



Est. 1970

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU DROIT ET DE LA POLITIQUE DE L'ENVIRONNEMENT

COMMENTS REGARDING RESPONSIVE ENVIRONMENTAL PROTECTION: A CONSULTATION PAPER

CIELAP Brief 96/10.

Prepared by:

Mark S. Winfield, Ph.D.
Director of Research

Greg Jenish, B.E.S.
Project Officer

Canadian Institute for Environmental Law and Policy
October 1996

VF:

CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW AND POLICY.

Comments regarding "Responsive

to Regulation 101/94	29
3.6.2. Specific Comments on Proposed Amendments to Regulation 101/94.	29
3.7 Containers	31
3.7.1. Carbonated Soft Drinks	31
3.7.1. Milk Containers	31
3.8 Waste & Packaging Audits and Reduction Work Plan Regulations (Regulations 102 and 104)	32
3.9 Manufacturer Controlled Networks	32
3.10 Waste Derived Fuel	33
3.10.1 Non-Hazardous Solid Waste	33
3.10.2 Liquid Waste-Derived Fuel	34
4.0 Liquid Industrial and Hazardous Waste	34
4.1 Hazardous Waste Definition	34
4.1.1. Specific Comments on Proposed Categories of Subject Waste	35
4.2 Manifests	36
4.2.1 Small Volume Hazardous Wastes	36
4.2.2. Definition of a "Site"	36
4.2.3. Field Operations	37
4.3 PCB's	37
4.3.1. Specific Comments on Proposed PCB Amendments	37
4.4 Biomedical Wastes	38
4.4.1. Incineration of Municipal Solid Waste in Hospital Incinerators	39
4.5 Asbestos	39
4.7 Oil Field Brine	39
3. Conclusions	40
IV. ENERGY	42
1. Amendments to the Regulations under the <i>Energy Efficiency Act</i>	42
2. Amendments to the Regulations under the <i>Power Corporation Act</i>	42
3. Amendments to the Regulations under the <i>Ontario Energy Board Act</i>	43
V. GOING BEYOND REGULATION	46
1. Introduction	46
2. Certification and Accreditation	46
3. Codes of Practice	46
4. Economic Instruments and Market Forces	46
5. Environmental Management Systems	47
6. Performance Agreements/Promoting Voluntary Measures	48
7. Performance Standards	48
8. Performance Reporting and Recognition	49
9. Conclusions	49

VI. CONCLUSIONS	50
ENDNOTES	53
ANNEX 1	60
ANNEX 2	70

COMMENTS REGARDING RESPONSIVE ENVIRONMENTAL PROTECTION:
A CONSULTATION PAPER

I. INTRODUCTION

On July 31 the Ontario Ministry of Environment and Energy released its proposed reforms to regulations under the *Environmental Protection Act*, *Ontario Water Resources Act*, *Pesticides Act*, and other statutes administered by the Ministry. The document, entitled Responsive Environmental Protection, is to form part of the Ministry's submission to the province's "Red Tape Commission," established in December 1995.

The Ministry initially provided a 45 day public comment period on the proposals. This was subsequently extended to October 15, in response to requests from a wide range of stakeholders, who argued that the original time frame was inadequate to respond to proposals for changes to virtually every regulation administered by the Ministry.

Given this still extremely short time-line provided for comments on the Ministry's proposals, The Canadian Institute for Environmental Law and Policy (CIELAP) has limited its detailed commentary to the areas of the Regulatory Process, Waste Management, Energy, and "Going Beyond Regulation." Brief comments on the Ministry's other proposals are provided in Annex 1.

CIELAP has no objection to efforts to reform Ontario's environmental protection system in order to make it more effective, efficient, fair and accountable. These themes have been central to the work of the Institute, and its predecessor, the Canadian Environmental Law Research Foundation (CELRF) over the past quarter century. In this context, we support the Ministry's proposals the repeal of some obsolete regulations, and the strengthening of a few others.

However, we have serious concerns regarding the overall direction of its proposals. In many cases the Ministry is proposing to reduce its oversight of activities which may damage the environment, lower environmental standards, and weaken opportunities for public participation and mechanisms for public accountability in environmental decision-making.

Our detailed comments on the Ministry's proposals are as follows.

II. THE REGULATORY PROCESS

1. Introduction

The Responsive Environmental Protection document makes a number of proposals regarding the regulatory process and specifically, the development of a regulatory code of practice by the Ministry. This is to include requirements for the application of cost/benefit tests to the selection of environmental policy instruments, full consultation with stakeholders, plain language drafting of regulatory requirements, improved access to regulatory information, and periodic and sunset reviews of all new and amended regulations. While a number of these proposals address long-standing concerns regarding the regulatory process in Ontario, and deserve support, others raise extremely serious concerns regarding their impact on future environmental protection initiatives.

2. Cost/Benefit Analysis

Responsive Environmental Protection makes specific reference to the comparative assessment of benefits and costs of proposed environmental policy instruments,¹ the assessment of the economic and business impacts of alternative instrument designs against environmental benefits,² and the application of the "More Jobs/Less Paper" test that the economic benefits of proposed measures outweigh their costs of business and government.³ The paper also describes the fact that most of the Ministry's older environmental regulations were not subject to detailed economic analysis as "unacceptable."⁴ Surprisingly, however, there is no evidence that the Ministry has undertaken a cost/benefit analysis of the regulatory changes which it proposes make through the regulatory review process.

Ontario's proposed application of a formal cost-benefit test to proposed environmental regulations would be unique among the Canadian provinces. Even those provinces which have recently undertaken major reviews of the regulatory systems, including Alberta,⁵ Newfoundland, Manitoba,⁶ and Saskatchewan⁷ have not established formal cost/benefit tests for new regulations. The Canadian⁸ and U.S. federal governments⁹ have introduced elaborate requirements for formal cost/benefit analyses of regulatory proposals as part of their efforts to reform the regulatory process.

However, many students of public administration and administrative law in the United States and Canada have raised serious questions about the value of such requirements. In his 1988 testimony before the Ontario Standing Committee on Regulations and Private Bills, for example, Professor Hudson Janisch of the University of Toronto, stated:

"I am not persuaded that the massive process of evaluation, the cost-benefit analysis of regulation-making and the whole bureaucracy that has been set up in the federal sphere is what the province needs at all."¹⁰

These concerns are based on a number of factors. The U.S. and, to a certain degree, Canadian federal experiences suggest that extensive review and evaluation requirements may actually reinforce the problem of the "ossification" of the regulatory process. This is a result of the additional costs and delays associated with meeting central agency review and evaluation requirements. These have had the perverse effect of discouraging agencies from amending or withdrawing existing regulations even when such steps are appropriate in light of changed circumstances and new information.¹¹

Furthermore, traditional models of cost/benefit and risk/benefit evaluation have been widely criticized for failing to give appropriate value to social and environmental costs and benefits, and for ignoring the question of the appropriateness of the distribution of costs and benefits resulting from a given activity.¹² Finally, requirements for cost/benefit analysis may introduce significant delays into the adoption of new regulations which are needed to protect the environment and public health and safety. Indeed, the need to ease formal cost-benefit analysis requirements and to place greater emphasis on the fairness of the distribution of costs and benefits arising from regulatory initiatives was reflected in U.S President Clinton's 1993 Executive Order 12,886.

Many of the issues intended to be addressed by cost/benefit analysis requirements may be better dealt with through properly structured consultation procedures. These should lead, in conjunction with the efforts of sponsoring agencies to provide appropriate background information on the potential effects of regulatory proposals, to the identification of major cost and distributional issues at the policy and regulation development stage. Consequently, it may be better to invest the limited public resources available for regulatory reform in the establishment of effective public notice, comment and consultation requirements for all major proposals, rather than in the creation of complex and costly systems for cost/benefit analysis and regulatory process management.

Recommendation:

- 1) *Formal cost/benefit tests should not be required for proposed new environmental regulations or amendments to existing regulations. Rather, available resources should be invested in early and meaningful consultation with all stakeholders in the regulation development process.*

3. Consultation on the Choice of Policy Instrument

Responsive Environmental Protection proposes that the development of new regulations or amendment of existing regulations involve full consultation with all stakeholders at an early stage in the developmental process. This is a welcome proposal, particularly given that the Red Tape Commission "More Jobs/Less Paper Test" only makes reference to consultation with business interests.¹³

Unhappily, the consultation process regarding the Responsive Environmental Protection does not inspire confidence in the government's commitment to full consultation with all stakeholders at an early stage in the policy and regulation development process. Stakeholders were initially only been given 45 days to comment on the document, and key technical documents were not made available until 30 days before the original deadline for public comments.

Recommendation:

- 2) *The Ministry should provide for early and meaningful consultation with all stakeholders in the development of new or significantly amended regulations or policies, including adequate time frames for public comment, and the provision of necessary supporting documentation in a timely manner.*

4. Clarity of Language and Regulatory Requirements

Responsive Environmental Protection proposes that plain language synopses be prepared for all new and amended regulations. This proposal is consistent with the 1988 recommendations of the Legislature's Standing Committee on Regulations and Private Bills¹⁴ and should be implemented.

5. Access to Regulatory Information

It is also proposed that plain language synopses for proposed regulations and amendments be published and listed on the EBR Registry. Again this proposal is consistent with the 1988 recommendations of the Standing Committee on Regulations and Private Bills. However, the government's proposal should be expanded to include new and amended policies as well as regulations.

Recommendation:

- 3) *Plain language synopses should be developed and published for new and amended policies and regulations. These synopses should be included when new and amended regulations and policies are published for public notice on the*

EBR public registry and when they are published in their final form.

6. Periodic and Sunset Reviews

Responsive Environmental Protection proposes that all new and amended regulations undergo a regular review to assess performance, continued relevance, and the availability of cheaper, and more effective means to achieve the desired outcome. The document also proposes that some regulations include specific termination dates.

These proposals are unnecessary and, if implemented, will create serious problems. Requiring that regulations be automatically reviewed and renewed every few years will place a substantial burden on governments, stakeholders, and the public, and introduce significant instability into the regulatory process.

Furthermore, Ontario already has a process for the identification of regulations and policies in need of review, namely, the request for review process under the EBR.¹⁵ The EBR process permits the resources available for reviews to be focused on regulations and policies which are actually of concern to stakeholders and the public.

Recommendation:

- 4) *Sunset and review process requirements need not be incorporated into new or amended regulations, as the EBR already provides a review mechanism.*

7. Conclusions

We support the Ministry's proposed commitment to full consultation with all stakeholders in the development of new regulations. However, we are concerned that this approach has not been taken with respect to the Responsive Environmental Protection document itself. In addition, we support the Ministry's proposals for the publication of plain language summaries of proposed and final regulations, and believe that this approach should be extended to major new or amended policies and guidelines.

We cannot support the Ministry's proposals for the application of formal cost-benefit tests to proposed new or amended regulations, or the Ministry's proposals for sunset clauses and automatic reviews of regulations. The implementation of these proposals would have major resource implications for Ministry at a time when budgetary reductions are raising serious questions about its ability to effectively administer and enforce laws and regulations essential to the protection of the health and environment of Ontarians. In addition, the application of a formal cost/benefit test will raise a major barriers to adoption of new regulations which may be necessary to protect human health and the environment.

III. WASTE MANAGEMENT

1. Introduction

Responsive Environmental Protection proposes major changes to the regulatory framework for both municipal solid and hazardous waste management. However, many of the proposed changes are vague and ill-defined, and therefore impossible to comment on meaningfully. In general, however, the proposals involve a significant weakening of the provincial regulatory system of the management of wastes, particularly with respect to hazardous wastes.

This is of particular concern given the extremely serious problems which lead to the establishment of the hazardous and liquid industrial waste management regulatory system in Ontario.¹⁶ The proposals also seem to ignore the serious environmental and health problems which have emerged in a number of other areas, such as the use of biosolids as solid conditioners, or the use of fraudulent "recycling" operations to mask the illegal handling and disposal of both municipal solid and hazardous wastes.

2. Specific Comments on Regulatory Proposals

NOTE: These comments are keyed to the Technical Annex as it provides the most detailed description of the Ministry's proposals.

1.0 Approvals

The Ministry is proposing major alterations to the waste approvals system, based on the establishment of four classes of approvals. Each class is intended to reflect the level of potential environmental risk associated with the activities within it. Class I facilities and systems would remain subject to the requirements of Part V of the *Environmental Protection Act* and the *Environmental Assessment Act*, presumably including requirements for public hearings. Class II facilities would require Ministry approval under the EPA, and the Director would have the discretion to decide whether a hearing under the Act would be required prior to the establishment of a facility. Class III facilities and systems would be subject to a "standardized approval," where a certificate of approval is "deemed" to exist where certain regulatory standards are met. Finally, Class IV facilities would be exempt from the requirements of Part V of the EPA, but continue to be subject to "other controls such as air and water regulations."

These proposals raise a number of extremely serious concerns.

1.1 Class I and II Approvals

The EPA current requires public hearings by the EAB before the approval of the use, operation, establishment, alteration, enlargement of a waste disposal site for disposal of hauled liquid industrial or hazardous waste, or any other waste, which the Director ascertains, having regard to its nature and quantity, is the equivalent of the domestic waste of not fewer than 1,500 people.¹⁷

The Ministry proposes to narrow the scope of undertakings for which public hearings are mandatory through the classification of the following activities as class II approvals:

Solid Waste

- * *certain alterations to waste disposal facilities;*
- * *the operation, alteration, and expansion of monofill sites; and*
- * *the establishment and operation of demonstration projects.*

Hazardous Waste

- * *the establishment and operation of demonstration projects;*
- * *the burning of liquid industrial waste generated off-site as fuel;*
- * *the processing of hazardous waste generated off-site;*
- * *the incineration on hazardous and liquid industrial wastes generated-on site;*
- * *the establishment and operation of mobile non-incineration hazardous waste destruction systems and sites; and*
- * *the establishment and operation of mobile hazardous waste "processing systems and sites."*

1.1.1 Comments on Specific Categories Proposed for Class II Approvals

Municipal Solid Waste

Certain alterations to waste disposal facilities regardless of size of the landfill or incinerator

- * term "certain alterations" not defined

Recommendation:

- 5) *No comment possible until definition of "certain alterations" provided.*

Operation, alteration, and expansion of monofill sites,

- * no reference to size or contents of site.

