

# ENVIRONMENTAL LAW

## ONTARIO MOVES TO PROTECT GROUNDWATER AT SOURCE

### White Paper Proposes More Planning Bureaucracy

Following on the recommendations of the Walkerton Inquiry and its own Source Protection Advisory Committee, the MOE has issued a *White Paper on Watershed-based Source Protection Planning*. Released February 12, 2004, the paper proposes that source protection plans be developed regionally and implemented locally for every watershed in the province. The process would rely on extensive public consultation, as well as the full cooperation of municipalities within local and regional watersheds. In addition, individual watershed Source Protection Planning Boards and regional Source Protection Planning Committees would join Conservation Authorities in overseeing the development process.

Funding may be problematic. The White Paper acknowledges the need for the collection and analysis of any technical data needed to “support” the plans, but does not identify where key stakeholders are expected to get the necessary money for that work. In addition to watershed planning, the White Paper addresses the rules surrounding water-taking permits and the factors to be considered in designing a system of water-taking charges. The Paper can be downloaded from our Online Compliance Centre at [www.willmsshier.com/compliance](http://www.willmsshier.com/compliance).

### Expert Committees To Advise On Water Protection Issues

MOE has established two expert advisory committees on surface and groundwater protection. The Implementation Committee will advise on plans to protect water sources, including funding mechanisms and incentives. W&SEL’s Juli Abouchar, who was assistant commission counsel to the Walkerton Inquiry, has been appointed to the Implementation Committee. The Technical Experts Committee will identify and assess threats to drinking water, including the impact of water-taking on the quality and quantity of drinking water.

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## MOE SWATS CHEMICAL VALLEY

Following February’s massive chemical spills into the St. Clair River, MOE Minister Dombrowsky vowed “zero tolerance” for “industrial actions that endanger our environment,” and urged industries to “ensure this doesn’t happen again.” The MOE SWAT Team is blitzing chemical companies in the Sarnia-Wallaceburg area. To date, Nova Chemicals, SCU Nitrogen Inc. and Cabot Canada Ltd. have been served Provincial Officer Orders detailing the actions needed to come into compliance. The Minister has appointed an Industrial Pollution Action Team to report in June on gaps in current law and practice, and recommend technology, industry, government and legal solutions.

## ENVIRO INDUSTRY URGED TO HELP SELL CO-OP AGREEMENTS

MOE’s Cooperative Agreements program, which urges companies to voluntarily exceed basic compliance requirements, is off to a slow start. Although the Ministry inked template agreements with the auto parts and the chemical industry sectors last September, only one facility had applied to join the program by February 2004. Participants are eligible for site-wide multi-media approvals, fast-tracked amendments to approvals, and other service

perks, including “an opportunity to forge a specialized relationship with the Ministry.” In an effort to entice more facilities, MOE is asking environment technology and service suppliers to offer discounts to auto parts and chemical producers who sign Cooperative Agreements for their facilities. In turn, the Ministry would profile the environmental firms on its website. To date, however, environmental companies’ response has been skeptical. For details, visit the MOE website at [www.ene.gov.on.ca/envision/coopagreements/index.htm](http://www.ene.gov.on.ca/envision/coopagreements/index.htm).

## W&SEL WELCOMES TWO NEW ENVIRONMENTAL LAWYERS

**Colin Grant:** Colin is an experienced litigator who has represented clients in federal and Ontario courts and administrative tribunals, including the Ontario Court of Appeal, the Environmental Review Tribunal and the OMB. Colin was called to the Bar in 1997. At W&SEL, Colin will focus on the regulatory and civil litigation of environmental claims and defence of environmental charges. Most recently, Colin was a Senior Solicitor at York Region. Colin holds an LL.B. from Queen’s University and a B.A. from University of Western Ontario. You can contact Colin at (416) 862-4825, or by email at [cgrant@willmsshier.com](mailto:cgrant@willmsshier.com).

**Paula Lombardi:** In addition to her environmental law credentials, Paula holds an M.C.I.P. and practiced as a professional land use planner before being called to the Ontario Bar in 2002. Her practice at W&SEL includes regulatory compliance and contaminated site issues, litigation and environmental aspects of land use planning and development. Paula holds an LL.B. from the University of Western Ontario and a degree in Urban and Regional Planning from Ryerson University. You can contact Paula at (416) 862-4824, or by e-mail at [plombardi@willmsshier.com](mailto:plombardi@willmsshier.com).



