

197

**Canadian Environmental Law Association**  
**L'Association canadienne du droit de l'environnement**

517 College Street, Suite 401, Toronto, Ontario M6G 4A2  
Telephone (416) 960-2284  
Fax (416) 960-9392

**SUBMISSIONS BY THE CANADIAN ENVIRONMENTAL  
LAW ASSOCIATION ON THE PROPOSED  
YUKON ENVIRONMENT ACT**

**Publication #197**

**ISBN# 978-1-77189-533-0**

Prepared by:

Toby Vigod  
Executive Director  
CELA

April 1991

VF:  
CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION.  
VIGOD, TOBY.  
CELA BRIEF NO.197; Subm...RN7182y

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. COMMENTARY ON PROPOSED YUKON ENVIRONMENT ACT.....	2
Part I - Objectives, Rights and Partnerships.....	2
Part II - Sustainable Development: Balancing Conservation and Development.....	4
Part IV - Authorities.....	5
Part V - Prohibition.....	6
Part VII - Development Assessment.....	6
Part VIII - Waste Management.....	9
Part IX - Hazardous Substances.....	9
Part X - Pesticides.....	10
Part XI - Air.....	11
Part XII - Water.....	11
Part XIV - Forests.....	12
Part XV - Protection of Wilderness.....	13
Part XVI - Spills.....	13
Part XVII - Enforcement.....	13
Part XVIII - Dispute Resolution.....	13
III. A NEW STRATEGY FOR TOXIC CHEMICALS.....	14
IV. CONCLUSIONS.....	15
APPENDIX A	
APPENDIX B	

SUBMISSIONS BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
ON THE PROPOSED YUKON ENVIRONMENT ACT

**I. INTRODUCTION**

The Canadian Environmental Law Association (CELA), founded in 1970, is a public interest environmental law group committed to the enforcement and improvement of environmental law. Over the years, CELA has commented on proposed environmental laws and has sat on a number of consultative committees updating various pieces of environmental legislation.<sup>1</sup>

CELA was pleased to receive a copy of the proposed Yukon Environment Act for comment. In many respects, the proposed Act is extremely forward looking and provides an excellent model for other jurisdictions to follow. However, we have identified a number of areas which we believe should be addressed and elaborated on before the Act is finalized. We have also reviewed the comments sent in by Professor Stewart Elgie from the University of Alberta and wish to adopt many of his suggestions for improvement. The following are additional comments made on a section-by-section basis.

**II. COMMENTARY ON PROPOSED YUKON ENVIRONMENT ACT**

**Part I - Objectives, Rights and Partnerships**

**Section 2**

We would recommend that rather than being a statement of Yukon environmental policy, that section 2 be the purpose of the Act.

**Section 3(1)**

We would recommend the use of the word "healthful" rather than "healthy" environment. There has been considerable debate over the years as to which adjective should be used to modify environment in establishing such an environmental right. One precedent that we found helpful is the Illinois Constitution which contains a right to a "healthful" environment. There was considerable discussion in the development of that constitution as to which adjective should be used. The General Government Committee of the Sixth Illinois Constitutional Convention rejected the words pleasant, aesthetic, pure, clean as incapable of judicial application and approved healthful because it was

---

<sup>1</sup> The author was a member of the Environmental Contaminants Act Amendments Consultative Committee which met during 1985-86 and most recently was one of two environmental representatives on the Pesticide Registration Review Team which dealt with reform of federal Pesticides law.

capable of proof and subject to change as medical science further determines what does and does not affect health.

**Section 3(4)(a)**

While this section provides a framework for public input, we believe that it is too vague in providing for "reasonable steps" to be taken for public notice and "relevant information" on "significant matters" and then leaving the details to be fleshed out in regulations. We would recommend that minimum provisions be put in the statute to ensure that the opportunities for public input are clear and understood. At a minimum, there should be an opportunity for a notice and comment period on draft regulations and there should also be the option available for the Minister to call for a public hearing, where appropriate. A public docket should be created in regard to proposed regulations and this should include the rationale for the regulation, all public comments filed and the final regulation. The term "relevant information" is also too broad. There should be an access to information section that should include the right of public access monitoring and compliance information and health and safety data. Copies of all permits and orders should also be accessible to the public.

**Section 3(7)(a)**

CELA wishes to support this section which gives citizens a cause of action to protect the environment and reforms the outdated law of standing in the areas of environmental law. We do have a number of specific concerns with the specific drafting which are outlined below.

Section 3 (3) provides that every person is to be provided with an adequate remedy to protect and conserve the environment and the public trust therein from adverse effects, degradation, contaminants, and any other negative effects. Yet section 3 (7) (a) only provides for relief for "adverse effects and/or from the release of contaminants" against any person causing an adverse effect or releasing any contaminant into the environment. We recommend that "degradation" be added after adverse effects in the types of harm to the environment that can be dealt with. We also maintain that limiting it only to persons "causing" adverse effects is too stringent a test. We would recommend amending the last part of the sentence to read "against any person causing or likely to cause an adverse effect...."

**Section 3(7)(d)**

This subsection should also be amended to read, "if an undertaking has caused or is likely to cause an adverse effect, degradation or has released a contaminant to the environment, any person may apply..."

**Section 3(7)(e)**

We would support Professor Elgie's recommendation that an additional clause be added to provide for civil penalties. We believe that the government has the authority to establish these type of provisions. It may also be useful to consider Professor Elgie's suggestion that any civil penalties be paid into an environmental protection fund.

**Section 3(7)(f)**

This section provides for a complete defence to any action under subsection (a) if (i) there are no adverse effects and (ii) if the defendant's activity is in compliance with a certificate of approval, license, order, direction or regulation issued under this Act. CELA is concerned that both these clauses are too broadly drafted and too absolute in providing defendants with "complete" defences. In respect to (i) we would urge adoption of the suggestion made by Professor Elgie to ease the burden of proof requirement somewhat.

One suggestion for a relaxed rule of causation is as follows:

It shall not be a defence to an action commenced under this act that,

- (a) the defendant was not the sole cause of the alleged or potential contamination or degradation;
- (b) it cannot be established that the contaminant which the defendant discharged or deposited or permitted to be discharged or deposited was the cause, in fact, of the contamination or degradation of the environment or the public trust therein, if the effect on the environment is of a nature consistent with the contaminant or source of degradation being a cause.