Recommendation

- 6) *Public hearings under Part V of the EPA should be required for the establishment, operation and expansion of large (>40,000 cubic metres) monofill sites.*
- 7) *Criteria for requirements for public hearings prior to the approval of other monofill sites should be developed on the basis of the types of materials to be monofilled (e.g. capacity to generate leachate, emissions, and odours).*

The establishment and operation of demonstration projects

- * no reference is made to size or nature of demonstration projects
 - could involve landfilling, incineration or other disposal activities which involve substantial environmental or health risks.

Recommendation

- 8) *Exemptions from hearing requirements should only be considered for waste management demonstration projects involving the recycling, reuse or composting of source separated recyclable materials. Public hearings should be required prior to the approval waste disposal demonstration projects (e.g. landfill, incineration and energy-from waste technologies).*

Hazardous Waste

The establishment and operation of demonstration projects.

- * high risk activity with respect to hazardous wastes
 - involves unproven technology and waste that is by definition hazardous
- * there is a long history of failed, and subsequently costly, experimental hazardous/liquid industrial waste management technologies in the province.
 - examples include Smithville PCB site,¹⁸ and Upper Ottawa Street (Hamilton) Landfill.¹⁹
- * no indication of how long a facility is to operate before it ceases to be a "demonstration project?"

The burning of liquid industrial waste generated off-site as fuel.

- * opens possibility of disposal of large quantities of liquid industrial wastes in variety of facilities, which may or may not have technical capacity to deal with these materials appropriately.
- * proliferation of cheap disposal options will undermine efforts to promote waste reduction/pollution prevention.

The processing of hazardous waste generated off-site.

- * "processing" is not defined (recycling/disposal/energy recovery?).
- * opens possibility of processing of large quantities of subject wastes in variety of facilities, which may or may not have technical capacity to deal with such materials appropriately.
- * what is approval status of the handling/disposal of residuals from processing hazardous waste generated off-site?

The incineration of hazardous and liquid industrial wastes generated-on site.

- * opens possibility of disposal of large quantities of subject wastes in variety of facilities, which may or may not have technical capacity to deal with such materials appropriately
- * proliferation of cheap disposal options will undermine efforts to promote waste reduction/pollution prevention.
- * note implications of proposed re-definition of a "site" (4.2)
 - would allow incineration of wastes gathered from several locations within a municipality
 - would shipments of waste for incineration within a "site" be subject to manifesting?

The establishment and operation of mobile non-incineration hazardous waste destruction systems and sites.

- * may involve the use of unproven new technologies in inherently risky application
 - also long history of problems in province in this area.

The establishment and operation of mobile hazardous waste "processing systems and sites."

- * "processing systems and sites" not defined

- * may involve the use of unproven new technologies in inherently risky application
- also as noted earlier there is a long history of problems in province in this area.

Recommendation:

- 9) *All activities related to the disposal, incineration, burning as fuel, destruction or processing of hazardous or liquid industrial wastes should be subject to public hearings under the EPA prior to approval. These activities are inherently hazardous and require open and detailed public scrutiny before they are approved.*

1.2 Class III Approvals

The province also proposes to place a large number of activities under the standardized approvals process. This involves no possibility of public hearings, and apparently little or no direct scrutiny by the Ministry prior to the "deeming" of a certificate of approval to exist. The activities in this category are to include:

Municipal Solid Waste

- * *waste transportation systems;*
- * *engineered fill sites;*
- * *soil conditioning sites for sewage biosolids and pulp and paper mill biosolids;*
- * *small food (20,000 tonnes/yr) and leaf and yard composting sites;*
- * *small, indoors, waste processing sites or transfer stations;*
- * *waste recycling sites;*
- * *scrap yards;*
- * *used tire sites (< 5,000 tires); and*
- * *waste derived fuel sites.*

Hazardous and Liquid Industrial Wastes

- * *on-site hazardous waste storage sites (including PCBs);*
- * *burning of hazardous and liquid industrial wastes generated on site as fuel;*
- * *dust suppression sites;*
- * *depots for selected wastes (undefined); and*
- * *hazardous waste transfer stations, including PCB's.*

1.2.1. General Comments Re: Class III Approvals

The Ministry's proposals regarding Class III approvals raise serious concerns. The precise nature of what the Ministry is contemplating under its proposed "standardized approval" system is far from clear. However, serious problems have been identified with the legal and policy implications of "deeming" Certificate of Approvals to exist under "permit by rule" systems. It must be remembered that the granting of a Certificate of Approval provides statutory authorization to the proponent. This provides an effective bar against common law actions directed at the proponent by occupiers and owners of neighbouring or downstream lands which may be harmed by the proponent's operation. These common law rights of the owners and occupiers should not be removed unless there is adequate provincial oversight of the approval and operation of facilities to ensure that they do not cause damage to the environment, property or human life.

Furthermore, concerns have been expressed regarding the need for compliance monitoring once facilities have been approved under a permit by rule system. This is of particular concern given the staffing reductions being experienced by the Ministry. It has also been argued that the lack for a formal Certificate of Approval may make enforcement actions by MoEE difficult.²⁰ There are also concerns that a standardized approval process will be insensitive to site-specific aspects of undertakings. Finally, it is unclear whether Class III approvals would be subject to the EBR requirements for public notice and comment periods prior to the "deeming" of Certificates of Approval to exist.

1.2.2. Specific Comments on Class III Approvals Categories

Municipal Solid Waste

Many of the activities proposed to be included in Class III have been the source of significant environmental problems in the past. These include:

Engineered fill sites.

- * redefinition of inert fill means engineered fill will be contaminated
- * contaminants in fill mean:
 - possible contamination of surface and groundwater;
 - atmospheric releases; and
 - human exposure.
- * refer to 3.3 (inert fill) for detailed commentary.

Soil conditioning sites for sewage biosolids, pulp and paper mill biosolids.

- * evidence of major problems with odours, visual impacts, and contamination of soils and ground and surface water to soils associated with this practice in the province.²¹
- * refer to detailed commentary under 3.5 (Soil Conditioning).

Small food (20,000 tonnes/yr) and leaf and yard composting sites.

- * concerns regarding odours and leachate.²²
- * refer to detailed commentary under 2.4 (Small Composting Sites).

Small, indoors, waste processing sites or transfer stations.

- * "small" not defined.
- * serious problems with operation of illegal waste transfer sites identified by MoEE Minister's Task Force on Illegal Waste
 - sites target of "Transfer and Processing Sites Project" (TAPS)
 - 356 charges, 85 convictions, \$384,000 in fines reported for 1994.²³

Waste Recycling Sites

- * major problems over past few years with operation of illegal waste storage and disposal sites under guise of "recycling" activities.
 - N.B. results of Project TAPS.
 - e.g. *Valentine Developments*, and *R. v. Hercules Recycling* cases.

Scrap yards.

- * noise and dust.
- * possible presence of hazardous wastes in scrap materials (e.g. metals contaminated with PCB's).

Used tire sites (< 5,000 tires).

- * fires, and rodent and insect problems at used tire sites.²⁴
- * numerous major prosecutions by Ministry over past two years related to used tire sites.²⁵ Examples include:

- *R. v. Michael Alphonse Larabie* (1994 - 75 days in jail).
 - *R. v. Industrial Group of Canada Ltd* (1994 - \$155,674 in fines).
- * if Ministry thought environmental damage caused by activities related to used tire sites were serious enough to seek these kinds of penalties why is it proposing de-regulation?

Waste derived fuel sites.

- * opens possibility of widespread burning of municipal solid waste given proposed re-definition of "waste derived fuel."
- * opens a major loophole for incineration projects to escape the full approvals requirements, including public hearings, of the EPA.
- * refer to detailed commentary on 3.10 (Waste Derived Fuel).

Recommendations:

- 10) *Consideration for "standardized approvals" should be limited to municipally operated solid waste recycling sites and depots, which receive source separated recyclable materials. All other municipal solid waste activities and facilities should remain subject to the existing approvals requirements.*
- 11) *Notice should be provided on the EBR registry and a public comment period provided prior to the "deeming" of any approval to exist under the EPA, OWRA or other Ontario environmental statute.*

Hazardous Wastes

We are seriously concerned by the proposals to place a significant range of activities related to hazardous and liquid industrial waste management under the Class III approvals system. Specific concerns regarding the proposed categories include the following:

On-site hazardous waste storage sites (including PCBs).

- * continuing evidence of major problems in this area:
 - recent examples include *R. v. Bata Industries Ltd.* (1993 - \$60,000 fine), *R. v. Consolidated Mayburn Mines Ltd.* (1993 - \$4,500 fine)²⁶ and *R. v. Exolon-Esk Co Canada Ltd.* (highest fine in 1994 - \$212,000)²⁷ prosecutions by MoEE.

Burning of hazardous and liquid industrial wastes generated on site as fuel

- * opens a major opportunity for the burning of hazardous wastes in inappropriate or unsafe facilities.
- * availability of cheap disposal options may undermine efforts to promote hazardous waste reduction and recycling.
- * why are on-site incinerators to be subject to Class II approval, but burning as fuel to be subject to Class III approval?
 - burning as fuel suggests will be burnt in facilities not designed for destruction of hazardous or liquid industrial wastes, and therefore, if anything more "risky" than incineration.
- * note implications of proposed re-definition of a "site" (4.2)
 - would allow burning of wastes gathered from several locations within a municipality
 - would shipments of waste for use as fuel within a "site" be subject to manifesting?

Dust suppression sites.

- * materials used include used oil, salt brine, calcium chloride, and pulping liquors (lignosulphates and spent sulfite liquor).²⁸
- * inappropriate use of hazardous or liquid industrial wastes:
 - direct release into the environment.
- * history of serious problems with use of liquid industrial wastes for dust suppression in province (e.g. PCBs in waste oil (banned in 1988)).
- * specific problems:
 - calcium chloride (salt)
 - significant impacts on property, health and environment²⁹
 - pulp liquors.
 - high BOD and moderately toxic to fish.³⁰
 - waste oil.
 - presence of wide range of contaminants (metals, etc.)³¹
- * availability of cheap disposal option is likely to undermine waste reduction and recycling.

Depots for selected wastes.

- * see commentary under 2.3 (selected waste depots).

Hazardous waste transfer stations, including PCB's.

- * long history of serious problems in province (e.g Smithville PCB site³²)
- * project HAUL (1993-94) resulted in 145 charges, 106 convictions, \$99,000 in fines & \$25,000 in creative sentencing.
 - indicates serious problems in this area - should not be candidate for de-regulation.

Recommendation:

- 12) *All activities related to liquid industrial and hazardous wastes should remain subject to the existing approvals requirements. They should not be considered candidates for a "standardized" approvals process.*

1.3 Class IV Approvals

The MoEE is proposing the exempt completely from the waste approvals and regulation requirements of Part V of the EPA the following activities:

Municipal Solid Waste

- * *sites or haulers under "manufacturer controlled networks;"*
- * *sites receiving "recyclable material" (includes hauling "recyclable material);"*
- * *on-site waste processing other than combustion or land application;*
- * *mobile waste processing;*
- * *inert agricultural, residential or industrial fill sites; and*
- * *derelict motor vehicle site.*

Hazardous Waste

- * *sites or haulers forming a "manufacturer controlled network,"*
- * *site receiving "recyclable material" (N.B. expansion of definition); and*
- * *on-site waste processing other than combustion or land application.*

Although these exemptions appear to be intended to promote the recycling of wastes, they raise a range of extremely serious problems. They will, in combination with the proposed redefinitions of "recyclable materials," "inert fill" and "agricultural wastes" exempt a wide range of activities from the regulatory system.

1.3.1. Specific Comments on Proposed Class IV (Exemption) Categories

Municipal Solid Waste

Manufacturer controlled networks (MCN).

- * proposal makes no provision for ensuring materials are actually reused or recycled. Indeed, definition in 3.9 makes specific reference to disposal within such a network. Is disposal or storage of materials collected through an MCN also exempted from approval requirements?

Recommendation

- 13) *MCN systems should be subject to a specific form of approval by MoEE which ensures the appropriate handling and disposal of all materials captured by the network.*

Sites receiving "recyclable materials."

- * redefinition of "recyclable materials" 3.1 seems to suggest that not all materials have to be actually recycled to qualify for exemptions as "receiving recyclable materials."
 - what is status of handling, storage and disposal of "recyclable material" which is not actually recyclable at such a site?
- * history of problems with illegal waste disposal sites operated as "recycling" facilities
 - target of MoEE Project TAPS (356 charges, 85 convictions, \$384,000 in fines reported for 1994).³³
 - examples - *R. v. 982677 Ontario Ltd o/a Hercules Recycling* case (1994 - \$60,000 fine), *Valentine Developments* case (1995).
- * N.B. also implications of redefinition of "site" (4.2).

Recommendation

- 14) *Exemptions from waste management sites approval requirements should be limited to municipally operated sites receiving source separated recyclable materials. The handling of any residuals from such sites should remain subject to the normal waste management approvals requirements.*

On-site processing.

- * no indication of what might be included in such activities. Specifically fails to

- * exclude landfilling or recover (i.e. incineration) on-site.
- * N.B. also implications of proposed redefinition of "site" (4.2)

Mobile waste processing.

- * no indication of what may or may not be in this category (chippers/shredders?).

Recommendations:

- 15) *Provide clear definition of what is included in the terms "Mobile" and "on-site" "waste processing"*
- 16) *Exemptions from waste management approval requirements should be limited to facilities processing source separated recyclable materials. The handling of any residuals from such sites should remain subject to the normal waste management approvals requirements.*

Inert, agricultural, residential or industrial fill site.

- * it is clear from the proposed redefinition of "inert fill" and "agricultural wastes" that these materials may include toxic contaminants or putricable materials which may pose public health hazards or cause odour or pest problems.
- * evidence of use of contaminated fill in illegal uses in past:
 - *R. v. John Zubick Ltd* case (1994 - \$60,000 fine)
- * see detailed comments under 3.3 (Inert Fill) and 3.4 (Agricultural Wastes).

Recommendations:

- 17) *Application of these types of materials to a site should be registered on title of the site.*
- 18) *Applications of agricultural waste and industrial fill should require a specific approval with provision for public notice under the EBR and a public comment period.*

Derelict motor vehicle sites.

- * why are scrap yard subject to class III approval and motor vehicle sites not?

Both types of facilities pose similar concerns.