**ONTARIO STACKS UP NEW LAWS**

**Is Ontario Practicing Legislative Overkill?**

- *Strong Communities (Planning Amendment) Act, 2003 (Bill 26)*
- *Greenbelt Protection Act, 2003 (Bill 27)*
- *Adams Mine Lake Act, 2004 (Bill 49)*

The government seems bent on stamping a "take-charge" image on its environmental portfolio with a flurry of law-making. Politicians and bureaucrats need to think and draft carefully to avoid more confusion and fragmentation of Ontario's planning and environmental framework.

The *Greenbelt Protection Act, 2003*, and the Minister's Order imposing a development moratorium to facilitate the creation of a greenbelt in the Golden Horseshoe show the potential for increasing confusion and regulatory conflict. Development is halted outside municipal boundaries until the government has time to study the issue and develop a greenbelt plan. Presumably, the plan will be implemented through another single-purpose law, as was the case with the *Niagara Escarpment Planning and Development Act*, the *Oak Ridges Moraine Conservation Act*,

*2001*, and the *Ontario Planning and Development Act, 1994*.

Was it necessary to cram another law onto the books? The lawmakers could have achieved the same result by using the *Ontario Planning and Development Act, 1994*. However, introducing a new, single purpose statute may be easier to explain to the public and have more political cachet. Unfortunately, profligate lawmaking tends to perpetuate confusing and conflicting legislation.

The same cautions about regulatory overkill should be considered by the MOE on the release of its *White Paper on Watershed-based Source Protection Planning*. In his Walkerton Report, Justice O'Connor recommended the integration of source protection into existing legislation, drafting amendments (where necessary) to expand powers or create consistency. Subsequently, the former government appointed an Advisory Committee, whose April 2003 report recommended a whole new statutory framework for source protection.

The broadly drafted White Paper supports the Advisory Committee in recommending the creation of a new statutory framework with a series of regional watershed planning authorities – with boundaries that don't coincide with municipal boundaries – and with no taxing authority or resources.

These new authorities will make source protection plans that will supersede municipal by-laws and local/regional official plans. Moreover, most of the new authorities will be populated by officials of existing conservation authorities. Much of the work they will do is the work authorities currently do under the *Conservation Authorities Act*.

We already have a cat's cradle of planning and environmental legislation bearing on the protection of water resources. For example, the *Planning Act* and its Provincial Policy Statements, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Nutrient Management Act, 2002*. Don't forget the *Sustainable Water and Sewage Systems Act, 2002*, which has received Royal Assent, but is not in force yet, plus the *Drainage Act* and *Farming and Food Production Protection Act*.

Imposing additional levels of bureaucracy plus a daunting multi-stakeholder consensus-

building process could subvert environmental protection efforts through prolonged territorial squabbling over jurisdiction and funding. How much compromise and old-fashioned horse trading will it take to get municipalities to buy into and sign on to a source protection plan? How many wetlands for a mall, or an industrial park, or a new real estate subdivision? Will this be better, or even different, from the pressures currently faced by conservation authorities?

The environmental goals of the government are laudable. However, it is vitally important to craft the legislation carefully to avoid conflicts and ensure integration with Ontario's existing land use planning and environmental protection framework.

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**ENGAGEMENTS OF NOTE**

**Donna Shier** will speak on *Understanding the Challenges in Developing a Contaminated Site* at the Real Estate Summit, Law Society of Upper Canada Continuing Legal Education, on April 21, 2004.

**Donna Shier** will speak on *Strategies for Redeveloping on Contaminated Sites and Decommissioning Brownfield Buildings*, at the Hazardous Building Materials Forum, hosted by Insight, in Toronto on May 3, 2004.

**Marc McAree** and **Barry Spiegel** will again teach the annual two-day *Fundamentals of Environmental Law in Ontario* course at The Canadian Institute, in Toronto on May 5 - 6, 2004.

**Doug Petrie, Carolyn Shaw and Barry Spiegel** will speak on *Dealing With Industrial Air Emissions*, **John Willms, Marc McAree** and **Juli Abouchar** will cover *Dealing With Industrial Water and Wastewater*, and **Barry Spiegel** will cover *Environmental Emergencies*, at the 12<sup>th</sup> Annual Canadian Environmental Conference and Trade Show, in Toronto on May 12-13, 2004.

**To Subscribe**

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