Clause (ii) is a major concern. Even under many existing provincial environmental statues, including Ontario's Environmental Protection Act, the fact that a defendant is operating under a valid Certificate of Approval is not a defence to a prosecution under that statute, nor is it a bar to a civil suit. Further at common law, the defense of statutory authority is limited to inevitable and unavoidable impacts. It is not enough that the project is authorized. Moreover, the defence only applies where the statute explicitly or implicitly authorizes the harm as well as the project. CELA urges the Yukon government not to inadvertently extend the scope of this defence to private projects as well as to public ones, or to all activities that have some form of approval. The approval itself should not be a defence to a cause of action. The fact that a project or undertaking has gone through an approval process and the factors that were considered in granting the approval will normally be taken into account in any event, and can be given the weight they deserve.

At a minimum the defence of statutory authorization should not apply where, although there is a standard in place, the activity has caused or is likely to cause severe or irreparable harm. For example:

It shall be a defence to an action commenced under this Act that the activity of the defendant is authorized by a standard passed under this Act unless the plaintiff can establish, or a balance of probabilities, that the activity has caused, or is likely to cause, severe or irreparable contamination or degradation to the environment.

### **Section 3(9)**

CELA supports Professor Elgie's submission that a valid concern of citizens who have launched private prosecutions is that the Attorney-General will intervene and stay the prosecution. We therefore support Professor Elgie's recommendation that a clause be added to clarify that a private prosecution is only curtailed where the Attorney-General or Minister of Justice is diligently prosecuting the same offence.

### **Section 37(9)**

The whistleblower protection provisions of this Act are welcome. CELA has one concern with the use of the term "embarrassing" in section 37 (9) (b). We believe this is too broad a term, is difficult to define and will be used by employers to try and deprive an employee of a remedy. We believe that the phrase "for any other improper purpose" which is already in the section addresses the harm the section is trying to protect against. We would therefore recommend that "embarrassing" be deleted.

CELA would also recommend including a section providing for an employees right to refuse to pollute. In the 1970s, employees in many jurisdictions were granted the right to refuse unsafe work under occupational health and safety legislation. The legal right to refuse to pollute is really an extension of the legal right to refuse unsafe work. Similar clauses could be crafted to ensure that workers do not have to engage in activities that result in pollution outside the workplace.

## **Part II - Sustainable Development: Balancing Conservation and Development**

CELA recommends against using the word "balancing" conservation and development. As the Brundtland Commission makes clear, a healthy environment is a prerequisite to a healthy economy. It is not a "balancing" act and in some cases development may not be able to proceed if the environment is threatened.

### **Section 8**

This section provides a good framework for ensuring that environmental considerations are integrated in all decision-making. We would recommend that (b) be broadened beyond policies to include the activities listed in clause (a).

Clause (b) only provides for a public report on the environmental implications of policies. CELA recommends that some opportunity for public comment on these reports be provided for. One suggestion is a 30-60 day comment period.

## **Part IV - Authorities**

### **Section 17(3)**

Presently this section only provides for discretionary powers of the Minister to undertake a number of programs or initiatives. We would recommend that "shall" be substituted for "may" in relation to clauses (a), (e), (f) and (g) and that these items be in a section separate from a section providing for discretionary powers.

CELA also has concern that the Act has limited itself only to the provision of environmental quality "guidelines." The public, in the 1990s expects that there will be legally enforceable standards to protection the quality of our air and water. In Ontario, for example, while we have had enforceable air standards since 1971, we are only in the process of developing enforceable effluent standards under the Municipal-Industrial Strategy for Abatement (MISA) program. We would strongly urge that "standards" be substituted for "guidelines" in subsections 17(3) (e) (f) and (g).

### **Section 19(1) (a)**

We note that the proposed Act describes the waste management program in terms of the 4Rs. During the past few years, the 4th R, namely recovery, has been dropped from forward-looking waste management agendas with the emphasis placed on reduction, reuse and recycling in that order. In fact, in mid-April the Ontario government announced that no future solid waste incinerators would be built in Ontario. The concern with solid waste incinerators has been that first, they create a disincentive to the 3Rs of reduction, reuse and recycling as they need waste to run. Second, incinerators turn solid waste into hazardous waste in terms of the emissions and ash they generate. We would therefore recommend that "recovery" be deleted from this subsection.

## Part V - Prohibition

### **Section 21**

This section provides for a prohibition of the release of a contaminant into the natural environment in an amount in excess of that prescribed by either a certificate of approval or a regulation where there is no certificate required. It is CELA's contention that this section is much too narrowly drafted as it only applies to levels of contamination that are in excess of those established in certificates of approval or regulations and does not provide for a general prohibition against releasing contaminants into the environment. This is a major gap in the legislation. We recommend that a general clause be added. One example is found in section 13 (1) of the Ontario Environmental Protection Act which provides as follows:

Notwithstanding any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect.

We would note that "adverse effect" has been defined in Part XX-Definitions.

### **Section 22**

We agree with the submissions of Professor Elgie that section 22 be amended so that it applies to continuing activities and structures.

### **Section 30**

This section should be amended to provide for public input into the permitting process. At the minimum, there should be an opportunity for notice and comment period. In certain circumstances, the Minister should have the authority to call for a public hearing. If there is no public input the permitting process will be seen as an exercise of behind closed doors industry-government negotiations.

## Part VII - Development Assessment

Environmental assessment has become one of the key mechanisms for implementing the principles of sustainable development advocated by the Brundtland Commission and the National Task Force on Environment and Economy. Environmental assessment acts as an "anticipatory" strategy that allows environmental impacts to be assessed prior to a project being undertaken. CELA would urge the Yukon to enact a comprehensive and forward-looking environmental assessment regime.



In recent years, as environmental assessment reform has been contemplated at the federal and provincial levels across Canada, environmental organizations and environmental law experts from across Canada have come to a general agreement on the key features of a sound environmental assessment process. The eight key elements of a strong environmental assessment process have been set out in the position paper of the Canadian Environmental Network Environmental Assessment Caucus on Bill C-78, the proposed Canadian Environmental Assessment Act.<sup>2</sup> They can be summarized as follows:

**1. Mandatory and Independent Process**

Environmental assessment legislation must establish a process that is mandatory and subject to review by an independent agency. As such, the process must be independent, accountable, free from political interference and must culminate in a final, binding decision. Cabinet could potentially override the initially binding decision.

**2. Justification of Purpose, Need and Alternatives**

Each environmental assessment must justify the proposed activity by showing that its purpose is legitimate, that it will meet an environmentally acceptable need, and that it is the best of the alternatives for meeting the need. In considering alternatives, both alternatives to the proposal and alternative means of carrying out the proposal should be considered. The null alternative should always be considered.