- * does this mean anyone can collect derelict motor vehicles on their property without the any approval from MoEE?
- * what about handling of hazardous wastes associated with vehicles (e.g. batteries, oil, brake fluids, etc.)?

Recommendation:

- 19) *Derelict motor vehicle sites should be subject to the same approval requirements applied to scrap yards. Specific provision should be made regarding the handling of oil, batteries and other hazardous materials associated with motor vehicles.*

Hazardous Waste

Sites and haulers forming a "Manufacturer Controlled Network."

- * opens enormous loophole for abuse.
- * provides no mechanism to ensure that hazardous and liquid industrial wastes being dealt with through such a network are handled, stored, processed, disposed of appropriately.
 - what about handling of residues from "network" hazardous waste recycling activities?
- * obvious opportunity for illegal storage, transfer or disposal of hazardous or liquid industrial wastes under guise of "manufacturer controlled network."

Recommendation:

- 20) *Sites and haulers forming a "Manufacturer Controlled Network" for hazardous or liquid industrial wastes should be subject to the full approval requirements of the EPA, and generator registration and manifesting requirements under regulation 347.*

Sites receiving "Recyclable Materials."

- * off site "recycling" is thought to account for the fate of approximately 25% of the hazardous wastes generated in the province.³⁴
- * N.B. proposed redefinition of "recyclable material" to include such things as batteries (may contain Cd,Ni,Hg,Pb) thermostats (may contain Hg),

photoprocessing wastes, printed circuit boards, metal bearing sludges, waste oils sent for re-refining, materials shipped directly to manufacturer for use in process

* this is an extremely dangerous proposal.

- no provision to ensure that these materials, which are by definition hazardous, are handled, stored, processed and residuals disposed of in a safe and appropriate manner.
- obvious opportunity for illegal storage, transfer or disposal of hazardous or liquid industrial wastes under guise of "recycling."
- what about residues from hazardous waste recycling operations?
- N.B. results of MoEE Project HAUL (1993-94) (145 charges, 106 convictions) indicate continuing problems with generators, carriers and receivers of liquid industrial and hazardous wastes.

Recommendation:

- 21) *Sites receiving hazardous or liquid industrial wastes for recycling should be subject to the full approval requirements of the EPA, and generator registration and manifesting requirements under regulation 347.*

On-site processing other than combustion or land application.

- * no definition of provided for "on-site processing."
- * does this exclude landfilling and discharges to sewers?
- * opens large loophole re: hazardous/liquid industrial wastes
 - how does Ministry intended to ensure that wastes are processed safely and that any residues are handled appropriately?
 - Project HAUL results indicate continuing problems with illegal handling, disposal of hazardous/liquid industrial wastes.

Recommendation:

- 22) *The on-site processing of hazardous or liquid industrial wastes should be subject to the full approval requirements of the EPA.*

1.3.2. General Comment Re: Promotion of Recycling of Hazardous Waste and Pollution Prevention

Ontario is a signatory to the May 1996 Canadian Council of Ministers of the Environment policy on pollution prevention.³⁵ This includes a definition of pollution

prevention which excludes off-site recycling activities. The Ministry should, therefore, be focussing its effort on the reduction of hazardous wastes at source, rather than promoting the off-site recycling of hazardous wastes through the de-regulation of such activities.

2.0 Standards

2.1 Landfills

The Ministry has recently released proposed design and operating standards for landfills. These are intended to expand on the existing standards contained in Regulation 347.

Recommendation:

- 23) *Refer to CIELAP letter to the Hon. B. Elliott, Minister of Environment and Energy of July 8, 1996 Re: EBR Registry Posting RA6E0006P: Regulatory Standards for New Landfill Sites Accepting Non-Hazardous Waste (Attached).*

2.2 Incinerators

The Ministry has recently released a new guideline on combustion and air pollution control requirements for new municipal solid waste incinerators. The Guideline is to be implemented through air Certificates of Approval. The Ministry is proposing to develop similar guidelines for woodwaste combustors, biomedical waste incinerators, crematoria, and sewage sludge incinerators.

We would prefer that air emission standards be incorporated into regulations rather than discretionary guidelines. While we welcome, in the short term, the Ministry's intention to develop new air emission standards for woodwaste combustors, biomedical waste incinerators, crematoria, and sewage sludge incinerators, we believe that the Ministry should also be vigorously pursuing and promoting the alternatives available to incineration of these types of wastes, with the exception of crematoria. This would include, for example, the control industrial discharges to sewers to eliminate toxic contamination of sludge so that it can be safely used as a soil conditioner.

Recommendation:

- 24) *Regulatory emission standards for woodwaste combustors, biomedical waste incinerators, crematoria and sewage sludge incinerators, based on the Maximum*

Achievable Control Technology (MACT) should be developed and implemented as soon as possible.

- 25) *The Ministry should actively pursue and promote safe alternatives to the incineration of woodwastes, biomedical wastes, and sewage sludge.*

2.3 Selected Waste Depots

The Ministry proposes to consolidate and "simplify" the standards for "selected waste" and "pesticide container" depots. This is to involve the removal of some administrative and operational requirements which it regards as "excessive." It is also proposed to expand the types of waste that can be collected at these facilities.

The Ministry provides no indication of what it considers to be "excessive" standards with respect to selected waste depots. We cannot comment without a clear indication of what the Ministry intends in this area. However, the proposal to weaken standards in this area is of serious concern given the Ministry's proposals to expand the allowable wastes for collection to include pharmaceuticals, sharps (presumably surgical, although undefined), solids (undefined), pesticides, paints, batteries and "similar small quantity wastes" from industrial generators. These categories include wastes which are hazardous, potentially toxic, or contaminated with potentially pathogenic or infectious materials.

We are also concerned that the Ministry is proposing to weaken administrative and operational requirements at pesticide container depots at a time when its staff has noted the lack of compliance monitoring by the Ministry of such facilities.³⁶

Recommendation:

- 26) *Standards for selected waste depots should not be weakened.*
- 27) *Appropriate, stringent standards should be developed and implemented to accompany any expansion of the category "selected waste depots."*

2.4 Small Composting Sites

The Ministry proposes to create a new category of "small composting sites" that could receive leaf and yard waste and a limited quantity of food waste. Such sites would be subject to "standardized approvals" (Class III) provided that:

- * they receive leaf and yard waste and, up to 20,000 tonnes of food waste, per year for processing; and

- * the food waste is source separated and does not include sewage biosolids, hauled sewage, meat processing wastes, and "other similar wastes."

A site receiving up to 20,000 tonnes of food waste per year cannot be described as "small." Compost sites have been associated with odour and leachate leakage and require careful management to avoid these problems.³⁷

It is unclear if the "standardized approval" system will provide the necessary level of oversight to ensure that these problems do not occur. This is a serious concern, as the emergence of odour and other problems at compost sites will undermine public support for the establishment and operation of such sites in the future.

3.0 Waste Diversion

3.1 Recyclable Material

The Ministry proposes to expand the definition of "recyclable materials." Municipal waste and hazardous materials falling within this category are to be exempted from the regulatory requirements for transportation, handling and approvals under Part V of the EPA. The specific proposed expansions include:

Municipal Solid Waste

- * *municipal waste materials which are immediately available for wholesale/retail sale;*
- * *waste materials shipped directly to a manufacturing site and fed entirely into a process that manufactures a product for a "realistic market demand;" and*
- * *specific materials including blue box materials, wastes in schedule 2 of regulation 101, clean wood chips for mulch/landscaping, clean crushed brick for use in paths/walkways, tire crumb for use in track/play surfaces, clean wood for use in fireplace logs.*

Hazardous Wastes

- * *hazardous recyclable materials immediately available for wholesale/retail sale and shipped directly to site of use.*
- * *hazardous recyclable materials shipped directly to a manufacturing sites and fed directly into a process that manufactures a product for a realistic market demand.*

- * *specific materials including: batteries (Cd,Ni,Hg,Pb) thermostats (Hg), photoprocessing wastes, printed circuit boards, metal bearing sludges sent for smelting, waste oils sent for re-refining.*

3.1.1. Comments on Specific Categories of "Recyclable Materials."

Municipal Solid Waste

In principle we support notion of facilitating use of clean, separated non-hazardous municipal waste materials as industrial feedstocks. However, we have serious concern over exemption of mixed wastes for sale, the status of residuals of recyclable materials that are not fully utilized in manufacturing processes, and the presence of potentially hazardous materials in the proposed list of specific materials. Our specific comments on the proposed categories are as follows:

Municipal waste materials which are immediately available for wholesale/retail sale.

- * no requirement that materials be source separated
 - does this mean mixed waste available for sale?
 - if so, obvious invitation for waste handling and disposal outside of regulatory system under the guise of "recycling."
 - N.B. problems identified through project TAPS with use of "recycling" facilities as illegal waste storage sites.
 - what is status of storage facilities for such materials?
 - how long can material be stored, especially if mixed waste, before it becomes a waste disposal site?
- * note that MoEE reports Ontario Waste Management Association as favouring expansion of source separation requirements for industrial, commercial and institutional waste generators (Regulation 103/94).³⁸
 - implies support for handling of source separated rather than mixed waste.

Waste materials shipped directly to a manufacturing site and fed entirely into a process that manufactures a product for a "realistic market demand."

- * appears to include the possibility of the shipment of mixed waste.
- * in subsequent paragraph on pg. 76 Ministry appears to propose that "recyclable materials" that are not shipped directly to the manufacturer and wholly utilized in an ongoing manufacturing process would still be granted a "recyclable material" exemption from regulatory requirements.
 - if is the case what is the status of residuals from "recyclable materials" used in manufacturing process?

- * what constitutes "realistic market demand"?
- * note that MoEE reports Ontario Waste Management Association as favouring expansion of source separation requirements for industrial, commercial and institutional waste generators (Regulation 103/94).³⁹
 - implies preference for source separated rather than mixed wastes.

Recommendation:

- 28) *The definition of "recyclable materials" should be limited to source separated waste materials.*
- 29) *A definition of "realistic market demand" should be provided.*

Specific materials including blue box materials, wastes in schedule 2 of regulation 101, clean wood chips for mulch/landscaping, clean crushed brick for use in paths/walkways, tire crumb for use in track/play surfaces, clean wood for use in fireplace logs.

- * does "Blue Box Materials" mean Schedule 1 of Regulation 101/94?
- * Schedule 2 includes "metals" and household appliances including refrigerators and freezers.
 - does this include metals with toxic properties like Hg, Cd, and Pb?
 - what about CFC refrigerants in refrigerators and freezers?

Recommendation:

- 30) *Clean wood chips for mulch/landscaping, clean crushed brick for use in paths/walkways, tire crumb for use in track/play surfaces, clean wood for use in fireplace logs should be added to the definition of recyclable materials.*

Hazardous Waste

As noted earlier under approvals, the Ministry's proposal to exempt hazardous recyclable materials from the waste management approvals requirements of the EPA and generator registration and manifesting requirements of regulation 347 presents an extraordinarily serious danger to human health and safety and to the environment. The materials in question are, by definition hazardous.

No provision appears to be going to be made to ensure that these materials, are handled, stored, processed and residuals disposed of in a safe and appropriate manner. At the same time, MoEE's project HAUL has indicated continuing serious problems with the handling and disposal of hazardous and liquid industrial wastes.

Furthermore, Ontario is a signatory to the May 1996 Canadian Council of Ministers of the Environment policy on pollution prevention.⁴⁰ This includes a definition of pollution prevention which excludes off-site recycling activities. The Ministry should, therefore, be focussing its effort on the reduction of hazardous wastes at source, rather than promoting the off-site recycling of hazardous wastes, particularly through the de-regulation of such activities.

Recommendation:

- 31) *Recycling activities involving hazardous and liquid industrial wastes should remain subject to the existing or strengthened regulatory requirements for transportation, handling and approvals*

3.2 Batteries and Precious Metal-Bearing Waste

3.2.1. Batteries

The Ministry proposes to "formalize" the "administrative exemption" (not defined) from the requirements of Regulation 347 for lead-acid battery recycling activities. The Ministry also proposes to expand this exemption to include all batteries.

This proposal cannot be supported. We are deeply disturbed by the information that an "administrative exemption" has been provided for lead-acid battery recycling. We know of no provision for such an exemption within the EPA and assume that this means the systematic and conscious non-enforcement of regulatory requirements. Lead acid batteries contain hazardous substances (e.g. lead) and their recycling has been long associated with serious environmental problems.⁴¹

The proposal to provide a blanket exemption for all other battery recycling activities is even more alarming. Batteries may contain a wide range of hazardous substances, including mercury, cadmium, and nickel which are classified as "toxic" substances for the purposes of the *Canadian Environmental Protection Act*. The Ministry appears to be making no provision to ensure that these materials are safely handled, processed, and disposed of. This is of particularly serious concern given that there have been very serious offenses under the EPA and OWRA involving battery recycling in the past few years.⁴²

Recommendations:

- 32) *The "administrative" exemption from regulation 347 for lead acid battery recycling should be withdrawn.*

- 33) *The exemption should not be expanded to include the recycling of other types of waste batteries*

3.2.2. Metal Bearing Sludges

The Ministry is also proposing to exempt precious metal-bearing waste destined for reclamation facilities be exempted from the subject waste requirements and the waste management requirements of Regulation 347. "Precious metal bearing waste" is not defined. However, it seems likely to contain a wide range of toxic or otherwise hazardous component. The Ministry provides no indication of how it intends to ensure that these materials are handled or process safely, and residual handled appropriately. The proposal is dangerous and cannot be supported.

Recommendation:

- 34) *Precious metal-bearing sludges should not be exempted from the subject waste requirements and the waste management system requirements of Regulation 347.*

3.3 Inert Fill

The Ministry is proposing to define five types of fill to "correspond to levels of risk and environmentally acceptable uses." The fill types are: inert; agricultural, residential, industrial and engineered. Numerical quality criteria (i.e. level of contamination) are to be defined for particular land uses. Fill for use in a residential area, for example, would have to meet quality criteria for "residential fill."

No specific information is provided regarding the level of contamination which would be classified as acceptable for each category of fill. No information is provided regarding how the Ministry intends to ensure that all future land uses are compatible with the quality of the fill applied to a given site.

