.X- 8-9
11. KPMG, Canadian Environmental Management Survey, 1996.
12. Environmental Commissioner for Ontario, Annual Report 1997 (Toronto: ECO, 1998), p.11.