**3. "All in Unless Exempted Out"**

The environmental assessment process must define "environment" broadly and be universal in application (all projects in the process unless specifically exempted out) within relevant jurisdictional constraints. Therein, the approach of different levels of assessment would apply, a screening exercise to determine at which level of the process each proposal would be assessed. In addition, a process for the environmental assessment of government policy should be grounded in legislation.

---

<sup>2</sup> Reforming Federal Environmental Assessment. Submission of the CEN Environmental Assessment Caucus on Bill C-78, the proposed Canadian Environmental Assessment Act, November, 1990.

#### **4. Efficiency: Levels of Assessment: Federal-Provincial Reviews**

The process must be efficient. Efficiency can be encouraged by employing the concept of different "levels of assessment" and combining federal and provincial environmental assessment review processes. Classes of proposals, within the "levels of assessment" approach, should include only proposals which are similar, occur frequently, and are of relatively low environmental impact.

#### **5. Criteria to Guide Discretionary Decision-Making**

Specific criteria must be established to guide the planning and assessment of proposals and to ensure accountability whenever discretionary decision making occurs in the process.

#### **6. Significant Public Role**

A significant role for the public is essential throughout the environmental assessment process. There must be public rights to notice and adequate time for comment on drafts of changes to the Act or its accompanying guidelines, policies and regulations, and timely notice of and access and/or input to documents and procedures relevant to individual assessment procedures.

Participation must also be guaranteed by a legislated intervenor funding program. Decisions must be made on the basis of a hearing process conducted according to the rules of natural justice including full disclosure of information and cross-examination.

Section 35(3) which deals with the opportunity for effective public input does not set out a trigger to public hearings on proposed undertakings. We would suggest that undertakings that are likely to cause a significant environmental impact should undergo a public review before a independent panel, if requested by the public. There could be an exemption for frivolous and vexatious requests.

#### **7. Implementable and Enforceable Decision**

The ultimate decision must be capable of implementation and enforcement. A comprehensive system is required that would include the assessment process, the final decision, and an enforceable (and revocable) licence or permit that would incorporate and ensure implementation of the terms and conditions, including monitoring and follow-up, of the final decision.

## **8. Monitoring and Follow-up**

Monitoring, follow-up and conditions for abandonment of a proposal must be a mandatory part of the final decision. The public should be entitled to a role in the evaluation of monitoring reports.

An additional principle of equal importance in any EA Program includes the assessment of the cumulative impacts of developments. As well, there is an overall need for predictability, reliability and consistency throughout the process.

We hope that these principles will be of assistance in drafting this Part of the Act.

## **Part VIII - Waste Management**

CELA is pleased to see that there is a section on waste prevention, reduction and recycling as well as sections on waste disposal. The Yukon has an opportunity here to take the lead in establishing a regulatory framework to encourage the 3Rs of reduction, reuse and recycling. We are enclosing for your information a series of provincial recommendations from a study done for the Municipality of Metropolitan Toronto entitled "A Regulatory Agenda for Solid Waste Reduction" (Appendix A). You may wish to consider adding some of these initiatives to section 47 of the proposed Act. As well, we would encourage the establishment of waste reduction targets.

### **Section 43**

Substitute "shall" for "may."

### **Section 47**

Substitute "shall" for "may."

CELA also recommends that public hearings before an independent panel be held in respect to the establishment of all special waste sites and solid waste disposal sites taking over a specified quantity of waste.

There should also be a requirement for all operators of a waste disposal facility to post security adequate to cover the cost of maintenance and restoration after closure of the site.

## **Part IX - Hazardous Substances**

CELA supports the recommendations of Professor Elgie that there be a requirement that persons report all hazardous substances used or stored on their premises. We would also suggest that the

production of a contingency plan be part of the application requirements rather than something that may be provided at the discretion of the Director.

### Part X - Pesticides

CELA has a number of concerns with the sections on Pesticides. First of all, we suggest that the Yukon government have regard for the recommendations of the Pesticide Registration Review Team found in their Final Report issued in December 1990.

CELA recommends that the following two principles guide the regulatory process. The first is that there must be a reduction of pesticide use over time in order to protect human health and the environment. Ecologically sound pest management strategies, technologies, and cultural practices must be developed and implemented as the main form of pest control. This principle is reflected in part by the Quebec Pesticides Act which requires the Minister to devise and propose programs "fostering a decrease in and the rationalization of the use of pesticides."

The second principle is that while pesticides are still in use, steps must be taken to minimize the risk of harm to human health and the environment from their impact. These two principles should be reflected in this Part of the Act.

We would also suggest that the legislation provide for;

- (a) the establishment of targets and workplans for the reduction of use of pesticides in all use sectors, including agriculture, forestry, industrial, commercial, lawn and turf, and domestic sectors; and
- (b) the promotion of viable, ecologically-sound pest management strategies that reduce risk of harm to health, safety and the environment.

We would also recommend that the Act be amended to allow for regulations to be promulgated in regard to the following:

- (a) training and licensing programs for all dealers, wholesalers and retailers of pest control products, and for users of commercial pest control products;
- (b) the safe storage and display of pesticide products at retail;
- (c) the safe reuse, recycling, collection, storage and disposal of containers and the safe collection, storage and disposal of pesticide wastes;
- (d) suggested action levels for pesticides in groundwater and drinking water, where deemed appropriate and the monitoring thereof;
- (e) posting and notification for lawn and turf applications of pest control products;
- (f) emergency response measures;
- (g) buffer zones; and

- (h) record keeping (e.g., crop area, location and volume) for users of commercial (including restricted) pest control products for agriculture, forestry, industrial rights-of-way, and for other specified uses.<sup>3</sup>

**Section 51(2)(a)-(d)**

CELA is concerned with the tests that are set out in this section to determine liability are vague, and very difficult to prove. Presently, under the common law, a person would have a remedy for pesticide spray drift in either trespass or nuisance. It is unclear whether these sections purport to take away these remedies as it could be argued that "spray drift" is an inevitable result from the "proper use" of pesticides. We would urge that these sections be amended to read:

- (2) No person shall use a pesticide or any substance containing a pesticide in a way that
  - (a) causes or is likely to damage the natural environment;
  - (b) causes or is likely to cause harm to plant or animal life or damage to property;
  - (c) causes or is likely to cause harm or discomfort to any person;
  - (d) threatens or is likely to threaten the safety of any person.