Recommendation:

- 35) *Ministry provide answers to the following questions prior to proceeding with this proposal:*
- * *what levels of contamination will be considered acceptable within each category of fill?*
 - * *would the fill type used be registered on the title of the land?*
 - * *would formal land use restrictions be applied to sites and if so, what form would these restrictions take?*
 - * *how does the Ministry intend to ensure that contaminants do not spread from industrial or engineered fill to ground or surface waters?*

- * *has the Ministry given consideration to the vapourization of hazardous contaminants from such fill?*

3.4 Agricultural Wastes

The Ministry proposes expand the definition of agricultural waste to permit the application of the following materials to agricultural lands:

- * fruit and vegetable waste from food packing, food processing and wholesale storage and distribution operations;
- * field crop waste from screening, drying and storage operations;
- * manure and animal bedding from stockyards, meat packing plants, riding stables, racetracks, fairs, and exhibitions;
- * dead fish, aquatic plants, animals, or settleable tank or impoundment solids, from aquaculture operations.

It is proposed by the Ministry that applications of Agricultural wastes to agricultural lands would be subject to a "standardized" (Class III) approval.

This proposals raise a number of serious concerns. These include:

- * general concern over use of agricultural land as cheap disposal option for these wastes;
- * the possibility of odour and other nuisances arising from the placement of these materials on agricultural lands (particularly manure, dead fish and animals);
- * the possibility of the contamination of surface or groundwater by pathogens from manure and bedding, and from dead fish, plants, animals and other wastes from aquaculture operations;
- * the release of organisms (e.g. plants (or seeds), microorganisms, fish (eggs or fry in aquaculture wastes) which may become pests or disrupt existing ecosystems; and
- * potential human occupational exposure to pathogens associated with manure, bedding or aquaculture wastes.

The proposal cannot be supported for these reasons. The potential environmental or human health impacts of the disposal of these materials on

agricultural lands should be investigated in detail before such activities are considered for approval.

Recommendation:

- 36) *The environmental and human health impacts of the use of the proposed materials on agricultural land should be investigated in detail prior to the granting of approval for such uses. Uses should not be permitted where there are potential negative effects.*

3.5 Soil Conditioning

The Ministry proposes to use "standardized approvals" for the utilization of biosolids, such as sewage and pulp and paper mill sludge, as a soil conditioner. Serious problems, including odours, visual impacts, and soil and ground and surface water contamination have been identified with such practices in the province.⁴³ The spreading of these materials on agricultural lands appears to be being employed as an inexpensive disposal option. These issues should be investigated and addressed before any consideration is given to the expansion of the use of these materials as soil conditioners or the simplification of the approval requirements for such uses.

Recommendation:

- 37) *The environmental and health concerns associated with the use of biosolids on agricultural lands as a soil conditioner should be investigated and reported on by the Ministry. The approval requirements for the use of such materials as soil conditioners should not be modified until the completion of these studies.*

3.6 Municipal Source Separation Systems

The Ministry proposes the following changes to Regulation 101/94:

- * *combine the mandatory and supplementary Blue Box list into a single list and require the collection of 7 or more materials;*
- * *remove existing Blue Box requirements that prohibit innovative systems, such as two-stream systems;*
- * *amend the 50 metre buffer requirement that exempts municipal waste recycling from waste approvals;*

- * *allow other waste reduction methods such as "grasscycling" instead of current requirements for central composting of grass clippings; and*
- * *add new material such as asphalt to Schedule 3 of Regulation 101/94.*

3.6.1. General Comment Regarding Proposed Amendments to Regulation 101/94.

This regulation was only adopted two years ago and, as Ministry staff have noted in their comments, as some elements of the regulation have yet to even come into force, and it is too early to determine impacts.⁴⁴ Furthermore, the regulation was the subject of extensive consultations by the Ministry during its development. Opening a recently adopted regulation which was the subject of extensive public consultations would be inconsistent with the principles of the *Environmental Bill of Rights*.⁴⁵

3.6.2. Specific Comments on Proposed Amendments to Regulation 101/94.

Combine the mandatory and supplementary Blue Box list into a single list and require the collection of 7 or more materials.

- * cannot be supported as all of the items on the mandatory list constitute significant components of the municipal waste stream, and their removal would result in recyclable materials going to disposal.

Recommendation:

- 38) *The province should focus on the development of a funding arrangement for the Blue Box system which ensures the full internalization of costs of the recycling of materials by the firms which place the relevant products on the market, such as that proposed by CIELAP to the Ministry in October 1993.*⁴⁶

Remove existing Blue Box requirements that prohibit innovative systems, such as two-stream systems.

- * specific barriers to innovative systems are not identified.

Recommendation:

- 39) *No comment possible due to insufficient information.*

Amend the 50 metre buffer requirement that exempts municipal waste recycling from waste approvals.

- * nature of amendment not specific, but presumably to remove requirement for buffer zone.
- * recycling sites are associated with noise and dust.
- * nuisance problems may undermine public support for the establishment and operation of sites in the future.
- * no substantial evidence has been provided to suggest that buffer requirement has been a barrier to the establishment of recycling sites.

Recommendation:

40) *The requirement for a 50 metre buffer zone around recycling facilities should be maintained.*

Allow other waste reduction methods such as "grasscycling" instead of current requirements for central composting of grass clippings.

- * "other waste reduction methods" not defined.

Recommendation:

41) *No comment possible due to insufficient information.*

Add new materials, such as asphalt, to Schedule 3 of Regulation 101/94.

- * If thousands of tonnes of asphalt are being recycled annually already, why is a regulatory change necessary?
 - What evidence is there that the existing requirements are a barrier to recycling?
- * other "new materials are not defined or described.

Recommendation:

42) *Schedule 3 of Regulation 101/94 should not be amended to include asphalt. No further comment is possible until the Ministry clarifies which materials, in addition to asphalt, the Ministry is considering adding to Schedule 3 of Regulation 101/94.*

3.7 Containers

3.7.1. Carbonated Soft Drinks

The Ministry notes that some stakeholders have proposed that this regulation be withdrawn and seeks input on this issue.⁴⁷

The Ministry's own staff have noted the need to continue to require the use of recyclable or refillable containers, and the need to maintain the current ban on detachable opening devices.⁴⁸

The regulation is an important statement by the province of the responsibility for soft drink manufacturer for the post consumer management of their containers. Deposit-refund systems and refillable container use requirements also reduce litter, and provide for full-cost internalization of post consumer management costs by producers.⁴⁹

Recommendations:

- 43) *Existing requirements for the use of refillable soft drink containers should be retained and enforced. In the interests of fairness, consideration should be given to expanding the requirements to other non-carbonated beverages, such as milk, juices, and liquor content drinks.*

- 44) *A system for the full internalization of other post-consumer product management costs by producers should be established by the province. For detailed commentary see Who Pays for Blue? Financing Residential Waste Diversion in Ontario (CIELAP, October 1993).*

3.7.1. Milk Containers

The Ministry proposes to repeal regulations 344 (prohibits sale of milk in disposable containers except plastic film containers, laminated containers, coated paper containers) and 345 (prohibits sale of milk in plastic coated paper containers with more than 2 litres capacity).

Recommendation:

- 45) *Regulation 344 and 345 should only be repealed if they are replaced by a system to provide for the full internalization of the costs of the recycling or reuse of milk containers by milk manufacturers as per the recommendations contained in Who Pays for Blue?*

3.8 Waste & Packaging Audits and Reduction Work Plan Regulations (Regulations 102 and 104)

The Ministry notes that some stakeholders⁵⁰ have proposed that this regulation be withdrawn and seeks input on this issue.⁵¹

These regulations were the subject of extensive consultations with stakeholders, and, according to Ministry staff, no major irritants have been identified with these regulations.⁵² Opening a recently adopted regulations under these circumstances would be inconsistent with the principles of the *Environmental Bill of Rights*.⁵³

Furthermore, the Ministry states in its Technical Annex that waste and packaging reduction has consistently saved institutional, commercial and industrial waste generators money and increased operational efficiencies.⁵⁴

There appears to be no rationale for the repeal of these regulations. Indeed, as Ministry staff have noted, the repeal of these regulations would mean that not all firms and sectors currently covered by the regulations would undertake waste and packaging audits and reduction work plans. This could result in significant lost opportunities for waste reduction and cost savings.⁵⁵

Recommendation:

46) *The Waste Packaging Audit and Waste Reduction Work Plan Regulations (Regulations 102 and 104) should be retained.*

3.9 Manufacturer Controlled Networks

In general we support the principle of cost internalization through product stewardship systems.⁵⁶ However, as noted earlier, we have serious concerns regarding the Ministry's proposals regarding such systems, particularly where liquid industrial or hazardous wastes are concerned. The Ministry does not appear to be making any provision for ensuring that such wastes, or other materials which may enter such a network are properly or safety handled, processed, or disposed of.

Recommendation:

47) *See previous recommendations regarding Manufacturer Controlled Networks.*

3.10 Waste Derived Fuel

3.10.1 Non-Hazardous Solid Waste

The Ministry is proposing to expand the definition of waste derived fuel to permit the burning of non-hazardous solid waste. The current definition only permits the burning of hazardous and liquid industrial wastes which meet specific criteria for heavy metal, PCB and halogen content, flash points, and value as fuel. The proposed change would permit the burning of non-hazardous solid wastes in cement kilns and industrial boilers. Such waste would have to meet specific thermal values or be listed waste, such as wood or tires.

We do not support this proposal. The proposal would open the door to the possibility of the widespread disposal of municipal solid waste as fuel. This will compete directly with recycling operations for a supply of high energy content secondary materials (e.g. paper and plastics).⁵⁷ In addition, the burning of supplemental fuels in cement kilns has already been strongly associated with emissions of a wide range of other major contaminants.⁵⁸

There are also serious concerns regarding the types of materials which the Ministry is apparently considering including as "non-hazardous solid waste." "Creosote-impregnated waste materials," such as utility poles and railway ties⁵⁹ were placed on the Priority Substances List for assessment of being "toxic" substances for the purposes of the *Canadian Environmental Protection Act* (CEPA). The CEPA assessment of these products was inconclusive.⁶⁰

Recommendation:

- 48) *The current exclusion of non-hazardous solid waste from the definition of waste derived fuel should be maintained*

The Ministry also proposes to apply its recently released *Guideline A-7 - Combustion and Air Pollution Control Requirements for New Municipal Waste Incinerators* to any facility where non-hazardous waste-derived fuel is burned. The application of such standards would be a necessary step prior to the authorization of the burning of non-hazardous wastes. The standards contained in the Guideline should be provided through regulation, to ensure that their application is non-discretionary.

However, we have serious concerns regarding the Ministry's ability to enforce such standards at the large number of sites likely to wish to burn non-hazardous waste derived fuel. This is of particular concern given the major reductions occurring in the Ministry's staffing levels.

3.10.2 Liquid Waste-Derived Fuel

The Ministry proposes also to replace the current wording of Regulation 347 regarding the energy content of waste with a specific minimum thermal energy value. We have no objection to this proposal.

Recommendation:

- 49) *A specific minimum thermal energy value should be added to the definition of liquid waste-derived fuel.*

The Ministry's proposal ignores a number of other major issues which have been identified with respect to the burning of liquid-waste derived fuel. These include the impact of these activities on the recycling of used oil,⁶¹ and the health and environmental concerns which have been identified with the burning of used oil in space heaters.⁶²

- 50) *The Ministry should undertake a comprehensive public review of the environmental and health issues related to the burning of liquid waste derived fuels.*

4.0 Liquid Industrial and Hazardous Waste

4.1 Hazardous Waste Definition

The Ministry proposes the following changes to the provincial hazardous waste definition to "harmonize" it with the federal definition:

- * *the exemption of liquid industrial waste from the generator registration and manifest requirements under Regulation 247;*
- * *incorporate corrosive solid waste into the Ontario hazardous waste definition;*
and
- * *remove the requirement for generator registration of registerable solid waste.*

4.1.1. Specific Comments on Proposed Categories of Subject Waste

Liquid Industrial Waste

This change does not appear to have been proposed by MoEE staff.⁶³ It is unclear what materials (sources, contents and destinations) would no longer be subject to registration and manifesting requirements as a result of this change. Liquid industrial wastes have been subject to manifesting requirements in the province since 1970. This appears to be a case of downwards harmonization with the federal standard.

Recommendation:

- 51) *The Ministry should investigate and specify what materials (sources, contents and destinations) would no longer be subject wastes as a result of this change, prior to taking any action regarding the removal of liquid industrial waste from the definition of subject waste.*

Corrosive Solid Waste

The province proposes to add corrosive solid waste to its definition of hazardous waste. This would be consistent with the federal definition of hazardous waste.

Recommendation:

- 52) *Corrosive solid waste should be added to the province's definition of hazardous waste.*

Registerable Solid Waste.

We do not support this proposal as the wastes in question may generate significant amounts of leachate, and therefore require disposal in a secure landfill. This again, appears to be a case of downward harmonization with federal standards.

Recommendation:

- 53) *Registerable solid waste should be retained as part of the Ontario definition of hazardous waste.*

4.2 Manifests

4.2.1 Small Volume Hazardous Wastes

The Ministry proposes to reduce reporting requirements by generators, carriers and receivers for small volume shipments of hazardous wastes from reports on each movement to quarterly, semi-annual or annual summaries of activities.

We does not support this proposal for the following reasons:

- * volume is not a measure of potential hazard. Small quantities of extremely toxic materials can have more potential to cause harm to the environment or human health and safety than large quantities of less hazardous materials;
- * the reduced frequency of reporting will mean that problems will not become apparent for an extended period of time.

Recommendation:

- 54) *The proposed reduction of reporting requirements for small hazardous waste shipments should not be implemented. The Ministry should explore alternative approaches to reducing the paper burden associated with such movements, in a manner which does not reduce environmental and human health protection, enforceability or accountability.*

4.2.2. Definition of a "Site"

The Ministry proposes that the definition of a site in Regulation 347 be amended to include all industrial facilities/complexes operated by a company within a certain municipal boundary. Manifesting would not be required for shipments of subject wastes between such facilities/complexes.

We do not support this proposal. Such shipments could involve significant quantities of wastes. In addition, there is a serious potential for fraud if shipments are wastes claimed to have been shipped to another facility/complex within the municipal boundary, when in fact it is shipped somewhere else for (illegal) disposal. This exemption would also reduce the amount of information available to the Ministry and the public regarding the amounts of subject waste being generated and shipped-off site by a generator.

Recommendation:

- 55) *The definition of a "site" in Regulation 347 should not be altered.*

4.2.3. Field Operations

The Ministry proposes to exempt waste generated and collected from "field operations" from subject waste requirements, where they are transported directly to a local waste transfer facility. This would formalize an "administrative exemption" that has been practiced for such operations.

CIELAP does not support this proposal. No specific definition of "field operations" is proposed by the Ministry. Furthermore, the waste generated and collected from such operations may contain extremely hazardous materials, such as PCB's or mercury.

Recommendation:

- 56) *A system should be established to track the collection and handling of subject wastes from "field operations."*

4.3 PCB's

The Ministry proposes the following changes to the PCB waste requirements:

- * *require a Class II approval for non-incineration mobile PCB waste destruction systems and sites;*
- * *make approvals for consolidation and transfer sites consistent with stringent approval requirements for other hazardous wastes (proposed as class III approval).*
- * *make the definition of PCB waste consistent with the federal definition by eliminating mono and dichlorinated species, and adding a collection of more than 40 lighting ballasts.*

4.3.1. Specific Comments on Proposed PCB Amendments

Non-incineration mobile PCB waste destruction systems and sites approval.

We do not support the classification of such sites as a Class II approval. Such sites will involve the use of new and unproven technologies. The use of such technologies for PCB destruction for the first time should be subject to public hearings to establish their efficacy and safety. Subsequent uses of the technology might then be dealt with as a Class II approval

Recommendation:

- 57) *First time uses of non-incineration mobile PCB destruction systems and sites should be subject to a mandatory public hearing prior to approval. Approvals of subsequent uses may involve public hearings at the Director's discretion.*

Consolidation and Transfer Site Approvals.

Approvals of such sites would be placed under the proposed Class III "standardized approval" system and no longer be subject to a specific approval by the Director. Given the extremely hazardous nature of PCB wastes, and previous problems involving PCB consolidation and transfer sites in Ontario,⁶⁴ such sites should be subject to full approval requirements of the EPA.

Recommendation:

- 58) *PCB consolidation and transfer sites should be subject to the requirements to obtain a Certificate of Approval under Part V of the EPA.*

PCB Definition.

The removal of mono and dichlorinated species of PCB's from the Ontario definition would be a case of downwards harmonization with the federal definition. The status of collections of less than 40 lighting ballasts would remain unclear under the proposed definition.

Recommendation:

- 59) *Mono and dichlorinated species of PCB's should be retained in the Ontario PCB definition.*
- 60) *Collections of lighting ballasts should to added to the Ontario PCB definition.*

4.4 Biomedical Wastes

The Ministry proposes to develop a new definition of biomedical wastes which specifies which types of wastes are to be classified as hazardous.

Recommendation:

- 61) *Refer to Commentary on a Strategy for the Development of New Biomedical Waste Management Facilities in Ontario (CIELAP. 1992).*

4.4.1. Incineration of Municipal Solid Waste in Hospital Incinerators

The Ministry's proposals contained in Responsive Environmental Protection ignore a major issue identified by MoEE staff, namely the incineration of municipal solid waste in hospital incinerators.⁶⁵ Hospital incinerators operational before December 31, 1985 are exempted from Part V, Section 27 of the EPA, permitting them to accept off-site wastes from other hospitals for incineration. These incinerators are currently allowed to operate without air pollution controls. Hospital Incinerators have been identified as major sources of a wide range of hazardous air contaminants in the Great Lakes basin.⁶⁶

Recommendation:

- 62) *The exemption from section 27 of the EPA provided to hospital incinerators operational before December 31, 1985 should be withdrawn. New regulatory emission control regulations for hospital incinerators, based on the Maximum Achievable Control Technology, should be developed and implemented as soon as possible.*

4.5 Asbestos

The Ministry proposes to develop a new definition of asbestos waste that would specify which forms of asbestos are harmful in quantities greater than 1% by volume. "Asbestos waste" is currently defined as materials that contain asbestos in more than a "trivial amount or proportion". The Ministry also proposes to "streamline" the landfill operation and spill clean-up clauses to "avoid duplication" with other regulations

Recommendation:

- 63) *Insufficient information provided for meaningful commentary.*

4.7 Oil Field Brine

The Ministry proposes to amend the definition of "field oil brine" in regulation 341 to "harmonize" requirements with MNR regulations. Specific proposed amendments are not provided.

Recommendation:

64) *Insufficient information provided for meaningful commentary.*

The Ministry also proposes to narrow the current exemption for oil field brine waste from the EPA, so it is only exempted from the provisions of Part V of the EPA. This reflects the concerns, expressed by MoEE staff that the MNR's primary mandate under the *Petroleum Resources Act* is the regulation of the oil and gas industry, and not environmental protection.⁶⁷

Recommendation:

65) *The exemption from the EPA for oil field brine waste should be removed and responsibility for the regulation of the environmental aspects of oil field brine management assigned to the MoEE.*

The Ministry also proposes to add definitions to clarify the handling requirements for other wastes generated during petroleum exploration and production.

Recommendation:

66) *Insufficient information provided for meaningful commentary.*

3. Conclusions

The Ministry is proposing a sweeping set of changes to the province's regulatory regime for both municipal solid wastes and hazardous wastes. Many of the Ministry's proposals, especially with respect to municipal solid waste management are vague, ill-defined, and consequently impossible to comment on in a meaningful way.

However, we are very seriously concerned by the Ministry's proposals to de-regulate the recycling of hazardous wastes, including battery recycling and the recycling metal bearing sludges, and recycling within "manufacturer controlled networks." We believe that the promotion of hazardous waste recycling in this manner would be extremely dangerous given the nature of the wastes involved, and the long history in the province of Ontario of serious environmental problems in this area. The proposals are an open invitation to fraud, and illegal and unsound hazardous waste handling and disposal. We are also deeply concerned by the Ministry's proposals for the downwards harmonization of its definition of "subject" waste with federal

standards through the removal of "liquid industrial wastes," and certain varieties of PCB's and other wastes from the Ontario definition.

We are also seriously concerned by proposals to weaken regulatory controls on the handling, transfer and storage of hazardous wastes including PCBs, the burning of hazardous and liquid industrial waste generated on-site as fuel, and the use of hazardous and liquid industrial wastes for dust suppression. These proposals are particularly alarming given the evidence of ongoing serious problems in these areas, provided by the results of the province's enforcement efforts over the past few years. The approach being proposed by the Ministry would also be inconsistent with the recently adopted CCME policy on pollution prevention.

The weakening of regulatory controls on use of biosolids (i.e. sewage sludge and pulp and paper sludge) as soil conditioner, expansion of the definition of agricultural wastes, and the weakening of controls on its application to agricultural lands are also of major concern and cannot be supported. Rather, the environmental and health issues related to the use of biosolids and agricultural wastes require serious study. Similarly the Ministry's, proposed approach to the issue of the use of engineered and inert fill requires serious reconsideration.

The Ministry's proposals to weaken regulatory controls on recycling facilities receiving mixed wastes, waste processing sites and transfer stations, and used tire site are also of concern. There is again, evidence of serious and ongoing problems in this area, including the fraudulent operation of waste storage and disposal sites under the guise of recycling. Consequently, these activities should not be candidates for a weakened regulatory framework. The Ministry's proposals for the expansion of the definition of "waste-derived fuel" and to weaken the approvals requirements for waste derived fuel sites opens the door the widespread incineration of solid waste as "fuel." The Ministry's capacity to police such activities, given its reduced resources, is open to serious question.

We are also disappointed by the Ministry's failure to deal with issues such as environmental and health risks associated with burning of waste oil as fuel, and the lack of regulation of hospital incinerators. The latter issue was identified as a major environmental problem by ministry staff.

We welcome the Ministry's proposals to strengthen the regulatory controls on the deep well disposal of oil field brine.

IV. ENERGY

1. Amendments to the Regulations under the *Energy Efficiency Act*

Regulation 82/95

The essence of changes to the *Energy Efficiency Act Regulation 82/95* is to broaden the number of products which are captured by the regulation and re-categorize some of the products and standards. These changes align Ontario's *Energy Efficiency Act* with the United States' *National Appliance Energy Conservation Act*.

The amendment to 82/95 will add minimum standards for gas-fired room heaters, wall furnaces and fire places; and for fluorescent lamps that are primarily used in area lighting. The amendment will also establish new standards for three products: electrically heated storage water heaters; parking lot and area dusk-to-dawn lighting; and cobra-head type roadway lighting.

Recommendation:

67) *Proceed with amendment.*

2. Amendments to the Regulations under the *Power Corporation Act*

Regulations 931, 149/92, 612/94, 611/92, 296/91

The first four regulations deal with: *Debt Guarantee Fees* payable to the Province of Ontario by Ontario Hydro; *Prescribed Investments* to ensure financing coordination between Ontario Hydro and the Provincial Government; the *Electrical Safety Code* for safe electrical installations; and *Electrical Inspection Fees* to apply the cost of the Electrical Safety Code to its users. Regulation 296/91 deals with economic development assistance to the Elliot Lake Region.

Within the scope of this consultation process (ie. Responsive Environmental Protection) there is no proposal that these regulations be amended. However, under a parallel consultation process for regulations under the *Power Corporation Act*, there will be consideration of changes to these regulations.

Given that the final outcome of changes to the *Power Corporation Act* are not as yet known and that this consultation process is not required to deal with these changes, comments in this section will be kept brief. For greater detail on changes to the *Power Corporation Act*, see CIELAP's Brief 96/2 *Submission to the Advisory Committee on Competition in Ontario's Electricity System*.

Whatever system or systems of electricity production and generation evolve as a consequence to changes to the *Power Corporation Act*, it is CIELAP's recommendation that the current commitment by Ontario Hydro to stabilize its emissions of greenhouse gases (GHG) by the year 2000, relative to its 1990 levels and to reduce its GHG emissions by 20% relative to its 1988 level by the year 2005 be maintained.

Recommendations

68) *Considerations of any changes to the Power Corporation Act should be made, at a minimum, within the framework set out above.*

Regulation 933

By way of Regulation 82/95 of the *Energy Efficiency Act*, the products which Regulation 933 covered are no longer offered for sale or lease in the Province. In this regard the regulation may be viewed as obsolete.

Recommendation:

69) *Regulation 933 should be repealed.*

3. Amendments to the Regulations under the *Ontario Energy Board Act*

Proposed Amendments

The following changes are proposed to Regulations made under the *Ontario Energy Board Act*:

- * To institute the Ontario Energy Board Rule of Procedure as (Regulation 870) as rules rather than a regulation under the *Statutory Powers Procedure Act*. Subsequently revoke regulation 870 and replace it with rules;
- * Revoke Regulation 188/93 since the powers of the regulations in 1994 and the regulation has become obsolete;
- * Revise Regulation 869 to remove all exemptions relating to transactions which have been completed; and
- * Consolidate Regulation 869 *General* and Regulation 702 *Uniform System of Accounts* into one regulation.

The major consideration with the proposed amendments to the *Ontario Energy Board Act* is the effect of 'freeing' the Ontario Energy Board from the formal process of Cabinet approval under the *Statutory Powers Procedure Act* for the purposes of procedural rule making.

In large measure, these amendments reflect the continuing evolution of the Ontario Energy Board as set in motion by changes made to the *Statutory Powers Procedure Act* in 1994. Those changes embodied the general sentiment that boards and tribunals should be more self-governing and should be able to set their own rules. Currently, rule changes and formulations for the OEB require Cabinet approval. Upon approval they are subsequently communicated to the public in the usual formal manner of the regulatory process such as listing them in the *Ontario Gazette*.

The proposed amendments would eliminate this procedure and allow the Ontario Energy Board to set its own rules of procedure. There are both strengths and weaknesses to this approach. The advantages that could potentially be conferred upon the system by the proposed amendments include: an increased level of coherence and comprehensibility of the rules for members of the public as they could be written more in plain language rather than in formal regulatory style. As well, the rules could conceivably be more contextually current, as they could follow the timetable established by the OEB, rather than that of the Cabinet.

The disadvantages that could potentially arise after the proposed amendments are made include: more frequent rule changes that could result in making it more difficult for parties to keep abreast of the operating environment. There could be the ability to make rules with general and particular application, as permitted in the amended *Statutory Powers Procedure Act*, which could be troublesome for parties attempting to understand the operating environment, not to mention potentially raising issues of fairness. It is quite probable that there will be fewer full public hearings and more consultation or negotiation processes. This could raise public access and public interest concerns. Finally, one could argue that future rule changes will be conceivably, 'shielded' from examination by the legislature.

Regulation 188/93

This regulation exempted Ontario Hydro from requirements for public review prior to instituting experimental rates. The powers of the regulation have lapsed and therefore Ontario Hydro is now subject to normal OEB rate review processes.

Recommendation:

71) *Regulation 199/93 should be repealed.*

Regulation 869

Revise 869 to remove all exemptions relating to transactions which have been completed.

Recommendation:

- 72) *Regulation 869 should be repealed, provided that a public record is kept of completed transactions exempted through this regulation.*

V. GOING BEYOND REGULATION

1. Introduction

The Ministry makes a number of proposals regarding its future direction. These include the role of certification and accreditation requirements, codes of practice, economic instruments, environmental management systems, the use of performance standards, improved access to environmental information and the promotion of voluntary action by industry. While some of these proposed directions deserve strong support, others raise very serious concerns.

2. Certification and Accreditation

In general, we support the establishment of requirements for the appropriate training and accreditation of individuals who handle hazardous or otherwise regulated materials, such as pesticides and ozone depleting substances. However, we are deeply concerned by the potential for the *de facto* privatization of the Ministry's regulatory functions through this approach. This is particularly true with respect to services related to environmental law enforcement.

3. Codes of Practice

We have a number of serious concerns regarding the expanded use of codes of practice by Ministry, particularly as part of a "standardized approvals" process. These concerns flow from a number of sources. We question the adequacy of the standards contained in the codes of practice which Ministry has proposed to incorporate into its standardized approval process. The Environmental Practices Guide for Ontario Hot Mix Asphalt Plants (March 1996), produced by the Ontario Hot Mix Producers Association, for example, contain no specific emission standards for any of the pollutants produced by Hot Mix Asphalt Plants.