**Part XI - Air**

**Section 59**

CELA supports the recommendations of Professor Elgie that this section apply to existing sources of air pollution as well as new, expanded or substantially altered undertakings.

**Section 60**

Substitute "shall" for "may." We also support Professor Elgie's recommendations for fleshing out the regulatory regimes for air pollutants.

**Part XII - Water**

**Section 63**

CELA contends that this section should also apply to existing facilities that involve the release or a contaminant into water.

CELA would also recommend the addition of provisions to protect groundwater, including the establishment of groundwater quality

---

<sup>3</sup> This list was taken in part from the list of Federal-Provincial Initiatives found in the Final Report of the Pesticide Registration Review Team, at p. 30.

standards. We would also recommend the establishment of a groundwater protection strategy.

**Part XIV - Forests**

CELA has been very involved in forestry issues during the past four years and has represented Forests For Tomorrow before the Environmental Assessment Board since 1989 in respect of the Timber Management Class Environmental Assessment. We trust that the following suggested amendments will be of assistance.

**Section 72**

Amend (d) to read: "construction maintenance and abandonment of roads..."

Add (f) forest protection and maintenance activities

**Section 73(1)**

Amend (a) to read: the principle of ecologically sustainable use of forest resources and long-term productivity of the forest;

Amend (b) to read: the principle of interdisciplinary forest management planning and integrated resource management;

Add (d) the maintenance of biological diversity;

(e) the right of the public to participate in the forest management planning process.

**Section 74(1)**

Amend (f) to read: prescribing the contents of applications for certificates of approval for forest undertakings under this Act, including an Environmental Impact Statement, and the manner in which such applications should be reviewed.

Add (j) prescribing methods to ensure meaningful public participation in the forest management planning process;

(k) prescribing silvicultural standards, including the prohibition of practices or operations which cause or are likely to cause adverse impacts upon the ecological sustainability, long-term productivity, or biological diversity of the forests, or upon non-timber values, uses or resources;

(l) prescribing clear statements of measurable quantifiable objectives and strategies for all forest resources;

(m) prescribing measures to protect ecologically significant stands of old growth forests;

(n) prescribing measures to protect vulnerable, threatened or endangered species of flora and fauna;

- (o) prescribing measures to maintain sustainable habitat for all wildlife species within forested landscapes;
- (p) prescribing measures to protect watercourses from the potentially adverse effects caused by forestry operations;
- (q) prescribing monitoring and data collection programs to periodically assess the success in meeting forest management goals and objectives;
- (r) requiring annual reports to the Legislature and to the public on the results of the monitoring and data collection programs respecting forest management activities; and
- (s) requiring "State of the Forest" reports every five years to the Legislature and to the public.

CELA also recommends that the term "sustainable yield" be clearly defined to ensure that what is cut does not exceed what is growing back.

#### Part XV - Protection of Wilderness

We would support Professor Elgie's recommendation that the Act should specify that at least 12% of the lands and waters in each of the Yukon's natural regions (as defined by Parks Canada) be permanently protected as wilderness.

#### Part XVI - Spills

We recommend that the government be given the clear authority to undertake the clean-up itself, and bill the responsible person later.

We would also recommend the establishment of a victim compensation fund to provide compensation for victims of spills in a timely manner. Part IX of the Ontario Environmental Protection Act provides a model for the establishment of such a fund.

#### Part XVII - Enforcement

##### **Section 103**

CELA would recommend that the limitation period be extended to two years. This is now the standard limitation period in most environmental legislation and will allow for enough time for investigations to be made and a determination that a prosecution is appropriate.

#### Part XVIII - Dispute Resolution

##### **Section 116**

CELA is concerned about the restriction of mediation to parties "directly affected" or who have a "direct interest." This is an

extremely narrow view of who should be a party in an environmental case. In many instances, it may very well be a body of water, the air, wildlife or wetlands that may be affected by a proposal. An individual or group may not have a "direct" interest in the matter but may be concerned with the impact on the environment and may represent a "public interest." Further, a person living in the neighbourhood may be willing to accept compensation even though the environment may be adversely affected. Surely, both those more directly affected as well as those who have a broader interest in the environmental impacts of a proposal should be able to participate in mediation. CELA would recommend that the qualification that a person have a direct interest or be directly affected by a proposal be deleted.

### III. A NEW STRATEGY FOR TOXIC CHEMICALS

Zero discharge of persistent toxic chemicals has become the rallying cry of environmentalists and citizens. In a recent report by the Canadian Institute for Environmental Law and Policy and the National Wildlife Federation entitled "A Prescription for Healthy Great Lakes: Report of the Program for Zero Discharge", the authors outline the shortcomings of the present pollution control approach and set forward a series of recommendations to implement a zero discharge strategy. The overall approach is one of pollution prevention and toxic use reduction.

A toxic use reduction program would include:

1. Clearly specified toxic use reduction goals and objectives;
2. The gathering of inventories and audits of toxics use;
3. Toxics use reduction planning by each industrial sector using toxics;
4. Technical assistance programs;
5. Community and worker right-to act provisions;
6. Reorganization of government agencies on a multi-media basis;
7. Toxics use standards; and
8. Toxics use reduction permitting procedures.

We have attached a summary of the recommendations from this report for your consideration. (Appendix B)

While these principles have been developed in the Great Lakes context, the recommendations have broad application in dealing with the reduction of toxic chemicals. We would recommend consideration of these programs in drafting the provisions for the air, water and hazardous substances Parts of this Act.



**IV. CONCLUSIONS**

The Yukon government is to be commended for its forward-looking environmental legislation. These submissions have tried to identify areas of concern that we believe should be addressed before the proposed Act becomes law. We look forward to seeing the legislation in its final form.

---

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

---

517 College Street, Suite 400, Toronto, Ontario M6G 4A2 (416) 923-3529 FAX (416) 960-9392

**A REGULATORY AGENDA  
FOR SOLID WASTE REDUCTION**

A project undertaken by the Canadian Institute for Environmental Law and Policy for the Municipality of Metropolitan Toronto Works Department. SWEAP Program. Order Number MT-57554. May, 1989

Steven Shrybman  
\*Research Associate, CIELAP  
\*Counsel, Canadian Environmental  
Law Association

with initial research by  
Rick Lindgren

# PROVINCIAL INITIATIVES

## POLICY

16. The Province of Ontario should adopt a waste management policy explicitly recognizing waste reduction as the overriding first priority of a strategy with following hierarchy:

1. Reduction at source
2. Re-use
3. Recycling

Only after all feasible reduction options have been exhausted will waste disposal be considered an acceptable management option.

However the ultimate objective of provincial policy should be the virtual elimination of wastes. Toward that objective the following interim targets should be established:

June 30, 1990	30%
June 30, 1992	40%
June 30, 1996	50%
June 30, 1998	60%

## THE WASTE REDUCTION OFFICE (WRO)

17. Environment Ontario should establish a waste reduction office that has a statutory mandate and obligation to produce and implement a comprehensive strategy for the province that will achieve a 50 percent reduction of solid waste during the next decade. To do so, the WRO must be given a budget and staff sufficient to the task and one that reflects the primacy of the waste-reduction objective.

## MANDATORY WASTE REDUCTION PROGRAMS FOR MUNICIPALITIES

18. The Ontario Government should ensure, as a matter of law, that all municipalities take appropriate steps to achieve specified waste reduction objectives. The precise nature of these statutory obligations should be determined as part of a consultation process the Ministry should sponsor as soon as possible.

Elements of this regulatory initiative should include proposals that would require municipalities to take the following actions.

### Waste Reduction Planning

19. At a minimum waste reduction plans must include:
- i) an inventory of the waste management facilities available to process or dispose of the municipalities wastes including composting, and recycling facilities, if any.
  - ii) an inventory and characterization of the solid waste streams being generated within the municipality, which should be differentiated into residential, commercial, industrial and other classes.
  - iii) a description of the waste reduction programs that are in place or planned for the municipality together with projections of the waste the program is expected to divert from disposal. Included in this inventory should be a description of all public education, marketing and financial or technical support activities in which the municipality is engaged.
  - iv) an annual audit of the quantity, character and ultimate fate of all materials diverted from the waste stream.
  - v) an annual report of the quantities of wastes disposed of at facilities operated by or within the municipality.

Provision should be made to permit municipalities to submit joint or regional plans where desirable for geographical or logistical reasons.

### Mandatory Source Separation

20. Mandatory source separation of designated materials should be made a feature

of provincial waste reduction legislation. A list of designated "recyclables" should be promulgated that would have to be source separated in all municipalities.

### Waste Disposal Restrictions

21. Restrictions should be established to prevent the disposal of materials and products for which waste reduction alternatives exist. These restrictions should reflect the particular circumstances of a community and be added as conditions to the Certificates of Approval for waste disposal facilities, public or private, operating in the area.

## PRODUCT AND PACKAGING REGULATION

### *SOURCE REDUCTION*

#### Product or Packaging Bans

22. A general policy commitment should be made to phase out the use of all containers and packaging products that are not being effectively diverted from the waste stream. As the first step toward that objective regulations should be developed that will prohibit by 1992 the distribution and sale of all containers and packaging products that are non recyclable or that pose extraordinary environmental impacts.
23. A general policy commitment should also be made to phase out the use of all disposable products for which non-disposable substitutes are available. As the first steps toward that objective regulations should be developed that will:
  - i) Prohibit, by 1992, the distribution and sale of all disposable products that are not being recycled, and for which non-disposable substitutes are available. An exception may be necessary for those disposable products that are necessary for public health reasons.
  - ii) Establish an approvals process for all new disposable products that are proposed for distribution and sale in Ontario. No approval would be given to introduce a disposable product that is not consistent with provincial waste reduction objectives.

## Product Durability Requirements

24. Unconditional warranty conditions should be established for appropriate classes of consumer products in order to increase product life.

### *RE-USABILITY*

25. The prohibition of non-reusable containers, and the regulation of container size, set out in Ontario Regulation 622/85 with respect to soft drink containers, should be strengthened and extended to as many types of container and packaging products as practical. As an adjunct to such initiatives, programs should be developed to ameliorate the impact of any resulting economic dislocations.

### *RECYCLABILITY*

26. Recycling performance standards should be developed and applied to all products and materials sold in Ontario that are not amenable to source reduction and re-use strategies and regulation.

### *LABELLING*

27. Product and packaging labelling requirements should be developed that will require all materials and products sold in Ontario to be labelled with universal symbols that indicate whether the material or product:
  - Can be recycled
  - Can be returned for deposit
  - Is compostable
  - Is household hazardous waste
  - Is neither returnable nor recyclable

## FINANCIAL INCENTIVES/DISINCENTIVES

### **WASTE MANAGEMENT SURCHARGES**

28. A graduated waste management surcharge system should be established and levied against producers in order to internalize the environmental costs associated with their products and materials. Taxes would be fully or partially rebated for products and materials that achieve specific waste reduction or recycling objectives or that use recycled materials.
29. A particular product waste management surcharge should be assessed at a value that approximates the actual cost of either diverting that product or material from the waste stream, or with managing it as waste. Provision should also be made to increase waste management charges by specific amounts in the event that reduction objectives are not met.
30. The structure of product waste management charges should also reflect the waste management hierarchy and favour reduction and reuse, then recycling by accounting for resource and energy impacts.
31. Revenues that are generated from the imposition of waste management surcharges should be credited to a waste reduction fund and used for the purposes of accomplishing provincial waste reduction objectives.
32. Two of the first priorities for the imposition of waste management surcharges should address packaging and paper components of the waste stream.

#### packaging

- i) A \$0.03 tax should be imposed on all packaging that is offered for sale in Ontario. The tax should be levied against manufacturers or distributors who would be able to claim a:

\*one-cent credit for each package that is recyclable;

\*a two-cent credit if the package achieves a 75 percent packaging rate, or is made predominantly of recovered materials, and:

\*and an entire rebate for packaging that is reusable and is reused, or that is made entirely of recovered materials.

paper

- ii) A \$10.00 per tonne tax should be imposed on all newsprint and other paper offered for sale in Ontario. The tax should be levied against manufacturers, distributors or publishers who would be able to claim:

\*a non-refundable rebate of \$15.00 for every tonne of recovered material that it uses.

\*If by 1992, less than 50% of the newsprint and paper sold in Ontario is not being recycled, the waste management tax should be increased to \$25.00/Tonne, and the non-refundable rebate to \$30.00/Tonne.

**DEPOSITS AND BOUNTIES**

- 33. Mandatory deposits should be required for durable goods that are classified as household hazardous waste. The use of mandatory deposit systems should also be considered for other durable goods as an adjunct to other programs and regulations intended to divert these materials from the waste stream.

**PROBLEMATIC MATERIALS**

- 34. Special waste disposal charges should be imposed on household hazardous waste and other problematic products and materials that fail to meet, or that are not amenable to, recycling performance standards.