Furthermore, concerns must be raised regarding the openness and accountability of the processes by which such codes of practice are developed. Participation in these processes is typically limited to members of the affected industry. The Ministry should not rely on documents developed solely by regulatees as the basis for its approvals processes.

4. Economic Instruments and Market Forces

Ministry makes reference its efforts to use economic instruments in support of its mandate. In general, we are in support of the expansion of the use of economic

instruments by the Ministry. Indeed, in 1993 the Canadian Institute for Environmental Law and Policy developed for the Ministry a detailed proposal on the use of a combination of economic instruments in the funding of municipal solid waste recycling.⁶⁸

However, we see economic instruments as a supplement, and not a replacement for a well-established regulatory framework for environmental protection. In addition, we continue to have serious concerns regarding the use of emission trading schemes.

Experience with emission trading systems is extremely limited. Trading systems require extensive and complex administrative, monitoring and enforcement structures, and their potential environmental and economic effectiveness, even when such mechanisms are in place, is the subject of continuing debate.⁶⁹

In addition, serious concerns have been identified regarding the problem of "local loading" with emission trading schemes. These considerations render trading systems an inappropriate instrument for the management of substances known to have direct environmental or human health effects.⁷⁰ For similar reasons, it has been argued that emission trading schemes should only be considered for emissions for which there is near perfect mixing, such as carbon dioxide.⁷¹

The need for substantial administrative and enforcement capacity to oversee emission trading systems is of particular concern given the reductions in the capacity of the MoEE resulting from recent budget cuts. The Ministry's proposals for the use of emission trading in the context of "community" managed "Local Airshed Management Units" (LAMU's) are of even greater concern in this sense. Municipalities and local community organizations are unlikely to have the administrative, monitoring and enforcement capacity to oversee trading programs, particularly in light of the province's reductions in transfer payments to municipalities.

5. Environmental Management Systems

The Ministry states that it sees great advantage in expanding industry adoption of Environmental Management Systems, like the ISO 14,001 standard, particularly in conjunction with joint environmental priority setting and the development of codes of practice for specific sectors. However, governments have been cautioned regarding excessive reliance on environmental management systems as means of ensuring environmental performance and regulatory requirements.⁷²

Specifically with respect to the ISO 14,001 standard, it has been pointed out that the ISO standard does not set out minimum levels of environmental performance in terms of air or water emissions or waste amounts, nor actually guarantee the

achievement of any level of performance.⁷³ Concerns have also been expressed regarding the openness and accessibility of the ISO standards development process, and the program's potential implications for environmental standards under international trade law.⁷⁴

6. Performance Agreements/Promoting Voluntary Measures

The Ministry indicates that it is considering giving business "greater operational flexibility, more regulatory certainty and streamlined approvals" in exchange for voluntary commitments to action beyond compliance."⁷⁵ We strongly oppose this proposal. Voluntary measures should be used as a supplement, not a substitute for regulatory requirements. The Ministry should keep in mind that voluntary commitments are precisely that - voluntary commitments, and therefore cannot be enforced. Consequently, they cannot be relied upon to ensure the protection of the environment or human health.

Furthermore, the Ministry's proposals ignore the "free-rider" problem inherent to voluntary schemes. The need for a firm regulatory framework to ensure fairness has been clearly demonstrated by recent industry calls for a regulatory backdrop to support any future "product stewardship" system for municipal solid wastes.⁷⁶

More generally, the Ministry's emphasis on voluntary measures as the primary means for moving environmental standards forward in the future ignores the consideration that firms, particularly in the primary resources sectors (i.e. mining, chemicals, and fossil fuels) have strong economic incentives to externalize the costs of production in order to maximize economic return. This form of market failure, and the need for state intervention to counter it, is widely recognized.⁷⁷

7. Performance Standards

The Ministry is also stressing the use of performance, as opposed to design, based environmental regulations as part of its efforts to "reinvent" environmental regulation.⁷⁸ "Performance" standards establish required outcomes, but do not prescribe the technology to be used to achieve those results. Design standards, on the other hand, prescribe the use of particular, usually end-of-process pollution control, technologies.⁷⁹ The use of performance standards is to provide "technological flexibility" to industry in its responses to new environmental regulations. This is intended to facilitate the development and adoption of innovative pollution prevention technologies.⁸⁰

However, as the Ministry notes, in some cases, the use of design standards, and the regulation of certain equipment, practices and related training may be required

to ensure the protection of safety, health or the environment. In addition, in order to be effective and enforceable, performance standards must prescribe, the specific outcomes required to be achieved within specified timeframes and provide for monitoring and reporting mechanisms to ensure that the necessary results are obtained.

8. Performance Reporting and Recognition

We support increased public access to environmental information through the Ministry of Environment and Energy. However, it is unclear to us how this will be achieved in light of reduced resources at Ministry.

9. Conclusions

A number of the Ministry's proposals to go "beyond environmental regulation" deserve significant support. These include the increased use of economic environmental policy instruments, particularly environmental taxes and charges, and the use, where appropriate of performance standards to set environmental requirements. However, a number of the Ministry's proposals raise serious questions. We are particularly concerned by the Ministry's proposals for the expanded use of industry developed "codes of practice" within the regulatory system, and the increased reliance on private sector actors to carry out Ministry functions through expanded certification and accreditation programs.

Furthermore, we are alarmed by the Ministry's proposals to reduce regulatory requirements in exchange for commitments to voluntary action by industry. Voluntary measures should be used as a supplement to, and not as a substitute for, regulatory requirements. Voluntary commitments are, by definition, and therefore cannot be relied upon to ensure the protection of human health and the environment.

VI. CONCLUSIONS

Responsive Environmental Protection proposes a series of rapid and sweeping changes to Ontario's environmental protection system. We are deeply concerned many aspects of the Ministry's proposals. The Ministry has proposed major amendments to regulations affecting virtually every aspect of its mandate. However, the Ministry initially only provided a 45 day public comment period on these proposals, and did not provide technical documents describing the actual regulatory changes being proposed until 30 days before the end of the public comment period.

Although the public comment period was subsequently extended for an additional 30 days, it remains totally inadequate for the development of appropriate responses to the Ministry's proposals. We are also concerned by the Ministry's moves towards the implementation of proposals contained in Responsive Environmental Protection, such as exemptions for approval requirements and the adoption of a "standardized approval" system, before the public comment period on the document has ended.

With respect to the specific proposals contained in the document, we do not support the Ministry's proposals for the application of formal cost-benefit tests to proposed new or amended regulations, or the Ministry's proposals for sunset clauses and automatic reviews of regulations. The implementation of these proposals would have major resource implications for the Ministry at a time when budgetary reductions are raising serious questions about its ability to effectively administer and enforce laws and regulations essential to the protection of the health and environment of Ontarians. In addition, the application of a formal cost/benefit test will raise a major barrier to the adoption of new regulations which may be necessary to protect human health and the environment.

We are also seriously concerned by the Ministry's proposals to de-regulate the recycling of hazardous wastes, including battery recycling and the recycling of metal bearing sludges, and recycling within "manufacturer controlled networks." We believe that the promotion of hazardous waste recycling in this manner would be extremely dangerous, given the nature of the wastes involved, and the long history in the province of Ontario of serious environmental problems in this area. The proposals are an open invitation to fraud, and illegal and unsound hazardous waste handling and disposal under the guise of recycling. We are also deeply concerned by the Ministry's proposals for the downwards harmonization of its definition of "subject" waste with federal standards through the removal of "liquid industrial wastes," and certain varieties of PCB's and other wastes from the Ontario definition.

In addition, we are seriously concerned by proposals to weaken regulatory controls on the handling, transfer and storage of hazardous wastes including PCBs, the burning of hazardous and liquid industrial waste generated on-site as fuel, and the

use of hazardous and liquid industrial wastes for dust suppression. These proposals are particularly alarming given the evidence of ongoing serious problems in these areas, provided by the results of the province's enforcement efforts over the past few years. The approach being proposed by the Ministry would also be inconsistent with the recently adopted CCME policy on pollution prevention.

The weakening of regulatory controls on use of biosolids (i.e. sewage sludge and pulp and paper sludge) as soil conditioner, the expansion of the definition of agricultural wastes, and the weakening of controls on its application to agricultural lands, are also of major concern and cannot be supported. Rather, the environmental and health issues related to the use of biosolids and agricultural wastes require serious study. Similarly, the Ministry's proposed approach to the issue of the use of engineered and inert fill requires serious reconsideration.

The Ministry's proposals to weaken regulatory controls on recycling facilities receiving mixed wastes, waste processing sites and transfer stations, and used tire site are also of concern. There is again, evidence of serious and ongoing problems in this area, including the fraudulent operation of waste storage and disposal sites under the guise of recycling. Consequently, these activities should not be candidates for a weakened regulatory framework. The Ministry's proposals for the expansion of the definition of "waste-derived fuel" and to weaken the approvals requirements for waste derived fuel sites opens the door to the widespread incineration of solid waste as "fuel." The Ministry's capacity to police such activities, given its reduced resources, is open to serious question.

We are also disappointed by the Ministry's failure to deal with issues such as environmental and health risks associated with burning of waste oil as fuel, and the lack of regulation of hospital incinerators. The latter issue was identified as a major environmental problem by ministry staff. We welcome the Ministry's proposals to strengthen the regulatory controls on the deep well disposal of brine.

A number of the Ministry's proposals to go "beyond environmental regulation" deserve support. These include the increased use of economic environmental policy instruments, particularly environmental taxes and charges, and the use, where appropriate, of performance standards to set environmental requirements. However, a number of the Ministry's other proposals raise serious questions. We are particularly concerned by the Ministry's proposals for the expanded use of industry developed "codes of practice" within the regulatory system, and the increased reliance on private sector actors to carry out Ministry functions through expanded certification and accreditation programs.

Furthermore, we are alarmed by the Ministry's proposals to reduce regulatory requirements in exchange for commitments to voluntary action by industry. Voluntary measures should be used as a supplement to, and not as a substitute for, regulatory

requirements. We are also concerned that the Ministry appears to regard voluntary action by industry as the only means of moving environmental standards forward in the province.

CIELAP has no objection to efforts to reform Ontario's environmental protection system in order to make it more effective, efficient, fair and accountable. These themes have been central to the work of the Institute, and its predecessor, the Canadian Environmental Law Research Foundation (CELRF) over the past quarter century.

However, we are deeply concerned the Ministry's proposals appear to reflect an out-dated approach to the relationship between environmental protection and the economy. Notwithstanding the accompanying statements about the dual importance of a health environment and a strong economy, the Ministry's proposals clearly indicate that environmental protection requirements are seen as barriers to job creation, investment and economic growth. This ignores the growing body of research on the implications of environmental sustainability for economies such as Ontario's,⁸¹ and the complex relationship between well-designed public welfare regulations and economic well-being.⁸²

The establishment of new environmental protection requirements has never been an easy matter. Those standards and requirements which have been implemented over the past twenty-five years have usually been put in place for good reason. Consequently, they should not be radically altered, or even dispensed with, without giving careful thought to the implications for the well-being of present and future generations of Ontarians.

ENDNOTES

1. Responsive Environmental Regulation, p.52.
2. Ibid.
3. Red Tape Commission, Interim Report (Toronto: June 1996), pp.6-7.
4. Responsive Environmental Regulation, pg. 52.
5. Regulatory Reform Task Force, Alberta Regulatory Reform: Improving the Alberta Advantage: Workplan, (Edmonton: Government of Alberta, 1995).
6. See *Guidelines for Business Regulations*, (Winnipeg: July 1994). These guideline require the *identification* of costs and benefits, but do not require a formal cost/benefit test.
7. *Code of Regulatory Conduct* (Regina: Government of Saskatchewan, 1993). As with the Manitoba requirement, the Saskatchewan Code requires the *identification* of major costs and benefits, but does not apply a formal cost/benefit test.
8. Government of Canada Regulatory Policy (Ottawa: Treasury Board Secretariat, November 1995).
9. *Executive Order 12,291*, 3 C.F.R. 127 (1982).
10. Hudson N. Janisch, Testimony to the Standing Committee on Regulations and Private Bills, Legislative Assembly of Ontario, March 24, 1988, p.T-6.
11. See, for example, R.J. Pierce, Jr. "Seven Ways to De-Ossify Agency Rule-Making," 47 Administrative Law Review, (1994). See also Carnegie Commission, Risks and the Environment: Improving Regulatory Decision-Making (Washington, D.C.: 1993).
12. For detailed critiques of the risk-benefit approach see, for example: J. Castrilli and T. Vigod, "Pesticides," in J. Swaigen ed., Environment on Trial: A Guide to Ontario Environmental Law and Policy (Toronto: Canadian Institute for Environmental Law and Policy and Emond-Montgomery Publishers 1993), pp 624-625; W. Leiss, Risk Management Approaches: Concepts, Issues and Choices (Paper Presented to the Federal Pesticide Review Team) (Vancouver: William Leiss and Associates Ltd., 1989); and United States Congress, Senate and House of Representatives, Risk Benefit Analysis in the Legislative Process: Summary of a Congress-Science Joint Forum (96th., Congress, 2nd. Session, March 1980)(Prepared by the Congressional Research Service and Library of Congress).
13. Red Tape Commission, Interim Report, pp.6-7.

14. Standing Committee on Regulations and Private Bills, Second Report (Toronto: Legislative Assembly of Ontario, 1988).
15. *Environmental Bill of Rights*, Part IV.
16. On the evolution of the regulatory framework for hazardous waste management see M. Winfield, The Ultimate Horizontal Issue: Environmental Politics and Policy in Ontario and Alberta 1970-1992 (Toronto: Ph.D. Thesis, Department of Political Science, University of Toronto, 1992), Chapters II, III, and IV.
17. EPA, R.S.O., 1990, section 30(1).
18. M. Mittlestadt, "Hard lessons learned from a toxic hot spot," The Globe and Mail January 21, 1991.
19. "Smith seeks probe of liquid waste at Hamilton Site," The Globe and Mail, May 1, 1980.
20. For a general critique of the use of permit by rule systems in waste management see M. Winfield et al., Looking Back and Look Ahead: Municipal Solid Waste Management in Ontario from the 1983 Blueprint to 50% Diversion in 2000: Conference Background Paper (Toronto: Canadian Institute for Environmental Law and Policy, December 1992), pp.16-17.
21. See, for example, S. Leahy, "The graying of Ontario's green fields," The Toronto Star, August 6, 1994.
22. See, for example, R.B. Monk, "A Status Report on Municipal Solid Waste Composting," Resource Recycling, Vol. 11, No.7, July 1992.
23. Offenses Against the Environment: Convictions in 1994 (Toronto: Ministry of Environment and Energy, 1995), pp.29-31.
24. CP, "Ontario grows tired of tire litter," The Globe and Mail, December 23, 1993. See also Malcolm Pirnie Air Emissions Associated with the Combustion of Scrap Tires for Energy Recovery (Columbia: Ohio Air Quality Development Authority, May 1991), pp.3-1 - 3.3.
25. See Offenses Against the Environment: Convictions in 1993 (Toronto: Ministry of Environment and Energy, 1994), and Offenses Against the Environment: Convictions in 1994.
26. Offenses Against the Environment (1993), pp.22-23.
27. Offenses Against the Environment (1994), p.9.