**TIPPING FEES**

- 35. A windfall profits tax should be levied against the operators of private waste disposal facilities and dedicated to waste reduction initiatives.

Private operators should also be required to establish and maintain substantial reserves to ensure that adequate resources will be available to manage waste disposal sites after they are closed and to satisfy any damage claims that may arise.



## PROCUREMENT

36. The Province should adopt the following procurement policy and promulgate regulations that will require adherence by all provincial boards, agencies and crown corporations:

- i) In purchasing supplies and materials for use, whenever the price is reasonably competitive, preference should be given to products and materials that are recyclable and that contain the highest percentage of recycled material, and suitable for the intended use.  
"Reasonably competitive" means:
  - a) for paper and paper products, a price within 20 percent off the price of paper or paper products made from virgin paper materials; and
  - b) for all other products, a price within 10 percent of comparable products made from virgin materials.
- ii) Price preferences for a specific product may be set at rates higher than the price preferences set out in section 1.
- iii) Where practical, all stationery, documents or other material that is made of recovered materials should so indicate with a statement to that effect or by way of an appropriate symbol.
- iv) The purchasing agents for the Provincial Government and those institutions subject to this procurement regulation shall submit annual reports to the Minister of the Environment indicating the proportion of its purchases that satisfies procurement objectives.
- v) By December 1, 1989, all firms supplying or intending to supply goods or services to an institution subject to these procurement requirements shall submit a written statement certifying that:
  - a) It has conducted a solid waste audit;
  - b) It has implemented a solid waste reduction program, and that;
  - c) It has adopted and implemented a procurement policy that substantially matches that set out by paragraphs (i) through (iv) above.

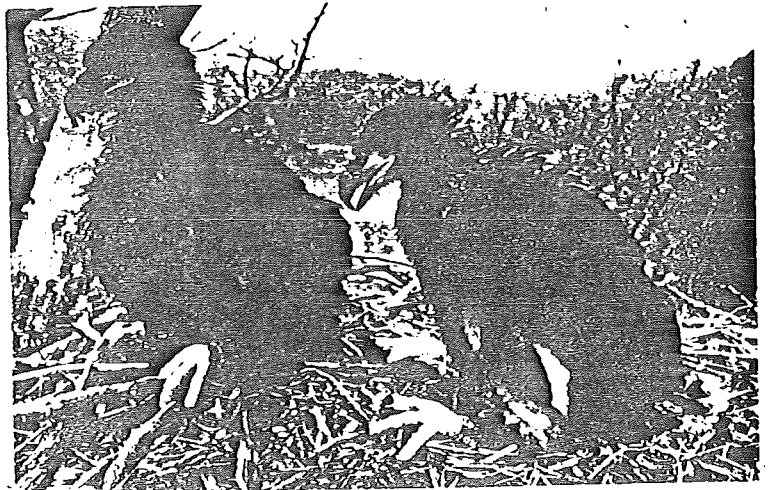
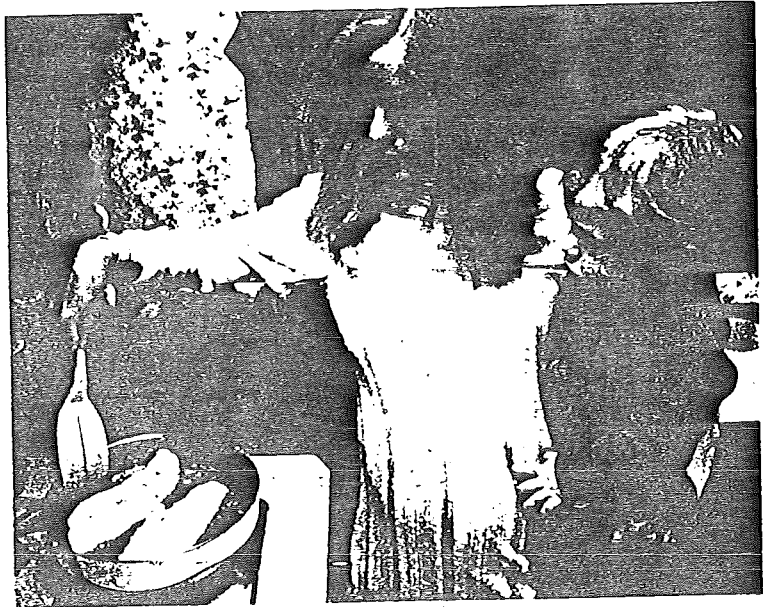
As experience is gained with market research and other programs designed to encourage the full utilization of recovered materials, it may also be necessary for the province to establish performance standards that will specify percentages of public purchasing that must be comprised of recovered materials.

### FACILITY APPROVALS

37. The authority to regulate the operation of waste management systems and sites, by way of conditions to certificates of approval that license such operations, should be used to:
- i) Ensure that all sites, both public and private, restrict the disposal of products and materials for which source reduction, re-use and recycling alternatives exist.
  - ii) Require that annual audits be undertaken by the operators of all private waste management systems and sites that will provide the following information and data:
    - a) An audit of the quantity and character of the solid waste managed or disposed of;
    - b) A description of the waste reduction activities or services offered by the company, and an audit of the quantities and character of the products and materials that have been so managed.
38. All certificates of approval to operate waste management systems or sites should stipulate that only residual wastes may be disposed of at or by such facilities.

# A PRESCRIPTION FOR HEALTHY GREAT LAKES

REPORT OF THE PROGRAM FOR ZERO DISCHARGE



A Joint Project of the  
**NATIONAL WILDLIFE FEDERATION\***



And the  
**CANADIAN INSTITUTE FOR  
ENVIRONMENTAL LAW AND POLICY**

## CHAPTER 18

# Summary of Recommendations

### A Vision For the Future of the Great Lakes

**G**overnment strategies to protect and clean up the Great Lakes must be guided by a vision of a future, healthy Great Lakes ecosystem. In this report, we offer our prescription for a healthy Great Lakes. It is based on three measures of the Lakes' health:

- Whether women can eat Great Lakes fish without affecting the development of their babies;
- Whether wildlife that eat Great Lakes fish and other aquatic life thrive in the Great Lakes Basin; and
- Whether people can eat Great Lakes fish without increasing their risk of getting cancer.

Other visions may be just as valid as ours, so long as they provide clear direction for the problems that must be addressed and provide clear direction for the actions that must be taken by the responsible parties. (Chapter 1)

### A New Strategy To Protect and Clean Up the Great Lakes

If we are to achieve the healthy ecosystem of our visions, we must overcome the limitations of the pollution control approach and eliminate the most harmful substances damaging life in the Great Lakes ecosystem. Our strategy for achieving this objective is two-pronged:

- 1) Stop all future discharges of the most harmful pollutants through a zero discharge program and substantially reduce the discharge of all other chemicals; and
- 2) Clean up those contaminants that have been released into the Great Lakes. (Chapter 5)

The specific recommendations for reforming existing programs and adopting new programs are described below. Included with each recommendation is the timeframe within which each can be accomplished and the government agency (or agencies) responsible. The Chapter of this report where these recommendations are described in depth is also listed.

### The Zero Discharge Strategy

#### *Immediately Freeze Toxic Dumping.*

No government in the Great Lakes Basin should issue or reissue a discharge permit that would allow any increase in the amount released of any of the 362 chemicals on the Water Quality Board's "1986 Working List of Chemicals in the Great Lakes Basin," unless the applicant for the permit demonstrates that the discharge will not result in additional accumulation of the chemical in the Lakes or harm to the ecosystem. (Chapter 7)

#### *Sunset the Most Dangerous Toxic Chemicals.*

Toxic chemicals with very high bioconcentration factors should immediately be banned from further use or manufacture anywhere in the Great Lakes Basin, even if there is little evidence of specific toxic effects. (Chapter 8)

The U.S. and Canadian Federal Governments should set up a joint sunset task force. The public should be consulted in all aspects of this task force's work. The task force should submit its recommendations to the U.S. and Canadian Governments by the September, 1993, biennial meeting of the IJC.

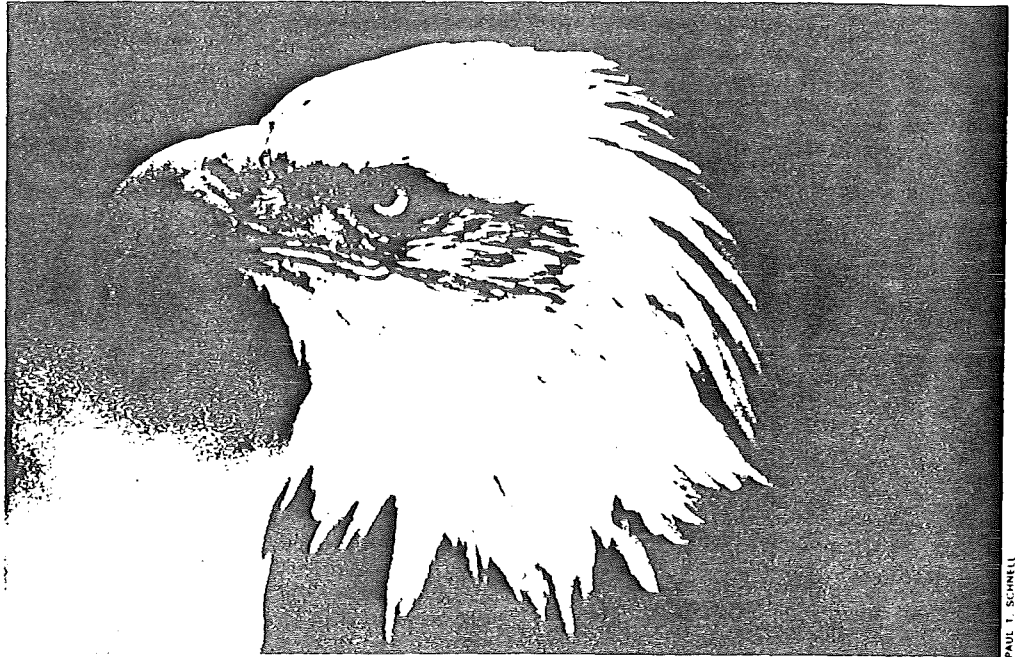
The task force should:

- adopt criteria for placing a chemical on the sunset list;
- determine methods to measure chemicals using these criteria; and
- list the chemicals to be sunset. (Chapter 8)

The U.S. and Canadian Federal Governments should use the criteria for banning chemicals developed by the sunset task force to screen the use or production of new chemicals in the Great Lakes Basin. (Chapter 8)

The two Federal Governments should set specific timetables for phasing out all chemicals not subject to an immediate ban. These timetables should be set by September of 1994, one year after the task force's recommendations are issued. (Chapter 8)

The Canadian and U.S. Governments should issue a sunset reference to the International Joint Commission. This reference should be announced by the September, 1991 meeting of the IJC. (Chapter 8)



#### *Reduce Use of Toxics.*

Each Government in the Great Lakes Basin should implement comprehensive toxics use reduction programs that include:

1. Clearly specified toxics use reduction goals and objectives;
2. The gathering of inventories and audits of toxics use;
3. Toxics use reduction planning by each industrial sector using toxics;
4. Technical assistance programs;
5. Community and worker right-to-act provisions;
6. Reorganization of government agencies on a multi-media basis;
7. Toxics use reduction standards; and
8. Toxics use reduction permitting procedures. (Chapter 9)

Each Government in the Great Lakes Basin should set a goal of 50% reduction in the total use of toxic chemicals by 1996 and 75% reduction by 2000. (Chapter 9)

Governments in the Great Lakes Basin should require that each industry and each sector of users of toxic chemicals develop toxics use reduction plans by 1994 that will achieve the overall goals of 50% reduction in use of toxics by 1996 and 75% reduction by 2000. (Chapter 9)

Each Government in the Great Lakes Basin should pass legislation encouraging good neighbor agreements and giving all community residents and workers the following rights:

1. The right to information and inspection;
2. Worker right to refuse unsafe work;
3. Worker right to report pollution, and
4. The right to sue. (Chapter 9)

#### *Adopt Zero Discharge Technologies.*

Governments should immediately revise their technology-based effluent standards to ensure that they are based on the best available toxics use reduction methods. (Chapter 10)

Great Lakes petroleum refineries should reduce total discharges of chromium to water from the 9,000 kilograms now released each year to zero.

This reduction could be achieved by combining three techniques:

- substituting phosphate-based chemicals for the zinc chromate now used as an additive in cooling waters;
- reducing the amount of cooling water used and discharged by conserving and recycling water; and
- employing more advanced pollution control techniques.