28. See Acres International, Dust Suppressant Study, (Toronto: Ministry of Environment, March 1988), pg. 7.

29. See W. Winfield and J. Swaigen, "Water," in J. Swaigen and D. Estrin, eds., Environment on Trial: A Guide to Ontario Environmental Law and Policy (3rd. ed.) (Toronto: Emond-Montgomery Publishers and CIELAP, 1993), pp. 559-561.

30. Ibid., p. 561.

31. See Canadian Environmental Protection Act Priority Substances List Assessment Report: Waste Crankcase Oils (Ottawa: Health Canada and Environment Canada, 1994), pg. 7. See also Acres International, Dust Suppressant Study, pg. 69.

32. M. Mittlestadt, "Hard lessons learned from a toxic hot spot," The Globe and Mail January 21, 1991.

33. Offenses Against the Environment: Convictions in 1994 (Toronto: Ministry of Environment and Energy, 1995), pp. 29-31.

34. See Industrial Releases Within the Great Lakes Basin: An Evaluation of NPRI and TRI Data (Toronto: Environment Canada, Ontario Region, November 1995).

35. The Definition adopted by the CCME is as follows "the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes *at the source*" (emphasis added). CCME A Strategy to Fulfil the CCME Commitment to Pollution Prevention (Winnipeg: CCME, May 1996).

36. MoEE Regulatory Review - Regulation 347 - General Waste Management, Pesticide Container Depots, Sections 61 to 73, Section B, Response to Question 2.

37. See, for example, R.B. Monk, "A Status report on municipal solid waste composting," Resource Recycling Vol. 11, No. 7, (July 1992); and B. Golob, "Addressing public concerns in project siting," Biocycle, September 1990.

38. MoEE Regulation Review: Regulation 103/94 - Industrial, Commercial and Institutional Source Separation Programs, Section C, Question 1.

39. Ibid.

40. The Definition adopted by the CCME is as follows "the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes *at the source*" (emphasis added). CCME A Strategy to Fulfil the CCME Commitment to Pollution Prevention (Winnipeg: CCME, May 1996).

41. See, for example, C. Parsons, "Cleanup yields unexpected find," The Globe and Mail August 7, 1993 regarding the Toronto Refiners and Smelters site closed in 1988.

42. See, for example, *R. v. Erie Battery Inc.*, (1992, MoEE file # 91-0304).
43. See, for example, S. Leahy, "The graying of Ontario's green fields," The Toronto Star, August 6, 1994.
44. MoEE Regulation Review: Regulation 101/94 Recycling and Composting of Municipal Waste, Section B, Summary Information.
45. EBR Part IV.
46. See M. Winfield and Z. Makuch, Who Pays for Blue? Financing Municipal Solid Waste Recycling in Ontario (Toronto: Canadian Institute for Environmental Law and Policy, October 1993).
47. Responsive Environmental Protection pg. 47.
48. MoEE Regulation Review: Regulation 340 - Containers/357 - Refillable Containers for Carbonated Soft Drinks, Essential Questions #1.
49. See, for example, J.E. Young, "Refillable Bottles: A return to a good thing," World Watch Vol.4, No. 2., March/April 1991; J. McGinnes, "Refillables: A Powerful Tool, If we use them," Waste Less Times No. 14, December 1992; and G. Coffey and F. Hartmann, "Moving up the ladder: the place of reuse and refill in Canadian waste management strategies," (Toronto: Toronto Environmental Alliance, August 1994).
50. The stakeholders seeking the repeal of these regulations included the Grocery Products Manufacturers (March 1, 1996), the Canadian Manufacturers' Association (February 19, 1996) and the Ontario Forest Industries Association (February 29, 1996).
51. Responsive Environmental Protection, pg. 47.
52. See MoEE Regulation Review Regulation: 102/94 Waste Audits and Waste Reduction Workplans/104/94 Packaging Audits and Packaging Reduction Workplans.
53. EBR Part IV.
54. MoEE, Responsive Environmental Protection, Technical Annex, pg. 80.
55. See MoEE Regulation Review Regulation: 102/94 Waste Audits and Waste Reduction Workplans/104/94 Packaging Audits and Packaging Reduction Workplans.
56. See, for example, Who Pays for Blue?.
57. See Response to Incineration Information Package (Toronto: CIELAP, September 1995), for detailed argument on this point.

58. See, for example, M. Cohen et al. Quantitative Estimation of the Entry of Dioxins, Furans, and Hexachlorobenzene into the Great Lakes from Airborne and Waterborne Sources (Flushing, NY: Centre for the Biology of Natural Systems, Queen's College CUNY, May 1995).

59. MoEE Regulatory Review: Regulation 347 - General Waste Management, Waste Derived Fuel Sites, (Section 1, 28.3 - 28.5), Section C, summary information.

60. Canadian Environmental Protection Act: Priority Substances List Assessment Report: Creosote-impregnated Waste Materials (Ottawa: Environment Canada and Health Canada, 1993).

61. MoEE Regulatory Review: Regulation 347 - General Waste Management, Waste Derived Fuel Sites, (Section 1, 28.3 - 28.5), Section C, Essential Questions 1.

62. See Canadian Environmental Protection Act/Priority Substances List Assessment Report/Used Crankcase Oil (Ottawa: Environment Canada and Health Canada, 1994), pp.15-18.

63. MoEE Regulation Review: Regulation 347 - General Waste Management - as it pertains to Hazardous and Liquid Industrial Waste.

64. M. Mittlestadt, "Hard lessons learned from a toxic hot spot," The Globe and Mail January 21, 1991.

65. MoEE Regulation Review: Regulation 347 - General Waste Management, Existing Hospital Incinerators, Sections 1 and 29.

66. Cohen et al., Quantitative Estimation of the Entry of Dioxins, Furans and Hexachlorobenzene into the Great Lakes Great Lakes.

67. MoEE Regulation Review: Regulation 341 - Deep Well Disposal, Section B, Essential Questions 1.

68. Who Pays for Blue?

69. On problems with emission trading schemes see, M. Winfield and B. Heidenreich, "Sustainable Development, the Law and Public Policy," in J. Swaigen and D. Estrin, eds., Environment on Trial: A Guide to Ontario Environmental Law and Policy (Toronto: Emond-Montgomery Publishers and the Canadian Institute for Environmental Law and Policy, 1993); L. Nowland and C. Rolfe, Economic Instruments and Environmental Protection: Selected Legal Issues (Vancouver: West Coast Environmental Law Research Foundation, 1993); and M. Winfield and B. Rutherford, "CEPA and Economic Instruments," in M. Winfield ed., Reforming the Canadian Environmental Protection Act: A Submission to the House of Commons Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and

Policy, 1994).

70. Mark A. Bernstein, Alexander E. Farrell, James W. Winebrake, The Clean Air Act's SO₂ Emissions Market: An Estimate of Regulator Restrictions and Market Uncertainty (Energy Management and Policy Program, University of Pennsylvania, February 16, 1993).

71. See Winfield and Rutherford, "CEPA and Economic Instruments."

72. H. Mann, Environmental Regulatory Innovation: Final Report of an Environment Canada Task Force (Ottawa: Environmental Protection Service, Environment Canada, March 1996)., pg. 16.

73. Ibid.

74. For a detailed critique of the ISO Environmental Management Standards process see Benchmark Environmental Consulting, ISO 14000: An Uncommon Perspective - Five Questions for Proponents of the ISO 14000 Series (Brussels: The European Environmental Bureau, October 1995).

75. Responsive Environmental Protection, pg. 58.

76. See Funding of Packaging Recycling in Ontario: A Proposal by the Canadian Industry Packaging Stewardship Initiative (Toronto: CIPSI Ontario and the Ministry of Environment and Energy, 1994).

77. See generally, M. Winfield and B. Heidenreich, "Sustainable Development, Public Policy, and the Law," in Estrin and Swaigen, eds., Environment on Trial, pp. xxv-xxxix.

78. Responsive Environmental Regulation, pg. 58.

79. "More effective and efficient environmental policies," in Environment and Economics (Paris: Organization for Economic Cooperation and Development, 1985), p.171. See also Office of Technology Assessment, Industry, Technology and the Environment: Competitive Challenges and Business Opportunities (Washington, D.C.: United States Congress, 1993) p.23. In Ontario, specific design elements were incorporated into Control Orders and other instruments to ensure compliance by setting timetables for the construction of pollution control facilities. See R. Gibson, Control Orders and Industrial Pollution Control in Ontario (Toronto: Canadian Environmental Law Research Foundation, 1983).

80. See: OECD, "More efficient and effective environmental policies," p.171; P.Ph. Barde and P.F. Teneire Buchot, "The Promotion and Diffusion of Clean Technologies in Industry" (Paris: Organization for Economic Cooperation and

Development, Environment Secretariat, 1987), pp.22-24; and N.A.Ashford, "Understanding Technological Responses of Industrial Firms to Environmental Problems: Implications for Government Policy," in K.Fischer and J.Schot, eds., Environmental Strategies for Industry (Washington D.C.: Island Press, 1992), p.294.

81. See, generally, for example, M.Winfield and J.Rabantek, Putting the Environment in Green Industry Strategies: The Role of Environmental Industries in Restructuring for Sustainability (Toronto: Canadian Institute for Environmental Law and Policy, April 1995).

82. Ibid.

ANNEX 1

BRIEF COMMENTS ON OTHER PROPOSALS IN RESPONSIVE ENVIRONMENTAL PROTECTION

All Comments Based on Proposals in Responsive Environmental Protection: A Consultation Paper.

AIR QUALITY

1. Revise the Gasoline Volatility Regulation (Reg. 271/91) to reduce emissions by lowering gasoline volatility requirements from 72 kPa to 62 kPa.
 - support lowering of gasoline volatility requirements.
2. Consolidate three vehicle and fuels regulations (271/91, 353 and 455/94) into one regulation that clarifies existing requirements and harmonizes federal-provincial overlapping requirements.
 - no objection in principle. Note comment above re: Regulation 271/91. Support updating testing procedures/technologies and emission standards for light duty vehicles and heavy duty vehicles if involve strengthening of standards.
3. Consolidate the current General-Air Pollution Regulation (Reg. 346) and the Ambient Air Quality Criteria Regulation (Reg. 337) into one new general air regulation listing all provincial air standards for specific substances.
 - no objection in principle to consolidation, but concern over adequacy of provincial air standard setting practices, particularly "point of impingement" model as noted by MoE in Clean Air Program (1987).
 - concerns about LAMU proposal outlined below.
4. Replace the Hot Mix Asphalt Facilities Regulation (Reg. 349) with code of practice under a standardized approval regulation.
 - do not support.
 - concerns re: standardized approvals (Class III) outlined under **Waste Management**
 - OHMPA Code of Practice contains no specific emission limits or testing requirements
 - regulation requires strengthening including:
 - extension of application to all hot mix facilities (mobile and

- stationary)
 - expansion to include contaminants other than particulates (i.e. SO_x, NO_x, CO and Total Organic Compounds).
5. Replace the Boilers Regulation (Reg. 338) with code of practice under a standardized approval regulation.
 - do not support
 - concerns re: standardized approvals outlined under **Waste Management**.
 - province should examine alternative methods of regulating use of high sulphur content fuel as recommended by MoEE staff.
 - could prohibit sale of fuel coal/fuel oil with sulphur content of > 1%.
 6. Replace the Lambton Industry Meteorological Alert Regulation (Reg. 350) with a Memorandum of Understanding (MOU) to be negotiated by the Ministry and the Lambton Industrial Society.
 - do not support, rationale for change not apparent
 - replaces regulatory air pollution control requirements with voluntary measures.
 7. Revoke the Air Contaminants from Ferrous Foundries Regulation (Reg. 336).
 - support.
 8. Revoke the Sulphur Content of Fuels Regulation (Reg. 361).
 - do not support, will result in increased air pollution in Metro Toronto.
 9. Revise and consolidate 14 air regulations: (1) an acid rain regulation, (2) an ozone depleting substances regulation, (3) a vehicles and fuels regulation and (4) a general air regulation.
 - no objection in principle, given no substantive changes.
 - 10) Eliminate sections of the Ozone Depleting Substances and Acid Rain regulations which specify targets that have been achieved.
 - requires careful drafting to ensure do not undermine existing requirements/standards (e.g. if something is banned by regulation, then remove language implementing ban on assumption substances is no longer in use, substance may come back into use legally).

- do not support reduction of reporting requirements under Countdown Acid Rain from quarterly to annual reports.
- 11) Update and move air modelling requirements from the General Air Pollution Regulation (Reg. 346) into a guideline that will permit the use of a wider range of models.
- see comment above re: adequacy of "point of impingement" models.
- 12) Move training components out of several regulations (eg. Dry Cleaners Reg. 323/94) into a new, consolidated Training, Certification, Licensing and Accreditation regulation to allow regulated parties to more easily locate and identify their responsibilities.
- no apparent rationale. Training requirements vary from regulation to regulation. TCLA requirements should remain with appropriate subject regulations.
- 13) Harmonize federal-provincial regulatory activities on vehicle pollution control and fuel quality with the federal government and the Ministry of Consumer and Commercial Relations.
- supported provided it does not lead to a decrease in standards or environmental protection.
- 14) Harmonize federal-provincial air quality data reporting activities.
- no comment possible without specific proposals.
- 15) Harmonize federal-provincial requirements regulating the production of ozone depleting substances by eliminating overlapping production requirements from provincial regulation.
- no comment possible without specific proposals.
- 16) Release a draft 3-year Standards Setting Plan which identifies priorities for standards development and revision. The Ministry will consult with stakeholders on the plan. In accordance with the Standards Setting Plan:
- * review and update air standards on an on-going basis; and
 - * Adopt high and effective standards from other jurisdictions, and encourage joint development of standards through partnerships with

other regulatory agencies, the regulated community and stakeholders. [Where this is not appropriate or timely, in-house standards development will continue].