Great Lakes bleached kraft mills should reduce their current discharges of 13,000 tonnes of AOX each year to zero. This could be achieved by changing production processes so that no chlorine is used in the bleaching or delignification processes. (Chapter 10)

## The Clean-Up Strategy

### *Protect Lake Superior.*

The U.S. and Canada should immediately implement a zero discharge strategy for Lake Superior. The strategy should include:

1. Designation of Lake Superior as "outstanding national resource waters" under the U.S. *Clean Water Act* and a similar designation in Canada;
2. A freeze on building new or expanding existing pulp and paper mills that use chlorine;
3. A phase-out of the use of chlorine and the discharge of all persistent toxic chemicals at existing pulp and paper mills;
4. An independent environmental review in Canada of the impacts of logging and forest management practices on Lake Superior; and
5. An inventory of undeveloped Lake Superior shoreline, and preparation by the U.S. and Canada of a joint plan for protecting sensitive and undeveloped areas. (Chapter 7)

### *Reform Water Quality Standards.*

By June 30, 1994, all Governments in the Great Lakes Basin should adopt uniform Water Quality Standards based on fish being safe to eat by all wildlife and humans. (Chapter 11)

Legislation and regulations should state that Water Quality Standards are only interim and that the standard for all persistent toxic substances will be changed to "virtually eliminated." (Chapter 11)

By June 30, 1994, Governments in the Great Lakes Basin should adopt new Water Quality Standards to protect babies from developmental problems. These Standards should use the model procedures in Chapter 12 and protect a 120-pound woman eating an average of 50 grams of fish each day. (Chapter 12)

By June 30, 1994, Great Lakes Governments should revise their Water Quality Standard for PCBs so that it is no higher than one part per quadrillion. (Chapter 12)

By June 30, 1994, uniform Water Quality Standards that protect wildlife should be adopted by all Great Lakes Governments. These standards should take into account bioaccumulation factors, the limitations of field data, protection of the most sensitive species and the combined effects of contaminants in the Great Lakes. (Chapter 12)

By June 30, 1994, Governments in the Great Lakes Basin should adopt new Water Quality Standards for dioxin (2,3,7,8 TCDD) of no higher than 0.0067 parts per quadrillion to protect wildlife. (Chapter 12)

By June 30, 1994, uniform Water Quality Standards should be adopted by all Great Lakes Governments that prevent an increased risk of cancer in humans by using an additive process to take into account the mixtures of cancer-causing chemicals in fish. (Chapter 12)

By June 30, 1994, all Great Lakes Governments should eliminate dilution provisions in existing regulatory programs. (Chapter 13)

By June 30, 1994, all Great Lakes Governments should adopt uniform anti-degradation policies that emphasize a zero discharge approach. (Chapter 13)

### *Develop and Enforce Lakewide Clean-up Strategies.*

Comprehensive clean-up plans based on the six-step strategy outlined in Chapter 14 should be developed for each of the Great Lakes by January 1993. (Chapter 14)

By January 1, 1993, U.S. EPA, Illinois, Indiana, Michigan and Wisconsin should adopt the strategy for cleaning up PCB pollution in Lake Michigan proposed in Chapter 15. The first actions required in the strategy should be to clean up contaminated sediments in Waukegan Harbor and the Fox, Kalamazoo and Grand Cal Rivers; and elimination of at least half of the atmospheric sources of PCB pollution by the Year 2000. Allocation to the four States of the responsibility for meeting load reduction targets should be based primarily on current tributary loadings. (Chapter 15)

The Governments in the Great Lakes Basin should immediately intensify efforts to monitor likely sources and loadings of PCBs and other persistent toxic chemicals. (Chapter 15)

By January, 1993, U.S. EPA and Environment Canada should enforce load reduction targets and timetables for lakewide clean-up strategies by using the tools available under the U.S. *Clean Water Act* and the *Canada-Ontario Agreement Respecting Great Lakes Water Quality*. (Chapter 16)

## APPENDIX

# Resources for More Information

**F**or more information on the research methods and conclusions summarized in this report, please use the order form to request copies of the documents listed below. Costs listed are to cover the expenses of copying and postage. Following this section are addresses of organizations described in Chapter 17.

### From NWF

- Model Water Quality Standards to Protect Human Health From Reproductive and Developmental Toxicants. By Wayland Swain, Ph.D., 175 pages. (\$10.00 U.S.)
- Model Water Quality Standards to Protect Wildlife. By David Zaber, M.S., 50 pages. (\$5.00 U.S.)
- Model Water Quality Standards to Protect Human Health From Multiple Carcinogens. By Jeffery Foran, Ph.D., 20 pages. (\$3.00 U.S.)
- Lake Michigan Sport Fish: Should You Eat Your Catch? By Barbara Glenn, M.S. and Jeffery Foran, Ph.D., Summary, 16 pages (free). Complete, two-volume Technical Report, 1000 pages (\$35.00 U.S.)
- Target Load Reductions For Toxic Substances in the Great Lakes: Part 1, The Great Lakes Model; Part 2, Evaluation of Waste Load Allocation Issues. By Larry Fink, M.S. and Michael Penn, 170 pages. (\$10.00 U.S.)
- Sources of Polychlorinated Biphenyl Loadings To Lake Michigan. By Lorraine Lamey, M.S., 40 pages. (\$5.00 U.S.)
- A Summary of Mean Fish Tissue Contaminant Levels. By Lorraine Lamey, M.S., 90 pages. (\$10.00 U.S.)
- A Summary of Fish Consumption Rate Surveys. By Lorraine Lamey, M.S., 15 pages. (\$2.00 U.S.)
- Proposed Great Lakes Antidegradation Policy. By Mark Van Putten, J.D., 12 pages. (\$2.00 U.S.)

### From CIELAP

- Zero Discharge: A Strategy for the Regulation of Toxic Substances in the Great Lakes Ecosystem. By Paul Muldoon and Marcia Valiante, 79 pages (\$30.00 Cdn.)
- Pollution Prevention in the Great Lakes: A Survey of Current Efforts and an Agenda for Reform. By Marcia Valiante and Paul Muldoon, 140 pp. (\$40.00 Cdn.)
- Developing Options for Technology-Based Standards for the Petroleum Refining Sector in the Great Lakes. By Susan Sang, Ph.D., (\$30.00 Cdn.)
- Developing Options for Technology-Based Standards for the Pulp and Paper Sector in the Great Lakes. By Susan Sang, Ph.D., (\$30.00 Cdn.)
- Still Going to B.A.T. for Water Quality? A Four-Year Review of the Ontario Municipal-Industrial Strategy for Abatement. By Burkhard Mausberg (\$10.00 Cdn.)
- Do You Have a Zero Discharge Home? By CIELAP, (\$1.00 Cdn.)