- concern as noted above "point of impingement" approach to standard setting. Also serious concerns regarding proposed approach to risk assessment and risk management.
- 17) Establish a regulatory provision in the new General Air Regulation to empower communities to manage their own airsheds, to meet or surpass current provincial standards within Local Airshed Management Units (LAMUs).
- proposal is unworkable
 - where will resources for LAMU's come from?
 - who constitutes the "community?"
 - see other questions raised by Canadian Environmental Law Association in their brief re; Responsive Environmental Regulation.
- 18) Work with stakeholders to develop the concept of LAMUs over the next year and initiate pilot projects, including the use of emission reduction trading.
- where will operating funds for LAMUs come from. Where will capacity to oversee (monitoring and enforcement) trading schemes come from?

APPROVALS

- 1) Remove unnecessary requirements for a Certificate of Approval for certain environmentally insignificant activities such as: minor ventilation systems and service connections; and realignment and replacement of watermains and sewers and seek comments on additional activities for which the requirement to obtain a Certificate of Approval could be removed, with minimal impact on the environment.
- require more information on specific approvals under consideration for removal.
 - in general, if approvals have been required there usually has been a reason for it.
- 2) Designate certain projects/activities for standardized approvals regulations. Possible candidates for standardized approvals regulations include the following:

- * Minor modifications to existing approved facilities and equipment;
 - * Comfort and process heating units, hospital sterilizers (EPA Section 9);
 - * New water mains, sanitary sewers and storm sewers; and
 - * spill containment and storm water management for existing electrical transformer stations and petroleum storage and distribution facilities (OWRA Section 52 and 53);
 - * Projects that are subject to adequate conditions in other codes and approval processes (eg. building code); and,
 - * Projects that are reviewed and certified by an independent accredited professional.
- do not support. See general comments re standardized approvals under **Waste Management**.
- 3) Enact regulations to remove hearing requirements under the EPA and OWRA for demonstration of new waste technology projects. A Certificate of Approval will continue to be required.
- do not support. See detailed comments under **Waste Management**.
- 4) The Ministry proposes to reform the present fee structure for Certificates of Approval through amendments to the Fees Regulations (Reg. 502/92 and 503/92).
- support reform of fee structure in principle. Cannot comment without specific proposals. In general fees should recover the full costs of approval administration. Additional fees might be considered based on types of emissions, effluents and wastes.
- 5) The Ministry proposes to establish pilot projects with industry to assess the feasibility of single-site approvals and consult on the concept of single-site approvals and invite expressions of interest for pilot studies.
- support in principle, but serious concerns regarding Ministry's capacity to administer successfully given reduced resources.
- 6) The Ministry proposes to transfer approvals such as noise, odours, dust to municipalities, establish a pilot project with a municipality to assess the feasibility of further transfers and invite further suggestions on the types of approvals that could be transferred to municipalities.
- do not support. Serious concerns regarding capacity of Municipalities to administer these approvals, especially in context of reduced resources. Must also consider problems of conflict of interest, economic blackmail

of communities. Remember why environmental approval functions were moved up from municipalities under *Public Health Act* to province in the first place.

ENVIRONMENTAL ASSESSMENT

- 1) Revoke 315 obsolete Exemption Regulations.
 - support provided public record is maintained of all exemptions granted under the Act since 1975.
 - ensure that exemption regulations do not contain terms and conditions which must still be fulfilled.
- 2) Release the revised General EA Regulation.
 - no comment possible without further information.
- 3) Draft new 'Rules of Procedure' under the Statutory Powers Procedure Act and subsequently revoke the Environmental Assessment Board's regulation (Reg. 335) describing their rules of practice.
 - see detailed comments re: Rules of Procedure under *Ontario Energy Board Act* under **Energy**.

ENVIRONMENTAL BILL OF RIGHTS

- 1) The Ministry proposes to Amend the EBR Classification of Instruments Regulation (Regulation 681/94) to remove notice requirements for proposals having little or no environmental impact or for which there is no expressed public interest.
 - do not support. Undermines principle of comprehensiveness of registry. Will also degrade usefulness of registry as a management tool for the Ministry.
- 2) The Ministry proposes to Amend the EBR General Regulation (Reg. 73/94), to reflect the renaming of Ministries and Acts (administrative amendment).
 - support with qualification that exemption provided to Ministry of Finance by Regulation 482/95 should be repealed.

PESTICIDES

- 1) Reduce the number of types of pesticide licenses from 53 to 15.
 - no comment.
- 2) Introduce recertification every five years for licensed exterminators and add new requirements for unlicensed assistants to take basic health and safety training.
 - support.
- 3) Simplify insurance requirements for operators and require a minimum of \$1 million in comprehensive third party liability for all pest control businesses.
 - support.
- 4) Replace sections in Regulation 914 that require burial of pesticide containers with new requirements to recycle empty commercial and agricultural plastic and metal pesticide containers.
 - support with qualifications. Must ensure appropriate and safe handling of empty pesticide containers.
- 5) Simplify public notification requirements to encourage IPM programs and reduced pesticide use.
 - do not support. Should only provide exemption from notice requirements where no pesticides used at all.
- 6) Remove permit requirements for pesticide applications that pose little environmental risk.
 - do not support. All pesticide applications, by definition involve potential risk to human health or the environment.
- 7) Eliminate those sections of Regulation 914 dealing with the use of older pesticides that are no longer available.
 - do not support. Findings under Canada-Ontario Agreement on Great Lakes Basin that de-registered pesticides may still be in use.
- 8) Consolidate and clarify sections of Regulation 914 controlling the use of fumigants.

- insufficient information for comment.
- 9) Eliminate the requirement for listing pesticides with new active ingredients on the EBR Registry.
- do not support. Undermines principle of comprehensiveness of registry. Introduction of pesticides into province is an environmentally significant event.
- 10) Replace the provincial pesticide classification system with a new national pesticide classification system which would be implemented at the federal level.
- do not support. National system not defined or anywhere near implementation.

SPILLS

- 1) Revise the Spills Regulation (Reg. 360) to better organize and simplify language.
- support in principle if no substantive change.
- 2) Clarify the spills reporting exemption to eliminate trivial and frivolous reports and ensure that only environmentally significant spills are reported.
- do not support. Technical Annex indicates proposal involves expansion of existing reporting exemptions.
- 3) Encourage industry to base their estimates of reportable spill quantities in contingency plans on an assessment of the likelihood of adverse environmental effects.
- inadequate information provided for comment.

TRAINING, CERTIFICATION, LICENSING and ACCREDITATION

- 1) Create a new Training, Certification Licensing and Accreditation Regulation. A regulation which would assemble requirements from existing regulations and develop a framework for future initiatives. This may result in replacement of existing regulations (eg. Dry Cleaners Reg. 323 and Water Works and Sewage

Works Reg. 435). The regulation would define standard requirements for all training, licensing, certification and accreditation, and enabling powers for third party delivery of these services.

- do not support. TCLA requirements should accompany appropriate regulations. Different regulations require different TCLA regimes. Don't see how can be done on one size fits all basis.

WATER QUALITY

- 1) Complete a performance-based regulation for sewage treatment plants in cooperation with stakeholders.
 - support, but likely impractical in light of reductions to Municipal Assistant Program.
 - what about industrial discharges to sewers, which are the major source of contaminant discharges from STPs?
- 2) Replace the Marinas Regulation (Reg. 351) with a voluntary Code of Environmental Practice.
 - do not support. Replaces regulatory requirement with voluntary measures. Marinas will no longer be required to have pump-out facilities and MSW facilities.
- 3) Remove the requirement for the Pulp and Paper Sector to submit reports on how to reach zero AOX by 2002 and remove the requirement for the Ministry to review the reports against the goal of zero AOX under MISA Program.
 - do not support. Inconsistent with EBR principle of not re-opening recently enacted regulations which were subject of substantial consultation.
 - scientific evidence regarding likely impacts of AOX discharges growing.
 - unfair, given that some plants have already made expenditures to implement requirement (e.g. E.B. Eddy in Espanola, and Domtar in Cornwall).
- 4) Reduce routine chronic toxicity testing requirements under MISA when sufficient data has been collected to analyze trends.
 - do not support. Inconsistent with EBR principle of not re-opening recently

enacted regulations which were subject of substantial consultation. Require on-going data to indicate whether discharges may cause long-term harm.

- 5) Remove reporting and monitoring requirements under MISA for substances that are not used in a facility's industrial processes.
 - should only remove reporting and monitoring requirements for substances if not used in plant and non-detectable in effluent. Also require consideration of impact of process changes in plant on discharges.
- 6) Reduce monitoring frequency under MISA for facilities that surpass effluent limits as incentive to good performance.
 - do not support. Will render regulations unenforceable.
- 7) Revise MISA Regulations to allow regulated facilities to store monitoring data using software of their choice. Summary data must be submitted in a Ministry-approved electronic format using any software. However, where detailed data is requested by the Ministry, it can be submitted in any format.
 - do not support. Facilities should be required to report data in common format to permit timely processing and analysis by ministry.
- 8) Coordinate MISA reporting requirements with the federal government.
 - insufficient information for meaningful comment.
- 9) Work with the federal government to coordinate water quality data requirements.
 - insufficient information for meaningful comment.

WELLS

- 10) Revise the regulation to increase the licensing fee, decrease the frequency of license renewal, and require that the water well records be submitted in electronic format.
 - do not support decreased frequency of license renewals. Should require metering of water taken and charge for water taken.

ANNEX 2

CIELAP letter to the Hon. B. Elliott, Minister of Environment and Energy of July 8, 1996 Re: EBR Registry Posting RA6E0006P: Regulatory Standards for New Landfill Sites Accepting Non-Hazardous Waste

COPY

July 3, 1996

The Hon. Brenda Elliott
Minister of Environment and Energy
12th Floor
135 St. Clair Ave. W.
Toronto, Ontario
M4V 1P5

Re: EBR Registry Posting RA6E0006.P: Regulatory Standards for New Landfill Sites Accepting Non-Hazardous Waste

Dear Mrs. Elliott,

I am writing to you regarding the Ministry of Environment and Energy's proposed Regulatory Standards for New Landfill Sites Accepting Non-Hazardous Wastes, which were released on June 18, 1996.

It is difficult to comment meaningfully on this proposal without a clearer impression of the nature and structure of the reformed landfill approval process of which this standard is to be a central component. Indeed, I would like to recommend to you that you extend the public comment period on the proposed regulation until the government's entire package of proposed reforms is available to the public.

Within this context, I would like to draw you attention to certain aspects of the regulation which give rise to concerns on the part of the Institute.

1. Location Criteria

CIELAP is surprised at the inclusion of site selection criteria in the proposed regulation. In fact, the proposed regulation appears to imply that site location will not be an issue in landfill approvals for facilities located outside of the categories of Public Airports, Hazardous Lands, and Natural Heritage Features as identified in the draft regulation.

The proposed definitions of Natural Heritage Features and Hazard Lands are extremely narrow. The definition of Natural Heritage Features, in particular, is unlikely to be

adequate to ensure the integrity of such features. More broadly, the implied approach would be a significant step backwards from the existing approvals process, where it is necessary to demonstrate that a proposed site for a landfill is the most suitable available from ecological, social, cultural, and economic perspectives. This more rigorous approach reflects the significance of the environmental and social impacts of landfill facilities.

2. Role of the Public in the Approvals Process

CIELAP is also concerned by indications that it is the government's intention to remove the current requirements for public hearings prior to the approval of all new landfill facilities. Public hearings before the Environmental Assessment Board, or its predecessor, the Environmental Hearings Board, prior to the approval of landfills of any significant size have been a statutory requirement in the Province of Ontario since the passage of the *Waste Management Act* by the government of Premier John Robarts in 1970. The elimination of this requirement would, again, be a significant step backwards from the existing legal framework in Ontario.

3. Impact of Design Standard on Innovation

The government appears to be proposing to establish an approval system structured around a particular form of landfill design. In doing so the government risks creating barriers to the approval of alternative designs or technologies which may, in fact, provide for a higher level of environmental protection than those proposed in the draft regulation.

4. Financial Assurance

The proposed regulation would include requirements for financial assurances from private landfill operators to ensure the appropriate closure and perpetual care of facilities. However, given the potential scale of the environmental impacts of a landfill facility, it is not clear that the proposed \$0.5/tonne financial assurance fee will provide adequate financial resources to provide for long-term care or the remediation of any problems which might arise at an abandoned site. It is also unclear if the government intends to exempt landfill operators of any future environmental liability once a facility has been closed. CIELAP would oppose such an exemption, given the risk of liability which it poses to the public.

5. Overall Policy Approach

CIELAP has worked extensively on municipal solid waste management issues in the

Province of Ontario over the past eight years. In this context, the Institute is concerned by the overall direction of the province's policy of simplifying and accelerating the approvals process for new landfill facilities. Landfills, regardless of design, have major environmental impacts, including air and water pollution, the disruption of surface and groundwater flows, noise, and the disruption or destruction of physical landscape, including agricultural lands and wildlife habitat. Once established, landfills typically provide limited economic benefits to their host communities.

At the same time, it should be remembered that the portion of the municipal solid waste stream which may be diverted from disposal through waste reduction, reuse, recycling or composting is very high, on the order of 80%-90%. As a consequence, the establishment of new landfill facilities should only be viewed as an option of last resort in the management of municipal solid waste. In this context, it is especially disappointing to see the province putting so much effort into facilitating the creation of new waste disposal facilities, at the same time that it is withdrawing from most of its efforts related to waste diversion.

Please feel free to contact me should you, your staff or your officials require any additional information on CIELAP's views on this matter.

Yours sincerely,

Anne Mitchell,
Executive Director.

cc: Dalton McGuinty, M.P.P, Liberal Environment Critic.
Marilyn Churley, M.P.P., N.D.P. Environment Critic.
Larry Wilcox, Waste Reduction Branch, Ministry of Environment and Energy.